

**CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
THE PHILIPPINES AND THE GOVERNMENT OF THE FEDERATIVE  
REPUBLIC OF BRAZIL 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 Federative Republic of Brazil, 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. The existing taxes to which the Convention shall apply are;
  - a) in the case of the Philippines:
    - the income taxes imposed by the Government of the Republic of the Philippines;  
(hereinafter referred to as "Philippine tax");
  - b) in the case of Brazil:
    - the federal income tax, excluding the tax on excess remittances and on activities of minor importance;  
(hereinafter referred to as "Brazilian tax")
3. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the above- mentioned taxes. 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 "Philippines" means the Republic of the Philippines;
  - b) the term "Brazil" means the Federative Republic of Brazil;



c) the term "nationals" means:

I - all individuals possessing the nationality or the citizenship of a Contracting State;

II - all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;

d) the terms "a Contracting State" and "the other Contracting State" mean the Philippines or Brazil as the context requires;

e) the term "person" comprises an individual, a company and any other body of persons;

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

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 "international traffic" means any transport by a ship or aircraft operated by a resident of one of the Contracting States, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term "tax" means Brazilian tax or Philippine tax, as the context requires;

j. the term "competent authority" means:

I - in the Philippines: the Minister of Finance or his authorized representative;

II - in Brazil: the Minister of Finance, the Secretary of the Federal Revenue or their authorized representative.

2. As regards the application of this 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 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 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 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 this case shall be determined in accordance with the



following rules:

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

b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

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

d) if he is a national of both Contracting 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 the competent authorities of the Contracting States shall settle the question by mutual agreement.

## **ARTICLE 5**

### **PERMANENT ESTABLISHMENT**

1. For the purpose 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 exploration or extraction of natural resources;

g) a building site or construction or assembly project, which exists for more than 6 months;

h) 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 or display 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 or display;
- 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 for 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.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

However, an insurance company of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State provided that it receives premium or insures risks in the other State.

5. 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 through a broker, general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.

6. 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 from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. a) Subject to the provisions of sub-paragraphs b) and c) the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated;

b) 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;

c) ships, boats 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 for the performance of professional 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 there in. 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 under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **SHIPPING AND AIR TRANSPORT**

1. Profits derived from sources within one of the Contracting States by a resident of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in both Contracting States.

2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

## **ARTICLE 9**