

AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of the People's Republic of China and the Government of the Kingdom of the Netherlands,

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 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 imposed on behalf of a Contracting State or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
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 Netherlands:
 - (i) the income tax;
 - (ii) the wages tax;
 - (iii) the company tax, including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act, the Mining Act BES, the Mining Decree BES or Petroleum Act Saba Bank BES;
 - (iv) the dividend tax;

(hereinafter referred to as “Netherlands 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; when used in geographical sense, means all the territory of the People’s Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People’s Republic of China has jurisdiction or sovereign rights in accordance with international law and its internal law;

b) the term “the Netherlands” means:

(i) the European part of the Netherlands, including its territorial sea, and any area beyond the territorial sea within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights; and

(ii) the Caribbean part of the Netherlands that is situated in the Caribbean Sea and consists of the islands of Bonaire, Saint Eustatius and Saba, including the territorial sea of these islands, and any area beyond the territorial sea of these islands within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

c) the terms “a Contracting State” and “the other Contracting State” mean China or the Netherlands 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 “competent authority” means:

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

(ii) in the Netherlands, the Minister of Finance or his authorized representative;

i) the term “national”, in relation to a Contracting State, means:

- (i) any individual possessing the nationality of a Contracting State;
- (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

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 that 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 local authority thereof. 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.

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 12 months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise 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. 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 harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. 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) 10 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other Contracting State if the beneficial owner of the dividends is the Government of that other Contracting State, any of its institutions or any other entity the capital of which is wholly owned directly or indirectly by that other Contracting State.

4. 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 corporate rights 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.

5. 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.

6. 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.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividends are paid to take advantage of this Article by means of that creation or assignment.

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. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to, or on loans guaranteed or insured by, the Government or a local authority, the Central Bank, or any financial institution wholly owned by the other Contracting State, shall be exempt from tax in the first-mentioned State.

4. For the purposes of paragraph 3, the term “any financial institution wholly owned by the other Contracting State” means:

a) in the case of China:

- (i) China Development Bank Corporation;
- (ii) Agricultural Development Bank of China;
- (iii) Export-Import Bank of China;
- (iv) National Council for Social Security Fund;
- (v) China Export & Credit Insurance Corporation;
- (vi) China Investment Corporation; and
- (vii) any other institution as may be agreed from time to time between the competent authorities of the Contracting States;

b) in the case of the Netherlands:

- (i) Netherlands Finance Company for Developing Countries;
- (ii) Netherlands Investment Bank for Developing Countries; and
- (iii) any other institution as may be agreed from time to time between the competent authorities of the Contracting States.

5. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, 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 and 2 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.

9. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

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 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.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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, or 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, 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.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

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 of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, at any time during the twelve month period preceding such alienation, had a participation, directly or indirectly, of at least 25 per cent in the capital of that company.

6. However, the provisions of paragraphs 4 and 5 shall not apply to gains derived from the alienation of shares:

a) quoted on a recognised 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; or

b) held by the Government of a Contracting State, any of its institutions or any other entity the capital of which is wholly owned by that Contracting State, provided that such institution or entity is a resident of that Contracting State.

7. 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 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 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 by a resident of a Contracting State 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 is situated.

Article 16

DIRECTORS' FEES

1. Directors' fees and other remuneration 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.

2. For the purpose of the provisions of paragraph 1, the term "member of the board of directors" includes any person who is charged with the general management of the company and any person who is charged with the supervision thereof.

Article 17

ARTISTES AND SPORTSMEN

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 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. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is wholly or mainly supported by public funds of the first-mentioned State or local authorities thereof, or takes place under a cultural agreement between the Governments of the Contracting States. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident.

Article 18

PENSIONS AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.

2. However, pensions and other similar remuneration, whether or not periodic in nature,

insofar as the contributions or payments associated with the pension or other similar remuneration, or the entitlements received from them, have qualified for tax relief in the other Contracting State, may also be taxed in that State.

3. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by the Government of a Contracting State or local authority thereof under the social security system of that State, whether or not periodic in nature, shall be taxable only in that State.

Article 19 **GOVERNMENT SERVICE**

1. a) Salaries, wages and other similar remuneration paid by the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to the Government of that State or 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 the Government of that State or 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 the Government of a Contracting State or a local authority thereof.

Article 20 **STUDENTS**

Payments which a student 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 receives for the purpose of his maintenance or education 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.

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 also be taxed in that other State.

Article 22

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 Netherlands, the amount of tax on that income payable in the Netherlands 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 Netherlands is dividend paid by a company which is a resident of the Netherlands 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 in the Netherlands by the company paying the dividend in respect of its income.

2. In the Netherlands, double taxation shall be eliminated as follows:

a) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Agreement, may be taxed or shall be taxable only in China.

b) However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraphs 1 and 3 of Article 8, paragraph 5 of Article 10, paragraph 6 of Article 11, paragraph 4 of Article 12, paragraphs 1, 2, 3, 4 and 5 of Article 13, paragraph 1 of Article 14, paragraphs 1 and 3 of Article 15, paragraphs 2 and 3 of Article 18, sub-paragraph a) of paragraph 1 and sub-paragraph a) of paragraph 2 of Article 19 and paragraph 2 of Article 21 of this Agreement may be taxed or shall be taxable only in China and are included in the basis referred to in sub-paragraph a) of paragraph 2 of this Article, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall

be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

c) Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 1 of Article 16, paragraphs 1 and 2 of Article 17 and paragraph 3 of Article 21 of this Agreement may be taxed or shall be taxable only in China to the extent that these items are included in the basis referred to in sub-paragraph a) of paragraph 2 of this Article. The amount of this reduction shall be equal to the tax paid in China on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from the Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the reduction of the Netherlands tax is concerned with respect to the aggregation of income from more than one country and the carry-forward of the tax paid in China on the said items of income to subsequent years.

d) Notwithstanding the provisions of sub-paragraph b) of paragraph 2 of this Article, the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in China on items of income which according to paragraph 1 of Article 7, paragraph 5 of Article 10, paragraph 6 of Article 11, paragraph 4 of Article 12, paragraph 4 of Article 13 and paragraph 2 of Article 21 of this Agreement may be taxed or shall be taxable only in China to the extent that these items are included in the basis referred to in sub-paragraph a) of paragraph 2 of this Article, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a reduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this reduction the provisions of sub-paragraph c) of paragraph 2 of this Article shall apply accordingly.

Article 23

MISCELLANEOUS RULE

Nothing in this Agreement shall prejudice the right of each Contracting State to apply its domestic laws and measures concerning the prevention of tax evasion and avoidance, whether or not described as such, insofar as they do not give rise to taxation contrary to this Agreement.

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 favourably 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.

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 this 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 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 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 paragraphs 2 and 3. When it seems advisable for reaching an agreement, representatives of the competent authorities of the Contracting States may meet together for an oral 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 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. 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 the taxes covered by Article 2. The competent authorities of the Contracting States shall 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 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 carry out measures which would be contrary to public policy (*ordre public*);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28
**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 29
ENTRY INTO FORCE

1. Both Contracting States shall notify each other through diplomatic channels that they have completed the internal legal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the last day of the month following the date of the last notification. This Agreement shall have effect as regards income derived during the taxable years and periods beginning on or after the first day of January next following the calendar year in which this Agreement enters into force.

2. The Agreement between the People's Republic of China and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with Protocol, signed at Beijing on May 13th, 1987 (the prior Agreement), shall cease to have effect in relation to any tax with effect from the date on which this Agreement has effect in relation to that tax in accordance with paragraph 1 of this Article.

Article 30

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 written notice of termination to the other Contracting State through diplomatic channels. In such event this Agreement shall cease to have effect as respects income derived during the taxable years and periods 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 thereto, have signed this Agreement.

Done at _____ on the _____ day of _____, _____, in duplicate in the Chinese, Netherlands and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

For the Government of
the People's Republic of China

For the Government of
the Kingdom of the Netherlands

PROTOCOL

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

1. Ad Article 1

It is understood that a person who is established in the Netherlands and treated as a tax exempt investment institution under the Netherlands company tax law shall not be entitled to the benefits of this Agreement.

2. Ad paragraph 2 of Article 3 and Article 25

It is understood that, if the competent authorities of the Contracting States have, by mutual agreement, reached a solution within the context of the Agreement for cases in which

- a) application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Agreement, or
- b) differences in qualification (for example of an element of income or of a person)

would result in double taxation or double exemption, this solution, after publication thereof by both competent authorities, shall also be binding for the application of the provisions of the Agreement in other similar cases in the future.

3. Ad Articles 6, 13 and 22

It is understood that rights to the exploration and exploitation of natural resources shall be regarded as immovable property located in the Contracting State to whose territorial sea, and any area beyond the territorial sea, including the seabed and subsoil thereof — within which that State, in accordance with international law and its internal law, exercises jurisdiction or sovereign rights — these rights apply.

4. Ad Article 7

It is understood that in the case of profits from survey, supply, installation or construction activities, only so much of these profits shall be attributable to a permanent establishment as results from the functions performed, assets used and risks assumed at or through the permanent establishment.

5. Ad Article 8

The provisions of Article 8 of this Agreement shall not affect the provisions of Article 8 of the Agreement between the Government of the People's Republic of China and the Government of the Kingdom of the Netherlands relating to maritime shipping, signed at Beijing on 14 August 1975, nor the provisions of paragraph 2 of Article 10 of the Agreement between the Government of the People's Republic of China and the Government of the Kingdom of the Netherlands relating to civil air transport, signed at

Beijing on 20 January 1979, nor the provisions of the letters exchanged on 14 December 2004 and 21 December 2004 between the State Administration of Taxation of the People's Republic of China and the Embassy of the Kingdom of the Netherlands relating to the reciprocal exemption from taxation on revenue arising from international transportation by air transport enterprises.

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

Done at Beijing on the 31st day of May, 2013, in duplicate in the Chinese, Netherlands and English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

For the Government of
The People's Republic of China

WANG Li

For the Government of
the Kingdom of the Netherlands

Frans WEEKERS