

No. 21311

**PHILIPPINES
and
INDONESIA**

**Agreement for the avoidance of double taxation and the
prevention of fiscal evasion with respect to taxes on
income. Signed at Manila on 18 June 1981**

Authentic text: English.

Registered by the Philippines on 15 November 1982.

**PHILIPPINES
et
INDONÉSIE**

**Accord tendant à éviter la double imposition et à prévenir
l'évasion fiscale en matière d'impôts sur le revenu.
Signé à Manille le 18 juin 1981**

Texte authentique : anglais.

Enregistré par les Philippines le 15 novembre 1982.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of the Philippines and the Government of the Republic of Indonesia,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

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

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

3. The taxes which are the subject of this Agreement are:

(a) In the Philippines: the income taxes imposed by the Government of the Republic of the Philippines

(hereinafter referred to as "Philippine tax");

(b) In Indonesia:

(i) The income tax (*Pajak Pendapatan*);

(ii) The company tax (*Pajak Perseroan*);

(iii) The tax on interest, dividend and royalty (*Pajak Atas Bunga, Dividen dan Royalty*)

(hereinafter referred to as "Indonesian tax").

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

¹ Came into force on 20 May 1982, i.e., 30 days after the date of the exchange of the instruments of ratification, which took place at Jakarta on 19 April 1982, in accordance with article 30 (2).

Article 3. GENERAL DEFINITIONS

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

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

(ii) The term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws, and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law;

(b) The terms "a Contracting State" and "the other Contracting State" mean the Philippines or Indonesia;

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

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

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

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

(g) The term "national" means:

(i) Any individual possessing the nationality of a Contracting State;

(ii) A juridical person created or organized under the laws of a Contracting State and all organizations without juridical personality treated for the purposes of tax of that Contracting State as juridical persons created or organized under the laws of that Contracting State;

(h) The term "competent authority" means:

(i) In the case of the Philippines, the Minister of Finance or his duly authorized representative;

(ii) In the case of Indonesia, the Minister of Finance or his duly authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

Article 4. FISCAL DOMICILE

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is treated as a resident for tax purposes in the Contracting State.

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

- (a) He shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) If he has an habitual abode in both Contracting States or in neither of them, the competent authorities of the two Contracting States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” includes especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A farm or plantation;
- (g) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (h) A place of exploration of natural resources;
- (i) A building site or construction project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than six months;
- (j) An assembly or installation project which exists for more than three months;
- (k) Premises used as a sales outlet;
- (l) A warehouse, in relation to a person providing storage facilities for others;
- (m) 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 connected project) for a period or periods aggregating more than 183 days within any twelve-month period.

3. Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not to include:

- (a) The use of facilities solely for the purpose of storage 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) Maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) He has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise; or
- (b) He has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) In so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

5. 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 an independent status within the meaning of paragraph 6.

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

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under arms-length conditions. In such a case, the provisions of paragraph 4 shall apply.

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

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

Article 7. BUSINESS PROFITS

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:

- (a) That permanent establishment; or
- (b) Sales within that other Contracting State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- (c) Other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

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

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

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportion-

ment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

5. Notwithstanding the provisions of paragraph 3, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices by way of:

- (a) Royalties, fees or other similar payments in return for the use of patents or other rights; or
- (b) Commission for specific services performed or for management; or
- (c) Interest on money lent to the permanent establishment, except in the case of a banking institution.

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

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

Article 8. SHIPPING AND AIR TRANSPORT

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

- (a) One and one-half percent of the gross revenues derived from sources in that State; or
- (b) The lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

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

Article 9. ASSOCIATED ENTERPRISES

1. Where:

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

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

2. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws.

Article 10. DIVIDENDS

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

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

- (a) 15 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 percent of the capital of the paying company;
- (b) 20 percent of the gross amount of the dividends in all other cases.

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

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations provided in the preceding paragraph.

4. The term “dividends” as used in this article means the income from shares, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 (Business profits) or article 14 (Independent personal services), as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derived profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax of the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in some other State.

7. Nothing in this article shall prevent either Contracting State from imposing, apart from the corporate income tax, a tax on remittances of profits by a branch to its head office, provided that the tax so imposed shall not exceed 20 percent of the amount remitted.

Article 11. INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 percent of the gross 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 shall be taxable only in that other State, if the interest is paid in respect of:

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

(ii) A loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Central Bank of the Philippines, or the Bank Indonesia (the Central Bank of Indonesia), or any other lending institution, as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States;

(b) The tax on interest paid by a company which is a resident of a Contracting State to a resident of the other Contracting State in respect of public issues of bonds, debentures or similar obligations shall not exceed 10 percent of the gross amount of the interest.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations prescribed in the preceding paragraphs.

5. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by a mortgage, and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the State in which the income arises, including interest on deferred payment sales. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 (Business profits) or article 14 (Independent personal services), as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent estab-

lishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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, if such resident is the beneficial owner of the royalties.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State. However, the tax so charged shall not exceed:

(a) In the case of the Philippines:

(i) 15 percent of the gross amount of the royalties where the royalties are paid by an enterprise registered with the Philippine Board of Investments, and engaged in preferred areas of activities as determined by the said Board; and

(ii) In all other cases, 25 percent of the gross amount of the royalties;

(b) In the case of Indonesia: 15 percent of the gross amount of the royalties.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations provided in the preceding paragraph.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 (Business profits) or article 14 (Independent personal services), as the case may be, shall apply.

Article 13. GAINS FROM THE ALIENATION OF PROPERTY

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

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

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

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

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable in that State.

However, such income may be taxed in the other Contracting State if:

- (a) He has a fixed base regularly available to him in that other State for the purpose of performing his activities but only so much of the income as is attributable to that fixed base; or
- (b) His stay in that other State is for a period or periods aggregating 90 days or more in the calendar year.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16 (Directors' fees), 18 (Pensions and annuities), 19 (Government service), 20 (Professors and teachers), and 21 (Students and trainees), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in that other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment as a member of a regular crew or complement of a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

Article 16. DIRECTORS' FEES

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

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

Article 17. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 14 (Independent personal services) and 15 (Dependent personal services), income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

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

3. The provisions of paragraphs 1 and 2 of this article shall not apply to income derived from activities performed in a Contracting State by an entertainer or an athlete if the visit to that Contracting State is pursuant to a special programme for cultural exchange agreed upon between the two Contracting States or is substantially supported by public funds of the other Contracting States, including those of any political subdivision, local authority or statutory body thereof, nor to income derived by a non-profit-making organization in respect of such activities, provided no part of its income is payable to, or is otherwise available for, the personal benefit of its proprietors, members or shareholders and the organization is certified as qualifying under this provision by the competent authority of the other State.

4. Notwithstanding the provisions of article 7 (Business profits), where the activities mentioned in paragraph 1 of this article are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the visit to that Contracting State is pursuant to a special programme for cultural exchange agreed upon between the two Contracting States or the enterprise is substantially supported by public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof, or unless the enterprise is a non-profit organization referred to in paragraph 3.

Article 18. PENSIONS AND ANNUITIES

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

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

Article 19. GOVERNMENT SERVICE

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

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

- (i) Is a national of that State; or
- (ii) Did not become a resident of that State solely for the purpose of rendering the services.

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

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

3. The provisions of articles 15 (Dependent personal services), 16 (Directors' fees) and 18 (Pensions and annuities) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20. PROFESSORS AND TEACHERS

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

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

3. This article shall not apply to remuneration which a professor or a teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 21. STUDENTS AND TRAINEES

1. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely as a student at a university, college or other similar educational institution shall, for a period not exceeding in the aggregate five years from the date of his first arrival, be exempt from tax in that other State on:

- (a) All remittances from abroad for purposes of his maintenance or education, and
- (b) Any remuneration not exceeding an amount, in local currency of the respective Contracting States, as is equivalent to US\$ 1,800 in any calendar year, for personal services rendered in that State with a view of supplementing the resources available to him for such purposes.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely as a trainee for the purpose of acquiring technical, professional or business experience shall, for a period not exceeding two years from the date of his first arrival, be exempt from tax in that other State on:

- (a) All remittances from abroad for purposes of his maintenance or training, and
- (b) Any remuneration not exceeding an amount, in local currency of the respective Contracting States, as is equivalent to US\$ 3,600 in any calendar year, for personal services rendered in that other State, provided such services are in connection with his training or incidental thereto.

3. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the government of the Contracting States shall, for a period not exceeding two years from the date of his first arrival, be exempt from tax in that other State on:

- (a) The amount of such grant, allowance or award;
- (b) All remittances from abroad for the purposes of his maintenance, education or training; and
- (c) Any remuneration for personal services in that other State, provided that such services are in connection with his study, research, training or incidental thereto.

4. The amounts referred to in paragraphs 1 and 2 of this article may be reviewed and agreed upon by the competent authorities of both Contracting States from time to time.

Article 22. OTHER INCOME

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Agreement shall be taxable only in that State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in accordance with the laws of that State.

Article 23. ELIMINATION OF DOUBLE TAXATION

1. The laws of each of the Contracting States shall continue to govern the taxation of income whether derived from the Contracting State or elsewhere except where express provisions to the contrary are made in this Agreement. Where income derived from a Contracting State is subject to tax in both Contracting States, relief from double taxation on such income shall be given in accordance with the following provisions of this article.

2. In the case of the Philippines, double taxation shall be avoided as follows: subject to the provisions of the laws of the Philippines relating to the allowance as credit against Philippine tax of tax payable in any country other than the Philippines, Indonesian taxes paid or accrued under the laws of Indonesia and in accordance with this Agreement, whether directly or by deduction, in respect of income from sources within Indonesia shall be allowed as a credit against Philippine tax payable in respect of that income.

3. In the case of Indonesia, double taxation shall be avoided as follows:

- (a) Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such tax is imposed the items of income which may be taxed in the Philippines in accordance with the provisions of this Agreement;
- (b) Where a resident of Indonesia derives income from the Philippines and that income may be taxed in the Philippines in accordance with the provisions of this Agreement, the amount of Philippine tax payable in respect of that income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to that income.

4. Taxes which have been exempted or reduced in one of the Contracting States by virtue of this Agreement or the special incentive laws of that Contracting State designed to promote economic development, effective on the date of signature of this Agreement, or which may be introduced in future taxation laws in modification of, or in addition to, the existing laws, shall be considered as though such taxes had been paid and shall be allowed tax credit in the other Contracting State in an amount equal to the tax which would have been appropriate to the income concerned if no such exemption had been given or no such reduction had been allowed.

Article 24. NON-DISCRIMINATION

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied

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

3. Except where the provisions of paragraph 1 of article 9 (Associated enterprises), paragraph 6 of article 11 (Interest), or paragraph 4 of article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith 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. Nothing contained in this article shall be construed as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives and any tax of a preferential nature designed in pursuance of its programme of economic development.

6. In this article, the term "taxation" means taxes, which are the subject of this Agreement.

7. The competent authorities of the Contracting States may consult with each other on the mode of application of this article.

Article 25. MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within two years from the first notification of the action which gives rise to taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement.

3. A Contracting State shall not, after the expiration of the period prescribed by its domestic law, but in no case after five years from the end of the taxable period in which the income concerned has accrued, increase the tax base of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State.

4. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is in accordance with this Agreement. The exchange of information is not restricted by article 1. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, including judicial determination, or collection of the taxes which are the subject of this Agreement.

2. In no case shall the provisions of paragraph 1 be construed 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 practice of that or of the other Contracting State;
- (b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that State 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.

3. The exchange of information may be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

Article 27. ASSISTANCE IN COLLECTION

In no case shall this article be construed as to impose upon a Contracting State the obligation to carry out measures at variance with the laws or administrative practices of either Contracting State with respect to the collection of its own taxes.

Article 28. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

Article 29. MISCELLANEOUS RULES

1. The provisions of this Agreement shall not be construed as to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded:

- (a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State; or
- (b) By any other special arrangement on taxation in connection with the economic or technical cooperation between the two Contracting States.

2. Nothing in this Agreement shall be construed as preventing the Philippines from taxing its citizens who may be residing in Indonesia, in accordance with its domestic legislation. However, no credit shall be given for taxes paid pursuant thereto.

3. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying this Agreement.

Article 30. ENTRY INTO FORCE

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

2. This Agreement shall enter into force after the expiration of 30 days from the date of the exchange of the instruments of ratification and its provisions shall have effect in both Contracting States:

- (a) In respect of taxes withheld at the source, on amounts paid to non-residents on or after the first day of January of the calendar year following that in which the exchange of the instruments of ratification takes place; and
- (b) In respect to other taxes, for taxation years beginning on or after the first day of January of the calendar year next following that in which the exchange of the instruments of ratification takes place.

Article 31. TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may, on or before June 30 in any calendar year after the fifth year following the date of entry into force of this Agreement, give notice of termination to the other Contracting State and in such event this Agreement shall cease to have effect:

- (a) In respect of taxes withheld at the source, on amounts paid to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (b) In respect of other taxes, for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

DONE at Manila, this 18th day of June one thousand nine hundred and eighty-one, in duplicate, in the English language.

For the Government
of the Republic of the Philippines:

[Signed — Signé]¹

For the Government
of the Republic of Indonesia:

[Signed — Signé]²

¹ Signed by Cesar Virata — Signé par Cesar Virata.

² Signed by Mochtar Kusumaatmadja — Signé par Mochtar Kusumaatmadja.