ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

("the Arrangement")

CONSOLIDATED TEXT

(English Translation)

The Arrangement (including its protocol) was signed on 21 August 2006 and amended by the following protocols:

- the protocol signed on 30 January 2008 ("the Second Protocol");
- the protocol signed on 27 May 2010 ("the Third Protocol");
- the protocol signed on 1 April 2015 ("the Fourth Protocol"); and
- the protocol signed on 19 July 2019 ("the Fifth Protocol").

The consolidated text presented in this document incorporates amendments made by all the above protocols to the Arrangement to show the text of the Arrangement as it currently reads.

The consolidated text is provided in this document for convenience of reference only and the document does not constitute a source of law. The authentic legal texts of the Arrangement and its protocols remain the only legal texts applicable, which are available via the following link:

https://www.ird.gov.hk/eng/tax/dta_china.htm

April 2023

(English Translation)

ARRANGEMENT BETWEEN THE MAINLAND OF CHINA AND THE HONG KONG SPECIAL ADMINISTRATIVE REGION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Mainland of China and the Hong Kong Special Administrative Region, desiring to further develop their economic relationship and to enhance their co-operation in tax matters, intending to eliminate 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 tax reliefs provided in this Arrangement for the indirect benefit of residents of third tax jurisdictions), have agreed as follows:[1]

Article 1
Persons Covered

This Arrangement shall apply to persons who are residents of One Side or both Sides.

Article 2
Taxes Covered

1. This Arrangement shall apply to taxes on income imposed on behalf of One Side or of its local authorities, irrespective of the manner in which they are levied.

[1] As amended by Article 1 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on items of income, including taxes on gains from the alienation of movable or immovable property and taxes on capital appreciation.

3. The existing taxes to which this Arrangement shall apply are:

(1) in the Mainland of China:

(i) individual income tax;

(ii) enterprise income tax.[2]

(2) in Hong Kong:

(i) profits tax;

(ii) salaries tax;

(iii) property tax,

whether or not the tax is charged under personal assessment.

4. This Arrangement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Arrangement in addition to, or in place of, the existing taxes as well as any other taxes falling within paragraph 1 or 2 of this Article which may be imposed in future. The competent authorities of the both Sides shall notify each other of significant changes that have been made in their respective taxation laws within a reasonable period of time after such changes.

5. The existing taxes, together with the taxes imposed after the signature of this Arrangement, are hereinafter referred to as "Mainland tax" or "Hong Kong Special Administrative Region tax".

[2] As amended by Article 1 of the Second Protocol, which entered into force on 11 June 2008.

Article 3
General Definitions

1. In this Arrangement, unless the context otherwise requires:

(1) the terms "One Side" and "the Other Side" mean the Mainland of China or the Hong Kong Special Administrative Region, as the context requires;

(2) the term "tax" means Mainland tax or Hong Kong Special Administrative Region tax, as the context requires;

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

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

(5) the term "enterprise" applies to the carrying on of business activities of any form;

(6) the terms "enterprise of One Side" and "enterprise of the Other Side" mean respectively an enterprise carried on by a resident of One Side and an enterprise carried on by a resident of the Other Side;

(7) the term "shipping, air and land transport" means any transport by a ship, aircraft or land transport vehicle operated by an enterprise of One Side, except when the ship, aircraft or land transport vehicle is operated solely between places in the Other Side;

(8) the term "competent authority" means, in the case of the Mainland of China, the State Administration of Taxation or its authorized representatives; and in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue, or his authorized representative or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions;

(9) the term "business" includes the performance of professional services and other activities of an independent character.

2. In the Arrangement, the term "Mainland tax" or "Hong Kong Special Administrative Region tax" does not include any penalty or interest imposed under the laws of any One Side relating to the taxes to which this Arrangement applies by virtue of Article 2.

3. As regards the application of this Arrangement by One Side, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at the time under the laws of that Side concerning the taxes to which this Arrangement applies, and any meaning under the applicable tax laws of that Side prevails over a meaning given to the term under other laws of that Side.

Article 4
Resident

1. In this Arrangement, the term "resident of One Side" means:

(1) in the case of the Mainland of China, any person who, under the laws of the Mainland of China, is liable to tax therein by reason of his domicile, residence, place of establishment, place of effective management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in the Mainland of China in respect only of income from sources in the Mainland of China;[3]

(2) in the case of the Hong Kong Special Administrative Region:

(i) an individual who ordinarily resides in the Hong Kong Special Administrative Region;

(ii) an individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in 2 consecutive years of assessment one of which is the relevant year of assessment;

(iii) a company incorporated in the Hong Kong Special Administrative Region, or if incorporated outside the Hong Kong Special

[3] As amended by Article 2 of the Second Protocol, which entered into force on 11 June 2008.

Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(iv) any other person constituted under the laws of the Hong Kong Special Administrative Region, or if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Sides, then his status shall be determined as follows:

(1) he shall be deemed to be a resident only of the Side in which he has a permanent home available to him; if he has a permanent home available to him in both Sides, he shall be deemed to be a resident only of the Side with which his personal and economic relations are closer ("centre of vital interests");

(2) if the Side in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Side, he shall be deemed to be a resident only of the Side in which he has an habitual abode;

(3) if he has an habitual abode in both Sides or in neither of them, the competent authorities of both Sides shall resolve by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Sides, the competent authorities of both Sides shall endeavour to determine by mutual agreement the Side of which such person shall be deemed to be a resident for the purposes of this Arrangement, 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 Arrangement, except to the extent and in such manner as may be agreed upon by the competent authorities of both Sides.[4]

[4] As amended by Article 2 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

Article 5
Permanent Establishment

1. In this Arrangement, 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:

(1) a place of management;

(2) a branch;

(3) an office;

(4) a factory;

(5) a workshop;

(6) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also encompasses:

(1) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than 6 months;

(2) the furnishing of services, including consultancy services, by an enterprise of One Side in the Other Side, directly or through employees or other personnel engaged by the enterprise, but only if such activities continue (for the same or a connected project) for a period or periods aggregating more than 183 days[5] within any 12-month period.

[5] As amended by Article 3 of the Second Protocol, which entered into force on 11 June 2008.

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

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

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

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

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

(5) a fixed place of business established solely for the purpose of carrying on any other activity of a preparatory or auxiliary character for the enterprise;

(6) a fixed place of business established solely for any combination of the activities mentioned in subparagraphs (1) to (5) of this paragraph, 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 One Side 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:

(1) in the name of the enterprise; or

(2) 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

(3) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that One Side 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 the fixed place of business a permanent establishment under the provisions of that paragraph. [6]

6. Paragraph 5 shall not apply where the person carries on business in One Side as an independent agent and acts in that One Side on behalf of an enterprise of the Other Side 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 that person 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.[7]

7. The fact that a company which is a resident of One Side controls or is controlled by a company which is a resident of the Other Side, or which carries on business in that Other Side (whether through a permanent establishment or otherwise), shall not of itself constitute any company of any One Side a permanent establishment of a company of the Other Side.

8. For the purposes of this Article, a person 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 shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50% of the beneficial interest in the other (or, in the case of a company, more than 50% of the voting rights and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50% of the beneficial interest (or, in the case of a company, more than 50% of the voting rights and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.[8]

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[6] As amended by paragraph 1 of Article 3 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

[7] As amended by paragraph 1 of Article 3 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

[8] As added by paragraph 2 of Article 3 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

Article 6
Income from Immovable Property

1. Income derived by a resident of One Side from immovable property (including income from agriculture or forestry) situated in the Other Side may be taxed in that Other Side.

2. The term "immovable property" shall have the meaning which it has under the laws of the Side 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 laws in respect of real estate apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the exploring of, or the right to explore, mineral deposits, resources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply to income derived from immovable property of an enterprise.

Article 7
Business Profits

1. The profits of an enterprise of One Side shall be taxable only in that Side unless the enterprise carries on business in the Other Side through a permanent establishment situated therein. If the enterprise carries on business in the Other Side through a permanent establishment situated therein, its profits may be taxed in the Other Side, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of One Side carries on business in the Other Side through a permanent establishment situated therein, there shall in each Side 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 Side in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts (other than reimbursement of actual expenses) paid by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, for amounts (other than reimbursement of actual expenses) charged by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, remuneration, fees or any other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in One Side to determine the profits to be attributed to a permanent establishment by apportioning the total profits of the enterprise to its various units or by any other methods provided for in the laws, nothing in paragraph 2 shall preclude that Side from determining the profits to be taxed by such method. However, the result of adopting such method shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason only of the 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 for a deviation.

7. Where profits include items of income which are dealt with separately in other Articles of this Arrangement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8
Shipping, Air and Land Transport

1. Income and profits derived by an enterprise of One Side from the operation of ships, aircraft or land transport vehicles in shipping, air and land transport in the Other Side shall be exempt from tax (including value added tax and other similar taxes in the Mainland of China) in that Other Side.[9]

2. The provisions of paragraph 1 of this Article shall also apply to income and profits derived from participation in partnership business, joint venture business or international business agency, to the extent of the income and profits that is proportional to the shareholding of such business.

Article 9
Associated Enterprises

1. Where:

   (1) an enterprise of One Side participates directly or indirectly in the management, control or capital of an enterprise of the Other Side; or

   (2) the same person participates directly or indirectly in the management, control or capital of an enterprise of One Side and an enterprise of the Other Side,

in any of the above situations, the commercial or financial relations between the two enterprises are different from those between independent enterprises. Accordingly, any profits which would have accrued to one of the enterprises but by reason of those relations have not so accrued may be included in the profits of that enterprise and taxed as such.

[9] As amended by Article 1 of the Fourth Protocol, which entered into force on 29 December 2015.

2. Where One Side includes in the profits of an enterprise of that Side —— and taxes accordingly —— profits of an enterprise that have been charged to tax in the Other Side and such profits are profits which would have accrued to the enterprise of that One Side had the 2 enterprises been independent enterprises under the same conditions, the Other Side shall make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the competent authorities of both Sides shall, if necessary, consult each other.

Article 10
Dividends

1. Dividends paid by a company which is a resident of One Side to a resident of the Other Side, may be taxed in that Other Side.

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

(1) where the beneficial owner is a company directly owning at least 25% of the capital of the company which pays the dividends, 5% of the gross amount of the dividends;

(2) in any other case, 10% of the gross amount of the dividends.

The competent authorities of both Sides shall by mutual agreement settle the mode of application of these limitations.

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 under the laws of the Side of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the dividends, being a resident of One Side, carries on business in the Other Side of which the company paying the dividends is a resident through a permanent establishment situated therein, and the shareholding in respect of which the dividends are paid is effectively connected with that permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of One Side derives profits or income from the Other Side, that Other Side may not impose any tax on the dividends paid by or undistributed profits of the company even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that Other Side, except insofar as such dividends are paid to a resident of that Other Side or insofar as the shareholding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that Other Side.

Article 11
Interest

1. Interest arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.

2. However, such interest may also be taxed in the Side in which it arises and according to the laws of that Side, but if the beneficial owner of the interest is a resident of the Other Side the tax so charged shall not exceed 7% of the gross amount of the interest. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in One Side is exempt from tax in that Side if it is received by the Government of the Other Side or any other institutions mutually recognized by the competent authorities of both Sides.

4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not it is secured by mortgage or whether or not it carries a

right to participate in the debtor's profits, and in particular, income from bonds, debentures and Government securities, including premiums and prizes attaching to such bonds, debentures or securities. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the beneficial owner of the interest, being the Government of One Side, a local authority thereof or a resident of that Side, carries on business in the Other Side in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with that permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Side when the payer is the Government of that Side, a local authority thereof or a resident of that Side. However, where the person paying the interest, whether or not he is the Government of a Side, a local authority thereof or a resident of a Side, has in a Side a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Side in which the permanent establishment is situated.

7. Where, by reason of a special relation between the payer and the beneficial owner of the interest or between both of them and some other person, the amount of interest paid exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relation, 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 Side, but due regard shall still be had to the other provisions of this Arrangement.

Article 12
Royalties

1. Royalties arising in One Side and paid to a resident of the Other Side may be taxed in that Other Side.

2. However, such royalties may also be taxed in the Side in which they arise and according to the laws of that Side, but if the beneficial owner of the royalties is a

resident of the Other Side the tax so charged shall not exceed 7% of the gross amount of the royalties. The competent authorities of both Sides shall by mutual agreement settle the mode of application of this limitation.[10]

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 works including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, 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 of this Article shall not apply if the beneficial owner of the royalties, being the Government of One Side, a local authority thereof or a resident of that Side, carries on business in the Other Side in which the royalties arise through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with that permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Side when the payer is the Government of that Side, a local authority thereof or a resident of that Side. However, where the person paying the royalties, whether or not he is the Government of a Side, a local authority thereof or a resident of a Side, has in a Side a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Side in which the permanent establishment is situated.

6. Where, by reason of a special relation between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of royalties paid exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relation, 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 Side, but due regard shall still be had to other provisions of this Arrangement.

[10] The amendment in Article 2 of the Fourth Protocol provides that, in relation to paragraph 2 of Article 12 of the Arrangement, for royalties paid to an aircraft and ship leasing business, the tax charged shall not exceed 5% of the gross amount of the royalties. The Fourth Protocol entered into force on 29 December 2015.

Article 13
Capital Gains

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

2. Gains derived from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of One Side has in the Other Side, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that Other Side.

3. Gains derived by an enterprise of One Side from the alienation of ships or aircraft or land transport vehicles operated in shipping, air and land transport or movable property pertaining to the operation of such ships, aircraft or land transport vehicles, shall be taxable only in that Side.

4. Gains derived by a resident of One Side from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the Other Side if, at any time during the three years preceding the alienation, these shares or comparable interests derived more than 50% of their value directly or indirectly from immovable property, as defined in Article 6, situated in that Other Side.[11]

5. Gains derived by a resident of One Side from the alienation of shares, other than the shares referred to in paragraph 4, or other rights in the capital of a company which is a resident of the Other Side may be taxed in that Other Side if, at any time within the 12 months before the alienation, the recipient of the gains had a participation, directly or indirectly, of not less than 25% of the capital of the company.[12]

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[11] As amended by Article 4 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

[12] As amended by Article 5 of the Second Protocol, which entered into force on 11 June 2008.

6. Notwithstanding the provisions of paragraphs 4 and 5, gains derived by a resident of One Side from the alienation of shares of a company that is a resident of the Other Side quoted on a recognized stock exchange shall be taxable only in the Side of which the alienator is a resident. The alienation is limited to cases where the shares are bought and sold in the same stock exchange.

An investment fund that meets the following conditions shall be regarded as an investment fund that is a resident of One Side, and this paragraph shall apply to such an investment fund:

(1) the investment fund is one established under the relevant laws of the Side in which the investment fund is situated, and is recognized by an industry regulatory body of that Side and subject to the supervision of the body;

(2) the manager of the investment fund shall either be a company registered and incorporated in that Side or other persons constituted in that Side, and shall manage the investment fund in accordance with the requirements of the industry regulatory body of that Side; and

(3) more than 85% of the funds are raised through the market of that Side. Investment funds that raise funds in the following manners shall be regarded as raising funds through the market of that Side:

(i) being listed for trading on the stock exchange of that Side;

(ii) by sale or placement in that Side through a financial institution that carries on a substantive business;

(iii) by sale or placement in that Side directly to investors;

(iv) any other manner as agreed by the competent authorities of both Sides.[13]

7. Gains derived from the alienation of any property, other than that referred to in paragraphs 1 to 5, shall be taxable only in the Side of which the alienator is a resident.[14]

[13] As amended by Article 3 of the Fourth Protocol, which entered into force on 29 December 2015.

[14] As amended by Article 3 of the Fourth Protocol, which entered into force on 29 December 2015.

Article 14
Income from Employment

1. Subject to the provisions of Articles 15, 17, 18, 18A, 19 and 20, salaries, wages and other similar remuneration derived by a resident of One Side in respect of an employment shall be taxable only in that One Side unless the employment is exercised in the Other Side. If the employment is exercised in the Other Side, such remuneration as is derived therefrom may be taxed in that Other Side.[15]

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of One Side in respect of an employment exercised in the Other Side shall be taxable only in that One Side if all the following 3 conditions are satisfied:

(1) the recipient is present in the Other Side for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the taxable period concerned;

(2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the Other Side;

(3) the remuneration is not borne by a permanent establishment which the employer has in the Other Side.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, an aircraft or a land transport vehicle operated in shipping, air and land transport by an enterprise of One Side shall be taxable only in that Side.

[15] As amended by paragraph 1 of Article 5 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

Article 15
Directors' Fees

Directors' fees and other similar payments derived by a resident of One Side in his capacity as a member of the board of directors of a company which is a resident of the Other Side may be taxed in that Other Side.

Article 16
Artistes and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of One Side as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the Other Side, may be taxed in that Other Side.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Side in which the activities of the entertainer or sportsperson are exercised.

Article 17
Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (whether a payment in lump sum or by instalments) paid to a resident of One Side in consideration of past employment shall be taxable only in that Side.

2. Notwithstanding the provisions of paragraph 1 of this Article, pensions and other payments (whether a payment in lump sum or by instalments) made under a pension scheme which is:

(1) a public scheme which is part of the social security system implemented by the Government of One Side or a local authority thereof;

(2) an arrangement in which individuals may participate to secure retirement benefits and which is recognized for tax purposes in One Side,

shall be taxable only in the Side in which the scheme is implemented.

Article 18
Government Service

1. (1) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of One Side or a local authority thereof to an individual in respect of services rendered to that Government or authority, in the discharge of government functions, shall be taxable only in that Side.

(2) However, if the services are rendered in the Other Side and the individual is a resident of that Other Side who did not become a resident of that Other Side by reason only of the rendering of such services, such salaries, wages and other similar remuneration shall be taxable only in that Other Side.

2. (1) Any pension (whether a payment in lump sum or by instalments) paid by, or paid out of funds created or contributed as employer by, the Government of One Side or a local authority thereof to an individual in respect of services rendered to that Government or authority shall be taxable only in that Side.

(2) However, if the individual who rendered the services is a resident of the Other Side and the case falls within subparagraph (2) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that Other Side.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to remunerations and pensions received in respect of services rendered in connection with a business carried on by the Government of One Side or a local authority thereof.

Article 18A
Teachers and Researchers[16]

1. Where an individual is employed by a university, college, school in One Side or by an educational institution or scientific research institution recognized by the Government of One Side and is, or was immediately before visiting the Other Side, a resident of that One Side and is present in that Other Side for the primary purpose of teaching or research at a university, college, school in that Other Side or at an educational institution or scientific research institution recognized by the Government of that Other Side, the remuneration derived by the individual in respect of such teaching or research, to the extent it is paid by, or on behalf of, the employer of that One Side, shall not be taxed in that Other Side for a period of three years, provided that such remuneration is subject to tax in that One Side.

2. The period of "three years" provided in paragraph 1 of this Article shall begin on the date of the individual's first arrival in the Other Side for the above purpose or the date from which the provisions begin to apply under paragraph 2 of Article 7 of [the Fifth Protocol], whichever is the later.

3. Paragraph 1 of this Article shall not apply to income derived 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 19
Students

Payments which a student who is or was immediately before visiting One Side a resident of the Other Side and who is present in the One Side solely for the purpose of his education receives for the purpose of his maintenance and education shall not be taxed in that One Side, provided that such payments arise from sources outside that One Side.

[16] As added by paragraph 2 of Article 5 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

Article 20
Other Income

1. Items of income of a resident of One Side, wherever arising, not dealt with in the foregoing Articles of this Arrangement shall be taxable only in that Side.

2. The provisions of paragraph 1 of this Article 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 One Side, carries on business in the Other Side through a permanent establishment situated therein and a right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of One Side not dealt with in the foregoing Articles of this Arrangement and arising in the Other Side may also be taxed in that Other Side.

Article 21
Methods for Elimination of Double Taxation

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

Tax paid in the Hong Kong Special Administrative Region in accordance with the provisions of this Arrangement in respect of income derived from sources in the Hong Kong Special Administrative Region by a resident of the Mainland of China shall be allowed as a credit against Mainland tax imposed on that resident. However, the amount of the credit shall not exceed the amount of Mainland tax in respect of that item of income computed in accordance with the tax laws and regulations of the Mainland of China.

2. In the Hong Kong Special Administrative Region, double taxation shall be eliminated as follows:

Subject to the provisions of the tax laws of the Hong Kong Special Administrative Region relating to the allowance of a deduction and a credit for tax paid in any territory outside the Hong Kong Special Administrative Region, tax paid in the Mainland of China in accordance with the provisions of this Arrangement in respect

of any item of income derived from sources in the Mainland of China by a resident of the Hong Kong Special Administrative Region shall be allowed as a credit against Hong Kong Special Administrative Region tax imposed on that resident. However, the amount of the credit shall not exceed the amount of Hong Kong Special Administrative Region tax in respect of that item of income computed in accordance with the tax laws and regulations of the Hong Kong Special Administrative Region.

3. Where a resident company of One Side pays dividends to a resident company of the Other Side and that resident company of the Other Side, directly or indirectly, controls not less than 10% of the shares of the company which pays the dividends, the credit that the resident company of the Other Side is entitled to shall include the tax paid by the company which pays the dividends in respect of the profits from which such dividends are derived (but not exceeding the appropriate portion of profits incidental to the derivation of such dividends).

Article 22
Non-Discrimination

1. The taxation on a permanent establishment which an enterprise of One Side has in the Other Side shall not be less favourably levied in that Other Side than the taxation levied on enterprises of that Other Side carrying on the same activities. The provisions of this Article shall not be construed as obliging One Side to grant to residents of the Other Side any deduction, reliefs and reductions on account of the civil status or family responsibilities which it grants to its own residents.

2. 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 One Side to a resident of the Other Side 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 that One Side.

3. Enterprises of One Side, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the Other Side, shall not be subjected in the One Side 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 One Side are or may be subjected.

Article 23
Mutual Agreement Procedure

1. Where a person considers that the actions of One Side or both Sides result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic laws of those Sides, present his case to the competent authority of the Side of which he is a resident. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provision of this Arrangement.

2. The above-mentioned 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 Side, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of both Sides.

3. The competent authorities of both Sides shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement, and may also consult together for the elimination of double taxation in cases not provided for in this Arrangement.

4. The competent authorities of both Sides may communicate with each other directly for the purposes of reaching an agreement under paragraphs 2 and 3 of this Article. For the purpose of reaching an agreement, representatives of the competent authorities of both Sides may meet and exchange their opinions verbally.

Article 24
Exchange of Information[17] [18]

1. The competent authorities of both Sides shall exchange such information as is foreseeably relevant for carrying out the provisions of this Arrangement or to the administration or enforcement of the domestic laws of both Sides concerning taxes covered by this Arrangement, insofar as the taxation thereunder is not contrary to this Arrangement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by One Side shall be treated as secret in the same manner as information obtained under the domestic laws of that Side 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, or the determination of appeals in relation to, the taxes referred to in paragraph 1. 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, including, in the case of the Hong Kong Special Administrative Region, the decisions of the Board of Review.

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

(1) to carry out administrative measures at variance with the laws and administrative practice of that Side or of the Other Side;

(2) to supply information which is not obtainable under the laws or in the normal course of the administration of that Side or of the Other Side;

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[17] As amended by Article 1 of the Third Protocol, which entered into force on 20 December 2010.

[18] The amendment in Article 5 of the Fourth Protocol provides that, in relation to Article 24 of the Arrangement, both Sides agree that in addition to taxes to which the Arrangement applies, the information to be exchanged shall cover the following other taxes enforced and imposed in the Mainland of China:

(1) value added tax;
(2) consumption tax;
(3) business tax;
(4) land appreciation tax;
(5) real estate tax.

The Fourth Protocol entered into force on 29 December 2015.

(3) 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.

4. If information is requested by One Side in accordance with this Article, the Other Side shall use its information gathering measures to obtain the requested information, even though that Other Side 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 One Side 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 of this Article be construed to permit One Side 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 24A
Entitlement to Benefits under the Arrangement[19]

Notwithstanding the other provisions of this Arrangement, a benefit under this Arrangement 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 Arrangement.

Article 25
Miscellaneous Provisions

Nothing in this Arrangement shall prejudice the right of either Side to apply its domestic laws and measures concerning tax avoidance, whether or not described as

[19] As added by Article 6 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.

such. For the purpose of this Article, "laws and measures concerning tax avoidance" includes any laws and measures for preventing, prohibiting, avoiding or resisting any transaction, arrangement or practice, the purpose or effect of which is to confer a tax benefit on any person.

Article 26
Entry into Force

1. This Arrangement shall, upon the written notifications by both Sides of the completion of their respective required approval procedures, enter into force on the date of the later of these notifications. The provisions of this Arrangement shall apply to income derived in the following years:

(1) in the Mainland of China: taxable years beginning on or after 1 January in the calendar year next following the year in which this Arrangement enters into force;

(2) in the Hong Kong Special Administrative Region: years of assessment beginning on or after 1 April in the calendar year next following the year in which this Arrangement enters into force.

2. The Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation on Income signed on 11 February 1998 shall cease to have effect on the date on which this Arrangement applies to the relevant types of tax in accordance with paragraph 1 of this Article.

3. Paragraph 6 of Article 11 of the Air Services Arrangement between the Mainland of China and the Hong Kong Special Administrative Region signed on 2 February 2000 shall cease to have effect on the date on which this Arrangement applies to the relevant types of tax in accordance with paragraph 1 of this Article.

Article 27
Termination

This Arrangement shall remain in force indefinitely, but One Side may give the Other Side written notice of termination on or before 30 June in any calendar

year beginning after the expiration of a period of 5 years from the date of its entry into force. In such event this Arrangement shall cease to have effect from:

(1) in the Mainland of China: the taxable year beginning on or after 1 January in the calendar year next following the year in which the notice is given;

(2) in the Hong Kong Special Administrative Region: the year of assessment beginning on or after 1 April in the calendar year next following the year in which the notice is given.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Arrangement.

DONE in duplicate in Hong Kong on 21 August 2006 in the Chinese language.

[SIGNED]

Protocol to the Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

1. For the purpose of paragraph 2 of Article 3, the term "penalty or interest", in relation to the Hong Kong Special Administrative Region, includes (but not limited to) any sum added to the Hong Kong Special Administrative Region tax by reason of default and recovered therewith, as well as any additional tax assessed for infringement of or failure to comply with its tax laws.

2. [Repealed][20]

3. For the purpose of paragraph 1 of Article 24, information may not be disclosed to any other jurisdiction for any purpose without the consent of the Side which furnished the information in the first place.

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

DONE in duplicate in Hong Kong on 21 August 2006 in the Chinese language.

[SIGNED]

[20] As repealed by Article 4 of the Fifth Protocol, which entered into force on 6 December 2019. Under paragraph 2 of Article 7 of the Fifth Protocol, the provisions of the Fifth Protocol apply, in the Hong Kong Special Administrative Region, to income derived in the years of assessment beginning on or after 1 April 2020; in the Mainland, to income derived in the taxable years beginning on or after 1 January 2020.