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Australian Treaty Series 1980 No 16

DEPARTMENT OF FOREIGN AFFAIRS

CANBERRA

Agreement between the Government of Australia and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

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**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF 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 AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF
THE PHILIPPINES,**

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

HAVE AGREED as follows:

CHAPTER I

SCOPE OF THE AGREEMENT

Article 1

Personal scope

(1) This Agreement shall apply to persons who are residents of one or both of the Contracting States.

(2) However, nothing in this Agreement shall prevent the Philippines from taxing its own citizens, who are not residents of the Philippines, in accordance with Philippine law.

Article 2

Taxes covered

(1) The existing taxes to which this Agreement shall apply are -

(a) in Australia:

the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

(b) in the Philippines:

the income taxes imposed by the Government of the Republic of the Philippines.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. At the end of each calendar year, the competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any substantial changes which have been made in the laws of his State relating to the taxes to which this Agreement applies.

CHAPTER II

DEFINITIONS

Article 3

General definitions

(1) In this Agreement, unless the context otherwise requires -

(a) the term "Australia" means the Commonwealth of Australia and, when used in a geographical sense, includes -

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Coral Sea Islands Territory; and

(vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force a law of Australia or of a State or part of Australia or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf;

(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 "Contracting State", "one of the Contracting States" and "other Contracting State" mean Australia or the Philippines, as the context requires;

- (d) the term "person" means an individual, an estate, a trust, a company and any other body of persons;
 - (e) the term "company" means any body corporate or any entity which is treated as a company or a body corporate for tax purposes;
 - (f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of the Philippines, as the context requires;
 - (g) the term "tax" means Australian tax or Philippine tax, as the context requires;
 - (h) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
 - (i) the term "Philippine tax" means tax imposed by the Philippines, being tax to which this Agreement applies by virtue of Article 2;
 - (j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and, in the case of the Philippines, the Minister of Finance or his authorized representative;
 - (k) the term "international traffic", in relation to the operation of ships or aircraft by a resident of one of the Contracting States, means operations of ships or aircraft other than operations of ships or aircraft confined solely to places in the other Contracting State.
- (2) In this Agreement, the terms "Australian tax" and "Philippine tax" do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.
- (3) For the purposes of this Agreement, the carriage of passengers, livestock, mail, goods or merchandise shipped in one of the Contracting States for discharge at another place in that State shall be treated as operations of ships or aircraft confined solely to places in that State.
- (4) In the application of this Agreement by a Contracting State, any term not defined in this Agreement 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 this Agreement applies.

Article 4

Residence

- (1) For the purposes of this Agreement, a person is a resident of one of the Contracting States -
- (a) in the case of Australia, subject to paragraph (2), if the person is a resident of Australia for the purposes of Australian tax;
 - (b) in the case of the Philippines -
 - (i) if the person is a company or an entity which is incorporated, created or organized in the Philippines or under its laws and is treated as a body corporate for purposes of Philippine tax;
 - (ii) if the person, not being a company or an entity treated as a company or body corporate for the purposes of Philippine tax, is a resident of the Philippines for the purposes of Philippine tax.
- (2) In relation to income from sources in the Philippines, a person who is subject to Australian tax on income which is from sources in Australia shall not be treated as a resident of Australia unless the income from sources in the Philippines is subject to Australian tax or, if that income is exempt from Australian

tax, it is so exempt solely because it is subject to Philippine tax.

(3) Where by reason of the preceding provisions of this Article an individual is a **resident of both Contracting States**, then his status shall be determined in accordance with the following rules -

(a) he shall be deemed to be a **resident** solely of the **Contracting State** in which he has a **permanent home** available to him;

(b) if he has a permanent home available to him in **both Contracting States**, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State with which his **personal and economic relations** are **the closer**.

(4) For the purposes of the last preceding paragraph, an individual's citizenship of a Contracting State shall be a factor in determining the degree of his personal and economic relations with that Contracting State.

(5) 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 solely of the Contracting State in which it is incorporated, created or organized.

Article 5

Permanent establishment

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an 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, oil or gas well, quarry or other place of extraction of natural resources;

(g) an agricultural, pastoral or forestry property;

(h) 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;

(i) premises used as a sales outlet;

(j) a warehouse, in relation to a person providing storage facilities for others;

(k) a place in one of the Contracting States through which an enterprise of the other Contracting State furnishes services, including consultancy services, for a period or periods aggregating more than six months in any taxable year or year of income, as the case may be, in relation to a particular project, or to any project connected therewith.

(3) Notwithstanding the preceding provisions of this Article, an enterprise shall not be deemed to have a permanent establishment merely by reason of -

- (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 for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.
- (4) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if substantial equipment is being used in that State for more than six months by, for or under contract with the enterprise.
- (5) A person acting in one of the Contracting States 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 of that enterprise in the first-mentioned State if -
- (a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
 - (b) he has no such authority, but habitually maintains on behalf of the enterprise in the first-mentioned State a stock of goods or merchandise from which on behalf of the enterprise he regularly delivers goods or merchandise for use or consumption in that State; or
 - (c) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.
- (6) An enterprise of one of the Contracting States 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 an independent status, where that person is acting in the ordinary course of his business as such a broker or agent.
- However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered to be an agent of 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 (5) shall apply.
- (7) The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

Article 6

Income from real property

- (1) Income from real property may be taxed in the Contracting State in which the real property is situated.

(2) The term "real property" shall have the meaning which it has under the laws in force in the Contracting State in which the property in question is situated. The term shall in any case include rights to royalties and other payments in respect of the operation of mines, oil or gas wells, or quarries or in respect of the exploitation of any natural resource and those rights shall be regarded as situated where the mines, oil or gas wells, quarries or natural resources are situated. Ships or aircraft shall not be regarded as real property.

(3) Income from a lease of land and income from any other direct interest in or over land, whether or not improved, shall be regarded as income from real property situated where the land to which the lease or other direct interest relates is situated.

(4) The provisions of paragraphs (1) and (3) shall also apply to income from real property of an enterprise and to income from real property used for the performance of professional services.

Article 7

Business profits

(1) The profits of all enterprise of one of the Contracting States 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 -

(a) that permanent establishment; or

(b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on through that permanent establishment if the sale or the business activities had been made or carried on in that way with a view to avoiding taxation in that other State.

(2) Subject to the provisions of paragraph (3), where an enterprise of one of the Contracting States 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 or with other enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(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) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(6) For the purposes of this Article, the profits of an enterprise do not include income from the operation of aircraft in international traffic and, except as provided in the Articles referred to in this paragraph, do not include items of income dealt with in Articles 6, 8, 10, 11, 12, 13, 14, 16 and 17.

(7) The profits of an enterprise of one of the Contracting States from the carrying on in the other Contracting State of a business of any form of insurance other than life insurance may be taxed in the other Contracting State in accordance with the law of that other State relating specifically to the taxation of any person who carries on such business, and Article 24 shall apply for the elimination of double taxation as if the profits so taxed were attributable to a permanent establishment of the enterprise in the State imposing the tax.

Article 8

Shipping

(1) The tax payable in a Contracting State by a resident of the other Contracting State in respect of profits from the operation of ships in international traffic shall not exceed the lesser of -

- (a) one and one-half per cent of the gross revenues derived from sources in that State; and
- (b) 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.

(2) Paragraph (1) shall apply in relation to the share of the profits from the operation of ships derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organization or in an international operating agency.

Article 9

Associated enterprises

(1) Where -

- (a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(3) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1) or (2), in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement in relation to the nature of the income, and for this purpose the competent authorities of the Contracting

States shall, if necessary, consult each other.

Article 10

Dividends

(1) Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall -

(a) in the case of dividends derived by a company, not exceed 15 per cent of the gross amount of the dividends where relief, either by way of rebate or credit as described in paragraph (2) of Article 24 or relief by way of credit as described in the second sentence of paragraph (4) of Article 24, is given to the beneficial owner of the dividends; and

(b) in any other case, not exceed 25 per cent of the gross amount of the dividends.

Nothing in this paragraph shall affect the taxation of a company in respect of profits out of which dividends are paid.

(3) The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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 that permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State. Provided that this paragraph shall not apply in relation to dividends paid by a company which is a resident of Australia for the purposes of Australian tax and which is also a resident of the Philippines for the purposes of Philippine tax.

(6) The Philippines may impose in accordance with its domestic law, apart from the corporate income tax, a tax on remittances of profits by a branch to its Head Office provided that the tax so imposed shall not exceed 15 per cent of the amount remitted.

(7) Australia may impose an income tax (in this paragraph called a "branch profits tax") on the reduced taxable income of a company that is a resident of the Philippines in addition to the income tax (in this paragraph called "the general income tax") payable by the company in respect of its taxable income; provided that any branch profits tax so imposed in respect of a year of income shall not exceed 15 per cent of the amount by which the reduced taxable income of that year of income exceeds the general income tax payable in respect of the reduced taxable income of that year of income.

Article 11

Interest

- (1) Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
- (2) Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the interest.
- (3) The term "interest" in this Article includes interest from Government securities or from bonds or debentures and interest from any other form of indebtedness (whether or not secured by mortgage and whether or not carrying a right to participate in profits) as well as all other income assimilated to interest by the taxation law of the Contracting State in which the income arises.
- (4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, 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 indebtedness giving rise to the interest is effectively connected with that permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- (5) Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and the interest is borne by the permanent establishment or fixed base, then the interest shall be deemed to arise where the permanent establishment or fixed base is situated.
- (6) Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.
- (7) Interest derived by the Government of a Contracting State, or by any other body exercising governmental functions in, or in a part of, a Contracting State, or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.
- (8) The Philippine tax on interest arising in the Philippines in respect of public issues of bonds, debentures or similar obligations and paid by a company which is a resident of the Philippines to a resident of Australia shall not exceed 10 per cent of the gross amount of the interest.
- (9) The principles set forth in paragraphs (1) to (7) inclusive of Article 5 shall be applied in determining for the purposes of this Article whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

Article 12

Royalties

- (1) Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State. However, the tax so charged shall not exceed -

(a) 15 per cent of the gross amount of the royalties where the royalties are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities; and

(b) in all other cases, 25 per cent of the gross amount of the royalties.

(3) The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for -

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in paragraph (a), any such equipment as is mentioned in paragraph (b) or any such knowledge or information as is mentioned in paragraph (c);

(e) the use of, or the right to use -

(i) motion picture films;

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

(f) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, 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 asset giving rise to the royalties is effectively connected with that permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division of that State or a local authority of that State or a person who is a resident of that State for purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in the other Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties was incurred, and the royalties are borne by the permanent establishment or fixed base, then the royalties shall be deemed to arise where the permanent establishment or fixed base is situated.

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person, the amount of the royalties paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the amount of the royalties paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

(7) The principles set forth in paragraphs (1) to (7) inclusive of Article 5 shall be applied in determining

for the purposes of this Article whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

Article 13

Alienation of property

(1) Income from the alienation of real property may be taxed in the Contracting State in which that property is situated.

(2) For the purposes of this Article -

(a) the term "real property" shall have the meaning which it has under the laws in force in the Contracting State in which the property in question is situated and shall include -

(i) a lease of land or any other direct interest in or over land;

(ii) rights to exploit, or to explore for, natural resources; and

(iii) shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States;

(b) real property shall be deemed to be situated -

(i) where it consists of direct interests in or over land - in the Contracting State in which the land is situated;

(ii) where it consists of rights to exploit, or to explore for, natural resources - in the Contracting State in which the natural resources are situated or the exploration may take place; and

(iii) where it consists of shares or comparable interests in a company, the assets of which consist wholly or principally of direct interests in or over land in one of the Contracting States or of rights to exploit, or to explore for, natural resources in one of the Contracting States - in the Contracting State in which the assets or the principal assets of the company are situated.

(3) Subject to the provisions of paragraph (1), income from the alienation of capital assets of an enterprise of one of the Contracting States or available to a resident of one of the Contracting States for the purpose of performing professional services or other independent activities shall be taxable only in that Contracting State, but, where those assets form part of the business property of a permanent establishment or fixed base situated in the other Contracting State, such income may be taxed in that other State.

Article 14

Independent personal services

(1) Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, if such an individual -

(a) has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; or

(b) in a year of income or taxable year, as the case may be, stays in the other Contracting State for a period or periods aggregating 183 days for the purpose of performing his activities; or

(c) derives, in a year of income or taxable year, as the case may be, from residents of the other Contracting State gross remuneration in that State exceeding ten thousand Australian dollars or its equivalent in Philippine pesos from performing his activities,

so much of the income derived by him as is attributable to activities so performed may be taxed in the other State.

(2) The Treasurer of Australia and the Minister of Finance of the Philippines may agree in letters exchanged for the purpose to variations in the amount specified in sub-paragraph (c) of paragraph (1) and any variations so agreed shall have effect according to the tenor of the letters.

(3) The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities, as well as in the exercise of independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent personal services

(1) Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or taxable year, as the case may be, of that other State; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

Article 16

Directors' fees

Directors' fees and similar payments derived by a resident of one of the Contracting States 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. In relation to remuneration of a director of a company derived from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, the provisions of Article 15 shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to "employer" were references to the company.

Article 17

Entertainers

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as

theatrical, motion picture, radio or television artistes and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(2) Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

(3) Notwithstanding the provisions of paragraph (1) and Articles 14 and 15, income derived from activities performed in a Contracting State by entertainers shall be exempt from tax in that Contracting State if the visit to that State is substantially supported or sponsored by the other Contracting State and the entertainer is certified as qualifying under this provision by the competent authority of that other State.

Article 18

Pensions and annuities

(1) Pensions (including government pensions) and annuities paid to a resident of one of the Contracting States shall be taxable only in that State. However, pensions paid by a Philippine enterprise under a pension plan not registered under Philippine law may be taxed in the Philippines.

(2) 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 19

Government service

(1) Remuneration (other than a pension) paid by a Contracting State or a political sub-division of that State or a local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who -

(a) is a citizen or national of that State; or

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

(2) The provisions of paragraph (1) shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political sub-division of one of the States or a local authority of one of the States. In such a case the provisions of Articles 15 and 16 shall apply.

Article 20

Professors and teachers

(1) Remuneration which a professor or teacher who is a resident of one of the Contracting States and who visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution receives for those activities shall be taxable only in the first-mentioned State.

(2) This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

(3) For the purposes of paragraph (1), the term "remuneration" shall include remittances from sources

outside the other State sent to enable the professor or teacher to carry out the purposes referred to in paragraph (1).

Article 21

Students and trainees

Where a student or trainee, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in the other State solely for the purpose of his education or training, receives remittances from sources outside the other State for the purpose of his maintenance or education, those payments shall be exempt from tax in the other State.

Article 22

Income of dual resident

Where a person who by reason of the provisions of paragraph (1) of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraph (3) or (5) of that Article is deemed for the purposes of this Agreement to be a resident solely of one of the Contracting States derives income from sources in that Contracting State or from sources outside both Contracting States, that income shall be taxable only in that Contracting State.

Article 23

Source of income

Income derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8 and 10 to 17 may be taxed in the other Contracting State, shall, for the purposes of Article 24 and of the income tax law of that other State, be deemed to be income from sources in that other State.

CHAPTER IV

METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 24

(1) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Philippine tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in the Philippines (excluding, in the case of dividends, tax paid in respect of the profits out of which the dividends are paid except to the extent that the provisions of paragraph (2) may permit that tax to be included) shall be allowed as a credit against Australian tax payable in respect of that income.

(2) A company which is a resident of Australia is, in accordance with the provisions of the taxation law of Australia in force at the date of signature of this Agreement, entitled to a rebate in its assessment at the average rate of tax payable by the company in respect of dividends that are included in its taxable income and are received from a company that is a resident of the Philippines. However, should the law so in force be amended so that the rebate in relation to the dividends ceases to be allowable under that law, credit shall be allowed to the first-mentioned company under paragraph (1) for the Philippine tax paid on the profits out of which the dividends are paid, but only if that company beneficially owns at least 10 per cent of the paid-up share capital of the second-mentioned company.

(3) For the purposes of paragraph (1) and of the income tax law of Australia -

(a) a resident of Australia deriving income from sources in the Philippines, consisting of royalties to

which sub-paragraph (a) of paragraph (2) of Article 12 applies, shall be deemed to have paid, in addition to any Philippine tax actually paid, Philippine tax in an amount equal to 5% of the gross amount of the royalties; and

(b) the amount of the said royalties shall be deemed to be the amount that would have been the amount of the royalties if no Philippine tax had been paid, increased by 5%.

(4) In accordance with the provisions and subject to the limitations of the law of the Philippines (as it may be amended from time to time without changing the general principle hereof), the Philippines shall allow to a resident of the Philippines as a credit against the Philippine tax the appropriate amount of taxes paid or accrued to Australia. In the case of a Philippine corporation owning more than 50 per cent of the voting stock of an Australian corporation from which it receives dividends in any taxable year, the Philippines shall also allow credit for the appropriate amount of taxes paid or accrued to Australia by an Australian corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to Australia, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the Philippine tax on income from sources within Australia, and on income from sources outside the Philippines) provided by Philippine law for the taxable year.

CHAPTER V

SPECIAL PROVISIONS

Article 25

Mutual agreement procedure

(1) Where a resident of one of the Contracting States considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented in writing within two years from the first notification of the action.

(2) The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

Article 26

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation -

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) to supply particulars 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 which would disclose any trade, business, industrial, commercial or professional secret or trade process, or to supply information the disclosure of which would be contrary to public policy.

Article 27

Diplomatic and consular officials

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreement.

Article 28

Miscellaneous

If, under any Agreement or Convention concluded by the Philippines, a resident of any other country is exempt from -

(a) the Philippine income tax on gross billings relating to the operation of aircraft in international traffic; or

(b) the Philippine business tax on gross receipts relating to the operation of ships or aircraft in international traffic,

the Philippines will grant a corresponding exemption to residents of Australia and Australia will grant a corresponding exemption to residents of the Philippines.

CHAPTER VI

FINAL PROVISIONS

Article 29

Entry into force

(1) This Agreement shall be ratified and the instruments of ratification shall be exchanged at Canberra, Australia as soon as possible.[\[1\]](#)

(2) The Agreement shall enter into force upon the date of exchange of the instruments of ratification and its provisions shall have effect:

(a) in Australia -

(i) with respect to withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year in which the exchange of instruments of ratification takes place;

(ii) with respect to other Australian tax, in relation to income of any year of income beginning on or after

1 July in that calendar year;

(b) in the Philippines -

- (i) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and
- (ii) in respect of other taxes for taxable years beginning on or after the first day of January in that calendar year.

Article 30

Termination

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the fifth year following the exchange of the instruments of ratification, give to the other Contracting State, through the diplomatic channel, written notice of termination and in such event the Agreement shall cease to have effect:

(a) in Australia -

- (i) with respect to withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the written notice of termination takes place;
- (ii) with respect to other Australian tax, in relation to income of any year of income beginning on or after 1 July in the next following calendar year;

(b) in the Philippines -

- (i) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January in the calendar year next following that in which the written notice of termination takes place; and
- (ii) in respect of other taxes for taxable years beginning on or after the first day of January in the next following calendar year.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Manila this 11th day of May One thousand nine hundred and seventy-nine in the English language.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF

AUSTRALIA: THE REPUBLIC OF THE PHILIPPINES:

[Signed:] [Signed:]

V R GARLAND CESAR VIRATA