

TREATY USA - CHINA

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT BEIJING ON APRIL 30, 1984

GENERAL EFFECTIVE DATE UNDER ARTICLE 27: 1 JANUARY 1987

PROTOCOL 1

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME

At the signing of the Agreement between the Government of the United States of America and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Tax Evasion with Respect to Taxes on Income (hereinafter referred to as "the Agreement"), both sides have agreed upon the following provisions which form an integral part of the Agreement:

- 7) It is agreed by both sides that the competent authorities of the Contracting States may through consultation deny the benefits of Articles 9, 10 and 11 to a company of a third country if the company becomes a resident of a Contracting State for the principal purpose of enjoying benefits under this Agreement.

PROTOCOL 2

PROTOCOL CONCERNING THE INTERPRETATION OF PARAGRAPH 7 OF THE PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT BEIJING ON APRIL 30, 1984

The Government of the United States of America and the Government of the People's Republic of China, desiring to conclude a Protocol in addition to the Agreement

between them for the avoidance of double taxation and the prevention of tax evasion, and the supplementary Protocol attached thereto, have agreed as follows:

Both sides have agreed, with respect to the interpretation of Paragraph 7 of the Protocol to the Agreement, that their understanding is as follows:

- 1) A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Agreement to relief from taxation in the other Contracting State unless:
 - a)
 - i) more than 50 percent of the beneficial interest in such person (or in the case of a company more than 50 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:
 - (A) individuals who are residents of one of the Contracting States;
 - (B) citizens of the United States;
 - (C) companies as described in subparagraph 1(b) of this protocol; and
 - (D) one of the Contracting States, its political subdivisions or local authorities; and
 - ii) in the case of relief from taxation under Articles 9 (dividends), 10 (interest), and 11 (royalties), not more than 50 percent of the gross income of such person is used to make payments of interest to persons who are other than persons described in clauses (A) through (D) of subparagraph (a) (I), whether directly or indirectly; or
 - b) it is a company which is a resident of a Contracting State and in whose principal class of shares there is substantial and regular trading on a recognized stock exchange.
- 2) Paragraph 1 shall not apply if the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Agreement.
- 3) For the purposes of paragraph 1 (b), the term "a recognized stock exchange" means:
 - a) the NASDAQ System own by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934; and
 - b) any national securities exchange approved to be established by the Government of the People's Republic of China or its authorized institution; and

c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4) Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of paragraph 1, 2 and/or 3 the competent authorities of the Contracting States shall consult each other.