

**CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND THE REPUBLIC OF INDIA 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 Republic of India,

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, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The taxes to which this Convention shall apply are:

(a) in the Philippines: the income taxes imposed by the government of the Republic of the Philippines; (herein referred to as "Philippine tax")

(b) in India:

(i) the income tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);

(ii) the surtax imposed under the Companies (Profits) Surtax Act (7 of 1964;

(herein referred to as "Indian Tax").

4. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. Convention, unless the context otherwise requires:

(a) the term "India" means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law/the U.N. Convention on the Law of the Sea;

(b) the term "Philippines" means the Republic of the Philippines and when used in a geographical sense means the national territory comprising the Republic of the Philippines;

(c) the terms "a Contracting State" and "the other Contracting State" mean India or the Philippines as the context requires;

(d) the term "tax" means Indian tax or Philippine tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;

(e) the term "person" includes an individual, a company and any other taxable unit under the taxation laws in force in the respective Contracting States;

(f) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;

(g) 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;

(h) the term "competent authority" means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative; and in the case of the Philippines, the Secretary of Finance or his authorized representative;

(i) the term "national" means any individual, possessing the citizenship of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the 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 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 (centre of vital interest);

(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 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 State in which its place of effective management is situated.

If the place of effective management cannot be determined, then the competent authorities shall settle the question by mutual agreement.

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 place of exploration of natural resources;

(h) 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;

(i) a warehouse, in relation to a person providing storage facilities for others.

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) 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. 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 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; or

(c) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to 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 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 for 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. Ships, boats 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