

CONVENTION

BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF ROMANIA 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 Romania 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

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,

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

(a) In the case of Romania:

(i) tax on income derived by individuals;

(ii) tax on the profits of bodies and legal persons;

(iii) tax on salaries, wages and other similar-remunerations ;

(iv) tax on income realised from agricultural activities
(hereinafter referred to as "Romanian tax").

(b) In the case of the Philippines: the income taxes imposed under the National Internal Revenue Code of the Philippines (hereinafter referred to as "Philippine tax").

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each calendar year the competent authorities of the Contracting States shall notify to each other any 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) The term "ROMANIA" means Romania and, used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone and the continental shelf over which Romania exercises sovereign rights, in accordance with its internal law and with the international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea bed and subsoil of these waters;

(b) 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 over which the Republic of the Philippines has sovereign rights and other rights under international law;

(c) The terms "a Contracting State" and "the other-Contracting State" mean, as the context requires, Romania or the Philippines;

(d) The term "person" includes an individual, an estate, a trust, a company and any other body of persons;

(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" "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 "tax" means a Romanian Tax or a Philippine tax as the context requires;

(h) The term "Competent Authority" means:

{1) In the case of Romania, the Minister of Economy and Finance or his authorised representative;

{2) In the case of the Philippines, the Secretary of Finance or his authorized representative;

(i) The term "nationals" means all individuals having the citizenship of a Contracting State and all legal persons or other entities created under the law in force in a Contracting State;

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

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State, relating to the taxes which are subject of the Convention.

Notwithstanding the preceding sentence, if the meaning of such term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any purpose of this Convention, establish a common meaning of the term for the purpose of this Convention.

ARTICLE 4

FISCAL DOMICILE

1. For the purpose of this Convention, the term "resident of a Contracting State" means any person who under the law of that State is liable to taxation 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 Contracting State in respect only of income from sources therein.

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 permanent home available to him in either State, he shall be deemed to be a resident 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 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. Whereby by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

(a) It shall be deemed to be a resident of the State of which it is a national;

(b) If it is a national of neither of the States, then it shall be deemed to be a resident of the State in which its place of effective management is situated;

(c) If the place of effective management can not be determined, then the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question, and to determine the mode of application of the Convention to such person.

ARTICLE 5

ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially.

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) a farm, a plantation, an orchard or vineyard;
- (h) a building site or construction or assembly project, which exists for more than six months;
- (i) a warehouse, in relation to a person providing storage facilities for others.

3. The term "permanent establishment" shall not be deemed 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. Where such goods and merchandise are sold directly in the places of storage, the latter shall be deemed to constitute a permanent establishment;
- (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 goods or merchandise belonging to the enterprise displayed in the frame of an occasional temporary fair or exhibition which are sold after the closing of the said fair or exhibition;
- (e) the maintenance of a fixed place of business, solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
- (f) 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.

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 6 applies) shall be deemed to be 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 the purchase of goods or merchandise for that enterprise; or

(b) he has no such authority, but habitually maintains in the first-mentioned state a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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 within the meaning of paragraph 6.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State thorough a broker, general commission agent or any other agent of an independent status, where 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, 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 arm's length conditions.

7. The fact that a company which is a resident of the other 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 for either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property, including income from agriculture and forestry, may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property referred to 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 the 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall 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