


**AGREEMENT
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN
AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Government of the Republic of Azerbaijan and the Government of the State of Kuwait:

Desiring to promote their mutual economic relations through the conclusion between them of 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 administrative-territorial or 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 on 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, as well as taxes on capital appreciation.

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

a) in the Republic of Azerbaijan:

- (1) the tax on profit of legal persons;
- (2) the income tax on physical persons;
- (3) the tax on property and
- (4) the land tax
(hereinafter referred to as "Azerbaijan tax").

b) in the State of Kuwait:

- (1) the corporate income tax;
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~~(2)~~ the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS);

~~(3)~~ the Zakat;

(4) the tax subjected according to the supporting of national employees law; → N

(hereinafter referred to as "Kuwait tax").

4. The Agreement shall apply also to any identical or substantially similar taxes, which are imposed under the laws of a Contracting State 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 substantial 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 term "Azerbaijan" means the territory of the Republic of Azerbaijan, including the Caspian Sea (Lake) sector belonging to the Republic of Azerbaijan, the air space above the Republic of Azerbaijan, within which the sovereign rights and jurisdiction of the Republic of Azerbaijan is implemented in respect to subsoil, sea bed and natural resources and any other area which has been or may hereinafter be determined in accordance with international law and legislation of the Republic of Azerbaijan;

b) the term "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;

c) the terms "a Contracting State" and "the other Contracting State" mean Azerbaijan or Kuwait, 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 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 "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 "national" means:

- (1) any individual possessing the nationality of a Contracting State;
- (2) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

i) the term "competent authority" means:

in the Republic of Azerbaijan: the Ministry of Finance and the Ministry of Taxes;
in the State of Kuwait: the Minister of Finance or an authorized representative of the Minister of Finance;

j) the term "tax" means Azerbaijan tax, or Kuwaiti tax, as the context requires.

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 that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

a) in the case of Azerbaijan: any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of registration, place of incorporation, place of management or any other criterion of a similar nature;

b) in the case of Kuwait: an individual who has his domicile in Kuwait and is a Kuwaiti national, and a company, which is incorporated in Kuwait.

2. For purposes of paragraph 1, a resident of a Contracting State shall include all of the following:

- a) the Government of that Contracting State or of administrative-territorial or political subdivision or local authorities thereof;
- b) any governmental institution created in that Contracting State under public law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity;
- c) any entity established in that Contracting State all the capital of which has been provided by that Contracting State or any governmental institution as defined in subparagraph b), together with other states.

3. 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 (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 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 his status cannot be determined under the provisions of subparagraphs a)-c), the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. 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 only of the State in which it was registered or incorporated.

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;

f) a mine, an oil or gas well, a quarry, an installation, structure or vessel or any other place of exploration, development, extraction and exploitation of natural resources.

3. A building site or construction, assembly, erection or installation project, or supervisory or consultancy activities in connection therewith carried out in a Contracting State, constitutes a permanent establishment only if such site, project or activities continue for a period of more than six months.



4. The furnishing of services, including consultancy or managerial services, by an enterprise of a Contracting State through its employees or other personnel engaged by the enterprise for such purpose, in the other Contracting State constitutes a permanent establishment only if activities of that nature continue for the same or a connected project for a period or periods aggregating more than six months within any 12 month period.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if substantial technical, mechanical or scientific equipment or machinery is used for more than six months within any 12 month period or installed, in that other Contracting State by, for or under contracts with the enterprise.

6. 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), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph (9) 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- a) has and habitually exercises in the first-mentioned 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 (6) 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

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- b) has no such authority, but habitually maintains in the first - mentioned State a stock of goods or merchandise belonging to such enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise;
- c) he habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively for the enterprise itself or for such enterprise and other enterprise which are controlled by it or have a controlling interest in it;
- d) in so acting, he manufactures or processes in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.

8. Notwithstanding the preceding provisions of this Article, if an insurance company of a Contracting State is engaged in the collection of insurance premiums and provides insurance coverage for the risks in the other Contracting State, except for re-insurance by a person other than an agent of an independent status to whom paragraph (9) applies, it shall be deemed to have a permanent establishment in that other State.

9. 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. However, if the activities of such agent are devoted wholly or almost wholly on behalf of the enterprise and other enterprise, which are controlled by it or have a controlling interest in it, he shall not be considered to be an agent of an independent status for the purposes of this paragraph, unless it is shown that the transactions between the agent and the enterprise were made under the agreed conditions which would be made between independent parties.

10. 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; ship and aircraft shall not be regarded as immovable property.



3. The provisions of paragraph 1 shall also 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 has carried out 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.

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 those deductible expenses, which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in a Contracting State, in which the permanent establishment is situated or elsewhere, within the framework determined by the domestic law or regulations of that State. Hence, 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 money lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (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 money lent to the head office or any of its other offices.

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. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of a person, nothing in this Article shall affect the application of any law or regulations of that Contracting State relating to the determination of the tax liability of that permanent establishment by making of an estimate by the competent authority of that Contracting State of the profits to be subject to tax of that permanent establishment by the competent authority of that Contracting State, provided that such law or regulations shall be applied, taking into account the information available to the competent authority, consistently with the principles of this Article.

7. 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.

8. Where 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 SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include:

a) profits from the bareboat rental, of ships or aircraft in international traffic;

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

3. The provisions of paragraphs 1 and 2 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

Article 9 ASSOCIATED ENTERPRISES

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other 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 Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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 the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) Five (5) percent of the gross amount of dividends if the beneficial owner is:

(i) an entity mentioned in subparagraphs a) and b) of paragraph 2 of Article 4;

(ii) a company which controls directly or indirectly at least 15 per cent of the capital of the company paying the dividends and its participation in that company exceeds 200.000 U.S. Dollars, or its equivalent in any other currency;

b) Ten (10) per cent of the gross amount of the dividends in all other cases.

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, mining shares, 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 taxation 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 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.

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 Contracting State, the tax so charged shall not exceed seven (7) per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax if derived by those bodies as defined in paragraph 2 of Article 4.

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, as well as income which is subjected to the same taxation treatment as income from money lent by the taxation laws of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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 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 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 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 of the interest 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 ten (10) per cent of the gross amount of royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the alienation of or the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, works on films, tapes or other means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, computer software design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience (know-how).

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 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 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 fixed base, may be taxed in that other State.

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

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 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 his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or



b) if his stay in the other Contracting State is for a period or periods exceeding in the aggregate 183 days in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other 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 and 19, 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 of this Article, 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 in any twelve 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 this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

4. Ground staff appointed from head office of national air carrier of a Contracting State to the other Contracting State shall be exempt from taxes levied on their remunerations in that other Contracting State.

Article 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, the supervisory board or other similar organ of a company which is a resident of the other Contracting State shall be taxable only in that other State.



Article 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, variety, radio or television artist, 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 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. The provisions of paragraphs 1 and 2 shall not apply to income derived by entertainers or sportsmen who are residents of a Contracting State from personal activities as such exercised in the other Contracting State if their visit to that other Contracting State is substantially supported from the public funds of the first-mentioned Contracting State, including those of any administrative-territorial or political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, founders or members.

Article 18
PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration and annuities paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. As used in this Article:
 - a) the terms "pensions and other similar remuneration" mean periodic payments made after retirement in consideration of past employment or by way of compensations for injuries received in connection with past employment.
 - b) the term "annuity" means a stated sum payable to an individual periodically at stated times during 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.

Article 19
GOVERNMENT SERVICE

1.
 - a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or an administrative-territorial or a political 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 salaries, wages and other similar 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:

(1) is a national of that State; or

(2) 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 an administrative-territorial or a political 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 other State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or an administrative-territorial or a political subdivision or a local authority thereof.

Article 20 TEACHERS AND RESEARCHERS

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that Contracting State on his remuneration for such activity.

Article 21 STUDENTS

1. Payments which a student or business 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 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.

2. Notwithstanding the provisions of paragraph 1, remuneration which a student or business 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 Contracting State solely for the purpose of his education or training derives from temporary services rendered in the first-



mentioned Contracting State shall not be taxed in that Contracting State, provided that such services are in connection with his education or training and that the remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

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 income 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 and situated in the other Contracting State, may be taxed in that 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 and aircraft operated in international traffic by an enterprise of a Contracting State or by movable property pertaining to the operation of such ships or aircraft, 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
ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either Contracting State shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Agreement.



2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article:

a) In the case of Azerbaijan:

Where a resident of Azerbaijan derives income or owns capital, which, in accordance with the provisions of this Agreement, may be taxed in both Azerbaijan and Kuwait, tax amount paid in Kuwait shall be deducted from tax amount computed from this person in Azerbaijan in respect of said income and property. Such deduction shall not, however, exceed the tax amount computed for such income or capital according to the legislation and taxation rules of Azerbaijan.

b) In the case of Kuwait:

Where a resident of Kuwait derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in both Azerbaijan and Kuwait, Kuwait shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Azerbaijan and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Azerbaijan;

Such deduction in either case shall not, however, exceed that part of the tax on income or on capital, 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 Azerbaijan.

3. For the purposes of item (a) of subparagraph (1) the Zakat mentioned in subparagraph b) of paragraph 3 of Article 2 shall be considered an income tax.

4. For the purposes of allowance as a credit in a Contracting State, the tax paid in the other Contracting State shall include the tax which is otherwise payable in that other Contracting State, but has been waived or reduced in accordance with the special investment incentive law or measures designed to promote economic development in that other Contracting State.

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 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 favorably levied in that other State than the taxation levied on enterprises of that other 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 paragraph 1 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 had 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. Nothing in this Article shall be interpreted as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any third state or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which such the first-mentioned Contracting State may be a party.

5. 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.

6. 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 endeavor, 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 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 endeavor 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.

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 concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their administrative-territorial, political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in the first sentence. 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 MISCELLANEOUS RULES

1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded either:

- a) by the laws of a Contracting State in the determination of the tax imposed by that Contracting State;



b) by any other special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Agreement.

Article 29

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 30

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other the completion of its internal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and its provisions shall thereupon have effect in both Contracting States:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the year in which this Agreement has entered into force;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the year next following the year in which this Agreement has entered into force.

Article 31

DURATION AND TERMINATION

This Agreement shall remain in force for a period of five years and shall continue in force thereafter for a similar period(s) unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such case the Agreement shall cease to have effect:

a) in respect of taxes withheld at source - for amounts paid on or after the first day of January of the year next following the year in which the notice of termination of Agreement is given;

b) in respect of other taxes - for amounts of taxes charged during period beginning on the first day of January of the year next following the year in which the notice of termination of Agreement is given.



IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Agreement

Done at Kuwait city this "16" day of Safar 1430 H corresponding to the "10" day of February 2009, in two originals, in the Azerbaijani, Arabic and English languages, all texts being equally authentic. In the case of divergence, the English text prevails.

**For
the Government of the
Republic of Azerbaijan**

**For
the Government of
the State of Kuwait**



PROTOCOL
TO
AGREEMENT

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN AND THE
GOVERNMENT OF THE STATE OF KUWAIT

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND ON CAPITAL

At the moment of signing the Agreement between the Government of the Republic of Azerbaijan and the Government of the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

I. ad Article 5 paragraph 5

A person, who is authorized to negotiate all elements and details of a contract in a way binding on the enterprise, can be said to exercise this authority in the Contracting State, even if the contract is signed by another person in the other Contracting State in which the enterprise is situated.

II. ad Article 12 paragraph 3

However, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall be deemed to be profits of an enterprise to which the provisions of this Article shall apply.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

Done at Kuwait city this "15" day of Safar 1430 H corresponding to the "10" day of February 2009, in two originals, in the Azerbaijani, Arabic and English languages, all texts being equally authentic. In the case of divergence, the English text prevails.

For
the Government of the
Republic of Azerbaijan

For
the Government of
the State of Kuwait