

PROTOCOL AMENDING THE CONVENTION
BETWEEN JAPAN AND THE REPUBLIC OF THE PHILIPPINES
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Japan and the Republic of the Philippines,

Desiring to amend the Convention between Japan and the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Tokyo on 13th February, 1980 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Paragraph (6) of Article 5 of the Convention shall be deleted and replaced by the following:

"(6) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State consultancy services, or supervisory services in connection with a contract for a building, construction or installation project through employees or other personnel - other than an agent of an independent status to whom paragraph (7) applies -, provided that such activities continue (for the same project or two or more connected projects) for a period or periods aggregating more than six months within any twelve-month period. However, if the furnishing of such services is effected under an agreement between the Governments of the two Contracting States regarding economic or technical cooperation, that enterprise shall, notwithstanding any provisions of this Article, not be deemed to have a permanent establishment in that other Contracting State."

ARTICLE II

Article 9 of the Convention shall be deleted and replaced by the following:

"Article 9

(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) Where a Contracting State includes, in accordance with the provisions of paragraph (1), in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention."

ARTICLE III

Paragraph (2) of Article 10 of the Convention shall be deleted and replaced by the following:

"(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 Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payment of the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

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

ARTICLE IV

Paragraphs (2), (3), (4), (5), (6), (7) and (8) of Article 11 of the Convention shall be deleted and replaced by the following:

"(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and derived by the Government of the other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

For the purposes of this paragraph, the term "financial institution wholly owned by the Government" means:

- (a) In the case of Japan, the Japan Bank for International Cooperation and the Nippon Export and Investment Insurance;

- (b) In the case of the Philippines, the Development Bank of the Philippines and the Land Bank of the Philippines; and
- (c) Any such financial institution the capital of which is wholly owned by the Government of either Contracting State, other than those referred to in sub-paragraphs (a) and (b) above, as may be agreed from time to time between the Governments of the two Contracting States.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

(5) The provisions of paragraphs (1) and (2) above 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 Contracting 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof or a resident of that Contracting 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 Contracting State in which the permanent establishment or fixed base is situated.

(7) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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."

ARTICLE V

Paragraph (2) of Article 12 of the Convention shall be deleted and replaced by the following:

"(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

- (a) 15 per cent of the gross amount of the royalties if the royalties are paid in respect of the use of or the right to use cinematograph films and films or tapes for radio or television broadcasting;
- (b) 10 per cent of the gross amount of the royalties in all other cases."

ARTICLE VI

Paragraph (3) of Article 23 of the Convention shall be deleted and replaced by the following:

"(3) For the purposes of the credit referred to in the first sentence of paragraph (1), Philippine tax shall always be considered as having been paid at the rate of 20 per cent in the case of dividends to which the provisions of paragraph (2) or (3) of Article 10 apply, and at the rate of 15 per cent in the case of interest to which the provisions of paragraph (2) of Article 11 apply, and in the case of royalties to which the provisions of paragraph (2) or (3) of Article 12 apply."

ARTICLE VII

Paragraph (3) of Article 24 of the Convention shall be deleted and replaced by the following:

"(3) Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, or paragraph (7) of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State."

ARTICLE VIII

(1) The reference in paragraph 1 of the Protocol signed at Tokyo on 13th February, 1980 (hereinafter referred to as "the Protocol of 1980") to "it is proved that" shall be deleted.

(2) The reference in paragraph 3 of the Protocol of 1980 to ", paragraph (3) of Article 11" shall be deleted.

ARTICLE IX

(1) This Protocol shall be approved in accordance with the legal procedures of each of the Contracting States and shall enter into force on the thirtieth day after the date of exchange of diplomatic notes indicating such approval.

(2) This Protocol shall be applicable:

(a) with respect to taxes withheld at source, for amounts taxable on or after 1st January in the calendar year next following that in which the Protocol enters into force; and

(b) with respect to taxes on income which are not withheld at source, as regards income for any taxable year beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force.

(3) The provisions of paragraph (3) of Article 23 of the Convention amended by this Protocol shall not apply in respect of income derived by a resident of Japan in any taxable year beginning after 31 December of the tenth calendar year next following the calendar year in which this Protocol enters into force.

(4) This Protocol shall remain in effect as long as the Convention remains in force.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Manila on this ninth day of December, 2006, in the English language

For Japan:

Ryuichiro Yamazaki

For the Republic
of the Philippines:

Margarito B. Teves