

**PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF  
THE PEOPLE’S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE  
FEDERATIVE REPUBLIC OF BRAZIL FOR THE AVOIDANCE OF DOUBLE  
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO  
TAXES ON INCOME AND THE PROTOCOL THERETO, SIGNED AT BEIJING ON  
5 AUGUST 1991**

The Government of the People’s Republic of China and the Government of the Federative Republic of Brazil,

Desiring to amend the Agreement between the Government of the People’s Republic of China and the Government of the Federative Republic of Brazil for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol thereto, signed at Beijing on 5 August 1991 (hereinafter referred to as “the Agreement”);

Have agreed as follows:

**Article 1**

The title to the Agreement shall be deleted and replaced by the following:

**“AGREEMENT  
BETWEEN  
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA  
AND  
THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL  
FOR  
THE ELIMINATION OF DOUBLE TAXATION  
WITH RESPECT TO TAXES ON INCOME  
AND THE PREVENTION OF TAX EVASION AND AVOIDANCE”**

**Article 2**

The preamble to the Agreement shall be deleted and replaced by the following:

“The Government of the People’s Republic of China and the Government of the Federative Republic of Brazil,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

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

Have agreed as follows:”

### **Article 3**

Article 1 of the Agreement shall be deleted and replaced by the following:

#### **“ARTICLE 1 PERSONS COVERED**

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 18 and Articles 19, 20, 21, 23, 24, 25 and 27.”

### **Article 4**

Article 2 of the Agreement shall be deleted and replaced by the following:

#### **“ARTICLE 2 TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are:
  - (a) in the case of China:
    - (i) the individual income tax;
    - (ii) the enterprise income tax;(hereinafter referred to as ‘Chinese tax’);
  - (b) in the case of Brazil:

the federal income tax

(hereinafter referred to as ‘Brazilian tax’).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.”

## **Article 5**

Subparagraphs (a), (b) and (j) of paragraph 1 of Article 3 of the Agreement shall be deleted and replaced by the following:

- “(a) 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 land territory, internal waters, territorial sea and territorial airspace, and any area beyond its territorial sea, within which the People’s Republic of China has sovereign rights or may exercise jurisdiction in accordance with international law and its internal law, to which the Chinese laws relating to taxation apply;
- (b) the term ‘Brazil’ means the Federative Republic of Brazil and, when used in a geographical sense, means the territory of the Federative Republic of Brazil, as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federative Republic of Brazil exercises sovereign rights or jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources or for the production of energy from renewable sources;
- (j) the term ‘competent authority’ means, in the case of China, the State Taxation Administration or its authorized representative, and in the case of Brazil, the Minister of Economy, the Special Secretary of the Federal Revenue of Brazil or their authorised representatives;”

## **Article 6**

Paragraph 3 of Article 4 of the Agreement shall be deleted and replaced by the following:

“3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such a manner as may be agreed upon by the competent authorities of the Contracting States.”

## **Article 7**

1. Paragraph 3 of Article 5 of the Agreement shall be deleted and replaced by the following:

“3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than nine months.”

2. The following new paragraph 3.1 shall be inserted immediately after paragraph 3 of Article 5 of the Agreement:

“3.1. For the sole purpose of determining whether the nine-month period referred to in paragraph 3 has been exceeded,

- (a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding nine months, and
- (b) connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project.”

3. Paragraphs 4, 5 and 6 of Article 5 of the Agreement shall be deleted and replaced by the following:

“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 or display 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 or display;
- (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 activity not listed in subparagraphs (a) to (d), provided that this activity has a preparatory or auxiliary character; or

- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (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 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

- (a) in the name of the enterprise, or

- (b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

- (c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that 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. Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.”

4. The following new paragraph 8 shall be included in Article 5 of the Agreement:

“8. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.”

## **Article 8**

1. Paragraphs 2, 3 and 5 of Article 10 of the Agreement shall be deleted and replaced by the following:

“2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);
- (b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term ‘dividends’ as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other rights which is also subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

5. Where a resident of a Contracting State has a permanent establishment in the other Contracting State, this permanent establishment may be subject to a tax in accordance with the law of that other Contracting State. However, such tax cannot exceed 10 per cent of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.”

2. The following new paragraph 7 shall be included in Article 10 of the Agreement:

“7. Notwithstanding the provisions of paragraph 2 of this Article, 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 the first-mentioned State. However, the tax so charged shall not exceed 5 per cent of the gross amount of the dividends if the beneficial owner of the dividends is:

- (a) the other Contracting State, including political subdivisions and local authorities thereof;
- (b) the Central Bank of the other Contracting State;
- (c) in the case of China, any of the following institutions, including their directly or indirectly wholly owned subsidiaries:
  - (i) the China Investment Corporation (CIC);
  - (ii) the CIC International Co., Ltd.;
  - (iii) the CIC Capital Corporation;
  - (iv) the Silk Road Fund Co., Ltd.;

- (v) the National Council for Social Security Fund;
- (vi) the China-LAC Industrial Cooperation Investment Fund Co., Ltd.;
- (d) in the case of Brazil, the Brazilian Development Bank (BNDES), including its directly or indirectly wholly owned subsidiaries;
- (e) a statutory body of the other Contracting State, or any other institution wholly owned by the Government of the other Contracting State as may be agreed from time to time between the competent authorities of the Contracting States.”

## **Article 9**

1. Paragraphs 2, 3 and 4 of Article 11 of the Agreement shall be deleted and replaced by the following:

“2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the interest in respect of loans and credits granted by a bank for a period of at least 5 years to fund public works, as well as the acquisition of equipment, or the planning, installation or supplying of industrial or scientific equipment;

(b) 15 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State and derived and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State provided the beneficial owner is:

- (a) the other Contracting State, including political subdivisions and local authorities thereof;
- (b) the Central Bank of the other Contracting State;
- (c) in the case of China, any of the following institutions, including their directly or indirectly wholly owned subsidiaries:
  - (i) the China Development Bank;
  - (ii) the Agricultural Development Bank of China;
  - (iii) the Export-Import Bank of China;
  - (iv) the China Export & Credit Insurance Corporation;
  - (v) the China Investment Corporation (CIC);

- (vi) the CIC International Co., Ltd.;
  - (vii) the CIC Capital Corporation;
  - (viii) the Silk Road Fund Co., Ltd.;
  - (ix) the National Council for Social Security Fund;
  - (x) the China-LAC Industrial Cooperation Investment Fund Co., Ltd.;
- (d) in the case of Brazil, the Brazilian Development Bank (BNDES), including its directly or indirectly wholly owned subsidiaries;
- (e) a statutory body of the other Contracting State, or any other institution wholly owned by the Government of the other Contracting State as may be agreed 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, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as any other income assimilated to income from money lent by the tax law of the Contracting State in which the income arises.”
2. Paragraph 8 of Article 11 of the Agreement shall be deleted.

## **Article 10**

Paragraph 2 of Article 12 of the Agreement shall be deleted and replaced by the following:

“2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 15 per cent of the gross amount of the royalties arising from the use or the right to use trade marks;
- (b) 10 per cent of the gross amount of the royalties in all other cases.”

## **Article 11**

Article 23 of the Agreement shall be deleted and replaced by the following:

### **“ARTICLE 23 ELIMINATION OF DOUBLE TAXATION**



1. In the case of China, double taxation shall be avoided as follows:
  - (a) where a resident of China derives income from Brazil, the amount of tax paid on that income in Brazil in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by Brazil solely because the income is also income derived by a resident of Brazil) may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China;
  - (b) in addition to the provisions of subparagraph (a), where the income derived from Brazil is a dividend paid by a company which is a resident of Brazil 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 in Brazil by the company paying the dividend in respect of its income.
2. In the case of Brazil, double taxation shall be avoided as follows:
  - (a) where a resident of Brazil derives income which, in accordance with the provisions of this Agreement, may be taxed in China (except to the extent that these provisions allow taxation by China solely because the income is also income derived by a resident of China), Brazil shall allow, according to the provisions of its law regarding the elimination of double taxation, as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in China. Such deduction, however, shall not exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in China;
  - (b) where in accordance with any provision of the Agreement income derived by a resident of Brazil is exempt from tax in Brazil, Brazil may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.”

## **Article 12**

Article 25 of the Agreement shall be deleted and replaced by the following:

### **“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. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement

with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the 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 13**

Article 26 of the Agreement shall be deleted and replaced by the following:

### **“ARTICLE 26 EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

## **Article 14**

The following new Article 26-A shall be inserted immediately after Article 26 of the Agreement:

### **“ARTICLE 26-A ENTITLEMENT TO BENEFITS**

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Agreement (other than a benefit under paragraph 3 of Article 4 or Article 25) unless such resident is a ‘qualified person’, as defined in paragraph 2, at the time that the benefit would be accorded.

2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Agreement if, at that time, the resident is:

- (a) an individual;
- (b) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of that State, political subdivision or local authority;
- (c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;
- (d) a person, other than an individual, that:
  - (i) is a non-profit organisation agreed upon by the competent authorities of the Contracting States;
  - (ii) is an entity or arrangement established in a Contracting State that is treated as a separate person under the taxation laws of that State and:

- (A) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or
  - (B) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (A);
  - (e) a person other than an individual if, at that time and on at least half of the days of a twelve-month period that includes that time, persons who are residents of that Contracting State and that are entitled to benefits of this Agreement under subparagraphs (a) to (d) own, directly or indirectly, at least 50 per cent of the shares of the person.
3. (a) A resident of a Contracting State shall be entitled to benefits under this Agreement with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned State and the income derived from the other State emanates from, or is incidental to, that business. For purposes of this Article, the term ‘active conduct of a business’ shall not include the following activities or any combination thereof:
- (i) operating as a holding company;
  - (ii) providing overall supervision or administration of a group of companies;
  - (iii) providing group financing (including cash pooling); or
  - (iv) making or managing investments, unless these activities are carried on by a bank, insurance enterprise or registered securities dealer in the ordinary course of its business as such.
- (b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other State from a connected person, the conditions described in subparagraph (a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.
- (c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.
4. A resident of a Contracting State that is not a qualified person shall nevertheless be entitled to a benefit that would otherwise be accorded by this Agreement with respect to an item of income if, at the time when the benefit otherwise would be accorded and on at least half of the

days of any twelve-month period that includes that time, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the shares of the resident.

5. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3 or 4, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Agreement, or benefits with respect to a specific item of income, taking into account the object and purpose of this Agreement, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Agreement. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other State, shall consult with the competent authority of that other State before either granting or denying the request.

6. For the purposes of this and the previous paragraphs of this Article:

(a) the term ‘recognised stock exchange’ means:

(i) any stock exchange established and regulated as such under the laws of either Contracting State; and

(ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;

(b) with respect to entities that are not companies, the term ‘shares’ means interests that are comparable to shares;

(c) the term ‘principal class of shares’ means the class or classes of shares of a company or entity which represents the majority of the aggregate vote and value of the company or entity;

(d) two persons shall be ‘connected persons’ if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company’s shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons;

(e) the term ‘equivalent beneficiary’ means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State or this Agreement which are equivalent to, or more favourable than, benefits to be accorded to that item of income under this Agreement. For the purposes of determining whether a person is an equivalent beneficiary with respect to dividends received by a company, the person shall be deemed to be a company and to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds.

7. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

8. (a) Where:

- (i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and
- (ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned State,

the benefits of the Agreement shall not apply to any item of income on which the tax in the third jurisdiction is less than the lower of 15 per cent of the amount of that item of income and 60 per cent of the tax that would be imposed in the first-mentioned State on that item of income if that permanent establishment were situated in the first-mentioned State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Agreement. However, any interest or royalties to which the provisions of this paragraph apply shall remain taxable in that other Contracting State, but the tax so charged shall not exceed 15 per cent of the gross amount thereof.

- (b) The preceding provisions of this paragraph shall not apply if the income derived from the other State emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).
- (c) If benefits under this Agreement are denied pursuant to the preceding provisions of this paragraph with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of this paragraph (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence shall consult with the competent authority of the other Contracting State before either granting or denying the request.

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

## **Article 15**

The preamble to the Protocol to the Agreement shall be deleted and replaced by the following:

## **“PROTOCOL**

It is agreed that the following provisions constitute an integral part of the Agreement.”

### **Article 16**

Paragraph 2 of the Protocol to the Agreement shall be deleted and replaced by the following:

“2. With reference to Articles 10, 11 and 12

- (a) The Contracting State in which the income arises shall forthwith limit its tax to the rates given in the Articles instead of taxing in full in the first place and later making a refund.
- (b) If, after the 23<sup>rd</sup> day of May 2022, Brazil agrees, in an Agreement or Protocol with any other State to rates that are lower (including any exemption) than the ones provided in Article 10, 11 and 12, then such rates shall, for the purposes of this Agreement, automatically be applicable under the same terms, from the time and for as long as such rates are applicable in that other Agreement. However, in the case of dividends, such rate shall in no case be lower than 5 per cent, and in the case of interest and royalties, such rates shall in no case be lower than 10 per cent.”

### **Article 17**

The following new paragraphs 5, 6, 7, 8, 9 and 10 shall be included in the Protocol to the Agreement:

“5. With reference to Article 2

It is understood that in the case of Brazil the social contribution on net profits (‘Contribuição Social sobre o Lucro Líquido’ – CSLL) created by Law 7,689 of 15 December 1988 is included in the taxes referred to in subparagraph (b) of paragraph 3 of Article 2.

6. With reference to paragraph 1 of Article 7

In the determination of the profits of a building site or construction or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. In cases in which the headquarter of an enterprise of a Contracting State undertakes the provision of goods or merchandise, and the permanent establishment of the enterprise situated in the other Contracting State undertakes the installation activities in connection with such goods or merchandise and has no involvement in the provision of the goods or merchandise, the profits derived from the provision of goods or merchandise by the headquarters shall not be attributed to the permanent establishment.

7. With reference to Article 11

It is understood that interest paid as ‘interest on the company’s equity’ (‘juros sobre o capital próprio’ in Portuguese) in accordance with the Brazilian law is also considered interest for the purposes of paragraph 4 of Article 11.

8. With reference to Article 25

It is understood that for the purpose of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

9. With reference to Article 26

It is understood that, in relation to the requests presented by Brazil, the taxes referred to in paragraph 1 of Article 26 mean federal taxes only. The information supplied by Brazil shall not be subject to any assimilated aforementioned limitations.

10. With reference to the Agreement

It is understood that the provisions of the Agreement shall not prevent a Contracting State from applying its domestic legislation aimed at countering tax evasion and avoidance, whether or not described as such, including provisions of its tax law regarding ‘thin capitalization’ or to avoid the deferral of payment of the income tax such as the ‘controlled foreign corporations/CFCs’ legislation or any similar legislation.”

## **Article 18**

1. Each of the Contracting States shall notify the other in writing, through the diplomatic channel, of the completion of the procedures required by its laws for the bringing into force of this Protocol.

2. This Protocol shall enter into force on the 30th (thirtieth) day after the date of the receipt of the later of the notifications referred to in paragraph 1 and shall have effect:

- (a) in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January of the calendar year immediately following that in which this Protocol enters into force;
- (b) in respect of other taxes covered by the Agreement, for taxable years beginning on or after the first day of January of the calendar year immediately following that in which this Protocol enters into force.

## **Article 19**



This Protocol shall cease to have effect at such time as the Agreement ceases to have effect in accordance with Article 29 of the Agreement.

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

Done in duplicate at Beijing / Brasilia, this 23<sup>rd</sup> day of May 2022, in the Chinese, the Portuguese and the English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

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

**For the Government of  
the Federative Republic of Brazil**

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**WANG Jun**  
Commissioner of  
the State Taxation Administration

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**Paulo Guedes**  
Minister of Economy