



Tax Convention Kazakhstan — USA

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CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

1 Letter of Submittal

MESSAGE FROM
THE PRESIDENT OF THE UNITED STATES
TRANSMITTING
CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND CAPITAL, TOGETHER WITH THE PROTOCOL AND THE
TWO RELATED EXCHANGES OF NOTES, SIGNED AT ALMATY ON
OCTOBER 24, 1993
LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC,
September 9, 1994.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with the Protocol and two related exchanges of notes, signed at Almaty on October 24, 1993.

The Convention would replace, with respect to Kazakhstan, the existing income tax convention between the United States and the Union of Soviet Socialist Republics, signed at Washington on June 20, 1973, and would modernize tax relations between the two countries. It is expected that the Convention will be an important impetus to Kazakhstan's emergence as a market economy by encouraging and facilitating greater U.S. private sector investment in Kazakhstan. The Convention will establish a framework that we hope will contribute to the expansion of economic, scientific, technical and cultural cooperation between the two countries.

Like other U.S. income tax conventions, this bilateral Convention provides rules specifying when various categories of income derived by a resident of one country may be taxed by the other country. The Convention also confirms that the residence country will avoid international double taxation by granting a foreign tax credit, and it provides for administrative cooperation to avoid double taxation and prevent fiscal evasion of taxes.

The Convention limits the tax that may be imposed by the country where the income arises (the "source" country) on dividends, branch profits, interest, royalties, and capital gains derived by residents of the other country. These limits are generally consistent with those in other recent U.S. tax treaties.

Business profits derived by a resident of one country may be taxed by the other country only to the extent that the profits are attributable to a permanent establishment in that other country, and then only on a net basis with deductions for business expenses. The Convention defines a permanent establishment to include, inter alia, offices, factories and mines. A provision of the Protocol (point 8) ensures the deductibility of wage and interest expense in calculating the Kazakhstan tax on profits. That provision is important to the availability of a U.S. foreign tax credit.

The Convention provides conditions under which each country may tax income derived by individual residents of the other country from independent personal services or as employees, as well as

pension income benefits. Social security benefits may be taxed only by the country which pays them. Special relief is granted to visiting students, trainees, and researchers. The provision in the 1973 convention of a two-year exemption for visiting teachers and journalists is not retained.

The benefits of the Convention are limited to residents of the two countries meeting certain standards designed to prevent residents of third countries from inappropriately using the Convention. Similar standards are found in other recent U.S. income tax conventions.

The Convention assures that the residence country will avoid double taxation of income that arises in the other country and has been taxed there in accordance with the Convention. In addition the Convention includes standard administrative provisions that will permit the tax authorities of the two countries to cooperate to resolve issues of potential double taxation and to exchange information relevant to implementing the Convention and the domestic laws imposing the taxes covered by the Convention. The non-discrimination provisions go beyond the standard provisions in including assurances that citizens and residents of one country will not be subjected by the source country to tax treatment more burdensome than that to which citizens and residents of that country or any third state are subjected.

The Convention will enter into force on the date of the exchange of instruments of ratification. The provisions concerning taxes on dividends, interest, and royalties will take effect on the first day of the second month following the exchange of instruments of ratification, and provisions concerning other taxes will take effect for taxable years beginning on or after January 1 following the exchange of instruments of ratification. Upon entry into force of the Convention, the 1973 tax treaty will cease to have effect between the United States and Kazakhstan. However, a taxpayer may elect to apply the 1973 treaty in full for one additional taxable year if its provisions are more favorable.

A Protocol and two exchanges of notes accompany the Convention. The Protocol clarifies the operation of certain provisions and denies treaty benefits with respect to dividends and interest paid by certain U.S. investment vehicles. Most significantly, point 8 of the Protocol guarantees the deductibility of wage costs and interest that might not otherwise be deductible under Kazakhstan law. One exchange of notes confirms that Kazakhstan and the United States share the same understanding of certain provisions of the Convention, including in particular, and understanding that the countries will exchange information under Article 26 irrespective of internal laws on bank secrecy. The other exchange of notes makes technical corrections to the Convention.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER

2 Letter of Transmittal

THE WHITE HOUSE, September 19, 1994.

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with the Protocol and the two related exchanges of notes, signed at

Almaty on October 24, 1993. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

The Convention replaces, with respect to Kazakhstan, the 1973 income tax convention between the United States of America and the Union of Soviet Socialist Republics. It will modernize tax relations between the two countries and will facilitate greater private sector U.S. investment in Kazakhstan. I recommend that the Senate give early and favorable consideration to the Convention, Protocol, and the two related exchanges of notes and give its advice and consent to ratification.

WILLIAM J. CLINTON.

3 The Convention

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND CAPITAL

The Government of the United States of America and the Government of the Republic of Kazakhstan, confirming their desire to develop and strengthen the economic, scientific, technical and cultural cooperation between both States, and desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, have agreed as follows:

ARTICLE 1
General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States and to other persons as specifically provided in the Convention.
2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:
 - a) by the laws of either Contracting State; or
 - b) by any other agreement between the Contracting States.
3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax, in accordance with its domestic law, residents (as determined under Article 4 (Residence)) and Citizens or former citizens of that State.
4. The following benefits shall be conferred by a Contracting State notwithstanding the provisions of paragraph 3:
 - a) under paragraph 2 of Article 7 (Associated Enterprises), paragraph 5 of Article 18 (Pensions, etc.) and Articles 23 (Relief from Double Taxation), 24 (Non-discrimination) and 25 (Mutual Agreement Procedure); and
 - b) under Articles 17 (Government Service), 19 (Students, Trainees and Researchers), and 27 (Diplomatic Agents and Consular Officers) for individuals who are neither citizens of that State nor, in the case of the United States of America, individuals having immigrant status therein.

ARTICLE 2
Taxes Covered

1. The taxes to which this Convention shall apply are:
 - a) in the United States of America: the Federal income taxes imposed by the Internal Revenue Code, but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes (hereafter referred to as United States tax).
 - b) in the Republic of Kazakhstan: taxes on profits and income provided by the laws on Taxation of Enterprises, Associations and Organizations” and “On the Income Tax on Citizens of the Kazakh SSR, Foreign Citizens and Stateless Persons” (hereafter referred to as Kazakhstan tax).

2. The Convention shall apply also to any substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes, including taxes which are substantially similar to those currently imposed by one Contracting State but not by the other Contracting State and which are subsequently imposed by the other State. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.
3. The Convention shall also apply to any tax on capital described in subparagraph (g) of paragraph 1 of Article 3 (General Definitions) that is imposed by either Contracting State as of the date of signature of the Convention or thereafter, but only if such capital tax is provided by Federal or Republic legislation.

ARTICLE 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term “Contracting State” means the United States of America (the United States) or the Republic of Kazakhstan (Kazakhstan), as the context requires.
 - b) the term “United States” means the United States of America, but does not include Puerto Rico, the virgin Islands, Guam, or any other United States possession or territory. When used in a geographical sense, the term “United States” includes the territorial sea, and also the exclusive economic zone and continental shelf in which the United States, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the laws relating to United States tax are applicable;
 - c) the term “Kazakhstan” means the Republic of Kazakhstan. when used in a geographical sense, the term “Kazakhstan” includes the territorial sea, and also the exclusive economic zone and continental shelf in which Kazakhstan, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the laws relating to Kazakhstan tax are applicable;
 - d) the term “person” means an individual, an estate, a trust, a partnership, a company and any other body of persons;
 - e) the term “company” means any entity which is treated as a body corporate for tax purposes. In the case of Kazakhstan, this term means a joint stock company, a limited liability company or any other legal entity or other organization which is liable to a tax on profits;
 - f) the term “international traffic” means any transport by a Ship or aircraft, except when such transport is solely between places in the other Contracting State;
 - g) for purposes of Article 22 (Capital), the term “capital” means movable and real property, and includes (but is not limited to) cash, stock or other evidences of ownership rights, notes, bonds or other evidences of indebtedness, and patents, trademarks, copyrights or other like right or property;
 - h) the term “competent authority” means:
 - i) in the United States: the Secretary of the Treasury or his authorized representative; and

- ii) in Kazakhstan; the Minister of Finance or his authorized representative.
2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4 **Residence**

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, citizenship, place of management, place of incorporation, or any other criterion of a similar nature.
- a) However, 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.
 - b) In the case of income derived by a partnership, trust, or estate, residence is determined in accordance with the residence of the person liable to tax with respect to such income.
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 (center of vital interests)
 - b) if the State in which he has his center of vital interests cannot be determined, or if he does not have 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 citizen;
 - d) if each State considers him as its citizen or if he is a citizen of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement, but if the competent authorities are unable to reach such an agreement, the company shall be treated as a resident of neither Contracting State for the purposes of deriving benefits under this Convention.
4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

ARTICLE 5
Permanent Establishment

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which a resident of a Contracting State, whether or not a legal entity, carries on business activities in the other Contracting State.
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, supervisory services connected therewith, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, but only if such site, project, or rig lasts or such services continue for a period of more than 12 months; or
 - b) the furnishing of services, including consultancy services, by residents through employees or other personnel engaged by the residents for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period of 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 resident;
 - b) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of storage, display, or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of processing by another person;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the resident;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the resident, any other activity of a preparatory or auxiliary character;
 - f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e).
5. Notwithstanding the provisions of paragraphs 1 and 2, where a resident of a Contracting State carries on activities in the other Contracting State through an agent, that resident shall be deemed to have a permanent establishment in that other State in respect of any activities which the agent undertakes for that resident, if the agent meets each of the following conditions:

- a) he has an authority to conclude contracts in that other State in the name of the ;
 - b) he habitually exercises that authority;
 - c) he is not an agent of an independent status to whom the provisions of paragraph 6 apply;
and
 - d) his activities are not limited to those mentioned in paragraph 4.
6. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 **Business Profits**

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on or has carried on business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of them is attributable
 - a) that permanent establishment;
 - b) sales in that other State of goods or merchandise of the same kind as those sold through that permanent establishment; or
 - c) other business activities carried on in that other State of the same kind as those effected through that permanent establishment.
2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent person engaged in the same or similar activities under the same or similar conditions.
3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment. There shall be allowed a reasonable allocation, between a resident of a Contracting State and a permanent establishment of such resident situated in the other Contracting State, of properly documented expenses incurred for the purpose of the resident's business activities. Such allocable expenses include executive and general administrative expenses, research and development expenses, interest, and charges for management, consultancy, or technical assistance, whether incurred in the State in which the permanent establishment is situated or elsewhere. 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 payments

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. The business profits attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the resident.
5. Where the information available to or readily obtainable by the competent authority of a Contracting State is not adequate to determine the expenses of a permanent establishment, profits may be calculated in accordance with the tax laws of that State. For purposes of this paragraph 5, information will be considered to be readily obtainable if the taxpayer provides the information to the requesting competent authority within 91 days of a written request by the competent authority for such information.
6. For purposes of this Article, the term “business profits” means profits derived from the active conduct of business. It includes, for example, profits from manufacturing, mercantile, transportation, communication, or extractive activities, and from the furnishing of services of another person. It does not include income received by an individual for his performance of personal services (either as an employee or in an independent capacity) Income of an individual from the performance of services as an employee is dealt with in Article 15 (Income from Employment). Income of an individual from the performance of services in an independent capacity is dealt with in Article 14 (Independent Personal Services).
7. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 7 **Associated Enterprises**

1. Where:
 - a) a person which is a resident of a Contracting State participates directly or indirectly in the management, control or capital of a person which is a resident of the other Contracting State; or
 - b) the same persons participate directly or indirectly in the management, control or capital of a resident of a Contracting State and any other person; and
 - c) in either case conditions are made or imposed between the two persons in their commercial or financial relations which differ from those which would be made between independent persons, then any income, which would have accrued to one of the persons in the absence of those conditions, but has not so accrued because of those conditions, may be included in the income of that person and taxed accordingly.
2. Where a Contracting State includes in the profits of a resident of that State, and taxes accordingly, profits on which a resident of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the resident of the first-mentioned State if the conditions made between the two persons had been those which would have been made between independent enterprises, then that other State

shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 1 shall not limit either Contracting State in applying its domestic law to make adjustments to income, deductions, credits, or allowances between persons, whether or not residents of a Contracting State, when necessary to prevent evasion of taxes or clearly to reflect the income of any such persons.

ARTICLE 8 **Shipping and Air Transport**

1. Income of a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Income of a resident of a Contracting State from the following activities shall be taxable only in
 - a) income from the rental of ships or aircraft operated in international traffic by the ;
 - b) income from the rental of ships and aircraft, whether or not operated in international traffic, if such rental activity is incidental to the operation of ships or aircraft in international traffic by the lessor; and
 - c) income (including demurrage) from the use, or rental for use, of containers in international traffic (including trailers, barges, and related equipment for the transport of containers).
3. The provisions of paragraphs 1 and 2 shall also apply to income from participation in a pool, a joint business, or an international transportation agency.

ARTICLE 9 **Income from Real Property**

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. For purposes of this Convention, the term “real property” includes any interest owned or held in tenancy by any individual or any legal entity in land, unsevered products of land as well as any fixture built on that land (buildings, structures, etc.) and other property considered real property under the law of the Contracting State in which the property in question is situated. Ships, boats and aircraft shall not be regarded as real property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.
4. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in that other State may elect, subject to the procedures of the domestic law of that other State, to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in that other State. Any such election

shall be binding for the taxable year of the election and all subsequent taxable years unless revoked pursuant to the procedures under the domestic law of the Contracting State in which the property is situated.

ARTICLE 10
Dividends

1. Dividends that are paid by a company which is a resident of a Contracting State and that are beneficially owned by a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the first Contracting State, and according to the laws of that State, but the tax so charged shall not exceed:
 - a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 percent of the voting stock of the company paying the dividends; and
 - b) 15 percent of the gross amount of the dividends in all other cases. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other 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. The term “dividends” also includes income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises. In the case of Kazakhstan, this term includes, in particular, income transmitted abroad to the foreign participants of a joint venture created under the laws of Kazakhstan.
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 or has carried 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 or has performed in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 6 (Business profits) or Article 14 (Independent personal Services), as the case may be, shall apply.
5. A company which is a resident of a Contracting State and which has a permanent establishment in the other Contracting State or which is subject to tax on a net basis in that other State under paragraph 4 of Article 9 (Income from Real Property), paragraphs 2 and 3(b) of Article 12 (Royalties), or paragraphs 1 or 2 of Article 13 (Gains) may be subject in That other State to a tax in addition to the tax on profits. Such tax, however, may not exceed 5 percent of the portion of the profits of the company subject to tax in the other Contracting State which represents the “dividend equivalent amount” of such profits.

ARTICLE 11
Interest

1. Interest arising in a Contracting State and derived by 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 percent of the gross amount thereof.
3. Notwithstanding the provisions of paragraph 2:
 - a) interest beneficially owned or paid by a Contracting State, subdivision or local authority thereof, and such government instrumentalities as may be agreed upon by the competent authorities, shall be taxable only in that State;
 - b) interest arising in a Contracting State and paid to a resident of the other Contracting State in respect of a loan for a period of not less than three years made, guaranteed, or insured by any export credit agency wholly owned by that other Contracting State shall only be taxable in that other State.
4. 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 or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 6 (Business profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base or derives profits that are taxable on a net basis in that State under paragraph A of Article 9 (Income from Real Property), paragraphs 2 and 3(b) of Article 12 (Royalties), or paragraph 1 or 2 of Article 13 (Gains), and such interest is borne by such permanent establishment or trade or business subject to tax on a net basis, then such interest shall be deemed to arise in the State in which the permanent establishment or trade or business 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 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 the Convention.
7. A resident of a Contracting State may be subject in the other Contracting State to a tax, in respect of interest, in addition to the tax on business profits allowable under the other provisions of this Convention. Such additional tax, however, may not exceed 10 percent of the "excess interest amount".

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 is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of The royalties. In the case of royalties described in subparagraph b) of paragraph 3, the beneficial owner may elect to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment or fixed base in the Contracting State in which the royalties arise.
3. The term “royalties” as used in This Convention means:
 - a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including computer programs, video cassettes, and cinematograph films and tapes for radio and television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience; and
 - b) payments for the use of, or the right to use, industrial, commercial, or scientific equipment.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 6 (Business profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when paid for the use of or the right to use the right or property in that State.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 13

Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 9 (Income from Real Property) and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of
 - a) stock, participations or other rights in the capital of a company or other legal person (whether or not a resident of a Contracting State) the property of which consists principally of real property situated in a Contracting State; or

- b) an interest in a partnership, trust, or estate (whether or not a resident of a Contracting State) to the extent attributable to real property situated in a Contracting State may be taxed in that State. For the purposes of this paragraph, the term “real property” includes the shares of a company referred to in subparagraph (a) or an interest in a partnership, trust, or estate referred to in subparagraph (b), and in case of The United States includes a United States real property interest, as defined in section 897 of The Internal Revenue Code (or any successor Statute).
- 3. In addition to gains from the alienation of shares described in paragraph 2 of this Article, gains derived by a resident of a Contracting State from the alienation of stock, participations, or other rights in the capital of a company or other legal person which is a resident of the other Contracting State may be taxed in that other Contracting State if the recipient of the gain, at any time during the 12-month period preceding such alienation, had a participation, directly or indirectly, of at least 25 percent of the vote or value of that company or other legal person. Such gains shall be deemed to arise in that other State to the extent necessary to avoid double taxation.
- 4. Gains from the alienation of personal property which are attributable to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or which are attributable 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, and gains from the alienation of such permanent establishment (alone or with the whole enterprise) or such fixed base, may be taxed in that other State.
- 5. Gains derived by a resident enterprise of a Contracting State from the alienation of ships, aircraft, or containers operated in international traffic shall be taxable only in that State.
- 6. Gains from the alienation of any property other than property referred to in paragraphs 1 through 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Independent Personal Services

- 1. Income derived by an individual who is a resident of a Contracting State from the performance of independent personal services shall be taxable only in that State, unless
 - a) such services are performed or were performed in the other Contracting State; and either
 - b) The income is attributable to a fixed base which the individual has or had regularly available to him in that other State, or
 - c) such individual is present or was present in that other State for a period or periods exceeding in the aggregate 183 days in any consecutive twelve-month period. In such a case the income attributable to the services may be taxed in that other State in accordance with principles similar to those of Article 6 (Business Profits) for determining the amount of business profits and attributing business profits to a permanent establishment.
- 2. The term “independent personal services” includes, in particular, independent scientific, literary, artistic, educational or teaching activities, as well as the independent services of physicians, lawyers, engineers, architects, dentists, and accountants.

ARTICLE 15
Income from Employment

1. Subject to the provisions of Articles 16 (Directors' Fees); 17 (Government Service), and 18 (Pensions, Etc.), 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 twelve month period; and
 - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Remuneration derived by a resident of a Contracting State that would otherwise be taxable in the other Contracting State under the preceding provisions of this Article may be taxed only in the first-mentioned State when the remuneration is in respect of employment as a member of the regular complement of a ship or aircraft operated in international traffic.

ARTICLE 16
Directors' Fees

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

ARTICLE 17
Government Service

1.
 - a) Remuneration, other than a pension, paid from the public funds of a Contracting State, a subdivision or local authority thereof to an individual in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State.
 - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - i) is a citizen of that State; or
 - ii) did not become a resident of that State solely for the purpose of rendering the services.
2. Notwithstanding the provisions of paragraph 1, the provisions of Article 14 (Independent Personal Services) or Article 15 (Income from Employment), as the case may be, shall apply to remuneration paid in respect of services rendered in connection with a business.

ARTICLE 18
Pensions, Etc.

1. Subject to the provisions of paragraph 2,
 - a) pensions and similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment may be taxed only in that State; and
 - b) social security benefits and other public pensions paid by a Contracting State may be taxed only in that State.
 - a) Any pension paid to an individual in respect of services rendered to a Contracting State, subdivision, or authority in the discharge of functions of a governmental nature and paid by, or out of funds created by, that State, subdivision or local authority shall be taxable only in that Contracting State.
 - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a citizen of, that other Contracting State.
3. Annuities derived and beneficially owned by an individual who is a resident of a Contracting State shall be taxable only in that State. The term “annuities” as used in this paragraph means a stated sum paid periodically as stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered.)
4. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term “alimony” as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.
5. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

ARTICLE 19
Students. Trainees and Researchers

1. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other State for the primary purpose of:
 - a) studying at a university or other accredited educational institution in that other State, or
 - b) securing training required to qualify him to practice a profession or professional specialty, or
 - c) studying or doing research as a recipient of a grant, allowance, or other similar payments from a governmental, religious, charitable, scientific, literary, or educational organization, shall be exempt from tax by that other State with respect to payments from abroad for the purpose of his maintenance, education, study, research, or training, and with respect to the grant, allowance, or other similar payments.

2. The exemption in paragraph 1 shall apply only for such period of time as is ordinarily necessary to complete the study, training or research, except that no exemption for training and/or research shall extend for a period exceeding five years.
3. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 20
Other Income

Items of income of a resident of a Contracting State, arising in the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other State.

ARTICLE 21
Limitation on Benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other State only if such person
 - a) an individual;
 - b) engaged in the active conduct of business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from that other State is derived in connection with, or is incidental to, that business;
 - c) a company the shares of which are traded in the first-mentioned State on a substantial and regular basis on an officially recognized securities exchange or a company which is wholly owned, directly or indirectly, by another company that is a resident of the first-mentioned State and the shares of which are so traded;
 - d) a not-for-profit organization that is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention; or
 - e) a person that satisfies both of the following conditions:
 - i) more than 50 percent of the beneficial interest in such person, or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares, is owned directly or indirectly by persons entitled to the benefits of this Convention under subparagraphs a), c) or d), and
 - ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs a), c) or d).
2. A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income arises so determines.

3. For purposes of subparagraph (e) (ii) of paragraph 1, the term “gross income” means gross receipts, or where a person is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

ARTICLE 22

Capital

1. Capital represented by real property referred to in Article 9 (Income from Real Property) owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships, aircraft, and containers owned by a resident of a Contracting State and operated in international traffic, and by movable property pertaining to the operation of such ships, aircraft, and containers shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State (as determined under Article 4 (Residence)) shall be taxable only in that State.

ARTICLE 23

Relief from Double Taxation

In accordance with the provisions and subject to the limitations of the law of each Contracting State (as it may be amended from time to time without changing the general principle hereof), each State shall allow to its residents (and, in the case of the United States, its citizens), as a credit against the income tax of that State:

- a) the income tax paid to the other Contracting State by or on behalf of such residents or citizens; and
- b) in the case of a company owning at least 10 percent of the voting stock of a company which is a resident of the other Contracting State and from which the first-mentioned company receives dividends, the income tax paid to the other State by or on behalf of the distributing company with respect to the profits out of which the dividends are paid. For purposes of this Article, the United States taxes referred to in paragraphs 1 a) and 2 of Article 2 (Taxes Covered), and the Kazakhstan taxes referred to in paragraphs 1 b) and 2 of Article 2 (Taxes Covered), as described in paragraph 8 of the Protocol to this Convention, shall be considered income taxes.

ARTICLE 24

Non-discrimination

1. A citizen 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 a citizen of that other State or of a third State, who is in the same circumstances, is or may be subjected. This provision shall apply to

persons who are not residents of one or both of the Contracting States. This provision shall not be construed as obliging a Contracting State to grant to citizens of the other Contracting State tax benefits granted by special agreements to citizens of a third State.

2. A resident of a Contracting State which has a permanent establishment in the other Contracting State shall not, in that other State and with respect to income attributable to that permanent establishment, be subjected to more burdensome taxes than are generally imposed on residents of that other State or of a third State which are carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to permanent establishments of the residents of the other Contracting State tax benefits granted by special agreements to permanent establishments of the residents of a third State.
3. Except where the provisions of paragraph 1 of Article 7 (Associated Enterprises), paragraph 4 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable Capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. A company which is a resident 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 more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first-mentioned State (whether owned by residents of that State or of a third State) are or may be subjected.
5. Nothing in this Article shall prevent a Contracting State from imposing the tax described in paragraph 5 of Article 10 (Dividends) or paragraph 7 of Article 11 (Interest).
6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description.

ARTICLE 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or citizen.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:
 - a) to the same attribution of income, deductions, credits, or allowances of a resident of a Contracting State to its permanent establishment situated in the other Contracting State;
 - b) to the same allocation of income, deductions, credits, or allowances between ;
 - c) to the same characterization of particular items of income;
 - d) to the same application of source rules with respect to particular items of income;
 - e) to a common meaning of a term; and
 - f) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes 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.
5. If any difficulty or doubt arising as to the interpretation or application of this Convention cannot be resolved by the competent authorities pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and the taxpayer(s) agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedures shall be established between the States by notes to be exchanged through diplomatic channels. After a period of three years after the entry into force of this Convention, the competent authorities shall consult in order to determine whether it is appropriate to make the exchange of diplomatic notes. The provisions of this paragraph shall have effect after the States have so agreed through the exchange of diplomatic notes.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as confidential 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, collection, or administration 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 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.
3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of the Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of complete original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.
4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

ARTICLE 27

Diplomatic Agents and Consular Officers

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

ARTICLE 28

Entry into Force

1. This Convention shall be subject to ratification in each Contracting State and instruments of ratification shall be exchanged at as soon as possible.
2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:
 - a) in respect of taxes withheld at source on dividends, interest or royalties, for amounts paid or credited on or after the first day of the second month following the month in which the Convention enters into force;
 - b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year in which the Convention enters into force.

ARTICLE 29

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, by giving, through diplomatic channels, at least 6 months prior notice of termination in writing. In such event, the Convention shall cease to have effect:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first of January following the expiration of the 6-month period;
- b) in respect of other taxes, for taxable periods beginning on or after the first of January following the expiration of the 6 month period.

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

DONE at Almaty this 24th day of October 1993, in duplicate, in the English and Russian languages, both texts being equally authentic. A Kazakh language text shall be prepared, which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Warren Christopher(s)

FORTHE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN:

(s)

4 Protocol

At the signing today of the Convention between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With regard to Article 5,

It is understood that a fixed place of business through which a resident of a Contracting State carries on business in the other Contracting State constitutes a permanent establishment, whether or not such place of business is owned by the resident. For example, the operation of a mine, an oil or gas well, a quarry or any other place of extraction of natural resources constitutes a permanent establishment of the operator, without regard to whether the operator owns the property from which the natural resources are extracted.

2. With regard to Article 10,

- (a) In the case of dividends from a United States Regulated Investment Company, subparagraph (b), and not subparagraph (a) of paragraph 2 shall apply. In the case of dividends from a United States Real Estate Investment Trust, the rate of withholding applicable under domestic law shall apply.
- (b) The term “dividend equivalent amount”, as used in paragraph 5, refers to the portion of the profits of a permanent establishment subject to a tax under Article 6 (Business Profits), or that portion of the profits of a resident of one State subject to tax on a net basis in the other State under paragraph 4 of Article 9 (Income from Real Property), paragraphs 2 and 3(b) of Article 12 (Royalties), or paragraphs 1 or 2 of Article 13 (Gains), that is comparable to the amount that would be distributed as a dividend if such income were earned by a locally incorporated subsidiary. In the case of the United States, the term “dividend equivalent amount” shall have the same meaning that it has under the law of the United States as it may be amended from time to time without changing the general principle of this paragraph 2(b) of the Protocol.

3. With regard to Article 11,

- a) If Kazakhstan agrees in a treaty with another country which is a member of the Organization for Economic Cooperation and Development to impose a lower rate on interest than the rate specified in paragraph 2, both Contracting States shall apply that lower rate instead of the rate specified in paragraph 2.
- b) For purposes of paragraph 3 (b), the agencies and instrumentalities referred to shall be the Export-Import Bank and the Overseas Private Investment Corporation of the United States and similar agencies of either Contracting State as may be agreed upon in future by the competent authorities. The provisions of this paragraph shall apply provided that the lender does not have a right of recourse for payment of principal or interest to any person other than the borrower or a governmental body in the country of the borrower.
- c) Notwithstanding the provisions of paragraph 1, the United States may tax an excess inclusion with respect to a Real Estate Mortgage Interest Conduit (“REMIC”) in accordance with its domestic law.
- d) Where a resident of Kazakhstan conducts business in the United States through a permanent establishment in the United States or derives income subject to tax in the United States on a net basis by reason of paragraph 4 of Article 9 (Income from Real Property), paragraphs 2 and 3(b) of Article 12 (Royalties), paragraphs 1 or 2 of Article 13 (Gains), or Article 14 (Independent Personal Services), the “excess interest amount” shall be the excess if
 - (i) interest borne by the permanent establishment or trade or business subject to tax on a net basis in the United States, over
 - (ii) the interest paid by such permanent establishment or trade or business subject to tax on a net basis. Where a resident of the United States conducts business in Kazakhstan through a permanent establishment in Kazakhstan or derives income subject to tax in Kazakhstan on a net basis by reason of paragraph 4 of Article 9 (Income from Real Property), paragraphs 2 and 3(b) of Article 12 (Royalties), paragraph 1 or 2 of Article 13 (Gains), or Article 14 (Independent Personal Services), the “excess interest amount” shall be the amount of interest expense that is deductible in computing the resident’s profits attributable to the permanent establishment in Kazakhstan or to the trade or business subject to tax in Kazakhstan on a net basis and that is comparable to the meaning of ‘excess interest amount’ in the preceding sentence.

4. With regard to Articles 10, 11 and 12,

Taxes may be withheld at the source in a Contracting State at the rates provided by domestic law, but any excess amount will be refunded in a timely manner on application by the taxpayer if the right to collect the said taxes is waived or limited by the provisions of the Convention.

5. Regarding Articles 9 and 12,

Where a resident of a Contracting State elects to Compute the tax due under Article 9 or 12 on a net basis, as provided for in those articles, the competent authorities of each Contracting State may adopt reasonable rules for the determination and reporting of taxable income. Each competent authority may also adopt procedures to ensure that a person deriving such income provides books and records as necessary to determine the proper amount of the tax.

6. With regard to paragraph 3 of Article 13,

If either Contracting State introduces such a tax, it shall inform the other Contracting State in a timely manner, and agrees to consult with that other State as to whether it is appropriate to amend the treaty to provide non-recognition treatment in certain cases.

7. With regard to Article 21,

In the United States, the term “officially recognized securities exchange” means the NASDAQ System owned by the National Association of Securities Dealers, Inc., and any stock exchange registered with the Securities Exchange Commission as a national securities exchange for purposes the Securities Exchange Act of 1934.

8. With regard to Article 23,

- a) It is understood that in the case of an individual resident in Kazakhstan who is also a citizen of the United States, the credit required to be granted against Kazakhstan tax on income shall include a credit for the income tax paid by such individuals to the United States imposed solely by reason of citizenship, subject only to a limitation of such credit to Kazakhstan tax on income from all sources outside Kazakhstan.
- b) The Republic of Kazakhstan confirms that in computing the taxes on profits and income under current law, an entity that is a resident of Kazakhstan and is a joint venture with participation by residents of the United States or which is wholly owned by residents of the United States, or a permanent establishment (subject to the provisions of Article 6), is permitted deductions for actual wages paid and for interest expense whether or not paid to a bank and without regard to the term of the debt. The deduction may not exceed the limitation under Kazakh tax law, as long as the limitation is not less than an arm's length rate taking into account a reasonable risk premium.
- c) It is understood that income tax paid by a Kazakh person which is treated as a partnership under U.S. Federal income tax rules shall be treated for purposes of this Article as paid by the U.S. partner, pursuant to the rules of the Internal Revenue Code.
- d) Both sides agree that a tax sparing credit shall not be provided in Article 25 (Relief from Double Taxation) of the Convention at this time. However, the Convention shall be promptly amended to incorporate a tax sparing credit provision if the United States hereafter amends its laws concerning the provision of tax sparing credits, or the United States reaches agreement on the provision of a tax sparing credit with any other country.

9. With regard to Article 25,

When the competent authority of one of the Contracting States considers that the law of the other Contracting State is or may be applied in a manner that eliminates or significantly limits a benefit provided by the Convention, that State shall inform the other Contracting State in a timely manner and may request consultations with a view to restoring the balance of benefits of the Convention. If so requested, the other State shall begin such consultations within three months of the date of such request.

If the Contracting States are unable to agree on the way in which the Convention should be modified to restore the balance of benefits, the affected State may terminate the Convention in accordance with the procedures of paragraph 1, notwithstanding the five year period referred to in that paragraph, or take such other action regarding this Convention as may be permitted under the general principles of international law.

10. With regard to Article 28,

Where any legal rules applicable as of the dates of entry into force of this Convention provided greater benefits with respect to taxation than are provided under this Convention, the taxpayer may elect to apply those rules, in their entirety, for the first taxable year with respect to which the provisions of this Convention would otherwise have effect under paragraph 2

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

(s) Warren Christopher

FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN:

(s)

TECHNICAL CHANGES

No. MFA 723/94

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Kazakhstan and has the honor, on the instruction of the Department of State, to convey the following with regard to the Convention between the United States of America and the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, which was signed in Almaty on October 24, 1993;

During detailed review of the Convention prior to submission to the Senate for ratification, the Department of the Treasury discovered minor technical errors in the original signed English and, in some cases, Russian text. The United States proposes correcting these errors through an exchange of diplomatic notes. The Ministry is requested to make these technical changes in the signed copies of the Convention which are held in Kazakhstan. The Kazakh language version, currently in process of conformation will also be amended to reflect these changes.

The full text or the changes required are as follows:

5 Technical Changes

THE TECHNICAL CHANGES IN TEXT OF CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE REPUBLIC OF Kazakhstan FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

1. Throughout the Russian text of the Treaty and Protocol, replace “–(Russian text)–” with “–(Russian Text)–”.
2. In paragraph 4 a) of Article 1 (General Scope), English and Russian texts, the phrase “paragraph 5 of Article 18”., should be replaced by “paragraphs 1 b) and 5 of Article 18”..
3. In paragraph 5 of Article 11 (Interest), English and Russian texts, the phrase “fixed base”, should be inserted twice in the last part of the paragraph. The corrected text should read “... and such interest is borne by such permanent establishment, fixed base or trade or business subject to tax on a net basis, then such interest shall be deemed to arise in the State in which the permanent establishment fixed base or trade or business is situated”.
4. In paragraph 5 of Article 13 (Gains), English text, the word “enterprises” should be deleted. The corrected text reads “gains derived by a resident of a contracting states.....”.

5. In paragraph 3 of Article 18 (Pension, Etc.). English text, there is an error in the second sentence. It should refer to “at stated times” not “as stated times”.
6. In paragraph 3 of Article 24 (Non-Discrimination), English and Russian texts, the cross-reference should be to paragraph 6, Article 11 (Interest), not to paragraph 4.
7. In paragraph 1 of Article 28 (Entry Into Force.), English and Russian text, the blank should be filled in with “Washington, D.C”.
8. In point 3 c), of the protocol, English and Russian texts, the phrase “notwithstanding the provisions of paragraph 1”, should read “Notwithstanding the provisions of paragraphs 2 and 3”,.
9. In point 3 c), of the Protocol, English text, the reference would be to a “real estate mortgage investment conduit”, not to “real mortgage interest conduit”.
10. In point 8 b) of the Protocol, English and Russian text, the final sentence should begin “in the case of interest the deduction.....”.. The words “in the case of interest” were omitted by mistake.
11. In point 8 d) of the Protocol, English text, the correct cross-reference is to Article 23, not 25.
12. In point 9 of the Protocol, English and Russian text in the second paragraph, after the reference to “Paragraph 1”. the words “of Article 29 (Termination”, need to be inserted.)

End Changes.

Following notification to the embassy from the Ministry that these corrections (suggested draft attached) have been made in the copy held by Kazakhstan the Embassy will correct the file copies and so inform the Department of State. The corrections will also be made in the copy held in Washington. The exchange of diplomatic notes would be considered a correction of the Convention and will become part of the official treaty record, but will not be considered by the United States to be an amendment of the Convention. The Convention will be printed in the Treaties and Other International Acts Series as corrected.

The Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs the assurances of its highest consideration.

Embassy of the United States of America
Almaty, Kazakhstan
August 1, 1994

6 Notes of Exchange

Note of Exchange 1

DEPARTMENT OF STATE
OFFICE OF LANGUAGE SERVICES
Translating Division

LS No. 145237a
Russian
TM/

REPUBLIC OF KAZAKHSTAN
MINISTRY OF FINANCE

480091 Almaty 91, pr. Ablaykhana 97
Telegraph address: Almaty 91,
Teletype 251 'Filin' 64
Tel: 62-92-97, Fax: 8-327-62-27-70

September 7, 1994

No. F-2 [illegible]- 4- 1 [illegible]1/5731 [sic]

TO:

The Ministry of Foreign Affairs
of the Republic of Kazakhstan

Re: Convention for the Avoidance of Double Taxation with the U.S.

The Ministry of Finance of the Republic of Kazakhstan has reviewed note no. MFA 723 of August 1, 1984, from the Embassy of the United States of America concerning technical corrections to the English and Russian texts of the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital between the Republic of Kazakhstan and the United States of America, signed on October 24, 1993, and consents to the incorporation of these changes into the originals of the texts on file in the Republic of Kazakhstan.

The following is understood to be the procedure for incorporating the changes into the original texts of the documents on file in Kazakhstan: the changes will not be physically entered directly on the signed copies; rather, notes will be exchanged that contain references to the locations at which changes need to be made. The original documents themselves will not be corrected and will remain unchanged. The signed notes with a list of the technical corrections will be filed with the signed copies of the Convention and will become a part of the official agreement.

After the exchange of notes consenting to the introduction of the relevant technical changes, the amendments will be deemed to have been made and [subject indeterminate] will be printed in corrected form upon publication in official editions of announcements of legislative acts of the highest legislative bodies of both States.

The Kazakh-language version, which is in the process of conformance, will also be corrected to reflect these changes.

In connection with the foregoing, the Ministry of Finance requests the Ministry of Foreign Affairs of the Republic of Kazakhstan to make the relevant corrections to the originals of the English and

Russian texts of the Convention on file in the Republic of Kazakhstan by transmitting a reply note to the Embassy of the U.S. in Kazakhstan.

A draft note proposed by the U.S. and our version of the draft are attached, along with the text of the technical changes in Russian.

Deputy Minister
[signature] B. Aymakov

Embassy of the United States of America

Almaty,
August 15, 1994

Mr. Yerkishbay Derbisov
Minister of Finance
Republic of Kazakhstan
Almaty

Excellency:

I have the honor to refer to the Convention between the Government of the Republic of Kazakhstan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Almaty on October 24, 1993. There is attached to this note a Memorandum of Understanding with respect to certain provisions of that Convention for the purpose of giving guidance both to the taxpayer; and the tax authorities of our two countries in interpreting those provisions.

If the positions stated in the Memorandum of understanding meet with the approval of the Government of the Republic of Kazakhstan, this note and your note in reply thereto will indicate that our governments share a common understanding.

Accept, Excellency, the expression of my highest consideration.

Sincerely,
(s) William Courtney
Ambassador

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING WITH RESPECT TO CERTAIN PROVISIONS OF
THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF
KAZAKHSTAN AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED IN ALMATY
ON OCTOBER 24, 1993

1. WITH REFERENCE TO PARAGRAPH 5 OF ARTICLE 6 (BUSINESS PROFITS):

It is understood that this provision will be applied only in exceptional cases. Where books and records audited by a certified public accountant are available to or readily obtainable by the competent authority, they will be considered adequate information on which gross income and deductions may be determined in order to measure the net income subject to tax.

2. WITH REFERENCE TO PARAGRAPH 1c) ARTICLE 14 (INDEPENDENT PERSONAL SERVICES) AND PARAGRAPH 2a) OF ARTICLE 15 (INCOME FROM EMPLOYMENT):
The reference to “183 days in any consecutive twelve month period” or “183 days in any twelve month period” means “183 days in any twelve month period beginning or ending in the taxable year concerned”.
3. WITH REFERENCE TO PARAGRAPH 1c) OF ARTICLE 21 (LIMITATION ON BENEFITS):
It is understood that the term “officially recognized exchange”, includes an exchange that is officially recognized by either contracting state and that is agreed upon by the competent authorities of both contracting states.
4. WITH REFERENCE TO POINT 3a) OF THE PROTOCOL:
It is understood that the phrase “both contracting states shall apply that lower rate” means that both contracting states agree to promptly amend the convention to incorporate that lower rate.
5. WITH REFERENCE TO ARTICLE 26 (EXCHANGE OF INFORMATION):
Notwithstanding any provision of the law of either contracting state, the information that may be exchanged under this article includes information from bank documents, including bank documents of third parties involved in transactions with taxpayer(s), and the information will be made available in civil, as well as criminal tax investigations.

Note of Exchange 2

DEPARTMENT OF STATE
OFFICE OF LANGUAGE SERVICES
Translating Division

LS No 145047b
Russian
TM/

Mr. William Courtney
Ambassador of the United States of America in Kazakhstan
Embassy of the United States of America

Mr. Ambassador:

The Ministry of Finance of the Republic of Kazakhstan has the honor to refer to the Convention between the Government of the Republic of Kazakhstan and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed in Almaty on October 24, 1993.

The Government of Kazakhstan approves the Memorandum of Understanding with Respect to Certain Provisions of the Convention, which was submitted attached to your note no. MFA 765/94 of August 15, 1994, authorizing the Ministry of Finance of the Republic of Kazakhstan so to do.

Attached to this note is a translation of the English text of the Memorandum of Understanding with Respect to Certain Provisions of the Convention, which [memorandum] clarifies certain provisions of the Convention.

This note confirms that our governments have reached a mutual understanding on all articles of the Convention, and that they will make an effort to have it ratified.

Sincerely,

Minister of Finance
Ye. Derbisov

RELATED NOTES

EXCHANGE OF NOTES RELATING TO THE TAX CONVENTION WITH KAZAKHSTAN

MESSAGE
FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN EXCHANGE OF NOTES DATED AT WASHINGTON JULY 10, 1995, RELATING TO THE CONVENTION (SEE TREATY DOC. 103-33) BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, TOGETHER WITH RELATED PROTOCOL, SIGNED AT ALMATY ON OCTOBER 24, 1993
LETTER OF SUBMITTAL (NOTES)

DEPARTMENT OF STATE,
Washington, July 14, 1995.

THE PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you an exchange of notes, dated at Washington July 10, 1995, with a view to transmission of these notes to the Senate for advice and consent to ratification in connection with the Senate's consideration of the Convention Between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Almaty on October 24, 1993, and exchanges of notes (the "Taxation Convention"). This exchange of notes addresses the interaction between the Taxation Convention and other treaties and agreements that have provisions affecting taxes.

The United States is a party to the General Agreement on Trade in Services ("GATS"), annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. GATS entered into force on January 1, 1995. Although the United States is a party to GATS, the Government of Kazakhstan is not yet a party. The exchange of notes ensures first that, if Kazakhstan accedes to the GATS and GATS obligations become applicable between the United States and Kazakhstan, the dispute resolution mechanisms of the Taxation Convention would govern national treatment disputes regarding taxation measures. The exchange of notes further provides that the non-discrimination provisions of the Taxation Convention, rather than the national or most-favored-nation treatment obligations of any other agreement (except for the General Agreement on Tariffs and Trade, if it applies between the United States and Kazakhstan, and the Agreement on Trade Relations Between the United States and Kazakhstan, signed on May 19, 1992) will apply to taxation measures except those outside the scope of the Taxation Convention.

Provisions similar to those in this exchange of notes are included in the taxation conventions between the United States and Portugal, Sweden, and France, which have been transmitted to the Senate.

The Department of Treasury and the Department of State cooperated in the negotiation of the Convention and the most recent exchange of notes. The notes have the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER.

LETTER OF TRANSMITTAL (NOTES)

THE WHITE HOUSE, August 3, 1995.

To the Senate of the United States:

I transmit herewith an exchange of notes dated at Washington July 10, 1995, for Senate advice and consent to ratification in connection with the Senate's consideration of the Convention Between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Almaty on October 24, 1993, and exchanges of notes (the "Taxation Convention"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the exchange of notes.

This exchange of notes addresses the interaction between the Taxation Convention and other treaties that have tax provisions, including in particular the General Agreement on Trade in Services ("GATS"), annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994.

I recommend that the Senate give favorable consideration to this exchange of notes and give its advice and consent to ratification in connection with the Taxation Convention.

WILLIAM J. CLINTON.

DEPARTMENT OF STATE
WASHINGTON
July 10, 1995

His Excellency
Touleotai Souleimenov,
Ambassador of the Republic of Kazakhstan.

Excellency:

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Almaty on October 24, 1993, and Exchanges of Notes (Taxation Convention) and the General Agreement on Trade in Services ("GATS").

The Government of the United States is a Party to the GATS, annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. The Government of Kazakhstan is not yet a Party to the GATS. The United States and Kazakhstan have, however, considered the relationship between the Taxation Convention and the GATS in the event that the GATS applies between them, particularly with regard to the Consultation provision in Article XXII of the GATS and the Most-Favored-Nation and National Treatment provisions in Articles II and

XVII of the GATS. In addition, the United States and Kazakhstan have considered the relationship between the Taxation Convention and other agreements that apply between them and that have provisions concerning national treatment or most-favored-nation treatment.

To address these issues, I have the honor to propose that:

- (1) notwithstanding Article XXII and footnote 11 of the GATS, in the event that the GATS applies between the United States and Kazakhstan, a dispute concerning whether a measure is within the scope of the Taxation Convention shall be considered only pursuant to Article 25 (Mutual Agreement procedure) of the Taxation Convention by the competent authorities of the United States and Kazakhstan as defined in subparagraph 1(h) of Article 3 (General Definitions); and
- (2) unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, national treatment or most-favored-nation obligations under any other agreement (including GATS in the event that it applies between the United States and Kazakhstan) shall not apply to a taxation measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the Agreement on Trade Relations between the United States and Kazakhstan, signed on May 19, 1992, and the General Agreement on Tariffs and Trade if it applies between the United States and Kazakhstan.

If this proposal is acceptable to the Government of Kazakhstan, I have the further honor to propose that this note, and your Government's note in reply, shall constitute an agreement which shall enter into force on the date the Taxation Convention enters into force

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:
(s) Alan Larson

EMBASSY OF KAZAKHSTAN

No 22

The Department of State
of the United States of America
Washington, D.C.

The Embassy of the Republic of Kazakhstan to the United States of America presents its compliments to the Department of State of the United States of America and on instruction of the Government of the Republic of Kazakhstan has the honor to convey the following.

"The Government of the Republic of Kazakhstan has the honor to reply to the Government of the United States' note of July 10, 1995 concerning the Convention Between the Government of the Republic of Kazakhstan and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related protocol, signed at Almaty on October 24, 1993 and Exchanges of Notes ("Taxation Convention"), and the General Agreement on Trade in Services ("GATS").

The proposal contained in the aforementioned note reads as follows:

- “(1) Notwithstanding Article XXII and footnote 11 of the GATS, in the event that the GATS applies between the United States and Kazakhstan, a dispute concerning whether a measure is within the scope of the Taxation Convention shall be considered only pursuant to Article 25 (Mutual Agreement Procedure) of the Taxation Convention, by the competent authorities of the United States and Kazakhstan, as defined in subparagraph 1 (h) of Article 3 (General Definitions); and
- “(2) Unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, National treatment, or Most-Favored-Nation obligations under any other agreement (including GATS in the event that it applies between the United States and Kazakhstan shall not apply to a taxation measure, except for such National treatment or Most-Favored-Nation obligations as may apply to trade in goods under the Agreement on Trade Relations Between the United States and Kazakhstan, signed on May 19, 1992, and the General Agreement on Tariffs and Trade, if it applies between the United States and Kazakhstan”.

The Government of the Republic of Kazakhstan is pleased to confirm that this proposal is acceptable to the Government of the Republic of Kazakhstan, and that the U.S. note of July 10, 1995 and this note shall constitute an agreement which shall enter into force on the date the Taxation Convention enters into force”.

The Embassy of the Republic of Kazakhstan avails itself of the opportunity to renew assurances of its highest consideration to the Department of State of the United States of America.

Washington, July 10, 1995