

KAZAKHSTAN (Treaty of 16.04.1998)

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Convention between the kingdom of belgium and the republic of kazakhstan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

The Kingdom of Belgium and the Republic of Kazakhstan, Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

Article 1 Personal scope

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, Have agreed as follows:

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2 Taxes covered

1. This Convention shall apply to taxes on income and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
 - a) in the Republic of Kazakhstan:
 - (i) the tax on income of legal persons and individuals;
 - (ii) the tax on the property of legal persons and individuals;

(hereafter referred to as "Kazakhstan tax").

- b) in the Kingdom of Belgium:

- (i) the individual income tax;
- (ii) the corporate income tax;
- (iii) the income tax on legal entities;
- (iv) the income tax on non-residents;
- (v) the supplementary crisis contribution;

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax,

(hereinafter referred to as "Belgian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention 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 which have been made in their respective taxation laws.

Article 3 General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term:

(i) "Kazakhstan" means the Republic of Kazakhstan, and when used in a geographical sense, the term "Kazakhstan" includes the territorial waters, and also the exclusive economic zone and continental shelf in which Kazakhstan, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the law relating to Kazakhstan tax are applicable;

(ii) "Belgium", means the Kingdom of Belgium, and when used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;

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

c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.

d) the terms "Contracting State" and "the other Contracting State" mean Kazakhstan or Belgium, as the context requires;

e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

g) the term "competent authority" means:

(i) in the case of Kazakhstan: the Ministry of Finance or its authorized representative, and

(ii) in the case of Belgium: the Minister of Finance or his authorized representative;

h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or any other association deriving its status as such from the laws in force in a Contracting State.

(i) the term "capital" for purposes of Article 22 means movable and immovable property, and includes (but is not limited to) cash, stock or other evidences of ownership rights, notes, bonds or other evidences of indebtedness, and patents, trademarks, copyrights or other like right or property;

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

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of

management, place of incorporation, or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
 - a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5 Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

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

3. The term "permanent establishment" also includes:

a) a building site or construction or installation or assembly project in a Contracting State, or supervisory services connected therewith, only if such site or project lasts or such services continue for more than 12 months in that Contracting State; and

- b) an installation or structure used for the exploration of natural resources in a Contracting State, or supervisory services connected therewith, or a drilling rig or ship used for the exploration of natural resources, only if such use lasts or such services continue for more than 12 months in that Contracting State; and
 - c) the furnishing of services within a Contracting State, including consultancy services, by a resident through employees or other personnel engaged by the resident for such purpose and present in that Contracting State, but only where the activities of that nature continue (for the same or connected project) within the Contracting State for more than 12 months.
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, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in

sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the 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. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property

and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7 Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or 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 the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any other offices, by way of royalties, fees or 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 a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of 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 to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be effected by the provisions of this Article.

Article 8 Shipping and air transport

1. Profits derived from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purpose of this Article, profits from the operation in international traffic of ships or aircraft shall include in particular:
 - a) profits derived from the rental on a full basis of ships or aircraft and profits derived from the incidental rental on a bareboat basis of ships or aircraft used in international traffic;
 - b) profits derived from the use or rental of containers, if such profits are supplementary or incidental to profits to which the provisions of paragraph 1 apply.
3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9 Associated enterprises

Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise

of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that 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) 5 per cent of the gross amount of the dividend if the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends;

 - 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, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating

in profits, as well as income - even paid in the form of interest - which is treated as income from shares by the tax legislation of the State of which the paying company is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing a special tax on the profits of a company attributable to a permanent establishment in that State, in addition to the tax which would be chargeable on the profits of a company which is a national of that State, provided that any additional tax shall not exceed 5 per cent of the amount of such profits which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the profits shall be determined after deducting therefrom all taxes, other than the additional tax referred to in this paragraph, imposed in the Contracting State in which the permanent establishment exists and after deducting any amount reinvested in that permanent establishment.

Article 11 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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 other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is:
 - a) interest paid to the other Contracting State, a political subdivision or a local authority thereof or to the Central Bank of that other State;
 - b) interest paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by an agency or instrumentality owned by that State a political subdivision or a local authority thereof the objective of which is to promote the export.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, the term "interest" shall not include for the purpose of this Article penalty charges for late payment or interest regarded as dividends under paragraph 3 of Article 10.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such

interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable in the Contracting State in which the interest arises according to the laws of that State.
8. The provisions of this Article shall not apply if it was the main purpose of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
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 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematograph films and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, and payments for the use of, or the right to use, industrial, commercial or scientific equipment.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable in the Contracting State in which the royalties arise, according to the laws of that State.

Article 13 Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains derived by a resident of a Contracting State from the alienation of:
 - a) shares, other than shares quoted on an approved Stock Exchange, deriving the greater part of their value from immovable property situated in the other Contracting State, or

- b) an interest in a partnership the assets of which consist principally of immovable property situated in the other Contracting State,

may be taxed in that other State.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
5. Gains from the alienation of any property other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14 Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such services are performed in the other Contracting State; and
 - a) the income is attributable to a fixed base which is regularly available to him in that other State; or

- b) such resident is present in that other State for a period or periods exceeding in the aggregate 183 days in any consecutive twelve month period.

In such a case the income attributable to the services may be taxed in that other State in accordance with principles similar to those of Article 7 for determining the amount of business profits and attributing business profits to a permanent establishment.

- 2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 Dependent personal services

- 1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
- 2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of twelve consecutive months, and
 - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State,

and

- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Company managers

- 1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

The preceding provision shall also apply to payments derived in respect of the discharge of functions which, under the laws of the Contracting State of which the company is a resident, are regarded as functions of a similar nature as those exercised by a person referred to in the said provision.

- 2. Remuneration derived by a person referred to in paragraph 1 from the company in respect of the discharge of day-to-day functions of a managerial or technical nature and remuneration received by a resident of a Contracting State in respect of his personal activity as a partner of a company, other than a company with share capital, which is a resident of the other Contracting State, may be taxed in accordance with the provisions of Article 15, as if such remuneration were remuneration derived by an employee in respect of an employment and as if references to the "employer" were references to the company.

Article 17 Artistes and sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply if the activities exercised in a Contracting State are substantially supported from public funds of the other Contracting State or a political subdivision or a local authority thereof. In such case, income derived from such activities shall be taxable only in that other Contracting State.

Article 18 Pensions and other payments

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such a resident shall be taxable only in that State.
2. However, pensions and other allowances, periodic or non periodic, paid under the social security legislation of a Contracting State may be taxed in that State. This provision also applies to pensions and allowances paid under a public scheme organised by a Contracting State in order to supplement the benefits of that legislation.
3. The term "annuity" means a stated sum payable to an individual periodically at stated times during his

life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19 Government service

1.

a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

(i) is a national of that State; or

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

2.

a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

- 3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20 Students, trainees, teachers and researchers

- 1. Payments which a student or a trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

- 2. Remuneration paid by a Contracting State, political subdivisions or a local authority thereof, or by a statutory body of that State or authority, to an individual in his capacity as a teacher or a researcher shall be taxable only in that State.

Article 21 Other income

- 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention and which are taxed in that State shall be taxable only in that State.

- 2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated

therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 22 Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft owned and operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of such enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23 Elimination of double taxation

1. In the case of Kazakhstan, double taxation shall be avoided as follows:

- a) Where a resident of Kazakhstan derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Belgium, Kazakhstan shall allow:
 - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Belgium;
 - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Belgium.

Such deduction in any case shall not exceed the tax assessed on the same income or capital in Kazakhstan at the rates in effect therein.

- b) Where a resident of Kazakhstan derives income or owns capital, which in accordance with the provisions of this Convention, shall be taxable only in Belgium, Kazakhstan may include this income or capital in the tax base but only for purposes of determining the rate of tax on such other income or capital as is taxable in Kazakhstan.

2. In the case of Belgium, double taxation shall be avoided as follows:

- a) Where a resident of Belgium derives income or owns elements of capital which are taxed in Kazakhstan in accordance with the provisions of this Convention, other than those of paragraph 2 of Article 10, of paragraphs 2 and 7 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income or such elements of capital from tax but may, in calculating the amount of tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if such income or elements of capital had not been exempted.
- b) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to subparagraph c) hereinafter, interest taxable in accordance with paragraph 2 or 7 of Article 11, or royalties taxable in accordance with paragraph 2 or 6 of Article 12, the

Kazakhstan tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.

- c) Dividends derived by a company which is a resident of Belgium from a company which is a resident of Kazakhstan, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.

- d) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in Kazakhstan, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in subparagraph a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in Kazakhstan, by reason of compensation for the said losses.

Article 24 Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal

allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25 Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph I of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
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 Convention. 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 Convention.
4. The competent authorities of the Contracting States shall agree on administrative measures necessary to carry out the provisions of the Convention and particularly on the proofs to be furnished by residents of either Contracting State in order to benefit in the other State from the exemptions or reductions in tax provided for in the Convention.
5. The competent authorities of the Contracting States shall communicate directly with each other for the application of the Convention

Article 26 Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in Dubiic court nraceeHinv[] or in illHici[]l Heci[]inn[]
2. In no case shall the provisions of paragraph I be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and political practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27 Assistance in collection

1. The competent authorities of the Contracting States undertake to lend assistance to each other in the notification and the collection of taxes, together with interest, costs, and - administrative penalties relating to such taxes, referred to in this Article as a "tax claim,".
2. Requests for assistance by the competent authorities of a Contracting State in the collection of a tax claim shall include a certification by such authority that, under the laws of that State, the tax claim has been finally determined. For the purposes of this Article, a tax claim is finally determined when a Contracting State has the right under its internal law to collect the tax claim and the taxpayer has no further rights to restrain collection.
3. Claims which are the subject of requests for assistance. shall not have any priority in the Contracting State rendering assistance and the provisions of paragraph I of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

4. A tax claim of a Contracting State that has been accepted for collection by the competent authority of the other Contracting State shall be collected by the other State as though such claim were the other State's own tax claim as finally determined in accordance with the provisions of its laws relating to the collection of its taxes.
5. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State.
6. A request under this Article shall only be made by a Contracting State if that State has exhausted all means in its own territory for the recovery of its own tax claim.
7. No assistance shall be provided under this Article for a tax claim of a Contracting State in respect of a taxpayer to the extent that the tax claim relates to a period during which the taxpayer was not a resident of one or the other Contracting State.
8. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or that would be contrary to its public policy (ordre public).
9. With regard to tax claims which are open to appeal, the competent authority of a Contracting State may, in order to safeguard its rights, request the competent authority of the other Contracting State to take the protective measures provided for in the laws of that other State; the provisions of the preceding paragraphs shall apply with the necessary changes to such measures.

Article 28 Members of diplomatic missions and consular costs

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29 Entry into force

This Convention shall be ratified and shall enter into force on the 30th day after the date of the latter notification indicating that both Contracting States have complied with the domestic legal procedures required in each State for its entry into force.

The Convention shall apply:

- a) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January in the calendar year in which the Convention enters into force;

- b) with regard to other taxes on income, in respect to taxable periods beginning on or after the first day of January in the calendar year in which the Convention enters into force;

- c) with regard to taxes on capital charged on elements of capital existing on the first day of January of any year from the year in which the Convention enters into force.

Article 30 Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have Oft -

- a) with regard to taxes withheld at source, for amounts paid or credited on or after the first day of January

in the year next following that in which the notice of termination is given;

b) with regard to other taxes on income, for taxable periods beginning on or after the first day of January in the year next following that in which the notice of termination is given;

c) with regard to taxes on capital charged on elements of capital existing on the first day of January of the year next following that in which the notice of termination is given.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Convention.

Appendix Protocol

At the moment of signing the Convention between the Republic of Kazakhstan and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. Ad Article 2

It is understood that the terms "the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax" used in subparagraph b) of paragraph 3 include:

- the withholding tax on movable income (dividends, interest and royalties);

- the withholding tax on immovable income;

- the withholding tax on professional income;

- the additional local taxes on the individual income tax and on the withholding tax on immovable income.

2. Ad Article 4

The term "resident of a Contracting State" shall also include any institution or body established under the law of a Contracting State, which operates exclusively for the purpose of providing pension or employee benefits, even if such an institution or body is exempt Mom tax in the State in which it has been established.

3. Ad Articles 6 and 7

It is understood that an enterprise of a Contracting State which works mineral deposits, sources or other natural resources in the other Contracting State carries on, in respect of those activities, business in that other State through a permanent establishment situated therein to which the rules of paragraphs I to 6 of Article 7 apply. Such an enterprise shall also be considered to carry on business in that other State through a permanent establishment situated therein to which the rules of paragraphs I to 6 of Article 7 apply if it has the right to work mineral deposits, sources or other natural resources in that other State.

4. Ad Article 7

a)

- (i) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise but only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business;
 - (ii) in the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent establishment.
- b) Nevertheless, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through a permanent establishment, may be considered attributable to that permanent establishment, provided that it is proved that the transaction concerned has been resorted to in order to avoid taxation in the Contracting State where the permanent establishment is situated.
- c) In the case of a banking enterprise, the permanent establishment shall be allowed a deduction for amounts paid to its head office or any of the other offices of the enterprise by way of interest on moneys lent to it by means of advances as distinct from capital allotted to it. Nevertheless this deduction shall be limited to the normal amounts which would have been paid if the permanent establishment had been a distinct and separate enterprise dealing wholly independently with the head office or any of the other offices of the enterprise.

5. Ad Article 10

- a) Dividends paid by a company which is a resident of a Contracting State to a company which is a resident of the other Contracting State shall be exempt from tax in the firstmentioned State provided that such dividends are paid in consideration of an investment of at least fifty million US dollars in the company paying the dividends.

Such exemption shall apply as from January 1st of the year immediately following the year in which the investment amounts to fifty million US dollars but shall not apply after a period of ten years starting from January 1st of the year immediately following the year in which the beneficial owner of the dividends begins to invest in the company paying the dividends.

This provision shall only apply for twenty years as from January 1st of the year immediately following the year in which the Convention enters into force.

- b) As long as a convention for the avoidance of double taxation is effective between Kazakhstan and a country which is a member of the OECD, which convention does not provide for the special tax provided for in paragraph 6 of Article 10 of this Convention, this special tax shall not be levied upon enterprises carried on by a resident of Belgium.

6. Ad Article 11

In the case of Belgium, it is understood that the provisions of subparagraph b) of paragraph 3 apply to a loan made, guaranteed or insured or to a credit extended, guaranteed or insured by:

- L'Office National du Ducroire;

- L'Association pour la Coordination du Financement a Moyen Terme des Exportations Belges ('Creditexport');

- Le Comité pour la Promotion des Exportations de Biens d'Equipeement Beiges ('Copromex');

- L'Institut de Réescompte et de Garantie.

7. Ad Article 12

- a) If, in any agreement for the avoidance of double taxation which Kazakhstan would conclude after the date of signature of this Convention with a third State, being a member of the European Union, Kazakhstan would agree to exempt or lower the rate of tax provided in paragraph 2, the Contracting States shall enter into negotiations.
- b) When applying paragraph 2 of Article 12, of the Convention payments for technical assistance or technical services shall not be considered to be payments for information concerning industrial, commercial or scientific experience, but shall be taxable in accordance with the provisions of Article 7 or Article 14, as the case may be.
- c) in the case of royalties paid for the use of or the right to use industrial, commercial or scientific equipment the beneficial owner may elect to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment or fixed base situated in the Contracting State in which the royalties arise.
- d) it is understood that Articles 7 or 14 apply to payments made in consideration of the acquisition of software for the personal or business use of the purchaser or in consideration of the alienation of rights attached to the software (transfer of full ownership of the software).
- e) The provisions of paragraph 3 of Article 12 shall not apply to equipment dealt with in paragraph 2 of Article 8.

8. Ad Article 13

Paragraph 2 shall not apply if the gains referred to in this paragraph are derived in the course of a corporate reorganisation, merger, division or similar transaction.

9. Ad Article 25

The provisions of paragraphs I and 2 of Article 25 shall also apply to a case of economic double taxation which may result from the application of Article 9.

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