



Double Taxation Avoidance Agreement between The Philippines and South Korea

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Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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Convention between
the Republic of Korea and the Republic of the Philippines
for the Avoidance of Double Taxation and the Prevention
of Fiscal Evasion with Respect to Taxes on Income

Signed at Seoul February 21, 1984
Entered into force November 9, 1986

The Government of the Republic of Korea and the Government of the Republic of the Philippines,
Desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of
Fiscal Evasion with respect to taxes on income,

have agreed as follows:

Article 1. **【Personal Scope】** [1986.11.09]

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

Article 2. **【Taxes Covered】** [1986.11.09]

1. The taxes which this Convention shall apply are:

(a) In the case of Korea:

() the income tax and

() the corporation tax,

(hereinafter referred to as "Korean Tax").

(b) In the case of the Philippines: the income taxes imposed by the Government of the Republic of the Philippines,.

(hereinafter referred to as "Philippine Tax").

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in additions to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 3. **【General Definitions】** [1986.11.09]

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the seabed and sub-soil and their natural resources may be exercised;

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

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

(d) the term "tax" means Korean tax or Philippine tax;

(e) the term "person" includes an individual, an estate, a trust, a company and any other body of persons;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "national" means:

() any individual possessing the nationality or the citizenship of a Contracting State;

() in relation to Korea, any legal person, partnership and association deriving its status as such from the laws in force in Korea.

() in relation to the Philippines, any legal person, partnership or association created, organized or incorporated under the laws of the Philippines;

(j) the term "competent authority" means,

() in the case of Korea, the Minister of Finance or his authorized representative;

() in the case of the Philippines, the Minister of Finance or his authorized representative.

2. As regards the application of this Convention by a Contracting State any term not defined

therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

Article 4. **【Resident】** [1986.11.09]

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 head or main office, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

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

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

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

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5. **【Permanent Establishment】** [1986.11.09]

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) premises used as a sales outlet; and
- (h) a warehouse, in relation to a person providing storage facilities for others.

3. (a) a building site or construction, installation or assembly project or supervisory activities in connection therewith, constitute a permanent establishment only if such site, project or activity continues for a period of more than six months;

(b) the furnishing of services including consultancy services by an enterprise through an employee or other personnel constitutes a permanent establishment only if activities of that nature continue within a Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve-month period; and

(c) a place of exploration of natural resources constitutes a permanent establishment only if it exists for more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

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

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

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and

(f) the maintenance of 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.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 7 applies) shall be deemed to be a permanent establishment in the first-mentioned State if;

(a) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to those mentioned in paragraph 4 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.

6. An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it concludes contracts, collects premiums in the territory of that State and insures risks situated therein through an employee or through a representative who is not an agent of an independent status.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.

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

Article 6. **【Income from Immovable Property】** [1986.11.09]

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of,

or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7. **【Business Profits】** [1986.11.09]

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

4. 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. 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】** [1986.11.09]

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

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

(a) one and one-half per cent of the gross revenues derived from sources in that state; and

(b) the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

Article 9. **【Associated Enterprises】** [1986.11.09]

Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10. **【Dividends】** [1986.11.09]

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 (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends ; and

(b) 25 per cent of the gross amount of the dividends in all other cases.

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

3. Notwithstanding the provisions of paragraph 2 hereof, the amount of tax imposed by the Philippines on the dividends paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Korea, who is the beneficial owner of the dividends, shall not exceed 10 per cent of the gross amount of the dividends.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders 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 laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other 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 of 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, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. **【Interest】** [1986.11.09]

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

(a) 10 per cent of the gross amount of the interest if the interest is paid in respect of public issues of bonds, debentures or similar obligation; and

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

3. Notwithstanding the provisions of paragraph 2 hereof, the amount of tax imposed by the Philippines on the interest paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Korea, who is the beneficial owner of the interest, shall not exceed 10 per cent of the gross amount of the interest.

4. Notwithstanding the provisions of paragraph 2 hereof, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if the interest is paid in respect of

() a bond, debenture or other similar obligation of the government of that State or a political subdivision or local authority thereof, or

() a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by

(aa) in the case of Korea, the Bank of Korea, the Export-Import Bank of Korea, the Korea Exchange Bank;

(bb) in the case of the Philippines, the Central Bank of the Philippines and

(cc) other lending institutions as maybe specified and agreed in letters of exchange between the competent authorities of the Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and 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, including interest on deferred payment sales.

6. The provisions of paragraphs 1, 2 and 3 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 a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. Interest 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 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.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a 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】** [1986.11.09]

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State if such resident is the beneficial owner of the royalties.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2 hereof, the amount of tax imposed by the Philippines on the royalties paid by a company, being a resident of the Philippines, registered with the Board of Investments and engaged in preferred pioneer areas of investment under the investment incentives laws of the Philippines to a resident of Korea, who is the beneficial owner of the royalties, shall not exceed 10 per cent of the gross amount of the royalties.

4. The term "royalties" as used in this Article means 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, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on films or videotapes for use in connection with television or tapes for the use of radio broadcasting.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other

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 a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. 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 in connection with which the obligation to pay the royalties was incurred, 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.

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

Article 13. **【Capital Gains】** [1986.11.09]

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from Immovable Property), and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic by enterprises of a Contracting State or gains from the alienation of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State of which the enterprise is a resident.

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

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

Article 14. **【Independent Personal Services】** [1986.11.09]

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable in that State. However, such income may be taxed in the other Contracting State:

(a) if he has a fixed base regularly available to him in that other State for the purpose of performing his activities but only so much of the income as is attributable to that fixed base; or

(b) if his stay in that other State is for a period or periods aggregating 120 days or more in the calendar year.

2. The term "professional services" includes 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】** [1986.11.09]

1. Subject to the provisions of Articles 16 (Directors' Fees), 18 (Pensions and Annuities), 19 (Government Services), 20 (Students and Apprentices), and 21 (Professors and Teachers), 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 in the calendar year concerned, and

(b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of a n employment as a member of regular crew or complement exercised aboard a ship or airc

Article 16. **【Directors' Fees】** [1986.11.09]

1. 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.

2. The remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 15 (Dependent Personal Services).

Article 17. **【Artistes and Athletes】** [1986.11.09]

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 a theatre, motion picture, radio or television artiste, and a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete from his personal activities as such in a Contracting State shall be taxable only in the other Contracting State if his visit to the first-mentioned State is supported substantially from the public funds of that other State or of one of its political subdivisions or local authorities.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities as such of an entertainer or an athlete in a Contracting State accrues not to that entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State if this person is supported substantially from the public funds of that other State or of one of its political subdivisions or local authorities, or if this person is a nonprofit organization of that other State.

Article 18. **【Pensions and Annuities】** [1986.11.09]

1. Subject to the provisions of paragraph 2 of Article 19 (Government Service), pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, social security pensions paid by a social security instrumentality of a Contracting State shall be taxable only in that State.

Article 19. **【Government Service】** [1986.11.09]

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

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

() is a national of that State; or

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

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

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

3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees) and 18 (Pensions and Annuities) 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.

4. The provisions of paragraphs 1 and 2 of this Article shall likewise apply in respect of remuneration or pensions paid:

(a) in the case of Korea - by the Bank of Korea, the Export-Import Bank of Korea, the Korea Exchange Bank and the Korea Trade Promotion Corporation;

(b) in the case of the Philippines - the Central Bank of the Philippines; and

(c) in the case of both Contracting States - by such other government owned institutions

performing functions of a governmental nature as may subsequently be agreed upon in letter

Article 20. **【Students and Apprentices】** [1986.11.09]

1. An individual 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 as a student at a recognized university, college, school or other similar recognized educational institution in the first-mentioned State for a period not exceeding five years from the date of his first arrival in the first-mentioned State in connection with that visit, shall be exempt from tax in that first-mentioned State on

(a) all remittances from abroad for the purposes of his maintenance, education or training; and

(b) any remuneration for personal services rendered in the first-mentioned State with a view to supplementing the resources available to him for such purposes.

2. An individual 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 as an apprentice for the purpose of acquiring technical, professional or business experience shall be exempt from tax in that first-mentioned State on:

(a) all remittances from abroad for purpose of his maintenance or training, and

(b) for an aggregate period of not more than three years from the date of his first arrival, any remuneration for personal services rendered in that other State, provided such services are in connection with his training or incidental thereto.

3. An individual, 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 study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance program entered into by the government of the Contracting State shall, for a period not exceeding three years from the date of his first arrival, be exempt from tax in that first-mentioned State on:

(a) the amount of such grant, allowance or award;

(b) all remittance from abroad for the purposes of his maintenance, education or training; and

(c) any remuneration for personal services in that first-mentioned State provided that such services are in connection with his study, research, training or incidental thereto.

Article 21. **【Professors and Teachers】** [1986.11.09]

1. Remuneration which a professor or a teacher, who is or was a resident of one of the Contracting States and who visits the other Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution, receives for those activities shall be taxable only in the first-mentioned State.

2. For the purposes of paragraph 1 of this Article, the term "remuneration" shall include remittances from sources outside the other State sent to enable the professor or teacher to carry out the purposes referred to in paragraph 1.

Article 22. **【Other Income】** [1986.11.09]

1. Items of income of a resident of a Contracting State wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

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

Article 23. **【Relief from Double taxation】** [1986.11.09]

1. Subject to the laws of Korea regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea, Philippine tax payable in respect of income derived from the Philippines shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that portion of Korean tax which the income from sources within the Philippines bears to the entire income subject to Korean tax.

2. Subject to the laws of the Philippines regarding the allowance as a credit against Philippine tax of tax payable in any country other than the Philippines, Korean tax payable in respect of income derived from Korea shall be allowed as a credit against Philippine tax payable in respect of that income. The credit shall not, however, exceed that portion of the Philippine tax which the income from sources within Korea bears to the entire income subject to Philippine tax.

3. For the purposes of the credit referred to in paragraph 1 hereof, the Philippine tax shall always be considered as having been paid at the rate of 20 per cent in the case of dividends to which the

provisions of paragraphs 2 (a) and 3 of Article 10 apply; 15 per cent in the case of interest to which the provisions of paragraph 3 of Article 11 apply; 25 per cent in the case of royalties to which the provisions of paragraph 2 of Article 12 apply; and 15 per cent in the case of royalties to which the provisions of paragraph 3 of Article 12 apply.

Article 24. 【Non- Discrimination】 [1986.11.09]

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 Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relief and 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 (Associated Enterprises), paragraph 6 of Article 11 (Interest), or paragraph 4 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 or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

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

Article 25. 【Mutual Agreement Procedure】 [1986.11.09]

1. Where a person considers that the actions of one of both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 (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 endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavor 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.

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 26. **【Exchange of Information】** [1986.11.09]

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

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

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

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

Article 27. **【Diplomatic Agents and Consular Officers】** [1986.11.09]

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

Article 28. **【Entry Into Force】** [1986.11.09]

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

2. This Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and its provisions shall have effect:

(a) in respect of taxes withheld at the source on amount paid to nonresident on or after the first day of January of the calendar year next following that in which the exchange of instruments of ratification takes place; and

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

Article 29. **【Termination】** [1986.11.09]

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may, on or before June 30 in any calendar year after the fifth year following the change 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 amount paid or credited to nonresident 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.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective governments, have signed this Convention.

DONE in duplicate at this day of in the Korean and English languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

[1986.11.09]

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of Korea and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. In respect of Article 1, it is hereby agreed that:

a) nothing in said Article or in this Convention shall be construed as preventing a Contracting State from taxing its citizens who may be residing in the other Contracting State in accordance with its domestic legislation.

b) no credit, however, shall be given by a Contracting State for taxes levied by the other pursuant to the paragraph (a) above.

2. In respect of subparagraph (a) of paragraph 1 of Article 2 of the Convention, it is understood that the Convention shall apply to the Korean defense tax where charged by reference to the income tax or the corporation tax and the Philippine corporate development tax.

3. In respect of Article 7, paragraph 3, it is understood that this provision shall not affect the provisions of the internal laws of Korea or the Philippines in respect of amounts paid or charged (other than reimbursement of actual expenses) by the permanent establishment to the head office

of the enterprise or to any of its other offices, by way of:

- a) royalties, fees or other similar payments in return for the use of patents or other rights,
- b) commission for specific services performed or for management, and
- c) interest on money lent to the permanent establishment, except in the case of banking institution.

4. In respect of Article 8, paragraph 3 (b), it is understood that the term "lowest rate of Philippine tax" includes a zero rate or exemption from Philippine tax.

5. In respect of Article 10, nothing in this Article shall prevent either Contracting State from imposing, apart from the corporate income tax, a tax on remittance or profits by a branch to its head office provided that the tax so imposed shall not exceed 10 per cent of the amount remitted.

6. It is understood that in respect of paragraph 3 of Article 23, the 25 per cent tax credit applies only in case tax rates imposed on royalties under the domestic laws of the source country exceed 25%. Otherwise, the provision of paragraph 1 of Article 23 shall apply.

7. In respect of Article 25, paragraph 2, it is understood that this will not prejudice the time limits prescribed in the domestic laws of each Contracting State.

IN WITNESS WHEREOF, the undersigned have signed the present protocol which shall have the same force and validity as if it were inserted word by word in the Convention.

DONE in duplicate at SEOUL this 21st day of February of 1984 in the Korean and English language, each text being equally authentic.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF THE

THE REPUBLIC OF KOREA REPUBLIC OF THE PHILIPPINES
