

**CONVENTION BETWEEN THE REPUBLIC OF THE PHILIPPINES
AND SPAIN 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 Spain 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, as well as taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are, in particular:

(a) In the case of Spain:

(i) the income tax on individuals; and

(ii) the corporation tax; (hereinafter referred to as "Spanish Tax");

(b) 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").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes.

**ARTICLE 3
GENERAL DEFINITIONS**

1. In this Convention, unless the context otherwise requires:

(a) the term "Spain" means the territory of the Spanish State, including any area outside the territorial sea upon which in

accordance with international law and on application of its legislation, the Spanish State exercises or could in the future exercise jurisdiction or sovereign rights;

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

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

(d) the term "tax" means Spanish tax or Philippine tax as the context requires;

(e) the term "person" comprises an individual, a partnership, a corporation, an estate, a trust, 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 "national" means:

(a) in the case of Spain, any individual possessing Spanish nationality;

(b) in the case of the Philippines, any individual possessing the citizenship of the Philippines;

(c) any legal person, partnership or association deriving its status as such from the law in force in a Contracting State;

(i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of one of the Contracting States except where the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term "competent authority" means:

(i) in the case of Spain, the Minister of Economy and Finance or his authorized representative; and

(ii) in the case of the Philippines, the Secretary of Finance or his 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 relating to the taxes to which are the subject of the Convention.

ARTICLE 4

FISCAL DOMICILE

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 Contracting State in respect only of income from sources therein.

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 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 closest (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 its status shall be determined by mutual agreement.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes 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" includes, but is not limited to:

(a) a place of management;

(b) a branch;

(c) an office;

- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a store or premises where sales are performed;
- (h) a mine, an oil-well, quarry or other place of extraction of natural resources;
- (i) a building site or construction, installation or assembly - project or supervisory activities in connection therewith, where such site, project or activity continues for more than six months;
- (j) the furnishing of services including consultancy services by an enterprise through an employee or other personnel provided where activities of that nature (for the same or connected project) within the other Contracting States continue within a Contracting State for a period or periods exceeding 180 days within any twelve-month period.

3. The term "permanent establishment" shall not be deemed to

- (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. Where such goods and merchandise are sold directly in the places of storage, the latter shall be deemed to constitute a permanent establishment;
- (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 solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) The maintenance of a fixed place 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 an independent status to whom paragraph 6 applies - shall be deemed to be a permanent establishment in the first-mentioned Contracting State if

- (a) he has, and habitually exercises in that Contracting 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; or

(b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

5. An insurance enterprise of a Contracting State shall, except with regards to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other Contracting State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.

6. 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 Contracting State through a broker, general commission agent or any other agent of an independent status, where 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 that enterprise he would not be considered an agent of an independent status within the meaning of the paragraph if it is proved that the transactions between the agent and the enterprise were not made under arms-length conditions.

7. The fact that a corporation of a Contracting State controls or is controlled by a corporation of the other Contracting State or a corporation which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation 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. The term "immovable property" shall be defined in accordance with 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 apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.