

**CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME THE
GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE
SWISS FEDERAL COUNCIL**

DESIRING to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

HAVE AGREED as follows:

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ARTICLE 1 PERSONAL SCOPE

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

ARTICLE 2 TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

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

a) in the Philippines:

the income tax imposed under Title II and the stock transaction tax in accordance with Section 124-A of the National Internal Revenue Code of the Republic of the Philippines (hereinafter referred to as "Philippine tax");

b) in Switzerland:

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income) (hereinafter referred to as "Swiss tax").

The Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall

notify each other of substantial changes which have been made in their respective taxation laws.

ARTICLE 3 GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:

a) i) the term "Philippines" means the Republic of the Philippines; used in a geographic sense, it means the archipelagic territory comprising the Republic of the Philippines as defined in its Constitution and laws, including adjacent areas and such other areas in the sea and in the air within which the Philippines has sovereignty, jurisdiction or similar rights under international law;

ii) the term "Switzerland" means the Swiss Confederation;

b) the terms "a Contracting State" and "the other Contracting State" mean the Philippines or Switzerland, as the context requires;

c) the term "person" includes an individual, an estate, a trust, a company, and any other body of persons;

d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

e) 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;

f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which 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;

g) the term "national" means:

i) any individual possessing the nationality or citizenship of a Contracting State;

ii) any legal person, partnership or association created or incorporated under the laws of a Contracting State;

h) the term "competent authority" means:

i) in the case of the Philippines, the Secretary of Finance or his authorized representative;

ii) in the case of Switzerland, the Director of Federal Tax Administration or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires or the competent authorities agree to a common definition pursuant to the provisions of Article 23

(Mutual Agreement Procedure), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4 RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has a habitual abode;

c) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of the 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;

g) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than six months;

h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any twelve-month period.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;

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.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 5 applies) shall be deemed to have a permanent establishment in the first-mentioned State if:

a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 of this Article; or

b) he 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.

5. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a