



# **Double Taxation Avoidance Agreement between The Philippines and The Netherlands**

## **DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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# Philippines

Convention between the Kingdom of the Netherlands and the Republic of the Philippines for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

Done at Manila, on 9 March 1989

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*authentic texts:* English  
*treaty into force:* 20 September 1991 (see Trb. 1991, 153)  
*treaty applicable:* 1 January 1992

## Article 1. Personal scope

1. This Convention shall apply to persons who are residents of one or both of the States.
2. Nothing in this Convention shall be construed as depriving the Philippines of the right to tax its own citizens who are residents of the Netherlands with respect to income derived from dependent or independent services exercised outside of the Philippines in accordance with the laws of the Philippines, but the Netherlands shall not be bound to give for that reason any exemption or credit for such tax.

## Article 2. Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of one of the States, 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 case of the Netherlands:
    - de inkomstenbelasting (income tax),
    - de loonbelasting (wages tax),
    - de vennootschapsbelasting (company tax),
    - de dividendbelasting (dividend tax)(hereinafter referred to as 'Netherlands tax');
  - b. in the case of the Philippines:
    - the income taxes imposed by the Government of the Republic of the Philippines (hereinafter referred to as 'Philippine tax').
4. The Convention shall apply also to any identical or substantially similar taxes on income 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 States shall notify to each other any 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. the term 'State' means the Netherlands or the Philippines, as the context requires; the term 'States' means the Netherlands and the Philippines;
  - b. the term 'the Netherlands' comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea bed and its sub-soil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;
  - c. the term 'Philippines' used in a geographical sense means the national territory comprising the Republic of the Philippines;
  - d. the term 'person' comprises an individual, a company, an estate, an irrevocable trust, and any other body of persons;
  - e. the term 'company' means any body corporate or any other entity which is treated as a body corporate for tax purposes;

- f. the terms 'enterprise of one of the States' and 'enterprise of the other State' mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;
  - g. the term 'competent authority' means the Minister or Secretary of Finance of one of the States or his duly authorized representative;
  - h. the term 'national' means:
    - i. any individual possessing the nationality or citizenship of one of the States;
    - ii. any legal person, partnership and association created, organized or incorporated under the laws of one of the States;
  - i. the term 'international traffic' means any transport by ship or aircraft operated by an enterprise of one of the States, except when the ship or aircraft is operated solely between places in the other State.
2. As regards the application of the Convention by either of the States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

#### **Article 4. Fiscal domicile**

1. For the purposes of this Convention, the term 'resident of one of the States' means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
2. For the purposes of this Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then this case shall be determined in accordance with the following rules:
  - 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 the 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 States shall settle the question by mutual agreement.
4. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both States, then the competent authorities shall determine by mutual agreement the State of which that person shall be deemed to be a resident.

#### **Article 5. Permanent establishment**

1. For the purposes of this Convention, the term 'permanent establishment' means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term 'permanent establishment' includes especially:
  - a. a place of management;
  - b. a branch;
  - c. an office;
  - d. a factory;
  - e. a workshop;
  - f. a mine, quarry or other place of exploration or extraction of natural resources;
  - g. a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than 183 days;
  - h. the furnishing of services including consultancy services by an enterprise through an employee or other personnel where activities of that nature continue (for the same or a connected project) for a period or periods exceeding in the aggregate 183 days within any twelve-month period.
3. The term 'permanent establishment' shall be deemed not to include:
  - a. the use of facilities solely for the purpose of storage or display 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 or display;
  - c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. A person acting in one of the States on behalf of an enterprise of the other State – other than an agent of an independent status to whom paragraph 6 applies – shall be deemed to be a permanent establishment in the first-mentioned State if:
- a. he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
  - b. he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise.
5. An insurance enterprise of one of the States shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.
6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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 from immovable property, including income from agriculture or forestry, may be taxed in the State in which such property is situated.
2. The term 'immovable property' shall be defined in accordance with the law of the 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, excluding bonds or debentures; 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 professional services.

## **Article 7. Business profits**

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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 one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. In the application of paragraph 3, no deduction shall be allowed in respect of amounts charged – otherwise than with respect to expenses actually incurred – by the head office of the enterprise or any of its other offices to the permanent establishment, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys made available to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for such amounts charged – otherwise than with respect to expenses actually incurred – by the permanent establishment to the head office of the enterprise or any of its other offices.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. In the case of profits from survey, supply, installation or construction activities only so much of them is attributable to a permanent establishment as results from the actual performance of these activities through that permanent establishment.
7. Payments received by an enterprise of one of the States as a consideration for the furnishing of technical services in the other State, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts and blue prints related thereto, or for consultant or supervisory services shall be deemed to be profits of an enterprise to which the provisions of this Article shall apply.
8. 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.
9. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

#### **Article 8. Shipping and air transport**

1. Profits derived by an enterprise of one of the States from the operation of ships and aircraft in international traffic may be taxed in that State.
2. However, such profits may also be taxed in the other State, but only in so far as such profits are derived from that other State. The tax so charged shall not exceed the lesser of
  - a. the rate of 1% applied on the gross revenue derived from that other State, or
  - b. the lowest rate of Philippine tax applied on such profits derived by an enterprise of a third State.
3. For the purposes of this Article, profits derived from the other State mean profits as determined under its domestic law realised from the carriage of passengers, excess baggage, mail, livestock or goods boarded or loaded in that other State by a shipping enterprise doing business in that State of passage documents sold therein or from uplifts anywhere in the world by an international carrier doing business in that other State of passage documents sold therein, provided that in such cases the mail, livestock or goods originate from that other State. Profits realised from the carriage of passengers, excess baggage, mail, livestock or goods which are brought to that other State solely for transshipments, or for transfer from one aircraft to another or from an aircraft to a ship or from a ship to an aircraft shall not be included. Profits from chartered flights originating from that other State shall be deemed to be derived from that State regardless of the place of sale of the passage documents. For purposes of determining the taxability of profits from chartered flights, the term 'originating from that other State' shall include flights of passengers who stay in that other State for more than 48 hours prior to embarkation.
4. The provisions of paragraphs 1, 2 and 3 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

#### **Article 9. Associated enterprises**

Where

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

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

#### **Article 10. Dividends**

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.
2. However, such dividends may also be taxed in the 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% of the gross amount of the dividends if the recipient is a company the capital of which is wholly or partly divided into shares and which holds directly at least 10% of the capital of the company paying the dividends;
  - b. 15% of the gross amount of the dividends in all other cases.
3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.
4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term 'dividends' as used in this Article means income from shares, 'jouissance' shares or 'jouissance' rights, mining shares, founders' shares or other rights participating in profits, as well as income from debt-claims participating in profits and income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.
6. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the States, carries on business in the other State, of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
7. If a resident of one of the States has a permanent establishment in the other State, this permanent establishment may be subject to an additional tax on the profits remitted by that permanent establishment to its head office in accordance with the law of the last-mentioned State, but the additional tax so charged shall not exceed 10% of the amount of the remitted profits. This provision shall not apply to profits mentioned in Article 8.
8. Where a company which is a resident of one of the States derives profits or income from the other 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. Interests**

1. Interest arising in one of the States and paid to a resident of the other State may be taxed in that other State.
2. However, such interest may also be taxed in the 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% of the gross amount if such interest is paid:
    - i. in connection with the sale on credit of any industrial, commercial or scientific equipment, or
    - ii. on any loan of whatever kind granted by a bank, or any other financial institution,
    - iii. in respect of public issues of bonds, debentures or similar obligations,
  - b. 15% of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of paragraph 2:

- a. interest arising in one of the States and paid in respect of a bond, debenture or other similar obligation of the Government of that State or of a political subdivision or local authority thereof shall be exempt from tax in that State;
  - b. interest arising in one of the States and paid in respect of a loan made by or guaranteed or insured by the Government of the other State, the central bank of that other State or any agency or instrumentality (including a financial institution) owned or controlled by that Government shall be exempt from tax in the first-mentioned State.
4. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.
  5. The term 'interest' as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage but not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
  6. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the interest, being a resident of one of the States, carries on, in the other State in which the interest arises, a trade or business through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
  7. Interest shall be deemed to arise in one of the States 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 one of the States or not, has in one of the States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

## **Article 12. Royalties**

1. Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State.
2. However, such royalties may also be taxed in the 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:
  - a. 10% of the gross amount of the royalties where the royalties are paid by an enterprise registered, and engaged in preferred areas of activities in that State; and
  - b. 15% of the gross amount of the royalties in all other cases.
3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.
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 including cinematograph films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Royalties shall be deemed to arise in one of the States 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 one of the States or not, has in one of the States a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and those royalties are

borne by that permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each 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, as defined in paragraph 2 of Article 6, may be taxed in the 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 one of the States has in the other State, or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3. Notwithstanding the provisions of paragraph 2, gains derived by an enterprise of one of the States from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its domestic law a tax on gains from the alienation of any property derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State at any time during the six years immediately preceding the alienation of the property.

### **Article 14. Independent personal services**

1. Income derived by a resident of one of the States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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, 18, 19 and 20 salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other 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 one of the States in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if:

a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of one of the States who is a member of the regular crew or complement of a ship or aircraft operated in international traffic shall be taxable only in that State.



## **Article 16. Directors' remuneration**

1. Directors' fees and other remuneration derived by a resident of the Netherlands in his capacity as a member of the board of directors of a company which is a resident of the Philippines may be taxed in the Philippines.
2. Directors' fees and other remuneration derived by a resident of the Philippines in his capacity as a 'bestuurder' or a 'commissaris' of a company which is a resident of the Netherlands may be taxed in the Netherlands.
3. Where the remuneration mentioned above is derived by persons, who exercise activities in real and regular functions in a permanent establishment situated in the other State than the State of which the company is a resident, and is borne as such by that permanent establishment, then, notwithstanding the provisions of paragraphs 1 and 2, such remuneration may be taxed in the State in which the permanent establishment is situated.

## **Article 17. Artistes and athletes**

1. Notwithstanding the provisions of Articles 5, 7, 14 and 15 income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such, and income derived from the furnishing by an enterprise of the services of such entertainers or athletes, may be taxed in the State in which these activities are performed.
2. The provisions of paragraph 1 shall not apply to income derived from activities performed in one of the States by entertainers and athletes if the visit to that State is substantially supported by public funds of the other State, including any political subdivision, local authority or statutory body thereof, nor to income derived by a non-profit organization in respect of such activities no part of which income is payable to, or otherwise available for the personal benefit of, any proprietor, member or shareholder thereof if the organization is certified as qualifying under this provision by the competent authority of the other State.

## **Article 18. Pensions and annuities**

1. Subject to the provisions of paragraph 2 of this Article and paragraph 1 of Art. 19, pensions and other similar remuneration paid in consideration of past employment to a resident of one of the States and any annuity paid to such a resident, shall be taxable only in that State.
2. However, such income may also be taxed in the other State in so far as it is charged as such against profits derived in that other State by an enterprise of that other State or by an enterprise having a permanent establishment therein.

## **Article 19. Government functions**

1. Remuneration, including pensions, paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.
2. However, the provisions of Articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the States or a political subdivision or a local authority thereof.
3. Paragraph 1 shall not apply in so far as services are rendered to a State in the other State by a resident of that other State who is not a citizen or national of the first-mentioned State.

## **Article 20. Professors and teachers**

1. Payments which a professor or teacher who is a resident of one of the States and who is present in the other State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.
2. This Article shall not apply to income from research if such research is undertaken not in the general interest but primarily for the private benefit of a specific person or persons.

## **Article 21. Students**

1. An individual who immediately before visiting one of the States is a resident of the other State and is temporarily present in the first-mentioned State for the primary purpose of:
  - a. studying at a recognized university, college or school in that first-mentioned State; or
  - b. securing training as a business apprentice,  
shall be exempt from tax in the first-mentioned State in respect of:
    - i. all remittances from abroad for the purpose of his maintenance, education or training; and
    - ii. any remuneration for personal services performed in the first-mentioned State in an amount not in excess of 5,000 guilders or the equivalent in Philippine currency, as the case may be, for any taxable year.

The benefits under this paragraph shall only extend for such period of time as may be reasonable or customarily required to effectuate the purpose of the visit.

2. An individual who immediately before visiting one of the States is a resident of the other State and is temporarily present in the first-mentioned State for a period not exceeding three years for the purpose of study, research or training solely as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by one of the States, a political subdivision or a local authority thereof shall be exempt from tax in the first-mentioned State on:
  - a. the amount of such grant, allowance or award; and
  - b. any remuneration for personal services performed in the first-mentioned State provided such services are in connection with his study, research or training or are incidental thereto and the duration of such services does not exceed an aggregate of 183 days in any taxable year.

## **Article 22. Elimination of double taxation**

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed in the Philippines.
2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation, where a resident of the Netherlands derives items of income according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraphs 1 and 3 of Article 16, paragraph 2 of Article 18 and Article 19 of this Convention may be taxed in the Philippines and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a proportionate reduction of its tax. This reduction shall not, however, exceed that part of the Netherlands tax as computed before the reduction is given, which is otherwise due on the said items of income.
3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 8, paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12 and Article 17 of this Convention may be taxed in the Philippines to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in the Philippines on these items of income, but shall not exceed that part of the Netherlands tax which is otherwise due on the said items of income.
4. For the purposes of paragraph 3, where the Philippine tax actually paid on interest and royalties arising in the Philippines is lower than 15%, then the tax paid in the Philippines on these items of income shall be deemed to be 15%.
5. Subject to the existing provisions of the laws of the Philippines of tax paid outside the Philippines and to subsequent modifications of those provisions – which shall not affect the general principles thereof – tax payable under the laws of the Netherlands on profits, income or gains arising in the Netherlands shall be deducted from any Philippine tax payable in respect of such profits, income or gains. The deduction shall not, however, exceed that part of the Philippine income tax, as computed before the deduction is given, which is otherwise due on the income which may be taxed in the Netherlands.
6. If a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph 5 of Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

### **Article 23. Non-discrimination**

1. The nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of one of the States has in the other 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 one of the States to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of Article 9, paragraph 8 of Article 11, or paragraph 7 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other 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 one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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 of every kind and description.
6. With respect to the taxes referred to in Article 2, nothing in this Article shall prevent the Philippines from limiting to its citizens or corporations the enjoyment of tax incentives granted under Article 44 of Presidential Decree No. 1789, as amended by P.B. No. 391, otherwise known as the Investment Policy Act.

### **Article 24. Mutual agreement procedure**

1. Where a resident of one of the States considers that the actions of one or both of the States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the State of which he is a national. This case must be presented within two years from the first notification of the action giving rise to taxation not in accordance with the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with the Convention. A State is not obliged to implement an agreement reached after the expiration of five years from the end of the taxable year in issue.
3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation, or the prevention of fiscal evasion in cases not provided for in the Convention.
4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

### **Article 25. Exchange of information**

1. The competent authorities of the States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Convention, in particular for the prevention of fraud, and for the administration of statutory provisions against legal avoidance concerning taxes covered by this Convention. Any information received by the competent authority of one of the States 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) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Convention applies and shall be used only for such purposes.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the States the obligation:

- a. to carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;
- b. to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other State;
- c. to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

#### **Article 26. Diplomatic and consular officials**

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

#### **Article 27. Territorial extension**

1. This Convention may be extended either in its entirety or with any necessary modifications to the Netherlands Antilles and/or to Aruba.
2. Unless otherwise agreed the termination of the Convention shall also terminate the application of the Convention to the Netherlands Antilles and/or to Aruba.

#### **Article 28. Entry into force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Manila as soon as possible.
2. The Convention shall enter into force upon the exchange of the instruments of ratification and its provisions shall have effect:
  - a. in respect of tax withheld at the source on amounts paid on or after the first day of January in 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 and periods beginning on or after the first day of January in the calendar year next following that in which the exchange of instruments of ratification takes place.

#### **Article 29. Termination**

This Convention shall continue in effect indefinitely but either State may, on or before June 30 in any calendar year after the expiration of a period of five years from the date of entry into force, give notice of termination, through diplomatic channels, to the other State and in such event the Convention shall cease to have effect:

- a. in respect of tax withheld at the source on amounts paid 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 and periods 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, duly authorized thereto, have signed this Convention.

DONE at Manila, this 9th day of March, 1989, in duplicate, in the English language.

### **Protocol**

#### **I. Ad Article 3**

The competent authorities shall determine by mutual agreement the application of the Convention to an estate as meant in sub-paragraph (d) of paragraph 1 of Article 3.

## **II. Ad Article 9**

It is understood that costsharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses, research and development expenses and other similar expenses, do not by themselves alone indicate a non arm's length transaction.

## **III. Ad Article 10**

The provisions of sub-paragraph (a) of paragraph 2 of Article 10 shall not apply, if the company which is a resident of the Netherlands suffers Netherlands company tax on the dividends which it receives from the company which is a resident of the Philippines. In such case the provisions of sub-paragraph (b) of paragraph 2 of Article 10 shall apply.

## **IV. Ad Articles 10, 11 and 12**

Applications for the restitution of tax levied and paid not in accordance with the provisions of Article 10, 11 and 12 have to be lodged with the competent authority of the State having levied the tax within a period of two years after which the tax has been levied and paid.

## **V. Ad Article 22**

a. It is understood that, in so far as the Netherlands income tax or company tax is concerned, the basis meant in the first paragraph of Article 22 is the 'onzuivere inkomen' or 'winst' in terms of the Netherlands Income Tax Law or Company Tax Law, respectively.

b. Notwithstanding the provisions of paragraph 4 of Article 22, as far as royalties are concerned, the percentage mentioned in that paragraph shall be increased by 5% as long as the Philippine domestic legislation provides for a tax at source on royalties which is not lower than 35%.

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

DONE at Manila this 9th day of March, 1989, in duplicate, in the English language.