

INTERNATIONAL MONETARY FUND



# **Staff Country Reports**

## **Mongolia: Technical Assistance Report—Safeguarding Domestic Revenue—A Mongolian DTA Model**

This technical assistance report on Mongolia was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in June, 2012. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Mongolia or the Executive Board of the IMF.

The policy of publication of staff reports and other documents by the IMF allows for the deletion of market-sensitive information.

Copies of this report are available to the public from

International Monetary Fund • Publication Services  
700 19<sup>th</sup> Street, N.W. • Washington, D.C. 20431  
Telephone: (202) 623-7430 • Telefax: (202) 623-7201  
E-mail: [publications@imf.org](mailto:publications@imf.org) Internet: <http://www.imf.org>

**International Monetary Fund  
Washington, D.C.**

# **INTERNATIONAL MONETARY FUND**

Legal Department



## **MONGOLIA**

### **SAFEGUARDING DOMESTIC REVENUE – A MONGOLIAN DTA MODEL**

an Aide-Mémoire prepared by

**Geerten M.M. Michielse**

**June 2012**

The contents of this report constitute technical advice provided by the staff of the International Monetary Fund (IMF) to the authorities of Mongolia (the “TA recipient”) in response to their request for technical assistance. This report (in whole or in part) or summaries thereof may be disclosed by the IMF to IMF Executive Directors and members of their staff, as well as to other agencies or instrumentalities of the TA recipient, and upon their request, to World Bank staff and other technical assistance providers and donors with legitimate interest, unless the TA recipient specifically objects to such disclosure (see Operational Guidelines for the Dissemination of Technical Assistance Information—

<http://www.imf.org/external/np/pp/eng/2009/040609.pdf>).

Disclosure of this report (in whole or in part) or summaries thereof to parties outside the IMF other than agencies or instrumentalities of the TA recipient, World Bank staff, other technical assistance providers and donors with legitimate interest shall require the explicit consent of the TA recipient and the IMF’s Legal Department.

Contents	Page
I. Introduction .....	<a href="#">4</a>
A. Background .....	<a href="#">4</a>
B. Treaty (Re-)Negotiations.....	<a href="#">4</a>
II. Assessment of the Current Tax Treaty Network.....	<a href="#">6</a>
A. Business Income .....	<a href="#">6</a>
B. Service Income .....	<a href="#">9</a>
C. Investment Income .....	<a href="#">10</a>
D. Capital Gain on the Indirect Sale of a Mining License.....	<a href="#">14</a>
E. Elimination of Double Taxation.....	<a href="#">17</a>
F. Treaty Shopping.....	<a href="#">19</a>
G. Other.....	<a href="#">20</a>
III. Mongolian Double Tax Agreement Model.....	<a href="#">24</a>

## I. INTRODUCTION

### A. Background

1. **Mongolian authorities are increasingly faced with cases of international tax planning.** As the activities in the mineral extraction sectors are increasing, foreign investors are carefully planning the structure of their Mongolian investments to minimize the overall tax burden. The main investors are multinational companies residents of Canada, China, and Russia. It is common practice amongst multinational companies to utilize DTA-networks around the world by setting up intermediate companies to reduce their overall tax burden.
2. **Over the last two decades Mongolia negotiated and enacted over 30 DTAs.** An overview is provided in appendix 1. These DTAs are—to a large extent—following the UN Model Double Taxation Convention (“UN Model”). The UN Model contains provisions dividing taxation rights between source and residence countries. The UN Model gives more taxing rights to the source country than the OECD Model Convention. In most international relations, Mongolia is currently the source country. However, in a few years this might change as the exploration of minerals takes off and Mongolia will set up Sovereign Wealth Funds (SFW) using the resources to create sustainable wealth for its citizens.
3. **The current Mongolian DTA network, however, is prone to international tax planning as some DTAs contain favorable provisions allowing residents of other countries to substantially reduce source taxation in Mongolia.** For instance, in some cases the Mongolian withholding tax on dividends, interest, royalty, service fees, or lease payments is limited or even prohibited. In other cases, capital gains on indirect transfers of mining licenses cannot be taxed in Mongolia. Under most DTAs employment income received by teachers is exempt for at least a period of two years.
4. **The authorities requested an assessment of their DTA network, identify its weaknesses, and make suggestions for improving their DTAs in future.** This report will provide an overview of the main provisions of their current DTA network, analyze and make suggestions for safeguarding the Mongolian tax base.

### B. Treaty (Re-) Negotiations

5. **The Mongolian authorities are currently considering cancelling all DTAs and start building up a new DTA network with countries based on trade volumes and reciprocity in economic relations.** All Mongolian DTAs are in force for at least five years, which makes them eligible to cancellation. However, terminating DTAs effectively by 1 January of the next calendar year requires a notice through diplomatic channels at the latest on 30 June in the year before. The DTAs with Kuwait and the United Arab Emirates,

however, have a slightly different wording, which suggests that these DTAs are extended for periods of 5 years and can only be terminated after such period elapses.

**6. Terminating DTAs should be used as ultimate remedy to force the other Contracting State into renegotiations if (parts of) the DTA provisions are potentially harmful for Mongolia.** In the current situation, only a few DTAs can be considered potentially harmful as they insufficiently protect the Mongolian tax base. Some DTAs are in need of amendment due to changes in the domestic legislation (i.e. the introduction of taxation on indirect transfers of exploration and mining licenses). Such amendments may also be realized by negotiating additional protocols. Most DTAs—although slightly out of line with the proposed Mongolian DTA Model (see chapter III)—do not require immediate attention. See appendix 1 for the current Mongolian DTA network.

**7. Negotiating or renegotiating DTAs does not only require the development of an international tax treaty policy (i.e. in the form of a DTA model), but also requires in-depth information on the domestic tax system of the other Contracting State.** It is typically the combination of a favorable DTA provision and a particular domestic tax treatment in the other State that results in international tax planning. Information about other tax systems is often difficult to obtain and to understand—especially in the context of its international tax relations—and is highly technical and complex. Technical assistance by experienced international tax lawyers and treaty negotiators is strongly recommended to obtain this knowledge.

### ***Recommendations***

- Mongolia should take a more differentiated approach towards repairing its DTA network by selectively (re-)negotiating and/or amending its current DTAs;
- Mongolia should hire an experienced international tax lawyer and treaty negotiator to assist them in obtaining information about the domestic tax legislation of the other Contracting State and help them in the actual negotiation process.

## II. ASSESSMENT OF THE CURRENT TAX TREATY NETWORK

### 8. **The current Mongolian tax treaty network is largely based on the UN Model.**

The DTAs contain various provisions that are considered harmful to the further development of Mongolia, especially as a resource-rich nation. In this chapter, an overview is provided of the most critical provisions in those tax treaties currently in force, an analysis is made of their strengths and weaknesses, and suggestions are given to improve them.

### A. Business Income

#### *Domestic tax treatment*

### 9. **Non-resident taxpayers who carry on a business in Mongolia are subject to the Corporate Income Tax (CIT) to the extent that profit can be attributed to a permanent establishment (“pe”).** Article 5 CIT contains five types of permanent establishment:

- (1) a *regular pe*, which requires a fixed place of business through which the business of an enterprise is wholly or partly carried on;
- (2) a *construction-pe*, which is deemed to exist if a building site, construction, assembly or installation project, or supervisory activities last more than six months within any twelve-month period;
- (3) a *service-pe*, which exists if certain service activities are furnished for a period or periods aggregating more than three months within any twelve-month period (see below);
- (4) an *agency-pe*, which exists where a person—other than an agent of an independent status—is acting in Mongolia on behalf of a foreign economic entity, or holds a stock of goods and merchandise from which he regularly delivers goods or merchandise on behalf of the foreign economic entity; and
- (5) an *insurance pe*, if a foreign insurance enterprise, except in regard to re-insurance, collects premiums in Mongolia or insures risks situated in Mongolia through a person other than an agent of an independent status.

### 10. **Profit attributable to a permanent establishment in Mongolia is determined and taxed in a similar manner as profit of a resident economic entity.** The domestic profit determination rules apply for both resident and nonresident business. In addition, the CIT contains a provision that allows the tax authorities to challenge transactions between related parties—including headquarter and permanent establishment—and correct (increase or reduce) taxable profit.

#### *DTA treatment*

### 11. **All DTAs contain a definition of a regular permanent establishment that is identical to the definition in the Mongolian CIT.** This means that if a regular pe is established under domestic law, Mongolian DTAs safeguard the domestic taxation of profit attributable to that pe.



12. **All DTAs contain a provision that deems a construction-pe after a certain period of time has elapsed.** The period that is required to establish a construction-pe varies from 3 months to 24 months (see table 1). This time test applies to each individual site or project. A site exists from the date on which the contractor begins his work, including any preparatory work, in the country where the construction is to be established, and continues to exist until the work is completed or permanently abandoned. A site should not be regarded as ceasing to exist when work is temporarily discontinued. Seasonal or other temporary interruptions should be included in determining the life of a site. Seasonal interruptions include interruptions due to bad weather.

**Table 1. Time period required for construction-pe**

<i>Time period (in months)</i>	<i>DTAs</i>
3	Kuwait
6	Belgium, Canada, Germany, Indonesia, Italy, Luxemburg, Malaysia, Singapore, Switzerland, and Vietnam
9	India
12	Austria, Belarus, Bulgaria, Czech Republic, France, Hungary, Kazakhstan, PR of Korea, Korea, Kyrgyzstan, the Netherlands, Poland, Ukraine, and United Kingdom
18	China and United Arab Emirates
24	Russia and Turkey

© IBFD Tax Treaty Database 2012

13. **All DTAs include a provision that establishes an agency-pe, and that exclude an independent agent from its definition.** Only the DTAs with the Czech Republic, Indonesia, Luxemburg, Malaysia, and Ukraine include the possibility of constructing an agency-pe in case a person holds a stock of goods and merchandise belonging to a foreign enterprise from which he regularly delivers goods and merchandise on behalf of that enterprise.

14. **Only a few DTAs include the explicit establishment of an insurance-pe.<sup>1</sup>** Under most DTAs Mongolia would lose its domestic taxing right on the collection of insurance premiums by foreign insurance companies, unless these insurance companies—as is often the case—are using dependent collection agents (establishing an agency-pe).

### *Assessment*

15. **There is no discrepancy between the domestic and DTA-definition of a regular permanent establishment.** Mongolia applies the same minimum presence rule (i.e.

<sup>1</sup> DTAs with Bulgaria, Czech Republic, Indonesia, Kazakhstan, and PR of Korea.

permanent establishment) as is allowed under its DTAs and can effectively tax non-resident companies and entrepreneurs according to the rules laid down in the CIT and PIT.

16. **Based on the Mongolian CIT, a permanent establishment exists if a non-resident is engaged in construction activities that lasts more than 6 months.** Most DTAs have more favorable conditions as they contain a longer time period before a permanent establishment can be recognized by Mongolia. The DTAs with China, Russia, Turkey, and the United Arab Emirates are unusual generous compared with international standards (i.e. substantially longer than 12 months).

17. **The DTA with Kuwait creates a possible loophole as it sets the period for a construction-pe at 3 months.** A constructor who works in Mongolia for more than 3, but less than 6 months, is deemed to have a permanent establishment in Mongolia. Kuwait refrains from taxing the profits related to these construction activities as it has given the taxing right to Mongolia (i.e. after 3 months). Mongolia, however, cannot tax this constructor based on the CIT (requires 6 months construction activities).

18. **With respect to the agency-pe there is a difference between domestic law and most DTAs.** A person who habitually maintains a stock of goods or merchandise from which he regularly delivers goods and merchandise on behalf of a foreign enterprise is not considered as a permanent establishment under most DTAs. Mongolia will not be able to tax the profit that can be allocated to these persons under its CIT.

19. **Although all DTAs include a transfer pricing provision allowing Mongolia to challenge profit realization on transactions between associated persons, a number of DTAs do not contain an obligation to apply a corresponding adjustment.** In the DTAs with Belgium, Canada, Czech Republic, Germany, India, Luxemburg, Malaysia, Poland, Singapore, Ukraine, and Vietnam such obligation is not incorporated and as a result international double taxation may arise.

### ***Recommendations***

- Make sure that the definitions of a an agency-pe are consistent under the DTAs and include the person holding stock of goods or merchandise from which he regularly delivers goods and merchandise on behalf of a foreign enterprise;
- The time period for deeming a construction-pe should not be less than the time period used in the CIT (i.e. 6 months), and try to limit this time period to 12 months (i.e. the internationally acceptable time period).

## B. Service Income

### *Domestic tax treatment*

20. **Service income is taxed as business profit if the service provider maintains a permanent establishment through which the services are performed in Mongolia.**

Domestic legislation deems that a permanent establishment exists if the services are furnished for a period or periods aggregating more than three months within any twelve-month period. Service income is determined taking into account the related business expenses and is taxed at the CIT-rate of 25 per cent (rate of 10 per cent for business profits up to 3 billion Tugriks is available).

21. **If the service provider does not maintain a permanent establishment in Mongolia, but performs a service in Mongolia, payments are subject to a 20 per cent withholding tax.** In case a management, technical, or consultancy service is provided, the place of performance is irrelevant and Mongolia levies a 20 per cent withholding tax on all those payments.

### *DTA treatment*

22. **A number of DTAs deems the existence of a permanent establishment if services are furnished during a certain period of time (“service-pe”).**<sup>2</sup> In most of these DTAs an aggregate of 6 to 12 months within any twelve-months period is required before furnishing services become a permanent establishment. The DTAs with China and the United Arab Emirates are very generous as they recognize a “service-pe” only after a period of 18 months. In the DTAs with Indonesia and Kuwait the domestic rule of 3 months is confirmed. In DTAs that do not contain a “service-pe”, the domestic rule cannot be applied unless a regular pe can be construed.

23. **In some DTAs Mongolia has safeguarded its right to levy a limited tax (whether by withholding or not) on “technical fees”.** In the DTAs with Canada, Malaysia, and Vietnam a special provision is incorporated allowing the source country a tax of maximum [5, 10, and 10 per cent respectively. In the DTAs with India, Italy, Luxemburg, PR of Korea, and the Netherlands a separate provision regarding technical fees is included in the royalty article allowing the source country to levy a tax of maximum 15, 5, 10, and 5 per cent respectively. In the DTA with Belarus the “other income”-provision contains a maximum tax of 10 per cent on technical fees by the source country.

---

<sup>2</sup> A “service-pe” is included in the DTAs with Belarus, Canada, China, Czech Republic, Indonesia, Kazakhstan, PR of Korea, Kuwait, Kyrgyzstan, Singapore, United Arab Emirates, and Vietnam.

### Box 1. Definition “Technical Fees”

The term “technical fees” means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any service of a technical, managerial or consultancy nature.

#### *Assessment*

24. **Only half of DTAs protects the domestic taxation of technical fees in one way or another (i.e. through establishing a service-pe or by allowing the source country a withholding tax).** In international practice technical fees are often used to erode the tax base and avoid paying tax in the source country. Establishing domestic legislation to tax those payments is an effective anti-abuse measure. This measure requires full protection under DTAs.

#### *Recommendations*

- All DTAs should include provisions allowing Mongolia to levy a tax (CIT or 20 per cent withholding) on service fees of a technical, managerial, or consultancy nature;
- A provision to establish a service-pe after an aggregate time period of furnishing services in any twelve-months period should be included in DTAs. The domestically used 3-months time period should not be extended to more than 6 months (to comply with international practice);
- A separate article safeguarding the withholding tax on technical fees should be included in DTAs.

## C. Investment Income

#### *Domestic tax treatment*

25. **Dividends, interest, and royalty paid to nonresident taxpayers are subject to a withholding tax of 20 per cent.** If those payments are made to resident taxpayers—whether individuals or legal entities—a final withholding tax of 10 per cent is due.

#### *DTA treatment of dividends*

26. **Most DTAs reduce the withholding tax rate on dividends to 10 or 15 per cent.** In a number of DTAs the rate is reduced to 5 per cent (China, the Republic of Korea, and Kuwait). The DTA with the United Arab Emirates does not allow the source state to levy a withholding tax.

27. **Some DTAs further reduce the withholding tax rate on dividends paid to qualifying companies to 5 per cent.**<sup>3</sup> In a few DTAs this rate is set at zero per cent (the Netherlands, Luxemburg, and Kuwait). In the DTAs with Kuwait and Singapore the zero-rate applies to State-owned enterprises.

28. **Whether a company is treated as a qualifying company depends on the size and/or quality of the shareholding.** Most DTAs refer to a direct and/or indirect minimum shareholding in the capital of a company, whereas a few refer to a share in the voting power (Canada and the United Kingdom). Typically a minimum shareholding of 10 per cent is required. In the DTAs with Hungary, Luxemburg, Singapore, and Switzerland a minimum shareholding of 25 per cent is required. In the DTAs with Italy and Luxemburg an additional requirement is that the shares must be held for a minimum period of 12 months before the dividend distribution.

### ***DTA treatment of interest***

29. **Most DTAs reduce the domestic withholding tax rate on interest to 10 per cent.** The DTAs with Kuwait (5 per cent) and the United Arab Emirates (zero per cent) carry lower rates, whereas the DTA with India allows a 15 per cent withholding rate on interest payments. Interest on government bonds and government guaranteed loans for import/export are typically exempt from being subject to the withholding tax. In some DTAs interest on bank loans is also subject to a further reduced rate: in the DTAs with Belgium, France, Luxemburg, the Netherlands, and Switzerland a zero rate applies, whereas in the DTAs with Singapore a 5 per cent and the United Kingdom a 7 per cent rate is allowed.

### ***DTA treatment of royalty***

30. **Most DTAs reduce the domestic withholding tax rate on royalty to 5 or 10 per cent.** The DTA with India allows a withholding tax of 15 per cent, whereas the DTA with Russia allows both Contracting States to levy their domestic withholding tax.

31. **In some DTAs the use or right to use industrial, commercial, or scientific equipment is not covered by the definition of “royalty”.**<sup>4</sup> This reflects an amendment made by the OECD in 1992 to make clear that such payments are in fact lease payments that should be covered by the rules for the taxation of business profits, as defined by Article 5

---

<sup>3</sup> This is the case in the DTAs with Austria, Belgium, Canada, France, Germany, Hungary, Italy, Singapore, Switzerland, and the United Kingdom.

<sup>4</sup> The DTAs with Austria, Belgium, France, Luxemburg, the Netherlands, Switzerland, Ukraine, and the United Kingdom follow in this respect the OECD definition.

(permanent establishment) and Article 7 (business profit). In the DTAs with Germany, Kazakhstan, and the Netherlands also payments for the use, or right to use films or tapes for radio or television broadcasting are considered business profits.

**Table 2. Overview of maximum source country taxation**

<i>DTA</i>	<i>Dividend</i>		<i>Interest</i>	<i>Royalty</i>	<i>Technical fees</i>
	<i>Non-qualifying</i>	<i>Qualifying</i>			
<i>Austria</i>	10	5	10	5/10	
<i>Belarus</i>	10	10	10	10	10
<i>Belgium</i>	15	5	10	5	
<i>Bulgaria</i>	10	10	10	10	
<i>Canada</i>	15	5	10	5/10	5
<i>China</i>	5	5	10	10	
<i>Czech Rep.</i>	10	10	10	10	
<i>France</i>	15	5	10	5	
<i>Germany</i>	10	5	10	10	
<i>Hungary</i>	15	5	10	5	
<i>India</i>	15	15	15	15	15
<i>Indonesia</i>	10	10	10	10	
<i>Italy</i>	15	5	10	5	5
<i>Kazakhstan</i>	10	10	10	10	
<i>Korea</i>	5	5	5	10	
<i>PR Korea</i>	10	10	10	10	5
<i>Kuwait</i>	0/5	5	5	10	
<i>Kyrgyzstan</i>	10	10	10	10	
<i>Luxemburg</i>	15	0/5	10	5	10
<i>Malaysia</i>	10	10	10	10	10
<i>Netherlands</i>	15	0	10	5	5
<i>Poland</i>	10	10	10	5	
<i>Russia</i>	10	10	10	domestic	
<i>Singapore</i>	10	5	5/10	5	
<i>Switzerland</i>	10	5	10	5	
<i>Turkey</i>	10	10	10	10	
<i>Ukraine</i>	10	10	10	10	
<i>UAE</i>	0	0	0	10	
<i>United Kingdom</i>	15	5	7/10	5	
<i>Vietnam</i>	10	10	10	10	10

© Composed by GMM based on actual DTAs

	Problematic DTAs (protection of Mongolian tax base requires immediate action)
	Favorable DTA rates

## *Assessment*

32. **Some DTAs make a distinction between dividends paid to (a) qualifying companies and paid to (b) other companies and individuals.** This is the result of country's practices exempting foreign sourced dividends received by qualifying companies.<sup>5</sup> If those dividends are subject to a withholding tax in the source country, no foreign tax credit is available in the residence country (exempt income), and therefore it constitutes a final tax burden. Countries applying this treatment usually insist on a lower (or even no) withholding tax on such dividends. Mongolia does not exempt foreign sourced dividends from being taxed. In all cases in which dividends are subject to tax, a tax credit will be available and the withholding tax of the source country can be used to offset the tax liability in the residence country. As a consequence, most countries are willing to accept a higher withholding tax rate in such situations.

33. **Mongolia has entered into DTAs that do not allow levying its domestic withholding tax on dividends, which—in combination with the domestic tax treatment of such dividends received in the other Contracting State—has caused international tax planning.** This is especially the case in relation with the Netherlands (participation exemption, loose substance rules, and no withholding taxes) and Luxemburg (participation exemption and no withholding taxes). Also the DTA with the United Arab Emirates is in this respect of concern, as the UAE does not levy income taxes (except for oil and gas production). Although the treaty provision only allows a reduction of the source state taxation if the recipient of the payment is the “beneficial owner”, it is in practice hard to enforce this rule.

34. **A withholding tax on interest payment typically raises the cost of borrowing for Mongolian companies, as the interest rate on cross-border loans are often specified as “net of all taxes”.** Therefore, most DTAs exempt interest payments on government bonds and bank loans from withholding tax in the source country. Interest payments on intercompany loans are usually subject to a reduced withholding tax rate as they are prone to abuse. Companies may shift profits to low tax jurisdictions by issuing loans between companies belonging to the same group. The withholding tax safeguards Mongolia as a source country somewhat from this type of base erosion. Introduction of a thin capitalization provision in the Corporate Income Tax Law will further reduce base erosion. Interest payments on bank (or third party) loans should not be exempt. The capacity of the Mongolian tax administration to identify back-to-back loans and guarantee situations is currently low. Mongolia may consider adopting a lower withholding tax on such loans or limit the

---

<sup>5</sup> Qualifying companies are companies that typically own at least 10 per cent of the shares and/or voting rights in the distributing company. The exemption is introduced to prevent economic double taxation on profits within the corporate chain.

exemption to those loans that are guaranteed by (regional) development banks to reduce the borrowing cost for investors.

35. **The withholding tax on lease payments to non-residents is not secured under a number of DTAs.** The withholding tax cannot be levied if the definition of “royalty” does not cover the use or right to use industrial, commercial, or scientific equipment (i.e. lease payments). In such situations the tax can only be levied if the non-resident maintains a permanent establishment in Mongolia, which will usually not be the case.

### ***Recommendations***

- The source state should be allowed to tax dividend, interest, and royalty at maximum 10 per cent (i.e. the rate applicable in domestic situations);
- Mongolia should not initiate a differential tax rate for dividends, but may be willing to further reduce the maximum rate in the source country for qualifying dividends to 5 per cent providing that the DTA contains a sufficient anti-treaty shopping provision;
- Interest on government bonds, government secured loans, and loans granted by (regional) development banks should be exempt from tax in the source country;
- The definition of “royalty” should contain the use or right to use industrial, commercial, or scientific equipment enabling Mongolia to levy the withholding tax on lease payments.

## **D. Capital Gain on the Indirect Sale of a Mining License**

### ***Domestic tax treatment***

36. **Under the proposed Corporate Income Tax Act, a portion of the capital gain realized on the sale of shares of an entity, which (directly or indirectly) holds an exploration or mining license in Mongolia is subject to tax at 30 per cent; i.e. the portion of the license and other depreciable assets used in a mining activity in Mongolia.** However, the capital gain is only taxed if more than 50 per cent of the value of the shares is attributable to such an exploration license, a mining license, and/or other depreciable assets used in mining activities in Mongolia, and if at least 10 per cent of the shares is sold.



### ***DTA treatment***

37. **Taxation of capital gains on sale of shares is given to the country of residence of the shareholder.** All DTAs, except for the DTAs with Kuwait and the United Arab Emirates, follow the UN Model Double Tax Agreement. The capital gain on the sale of immovable property is taxable in the country where the property is located. The capital gain on the sale of business property attributable to a permanent establishment is taxable in the country where the permanent establishment is located. The capital gain on the sale of property used in international traffic is taxable in the country where the company has its place of effective management. In any other case, the capital gain is taxable in the country in which the alienator is resident. The DTAs with Kuwait and the United Arab Emirates share the tax base on capital gains between the source country and the country of residence.

38. **Some DTAs contain a provision that allows the source country to tax capital gains on the sale of shares if the value of these shares is derived principally from immovable property situated in that country (“indirect” sale of immovable property).<sup>6</sup>** The DTAs with Canada and France limit the definition of “immovable property” by applying the provision only for rental property that is used by the taxpayer to carrying on its business activities. Most DTAs do not provide guidance on the interpretation of “principally”; the DTA with Singapore states explicitly that immovable property must represent more than 75 per cent of the value of the shares, whereas the DTA with the United Kingdom seems to refer to more than 50 per cent.

### ***Assessment***

39. **Mongolia is only able to safeguard its taxing rights on an indirect sale of exploration and mining licenses in a limited number of DTAs.** An indirect sale through the sale of shares in the company owning such licenses is the only method available to investors to transfer the ownership, as the mining law does not allow a direct sale of such licenses. The requirement that the value of immovable property should represent more than 75 per cent of the value of the shares in the DTA with Singapore, however, limits the possibility of Mongolia to execute its domestic taxing right. If DTAs do not include a special rule for the indirect sale of immovable property through a sale of shares, Mongolia will not be able to execute its domestic taxing right. Capital gains on the sale of shares are normally taxable in the residence country of the shareholder.

40. **Exploration and mining licenses are typically regarded as immovable property; depreciable assets used in mining activities are not necessarily covered as such.** If the

---

<sup>6</sup> The DTAs with Canada, China, France, India, Korea, PR of Korea, Kyrgyzstan, Poland, Singapore, Ukraine, United Kingdom, and Vietnam contain such provision.

DTA provision does not explicitly states that the value of such assets must be taken into account, part of the domestic taxing right is not safeguarded, and consequently a smaller part of the capital gains can be taxed in Mongolia. Under the DTAs with Canada and France it could be argued that the Mongolian domestic tax provision is safeguarded as an exploration or mining license can be regarded as “rental property that is used by the taxpayer to carrying on its business activities”.

**Table 3. Capital gains on indirect transfers of exploration and mining licenses**

<i>DTA</i>	<i>13(4) included</i>	<i>Scope of indirect relation between shares and immovable property</i>	<i>Other remarks</i>
<i>Austria</i>			
<i>Belarus</i>			
<i>Belgium</i>			
<i>Bulgaria</i>			
<i>Canada</i>	X	Principally	Only applicable if immovable property is rented and used to carrying on business activities
<i>China</i>	X	Principally	
<i>Czech Rep.</i>			
<i>France</i>	X	Principally	Immovable property used by a company for its own industrial, commercial or agricultural operations or for performing independent personal services is not included
<i>Germany</i>			
<i>Hungary</i>			
<i>India</i>	X	Principally	
<i>Indonesia</i>			
<i>Italy</i>			
<i>Kazakhstan</i>			
<i>Korea</i>	X	Principally	
<i>PR of Korea</i>	X	Wholly or principally	
<i>Kuwait</i>	X		Capital gain is shared
<i>Kyrgyzstan</i>	X	Wholly or principally	
<i>Luxemburg</i>			
<i>Malaysia</i>			
<i>Netherlands</i>			
<i>Poland</i>	X	Principally	
<i>Russia</i>			
<i>Singapore</i>	X	>75 per cent of value of shares	
<i>Switzerland</i>			
<i>Turkey</i>			
<i>Ukraine</i>	X	Principally	
<i>UAE</i>	X		Capital gain is shared
<i>United Kingdom</i>	X	Value or greater part of value	
<i>Vietnam</i>	X	Wholly or principally	

© Composed by GMM based on actual DTAs

	DTAs in which the Mongolian tax on indirect transfers of licenses cannot be levied;
	DTAs that require (small) modification to safeguard Mongolian tax base.

## *Recommendations*

- Mongolia should include a provision in its DTAs that reserves its right to tax capital gains on the sale of shares that derive more than 50 per cent of their value from immovable property situated in Mongolia;
- It should be made clear that immovable property—for the purpose of this provision—includes exploration and mining licenses, and other depreciable assets used in a mining activity.

## **E. Elimination of Double Taxation**

### *Domestic tax treatment*

41. **Resident taxpayers are allowed to reduce their tax liability by the foreign tax paid on that part of their income received abroad.** This reduction shall never exceed the Mongolian income tax due on that foreign income (ordinary tax credit). The reduction is calculated on a country-by-country basis.

### *DTA treatment*

42. **All Mongolian DTAs, except for the DTA with Hungary, provide residents with an ordinary foreign tax credit.** The DTA with Hungary allows resident taxpayers in Mongolia to exempt foreign business profit (and other so-called active income). Some DTAs<sup>7</sup> include an underlying tax credit for corporate income tax paid abroad in addition to the withholding tax, in case a qualifying shareholder receives the dividend.<sup>8</sup>

43. **Some DTAs contain a tax sparing credit for exempt income under the Mongolian foreign investment law.**<sup>9</sup> Although exempt from tax, the other Contracting States will allow a tax credit as if the exempt income has been taxed in Mongolia. Only in the DTAs with India, Italy, Malaysia, Poland, and Singapore, the tax sparing credit is mutual; i.e. applicable

<sup>7</sup> Such provision is included in the DTAs with Belgium, China, France, Luxemburg, and Malaysia.

<sup>8</sup> A qualifying shareholder is any shareholder who holds at least 10 per cent of the shares or voting rights in the distributing company.

<sup>9</sup> The DTAs with Bulgaria, Czech Republic, India, Italy, Malaysia, Poland, and Singapore still allow a tax sparing credit. The tax sparing credits in the DTAs with Canada, France, Indonesia, the Netherlands, Turkey, and the United Kingdom have expired.

for Mongolian residents if the other Contracting State exempts income to promote economic development.

### *Assessment*

44. **If the domestic rule used to eliminate double taxation provides a foreign tax credit, it is uncommon to allow for an exemption of foreign source income under the DTA.** Applying a foreign tax credit prevents Mongolian residents from shifting taxable income or profit abroad, because it preserves at least the Mongolian income tax rate on such income. If the exemption method had been used, this income would be subject to tax at the tax rate applicable abroad. Some countries—like for instance Germany—that use an exemption method to eliminate double taxation, have adopted the reverse rule (i.e. apply under certain circumstances in their DTAs the credit method) to prevent international tax planning.

45. **Most countries are no longer willing to give a tax sparing credit to its taxpayers for exempt income abroad.** To encourage foreign investment, many countries grant different kinds of tax concessions to foreign investors. When such a country concludes a DTA with a country that applies the credit method, the concession may be nullified to the extent that such other country will allow a deduction only of the tax actually paid in the country of source. This may be seen as frustrating the other country's tax incentive legislation. To avoid that result, some countries have agreed to include “tax sparing” provisions in DTAs. In the case of a credit country, “tax sparing” provisions basically enable the investor to obtain a foreign tax credit for the taxes that have been ‘spared’ (i.e. not actually paid) under the incentive regime of the source country. In this way, the taxpayer maintains the benefit of the foreign exemption that would have otherwise been lost by using the credit method. See box 2.

#### **Box 2. Example of “tax sparing”**

Assume that a Mongolian resident invests in India in a project that promotes economic development of the Punjab province. The income it receives from this project would be exempt in India. In Mongolia, the income is subject to the normal CIT rate and a credit is allowed for the foreign tax paid. In this case there is no foreign tax paid and therefore the taxpayer ends up paying the full Mongolian tax rate on the income earned in India. The benefit provided by the Indian tax system is in fact received by Mongolia in form of higher tax revenue than otherwise would have been received. The tax sparing credit eliminates this effect by granting the Mongolian taxpayer a credit for the unpaid Indian corporate income tax.

Most countries have re-examined the use of “tax sparing” over the last decades. Incentives in the form of exemption to promote foreign direct investment and/or to promote national economic goals have proven not effective and should not be supported. “Tax sparing” encourages excessive repatriation of profits, rather than re-investment in the country. It also offers ample opportunities for tax planning and tax avoidance. Taxpayers in third countries may re-route their transactions (interest/royalties) to benefit from “tax sparing”, or may set

up conduit structures to benefit from the “tax sparing” provided in that other country’s DTAs. Even cases of governmental abuse are known, if tax rates were kept high to allow domestic taxpayers to enjoy extra benefits from “tax sparing” provisions.

### *Recommendations*

- Mongolia should provide its residents under DTAs—as it does in its domestic legislation—a foreign tax credit;
- Mongolia should refrain from including “tax sparing” provisions.

## **F. Treaty Shopping**

### *Domestic tax treatment*

46. **Mongolia does not have provisions in its domestic tax legislation dealing with international tax planning other than the possibility to modify income on transactions between associated persons.** There is no practice developed yet in the judiciary to deal with situations of treaty shopping and/or qualification differences, neither is there any practice in interpreting DTA terminology like for instance “beneficial ownership”.

### *DTA treatment*

47. **In all DTAs providing limited taxing rights for payment of dividends, interest, and royalties, the limited rights are conditional upon the recipient being the “beneficial owner” of these payments.** None of the DTAs, however, provides any indication of the content of “beneficial ownership” (neither do the UN and OECD Models), meaning that—according to Article 3, paragraph 2 of the UN Model—the domestic interpretation should be followed. Mongolia has not developed an interpretation of this concept, which makes the limitation in the DTAs ineffective. Development of a domestic “beneficial ownership” concept in line with the commentaries on both Models is difficult as those commentaries vaguely refer to recipients that are not merely acting as agents or nominees.

48. **The DTAs with Italy and the United Kingdom contain a specific anti-avoidance provision disallowing treaty benefits.** A resident of a Contracting State who, as a consequence of domestic law concerning incentives to promote foreign investment, is not subject to tax or is subject to tax at a reduced rate in that Contracting State on income or capital gains, shall not receive the benefit of any reduction in or exemption from tax provided for in the DTA by the other Contracting State if the main purpose or one of the main

purposes of such resident or a person connected with such resident was to obtain those benefits.

### *Assessment*

#### **49. Currently Mongolian DTAs contain no effective protection against treaty shopping, except through the (non-developed) concept of “beneficial ownership”.**

Persons who are not ‘genuine’ residents of the other Contracting State are able to abuse the provisions of the DTA to obtain its benefits (amongst which are the reduced withholding tax rates). The United States and some European countries have developed provisions in their DTAs to limit such benefits to ‘genuine’ persons. Those limitation-on-benefit (or anti treaty shopping) provisions are usually very elaborate and complex. A simplified version may, however, serve the purpose for Mongolia. Such limitation-on-benefit provision normally contains a listing of ‘genuine’ persons who are eligible to claim treaty benefits, i.e.:

- (a) individuals;
- (b) persons who are engaged in the active conduct of a business;
- (c) companies the shares of which are traded on a recognized stock exchange;
- (d) not-for-profit organizations (if more than half of the beneficiaries, members, or participants are entitled to the treaty benefits);
- (e) any company that fulfills the following criteria:
  - (i) > 50 per cent of the shares are owned by persons entitled to the treaty benefits; and
  - (ii) < 50 per cent of ‘gross income’ is used to meet liabilities to persons not entitled to the treaty benefits.

### *Recommendation*

- Mongolia should develop a limitation-on-benefit (or anti treaty shopping) provision that limits the application of its DTA benefits to ‘genuine’ residents of the other Contracting State.

## **G. Other**

### **Students, researchers, teachers and professors**

**50. All DTAs concluded by Mongolia contain provisions to exempt scholarships, grants, and certain income from personal services received by students and trainees.** All DTAs exempt scholarships and/or grants received from sources abroad by students and trainees. In the DTAs with India, Italy, and Kazakhstan this exemption is limited to 5 years. In a number of DTAs income from personal services performed by students and trainees is

also exempt if such services are in connection with their studies or training.<sup>10</sup> In the DTAs with Malaysia, Singapore, and United Kingdom this income is limited to a certain amount, whereas in the DTAs with Austria and Turkey the services performed should not exceed the aggregate of 183 days in a calendar year.

51. **All DTAs—except for the DTAs with Canada, France, and Switzerland—contain an exemption in the state of source for the remuneration received by visiting teachers and professors.** Payments which a professor or teacher, who is a resident of a Contracting State and who is present in the other Contracting State for the purpose of teaching or scientific research for a limited period in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research are taxable only in the state of residence. Most DTAs set that limited period at 2 years. The DTAs with China, Kazakhstan, PR of Korea, Luxemburg, and Russia have the limited period set at 3 years, whereas the DTA with Hungary does not contain any time limit.

### ***Recommendations***

- Mongolia should include in its DTAs only a provision exempting scholarships, grants, etc. provided from sources abroad and used for the purpose of education, acquiring practical experiences, and research.
- The exemption for remuneration paid to teachers and professors should be abolished in future DTAs. Such payments should follow the general rules for employment income (Article 15 UN Model).

### **Mutual agreement procedures**

52. **All Mongolian DTAs include a mutual agreement procedure.** In case international double taxation is not resolved under the tax agreement, the taxpayer has the right to request a mutual agreement procedure. In the DTAs with Austria and Canada a binding arbitration procedure is included in the provision, which can be initiated by the taxpayer 2 years after the start of the mutual agreement procedure. Typically the mutual agreement procedure must be requested within 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA. In the DTAs with Turkey and the United Kingdom this time period is omitted.

---

<sup>10</sup> DTAs with Austria, China, Czech Republic, India, Indonesia, Italy, Kazakhstan, PR of Korea, Luxemburg, Malaysia, Singapore, Turkey, Ukraine, United Kingdom, and Vietnam.

53. **If agreement is reached between the competent authorities to eliminate international double taxation, domestic law should allow the appropriate action to implement this agreement.** Most countries—like Mongolia—have domestic statutes of limitation, which prohibit modification of tax liability after a certain time period has elapsed. In order to avoid the prevention of a mutual agreement being implemented due to these statutes of limitation, DTAs usually state explicitly “any agreement reached is implemented notwithstanding any time limits in the domestic law of the Contracting State”. In the DTAs with Belgium, Canada, Indonesia, Malaysia, Russia, Switzerland, Turkey, and the United Kingdom, such phrase is not included. This may result in reaching mutual agreements that cannot be implemented.

### ***Recommendations***

- In its domestic legislation, Mongolia should waive the statute of limitation in all cases tax liability is modified as a result of a mutual agreement reached under a DTA;
- Future DTAs should contain the phrase that “any agreement reached will be implemented notwithstanding any time limits in the domestic law of the Contracting States” ensuring proper implementation of mutual agreements in the other Contracting State.

### **Assistance in tax recovery**

54. **Currently only two DTAs include a provision that enables assistance in recovery of taxes.**<sup>11</sup> Based on these provisions, a Contracting State may assist the other Contracting State upon request in recovering their tax claims in accordance with the law and administrative practice for the recovery of its own tax claims. The assistance applies only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and which are not contested. A Contracting State can refuse a request for assistance:

- (a) if the applicant State has not pursued all means available in its own territory; and/or
- (b) if and insofar as it considers the tax claim to be contrary to the provisions of the DTA or of any other agreement to which both of the States are parties.

---

<sup>11</sup> The DTAs with Belgium and the Netherlands contain such provision.



### ***Recommendation***

- Mongolia should strive to implement a provision that allows it to request assistance in tax collection from the tax administration in the other Contracting State in cases where its residents obtain property in that other Contracting State;

### **Exchange of information**

55. **Most DTAs follow the UN Model provision regarding the exchange of information.** The Mongolian tax legislation allows providing taxpayer's information to foreign tax administrations. The procedures, however, are unclear and the reference to the competent authorities to develop such procedures is not contained in the DTAs. In some DTAs some Contracting States have strengthened the confidentiality rule<sup>12</sup> or made sure that its domestic bank secrecy is not jeopardized.<sup>13</sup>

### ***Recommendation***

- DTAs should include an exchange of information provision in accordance with the UN Model.

---

<sup>12</sup> This is for instance the case in the DTAs with Austria and Malaysia.

<sup>13</sup> This is the case in the DTA with Switzerland.

### III. MONGOLIAN DOUBLE TAX AGREEMENT MODEL

The Mongolian DTA Model is based on the UN Model Double Taxation Convention. Additional or modified provisions safeguarding Mongolia's domestic tax base are included in blue script.

#### CHAPTER I *Scope of the Agreement*

##### **Article 1 – Persons covered**

This Agreement applies to persons who are residents of one or both of the Contracting States.

##### **Article 2 – Taxes covered**

1. This Agreement applies 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. 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, are regarded as taxes on income and on capital.
3. The existing taxes to which this Agreement applies 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 [*Contracting State*]:
    - (i) ...
    - (ii) ... (hereinafter referred to as “... tax”).
4. This Agreement applies also to any identical or substantially similar taxes that 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 notify each other of significant changes made to their tax laws.

## CHAPTER II

### *Definitions*

#### Article 3 – General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term “person” includes an individual, a company and any other body of persons;
  - (b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (c) 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;
  - (d) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (e) the term “competent authority” means:
    - (i) in the case of Mongolia, the Minister of Finance or his authorized representative;
    - (ii) in the case of [*Contracting State*], ...
  - (f) the term “national” means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein has, unless the context otherwise requires, 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 any person who, under the laws of that State, is liable to tax therein by reason of his residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, 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 is determined as follows:

- (a) he is 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 is 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 is 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 is 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 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 is deemed to be a resident only 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) 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 or any other place of extraction of natural resources.
3. The term “permanent establishment” also encompasses:
  - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than three months within any twelve-month period.

4. Notwithstanding the preceding provisions of this article, the term “permanent establishment” is 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 a fixed 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 an independent status to whom paragraph 7 applies—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise is 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 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 the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State is deemed to have a permanent establishment in the other Contracting State, except in regard to re-insurance, if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise of a Contracting State is not 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, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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), does not of itself constitute either company a permanent establishment of the other.

### **CHAPTER III** ***Taxation of Income***

#### **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” has the meaning, which it has under the law of the Contracting State in which the property in question is situated. The term includes in any case 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, boats and aircraft are not regarded as immovable property.

3. The provisions of paragraph 1 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 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 profit of an enterprise of a Contracting State is only taxable 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 profit of the enterprise is taxed in the other State but only so much of it as is attributable to:

- (a) that permanent establishment; or
- (b) sales in that other State of goods or merchandise of the same or similar kind as those sold 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, in each Contracting State the profit is attributed to that permanent establishment that 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 the determination of the profit of a permanent establishment, expenses that are incurred for the purposes of the business of the permanent establishment, whether in the State in which the permanent establishment is situated or elsewhere, are allowed as deductions, including executive and general administrative expenses so incurred. However, no such deduction are 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. In so far as it has been customary in a Contracting State to determine the profit to be attributed to a permanent establishment on the basis of an apportionment of the total profit of the enterprise to its various parts, nothing in paragraph 2 precludes that Contracting State from determining the profit to be taxed by such an apportionment as may be customary; the method of apportionment adopted, however, is such that the result is in accordance with the principles contained in this article.

5. For the purposes of the preceding paragraphs, the profit to be attributed to the permanent establishment is determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profit include items of income that are dealt with separately in other articles of this Agreement, then the provisions of those articles are not affected by the provisions of this article.

## **Article 8 – Shipping, inland waterways transport and air transport**

1. Profit from the operation of ships, aircraft, [road and railway vehicles](#) in international traffic are taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it is deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 also apply to profits 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 profit which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, has not so accrued, may be included in the profit of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profit of an enterprise of that State—and taxes accordingly—profit on which an enterprise of the other Contracting State has been charged to tax in that other State and the profit so included is profit 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 makes an appropriate adjustment to the amount of the tax charged therein on that profit. In determining such adjustment, due regard is paid to the other provisions of the Agreement and the competent authorities of the Contracting States, 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 does not exceed 10 per cent of the gross amount of the dividends. The competent authorities of the Contracting States settle by mutual agreement the mode of application of these limitations. This paragraph does not affect the taxation of the company in respect of the profit 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 laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 do 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of article 7 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 in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profit, even if the dividends paid or the undistributed profit consist wholly or partly of profit 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 does not exceed **10 per cent** of the gross amount of the interest. The competent authorities of the Contracting States settle by mutual agreement the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived and beneficially owned by the Government of the other Contracting State, including political subdivisions and local authorities thereof, the Central Bank or any financial institution wholly owned by that Government, or interest derived on loans guaranteed by that Government, is exempt from tax in the first-mentioned Contracting State.

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. Penalty charges for late payment are not regarded as interest for the purpose of this article.

5. The provisions of paragraphs 1, 2, and 3 do 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, and the debt claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment, or with (b) business activities referred to in letter (c) of paragraph 1 of article 7. In such cases article 7 applies.

6. Interest is 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest is deemed to arise in the State in which the permanent establishment 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 apply only to the last-mentioned amount. In such case, the excess part of the payments remains 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 does not exceed **10 per cent** of the gross amount of the royalties. The competent authorities of the Contracting States settle by mutual agreement the mode of application of this limitation.
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, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 do 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, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment, or with (b) business activities referred to in letter (c) of paragraph 1 of article 7. In such cases article 7 applies.
5. Royalties are 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties are deemed to arise in the State in which the permanent establishment 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 applies only to the last-mentioned amount. In such case, the excess part of the payments remains taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13 – Service fees**

1. Technical fees 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 technical fees may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the technical fees the tax so charged shall or will not exceed **10 per cent** of the gross amount of the technical fees.
3. The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.
4. The provisions of paragraph 1 and 2 of this Article do not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, and the technical fees are effectively connected with such permanent establishment. In such a case the provisions of Article 7 apply.
5. Technical fees are deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees are deemed to arise in the Contracting State in which the permanent establishment 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 technical fees paid exceeds, for whatever reason, 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 applies to the last-mentioned amount. In such a case, the excess part of the payments remains taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

### **Article 14 – 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft, or boats, are taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. In particular:

- (a) for the purpose of this paragraph, “immovable property” includes exploration and mining licenses, and other depreciable assets used in a mining activity in one of the Contracting States;
- (b) for the purposes of this paragraph, “principally” in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, and 4 are taxable only in the Contracting State of which the alienator is a resident.

## **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 are 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, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State is 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, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 16 – Directors’ fees and remuneration of top-level managerial officials**

- 1. 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 of a company which is a resident of the other Contracting State may be taxed in that other State.
- 2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

#### **Article 17 – Artists and sportspersons**

- 1. Notwithstanding the provisions of article 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 sportsperson, 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 sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

#### **Article 18 – Pensions and social security payments**

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

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

## **Article 19 – Government services**

1. (a) Salaries, wages and other similar 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 subdivision or authority are taxable only in that State.
- (b) However, such salaries, wages and other similar remuneration are taxable only in the other Contracting State if the services are rendered in that other State 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 the 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 subdivision or authority is taxable only in that State.
- (b) However, such pension is 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 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 a political subdivision or a local authority thereof.

## **Article 20 – Students, apprentices, and trainees**

A student, business apprentice or trainee who is or was immediately before visiting a Contracting State a resident of the other State and who is present in the first-mentioned State solely for the purpose of his education or training is 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;
- (b) grants, scholarships or awards supplied by the Government of either Contracting State, or a scientific, educational, cultural or non-profit making organization; and
- (c) income derived from personal services performed in that Contracting State in an amount not exceeding the equivalent of USD 7,500 in any fiscal year.

## **Article 21 – 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 are taxable only in that State.
2. The provisions of paragraph 1 does 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of article 7 applies.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

## **CHAPTER IV** ***Taxation of Capital***

## **Article 22 – 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 may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, is taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State are taxable only in that State.



## CHAPTER V

### *Methods for the Elimination of Double Taxation*

#### **Article 23 – Credit method**

1. Where a resident of Mongolia [*or a Contracting State*] derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the other Contracting State, Mongolia [*or the first-mentioned State*] allows as a deduction from the 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 does 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 any provision of this Agreement, income derived or capital owned by a resident of Mongolia [*or a Contracting State*] is exempt from tax in that State, Mongolia [*or such State*] may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

## CHAPTER VI

### *Special Provisions*

#### **Article 24 – Non-discrimination**

1. Nationals of a Contracting State are not subject 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 subject. This provision also applies, notwithstanding the provisions of article 1, to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State are not subject in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subject.
3. The taxation on a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State, is not less favorably levied in that other State than

the taxation levied on enterprises of that other State carrying on the same activities. This provision is not construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of article 9, paragraph 6 of article 11, paragraph 6 of article 12, or [paragraph 6 of article 13](#) apply, interest, royalties, [technical fees](#) and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State is, for the purpose of determining the taxable profits of such enterprise, 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 is, for the purpose of determining the taxable capital of such enterprise, deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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, is not subject 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 subject.

6. The provisions of this article apply, notwithstanding the provisions of article 2, to taxes of every kind and description.

## **Article 25 – 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 24, 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 endeavors, 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 that is not in accordance with this Agreement. Any agreement reached is implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States endeavors 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

## **Article 26 – Exchange of information**

1. The competent authorities of the Contracting States 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, in so far as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by article 1. Any information received by a Contracting State is treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State it is 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 which are the subject of the Agreement. Such persons or authorities use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information is made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case the provisions of paragraph 1 is 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.

## **Article 27 – Assistance in the collection of taxes**

1. The Contracting States provide each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Convention applies, and of any increases, surcharges, overdue payments, interest and costs pertaining to the said taxes.
2. At the request of the applicant Contracting State the requested Contracting State recovers tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures, which are not provided for in the laws of the applicant State.
3. The provisions of paragraph 2 apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested. However, where the claim relates to a liability to tax of a person as a non-resident of the applicant State, paragraph 2 only applies, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.
4. The requested State is not obliged to accede to the request:
  - (a) if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;
  - (b) if and insofar as it considers the tax claim to be contrary to the provisions of this Agreement or of any other agreement to which both of the States are parties.
5. The instrument permitting enforcement in the applicant State is—where appropriate and in accordance with the provisions in force in the requested State—accepted, recognized, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested State.
6. The competent authorities of the States prescribe by common agreement rules concerning the application of this Article.

## **Article 28 – Members of diplomatic missions and consular posts**

Nothing in this Agreement affects 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 – Limitation-on-benefit (or Anti-treaty shopping)**

1. A person that is a resident of a Contracting State and derives income from the other Contracting State is entitled under Article 10, paragraph 2, Article 11, paragraph 2, Article 12, paragraph 2, Article 13, paragraph 2, Article 14, and Article 21 of this Agreement to relief from taxation in that other State only if such person is:

- (a) an individual;
- (b) engaged in the active conduct of business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from that other State is derived in connection with, or is incidental to, that business;
- (c) a company the shares of which are traded in the first-mentioned State on a substantial and regular basis on an officially recognized securities exchange or a company which is wholly owned, directly or indirectly, by another company that is a resident of the first-mentioned State and the shares of which are so traded;
- (d) a not-for-profit organization that is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention; or
- (e) a person that satisfies both of the following conditions:
  - (i) more than 50 percent of the beneficial interest in such person or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares, is owned directly or indirectly by persons entitled to the benefits of this Agreement under subparagraph (a), (c) or (d); and
  - (ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Agreement under subparagraph (a), (c) or (d).

2. A person that is not entitled to the benefits of the Agreement pursuant to the provisions of paragraph 1 may, nevertheless, be granted the benefits of the Agreement if the competent authority of the State in which the income arises so determines.

3. For purposes of subparagraph (e)(ii) of paragraph 1, the term “gross income” means gross receipts, or where a person is engaged in a business, which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

## **CHAPTER VII**

### ***Final Provisions***

#### **Article 30 – Entry into force**

1. This Agreement is ratified and the instruments of ratification are exchanged as soon as possible.
2. The Agreement enters into force upon the exchange of instruments of ratification and its provisions have effect:
  - (a) in respect of taxes withheld at source, to income paid or credited on or after 1 January of the calendar year 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 1 January of the calendar year following that in which the Agreement enters into force.

#### **Article 31 – Termination**

This Agreement remains 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 after the period of 5 years from the date on which the Agreement enters into force. In such event, the Agreement ceases to have effect:

- (a) in respect of taxes withheld at source, to income paid or credited on or after 1 January of the calendar year 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 1 January of the calendar year following that in which the notice is given.

IN WITNESS WHEREOF THE UNDERSIGNED, DULY AUTHORIZED THERETO, HAVE SIGNED THIS CONVENTION.

Done at [*place*] on [*date*], in duplicate, in the [*language of other Contracting State*], Mongolian and English languages, all texts being equally authentic. In case there is any divergence of interpretation between the [*language of other Contracting State*] and Mongolian texts, the English text prevails.

## Appendix 1. Mongolian DTAs

	<i><b>DTA</b></i>	<i><b>Entry in force</b></i>
1	Austria	2005
2	Belarus	2002
3	Belgium	1999
4	Bulgaria	2002
5	Canada	2003
6	China	1993
7	Czech Republic	1999
8	France	1999
9	Germany	1997
10	Hungary	1997
11	India	1994
12	Indonesia	1998
13	Italy	2004
14	Kazakhstan	2000
15	Korea	1992
16	PR of Korea	2005
17	Kuwait	1998
18	Kyrgyzstan	2000
19	Luxemburg	2002
20	Malaysia	1997
21	Netherlands	2004
22	Poland	2002
23	Russia	1998
24	Singapore	2005
25	Switzerland	2002
26	Turkey	1997
27	Ukraine	2003
28	United Arab Emirates	2003
29	United Kingdom	1997
30	Vietnam	1997

© Based upon info provided by the Mongolian Ministry of Finance.