

PROTOCOL

At the signing of the Agreement concluded today between the Government of the People's Republic of China and the Government of the Republic of Italy for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income the under signed have agreed upon the following provisions which shall form an integral part of the said Agreement.

It is understood:

a. that, where a tax on capital is subsequently introduced, the Agreement shall also apply to such tax and the double taxation shall be avoided according to the provisions of Article 23;

b. that, with reference to paragraph 3 of Article 7 of the Agreement, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expense) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of:

- (i) royalties, fees or other similar payments in return for the use of patents or other rights;
- (ii) commission, for specific services performed or for management; and
- (iii) interest on money lent to the permanent establishment; except where the enterprise is a banking institution:

c. that, with reference to paragraph 3 of Article 10, the term "dividends" includes the profits distributed by joint-ventures;

d. that, with reference to paragraph 4 of Article 11, the term "interest" shall also include other income assimilated to income from money lent by the taxation laws of the State in which the income arises;

e. that,

- (i) with reference to paragraph 2 of Article 12, when applying this provision payments derived from the use, or the right to use, of industrial, commercial or scientific equipments shall be taxed on the basis of 70 per cent of the gross amount of royalties;
- (ii) with further reference to paragraph 2 of Article 12, the tax therein provided shall apply, in the case where a mixed contract includes the supply of technical know-how as well as the sale of equipment or machinery, only on the relevant payment for know-how;
- (iii) with reference to paragraph 3 of Article 12, the definition of the term "royalties" includes payments for the use of know-how;

f. that, with reference to the last sentence of paragraph 4 of Article 10, of paragraph 5 of Article 11, of paragraph 4 of Article 12 and paragraph 2 of Article 22, the provisions therein contained shall not prevent either Contracting State from applying its internal law, provided that it is not contrary to the principles embodied in Articles 7 and 14 of this Agreement;

g. that, with reference to paragraph 1 of Article 25, the expression “notwithstanding the remedies provided by the national laws” means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, first of all initiated, when the claim is related with an assessment of the taxes not in accordance with this Agreement;

h. that, taxes withheld at the source in Italy will be refunded by request of the tax payer if the right to collect the said taxes is affected by the provisions of this Agreement. Claims for refund, that shall be produced within the time limit fixed by the law of Italy, shall be accompanied by an official certificate of the Chinese relevant competent authorities certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Agreement. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the preceding provisions, in accordance with Article 25 of this Agreement. However, this provision shall not prevent the competent authorities of the Contracting States from the carrying out, by mutual agreement, of practice other than refunds for the allowance of the reductions for taxation purposes provided for in this Agreement.

DONE in duplicate at Beijing, the 31st day of October 1986, in the Chinese, Italian and English languages, all the texts being equally authoritative, except in the case of doubts when the English text shall prevail.

**On behalf of
the Government of the
People’s Republic of China**

**On behalf of
the Government of the Republic
of Italy**