

Double Taxation Avoidance Agreement between Philippines and Switzerland

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The *Convention between the Republic of the Philippines and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income* was signed in Manila on June 24, 1998. The *Convention* entered into force on April 30, 2001, upon the exchange of the relevant instruments of ratification in Bern, Switzerland on that date. Its provisions on taxes apply on income derived or which accrued beginning January 1, 2002.

CONVENTION
BETWEEN
THE REPUBLIC OF THE PHILIPPINES
AND
THE SWISS CONFEDERATION
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of the Philippines and the Swiss Federal Council

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

Have agreed as follows:

Article 1
PERSONAL SCOPE

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

Article 2
TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the 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 Philippines:

the income tax imposed under Title II and the stock transaction tax in accordance with Section 124-A of the National Internal Revenue Code of the Republic of the Philippines
(hereinafter referred to as “Philippine tax”);
 - b) in Switzerland:

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income)
(hereinafter referred to as “Swiss tax”).
4. 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 each other of substantial changes which have been made in their respective taxation laws.

Article 3 GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:
 - a) (i) the term “Philippines” means the Republic of the Philippines; used in a geographic sense, it means the archipelagic territory comprising the Republic of the Philippines as defined in its Constitution and laws, including adjacent areas and such other areas in the sea and in the air within which the Philippines has sovereignty, jurisdiction or similar rights under international law;
(ii) the term “Switzerland” means the Swiss Confederation;
 - b) the terms “a Contracting State” and “the other Contracting State” mean the Philippines or Switzerland, as the context requires;
 - c) the term “person” includes an individual, an estate, a trust, a company, and any other body of persons;

- d) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - e) 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;
 - f) 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;
 - g) the term “national” means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State;
 - (ii) any legal person, partnership or association created or incorporated under the laws of a Contracting State;
 - h) 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 Switzerland, the Director of Federal Tax Administration or his authorized representative.
2. As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires or the competent authorities agree to a common definition pursuant to the provisions of Article 23 (Mutual Agreement Procedure), 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.
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 no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has a habitual abode;
 - c) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed a resident of the Contracting State in which its place of effective management is situated.

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 the 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 building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than six months;
 - h) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a

connected project) within the country for a period or periods aggregating more than six months within any twelve-month period.

3. 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
 - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (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.
4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 5 applies) shall be deemed to have a permanent establishment in the first-mentioned State if:
 - a) he has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 of this Article; 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.
5. 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.

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

Article 6
INCOME FROM IMMOVABLE PROPERTY

1. Income 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 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 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 profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the

enterprise of which it is a permanent establishment.

However, insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in this paragraph shall preclude such 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.

3. In determining the profits of a permanent establishment, there shall be allowed as deduction 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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. For the 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.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
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 that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits derived from the

participation in pools, a joint business or an international operating agency.

Article 9
RELATED ENTERPRISES

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then the competent authorities of the Contracting States shall consult each other with a view to reach an agreement on the adjustment of profits in both Contracting States.
3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after three years in the case of the Philippines or after five years in the case of Switzerland from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud or wilful default.

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 also be taxed in the Contracting State of which

the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

- a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnerships) which holds directly at least 10 per cent of the capital of the paying company;
- b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

3. The term “dividends” as used in this Article means income from shares or other rights not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of that State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), 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 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 remittance of profits by a branch 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 State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
5. Interest shall be deemed to arise in Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the 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 State in which the permanent establishment or fixed base is situated.
6. 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 State.
2. However, the royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but the tax so charged shall not exceed 15 per cent 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 cinematographic films and films and tapes for television or radio broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation 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.
6. 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 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 recipient 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 13
GAINS FROM THE ALIENATION OF PROPERTY

1. Gains from the alienation of immovable property referred to in Article 6 (Income from Immovable Property), may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such 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 or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of shares of a company the property of which consist 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 mentioned in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
INDEPENDENT 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 only in that State. However, such income may be taxed in the other Contracting State if:
 - a) he has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities; but only so much of the income as is attributable to that fixed base may be taxed in that Contracting State; or
 - b) he is present in that other State for a period or periods aggregating 183 days within any 12 month period; but only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent

activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions and Similar Payments), 19 (Government Service) and 20 (Students and Trainees), 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 that 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 within any twelve-month period, 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

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 (Independent Personal Services), and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as

such may be taxed in the Contracting State in which these activities are performed.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to that 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. This paragraph shall not apply if it is established that neither the entertainer nor the athlete himself, nor persons related to him, control directly or indirectly the enterprise providing such activities.
3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers or athletes if their visit to that Contracting State is substantially supported from public or governmental funds of the other Contracting State, a political subdivision or a local authority thereof. In such case the provisions of Articles 7, 14 or 15 as the case may be, shall apply.

Article 18
PENSIONS AND SIMILAR PAYMENTS

Subject to the provisions of paragraph 2 of Article 19 (Government Service), pensions and similar payments paid to a resident of a Contracting State in consideration of past employment 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 local authority thereof to an 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 State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or 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 resident of, and a national of, that State.
3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees) and 18 (Pensions and Similar Payments) 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 immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

Article 21
RELIEF FROM DOUBLE TAXATION

1. In the Philippines, in accordance with the provisions and subject to the limitations of the laws of the Philippines, as may be amended from time to time without changing the general principles hereof, double taxation shall be avoided in the following manner:

In accordance with the principles of this Convention, taxes paid or accrued under the laws of Switzerland, whether directly or by deduction, in respect of income from sources within Switzerland shall be allowed as a credit against Philippine tax subject to the following limitations:

- (i) the amount of credit in respect to the tax paid or accrued to Switzerland shall not exceed the same proportion of taxes covered by the Convention against which such credit is taken, which the taxpayer's taxable income from sources within Switzerland bears to his entire taxable income for the same taxable year; and
- (ii) the total amount of the credit shall not exceed the same proportion of the taxes covered by the Convention against which such credit is taken, which the taxpayer's taxable income from sources without the Philippines

bears to his entire taxable income for the same taxable year.

In the case of a Philippine corporation owning directly or indirectly more than 50 per cent of the voting stock of a Swiss company from which it receives dividends in any taxable year, the Philippines shall also allow credit for the appropriate amount of taxes paid or accrued to Switzerland by a Swiss company paying such dividends with respect to such profits out of which such dividends are paid. The deduction shall not, however, exceed that part of the Philippine income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Switzerland.

2. In Switzerland, double taxation shall be avoided in the following manner:
 - a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in the Philippines, Switzerland shall, subject to the provisions of subparagraphs (b) and (c), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted, provided, however, that such exemption does not apply to income or profits derived by an enterprise which is a resident of Switzerland from sources within the Philippines, which in accordance with paragraph 2 of Article 8 may be taxed in the Philippines. Such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if the taxation of such gains in the Philippines is demonstrated.
 - b) Where a resident of Switzerland derives dividends or interest which, in accordance with the provisions of Article 10 or 11, may be taxed in the Philippines, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
 - (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in the Philippines in accordance with the provisions of Articles 10 and 11; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in the Philippines; or
 - (ii) a lump sum reduction of the Swiss tax; or
 - (iii) a partial exemption of such dividends or interest from Swiss tax, in any case consisting at least of the deduction of the tax levied in the Philippines from the gross amount of the dividends or interest.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

- c) Where a resident of Switzerland derives royalties which, in accordance with

the provisions of Article 12, may be taxed in the Philippines, Switzerland shall allow, upon request, a relief to such resident which may consist of:

- (i) the deduction of 5 per cent of the gross amount of such royalties, and
 - (ii) a deduction from the Swiss tax on the income of that resident, as computed by reference to the relief referred to in subparagraph (i), of an amount of 10 per cent of the gross amount of the royalties; such deduction shall, however, be determined pursuant to the general principles of relief referred to in subparagraph (b).
- d) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of the Philippines shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends was a resident of Switzerland.

Article 22

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, in particular with respect to residence, are or maybe subjected. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less 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 paragraph 1 of Article 9 (Related Enterprises), paragraph 6 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State, shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more

burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. In this Article, the term “taxation” means taxes which are the subject of this Convention.

Article 23 **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22 (Non-Discrimination), to that Contracting State of which he is a national. The case must be presented within two years from the first notification of the action which gives rise to taxation not in accordance with the provisions of the Convention.
2. The competent authority 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. A Contracting State shall not, after three years in the case of the Philippines or after five years in the case of Switzerland from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.
4. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.
5. 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 24 **DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

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

provisions of special agreements.

2. Notwithstanding the provisions of Article 4 (Resident), an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:
 - a) in accordance with international law he is not liable to tax in the receiving Contracting State in respect of income from sources outside that State and
 - b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.
3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

Article 25 MISCELLANEOUS RULES

1. Nothing in this Convention shall be construed as depriving the Philippines of the right to tax its own citizens who are residents of Switzerland with income derived from dependent or independent services exercised outside the Philippines in accordance with the laws of the Philippines, but Switzerland shall not be bound to give for that reason any additional exemption for such tax.
2. The competent authorities of the Contracting States, upon their mutual agreement, may deny the benefits of this Convention to any person, or with respect to any transaction, if in their opinion the granting of those benefits, under the circumstances, would constitute an abuse of the Convention according to its purpose.

Article 26 ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne 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:

In respect of taxes covered by this Convention, including taxes withheld at source on income paid to non-residents, for any taxable period beginning on or

after the first day of January next following that year in which the exchange of instruments of ratification takes place.

Article 27
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 notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

In respect of taxes covered by this Convention, including taxes withheld at source on income paid to non-residents, for taxable periods beginning on or after the first day of January next following that year in which the notice is given.

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

DONE in duplicate at Manila this 24th day of June 1998 in the English and German languages, both texts being equally authentic. In case there is any divergency of interpretation between the English and the German texts, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF
THE PHILIPPINES:

(Sgd.) SALVADOR M. ENRIQUEZ,
JR.
Secretary of Finance

FOR THE SWISS FEDERAL
COUNCIL:

(Sgd.) KURT HOCHNER
Ambassador
Embassy of Switzerland

PROTOCOL

The Government of the Republic of the Philippines and the Swiss Federal Council

Have agreed on signing at Manila on this 24th day of June 1998 of the

Convention for the Avoidance of Double Taxation with Respect to Taxes on Income upon the following provisions which shall form an integral part of the said Convention:

1. With reference to Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or business.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated.

The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

2. With reference to Article 12

With respect to paragraph 3, it is understood that payments for technical, scientific or geological services, such as payments for analyses or special studies of a scientific, geological or technical nature, for special engineering services, or for consultation or advisory services shall not be deemed remuneration for information concerning industrial, commercial or scientific experience. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. With reference to Articles 7 and 12

It is understood that payments received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment constitute business profits covered by Article 7.

4. With respect to remuneration by professors and teachers and with respect to other income

It is understood that remuneration derived by professors and teachers as well as any item of income not dealt with in the Convention are not covered by the Convention. Hence, the taxation of such income is exclusively governed by the

domestic law of each Contracting State.

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

DONE in duplicate at Manila this 24th day of June 1998 in the English and German languages, both texts being equally authentic. In case there is any divergency of interpretation between the English and the German texts, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF
THE PHILIPPINES:

(Sgd.) SALVADOR M. ENRIQUEZ,
JR.
Secretary of Finance

FOR THE SWISS FEDERAL
COUNCIL:

(Sgd.) KURT HOCHNER
Ambassador
Embassy of Switzerland

EXCHANGE OF LETTERS

Letter of H.E. Kurt Hoechner, Ambassador of Switzerland in the Philippines, to Hon. Salvador M. Enriquez, Jr., Secretary of Finance, regarding the provision of the *Convention* on exchange of information.

“Manila, June 24 1998

HIS EXCELLENCY

Hon. SALVADOR M. ENRIQUEZ, JR.

Secretary of Finance

Republic of the Philippines

Manila

Your Excellency,

Referring to the Convention between the Swiss Confederation and the Republic of the Philippines for the avoidance of double taxation with respect to taxes on income which was signed today, I have the honour to inform you that according to the Swiss policy on exchange of information, Switzerland is prepared to exchange under the Convention such information (being information which is at its disposal under its taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention in relation to the taxes which are the subject of the Convention. It is understood that any information so exchanged shall be treated as secret by the competent authority of the Republic of the Philippines and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the Convention. Switzerland will not exchange information which would disclose any trade, business, industrial or professional secret or trade process. Besides, Switzerland is not prepared to carry out administrative measures at variance with the regulations and practice of Switzerland or which would be contrary to the sovereignty, security or public policy of Switzerland or to supply particulars which are not procurable under the Swiss legislation.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

FOR THE GOVERNMENT OF SWITZERLAND:

(Sgd.) Dr. KURT HOECHNER

Ambassador”

Reply of Hon. Salvador M. Enriquez, Jr., Secretary of Finance, to H.E. Kurt Hoechner, Ambassador of Switzerland in the Philippines, regarding the provision of the *Convention* on exchange of information.

“Manila, June 24 1998

*HIS EXCELLENCY
Dr. KURT HOECHNER
Ambassador of Switzerland
Manila*

Your Excellency,

I have the honor to acknowledge the receipt of Your Excellency’s letter dated 24 June 1998, which reads as follows:

‘Your Excellency,

Referring to the Convention between the Swiss Confederation and the Republic of the Philippines for the avoidance of double taxation with respect to taxes on income which was signed today, I have the honour to inform you that according to the Swiss policy on exchange of information, Switzerland is prepared to exchange under the Convention such information (being information which is at its disposal under its taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention in relation to the taxes which are the subject of the Convention. It is understood that any information so exchanged shall be treated as secret by the competent authority of the Republic of the Philippines and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the Convention. Switzerland will not exchange information which would disclose any trade, business, industrial or professional secret or trade process. Besides, Switzerland is not prepared to carry out administrative measures at variance with the regulations and practice of Switzerland or which would be contrary to the sovereignty, security or public policy of Switzerland or to supply particulars which are not procurable under the Swiss legislation.’

I wish to inform Your Excellency that the contents of Your Excellency’s letter are acceptable to the Philippine Government.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

*(Sgd.) SALVADOR M. ENRIQUEZ, JR.
Secretary”*