

PROTOCOL

The Government of the People's Republic of China and the Swiss Federal Council 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 on capital upon the following provisions which shall form an integral part of the said Agreement:

1. Notwithstanding the provision of sub-paragraph (b) of paragraph 3 of Article 5 it is understood that an enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State consultancy services in connection with the sale or lease of machinery or equipment through employees or other personnel; such consultancy services include instructions for the installation of the machinery or equipment and consultations on technical materials, training of personnel as well as providing design services related to the installation and use of the machinery or equipment.
2. With respect to paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State, having a permanent establishment in the other Contracting State, sells goods or merchandise or carries on any other business activity in the other Contracting State, the profits of that permanent establishment shall be determined only on the basis of that part of the receipts which is attributable to the actual activity of the permanent establishment for such sales or business activity.
3. With respect to paragraph 3 of Article 10 it is understood that the term "dividends" also includes remittances or deemed remittances of profits derived by a resident of Switzerland from a Joint Venture established in China.
4. With respect to Article 12 it is understood that for the application of the percentage rate referred to in paragraph 2 of Article 12, 60 per cent of the gross amount of the royalties paid for the use of, or the right to use, any industrial, commercial or scientific equipment, shall be taken as the taxable base.
5. With respect to Article 18 it is understood that the provisions of that Article shall also apply to an annuity paid to a resident of a Contracting State. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
6. The provisions of this Agreement shall not be construed as restricting in any manner any tax benefits which are or may hereafter be accorded in a Contracting State by the laws of that Contracting State or by any agreement between the Governments of the Contracting States.

DONE in duplicate at Beijing, this 6th day of July, 1990, in the Chinese, French and English languages, all texts being equally authentic. In case there is any divergency of interpretation between the French and the Chinese texts, the English text shall prevail.

For the Government

For the Swiss

of the People's Republic of China

Federal Council