

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

Note: The Convention is pending ratification.

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EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of the Philippines and the Government of the United States of America, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose their respective Plenipotentiaries.

The Government of the Republic of the Philippines:

Mauro Mendez, Secretary of Foreign Affairs of the
Republic of the Philippines, and
Rufino G. Hechanova, Secretary of Finance of the
Republic of the Philippines,

The Government of the United States of America:

Dean Rusk, Secretary of State of the United States of America,

who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:

ARTICLE 1
Taxes Covered

(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States, the Federal income tax, including surtax, imposed by Subtitle A of the Internal Revenue Code (but not including the tax on improperly accumulated earnings or the personal holding company tax).

(b) In the case of the Philippines, the income tax imposed by Title II of the National Internal Revenue Code (but not including the tax on improperly accumulated earnings or the personal holding company tax).

(2) The present Convention shall also apply to taxes substantially similar to those covered by paragraph (1) of this Article which are subsequently imposed in addition to, or in place of, existing taxes.

(3) For the purpose of Article 6, this Convention shall also apply to taxes of every kind, and to those imposed at the national, state, or local level.

ARTICLE 2

General Definitions

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States thereof, the District of Columbia and Wake Island;

(b) The term "Philippines" means the Republic of the Philippines, and when used in a geographical sense means the territories comprising the Philippines;

(c) The terms "one of the Contracting States" and "the other Contracting State" mean the United States or the Philippines, as the context requires;

(d) The term "person" comprises an individual, a corporation and any other body of individuals or persons;

(e) The term "corporation" means any body corporate, association or joint stock company or other entity which is treated as a body corporate for tax purposes;

(f) The term "United States corporation" means a corporation created or organized under the laws of the United States or of any State thereof or the District of Columbia;

(g) The term "Philippine corporation" means a corporation created or organized under the laws of the Philippines;

(h) The terms "resident or corporation of one of the Contracting States" and "resident or corporation of the other Contracting State" mean a resident or corporation of the United States or a resident or corporation of the Philippines, as the context requires;

(i) The term "competent authority" means:

(1) in the United States, the Secretary of the Treasury or his delegate;

(2) in the Philippines, the Secretary of Finance or his delegate.

(2) As regards the application of the present 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 the subject of the present Convention.

ARTICLE 3

General Rules of Taxation

(1) A resident or corporation of one of the Contracting States shall be taxable by the other Contracting State only on income derived from sources within that other Contracting State.

(2) A resident or corporation of one of the Contracting States shall be taxed by the other Contracting State on income taxable under paragraph (1) in accordance with

the limitations set forth in the present Convention. Any income to which the provisions of the present Convention are not expressly applicable shall be taxable by each of the Contracting States in accordance with its own law. The provisions of the present Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded (a) by the laws of one of the Contracting States in the determination of the tax imposed by that State or (b) by any other agreement between the Contracting States.

(3) Except as provided in paragraph (4), a Contracting State may tax an individual who is a citizen or resident of that Contracting State (whether or not such person is also a resident of the other Contracting State) or a corporation of that Contracting State (whether or not also a corporation of the other Contracting State) as if the present Convention had not come into effect.

(4) The provisions of paragraph (3) shall not affect —

- (a) the benefits conferred by a Contracting State under Articles 4 and 6;
- (b) the benefits conferred by the United States under Article 18; and
- (c) the benefits conferred by a Contracting State under Articles 14, 15, 16 and 17 upon individuals other than citizens of, or individuals having immigrant status in, that Contracting State.

ARTICLE 4

Relief from Double Taxation

Double taxation of income shall be avoided in the following manner:

(1) The United States shall allow as a credit against its tax specified in subparagraph (I)(a) of Article 1 the appropriate amount of taxes paid to the Philippines. Such appropriate amount shall be based upon the full amount of tax paid to the Philippines, and such credit shall, in other respects, be allowed in accordance with the applicable revenue laws of the United States. It is agreed for this purpose that the Philippine tax specified in subparagraph (I)(b) of Article 1 shall be considered to be an income tax, and that by virtue of the provisions of paragraph (2) of this Article the Philippines satisfies the similar credit requirement prescribed by section 901 (b) (3), Internal Revenue Code of 1954, with respect to taxes paid to the Philippines.

(2) The Philippines shall allow to a resident or corporation of the Philippines as a credit against its tax specified in subparagraph (I)(b) of Article 1 the appropriate amount of taxes paid to the United States. Such appropriate amount shall be based upon the full amount of tax paid to the United States, and such credit shall, in other respects, be allowed in accordance with the revenue laws of the Philippines. It is agreed for this purpose that the United States tax specified in subparagraph (I)(a) of Article 1 shall be considered to be an income tax and that by virtue of the provisions of paragraph (1) of this Article the United States satisfies the similar credit requirement prescribed by section 30 (c)(3)(B), National Internal Revenue Code, with respect to taxes paid to the United States.

ARTICLE 5

Source of Income

For purposes of Article 3 and 4:

(1) Income from the performance of personal services (including private pensions and annuities paid in respect of such services) or the furnishing of personal services shall be treated as income from sources within the State in which such services are performed. Compensation for personal services performed aboard ships or aircraft operated by a resident or corporation of a Contracting State and, in the case of the United States, registered in the United States (including private pensions and annuities paid in respect of such services) shall be treated as income from sources within that Contracting State, if rendered by a member of the regular complement of the ship or aircraft.

(2) The source of any item of income to which the provisions of this Article are not expressly applicable shall be determined by each of the Contracting States in accordance with its own law.

ARTICLE 6

Nondiscrimination

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than is a citizen of that other Contracting State who is resident therein.

(2) A permanent establishment which a citizen or corporation of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than is a citizen or corporation of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging either Contracting State to grant to citizens of the other Contracting State who are not residents of the former Contracting State any personal allowances or deductions which are by its law available only to residents of that former Contracting State.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned by one or more citizens or corporations of the other Contracting State, shall not be subjected in the former Contracting State to more burdensome taxes than is a corporation of the former Contracting State, the capital of which is wholly owned by one or more citizens or corporations of that former Contracting State.

ARTICLE 7

Business Profits

(1) A resident or corporation of one of the Contracting States shall be subject to tax in the other Contracting State with respect to its industrial or commercial profits only if that resident or corporation has a permanent establishment in that other Contracting State.

(2) In the imposition of such tax —

(a) there shall be allowed as deductions ordinary and necessary expenses, wherever incurred, which are allocable, to the reasonable satisfaction of the competent authority of that Contracting State, to income from sources within that Contracting State; and

(b) no profits shall be deemed to be derived from sources within that Contracting State merely by reason of the purchase of goods or merchandise.

(3) For purposes of paragraph (1) the term "industrial or commercial profits" means income derived from the active conduct of a trade or business. It includes profits from manufacturing, mercantile, agricultural, fishing and mining activities, and from the furnishing of personal services. It does not include income from the performance of personal services, dividends, interest, royalties, income from the rental of personal property, income from real property, insurance premiums, or gains derived from the sale or exchange of capital assets.

ARTICLE 8

Definition of Permanent Establishment

(1) The term "permanent establishment" means a fixed place of business through which a resident or corporation of one of the Contracting States engages in trade or business.

(2) The term "a fixed place of business" includes, but is not limited to, a branch; an office; a store or other sales outlet; a workshop; a factory; a warehouse; a mine, quarry or other place of extraction of natural resources; a building site, or construction or installation site, which exists for more than three months.

(3) The term "permanent establishment" shall not be deemed to include any one or more of the following:

(a) facilities used for the purpose of storage, display or delivery of goods or merchandise belonging to the resident or corporation;

(b) the maintenance of a stock of goods or merchandise belonging to the resident or corporation for the purpose of storage, display and/or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the resident or corporation for processing by another person;

(d) a fixed place of business maintained for the purpose of purchasing goods or merchandise, and/or for the collection of information, for the resident or corporation;

(e) a fixed place of business maintained 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 resident or corporation.

(4) Even if a resident or corporation of one of the Contracting States does not have a permanent establishment in the other Contracting State under paragraphs (1) — (3) of this Article, nevertheless he shall be deemed to have a permanent establishment in the latter State if he engages in trade or business in that State through an agent who —

(a) has an authority to conclude contracts in the name of that resident or corporation and regularly exercises that authority in the latter State unless the exercise of the authority is limited to the purchase of goods or merchandise;

(b) regularly secures orders in the latter State for that resident or corporation; or