

No. 53224*

**Canada
and
Kazakhstan**

Convention between the Government of Canada 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). Almaty, 25 September 1996

Entry into force: *30 March 1998 by the exchange of the instruments of ratification, in accordance with article 29*

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

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**Canada
et
Kazakhstan**

Convention entre le Gouvernement du Canada et le Gouvernement de la République du Kazakhstan en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Almaty, 25 septembre 1996

Entrée en vigueur : *30 mars 1998 par l'échange des instruments de ratification, conformément à l'article 29*

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

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[ENGLISH TEXT – TEXTE ANGLAIS]

**CONVENTION
BETWEEN
THE GOVERNMENT OF CANADA
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**

**THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE
REPUBLIC OF KAZAKHSTAN,**

CONFIRMING their desire to develop and strengthen the economic, scientific, technical and cultural cooperation between both States,

DESIRING to conclude a Convention 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 Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State, 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, 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 Kazakhstan:
 - (i) the tax on income of legal persons and individuals;
 - (ii) the tax on the property of legal persons and individuals;
(hereinafter referred to as "Kazakhstan tax");
 - b) in the case of Canada:

the taxes imposed by the Government of Canada under the Income Tax Act;

(hereinafter referred to as "Canadian 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.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term:
 - (i) "Kazakhstan" means the Republic of Kazakhstan. When used in a 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 and jurisdiction in accordance with international law and in which the laws relating to Kazakhstan tax are applicable;
 - (ii) "Canada" used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;
 - (b) the term "person" includes an individual, a company and any other body of persons and, in the case of Canada, the term also includes a trust;
 - (c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes, and in particular in the case of Kazakhstan includes a joint stock company, a limited liability company or any other legal entity or other organization which is liable to a tax on profits;
 - (d) the terms "a Contracting State" and "the other Contracting State" mean Kazakhstan or Canada, as the context requires;

- (e) the term "international traffic" with reference to a resident of a Contracting State means any voyage of a ship or aircraft to transport passengers or property (whether or not operated or used by that resident) except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State;
 - (f) the term "competent authority" means:
 - (i) in Kazakhstan: the Ministry of Finance or its authorized representative;
 - (ii) in Canada: the Minister of National Revenue or his authorized representative;
 - (g) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or any other association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Convention by a Contracting State at any time, 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 Convention applies.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means:
- (a) 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;
 - (b) the Government of that State or a political subdivision or local authority thereof or any legal entity owned by such Government, subdivision or authority. It shall include also any pension or other employee benefit plan, and any charitable organization, established under the law of that Contracting State.
- 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.
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 only 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 only 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 only 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 only 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 a company is a resident of both Contracting States, then its status shall be determined as follows:
- (a) it shall be deemed to be a resident only of the State of which it is a national;
 - (b) if it is a national of neither of the States, it shall be deemed to be a resident only of the State in which its place of effective management is situated.
4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement, but if the competent authorities are unable to reach such an agreement, the person shall be treated as a resident of neither Contracting State for the purposes of deriving benefits under this Convention.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State 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 relating to the exploration for or the exploitation of natural resources.
3. The term "permanent establishment" also includes:
- (a) 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 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, but only if such use lasts for more than 3 months, or such services continue for more than 12 months; and