

**AGREEMENT BETWEEN THE REPUBLIC OF THE PHILIPPINES AND
THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND
ON CAPITAL**

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

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 (Korperschaftsteuer);
 - (iii) the trade tax (Gewerbesteuer), and
 - (iv) the capital tax (Vermogensteuer)
- 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 Philippines or the Federal Republic of Germany 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