

**PROTOCOL TO THE 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 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 (Solidaritatzuschlag) 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 for 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 survey 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.