

No. 47779

**Germany
and
Kazakhstan**

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

Entry into force: *21 December 1998 by the exchange of instruments of ratification, in accordance with article 31*

Authentic texts: *English, German, Kazakh and Russian*

Registration with the Secretariat of the United Nations: *Germany, 9 September 2010*

**Allemagne
et
Kazakhstan**

Accord entre la République fédérale d'Allemagne et la République du Kazakhstan tendant à éviter la double imposition en matière d'impôts sur le revenu et sur la fortune (avec protocole). Bonn, 26 novembre 1997

Entrée en vigueur : *21 décembre 1998 par échange des instruments de ratification, conformément à l'article 31*

Textes authentiques : *anglais, allemand, kazakh et russe*

Enregistrement auprès du Secrétariat des Nations Unies : *Allemagne, 9 septembre 2010*

[ENGLISH TEXT – TEXTE ANGLAIS]

**Agreement
between the Federal Republic of Germany
and the Republic of Kazakhstan
for the Avoidance of Double Taxation
with respect to Taxes on Income and on Capital**

The Federal Republic of Germany
and
the Republic of Kazakhstan –

desiring to promote their mutual economic relations by removing fiscal obstacles,

have agreed as follows:

Article 1

Personal Scope

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

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, of a Land or of a political subdivision or local authority thereof, irrespective of the manner in which they are levied.

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

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

a) in the Republic of Kazakhstan:

the tax on income of legal persons and individuals,

the tax on the property of legal persons and individuals,

and the tax on excess profit of users of natural resources.

(hereinafter referred to as "Kazakhstan tax");

b) in the Federal Republic of Germany:

the income tax (Einkommensteuer),

the corporation tax (Körperschaftsteuer),

the capital tax (Vermögensteuer), and

the trade tax (Gewerbesteuer)

including the supplements levied thereon

(hereinafter referred to as "German tax").

[Published as submitted. – Publié tel que soumis.]

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

Article 3

General Definitions

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

a) the terms

aa) "Kazakhstan" means the Republic of Kazakhstan, and when used in a geographical sense, the term "Kazakhstan" includes the territory in which Kazakhstan, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the law relating to Kazakhstan tax is applicable;

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

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

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

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

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

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

g) the term "national" means:

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

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

h) the term "competent authority" means

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

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

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

Article 4

Resident

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

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

- a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5

Permanent Establishment

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

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also includes:

- a) a building site or construction or installation or assembly project only if such site or project lasts for more than 12 months; and
- b) an installation or structure used for the exploration of natural resources, or supervisory services connected therewith, or a drilling rig or ship used for the exploration of natural resources, only if such use lasts for more than 12 months, or such services continue for more than 12 months.

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

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e) above, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 above, where a person – other than an agent of an independent status to whom paragraph 6 below applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 above which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

Article 6

Income from Immovable Property

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

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

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