

104TH CONGRESS }
1st Session }

SENATE

{ TREATY DOC.
104-15 }

EXCHANGE OF NOTES RELATING TO THE TAX
CONVENTION WITH KAZAKHSTAN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN EXCHANGE OF NOTES DATED AT WASHINGTON JULY 10, 1995,
RELATING TO THE CONVENTION (SEE TREATY DOC. 103-33) BE-
TWEEN THE GOVERNMENT OF THE UNITED STATES OF AMER-
ICA AND THE GOVERNMENT OF THE REPUBLIC OF
KAZAKHSTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AND CAPITAL, TOGETHER WITH RELATED
PROTOCOL, SIGNED AT ALMATY ON OCTOBER 24, 1993



AUGUST 3, 1995.—Treaty was read the first time and, together with the
accompanying papers, referred to the Committee on Federal Relations
and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

99-118

WASHINGTON : 1995

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 3, 1995.*

To the Senate of the United States:

I transmit herewith an exchange of notes dated at Washington July 10, 1995, for Senate advice and consent to ratification in connection with the Senate's consideration of the Convention Between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Almaty on October 24, 1993, and exchanges of notes (the "Taxation Convention"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the exchange of notes.

This exchange of notes addresses the interaction between the Taxation Convention and other treaties that have tax provisions, including in particular the General Agreement on Trade in Services ("GATS"), annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994.

I recommend that the Senate give favorable consideration to this exchange of notes and give its advice and consent to ratification in connection with the Taxation Convention.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 14, 1995.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you an exchange of notes, dated at Washington July 10, 1995, with a view to transmission of these notes to the Senate for advice and consent to ratification in connection with the Senate's consideration of the Convention Between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Almaty on October 24, 1993, and exchanges of notes (the "Taxation Convention").

This exchange of notes addresses the interaction between the Taxation Convention and other treaties and agreements that have provisions affecting taxes.

The United States is a party to the General Agreement on Trade in Services ("GATS"), annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. GATS entered into force on January 1, 1995. Although the United States is a party to GATS, the Government of Kazakhstan is not yet a party. The exchange of notes ensures first that, if Kazakhstan accedes to the GATS and GATS obligations become applicable between the United States and Kazakhstan, the dispute resolution mechanisms of the Taxation Convention would govern national treatment disputes regarding taxation measures. The exchange of notes further provides that the non-discrimination provisions of the Taxation Convention, rather than the national or most-favored-nation treatment obligations of any other agreement (except for the General Agreement on Tariffs and Trade, if it applies between the United States and Kazakhstan, and the Agreement on Trade Relations Between the United States and Kazakhstan, signed on May 19, 1992) will apply to taxation measures except those outside the scope of the Taxation Convention.

Provisions similar to those in this exchange of notes are included in the taxation conventions between the United States and Portugal, Sweden, and France, which have been transmitted to the Senate.

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The Department of Treasury and the Department of State cooperated in the negotiation of the Convention and the most recent exchange of notes. The notes have the full approval of both Departments.

Respectfully submitted.

WARREN CHRISTOPHER.

DEPARTMENT OF STATE
WASHINGTON
July 10, 1995

Excellency:

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Republic of Kazakhstan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related Protocol, signed at Almaty on October 24, 1993, and Exchanges of Notes ("Taxation Convention") and the General Agreement on Trade in Services ("GATS").

The Government of the United States is a Party to the GATS, annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. The Government of Kazakhstan is not yet a Party to the GATS. The United States and Kazakhstan have, however, considered the relationship between the Taxation Convention and the GATS in the event that the GATS applies between them, particularly with regard to the Consultation provision in Article XXII of the GATS and the Most-Favored-Nation and National Treatment provisions in Articles II and XVII of the GATS. In addition, the United States and Kazakhstan have considered the relationship between the Taxation Convention and other agreements that apply between them and that have provisions concerning national treatment or most-favored-nation treatment.

His Excellency

Touleoutai Souleimenov,

Ambassador of the Republic of Kazakhstan.

To address these issues, I have the honor to propose that:

(1) notwithstanding Article XXII and footnote 11 of the GATS, in the event that the GATS applies between the United States and Kazakhstan, a dispute concerning whether a measure is within the scope of the Taxation Convention shall be considered only pursuant to Article 25 (Mutual Agreement Procedure) of the Taxation Convention by the competent authorities of the United States and Kazakhstan as defined in subparagraph 1(h) of Article 3 (General Definitions); and

(2) unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, national treatment or most-favored-nation obligations under any other agreement (including GATS in the event that it applies between the United States and Kazakhstan) shall not apply to a taxation measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the Agreement on Trade Relations between the United States and Kazakhstan, signed on May 19, 1992, and the General Agreement on Tariffs and Trade if it applies between the United States and Kazakhstan.

If this proposal is acceptable to the Government of Kazakhstan, I have the further honor to propose that this note, and your Government's note in reply, shall constitute an agreement which shall enter into force on the date the Taxation Convention enters into force.

Accept, Excellency, the renewed assurances of my
highest consideration.

For the Secretary of State:

Alvin Larson



КАЗАКСТАН
РЕСПУБЛИКАСЫНЫҢ
ЕЛШІЛІГІ
Embassy of Kazakhstan
Вашингтон қаласы

№ 22

The Embassy of the Republic of Kazakhstan to the United States of America presents its compliments to the Department of State of the United States of America and on instruction of the Government of the Republic of Kazakhstan has the honor to convey the following.

"The Government of the Republic of Kazakhstan has the honor to reply to the Government of the United States' note of July 10, 1995 concerning the Convention Between the Government of the Republic of Kazakhstan and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, together with a related protocol, signed at Almaty on October 24, 1993 and Exchanges of Notes ("Taxation Convention"), and the General Agreement on Trade in Services ("GATS")

The proposal contained in the aforementioned note reads as follows:

" (1) Notwithstanding Article XXII and footnote 11 of the GATS, in the event that the GATS applies between the United States and Kazakhstan, a dispute concerning whether a measure is within the scope of the Taxation Convention shall be considered only pursuant to Article 25 (Mutual Agreement Procedure) of the Taxation Convention, by the competent authorities of the United States and Kazakhstan, as defined in subparagraph 1 (h) of Article 3 (General Definitions); and

" (2) Unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, National treatment, or Most-Favored Nation obligations under any other agreement (including GATS in the event that it applies between the United States and Kazakhstan) shall not apply to a taxation measure, except for such National treatment or Most-Favored Nation obligations as may apply to trade in goods under the Agreement on Trade Relations Between the United States and Kazakhstan, signed on May 19, 1992, and the General Agreement on Tariffs and Trade, if it applies between the United States and Kazakhstan."

The Government of the Republic of Kazakhstan is pleased to confirm that this proposal is acceptable to the Government of the Republic of Kazakhstan, and that the U.S. note of July 10, 1995 and this note shall constitute an agreement which shall enter into force on the date the Taxation Convention enters into force."

The Embassy of the Republic of Kazakhstan avails itself of the opportunity to renew assurances of its highest consideration to the Department of State of the United States of America.

Washington, July 10, 1995

***The Department of State
of the United States of America
Washington, D.C.***

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