

Kazakhstan

Convention between the Kingdom of the Netherlands and the Republic of Kazakhstan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital.

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Chapter 1. Scope of the Convention

Article 1. Personal scope

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

Article 2. Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
 - a. in the Netherlands:
 - de inkomstenbelasting (income tax),
 - de loonbelasting (wages tax),
 - de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),
 - de dividendbelasting (dividend tax),
 - de vermogensbelasting (capital tax),
(hereinafter referred to as 'Netherlands tax');
 - b. in Kazakhstan:
 - the tax on income of legal persons and individuals;
 - the tax on the property of legal persons and individuals;
(hereinafter referred to as 'Kazakh tax').
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Chapter II. Definitions

Article 3. General definitions

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

- a. the terms 'a Contracting State' and 'the other Contracting State' mean the Kingdom of the Netherlands (the Netherlands) or the Republic of Kazakhstan (Kazakhstan), as the context requires; the term 'Contracting States' means the Kingdom of the Netherlands (the Netherlands) and the Republic of Kazakhstan (Kazakhstan);
 - b. the term 'the Netherlands' means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their natural resources;
 - c. the term 'Kazakhstan' means the Republic of Kazakhstan. When used in a geographical sense, the term 'Kazakhstan' includes the territorial waters, and also the exclusive economic zone and continental shelf in which Kazakhstan, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the law relating to Kazakhstan are applicable;
 - d. the term 'person' includes an individual, a company and any other body of persons;
 - e. the term 'company' means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - f. the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - g. the term 'international traffic' means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - h. the term 'national' means:
 1. any individual possessing the nationality of a Contracting State;
 2. any legal person, company, partnership or any other association deriving its status as such from the laws in force in a Contracting State;
 - i. the term 'competent authority' means:
 1. in the Netherlands: the Minister of Finance or his duly authorized representative;
 2. in Kazakhstan: the Ministry of Finance or its 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, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4. Resident

1. For the purposes of this Convention, the term 'resident of a Contracting State' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

A Contracting State, its political subdivisions or local authorities thereof, an instrumentality of that State, political subdivision or authority as well as a pension fund or charitable organisation recognized as such in a Contracting State and of which the income is generally exempt from tax in that State, shall be regarded as resident of that State. As recognized pension fund of a Contracting State shall be regarded any pension fund recognized and controlled according to statutory provisions of that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a. he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d. if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5. Permanent establishment

1. For the purposes of this Convention, the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term 'permanent establishment' includes especially:
 - a. a place of management;
 - b. a branch;
 - c. an office;
 - d. a factory;
 - e. a workshop, and
 - f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3.
 - a. A building site or construction or installation or assembly project in a Contracting State, or supervisory services connected therewith, constitute a permanent establishment in that Contracting State only if they last more than 12 months;
 - b. an installation or structure used for the exploration on natural resources in a Contracting State, or supervisory services connected therewith, or a drilling rig or ship used for the exploration of natural resources in a Contracting State constitute a permanent establishment in that Contracting State only if such use or services last more than 12 months;
 - c. the furnishing of services within a Contracting State, including consultancy services, by a resident of the other Contracting State through employees or other personnel present within the first-mentioned State and engaged by that resident for such purpose constitutes a permanent establishment in that Contracting State only if such services last more than 12 months.
4. Notwithstanding the preceding provisions of this Article, the term 'permanent establishment' shall be deemed not to include:
 - a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b. the sale, after an exhibition or a fair, of goods or merchandise displayed belonging to the enterprise;
 - c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - d. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - e. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information or disseminating information or of marketing of a preparatory or auxiliary character, for the enterprise;
 - f. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - g. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III. Taxation of income

Article 6. Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term 'immovable property' shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7. Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, 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, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, 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, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident and in which the place of effective management of the enterprise is situated.
2. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic if such rental profits are incidental to the profits described in paragraph 1.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9. Associated enterprises

1. Where
 - a. an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
 - b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. It is understood, however, that the fact that associated enterprises have concluded arrangements, such as costsharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in the preceding sentence.
2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10. Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
 - a. 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends;
 - b. 15 per cent of the gross amount of the dividends in all other cases.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.
4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term 'dividends' as used in this Article means income from shares, 'jouissance' shares or 'jouissance' rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income 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.
6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
8. Profits of an enterprise of a resident of a Contracting State derived through a permanent establishment situated in the other Contracting State may, after having been taxed in accordance with the provisions of Article 7, and after deduction of any amount reinvested in that permanent establishment, be taxed on the remaining amount in that other State, but the additional tax so charged shall not exceed the percentage provided for in subparagraph (a) of paragraph 2 of this Article. However, if in the taxable year concerned, the profits of the permanent establishment do not exceed 100,000 US dollars, this additional tax shall not be levied.

Article 11. Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient of the interest is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.
4. The term 'interest' as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.
8. Notwithstanding the provisions of paragraph 2:
 - a. interest arising in one of the States and paid in respect of a bond, debenture or other similar obligation of the Government of that State, the central bank of that State, a political subdivision or local authority thereof shall be exempt from tax in that State;
 - b. interest arising in one of the States and paid in respect of a bond, debenture or other similar obligation to the Government of the other State, the central bank of the other State, a political subdivision or local authority thereof shall be exempt from tax in the first-mentioned State;
 - c. interest arising in one of the States and paid in respect of loans guaranteed or insured by the Government of the other State, the central bank of the other State or any agency or instrumentality (including a financial institution) owned or controlled by that Government, shall be exempt from tax in the first-mentioned State.

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 recipient and the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.
4. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use:
 - a. any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience; and
 - b. industrial, commercial or scientific equipment.
5. Notwithstanding paragraph 2 of this Article, the beneficial owner of royalties in respect of leasing, as defined in subparagraph (b) of paragraph 4 of this Article, may elect to be taxed in the Contracting State in which the royalties arise as if the right or property in respect of which such royalties are paid is effectively connected with a permanent establishment or fixed base in that State. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply to the income and deductions (including depreciation) attributable to such right or property.
6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
7. Royalties 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 royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains derived by a resident of a Contracting State from the alienation of shares (other than shares quoted on an approved stock exchange) or other rights of a similar nature, the value of which is derived principally from immovable property situated in the other Contracting State, may be taxed in the other Contracting State. For the purposes of this paragraph, the term 'immovable property' also includes the shares of a company (or other similar rights) the value of which is derived principally from immovable property, but does not include property in which the business of the company (or other entity) is carried on, unless the business of the company (or other entity) is principally the ownership, purchase and sale, or the rental of immovable property.
3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident and in which the place of effective management of the enterprise is situated.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.
6. The provisions of paragraph 5 shall not affect the right of each of the Contracting States to levy according to its own law a tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or 'jouissance' rights.

Article 14. Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such services are performed or were performed in the other Contracting State; and

- a. the income is attributable to a fixed base which the individual has or had regularly available to him in that other State; or
- b. such individual is present or was present in that other State for a period or periods exceeding in the aggregate 183 days in any consecutive twelve month period.

In such a case the income attributable to the services may be taxed in that other State in accordance with principles similar to those of Article 7 for determining the amount of business profits and attributing profits to a permanent establishment.

2. The term 'professional services' includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. Dependent personal services

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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 commencing or ending in the fiscal year concerned, and
- b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

Article 16. Directors' fees

Directors' fees or other remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ, a 'bestuurder' or a 'commissaris' of a company which is a resident of the other Contracting State, who is nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively, may be taxed in that other State.

Article 17. Artistes and sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18. Pensions and annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity shall be taxable only in that State.
2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other Contracting State, or where instead of the right to annuities a lump sum is paid, this remuneration or this lump sum may be taxed in the Contracting State where it arises.
3. The term 'annuity' means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19. Government service and social security payments

1. a. Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed 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:
 1. is a national of that State; or
 2. did not become a resident of that State solely for the purpose of rendering the services.
2. a. Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.
b. However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.
4. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.

Article 20. Professors and teachers

1. Payments which a professor or teacher who is a resident of a Contracting State and who is present in the other Contracting State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.
2. 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 21. 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 speciality, 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 shall extend for a period exceeding 2 years and no exemption for study or research shall extend for a period exceeding 5 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 22. Other income

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

Chapter IV. Taxation of capital

Article 23. Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident and in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Chapter V. Elimination of double taxation

Article 24. Elimination of double taxation

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or capital which, according to the provisions of this Convention, may be taxed in Kazakhstan.
2. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 5 of Article 11, paragraph 6 of Article 12, paragraphs 1 and 3 of Article 13, Article 14, paragraph 1 of Article 15, paragraphs 1 (subparagraph (a)), 2 (subparagraph (a)) and 4 of Article 19 and paragraph 2 of Article 22 of this Convention may be taxed in Kazakhstan and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be

deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income or items or capital which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraphs 2 and 5 of Article 12, paragraphs 2 and 6 of Article 13, Article 16, Article 17, paragraph 2 of Article 18 and paragraphs 1 and 2 of Article 23 of this Convention may be taxed in Kazakhstan to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in Kazakhstan on these items of income or capital, but shall not exceed the amount of the reduction which would be allowed if the items of income or capital so included were the sole items of income or capital which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

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

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

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

- b. Where a resident of Kazakhstan derives income or owns capital, which according to the provisions of this Convention shall be taxable only in the Netherlands, Kazakhstan may include this income or capital in the tax base but only for purposes of determining the rate of tax on such income or capital as is taxable in Kazakhstan.

Chapter VI. Special provisions

Article 25. Offshore activities

1. The provisions of this Article shall apply notwithstanding any other provisions of this Convention. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 14.

2. In this Article the term 'offshore activities' means activities which are carried on offshore in connection with the exploration or exploitation of the sea bed and its sub-soil and their natural resources, situated in a Contracting State.

3. An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraph 4 of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of twelve months.

For the purposes of this paragraph:

- a. where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first-mentioned enterprise, and the afore-mentioned activities carried on by both enterprises – when added together – exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in a twelve months-period;
- b. an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

4. However, for the purposes of paragraph 3 of this Article the term 'offshore activities' shall be deemed not to include:

- a. one or any combination of the activities mentioned in paragraph 4 of Article 5;
- b. towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c. the transport of supplies or personnel by ships or aircraft in international traffic.

5. A resident of a Contracting State who carries on offshore activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the other Contracting State if offshore activities in question last for a continuous period of 30 days or more.
6. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities carried on through a permanent establishment in the other Contracting State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.
7. Where documentary evidence is produced that tax has been paid in Kazakhstan on the items of income which may be taxed in Kazakhstan according to Article 7 and Article 14 in connection with respectively paragraph 3 and paragraph 5 of this Article, and to paragraph 6 of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph 2 of Article 24.

Article 26. Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 27. Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 26, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and 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 in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the 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 within a period of two years pursuant to the previous paragraphs of this Article, the case may, if the taxpayer(s) agree(s), be submitted for arbitration, provided the taxpayer(s) agree(s) 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 Contracting States with respect to that case. The procedures shall be established 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 28. 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. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 27, such information as is necessary for carrying out the arbitration procedure. Such release of information shall be subject to the provisions of Article 30. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 1 of this Article with respect to any information so released.

Article 29. Assistance in recovery

1. The States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Convention shall apply and of any increases, surcharges, overdue payments, interests and costs pertaining to the said taxes.

2. At the request of the applicant State the requested State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures which are not provided for in the laws of the applicant State.

3. The provisions of paragraph 2 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested.

However, where the claim relates to a liability to tax of a person as a non-resident of the applicant State, paragraph 2 shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.

4. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate is limited to the value of the estate or the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

5. The requested State shall not be obliged to accede to the request:

- a. if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;
- b. if and insofar as it considers the tax claim to be contrary to the provisions of this Convention or of any other convention to which both of the States are parties.

6. The request for administrative assistance in the recovery of a tax claim shall be accompanied by:

- a. a declaration that the tax claim concerns a tax covered by the Convention and that the conditions of paragraph 3 are met;
- b. an official copy of the instrument permitting enforcement in the applicant State;
- c. any other document required for recovery;

- d. where appropriate, a certified copy confirming any related decision emanating from an administrative body or a public court.
7. The applicant State shall indicate the amounts of the tax claim to be recovered in both the currency of the applicant State and the currency of the requested State. The rate of exchange to be used for the purpose of the preceding sentence is the last selling price settled on the most representative exchange market or markets of the applicant State. Each amount recovered by the requested State shall be transferred to the applicant State in the currency of the requested State. The transfer shall be carried out within a period of a month from the date of the recovery.
8. At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, in so far as such is permitted by the laws and administrative practice of the requested State.
9. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested State.
10. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance in the recovery shall give particulars concerning that period.
11. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 10, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
12. The requested State may allow deferral of payment or payment by instalments, if its laws or administrative practice permit it to do so in similar circumstances; but it shall first inform the applicant State.
13. The competent authorities of the Contracting States shall by common agreement prescribe rules concerning minimum amounts of tax claims subject to a request for assistance.
14. The States shall reciprocally waive any restitution of costs resulting from the respective assistance and support which they lend each other in applying this Convention. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery which have been found unjustified in respect of the reality of the tax claim concerned or of the validity of the instrument permitting enforcement in the applicant State.

Article 30. Limitation of Articles 28 and 29

In no case shall the provisions of Articles 28 and 29 be construed so as to impose on a Contracting State the obligation:

- a. to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b. to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c. to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 31. Diplomatic agents and consular officers

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

Chapter VII. Final provisions

Article 32. Entry into force

This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January of the year preceding the year in which the Convention enters into force, but no earlier than the first day of January 1995.

Article 33. Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event the Convention shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Convention.

DONE at Almaty this 24 day of April 1996, in duplicate, in the Dutch, Kazakh, Russian and English languages, the four texts being equally authentic. In case there is any divergence of interpretation between the Dutch, Kazakh and Russian texts, the English text shall prevail.

Protocol

I. Ad Article 4

If the State of residence of an individual living aboard a ship without any real domicile in either of the Contracting States cannot be determined on the basis of Article 4 of the Convention, he shall be deemed to be a resident of the Contracting State in which the ship has its home harbour.

II. Ad Article 5

For the purposes of subparagraphs (f) and (g) of paragraph 4 it is understood that the mere facilitation of the conclusion (including the mere signing) of contracts concerning loans, concerning the delivery of goods or merchandise or concerning technical services shall be considered as an activity of a preparatory or auxiliary character.

III. Ad Articles 5, 6, 7, 13 and 26

1. It is understood that exploration and exploitation rights of natural resources shall be regarded as immovable property situated in the Contracting State the sea bed and sub-soil of which they are related to, and that these rights shall be deemed to pertain to the property of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or to the benefits of, assets to be produced by such exploration or exploitation.
2. It is understood that the ownership by a resident of a Contracting State of any such rights arising in the other Contracting State and which are deemed, in accordance with the foregoing paragraph, to pertain to the property of a permanent establishment, shall give rise to a permanent establishment in that other State for purposes of application of all of the relevant provisions of the Convention.

IV. Ad Article 7

1. It is understood that in the case of a contract performed by an enterprise of a Contracting State partially through a permanent establishment in the other Contracting State, and partially outside that other State, the Contracting State in which the permanent establishment is situated shall not have the right to tax all of the

income derived in connection with the performance of the contract, but shall be required to allocate both income and deductions, pursuant to paragraphs 2 and 3 of Article 7, as if the head office and the permanent establishment of the enterprise were operated as independent entities.

It is further understood that in determining the proper allocation of income, due regard shall be had to the role played and activities performed by the permanent establishment on the one hand, and the role played and the activities performed by the enterprise outside of the country in which the permanent establishment is situated, on the other hand. Income properly allocable to such other activities shall not be taxable in the Contracting State in which the permanent establishment is situated.

It is further understood that the foregoing may be applied in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment, premises or public works.

2. In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through a permanent establishment, may be considered attributable to that permanent establishment, provided that it is proved that the transaction concerned has been resorted to in order to avoid taxation in the Contracting State where the permanent establishment is situated.

V. Ad Articles 7, 12 and 14

Where,

- i. the only significant component of a contract is the performance of technical services, including the performance of studies or surveys of a scientific, geological or technical nature, or the provision of consultancy or supervisory services, and not the transfer or assignment of designs, plans, processes, scientific or commercial experience, or other rights described in paragraph 4 of Article 12, and
- ii. no element of the payment under the contract is proportional to the income or revenues (or other similar factor) of the beneficiary of the services, and
- iii. the value of any component of the contract which is attributable to the transfer of rights described in paragraph 4 of Article 12 does not exceed the lesser of 10 per cent of the total value of the contract or 50,000 US dollars, then payments received as consideration for such services shall be deemed to be payments to which Article 7 or Article 14 apply. In other cases, where contracts are of a 'mixed' nature, amounts paid under the contract may be allocated to reflect the fact that one part of such payments should be considered as payments for services, and the other part as royalties subject to tax under Article 12.

VI. Ad Articles 7, 14 and 26

It is understood that in the case of Kazakhstan, in computing the taxes on profits and income under the laws in effect from the date of entry into effect of the Convention until June 30, 1995, an entity that is a resident of Kazakhstan with more than 30 per cent participation by residents of the Netherlands, or a permanent establishment of an enterprise of the Netherlands (subject to the provisions of Article 7), is permitted deductions for actual wages paid and for interest expenses, 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 arms' length rate, including in the case of interest a reasonable risk premium.

VII. Ad Article 10

1. It is understood that dividends paid by a company resident in a Contracting State, to a company resident in the other Contracting State, which holds directly or indirectly at least 50 per cent of the capital of the company paying the dividends, shall be exempt from tax in the first Contracting State, provided that the company receiving the dividends has made an investment in the company paying the dividends of at least one million U.S. Dollars, which investment is guaranteed in full or insured in full by the Government of the first Contracting State, the central bank of that State or any agency or instrumentality (including a financial institution) owned or controlled by that Government, and has been approved by the Government of the other Contracting State. If the foregoing investment exceeds one million U.S. Dollars, but the entire investment is not guaranteed in full or insured in full, then this provision shall apply only to that portion of the dividends which the guaranteed or insured portion of the investment bears to the total investment.

2. It is understood that the additional tax provided for in paragraph 8 shall not be levied if the amount invested in the permanent establishment exceeds 500,000 U.S. Dollars and such investment is insured in full

or guaranteed in full by the Government of State of which the enterprise is a resident, the central bank of that State or any agency or instrumentality (including a financial institution) owned or controlled by the Government of that State, and has been approved by the Government of the other Contracting State. If the foregoing investment exceeds 500,000 U.S. Dollars, but the entire investment is not guaranteed in full or insured in full, then this provision shall apply only to that portion of the base of the additional tax which the guaranteed or insured portion of the investment bears to the total investment.

3. If, and so long as, a convention for the avoidance of double taxation is effective between Kazakhstan and a present member of the Organization for Economic Cooperation and Development, which convention does not provide for an additional tax such as that provided for in paragraph 8 of Article 10 of this Convention, the additional tax mentioned therein shall not be levied upon enterprises resident in the Netherlands.

VIII. Ad Articles 10 and 11

It is understood that in the case of the Netherlands the term dividends includes income from profit sharing bonds.

IX. Ad Articles 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

X. Ad Article 11

It is understood that the term 'interest' also includes interest charged by a bank to a permanent establishment of such bank in a Contracting State.

XI. Ad Articles 11 and 12

1. If Kazakhstan after 28 April 1995 has signed a Convention for the avoidance of double taxation with a present member State of the Organisation for Economic Co-operation and Development which provides for a lower effective rate on interest or on royalties (including a zero rate) then such lower rate shall automatically apply to residents of the Netherlands.
2. It is understood that the provisions of Articles 11 and 12 shall not apply if the debt-claim in respect of which the interest is paid, respectively if the right or property giving rise to the royalties, was created or assigned mainly for the purpose of taking advantage of these Articles. In case a Contracting State intends to apply this provisions, its competent authority shall in advance consult with the competent authority of the other Contracting State.

XII. Ad Article 12

It is understood that where the beneficial owner of royalties in respect of leasing, as defined in subparagraph (b) of paragraph 4 of Article 12, makes the election as meant in paragraph 5 of Article 12, any interest payable which is attributable to the right or property for which the royalty was received and which is deductible for determining the net basis as meant in paragraph 5 of Article 12 shall be deemed to have a source in the Contracting State in which the leasing payment arises. Any such interest payment, if made to a resident of the other Contracting State, will be subject to the provisions of Article 11 of this Convention. An election made under paragraph 5 of Article 12 shall be made to the competent authority of the Contracting State in which the leasing payment is deemed to have its source.

XIII. Ad Article 18

As long as Kazakhstan cannot under its national legislation exercise the taxation right provided for under paragraph 1 of Article 18, the provisions of this paragraph shall, for the time being, not be operative concerning pensions received by a resident of Kazakhstan in connection with an employment formerly exercised in the Netherlands. With respect to such pensions the provisions of the Netherlands national legislation will continue to apply. As soon as the competent authority of Kazakhstan informs the competent authority of the Netherlands that Kazakhstan can exercise under its national legislation the taxation right provided for under paragraph 1, this protocol provision will cease to apply.

XIV. Ad Article 19

It is understood that in the case of the Netherlands the term 'any pension and other payment paid out under the provisions of a social security system of a Contracting State' includes all payments and other benefits derived under the Netherlands laws on social insurance and social provisions, e.g. in respect of old age, death, illness, disablement, unemployment, child support or widow and orphan support.

XV. Ad Article 23

It is understood that for the purposes of Article 23 the term 'capital' means movable and immovable property, and includes (but is not limited to) cash, stock or other evidences of ownership rights, notes, bonds or other evidences of indebtedness, and patents, trademarks, copyrights or other like right or property.

XVI. Ad Article 24

It is understood that for the computation of the deduction mentioned in paragraph 3 of Article 24, the items of capital referred to in paragraph 1 of Article 23 shall be taken into account for the value thereof reduced by the value of the debts secured by mortgage on that capital and the items of capital referred to in paragraph 2 of Article 23 shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base.

XVII. Ad Article 25

It is understood that the provisions of Article 25 will only be effective when the status of the Kaspian sea as a 'sea' under international law is internationally recognised.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Convention.

DONE at Almaty this 24 day of April 1996, in duplicate, in the Netherlands, Kazakh, Russian and English languages, the four texts being equally authentic. In case there is any divergence of interpretation between the Netherlands, Kazakh and Russian texts, the English text shall prevail.