**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 Poland 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**

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| This document presents the synthesised text for the application, in respect of relations between the Republic of Kazakhstan and the Republic of Poland, of the Convention between the Government of the Republic of Poland 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 signed on September 21, 1994 (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 Poland 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 Poland submitted to the Depositary upon ratification on January 23, 2018. 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 Poland in their MLI positions. |

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| Entry into force and entry into effect of the MLI  The MLI enters into force for the Republic of Poland on July 1, 2018 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) 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  (ii) 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.  (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 POLAND AND THE GOVERNMENT OF THE REPUBLIC OF KAZAHKSTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Governments of the Republic of Poland and the Republic of Kazakhstan,

**[MODIFIED by paragraph 1of Article 16 of the MLI]** striving to strengthen and develop economic, scientific, technical, and cultural relations between the two countries, and to conclude a Convention for the avoidance of double taxation and the prevention of evasion of taxes on income and on capital,

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| *The following preamble text described in 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 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 Poland:

(i) the income tax on individuals;

(ii) the income tax on bodies corporate;

(hereinafter referred to as «Polish taxes»).

b) in the Republic of Kazahkstan:

(i) the tax on profit and income of enterprises;

(ii) the income tax on individuals;

(iii) the property tax on individuals

(hereinafter referred to as «Kazakh taxes»).

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 fundamental changes which have been made in their taxation laws.

**Article 3**

**General Definitions**

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

a) the term

(i) «Poland» used in the geographical sense, means the territory of the Republic of Poland, including any area outside its territorial waters, on which, under the laws of Poland and under international law, Poland may wield sovereign rights to the sea bottom, its subsoil and their natural resources;

(ii) «Kazahkstan» means the Republic of Kazahkstan, and used in the geographical sense, includes the territorial waters and the economic zone and continental shelf, on which Kazahkstan may for particular purposes wield sovereign rights and jurisdiction under international law and on which the fiscal laws of Kazakhstan are in force;

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 business entity which is treated as a body corporate for tax purposes and includes in particular a corporation, a limited liability company or any other body corporate or organization, which is liable to taxes on income;

d) the terms «Contracting State» and «the other Contracting State» mean Poland or Kazahkstan, 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, rail or road vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road vehicle is operated solely between places in the other Contracting State;

g) the term «competent authority» means:

(i) in Poland - the Minister of Finance or his authorized representative,

(ii) in Kazahkstan - the Ministry of Finance or its authorized representative;

h) the term «national» means:

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

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

i) the term «capital» means, for the purposes of Article 22, movable and immovable property and includes (but not exclusively) cash assets, shares and securities, notes, bonds or other rights to monetary claims, as well as patents, trade marks, copyrights or other similar rights or property.

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

**Article 4**

**Resident**

1. For the purposes of this Convention, the term «resident of a Contracting State» means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term also includes the Government of a Contracting State, its political subdivisions or local authorities, and the financial institutions used by that government or authorities. However, this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which has an habitual abode;

c) if he has a 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, the competent authorities of the Contracting States shall settle the question by mutual agreement, but if the authorities do not reach an agreement, then it shall be deemed not to be a resident of either Contracting State for the purposes of obtaining privileges under this Convention.

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| *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 State 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. A place of business also means a place of production.

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 mineral or fossil natural resources.

3. The term «permanent establishment» likewise encompasses:

a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, if such site, project or activities last more than 12 months; and

b) the systems or equipment used to search for natural resources or the supervisory activities in connection therewith, or a platform or ship used to search for natural resources, if the use of such facilities or service activities lasts more than 12 months; and

c) the furnishing of services, including consulting services, by the personnel of a resident of a Contracting State or other personnel engaged by such resident for the purpose, if activities of that nature last (for the same or a connected project) within the country for more than 12 months.

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

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

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

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

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

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

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), 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 in a Contracting state on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

**Article 6**

**Income From Immovable Property**

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

2. The term «immovable property» shall have the meaning which it has under the law of the 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 the income from immovable property used for the performance of independent personal services.

**Article 7**

**Business Profit**

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 or carried 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:

a) such a permanent establishment;

b) the sale in the other Contracting State of merchandise or goods, which are identical or similar to merchandise sold by the permanent establishment; or

c) other business carried on in the other State, which in its nature is identical or similar to the business carried on by the permanent establishment.

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. No deduction shall be allowed the permanent establishment in respect of amounts paid to its the head office or other similar entity, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services or for aid in 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. If the information which a competent authority of a Contracting State possesses or which may be easily available does not constitute sufficient basis to determine the profits or expenses to be attributed to the permanent establishment, then profit may be determined according to the taxation laws of that state. For the purposes of this paragraph, information shall be deemed to be easily available if the taxpayer provides information to the competent authority within 91 days from the date on which the authority requested the information be provided.

6. Where profits include items of income or income from capital appreciation 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.

7. 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**

**International Traffic**

1. Profits from the operation of ships or aircraft, rail or road vehicles in international traffic by a resident of a Contracting State shall be taxable only in that 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 Enterprise**

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 where 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. **[MODIFIED by paragraph 2 of Article 12 of the MLI]** Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly-profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on that income. 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.

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| *The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:*  ARTICLE 17 – CORRESPONDING ADJUSTMENTS  Where a Contracting State includes in the profits of an enterprise 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 the Convention and the competent authorities of the Contracting State shall if necessary consult each other. |

**Article 10**

**Dividends**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** 10 percent of the gross amount of the dividends if the beneficial owner is a company which directly or indirectly holds at least 20 percent of the capital of the company paying the dividends,

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| *The following paragraph 1 of Article 8 of the MLI applies to subparagraph a) of paragraph 2 of Article 10 of this Convention:*  ARTICLE 8 – DIVIDEND TRANSFER TRANSACTIONS  Subparagraph a) of paragraph 2 of Article 10 of the Convention shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends). |

b) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

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 (business profits) or Article 14 (independent personal services) 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 the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. A company which is a resident of a Contracting State and has a permanent establishment in the other Contracting State may be subject to taxation in that other State in addition to the tax on profit. Such tax, however, shall not exceed 10 percent of the profits of a company subject to taxation in the other Contracting State.

**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, if such resident is the beneficial owner of the interest.

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 is the [beneficial] owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. 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.

4. 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 (business profits) or Article 14 (independent personal services) as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether 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.

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

7. **[REPLACED by paragraph 1 of Article 7 of the MLI, reproduced below Article 27 of the Convention]**The provisions of this Article shall not apply if the chief purpose or one of the chief purposes of any person connected with the creation or the alienation of a debt-claim in respect of which the interest is paid was to obtain privileges (benefits) from such by the creation or the alienation of such a debt-claim.

8. Notwithstanding the provisions of paragraph 2, interest originating in a Contracting State due to the Government of the other Contracting State or a local authority or any agency thereof, or originating with the assistance of that Government or local authority shall be exempt from taxation in the first-mentioned State.

**Article 12**

**Royalties**

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

2. However, royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but, However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient, being the [beneficial] owner of the royalties, is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on 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 (business profits) or Article 14 (independent personal services) as the case may be, shall apply.

5. 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.

6. **[REPLACED by paragraph 1 of Article 7 of the MLI, reproduced below Article 27 of the Convention]**The provisions of this Article shall not apply if the chief purpose or one of the chief purposes of any person connected with the creation or the alienation of rights in respect of which the royalties are paid was to obtain privileges (benefits) from such by the creation or the alienation of such rights.

**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. **[REPLACED in part by paragraph 4 of Article 9 of the MLI]**

Gains derived by a resident of a Contracting State from the alienation of:

a) shares other than those listed on a recognized exchange, deriving their value or major part of their value directly or indirectly from immovable property situated in the other Contracting state, or

b) participation in a partnership or trust company, whose income is mainly from immovable property situated in the other Contracting state or from the shares specified in sub-paragraph a,

may be taxed in that other Contracting State.

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| *The following paragraph 4 of Article 9 of the MLI replaces the parts of paragraph 2 of Article 13 of this Convention that provide that gains derived by a resident of a Contracting State from the alienation of shares or other rights of participation in an entity may be taxed in the other Contracting State provided that these shares or rights derived more than a certain part of their value from immovable property (real property) situated in that other Contracting State, or provided that more than a certain part of the property of the entity consists of such immovable property (real property):*  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. |

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 which a resident of a Contracting State has in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

**Article 14**

**Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State, unless the activity is or was exercised the other Contracting State, and

a) the income pertains to a fixed base, which the individual has or had a fixed base regularly available to him in the other Contracting State; or

b) the individual's stay in the other Contracting State is or was for a period or periods exceeding in the aggregate 183 days in the course of 12 months running.

In such case, the income pertaining to such activity may be taxed in the other Contracting State according to the principles contained in Article 7 (business profits) defining the profit attributed 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 (directors' fees), 18 (pensions) and 19 (government service), 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 a 12-month period, and

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

c) the remuneration is not paid 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, or by a person operating a rail or motor vehicle operated in international traffic may be taxable only in the Contracting State of which the enterprise operating the ships or aircraft, rail or motor vehicle 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 other similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

**Article 17**

**Artistes and Sportsmen**

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

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

3. Notwithstanding the provisions of paragraphs 1 and 2, the income referred to in this Article shall be exempt from taxation in the Contracting State in which the activity of the entertainer or sportsman is exercised, if such activity is financed in substantial degree by the public funds of that State or the other State, of if such activity is exercised under a cultural cooperation agreement between the Contracting States.

**Article 18**

**Pensions**

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

2. The term «pension» means a fixed amount paid to an individual for life at fixed dates, or paid at a specific or fixed time due to obligations of making return payments as monetary compensation or the equivalent thereof.

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

**Article 19**

**Government Service**

1.a) 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 remuneration may be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

1) is a national of that State, or

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

2.a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority 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, or a national of, that State.

3. The provisions of Articles 15 (dependent personal services), 16 (directors' fees) and 18 (pensions) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

**Article 20**

**Students, Apprentices, Instructors, Research Employees**

1. An individual who is a resident of a Contracting State visiting the other Contracting State for the purpose of:

a) study at a university or other recognized school in that other State, or

b) training needed to perform a specialized job, or to improve qualifications, or

c) study or research on a grant from a government, religious, charitable, scientific, literary or educational organization,

shall be exempt from taxation in that other State in respect of payments obtained from abroad for the purpose of maintenance, education, training or research, as well as in respect of grants, allowances and other similar payments.

2. The exemptions referred to in paragraph 1 shall only apply for such time as is necessary to complete the studies, training or research, and as regards training or research, the exemption may not exceed five years.

3. An individual who is visiting in a Contracting State for the purpose of teaching or conducting research work at a university, post-secondary school or other educational institution, and who has or had a permanent home available to him in the other Contracting State immediately before that visit, shall be exempt from taxation in the first-mentioned State in respect of remuneration for teaching or conducting research work, provided that the period of his stay not exceed two years from the day he first arrived for that purpose.

4. The provisions of this Article shall not apply to income from research work if such work is not undertaken in the public interest, but chiefly for the private benefit of a specific person or specific persons.

**Article 21**

**Other Income**

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

**Article 22**

**Capital**

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

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

3. Capital represented by ships or aircraft, rail or motor vehicles owned by a resident of a Contracting State and operated in international traffic, or by movable property pertaining to the operation of such ships, aircraft or rail or motor vehicles, may be taxed only in that State.

4. All other elements of capital of a resident of a Contracting State may be taxed only in that State.

**Article 23**

**Avoidance of Double Taxation**

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow:

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

b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction from the income tax or capital tax is given and which may be taxable in that other State.

2. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, is taxable only in the other Contracting State, the first-mentioned State may include such income or capital in the basis for taxation, but only for the purpose of determining the tax rate on other income or capital which is taxable in the first-mentioned Contracting State.

**Article 24**

**Non-Discrimination**

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

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

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

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

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, may 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 enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall not be construed as obliging a Contracting State to grant to non-residents of the other Contracting State any personal allowances, relieves and reductions for taxation purposes which it grants to its own residents.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (taxes covered), apply to taxes of every kind and description.

**Article 25**

**Mutual Agreement Procedure**

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding 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 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 this Convention.

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

3. **[MODIFIED by second sentence of paragraph 3 of Article 16 of the****MLI]** The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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| *The following second sentence of paragraph 3 of Article 16 of the MLI applies to the paragraph 3 of the Article 25 of this Convention:*  ARTICLE 16 – MUTUAL AGREEMENT PROCEDURE  They may also consult together for the elimination of double taxation in cases not provided for in this 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 26**

**Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States, concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authorities of the Contracting States the obligation:

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

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

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

**Article 27**

**Diplomatic Representatives and Consular Officials**

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

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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 28**

**Entry Into Force**

The Contracting States shall notify each other through diplomatic channels of the ratification of this Convention by their legislatures. The convention shall enter into force upon the exchange of instruments of ratification and its provisions shall apply:

a) as regards taxes imposed at their source, on dividends, interest and royalties - to amounts derived or due commencing the first day or later of the second month following the month in which the Convention entered into force;

b) as regards other taxes, to tax periods commencing January 1 or later in the year following the year in which the Convention entered 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) as regards taxes imposed at their source - to amounts derived or due commencing January 1 or later in the year following the expiration of the six-month period;

b) as regards other taxes - to the tax period commencing January 1 or later in the year following the day of expiration of the six-month period.

In witness whereof the undersigned, having been duly authorized by their respective Governments, have signed this Convention.

Done in Alma Ata on September 21, 1994, in two copies, each in Polish, Kazakh and Russian, with all three texts having equal force. In case of differences in the interpretation of the texts, the Russian text shall be the authoritative one.

**FOR THE GOVERNMENT OF THE REPUBLIC OF POLAND:**

**FOR THE GOVERNMENT OF THE REPUBLIC OF KAZAHKSTAN:**