

**AGREEMENT
BETWEEN
THE CABINET OF MINISTERS OF UKRAINE
AND
THE GOVERNMENT OF MONGOLIA
FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AND ON CAPITAL**

The Cabinet of Ministers of Ukraine and the Government of Mongolia,

desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

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 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 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.

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

a) In the case of Mongolia:

i/ the individual income tax;

ii/ the corporate income tax,

(hereinafter referred to as "Mongolian tax");

b) In the case of Ukraine:

i/the enterprise profit tax;

ii/the income tax on citizens;
(hereinafter referred to as "Ukrainian tax").

4. This 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 referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3. GENERAL DEFINITIONS

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

a) The terms "a Contracting State" and "the other Contracting State" mean Mongolia or Ukraine as the context requires;

b) The term "Mongolia" means, when used in a geographical sense, the territory of Mongolia and any area in which the tax law of Mongolia is in force insofar as Mongolia exercises in such area, in conformity with international law, sovereign rights to exploit its natural resources;

c) The term "Ukraine" means the territory of Ukraine, including any area beyond the territorial sea within which, in accordance with international law and in application of its domestic legislation, Ukraine exercises jurisdiction or sovereign rights with respect to the seabed, its subsoil and super jacent waters and their natural resources;

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 a body corporate for tax purposes;

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 "national" means:

i/ any individual possessing the nationality of Contracting State;

ii/ any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

h) The term "*international traffic*" means any transport by a ship, an aircraft, road or railway vehicle operated by an enterprise of a Contracting State, except when the ship, the aircraft, road or railway vehicle is operated solely between places in the other Contracting State;

k) The term "*competent authority*" means:

i/ In the case of Mongolia the Minister of Finance or his authorized representative;

ii/ In the case of Ukraine the State Tax Administration of Ukraine or its' authorized representative.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting 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. 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 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 he has an habitual abode;

c) if he has an habitual abode in both States or neither of them, he shall be deemed to be a resident of the States 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 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

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) 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.
- g) a store or any premises used as a sales outlet

3. A building site, or construction or installation project constitutes a permanent establishment only if it lasts 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 or display 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 or display;

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 place of business solely for any "combination of activities mentioned in subparagraphs 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 independent status to whom the paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first - mentioned State in respect of any activities which that person undertakes for the enterprise, if such a person:

a) has and habitually exercises in that State an authority to conclude contracts in the name of 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; or

b) has no such authority, but habitually maintains in that <State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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

the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered to be an agent of an independent status within the meaning of this paragraph.

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, aircraft, road and railway vehicles shall not be regarded as immovable property.

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

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

Article 7.

BUSINESS PROFITS

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

a) that permanent establishment;

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

c) other business activities carried on in that other State of the same or similar kind as those affected 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 business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, 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, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

4. 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 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.

5. 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.

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 and sufficient reason to the contrary.

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

Article 8.

INTERNATIONAL TRANSPORT

1. Profits derived by a resident of a Contracting State from the operation of ships, aircraft, road and railway vehicle in international traffic shall be taxable only in that State.

2. For the purpose of this Article, profits derived from operation in international traffic of ships, aircraft, road and railway vehicle include:

a) profits derived from the rental on a bargboat basis of ships, aircraft, road and railway vehicle if operated in international traffic; and

b) profits derived from use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, where such rental profits or profits from such use, maintenance or rental, as the case may be, are incidental to the profits derived from the operation of ships, aircraft, road and railway vehicle in international traffic.

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

Article 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.

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 beneficial owner of dividends is a resident of the other Contracting State the tax so charged shall not exceed 10 percent of the gross amount of the dividends.

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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.

Article 11.
INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in:

a) Ukraine and paid in respect of bond, debenture or other similar obligations of the Government, a political subdivision or a local authority of Mongolia or to the Central Bank of Mongolia or to the Trade and Development Bank of Mongolia shall be exempt from the Ukrainian tax;

b) Mongolia and paid in respect of bond, debenture or other similar obligations of the Government, a political subdivision or a local authority of Ukraine or to the National Bank of Ukraine shall be exempt from the Mongolian tax.

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

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

6. Interest shall be deemed to arise in a Contracting State when the payer is 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.

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

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, 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 beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent on royalties of the gross amount of such 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 or artistic work (including cinematography) film and films or tapes for radio or television broadcasting), and the use of, or the right to use any copyright of scientific work, and patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

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 Contracting State independent personal services from a fixed base situated therein, and the right

or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties 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 royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, 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 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 Agreement.

Article 13. CAPITAL GAINS

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

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

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

4. Gains from the alienation of shares of the capital stock of a company the property of which consist directly or indirectly principally of immovable property situated in a Contracting State may be taxed 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 Contracting State except in the following circumstances, when such income may also be taxed in the other Contracting State:

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

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

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

Article 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 Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such a remuneration as is derived therefrom may be taxed in that other Contracting 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 State shall be taxable only in the first-mentioned State, if all the following conditions are met:

a) the recipient is employed in the other Contracting State or a period or periods not exceeding in the aggregate days in any 12 month period commencing or ending in the fiscal year concerned; and

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

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

3. Notwithstanding the preceding provisions of paragraphs of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft or road and railway vehicle operated in international traffic, shall be taxable only in that State.

Article 16. DIRECTORS' FEES

Directors' fees and other similar payments derived by a President of a Contracting State in his capacity as a member of the board of directors or any other similar organ 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 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities performed in a Contracting State by artistes or sportsmen if the visit to that State is supported by public funds of the other Contracting State or of political subdivisions or local authorities thereof, such income shall be taxable only in that other State of which the artiste or the sportsman is a resident.

Article 18. PENSIONS

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

2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by a Contracting State or political subdivision or a local authority thereof under a public scheme which is a part of the social security system of that Contracting State shall be taxable only in that Contracting 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 a political subdivision or local 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 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 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 political subdivision or local 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 State or a political subdivision or a local authority thereof.

Article 20.
TEACHERS AND RESEARCHERS

1. An individual who is, or immediately before visiting a Contracting State was, a resident of the other State and is present in the first-mentioned Contracting State, for the primary purpose of teaching, giving lectures or conducting research at a university, college, school or educational institution or scientific research institution accredited by the Government of the first-mentioned Contracting State shall be exempt from tax in the first-mentioned Contracting State, for a period of two years from the date of his first arrival in the first-mentioned Contracting State, in respect remuneration or such teaching, lectures or research.

2. The provision of this Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of a private person or persons.

Article 21.
STUDENTS AND TRAINEES

1. A student, business apprentice or trainee 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 State solely for the purpose of his education or training shall be exempt from tax in that first-mentioned State on the following payments or income received or derived by him for the purpose of his maintenance, education or training:

a) payments derived from sources outside that Contracting State; and

b) grants, scholarships or awards supplied by the both Government of either Contracting State or a scientific, educational, cultural or non-profit making organization.

c) income derived from personal services performed in that Contracting State.

2. In respect of remuneration from employment or professional services not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall in addition be entitled during such education or training to the same exemptions, relieves or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

Article 22.
OTHER INCOME

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

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

Article 23.
CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State situated in the other Contracting State, may be taxed in 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, aircraft, road and railway vehicles operated by an enterprise of a Contracting State in international traffic, and by movable property pertaining to the operation of such ships, aircraft, road and railway vehicles, shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 24.

METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income or owns capital, which may be taxed in other Contracting State, in accordance with the provisions of this Agreement, the first-mentioned Contracting State shall, according to its legislation, allow as a deduction from tax on the income of that resident an amount equal to the income tax paid in that other State and 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 is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.

2. Where in accordance with Articles 10,11 and 12 the income derived by a resident of a Contracting State is exempt tax from that State, such State may nevertheless, in calculating the amount of the tax on the remaining income of such resident, take into account the exempted income.

This exemption relating to Articles 10,11 and 12 will be valid within 5 years, but the both Contracting States may postpone the time limit by negotiation.

Article 25.

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also 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 Contracting State, carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relieves 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 conditions as if they have 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.

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.

Article 26.

MUTUAL AGREEMENT PROCEDURE

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

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, which is not in accordance with the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

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 for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

Article 27.
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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of evasion of such taxes. 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 Agreement. 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).

Article 28.
MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 29.
ENTRY INTO FORCE

1. This Agreement shall enter into force on the first day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

a) in respect of taxes withheld at source, to income paid or credited on or after first January in the calendar year next following that in which the Agreement enters into force;

b) in respect of other taxes on income and taxes on capital, to income or capital in any taxable year beginning on or after first January in the calendar year next following that in which the Agreement enters into force.

2. Since the entry into effect of this Agreement, the application of the Multilateral Convention for the avoidance of double taxation with respect to income and capital of individuals signed in Miskolc on 27 May 1977 and the Multilateral Convention for the avoidance of double taxation with respect to income and capital of legal persons signed in Ulaanbaatar on 19 May 1978 shall, in relations between Ukraine and Mongolia, cease to have effect.

Article 30.
TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of 5 years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect:

a) in respect of taxes withheld at source, to income paid or credited on or after first January in the calendar year next following that in which the notice is given;

b) in respect of other taxes on income and taxes on capital, to income or capital in any taxable year beginning on or after first January in the calendar year next following that in which the notice is given.

IN WITNESS whereof the undersigned, being duly authorized thereto, have signed this Agreement.

Done in duplicate at *Kyiv*, this *1st* day of *July* 2002 in the Ukrainian, Mongolian and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

**FOR THE CABINET OF
MINISTERS OF UKRAINE**



**FOR THE GOVERNMENT
OF MONGOLIA**

