

June 13, 1997

**CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND THE REPUBLIC OF HUNGARY FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

The Republic of the Philippines and the Republic of Hungary,

Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on income,

Have agreed as follows:

**ARTICLE 1
PERSONAL SCOPE**

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. Nothing in this Convention shall be construed as preventing a Contracting State from taxing its citizens who may be residing in the other Contracting State in accordance with the domestic law of the first Contracting State. However, no credit or exemption shall be given by the latter Contracting State for taxes so imposed.

**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.
3. The existing taxes to which the Convention shall apply are, in particular:
 - (a) in the Philippines:

the income taxes 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 Hungary:
 - (i) the income tax on individuals
 - (ii) the corporation tax(hereinafter referred to as "Hungarian tax").

4. 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. For the purposes of this Convention, unless the context otherwise requires:

(a) (i) the term "Philippines" means the Republic of the Philippines; when used in a geographical sense, it means the archipelagic territory comprising the Republic of the Philippines 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 its Constitution, laws and international law;

(ii) the term "Hungary" means the Republic of Hungary, and when used in a geographical sense means the territory comprising the Republic of Hungary;

(b) the terms "a Contracting State" and "the other Contracting State" mean the Philippines or Hungary 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 "national" means:

(i) any individual, possessing the citizenship Contracting State;

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

(g) 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 Hungary, the Minister of Finance or his authorized representative;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of one of the Contracting States, except when the ship or aircraft is operated solely between places in the other Contracting State.

As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, 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. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 (center of vital interest);

(b) if the State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident 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 to be 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 or construction project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than six months;

(h) an assembly or installation project which exists for more than six months;

(i) the furnishing of services, including consultancy services by an enterprise through employees or other personnel where activities of that nature continue (for the same or a connected project) within a State 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Where a person is 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 6 applies) that enterprise he represents shall be deemed to have a permanent establishment in the first-mentioned State if 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.

5. An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under arms-length conditions. In such a case, the provisions of paragraph 4 shall apply.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ship and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7 BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities