

1994 Income Tax Convention

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Status: In Force

CONVENTION BETWEEN THE GOVERNMENT OF ROMANIA 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 Romania 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 States 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.

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

a) In the case of Romania:

- i) tax on income derived by individuals;
- ii) tax on the profits of bodies and legal persons;
- iii) tax on salaries, wages and other similar remunerations;
- iv) tax on income realised from agricultural activities (hereinafter referred to as "Romania tax").

b) In the case of the Philippines:

The income taxes imposed under the National Internal Revenue Code of the Republic of the Philippines (hereinafter referred to as "Philippine tax").

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each calendar year 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 "ROMANIA" means Romania and, used in a geographical sense, indicates the territory of Romania including its territorial sea as well as the exclusive economic zone and the continental shelf over which Romania exercises sovereign rights, in accordance with its internal law and with the international law, concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea bed and subsoil of these waters;

b) The term "PHILIPPINES" shall refer to the territory of the Republic of the Philippines in accordance with its Constitution and laws, including adjacent areas and such other areas over which the Republic of the Philippines has sovereign rights and other rights under international law;

c) The terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Romania or the Philippines;

d) The term "person" includes an individual, an estate, a trust, a company and any other body of persons;

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

f) 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;

g) The term "tax" means a Romanian tax or a Philippine tax as the context requires;

h) The term "Competent Authority" means:

(i) In the case of Romania, the Minister of Finance or his authorized representative;

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

i) The term "nationals" means all individuals having the citizenship of a Contracting State and all legal persons or other entities created under the law in force in a Contracting State;

j) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other 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 subject of the Convention.

Notwithstanding the preceding sentence, if the meaning of such term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any purpose of this Convention, establish a common meaning of the term for the purpose of this Convention.

Article 4 Fiscal Domicile

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

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) He shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interest);

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

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

d) If he is a national of both 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 this case shall be determined in accordance with the following rules:

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

b) If it is a national of neither of the States, then it shall be deemed to be a resident of the State in which its place of effective management is situated;

c) If the place of effective management can not be determined, then 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 person.

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" 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 farm, a plantation, an orchard or vineyard;

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

i) 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. Where such goods and merchandise are sold directly in the places of storage, the latter shall be deemed to constitute a permanent establishment;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the goods or merchandise belonging to the enterprise displayed in the frame of an occasional temporary fair or exhibition which are sold after the closing of the said fair or exhibition;
- e) the maintenance of the fixed place of business, solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
- f) 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 an 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 belonging to the enterprise 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 reinsurance, 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 an independent status within the meaning of paragraph 6.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph, if it is shown that the transactions between the agent and the enterprise were not made under arm's length conditions.

7. The fact 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 6 Income From Immovable Property

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property referred to 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 the 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 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 paragraph 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 the 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 within that other Contracting State 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 effected, 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.

However, insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in this paragraph shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied in this Article.

3. In determining the profits of a permanent establishment there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent and actually provided to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commissions for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent and actually provided to the head office of the enterprise or any of its other offices.

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 purpose of the preceding paragraph, 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 8 Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in the 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 per cent of the gross revenues derived from sources in that State, and
- b) the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third state.

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

4. The profits derived by an enterprise of a Contracting State from the operation of ships and aircraft used mainly to transport exclusively between places situated in the other Contracting State may be taxed in that other State.

Article 9 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 the tax so charged therein on those profits. 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, and for this purpose the competent authorities of the Contracting States shall, if necessary, consult each other.

3. A Contracting State shall not change the taxable income of a taxpayer 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 year in which the incomes which would be subject to such change would have accrued to a taxpayer of that State. This paragraph apply in the case of fraud, willful default of neglect.

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 owner of the dividends the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) and during the part of the paying corporations taxable year which precedes the date of payment of the dividends and during the whole of its prior taxable year (if any), at least 25 per cent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation;

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

3. Remittances of profits by a branch to its head office may be subjected according to internal law, to a tax not exceeding 10 percent thereof, apart from the corporate income tax.

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

5. The term "dividends" as used in 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 assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 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 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of a Contracting State derived profits or income from the other Contracting State, that other 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, not 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 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 the tax so charged shall not exceed:

a) 10 percent if such interest is paid:

- i) in connection with the sale on credit of any industrial, commercial or scientific machine or equipment, or similar installation, or
 - ii) on any loan of whatever kind granted by a bank, or
 - iii) in respect of public issues of bonds, debentures or similar obligations,
- b) 15 percent of the gross amount of such interest in connection with the sale on credit of any means of transport and in all other cases not covered by paragraph 2(a) of this Article.
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, including interest on deferred payment sales. Penalty charges for late payment shall not be regarded as interest for purposes of this Article.
4. The provisions of paragraphs 1 and 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 7 or Article 14, as the case may be, shall apply.
5. Interest shall be determined to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, a territorial administrative unit, 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 special relationship between the payer and the recipient or between both of them and some other person, the amount of 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 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 other similar obligation of the government of that Contracting State or of a political subdivision, a local authority, or a territorial administrative unit thereof shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other Contracting State;
 - b) interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other Contracting State if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by a government instrumentality of the other Contracting State, as by the National Bank of Romania, in the case of Romania and by the Central Bank of the Philippines in the case of the Philippines, or by any other instrumentality as is specified and agreed in letters exchanged between the Competent Authorities of the Contracting States.

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, if such resident is the beneficial owner of the royalties.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed:
- a) 10 percent of the gross amount of the royalties, where the royalties are paid by an enterprise registered with the Romanian Agency for Development, in the case of Romania and with the Board of Investments, in the case of the Philippines and engaged in preferred pioneer areas of activities;
 - b) 15 per cent of the gross amount of the royalties, in respect of cinematographic films and tapes for television or broadcasting, and
 - c) 25 percent of the gross amount of the royalties, in all other cases.
3. The term "royalties" as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific works, any 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, videotapes, tapes and discs for use in connection with television and radio broadcasting.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that state itself, a political subdivision, a local authority, a territorial administrative unit, 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 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.

6. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient 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 permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

Article 13 Gains From Alienation of Property

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 such 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 from the alienation of ships and aircrafts operated in international traffic by an enterprise of a Contracting State 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 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.

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

Article 14 Independent 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, such income may be taxed in the other Contracting State 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.

2. The term "professional services" includes especially independent scientific, 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. Except as provided in Articles 16, 18, 19, 20 and 21, salaries 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 exercised in the other Contracting State, the remuneration derived for this activity are taxable 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 an 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 16 Directors' Fees

- 1. 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.
- 2. The remuneration which a person to whom paragraph 1 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.

Article 17 Artists and Athletes

- 1. Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, 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 income in respect of the personal activities as such of an artiste or athlete accrues to that artist or athlete himself but to another person that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the artist or athlete are exercised.
- 3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived in respect of the activities referred to in paragraph 1 of this Article within the framework of cultural or sports exchange programme agreed to by both Contracting States, substantially supported by public funds shall be exempted from taxation in the Contracting State in which these activities are exercised.
- 4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities as such of entertainers and athletes in a Contracting State accrues not to that entertainer or athlete himself but to another person, notwithstanding the provisions of Articles 7, 14 and 15, that income shall be taxable only in the other Contracting State if this person is supported substantially from the public funds of that other Contracting State.

Article 18 Pensions

- 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
- 2. Notwithstanding the provisions of paragraph 1, social security pensions paid by a social security instrumentality of a Contracting State shall be taxable only in that Contracting State.

Article 19 Government Service

- 1.
 - a) Remuneration, other than a pension, paid by a Contracting State, a political subdivision, a local authority, or a territorial administrative unit thereof to any individual in respect of services rendered to that State, subdivision, authority or unit thereof shall be taxable only in that State.
 - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that other Contracting State who:
 - i) is a national of that State; or
 - ii) did not become a resident of that state solely for the purpose of performing the services.
- 2. Any pension paid by or out of funds created by a Contracting State or a political subdivision, a local authority, or a territorial administrative unit thereof to any individual in respect of services rendered to that State, subdivision, authority or unit thereof shall be taxable only in that State.
- 3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State, a political subdivision, a local authority, or a territorial administrative unit thereof.

Article 20 Teachers and Researches

- 1. A profesor, or teacher, or other members of a teaching staff resident of a Contracting State who are teaching at a university or at any other accredited educational institution of the other Contracting

State shall be taxable only in that first Contracting State on all remuneration received in respect of that activity for a period not exceeding two years from the beginning for their activity.

2. The provisions of paragraph 1 shall also apply to remuneration received by an individual resident of a Contracting State for conducting research in the other Contracting State, if such research is not undertaken primarily for the private benefit of a specific enterprise or person.

Article 21 Students and Trainees

1. Payments which a student, a business apprentice, a trainee or a person sent to acquire special technical, professional or business experience 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 purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments are made to him from outside that State.

2. Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training derives from services rendered in that other State shall not be taxed in the other State provided that such services are in connection with his education or training and that remuneration of such services is necessary to supplement the resources available to him for the purpose of his maintenance.

Article 22 Relief From Double Taxation

Double taxation shall be avoided in the following manner:

1. In the case of Romania:

Taxes paid in the Philippines by Romanian resident on incomes derived which in accordance with the provisions of this Convention may be taxed in the Philippines shall be deducted from the taxes owed to the Romanian State.

2. In the case of Philippines:

Subject to the provisions of the laws of the Philippines relating to the allowance as credit against Philippine tax of taxes paid in a territory outside the Philippines. Romanian taxes paid or have accrued under the laws of Romania and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Romania shall be allowed, where similar tax is imposed in the Philippines, as a credit against Philippine tax payable in respect of that income. 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 Romania.

3. Taxes which have been relieved or reduced in one of the Contracting State by virtue of the provisions of this Convention shall be allowed as tax credit in the other Contracting State in an amount equal to the tax which would have been appropriate to the income involved if no such relief or reduction had been allowed. In no case, however, shall the credit exceed the amount of taxes payable in that other country.

4. Nothing in this Convention shall be construed as preventing a Contracting State from taxing its citizens in accordance with its domestic legislation.

Article 23 Other Income

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Article of this Convention may be taxed in the State where the income arises.

Article 24 Non-Discrimination

1. 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 national of that other Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourable 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 reduction for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 5 of Article 12 apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 are or may be subjected.

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

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

Article 25 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 to that Contracting State of which he is a national. The case must be presented within three years from the first notification of the action which gives rise to taxation not in accordance with the provisions of the Convention.

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 a satisfactory 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 which is not in accordance with the Convention.

3. 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. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

Article 26 Exchange of Information

1. The competent authorities of the Contracting State shall exchange such information as is necessary for carrying out the provisions of this Convention and of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is in accordance with this Convention, in particular for the prevention of fraud or evasion of such taxes. The competent authorities shall, through consultations, develop appropriate conditions, methods and techniques concerning the matters respecting how such exchange shall be made, as well as exchanges of information regarding avoidance of tax where appropriate. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

b) to supply information which is 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.

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates from or with respect to its residents or corporations in the same manner and to the same extent as if the tax of the requesting State were the tax of the other state and were being imposed by that other State. A Contracting State may obtain information from or with respect to its residents or corporation in accordance with this paragraph for the sole purpose of assisting the other Contracting State in the determination of the taxes of that other State.

4. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and copies of unedited original documents (including books, papers, statements, records,

accounts, or writings) to the same extent such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

Article 27 Assistance in Collection

1. Each of the Contracting State shall endeavour to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits.

2. In no case shall thin Article be construed so as to impose upon a Contracting State the obligations to carry out measures at variance with the laws or administrative practices of either Contracting State with respect to the collection of its own taxes.

Article 28 Diplomatic Agents and Consular Officers

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

Article 29 Entry Into Force

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

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 taxes withheld at the source on amounts paid to nonresidents on or after the first day of January of the calendar year next following that 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 of the calendar next following that in which the exchange of instruments of ratification takes place.

Article 30 Termination

1. This Convention shall remain in force indefinitely. Either Contracting State may, however, on or before June 30 in the calendar year after the fifth year following the exchange of the instruments of ratification, by giving notice of termination to the other Contracting State and in such event the Convention shall cease to have effect:

a) in respect of taxes withheld at the source on amounts paid to nonresidents on or after the first day of January of 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 of the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorized thereto, by their respective Governments, have signed this Convention.

Done in duplicate at Bucharest this 18 day of May 1994 each in Romanian and the English language, both texts being equally authentic.

FOR THE GOVERNMENT OF ROMANIA:

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES: