



# **Double Taxation Avoidance Agreement between The Philippines and Canada**

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Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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## **Convention Between the Philippines and Canada 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 Canada, 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 I**

#### **Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

### **Article II**

#### **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 and 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 Canada: the income taxes imposed by the Government of Canada (hereinafter referred to as "Canadian 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 on income which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of changes which have been made to their respective laws.

### **Article III**

#### **General Definitions**

1. In this Convention, unless the context otherwise requires:
  - a*) (i) the term "Canada" used in a geographical sense means the territory of Canada, including any area beyond the territorial waters of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the sea-bed and sub-soil and their natural resources,
  - (ii) the term "Philippines" used in a geographical sense means the national territory comprising the Republic of the Philippines;

b) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Philippines or Canada;

c) the term "person" comprises an individual, an estate, a trust, a company, a partnership and any other body of persons;

d) the term "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes; in French, the term "société" also means a "corporation" within the meaning of Canadian law;

e) 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;

f) the term "competent authority" means:

(i) in the case of Canada, the Minister of National Revenue or his duly authorized representative;

(ii) in the case of the Philippines, the Secretary of Finance or his duly authorized representative;

g) the term "tax" means Philippine tax or Canadian tax, as the context requires;

h) the term "national" means:

(i) any individual possessing the citizenship of a Contracting State;

(ii) any legal person, partnership and association created, organized or incorporated under the laws of a Contracting State.

2. As regards the application of the Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

#### **Article IV**

##### **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.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States then this case shall be determined in accordance with the following rules:

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 (hereinafter referred to as his "centre of vital interests");

*b)* if the Contracting State in which he has his centre of vital interests can not 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 a 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 company is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

*a)* it shall be deemed to be a resident of the Contracting State of which it is a national;

*b)* if it is a national of neither of the Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question, and to determine the mode of application of the Convention to such a person.

## **Article V**

### **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" shall include especially:

*a)* a place of management;

*b)* a branch;

*c)* an office;

*d)* a factory;

*e)* a workshop;

*f)* a mine, quarry or other place of extraction of natural resources;

*g)* a building or construction site or supervisory activities in connection therewith, where such activities continue for a period more than six months;

*h)* an assembly or installation project which exists for more than three months;

*i)* premises used as a sales outlet;

*j)* a warehouse, in relation to a person providing storage facilities for others.

3. The term "permanent establishment" shall not be deemed 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 for collecting information for the enterprise;

*e)* the maintenance of a fixed place of business 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 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 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 that enterprise; 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.

5. An insurance enterprise of a Contracting State shall, except in regard to re-insurance, 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 an agent of 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 State through a broker, general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.

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 VI**

### **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. For the purposes of this Convention, 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.

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 professional services.

## **Article VII**

### **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 or has carried 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 of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those affected, through 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 be attributed to that permanent establishment 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 the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses, whether incurred in the 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. 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.

6. 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 VIII**

### **Shipping and Air Transport**

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft shall be taxable only 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 or aircraft in international traffic may be taxed in the first-mentioned State but the tax so charged shall not exceed the lesser of

a) one and one-half percent of the gross revenues derived from sources in that State; and

b) the lowest rate of Philippine tax imposed on such profits derived by an enterprise of a third State.

## **Article IX**

### **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 profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises, 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 Convention in relation to the nature of the income.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

## **Article X**

### **Dividends**

1. Dividends paid by a company which is a resident of Canada to a resident of the Philippines may be taxed in the Philippines.

However, such dividends may also be taxed in Canada, but where the beneficial owner of the dividends is a resident of the Philippines, the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

2. Dividends paid by a company which is a resident of the Philippines to a resident of Canada may be taxed in Canada. However, such dividends may also be taxed in the Philippines, but where the beneficial owner of the dividends is a resident of Canada the tax so charged shall not exceed:

*a)* 15 percent of the gross amount of any dividend paid to a company which is a resident of Canada which controls at least 10 percent of the voting power of the company paying the dividend; or

*b)* 25 percent of the gross amount of the dividends in all other cases.

3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company on the profits out of which the dividends are paid.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. The provisions of paragraph 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article VII or Article XIV, as the case may be, shall apply.

6. Where a company is a resident of a Contracting State the other Contracting 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 profit or income arising in such other State.

7. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the earnings of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 15 percent of the amount of such earnings which have not been subjected to such additional tax in previous years. For the purpose of this provision, the term "earnings" means the profits attributable to a permanent establishment in a Contracting State in a year and previous years after deducting there from all taxes, other than the additional tax referred to herein, imposed on such profits by that State.

## **Article XI**

### **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 be taxed in the Contracting State in which it arises, and according to the law of that State; but the tax so charged shall, provided that the interest is taxable in the other Contracting State, not exceed 15 percent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, 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, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article X.

4. The provisions of paragraph 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business through a permanent establishment situated therein, or performs in that other State professional 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 a case, the provisions of Article VII or Article XIV, 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, 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 that interest is borne by that 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.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient 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 payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

7. Notwithstanding the provisions of paragraph 2,

*a)* interest arising in a Contracting State and paid in respect of a bond, debenture or similar obligation of the government of that Contracting State or of a political sub-division or local authority thereof shall, provided that the interest is beneficially owned by a resident of the other Contracted State, be taxable only in that other State;

*b)* interest arising in the Philippines and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation;

*c)* interest arising in Canada and paid to a resident of the Philippines shall be taxable only in the Philippines if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by such lending institution as is specified and agreed in letters exchanged between the competent authorities of the Contracting States; and

*d)* 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 Canada shall not exceed 10 percent of the gross amount of the interest.

## **Article XII**

### **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. 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, provided that the royalties are taxable in the other Contracting State, not exceed

*a)* in Canada, 10 percent of the gross amount of the royalties; and

*b)* in the Philippines, the lesser of

*(i)* 25 percent of the gross amount of the royalties, and

*(ii)* the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid in similar circumstances to a resident of a third State.

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, patent, trademark, 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, and includes payments of any kind in respect of motion picture films and works on films or videotapes for use in connection with television.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, 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 fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

5. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon the payer and the recipient 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 payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article XIII**

#### **Gains from the Alienation of Property**

1. Gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming a 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other State. However, gains derived by an enterprise of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

3. 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 an 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.

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

5. The provisions of paragraph 4 shall not affect the right of either Contracting State to levy, according to its domestic law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property.

## **Article XIV**

### **Professional 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. However, in the following circumstances such income may be taxed in the other State, that is to say:

*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)* if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year; or

*c)* if the remuneration for his services in the other Contracting State derived in the calendar year from residents of that Contracting State exceeds two thousand five hundred Canadian dollars (\$2,500), or its equivalent in Philippine pesos or such other amount as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States.

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

## **Article XV**

### **Dependent Personal Services**

1. Subject to the provisions of Articles XVI, XVIII and XIX, 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 the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and either

a) the remuneration earned in the other Contracting State in the calendar year concerned does not exceed two thousand five hundred Canadian dollars (\$2,500) or its equivalent in Philippine pesos or such other amount as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States; or

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and such 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 in respect of employment as a member of the regular crew or complement of a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

## **Article XVI**

### **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 XVII**

### **Artistes and Athletes**

1. Notwithstanding the provisions of Articles XIV and XV income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are performed.

2. The provisions of paragraph 1 shall not apply to income derived from activities performed in a Contracting State by entertainers and athletes if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political sub-division, local authority or statutory body thereof, nor to income derived by entertainers and athletes in respect of such activities performed for a non-profit organization no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof if

the organization is certified as qualifying under this provision by the competent authority of the other Contracting State.

3. Notwithstanding the provisions of Article VII, where the activities mentioned in paragraph 1 of this Article are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported from the public funds of the other Contracting State, including any political sub-division, local authority or statutory body thereof, in connection with the provisions of such activities, or unless the enterprise is a non-profit organization referred to in paragraph 2.

## **Article XVIII**

### **Pensions and Annuities**

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the Contracting State in which they arise. However, in the case of periodic pension payments, the total tax so charged shall not exceed 30 percent of the amount by which the total of such payments made in any taxable period to a resident of that other State exceeds five thousand Canadian dollars (\$5,000) or its equivalent in Philippine pesos or such other amount as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States.

2. In this article, the term "annuities" means stated sums payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make payments in return for adequate and full consideration in money or money's worth.

## **Article XIX**

### **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 any individual in respect of services rendered to that State or sub-division or local authority thereof shall be taxable only in that State.

*b)* However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient 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 or a local authority thereof.

## **Article XX**

### **Students**

Payments which a student, apprentice or business trainee who is or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

## **Article XXI**

### **Income not Expressly Mentioned**

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that Contracting State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in accordance with the law of that other State.

## **Article XXII**

### **Methods for Prevention of Double Taxation**

1. In the case of Canada, double taxation shall be avoided as follows:

*a)* Subject to the existing provisions of the laws of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof), and unless a greater deduction or relief is provided under the laws of Canada, tax payable under the laws of the Philippines on profits, income or gains arising in the Philippines shall be deducted from any Canadian tax payable in respect of such profits, income or gains.

*b)* Subject to the existing provisions of the laws of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions (which shall not affect the general principle hereof) for the purpose of computing Canadian tax a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in the Philippines.

2. Subject to the existing provisions of the laws of the Philippines regarding the deduction from tax payable in the Philippines of tax paid outside the Philippines and to subsequent modifications of those provisions (which shall not affect the general principle hereof) tax payable under the laws of Canada on profits, income or gains arising in Canada shall be deducted from any Philippine tax payable in respect of such profits, income or gains. The deduction shall not, however, exceed that part of the Philippine income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Canada.

3. For the purpose of paragraph 1(a),

a) tax payable under the laws of the Philippines on the gross amount of interest received by a resident of Canada on bonds, debentures or similar obligations referred to in paragraph 7(d) of Article XI shall be deemed to have been paid at the rate of 15 percent, and

b) tax payable under the laws of the Philippines shall not include any amount imposed in accordance with paragraph 3 of Article XXVII that exceeds the amount that would be payable in accordance with this Convention in the absence of that paragraph.

4. For the purposes Contracting State which are taxed in the other Contracting State in accordance with any provisions of this Convention, other than paragraph 3 of Article XXVII, shall be deemed to arise from sources in that other State.

### **Article XXIII**

#### **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. Stateless persons resident in one Contracting State shall not be subject in either 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 the State concerned in the same circumstances are or may be subjected.

3. 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.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

5. 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 State to any taxation or any requirements to which other similar enterprises more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

6. Nothing in this Article shall be construed so as to prevent the Philippines from limiting to its nationals the enjoyment of tax incentives granted under:

a) the following enactments:

Investment Incentives Act (Republic Act No.5186)

Export Incentives Act (Republic Act No.6135)

so far as they were in force, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or

b) any other enactment of the Philippines adopted in pursuance of its programme of economic development which the competent authorities of the Contracting States agree should be excluded from the provisions of this Article, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

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

## **Article XXIV**

### **Mutual Agreement Procedure**

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Convention.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. A Contracting State shall not, after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

4. 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 the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:

a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

b) to the same allocation of income between a resident of a Contracting State and any associated person provided for in Article IX.

5. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Convention.

## **Article XXV**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention, or for the prevention of fraud or fiscal evasion in relation to such taxes. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States 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 information, the disclosure of which would be contrary to public policy (ordre public).

## **Article XXVI**

### **Diplomatic and Consular Officials**

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding Article IV of this Convention, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of that sending State.

3. This Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

## **Article XXVII**

## **Miscellaneous Rules**

1. The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowances now or hereafter accorded,

*a)* by the laws of one of the Contracting States in determination of the tax imposed by that Contracting State, or

*b)* any other agreement entered into by a Contracting State.

2. Nothing in this Convention shall be construed as preventing Canada from imposing its tax on amounts included in the income of a resident of Canada according to section 91 of the Canadian Income Tax Act.

3. Nothing in this Convention shall be construed as preventing the Philippines from taxing its citizens in accordance with its domestic legislation. This provision shall in no case render the total taxation on a Philippine citizen who is a resident of Canada more burdensome than the total taxation that would apply if that person were a resident of the Philippines. This paragraph shall cease to have effect with respect to taxation years beginning after the last day of the calendar year in which a Convention, concluded between the Philippines and any third State in which the Philippines relinquishes its right to tax its citizens resident in that State, enters into force.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Convention.

## **Article XXVIII**

### **Entry Into Force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Ottawa.

2. The Convention shall enter into force upon the exchange of the instruments of ratification and its provisions shall have effect:

*a)* 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

*b)* in respect to other taxes for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

## **Article XXIX**

### **Termination**

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

a) 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 notice is given; and

b) in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

**IN WITNESS WHEREOF** the undersigned, duly authorized to that effect, have signed this Convention.

**DONE** in triplicate at Manila, this 11th day of March 1976, in the English and French languages, each version being equally authentic.

Donald C. Jamieson

**FOR THE GOVERNMENT OF CANADA**

Cesar Virata

**FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES**