

1994 Income Tax Agreement and Final Protocol

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AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA 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 Independent State of Papua New Guinea,

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 Personal Scope

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

Article 2 Taxes Covered

1. The existing taxes to which this Agreement shall apply are:

(a) in Papua New Guinea:

the income tax imposed under the law of Papua New Guinea (hereinafter referred to as "Papua New Guinea tax");

(b) in China:

(i) the individual income tax;

(ii) the income tax for enterprises with foreign investment and foreign enterprises; and

(iii) the local income tax

(hereinafter referred to as "Chinese tax").

2. This Agreement shall also apply to identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes of that Contracting State referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3 General Definitions

1. In this Agreement, unless the context otherwise requires:

(a) the term "Papua New Guinea" means the Independent State of Papua New Guinea and, when used in a geographical sense, includes any area adjacent to territorial limits of Papua New Guinea in respect of which there is for the time being in force, consistent with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the Continental Shelf, its sea bed and sub-soil;

(b) the term "China" means the People's Republic of China; when used in a 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 sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean Papua New Guinea or China as the context requires;

(d) the term "person" comprises an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity which 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 "tax" means Papua New Guinea tax or Chinese tax as the context requires;

(h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State; and

(ii) any legal person, partnership, association or other entity deriving its status as such from the law in force in a Contracting State;

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "competent authority" means:

(i) in the case of Papua New Guinea, the Commissioner General of Internal Revenue or an authorised representative of the Commissioner General of Internal Revenue; and

(ii) in the case of China, the State Administration of Taxation or its authorised representative.

2. In the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

Article 4 Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to tax therein by reason of the person's domicile, residence, place of head office, place of effective management or any other criterion of a similar nature.

2. A person is not a resident of a Contracting State for the purpose of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.

3. Where by reason of the provisions of paragraph 1 a person, being an individual, is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:

(a) the person shall be deemed to be a resident of the State in which the person has a permanent home;

(b) if a permanent home is available to the person in both States, the person shall be deemed to be a resident of the State with which the person's personal and economic relations are the closer (centre of vital interests);

(c) if the State in which the person's centre of vital interests cannot be determined, or the person has no permanent home in either State, the person shall be deemed to be a resident of the State in which the person has an habitual abode;

(d) if the person has an habitual abode in both States or in neither of them, the person shall be deemed to be a resident of the State of which the person is a national;

(e) if the person is a national of both States or is a national of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which the place of effective management of its business is situated. However, where such a person has the place of effective management of its business in one of the Contracting States and the place of head office of its business in the other Contracting State, then the competent authorities of the Contracting States, shall determine by mutual agreement the State of which the company shall be deemed to be a resident for the purposes of this Agreement.

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;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forestry product.

3. The term "permanent establishment" likewise encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 6 months;

(b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, provided that such

activities continue for the same project or a connected project for a period or periods aggregating more than 6 months within any 12 month period;

(c) substantial equipment used in a Contracting State by, for or under a contract with the enterprise for a period of more than 6 months;

(d) an installation or structure used for the exploration or exploitation of natural resources for a period of more than 6 months.

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 paragraph 2, a person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State, other than an agent of independent status to whom paragraph 6 applies, shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

(a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the mere purchase of goods or merchandise for the enterprise;

(b) the person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers in that State goods or merchandise on behalf of the enterprise; or

(c) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

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.

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 Real Property

1. Income derived by a resident of a Contracting State from real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Agreement, the term "real 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 real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, or the right to explore for, mineral deposits, oil or gas deposits, quarries, sources or other places for the extraction of natural resources including timber and other forestry products; provided that ships and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. Any interest or right referred to in paragraph 2 shall be regarded as situated in the Contracting State in which the land to which the interest or right relates is situated.

5. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real 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 directly 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 business of the permanent establishment, including an allocation of executive and general administrative expenses incurred for the purposes of the enterprise, whether in the State in which the permanent establishment is situated or elsewhere.
4. 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.
5. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the profits to be attributed to a permanent establishment in cases where the information available to the competent authority of that State is inadequate to determine the profits, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.
6. For the purposes of paragraphs 1 to 5, 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 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. Income from the operation of a ship or aircraft in international traffic carried on by an enterprise which is a resident of a Contracting State shall be exempt from tax in the other Contracting State, unless the ship or aircraft is operated solely between places within the other Contracting State.
2. The provisions of paragraph 1 shall also apply to income derived from the participation in a pool, a joint business or an international operating agency.
3. For the purposes of paragraphs 1 and 2 of this Article, income derived by an enterprise which is a resident of a Contracting State from the operation of a ship or aircraft from the other Contracting State shall mean income from the carriage of passengers, mail, livestock or goods loaded into a ship or aircraft in that other Contracting State.

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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the profits to be attributed to an enterprise, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.
3. 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 derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.
2. However, subject to the agreed Protocol, 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. 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.
4. 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 Contracting 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.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting 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 Contracting State.

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 law of that State, but where the beneficial owner of such 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.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that Contracting State if it is derived and beneficially owned by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality of the Government or local authority, including interest owned by the Central Bank of the other Contracting State or any financial institution wholly owned by the Government of the other Contracting State and performing functions of a governmental nature.
4. 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, includes income from government securities and income from bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. 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.
6. Interest shall be deemed to arise in a Contracting State where the payer is the Government of that Contracting State, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether the person 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 that

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.

7. 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 paid exceeds, for whatever reason, 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 law of each Contracting State, due regard being had to the other provisions of this Agreement.

8. The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article.

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 where the beneficial owner of such royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments made or payable, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the use of, or the right to use:

(i) cinematograph or motion picture films;

(ii) films or video tapes in connection with television; or

(iii) tapes or compact disks in connection with radio and television broadcasting; or

(iv) computer software or programs developed in connection with the use of computers;

(d) the supply of scientific, technical, industrial or commercial know how or information; or

(e) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowhow or information as is mentioned in sub-paragraph (d).

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 where the payer is the Government of that Contracting State, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether the person 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 obligation 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 Contracting 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 paid exceeds, for whatever reason, 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.

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 Contracting 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 together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting 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 head office of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 25 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. 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 Contracting State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:

(a) if the person has a fixed base regularly available in the other Contracting State for the purpose of performing the person's 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;

(b) income is derived by the individual from a resident of that other Contracting State and exceeds an amount of US\$ 5,000 or its equivalent in Papua New Guinea currency or Chinese currency in any 365 day period, in which case so much of the income as is derived from the activities in that other Contracting State may be taxed in that State; or

(c) if the person's stay in that other Contracting State exceeds 183 days in any 365 day period, in which case so much of the income as is derived from activities in that other Contracting State may be taxed in that 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 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 365 day period; 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 in respect of an employment exercised aboard a ship or aircraft, other than a ship or aircraft operated solely between places in one Contracting State, may be taxable in the Contracting State of which the employer is a resident. Where the employment is exercised aboard a ship or aircraft operated solely between places in one Contracting State paragraphs 1 and 2 shall apply.

Article 16 Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in the person's 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.

Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a stage, theatre, motion picture, radio or television artiste, or a

musician, or as an athlete, from personal activities 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 an athlete in that capacity accrues not to the entertainer or athlete 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 athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by entertainers or athletes who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of both Contracting States shall be exempt from tax in that other Contracting State.

Article 18 Pensions

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

2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by the Government of a Contracting State or a local authority thereof under a public welfare scheme of the social security system of that Contracting State shall be taxable only in that Contracting State.

Article 19 Government Service

1.

(a) Remuneration, other than pension, paid by the Government of Contracting State, a political sub-division or a local authority thereof to an individual in respect of services rendered in the discharge of governmental functions to that State or subdivision or authority shall be taxable only in that State.

(b) However, such 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) Any pension paid by, or out of funds to which contributions are made by the Government of a Contracting State, a political sub-division or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State, a political sub-division or a local authority thereof shall be taxable only in that Contracting State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political subdivision or a local authority thereof.

Article 20 Students and Trainees

A student, business or technical apprentice or trainee 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 the person's education or training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by the person for the purpose of the person's maintenance, education or training:

(a) payments derived from sources outside that Contracting State for the purpose of the person's [sic] maintenance, education, study, research or training;

(b) grants, scholarships or awards supplied by the Government, or a scientific, educational, cultural or other tax-exempt organisation; and

(c) any remuneration not exceeding US\$ 3000 or its equivalent in Papua New Guinea currency or Chinese currency per annum, in respect of services performed in that other Contracting State, provided the services are performed in connection with the person's study, research or training or are necessary for the purposes of the person's maintenance.

Article 21 Teachers and Researchers

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching, giving lectures or research at such educational institution, shall be exempt from tax in that other State on any remuneration for such teaching, lecturing or research which is subject to tax in the first-mentioned Contracting State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 22 Other Income

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned 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 real 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 Contracting 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.

Article 23 Methods for the Elimination of Double Taxation

1. In the case of Papua New Guinea, double taxation shall be eliminated as follows:

(a) Subject to the provisions of the law of Papua New Guinea from time to time in force which relate to the allowance of a credit against Papua New Guinea tax of tax paid in a country outside Papua New Guinea, tax paid under the law of China and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Papua New Guinea for the purpose of the law of Papua New Guinea relating to Papua New Guinea tax from sources in China (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Papua New Guinea tax payable in respect of that income.

2. In the case of China, double taxation shall be eliminated as follows:

(a) Where a resident of China derives income from Papua New Guinea, the amount of tax on that income payable in Papua New Guinea in accordance with the provisions of this Agreement shall 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 Papua New Guinea is a dividend paid by a company which is a resident of Papua New Guinea to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to Papua New Guinea by the company paying the dividend in respect of its income.

3. The tax payable in a Contracting State mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the tax which would have been payable but for an exemption or reduction of tax granted under the law of that Contracting State.

4. For the purpose of paragraph 3, in the case of dividends, interest and royalties, the amount of tax to be included under this Article shall be limited to the rate specified under paragraph 2 of Article 10, paragraph 2 of Article 11 and paragraph 2 of Article 12 respectively.

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 Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph 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 Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. The provisions of this paragraph 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 Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise 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. Nothing in this Article shall affect the operation of any law of a Contracting State relating to the income tax rate or withholding tax applying to non-resident persons.

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 that person in taxation not in accordance with the provisions of this Agreement, the person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State which he is a resident or, if the person's case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person 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 provisions of this 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 endeavour 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 this 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 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 necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. 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.

2. In no case shall the provisions of paragraph 1 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).

Article 27 Diplomatic Agents and Consular Officers

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 28 Entry Into Force

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications, as the case may be, and thereupon shall have effect:

(a) in Papua New Guinea:

- (i) in respect of withholding tax on income that is derived by a nonresident, in relation to income derived on or after 1 January in the calendar year next following that in which the later of these notifications is given;

(ii) in respect of any other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the later of these notifications is given;

(b) in China:

in respect of income derived during any taxable year beginning on or after 1 January next following that in which this Agreement enters into force.

Article 29 Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement by giving notice of termination, through the diplomatic channel, at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(a) in Papua New Guinea:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice is given;

(ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the notice is given;

(a) in China:

in relation to income of any taxable year beginning on or after 1 January next following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done at Beijing on the 14th day of July 1994, in duplicate in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

FOR THE GOVERNMENT OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA:

PROTOCOL

At the signing of the Agreement between the Government of the Independent State of Papua New Guinea and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "The Agreement"), both sides have agreed upon the following provisions which form an integral part of the Agreement.

1. Ad Article 7

Nothing in this Article shall affect the operation of:

(a) any law of a Contracting State relating to tax imposed on profits from insurance with non-residents; or

(b) any law of a Contracting State relating to the taxation of income derived by a foreign contractor from a prescribed contract, where, in accordance with this Agreement, that contractor is a resident of the other Contracting State with a permanent establishment in the first-mentioned State, provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (other than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

2. Ad Paragraph 2, Article 10

The tax specified in Paragraph 2, Article 10 shall, in the case of Papua New Guinea, be limited to 10 per cent of the gross amount of the dividends while the Chinese tax law existing on the date of the signing of the Agreement regarding dividends still applies, otherwise the provisions of Paragraph 2, Article 10 shall apply.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done in duplicate at Beijing this 14th day of July 1994 in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

FOR THE GOVERNMENT OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA: