

Double Taxation Avoidance Agreement between Philippines and Austria

Completed on January 1, 1983

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The Convention between the Republic of the Philippines and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income was signed in Vienna, Austria on April 4, 1981. It entered into force on May 1, 1982, the first day of the third month following the exchange of the relevant instruments of ratification in Manila on February 1, 1982. Its provisions on taxes apply on income derived or which accrued beginning January 1, 1983.

CONVENTION
BETWEEN
THE REPUBLIC OF THE PHILIPPINES
AND
THE REPUBLIC OF AUSTRIA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Republic of the Philippines and the Republic of Austria, 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. The existing taxes to which the Convention shall apply are:
 - a) in Austria:
 1. the income tax (die Einkommensteuer);
 2. the corporation tax (die Körperschaftsteuer); and
 3. the directors tax (die Aufsichtsratsabgabe).
 - b) in the Philippines:
 1. the individual income tax;
 2. the corporate income tax, including the corporate development tax, but not including the tax on improperly accumulated earnings or the personal holding company tax;
 3. the estates and trusts income tax;
 4. the withholding taxes on dividends, interests, royalties, rentals, lease, charter fees, insurance premiums, and other fixed or determinable annual, periodical, or casual gains, profits, and income;
 5. the branch profit remittance tax;
 6. the international carriers income tax;
 7. the capital gains tax on stock and real property transactions;
 8. the mutual life insurance company income tax; and
 9. the offshore banking units and expanded foreign currency deposit units income tax.
2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws.

Article 3
GENERAL DEFINITIONS

1. For the purpose of this Convention, unless the context otherwise requires:
 - a) the term “Austria” means the Republic of Austria;
 - b) the term “Philippines” means the Republic of the Philippines;
 - c) the terms “a Contracting State” and “the other Contracting State” mean, as the context requires, Austria or Philippines;

- d) the term “person” includes an individual, a company and any other body of persons as well as undivided estates and trusts (under Philippine law);
 - 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 “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;
 - h) the term “nationals” means:
 - (i) any individual possessing the citizenship of a Contracting State;
 - (ii) any legal person, partnership or association created, organized or incorporated under the laws of a Contracting State;
 - i) the term “competent authority” means:
 - (i) in Austria: the Federal Minister of Finance;
 - (ii) in the Philippines: the Minister of Finance or his duly authorized representative.
2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4 RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then 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 (centre of vital interests);

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

Article 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop;
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - g) a warehouse, in relation to a person providing storage facilities for others; and
 - h) premises used for the purpose of selling goods or merchandise.
3. The term “permanent establishment” likewise encompasses:

- a) a building site or construction or installation project or supervisory service activities in connection therewith if it lasts more than six months;
 - b) an assembly or installation project which exists for more than three months.
4. Notwithstanding the preceding provisions of this Article the term “permanent establishment” shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. 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 7 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 the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
 - b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.
6. An insurance enterprise of a Contracting State shall except in regard to re-insurance, be deemed to have a permanent establishment in the other State if it

collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 7.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that 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 the 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. In such a case, the provisions of paragraph 5 shall apply.
8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under 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.
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 independent personal services.

Article 7 **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
 - a) that permanent establishment; or
 - b) sales of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those affected, through that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall 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 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.
4. Notwithstanding the provisions of paragraph 3, no deduction shall be allowed in respect of amounts, if any, paid or charged (other than reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise 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) commission for specific services performed or for management; and
 - c) interest on money lent to the permanent establishment, except in the case of banking institutions.
5. 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 contained in this Article.

6. 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.
7. 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.
8. 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.
9. The term “profits” as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic 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 revenues derived from sources in that State; and
 - b) the lowest rate of Philippine tax imposed on such profits derived by an enterprise of a third State.
3. For the purposes of paragraph 2 profits derived from sources in the Philippines include gross revenue realized from uplifts anywhere in the world by any international carrier doing business in the Philippines of passage documents sold therein, whether for passenger, express baggage or mail, provided the cargo or mail originates from the Philippines. The gross revenue realized from the said cargo or mail shall include the gross freight charge up to final destination. Gross revenues from chartered flights originating from the Philippines shall likewise form part of profits derived from sources in the Philippines regardless of the place of sale or payment of the passage documents. For purposes of determining the taxability of revenues from chartered flights the term “originating from the Philippines” shall include flights of passengers who stay in the Philippines for more than forty-eight (48) hours prior to embarkation.

Article 9
ASSOCIATED ENTERPRISES

Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

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

Article 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting 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 beneficial owner is a company which holds directly at least 10 per cent either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payments of the dividends;
 - b) 25 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company with respect to the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares

by the taxation laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such 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 derives 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, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
6. Nothing in this Article shall prevent either Contracting State from imposing, apart from the corporate income tax, a tax on remittances of profits by a branch of a company to its head office provided that the tax so imposed shall not exceed 10 per cent of the amount remitted.

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 Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:
 - a) 10 per cent of the gross amount of the interest if the interest is paid by a resident of the Philippines to a resident of Austria in respect of public issues of bonds, debentures or similar obligations.
 - b) 15 per cent of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of paragraph 2, the amount imposed by the Philippines on the interest paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the

Philippines to a resident of Austria, who is the beneficial owner of the interest, shall not exceed 10 per cent of the gross amount of the interest.

4. Notwithstanding the provisions of paragraphs 2 and 3, interest arising in a Contracting State and derived by the government of the other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State and any financial institution wholly-owned or controlled by that government, or by any resident of that other Contracting State with respect to debt-claims guaranteed or indirectly financed by the government of that other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State and any financial institution wholly-owned or controlled by that government shall be exempt from tax in the first-mentioned Contracting State. For the purpose of this paragraph, the term “financial institution wholly-owned or controlled by the government” means:
 - a) in the case of Austria the Osterreichische Kontrollbank Aktiengesellschaft;
 - b) in the case of the Philippines the Central Bank of the Philippines and the Development Bank of the Philippines; and
 - c) any such financial institution the capital of which is wholly-owned or controlled by the government of either Contracting State, other than those referred to in subparagraphs (a) and (b) above, as may be agreed from time to time between the governments of the Contracting States.
5. 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 prices to such securities, bonds or debentures.
6. The provisions of paragraphs 1, 2 and 3 above shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof or a resident of that Contracting 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 such interest is borne by such 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.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws 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 Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of the Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.
3. Notwithstanding the provisions of paragraph 2, the amount of tax imposed by the Philippines on the royalties paid by a company, being a resident of the Philippines registered with the Board of Investments and engaged in preferred pioneer areas of investments under the investment incentives laws of the Philippines to a resident of Austria, who is the beneficial owner of the royalties, shall not exceed 10 per cent of the gross amount of the royalties.
4. The term “royalties” as used in this Article means the payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, 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.
5. The provisions of paragraph 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting 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 and Article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof or a resident of that Contracting 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 a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such 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.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.
8. The rates of tax imposed in the Philippines under the provisions of paragraphs 2 and 3 may not exceed the lowest rate of Philippine tax that may be imposed on royalties of the same kind paid in similar circumstances to a resident of a third State.

Article 13 CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
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 independent personal services including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic by enterprises of a Contracting State or gains from the alienation of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly 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 that referred to in paragraphs 1 to 4, 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 activities of an independent character shall be taxable in that State. However, such income may be taxed in the other Contracting State,
 - a) if he has a fixed base regularly available to him in that other State for the purpose of performing his activities but only so much of the income as is attributable to that fixed base; or
 - b) if his stay in that other State is for a period or periods aggregating 120 days or more in the calendar year.
2. The term “professional services” includes specially 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 derived of an employment exercised aboard 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

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. 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.
3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including those of any political subdivision, local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, members or shareholders and the organization is certified as qualifying under this provision by the competent authority of the other State.
4. 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 by public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof, or unless the enterprise is a non-profit organization referred to in paragraph 3.

**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. However, pensions paid out of Philippine pension plans not registered under Philippine laws may be taxed in the Philippines.
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.

**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 the 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. The provisions of paragraph 1 of this Article shall also apply to remuneration derived by members of permanent delegations of foreign commerce of a Contracting State in the other Contracting State.
3. 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.
4. 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 AND TRAINEES

1. Payments 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 receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.
2. Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned shall not be taxed in that other State if the employment is directly related to his studies or apprenticeship.
3. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance program entered into by the governments of the Contracting States shall, for a period not exceeding two years from the date of his first arrival, be exempt from tax in that other State on:
 - a) the amount of such grant, allowance or award; and
 - b) all remittances from abroad for the purposes of his maintenance, education or training.

Article 21
PROFESSORS AND TEACHERS

1. Remuneration which a professor or a teacher, who is a resident of one of the Contracting States and who visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution, receives for those activities shall be taxable only in the first-mentioned State.
2. This Article shall not apply to remuneration which a professor or a teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of paragraph 1 of this Article, the term “remuneration” shall include remittances from sources outside the other State sent to enable the professor or teacher to carry out the purposes referred to in paragraph 1.

Article 22
OTHER INCOME

1. 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.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23
METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. Where a resident of Austria derives income which, in accordance with the provisions of this Convention may be taxed in the Philippines, Austria shall, subject to the provisions of paragraphs 2 and 6 exempt such income from tax.
2. Where a resident of Austria derives items of income which, in accordance with the provisions of subparagraph (b) of paragraph 2 of Article 10, of Articles 11 and 12, and paragraph 4 of Article 13 may be taxed in the Philippines, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Philippines. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the Philippines.
3. For the application of paragraph 2, the tax on royalties levied in the Philippines shall be deemed to have been 25 per cent of the gross amount of such royalties.
4. No exemption or credit will be given for income taxed in the Philippines under paragraph 2 of Article 8.
5. Where a resident of the Philippines derives income which, in accordance with the provisions of this Convention, may be taxed in Austria, the Philippines shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Austria. Such deduction in either case shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable as the case may be, to the income which may be taxed in Austria.

6. Where in accordance with any provision of the 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.

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.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not 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.
3. Except where the provisions of Article 9, paragraph 8 of Article 11, or paragraph 7 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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, the Philippines may limit to its citizens the enjoyment of tax incentives granted under:
 - a) the Investment Incentives Act (Republic Act No. 6135), the Investment Incentives Program for the Tourism Industry (Presidential Decree No. 535) or the Agricultural Investment Incentives Act (Presidential Decree No. 1159) so far as it was in force on, and has not been modified since, the date of

signature of this Convention, or has been modified only in minor respects so as not to affect its general character; or

- b) any enactment adopted by the Philippines in pursuance of its program of economic development which may be determined by mutual agreement between the Governments of the two Contracting States.

Article 25
PHILIPPINE CITIZENS

Nothing in this Convention shall be construed as depriving the Philippines of the right to tax its own citizens who are residents of Austria with income derived from dependent or independent services exercised outside of the Philippines in accordance with the laws of the Philippines, but Austria shall not be bound to give for that reason any additional exemption or credit for such tax.

Article 26
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 law 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 of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in 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 the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 27
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 States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. 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 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 (*ordre public*).

Article 28
DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or 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 at Manila, as soon as possible.
2. This Convention shall enter into force on the first day of the third month next following that in which the exchange of instruments of ratification takes place and its provisions shall have effect in respect of the taxes for any fiscal year

beginning after December 31 in the calendar year in which the exchange of instruments of ratification takes place.

Article 30
TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June in a calendar year after the fifth year from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect in respect of the taxes for any fiscal year beginning after December 31 in the calendar year in which the notice of termination has been given.

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

DONE in duplicate in Vienna on the 4th day of April, 1981, in the English and German languages, each text being equally authentic.

FOR THE REPUBLIC OF
THE PHILIPPINES:

(Sgd.) CESAR VIRATA

FOR THE REPUBLIC OF
AUSTRIA

(Sgd.) HERBERT SALCHER