

CHINA



Treaty Series No. 24 (1998)

Protocol

amending the Agreement between the
Government of the United Kingdom of Great Britain and
Northern Ireland and the Government of the
People's Republic of China

for the Reciprocal Avoidance of Double Taxation
and the Prevention of Fiscal Evasion with
respect to Taxes on Income and Capital Gains

Peking, 2 September 1996

[The Protocol entered into force on 4 March 1997]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
1998*

**PROTOCOL
AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR
THE RECIPROCAL AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND CAPITAL GAINS**

The Government of the United Kingdom of Great Britain and Northern Ireland and The Government of the People's Republic of China,

Desiring to conclude a Protocol to amend the Agreement between the Contracting Governments for the reciprocal avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, signed at Beijing on 26 July 1984¹ (hereinafter referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

Sub-paragraph (a) of paragraph (1) of Article 2 of the Agreement shall be deleted and replaced by the following:

"(a) in the People's Republic of 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");".

ARTICLE 2

Sub-paragraph (i) of paragraph (1) of Article 3 of the Agreement shall be deleted and replaced by the following:

- "(i) the term "competent authority" means, in the case of China, the State Administration of Taxation or its authorised representatives, and in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives."

ARTICLE 3

Paragraph (1) of Article 4 of the Agreement shall be deleted and replaced by the following:

"(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 his domicile, residence, place of head office or effective management, place of incorporation or any other criterion of a similar nature."

¹Treaty Series No. 7 (1985) Cmnd. 9439.

ARTICLE 4

(1) Sub-paragraph (a) of paragraph (3) of Article 12 of the Agreement shall be deleted and replaced by the following:

“(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, and films or tapes for radio or television broadcasting, or any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience (know-how); and”.

(2) In paragraph (3) of Article 13 of the Agreement, the following words shall be deleted:

“including the use of, or the right to use, information concerning industrial, commercial or scientific experience.”.

ARTICLE 5

(1) Paragraphs (3), (4) and (5) of Article 23 of the Agreement shall be deleted and replaced by the following:

“(3) Subject to paragraph (4) of this Article, for the purpose of paragraph (2) of this Article, the term “Chinese tax payable” shall be deemed to include any amount which would have been payable as Chinese tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under any of the following provisions of Chinese law:

- (a) Articles 7, 8, 9, 10, 19(1), 19(3) and 19(4) of the Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprises and Articles 73, 75 and 81 of the Detailed Rules and Regulations for the Implementation of the Income Tax Law of the People’s Republic of China for Enterprises with Foreign Investment and Foreign Enterprises where the exemption from or reduction of tax so granted is for the purpose of promoting new industrial, commercial, scientific, educational or other development in China, so far as they were in force on, and have not been modified since, the date of signature of the Protocol amending this Agreement signed at Beijing on 2 September 1996, or have been modified only in minor respects so as not to affect their general character; or
- (b) any other provision which may subsequently be made granting an exemption from or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

(4) Relief from United Kingdom tax by virtue of paragraph (3) shall not be given:

- (i) where income or profits in respect of which tax would have been payable but for the exemption or reduction of tax granted under the provisions referred to in that paragraph arise or accrue more than ten years after the date on which the Protocol to this Agreement referred to in that paragraph enters into force;
- (ii) in respect of income or profits from any source if that income or those profits arise in a period beginning more than ten years, or more than thirteen years if the income or profits arise from an infrastructure project, agricultural, forestry or animal husbandry projects or projects in remote underdeveloped areas, after the exemption or reduction referred to in that paragraph was first granted in respect of that source whether that period began before or after the entry into force of that Protocol.

(5) The period referred to in paragraph (4)(i) may be extended by agreement between the competent authorities of the Contracting States.

(6) For the purposes of paragraphs (1) and (2) of this Article profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other Contracting State.

(7) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article."

(2) Where Article 23(3) of the Agreement as it was before its amendment by this Protocol would have afforded greater relief from tax than is due under that provision as so amended, it shall continue to have effect in relation to dividends paid to a company which is a resident of the United Kingdom by a company which is a resident of China out of income or profits arising during any period before this Protocol entered into force.

ARTICLE 6

(1) Each of the Contracting States shall notify through the diplomatic channel to the other the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect in both Contracting States in respect of profits, income and capital gains arising on or after 1 January 1995.

(2) This Protocol shall cease to be effective at such a time as the Agreement ceases to be effective in accordance with Article 30 of the Agreement.

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

Done in duplicate at Beijing this 2nd day of September 1996 in the Chinese and English languages, both texts being equally authoritative.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

JEREMY HANLEY

For the Government of the People's
Republic of China:

XIANG HUAI CHENG

关于修订大不列颠及北爱尔兰联合王国政府和中华人民共和国政府关于对所得和财产收益相互避免双重征税和防止偷漏税的协定的议定书

大不列颠及北爱尔兰联合王国政府和中华人民共和国政府,

愿意就修订缔约双方于 1984 年 7 月 26 日在北京签订的关于对所得和财产收益相互避免双重征税和防止偷漏税的协定(以下简称“协定”)签订议定书,达成协议如下:

第一条

取消协定第二条第一款第(一)项,由下列条款代替:

“(一)在中华人民共和国:

- 1.个人所得税;
- 2.外商投资企业和外国企业所得税;
- 3.地方所得税;

(以下简称“中国税收”);”

第二条

取消协定第三条第一款第(九)项,由下列条款代替:

“(九)“主管当局”一语,在中国方面是指国家税务总

局或其授权的代表；在联合王国方面是指英国税务局局长或其授权的代表。”

第三条

取消协定第四条第一款，由下列条款代替：

“一、在本协定中，“缔约国一方居民”一语是指按照该国法律，由于住所、居所、总机构或实际管理机构所在地、注册所在地，或者其它类似标准，在该国负有纳税义务的人。”

第四条

一、取消协定第十二条第三款第(一)项，由下列条款代替：

“一、使用或有权使用文学、艺术或科学著作，包括电影影片、无线电或电视广播使用的胶片、磁带的版权、专利、商标、设计、模型、图纸、秘密配方、秘密程序所支付的作为报酬的各种款项，或者使用或有权使用有关工业、商业、科学经验的情报(专有技术)作为报酬的各种款项；以及”。

二、在协定第十三条第三款中，取消下列文字：“包括使用或有权使用有关工业、商业、科学经验的情报，”。

第五条

一、取消协定第二十三条第三款、第四款和第五款,由下列条款代替:

“三、除适用本条第四款以外,在本条第二款中,“应缴纳的中国税收”一语,应视为包括任何年度可能缴纳的,但按照以下中国法律规定给予免税、减税的中国税收数额:

(一)《中华人民共和国外商投资企业和外国企业所得税法》第七条、第八条、第九条、第十条、第十九条第一款、第三款和第四款以及《中华人民共和国外商投资企业和外国企业所得税法实施细则》第七十三条、第七十五条和第八十一条,为在中国促进新产业、商业、科学、教育或其它发展所规定的免税或减税政策,如果这些政策自修订本协定的议定书于一九九六年九月二日签署之日起仍有效,并未作修改,或仅在小的方面修改并不影响其一般性质。

(二)今后可能制定的,并经缔约国双方主管当局同意,具有实质类似性质的免税或减税的其它规定,如果该规定以后不作修改,或仅在小的方面修改并不影响其一般性质。”

四、第三款规定的英国税收优惠不应给予:

(一)本应纳税但按照该款的规定给予免税或减税的所得或利润,如果该所得或利润发生于该款所指的本协定的议定书生效之日后的十年以上的时间;

(二)任何来源的所得或利润,如果发生于按照该款规定自第一次给予免税或减税起十年后的时间(对于来源于基础设施项目、农业、林业、牧业项目或设在经济不发达地区的项目的所得和利润为十三年后的时间),不论上述时间开始于本议定书生效以前或以后。

五、第四款第(一)项所规定的期限可以由缔约国双方主管当局协商予以延长。

六、在本条第一款和第二款中,缔约国一方居民取得的按照本协定可以在缔约国另一方征税的利润、所得或财产收益,应认为发生于该缔约国另一方。

七、缔约国一方企业在该国已征税的利润,也包括在另一国企业的利润中,而且这些包括的利润是应计入该另一国企业的,企业之间所制订的条件又是独立企业之间在正常条件下进行交易,包括在两个企业利润中的数额,在本条中应视为该缔约国一方企业来源于该另一国的所得,按照本条第一款或第二款的规定,相应地给予减免。”

二、对于中国居民公司就本议定书生效前发生的所得或利润支付给英国居民公司的股息,如果协定第二十三条第三款在本议定书作出修订前比修订后的规定提供更大的税收优惠,该款的规定应继续有效。”

第六条

一、缔约国各方应通过外交途径通知对方完成本议定书生效所需的法律程序。本议定书自最后一方的通知发出

之日起生效,并且在缔约国各方,应对一九九五年一月一日或以后发生的利润、所得和财产收益有效。

二、当根据其第三十条的规定,协定终止有效时,本议定书也同时停止有效。

下列代表,经各自政府正式授权,已在本议定书上签字为证。

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大不列颠及北爱尔兰联合王国政府 中华人民共和国政府
代 表 代 表

JEREMY HANLEY

XIANG HUAI CHENG



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