

**Double Taxation Agreement (Government of the People's Republic of China) (Amendment)
Regulations 2007**

GN No. 3 of 2007

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THE INCOME TAX ACT

Regulations made by the Minister under section 76 of the Income Tax Act

1. These regulations may be cited as the **Double Taxation Agreement (Government of the People's Republic of China) (Amendment) Regulations 2007**.

2. In these regulations -

"principal regulations" means the Double Taxation Agreement (Government of the People's Republic of China) Regulations 1994.

3. Regulation 2 of the principal regulations is amended in the definition of "Agreement" by deleting the words "and set out in the Schedule to these regulations" and replacing them by the words "and set out in the First Schedule as amended by the Protocol set out in the Second Schedule to these regulations".

4. The principal regulations are amended -

(a) by renumbering the Schedule as the First Schedule;

(b) by adding, immediately after the First Schedule, the Schedule to these regulations.

Made by the Minister on 5th January 2007.

SCHEDULE

(regulation 4)

SECOND SCHEDULE

(regulation 2)

PROTOCOL

**AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS FOR THE AVOIDANCE OF DOUBLE**

TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT BEIJING ON 1 AUGUST 1994.

The Government of the People's Republic of China and the Government of the Republic of Mauritius;

Desiring to conclude a Protocol to amend the Agreement between the Government of the People's Republic of China and the Government of the Republic of Mauritius for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Beijing on 1 August 1994 (hereinafter referred to as "the Agreement");

Have agreed as follows:

ARTICLE 1

1. The following paragraph shall be added to Article 13 of the Agreement as paragraph 5:

"5. Gains derived by a resident of a Contracting State from the alienation of stock, participation, or other rights in the capital of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, during the 12 month period preceding such alienation, had a participation, directly or indirectly, of at least 25 per cent in the capital of that company."

2. The existing paragraph 5 in Article 13 of the Agreement shall be deleted and replaced by the following paragraph:

"6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5 shall be taxable only in the Contracting State of which the alienator is a resident."

ARTICLE 2

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

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 their local authorities insofar as the taxation thereunder is not contrary to the 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.
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 3

The Governments of the Contracting States shall notify each other, through diplomatic notes, of the completion of the Internal legal procedures necessary for the entry into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in China, in respect of income derived during the taxable year beginning on or after the first day of January next following the year in which this Protocol enters into force;
- (b) in Mauritius, in respect of income derived during the income year beginning on or after the first day of July next following the date on which this Protocol enters into force.

ARTICLE 4

This Protocol shall remain in force as long as the Agreement remains in force.

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

DONE in duplicate at Beijing this fifth day of September 2006, in the English and Chinese languages. In case of divergence in interpretation, the English version shall prevail.

Hon. Xie Xuren

For the Government of
People's Republic of China

H.E Paul Chong Leung

For the Government of
Republic of Mauritius