

## **AGREEMENT**

### **BETWEEN THE GOVERNMENT OF MONGOLIA AND THE GOVERNMENT OF THE KYRGYZ REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Government of Mongolia and the Government of the Kyrgyz Republic

desiring to develop and strengthen economic, scientific, technical and cultural cooperation and for the purpose to avoid double taxation of income and capital, have decided to conclude the following Agreement and have agreed as follows:

#### **ARTICLE 1**

##### **Personal Scope**

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

#### **ARTICLE 2**

##### **Taxes Covered**

1. This Agreement shall apply to taxes on income and on capital charged in accordance with the Law of each of the Contracting States, 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 this Agreement shall apply are in particular:
  - a) In the case of Mongolia:
    - (i) the individual income tax;
    - (ii) the corporate income tax,  
(hereinafter referred to as "Mongolian tax");
  - b) In the case of the Kyrgyz Republic
    - (i) the individual income tax;
    - (ii) the corporate income tax,  
(hereinafter referred to as "Kyrgyz tax");
4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

#### **ARTICLE 3**

##### **General Definitions**

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

- a) the term "Mongolia" means, when used in a geographical sense, the territory of Mongolia and any area in which the tax law of Mongolia is in force insofar as Mongolia exercises in such area, in conformity with international law, sovereign rights to exploit its natural resources;
  - b) the term "Kyrgyzstan" means the Kyrgyz Republic. When used in the geographical terms the term "Kyrgyzstan" means the territory on which the Kyrgyz Republic carries out sovereign rights and jurisdiction in accordance with the International Law and in which the taxation laws of the Kyrgyz Republic are in force;
  - c) the term "person" means physical person, company or any other entity;
  - d) the term "company" means any corporate entity or any other organization which is treated as a body corporate for tax purposes and includes, in particular, joint stock companies, Ltd. companies or any other legal person or organization;
  - e) the term "Contracting State" means Mongolia and the term "the other Contracting State" means the Kyrgyz Republic;
  - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise managed by a resident of a Contracting State and an enterprise managed by a resident of the other Contracting State;
  - g) the term "international traffic" means any transport by aircraft, railway or road vehicle operated by an enterprise of the Contracting State, except when the aircraft, road or railway vehicle is operated solely between places in the other Contracting State;
- i) the term "competent authority" means:
- (i) In the case of Mongolia, the Minister of Finance or his authorized representative;
  - (ii) In the Kyrgyz Republic, the Minister of Finance or his authorized representative;
- j) the term "national" means:
- (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or any other association which has derived its status as such from the laws in force in a Contracting State.
- k) the term "capital" means movable or 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 Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

#### **ARTICLE 4**

##### **Resident**

1. For the purposes of this Agreement, 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 or any other criterion of a similar nature. 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 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 center 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 exceeding in the aggregate 183 days in year;
- 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 endeavor to 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 Agreement, 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;
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - g) an agricultural, pastoral or forestry property.
3.
  - a) A building site, a 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 exploration of natural resources, or supervisory services connected therewith, or drilling rig or ship used for exploration of natural

- resources, only if such use lasts for more than 12 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, if 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" shall be deemed not to include:
    - a) the use of constructions and facilities solely for the purpose of storage, demonstration 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, demonstration 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 preparatory or auxiliary character, such as advertising or scientific research.
  5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of 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 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 business as a broker or agent.
  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 make 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 that it has under the laws 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 in respect of landed property apply, usufruct of immovable property and rights to variable or fixed payments considerate as compensation for the working of, or the right to work, mineral deposits, or sources and other natural resources; aircraft, or road and railway vehicle shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, leasing, or use in any form of immovable property.
4. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company, the income from direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.
5. The provisions of paragraphs 1 and 3 of this Article 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 Profit**

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 in that other State. If the enterprise carries on business in that manner, 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 with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere, except a deduction for amounts paid to its head office or any other office of the resident by way of royalties, fees or other similar payment in return of 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 money lent to the permanent establishment.
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. Where information which has one of the Contracting States or information which is easy to

get in conformity with paragraphs 3 and 4 of this Article is not enough to determine the profits or the expenses of a permanent establishment, then the profits will be determined in conformity with tax laws of that Contracting State.

6. No profits shall be attributed to a permanent establishment by reason of the more purchase by the permanent establishment of goods or merchandise for the enterprise.
7. For the purposes of the preceding paragraphs, the profits attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to change the procedure established.
8. Where the profits include items of income or gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **International Traffic**

1. Profits from the operation of aircraft, railway or road transport vehicle derived by a resident of a Contracting State shall be taxable only in that State.
2. Profits derived by a resident of a Contracting State from the operation of leasing of the transport, containers and concerning equipment in international traffic shall be taxable only in that state.
3. The provisions of paragraphs 1 and 2 shall apply to profits from the participation in a pool, a joint business or an international operating agency.

## **ARTICLE 9**

### **Associated Enterprises**

1. 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 operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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.
2. If the Contracting State include in the profit of the enterprise of that Contracting State and also charged to taxation the profit according which the enterprise of the other Contracting State taxed in that other Contracting State and the profit including by this way is a profit which could have been expected to accrue to the enterprise of the first mentioned State, if the conditions, created between the both enterprises the same, which are being between independent enterprises, then that other State may to make an appropriate adjustment to the amount of tax charged on those profits. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose 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 law of that State, but if the beneficial owner is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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" 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 1 and 2 shall not apply if the person 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.
6. Profit of a company which is a resident of one of the Contracting States and carries out its economic activity in that State through the permanent establishment located there, may after being taxed under Article 7 (Business Profits) be taxed on the rest part in that Contracting State, where the permanent establishment is located and in accordance with the Law of that State, provided that the rate of the tax charged therein shall not exceed the rate stipulated in paragraph 2.

## **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 the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding paragraph 2 of this Article the interest rising in a Contracting State will be exempt in that State if the recipient and beneficial owner of the interest is the Government or National Bank of a Contracting State.
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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 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 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12**

### **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall 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:
  - (a) the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematography and video films or records for TV and radio; or
  - (b) any patent, design or model, plan, secret formula or process, trademark or for information

- (know-how) concerning industrial, commercial or scientific experience; or
  - (c) the use of, or right to use, any industrial, commercial or scientific equipment, or
  - (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a, b and c), any such equipment as is mentioned in subparagraph (c) or any such knowledge or information as is mentioned in subparagraph (c); or
  - (e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.
4. The provisions of paragraphs 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 Contracting 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 if they are paid for use or the a right to use the rights or property in that State.
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 Agreement.

## **ARTICLE 13**

### **Capital Gains**

1. Profits or 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. Profits or 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 pertains 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 profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Profits or gains from the alienation of aircraft, road and railway and road vehicle operated in international traffic or movable property pertaining to the operation of such transports, shall be taxable only in the Contracting State of which the enterprise is resident.
4. Profits or gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights in a company, the assets of which directly or indirectly consist wholly or principally of immovable property situated in the other Contracting State may be taxed in

that other 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 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 Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State, but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes services 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 19 (Government Service), 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 Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such a remuneration as is derived therefrom may be taxed in that other Contracting State.
2. Notwithstanding the provisions of paragraph 1, the remuneration derived by an individual who is a resident of one of the Contracting State in respect of an employment exercised in the other 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 12 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 transport vehicle operated in the international traffic, may be taxed in the Contracting State the enterprise operating the carriages is resident.

## **ARTICLE 16**

### **Directors' Fees**

Directors' fees and similar payments derived by a resident of a Contracting State as a member of the board of company which is a resident of the other Contracting State may be taxed in that other State.

**Article 17**  
**Entertainers and Sportsmen**

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services ), income derived by entertainers and sportsmen (such as theatrical, motion picture, radio or television artists and musicians and athletes ) from their personal activities, as such may be taxed in the Contracting State in which the activities are exercised.
2. Where income in respect of personal activities of an entertainer or a sportsman as such accrues not to the entertainer or sportsman 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 are exercised.
3. Income derived by the resident of the Contracting State, notwithstanding the provisions of paragraph 1 and 2, as entertainer or sportsman from their personal activities shall be taxable only in that State, if the activities are exercised in other Contracting State in the framework of culture or sport exchange programme, approved by authorized bodies.

**ARTICLE 18**  
**Pensions**

1. Subject to the provisions of paragraph 2 of Article 19 (Government Service), pensions and other similar remuneration and annuities paid to a resident of a Contracting State shall be taxable only in that State.
2. The term "annuity" means a stated sum payable periodically at stated times during 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.
3. Any alimony and other similar amounts 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) Remuneration, other than a pension or annuity, paid by a Contracting State or a political subdivision or a local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State.
  - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:
    - (i) is a citizen or national of that State; or
    - (ii) is not a resident of that State only in purposes of rendering of such services.
2.
  - a) Any pension paid by, or out of funds created by, a Contracting State or an

administrative subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or local 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 (Dependent Personal Services), 16 (Directors Fees), and 18 (Pensions) shall apply to remunerations and pensions in respect of services rendered in connection with a business carried on by a Contracting State or an administrative subdivision or a local authority thereof.

## **ARTICLE 20**

### **Students and Teachers**

1. Where a student, business apprentice or trainees, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of education or training receives payments from sources outside, these payments shall be exempt from tax in that other State.
2. Any remuneration from sources outside paid to teachers who are residents of a Contracting State are present in the other Contracting State for the purpose of teaching or carrying on scientific research for a period not exceeding two years exempt from tax in that other State for their personal service in teaching and scientific research activities.

## **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 Agreement 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 (Capital Gains), if the recipient of such income, being resident one of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and performs in that other State independent personal services from a fixed base situated therein, and right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In that case, the provisions of Article 7 (Business Profits) or 14 (Independent Personal Service), as the case may be, shall apply.

## **ARTICLE 22**

### **Capital**

1. Capital represented by immovable property referred to in Article 6 (Capital Gains), 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 aircraft, road and railway vehicle, operated in international traffic and by movable property pertaining to the operation of such aircraft, road and railway vehicle, shall be taxable only in the Contracting State, in which the place of effective management of the enterprise is situated.
4. Capital represented by shares or other corporate rights in a company, the assets of which consist mainly of immovable property situated in a Contracting State may be taxed in that Contracting State.
5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **ARTICLE 23**

### **Method for Elimination of Double Taxation**

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, the first-mentioned State shall allow:
  - a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;
  - b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

2. Where in accordance with any provision of the Agreement income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

## **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 Contracting 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 paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of 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 therewith 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.

## **ARTICLE 25**

### **Mutual Agreement Procedures**

1. Where a person who is a resident of one of the Contracting States considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement. The competent authority shall endeavour, if the claim appears to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement. The solution so reached shall be implemented notwithstanding any time limits in the national laws of the Contracting States.
2. The competent authorities of the Contracting States shall endeavour to resolve any difficulties or doubts arising as to the application of this Agreement. All disputes, connected with implementation of the provisions of this Agreement shall be decided by the negotiations and consultations.
3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **ARTICLE 26**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1.

Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes. Competent authorities may disclose such information during opened court sitting or court decision making.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority of a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
  - b) to supply particulars which are 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 to supply information the disclosure of which would be contrary to public policy.

## **ARTICLE 27**

### **Diplomatic and Consular Officials**

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

## **ARTICLE 28**

### **Entry into Force**

1. Each of the Contracting States shall notify to the other in writing the completion of its domestic procedure for the entry into force of this Agreement. This Agreement shall enter into force on the date of receipt of the latter of these notifications.
2. The provisions of this Agreement shall there upon effect:
  - a) with respect to taxes withheld at source, for amounts paid or credited on or after the first day of the third month following the month in which it enters into force; and
  - b) with respect to other taxes, for taxable periods beginning on or after the first day of January of the year next following the year in which it enters into forces.
3. On mutual consent of the Contracting States amendments and addenda can be introduced into this Agreement, which are processed by a separate protocol, which is an inevitable part of this Agreement.

## **ARTICLE 29**

### **Termination**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Agreement, through diplomatic channels, by giving written notice of termination not later than 6 months before the end of a calendar year after the fifth year from the date of entry into force of the Agreement. In such event, the Agreement shall

cease to have effect in respect of the taxes for any fiscal year beginning after December 31 in the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Agreement.

DONE in duplicate in Bishkek on the 4th day of December 1999 in the Mongol, Kyrgyz, Russian and English Languages, all texts being equally authentic. In case of divergence, the English text shall prevail.

**FOR THE GOVERNMENT  
OF MONGOLIA**

**FOR THE GOVERNMENT  
OF THE KYRGYZ REPUBLIC**