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DOUBLE TAXATION CONVENTION WITH THE REPUBLIC OF THE PHILIPPINES

PART I – INTRODUCTION

A double taxation convention has been concluded between the Republic of the Philippines and New Zealand. The text of the convention has been published as a schedule to an Order-in-Council (S.R. 1980/215) which was recently distributed to district offices and is also available from Government Bookshops.

The convention came into force on 14 May 1981 with effect in New Zealand in respect of income assessable for any income year beginning on or after 1 April 1981. In the Philippines it takes effect for taxation years beginning on or after 1 January 1981.

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PART II – NOTES ON THE CONVENTION ARTICLE BY ARTICLE

Article 1 – Personal Scope

In terms of paragraph 1 the Convention applies to persons who are residents of one or both of the Contracting States. In this context the term "persons" includes companies, estates and trusts. Under paragraph 2 the Philippines reserves the right to tax its citizens who may be residents of New Zealand. In this case New Zealand **cannot** give credit in the New Zealand tax assessment for Philippines tax paid on any New Zealand source income which is taxed by the Philippines.

Article 2 – Taxes Covered

The Convention covers income taxes imposed under Title II of the National Internal Revenue Code of the Philippines. With regard to New Zealand the Convention covers income tax and excess retention tax. Paragraph 1 (a) of the Protocol confirms that the bonus issue tax in New Zealand is not subject to the Convention. Paragraph 1 (b) of the Protocol excludes from the terms "Philippine tax" and "New Zealand tax" any amount which represents a penalty or interest under either country's domestic law.

Article 3 – General Definitions

(1) **"New Zealand": Paragraph 1 (a) (i)**

The term "New Zealand" 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 over which New Zealand has sovereign rights in respect of the sea, seabed and its subsoil.

(2) **"Philippines": Paragraph 1 (a) (ii)**

"Philippines" means the Republic of the Philippines and when used in a geographical sense means the national territory comprising the Republic of the Philippines.

(3) **"National": Paragraph 1 (f)**

The term "national" is used in paragraphs 2 (c) and (d) of Article 4 in determining resident status. It is also used in Article 19 Government Service.

The term covers any citizen of either country and any legal person, partnership or association under the laws of either country.

(4) **Undefined Terms: Paragraph 2**

This is a standard provision. Where a term is not defined it has the meaning applicable under the domestic law of the country applying the Convention.

Article 4 – Resident

(1) Paragraph 1 defines the meaning of the term "resident of a Contracting State" (i.e., for the purposes of Article 1). In effect the defined term is a reference to the domestic law of each country. Whenever the term is used in the Convention, the residence of the taxpayer must first be determined in accordance with this Article.

(2) Paragraph 2 sets out the tests to be applied to solve the problem of a dual resident **individual**. Dual residence arises when a taxpayer is resident in both countries by virtue of the domestic law of each country. The paragraph gives preference to the country in which the individual has a permanent home available to him. This criterion will frequently be sufficient to solve the conflict, e.g., where the individual has a permanent home in one country and has only stayed a certain length of time in the other country. See also paragraph (4) below.

(3) Paragraph 3 sets out the rule to determine the case of a company or other legal person which is resident in both countries. These cases will be decided by the competent authorities (defined in Article 3 (1) (h)) under the mutual agreement procedure (refer Article 24). Generally, competent authority intervention will not be necessary as residence will be decided on where the place of day to day management of the enterprise is situated, irrespect of where the overriding control is exercised.

(4) In applying the tests to dual residents it should be remembered that these tests apply only for the purposes of the tax convention. If the person **resident in New Zealand** (domestic law test) becomes for the purposes of the Convention a "resident of the Philippines" after the tests have been applied, this does **not** mean that he is a non-resident for all purposes of New Zealand tax law. For example he can never be subject to non-resident withholding tax, the reason being that although he is treated as a non-resident for certain purposes of the Convention, he is still a resident under the New Zealand Income Tax Act. What it does mean is that he is entitled to any benefits granted by the Convention to a "resident of the Philippines". Thus, although not subject to withholding tax on, for example, New Zealand royalty income, the royalty income would be subject to New Zealand income tax and would still qualify for the 15 percent limitation in the Convention.

Article 5 – Permanent Establishment

This Article defines the term "permanent establishment". This concept determines the right of a Contracting State to tax the profits of an "enterprise of the other Contracting State". Due to the inclusion of the words "includes especially" in paragraph 2, the examples cited as constituting a permanent establishment are by no means exhaustive.

The definition of "permanent establishment" is fairly standard and the following points should be noted:

- A building site or construction or installation or assembly project constitutes a permanent establishment if it lasts for more than 6 months.
- An enterprise shall be deemed to have a permanent establishment if it carries on supervisory activities for more than 6 months in connection with a building site or construction or installation or assembly project.
- A place for the furnishing of services, including consultancy services, by an enterprise through employees or other personnel constitutes a permanent establishment where the service activities last for more than 183 days within any twelve month period.

Article 6 – Income from Immovable Property

This Article recognises the internationally accepted practice in relation to income from land and the exploitation of land or landed property. The Article also applies to such items as rents, natural resource royalties, farming profits, etc. The principle of the Article is that income from "immovable property" may be taxed in the country where the property is situated. "Immovable property" is not defined in our general law but the Article provides extensive definition. Ships and aircraft are specifically excluded from the term "immovable property".

The Article involves no change in current practice in relation to the income covered.

Article 7 – Business Profits

This Article is in many respects a continuation of, and a corollary to, Article 5 on the definition of the concept of permanent establishment. Under Article 7 a Contracting State cannot tax the profits of an enterprise of the other Contracting State unless it carries on its business through a permanent establishment situated therein. If a permanent establishment exists the Article goes on to lay down a set of rules by reference to which the profits of the permanent establishment are to be calculated.

Before dealing with the salient features of the Article some comment is warranted on the importance of paragraph 8. This is because reference to this Article and Article 5 will not always be necessary to determine the liability of specific types of income. In effect paragraph 8 gives first preference to the other Articles in the Convention. It follows that this Article will only be applicable to business profits which do not belong to the categories of income covered by the special Articles, and in addition, to dividends, royalties and interest which specifically come within the circumstances detailed in paragraph 4 of Articles 10 and 12, paragraph 3 of Article 11 and consequently fall within Article 7.

(1) Paragraph 1 expresses the general rule that profits are taxable only in the country of residence unless the enterprise is engaged in business in the other country through a permanent establishment, in which case the other country may tax the profits of the permanent establishment.

It is important to note that only income attributable directly to the permanent establishment's operations can form part of the establishment's operations. This does not mean that income which is not directly attributable to the establishment's operations escapes liability for tax. For example, the restriction on the rate of tax imposed by paragraph 2 of Articles 10, 11 and 12, which concern dividend, interest and royalty payments respectively, would apply if such income did not arise from the permanent establishment's operations.

Note also that where an enterprise carries on in another country, any sales or business activities which are the same or similar to those carried out by its permanent establishment in that country, then the profits from those sales or business activities are deemed to be part of the permanent establishment's income.

(2) Paragraph 2 contains the normal provision enabling arm's-length profits to be attributed to the permanent establishment if necessary.

(3) Paragraph 3 merely expresses the taxpayer's right to deduct from the profits of the permanent establishment, the expenses incurred for the purposes of the permanent establishment, even if those expenses are incurred outside the country where the permanent establishment is situated.

(4) Paragraph 4 provides that where the profits to be attributed to a permanent establishment are determined, not on the basis of separate accounts or by making an estimate or arm's-length profit, but simply by apportioning the total profits of the enterprise by reference to various formulae, then such a method may continue to be employed provided it has been customary to adopt such a practice. Such a method differs from those envisaged in paragraph 2 of Article 7, since it contemplates not an attribution of profits on a separate enterprise footing, but an apportionment of total profits. However, in general the profits to be attributed to a permanent establishment should be determined by reference to the establishment's accounts if these reflect the real facts. A method of allocation which is based on apportioning total profits is generally not as appropriate as a method which has regard only to the activities of the permanent establishment and should be used only where it has as a matter of history been customary in the past and is accepted by the Department and taxpayer as being satisfactory.

(5) Paragraph 5 precludes the deduction by the permanent establishment of payments made to its head office by way of patent royalties, commission or management charges, and interest (except for interest in respect of money borrowed by a bank).

(6) Paragraph 6 precludes the attribution of profits to a permanent establishment by reason of merely purchasing activities carried on by the permanent establishment for the enterprise.

(7) Paragraph 7 provides that unless there are good and sufficient reasons to the contrary the profits attributed to a permanent establishment must be determined by the same method each year.

(8) Paragraph 8: refer second paragraph of preamble above.

(9) In terms of paragraph 2 of the Protocol, income from the business of any form of insurance is not subject to the provisions of this Article. Such income may be taxed in accordance with the domestic law of each country.

Article 8 – Shipping and Aircraft

(1) Under paragraph 1 profits from operating ships or aircraft in "international traffic" – defined in Article 3 (1) (f) – are to be taxed only in the country of residence of the enterprise. However, under paragraph 2 if the profits are derived from business conducted in the other country, i.e., not the country of residence but the country of source, that other country may impose a tax of up to 1½ percent of the gross revenue derived therefrom by the non-resident enterprise. In this instance, the country of residence would have to give credit for tax paid in the country of source.

International shipping and aircraft profits include income from:

(a) carriage of passengers and cargo;
(b) sale of passenger tickets on behalf of other enterprises;
(c) commercial advertising;
(d) charter fees (but refer paragraph (3) below).

(2) Due to the definition of "international traffic" exemption does not extend to profits derived from coastal traffic. Further, investment income of shipping and air transport enterprises is subject to the treatment ordinarily applied to that class of income, e.g., dividends derived would be subject to Article 10.

(3) Profits obtained from leasing a ship or aircraft on charter fully equipped, manned and supplied, whether or not the enterprise providing the ship or aircraft actually owns it, would be treated as profits from the operation of a ship or aircraft. However, the Article does not extend to profits from leasing a ship or aircraft on a bare boat charter basis except when it is an occasional source of income for an enterprise engaged in the international operation of ships or aircraft. Apart from this one exception, bare boat charter fees would normally be classified as business profits and consequently dealt with under Article 7.

Article 9 – Associated Enterprises

This is a standard Article enabling an arm's length profit to be attributed to associated enterprises.

Article 10 – Dividends

For the purposes of this Article, paragraph (5) of the Protocol provides that dividends in respect of which a trustee is subject to tax in New Zealand may be treated as being beneficially owned by that trustee.

(1) Paragraph 1 of the Article simply states that dividends may be taxed in the State of the recipient's residence.

(2) Paragraph 2 provides that the Contracting State from which the dividends are paid also has the right to tax, but the maximum tax that can be imposed is not to exceed:

- 15 percent of the gross amount of the dividends if the beneficial owner is a company;
- 25 percent of the gross amount of the dividends in all other cases.

Therefore, in terms of the Convention New Zealand's taxing rights will be restricted to 15percent or 25 percent of the gross dividend even though the rate under domestic law is 30 percent. This also means that the withholding tax rate on gross dividends flowing to individuals resident in the Philippines increased from 15 percent to 25 percent as from 1 April 1982. The Philippines tax is reduced from a 35 percent domestic rate to 15 percent or 25 percent as above. In the case of New Zealand the limitation is to be achieved by withholding tax of 15 percent or 25 percent being deducted by companies paying the dividends to residents of the Philippines.

(3) Paragraph 3 defines "dividends" for the purposes of the Article. The effect is that "dividends" has the meaning given to it by section 4 of the Income Tax Act 1976.

(4) Paragraph 4 concerns shares which are effectively connected with a permanent establishment. The paragraph provides that in the State of source the dividends are taxable as part of the profits of the permanent establishment there owned by the recipient which is a resident of the other State, **provided** they are paid in respect of holdings forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In effect this relieves the State of source of the dividends from any limitations under the Article.

The rules set out above also apply where the recipient of the dividends has in the other State, for the purposes of performing any of the kinds of independent personal services mentioned in Article 14, a fixed base with which the holding in respect of which the dividends are paid is effectively connected.

Up until 1 April 1982 these qualifications had no effect on the New Zealand tax position because our domestic law provided for a 15 percent final withholding tax in all cases on the gross payment and no convention can extend the taxing rights under domestic law. However, in view of the change in the New Zealand domestic law from 1 April 1982 the New Zealand tax on dividends paid in respect of shares effectively connected with a permanent establishment is 30 percent.

(5) Paragraph 5: The main effect of this paragraph is that it restricts the application of taxes on undistributed profits. For example, New Zealand cannot impose excess retention tax or bonus issue tax (refer paragraph 4 of Protocol) on a privately controlled company which is a "resident of the Philippines".

(6) Paragraph 6 limits to 15 percent of the amount remitted abroad the remittance tax which the Philippines may impose on profits remitted from the Philippines by a permanent establishment of a New Zealand company.

Article 11 – Interest

For the purposes of this Article, paragraph (5) of the Protocol provides that interest in respect of which a trustee is subject to tax in New Zealand may be treated as being beneficially owned by that trustee.

(1) Paragraph 1 affirms the taxing right of the State in which the recipient of the interest is a resident.

(2) Paragraph 2 also affirms the taxing right of the State in which the interest arises, but the maximum tax that can be imposed is 15 percent of the gross amount of the interest. New Zealand's tax is therefore limited to a maximum of 15 percent in all cases. The Philippines tax is reduced from a 35 percent domestic rate to 15 percent under this Convention.

(3) Paragraph 3 defines interest for the purpose of the Article. Penalty charges are excluded from the term.

(4) Paragraph 4 provides that in the State of source, interest is taxable as part of the profits of the permanent establishment there owned by the recipient which is a resident of the other State, **provided** the indebtedness in respect of which the interest is paid forms part of the assets of the permanent establishment or otherwise is effectively connected with that establishment. In effect this paragraph relieves the State of source of the interest from the 15 percent limitation under the Article.

The rules set out above also apply where the recipient of the interest has in the other State, for the purposes of performing any of the kinds of professional services mentioned in Article 14, a fixed base with which the debt-claim in respect of which the interest is paid is effectively connected.

These qualifications tie in with the New Zealand domestic law which provides that if a non-resident has a fixed establishment in New Zealand, then interest derived is not subject to non-resident withholding tax but is to be assessed on an annual basis.

(5) Paragraph 5 is a source rule and precludes argument as to the source of the interest. The paragraph also deals with interest arising through a permanent establishment or fixed base. Where a loan was contracted for the requirements of that establishment and the interest is borne by the latter, the paragraph determines that the source of the interest is in the Contracting State in which the permanent establishment is situated, leaving aside the place of residence of the owner of that establishment or base.

(6) Paragraph 6 is an anti-avoidance provision to ensure that only a reasonable interest payment is taxed at the reduced rate specified in the Convention.

(7) Paragraph 7 exempts in the country of source interest derived by the Government, governmental body or central bank of the other State.

(8) Paragraph 8 limits to 10 percent the withholding tax which can be imposed by the Philippines on interest paid by a resident Philippines **company** to a New Zealand resident of public issues of bonds, debentures or other similar obligations.

Article 12 – Royalties

›r the purposes of this Article, paragraph 5 of the Protocol provides that royalties in respect of which a trustee is subject tax in New Zealand may be treated as being beneficially owned by that trustee.

(1) Paragraph 1 affirms the taxing right of the State in which the recipient of the royalties is a resident.

(2) Paragraph 2 also affirms the taxing right of the State in which the royalty arises, but the maximum tax that can be imposed is not to exceed:

- in the case of New Zealand, 15 percent of the gross amount of the royalty; and
- 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 Investment and engaged in preferred areas of activities; and

  (ii) in all other cases, 25 percent of the gross amount of the royalties.

New Zealand's tax is therefore limited to a maximum of 15 percent in all cases. The Philippines tax is reduced from a 35 percent domestic rate to 15 percent or 25 percent as above. With regard to royalties paid to a resident of New Zealand by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities refer to the Credit Provisions set out in paragraph 2 of Article 23.

(3) Paragraph 3 defines "royalties" for the purposes of the Article. The term includes lump sum payments and certain rents. It should be noted that under paragraph 6 of the Protocol the definition is extended to include payments which are dependent upon production, sales, performance, results or any other similar basis. However, variable or fixed payments for the working of mineral deposits or other natural resources do not fall within the defined term as they are governed by Article 6.

It should also be noted that if a payment is made in the form of rent rather than on a royalty basis and the payment comes within the term "royalties", then the 15 percent or 25 percent maximum rate on gross applies. However, rental payments do not constitute royalties under our domestic law and there is, therefore, no non-resident withholding tax applicable. Payments of this nature will be subject to an annual assessment on the net amount after expenses and if the tax so levied exceeds 15 percent of the gross rental, a rebate will be given by virtue of the Convention to bring the tax down to 15 percent of gross.

(4) Paragraph 4 provides that in the State of source royalties are taxable as part of the profits of the permanent establishment there owned by the recipient which is a resident of the other State, provided the right or property in respect of which the royalties are paid is effectively connected with that establishment. In effect this relieves the State of source of the royalties from the 15 percent limitation under the Article.

The rules set out above also apply where the recipient of the royalties has in the other State, for the purpose of performing any of the kinds of professional services mentioned in Article 14, a fixed base with which the knowledge, information, assistance, right or property in respect of which the royalties are paid is effectively connected.

New Zealand's domestic law in relation to royalties provides for a withholding tax rate of 15 percent final on copyright (cultural) royalties or where the aggregate annual royalty payments do not exceed $1,000, and minimum final in all other cases.

(5) Paragraphs 5 and 6: The comments to paragraphs 5 and 6 respectively of the Interest Article apply equally here.

Article 13 – Income from Alienation of Property

(1) Paragraph 1 concerns income or gains derived from the alienation of real property. Income from such alienation may be taxed in the State where the property is situated. For example, if a resident of Germany sells at a profit a real property situated in New Zealand, the profit can be taxed in New Zealand if the New Zealand domestic law permits that taxation. In terms of paragraph 7 of the Protocol the Article extends to income or gains from the alienation of shares of a company or gains from the alienation of an interest in a partnership or trust.

(2) Paragraph 2 deals with income or gains derived from the alienation of movable property forming part of the business property of a permanent establishment or pertaining to a fixed base used for the performing of independent personal services. This may be taxed in the State where the permanent establishment or fixed base is situated.

(3) Paragraph 3 provides that income or gains from the alienation of ships or aircraft operated in international traffic are taxable only in the State of residence of the enterprise.

(4) Paragraph 4 stipulates that any income or gains from any property not covered by the Article is to be taxable only in the State in which the alienator is a resident.

Article 14 – Dependent Personal Services

(1) This Article concerns income from professional personal services (i.e., independent personal services) as distinct from income from dependent personal services (e.g., remuneration such as salary and wages) which is dealt with separately under Article 15. Under paragraph 1 income from independent personal services is taxable only in the State of residence unless the services are performed in the other State, in which case that other State also has the right to tax the income therefrom. However, an exemption will be given by the State visited provided:

- the visit or visits do not exceed 183 days in the aggregate in the income year, **or**
- the income is not attributable to a fixed base regularly available to the taxpayer in that other State.

The term "fixed base" is intended to cover a centre of activity of a fixed or permanent character, for instance, a doctor's consulting room or the office of an architect or lawyer.

(2) Where a resident of a Contracting State derives income from residents of the other State in respect of independent personal services, paragraph 2 allows the income derived to be taxed in that other State provided that income exceeds $11,000.

(3) This Article does not apply to artistes and athletes. They are dealt with under Article 17.

Article 15 – Dependent Personal Services

(1) Paragraph 1 states the general rule that personal services performed by a resident of one of the Contracting States may be taxed in that other Contracting State, only if the services are performed in that other Contracting State.

(2) Paragraph 2 states the case where exemption will be given by the State visited. The main requirements are that the visit does not exceed 183 days in the aggregate in the income year, that the remuneration is paid by an employer not resident in that State, and is not borne by a permanent establishment or fixed base which the employer has in that state. Initially New Zealand PAYE tax will be required to be deducted from the remuneration paid but will be refunded at the time of departure provided the requirements of the Article are fully met. In this respect a certificate must be obtained, by the person seeking exemption, from the Philippines tax authorities which certifies that that person is a resident of the Philippines for the purpose of Philippines tax.

(3) Paragraph 3 provides that remuneration derived from employment aboard a ship or aircraft operating in international traffic may be taxed in the State of residence of the shipping or airline enterprise. This means that if the State of residence of the enterprise is the Philippines then the Philippines has the right to tax the remuneration derived by the employee. New Zealand would allow credit for any Philippine tax on such remuneration if derived by a New Zealand resident.

Article 16 – Directors' Fees

This Article allows the State in which the company paying the fees or other similar payments is resident, to have the right to tax such income and the country of residence is obliged to give credit for a tax so charged.

Paragraph 2 precludes the Article from applying to income from personal services. This is dealt with under Article 15.

Article 17 – Artistes and Athletes

(1) Paragraph 1 enables the State in which the entertainer or athlete is performing the services to tax the income derived from these personal services.

(2) Paragraph 2 deals with the situation where income for the performance of an entertainer or athlete is not paid to the entertainer or athlete himself but to an enterprise providing the services of the entertainer or athlete. The paragraph permits the State in which the performance is given, to impose a tax on the profits diverted from the income of the entertainer or athlete to the enterprise where, for instance, the entertainer or athlete has control over or rights to the income thus diverted, or has obtained or will obtain some benefit directly or indirectly from that income. Without this paragraph the State where the services are being performed would in such cases, be unable to tax:

(a) because it would not be personal service income to the entertainer, and

(b) in the absence of a permanent establishment the payments could not be taxed as business profits in the hands of the other person.

(3) The effect of paragraph 3 is that the State in which the activities are performed will not tax the income derived there, in the following circumstances:

- the visit to that State is substantially supported by the public funds of the other State, or
- the income from the visit is derived by a non-profit making organisation which is certified as qualifying by the competent authority of the other State.

The term "substantially supported" is not defined, therefore to qualify under this provision each case will have to be determined on the facts available. For practical purposes, in respect of visits to New Zealand it will be necessary for the Philippine artistes or athletes to produce written evidence from the Philippine competent authority certifying that they qualify under the provisions of paragraph 3 of Article 17.

Article 18 – Pensions

(1) Paragraph 1 gives the State of **residence** exclusive right to tax pensions and annuities where they are paid in consideration of past employment. However, this rule is subject to Article 19 (2) wherein Government pensions paid in respect of services rendered are taxed exclusively in the State of source **but** if the recipient is a resident **and** a national of the other State the pensions are taxable on a residence basis. (See definition of "national" in Article 3.) This means that a Philippines Government pension paid to a resident of New Zealand is taxed only in the Philippines and exempt in New Zealand unless the recipient is also a national of New Zealand in which case the pension is taxed only in New Zealand and exempt in the Philippines.

(2) Paragraph 2 states that social security pensions are taxable only in the State paying the pensions, i.e., State of source.

(3) Paragraph 3 defines the terms "pensions" and "annuities" respectively.

Article 19 – Government Service

This Article deals with remuneration paid to an individual in respect of services rendered to a State or political subdivision or local authority thereof.

(1) Paragraph 1 provides for two situations:

- Remuneration received by Government servants is generally to be taxed only in the country paying the remuneration, i.e., country of origin or source of the payment.
- However, such remuneration is taxable only in the country where the services are performed provided the services are performed there:
  - (i) by an individual who is a resident and also a national of that country, or
  - (ii) by an individual who is a resident of that country and did not become a resident of that country solely for the purpose of performing those services.

(2) The second situation can be illustrated as follows.

Remuneration paid by the Philippines Government for services rendered in New Zealand by an individual who is a resident and national of New Zealand shall be taxed exclusively in New Zealand. This is still the position even though the individual, although a national (citizen) of New Zealand, became a resident of New Zealand for the purposes of rendering those services for the Philippines Government.

(3) Paragraph 2 deals with Government pensions. (See explanation to Article 18 in this supplement).

(4) Paragraphs 1 and 2 do not apply if the services are performed in connection with business carried on by that State, or one of its political subdivisions or local authorities, paying the remuneration. Under paragraph 3 the ordinary rules apply: Article 15 for wages and salaries, Article 16 for directors' fees and Article 18 for pensions. Article 17 is not mentioned because paragraphs 1 and 2 of Article 19 are to apply to remuneration paid to artistes employed by the State irrespective of whether such artistes could be said to be rendering services in connection with business carried on by the State.

Article 20 – Professors and Teachers

(1) Under paragraph 1 a Philippines teacher is exempt from New Zealand tax on income from teaching or carrying out advanced study or research in New Zealand if:

- he visits New Zealand for not more than 2 years;
- he is a resident of the Philippines;
- his visit is for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution.

The same rules apply conversely to residents of New Zealand visiting the Philippines for the same purpose.

(2) Paragraph 2 sets out the condition that this Article is not to apply if the research is undertaken for the private benefit of a specific person or persons, i.e., the research should be undertaken in the public interest.

(3) Paragraph 3 states that remuneration received in terms of paragraph 1 includes payments made from sources outside the State visited to enable the professor or teacher to carry out his teaching or research activities.

Article 21 – Students and Trainees

(1) Under paragraph 1 students or business apprentices visiting a Contracting State for the purpose of education or training are exempt from tax on payments they receive from overseas for their maintenance, education or training. In the case of a Philippine student visiting New Zealand, note:

- The student, apprentice or trainee must have been a resident of the Philippines immediately before he comes to New Zealand.
- He must be in New Zealand **solely** for the purpose of his education or training or as a trainee **solely** for the purpose of acquiring technical, professional or business experience.
- The payments must be made from sources outside New Zealand.
- There is no time limit on the period spent in New Zealand.
- The exemption is restricted to the payments mentioned, i.e., for maintenance.

The converse applies to a New Zealand student or apprentice going to the Philippines.

(2) Paragraph 2 exempts from New Zealand tax the amount received by a student or trainee from a grant, allowance or award made under an arrangement or assistance programme entered into by the Government of New Zealand. The conditions under which the exemption is given are similar to those set out in paragraph 1. In applying this provision refer to section 60 (1) and section 61 (38) of the Income Tax Act 1976.

Article 22 – Other Income

This Article provides a general rule relating to income not expressly mentioned in the other Articles of the Convention. A secondary effect of the Article is to clarify the situation of income derived from a third country by a person who could be "resident in" both the Philippines and New Zealand under the general laws of each country. Under the Convention that person can be a "resident of" only one country. In such a situation the taxing rights as to the third country income are allocated to the country "of" which he is a resident for the purposes of the Convention.

The effect of paragraph 1 is that income derived by a resident of New Zealand is taxed exclusively in New Zealand unless the income is derived from sources in the Philippines. If the income is derived from sources in the Philippines it may also be taxed there and a credit for the Philippine tax is given in New Zealand, should that income be liable for New Zealand tax. The converse will apply in the case of a resident of the Philippines. Cases of conflict between two residences are to be determined by reference to Article 4.

Article 23 – Relief from Double Taxation

This Article contains the normal rules whereby each State gives credit for the other State's tax when assessing its residents on income derived from sources in the other State. It should be noted that the credit provisions in the Article are subject to the domestic law of each country.

(1) Paragraph 1 sets out the credit provisions in the case of the Philippines where credit will be allowed for New Zealand tax on income from sources in New Zealand up to the amount of the Philippines tax on that income.

(2) Paragraph 2 sets out the credit provisions in the case of New Zealand. It should be noted that under this paragraph New Zealand is to provide "tax sparing" in respect of income from royalties derived from a New Zealand resident from an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activity. This means that in addition to allowing credit for the Philippine tax paid on such royalties (15 percent as per Article 12) New Zealand allows a notional credit of 10 percent of the gross amount of such royalties. Therefore New Zealand can allow a credit of up to 25 percent of the gross amount of the royalties against the income tax payable by a resident of New Zealand.

(3) The final sentence is a source rule for the purposes of the Article to facilitate the allowance of a tax credit or complete exemption.

Article 24 – Mutual Agreement Procedure

Article 25 – Exchange of Information

These Articles are to be implemented solely through Head Office.

Article 26 – Territorial Extension

This is a standard Article and requires no additional comment.

Article 27 – Diplomatic and Consular Officers

The aim of this Article is to ensure that diplomatic officers shall, under the Convention, receive no less favourable treatment than that to which they are entitled under international law or under special international agreements.

Article 28 – Entry into Force

This Article provides that the Convention shall enter into force upon the exchange of the instruments of ratification and shall have effect in New Zealand in respect of income assessable for any income year beginning on or after 1 April in the calendar year in which such exchange of instruments takes place. As the instruments of ratification were exchanged on 14 May 1981 the Convention will generally take effect in New Zealand from the income year which commenced on 1 April 1981 and in the Philippines from the taxation year which commenced on 1 January 1981.

Article 29 – Termination

This Article sets out the procedure if either State wishes to terminate the Convention. Unless notice of termination is given in accordance with the Article the Convention continues indefinitely.

Protocol

The Protocol forms an integral part of the Convention containing additional provisions in relation to certain Articles of the Convention. The main points are referred to earlier in this supplement on an Article by Article basis.

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