Double Taxation Avoidance Agreement between Philippines and Germany

Completed on September 9, 2013

The Federal Republic of Germany
and
the Republic of the Philippines -

Desiring to conclude an Agreement for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital,

Desiring to develop further their mutual economic relations and to deepen cooperation in the field of taxation for the purpose of ensuring the effective and correct collection of tax,

With the intention of pursuing the avoidance of cases of double taxation as well as of double non-taxation when distinguishing the rights to taxation on the basis of mutual agreement as equally important objectives -

Have agreed as follows:

Article 1
Personal Scope

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

Article 2
Taxes Covered

(1) This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, of a Land or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes to which this Agreement shall apply are in particular:

(a) in the Republic of the Philippines:

(i) the income tax on individuals;
(ii) the income tax on corporations;
(iii) the income tax on estates and trusts, and
(iv) the stock transaction tax
(hereinafter referred to as "Philippine tax");

(b) in the Federal Republic of Germany:

(i) the income tax (Einkommensteuer);
(ii) the corporation tax (Körperschaftsteuer);
(iii) the trade tax (Gewerbesteuer), and
(iv) the capital tax (Vermögensteuer)
including the supplements levied thereon
(hereinafter referred to as "German tax").

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

Article 3
General Definitions

(1) For the purposes of this Agreement, unless the context otherwise requires:

(a) the term “Philippines” means the Republic of the Philippines, and when used in a geographical sense means the archipelagic territory comprising the Republic of the Philippines as defined in its Constitution and laws, including adjacent areas and such other areas in the sea and in the air within which the Philippines has sovereignty, jurisdiction or similar rights under international law;

(b) the term “Federal Republic of Germany” means the Federal Republic of Germany, and when used in a geographical sense means the territory of the Federal Republic of Germany as well as the area of the sea-bed, its sub-soil and the superjacent water column adjacent to the territorial sea, insofar as Germany may exercise sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources or for the production of energy from renewable sources;

(c) the terms “a Contracting State” and “the other Contracting State” mean the Federal Republic of Germany 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 or 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 a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term “national” means:

(i) in respect of the Republic of the Philippines

any individual possessing the nationality of the Philippines, and any legal person, partnership or association deriving its status as such from the laws in force in the Philippines;

(ii) in respect of the Federal Republic of Germany

any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;

(i) the term “competent authority” means:

(i) in the case of the Philippines, the Secretary of Finance or his/her authorized representative;

(ii) in the case of the Federal Republic of Germany the Federal Ministry of Finance or the agency to which it has delegated its powers.

(2) As regards the application of this Agreement at any time by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4
Resident

(1) For the purposes of this Agreement, 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, place of incorporation or any other criterion of a similar nature, and also includes that State, a Land and any political subdivision or local authority thereof.

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

(a) he shall be deemed to be a resident only 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 only 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 only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only 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 reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(4) A partnership is deemed to be a resident of the Federal Republic of Germany if its place of effective management is situated therein.

Article 5
Permanent Establishment

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

(2) The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop, and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) The term “permanent establishment” also encompasses:

(a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

(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 if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months 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 delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(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.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for 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.

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

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or

otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6
Income from Immovable Property

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

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

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

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

Article 7
Business Profits

(1) The profits of an enterprise of 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 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 which it is 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, 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 permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, 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 of the enterprise or any of its other offices.

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

(5) 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 purposes of the preceding paragraphs of this Article, 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 of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8
Shipping and Air Transport

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

(2) However, profits from the operation of ships or aircraft in international traffic derived by an enterprise of a Contracting State and arising in the other Contracting State may be taxed in that other State but the tax so charged shall not exceed the lesser of:

(a) one and one-half percent of the gross revenues derived from sources in that other State; or

(b) the lowest rate that may be imposed by the Philippines on profits of the same kind derived under similar circumstances by a resident of a third State.

(3) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

(4) The provisions of paragraphs 1 and 2 shall also apply to profits 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 this Agreement and the competent authorities of the Contracting States 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 70 per cent of the capital of the company paying the dividends;

(b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(c) 15 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, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and distributions on certificates of an investment fund or investment trust.

(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 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 remittance of profits by a branch to its head office provided that the tax so imposed shall not exceed 10 percent of the amount remitted.

Article 11
Interest

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

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

(3) Notwithstanding the provisions of paragraph 2,

(a) interest arising in the Federal Republic of Germany and paid to the Philippine Government and the Bangko Sentral Ng Pilipinas shall be exempt from German tax;

(b) interest arising in the Philippines and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment or paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the DEG - Deutsche Investitions-und Entwicklungsgesellschaft mbH shall be exempt from Philippine tax.

(4) Notwithstanding the provisions of paragraph 2, interest as referred to in paragraph 1 may be taxed only in the Contracting State of which the recipient is a resident if the recipient is the beneficial owner of the interest and the interest is paid:

(a) in connection with the sale of commercial or scientific equipment on credit or

(b) in connection with the sale of goods by an enterprise to another enterprise on credit.

(5) The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(6) The provisions of paragraphs 1 to 4 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 case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(7) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

(3) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or

model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience. The term “royalties” shall also include payments of any kind for the use or the right to use a person’s name, picture or any other similar personality rights and on payments received as consideration for the registration of entertainers' or sportsmen's performances by radio or television.

(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 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 liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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 shares and similar rights in a company, the assets of which consist - directly or indirectly - principally of immovable property situated in a Contracting State, may be taxed in that State.

(3) 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.

(4) Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State, or gains from the alienation of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

(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.

Article 14
Independent Personal Services

(1) Income derived by an individual who is 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. However, such income may also be taxed in the other Contracting State if:

(a) he has a fixed base regularly available to him in that other 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 State; or

(b) he is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve-month period; in that case, only so much of the income as is derived from his activities performed in that 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, dentists, lawyers, engineers, architects and accountants.

Article 15
Dependent Personal Services

(1) Subject to the provisions of Articles 16 to 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 in any twelve month period commencing or ending 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 derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 16
Directors' Fees

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.

Article 17
Artistes and Sportsmen

(1) Notwithstanding the provisions of Articles 7, 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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

(3) Paragraphs 1 and 2 shall not apply to income accruing from the exercise of activities by artistes or sportsmen in a Contracting State where the visit to that State is financed entirely or mainly from public funds of the other State, a Land, a political subdivision or a local authority thereof or by an organisation which in that other State is recognised as a charitable organisation. In such a case the income may be taxed only in the Contracting State of which the individual is a resident.

Article 18
Pensions, Annuities and Similar Payments

(1) Subject to the provisions of paragraph 2 of Article 19, pensions and similar payments or annuities paid to a resident of a Contracting State from the other Contracting State shall only be taxable in the first-mentioned State.

(2) Notwithstanding the provisions of paragraph 1, payments received by an individual being a resident of a Contracting State from the statutory social insurance of the other Contracting State shall be taxable only in that other State.

(3) Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting States or a political subdivision thereof to a person resident in the other Contracting State as compensation for political persecution or for an injury or damage sustained as a result of war (including restitution payments) or of military or civil alternative service or of a crime, vaccination or a similar event shall be taxable only in the first-mentioned State.

(4) The term “annuities” means certain amounts payable periodically at stated times, for life or for a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19
Government Service

(1)

(a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State to an individual in respect of services rendered to that State, Land, political subdivision or local authority or some other legal entity under public law shall be taxable only in that State.

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

(i) is a national of that State or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

(2)

(a) Any pension paid by, or out of funds created by, a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State to an individual in respect of services rendered to that State, Land, political subdivision or local authority or some other legal entity under public law shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 15, 16, 17 or 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision or a local authority thereof or some other legal entity under public law of that State.

(4) The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a Land, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, Land, political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

(5) The provisions of paragraphs 1 and 2 shall likewise apply in respect of remuneration paid by or for the Goethe Institute or the German Academic Exchange Service (“Deutscher Akademischer Austauschdienst”) of the Federal Republic of

Germany. Corresponding treatment of the remuneration of other comparable institutions of the Contracting States may be arranged by the competent authorities by mutual agreement. If such remuneration is not taxed in the State where the institution was founded, the provisions of Article 15 shall apply.

Article 20
Visiting Professors, Researchers and Teachers

An individual who visits a Contracting State at the invitation of that State or of a university, college, school, museum or other cultural institution of that State or under an official programme of cultural exchange for a period not exceeding two years solely for the purpose of teaching, giving lectures or carrying out research at such 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 State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State.

Article 21
Students and Business Apprentices

(1) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

(2) With respect to paragraph 1, in respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or

training to the same exemptions, reliefs or reductions in respect of taxes available under the same conditions to residents of the State which he is visiting.

Article 22
Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) The provisions of paragraph 1 shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23
Capital

(1) Capital represented by immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by 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 by movable property pertaining to a fixed base available to an individual, who is a resident of a Contracting State, in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

(3) Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

(4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 24
Elimination of Double Taxation

(1) In the Philippines, double taxation shall be eliminated as follows:

Subject to the laws of the Philippines and the limitations thereof regarding the allowance of a credit against Philippine tax of tax payable in any country other than the Philippines, German tax payable in respect of income derived from the Federal Republic of Germany shall be allowed as credit against the Philippine tax payable in respect of that income.

(2) Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

(a) Unless foreign tax credit is to be allowed under sub-paragraph (b), there shall be exempted from the assessment basis of the German tax any item of income arising in the Philippines and any item of capital situated within the Philippines which, according to this Agreement, may be taxed in the Philippines.

In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of the Philippines at least 10 per

cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which if paid, would be exempted, according to the foregoing sentences.

(b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax on income payable in respect of the following items of income the Philippines tax paid under the laws of the Philippines and in accordance with this Agreement:

(i) dividends not dealt with in sub-paragraph (a);
(ii) interest;
(iii) royalties;
(iv) items of income that may be taxed in the Philippines according to paragraph 2 of Article 13;
(v) directors' fees;
(vi) items of income in the meaning of Article 17.

(c) The provisions of sub-paragraph (b) shall apply instead of the provisions of sub-paragraph (a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of the Federal Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in the Philippines in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of nos. 1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Aussensteuergesetz); the same shall apply to immovable property used

by a permanent establishment and to income from this immovable property of the permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 3 of Article 13).

(d) The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital, which are under the provisions of this Agreement exempted from German tax.

(e) Notwithstanding the provisions of sub-paragraph (a) double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph (b)

(i) if in the Contracting States items of income or capital are placed under differing provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 26 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed lower than without this conflict or

(ii) if after due consultation with the competent authority of the Philippines, the Federal Republic of Germany notifies the Philippines through diplomatic channels of other items of income to which it intends to apply the provisions of sub-paragraph (b). Double Taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year, next following that in which the notification was made.

Article 25
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, especially with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

(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 only to its own residents.

(3) Except where the provisions of paragraph 1 of Article 9, paragraph 8 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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) The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 26
Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, 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 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

(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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in 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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 27
Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of a Contracting State, of a Land, or a political subdivision or local authority thereof, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1 or the oversight of the above. 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.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures for the supply of information at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic tax interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28
Procedural Rules for Taxation at Source

(1) If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Agreement. The tax withheld at source shall be

refunded on application by the taxpayer if and to the extent that it is reduced by this Agreement or ceases to apply.

(2) Refund applications must be submitted within two years from the date of payment of the withholding tax on the dividends, interest, royalties or other items of income.

(3) Notwithstanding paragraph 1, each Contracting State shall provide for procedures to the effect that payments of income subject under this Agreement to no tax or only to reduced tax in the state of source may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Article.

(4) The Contracting State in which the items of income arise may ask for a certificate by the competent authority on the residence in the other Contracting State.

(5) The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Agreement.

Article 29
Application of the Agreement in Special Cases

This Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance. If the foregoing provision results in double taxation, the competent authorities shall consult each other pursuant to paragraph 3 of Article 26 on how to eliminate double taxation.

Article 30
Members of Diplomatic Missions or Consular Posts

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

(2) Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission or a consular post of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Agreement to be a resident of the sending State if:

(a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State or on capital situated outside that State, and

(b) he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

Article 31
Protocol

The attached Protocol shall be an integral part of this Agreement.

Article 32
Entry into Force

(1) This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Manila.

(2) This Agreement shall enter into force on the day of the exchange of the instruments of ratification and shall have effect in both Contracting States:

(a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which this Agreement entered into force;

(b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which this Agreement entered into force.

(3) With the entry into force of this Agreement, the Agreement between the Federal Republic of Germany and the Republic of the Philippines for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, signed in Manila on 22nd July 1983 shall expire. Its provisions shall continue to be applicable until this Agreement shall become effective as provided for in paragraph 2 of this Article. The provisions of the Agreement signed in Manila on 22nd July 1983 shall continue to apply to all tax cases having occurred prior to the date upon which this Agreement has entered into force.

Article 33
Termination

This Agreement shall continue in effect for an unlimited period but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

(a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;

(b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given.

Done at Berlin on 09 September 2013 in duplicate, each in the German and English languages, both texts being equally authentic.

For the Federal Republic of Germany	For the Republic of the Philippines
Dr. Martin Ney	Cesar Purisima

Protocol

to the Agreement

between

the Federal Republic of Germany

and

the Republic of the Philippines

for the Avoidance of Double Taxation with

respect to Taxes on Income and on Capital

The Federal Republic of Germany and the Republic of the Philippines have agreed on the following provisions to the Agreement of 9 September 2013 for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital:

1. With reference to Article 2:

The term “supplements” as mentioned in subparagraph (b) of paragraph 3 of Article 2 refers to additional taxes which are computed on the tax amount of the income tax, corporation tax, trade tax or capital tax, e.g., at present the solidarity surcharge (Solidaritätszuschlag) on the income tax and corporation tax.

2. With reference to Article 7:

(a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received therefore by the enterprise but only on the basis of the amount

which is attributable to the actual activity of the permanent establishment for such sales or business.

(b) In the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. Profits derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State.

(c) Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blue prints related thereto, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 or Article 14 of the Agreement apply. If, however, the granting of information concerning industrial, commercial or scientific experience constitutes by far the principal purpose of a contract and the provision of technical services stipulated in the contract is only of an ancillary and largely unimportant character, the whole amount of the consideration shall be treated under Article 12.

3. With reference to Articles 8, 10 and 25:

It is understood that the provisions of paragraph 2 of Article 8 and paragraph 6 of Article 10 do not contravene the principle of non-discrimination under Article 25.

4. With reference to Articles 10 and 11:

Notwithstanding the provisions of Articles 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting States in which they arise, and according to the law of that State,

(a) if they are derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner (“stiller Gesellschafter’’) from his participation as such, or from a loan with an interest rate linked to borrower’s profit (“partiarisches Darlehen”) or from profit sharing bonds (“Gewinnobligationen’’) within the meaning of the tax law of the Federal Republic of Germany and

(b) under the condition that they are deductible in the determination of profits of the debtor of such income.

5. With reference to paragraph 2 of Article 27:

In the Philippines, the term “oversight of the above” shall pertain only to the Congressional Oversight Committee under Section 290 of the National Internal Revenue Code of 1997.

6. With reference to Article 27

Insofar as personal data are supplied under Article 27, the following additional provisions shall apply:

(a) The receiving agency may use such data in compliance with paragraph 2 of Article 27 only for the purpose stated by the supplying agency and shall be subject to the conditions prescribed by the supplying agency.

(b) Notwithstanding the provisions of paragraph 2 of Article 27, the information may be used for other purposes, if under the law of both States it may be used for these other purposes and the competent authority of the supplying State has agreed to this use. Use for other purposes without the prior approval of the supplying State is permissible only if it is needed to avert in the individual case at hand an imminent threat to a person of loss of life, bodily harm or loss of liberty, or to protect significant assets and there is danger inherent in any delay. In such a case the competent authority of the supplying State must be asked without delay for retroactive authorisation of the change in use. If authorisation is refused, the information may no longer be used for the other purpose; any damage which has been caused by the change in use of the information must be compensated.

(c) The receiving agency shall on request inform the supplying agency on a case-by-case basis about the use of the supplied data and the results achieved thereby.

(d) The supplying agency shall be obliged to exercise vigilance as to the accuracy of the data to be supplied and their forseeable relevance within the meaning of the first sentence of paragraph 1 of Article 27 and the proportionality to the purpose for which they are supplied. Data are forseeably relevant if in the concrete case at hand there is the serious possibility that the other Contracting State has a right to tax and there is nothing to indicate that the data are already known to the competent authority of the other Contracting State or that the competent authority of the other Contracting State would learn of the taxable object without the information. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without delay. That agency shall be obliged to correct or erase such data without delay. If data have been supplied spontaneously, the receiving agency shall check without delay whether the data are

needed for the purpose for which they were supplied; that agency shall immediately erase any data which is not needed.

(e) If the supply of data is effected on request, the receiving agency shall inform the person concerned of the data collection by the supplying agency. The person concerned need not be informed if and as long as on balance it is considered that the public interest in not informing him outweighs his right to be informed.

(f) Upon application, the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. The second sentence of paragraph (e) shall apply accordingly.

(g) The receiving agency shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply under the exchange of data pursuant to this Agreement. In relation to the damaged person, the receiving agency may not plead to its discharge that the damage had been caused by the supplying agency.

(h) Where the domestic law applicable to the supplying agency provides particular deadlines for the deletion of the personal data supplied, that agency shall inform the receiving agency accordingly. In any case, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

(i) The supplying and the receiving agencies shall be obliged to keep official records of the supply and receipt of personal data.

(j) The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.