

Convention between the Government of the Republic of Kazakhstan and the Government of Canada

For the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital

This electronic version of the Canada-Kazakhstan Income Tax Convention signed on September 25, 1996, is provided for convenience of reference only and has no official sanction.

The Government of the Republic of Kazakhstan and the Government of Canada confirming their desire to develop and strengthen the economic, scientific, technical and cultural co-operation between both States, and 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

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, 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, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in the case of Kazakhstan:

(i) the tax on income of legal persons and individuals;

(ii) the tax on the property of legal persons and individuals; (hereinafter referred to as "Kazakhstan tax");

b) in the case of Canada:

the taxes imposed by the Government of Canada under the Income Tax Act; (hereinafter referred to as "Canadian 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. 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 laws relating to Kazakhstan tax are applicable;

(ii) "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada

may exercise rights with respect to the seabed and subsoil and their natural resources;

b) the term "person" includes an individual, a company and any other body of persons and, in the case of Canada, the term also includes a trust;

c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes, and in particular in the case of Kazakhstan includes a joint stock company, a limited liability company or any other legal entity or other organization which is liable to a tax on profits;

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

e) the term "international traffic" with reference to a resident of a Contracting State means any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident) except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State;

f) the term "competent authority" means:

(i) in Kazakhstan: the Ministry of Finance or its authorized representative;

(ii) in Canada: the Minister of National Revenue or his authorized representative;

g) 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.

2. As regards the application of the Convention by a Contracting State at any time, 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:

- a) 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;
- b) the Government of that State or a political subdivision or local authority thereof or any legal entity owned by such Government, subdivision or authority. It shall include also any pension or other employee benefit plan, and any charitable organization, established under the law of that Contracting State.

But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 only 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 only 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 only 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 only 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 company is a resident of both Contracting States, then its status shall be determined as follows:

- a) it shall be deemed to be a resident only of the State of which it is a national;
- b) if it is a national of neither of the States, it shall be deemed to be a resident only of the State in which its place of effective management is situated.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement, but if the competent authorities are unable to reach such an agreement, the person shall be treated as a resident of neither Contracting State for the purposes of deriving benefits under this Convention.

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 a resident of a Contracting State 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 relating to the exploration for or the exploitation of natural resources.

3. The term "permanent establishment" also includes:

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

b) an installation or structure used for the exploration of natural resources, or supervisory services connected therewith, or a drilling rig or ship used for the exploration of natural resources, but only if such use lasts for more than 3 months, or such services continue for more than 12 months; and

c) the furnishing of services, including consultancy services, by a resident through employees or other personnel engaged by the resident for such

purpose, but only where the activities of that nature continue (for the same or a connected project) within the country for more than 12 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" in respect of a resident of a Contracting State 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 resident;

b) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of processing by another person;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the resident;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the resident, 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 subparagraphs a) to e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of a resident of a Contracting State and has, and habitually exercises, in the other Contracting State an authority to conclude contracts in the name of the resident, that resident shall be deemed to have a permanent establishment in that other State in respect of any activities which that person undertakes for the resident, 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. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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 and to income from the alienation of such property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property used in carrying on a business or in the performance of independent personal services.

Article 7

Business Profits

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on or has carried on

business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of them as is attributable to:

- a) that permanent establishment;
- b) sales in that other State of goods or merchandise of the same kind as those sold through that permanent establishment; or
- c) other business activities carried on in that other State of the same kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on or has carried 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 business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with all other persons.

3. In the determination of the business profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

The permanent establishment shall not be allowed a deduction (otherwise than as a reimbursement of actual expenses) for amounts paid to its head office or any of the other offices of the company by way of royalties, fees or other similar payment in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment.

4. No business profits shall be attributed to a permanent establishment of a person by reason of the mere purchase by that permanent establishment of goods or merchandise for the person.

5. Where the information available to or readily obtainable by the competent authority of a Contracting State is not adequate to determine the business profits or expenses of a permanent establishment, profits may be calculated in accordance with the tax laws of that State. For purposes of this paragraph, information will be considered to be readily obtainable if the taxpayer provides the information to the requesting

competent authority within 91 days of a written request by the competent authority for such information.

6. Where business 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 affected by the provisions of this Article.

7. For the purposes of the preceding paragraphs, the business 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.

Article 8

Shipping and Air Transport

1. Profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 and of Article 7 (Business Profits), profits derived by a resident of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits referred to in those paragraphs derived by a resident of a Contracting State from its participation in a pool, a joint business or an international operating agency.

4. In this Article,

a) the term "profits" includes gross receipts and revenues derived directly from the operation of ships or aircraft in international traffic;

b) the term "operation of ships or aircraft in international traffic" by a person, includes:

(i) the charter or rental of ships or aircraft, and

(ii) the rental of containers and related equipment,

by that person provided that such charter or rental is incidental to the operation by that person of ships or aircraft in international traffic.

Article 9

Associated Persons

1. Where

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

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

2. Where a Contracting State includes in the profits of a resident of that State - and taxes accordingly - profits on which a resident of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the first-mentioned person if the conditions made between the two persons had been those which would have been made between independent persons, then that other State may make an appropriate adjustment to the amount of tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

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 a resident of the other Contracting State is the beneficial owner of the dividends the tax so charged shall not exceed:
 - a) except in the case of dividends paid by a non-resident-owned investment corporation that is a resident of Canada, 5 per cent of the gross amount of the

dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in 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 or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraph 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 (Business Profits) or Article 14 (Independent Personal Services), 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 on the earnings of a company attributable to a permanent establishment in that State, a tax in addition to the tax which would be chargeable on the earnings of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 5 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the profits, including any gains, attributable to a permanent establishment in a Contracting State in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by that State.

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 a resident of the other Contracting State is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2:

a) interest arising in a Contracting State and paid in respect of indebtedness of the Government of that State or of a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other State;

b) interest arising in Kazakhstan and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan for a period of not less than three years made, guaranteed or insured, or a credit for a period of not less than three years extended, guaranteed or insured by the Export Development Corporation; and

c) interest arising in Canada and paid to a resident of Kazakhstan shall be taxable only in Kazakhstan if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export-Import Bank of Kazakhstan or by any other export credit organisation established in Kazakhstan after the date of signature of this Convention and which is specified and agreed to in letters exchanged between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10 (Dividends).

5. The provisions of paragraph 2 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 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes 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 a resident of the other Contracting State is the beneficial owner of the royalties 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 computer programs, motion picture films and works on film, videotape or other means of reproduction for use in connection with television, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) 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 paragraph 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 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 obligation 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the right in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

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 (Income from Immovable Property) 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 in which there is substantial and regular trading on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or

b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in subparagraph a) above,

may be taxed in that other State. For the purposes of this paragraph, the term "immovable property" includes the shares of a company referred to in subparagraph a) or an interest in a partnership or trust referred to in subparagraph b) but does not include any property, other than rental property, in which the business of the company, partnership or trust is carried on.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment of a resident of a Contracting State 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 a fixed base, may be taxed in that other State.

4. Gains derived by a resident of a Contracting State 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 that State.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph 5 shall not affect the right of a Contracting State to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property.

Article 14

Independent Personal Services

1. Income derived by an individual who is 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 or were performed in the other Contracting State; and

a) the income is attributable to a fixed base which the individual has or had regularly available to him in that other State; or

b) such individual is present or was 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 (Business Profits) 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 (Directors' Fees), 18 (Pensions and other Payments) and 19 (Government Service), salaries, wages and other 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 consecutive twelve month period, 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State, shall be taxable only in that State unless the remuneration is derived by a resident of the other Contracting State.

Article 16

Directors' Fees

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.

Article 17

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), 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 (Business Profits), 14 (Independent Personal Services) and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

4. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by a resident of the other Contracting State

in the context of a visit in the first-mentioned State of a non-profit organization of the other State, provided the visit is substantially supported by public funds.

Article 18

Pensions and Other Payments

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the law of that State. However, in the case of periodic pension payments, other than social security benefits, the tax so charged shall not exceed 15 per cent of the gross amount of the payment.
3. Notwithstanding anything in this Convention:
 - a) any pension paid by, or out of funds created by, the Government of Kazakhstan or one of its political subdivisions or local authorities to an individual in respect of services rendered to the Government of Kazakhstan or subdivision or authority shall be taxable only in Kazakhstan. However, such pension shall be taxable only in Canada if the individual is a resident of, and a national of, Canada;
 - b) benefits paid under the social security legislation in a Contracting State shall be taxable only in that State; and
 - c) alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

Article 19

Government Service

1. a) Salaries, wages and 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 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. The provisions of paragraph 1 shall not apply to remuneration 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

Payments which a student, an apprentice 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.

Article 21

Other Income

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. However, if such income is derived by a resident of a Contracting State from sources in the other Contracting State, such income may also be taxed in the State in which it arises, and according to the law of that State.

Article 22

Capital

1. Capital represented by immovable property referred to in Article 6 (Income from Immovable Property), 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 a resident 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 operated by a resident of a Contracting State in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

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 Canada, 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 Canada;

(ii) as a deduction from the tax on capital of that resident, an amount equal to the capital tax paid in Canada.

These deductions, in any case, shall not exceed the tax that would have been payable on such income and capital in Kazakhstan;

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 Canada, 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 Canada, double taxation shall be avoided as follows:

a) subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Kazakhstan on profits, income or gains arising in

Kazakhstan shall be deducted from any Canadian tax payable in respect of such profits, income or gains;

b) subject to the existing provisions of the law of Canada regarding the taxation of income from a foreign affiliate and to any subsequent modification of those provisions -- which shall not affect the general principle hereof -- for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of Kazakhstan;

c) where in accordance with any provision of the Convention income or capital derived by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

3. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

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 are or may be subjected.

2. The taxation on a permanent establishment which a resident 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 residents of that other State carrying on the same activities.

3. Nothing in this Article shall 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. Companies which are residents 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 therewith which is other or more burdensome than the taxation and connected requirements to which other similar

companies which are residents of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

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, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with 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.
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 may consult together for the elimination of double taxation in cases not provided for in the Convention and may communicate with each other directly for the purpose of applying the Convention.
5. If any difficulty or doubt arising as to the interpretation or application of this Convention cannot be resolved by the competent authorities pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedures shall be established between the States by notes to be exchanged through diplomatic channels. After a period of three years after the entry into force of this Convention, the competent authorities shall consult in order to determine whether it is appropriate to make the exchange of diplomatic notes. The

provisions of this paragraph shall have effect after the States have so agreed through the exchange of diplomatic notes.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is relevant 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 is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). 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 public court proceedings or in judicial decisions.

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

a) to carry out administrative measures at variance with the laws and the 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*).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation were involved notwithstanding the fact that the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can

be obtained under the laws and administrative practices of that other State with respect to its own taxes.

Article 27

Diplomatic Agents and Consular Officers

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

Article 28

Miscellaneous Rules

1. The provisions of this Convention shall not be construed to restrict in any manner any exemption, allowance, credit or other deduction accorded by the laws of a Contracting State in the determination of the tax imposed by that State.
2. Nothing in the Convention shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that State with respect to a partnership, trust, or company, in which the person has an interest.
3. The Convention shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income or capital of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

Article 29

Entry Into Force

1. This Convention shall be subject to ratification in each Contracting State and the instruments of ratification shall be exchanged at Ottawa as soon as possible.
2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

- a) in respect of tax withheld at source, for amounts paid or credited on or after 1 January 1996; and
- b) in respect of other taxes, for taxable periods beginning on or after 1 January 1996.

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 year beginning 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 effect:

- a) in respect of tax withheld at source, for amounts paid or credited on or after first January in the year next following the expiration of the six month period; and
- b) in respect of other taxes, for taxable periods beginning on or after first January in the year next following the expiration of the six month period.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Convention.

DONE at Almaty this 25th day of September 1996, in the English, French, Kazakh and Russian languages, all texts being equally authentic.

FOR THE GOVERNMENT OF
CANADA

Michael Vujnovich

FOR THE GOVERNMENT OF THE REPUBLIC OF
KAZAKHSTAN

Majit Esenbaev

Protocol

At the signing today of the Convention between the Government of the Republic of Kazakhstan and the Government of Canada 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 upon the following provisions, which shall form an integral part of the Convention:

1. With regard to Article 12

If Kazakhstan agrees in a treaty with another country which at the time of signing the Convention is a member of the Organisation for Economic Cooperation and Development, to impose a lower rate on royalties than the rate specified in paragraph 2, both Contracting States shall apply that lower rate instead of the rate specified in paragraph 2 in regard of the following:

(a) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on film or videotape or other means of reproduction for use in connection with television broadcasting); or

(b) royalties for the use of, or the right to use, computer software; or

(c) where the payer and the beneficial owner of the royalties are not associated persons within the meaning of subparagraph a) or subparagraph b) of Article 9 (Associated Persons), royalties for the use of, or the right to use, any patent or any information concerning industrial, commercial or scientific experience (but not including any such information provided in connection with a rental or franchise agreement).

2. With regard to Article 22

The term "capital" for purposes of Article 22 (Capital) 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.

3. With regard to Article 28

The Contracting States agree that if and when the Republic of Kazakhstan joins the General Agreement on Trade in Services, and notwithstanding paragraph 3 of Article XXII of that Agreement, any dispute between them as to whether a measure relating to a tax to which any provision of this Convention applies falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by the paragraph 3 referred to herein, only with the consent of both Contracting States.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Almaty this 25th day of September 1996, in the English, French, Kazakh and Russian languages, all texts being equally authentic.

FOR THE GOVERNMENT OF
CANADA

FOR THE GOVERNMENT OF THE REPUBLIC OF
KAZAKHSTAN

Michael Vujnovich

Majit Esenbaev