

KAZAKSTAN

Agreement for avoidance of double taxation and prevention of fiscal evasion with Kazakhstan

Whereas the annexed Convention between the Government of the Republic of Kazakhstan and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital will enter into force, on the second day of the October, 1997, thirty days after the receipt of the later of notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification: No. GSR 633(E), dated 31-10-1997.

ANNEXURE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKSTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND FOR THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Republic of Kazakhstan desiring to conclude a Convention for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows :

ARTICLE 1 : *Personal Scope* - This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes Covered* - This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.

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

(a) in the Republic of Kazakhstan :

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

(ii) the tax on the property of legal persons and individuals;

(hereafter referred to as "Kazakhstan tax");

(b) in the Republic of India;

(i) the income-tax, including any surcharge thereon; and

(ii) the tax on capital (the wealth-tax);

(hereafter referred to as "Indian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* - 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the terms :

(i) "Kazakhstan" means the Republic of Kazakhstan, and when used in a geographical sense, the term "Kazakhstan" includes the territorial waters, and also the exclusive economic zone and

continental shelf in which Kazakstan, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the laws relating to Kazakstan tax are applicable;

- (ii) "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign right, other rights and jurisdiction, according to the Indian law and in accordance with international law including the U.N. Convention on the Law of the Sea;
- (b) the term "person" includes an individual, a company, a body of persons or any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (d) the terms "a Contracting State" and "the other Contracting State" mean Kazakstan or India, as the context requires;
- (e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term "competent authority" means :
 - (i) in Kazakstan : the Ministry of Finance or its authorised representative;
 - (ii) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (h) the term "national" means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or any other association deriving its status as such from the laws in force in a Contracting State;
- (i) the term "fiscal year" means :
 - (i) in the case of India, "previous year" as defined under section 3 of the Income-tax Act, 1961;
 - (ii) in the case of Kazakstan, the calendar year;
- (j) the term "tax" means Indian tax or Kazak tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

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

ARTICLE 4 : *Resident* - 1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of 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 or vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent Establishment* - 1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others; and
- (i) a farm, plantation or other place where agricultural forestry, plantation or related activities are carried on.

3. The term "permanent establishment" also includes :

- (a) a building site or construction or installation or assembly project, or supervisory activities connected therewith, only if such site, project or activity lasts for more than 12 months, and
- (b) an installation or structure used for the exploration of natural resources, or supervisory activities connected therewith, or a drilling rig or ship used for the exploration of natural resources, only if such use or activity lasts for more than 12 months.

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
- (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 7 applies - is acting on behalf of an enterprise of the other Contracting State 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. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State, shall except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or it insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

ARTICLE 6 : *Income from immovable property* - 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may also be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7 : *Business Profits* - 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 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, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

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

4. No 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.

5. Where profits include items of income or capital gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

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

ARTICLE 8 : *Shipping and Air Transport* - 1. Profits derived by an enterprise which is a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest. The provisions of this paragraph will, however, not apply to interest on fixed deposits with a bank.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9 : *Associated Enterprises* - Where—

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

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

ARTICLE 10 : *Dividends* - 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends 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” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate 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 paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed

profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated at a rate that does not exceed the rate set forth in paragraph 2 of this Article.

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 recipient and the beneficial owner of the interest is a resident of other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided it is derived and beneficially owned by :

- (i) the Government, a political sub-division or a local authority of the other Contracting State ; or
- (ii) the Central Bank of the other Contracting State or any other governmental bank or financial institution/agency that may be mutually agreed upon between the two Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and 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 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, 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 Convention.

ARTICLE 12 : *Royalties and Fees for Technical Services* - 1. Royalties or fees for technical services 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 and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for

information concerning industrial, commercial or scientific experience, and payments for the use of, or the right to use industrial, commercial or scientific equipment.

(b) The term “fees for technical services” means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Convention.

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

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services 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 or fees for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 of a company which is a resident of a Contracting State may be taxed in that State.

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

ARTICLE 14 : *Independent Personal Services* - 1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he 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 State; or

(b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-months period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other 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, surgeons, dentists and accountants.

ARTICLE 15 : *Dependent Personal Services* - 1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-months period commencing or ending in the fiscal year 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 preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the enterprise operating the ship or aircraft is a resident.

ARTICLE 16 : *Directors' Fees* - Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar body of a company which is a resident of the other Contracting State may also be taxed in that other State.

ARTICLE 17 : *Artistes and Sportpersons* - 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 sportperson, 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 of a sportperson in his capacity as such accrues not to the entertainer or sportperson 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 sportperson are exercised.

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportpersons if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportperson is a resident.

ARTICLE 18 : *Persons and other payments* - 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such a resident shall be taxable only in that State.

2. The term “annuity” means a stated sum payable to an individual periodically at stated times during its life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19 : *Government Service* - 1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

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

(i) is a national of that State; or

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

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division 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 and 18 shall apply to salaries, wages and other similar remuneration and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

ARTICLE 20 : *Students and Apprentices* - 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall, besides grants, loans and scholarships, be exempt from tax in that other State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration from employment in that other State for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year,

as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefit of this Article shall extend only for such period of time as may be reasonably or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than seven consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 21 : *Professors, Teachers and Research Scholars* - 1. A professor or teacher who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall not apply to income from research, if such research is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of this Article and Article 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

4. For the purposes of paragraph 1 "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned State.

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 Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games or any sort of gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

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 also be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State in which the enterprise operating such ships or aircraft is a resident.

ARTICLE 24 : *Elimination of Double Taxation - 1*. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

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

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

The amount of the tax to be deducted pursuant to the above provision shall not exceed the tax which would have been charged on the same income in Kazakhstan under the rates applicable thereon.

3. In the case of India, double taxation shall be avoided as follows :

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

The amount of the tax to be deducted pursuant to the above provision shall not exceed the tax which would have been charged on the same income in India under the rates applicable thereon.

4. Income or capital which, in accordance with the provisions of this Convention, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

5. The tax paid in a Contracting State shall be deemed to include the tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in the law of that Contracting State designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial or manufacturing activities or from agriculture, fishing or tourism (including restaurants and hotels), provided that the activities have been carried out within that Contracting State.

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, 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. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that

imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

3. 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.

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. 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 Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law of the Contracting State.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 27 : *Exchange of Information* - 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 28 : *Assistance in Collection* - 1. The Contracting States undertaken to lend assistance to each other in the collection of taxes to which this Convention relates together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a "revenue claim".

2. Request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that under the laws of that State, the revenue when claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those which used in the collection of its own taxes or those which would be contrary to its public policy (ordre public).

ARTICLE 29 : *Member of Diplomatic Missions and Consular Posts* - Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into force* - 1. The Contracting States shall notify each other in writing through diplomatic channels, the completion of the procedure required by the respective laws for the entry into force of this Convention. This Convention shall enter into force thirty days after the receipt of the later of the notifications.

2. The provisions of this Convention shall have effect :

- (a) in India in respect of income derived or capital held in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force ; and
- (b) in Kazakstan in respect of income derived or capital held in any fiscal year beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

ARTICLE 31 : *Termination* - This Convention shall remain in force indefinitely until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (a) in India, in respect of income arising in any previous year on or after the first day of April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given; and
- (b) in Kazakstan, in respect of income arising in any fiscal year on or after the first day of January next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

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

DONE, in duplicate at New Delhi, this 9th day of December, 1996, in Hindi, Kazak, Russian and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

(Sd.) (P. Chidambaram)

For the Government of the
Republic of India

(Sd.) (A. Eximov)

For the Government of the
Republic of Kazakstan

PROTOCOL

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

With reference to Article 7 :

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated.

With reference to Articles 10, 11 and 12:

In respect of Articles 10, 11 and 12, if under any Convention, Agreement or Protocol between the Governments of Republic of Kazakstan and the Republic of India with a third State, either Kazakstan or India limit their taxation on dividends (single rate), interest, royalties or fees for technical services to a rate lower or a scope more restricted than the rate of scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention. Agreement or Protocol on the said items of income shall also apply under this Convention.

In witness whereof, the undersigned, being duly authorized thereto, have signed this Protocol.

Done in duplicate at New Delhi, this 9th day of December, 1996, in the Hindi, Kazak, Russian and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

(Sd.) (P. Chidambaram)

For the Government of the
Republic of India

(Sd.) (A. Eximov)

For the Government of the
Republic of Kazakstan