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The Gazette of the Democratic Socialist Republic of Sri Lanka
EXTRAORDINARY

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(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

ERRATA

THE INLAND REVENUE ACT, No. 38 OF 2000

REFERENCE the Notification published under the Inland Revenue Act, No. 38 of 2000 in the *Gazette Extraordinary* No. 1237/7 of 21.05.2002, the following corrections are made.

1. In the paragraph under Notice, substitute for the words and figures "entered into on 10th June, 1983", of the words and figures "entered into 11th December, 2000".
2. In sub-paragraph (g) of paragraph 1 of Article 3, substitute in line 2 for the words, "in other" of the words "in the other",
3. In sub-paragraph (b) of paragraph 2 of Article 4, substitute in line 2 for the word "Estate", of the word "State",
4. In paragraph 1 of Article 7, substitute in line 5 for the word "affected", of the word "effected",
5. In paragraph 3 of Article 19, delete in line 2 the word "carried".

Acting Secretary,
Ministry of Finance.

Ministry of Finance,
Colombo,
26th September, 2002.

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The Gazette of the Democratic Socialist Republic of Sri Lanka

අති විශේෂ EXTRAORDINARY

අංක 1237/7 - 2002 මැයි 21 වැනි අඟහරුවාදා - 2002.05.21

No. 1237/7 - TUESDAY, MAY 21, 2002

(Published by Authority)

PART I: SECTION (I) - GENERAL

Government Notifications

THE INLAND REVENUE ACT, No. 38 OF 2000

Notice

IT is hereby notified under Section 92(1)(b) of the Inland Revenue Act, No. 38 of 2000, that the Agreement for affording relief from double taxation and for the prevention of fiscal evasion with respect to taxes on income, entered into on 10th June, 1983, between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Republic of the Philippines and set out in the Schedule hereto, has been approved by Parliament by resolution passed on March 06, 2002.

Acting Secretary,
Ministry of Finance.

Ministry of Finance,
Colombo,
16th May, 2002.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA AND THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES, DESIRING TO CONCLUDE A CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, HAVE AGREED AS FOLLOWS:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

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

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains

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PART I: SEC (I) - GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA - 21.05.2002

from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which this Convention shall apply are:

- (a) *in Sri Lanka*. - the income tax, including the income tax based on the turnover of enterprises licensed by the Greater Colombo Economic Commissions; (hereinafter referred to as "Sri Lanka tax").
- (b) *in the Philippines*. - the income taxes imposed by the Government of the Republic of the Philippines, (hereinafter referred to as "Philippine tax").

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

ARTICLE 3

General Definitions

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

- (a) the term "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka, including any area outside the territorial sea of Sri Lanka which in accordance with international law has been or may hereafter be designated, under the laws of Sri Lanka concerning the Continental Shelf, as an area within which the rights of Sri Lanka with respect to the waters, sea bed and subsoil and the natural resources may be exercised;
- (b) the term "Philippines" means the Republic of the Philippines and when used in a geographical sense means the national territory comprising the Republic of the Philippines;
- (c) the terms "a Contracting State" and "the other Contracting State" means Sri Lanka or the Philippines as the context requires;
- (d) the term "person" includes an individual, an estate, a trust, a company, and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) 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;
- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of one of the Contracting States, except when the ship or aircraft is operated solely between places in other Contracting State;
- (h) the term "nationals" means:
 - (i) in the case of Sri Lanka, all individuals possessing the nationality of Sri Lanka; in the case of the Philippines, individuals possessing the citizenship of the Philippines;
 - (ii) all legal persons, partnership and associations deriving their status as such from the laws in force in a Contracting State;
- (i) the term "competent authority" means:
 - (i) in the case of Sri Lanka, the Commissioner-General of Inland Revenue;
 - (ii) in the case of the Philippines, the Secretary of Finance or his authorized representative.

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

ARTICLE 4

Resident

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

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

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

3. Where by reasons of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

ARTICLE 5

Permanent Establishment

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

2. The term "permanent establishment" shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) exploration of natural resources including a drilling rig or ship;
- (h) a warehouse, in relation to a person providing storage facilities for others.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site or construction or installation project only if it lasts more than 183 days;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 90 days within any twelve month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

character.

5. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if substantial equipment is being used in that State for more than six months by, for or under contract with the enterprise.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercise in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other Contracting State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 8 applies.

8. 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 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, if it is shown that the transactions between the agent and the enterprise were not made under arms-length conditions. In such a case, the provisions of paragraph 6 shall apply.

9. 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 itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

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

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

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

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

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment (b) sales in that other State of goods or merchandise or the same or similar kind as those sold through that permanent establishment or (c) other business activities

carried on in that other State of the same or similar kind as those affected through that permanent establishment.

2. Subject to the provisions of paragraph 3 where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment 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 wholly independently with the enterprise of a permanent establishment.

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

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

- (a) royalties, fees or other similar payments in return for the use of patent or other rights;
- (b) commission for specific services performed or for management; and
- (c) interest on money lent to the permanent establishment, except in the case of banking institution.

5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall, however, be such that the result will be in accordance with the principles contained in this Article.

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

7. For the 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.

8. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of these Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

(1) Profits derived by an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable in that State.

(2) Notwithstanding the provisions of paragraph 1, profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operations of ships or aircraft in international traffic may be taxed in the first-mentioned State in accordance with its domestic law, but the tax so charged shall be reduced by forty percent. In no case, however, shall the tax so charged exceed the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

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

ARTICLE 9

Associated Enterprises

1. Where -

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

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

accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Convention and the competent authorities of the Contracting State shall, if necessary, consult each other.

ARTICLE 10

Dividends

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

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

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnership);
- (b) 25 per cent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

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

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

6. Nothing in this Article shall prevent either Contracting State from imposing, apart from the corporate income tax, a tax on remittances of profits by a branch to its head office provided that the tax so imposed shall not exceed 15 per cent of the amount remitted.

ARTICLE 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State shall be exempt from tax in that State if:

- (a) the payer of the interest is the Government of that State, a political subdivision or a local authority thereof; or
- (b) the interest is derived and beneficially owned by the Government or an agency of the Government of the other Contracting State; or
- (c) the interest is paid -

(i) in the case of Sri Lanka to the Central Bank of Sri Lanka,

(ii) in the case of the Philippines, to the Bangko Sentral ng Pilipinas, and

(iii) to other lending institutions as may be specified and agreed in letters exchanged between the competent authorities of the

Contracting States.

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

5. The provisions of paragraph 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14 as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or administrative 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 such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

ARTICLE 12

Royalties

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

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

- (a) 15 per cent of the gross amount of the royalties where the royalties are paid by an enterprise registered with, and engaged in preferred areas of activities in that Contracting State;
- (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 cinematographic films, or tapes for television or radio 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 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount, In such 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.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of stocks and shares of a company may be taxed in the Contracting State in which they have been issued.
5. Gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident.
6. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.
7. The term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

ARTICLE 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State :
 - (a) if 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) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days within any twelve month period; in that case, only so much of the income as is derived from his activities performed in the other State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Article 16, 18 and 19, 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, 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 within any twelve month period; 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 an employment exercised abroad a ship or aircraft in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

Directors' Fees

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State in accordance with the provisions of Article 15.

ARTICLE 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste or a musician or as an athlete from his personal activities as such may be taxed in the Contracting State in which these activities are exercised;

Provided; that such income shall not be taxed in the said Contracting State if the visit of the entertainers or athletes to that State is directly or indirectly supported wholly or substantially, from the public funds of the Government of either Contracting State. For the purposes of this paragraph the term "Government" includes a State Government a political sub-division or a local authority of either Contracting State.

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

ARTICLE 18

Pensions and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 19 pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.

However, pensions paid out of pension plans of Philippine enterprises not registered under Philippine laws may be taxed in the Philippines.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State shall be taxable only in that State.

ARTICLE 19

Government Service

1. (a) Remuneration other than a pension, paid by the Government of a Contracting State to an individual in respect of services rendered to that State or a local authority thereof shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who;
- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. Any pension paid by or out of funds created by the Government of a Contracting State to an individual in respect of services

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rendered to that State shall be taxable only in that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

4. For the purposes of this Article, the term "Government" shall include any State Government, a political subdivision, a local authority and the Central Banks of both Contracting States.

ARTICLE 20

Students and Trainees

1. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely as a student at a university, college or other similar education institution shall be exempt from tax in that other State on :

- (a) all remittances from abroad for purposes of his maintenance or education; and
- (b) for an aggregate period of not more than five years from the date of his first arrival, on any remuneration with a view of supplementing the resources available to him for such purposes.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that State solely as a trainee for the purpose of acquiring technical, professional or business experience shall be exempt from tax in that other State on;

- (a) all remittances from abroad for purposes of his maintenance or training ; and
- (b) for an aggregate period of not more than two years from the date of his first arrival, on any remuneration, provided such services are in connection with his training or incidental thereto.

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

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

ARTICLE 21

Other Income

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention may be taxed in the State where the income arises.

ARTICLE 22

Grants

1. When the Government of Sri Lanka or any agency thereof makes a cash grant or any similar payment for the purpose of investment promotion or economic development in Sri Lanka to a company resident in Sri Lanka which is wholly owned by a resident of the Philippines, the amount of such grant or payment shall not form part of the gross income of such resident or company for the purpose of computing Philippines tax.

The Competent Authorities shall agree on the mode of application of this Article.

ARTICLE 23

Elimination of Double Taxation

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except when express provision to the contrary is made in this Convention. When income is subject to tax in both Contracting States, relief

from double taxation shall be given.

- (a) *In Sri Lanka.* - Philippines tax payable in respect of income derived from the Republic of the Philippines shall be allowed as a credit against any Sri Lanka tax payable in respect of that income. The credit shall not, however, exceed that part of Sri Lanka tax as computed before the credit is given, which is appropriate to such item of income.
- (b) *in the Republic of the Philippines.* - Sri Lanka tax paid by a Philippine resident on income which, in accordance with the provisions of this Convention, may be taxed in Sri Lanka shall be deducted from the Philippine tax payable under the Philippine income tax law.

2. In respect of dividends and interests, for the purpose of allowance as a credit in a Contracting State the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

ARTICLE 24

Non-Discrimination

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State, shall for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

5. Notwithstanding the preceding provisions of this Article, either Contracting State may, in the promotion of necessary industry or business, limit to its nationals the enjoyment of tax incentives granted by it.

6. In this Article, the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 25

Mutual Agreement Procedure

1. Where a person considers that the action of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article, 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention. Any agreement reached shall be implemented within the time limits provided by the domestic law of the Contracting States.

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. They may also consult together for the elimination of double taxation in cases not provided for in 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. The Competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

ARTICLE 26

Exchange of Information

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

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

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

ARTICLE 27

Diplomatic Agents and Consular Officials

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

ARTICLE 28

Miscellaneous Rules

1. Nothing in this Convention shall be construed as preventing the Philippines from taxing its citizens who may be residing in Sri Lanka, in accordance with its domestic legislation. However, no credit shall be given in Sri Lanka for taxes in pursuant thereto.

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

ARTICLE 29

Entry into Force

1. Each of the Contracting States shall notify the other, through diplomatic channels, of the completion of their respective domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the later of these notifications.

2. The provisions of this Convention shall have effect :

- (a) in Sri Lanka, in respect of income derived on or after the first day of April of the year next following that in which the Convention enters into force ; and
- (b) in the Philippines,
 - (i) in respect of tax withheld at source on amounts paid to non-residents on or after the first day of January in the calendar year next following that in which the Convention enters into force ;
 - (ii) in respect of other taxes on income, for taxable years beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

ARTICLE 30

Termination

This Convention shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year at least 5 years after the year of its entry into force, give to the other Contracting State notice of termination in writing through diplomatic channels; in such event, this Convention shall cease to be effective for any year of assessment commencing on or after January in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned duly authorised thereto have signed this Convention.

Done in duplicate at Manila the the eleventh day of December, 2000, in English and Sinhala Languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

P. G. KARUNASIRI,
For the Government of the
Democratic Socialist
Republic of Sri Lanka.

JOSE T. PARDO,
For the Government of the
Republic of the Philippines.

06-30