

**MINISTRY OF FINANCE****(Department of Revenue)****NOTIFICATION**New Delhi, the 12<sup>th</sup> April, 2018**(INCOME TAX)**

**S.O. 1589(E).**—Whereas the Protocol, amending the Convention between the Government of the Republic of India and the Government of the Republic of Kazakhstan for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital with Protocol signed at New Delhi, India on the 9<sup>th</sup> December 1996, was signed at New Delhi, India on the 6<sup>th</sup> January, 2017, as set out in the annexure appended to this notification and hereinafter referred to as the said amending Protocol;

And whereas, the date of entry into force of the said amending Protocol is the 12<sup>th</sup> day of March, 2018, being the date of receipt, through diplomatic channels, of later of written notifications informing in regard to the completion of internal procedures required for the entry into force of the said amending Protocol, in accordance with paragraph 1 of Article XV of the said amending Protocol;

And whereas, clause (a) of paragraph 2 of Article XV of the said amending Protocol provides that the provisions of the said amending Protocol shall have effect in India in respect of income derived or capital held in any fiscal year beginning on or after the first day of April next following the date on which this Protocol enters into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said amending Protocol, as annexed hereto, shall be given effect to in the Union of India.

**ANNEXURE****PROTOCOL AMENDING THE CONVENTION****BETWEEN****THE GOVERNMENT OF THE REPUBLIC OF INDIA****AND****THE GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN****FOR THE AVOIDANCE OF DOUBLE TAXATION****AND****THE PREVENTION OF FISCAL EVASION****WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL****WITH PROTOCOL SIGNED****AT****NEW DELHI****ON****9<sup>TH</sup> DECEMBER, 1996**

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

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

Have agreed as follows:

**Article I**

Sub-paragraph (a) of paragraph 3 of Article 2 (Taxes covered) of the Convention shall be replaced by the following sub-paragraph:

- “(a) in the Republic of Kazakhstan:
- (i) the corporate income tax;
  - (ii) the individual income tax;
  - (iii) the tax on property of legal persons and individuals;
- (hereinafter referred to as "Kazakhstan tax");”.

**Article II**

1. Clause (i) of sub-paragraph (a) of paragraph 1 of Article 3 (General definitions) of the Convention shall be replaced by the following clause:

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

2. The following sentence shall be added at the end of paragraph 2 of Article 3 of the Convention:

“Any meaning under the applicable tax laws of that Contracting State prevailing over a meaning given to the term under other laws of that Contracting State.”.

**Article III**

1. Paragraph 1 of Article 4 (Resident) of the Convention shall be replaced by the following paragraph:

“1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that Contracting State and any political subdivision or local authority thereof.

This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State or capital situated therein.”.

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

**Article IV**

1. In sub-paragraph (b) of paragraph 3 of Article 5 (Permanent establishment) of the Convention, the number and words “more than 12 months” shall be replaced by the number and words “more than 6 months”.

2. After sub-paragraph (b) of paragraph 3 of Article 5 of the Convention, the following paragraph (c) shall be added:

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

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

residents of one of the Contracting States.

#### **Article V**

After paragraph 6 in Article 7(Business profits) of the Convention, the following paragraph 7 shall be added:

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

#### **Article VI**

In Article 9 (Associated enterprises) of the Convention, the existing text shall be numbered as paragraph 1 and after such numbering, the following paragraph shall be added:

“2. 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 this Convention and the competent authorities of the Contracting States shall if necessary consult each other.”.

#### **Article VII**

In paragraph 6 of Article 11 (Interest) of the Convention, the words “that State itself, a political subdivision, a local authority or” shall be deleted.

#### **Article VIII**

The first sentence of paragraph 5 of Article 12 (Royalties and fees for technical services) of the Convention shall be replaced by the following sentence:

“Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State.”

#### **Article IX**

In paragraph 1 of Article 21 (Professors, teachers and research scholars) of the Convention, the words “two years from the date of his arrival” shall be replaced by “two years from the date of his first arrival”.

#### **Article X**

Paragraph 3 of Article 22 (Other income) of the Convention shall be replaced by the following paragraph:

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

#### **Article XI**

Article 27 of the Convention shall be replaced by the following Article:

#### **“Article 27**

#### **Exchange of information**

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions, central or local authorities, insofar as the taxation

thereunder is not contrary to the Convention. The exchange of information is not restricted by articles 1 and 2 of this Convention.

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

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

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

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

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

4. If information is requested by a Contracting State in accordance with this article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 of this article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

## **Article XII**

Article 28 of the Convention shall be replaced by the following Article:

“Article 28

Assistance in the collection of taxes

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

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

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

applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other Contracting State.

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

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

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

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

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

b) in the case of a request under paragraph 4 of this article, a revenue claim of the first-mentioned Contracting State in respect of which that Contracting State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned Contracting State shall promptly notify the competent authority of the other Contracting State of that fact and, at the option of the other Contracting State, the first-mentioned Contracting State shall either suspend or withdraw its request.

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

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

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

### Article XIII

After Article 28 of the Convention, the following Article shall be added:

#### “Article 28A

##### Limitation of benefits

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

2. A resident of a Contracting State shall not be entitled to the benefits of this Convention if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Convention.
3. The benefits under this Convention shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State or of the items of capital situated therein.”.

#### Article XIV

In Protocol signed on the 9<sup>th</sup> December, 1996, the following sentences shall be deleted:

“With reference to Articles 10, 11 and 12;

In respect of Articles 10, 11 and 12 if under any Convention, Agreement or Protocol between the Governments of the Republic of India and the Republic of Kazakhstan with a third State, either India or Kazakhstan limit their taxation on dividends (single rate) interest, royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply under this Convention.”.

#### Article XV

1. This Protocol shall enter into force on the date of the receipt, through diplomatic channels, of the later of written notifications, informing that the internal procedures required for the entry into force of this Protocol have been completed by the Contracting States.
2. The provisions of this Protocol shall have effect:

- (a) in India in respect of income derived or capital held in any fiscal year beginning on or after the first day of April next following the date on which this Protocol enters into force; and
- (b) in Kazakhstan in respect of income derived or capital held in any fiscal year beginning on or after the first day of January next following the calendar year in which this Protocol enters into force.

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

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

**For the Government of the  
Republic of India**

(Sushil Chandra)  
Chairman,  
Central Board of Direct Taxes

**For the Government of the  
Republic of Kazakhstan**

(Bulat Sarsenbayev)  
Ambassador of the Republic  
of Kazakhstan to India

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RAJAT BANSAL, Jt. Secy.