

PROTOCOL

The Government of the People's Republic of China and the Government of the Republic of Austria

Have agreed at the signing of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital upon the following provisions which shall form an integral part of the said Agreement:

1. Ad Article 5

Notwithstanding the provisions of paragraph 3 of Article 5 of the Agreement, an enterprise of a Contracting State shall be deemed not 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.

2. Ad Article 7

- (a) In the determination of the profits of a building site or construction, assembly or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise or a third person in connection with those activities or independently therefrom there shall not be attributed to the profits of the building site of construction, assembly or installation project the value of such deliveries.
- (b) Income derived by a resident of a Contracting State from planning, project, construction or research activities as well as income from technical services exercised in that Contracting State in connection with a permanent establishment situated in the other Contracting State, shall not be attributed to that permanent establishment.
- (c) Notwithstanding the provisions of paragraph 3 no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties,

fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

- (d) The term “profits” as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

3. Ad Article 11

With reference to paragraph 2 of Article 11 interest paid to banks or financial institutions shall only be taxed on the basis of 70 per cent of its gross amount.

4. Ad Article 12

With reference to paragraph 2 of Article 12 royalties of any kind paid as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall only be taxed on the basis of 60 per cent of its gross amount.

IN WITNESS WHEREOF the representatives of the two Contracting States, duly authorized thereto, have signed this Protocol.

DONE at Beijing on the 10th day of April 1991, in duplicate in the Chinese, German and English languages, all three texts being equally authentic. In case of any divergence in the interpretation, the English text shall prevail.

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

**For the Government
of the Republic of Austria**