**Agreement Between the Federal Republic of Germany and the Republic**
**of Kazakhstan for the avoidance of double taxation**
**with respect to taxes on income and on capital**
**(November 26, 1997)**

EFFECTIVE-DATE: EFFECTIVE FROM 1 JANUARY 1996

Entry into Force: 21 December 1998

**LIST-OF-ARTICLES:**

     **Article 1    Personal scope**

     **Article 2    Taxes covered**

     **Article 3    General definitions**

     **Article 4    Resident**

     **Article 5    Permanent establishment**

     **Article 6    Income from immovable property**

     **Article 7    Business profits**

     **Article 8    Shipping and air transport**

     **Article 9    Associated enterprises**

     **Article 10   Dividends**

     **Article 11   Interest**

     **Article 12   Royalties**

     **Article 13   Capital gains**

     **Article 14   Independent personal services**

     **Article 15   Dependent personal services**

     **Article 16   Directors' fees**

     **Article 17   Artistes and sportsmen**

     **Article 18   Pensions, annuities and similar payments**

     **Article 19   Government service**

     **Article 20   Visiting professors, teachers and students**

     **Article 21   Other income**

     **Article 22   Capital**

     **Article 23   Avoidance of double taxation in the state of residence**

     **Article 24   Non-discrimination**

     **Article 25   Mutual agreement procedure**

     **Article 26   Exchange of information**

     **Article 27   Refund of withholding tax**

     **Article 28   Application of the agreement in special cases**

     **Article 29   Members of diplomatic missions and consular posts**

     **Article 30   Supplementary documents**

     **Article 31   Entry into force**

     **Article 32   Termination**

     **PROTOCOL (1997)**

**ARTICLES:**

**Article 1**

**Personal scope**

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

**Article 2**

**Taxes covered**

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, of a Land or of a political subdivision or local authority thereof, 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, the taxes on the total amounts of wages and salaries paid by enterprises, and taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are in particular:

(a) in the Republic of Kazakhstan:

- the tax on income of legal persons and individuals,

- the tax on the property of legal persons and individuals, and

- the tax on excess profit of users of natural resources, (hereinafter referred to as "Kazakhstan tax");

(b) in the Federal Republic of Germany:

- the income tax (Einkommensteuer),

- the corporation tax (K rperschaftsteuer),

- the capital tax (Verm gensteuer), and

- the trade tax (Gewerbesteuer), including the supplements levied thereon (hereinafter referred to as "German tax").

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

**Article 3**

**General definitions**

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

(a) the terms (aa) "Kazakhstan" means the Republic of Kazakhstan, and when used in a geographical sense, the term "Kazakhstan" includes the territory 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 tax is applicable;

(bb) "Federal Republic of Germany" means the territory of the Federal Republic of Germany, as well as the area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial sea, insofar as the Federal Republic of Germany exercises there, in conformity with international law and its national legislation, sovereign rights and jurisdiction to explore and exploit the natural resources;

(b) the term "person" means an individual and a company;

(c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(d) the terms "a Contracting State" and "the other Contracting State" mean the Republic of Kazakhstan or the Federal Republic of Germany as the context requires;

(e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State or an enterprise carried on by a resident of the other Contracting State;

(f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(g) the term "national" means:

(aa) in respect of the Republic of Kazakhstan any individual possessing the nationality of the Republic of Kazakhstan and any legal person, partnership or any association deriving its status as such from the laws in force in the Republic of Kazakhstan;

(bb) in respect of the Federal Republic of Germany any German within the meaning of the Basic Law of the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;

(h) the term "competent authority" means:

(aa) in the case of the Republic of Kazakhstan the Ministry of Finance or its authorised representative;

(bb) in the case of the Federal Republic of Germany the Federal Ministry of Finance or the agency to which it has delegated its powers.

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

**Article 4**

**Resident**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. The term shall include also that State, a Land and any political subdivision or local authority thereof. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 above 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 above a company is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

**Article 5**

**Permanent establishment**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop, 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 or installation or assembly project only if such site or project lasts for more than 12 months; and

(b) an installation or structure used for the exploration of natural resources, or supervisory services connected therewith, or a drilling rig or ship used for the exploration of natural resources, only if such use lasts for more than 12 months, or such services continue for more than 12 months.

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to e) above, 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 above, where a person

- other than an agent of an independent status to whom paragraph 6 below 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 above 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.

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

4. 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 of this Article, 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. This Article shall also apply to income from participation in a partnership. It shall further apply to remuneration received by a partner from the partnership for activities in the service of the partnership and for the granting of loans or the provisions of assets, where such remuneration is attributable under the tax law of the Contracting State in which the permanent establishment is situated to the income derived by a partner from that permanent establishment.

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

**Article 8**

**Shipping and air transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purpose of this Article, profits from the operation of ships or aircraft in international traffic include also:

(a) income from the rental on a bareboat basis of ships or aircraft; and

(b) income from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise; where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

**Article 9**

**Associated enterprises**

1. Where

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

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State

- and taxes accordingly

- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may 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 Agreement 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 beneficial owner of the dividends is a resident of the other Contracting State 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 (other than a partnership) which holds directly at least 25 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. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraphs 1 and 2 above, income derived from rights or debt-claims participating in profits (including in the Federal Republic of Germany income of a sleeping partner ("stiller Gesellschafter") from his participation as such or from a "partiarisches Darlehen" or "Gewinnobligationen") that is deductible in determining the profits of the debtor may be taxed in the Contracting State in which it arises according to the laws of that State.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other income 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" includes also income derived by a sleeping partner ("stiller Gesellschafter") from his participation as such or from a "partiarisches Darlehen", "Gewinnobligationen" or similar payments and distributions or certificates of an investment fund or investment trust.

5. The provisions of paragraphs 1 and 2 above 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.

6. 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.

7. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing an additional tax on the profits of a company attributable to a permanent establishment in that State, in addition to the tax which would be chargeable on the profits of a company which is a resident of that State, provided that any additional tax shall not exceed 5 per cent of the amount of such profits which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision the profits shall be determined after deducting therefrom all taxes, other than additional tax referred to in this paragraph, imposed in the Contracting State in which the permanent establishment exists, and reduced by an amount equal to 50 per cent of such profits.

**Article 11**

**Int erest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 above,

(a) interest arising in the Federal Republic of Germany and paid to the Government of the Republic of Kazakhstan, the National Bank of Kazakhstan, the Export and Import Bank of Kazakhstan or any other similar institution, as may be agreed from time to time between the competent authorities of the Contracting States shall be exempt from German tax;

(b) interest arising in the Republic of Kazakhstan and paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt f r Wiederaufbau or the Deutsche Finanzierungsgesellschaft f r Beteiligungen in Entwicklungsl ndern and interest paid in consideration of a loan guaranteed by HERMES-Deckung or any other similar institution, as may be agreed from time to time between the competent authorities of the Contracting States shall be exempt from Kazakstan tax;

(c) interest arising in a Contracting State shall be taxable only in the other Contracting State of which the recipient is a resident if such recipient is the beneficial owner of the interest and if such interest is paid:

(aa) in connection with the sale on credit of any industrial, commercial or scientific equipment, or

(bb) in connection with the sale on credit of any merchandise by one enterprise to another enterprise.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and 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. However, the term "interest" shall not include income dealt with in Article 10.

5. The provisions of paragraphs 1, 2 and 3 above 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 Land, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

**Article 12**

**Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State 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 is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a Land, 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 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 Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

**Article 13**

**Capital gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of shares and similar rights in a company, the assets of which consist principally of immovable property situated in a Contracting State may be taxed in that State.

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 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 to 4 above, shall be taxable only in the Contracting State of which the alienator is a resident.

**Article 14**

**Independent personal services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. For this purpose, where an individual who is a resident of a Contracting State stays in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities referred to above that are performed in that other State shall be attributable to that fixed base. In such cases the income attributable to a fixed base 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 business 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, dentists, lawyers, engineers, architects and accountants.

**Article 15**

**Dependent personal services**

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

2. Notwithstanding the provisions of paragraph 1 above, 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. The provisions of paragraph 2 above shall not apply to remuneration for employment within the framework of professional hiring out of labour.

4. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise which operates the ship or aircraft is situated.

5. Contributions made for an individual who renders dependent personal services in a Contracting State to a health-care and old-age insurance scheme established in and recognised for tax purposes in the other Contracting State shall be treated in the first-mentioned State in the same way and shall be subject to the same conditions and limitations as contributions made to health-care and old-age insurance schemes that are recognised for tax purposes in the first-mentioned State, provided that

(a) the individual was not a resident of that State, and was contributing to health-care and old-age insurance schemes, immediately before he or she began to exercise employment in that State; and

(b) the health-care and old-age insurance schemes are accepted by the competent authority of that State as generally corresponding to the schemes recognised as such for tax purposes by that State. For the purpose of this paragraph (a) the term "health-care insurance scheme" means any arrangement under which the individual rendering independent personal services and his or her dependants are entitled to receive benefits in the event of a temporary interruption of his or her rendering of dependent personal services for reasons of sickness;

(b) the term "old-age insurance scheme" means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the dependent personal services referred to in this paragraph;

(c) a "health-care and old-age insurance scheme" is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.

**Article 16**

**Directors' fees**

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

2. Notwithstanding the provisions of Article 15 payments derived by a resident of a Contracting State in his capacity as managing director or as a member of a board of management of a company which is a resident of the other Contracting State may be taxed in that other State.

**Article 17**

**Artistes and sportsmen**

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. However, such income shall not be taxed in the State mentioned in paragraph 1 above if the underlying activities are exercised during a visit to that State by a resident of the other Contracting State and where such visit is financed wholly or at least one half by that other State, a Land, a political subdivision or a local authority thereof or by an organisation which in that other State is recognised as a charitable organisation. In this case, such income may only be taxed in the Contracting State of which the artiste or sportsman is a resident.

**Article 18**

**Pensions, annuities and similar payments**

1. Pensions and similar payments or annuities paid to a resident of a Contracting State shall only be taxable in that State.

2. Notwithstanding the provisions of paragraph 1 above, payments received by an individual being a resident of a Contracting State from the statutory social insurance of the other Contracting State shall be taxable only in that other State.

3. Notwithstanding the provisions of paragraph 1 above, recurrent or non-recurrent payments made by one of the Contracting States or a political subdivision thereof to a person resident in the other Contracting State for damages sustained as a result of war or political persecution or of military or civil service (including restitution payments) shall be taxable only in the first-mentioned State.

4. The term "annuities" means certain amounts payable periodically at stated times, for life or for 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.

5. Maintenance payments, including those for children, made by a resident of one Contracting State to a resident of the other Contracting State shall be exempted from tax in that other State. This shall not apply where such maintenance payments are deductible in the first-mentioned State in computing the taxable income of the payer; tax allowances in mitigation of social burdens are not deemed to be deductions for the purposes of this paragraph.

**Article 19**

**Government service**

1. Remunerations, other than pensions, paid by a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State to an individual in respect of services rendered to that State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and if the individual is a resident of that State and

(a) is a national of that State; or

(b) 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 Land or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or Land or subdivision or authority shall be taxable only in that State.

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

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State.

4. The provisions of paragraph 1 above shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a Land, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, Land, political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

5. Paragraph 1 shall also be applicable to payments made by or on behalf of the Goethe-Institut and

- upon agreement between the competent authorities

- similar institutions of the Federal Republic of Germany. If these payments are not taxed in the Federal Republic of Germany, Article 15 shall be applicable.

**Article 20**

**Visiting professors, teachers and students**

1. An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State.

2. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

**Article 21**

**Other income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 above shall not apply to income, other than income from immovable property, 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.

**Article 22**

**Capital**

1. Capital represented by immovable 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 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 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.

**Article 23**

**Avoidance of double taxation in the state of residence**

1. Tax shall be determined in the case of a resident of Kazakhstan as follows:

(a) Where a resident of Kazakhstan derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Federal Republic of Germany, Kazakhstan shall allow:

(aa) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Federal Republic of Germany;

(bb) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Federal Republic of Germany. The amount of the tax to be deducted pursuant to the above provision shall not exceed the tax which would have been charged on the same income in Kazakhstan under the rates applicable therein.

(b) Where a resident of Kazakhstan derives income or owns capital which, in accordance with the provisions of this Agreement, shall be taxable only in the Federal Republic of Germany, Kazakhstan may include this income or capital in the tax base but only for purposes of determining the rate of tax on such other income or capital as is taxable in Kazakhstan.

2. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

(a) Unless foreign tax credit is to be allowed under sub-paragraph (b), there shall be exempted from the assessment basis of the German tax any item of income arising in Kazakhstan and any item of capital situated within Kazakhstan which, according to this Agreement, may be taxed in Kazakhstan. The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so exempted. In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of Kazakhstan at least 10 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends. There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which if paid, would be exempted, according to the foregoing sentences.

(b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German income tax payable in respect of the following items of income the Kazakhstan tax paid under the laws of Kazakhstan and in accordance with this Agreement:

(aa) dividends not dealt with in sub-paragraph (a) above;

(bb) interest;

(cc) royalties;

(dd) items of income that may be taxed in Kazakhstan according to paragraph 2 of Article 13;

(ee) items of income that may be taxed in Kazakhstan according to paragraph 3 of Article 15;

(ff) directors' fees;

(gg) items of income of artistes and sportsmen.

(c) The provisions of sub-paragraph (b) above shall apply instead of the provisions of sub-paragraph (a) above to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of the Federal Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in Kazakhstan in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of nos. 1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Au ensteuergesetz) or from participations within the meaning of paragraph 2 of section 8 of that Law; the same shall apply to immovable property used by a permanent establishment (paragraph 3 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 3 of Article 13).

(d) Notwithstanding the provisions of sub-paragraph (a) above double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph (b) above:

(aa) if in the Contracting States items of income or capital are placed under differing provisions of the Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 25 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed too lowly or

(bb) if after proper consultation and subject to the limitations of its domestic law a Contracting State notifies the other Contracting State through diplomatic channels of other income to which it intends to apply the provisions of sub-paragraph (d). The notification shall not take effect until the first day of the calendar year following the year in which the notification was made and all legal requirements under the domestic law of the notifying State for the notification to take effect have been fulfilled.

**Article 24**

**Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, especially with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other 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 which it grants only to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, 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 Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if this case comes under paragraph 1 of Article 24, 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 Agreement.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

**Article 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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. 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 Agreement. 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 above be construed 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 27**

**Refund of withholding tax**

1. If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be refunded on application by the taxpayer if and to the extent that it is reduced by this Agreement or ceases to apply.

2. Refund applications must be submitted by the end of the fourth year following the calendar year in which the withholding tax was applied to the dividends, interest, royalties or other items of income.

3. The Contracting State in which the items of income arise may ask for a certificate by the competent authority on the residence in the other Contracting State.

4. The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

**Article 28**

**Application of the agreement in special cases**

1. This Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance.

2. The limitations mentioned in the provisions of paragraph 2 of Article 11 and paragraph 2 of Article 12 shall not apply if it was the main purpose of any person concerned, in creating or assigning the debt-claim in respect of which the interest is paid, or in creating or assigning the rights in respect of which the royalties are paid, to take advantage of Articles 11 and 12 by means of that creation or assignment without economic reason appropriate to the business operation concerned.

3. If the above provisions result in double taxation, the competent authorities shall consult each other pursuant to paragraph 3 of Article 25 on how to avoid double taxation.

**Article 29**

**Members of diplomatic missions and consular posts**

1. Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission or a consular post under the general rules of international law or under the provisions of special agreements.

2. Insofar as, to the extent that, due to fiscal privileges granted to diplomatic agents or consular officers under the general rules of international law or under the provisions of special international agreements, items of income or capital are not subject to tax in the receiving State, the sending State shall have the right to tax such items of income or capital.

3. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, a consular post or a permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Agreement to be a resident of the sending State if:

(a) in accordance with international law he is not liable to tax in the receiving State in respect of items of income from sources outside that State, and

(b) he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

**Article 30**

**Supplementary documents**

The attached protocol forms an integral part of this Agreement.

**Article 31**

**Entry into force**

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Akmola as soon as possible.

2. This Agreement shall enter into force on the date of the exchange of the instruments of ratification and shall have effect in both Contracting States:

(a) in the case of taxes withheld at source, in respect of amounts paid on or after January 1, 1996;

(b) in the case of other taxes, in respect of taxes levied for any assessment period beginning on or after January 1, 1996.

**Article 32**

**Termination**

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

(a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;

(b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given. Done at Bonn this 26th day of November 1997 in two originals, each in the German, Kazakh, Russian and English languages, all four texts being authentic. In the case of divergent interpretation of the German, Kazakh, and Russian texts the English text shall prevail.

**PROTOCOL (1997)**

1. With reference to Article 7

(a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received therefore by the enterprise but only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business.

(b) In the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. Profits of an enterprise of a Contracting State derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State.

(c) Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blue prints related thereto, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 or Article 14 of the Agreement apply.

2. With reference to Article 12 Notwithstanding the provisions of paragraph 2 of Article 12 the beneficial owner of the royalties for the use of, or the right to use, industrial, commercial or scientific equipment mentioned in paragraph 3 of Article 12 may elect to be taxed as if the right or the property in respect of which such royalties are paid were effectively connected with a permanent establishment or fixed base in that State. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply in determining the income and deductions (including depreciation) attributable to such right or property.

3. With reference to Article 26 To the extent that personal data of an individual are exchanged under this Agreement and in accordance with domestic legal provisions, the following additional provisions shall apply, regard being had to the legal provisions applicable to the respective Contracting State:

(a) The data-receiving State may use such data only for the stated purpose and shall be subject to the conditions prescribed by the data-supplying State.

(b) The data-receiving State shall on request inform the data-supplying State about the use of the supplied data and the results achieved thereby.

(c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the competent authority of the data-supplying State.

(d) The data-supplying State shall be obliged to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the data-receiving State shall be informed of this without delay. That State shall be obliged to correct or erase such data.

(e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.

(f) The data-receiving State shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply under the exchange of data pursuant to this Agreement. In relation to the damaged person, the data-receiving State may not plead to its discharge that the damage had been caused by the data-supplying State.

(g) If the domestic law of the data-supplying State provides for special provisions for the erasure of the personal data supplied, that State shall inform the data-receiving State accordingly. Irrespective of such law, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

(h) The Contracting States shall be obliged to keep official records of the supply and receipt of personal data.

(i) The data-supplying and the data-receiving States shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

4. With reference to Article 27 In cases of paragraph 2 of Article 10, paragraphs 2 and 3 of Article 11, and paragraph 2 of Article 12 in which payments of dividends, interest and royalties are taxable at limited rates or not taxable in the State of source, each Contracting State provides for procedures that the payer can make the aforementioned payments withholding the tax only at the rates given in the relevant Article or not withholding any tax.

5. With reference to Article 28 This Agreement shall not be interpreted to mean that the Federal Republic of Germany is prevented from levying taxes on amounts which are to be included in the items of income of a resident of the Federal Republic of Germany under the Fourth Part of the German Law on External Tax Relations.

6. With reference to Article 31 If the instruments of ratification will not be exchanged until December 31, 1998 the Agreement shall have effect in both Contracting States:

(a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year in which the Agreement entered into force;

(b) in the case of other taxes, in respect to taxes levied for periods beginning on or after the first day of January of the calendar year in which the Agreement entered into force.