**PROTOCOL**

**AMENDING THE AGREEMENT BETWEEN**

**THE GOVERNMNET OF THE REPUBLIC OF KAZAKHSTAN**

**AND**

**THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN**

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL DATED 16 JANUARY 1996 (DEY 26, 1374 SOLAR HIJRA)**

The Government of the Republic of Kazakhstan

and

the Government of the Islamic Republic of Iran,

Desiring to conclude a Protocol amending the Agreement between the Government of the Republic of Kazakhstan and the Government of the Islamic Republic of Iran for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital dated 16 January 1996 (*Dey* 26, 1374 Solar Hijra) (hereinafter referred to as “the Agreement”)*,*

Have agreed as follows:

**ARTICLE 1**

The title of the Agreement shall be read as follows:

**“Agreement**

**between**

**the Government of the Republic of Kazakhstan**

**and**

**the Government of the Islamic Republic of Iran**

**for the Elimination of Double Taxation with respect to Taxes on Income and Capital and the Prevention of Tax Avoidance and Evasion”**.

**ARTICLE** **2**

The preamble of the Agreement shall be read as follows:

“The Government of the Republic of Kazakhstan

and

the Government of the Islamic Republic of Iran,

Desiring to further develop their economic relationship and to enhance their co‌operation in tax matters,

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income and capital without creating opportunities for non-taxation or reduced taxation through tax avoidance or evasion (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:”.

**ARTICLE 3**

Paragraph 4 of Article 2 (Taxes Covered) of the Agreement shall be read as follows:

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

**ARTICLE 4**

The definition of the term “competent authority” in sub-paragraph (h) under paragraph 1 of Article 3 (General Definitions) in the case of the Islamic Republic of Iran shall be read as follows:

“in case of the Islamic Republic of Iran, the Ministry of Economic Affairs and Finance or its authorized representative;”.

**ARTICLE 5**

Paragraph 3 of Article 4 (Resident) of the Agreement shall be read as follows:

“3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”.

**ARTICLE 6**

Article 5 of the Agreement (Permanent establishment) shall be read as follows:

“**ARTICLE 5**

**PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which an enterprise of a Contracting State wholly or partly carries on the business in the other Contracting State.

2. The term “permanent establishment” includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a warehouse and exhibition performing sales of goods or merchandise;

e) a factory;

f) a workshop; and

g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” also includes:

a) a building site; or construction site, assembly or installation 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;

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

c) the furnishing of services, including consultancy services, by a resident through employees or other personnel engaged by the resident for such purpose, but only where the activities of that nature continue (for the same or connected project) within the country for more than 12 months.

4. For the sole purpose of determining whether the twelve-month period referred to in sub-paragraphs (a), (b) and (c) of paragraph 3 of this Article has been exceeded,

a) where an enterprise of a Contracting State carries on activities in the other Contracting State and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding twelve months, and

b) connected activities are carried on at the same place during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that place.

5. Notwithstanding the preceding provisions of this Article, the following activities of an enterprise of a Contracting State in the other Contracting State shall be deemed not to be treated as carrying on through the permanent establishment:

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 purpose of advertising, for the supply of information, for scientific research, 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.

6. Paragraph 5 of this Article shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

7. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 8, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

a) in the name of the enterprise, or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 6 of this Article would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

8. Paragraph 7 of this Article shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

9. 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.

10. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.”.

**ARTICLE 7**

Subparagraph (a) of paragraph 2 of Article 10 (Dividends) of the Agreement shall be read as follows:

“a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 20 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);”.

**ARTICLE 8**

Paragraphs 1 and 2 of Article 25 (Mutual Agreement Procedure) of the Agreement shall be read as follows:

“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 either Contracting State. 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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.”.

**ARTICLE 9**

Article 26 of the Agreement (Exchange of Information) shall be read as follows:

*“***ARTICLE 26**

**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their 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.

2. Any information received under paragraph 1 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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).

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

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

**ARTICLE 10**

Article 29 (Entry into force) and Article 30 (Termination) of the Agreement shall be renumbered as Article 30 (Entry into Force) and Article 31 (Termination) respectively.

**ARTICLE 11**

The following new Article 29 (Entitlement to Benefits) shall be added to the Agreement:

**“ARTICLE 29**

**ENTITLEMENT TO BENEFITS**

1. a) Where

(i) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, and

(ii) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits under this Agreement shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Agreement.

b) The provisions of subparagraph (a) shall not apply if the income derived from the other Contracting State described in that subparagraph emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise’s own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

c) If the benefits under the Agreement are denied pursuant to the provisions of subparagraph (a) with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of subparagraphs (a) and (b) (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

2. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”.

**ARTICLE 12**

**ENTRY INTO FORCE**

1. Each of the Contracting States shall notify the other Contracting State in writing, through diplomatic channels, of the completion of the internalprocedures required for the entry into force of this Protocol.

2. This Protocol shall enter into force on the date of the receipt of the latter of these notifications and shall have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the 1st day of January (corresponding to the 10th day of month of Dey, Solar Hijra in the Iranian calendar) of the year next following the date on which the Protocol enters into force;

b) in respect of other taxes, for taxation years beginning on or after the 1st day of January (corresponding to the 10th day of month of Dey, Solar Hijra in the Iranian calendar) of the year next following the date on which the Protocol enters into force.

3. This Protocol shall form an integral part of the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate in Tehran, on ……. February 2025, corresponding to ..…… day of month of Bahman, 1403 Solar Hijra in the Iranian calendar, in Kazakh, Persian, Russian, and English languages, all thetexts being equally authentic. In case of divergence of interpretation between the texts, the English text shall prevail.

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| **For the Government of the**  **Republic of Kazakhstan** | **For the Government of the**  **Islamic Republic of Iran** |