

**SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN  
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA AND THE  
KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE  
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME**

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Agreement between the Government of the People’s Republic of China and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 7 October, 2009 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the People’s Republic of China on 7 June, 2017 and by the Kingdom of Belgium on 7 June, 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the People’s Republic of China submitted to the Depository upon approval on 25 May, 2022 and of the MLI position of the Kingdom of Belgium submitted to the Depository upon ratification on 26 June, 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Agreement.

The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as “Covered Tax Agreement” and “Agreement”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal

references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

#### References

The authentic legal texts of the MLI and the Agreement can be found on the webpage of the State Taxation Administration of the People's Republic of China.

(<http://www.chinatax.gov.cn/n810341/n810770/index.html>)

The MLI position of the People's Republic of China submitted to the Depositary upon approval on 25 May, 2022 and the MLI position of the Kingdom of Belgium submitted to the Depositary upon ratification on 26 June, 2019 can be found on the MLI Depositary (OECD) webpage.

(<http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>)

#### **Disclaimer on the entry into effect of the provisions of the MLI**

The provisions of the MLI applicable to this Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the People's Republic of China and the Kingdom of Belgium in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 25 May, 2022 for the People's Republic of China and 26 June, 2019 for the Kingdom of Belgium.

Entry into force of the MLI: 1 September, 2022 for the People's Republic of China and 1 October, 2019 for the Kingdom of Belgium.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure) have effect with respect to this Agreement:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January, 2023; and
- b) with respect to all other taxes, for taxes levied with respect to taxable periods

beginning on or after 1 March, 2023.

In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI (Mutual Agreement Procedure) has effect with respect to this Agreement for a case presented to the competent authority of a Contracting State on or after 1 September, 2022, except for cases that were not eligible to be presented as of that date under the Agreement prior to its modification by the MLI, without regard to the taxable period to which the case relates.

**AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA  
AND  
THE GOVERNMENT OF THE KINGDOM OF BELGIUM  
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 Belgium,

**[REPLACED by paragraph 1 and paragraph 3 of Article 6 of the MLI]** [Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,]

*The following paragraph 1 and paragraph 3 of Article 6 of the MLI replace the text referring to an intent to eliminate double taxation in the preamble of this Agreement:*

**ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT**

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed to the following:

**Article 1  
Persons Covered**

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

*The following paragraph 1 of Article 11 of the MLI applies and supersedes the provisions of this Agreement:*

ARTICLE 11 OF THE MLI – APPLICATION OF TAX  
AGREEMENTS TO RESTRICT A PARTY’S RIGHT TO TAX ITS  
OWN RESIDENTS

This Agreement shall not affect the taxation by a Contracting State of its residents, except with respect to the benefits granted under paragraph 2 of Article 9, or Articles 19, 20, 22, 24, 25 or 27 of this Agreement.

**Article 2**  
**Taxes Covered**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions 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, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) with respect to China:
    - (i) the individual income tax;
    - (ii) the enterprise income tax;including any prepayments on these taxes and any surcharges on these taxes and prepayments  
(hereinafter referred to as “Chinese tax” );
  - b) with respect to Belgium:
    - (i) the individual income tax;
    - (ii) the corporate income tax;
    - (iii) the tax on legal entities;
    - (iv) the tax on non-residents;
    - (v) the supplementary crisis contribution;including any prepayments on these taxes and any surcharges on these taxes and prepayments  
(hereinafter referred to as “Belgian tax” ).
4. The Agreement shall apply also to any identical or substantially similar taxes which 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 in due time of substantial changes which have been made in their respective taxation laws.

### **Article 3**

#### **General Definitions**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term “Belgium” means the Kingdom of Belgium; when used in a geographical sense, it means the territory of the Kingdom of Belgium including its territorial sea and areas within which, in accordance with international law, the Kingdom of Belgium exercises sovereign rights or its jurisdiction;
  - b) the term “China” means the People’s Republic of China; when used in a geographical sense, it means all the territory of the People’s Republic of China, in which the Chinese laws relating to taxation apply, including its territorial sea, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights for the purpose of exploring and exploiting the resources of the sea-bed and its subsoil and superjacent water in accordance with international law and its domestic law;
  - c) the terms “a Contracting State” and “the other Contracting State” mean Belgium or China, as the context requires;
  - d) the term “tax” means Belgian tax or Chinese tax, as the context requires;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes in the Contracting State of which it is a resident;
  - g) 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;
  - h) the term “national”, in relation to a Contracting State, means:
    - (i) any individual possessing the nationality or citizenship of that Contracting State; and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
  - i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise 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) with respect to China, the State Administration of Taxation or its authorized representative;
    - (ii) with respect to Belgium, the Minister of Finance or his authorized representative.

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, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision, local authority or statutory body 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. If its place of effective management cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual 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, 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” shall also include:
  - 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 twelve months;
  - b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purposes, but only where such activities 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, an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment 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 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, where the activities of such an agent are carried out exclusively or almost exclusively on behalf of that enterprise, that agent is not considered an independent agent for the purposes 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 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 or right to 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 Contracting 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 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 derived from the operation of ships or aircraft in international traffic by an enterprise of a Contracting State shall be taxable only in that State.
2. 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. **[REPLACED by paragraph 1 of Article 17 of the MLI]** [ 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.]

*The following paragraph 1 of Article 17 of the MLI replaces paragraph 2 of Article 9 of this Agreement:*

**ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS**

Where a Contracting State includes in the profits of an enterprise of that contracting State — and taxes accordingly — profits on which an enterprise of the other

Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** [5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which, prior to the moment of the payment of the dividends, has been holding, for an uninterrupted period of at least twelve months, directly at least 25 per cent of the capital of the company paying the dividends;]

*The following paragraph 1 of Article 8 of the MLI applies to subparagraph a) of paragraph 2 of Article 10 of this Agreement:*

### ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

*Subparagraph a) of paragraph 2 of Article 10 of this Agreement shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).*

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

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 rights to participate in profits, not being debt-claims, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the payment 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 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.

5. 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, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. **[REPLACED by paragraph 1 of Article 7 of the MLI<sup>1</sup>]** [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.

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<sup>1</sup> Refer to the text box inserted following Article 27 of the Agreement.

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.

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

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, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, the term “interest” shall not include for the purpose of this Article penalty charges for late payment nor interest regarded as dividends by the laws of the Contracting State of which the company making the payment is a resident.

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 when the payer is a resident of that Contracting 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 Contracting 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, 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 interest shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

8. **[REPLACED by paragraph 1 of Article 7 of the MLI<sup>2</sup>]** [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 7 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means 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, know-how, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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 obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment

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<sup>2</sup> Refer to the text box inserted following Article 27 of the Agreement.

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, 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 royalties shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

7. **[REPLACED by paragraph 1 of Article 7 of the MLI<sup>3</sup>]** [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 fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State 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 that State.

4. **[MODIFIED by subparagraph b) of paragraph 1 of Article 9 of the MLI]**[Gains derived by a resident of a Contracting State from the alienation of shares

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<sup>3</sup> Refer to the text box inserted following Article 27 of the Agreement.



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.]

*The following subparagraph b) of paragraph 1 of Article 9 of the MLI applies to paragraph 4 of Article 13 of this Agreement:*

**ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF  
SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE  
PRINCIPALLY FROM IMMOVABLE PROPERTY**

Paragraph 4 of Article 13 of this Agreement shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions of this Agreement.

5. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a recognized 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 5 per cent of the quoted shares, of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the first-mentioned resident, prior to the moment of such alienation, has owned, directly or indirectly, at least 25 per cent of the shares of that company.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 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. However, such income may also be taxed in the other Contracting State:

- a) if the resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in such case only so much of the income as is attributable to that fixed base may be taxed in that other 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 the activities performed in that other Contracting 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** **Dependent Personal Services**

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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

### **Article 16** **Directors’ Fees**

Directors’ fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or of a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

### **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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete 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 athlete are exercised.

### **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 State.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration, paid under the social security legislation of a Contracting State may be taxed in that State. This provision shall also apply to pensions and other similar remuneration paid under a public scheme organized by that Contracting State in order to supplement the pension benefits provided for under that legislation.

### **Article 19**

#### **Government Service**

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

Items of income not dealt with in the foregoing Articles of this Agreement and arising in a Contracting State may be taxed in that State.

### **Article 22**

#### **Elimination of Double Taxation**

1. In the case of Belgium, double taxation shall be eliminated as follows:
  - a) Where a resident of Belgium derives income, not being dividends, interest or royalties, which is taxed in China in accordance with the provisions of this Agreement, Belgium shall exempt such income from tax but may, in calculating the amount of tax on the remaining income of that resident, apply the rate of tax which would have been applicable if such income had not been exempted.

Belgium shall also exempt with progression profits of an enterprise of Belgium attributable to a permanent establishment through which the enterprise carries on business in China which are taxable in China in accordance with the provisions of this Agreement. This exemption shall not apply where the activities exercised through the permanent establishment consist exclusively or mainly:

- in executing collective or finance investments;
- in providing financial services exclusively or mainly for the enterprise or for related enterprises;

or where such permanent establishment holds any portfolio investment or any copyright, patent, trade mark, design, model, plan, secret formula or process which represent in the aggregate more than a third of the assets

forming part of the business property of the permanent establishment and such holding is not part of the activities, other than holding such rights or property, exercised through the permanent establishment.

Notwithstanding the provisions of this sub-paragraph and any other provision of this Agreement, Belgium shall, for the determination of the additional taxes established by Belgian municipalities and conurbations, take into account the earned income (revenus professionnels—beroepsinkomsten) that is exempted from tax in Belgium in accordance with this sub-paragraph. These additional taxes shall be calculated on the tax which would be payable in Belgium if the earned income in question had been derived from Belgian sources.

- b)* The exemption provided by sub-paragraph a) shall also be granted with respect to income treated as dividends under Belgian law, which is derived by a resident of Belgium from a participation in an entity that derives its status as such from the laws of China, where that entity has not been taxed as such by China, provided that the resident of Belgium has been taxed by China, proportionally to his participation in such entity, on the income out of which the income treated as dividends under Belgian law is paid. The exempted income is the income received after deduction of the costs incurred in Belgium or elsewhere in relation to the management of the participation in the entity.
- c)* Dividends derived by a company which is a resident of Belgium from a company which is a resident of China, shall be exempted from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.
- d)* Where a company which is a resident of Belgium derives from a company which is a resident of China dividends which are not exempted according to sub-paragraph c), such dividends shall nevertheless be exempted from the corporate income tax in Belgium if the company which is a resident of China is effectively engaged in the active conduct of a business in China. In such case, such dividends are exempted under the conditions and within the limits provided for in Belgian law except those related to the fiscal regime applicable to the income out of which the dividends are paid.

A company shall not be considered to be effectively engaged in the active conduct of a business in China where such company is an investment company, a financing company (other than a bank) or a treasury company or where such company holds any portfolio investment or any copyright, patent, trade mark, design, model, plan, secret formula or process which represent in the aggregate more than a third of its assets and such holding is not part of the active conduct of a business.

- e) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, the Chinese tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.
  - f) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in China, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in China by reason of compensation for the said losses.
2. In China, double taxation shall be eliminated as follows:
- a) Where a resident of China derives income from Belgium the amount of tax on that income payable in Belgium 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 a dividend is paid by a company which is a resident of Belgium 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 Belgian tax paid by the company paying the dividend in respect of its income.

### **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 favorably 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 7 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 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Contracting States may communicate with each other on the subject of the administrative measures which are necessary for carrying out the provisions of the Agreement and particularly on the subject of the proof to be provided by residents of each State in order to benefit in the other State from the tax exemptions or reductions provided by this Agreement.

5. The competent authorities of the Contracting States may communicate with each other directly for the application of the Agreement.

*The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Agreement.*

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT  
PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

**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, in particular for the prevention of fraud or evasion of such taxes, 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, or 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 held by banks or other financial institutions on request by the other Contracting State.

## **Article 27**

### **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.

*The following paragraph 1 of Article 7 of the MLI replaces paragraph 6 of Article 10, paragraph 8 of Article 11 and paragraph 7 of Article 12 of this Agreement:*

#### ARTICLE 7 OF THE MLI –PREVENTION OF TREATY ABUSE

*(Principal purposes test provision)*

Notwithstanding any provisions of the Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

**Article 28**  
**Entry into Force**

1. Both Contracting States shall notify each other in writing 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 30th day upon the receipt of the latter notification. This Agreement shall apply to income arising as from 1 January of the year following that of its entry into force or to income pertaining to fiscal years beginning as from 1 January of the year following that of its entry into force.

2. The Agreement between the Government of the People's Republic of China and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol signed at Beijing on April 18, 1985, as amended by the Additional Protocol signed at Beijing on November 27, 1996, shall cease to be effective with respect to income in respect of which the provisions of this Agreement have effect, in accordance with the provisions of paragraph 1.

**Article 29**  
**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 fiscal years beginning on or after the first day of January in the year next following that in which the notice of termination is given.

**IN WITNESS WHEREOF**, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

**DONE** at Brussels, on this ....., in duplicate in the Chinese, Dutch, French and English languages, the four texts being equally authentic. In case of any divergence of interpretation between the Chinese, Dutch, French and English texts, the English text shall prevail.



## PROTOCOL

At the moment of signing the Agreement between the Government of the People's Republic of China and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

1. With respect to the provisions of this Agreement, it is understood that the term "fiscal year" means:

- a)* in the case of Belgium, the taxable period;
- b)* in the case of China, the taxable year.

2. With respect to paragraphs 4 and 5 of Article 13:

If, in a Contracting State, the rate of taxation on the capital gains dealt with in paragraphs 4 and 5 of Article 13 exceeds 10 per cent, the competent authorities shall consult each other.

3. With respect to paragraph 5 of Article 26:

Information held by banks and other financial institutions will be exchanged only upon request. If the request does not identify both a specific taxpayer and a specific bank or financial institution, the competent authority of the requested State may decline to obtain any information that it does not already possess.

4. In the case of Belgium, with respect to paragraph 5 of Article 26:

- a)* in order to obtain such information the tax administration of Belgium shall have the power to ask for the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws;
- b)* penalties provided by the domestic laws of Belgium for a person failing to give information relevant for carrying out its domestic tax laws shall apply as if the obligation to give information provided in paragraph 5 was an obligation provided in the domestic tax laws of Belgium;
- c)* where a person refuses to give information requested within the framework of paragraph 5 or fails to give such information within the time required by the tax administration of Belgium, the tax administration of Belgium may bring appropriate enforcement proceedings against such person.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

**DONE** at Brussels, on this ....., in duplicate in the Chinese, Dutch, French and English languages, the four texts being equally authentic. In case of any divergence of interpretation between the Chinese, Dutch, French and English texts, the English text shall prevail.

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

**For the Government of  
the Kingdom of Belgium**