

# AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION

**AGREEMENT between the Government of the Republic of Tajikistan and the Government of the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.**

The Government of the Republic of Tajikistan and The Government of the Kingdom of Belgium, desiring to develop and to strengthen economic, scientific, technical and cultural cooperation between both States and to conclude an Agreement 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:

## CHAPTER I. - SCOPE OF THE AGREEMENT

### Article 1

#### Persons covered

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 imposed on behalf of a Contracting State or of its administrative-territorial units or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) in the Republic of Tajikistan:
    - (i) surtax on individuals (tax on the income of individuals);
    - (ii) the tax on the profit of legal persons;
    - (iii) the tax on immovable property;
    - (iv) the tax on the owners of means of transportation;(hereinafter referred to as "Tajik tax");
  - b) in the case of Belgium:
    - (i) the individual income tax;
    - (ii) the corporate income tax;

(iii) the income tax on legal entities;

(iv) the income tax on non-residents;

including the prepayments and the surcharges on these taxes and prepayments,

(hereinafter referred to as “Belgian tax”).

4. The 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 any significant changes which have been made in their taxation laws.

## CHAPTER II. - DEFINITIONS

### Article 3

#### General definitions

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

a) the terms “**a Contracting State**” and “**the other Contracting State**” mean “Tajikistan” or “Belgium”, as the context requires;

b) the term “**Tajikistan**” means the Republic of Tajikistan and, when used in the geographical sense, includes its territory, inland waters and the air space above them over which the Republic of Tajikistan may exercise its sovereign rights and jurisdiction, including the rights on exploration of sub-soil and natural resources, in accordance with international law and where the laws of the Republic of Tajikistan apply;

c) the term “**Belgium**” means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;

d) the term “**person**” includes an individual, a company and any other body of persons;

e) the term “**company**” means any body corporate or any entity that is treated as a body corporate for tax purposes in the Contracting State of which it is a resident;

f) the terms “**enterprise of a Contracting State**” and “**enterprise of the other Contracting State**” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term “**international traffic**” means any transport by a ship, aircraft, road or railway vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft, railway or road vehicle is operated solely between places in the other Contracting State;

h) the term “**competent authority**” means:

(i) in the case of Tajikistan, the Ministry of Finance or its authorised representative;

(ii) in the case of Belgium, the Minister of Finance or his authorised representative;

- i) the term “**national**”, in relation to a Contracting State, means:
  - (i) any individual possessing the nationality of that Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- j) the term “**pension fund**” means any person established in a Contracting State that is:
  - (i) operated principally:
    - A) to administer or provide retirement benefits; or
    - B) to earn income on behalf of one or more persons operated to administer or provide retirement benefits;
  - (ii) is either:
    - A) in the case of Tajikistan, an entity organized under Tajik law and regulated by the Ministry of Labour and Social Protection of Population; or
    - B) in the case of Belgium, an entity organized under Belgian law and regulated by the Banking, Finance and Insurance Commission.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **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, and also includes that State and any administrative-territorial unit or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- a) he shall be deemed to be a resident 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 person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only 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, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” also includes:

a) a building site or construction, installation or assembly project or on-site supervisory activities connected therewith, but only if such site, project or activities last more than 12 months;

b) the rendering of services, including consultancy and managerial services, by an enterprise of a Contracting State through employees or other personnel engaged by the enterprise for such purposes, but only if such services continue in the territory of the other Contracting State for a period or periods aggregating more than 6 months within any 12 month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **CHAPTER III. - TAXATION OF INCOME**

### **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, aircraft, road and railway vehicles shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

#### Article 7

### Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently.

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

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8**

### **International traffic**

1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft, road or railway vehicles in international traffic shall be taxable only in that Contracting State.
2. For the purpose of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:
  - a) profits from the leasing of ships or aircraft engaged in international traffic on charter fully equipped, manned and supplied;
  - b) profits from the leasing of ships or aircraft on a bare boat charter basis if such leasing activity is an ancillary activity for the enterprise engaged in international traffic;
  - c) profits from the leasing of containers if such leasing activity is an ancillary activity for the enterprise engaged in international traffic.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9**

### **Associated enterprises**

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 are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly - profits on which an enterprise 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 enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make such an adjustment as it considers appropriate to the amount of the tax

charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply in case of fraud or wilful default by one of the concerned enterprises in their transactions leading to an adjustment of profits in accordance with paragraph 1.

## Article 10

### Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

Notwithstanding the preceding provisions of this paragraph, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:

a) a company which is a resident of the other Contracting State and which holds, for an uninterrupted period of at least 12 months, shares representing directly at least 10 per cent of the capital of the company paying the dividends;

b) a pension fund that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the pension fund or through an associated enterprise.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “**dividends**” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income which is subjected to the same taxation treatment as income from shares by the tax legislation of the State of which the paying company is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other

State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other 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 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 the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is:
  - a) interest paid in respect of a loan granted or a credit extended by an enterprise to another enterprise;
  - b) interest paid to the other Contracting State, to one of its administrative-territorial units or local authorities or a public entity thereof;
  - c) interest paid to a pension fund, provided that such interest is not derived from the carrying on of a business by the pension fund or through an  
  
associated enterprise.
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 purposes of this Article.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is 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 may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term “**royalties**” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or recordings for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, 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 fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## Article 13

### Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, railway or road vehicles operated in international traffic, or movable property pertaining to the operation of such ships, aircraft, railway or road vehicles, shall be taxable only in that Contracting State.

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

#### **Article 14**

##### **Independent personal services**

1. Subject to the provisions of Article 21, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, in the following circumstances such income may also be taxed in the other Contracting State:

a) if that resident has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days within any period of 12 months; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other State.

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.

3. Income derived in respect of professional services or other activities of an independent character that may be taxed in the other Contracting State in accordance with paragraph 1 shall be taxed in that other State as if it were profits of an enterprise attributable to a permanent establishment situated in that other State.

#### **Article 15**

##### **Dependent personal services**

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is employed in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 month period commencing or ending in the taxable period concerned, 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 provisions of paragraphs 1 and 2, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road or railway vehicle operated in international traffic by an enterprise of a Contracting State, may be taxed in that State.

#### **Article 16**

### **Directors' fees**

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

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

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

### **Article 17**

#### **Artistes and sportsmen**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Where a resident of a Contracting State derives income referred to in paragraph 1 or 2 and such income is taxable in the other Contracting State on a gross basis, that income shall, upon request by such resident before July 1 of the year next following the year in which the personal activities are exercised, be taxed on a net basis in that other State.
4. The provisions of paragraphs 1 and 2 shall not apply if the activities exercised in a Contracting State are substantially supported by public funds of the other Contracting State or an administrative-territorial unit or a local authority thereof. In such case, income derived from such activities shall be taxable only in that other Contracting State.

### **Article 18**

#### **Pensions**

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration arising in a Contracting State and paid to a resident of the other Contracting State in consideration of past employment, shall be taxable only in the first-mentioned State.

### **Article 19**

#### **Government service**

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

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

(i) is a national of that State; or

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

2. a) Notwithstanding the provisions of paragraph 1, any pension or other similar remuneration paid by, or out of funds created by, a Contracting State or an administrative-territorial unit or a local authority thereof to an individual in respect of services rendered to that State or unit or authority, shall be taxable only in that State.

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

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

4. The provisions of paragraph 1 shall also apply to salaries, wages and other similar remuneration paid by a Contracting State or an administrative-territorial unit or a local authority thereof to an individual in respect of an activity carried on in the other Contracting State in the framework of a cooperation agreement.

## **Article 20**

### **Students**

Payments which a student or business apprentice 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**

### **Professors and Researchers**

1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and who, at the invitation of any university, college, school or other similar educational institution, which is officially recognised, is present in that other State for a period not exceeding 2 years from the date of his first arrival in that other Contracting State, solely for the purpose of teaching or research or both, at such educational institution shall be exempt from tax in that other State on his remuneration for teaching or research.

2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but for the private benefit of a specific person or persons.

## **Article 22**

## **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, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may be taxed in that other State if these items are not taxed in the first-mentioned State.

## **CHAPTER IV. – TAXATION OF CAPITAL**

### **Article 23**

## **Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships, aircraft, road or railway vehicles operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such means of transportation 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.

## **CHAPTER V. – METHODS FOR ELIMINATION OF DOUBLE TAXATION**

### **Article 24**

## **Elimination of double taxation**

1. In the case of double taxation, Tajikistan shall eliminate this double taxation as follows:
  - a) Where a resident of Tajikistan derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Belgium, Tajikistan shall allow:
    - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Belgium;
    - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Belgium.

Such deduction in 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 Belgium.

b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Tajikistan is exempt from tax in Tajikistan, Tajikistan 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.

2. In the case of double taxation, Belgium shall eliminate this double taxation as follows:

a) Where a resident of Belgium derives income, not being dividends, interest or royalties, or owns elements of capital, which are taxed in Tajikistan in accordance with the provisions of this Agreement, Belgium shall exempt such income or such elements of capital from tax but may, in calculating the amount of tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if such income or elements of capital had not been exempted.

Notwithstanding the provisions of this sub-paragraph and any other provision of this Agreement, Belgium shall, for the determination of the additional taxes established by Belgian municipalities and conurbations, take into account the earned income (revenus professionnels – beroepsinkomsten) that is exempted from tax in Belgium in accordance with this sub-paragraph. These additional taxes shall be calculated on the tax which would be payable in Belgium if the earned income in question had been derived from Belgian sources.

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

c) Where a company which is a resident of Belgium derives from a company which is a resident of Tajikistan dividends which are not exempted according to sub-paragraph b), such dividends shall nevertheless be exempted from the corporate income tax in Belgium if the company which is a resident of Tajikistan is effectively engaged in the active conduct of a business in Tajikistan. In such case, such dividends are exempted under the conditions and within the limits provided for in Belgian law except those related to the fiscal regime applicable to the income out of which the dividends are paid. This provision shall only apply to dividends paid out of profits generated by the said active conduct of business in Tajikistan.

A company shall not be considered to be effectively engaged in the active conduct of a business in Tajikistan where such company is an investment company, a financing company (other than a bank) or a treasury company or where such company holds any portfolio investment or any copyright, patent, trade mark, design, model, plan, secret formula or process which represent in the aggregate more than a third of its assets and such holding is not part of the active conduct of a business.

d) Subject to the provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are interest or royalties, the Tajik tax levied on that income shall be allowed as a credit against Belgian tax relating to such income.

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

## CHAPTER VI. – SPECIAL PROVISIONS

### Article 25

#### 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, in particular with respect to residence, 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 favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Contributions made by or on behalf of an individual who renders services in a Contracting State to a pension scheme
  - a) recognised for tax purposes in the other Contracting State,
  - b) in which the individual participated immediately before beginning to provide services in the first-mentioned State,
  - c) in which the individual participated at a time when that individual was providing services in, or was a resident of, the other State, and
  - d) that is accepted by the competent authority of the first-mentioned State as generally corresponding to a pension scheme recognised as such for tax purposes by that State, shall, for the purposes of
    - e) determining the individual's tax payable in the first-mentioned State, and
    - f) determining the profits of an enterprise which may be taxed in the first-mentioned State,be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that first-mentioned State.

For the purposes of this paragraph:

- a) the term **“a pension scheme”** means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the services referred to in this paragraph; and
- b) a pension scheme is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.

5. 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.
6. 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.
7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 26**

### **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 Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.
4. The competent authorities of the Contracting States shall agree on administrative measures necessary to carry out the provisions of the Agreement and particularly on the proofs to be furnished by residents of either Contracting State in order to benefit in the other State from the exemptions or reductions of tax provided for in the Agreement.
5. The competent authorities of the Contracting States shall communicate directly with each other for the application of the Agreement.
6. Where
  - a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
  - b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within 3 years from the presentation of the case to the competent authority of the other

Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if the competent authorities agree thereon. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States.

#### **Article 27**

#### **Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by Article 2 and any other tax imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

#### **Article 28**

#### **Members of diplomatic missions and consular posts**

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

#### **Article 29**

#### **Miscellaneous**

Notwithstanding the provisions of any other Article of this Agreement, a resident of a Contracting State shall not receive the benefit of any reduction in or exemption from tax provided for in the Agreement by the other Contracting State if the main purpose of such resident or a person connected with such resident was to obtain the benefits of the Agreement.

## **CHAPTER VII.- FINAL PROVISIONS**

### **Article 30**

#### **Entry into force**

1. Each of the Contracting States shall notify to the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date on which the later of these notifications is received.
2. The provisions of the Agreement shall have effect in both Contracting States:
  - a) with respect to taxes due at source on income credited or payable on or after January 1 of the year next following the year in which the Agreement entered into force;
  - b) with respect to other taxes charged on income of taxable periods beginning on or after January 1 of the year next following the year in which the Agreement entered into force;
  - c) with respect to taxes charged on capital existing on or after January 1 of the year following the year in which the Agreement entered into force.

### **Article 31**

#### **Termination**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination at least 6 months before the end of any calendar year after a period of 5 years from the date on which the Agreement entered into force. In such event, the Agreement shall cease to have effect in both Contracting States:

- a) with respect to taxes due at source on income credited or payable from January 1 of the year next following the year in which the notice of termination is given;
- b) with respect to other taxes charged on income of taxable periods beginning on or after January 1 of the year next following the year in which the notice of termination is given;
- c) with respect to taxes charged on capital existing on or after January 1 of the year following the year in which the notice of termination is given.

## **PROTOCOL**

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

1. In the case of Belgium, the terms “**administrative-territorial units**” or “**administrative-territorial unit**”, whenever they are used in this Agreement, are deemed to refer to “political subdivisions” or “political subdivision” as the case may be.

2. Ad paragraph 2 of Article 3:

In the interpretation of the provisions of the Agreement which are identical or in substance similar to the provisions of the OECD Model Tax Convention, the tax administrations of the Contracting States shall follow the general principles of the commentary of the Model Convention provided the Contracting States did not include in that commentary any observations expressing a disagreement with those principles and to the extent the Contracting States do not agree on a divergent interpretation in special circumstances.

3. Ad paragraph 3 of Article 5 and ad Article 7:

Where the enterprise has a permanent establishment in a Contracting State, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract regarding the site, project, activities or services concerned but only on the basis of that part of the contract which is effectively carried on in that Contracting State by the permanent establishment.

4. Ad paragraphs 1 and 2 of Article 7:

With respect to contracts for the study, the supply, the installation or the construction of industrial, commercial or scientific equipment or premises or public works, it is understood that the profits attributable to a permanent establishment situated in a Contracting State through which an enterprise of the other Contracting State carries on business, are determined solely on the basis of the part of the contract which has effectively been executed by the permanent establishment in the Contracting State in which it is situated.

5. Ad paragraph 2 of Article 12:

In applying Article 12, paragraph 2 of the Agreement payments constituting consideration for technical assistance or technical services shall not be considered to be payments for information concerning industrial, commercial or scientific experience, but shall be taxable in accordance with the provisions of Article 7 or Article 14, as the case may be.