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Amended tax treaty between PHL, Germany signed

IT has been said double-taxation agreements are meant to promote international trade and investment by ensuring that entities are not subject to the double application of certain types of tax between two states, as this would be detrimental to foreign business activity. The sharing of tax information afforded by a double-taxation agreement enhances the ability of tax administrators to monitor fiscal performance and revenue collections.

In view of these advantages, the prevailing trend among nations is to enter into international and bilateral agreements or treaties. As a member of the international community, every country is obligated to respect the treaties or international agreements entered into with other countries.

The Philippines has never wavered in its pursuit of achieving international comity and cooperation. In the area of tax administration, several tax treaties have been entered into by the Philippine government. One of these is 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 Capital, which was signed on July 22, 1983.

Thirty years later, on September 9, 2013, a renegotiated version of the double-taxation agreement (DTA) between the two countries was signed in Berlin, Germany. The signing of the renegotiated agreement is hailed as a monumental development in the Philippines's efforts to seek international cooperation in tax administration.

In the amended DTA, pertinent changes are in the main, lowering certain preferential rates. Enumerated below are some salient features:

Dividends (Article 10)

Lowered preferential tax rate on dividends to 5 percent, if beneficial owner is a company that owns at least 70 percent of stockholdings of paying company, from the previous 10 percent under the old DTA.

Interest (Article 11)

Lowered tax on interest to rate of 10 percent, unless otherwise exempt, instead of the 15-percent rate in all other cases under the old DTA.

Interest in connection with sale on credit of a commercial or scientific equipment and of an enterprise-to-enterprise sale on credit, if the recipient is also the beneficial owner thereof, is now taxable only in the residence state, and not anymore taxed in the source state at 10 percent.

Royalties (Article 12)

Lowered tax rate of 10 percent, regardless of type. Under the old DTA, it was taxed at either 15 percent or 10 percent, depending on the type of royalty.

Having in mind the rationale that tax conventions are drafted with a view toward the elimination of international juridical double taxation, then the provisions of these tax treaties must be upheld and respected. It must be emphasized that foreign investments will only thrive in a fairly predictable and reasonable international investment climate, and protection against double taxation is crucial in creating such a climate. As such, the introduction of the abovementioned reduced treaty rates in interests, royalties and dividends is a welcome development to both countries, clearly an incentive to cross-border transactions.

In another piece of good news involving the application of the preferential rates under the DTA, the Supreme Court has rendered a very recent decision on case that tackled the availment of tax-treaty benefits. The case of Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue, GR 188550, August 19, 2013, invalidated the requirement of the tax bureau that denies entitlement to the provisions of a tax treaty, unless preceded by an application for tax-treaty relief with the International Tax Affairs Division of the tax bureau.

This decision laid down that, indeed, there is no need to comply with the 15-day period for filing a tax treaty relief application (TTRA) prior to the availment of the tax-treaty provisions. However, nowhere in that decision is it categorically stated that filing a TTRA is no longer necessary. So, in the meantime, as a prudent measure, there is still a need for taxpayers to file a TTRA for purposes of having a confirmatory ruling.

Both the renegotiated version of the DTA between the Philippines and Germany, as well as the leniency in securing and invoking the tax-treaty benefits, testifies to the renewed commitment between nations to promote tax transparency as an international priority.

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