

Double Taxation Avoidance Agreement between Philippines and Italy

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**CONVENTION BETWEEN
THE REPUBLIC OF THE PHILIPPINES AND
THE REPUBLIC OF ITALY
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME¹.**

The Government of the Republic of the Philippines and the Government of the Republic of Italy,
Desiring to conclude a Convention to avoid double taxation with respect to taxes on income and to
prevent fiscal evasion,
Have agreed upon the following measures:

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 or of its political or administrative subdivisions or local authorities, 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 total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are, in particular:
 - (a) in the case of the Philippines: the income tax imposed by the Philippines (hereinafter referred to as "Philippine tax").
 - (b) in the case of Italy:
 - (i) the personal income tax (l'imposta sul reddito delle persone fisiche);
 - (ii) the corporate income tax (l'imposta sul reddito delle persone giuridiche); even if they are collected by withholding taxes at the source (hereinafter referred to as "Italian tax").

The Convention shall also apply 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. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

¹ Date of Conclusion: 5 December 1980. Entry into Force: 15 June 1990. Effective Date: 1 January 1990 (see Article 28).

Article 3 - *General definitions*

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

- (a) the term "Philippines" means the Republic of the Philippines;
- (b) the term "Italy" means the Italian Republic;
- (c) the terms "a Contracting State" and "the other Contracting State" mean the Philippines or Italy as the context requires;
- (d) the term "person" comprises an individual, a company and any other body of persons which is treated as an entity for tax purposes;
- (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 terms "nationals" or "citizens" mean:
 - (i) all individuals possessing the nationality or citizenship of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term "competent authority" means:
 - (i) in the case of the Philippines, the Secretary of Finance or his authorized representative;
 - (ii) in the case of Italy, the Ministry of Finance.

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

Article 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 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.

Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

If the place of effective management can not be determined, then the competent authorities of the Contracting States shall 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 in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

(g) a building site or construction or assembly project, or installation project, which exists for more than six months, or supervisory activities or consultancy services in connection therewith, where such activities or services continue for a period of more than six months.

3. The term "permanent establishment" shall not be deemed to include:

(a) the use of facilities solely for the purpose of storage, display or occasional 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 occasional delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

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

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State - other than an agent of independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

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

Article 6 - *Income from immovable property*

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

2. 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, and rights to which the provisions of general law respecting landed property apply. The term shall also include 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 paragraph 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7 - *Business profits*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the 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. 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 in international traffic may be taxed 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:

(a) in the case of the Philippines, the lesser of:

(i) 1.5% of the gross revenue derived from sources within the Philippines; and

(ii) the lowest rate of Philippine tax imposed on such profits derived by an enterprise of a third State;

(b) in the case of Italy, the lesser of:

(i) the equivalent amount of 1.5% of gross revenue derived from sources within Italy; and

(ii) the equivalent amount of the lowest rate of Philippine tax imposed on such profits derived from sources within the Philippines by an enterprise of a third State.

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

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 accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10 - Dividends

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

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15% of the gross amount of the dividend.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

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

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on in the other Contracting State of which the company paying the dividends is a resident, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. 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 to persons who are 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.

7. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the earnings of a company which is a national of that State, provided that any additional tax so imposed shall not exceed 20% of the amount of such earnings which have not been subjected to such additional tax in previous taxation years.

For the purpose of this provision, the term "earnings" means the profits attributable to a permanent establishment in a Contracting State in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by that State.

Article 11 - *Interest*

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

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10% of the amount of the interest in respect of public issues of bonds, debentures, or similar obligations and paid by a resident of one Contracting State to a resident of the other Contracting State and 15% of the amount of interest in all other cases. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

(a) the payer of the interest is the Government of that Contracting State or a local authority thereof; or the interest is paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State or local authority thereof; or

(b) the interest is paid to any other agency or instrumentality (including a financial institution) in relation to loans made in application of an agreement concluded between the Governments of the Contracting States.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on 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 interest is taxable in that other Contracting State according to its own law.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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 payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claims for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 - *Royalties*

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

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

(a) in the case of the Philippines, 15% 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 and also royalties in respect of cinematographic films or tapes for television or broadcasting;

(b) in all other cases, 25% of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, or tapes for television or broadcasting, any patent, trade mark, 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.

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 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 royalties are taxable in that other Contracting State according to its own law.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

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 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 from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

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

Article 14 - *Personal services*

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration or income for personal (including professional) services derived by a resident of a Contracting State, shall be taxable only in that State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration or income as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State in respect of personal (including professional) services performed 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 taxable 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. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

4. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 15 - *Directors' fees*

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

Article 16 - *Artistes and athletes*

1. Notwithstanding the provisions of Article 14, 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 exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, remunerations or profits and wages, salaries and other similar income derived by entertainers and athletes from their personal activities as such in a Contracting State shall be taxable only in the other Contracting State if their visit to the first Contracting State is supported substantially from the public funds of that other Contracting State, one of its political subdivisions or local authorities or of a statutory body or non-profit organization thereof.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities as such of entertainers and athletes in a Contracting State accrues not to that entertainer or athlete himself but to another person, notwithstanding the provisions of Articles 7 and 14, that income shall be taxable only in the other Contracting State if this person is supported substantially from the public funds of that other Contracting State, one of its political subdivisions or local authorities or of a statutory body thereof or if this person is a non-profit organization.

Article 17 - Pensions

Subject to the provisions of paragraph 2 of Article 18, 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.

Article 18 - Government service

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

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

(i) is a national of that State; or

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

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

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

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political or administrative subdivision or a local authority thereof.

Article 19 - Professors and teachers

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution, and who is a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching.

Article 20 - Students and business apprentices

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. Notwithstanding the provisions of paragraph 1, remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training derives from temporary services rendered in that other State shall not be taxed in the other State provided that such services are in connection with his education or training or that the remuneration of such services is necessary to supplement the resources available to him for the purpose of his maintenance.

Article 21 - 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 if the recipient of the 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 professional 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 a case the items of income are taxable in that other Contracting State according to its own law.

Article 22 - Method for elimination of double taxation

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this article.

2. If a resident of Italy owns items of income which are taxable in the Republic of the Philippines, Italy, in determining its income taxes specified in Article 2 of this Convention, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Convention otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the Philippine tax on income, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

On the contrary, no deduction will be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

3. In accordance with the provisions and subject to the limitations of the law of the Philippines (as it may be amended from time to time without changing the general principle hereof), the Philippines shall allow to a citizen or resident of the Philippines as a credit against the Philippine tax the appropriate amount of taxes paid or accrued to Italy and, in the case of a Philippine corporation owning more than 50% of the voting stock of a corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amounts of taxes paid or accrued to Italy by the corporation, resident of Italy paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to Italy, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the Philippine tax on income from sources within Italy, and on income from sources outside the Philippines) provided by Philippine law for the taxable year.

4. For the purposes of paragraphs 2 and 3 of this Article, where tax on dividends, interest or royalties arising in a Contracting State is exempted or reduced for a limited period in accordance with the laws of that State, such tax which has been exempted or reduced shall be deemed to have been paid at an amount not exceeding:

(a) 25% of the gross amount of the dividends referred to under Article 10;

(b) 15% of the gross amount of the interest referred to under Article 11; and

(i) 15% of the gross amount of the royalties referred to under paragraph 2 (a) of Article 12 or

(ii) 25% of the gross amount of the royalties referred to under paragraph 2 (b) of Article 12.

Article 23 - Non-discrimination

1. The nationals of a Contracting State, whether or not they are residents of one of the Contracting States, 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 an enterprise 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 7 of Article 11, or paragraph 6 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 condition 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 Contracting State to any taxation and connected requirement to which other similar enterprises of that first-mentioned State are or may be subjected.

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

6. Nothing in this Convention shall be construed as preventing the Philippines from taxing its citizens in accordance with its domestic legislation.

7. In this Article, the term "taxation" means the taxes to which the Convention applies.

Article 24 - Mutual agreement procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting States of which he is a national. This case must be presented within two years from the first notification of the action giving rise to taxation not in accordance with 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 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 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 25 - Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, as well as to prevent fiscal evasion. 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 which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities 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 one of the Contracting States 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 particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 26 - Diplomatic and consular officials

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

Article 27 - Refunds

1. Taxes withheld at the source in a Contracting State will be refunded by request of the taxpayer or of the State of which he is a resident if the right to collect the said taxes is affected by the provisions of this Convention.

2. Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting State which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by this Convention.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of Article 24 of this Convention.

Article 28 - Entry into force

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

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

(a) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and

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

Article 29 - Termination

This Convention shall continue in effect indefinitely but 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, give notice of termination to the other Contracting State and in such event the Convention shall cease to have effect:

(a) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and

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

Done in duplicate at Rome, Italy, the 5th day of December 1980, in the English and Italian languages, both texts being equally authoritative.

PROTOCOL

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

It is understood:

(a) that, with reference to paragraph 5 of Article 5, where the activities of the agent are devoted wholly or almost wholly in behalf of the enterprise, he would not be considered an agent of independent status within the meaning of the paragraph if it is proved that the transactions between the agent and the enterprises were not made under arm's length conditions;

(b) that, with reference to Article 7, paragraph 3, the expression "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment and in the case of royalties, commissions and interest, are admitted only to the extent of the actual amount reimbursed;

(c) that, with reference to paragraph 2 (a) of article 8, "gross revenue" shall be determined only on the basis of the declaration of the enterprises made in accordance with Revenue Regulation No. 3-76;

(d) that, with reference to paragraph 5 of Article 10, the dividends mentioned therein shall be taxable in the case of the Philippines according to Article 7 or 14 as the case may be;

(e) that, with reference to paragraph 2 (b) of Article 12, if the Philippines agree to a lower rate of tax on royalties of the same kind paid in similar circumstances to a resident of a third state, then this lower rate shall likewise be applied to residents of Italy;

(f) that, with reference to paragraph 5 of Article 23, the present laws of the Philippines are:

(i) Investment Incentives Act (Republic Act No. 5186, as amended);

(ii) Export Incentives Act (Republic Act No. 6135, as amended);

(iii) Tourism Incentives Law (Presidential Decree 535); Agricultural Investments Incentives Act (Presidential Decree No. 1159);

(g) that, with reference to paragraph 1 of Article 24, the expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of taxes not in accordance with this Convention;

(h) that, with reference to paragraph 2 of Article 24, any agreement reached after the expiration of the time limits in the national laws of the Contracting States shall not be implemented;

(i) the provisions of paragraph 3 of Article 27 shall not affect the competent authorities of the Contracting States from the carrying out, by mutual agreement, of other practices for the allowance of the reductions for taxation purposes provided for in this Convention.

Done in duplicate at Rome, Italy, the 5th of December 1980, in the English and Italian languages, both texts being equally authoritative.