

PHILIPPINES

Agreement for avoidance of double taxation and prevention of fiscal evasion with Philippines

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Philippines for the avoidance of double taxation and the prevention of fiscal evasion with respect of taxes on income has entered into force on the 21st March, 1994, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 29 of the said Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 173(E), dated 2-4-1996 and as amended by Notification No. SO 125(E), dated 2-2-2005.

ANNEXURE

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

The Government of the Republic of India and the Government of the Republic of the Philippines.

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 of income imposed on behalf of each Contracting State, irrespective of 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 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, 1964 (7 of 1964) ;
(hereafter referred to as "Indian tax") ;

(b) in the Philippines :

the income-taxes imposed by the Government of the Republic of the Philippines ;
(hereafter to as "Philippine 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 State shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS - 1. In this 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 authorised 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 other 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 herein 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 of 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 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 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. 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) 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 ;
- (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 the 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 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. 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 : AIR TRANSPORT - 1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable in that State.

2. Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of aircraft in international traffic may be taxed in the first-mentioned State in accordance with its domestic law, but the tax so charged shall be reduced by forty per cent. In no case, however, shall the tax so charged exceed the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

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

ARTICLE 9 : **SHIPPING** - 1. Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable in that State.

2. Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships in international traffic may be taxed in the first-mentioned State in accordance with its domestic law, but the tax so charged shall be reduced by forty per cent. In no case, however, shall the tax so charged exceed the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

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

ARTICLE 10 : **ASSOCIATED ENTERPRISES** - 1. Where :

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 11 : **DIVIDENDS** - 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least ten per cent of the shares of the company paying the dividends;
- (b) 20 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base

situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 12 : **INTEREST** - 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed :

- (a) 10% of the gross amount of interest if the interest is received by a financial institution (including insurance companies) ;
- (b) the Philippine tax on interest paid by a company which is a resident of the Philippines to a resident of India in respect of public issues of bonds, debentures or similar obligations shall not exceed 10 per cent of the gross amount of interest ; and
- (c) 15% of the gross amount of interest in all other cases.

3. Notwithstanding the provisions of paragraph 2—

- (a) interest arising in a Contracting State shall be exempt from tax in that State, provided it is derived and beneficially owned by :
 - (i) the Government, a political sub-division or a local authority of the other Contracting State ;
 - (ii) the Central Bank of the other Contracting State ; or
 - (iii) other lending institutions as may be specified and agreed in letters exchanged between the competent authorities of the Contracting State ;
- (b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in sub-paragraph (a)] who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, including sales on credit of any industrial, commercial or scientific equipment, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of the Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 : **ROYALTIES** - 1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties provided that such royalties are payable :

- (i) in the case of Philippines, by an enterprise which is registered with the Board of Investment, and
- (ii) in the case of India, by an enterprise in pursuance of any collaboration agreement approved by the Government of India.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14 : **CAPITAL GAINS** - 1. Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 : **INDEPENDENT PERSONAL SERVICES** - 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character

shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State ; or
- (b) ¹*[if the recipient is present in the other State for a period or periods exceeding in the aggregate 183 days in the relevant 'previous year' in the case of Republic of India or 'calendar year' in the case of Republic of the Philippines.]*

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16 : DEPENDENT PERSONAL SERVICES - 1. Subject to the provisions of Articles 17 (Directors' Fees), 18 (Entertainers and Athletes), 19 (Government Service), 20 (Non-Government Pensions and Annuities), 21 (Students and Trainees) and 22 (Professors and Teachers), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant "previous year" in the case of Republic of India or "calendar year" in the case of the Republic of the Philippines ;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

ARTICLE 17 : DIRECTORS' FEES - Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 : ENTERTAINERS AND ATHLETES - 1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer such as theatre, motion picture, radio or television artiste or a musician or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

2. While income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 15 (Independent Personal Services) and 16 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are exercised pursuant to a special programme between the Governments of the two Contracting States for cultural exchange and are supported substantially from the public funds of the first-mentioned Contracting State or a political sub-division, or a local authority thereof or from the funds of a statutory body, or a non-profit organisation which is certified as qualifying under this provision by the competent authority of that State.

4. Notwithstanding the provisions of paragraph 2 and Articles 7 (Business Profits), 15 (Independent Personal Services), and 16 (Dependent Personal Services), where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State if such activities are exercised by an entertainer or athlete of that other Contracting State pursuant to a special programme between the Governments of the two Contracting States for cultural exchange and are supported substantially from the public funds of that other State, a political sub-division or a local authority thereof or from the funds of a statutory body, or a non-profit organisation which is certified as qualifying by the competent authority of that other State of which he is a resident.

ARTICLE 19 : GOVERNMENT SERVICE - 1. (a) Remuneration, other than a pension paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who :

(i) is a national of that State ; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.

3. The Provisions of Articles 16 (Dependent Personal Services), 17 (Directors' Fees) and 20 (Non-Government Pensions and Annuities) shall apply to remuneration and pensions in respect of services rendered in connection with business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : NON-GOVERNMENT PENSIONS AND ANNUITIES - 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 21 : STUDENTS AND TRAINEES - 1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and

(b) remuneration from employment in that other State, in an amount not exceeding Rs. 15,000 or its equivalent in Philippine currency during any "previous year" in the case of Republic of India or "calendar year" in the case of the Republic of the Philippines, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than three consecutive years from the date of his first arrival in that other Contracting State.

3. The amounts referred to in paragraphs 1 and 2 of this Article may be reviewed and agreed upon by the competent authorities of both Contracting States from time to time.

ARTICLE 22 : PROFESSORS AND TEACHERS - 1. A professor or teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of

teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of this Article and Article 21, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the "previous year" in the case of Republic of India or "calendar year" in the case of the Republic of the Philippines, in which he visits the other Contracting State or in the immediately preceding "previous year" or the "year of income".

4. For the purposes of paragraph 1, "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

ARTICLE 23 : OTHER INCOME - Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

ARTICLE 24 : ELIMINATION OF DOUBLE TAXATION - 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. The amount of Philippine tax payable, under the laws of the Philippines and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in the Philippines, which have been subjected to tax both in India and in the Philippines, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in the Philippines. Further, where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income-tax payable by the company in India and as to the balance, if any, against surtax payable by it in India.

3. The term "Philippine tax payable" shall be deemed to include the amount of Philippine tax which would have been paid if the Philippine tax had not been exempted or reduced in accordance with this Convention and the special incentive laws designed to promote economic development in the Philippines, effective on the date of signature of this Convention, or which may be introduced in the future in the Philippine taxation laws in modification of, or in addition to, the existing laws.

4. The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of the Philippines, in respect of profits or income arising in India, which has been subjected to tax both in India and the Philippines, shall be allowed as a credit against Philippine tax payable in respect of such profits or income provided that such credit shall not exceed the Philippine tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in India.

5. For the purposes of the credit referred to in paragraph 4, the term "Indian tax payable" shall be deemed to include any amount which would have been payable as Indian tax for any assessment year but for an exemption or reduction of tax granted for that year or any part thereof by the special incentive measures under the provisions of the Income-tax Act, 1961 (43 of 1961), which are designed to promote economic development, or which may be introduced hereafter in modification of, or in addition to, the existing provisions for promoting economic development in India.

ARTICLE 25 : NON-DISCRIMINATION - 1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances.

5. Notwithstanding the preceding provisions of this Article, either Contracting State may, in the promotion of necessary industry or business, limit to its nationals the enjoyment of tax incentives granted by it.

6. In this Article, the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 26 : MUTUAL AGREEMENT PROCEDURE - 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention relating to the taxes which are the subject of this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 27 : EXCHANGE OF INFORMATION - 1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation :

- (a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process or information the disclosure of which would be contrary to public policy.

ARTICLE 28 : **DIPLOMATIC AGENTS AND CONSULAR OFFICERS** - Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : **ENTRY INTO FORCE** - Each of the Contracting States shall notify to the other completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given ;
- (b) in Philippines, in respect of income arising in any year of income beginning on or after the first day of January next following the calendar year in which the later of the notification is given.

ARTICLE 30 : **TERMINATION** - This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June, in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect :

- (a) in India, in respect of income arising in any previous year beginning on or after the 1st day of April, next following the calendar year in which the notice is given ;
- (b) in Philippines, in respect of income arising in any year of income beginning on or after the 1st day of January, next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Convention.

DONE in duplicate at Manila this twelfth day of February, one thousand nine hundred and ninety-six in Hindi and English languages, both the texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

PROTOCOL

1. For purposes of Article 1, nothing in this Convention shall be construed as preventing either Contracting State from taxing its citizens, in accordance with its domestic legislation, who may be residing in the other Contracting State. However, no credit shall be given under this Convention for taxes paid/payable in pursuance of such domestic legislation.

2. For purposes of paragraph 3 of Article 7, the deductions in respect of expenses incurred outside the Contracting State shall be restricted as per the limitation on allowance of such expenses provided in the domestic law of the concerned Contracting State.

3. For purposes of paragraph 2 of Articles 8 and 9, the rate of tax prescribed therein is understood to include the Branch Profit Remittance Tax as may beleviable by either Contracting State.

4. With reference to Articles 8 and 9 if at any time after the date of signature of the Convention the Philippines agrees to a lower or *nil* rate of tax with a third State the Government of the Republic of the Philippines shall without undue delay inform the Government of India through diplomatic channels and the two Governments will undertake to review these Articles with a view to providing such lower or *nil* rate to profits of the same kind derived under similar circumstances by enterprises of both Contracting States.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE in duplicate at Manila this twelfth day of February, one thousand nine hundred and ninety-six in Hindi and English languages, both the texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.