

**CONVENTION BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF ITALY
AND THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME AND THE PREVENTION OF FISCAL EVASION**

THE GOVERNMENT OF THE REPUBLIC OF ITALY

AND

THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN

Confirming their desire to develop and strengthen the economic, scientific, technical and cultural cooperation between both State, and desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion,

Have agreed upon the following measures:

Chapter I

SCOPE OF THE CONVENTION

Art. 1. Personal scope. - This Convention shall apply to persons who are residents of one or both of the Contracting States.

Art. 2. Taxes covered. - 1) This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

2) There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income 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 case of the Republic of Italy:

1 - the personal income tax (imposta sul reddito delle persone fisiche);

2 - the corporate income tax (imposta sul reddito delle persone giuridiche);

3 - the local income tax (l'imposta locale sui redditi);

whether or not they are collected by withholding at source (hereinafter referred to as « Italian tax »);

b) in the case of the Republic of Kazakhstan: taxes on profits and income provided by the following laws:

1 – the President’s Decree “On Taxation of Profit and Income of Enterprises”;

2 – the President’s Decree “On Taxation of Income of Individuals”;
whether or not they are collected by withholding at source (hereinafter referred to as “Kazakh tax”).

4) The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.

The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

Chapter II

DEFINITIONS

Art. 3. General definitions. - 1) For the purposes of this Convention, unless the context otherwise requires:

a) the term «Italy» means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with customary international law and the laws of Italy concerning the exploration and exploitation of natural resource, may be designated as an area within which the rights of Italy, with respect to the seabed and subsoil and natural resource, may be exercised;

b) the term “Kazakhstan” means the Republic of Kazakhstan.
When used in geographical sense, the term “Kazakhstan” includes the territorial waters, and also the exclusive economic zone and continental shelf in which Kazakhstan, for certain purposes, may exercise sovereign rights in accordance with international law and in which the law relating to Kazakhstan tax are applicable;

c) the term «Contracting State» and «the other Contracting State» means Italy or Kazakhstan, as the context requires;

d) the term «person» includes an individual, a company and any other body of persons;

e) the term «company» means any body corporate or any entity which is treated as body corporate for tax purposes, and in case of Kazakhstan includes, for example, a joint stock company, a limited liability company or any other legal entity or other organization which is liable to a tax on profits;

f) the terms «enterprise of a Contracting State» and «enterprise of the other Contracting State» mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

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

h) the term «nationals» means:

(i) all individuals possessing the nationality of a Contracting State;

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

i) the term «competent authority» means:

i) in the case of Italy, the Ministry of Finance;

ii) in the case of Kazakhstan, the Minister of Finance or his authorized representative.

2) As regards the application of this 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.

Art 4. Resident. - 1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources situated in that State.

2) Where by reason of the provisions of paragraph 1 an individual is a resident of both 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 States shall settle the question by mutual agreement.

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

Art. 5. Permanent establishment. - 1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of an enterprise is wholly or partly carried on.

2) The term "permanent establishment shall include 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 resource;
- g) a building site or construction or installation or assembly project, or supervisory services connected therewith, only if such site or project lasts for more than 12 months, or such services continue for more than 12 month;
- h) an installation or structure used for the exploration of natural resources, or supervisory services connected therewith, or a drilling ring or ship used for the exploration of natural resources, only if such use lasts for more than 12 months, or such services continue for more than 12 months; and
- i) the furnishing of services, including consultancy services, by a resident through employees or other personnel engaged by the resident for such purpose, but only where the activities of that nature continue (for the same or connected project) within the country for more than 12 months.

3) 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 enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 5 applies- shall be deemed to a permanent establishment in the first-mentioned State if he has, and habitually exercises, in that State, an authority to conclude contracts in the name of the enterprise unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5) An enterprise shall not be deemed to have a permanent establishment in the other 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.

6) 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 or a permanent establishment of the other.

Chapter III

TAXATION OF INCOME

Art. 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 be defined in accordance with 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 shall also be considered as “immovable property”. Ships, boats and aircraft shall not be regarded as immovable property.

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

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

Art. 7. Business profits. - 1) The profits of an enterprises of 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:

a) that permanent establishment;

b) sales in that other State of goods or merchandise of the same kind as those sold through that permanent establishment; or

c) other business activities carried on in that other State of the same kind as those effected through that permanent establishment.

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

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

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

5) Where the information available to or readily obtainable by the competent authority of a Contracting State is not adequate to determine the profits or expenses of a permanent establishment, profits or expenses may be calculated in accordance with the tax laws of that State. For purposes of this paragraph 5, information will be considered to be readily obtainable if the taxpayer provides the information to the requesting competent authority within 91 days of a written request by the competent authority for such information.

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

Art. 8. Shipping and air transport. - 1) Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

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

Art. 9. Associated enterprises. - 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.

Art. 10. Dividends. - 1) Dividends paid by a company which is, a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends;

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

The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of these limitations.

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

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

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 dividends are taxable in that other Contracting State according to its own law.

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) Notwithstanding the last sentence of paragraph 5 of this Article, a company which is a resident of Contracting State and which has a permanent establishment in the other Contracting State may be subject in that other State to tax in addition to the tax on profits. Such tax, however, may not exceed 5 per cent of the portion of the profits of the company subject to tax in the other Contracting State.

Art. 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 is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3) Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

a) the payer of the interest is the Government of that Contracting State or a local authority thereof; or

b) the interest is paid to the Government of the other Contracting State or to a local authority thereof; or

c) the interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.

4) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

5) The provisions of paragraphs 1 to 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the interest is taxable in that other Contracting State according to its own law.

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

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

Art. 12. Royalties. - 1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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, cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience, and payments for the use of, or the right to use, industrial, commercial or scientific equipment.

4) The provisions of paragraphs 1 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 royalties are taxable in that other Contracting State according to its own law.

5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right or property in respect which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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 royalties, having regard to 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Art. 13. Capital gains. - 1) Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

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 the other State.

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

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

Art. 14. Independent personal services. - 1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, unless he has a fixed base regularly available to him in the other Contracting State for purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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.

Art. 15. Dependent personal services. - 1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of twelve months 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.

Art. 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 similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Art. 17. Artists and sportsmen. - 1) Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

Art. 18. Pensions and annuities. -1) Subject to the provisions of paragraph 2 of Article 19, pensions, annuities 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.

Art. 19. Government service. - 1) a) Remuneration, other than a pension, paid by a Contracting State or a political or administrative 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 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 or administrative 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 remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting States, or a political or administrative subdivision or a local authority thereof.

Art. 20. Professors and teachers. - A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

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

Art. 21. Students. - 1) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Art. 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 items of income are taxable in that other Contracting State according to its own law.

3) Where, by reasons of a special relationship between the persons who have carried on activities from which income referred to in paragraph 1 is derived, the payment for such activities exceeds the amount which would have agreed upon by independent persons, the provisions of paragraph 1 shall apply only to the last mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Chapter IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Art. 23. Elimination of double taxation. - 1) It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

2) In the case of Italy:

If a resident of Italy owns items of income which are taxable in Kazakhstan, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the income tax paid in Kazakhstan but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to entire income.

However, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by a request of the recipient of the said income in accordance with the Italian law.

3) In the case of Kazakhstan:

a) Where a resident of Kazakhstan derives income which, in accordance with the provisions of this Convention, may be taxed in Italy, then Kazakhstan shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Italy. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Italy.

b) Where a resident of Kazakhstan derives income, which under the provisions of this Convention, shall be taxable only in Italy, Kazakhstan may include this income in the tax base but only for purposes of determining the rate of tax on such other income as is taxable in Kazakhstan.

Chapter V

SPECIAL PROVISIONS

Art. 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, 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 provisions shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3) Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 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 condition as if they had been paid to a resident of the first-mentioned State.

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

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

Art. 25. Mutual agreement procedure. - 1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws 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 two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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.

Art. 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, as well as to prevent fiscal evasion. 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 a Contracting State the obligation:

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

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

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

Art. 27. Diplomatic agents and consular officials. - Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

Art. 28. Refunds. - 1) Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said tax is affected by the provisions of this Convention.

2) Claims for refund that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is resident certifying the existence of the conditions required for being entitled to the application of the allowances, provided for by this Convention.

3) The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 25 of this Convention.

Art. 29. Limitation of benefits. - A person that is a resident of a Contracting State and derives income from the Contracting State shall not be entitled to relief from taxation in that other State otherwise provided for in this Convention if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of such item of income to take advantage of the provisions of this Convention.

In making a determination under this Article, the appropriate competent authority or authorities shall be entitled to consider, among other factors, the amount and nature of the income, the circumstances in which the income was derived, the stated intention of the parties to the transaction, and the identity and residence of the persons who in law or in fact, directly or indirectly, control or beneficially own (i) the income or (ii) the persons who are resident (s) of the Contracting State (s) and who are concerned with the payment or receipt of such income.

Chapter VI

FINAL PROVISIONS

Art. 30. Entry into force. - 1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Almaty as soon as possible.

2) the Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:

a) in respect of taxes withheld at source, to amounts derived on or after January 1, 1994;

b) in respect of other taxes on income, to taxes chargeable for any taxable period beginning on or after January 1, 1994.

3) Claims for refund or credits arising in accordance with this Convention in respect of any tax payable by residents of either of the Contracting States referring to the periods beginning on or after 1 January 1994 and until the entry into force of this Convention shall be lodged within two years from the date of entry into force of this Convention, or from the date the tax was charged, whichever is later.

Art. 31. Termination. - This Convention shall remain in force until terminated by one of the 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 after the year beginning 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 respect of taxes withheld at source, to amounts derived on or after first January of the calendar year next following that in which the notice is given; and
- b) in respect of other taxes on income, to taxes chargeable for any taxable period beginning on or after first January of the calendar year next following that in which notice is given.

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

Done in duplicate at Rome this September day of 22nd 1994, in the Italian, English, Kazakh, Russian languages, all texts being equally authentic, except in the case of doubt, when the English text shall prevail.

PROTOCOL

To the Convention between the Government of the Republic of Italy and the Government of the Republic of Kazakhstan for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion (hereinafter the “Convention”).

At the signing of the Convention concluded today between the Government of the Republic of Italy and the Government of the Republic of Kazakhstan, the undersigned have agreed upon the following provisions which shall form an integral part of the Convention.

1) With regard to Article 4, paragraph 3:

If there is a doubt as to where the place of effective management of a person is situated, the competent authorities shall endeavour to agree where the effective place of management of such person is situated. The person shall be deemed, for purposes of the Convention, to be a resident of the State in which the agreed effective place of management is situated.

But if the competent authorities are unable to reach an agreement, the person shall be treated as a resident of neither State for the purposes of deriving the benefits under this Convention.

2) With regard to Article 7, paragraph 3:

In determining expenses allocable to a permanent establishment in a Contracting State, there shall be allowed a reasonable allocation between a resident of a Contracting State and a permanent establishment of such resident situated in the other Contracting State, of properly documented expenses incurred for the purpose of the resident's business activities. Such allocable expenses include executive and general administrative expenses, research and development expenses, interest, and charges for management, consultancy or technical assistance, whether incurred in the State in which the permanent establishment is situated, or elsewhere. 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 payments 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 money lent to the permanent establishment. The business profits attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

3) With regard to Article 9:

If, in accordance of Article 9, a redetermination has been made by one Contracting State with respect to a person, the other Contracting State shall, to the extent it agrees that such redetermination reflects arrangements or conditions which would be made between independent persons, or as provided under paragraphs 8 and 9 of this protocol, make appropriate adjustments with respect to persons who are related to such persons and are subject to the taxing administration of the State. Any such adjustment shall be made in accordance with the mutual agreement procedure provided for by Article 25 and with paragraphs 8 and 9 of this protocol.

4) With regard to Articles 11 and 12:

The Contracting States agree that if Kazakhstan agrees to a lower rate than 10 per cent in paragraph 2 of Article 11 or in paragraph 2 of Article 12 in any Convention between Kazakhstan and a third state which is a member of the Organization for Economic Cooperation and Development, and that Convention enters into force either before or after the date of entry into force of this Convention, the competent authority of Kazakhstan shall notify the competent authority of Italy of the terms of the relevant paragraph in the Convention with that third state immediately after the entry into force of that Convention and such lower rate of tax shall be substituted for 10 per cent in paragraph 2 of Article 11 or paragraph 2 of Article 12 as the case may be, of this Convention with effect from the date of entry into force of that Convention, or of this Convention, whichever is the later.

5) With regard to Article 12:

Where a resident of a Contracting State receives payments for the use, of or the right to use, industrial, commercial or scientific equipment, from sources in the other Contracting State, such resident may elect to be taxed in the Contracting State in which such royalties arise, as if the right or property in respect of which such royalties are paid is effectively connected with a permanent establishment or fixed base in that Contracting State. In such case, the provisions of Article 7 or Article 14 of this Convention shall, as the case may be apply to the income and deductions attributable to such right or property.

6) With regard to Article 14:

Where income described in Article 14 is attributed to a fixed base in such case the income attributable to the services may be taxed in such State (and expenses attributed to the services) in accordance with principles similar to those of Article 7 for determining the amount of business profits and expenses and attributing business profits and expenses to a permanent establishment.

7) With regard to Article 19:

With reference to paragraphs 1 and 2 of Article 19, remuneration paid to an individual in respect of services rendered to the Italian Foreign Trade Institution (I.C.E.) and to the Italian National Tourist Office (E.N.I.T.), as well as to the corresponding Kazakh institutions, are covered by the provisions concerning government service.

8) With regard to Article 25:

If any difficulty or doubt arising as to the interpretation of the Convention cannot be resolved by the competent authorities pursuant to Article 25, the case may, if both competent authorities and the taxpayer(s) agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board in a particular case shall be binding on both States with respect to that case. The procedures shall be established between the States, if appropriate, pursuant to paragraph 4 of Article 25, and by notes exchanged between the two competent authorities. The provisions of this paragraph shall have effect after the competent authorities have so agreed through exchange of notes.

9) With regard to Article 25, paragraph 1:

The expression “irrespective of the remedies provided by the domestic laws” means that the mutual agreement procedure is not alternative with , the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related with an assesment of taxes , not in accordance with this Convention.

10) With regard to Article 10, paragraph 4, Article 11, paragraph 4, Article, 12, paragraph 4, and Article 22, paragraph 2:

The last sentence appearing therein cannot be construed as failing to take into account the principles set out in Article 7 and 14 of this Convention.

11) With regard to Article 30 paragraph 3:

This provision shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other practices for the allowance of the reductions for the taxation purposes provided for in this Convention.

Done in duplicate at Rome on this September day of 22nd 1994 in the English, Italian, Kazakh and Russian languages, all texts being equally authoritative, except in the case of doubt, when the English texts shall prevail.

EXCHANGE OF NOTES

Excellency,

I have the honour to refer to the Convention and Protocol between the Republic of Kazakhstan and the Republic of Italy for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fiscal Evasion, signed today at Rome and I should like to state on behalf of the Government of Kazakhstan our understanding with respect to Article 30.

It is the position of the Government of Kazakhstan that the effect of the Convention starting from 1 January 1994, provided in paragraph 2 of the said Article can be maintained only if the entry into force of the Convention takes place before 1 January 1998.

On the contrary, if the entry into force were to take place after 1 January 1998, the date of 1 January 1994 in paragraph 2 of Article 30 cannot be maintained, and the provisions of the Convention shall have effect as follows:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the month next following the month in which the Convention enters into force; and

b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year in which the Convention enters into force.

Consequently, I propose on behalf of the Government of Kazakhstan that the Governments of the Contracting States shall strive towards prompt ratification of the Convention, Protocol and text of the Exchange of Note.

I furthermore have the honour to propose that the present note and Your Excellency's reply confirming the acceptance by the Government of Italy of the above proposal shall be regarded as constituting an agreement between the two Governments concerning the matter above-mentioned.

Accept, Excellency, the renewed assurance of my highest consideration.

Excellency,

I have the honour to acknowledge receipt of your letter of today's date which reads as follow:

“Excellency,

I have the honour to refer to the Convention and Protocol between the Republic of Kazakhstan and the Republic of Italy for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fiscal Evasion, signed today at Rome and I should like to state on behalf of the Government of Kazakhstan our understanding with respect to Article 30.

It is the position of the Government of Kazakhstan that the effect of the Convention starting from 1 January 1994, provided in paragraph 2 of the said Article can be maintained only in the entry into force of the Convention takes place before 1 January 1998.

On the contrary, if the entry into force were to take place after 1 January 1998, the date of 1 January 1994 in paragraph 2 of Article 30 cannot be maintained, and the provisions of the Convention shall have effect as follows:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the month next following the month in which the Convention enters into force; and
- b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year in which the Convention enters into force.

Consequently, I propose on behalf of the Government of Kazakhstan that the Governments of the Contracting States shall strive towards prompt ratification of the Convention, Protocol and text of the Exchange of Note.

I furthermore have the honour to propose that the present note and Your Excellency's reply confirming the acceptance by the Government Italy of the above proposal shall be regarded as constituting an agreement between the two Governments concerning the matter above-mentioned.

Accept, Excellency, the renewed assurances of my highest consideration”.

I have the honour to inform you that the Government of the Republic of Italy is in agreement with the above proposals.

Accept, Excellency, the renewed assurances of my highest consideration.