

1980/215

THE DOUBLE TAXATION RELIEF (REPUBLIC OF THE PHILIPPINES) ORDER 1980

KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 20th day of October 1980

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 294 of the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Double Taxation Relief (Republic of the Philippines) Order 1980.

(2) This order shall be deemed to have come into force on the 1st day of April 1980.

2. Giving effect to Convention—It is hereby declared that the arrangements specified in the Convention set out in the Schedule to this order, being arrangements that have been made with the Government of the Republic of the Philippines with a view to affording relief from double taxation in relation to income tax and excess retention tax imposed under the Income Tax Act 1976 and income taxes imposed under Title II of the National Internal Revenue Code of the Philippines as amended from time to time shall, in relation to income tax and excess retention tax imposed under that Act, and notwithstanding anything in that Act or any other enactment, have effect according to the tenor of the Convention.

CONVENTION

BETWEEN THE GOVERNMENT OF NEW ZEALAND 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 New Zealand and the Government of the Republic of the Philippines,

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

Have agreed as follows:

ARTICLE 1

Personal Scope

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

2. Nothing in this Convention shall be construed as preventing the Philippines from taxing, in accordance with its domestic legislation, Filipino citizens who may be residents of New Zealand. New Zealand, however, is not obliged to give credit for the Philippine tax imposed by virtue of this reservation.

ARTICLE 2

Taxes Covered

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

2. All taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, shall be regarded as taxes on income.

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

(a) in New Zealand:

the income tax and the excess retention tax (hereinafter referred to as "New Zealand tax");

(b) in the Philippines:

the income taxes imposed under Title II of the National Internal Revenue Code of the Philippines as amended from time to time (hereinafter referred to as "Philippine tax").

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

ARTICLE 3

General Definitions

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

(a) (i) the term "New Zealand", when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) but does not include the Cook Islands, Niue or Tokelau; it also includes areas adjacent to the territorial sea of the metropolitan territory of New Zealand (including the outlying islands) which by New Zealand legislation and in accordance with international law have been, or may hereafter be, designated as areas over which New Zealand has sovereign rights for the purposes of exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the sea-bed and sub-soil;

- (ii) 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;
- (b) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, New Zealand or the Philippines;
- (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 one of the Contracting States, 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 citizenship of a Contracting State;
 - (ii) any legal person, partnership or association created, organised or incorporated under the laws of a Contracting State;
- (h) the term "competent authority" means:
 - (i) in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;
 - (ii) in the case of the Philippines, the Minister of Finance or his authorised representative.

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

ARTICLE 4

Resident

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

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

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both 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 Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting State shall settle the question by mutual agreement.

3. Where, by reason of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question having regard to its day to day management, the place where it is incorporated or otherwise constituted and any other relevant factors.

ARTICLE 5

Permanent Establishment

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

2. The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a place of exploration of natural resources;
- (h) a building site or construction, installation or assembly project, or supervisory activities in connection therewith where such site, project or activity continues for more than six months;
- (i) premises used as a sales outlet;
- (j) a warehouse, in relation to a person providing storage mainly for some other person or persons;
- (k) A place for 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 the country 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, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

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 of that enterprise in the first-mentioned State if 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.

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

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the enterprise, he shall not be considered as agent of an independent status within the meaning of this paragraph if 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.

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

ARTICLE 6

Income From Immovable Property

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, 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 one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to—

- (a) that permanent establishment; or
- (b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those being sold, or other business activities of the same or a similar kind as those being carried on through that permanent establishment if the sale or the business activities had been made or carried on in that way with a view to avoiding taxation in that other State.

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 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. 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 apportionment 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;

- (b) commission for specific services performed or for management; and
- (c) interest or money lent to the permanent establishment, except in the case of a banking institution.

6. 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.

7. 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.

8. 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 in international traffic of ships or aircraft shall be taxable 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 one and one-half percent of the gross revenues derived from sources in that 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 also 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 percent of the gross amount of the dividends if the beneficial owner is a company;
- (b) 25 percent of the gross amount of the dividends in all other cases.

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

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

3. The term "dividends" as used in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

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

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

6. Nothing in this Convention shall be construed as preventing the Philippines from imposing on the earnings of a company attributable to a permanent establishment in that State, tax in addition to the tax which would be chargeable on the earnings of a company which is a resident of that State, provided that any additional tax so imposed shall not exceed 15 percent of the amount remitted abroad. For the purpose of this provision, the term "earnings" means the profits attribu-

table to a permanent establishment in the Philippines in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by that 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 also 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 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law 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.

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

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

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

amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. Interest derived by the Government of a Contracting State, or by any other body exercising governmental functions in, or in a part of, a Contracting State, or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.

8. 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 New Zealand shall not exceed 10 percent of the gross amount of the interest.

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 also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

- (a) in the case of New Zealand, 15 percent of the gross amount of the royalties; and
- (b) 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; and
 - (ii) in all other cases, 25 percent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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, 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 video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of

which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 13

Alienation of Property

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

2. Income or 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 income or gains from the alienation of such permanent establishment (alone or together with the whole enterprise) or such fixed base, may be taxed in that other State.

3. Income or 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. Income or gains from the alienation of any property, other than those mentioned in this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless such services are performed in the other Contracting State, and

- (a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in the year of income or fiscal year, as the case may be, for the purpose of performing his activities, or
- (b) the individual has a fixed base regularly available to him in the other State for the purpose of performing his activities.

In such cases, the income may be taxed in that other State but only so much of it as is attributable to activities connected with that fixed base or performed during such period or periods.

2. Notwithstanding paragraph 1 of this Article income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character may be taxed in the other Contracting State if the gross remuneration derived for his services in the year of income or fiscal year from residents of the other State exceeds eleven thousand New Zealand dollars or its equivalent in Philippine pesos or such other amount as may be specified and agreed in letters exchanged between the competent authorities of the Contracting States.

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

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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 an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in the year of income or fiscal year, as the case may be, of that other State; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
- (c) the remuneration is not deductible in determining the taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting 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.

ARTICLE 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, 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 athlete in his capacity as such accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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 substantially supported by the public funds of the other Contracting State, 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 organisation is certified as qualifying under this provision by the competent authority of the other State.

ARTICLE 18

Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 19, pensions and annuities 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 system of a Contracting State shall be taxable only in that Contracting State.

3. (a) The term "pensions" as used in this Article means periodic payments made in consideration for past services rendered.

(b) The term "annuity" as used in this Article means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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 shall be taxable only in that State.

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

- (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, 16 and 18 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 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. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

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

ARTICLE 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 Contracting State solely as a student at a university, college or other similar educational institution or as a business apprentice, or as a trainee for the purpose of acquiring technical professional or business experience, shall, from the date of his first arrival in that Contracting State in connection with that visit be exempt from tax in that Contracting State on all remittances from abroad for the purposes of his maintenance, education or training.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that Contracting State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from an arrangement or assistance programme entered into by the Government of a Contracting State shall be exempt from tax in that Contracting State on

- (a) the amount of such grant, allowance or award; and
- (b) all remittances from abroad for the purposes of his maintenance, education or training.

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 Convention shall be taxable only in that Contracting State except that, 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.

ARTICLE 23

Relief from Double Taxation

Double taxation shall be avoided in the following manner:

1. In the case of the Philippines:

Subject to the provisions of the laws of the Philippines relating to the allowance as credit against Philippine tax of taxes paid in a territory outside the Philippines, New Zealand taxes paid or which have accrued under the laws of New Zealand and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within New Zealand 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 New Zealand.

2. In the case of New Zealand:

Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a

country outside New Zealand (which shall not affect the general principle hereof), Philippine tax paid under the law of the Philippines and consistently with this Convention, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in the Philippines (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income. Dividends derived by a company which is a resident of New Zealand from a company which is a resident of the Philippines (being dividends which, in accordance with the taxation law of New Zealand in existence at the date of signature of this convention, would be exempt from New Zealand tax) shall be exempt from New Zealand tax. Where, in terms of paragraph 2 (b) (i) of Article 12, a resident of New Zealand derives income from royalties which are paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activity he shall be deemed to have paid in addition to the Philippine tax actually paid, Philippine tax in an amount equal to 10 percent of the gross amount of the royalties.

For the purposes of this Article, profits, income or gains of a resident of New Zealand which are taxed in the Philippines in accordance with the Convention shall be deemed to arise from sources in the Philippines.

ARTICLE 24

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, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident, an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives 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 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 not in accordance with the Convention.

3. A Contracting State shall not, after five years from the end of the taxable period in which the income concerned has accrued, increase the taxable income of a resident of either of the Contracting States by including therein items of income which have also been charged to tax in the other Contracting State. This paragraph shall not apply in the case of fraud, wilful default or neglect.

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

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the Convention.

ARTICLE 25

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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, as well as to prevent fiscal evasion. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

ARTICLE 26

Territorial Extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations New Zealand is responsible, 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 manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 29 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory to which it has been extended under this Article.

3. Paragraph 4 of Article 2 shall apply to any taxes imposed by any territory to which the Convention is extended under this Article.

ARTICLE 27

Diplomatic and Consular Officers

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

ARTICLE 28

Entry into Force

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

2. The Convention shall enter into force upon the exchange of the instruments of ratification and its provisions shall have effect:

(a) in the Philippines:

(i) in respect of tax withheld at the source on amounts paid to non-residents on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place; and

(ii) in respect of other taxes for taxation years beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place;

(b) in New Zealand:

in respect of income assessable for any income year beginning on or after 1 April in the calendar year in which the exchange of instruments of ratification takes place.

ARTICLE 29

Termination

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the fifth year following the exchange of the instruments of ratification, give notice of termination to the other Contracting State and in such event the Convention shall cease to have effect:

(a) in the Philippines:

(i) in respect of tax 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 of termination is given; and

(ii) 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 of termination is given:

(b) in New Zealand:

in respect of income assessable for any income year beginning on or after 1 April in the calendar year immediately following that in which the notice of termination is given.

Done in duplicate at Manila this 29th day of April 1980 in the English language.

For the Government
of New Zealand

HUGH TEMPLETON

For the Government
of the Republic of the
Philippines

CESAR VIRATA

PROTOCOL

At the time of signature of the Convention between the Government of the Republic of the Philippines and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provisions.

1. With reference to Article 2:

- (a) for the purposes of sub-paragraph (a) of paragraph 3 the New Zealand income tax does not include the bonus issue tax;
- (b) the terms "Philippine tax" and "New Zealand tax" do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which the Convention applies.

2. With reference to Articles 7 and 22 it is understood that nothing in the Convention shall affect the operation of any law of a State relating to the taxation of income from any insurance business provided that if the relevant law in force in either State at the date of signature of the Convention is amended (otherwise than in minor respects so as not to affect its general character) the States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate. It is also understood that rental income derived from the lease of ships, aircraft, machinery or equipment will, for the purpose of the Convention, be regarded as "other income" and subject to the provisions of Article 22.

3. With reference to Article 8 if at any time after the date of signature of the Convention the Philippines agrees to a lower or nil rate of tax with a third state the Government of the Republic of the Philippines shall without undue delay inform the Government of New Zealand through diplomatic channels and the two Governments will undertake to review this Article with a view to providing such lower or nil rate to profits of the same kind derived under similar circumstances by enterprises of both Contracting States.

4. With reference to paragraph 5 of Article 10, the expression "tax on the company's undistributed profits" shall not include the bonus issue tax referred to in paragraph 1 (a) of this Protocol.

5. With reference to Articles 10, 11 and 12, dividends, interest or royalties in respect of which a trustee is subject to tax in New Zealand may be treated as being beneficially owned by that trustee.

6. With reference to Article 12, the term royalties as defined shall in any case include other like payments which are dependent upon production, sales, performance, results or any other similar basis.

7. With reference to Article 13, 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 an 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.

8. If, at any time after the date of signature of the Convention, New Zealand shall include a non-discrimination Article in any of its double tax conventions, the Government of New Zealand shall without undue delay inform the Government of the Republic of the Philippines in writing through diplomatic channels and shall enter into negotiations with the Government of the Republic of the Philippines with a view to including a non-discrimination Article in the Convention.

9. The provisions of the Convention shall not be construed 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 agreement entered into by a Contracting State.

In witness whereof, the undersigned have signed the present Protocol which shall have the same force and validity as if it were inserted word by word in the Convention.

Done at Manila this 29th day of April 1980 in duplicate, in the English language.

For the Government
of New Zealand

HUGH TEMPLETON

For the Government
of the Republic of the
Philippines

CESAR VIRATA

A. C. McLEOD,
Acting for Clerk of the Executive Council.