L.N. 104 of 1994

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income)
(People's Republic of China) Order, 1994

IN exercise of the powers conferred by section 80 of the Income Tax Act, the Minister of Finance has made the following Order:—

Citation.

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (People's Republic of China) Order, 1994.

Arrangements to have effect.

2. It is hereby declared:—

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the People's Republic of China with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the People's Republic of China:

(i) the individual income tax;

(ii) the income tax for enterprises with foreign investment and foreign enterprises;

(iii) the local income tax;

(b) that it is expedient that those arrangements should have effect.

SCHEDULE

AGREEMENT
BETWEEN THE GOVERNMENT OF MALTA
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 Malta 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, 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. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its 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:

(a) in the People's Republic of China:

(i) the individual income tax;

(ii) the income tax for enterprises with foreign investment and foreign enterprises;

(iii) the local income tax;
(hereinafter referred to as "Chinese tax");

(b) in Malta:
the income tax;
(hereinafter referred to as "Malta tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 3. 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 "China" means the People's Republic of China; when used in a 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 seabed and its sub-soil and superadjacent water resources in accordance with international law;

(b) the term "Malta", when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other Islands of the Maltese archipelago including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be

designated, under the law of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;

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

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) 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;

(g) the term "nationals" means:

(i) in respect of China, all individuals possessing the nationality of China and all juridical persons created or organised under the laws of China as well as any organisations without juridical personality treated for tax purposes as juridical persons created or organised under the laws of China;

(ii) in respect of Malta, any citizen of Malta and any legal person, partnership or association deriving its status as such from the law in force in Malta;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of head office (i.e. effective management) in 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 China, the State Tax Bureau or its authorized representative; and

(ii) in the case of Malta, the Minister responsible for finance or his authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Agreement applies.

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 Contracting State, is liable to tax therein

by reason of his domicile, residence, place of head office (i.e. effective management) 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 as follows:

(a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident solely of the Contracting 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 no permanent home available to him in either Contracting State, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident solely of the Contracting State of which he is a national;

(d) if he is a national of both Contracting 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 solely of the Contracting State in which its place of head office (i.e. effective management) is situated.

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;

(f) a mine, an oil or gas well, an offshore drilling site, a quarry or any other place of extraction of natural resources;

(g) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than 8 months;

(h) 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 8 months.

3. Notwithstanding the provisions of paragraphs 1 and 2, 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.

4. A person engaged in a Contracting State in activities which are complementary or auxiliary to activities in connection with either the exploration of the seabed and its subsoil or the exploitation of natural resources situated there is deemed to exercise such activities through a permanent establishment in that State.

5. Notwitstanding 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 3 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 other Contracting 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 shall not be considered an agent of an independent status within the meaning meaning of this paragraph if the transactions between the agent and the enterprise were not made under arm's length conditions.

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 Contracting 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 or to explore for, 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 Contracting 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 Contracting 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 or with other enterprises with which it deals.

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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the profits to be attributed to a permanent establishment by the method of exercise of discretion or the making of an estimate in cases where the information available to the competent authority of that State is inadequate to determine those profits, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of 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 paragraphs 1 to 5, 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

International Traffic

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of head office (i.e. effective management) of the enterprise is situated.

2. If the place of head office (i.e. effective management) of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the profits to be attributed to an enterprise by the method of exercise of discretion or the making of an estimate in cases where the information available to the competent authority of that State is inadequate to determine those profits, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

3. 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 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 therin 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 Contracting 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 Contracting State, but:

(a) where the dividends are paid by a company which is a resident of China to a resident of Malta who is the beneficial owner thereof, the Chinese tax so charged shall not exceed 10 per cent of the gross amount of the dividends;

(b) where the dividends are paid by a company which is a resident of Malta to a resident of China who is the beneficial owner thereof, the Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.

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 Contracting 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 Contracting 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 Contracting 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 Contracting State.

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 Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest, 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 shall be exempt from tax in that State if it is derived by the Government of the other Contracting State, a local authority thereof or such institution as may be agreed upon by both Contracting States, provided that such institution is wholly owned or controlled by that Government or local authority.

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 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 that Government of the Contracting State, a local authority thereof or 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 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 paid, 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 Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of the Contracting State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 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 and 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 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 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 the Government of that Contracting State, a local authority thereof or 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 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 benficial 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

Alienation of Property

1. Income or gains from the alienation of immovable property, as defined in Article 6, may be taxed in the Contracting State in which such property is situated.

2. Income or gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.

3. Income or 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 income or gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in the other Contracting State.

4. Income or gains from the alienation of ships and aircraft operated in international traffic or movable property pertaining to the operation of such means of transportation shall be taxable only in the Contracting State in which the place of head office (i.e. effective management) of the enterprise is situated.

5. Income or gains from the alienation of shares other than those mentioned in pargraph 2 representing a participation of at least 25 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Income or gains from the alienation of any property other than that referred to in paragraphs 1 to 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 Contracting State except in one of 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 his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year concerned; 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 for his services in the other Contracting State is derived from residents of that State and exceeds the equivalent of U.S.$ 10,000 during the calendar year, notwithstanding that his stay in that State is for a period or periods amounting in the aggregate to less than 183 days during that year.

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 Contracting 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 Contracting 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 Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a Contracting State in international traffic, may be taxed in the Contracting State in which the place of head office (i.e. effective management) of the enterprise is situated.

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 other comparable body however described, of a company which is a resident of the other Contracting State, may be taxed in that other Contracting 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 Contracting 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 the provisions of paragraphs 1 and 2, income derived by entertainers or athletes who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of both Contracting States shall be exempt from tax in that other Contracting State.

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 Contracting State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 19

Government Service

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

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

(i) is a national of that other Contracting State; or

(ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds to which contributions are made by, the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to the Government of that Contracting State or a local authority thereof shall be taxable only in that Contracting 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 Contracting 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 any business carried on by the Government of a Contracting State or a local authority thereof.

ARTICLE 20

Teachers and Researchers

1. Remuneration which a professor or teacher 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 purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that State, for a period of two years from the date of his first arrival in the first mentioned Contracting State, insofar as such remuneration derives from such advanced study, research or teaching.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

Students and Trainees

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 shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training:

(a) payments derived from sources outside that Contracting State for the purpose of his maintenance, education, study, research or training;

(b) grants, scholarships or awards supplied by the Government, or a scientific, educational, cultural or other tax-exempt organization; and

(c) any remuneration not exceeding an amount equivalent to U.S.$ 3,000 in respect of services in the first mentioned Contracting State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

ARTICLE 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, nor 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.

ARTICLE 23

Elimination of Double Taxation

1. In China, double taxation shall be eliminated as follows:

(a) Where a resident of China derives income from Malta, the amount of tax on that income payable in Malta in accordance with the provisions of this Agreement shall 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 the income computed in accordance with the taxation laws and regulations of China.

(b) Where the income derived from Malta is a dividend paid by a company which is a resident of Malta 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 Malta by the company paying the dividend in respect of its income.

2. In Malta, double taxation shall be eliminated as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within China, the Chinese tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

3. For the purposes of allowance as a credit, the tax payable in China or Malta, 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 provisions for tax incentives. In the case of dividends, interest and royalties, any such tax which has been exempted or reduced shall be deemed to have been paid at 10 per cent of the gross amount of such dividends, interest and royalties.

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 Contracting State in the same circumstances are or may be subjected. The provisions of this paragraph 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 favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

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 requirement to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status, family responsibilities or any other personal circumstances which it grants to its own residents.

6. 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 this 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. 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 paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

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 the Agreement, insofar as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of evasion of such taxes. The exchange of information is not restricted by Article 1. 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 Contracting 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 the 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

This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each Contracting State for the entry into force of this Agreement have been exchanged. This Agreement shall have effect in respect of income derived during any year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

ARTICLE 29

Termination

This Agreement shall remain in force until terminated by a Contracting State. 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 the diplomatic channels. In such event this Agreement shall cease to have effect in respect of income derived during any year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

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

DONE at Beijing on the second day of February, 1993 in duplicate in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF MALTA	FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
JOHN DALLI MINISTER OF FINANCE	LIU ZHONG LI MINISTER OF FINANCE

PROTOCOL

At the moment of signature of the Agreement between the Government of the People's Republic of China and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, both parties have agreed upon the following provisions which will form an integral part of the Agreement:

1. With reference to Article 7, each Contracting State shall tax the profit from the business of insurance in accordance with the provisions of its own law.

2. With reference to Article 8, this Agreement shall not affect the application of the provisions of Article 18 in respect of taxation of the Agreement on Maritime Transport signed in Beijing between the Government of Malta and the Government of the People's Republic of China on September 10, 1991.

IN WITNESS whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Beijing on the second day of February, 1993 in duplicate in the English and Chinese languages, both texts being equally authentic.

FOR THE GOVERNMENT OF MALTA	FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
JOHN DALLI MINISTER OF FINANCE	LIU ZHONG LI MINISTER OF FINANCE

Ippubblikat mid-Dipartiment ta' l-Informazzjoni – Kastilja — *Published by the Department of Information – Kastilja*
Mitbugħ fl-Istamperija tal-Gvern — *Printed at the Government Printing Press*

Prezz 19c — *Price 19c*