
STATUTORY INSTRUMENTS

1978 No. 184

INCOME TAX

**The Double Taxation Relief (Taxes
On Income) (Philippines) Order 1978**

Laid before the House of Commons in draft

Made - - - - 9th February 1978

At the Court at Buckingham Palace, the 9th day of February 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970, and an Address has been presented to Her Majesty by that House praying that an Order may be made in terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972 and section 39 of the Finance Act 1965 as amended, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Philippines) Order 1978.
2. It is hereby declared—
 - (a) that the arrangements specified in the Convention set out in the Schedule to this Order 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, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of the Philippines; and
 - (b) that it is expedient that these arrangements should have effect.

N.E. Leigh
Clerk of the Privy Council

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

SCHEDULE

“CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND 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 AND CAPITAL GAINS

The Government of the United Kingdom of Great Britain and Northern Ireland the 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 and capital gains;

Have agreed as follows:

Personal scope

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

(2) However, nothing in this Convention shall prevent the Philippines from taxing its own citizens, who are not residents of the Philippines, in accordance with Philippine laws but the United Kingdom shall not be bound to give credit for such tax.

Taxes covered

Article 2.—(1) The taxes which are the subject of this Convention are:

(a) in the United Kingdom of Great Britain and Northern Ireland:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;

(b) in the Philippines;

the income tax imposed by the Government of the Republic of the Philippines except the tax on gross billings in respect of international carriers (Section 24, paragraph (b), subparagraph (2), Internal Revenue Code).

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The Contracting States shall notify each other of the changes which have been made to their respective taxation laws.

General definitions

Article 3.—(1) In this Convention, unless the context otherwise requires:

- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term “Philippines” means the national territory comprising the Republic of the Philippines;
- (c) the term “national” means:

- (i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies who derives his status as such from his connection with the United Kingdom and any legal person, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to the Philippines, any citizen of the Philippines who derives his status as such and any legal person, association or other entity deriving its status as such from the law in force in the Philippines;
 - (d) the term “United Kingdom tax” means tax imposed by the United Kingdom being tax to which this Convention applies by virtue of the provisions of Article 2; the term “Philippine tax” means tax imposed by the Philippines being tax to which this Convention applies by virtue of the provisions of Article 2;
 - (e) the term “tax” means United Kingdom tax or Philippines tax, as the context requires;
 - (f) the terms “a Contracting State” and “the other Contracting State” means the United Kingdom or the Philippines, as the context requires;
 - (g) the term “person” comprises an individual, a company and any other body of persons;
 - (h) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (i) 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;
 - (j) the term “competent authority” means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of the Philippines the Secretary of Finance or his duly authorised representative.
- (2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State relating to the taxes which are the subject of this Convention.

Fiscal domicile

Article 4.—(1) For the purposes of the Convention, the term “resident of a Contracting State” means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of this domicile, residence, place of management or any other criterion of a similar nature; an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State. The terms “resident of the United Kingdom” and “resident of the Philippines” shall be construed accordingly.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more**

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

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

Permanent establishment

Article 5.—(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) the term “permanent establishment” shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources;
- (g) an installation or structure used for the exploration of natural resources;
- (h) a building site or construction or assembly project which exists for more than 183 days.

(3) An enterprise of a Contracting State shall likewise be deemed to have a permanent establishment in the other Contracting State if:

- (a) it carries on supervisory activities within that other Contracting State for more than 183 days in connection with a building site, or a construction or assembly project which is being undertaken, in that other Contracting State; or
- (b) it furnishes services, including consultancy services, in that other Contracting State through its employees or other personnel (other than agents of an independent status within the meaning of paragraph (7) of this Article) for a period exceeding in the aggregate 183 days within any twelve-month period.

(4) the term “permanent establishment” shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purposes of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(5) 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 the provisions of paragraph (7) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if:

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more**

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

(6) An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated there through an employee or representative established therein who is not an agent of an independent status within the meaning of paragraph (7) of this Article.

(7) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.

(8) 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.

Income from immovable property

Article 6.—(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

- (a) (2) (a) the term “immovable property” shall, subject to the provisions of subparagraph (b) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.
- (b) the term “immovable property” 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) of this Article 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) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Business profits

Article 7.—(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 business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is directly or indirectly attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3) and (4) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment;

- (a) there shall be allowed as deductions expenses of the enterprise which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses insofar as they are reasonably connected to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere;
- (b) there shall not be allowed any deduction for payments by that permanent establishment to the head office or any other part of the enterprise, by way of royalties, fees or other similar payments for the use of patents or other rights or by way of commission for specific services or for management or (except in the case of a banking enterprise) by way of interest on moneys lent to the permanent establishment, unless such payments reimburse expenses actually incurred by the enterprise.

(4) In determining the profits of a permanent establishment amounts receivable by the permanent establishment from the head office or any other part of the enterprise by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed, or for management, or (except in the case of a banking enterprise) by way of interest on moneys lent to the head office or any other part of the enterprise shall not be included in the receipts of the permanent establishment except insofar as they represent reimbursement of allowable expenses which it has actually incurred.

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

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

(7) Where profits include items 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.

Associated enterprises

Article 8. 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 enterprise 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.

Dividends

Article 9.—(1) Dividends derived from a company which is a resident of the Philippines by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in the Philippines but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed;

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;
 - (b) in all other cases 25 per cent of the gross amount of the dividends.
- (2) Dividends derived from a company which is a resident of the United Kingdom by a resident of the Philippines may be taxed in the Philippines. Such dividends may also be taxed in the United Kingdom and according to the laws of the United Kingdom, but where such dividends are beneficially owned by a resident of the Philippines the tax so charged shall not exceed:
- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;
 - (b) in all other cases 25 per cent of the gross amount of the dividends.
- (3) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:
- (a)
 - (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of the Philippines may be taxed in the Philippines.
 - (ii) Where a resident of the Philippines is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) of this paragraph tax may also be charged in the United Kingdom and according to the laws of the United Kingdom on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 25 per cent.
 - (iii) Except as provided in sub-paragraph (a)(ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of the Philippines shall be exempt from any tax in the United Kingdom which is chargeable on dividends.
 - (b) A resident of the Philippines who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends and to the payment of any excess of such credit over his liability to United Kingdom tax.
 - (c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial owner of the dividends is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends. For the purpose of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company, controls more than 50 per cent of the voting power in both of them.
- (4) The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the provisions of Article 10 of this Convention) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
- (5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on a trade or business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

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 13, as the case may be, shall apply.

(6) 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 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Interest

Article 10.—(1) Interest arising in a Contracting State which is derived and beneficially owned by 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 the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article, the tax charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest if the interest is paid by a company in respect of the public issue of bonds, debentures or similar obligations.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by:

- (a) the Government of the other Contracting State, a political subdivision or local authority thereof or an instrumentality of that other State; or
- (b) a resident of the other Contracting State in respect of a loan made, guaranteed or insured by such instrumentality of that other State as is specified and agreed in letters exchanged between the competent authorities of the Contracting States.

The term “instrumentality” as used in this paragraph means any agency or entity created or organised by either Contracting Government in order to carry out governmental functions.

(5) The term “interest” as used in this Article means income from Government securities, bonds or debentures, including premiums and prizes attaching to such securities, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on a trade or business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or 13, 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 establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

Royalties

Article 11.—(1) Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

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

- (a) 15 per cent of the gross amount of the royalties, where the royalties are paid:
 - (i) by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activity; or
 - (ii) in respect of cinematograph films and films or tapes for television or radio broadcasting;
- (b) in all other cases, 25 per cent of the gross amount of the royalties.

(3) The term “royalties” as used in this Article means payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on a trade or business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions, of Articles 7 or 13, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State where 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 fixed base in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment or fixed base, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

Gains from the alienation of property

Article 12.—(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

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

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and moveable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

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

Independent personal services

Article 13.—(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, unless:

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

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

Dependent personal services

Article 14.—(1) Subject to the provisions of Articles 15, 16, 17, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and

- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of employment as a member of the 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.

Directors' fees

Article 15. Director's fees and remuneration in respect of the discharge of day-to-day functions of a managerial or technical nature, derived from a company which is a resident of a Contracting State by a resident of the other Contracting State who is a member of the board of directors of that company, may be taxed in the first-mentioned State.

Artistes and athletes

Article 16.—(1) Notwithstanding the provisions of Articles 13 and 14, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

(2) Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 13 and 14, 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 entertainers and athletes if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including those of any political subdivision, local authority or statutory body thereof, not to income derived by a non-profit making organisation 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.

Pensions

Article 17. Subject to the provisions of Article 18, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State shall be taxable only in that State.

Governmental functions

Article 18.—(1) Remuneration paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom unless the individual is a Philippine national without also being a United Kingdom national.

(2) Remuneration paid out of public funds of the Philippines or of the funds of any local authority thereof to any individual in respect of services rendered to the Government of the Philippines or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

in the Philippines unless the individual is a United Kingdom national without also being a Philippine national.

(3) Pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature shall be exempt from Philippine tax.

(4) Pensions paid out of public funds of the Philippines or of the funds of any local authority thereof to any individual in respect of services rendered to the Government of the Philippines or a local authority thereof, in the discharge of functions of a governmental nature shall be exempt from United Kingdom tax.

(5) The provisions of Articles 14, 15 and 17, as the case may be, shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof.

Students and trainees

Article 19.—(1) An individual who was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other State solely as a student at a university, college, school or other similar recognised educational institution in that other State or as a business apprentice therein, shall be exempt from tax in that other State on:

- (a) all remittances from abroad for the purpose of his maintenance, education or training; and
- (b) any income derived from the other Contracting State in respect of services rendered in that other State (other than any rendered by a business apprentice to the person or partnership to whom he is apprenticed), with the view to supplementing the resources available to him for such purposes, not exceeding the sum of 500 pounds sterling in the case of the United Kingdom, or the equivalent in Philippine currency in the case of the Philippines, during any year of assessment.

(2) An individual who was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other State, solely for the purposes of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States shall be exempt from tax in that other 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.

(3) The exemptions from tax provided under paragraphs (1) and (2) of this Article shall apply only for such period of time as may reasonably or customarily be required for the purpose of the individual's visit but no individual shall be entitled to such exemptions for more than five years from the date of his first arrival in the other Contracting State.

Teachers

Article 20. An individual who, at the invitation of a university, college, school or other similar recognised educational institution in one of the Contracting States, visits that Contracting State for a period not exceeding two years solely for the purpose of teaching at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is subject to tax in the other Contracting State.

Elimination of double taxation

Article 21.—(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Philippine tax payable under the law of the Philippines and in accordance with the Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Philippines (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Philippine tax is computed.
- (b) In the case of a dividend paid by a company which is a resident of the Philippines to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Philippine tax creditable under the provisions of subparagraph (a) of this paragraph) the Philippine tax payable by the company in respect of the profits out of which such dividend is paid.

(2) Subject to the provisions of the laws of the Philippines relating to the allowance as a credit against Philippine tax of tax paid in a territory outside the Philippines, United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within the United Kingdom 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 the United Kingdom.

(3) For purposes of paragraphs (1) and (2) of this Article profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

Non-discrimination

Article 22.—(1) The 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 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 the enterprises of that other State carrying on the same activities.

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

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

(5) In this Article, the term “taxation” means taxes which are the subject of this Convention.

(6) Nothing in this Article shall be construed so as to prevent the Philippines from limiting to its nationals the enjoyment of tax incentives granted by law. However, such incentives which

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

are available to nationals of any third State shall likewise be available to nationals of the United Kingdom.

Mutual agreement procedure

Article 23.—(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 22, to that of the Contracting State of which he is a national. This case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Convention.

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

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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

Exchange of information

Article 24.—(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the provisions of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention, in particular, for the prevention of fraud or evasion of such taxes. Any information so exchanged shall be treated as secret, but may be disclosed to persons (including a court or administrative body) concerned with the assessment, collection, enforcement or prosecution in respect of the taxes which are the subject of the Convention.

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

- (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 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.

Diplomatic and consular officials

Article 25.—(1) Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.

(2) This Convention shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their total world income as are residents thereof.

Territorial extensions

Article 26.—(1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations either Contracting State is responsible and which imposes taxes substantially similar in character to those to which this 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.

(2) Unless otherwise agreed by both Contracting States, the termination of this Convention shall terminate the application of this Convention to any territory to which it has been extended under the provisions of this Article.

Entry into force

Article 27.—(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Manila as soon as possible.

(2) This Convention shall enter into force immediately after the expiration of thirty days following the date on which the instruments of ratification are exchanged⁽¹⁾ and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1977; and
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1977;
- (b) in the Philippines:
 - (i) in respect of tax withheld at the source on amounts paid on or after 1 January immediately following the calendar year in which the exchange of instruments of ratification takes place; and
 - (ii) in respect of other taxes for taxation years or periods beginning on or after the first day of January immediately following the calendar year in which the exchange of instruments of ratification takes place.

Termination

Article 28. This convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1982. In such event, the Convention shall cease to have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;
- (b) in the Philippines:
 - (i) in respect of tax withheld at the source on amounts paid on or after 1 January in the calendar year next following that in which the notice is given; and

(1) Instruments of Ratification were exchanged on 23 December 1977.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more**

- (ii) in respect of other taxes for taxation years or periods beginning on or after 1 January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at London this 10th day of June, 1976, in the English language.

GORONWY-ROBERTS OF CAERNARVON
For the Government of the United Kingdom of
Great Britain and Northern Ireland

C. VIRATA
For the Government of the Republic of the
Philippines”

EXPLANATORY NOTE

Under the Convention with the Philippines scheduled to this Order, certain trading profits (not being profits arising through a permanent establishment in the other country), pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries and pensions are normally to be taxed by the paying Government only. The remuneration of visiting teachers and certain payments made for visiting students are (subject to certain conditions) to be exempt in the country visited.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence.

The Convention provides that where a United Kingdom company pays a dividend to a resident of the Philippines (other than a company which controls 10 per cent or more of the voting power in the paying company) the recipient will, subject to certain conditions, receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less income tax at a rate not exceeding 25 per cent on the aggregate of the dividend and the tax credit. Dividends paid by Philippine companies to residents of the United Kingdom will, subject to certain conditions, be taxable in the Philippines at rates not exceeding 15 per cent, if the recipient is a United Kingdom company which controls at least 10 per cent of the voting power in the company paying the dividends, and 25 per cent in all other cases.

The maximum rate of tax to be imposed by the country of source upon interest paid to a resident of the other country will, in general, be 15 per cent. The rate of tax, however, is not to exceed 10 per cent where the interest is paid by a company in respect of the public issue of bonds, debentures or similar obligations. Interest received by a local authority or instrumentality of either country will not be taxed in the other country.

The rate of tax in the source country on royalties flowing from one country to the other is, in general, not to exceed 25 per cent. But royalties in respect of films and broadcasting tapes, or paid by an

enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activity, are to be taxed at a rate not exceeding 15 per cent.

There is provision for the taxation of capital gains on immovable property by the country in which the property is situated. Capital gains arising from the disposal of movable property will normally be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment or fixed base which the taxpayer has in the other country.

There are also provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention is to take effect in the United Kingdom as respects income tax and capital gains tax for the tax year 1977/78 and subsequent years and as respects corporation tax for the financial year commencing on 1 April 1977 and subsequent years.