**Synthesised text of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) and the Convention between the Government of the Republic of India and the**   
**Government of the Republic of Kazakhstan for the avoidance of double**   
**taxation and for the prevention of fiscal evasion with respect to taxes**   
**on income and on capital**

This document presents the synthesised text for the application, in respect of relations between the Republic of Kazakhstan and the Republic of India, of the Convention between the Government of the Republic of India and the Government of the Republic of Kazakhstan for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital signed on December 9, 1996 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Kazakhstan on June 25, 2018 and the Republic of India on June 7, 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the Republic of Kazakhstan submitted to the Depositary upon ratification on June 24, 2020 and of the MLI position of the Republic of India submitted to the Depositary upon ratification on June 25, 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law. The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

In this document, changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as changes from “Covered Tax Agreement” to “Convention” and changes from “Contracting Jurisdiction” to “Contracting State”). Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention by replacing such descriptive language with the article and paragraph numbers or language of the existing provisions. These changes are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of Kazakhstan and the Republic of India in their MLI positions.

Entry into force and entry into effect of the MLI

The MLI enters into force for the Republic of India on October 1, 2019 and for the Republic of Kazakhstan on October 1, 2020 and has effect as follows:

(a) The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:

(i) in Kazakhstan:

(A) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2021; and

(B) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after April 1, 2021; and

(ii) in India:

(A) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after the first day of the next taxable period that begins on or after October 1, 2019; and

(B) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after April 1, 2021; and

(b) Notwithstanding (a), Article 16 (Mutual Agreement Procedure) of the MLI shall have effect with respect to the Convention for a case presented to the competent authority of a Contracting State on or after October 1, 2020, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

**Convention between the Government of the Republic of India and the**   
**Government of the Republic of Kazakhstan for the avoidance of double**   
**taxation and for the prevention of fiscal evasion with respect to taxes**   
**on income and on capital**

The Government of the Republic of Kazakhstan and the Government of India,

**[MODIFIED by paragraph 1 of Article 6 of the MLI]** desiring to conclude a Convention for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital,

*The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:*

ARTICLE 6 – PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by the Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Convention for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

**Article 1**

**Personal scope**

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

**Article 2**

**Taxes covered**

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

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

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

(a) in the Republic of Kazakhstan:

(i) the corporate income tax;

(ii) the individual income tax;

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

(hereinafter referred to as "Kazakhstan tax");

(b) in the Republic of India:

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

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

(hereafter referred to as "Indian tax").

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

**Article 3**

**General definitions**

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

(a) the terms:

(i) "Kazakhstan" means the Republic of Kazakhstan, and when used in a geographical sense, the term "Kazakhstan" includes the state territory of the Republic of Kazakhstan and areas where Kazakhstan, exercises its sovereign rights and jurisdiction according to its legislation and international law;

(ii) "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign right, other rights and jurisdiction, according to the Indian law and in accordance with international law including the U.N. Convention on the Law of the Sea;

(b) the term "person" includes an individual, a company, a body of persons or any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

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

(d) the terms "a Contracting State" and "the other Contracting State" mean Kazakhstan or India, as the context requires;

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

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

(g) the term "competent authority" means:

(i) in Kazakhstan: the Ministry of Finance or its authorised representative;

(ii) in India: the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;

(h) the term "national" means:

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

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

(i) the term "fiscal year" means:

(i) in the case of India, "previous year" as defined under section 3 of the Income-tax Act, 1961;

(ii) in the case of Kazakhstan, the calendar year;

(j) the term "tax" means Indian tax or Kazak tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

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

**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 incorporation, place of management, or any other criterion of similar nature, and also includes that Contracting State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting 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 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. **[REPLACED by paragraph 1 of Article 4 of the MLI]** Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

*The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Convention:*

ARTICLE 4 – DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Convention a person other than an individual is a resident of more than one Contracting State, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

**Article 5**

**Permanent establishment**

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

(g) a sales outlet;

(h) a warehouse in relation to a person providing storage facilities for others; and

(i) a farm, plantation or other place where agricultural forestry, plantation or related activities are carried on.

3. The term "permanent establishment" also includes:

(a) a building site or construction or installation or assembly project, or supervisory activities connected therewith, only if such site, project or activity lasts for more than 12 months, and

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| *The following paragraph 1 of Article 14 of the MLI applies and supersedes the subparagraph a) of paragraph 3 of Article 5 of this Convention:*  ARTICLE 14 – SPLITTING-UP OF CONTRACTS  a building site or construction or installation or assembly project, or supervisory activities connected therewith  For the sole purpose of determining whether the 12 months period referred to in *subparagraph a) of paragraph 3 of Article 5 of this Convention* has been exceeded:  a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation or assembly project, or carries on supervisory activities in connection with such a place, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding 12 months; and  b) where connected activities are carried on in that other Contracting State at (or, where *subparagraph a) of paragraph 3 of Article 5 of this Convention* applies to supervisory activities, in connection with) the same building site or construction or installation or assembly project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,  these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation or assembly project, or supervisory activities in connection therewith. |

(b) an installation or structure used for the exploration of natural resources, or supervisory activities connected therewith, or a drilling rig or ship used for the exploration of natural resources, only if such use or activity lasts for more than 6 months.

(c) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods aggregating more than 90 days within any twelve-month period.

4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

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

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

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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| *The following paragraph 2 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Convention:*  ARTICLE 13 – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS  (Option A)  Notwithstanding the provisions of Article 5 of the Convention, the term “permanent establishment” shall be deemed not to include:  a) (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;  (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;  (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;  (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;  (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or  (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character;  b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);  c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),  provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character. |
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| *The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Convention as modified by paragraph 2 of Article 13 of the MLI:*  ARTICLE 13 – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS  4. Paragraph 4 of Article 5 of the Convention, as modified by paragraph 2 of Article 13 of the MLI shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:  a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Convention; or  b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,  provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation. |
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5. **[MODIFIED by paragraph 1 of Article 12 of the MLI]** Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an agent of an independent status to whom paragraph 7 applies -- is acting on behalf of an enterprise of the other Contracting State and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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| *The following paragraph 1 of Article 12 of the MLI applies to paragraph 5 of Article 5 of this Convention:*  ARTICLE 12 – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONAIRE ARRANGEMENTS AND SIMILAR STRATEGIES  Notwithstanding the provisions 1 and 2 of Article 5 of the Convention, but subject to paragraph 6 of Article 5 of the Convention as modified by paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:  a) in the name of the enterprise; or  b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or  c) for the provision of services by that 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 these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article 5 of the Convention. |

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or it insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. **[MODIFIED by paragraph 2 of Article 12 of the MLI]** An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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| *The following paragraph 2 of Article 12 of the MLI applies to paragraph 7 of Article 5 of this Convention:*  ARTICLE 12 – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONAIRE ARRANGEMENTS AND SIMILAR STRATEGIES  Paragraph 5 of Article 5 of the Convention as modified by Paragraph 1 of Article 12 of the MLI shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise. |

8. 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.

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| *The following paragraph 1 of Article 15 of the MLI applies to the provisions of this Convention:*  ARTICLE 15 – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE  For the purposes of the provisions of Article 5 of the Convention, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) in the person and the enterprise. |

**Article 6**

**Income from immovable property**

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

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

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

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

**Article 7**

**Business profits**

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that State.

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

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

6. For the purposes of 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.

7. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

**Article 8**

**Shipping and air transport**

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

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

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

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

**Article 9**

**Associated enterprises**

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 enteprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

**Article 10**

**Dividends**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

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

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

**Article 11**

**Interest**

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

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

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

(i) the Government, a political sub-division or a local authority of the other Contracting State; or

(ii) the Central Bank of the other Contracting State or any other governmental bank or financial institution/agency that may be mutually agreed upon between the two Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

**Article 12**

**Royalties and fees for technical services**

1. Royalties or fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

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

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

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

5. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

**Article 13**

**Capital gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

4. **[REPLACED by paragraph 4 of Article 9 of the MLI]** Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

*The following paragraph 4 of Article 9 of the MLI replaces paragraph 4 of Article 13 of this Convention:*

ARTICLE 9 – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

For purposes of this Convention, gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 50 per cent of their value directly or indirectly from immovable property situated in that other Contracting State.

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

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

**Article 14**

**Independent personal services**

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

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

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

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

**Article 15**

**Dependent personal services**

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

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

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

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

**Article 16**

**Directors' fees**

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

**Article 17**

**Artistes and sportpersons**

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

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

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

**Article 18**

**Pensions and other payments**

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

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

**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 State or subdivision or authority shall be taxable only in that State.

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

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

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

**Article 20**

**Students and apprentices**

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

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

(b) remuneration from employment in that other State for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

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

**Article 21**

**Professors, teachers and research scholars**

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

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

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

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

**Article 22**

**Other income**

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

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

3. Notwithstanding the provisions of paragraph 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other Contracting State.

**Article 23**

**Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may also be taxed in that other State.

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

**Article 24**

**Elimination of double taxation**

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

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

(a) Where a resident of Kazakstan derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, Kazakstan shall allow:

(i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in India;

(ii) as a deduction from the tax on capital of that resident, an amount equal to the tax on capital paid in India.

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

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

(a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Kazakstan, India shall allow:

(i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Kazakstan;

(ii) as a deduction from the tax on capital of that resident, an amount equal to the tax on capital paid in Kazakstan.

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

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

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

**Article 25**

**Non-discrimination**

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

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

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

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

**Article 26**

**Mutual agreement procedure**

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

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

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

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

**Article 27**

**Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is forseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions, central or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by articles 1 and 2 of this Convention.

Any information received under paragraph 1 of this article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph 1 of this article, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information (including documents) which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

**Article 28**

**Assistance in collection**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by articles 1 and 2 of this Convention. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this article.

2. The term "revenue claim" as used in this article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions, or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other Contracting State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other Contracting State.

4. When a revenue claim of a Contracting State is a claim in respect of which that Contracting State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that Contracting State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other Contracting State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other Contracting State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Contracting State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4 of this article, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 of this article shall not, in that Contracting State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Contracting State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 of this article shall not, in that Contracting State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State. Nothing in this article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 of this article and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned Contracting State, the relevant revenue claim ceases to be:

a) in the case of a request under paragraph 3 of this article, a revenue claim of the first-mentioned Contracting State that is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, or

b) in the case of a request under paragraph 4 of this article, a revenue claim of the first- mentioned Contracting State in respect of which that Contracting State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first-mentioned Contracting State shall promptly notify the competent authority of the other Contracting State of that fact and, at the option of the other Contracting State, the first-mentioned Contracting State shall either suspend or withdraw its request.

8. In no case shall the provisions of this article 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 carry out measures which would be contrary to public policy (order public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that Contracting State is clearly disproportionate to the benefit to be derived by the other Contracting State.

**Article 28A**

**Limitation of benefits**

1. The provisions of this Convention shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures against tax avoidance or evasion, whether or not described as such.

2. A resident of a Contracting State shall not be entitled to the benefits of this Convention if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Convention.

3. The benefits under this Convention shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State or of the items of capital situated therein

**Article 29**

**Members of diplomatic missions and consular posts**

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

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| *The following paragraphs 8 through 13 of Article 7 of the MLI apply and supersede the provisions of this Convention:*  ARTICLE 7– PREVENTION OF TREATY ABUSE  (*Simplified Limitation on Benefits Provision*)  *Paragraph 8 of Article 7 of the MLI*  Except as otherwise provided in the Simplified Limitation on Benefits Provision, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention, other than a benefit under paragraph 3 of Article 4 of this Convention as modified by paragraph 1 of Article 4 of the MLI, paragraph 2 of Article 9 or Article 25 of this Convention, unless such resident is a “qualified person”, as defined in paragraph 9 of Article 7 of the MLI at the time that the benefit would be accorded.  *Paragraph 9 of Article 7 of the MLI*  A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:  a) an individual;  b) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of any such Contracting State, political subdivision or local authority;  c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;  d) a person, other than an individual, that:  i) is a non-profit organisation of a type that is agreed to by the Contracting States through an exchange of diplomatic notes; or  ii) is an entity or arrangement established in that Contracting State that is treated as a separate person under the taxation laws of that Contracting State and:  A) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that Contracting State or one of its political subdivisions or local authorities; or  B) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision A);  e) a person other than an individual, if, on at least half the days of a twelve-month period that includes the time when the benefit would otherwise be accorded, persons who are residents of that Contracting State and that are entitled to benefits of the Convention under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.  *Paragraph 10 of Article 7 of the MLI*  a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting State, and the income derived from the other Contracting State emanates from, or is incidental to, that business. For purposes of the Simplified Limitation on Benefits Provision, the term “active conduct of a business” shall not include the following activities or any combination thereof:  i) operating as a holding company;  ii) providing overall supervision or administration of a group of companies;  iii) providing group financing (including cash pooling); or  iv) making or managing investments, unless these activities are carried on by a bank, insurance company or registered securities dealer in the ordinary course of its business as such.  b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned Contracting State to which the item is related is substantial in relation to the same activity or a complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this subparagraph shall be determined based on all the facts and circumstances.  c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.  *Paragraph 11 of Article 7 of the MLI*  A resident of a Contracting State that is not a qualified person shall also be entitled to a benefit that would otherwise be accorded by the Convention with respect to an item of income if, on at least half of the days of any twelve-month period that includes the time when the benefit would otherwise be accorded, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the beneficial interests of the resident.  *Paragraph 12 of Article 7 of the MLI*  If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 9 of Article 7 of the MLI, nor entitled to benefits under paragraph 10 or 11 of Article 7 of the MLI, the competent authority of the other Contracting State may, nevertheless, grant the benefits of the Convention, or benefits with respect to a specific item of income, taking into account the object and purpose of the Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under [the Convention]. Before either granting or denying a request made under this paragraph by a resident of a Contracting State, the competent authority of the other Contracting State to which the request has been made shall consult with the competent authority of the first-mentioned Contracting State.  *Paragraph 13 of Article 7 of the MLI*  For the purposes of the Simplified Limitation on Benefits Provision:  a) the term “recognised stock exchange” means:  i) any stock exchange established and regulated as such under the laws of either Contracting State; and  ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;  b) the term “principal class of shares” means the class or classes of shares of a company which represents the majority of the aggregate vote and value of the company or the class or classes of beneficial interests of an entity which represents in the aggregate a majority of the aggregate vote and value of the entity;  c) the term “equivalent beneficiary” means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State, the Convention or any other international instrument which are equivalent to, or more favourable than, benefits to be accorded to that item of income under the Convention; for the purposes of determining whether a person is an equivalent beneficiary with respect to dividends, the person shall be deemed to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds;  d) with respect to entities that are not companies, the term “shares” means interests that are comparable to shares;  e) two persons shall be “connected persons” if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person; in any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons. |

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| *The following paragraphs 1 to 3 of Article 10 of the MLI apply and supersede the provisions of this Convention:*  ARTICLE 10– ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENT SITUATED IN THIRD JURISDICTIONS  *Paragraph 1 of Article 10 of the MLI*  Where:  a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and  b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,  the benefits of the Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Convention.  *Paragraph 2 of Article 10 of the MLI*  Paragraph 1 of Article 10 of the MLI shall not apply if the income derived from the other Contracting State described in paragraph 1 of Article 10 of the MLI is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise’s own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).  *Paragraph 3 of Article 10 of the MLI*  If benefits under the Convention are denied pursuant to paragraph 1 of Article 10 of the MLI with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2 of Article 10 of the MLI. The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request. |

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| *The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:*  ARTICLE 7 – PREVENTION OF TREATY ABUSE  (*Principal purpose test provision*)  Notwithstanding any provisions of the Convention, a benefit under the Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Convention. |

**Article 30**

**Entry into force**

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

2. The provisions of this Convention shall have effect:

(a) in India:

-- in respect of income derived or capital held in any fiscal year beginning on or after the first day of April next following the calendar year in which the Convention enters into force; and

(b) in Kazakstan:

-- in respect of income derived or capital held in any fiscal year beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

**Article 31**

**Termination**

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

(a) in India:

-- in respect of income arising in any previous year on or after the first day of April next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given; and

(b) in Kazakstan:

-- in respect of income arising in any fiscal year on or after the first day of January next following the calendar year in which the notice is given and in respect of capital which is held at the expiry of any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

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

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

**Protocol**

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

With reference to Article 7:

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

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

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

**Protocol amending the Convention between the Government of the Republic of India and the Government of the Republic of Kazakhstan for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital with Protocol singed at New Delhi on 9th December, 1996**

The Government of the Republic of India and the Government of the Republic of Kazakhstan,

Desiring to amend the Convention between the Government of the Republic of India and the Government of the Republic of Kazakhstan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital with Protocol signed at New Delhi on 9th December 1996 (hereinafter referred to as "the Convention"),

Have agreed as follows:

**Article III**

2. With reference to paragraph 1 of Article 4 of the Convention, it is understood that the phrase "place of incorporation" includes "place of registration".

**Article IV**

3. With reference sub-paragraph (c) of paragraph 3 of Article 5 of the Convention, it is understood that where an enterprise of a Contracting State that is performing services in the other Contracting State is, during a period of time, associated with another enterprise that performs substantially similar services in that other Contracting State for the same project or for connected projects through one or more individuals who are present and performing such services in that other Contracting State, the first-mentioned enterprise shall be deemed, during that period of time, to be performing services in the other Contracting State for that same project or for connected projects through these individuals. For the purpose of the preceding sentence, an enterprise shall be associated with another enterprise if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by the same persons, regardless of whether or not these persons are residents of one of the Contracting States.

In witness thereof the undersigned, duly authorised thereto have signed this Protocol which shall be an integral part of the Convention.

Done in duplicate at New Delhi, this 6th day of January, 2017 in the Hindi, Kazakh, English and Russian languages, all texts being equally authentic. In case of divergence between any of the texts, English text will prevail.