

No. 31562

**SPAIN
and
PHILIPPINES**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Manila on 14 March 1989

Authentic texts: Spanish and English.

Registered by Spain on 30 January 1995.

**ESPAGNE
et
PHILIPPINES**

Convention visant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Manille le 14 mars 1989

Textes authentiques : espagnol et anglais.

Enregistrée par l'Espagne le 30 janvier 1995.

CONVENTION¹ BETWEEN SPAIN AND 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 Spain 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.- There shall be regarded as taxes on income all taxes imposed on total
income, or on elements of income, including taxes on gains from the alienation
of movable or immovable property, as well as taxes on the total amounts of
wages or salaries paid by enterprises.

¹ Came into force on 12 September 1994 by the exchange of the instruments of ratification, in accordance with article 28 (2).

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

(a) In the case of Spain:

- (i) the income tax on individuals; and
 - (ii) the corporation tax;
- (hereinafter referred to as "Spanish Tax").

(b) In the case of the Philippines:

The income taxes imposed by the Government of the Republic of the Philippines, (hereinafter referred to as "Philippine Tax").

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

Article 3

GENERAL DEFINITIONS

1.- in this Convention, unless the context otherwise requires:

(a) the term "Spain" means the territory of the Spanish State, including any area outside the territorial sea upon which in accordance with international law and on application of its legislation, the Spanish State exercises or could in the future exercise jurisdiction or sovereign rights;

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

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

- (d) the term "tax" means Spanish tax or Philippine tax as the context requires;
- (e) the term "person" comprises an individual, a partnership, a corporation, an estate, a trust, and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "national" means:
- (a) in the case of Spain, any individual possessing Spanish nationality;
 - (b) in the case of the Philippines, any individual possessing the citizenship of the Philippines;
 - (c) any legal person, partnership or association deriving its status as such from the law in force in a Contracting State;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of one of the Contracting States except where the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means:
- (i) in the case of Spain, the Minister of Economy and Finance or his authorized representative; and
 - (ii) in the case of the Philippines, the 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 relating to the taxes to which are the subject of the Convention.

Article 4

FISCAL DOMICILE

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

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

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

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

- (c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3.- Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then its status shall be determined by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

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

2.- The term "permanent establishment" includes, but is not limited to:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse, in relation to a person providing storage facilities for others;
- (g) a store or premises where sales are performed;
- (h) a mine, an oil-well, quarry or other place of extraction of natural resources;

(i) a building site or construction, installation or assembly - project or supervisory activities in connection therewith, where such site, project or activity continues for more than six months;

(j) the furnishing of services including consultancy services by an enterprise through an employee or other personnel provided where activities of that nature (for the same or connected project) within the other Contracting States continue within a Contracting State for a period or periods exceeding 180 days within any twelve-month period.

3.- The term "permanent establishment" shall not be deemed to 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 maintenance of a fixed place solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(e) The maintenance of a fixed place solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4.- A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom paragraph 6 applies - shall be deemed to be a permanent establishment in the first-mentioned Contracting State if:

(a) he has, and habitually exercises in that Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

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

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

6.- An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise he would not be considered an agent of an independent status within the meaning of the paragraph if it is proved that the transactions between the agent and the enterprise were not made under arms-length conditions.

7.- The fact that a corporation of a Contracting State controls or is controlled by a corporation of the other Contracting State or a corporation which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

2.- The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3.- The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

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 are attributable to that permanent establishment or are derived within such other Contracting State from sales of goods or merchandise of the same or similar kind as those sold, or from other business transactions of the same or similar kind as those effected through the permanent establishment. The competent authorities of the Contracting States shall consult each other on the similarity of goods sold or business transactions.

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 business profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4.- 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 paragraph 2 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.

5.- 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.

6.- For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7.- 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 of ships or aircraft shall be taxable only in that State.

2.- Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in the first-mentioned State but the tax so charged shall not exceed the lesser of:

- (a) one and one-half per cent of the gross revenue derived from sources in the first-mentioned State; and
- (b) the lowest rate of Philippine tax imposed on such profits derived by an enterprise 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.

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 and an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2.- Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment

due regard shall be had to the other provisions of this Convention in relation to the nature of the income, and for this purpose the competent authorities of the Contracting State, if necessary, consult each other.

3.- A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws.

Article 10

DIVIDENDS

1.- Dividends paid by a corporation 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 Corporation 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) 10 per cent of the gross amount of the dividends if the recipient is a corporation (excluding partnership) which holds directly at least 10 per cent of the voting shares of the company paying the dividends;

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

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

3.- 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 which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

4.- 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 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 professional services from a fixed base situated therein and the holding in respect 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.

5.- 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 to persons who are resident of that State, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or 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 per cent if such interest is paid:
 - (i) in connection with the sale on credit of any industrial, commercial or scientific equipment, or
 - (ii) in respect of issues of bonds, debentures or similar obligations offered to the general public.
- (b) 15 per cent of the gross amount of such interest in all other cases.

3.- Notwithstanding the provisions of paragraph 2,

- (a) Interest arising in a Contracting State and paid to a resident of the other Contracting State in respect of a bond, debenture or other similar obligation of the Government of the first-mentioned Contracting State or of a political subdivision or local authority 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:
 - (i) in the case of Spain, the Bank of Spain and the Spanish official credit institutions, and
 - (ii) in the case of the Philippines, the Central Bank of the Philippines or such lending institution as is specified and agreed in letters exchanged between the competent authorities of the Contracting States;

4.- 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, including premiums and prizes attaching to bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5.- The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient 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 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.

6.- Interest shall be deemed to arise in a Contracting State when the payor is that State itself, a political subdivision, a local authority, a statutory body thereof 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 permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7.- Where, owing to a special relationship between the payor 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 payor 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.- Such royalties may also be taxed in the Contracting State in which they arise, and according to the law of that State. However, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the royalties, where the royalties are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities;
- (b) 20 per cent in respect of cinematographic films or tapes for television or broadcasting; and
- (c) 15 per cent of the gross amount of the 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 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 or films or videotapes for use in connection with television.

4.- The provisions of paragraphs 1 and 2 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 professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5.- Where, owing to a special relationship between the payor 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 payor and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

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 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. However, gains derived by an enterprise of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

3.- Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

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

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 character shall be taxable only in that State. However, such income may be taxed in the other Contracting State when:

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing

his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

- (b) his stay for the purpose of performing his professional activities in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate one hundred twenty (120) days in the calendar year.

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

Article 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 an employment exercised aboard a ship or aircraft operation 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

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 these activities are performed.

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

3.- Notwithstanding the provisions of Article 7, where the activities mentioned in paragraph 1 of this Article are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported from the public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof, in connection with the provisions of such activities, or unless the enterprise is a non-profit organization referred to in paragraph 2.

4.- Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer 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 entertainer or athlete are exercised.

Article 18

PENSIONS AND ANNUITIES

1.- Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration in consideration of past employment and annuities paid to a resident of a Contracting State 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 State.

3.- The term "pensions" as used in this Article means periodic payments made in consideration for past services rendered.

4.- The term "annuity", as used in this Article, means a stated sum payable, under an obligation, periodically at stated times during life or during a specified or ascertainable period of time.

Article 19

GOVERNMENT SERVICE

1.- a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or Subdivision or authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in that other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2.- a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, 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 a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS

1.- Payments which a student or business apprentice 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 State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments are made to him from sources outside the State.

2.- Notwithstanding the provisions of paragraph 1, remuneration which a student or business apprentice 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 State solely for the purpose of his education or training derives from services rendered in that State shall not be taxed in that State provided that such services are in connection with his education or training or that the remuneration of such services is necessary to supplement the resource available to him for the purpose of his maintenance.

Article 21

TEACHERS AND RESEARCHERS

1.- A teacher or a researcher who is a resident of the Contracting State and visits the other Contracting State for the purpose of teaching or engaging in research shall be exempt from tax in that other State for a period not exceeding two years on remuneration in respect of such activities.

2.- This article shall not apply to income from research if such research is undertaken not in the general interest but primarily for the private benefit of a specific person or persons.

Article 22

OTHER INCOME

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that State. However, if such income is derived from sources within the other Contracting State, it may also be taxed in accordance with the law of that other State.

Article 23

RELIEF FROM DOUBLE TAXATION

1.- Subject to the provisions of the laws of the Philippines relating to the allowance as a credit against Philippine tax of tax paid in a territory outside the Philippines, Spanish tax payable under the laws of Spain and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Spain 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 attributable to the income which may be taxed in Spain.

2.- Subject to the provisions of the laws of Spain relating to the allowance as a credit against Spanish tax of tax paid in a territory outside Spain, the Philippine tax payable under the laws of the Philippines and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within the Philippines shall be allowed, where similar tax is imposed in Spain, as a credit against Spanish tax payable in respect of that income. The deduction shall not, however, exceed that part of the Spanish income tax, as computed before the deduction is given which is attributable to the income which may be taxed in the Philippines.

3.- Where, in accordance with the provision of this Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

4.- For the purpose of credit referred to in paragraph 2, the Philippine tax shall be deemed to be

- (a) in the case of dividends referred to in paragraph 2 (a) of Article 10, 15% per cent of the gross amount of the dividends; and on dividends referred to in paragraph 2 (b) of Article 10, 20% of the gross amount of dividends;
- (b) in the case of interest referred to in paragraph 2 (a) (i) of Article 11, 15 per cent of the gross amount of the interest;
- (c) in the case of royalties referred to in paragraph 2 (a) of Article 12, 15 per cent of the gross amount of such royalties and on royalties referred to in paragraph 2 (c) of Article 12, 20 per cent of the gross amount of the royalties.

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 nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 also apply to persons who are not residents of one or both of the Contracting States.

2.- The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less

favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3.- Except where the provisions of paragraph 1 of Article 9, paragraph 7 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.- Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

6.- The provisions of this Article shall, notwithstanding, the provisions of Article 2, apply to taxes of every kind and description.

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

3.- A Contracting State shall not, after the expiry of the time limits provided in its national laws, 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. 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 States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting State concerning taxes covered by the Convention, in so far as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. 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. However, if the information is originally regarded as secret in the transmitting State it 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 which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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 and 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.

Article 27

DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic and 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 in accordance with the Constitutional procedures of each Contracting State and instruments of ratification shall be exchanged at as soon as possible.

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

- (a) as regards taxes withheld at source, to amounts payable on or after the first day of January of the calendar year in which the convention entered into force;
- (b) as regards other taxes on income, to income derive during the calendar year in which the Convention entered into force, or relating to the accounting period ended during this year.

Article 29

TERMINATION

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

- a) as regards taxes withheld at source, to sums payable on or before the 31st of December of the calendar year for the end of which the termination has been notified;

- b) as regards other taxes on income, to income derived during the calendar year for the end of which the termination has been notified or relating to the accounting period beginning during this year.

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

DONE at Manila, in duplicate, this 14 day of March, 1989, in the English and Spanish languages, both texts being equally authentic.

For Spain:

For the Republic of the Philippines:



ENRIQUE ROMEU RAMOS
Ambassador Extraordinary
and Plenipotentiary
Embassy of Spain



VICENTE R. JAYME
Secretary of Finance

P R O T O C O L

At the signing today of the Convention between the Republic of the Philippines and Spain for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions which shall form an integral part of the Convention.

Article 1

With reference to Article 5, no permanent establishment is assumed if the services, including the provisions of equipment, are furnished in a Contracting State by enterprises of the other Contracting States, including consultancy firms, in accordance with, or in the implementation of, an agreement between the Contracting States regarding technical or scientific cooperation.

Article 2

With reference to paragraph 3 of Article 7, no deduction shall be allowed in respect of amounts paid or payable (other than reimbursement of actual expenses) by the permanent establishment to the head office of the resident of which it is a permanent establishment or any of its other offices, by way of -

- (a) royalties, fees or other similar payments in return for the use of patents or other rights;
- (b) commissions, for specific services performed or for management, and

- (c) interests on moneys lent to the permanent establishment, except in the case of a banking institution.

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 commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

Article 3

Paragraph 2 of Article 10, shall not be applicable, in the case of Spain, to the income attributable, whether distributed or not, to the shareholder of the corporations and entities referred to in Article 12.2 of Law 44/1978 of 8 September, 1978 and Article 19 of Law 61/1978 of 27 December, 1978 as long as the said income is not subject to the Spanish corporation tax. Such income may be taxed in Spain according to its internal law. However, no credit shall be given in the Philippines for taxes paid on such income.

Article 4

With reference to paragraph 5 of Article 10, nothing in this Convention shall be construed as preventing the Republic of the Philippines from imposing on the earnings (other than those derived from the operations of ships or

aircraft with international traffic) of a company being a resident of Spain attributable to a permanent establishment which it has in the Republic of the Philippines, a tax in addition to the tax which would be chargeable on the income of a branch being a resident of the Republic of the Philippines, provided that any additional tax so imposed shall not exceed 10% of the amount or the part of such earnings which is remitted abroad.

Article 5

With reference to paragraph 1 of Article 18, pensions paid out of pension plans of Philippine enterprises not registered under Philippine laws may taxed in the Philippines.

Article 6

Notwithstanding the provisions of Article 24, the Philippines may limit to its nationals the enjoyment of tax incentives granted under -

- (a) B.P. Blg. 391 otherwise known as the Investment Incentive Policy Act of 1983; and
- (b) Any other enactment adopted by the Philippines in pursuance of its programme of economic development which may be determined by mutual agreement between the competent authorities of the two Contracting States.

Should the Philippines extend the application of the foregoing incentives to the nationals of other States, the same shall likewise be accorded to the nationals of Spain.

Article 7

With respect to Article 25, the competent authorities of the Contracting States may consult together to endeavour to agree:

- (a) to the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;
- (b) to the same allocation of income between a resident of a Contracting State and any associated person provided for in Article 9.

Article 8

Subject to the provisions of this Convention, the Philippines reserves the right to tax its citizens who are residents of Spain, on their income from sources outside the Philippines, in accordance with the provisions of paragraph (f) of Section 21 of the Philippine National Internal Revenue Code. The Philippines shall allow as a deduction from gross income the total amount of national income tax actually paid in Spain and Spain shall not be bound to give credit for taxes paid in the Philippines pursuant to this reservation.

This paragraph shall cease to have effect with respect to taxable years beginning after the last day of the calendar year in which a Convention, concluded between the Philippines and any third State in which the Philippines relinquishes its right to tax its citizens resident in that State, enters into force.

Article 9

1. The present Protocol shall be regarded as an integral part of the aforesaid Convention.
2. The present Protocol shall enter into force together with the Convention on the date of exchange of instruments of ratification.
3. The present Protocol shall continue in force as long as the aforesaid Convention remains effective.

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

DONE at Manila this 14 day of March, 1989, in duplicate, in the English and Spanish languages, both texts being equally authentic.

For Spain:

For the Republic of the Philippines:



ENRIQUE ROMEU RAMOS
Ambassador Extraordinary
and Plenipotentiary
Embassy of Spain



VICENTE R. JAYME
Secretary of Finance