

**PROTOCOL AMENDING THE CONVENTION BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND JAPAN FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Republic of the Philippines and Japan,

Desiring to amend the Convention between the Republic of the Philippines and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Tokyo on 13th February, 1980 (hereinafter referred to as "the Convention",

Have agreed as follows:

ARTICLE I

Paragraph (6) of Article 5 of the Convention shall be deleted and replaced by the following:

"(6) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State consultancy services, or supervisory services in connection with a contract for a building, construction or installation project through employees or other personnel - other than an agent of an independent status to whom paragraph (7) applies - provided that such activities continue (for the same project or two or more connected projects) for a period or periods aggregating more than six months within any twelve-month period. However, if the furnishing of such services is effected under an agreement between the Governments of the two Contracting States regarding economic or technical cooperation, that enterprise shall, notwithstanding any provisions of this Article, not be deemed to have a permanent establishment in that other Contracting State."

ARTICLE II

Article 9 of the Convention shall be deleted and replaced by the following:

Article 9

(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 accordance with the provisions of paragraph (1), in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount-of the tax charged therein, on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention."

ARTICLE III

Paragraph (2) of Article 10 of the Convention shall be deleted and replaced by the following:

"(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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of" the profits out of which the dividends are paid."

ARTICLE IV

Paragraphs (2), (3), (4), (5), (6), (7) and (8) of Article 11 of the Convention shall be deleted and replaced by the following:

"(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and derived by the Government of the other Contracting State including political subdivisions and local authorities