

No. 17184

**FRANCE
and
PHILIPPINES**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Kingston on 9 January 1976

Authentic texts: French and English.

Registered by France on 17 November 1978.

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PHILIPPINES**

Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Kingston le 9 janvier 1976

Textes authentiques : français et anglais.

Enregistrée par la France le 17 novembre 1978.

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC 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 Government of the French Republic and the Government 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, with a view in particular to encourage international trade and investment,

Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

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

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Convention shall apply are:

a) In the case of France:

(i) The income tax;

(ii) The corporation tax;

including any withholding tax, prepayment (*précompte*) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as "French tax");

b) In the case of the Philippines:

—The income tax imposed by the Republic of the Philippines,

(hereinafter referred to as "Philippine tax").

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

¹ Came into force on 24 August 1978, date of the last of the notifications (effected on 6 June and 24 August 1978) indicating that the formalities of each Contracting State had been complied with, in accordance with article 29.

Article 3. GENERAL DEFINITIONS

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

a) The term “person” comprises an individual, a company and any other body of persons.

b) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes.

c) 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.

d) The term “nationals” means:

(i) All individuals possessing the nationality or the citizenship of a Contracting State;

(ii) All legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State.

e) The term “international traffic” means any transport by ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

f) The term “competent authority” means:

(i) In the case of France, the Minister of Economy and Finance, or his authorized representative;

(ii) In the case of the Philippines, the Secretary of Finance, or his authorized representative.

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

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources therein.

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

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

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

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

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

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

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” shall include especially:

- a) A place of management;
- b) A branch;
- c) An office;
- d) A factory;
- e) Premises used as a sales outlet;
- f) A workshop;
- g) A mine, quarry or other place of extraction of natural resources;
- h) A building site or construction or assembly project which exists for more than six months, or supervisory activities in connection therewith, where such activities continue for a period of more than six months;
- i) The furnishing of services including consultancy services by an enterprise through employees or other personnel, where activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.

3. The term “permanent establishment” shall not be deemed 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 for collecting information, for the enterprise;

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

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 5 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, 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 habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, where 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 that enterprise, he would not be considered an agent of an independent status within the meaning of this paragraph if it is proved that the transactions between the agent and the enterprise were not made under arm's-length conditions.

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 collects premiums in the territory of that State or insures risks situated therein through an employee or through a representative who is not an agent of independent status within the meaning of paragraph 5.

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

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall be defined in accordance with the taxation laws 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 professional services.

Article 7. BUSINESS PROFITS

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

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

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

4. *a)* Notwithstanding the provisions of paragraph 3, there shall not be allowed as deductions amounts paid or payable (otherwise than towards reimbursement of actual expenses) by a permanent establishment to the head office of the enterprise, in respect of payments referred to in subparagraph *c*).

b) In the determination of the profits of a permanent establishment, no account shall be taken for amounts charged (otherwise than towards reimbursement of actual expenses) by a permanent establishment to the head office of the enterprise, in respect of payments referred to in subparagraph *c*).

c) The provisions of subparagraphs *a*) and *b*) shall apply to:

- (i) Royalties, fees or other similar payments in return for the use of patents or other rights;
- (ii) Commissions for specific services performed or for management;
- (iii) Except in the case of a banking institution, interest from money lent:
 - By the head office of the enterprise to the permanent establishment; or
 - By the permanent establishment to the head office of the enterprise.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

Article 8. SHIPPING AND AIR TRANSPORT

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

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

- a) One and one-half per cent of the gross revenues derived from sources in the first-mentioned State; and
- b) The lowest rate of Philippine tax imposed on such profits derived by an enterprise of a third State.

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

Article 9. ASSOCIATED ENTERPRISES

Where:

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

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

Article 10. DIVIDENDS

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

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

- a) 15 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 10 per cent of the voting shares of the company paying the dividends;
- b) In all other cases, 25 per cent of the gross amount of the dividends.

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

3. The term “dividends” as used in this article means income from shares, “*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 taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on 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 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.

5. A resident of the Philippines who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (*pré-compte*) relating to such dividends, in the event it had been paid by the distributing company. Such prepayment (*pré-compte*) shall be refunded subject to the deduction of the tax levied according to the French taxation law and the provisions of paragraph 2.

The gross amount of the prepayment (*pré-compte*) refunded shall be deemed to be dividends for the purposes of the provisions of this Convention.

6. Where a company resident of a Contracting State has in the other Contracting State a permanent establishment, the profits of its permanent establishment shall, after having borne the corporation tax, be liable to tax the rate of which shall not exceed 15 per cent, according to the laws of that other Contracting State.

Article 11. INTEREST

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

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the amount of the interest.

3. Notwithstanding the provisions of paragraph 2:

a) Interest arising in a Contracting State and paid to a resident of the other Contracting State in respect of a bond, debenture or other similar obligation of the government of the first-mentioned Contracting State or a political subdivision or local authority thereof shall, provided that the interest is beneficially owned by a resident of the other Contracting State, be taxable only in that other Contracting State.

b) Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other Contracting State if it is

paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by:

- (i) In the case of France, the Banque française du commerce extérieur BFCE or the Compagnie française d'assurance pour le commerce extérieur COFACE, and
- (ii) In the case of the Philippines, the Central Bank of the Philippines, or such lending institution as is specified and agreed in letters exchanged between the competent authorities of the Contracting States.

c) The Philippine tax on interest arising in the Philippines in respect of public issues of bonds, debentures or similar obligations and paid by a company which is a resident of the Philippines to a resident of France shall not exceed 10 per cent of the gross amount of the interest.

4. 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 bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, a statutory body thereof or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt 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 Contracting State, due regard being had to the other provisions of this Convention.

Article 12. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State. However, the tax so charged shall, provided that the royalties are taxable in the other Contracting State, not exceed:

- a) In the case of the Philippines, 15 per cent of the gross amount of the royalties:
 - (i) Paid by an enterprise registered with the Philippines Board of Investments and engaged in preferred areas of activities; or
 - (ii) Paid in respect of cinematographic films or of works recorded for broadcasting or television;
- b) In all other cases, 25 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films and works recorded for broadcasting or television, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting 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.

5. 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 Contracting State, due regard being had to the other provisions of this Convention.

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph 2 of article 6, or from the alienation of shares or comparable interest in a real property cooperative or in a company the assets of which consist principally of immovable property may be taxed in the Contracting State in which such property is situated.

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

However, gains derived by an enterprise of a Contracting State 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.

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

4. The provisions of paragraph 3 shall not affect the right of a Contracting State 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 Contracting 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 a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, such income may be taxed in the other Contracting State when:

- a) He has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- b) His stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate one hundred twenty (120) days in the calendar year.

2. The term "professional services" includes 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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international

traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. DIRECTORS' FEES

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

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.

Article 17. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 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 may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities as such of entertainers and athletes in a Contracting State accrues not to that entertainer and athlete himself but to another person, notwithstanding the provisions of articles 7, 14 and 15, that income shall be taxable only in the other Contracting State if this person is supported substantially from the public funds of that other Contracting State, one of its political subdivisions or local authorities or of a statutory body thereof or if this person is a non-profit organization.

Article 18. PENSIONS

1. Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State. However, pensions paid out of pension plans of Philippine enterprises not registered under Philippine law may be taxed in the Philippines.

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

Article 19. GOVERNMENT SERVICE

1. *a)* Remuneration, other than a pension, paid by a Contracting State or one of its political subdivisions or local authorities or by a statutory body thereof to any individual in respect of services rendered to that State or subdivision or local authority or statutory body shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State or one of its political subdivisions or local authorities or by a statutory body thereof to any individual in respect of services rendered to that State or subdivision or local authority or statutory body shall be taxable only in that State.

3. The provisions of articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or one of its political subdivisions or local authorities or by a statutory body thereof.

Article 20. STUDENTS

1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

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

Article 21. TEACHERS AND RESEARCHERS

1. A teacher or a researcher who, resident of a Contracting State, visits the other Contracting State for the purpose of teaching or engaging in research shall be exempt from tax in that other Contracting State for a period not exceeding two years on remuneration in respect of such activities.

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 22. OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention shall be taxable only in that Contracting State. However, if such income is derived from sources

within the other Contracting State, it may also be taxed in accordance with the law of that other State.

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

Article 23. METHOD FOR ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided in the following manner:

1. *In the case of the Philippines.* a) Subject to the provisions of the laws of the Philippines relating to the allowance as a credit against Philippine tax of the tax paid in a territory outside the Philippines, French tax payable under the laws of France and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within France shall be allowed, where similar tax is imposed in the Philippines, as a credit against Philippine tax payable in respect of that income. The deduction shall not, however, exceed that part of the Philippine income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in France.

b) Nothing in this Convention shall prevent the Philippines from taxing its citizens in accordance with its domestic legislation.

2. *In the case of France.* a) Income other than that referred to in sub-paragraph b) below shall be exempt from the French taxes referred to in sub-paragraph a) of paragraph 3 of article 2 if the income is taxable in the Philippines under this Convention.

b) Income referred to in articles 10, 11, 12, 14, 16, 17 and 22 received from the Philippines may be taxed in France. The Philippine tax levied on such income entitles residents of France to a tax credit corresponding to the amount of Philippine tax levied but which shall not exceed the amount of French tax levied on such income. Such credit shall be allowed against taxes referred to in sub-paragraph a) of paragraph 3 of article 2, in the bases of which such income is included.

c) For the purposes of sub-paragraph b) and with respect to income referred to in articles 10, 11 and 12, the amount of the tax credit allowed to residents of France shall be the higher of the following amounts:

- (i) The amount of the Philippine tax actually levied, or
- (ii) With respect to income referred to in articles 10 and 12, 20 per cent of the gross amount of such income; with respect to income referred to in article 11, 15 per cent of the gross amount of such income,

but shall not exceed the amount of French tax levied on such income.

d) Notwithstanding the provisions of sub-paragraphs a) and b), French tax is computed on income chargeable in France by virtue of this Convention at the rate appropriate to the total of the income chargeable in accordance with the French law.

Article 24. NON-DISCRIMINATION

1. The nationals of a Contracting State, whether or not they are residents of one of the Contracting States, shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State, shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of article 9, paragraph 7 of article 11, or paragraph 5 of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirement to which other similar enterprises of that first-mentioned State are or may be subjected.

5. Nothing in this article shall be construed so as to prevent the Philippines from limiting to its nationals the benefit of an incentive granted by law. However, such incentives available to nationals of any third State shall likewise be available to nationals of France.

6. In this article, the term "taxation" means the taxes to which the Convention applies.

Article 25. MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. This case must be presented within two years of the first notification of the action giving rise to taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other

Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties arising as to the application of the Convention. In particular, the competent authorities of the Contracting States may consult together to endeavour to agree:

- a) To the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;
- b) To the same allocation of income between a resident of a Contracting State and any associated person referred to in article 9.

4. The competent authorities of the Contracting States may consult together for:

- a) The elimination of double taxation in cases not provided for in the Convention, or
 - b) The prevention of fiscal evasion,
- with respect to taxes to which the Convention applies.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

6. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Convention and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, tax reliefs or exemptions on income referred to in articles 10, 11 and 12 received from that other Contracting State.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective tax administrative practices and those which may be procured by special inquiry) as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention, in particular, for the prevention of fraud or evasion of such taxes. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those (including a court or administrative body) concerned with the assessment, collection, or enforcement in respect of taxes which are the subject of the Convention or with the prosecution, claims and appeals relating thereto.

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

- a) To carry out administrative measures at variance with the laws or the administrative practices of that or of the other Contracting State;
- b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

Article 27. DIPLOMATIC AND CONSULAR OFFICIALS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, or members of consular missions, or of members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of article 4, an individual who is a member of a diplomatic or consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:

- a) In accordance with international law, he is not taxable in the receiving State on income from sources outside that State; and
- b) He is liable in the sending State to the same obligations in relation to tax on his total world income as are residents of that sending State.

3. This Convention shall not apply to international organizations, to organs and officials thereof and to persons who are members of a diplomatic or consular or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

Article 28. TERRITORIAL SCOPE

1. This Convention shall apply:

- a) In the case of the Philippines, to the national territory of the Republic of the Philippines;
- b) In the case of France, to the European and overseas departments (Guadeloupe, Guyana, Martinique and Réunion) of the French Republic, and to any area outside the territorial sea adjacent to those departments, which is, in accordance with international law, an area within which France may exercise rights with respect to the sea bed and subsoil and their natural resources.

2. This Convention may be extended, either in its entirety or with any necessary modification, to the overseas territories of the French Republic which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

3. Unless otherwise agreed by both Contracting States, the denunciation of the Convention by one of them under article 30 shall terminate, in the manner provided for in that article, the application of the Convention to any territory to which it has been extended under paragraph 2 of this article.

Article 29. ENTRY INTO FORCE

1. Each Contracting State shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

2. Its provisions shall have effect for the first time:

- a) As regards taxes withheld at source, to amounts payable on or after the first day of January of the calendar year in which the Convention entered into force;
- b) As regards other taxes on income, to income derived during the calendar year in which the Convention entered into force, or relating to the accounting period ended during this year.

Article 30. TERMINATION

1. This Convention shall remain in force indefinitely. However, after the fifth calendar year following the entry into force of this Convention, each Contracting State may, by giving at least six months' written notice of termination through diplomatic channels, denounce the Convention for the end of a calendar year.

2. In such an event, its provision shall have effect for the last time:

- a) As regards taxes withheld at source, to sums payable on or before the 31st of December of the calendar year for the end of which the termination has been notified;
- b) As regards other taxes on income, to income derived during the calendar year for the end of which the termination has been notified or relating to the accounting period beginning during this year.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Convention.

DONE in duplicate at Kingston, this ninth day of January 1976, in the French and English languages, each text being equally authentic.

For the Government
of the French Republic:

[Signed]¹

For the Government
of the Republic of the Philippines:

[Signed]²

PROTOCOL

At the moment of proceeding this day to the signature of the Convention between the Government of the French Republic 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, both Governments have agreed upon the following provisions:

¹ Signed by Jean-Pierre Fourcade.

² Signed by César Virata.

1. In respect of paragraph 1 of article 7, when an enterprise of a Contracting State has a permanent establishment in the other Contracting State, profits derived by that enterprise from sales of goods and merchandise in that other State, but not effectively connected with that permanent establishment, being goods and merchandise of the same or similar kind as those sold through that permanent establishment, may be attributed to that permanent establishment if it is proved that this arrangement has been resorted to in order to avoid taxation in the other State.

2. In respect of paragraph 2 of article 7, when an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of this permanent establishment are not determined on the basis of the total amount received by the enterprise, but are determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business.

3. With respect to paragraph 2 of article 12, persons receiving payments of any kind as a consideration for the use or the right to use industrial, commercial or scientific equipment shall be taxed on their net income. The net income shall be determined in accordance with the rules laid down in article 7, paragraphs 2 and 3.

4. With respect to paragraph 3 of article 12, payments received as a consideration for studies or surveys of a scientific, geological or technical nature or for consultant or supervisory services shall not be considered as payments for "information concerning industrial, commercial or scientific experience" and shall be governed by the provisions of articles 5 and 7.

5. In respect of paragraphs 3 and 4 of article 17, a non-profit organization is an organization no part of the income of which is payable to, or is otherwise available for the personal benefit of, any proprietor or shareholder thereof and which is certified as qualifying as such by the competent authority of the State of which it is a resident.

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 Kingston, this ninth day of January 1976, in the French and English languages, each text being equally authentic.

For the Government
of the French Republic:

[Signed]¹

For the Government
of the Republic of the Philippines:

[Signed]²

¹ Signed by Jean-Pierre Fourcade.

² Signed by César Virata.