

## **PROTOCOL**

### **AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA 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 AND CAPITAL AND THE PROTOCOL THERETO**

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

Desiring to conclude a Protocol amending the Agreement between the Government of the Republic of Austria 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 and Capital and the Protocol thereto, signed at Beijing on 10 April 1991 (hereinafter referred to as "the Agreement") as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting;

Have agreed as follows:

#### **Article 1**

The title of the Agreement shall be replaced by the following:

"AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PREVENTION OF TAX EVASION AND AVOIDANCE".

#### **Article 2**

Article 1 of the Agreement [Persons Covered] shall be deleted and replaced by the following:

#### **"ARTICLE 1 PERSONS COVERED**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 1 of Article 17 of the Multilateral Convention To Implement Tax Treaty Related Measures To Prevent Base Erosion And Profit

Shifting, paragraph 2 of Article 18 of the Agreement and Articles 19, 20, 21, 24, 25, 26 and 28 of the Agreement.”

### **Article 3**

Paragraph 3 of Article 2 of the Agreement [Taxes Covered] shall be deleted and replaced by the following:

“3. The existing taxes to which the Agreement shall apply are in particular:

a) in China:

- (i) the individual income tax;
- (ii) the enterprise income tax;

(hereinafter referred to as “Chinese tax”);

b) in Austria:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the land tax (die Grundsteuer);
- (iv) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);
- (v) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstücken);

(hereinafter referred to as “Austrian tax”).”

### **Article 4**

Sub-paragraph j) of paragraph 1 of Article 3 of the Agreement [General Definitions] shall be deleted and replaced by the following:

“j) the term “competent authority” means, in the case of China, the State Taxation Administration or its authorized representative and, in the case of Austria, the Federal Minister of Finance or its authorized representative.”

### **Article 5**

Paragraphs 1 and 3 of Article 4 of the Agreement [Resident] 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 laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of effective management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority 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 or capital situated therein.”

“3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall

endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”

## **Article 6**

Sub-paragraph a) of paragraph 3 of Article 5 of the Agreement [Permanent Establishment] shall be deleted and replaced by the following:

“a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than twelve months;”

## **Article 7**

Sub-paragraph a) of paragraph 2 of Article 10 of the Agreement [Dividends] shall be deleted and replaced by the following:

- “a) 5 per cent of the gross amount of the dividends if the beneficial owner is:
- (i) a company which holds directly at least 25 per cent of the voting shares of the company paying the dividends, or
  - (ii) the Government of the other Contracting State or political subdivisions, local authorities thereof, or the Central Bank of the other Contracting State or any entity the capital of which is wholly owned directly or indirectly by the Government of the other Contracting State.”

## **Article 8**

Paragraphs 3, 4, 5, 6 and 7 of Article 11 of the Agreement [Interest] shall be deleted and replaced by the following:

“3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State or political subdivisions, local authorities thereof, the Central Bank of the other Contracting State, or any entity the capital of which is wholly owned directly or indirectly or which is mandated by the Government of the other Contracting State, or paid on loans guaranteed or insured by the Government of the other Contracting State, or political subdivisions, local authorities thereof, the Central Bank of the other Contracting State or any entity the capital of which is wholly owned directly or indirectly or which is mandated by the Government of the other Contracting State, shall be exempt from tax in the first-mentioned State.

4. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident if the beneficial owner of the interest is a resident of that State, and if the interest is paid with respect to indebtedness

arising as a consequence of the sale on credit of any equipment, merchandise or services connected therewith.

5. 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1, 2, 3 and 4 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 Contracting 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.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that 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 State in which the permanent establishment or fixed base is situated.

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

## **Article 9**

Paragraph 5 of Article 12 of the Agreement [Royalties] shall be deleted and replaced by the following:

“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 liability 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 State in which the permanent establishment or fixed base is situated.”

## **Article 10**

Sub-paragraphs c) and d) of paragraph 2 of Article 24 of the Agreement [Methods for the Elimination of Double Taxation] shall be deleted.

### **Article 11**

Article 27 of the Agreement [Exchange of Information] shall be deleted and replaced by the following:

#### **“Article 27 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, or of their political subdivisions or local authorities, 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, 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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 solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

## **Article 12**

The following provisions shall be inserted into the Protocol signed at Beijing on 10 April 1991 and numbered as paragraphs 5, 6, 7 and 8 respectively:

“5. Ad Article 5

It is understood that sub-paragraph b) of paragraph 3 of Article 5 does not apply to services that are covered by sub-paragraph a) of paragraph 3 of Article 5.

6. Ad Articles 10 and 11

It is understood that the term “Central Bank” means:

- a) in the case of China: the People’s Bank of China; and
- b) in the case of Austria: the Austrian National Bank (Oesterreichische Nationalbank, OeNB).

7. Ad Articles 10 and 11

It is understood that the term “any entity the capital of which is wholly owned directly or indirectly by the Government of the other Contracting State” in the case of Article 10 and the term “any entity the capital of which is wholly owned directly or indirectly or which is mandated by the Government of the other Contracting State” in the case of Article 11 mean:

a) in the case of China:

- (i) the China Development Bank;
- (ii) the Agricultural Development Bank of China;
- (iii) the Export-Import Bank of China;
- (iv) the National Council for Social Security Fund;
- (v) the China Export & Credit Insurance Corporation;
- (vi) the China Investment Corporation and any entities the capital of which is wholly owned directly or indirectly by it;
- (vii) the Silk Road Fund Co., Ltd;
- (viii) any other entity the capital of which is wholly owned directly or indirectly or, in the case of Article 11, which is mandated by the Government of China, as may be agreed from time to time between the competent authorities of the Contracting States; and

b) in the case of Austria:

- (i) any entity the capital of which is wholly owned directly or indirectly or, in the case of Article 11, which is mandated by the Government of Austria, as may be agreed from time to time between the competent authorities of the Contracting States; and
- (ii) in the case of Article 11, in particular:

- the Austrian Control Bank (Oesterreichische Kontrollbank Aktiengesellschaft, OeKB); and
- the Austrian Development Bank (Oesterreichische Entwicklungsbank AG, OeEB).

8. Ad Article 27

i. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

ii. It is understood that the exchange of information provided in Article 27 does not include measures which constitute “fishing expeditions”.

### Article 13

Both Contracting States shall notify each other through diplomatic channels that they have completed the internal legal procedures necessary for the entry into force of this Protocol. This Protocol shall enter into force on the thirtieth day upon the receipt of the latter notification. This Protocol shall have effect in respect of income derived in any taxable year beginning on or after the first day of January following the calendar year in which this Protocol enters into force.

**IN WITNESS WHEREOF** the undersigned, duly authorised thereto, have signed this Protocol.

**DONE** in duplicate on \*\*\* at \*\*\* in the German, Chinese and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

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

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