

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

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CONVENTION

between
the Government of the Republic of the Philippines and the Government of the
Kingdom of Denmark
for the avoidance of double taxation
and the prevention of fiscal evasion with
respect to taxes on income

The Government of the Republic of the Philippines and
the Government of the Kingdom of Denmark,

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 the Philippines from taxing its nationals who are residents of Denmark, in accordance with the domestic laws of the Philippines existing as of the date of signing of this Convention. However, no credit shall be given for taxes paid in pursuance thereto.

ARTICLE 2 TAXES COVERED

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

However, in the case of Denmark, this Convention shall also apply to taxes on income imposed on behalf of its political subdivisions or local authorities.

2. There shall be regarded as taxes on income all taxes imposed on total income, on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as income taxes on capital appreciation.

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

a) In the case of 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; and Presidential Decree No. 87 (The Oil Exploration and Development Act of 1972) as amended; (hereinafter referred to as "Philippine tax").

b) In the case of Denmark:

(i) the income tax to the State (indkomstskattentil staten);

(ii) the income tax to the municipalities (den kommunale indkomstskat);

(iii) the income tax to the county county municipalities (den amtskommunale indkomstskat);

(iv) taxes imposed under the Hydrocarbon Tax Act (skatter i henhold til kulbrinteskatteloven)

(hereinafter referred to as "Danish tax")

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the 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) the terms "a Contracting State" and "the other Contracting State" mean Denmark or the Philippines, as the Context requires;

b) the term "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereinafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the seabed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;

c) the term "Philippines" shall refer to the territory of the Republic of the Philippines in accordance with its Constitution and laws including adjacent areas and such other areas where the Republic has sovereign rights and other rights under international law,

d) the term "person" includes an individual, a company and any other entity which is treated as a taxable entity under the taxation laws in force in the respective Contracting States;

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

f) 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;

g) 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;

h) the term "competent authority" means:

(i) in the Philippines: the Secretary of Finance or his authorized representative;

(ii) in Denmark: the Minister for Taxation or his authorized representative;

i) the term "national" means:

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

(ii) any legal person, partnership or association created under or deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention 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 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 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 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 not a permanent home available to him in either State, he shall be 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 shall be 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 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, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement and determine the mode of application of the Convention to such person. In the absence of such agreement, for the purposes of the Convention, the person shall in each Contracting State be deemed not to be a resident of the other Contracting State.

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 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 preliminary surveys, exploration or extraction of natural resources;
- g) a building site, a construction, assembly or installation project or supervisory activities within the country in connection therewith, but only where such site, project or activities continue for a period of more than 183 days;
- 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 183 days within any twelve month period;
- i) a drilling rig if its activities are carried on for a period or periods exceeding 365 days in any 18 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,