

**LEGAL NOTICE NO. 134**

**REPUBLIC OF TRINIDAD AND TOBAGO**

The Income Tax Act, Chap. 75:01

**ORDER**

MADE BY THE PRESIDENT UNDER SECTION 93(1) OF THE INCOME TAX ACT

**THE DOUBLE TAXATION RELIEF (CHINA) ORDER, 2004**

WHEREAS it is provided by section 93(1) of the Income Tax Act that if the President by Order declares that arrangements specified in the order have been made with the Government of any country with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding any written law:

And whereas by Agreement dated 18<sup>th</sup> September, 2003 made between the Government of the Republic of Trinidad and Tobago and the Government of the People's Republic of China arrangements were made *inter alia* for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

Now, therefore, the President in pursuance of the section 93 (1) of the Income Tax Act is pleased to order, and it is hereby ordered as follows:

1. This Order may be cited as the Double Taxation Relief (China) Order, 2004.
2. It is hereby declared that –
  - (a) the Agreement specified in the Schedule has been made with the Government of the People's Republic of China; and
  - (b) it is expedient that the said Agreement shall have effect.

## **SCHEDULE**

### **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO 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**

#### **THE GOVERNMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA**

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income so as to encourage international trade and investment,

Have agreed as follows:

#### **ARTICLE 1**

##### **Personal Scope**

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

#### **ARTICLE 2**

##### **Taxes Covered**

1. The taxes which are the subject of this Agreement are:
  - (a) in the case of Trinidad and Tobago:
    - (i) the income tax;
    - (ii) the corporation tax;

- (iii) the petroleum profits tax;
- (iv) the supplemental petroleum tax; and
- (v) the unemployment levy;

(hereinafter referred to as "Trinidad and Tobago tax");

- (b) in the case of China:
  - (i) the individual income tax; and
  - (ii) the income tax for enterprises with foreign investment and foreign enterprises.

(hereinafter referred to as "Chinese tax").

2. This Agreement shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Agreement in addition to, or in place of, the taxes referred to above. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### ARTICLE 3

#### General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "Trinidad and Tobago" means the Archipelagic State of Trinidad and Tobago, comprising the several islands of the Republic of Trinidad and Tobago, its archipelagic waters, territorial sea and the airspace thereof, together with the adjacent submarine areas of the Exclusive Economic Zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereignty or sovereign rights in accordance with the laws of Trinidad and Tobago and with international law;

(b) the term "China" means the People's Republic of China; when used in geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent

water resources in accordance with international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean Trinidad and Tobago or China as the context requires;

(d) the term "tax" means the Trinidad and Tobago tax or the 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;

(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 "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;

(i) the term "competent authority" means:

- (i) in the case of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorized representative;
- (ii) in the case of China, the State Administration of Taxation or its authorized representative;

(j) the term "national" means:

- (i) any individual possessing the nationality of a Contracting State;
- (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

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

## 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 effective management, head office or any other criterion of a similar nature.

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 in accordance with the following rules:

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

## ARTICLE 5

### Permanent Establishment

1. For the purposes of this Agreement the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly

carried on.

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop, 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" likewise encompasses:

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

(b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than 6 months within any 12 month period;

(c) a drilling rig or ship used for the exploration for or exploitation of natural resources, or in activities connected with that exploration or exploitation but only if so used continuously or those activities continue for a period of more than 3 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom the provisions of paragraph 6 apply - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, 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 the first-mentioned Contracting State 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 shall not be deemed to have a permanent establishment in a 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, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning 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 (including income from agriculture or forestry) 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 the 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, 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 business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the 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 Contracting 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 by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall also apply to profits derived from 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. 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 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 25 percent of the capital of the company paying the dividends;

(b) 10 percent 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 other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other 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 on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Where a company which is a resident of a Contracting State having a permanent establishment in the other Contracting State, derives profits or income from that permanent

establishment, any remittances or deemed remittances of such profits or income by the permanent establishment to the company which is a resident of the first-mentioned Contracting State may, notwithstanding any other provision of this Agreement, be taxed in accordance with the law of the other Contracting State, but the rate of tax imposed on such remittances or deemed remittances shall not exceed 5 percent.

## **ARTICLE 11**

### **Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent 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 shall be exempt from tax in the first-mentioned State. The term "Government":

(a) in the case of Trinidad and Tobago, means the Government of Trinidad and Tobago and shall include:

- (i) the Central Bank of Trinidad and Tobago;
- (ii) the Agricultural Development Bank;
- (iii) the Export Insurance Company;
- (iv) the National Housing Authority;
- (v) the National Insurance Board;
- (vi) the Home Mortgage Bank;
- (vii) the Deposit Insurance Corporation;
- (viii) the Small Business Development Company;
- (ix) the Development Finance Limited;
- (x) the Trinidad and Tobago Mortgage Finance Company; or
- (xi) any other similar institution wholly owned by the Government of Trinidad and Tobago as may be agreed upon from time to time between the competent authorities of the Contracting States;

- (b) in the case of China, means the Government of China and shall include:
- (i) the People's Bank of China;
  - (ii) the China Development Bank;
  - (iii) the Export and Import Bank of China;
  - (iv) the Agriculture Development Bank of China; or
  - (v) any other similar institution wholly owned by the Government of China as may be agreed upon from time to time between the competent authorities of the Contracting States.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein or performs in that other 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 cases 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 the Government of that State, a political subdivision, a local authority thereof or 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.

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

## 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 recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 percent 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, 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 Contracting 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 cases 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 the Government of that State, a political subdivision, a local authority thereof or a resident of that 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.
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 payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of head office of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1 to 3, 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 except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) if he is present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any period of 12 months; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State; or

(c) if the remuneration derived in the taxable year by the resident of that Contracting State from the performance of such services in the other Contracting State exceeds 15000 US dollars or the equivalent in Chinese RMB or Trinidad and Tobago dollars, as the case may be.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## ARTICLE 15

### **Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
  
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of 12 months; 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 Contracting 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 of a company which is a resident of the other Contracting State may be taxed in that other State.

## **ARTICLE 17**

### **Artistes and Athletes**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a 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.

3. Notwithstanding paragraphs 1 and 2, income derived from activities performed in a Contracting State by entertainers or athletes who are residents of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State if the visit to that State is undertaken under a plan of cultural exchange between the governments of both Contracting States.

## **ARTICLE 18**

### **Pensions**

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

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

3. The term "annuity" referred to in paragraph 1 means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

## **ARTICLE 19**

### **Government Service**

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

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.



2. (a) Any pension paid by, or out of funds created by, the Government of a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to the Government of that State, a political subdivision or a local authority thereof shall be taxable only in that State.

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

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

## **ARTICLE 20**

### **Students and Trainees**

1. Payments which a student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student, business apprentice or trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

## **ARTICLE 21**

### **Teachers and Researchers**

1. Remuneration which an individual 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 for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or scientific research institution recognized by the Government of the first-mentioned State derives for the purpose of such teaching, lectures or research shall not be taxed in the first-mentioned State, for a period of two years from the date of his first arrival in the first-mentioned State.

2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

## **ARTICLE 22**

### **Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

## **ARTICLE 23**

### **Elimination of Double Taxation**

1. In the case of Trinidad and Tobago, double taxation shall be avoided as follows:
  - (a) Subject to the provisions of the laws of Trinidad and Tobago regarding the allowance of a credit against Trinidad and Tobago tax of tax payable in a territory outside Trinidad and Tobago (which shall not affect the general principle hereof):
    - (i) Chinese tax payable under the laws of China and in accordance with this Agreement, whether directly or by deduction on profits or income from sources within China (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Trinidad and Tobago tax computed by reference to the same profits or income by reference to which the Chinese tax is computed;
    - (ii) in the case of a dividend paid by a company which is a resident of China to a company which is a resident of Trinidad and Tobago and which controls directly or indirectly at least 25 percent of the voting power in the company paying the dividends the credit shall take into account, in addition to any Chinese tax creditable under (a) (i), the Chinese tax payable by the company paying the dividends in respect of the profits out of which such dividend is paid.
  - (b) The credit, however, shall in no case exceed that part of the tax, as computed before the credit is given, which is appropriate to the income which may be taxed in China.

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

a) Where a resident of China derives income from Trinidad and Tobago the amount of tax on that income payable in Trinidad and Tobago in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.

b) Where the income derived from Trinidad and Tobago is a dividend paid by a company which is a resident of Trinidad and Tobago to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the tax paid to Trinidad and Tobago by the company paying the dividend in respect of its income.

3. For the purposes of allowance as a credit, the tax payable in China or Trinidad and Tobago, as the context requires, shall be deemed to include the tax which is otherwise payable in a Contracting State but has been reduced or waived by that Contracting State under its legal provision for tax incentives.

## **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 are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other 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 any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or

may be subjected.

5. 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 this 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 this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **ARTICLE 26**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or

authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

## **ARTICLE 27**

### **Diplomatic Agents and Consular Officers**

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

## **ARTICLE 28**

### **Entry into Force**

Each Contracting State shall notify the other, through diplomatic notes, of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the date of the later of these notifications and shall thereupon have effect:

(a) in Trinidad and Tobago:

(i) in respect of taxes withheld at source on amounts paid, credited or remitted to non-residents on or after the first day of the second month following the date on which this Agreement enters into force;

(ii) in respect of other taxes, for the years of income beginning on or after the first day of January in the year next following that in which this Agreement enters into force.

(b) in China:

(i) in respect of taxes withheld at source on amounts paid, credited or remitted to non-residents, on or after the first day of the second month following the date on which this Agreement enters into force;

(ii) in respect of other taxes, for taxable years beginning on or after the first day of January in the year next following that in which this Agreement enters into force.

## **ARTICLE 29**

### **Termination**

1. This Agreement shall remain in force indefinitely, but either of the Contracting States, may, on or before June 30, in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination.

2. In such event this Agreement shall cease to have effect:

(a) in Trinidad and Tobago:

(i) in respect of taxes withheld at source on amounts paid, credited or remitted to non-residents on or after the first day of January in the year next following that in which the notice is given; and

(ii) in respect of other taxes for the year of income beginning the first day of January in the year next following that in which the notice is given.

(b) in China

(i) in respect of taxes withheld at source on amounts paid, credited or remitted to non-residents on or after the first day of January in the year next following that in which the notice is given; and

(ii) in respect of other taxes, for taxable years beginning the first day of January in the year next following that in which the notice is given.

In witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

Done at Port of Spain this 18<sup>th</sup> day September, 2003 in duplicate in the English and Chinese languages, both texts being equally authentic.

KNOWLSON GIFT

*For the Government of the  
Republic of Trinidad and  
Tobago*

LI ZHAOXING

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

# PROTOCOL

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

For the purposes of paragraph 3 of Article 12, the term "royalties" shall be considered to include the technical fees closely associated with such royalties.

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

Done at Port of Spain this 18<sup>th</sup> day September, 2003 in duplicate in the English and Chinese languages, both texts being equally authentic.

KNOWLSON GIFT  
*For the Government of the  
Republic of Trinidad and  
Tobago*

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

Dated this 28<sup>th</sup> day of June, 2004.

A. LEUNG WOO-GABRIEL  
*Secretary to Cabinet*