

PHILIPPINES BRAZIL CONVENTION

Date of Conclusion: 29 September 1983

Effective Date: 1 January 1992

CONVENTION BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL 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 the Federative Republic of Brazil and the Government of the Republic of the Philippines,

desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows:

Article 1 Personal scope

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

Article 2 Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting

State, irrespective of the manner in which they are levied.

2. The existing taxes to which the Convention shall apply are:

a) in the case of Brazil:

- the federal income tax, excluding the tax on excess remittances and on activities of minor importance;
(hereinafter referred to as "Brazilian 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")

3. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the above-mentioned taxes. The competent authorities of the Contracting States shall notify to each other any substantial changes which have been made in their respective taxation laws.

Article 3 General Definitions

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

a) the term "Brazil" means the Federative Republic of Brazil;

b) the term "Philippines" means the Republic of the Philippines;

c) the term "nationals" means:

I- all individuals possessing the nationality or the citizenship of a nationality or a citizenship of a Contracting State;

II- all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;

d) the terms "a Contracting State" and "the other Contracting State" mean Brazil or the Philippines as the context requires;

e) the term "person" comprises an individual, a company and any other body of persons;

f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "international traffic" means any transport by a ship or aircraft operated by a resident of one of the Contracting States, except when the ship or aircraft is operated solely between places in the other Contracting States;

i) the term "tax" means Brazilian tax or Philippine tax, as the context requires;

j) the term "competent authority" means:

I- in Brazil: the Minister of Finance, the Secretary of the Federal Revenue or their authorized representatives;

II- in the Philippines: the Minister of Finance or his authorized representative.

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

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States then 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 closer (centre of vital interests);

b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5

Permanent establishment

1. For the purpose 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 exploration or extraction of natural resources;

g) a building site or construction or assembly project, which exists for more than 6 months;

h) 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 or display 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 or display;

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 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

However, an insurance company of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State provided that it receives premium or insures risks in the other State.

5. 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.

6. 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 either company a permanent establishment of the other.

Article 6

Income from immovable property

1. Income from immovable property including income from agriculture or forestry may be taxed in the Contracting State in which such property is situated.

2. a) Subject to the provisions of sub-paragraphs b) and c) the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated;

b) 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;

c) 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.

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 7

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment

situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose of the permanent establishment, including executive and general administrative expenses so incurred.

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. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and air transport

1. Profits derived from sources within one of the Contracting States by a resident of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in both Contracting States.

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

Article 9

Associated enterprises

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.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

a) 15 per cent of the gross amount of the dividends, if the recipient is a company including a partnership;

b) 25 per cent of the gross amount of the dividends in all other cases.

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

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

fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

5. Where a resident of the Philippines has a permanent establishment in Brazil, this permanent establishment may be subject to a tax withheld at source in accordance with Brazilian law. However, such a tax cannot exceed 15 percent of the gross amount of the profits

of that permanent establishment determined after the payment of the corporate tax related to such profits.

6. Nothing in this Article shall prevent the Philippines from imposing, 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 percent of the amount remitted.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that 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 any tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

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 if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2:

a) interest arising in a Contracting State and paid to the Government of the other Contracting State, a political subdivision thereof or any agency (including a financial institution) wholly owned by that Government, or political subdivision shall be exempt from tax in the first-mentioned Contracting State;

b) interest arising from securities, bonds or debentures issued by the Government of

a Contracting State, a political subdivision thereof or by any agency (including a financial institution) owned by that Government be taxable only in that State;

c) subject to the provisions of paragraph (a) above, the Philippine tax on interest paid by a company which is a resident of the Philippines to a resident of Brazil in respect of public issues of bonds, debentures or similar obligations shall not exceed 10 percent of the gross amount of interest.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income taxation law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment, situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such a permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. The limitation established in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision 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 in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by such a permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. 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 payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

- a. 25 per cent of the gross amount of royalties arising from the use of, or the right to use trade marks and cinematograph films, films or tapes for television or radio broadcasting;
- b. 15 per cent of the gross amount of royalties in all other cases.

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

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 in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by the

permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such a permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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 royalties paid, having regard to the use, the right or information for which they are 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 payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

Capital gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which the immovable property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing 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.

3. Gains derived by a resident of one of the Contracting States from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

4. Gains from the alienation of any property or right other than those mentioned in paragraphs 1, 2 and 3 may be taxed in both Contracting States.

Article 14

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar nature shall be taxable only in that State, unless the payment of such activities and services is borne by a permanent establishment situated in the other Contracting State or a company resident therein. In such a case, the income may be taxed in that other State.

2. The term "professional services" includes, especially, independent scientific, technical, literary, artistic, educational or teaching activities as well as the 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, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State

unless the employment is exercised in the other Contracting State. If the employment is so exercised such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

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

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of a employment exercised aboard a ship or an 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 a Contracting State in his capacity as a member of the board of directors or of any council of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 **Artistes and Athletes**

1. Notwithstanding the provisions of Articles 14 and 15, 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 those activities are exercised.

2. Where the services mentioned in paragraph 1 of this Article are provided in a Contracting State by an enterprise of the other Contracting State, then the income derived from providing those services by such an enterprise may, notwithstanding any other provision of this Convention, be taxed in the first-mentioned Contracting State.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that Contracting State is substantially supported by public funds of, or sponsored by the other Contracting State, including those of any political subdivision, local authority or statutory body thereof.

Article 18 **Pensions and annuities**

1. Subject to the provisions of Article 19, pensions and other similar remuneration, and annuities arising in a Contracting State and paid to a resident of the other Contracting State

may be taxed in the first-mentioned State.

2. As used in this Article:

a) the term "pensions and other similar remuneration" means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received, in connection with past employment;

b) 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 (other than services rendered).

Article 19

Governmental payments

1. Remuneration, not including pensions, paid by a Contracting State, a political subdivision or a local authority thereof to any individual in respect of services rendered to that State, to a political subdivision or local authority shall be taxable only in that State.

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 of the remuneration is a resident of that State who

a) is a national of that State, or

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

2. Pensions paid by, or out funds created by, a Contracting State, a political subdivision or a

local authority thereof to any individual in respect of services rendered to that State, to a political

subdivision or a local authority thereof shall be taxable only in that State.

However, such pensions shall be taxable only in the other Contracting State if the recipient is a national of, and a resident of, that State.

3. Pensions paid out under the Social Security Scheme of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

4. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with any business carried on by a Contracting State, a political subdivision or a local authority thereof.

Article 20

Teachers and Researchers

I. An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who, at the invitation of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive taxable years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that State on his remuneration for such activity, provided such remuneration:

a) is derived from outside that State, or

b) is derived from that State but the exemption is limited to the amount of twenty-

four thousand United States dollars (24,000) per annum or its equivalent in local currency, or such other amount as may be agreed in letters exchanged by the competent authorities.

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

Article 21

Students and business apprentices

1. An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely

a) as a student at a university, college or school in that first-mentioned Contracting State,

b) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organization,

c) as a member of a technical cooperation programme entered into by the Government of the other Contracting State, or,

d) as a business apprentice,

shall be exempt from tax in that first-mentioned Contracting State for a period not exceeding two consecutive taxable years in respect of the amount of such grant, allowance or award and in respect of any remittances from abroad for the purpose of his maintenance, education or training.

2. An individual who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purposes of his education or training shall be exempt from tax in that first-mentioned Contracting State for a period not exceeding two consecutive taxable years in respect of the amount of remuneration from employment in that State.

3. The amounts referred to in paragraphs 1 and 2 of this Article shall mean twelve thousand United States dollars (\$12,000) per annum or its equivalent in local currency or such other amount as may be agreed upon in letters exchanged by the competent authorities.

Article 22

Other income

Items of income of a resident of a Contracting State, arising in the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other State.

Article 23

Methods for the elimination of double taxation

1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first Contracting State shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the other Contracting State.

The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in the other Contracting State.

2. For the deduction indicated in paragraph 1, the Brazilian tax and the Philippine tax shall always be deemed to have been paid at the rate of 25 per cent in the following cases:

a) dividends referred to in paragraph 2 of Article 10;

b) interest referred to in paragraph 2 of Article 11; and

c) royalties referred to in paragraph 2 of Article 12.

3. In the case of a company which is a resident of one of the Contracting State which owns more than 15 percent of the voting stock of a company which is a resident of the other Contracting State from which it receives dividends in any taxable year, the first-mentioned Contracting State shall also allow credit for the appropriate amount of taxes paid or accrued to the other Contracting State by the company paying such dividends with respect to the profits out of which such dividends are paid, including the taxes which would have been paid or accrued if the tax of that other Contracting State had not been exempted or reduced in accordance with the special incentive measures designed to promote economic development in that other Contracting State. The deduction shall not, however, exceed that part of the income tax of that Contracting State as computed before the deduction is given, which is appropriate to the income which may be taxed in the other Contracting State.

Article 24

Non-discrimination

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

2. The taxation of 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.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relief and reductions for taxation purpose on account of civil status or family responsibilities which it grants to its own residents.

3. 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 requirement connected therewith which is other or 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.

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

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

Article 25

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 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.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 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, willful 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.

5. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement in the sense of the preceding paragraphs.

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 Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons, authorities or courts other than those concerned with the assessment or collection of the taxes which are the subject of this Convention or the determination of appeals or the prosecution of offences in relation thereto.

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.

Article 27.

Diplomatic and consular officials

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

Article 28

Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at as soon as possible.

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

I - as respects taxes withheld at source to amounts paid or credited on or after January 1st of the calendar year immediately following that in which the Convention enters into force;

II - as respects other taxes covered by this Convention, for taxable year beginning on or after January 1st of the calendar year immediately following that in which the Convention enters into force.

Article 29

Termination

Either Contracting State may terminate this Convention after a period of three years from the date on which this Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such a case this Convention shall apply for the last time:

I- as respects taxes withheld at source, to amounts paid or credited before the expiration of the calendar year in which the notice of termination is given;

II- as respects other taxes covered by this Convention, to amounts received during the taxable year beginning in the calendar year in which the notice of termination is given.

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

PROTOCOL

At the moment of the signature of the Convention for the avoidance of double taxation with respect to taxes on income between the Federative Republic of Brazil and the Republic of the Philippines the undersigned, being duly authorized thereto, have agreed upon the following provisions which constitute an integral part of the present Convention.

1. With reference to Article 1

It is understood that the Philippines shall have the right to tax in accordance with Philippine law its citizens who are not residents of the Philippines, but Brazil shall not be bound to give credit for such tax.

In the event income derived by its citizens is taxed in accordance with the preceding sentence, the Philippines shall allow as a deduction from taxable income an amount equal to the income tax paid in Brazil.

2. With reference to Article 3, paragraph 1, subparagraph (e)

It is understood that in the case of the Philippines, the term "person" defined therein includes an estate or a trust recognized as such under the Philippine laws.

3. With reference to Article 5, paragraph 3

It is understood that the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) thereof, shall not be deemed to constitute a permanent establishment provided that the overall activity of the fixed place of business resulting from such a combination is of preparatory or auxiliary character.

4. With reference to Article 7, paragraph 3

It is understood that the provisions of paragraph 3 of Article 7:

a) shall be construed to mean that expenses incurred for the purpose of the permanent establishment including those for executive and general administrative expenses shall be allowed as a deduction whether incurred in the state where the permanent establishment is situated or elsewhere, and

b) shall not affect the provisions of the internal laws of Brazil or the Philippines in respect of amounts paid or charged (other than reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or to any of its other offices, by way of:

- i) royalties, fees or other similar payments in return for the use of patents or other rights,
- ii) commission for specific services performed or for management, and
- iii) interest on money lent to the permanent establishment, except in the case of banking institution.

5. With reference to Article 8

It is understood that the tax that may be imposed by one of the Contracting States on profits from sources within that Contracting State derived by a resident of the other Contracting State from the operation of ships or aircraft in international traffic shall not exceed the lesser of:

- a) one and one-half per cent of the gross revenue 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.

6. With reference to Article 10, paragraph 4

It is understood that in the case of Brazil the term "dividends" also includes any distribution in respect of certificates of an investment-trust which is a resident of Brazil.

7. With reference to Article 12

It is understood that:

- a) in the case of the Philippines, the rate prescribed in paragraph 2 b) shall only apply to royalties paid by an enterprise registered with the Philippine Board of Investment and engaged in preferred areas of activities. In all other cases, the rate of tax shall not exceed 25 per cent of the gross amount of royalties paid.
- b) the provisions of paragraph 3 shall apply to payments of any kind received as a consideration for the rendering of technical assistance and technical services.

8. With reference to Article 14

It is understood that the provisions of Article 14 shall apply even if the activities are exercised by a "Sociedade Civil" (Civil Company).

9. With reference to Article 16

It is understood that any remuneration which a person to whom Article 16 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 15 (Dependent personal services).

10. With reference to Article 24, paragraph 2

It is understood that the provisions of paragraph 5 of Article 10 are not in conflict with the provisions of paragraph 2 of Article 24.

11. With reference, to Article 24, paragraph 3

The provisions of the Brazilian law which do not allow that royalties as defined in paragraph 3 of Article 12, paid by company resident of Brazil to a person who is not a resident of Brazil who holds at least 50 per cent of the voting capital of that company be deductible at the moment of the determination of the taxable income of the

company resident of Brazil, are not in conflict with the provisions of paragraph 3 of Article 24 of the present Convention.

DONE in the city of Brasilia, this 29th day of September 1983, in duplicate, in the Portuguese and English languages, all two texts being equally authentic.