**Convention Between the Swiss Federal Council and the Government of the**
**Republic of Kazakhstan for the Avoidance of Double Taxation with Respect**
**to Taxes on income and on Capital**
**(October 21, 1999)**

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**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 and annuities**

     **Article 19   Government service**

     **Article 20   Students**

     **Article 21   Other income**

     **Article 22   Capital**

     **Article 23   Elimination of double taxation**

     **Article 24   Non-discrimination**

     **Article 25   Mutual agreement procedure**

     **Article 26   Exchange of information**

     **Article 27   Diplomatic agents and consular officers**

     **Article 28   Entry into force**

     **Article 29   Termination**

     **PROTOCOL (1999)ARTICLES:**

**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 Republic of Kazakhstan:

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

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

(hereinafter referred to as "Kazakhstan tax");

(b) in Switzerland:

- the federal, cantonal and communal taxes (i) on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income); and

(ii) on capital (total property, movable and immovable property, business assets, paid-up capital and reserves, and other items of capital) (hereinafter referred to as "Swiss 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 to each other any significant changes which have been made in their relevant taxation laws.

5. The Convention shall not apply to Federal anticipatory tax withheld at the source on prizes in a lottery.

**Article 3 General definitions**

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

(a) the terms:

(i) "Kazakhstan" means the Republic of Kazakhstan. For the purpose of use in the geographical sense the term "Kazakhstan" includes the State territory of the Republic of Kazakhstan and zones where Kazakhstan exercises its sovereign rights and jurisdiction according to its legislation and international law and where its tax legislation is applied;

(ii) "Switzerland" means the Swiss Confederation;

(b) the term "person" includes an individual, a company and any other body of persons;

(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 Kazakhstan or Switzerland, as the context requires;

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

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

(g) the term "competent authority" means:

(i) in the case of Kazakhstan: the Minister of Finance or his authorized representative;

(ii) in the case of Switzerland: the Director of the Federal Tax Administration or his authorized representative;

(h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or any other association deriving its status as such from the laws in force in a Contracting State;

(i) the term "capital" for the purposes of the Convention means movable and immovable property, and includes (but is not limited to) cash, stock or other evidence of ownership rights, notes, bonds or other evidence of indebtedness, and patents, trademarks, copyrights or other like right or property.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that Contracting 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 Contracting 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 a Contracting State or a political subdivision or a local authority thereof. It shall include also any pension or other employee benefit plan, and any charitable organisation, established under the law of a Contracting State and the income of which is generally exempt from tax in that Contracting State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that Contracting State or capital situated therein.

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

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(d) if he is a national of both Contracting 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 Contracting 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. The term "permanent establishment" also includes:

(a) a building site or construction or installation or assembly project in a Contracting State, or supervisory services connected therewith, only if such site or project lasts for more than 12 months, or such services continue for more than 12 months; and

(b) an installation or structure used for the exploration of 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, only if such use lasts for more than 12 months, or such services continue for more than 12 months; and

(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 Contracting State and engaged by that resident for such purpose, but only if 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 advertising, for the supply of information, for scientific research or similar activities which have a preparatory or auxiliary character for the enterprise;

(f) an installation project carried on by an enterprise of a Contracting State in the other Contracting State in connection with the delivery of machinery or equipment produced by that enterprise;

(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 Contracting 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 Contracting State through a broker, general commissi on 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 Contracting 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 Contracting State.

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

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property. 4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

**Article 7 Business profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting 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 Contracting 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. 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.

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

**Article 8 Shipping and air transport**

1. Profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. 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 enter- prise 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 profits on which an enterprise of a Contracting State has been charged to tax in that Contracting State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other Contracting State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the competent authorities of the Contracting States may consult together with a view to reach an agreement on the adjustment of profits in both Contracting States.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that Contracting State. This paragraph shall not apply in the case of fraud or wilful default.

**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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly 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. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares 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 Contracting State of which the company making the distribution is a resident.

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Profits of 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 Contracting 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 fiscal 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 Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2:

(a) interest arising in one of the Contracting States and paid in respect of a bond, debenture or other similar obligation of the Government of that Contracting State, the central bank of that Contracting State, an administrative subdivision or local authority thereof, shall be exempt from tax in that Contracting State;

(b) interest arising in one of the Contracting States and paid in respect of a bond, debenture or other similar obligation to the Government of the other Contracting State, the central bank of the other Contracting State, an administrative subdivision or local authority thereof, shall be exempt from tax in the first- mentioned Contracting State;

(c) interest arising in one of the Contracting States and paid in respect of loans guaranteed or insured by the Government of the other Contracting State, the central bank of the other Contracting 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 Contracting State;

(d) 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:

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

(ii) 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 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, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that Contracting 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 Contracting State in which the permanent establishment or fixed base is situated.

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

**Article 12 Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting 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 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.

4. Notwithstanding paragraph 2 of this Article, the beneficial owner of royalties in respect of leasing, as defined in subparagraph (b) of paragraph 3 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 were effectively connected with a permanent establishment or fixed base in that Contracting 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.

5. 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 Contracting 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.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision or a local authority or a resident of that Contracting 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 Contracting 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 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 Contracting State.

2. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that Contracting 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 Contracting State.

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

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

**Article 14 Independent personal services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting 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 Contracting State; or

(b) such individual is present or was present in that 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. In such a case the income attributable to the services may be taxed in that other Contracting 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, lawyers, engineers, architects, dentists and accountants.

**Article 15 Dependent personal services**

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting 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 Contracting 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 Contracting State if:

(a) the recipient is present in the other Contracting 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 Contracting State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the enterprise operating the ship or aircraft is a resident.

**Article 16 Directors' fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar body of a company which is a resident of the other Contracting State may be taxed in that other Contracting 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 Contracting 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. This paragraph shall not apply if it is established that neither the entertainer or the sportsman himself, nor persons related to him, participate directly in the profits of such person.

3. Paragraphs 1 and 2 shall not apply to income from activities performed by entertainers or sportsmen if such income is derived directly or indirectly in a substantial manner from public funds.

**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 paid to such a resident shall be taxable only in that Contracting State.

2. The term "annuity" means a stated sum payable to an individual periodically at stated times during his 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.

3. Alimony and other similar amounts (including child support payments) arising in a Contracting State and paid to a resident of the other State shall be taxable only in that other Contracting State.

**Article 19 Government service**

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

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

(i) is a national of that Contracting State; or

(ii) did not become a resident of that Contracting 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 Contracting State or subdivision or authority shall be taxable only in that Contracting State.

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

3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar 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.

**Article 20 Students**

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 Contracting State, provided that such payments arise from sources outside that Contracting 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 Convention shall be taxable only in that Contracting 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.

**Article 22 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 Contracting 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 Contracting State.

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

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

**Article 23 Elimination of double taxation**

1. 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 Switzerland, 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 Switzerland;

(ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Switzerland. 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 or capital 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 Convention, shall be taxable only in Switzerland, 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. In the case of Switzerland double taxation shall be avoided as follows:

(a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Kazakhstan, Switzerland shall, subject to the provisions of subparagraph (b), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted.

(b) Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 or 12, may be taxed in Kazakhstan, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

(i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Kazakhstan in accordance with the provisions of Articles 10, 11 and 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Kazakhstan; or

(ii) a lump sum reduction of the Swiss tax; or

(iii) a partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Kazakhstan, from the gross amount of the dividends, interest or royalties. Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

(c) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Kazakhstan shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

**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 Contracting State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article l, 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 Contracting State than the taxation levied on enterprises of that other Contracting 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 Article 9, paragraph 7 of Article 11, or paragraph 7 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 Contracting 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 Contracting 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 Contracting 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 Contracting 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 25 Mutual agreement procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those Contracting 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 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 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.

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

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

5. If any difficulty or doubt arising as to the interpretation or application of this Convention cannot be resolved by the competent authorities pursuant to the previous paragraphs of this Article, the case may, if both competent authorities and the taxpayer(s) agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both Contracting States with respect to that case. The procedures shall be established between the States by notes to be exchanged through diplomatic channels. After a period of three years after the entry into force of this Convention, the competent authorities shall consult in order to determine whether it is appropriate to make the exchange of diplomatic notes. The provisions of this paragraph shall have effect after the Contracting States have so agreed through the exchange of diplomatic notes.

**Article 26 Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those (including courts and administrative bodies) concerned with the assessment and collection of the taxes which are the subject of this Convention. Such persons or authorities shall use the information only for such purposes. No information as aforesaid shall be exchanged which would disclose any trade, business, banking, industrial or professional secret or trade process.

2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy (ordre public) or to supply particulars which are not procurable under its own legislation or that of the Contracting State making the application.

**Article 27 Diplomatic agents and consular officers**

1. 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.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or 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 Convention, to be a resident of the sending State if:

(a) in accordance with international law he is not liable to tax in the receiving Contracting State in respect of income from sources outside that State or on capital situated 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.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or on capital.

**Article 28 Entry into force**

1. This Convention shall be ratified and shall enter into force on the 30th day after date of the latter notification indicating that both Contracting States have complied with the domestic legal procedures required in each State for its entry into force. The Convention shall apply:

(a) with regard to taxes withheld at the source, in respect of amounts paid or credited on or after the first day of January in the calendar year in which the Convention enters into force; and

(b) with regard to other taxes, in respect to taxable years beginning on or after the first day of January in the calendar year in which the Convention enters into force.

**Article 29 Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

(a) in regard to taxes withheld at source, for amounts paid or credited on or after first January in the year next following that in which the notice of termination is given; and

(b) in regard to other taxes, for taxable periods beginning on or after first January in the year next following that in which the notice of termination is given. In witness whereof the undersigned, duly authorized thereto, have signed this Convention. Done in duplicate at Berne this October 21st, 1999, in the German, Kazakh, Russian and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.

**PROTOCOL (1999)**

The Swiss Federal Council and the Government of the Republic of Kazakhstan have agreed on signing at Berne on this October 21st, 1999, the Convention for the Avoidance of Double Taxation with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the said Convention:

1. With reference to **Article 7** It is understood that, in case of abusive constructions, paragraph 1 of Article 7 shall also apply if the enterprise sells goods or merchandise or carries on business of the same or similar kind as the sales or business undertaken by the permanent establishment, if it can be proved that this permanent establishment has taken a determinant part in these activities.

2. With reference to **Article 10**

(a) 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 US Dollars, which investment is guaranteed in full or insured in full by the Government of the other Contracting State, the central bank of that Contracting 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 first Contracting State. If the foregoing investment exceeds one million US 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 guaranteed or insured portion of the investment bears to the total investment.

(b) It is understood that the additional tax provided for in paragraph 6 shall not be levied if the amount invested in the permanent establishment exceeds 500,000 US Dollars and such investment is insured in full or guaranteed in full by the Government of the Contracting State of which the enterprise is a resident, the central bank of that Contracting State or any agency or instrumentality (including a financial institution) owned or controlled by the Government of that Contracting State, and has been approved by the Government of the other Contracting State. If the foregoing investment exceeds 500,000 US 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.

(c) If, and so long as, a convention for the avoidance of double taxation is effective between Kazakhstan and a present member of the Organisation for Economic Cooperation and Development, which convention does not provide for an additional tax such as that provided for in paragraph 6 of Article 10 of this Convention, the additional tax mentioned therein shall not be levied upon enterprises resident in Switzerland.

3. With reference to **Articles 11 and 12** If Kazakhstan after December 15, 1998 has signed a convention for the avoidance of double taxation with a present member State of the Organisation for Economic Cooperation 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 Switzerland.

Done in duplicate at Berne this October 21st, 1999, in the German, Kazakh, Russian and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall prevail.