



MERGERS AND ACQUISITIONS

# Philippines

Taxation of Cross-Border  
Mergers and Acquisitions

2010 Edition

TAX

# Philippines

## Introduction

In recent years, corporate acquisitions, business reorganizations, and combinations and mergers have become more common in the Philippines. Corporate acquisitions can be effected through a variety of methods and techniques, and the structure of a deal can have material tax consequences. Although reorganizations are generally taxable transactions, tax-efficient strategies and structures are available to the acquiring entity.

## Recent Developments

Two major tax developments in 2009 that affect mergers and acquisitions (M&A) were the reduction in the corporate income tax rate from 35 percent to 30 percent from 1 January 2009, and confirmation by the Court of Tax Appeals of a Resolution issued by the Supreme Court in 2008, which stated that taxpayers must secure a confirmatory ruling from the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) before availing themselves of preferential tax rates under bilateral tax agreements. It is now mandatory to secure such tax treaty ruling. Without it, no tax treaty benefits will be available and standard provisions and rates under the Philippine National Internal Revenue Code will apply.

## Asset Purchase or Share Purchase

An acquisition in the Philippines may be effected through a purchase of a target's shares, assets, or entire business (assets and liabilities). Share acquisitions have become more common, but acquisitions of assets only still occur. A brief discussion of each acquisition method follows.

### Purchase of Assets

Income from an asset acquisition is taxed in the Philippines, if transfer of title or ownership takes place in the Philippines. This is an important consideration for planning and structuring an asset acquisition. Generally, the value of an asset is its selling price at the time of acquisition. For the purposes of determining gain or loss, the gain shall be the amount realized from the sale over the historical or acquisition cost of the asset, or net book value in the case of depreciable assets.

### *Purchase Price*

To help avoid questions by the tax authorities on the valuation of an asset, the selling price should be at least equivalent to the book value or fair market value (FMV) of the asset, whichever is higher. In a purchase of assets in a business, it is advisable that each asset be allocated a specific purchase price in the purchase agreement, or the tax authorities might arbitrarily make a specific allocation for the purchase price of those assets. In addition, in an acquisition of assets, a sale comes within the purview of the Bulk Sales Law, if it is a sale of all, or substantially all, of the trade or business, or of the fixtures and equipment used in the business. The seller must comply with certain regulatory requirements, otherwise the sale will be considered fraudulent and void.

### *Goodwill*

Goodwill is not subject to depreciation. The tax authorities have consistently held that no amount of goodwill paid may be deducted or amortized for tax purposes, unless the same business or the assets related to the goodwill are sold. Thus, for tax purposes, since goodwill is not deductible or recoverable over time in the form of depreciation or amortization allowances, the taxpayer can only recover goodwill on a disposal of the asset, or a part of it, to which the goodwill attaches. In such a case, the gain or loss will be determined by comparing the sale price with the cost or other basis of the assets, including goodwill.

In the sale of a business or asset, payment for goodwill is normally included as part of the purchase price without identifying the portion of the purchase price allocated to it. Therefore, goodwill could form part of the purchase price for purposes of determining gain or loss from the subsequent sale of the business or assets, or for depreciation of depreciable assets.

Intangibles, such as patents, copyrights, and franchises used in a trade or business for a limited duration, may be the subject of a depreciation allowance. Intangibles used in a business or trade for an unlimited duration will not be subject to depreciation, but an intangible asset acquired through capital outlay that is known, from experience, to be of value to the business for only a limited period, may be depreciated over that period.

Payment for non-competition in the case of the sale of a business is a capital expenditure and may be amortized over the period mentioned in the agreement if the elimination of competition is for a definite and limited term. If a loss is incurred by virtue of the sale, it may be claimed as a deduction from gross income, except in the case of a capital loss, which can only be used to offset capital gains.

### *Depreciation*

Depreciation allowances for assets used in trade and business are allowed as tax deductions. Any method; that is, straight-line, declining balance, sum-of-the-years' digit, and rate of depreciation, may be adopted as long as it is reasonable and has due regard to the operating conditions under which it was chosen.

An asset purchase does not generally affect the depreciation. It is usual, however, for the purchaser to revalue the life of the asset purchased for the purposes of claiming the tax deductible allowance.

### *Tax Attributes*

An acquisition of assets may be structured tax-free (non-recognition of gain or loss) when property is transferred to a corporation in exchange for stock or units of participation, resulting in the transferor, alone or with no more than four others, gaining control (at least 51 percent of voting power) of the corporation. However, if in the exchange, money or other property is received (boot) along with the shares, any gain will be recognized up to the value of the boot and the fair market value of other property, if the transferor does not distribute the boot. Gains should also be recognized if, in the exchange, a party assumes liabilities in excess of the cost of assets transferred. Losses cannot be deducted.

The provisions for tax-free exchanges, however, should merely defer the recognition of gain or loss. In any event, the original or historical cost of the properties or shares in these transfers is used to determine gain or loss in subsequent transfers of these properties. In later transfers, the cost basis of the shares received in a tax-free exchange is the same as the original acquisition cost or adjusted cost basis to the transferor of the property exchanged. Similarly, the cost basis to the transferee of the property exchanged for the shares is the same as it would be in the hands of the transferor.

The formula for determining substituted basis is provided in a recent BIR ruling. Substituted basis is defined as the value of the property in the hands of the transferee after its transfer and the shares received by

the transferor from the transferee. The substituted bases of the shares or property are important in determining the tax base to be used in a tax-free exchange when calculating any gain or loss on later transfers.

### *Value-Added Tax (VAT)*

In asset acquisitions, a 12-percent VAT is imposed on the gross selling price of the assets purchased in the ordinary course of business or of assets originally intended for use in the ordinary course of business. Mergers and tax-free exchanges, on the other hand, are not subject to VAT, except on the exchange of real estate properties (Revenue Regulations 16-2005 implementing RA 9337).

### *Transfer Taxes*

An ordinary taxable acquisition of real property assets is subject to stamp duty. In tax-free exchanges however, no stamp duty is due. In all cases, a transfer of personal property is exempt from stamp duty.

### *Purchase of Shares*

The shares of a target Philippine company may be acquired through a direct purchase. Gains from the sale are considered Philippine-source income, and are thus taxable in the Philippines regardless of the place of sale. Capital gains tax (CGT) is imposed on both domestic and foreign sellers. Net capital gain is the difference between the selling price and the fair market value (book value of shares at the time of sale) of the shares, whichever is higher, less the shares' cost basis, plus selling expenses, if any. Accordingly, for CGT purposes it is advisable that the selling price not be lower than the book value. Capital gain is usually taxed at:

- 5 percent (for amounts up to PHP 100,000) and 10 percent (for amounts in excess of PHP 100,000) for sales of unlisted shares; and
- one-half of 1 percent of the gross selling price or gross value in money for sales of publicly listed/traded shares.

A capital loss from a sale of shares is allowed as a tax deduction only to the extent of the gains from other sales. In other words, capital losses may only be deducted from capital gains.

Most acquisitions are made for a consideration that is readily determined and specified, so for share purchases, it is imperative that shares not be issued for a consideration less than the par or issued price.

Consideration other than cash shall be valued subject to the approval of the SEC.

## *Tax Indemnities and Warranties*

When the transaction is a share acquisition, the purchaser acquires the entire business of the company, including liabilities, existing or contingent. It is best practice to conduct a due diligence review of the target business. The due diligence review report would generally cover:

- any significant undisclosed tax liability of the target that could have a significant impact on the acquiring company's decision;
- the degree of compliance of the target with tax regulations, status of tax filings, and associated payment obligations; and
- the material tax issues arising in the target and the technical correctness of the tax treatment adopted by the target in regard to significant transactions.

Following the results of the due diligence review, the parties execute an agreement containing the indemnities and warranties for the protection of the purchaser. In the alternative, it is possible to spin off the target business into a newly-formed company, thereby limiting the liabilities only to those of the target.

## *Tax Losses*

The change in control or ownership of a corporation following the purchase of its shares has no effect on any net operating loss (NOL) of the company. The net operating loss that was not offset previously as a deduction from gross income of the business or enterprise for any taxable year immediately preceding the taxable year in question, is carried over as a deduction from gross income for the three years immediately following the year of such loss. The NOL is allowed as a deduction from the gross income of the same taxpayer that sustained and accumulated the NOL, regardless of any change in ownership. Thus, a purchase of shares of the target corporation should not prevent the corporation from offsetting its NOL against its income.

## *Crystallization of Tax Charges*

As a share acquisition is a purchase of the entire business, any and all tax charges are assumed by the purchaser. This is one of the areas covered by the indemnities from the seller, for which a hold-harmless agreement is usually drawn up.

## *Pre-Sale Dividend*

While not a common practice, dividends may be issued prior to a share purchase. Dividends are, however, subject to tax, apart from stock dividends received by a Philippine company from another Philippine company.

## *Transfer Taxes*

Transfers of shares of stock, whether taxable or as part of a tax-free exchange, are subject to stamp duty. Only sales of shares listed and traded through the Philippine stock exchange are exempt from stamp duty. Effective 20 March 2009, Republic Act 9648 permanently exempted such sales from stamp duty.

## **Choice of Acquisition Vehicle**

In structuring an acquisition or reorganization an acquiring entity or investor can use one of the entities described later in the chapter. However, since the tax implications for different income streams vary from one acquisition vehicle to another, it is best to examine each option in the context of the circumstances of each transaction.

## ***Local Holding Company***

A Philippine holding company may be used to hold the shares of a local target company directly. The main advantage of this structure is that dividends from the target company to the holding company are exempt from tax. Although distributing the dividends further upstream to the foreign parent company will attract the dividend tax, tax efficiency may still be achieved through the use of jurisdictions where such foreign parent company is located. It is quite common to use a jurisdiction with which the Philippines has an effective tax treaty to optimize tax benefits.

One disadvantage of having a Philippine holding company is that it attracts the imposition of an improperly accumulated earnings tax (IAET). Current laws provide that the fact that a corporation is a mere holding company or investment company shall be prima facie evidence of a purpose to avoid the tax upon its shareholders or members. Thus if the earnings of such holding company are allowed to accumulate beyond the reasonable needs of the business, such Philippine holding company may be subject to the 10-percent IAET.

## ***Foreign Parent Company***

In the event that a foreign company opts to hold Philippine assets or shares directly, it will be taxed as a non-resident foreign corporation. As such, a final withholding tax (WHT) of 15 percent will be imposed on

the cash or property dividends it receives from a Philippine corporation, subject to the condition that the country in which such a non-resident foreign corporation is domiciled shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to 15 percent. The tax rate may likewise be reduced where a tax treaty applies, subject to securing a prior confirmatory ruling from the BIR. The same requirement applies for other types of income covered by tax treaties; that is, the preferential rates or exemption will apply only if a prior ruling is secured.

Philippine corporation law does not permit a foreign company to merge with a Philippine company under Philippine jurisdiction. They may, however, elect to merge abroad.

### **Non-Resident Intermediate Holding Company**

Certain tax treaties provide exemption from capital gains tax (CGT) on the disposal of Philippine shares. Gains from sales of Philippine shares owned by a resident of a treaty country are exempt from CGT, provided the assets of the Philippine company whose shares are being sold do not consist principally (more than 50 percent) of real property interests in the Philippines. This is a potential area for planning and specific treaties should be consulted. Some of the treaties with this exempting provision are the Republic of the Philippines (RP) – U.S. treaty, RP – Singapore treaty, and RP – Japan treaty.

### **Local Branch**

In certain cases, foreign companies may opt to hold Philippine assets or shares through a branch office. As with a domestic corporation, a resident foreign corporation, such as a branch, is taxed at 30 percent of Philippine-source income (from 1 January 2009). Through the attribution principle implemented under Revenue Audit Memorandum Order (RAMO) No. 1-95, a portion of the income derived from Philippine sources by the foreign head office of the branch is attributed to the branch, following the formula in the RAMO. The income is apportioned through the branch or liaison office that was not party to the transaction that generated the income. The branch or liaison office then becomes liable to pay tax on the income so attributed to it. Profit remitted to a foreign head office is subject to a 15-percent WHT, unless reductions of this rate are provided for in an applicable tax treaty.

In establishing a branch office in the Philippines, the Securities and Exchange Commission (SEC) requires that the foreign head office comply with certain financial

ratios (that is, 3:1 debt to equity ratio, 1:1 solvency ratio, and 1:1 currency ratio).

### **Joint Ventures**

Joint ventures may be either incorporated (registered with the Securities and Exchange Commission [SEC] as a corporation) or unincorporated. Both forms are subject to the same tax as ordinary corporations.

Unincorporated joint ventures formed to undertake construction projects, or those engaged in petroleum, coal, geothermal, and other energy operations under a government service contract, are not taxable entities. Profits distributed to the joint venture or consortium members are taxable.

### **Choice of Acquisition Funding**

Corporate acquisitions may be funded through a cash infusion for the equity, a loan, or a combination of the two.

### **Debt**

Companies tend to favor debt over equity as a form of financing mainly because of the tax-favored treatment of interest payments, vis-à-vis dividends (see Deductibility of Interest). The tax advantage of interest payments, in contrast to dividends, is an outright saving of 30 percent in the form of deductible expense against the taxable base. Since interest payments are subject to a 20-percent final tax under the Tax Code, financing through debt still has an advantage over financing with equity equivalent to 15 percent.

At present there are no specific rules for determining what constitutes excessively thin-capitalization, so it is necessary to determine what seems to be a reasonable ratio of debt to equity in the circumstances of each case.

### **Deductibility of Interest**

Under present laws, interest payments incurred in business are deductible against gross income. The allowable deduction for interest expense will be reduced by an amount equal to 33 percent of the interest income of the company, if any, subjected to final tax.

### **Withholding Tax on Debt and Methods to Reduce or Eliminate**

Generally, interest income received by a Philippine corporation from another Philippine corporation is subject to the regular corporate income tax of 30 percent. However, interest income received by a non-resident foreign corporation from the Philippines is subject to a final withholding tax of 20 percent. The rate

of WHT may be reduced or eliminated under a double tax agreement, subject to securing a prior ruling.

### **Checklist for Debt Funding**

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At present there are no specific rules for determining what constitutes excessively thin-capitalization, so it is necessary to determine what seems to be a reasonable ratio of debt to equity in the circumstances of each case.

### **Equity**

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A purchaser may use equity to fund its acquisition, by issuing shares to the seller in satisfaction of the consideration.

A tax-free acquisition of shares can be accomplished through a share-for-share exchange between the acquiring company and the target company, in which one party transfers either its own shares or the shares it owns in a domestic corporation solely in exchange for shares of stock in the other company, resulting in the transferor gaining control of the transferee company. In the same manner, the transferee company becomes the controlling stockholder of the transferor company, since the shares received are the domestic shares of the transferee company.

This is considered a tax-free exchange within the scope of section 40(C)(2) of the Philippine Income Tax Code. No gain or loss is recognized if property (including shares of stocks) is transferred to a corporation by a person in exchange for stock or units of participation in such a corporation, resulting in said person, alone or with no more than four others, gaining control (stock ownership of at least 51 percent of the total voting power) of the corporation.

In a 1994 ruling by the BIR, the tax-free provision of section 40 (C)(2) was extended to exempt transfers of shares held by foreign stockholders in a domestic corporation in exchange for shares of another foreign corporation (BIR Ruling 149-94, 29 September 1994). In a series of rulings (BIR Ruling 385-93, 30 September 1993; BIR Ruling 038-89, 20 March 1989; BIR Ruling 347-87, 5 November 1987), the BIR also exempted the transfer of the shares of a Philippine corporation held by foreign stockholders to another foreign entity, as part of a worldwide reorganization, without using section 40(C)(2).

### **Hybrids**

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The current laws contain no guidelines on whether to classify hybrid financial instruments as equity infusions or debt instruments. The question at issue is whether a

loan is a bona fide loan or a disguised infusion of capital. If it is the latter, there is a risk that the BIR may:

- disallow the interest expense; or
- if the loan is interest free or carries an interest rate that is less than the prevailing market rate, impute interest income to the lender and assess additional income tax on that imputed interest income.

Certain court decisions may provide some guidance on whether a transaction should be considered a bona fide loan or a dividend distribution, but so far, no authoritative or definitive rulings have been issued.

### **Discounted Securities**

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Under Philippine laws, the discount on discounted securities is treated as interest income, rather than a taxable gain. For discounted instruments, a trading gain arises only in cases where the instrument is sold above par.

## **Other Considerations**

### **Concerns of the Seller**

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In an acquisition of assets, a sale comes within the purview of the Bulk Sales Law, if it is a sale of all or substantially all of the trade or business, or of the fixtures and equipment used in the business. The seller must comply with certain regulatory requirements, otherwise the sale will be considered fraudulent and void.

The current position of the BIR is that isolated transactions are not subject to VAT, because these were not done in the ordinary course of trade or business of the company. There may be a shift in BIR policy on the imposition of VAT on isolated transactions such as sales of assets, shares, or the whole business enterprise.

### **Company Law and Accounting**

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The Corporation Code of the Philippines governs the formation, organization, and regulation of private companies, unless such companies are owned or controlled by the government or its agencies. Mergers and other business combinations are also governed by the Corporation Code.

The Corporation Code of the Philippines allows two or more corporations to merge into a single corporation, either one of the constituent corporations, or a new single corporation, the consolidated corporation. Under the Philippine Tax Code, the terms merger and consolidation are understood to mean:

- the ordinary merger or consolidation; or
- the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock, undertaken for a bona fide business purpose and not solely for the purpose of escaping the burden of taxation.

Mergers in the Philippines require a transfer of all the assets and liabilities of the absorbed corporation to the surviving corporation. This step is followed by the dissolution of the absorbed corporation. In return for the transfer of all the assets and liabilities of the absorbed corporation, the surviving entity issues a block of shares equal to the net asset value transferred, these shares are in turn distributed to the stockholders of the absorbed corporation.

A de-facto merger is the acquisition by one corporation of all, or substantially all, the properties of another corporation solely for stock, usually undertaken for a bona fide business purpose and not solely to escape the burden of taxation. For the acquisition to be considered substantial, at least 80 percent of the assets acquired must have an element of permanence; that is, not acquired for immediate disposal. Unlike a statutory merger, where the absorbed corporation is automatically dissolved as a consequence of the merger, in a de-facto merger the corporation the assets of which were acquired survives after the transfer until it is later dissolved by another act. The tax consequences of a de facto merger are generally similar to those of a statutory merger. However, since in a de facto merger the acquisition of assets does not automatically result in the dissolution of the corporation the assets of which are acquired, the NOLCO of the absorbed corporation is not transferred to the acquiring corporation.

A legitimate business purpose for the merger is essential. Without it, the merger could be treated as a mere arrangement to avoid the payment of taxes, and the BIR could disregard the tax-free nature of the transaction. In determining the existence of a bona fide business purpose for the merger, each step of the transaction is usually considered and the entire transaction or series of transactions could be treated as a single unit.

It is recommended that the step transactions test be observed. Under this test, it is advisable to implement each successive step in a merger after the lapse of a certain period of time, say, a year or so. This would prevent an examination by the BIR on whether or not there is a business purpose. However, the acceptable

time-frame for each transaction has yet to be the subject of an inquiry for which the BIR has issued a ruling.

### **Group Relief/Consolidation**

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Group tax relief is not applicable under Philippine law. For tax purposes, each legal entity is registered as a separate taxpayer and subject to separate tax filings and tax consolidations would not be possible.

### **Transfer Pricing**

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The Philippine Tax Code grants the Commissioner of Internal Revenue the power to reallocate income and deductions between and among related entities. However, as of this time, the BIR is still finalizing the transfer pricing regulations. Pending the issuance of the formal transfer pricing regulations, the BIR has issued a Revenue Memorandum Circular stating that as a matter of policy, the BIR subscribes to the Organization for Economic Cooperation and Development (OECD) Transfer Pricing guidelines. This means the BIR has the power to resolve transfer pricing issues in accordance with the guidelines laid down by the OECD.

### **Dual Residency**

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The Philippines follows the incorporation/domestication rule: a corporation is considered a resident of the country where it is incorporated. Certificates of incorporation or registration, or articles of incorporation or association are considered sufficient proof of residency.

### **Foreign Investments of a Local Target Company**

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Philippine domestic corporations are taxed on their worldwide income at the rate of 30 percent, subject to foreign tax credits in compliance with applicable rules.

## **Comparison of Asset and Share Purchases**

### **Advantages of Asset Purchase**

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- There would be no automatic assumption by the transferee corporation of liabilities of the transferor corporation.
- The transferor corporation would not automatically be dissolved and could continue its separate existence.
- The transferor and transferee corporations may select which assets to transfer or purchase.

- The transfer of all, or substantially all, of the assets solely for stock would not be subject to donor's tax and VAT.
- The transfer of all, or substantially all, of the assets solely for stock is not subject to DST unless the assets transferred involve real property.
- No loss or gain will be recognized, provided the conditions imposed by section 40(c)(2) of the Tax Code are satisfied.
- An asset purchase does not normally need SEC approval, unless the assets are payments for subscription to the capital stock, and there is a need to increase the authorized capital stock of the transferee corporation.
- The property purchased by the buyer would be subject to depreciation. The buyer may use a different method and rate of depreciation based on the acquisition cost of the property acquired.

### ***Disadvantages of Asset Purchases***

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- Unless specifically provided for in the agreement, the transferee corporation would not acquire the rights, privileges, and franchises of the transferor corporation.
- The transferee corporation could not claim the NOLCO, if any, of the transferor corporation, since the transferor corporation continues to exist as a legal entity.
- The transferor's unused input VAT could not be absorbed by, or transferred to the transferee corporation.
- A transfer of all or substantially all of the assets would have to comply with the requirements of the Bulk Sales Law.
- There would be a higher purchase price in the event of any additional premium or goodwill imputation.
- Acquisition would be subject to VAT, if the transaction was deemed a sale.
- Any real property purchased would be subject to DST and VAT.

### ***Advantages of Stock Purchase***

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- There may be an automatic transfer of the rights, privileges, and franchises by the transferor corporation to the transferee corporation from which the buyer may benefit.
- The transferee corporation may claim the NOLCO of the transferor corporation, subject to the provisions of the Tax Code and its regulations.
- The transferor's unused input VAT may be absorbed by, or transferred to the transferee corporation.
- A merger may not be subject to donor's tax and VAT, subject to the above discussion. Moreover, no loss or gain will be recognized, provided the conditions imposed by section 40(c)(2) of the Tax Code are satisfied.
- A stock purchase may involve a lower purchase price and lower taxes.

### ***Disadvantages of Stock Purchase***

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- The transferee corporation may be responsible for all the liabilities and obligations of the transferor corporation as if the former had itself incurred them. Any claim, action, or pending proceeding by, or against the transferor corporation may be prosecuted by, or against the transferee corporation.
- It may be necessary to increase the authorized capital stock of the transferee corporation to accommodate the issue of new shares; hence, SEC approval is required.
- The issue of new shares would be subject to DST.
- Regulatory compliance would be required before the shares are registered in the buyer's name.

## Withholding Tax Rate Chart

The rate information and footnotes contained in this table are from the 2009 IBFD/KPMG Global Corporate Tax Handbook.

Country	Dividends		Interest <sup>1</sup> (%)	Royalties (%)
	Individuals, Companies (%)	Qualifying Companies (%)		
Australia	15/25 <sup>2</sup>	15/25 <sup>2</sup>	10/15 <sup>3</sup>	15/25 <sup>4</sup>
Austria	25	10 <sup>5</sup>	10/15 <sup>6</sup>	10/15 <sup>4</sup>
Bahrain	15	10 <sup>7</sup>	10	10/15 <sup>8</sup>
Bangladesh	15	10 <sup>9</sup>	15	15
Belgium	15	10 <sup>7</sup>	10	15
Brazil	15/25 <sup>10</sup>	15/25 <sup>10</sup>	10/15 <sup>3</sup>	15/25 <sup>11</sup>
Canada	25	15 <sup>7</sup>	10/15 <sup>3</sup>	25
China	15	10 <sup>7</sup>	10	10 <sup>12</sup> /15 <sup>8</sup>
Czech Republic	15	10 <sup>7</sup>	10	10/15 <sup>13</sup>
Denmark	15	10 <sup>9</sup>	10	15
Finland	15	15 <sup>7</sup>	10/15 <sup>3</sup>	15/25 <sup>14</sup>
France	15	10 <sup>7</sup>	10/15 <sup>3</sup>	15
Germany	15	10 <sup>9</sup>	10/15 <sup>15</sup>	10 <sup>12</sup> /15 <sup>8</sup>
Hungary	20	15 <sup>9</sup>	15	15
India	20	15 <sup>7</sup>	15/10 <sup>16</sup>	15 <sup>17</sup>
Indonesia	20	15 <sup>9</sup>	10/15 <sup>3</sup>	15/25 <sup>4</sup>
Israel	15	10 <sup>7</sup>	10	15
Italy	15	15	10/15 <sup>3</sup>	15/25 <sup>14</sup>
Japan	15	10 <sup>5</sup>	10	10/15 <sup>19</sup>
Korea	25	10 <sup>18</sup>	10/15 <sup>6</sup>	10/15 <sup>4</sup>
Malaysia	15/25 <sup>10</sup>	15/25 <sup>10</sup>	15	15/25 <sup>20</sup>
Netherlands	15	10/15 <sup>21</sup>	10/15 <sup>15</sup>	10/15 <sup>4</sup>
New Zealand	15/25 <sup>10</sup>	15/25 <sup>10</sup>	10/15 <sup>6</sup>	15
Norway	25	15 <sup>7</sup>	15	7.5/25 <sup>22</sup>
Pakistan	25	15 <sup>23</sup>	10/15 <sup>3</sup>	15/25 <sup>4</sup>
Poland	15	10 <sup>9</sup>	10	15
Romania	15	10 <sup>23</sup>	10/15 <sup>15</sup>	10 <sup>4</sup> /15 <sup>19</sup> /25
Russian Federation	15	15	15	15
Singapore	25	15 <sup>24</sup>	10/15 <sup>3</sup>	15 <sup>19</sup> /25
Spain	15	10 <sup>7</sup>	10/15 <sup>15</sup>	10 <sup>4</sup> /15/20 <sup>19</sup>
Sweden	15	10 <sup>9</sup>	10	15
Switzerland	15	10 <sup>7</sup>	10	15
Thailand	15	15 <sup>25</sup>	10/15 <sup>3</sup>	15 <sup>19</sup> /25
United Arab Emirates	15	10 <sup>7</sup>	10	10
United Kingdom	25	15 <sup>7</sup>	10/15 <sup>3</sup>	15 <sup>19</sup> /25
United States	25	20 <sup>26</sup>	10/15 <sup>27</sup>	15/25 <sup>4</sup>
Vietnam	15	10 <sup>9</sup>	15	15

## Notes

- Many of the treaties provide for an exemption for certain types of interest, such as interest paid to public bodies and institutions or in relation to sales on credit. Such exemptions are not considered in this column.
- The lower rate applies if a rebate or credit for double taxation relief is granted to the Australian company in accordance with Art. 24 of the treaty. However, if the rebate in relation to the dividends ceases to be allowable under Australian law, a credit for the underlying tax on the profits out of which the dividends are paid will be allowed, but only if the Australian company beneficially owns at least 10 percent of the paid-up share capital of the Philippine company.
- The lower rate applies to interest paid in respect of public issues of bonds, debentures, or similar obligations.
- The lower (or lowest) rate applies to royalties paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities under the Philippine investment incentives laws.
- The rate applies if the beneficial owner is a company that holds directly at least 10 percent either of the voting shares of the Philippine company or of the total shares issued by that company during the period of six months immediately preceding the date of dividend payment. In the case of the treaty with Japan, the rate also applies if the dividends are paid by a company registered with the Philippine Board of Investments and engaged in preferred pioneer areas of investment under the Philippine investment laws.
- The lower rate applies to interest paid on public issues of bonds, debentures or similar obligations; and to interest paid by a company registered with the Philippine Board of Investments and engaged in preferred pioneer areas of investment under the Philippine investment incentives laws.
- The rate generally applies with respect to participations of at least 10 percent of capital or voting power, as the case may be.
- The 15-percent rate applies to royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematographic films or tapes for television or broadcasting.
- The rate generally applies with respect to participations of at least 25 percent of the capital.
- The lower rate applies if the recipient is a company, including a partnership in the case of the treaty with Brazil.
- Twenty-five percent applies to royalties arising from the use of or the right to use trademarks and cinematographic films, films or tapes for television or radio broadcasting; 15 percent for other royalties.
- Ten percent applies to royalties arising from the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience, provided that the contract giving rise to the royalties has been approved by the competent Philippine authorities.
- Ten percent applies to royalties arising from the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience; 15 percent applies to royalties arising from the use of, or the right to use, any copyright of cinematographic films, and films or tapes for television or radio broadcasting.
- The lower rate applies to royalties paid by an enterprise registered with and engaged in preferred areas of activities and also to royalties in respect of cinematographic films or tapes for television or broadcasting, and royalties for the use of, or the right to use any copyright of literary, artistic, or scientific work.
- The lower rate applies to interest paid on the sale on credit of any industrial, commercial or scientific equipment, or to public issues of bonds, debentures, or similar obligations. In the case of the treaty with Germany, the rate also applies to interest paid on any loan of whatever kind granted by a bank.
- The lower rate applies if the interest is received by a financial institution (including an insurance company) or in respect of public issues of bonds, debentures, or similar obligations.

17. Fifteen percent applies if the royalties are paid by an enterprise registered with the Philippine Board of Investment; otherwise the domestic rate applies.
18. The rate generally applies with respect to participations of at least 25 percent of capital or voting power, as the case may be. The rate also applies if the dividends are paid by a company registered with the Philippine Board of Investments and engaged in preferred pioneer areas of investment under the Philippine investment laws.
19. The rate applies to royalties paid on cinematographic films and tapes for television or broadcasting. In the case of the treaties with Singapore, Thailand and the United Kingdom, the royalties must be paid by an enterprise registered with the Philippine Board of Investments and engaged in preferred pioneer areas of activities.
20. The lower rate applies to royalties paid by a registered enterprise and to royalties paid for the use of, or the right to use, cinematographic films, or tapes for radio or television broadcasting.
21. The lower rate applies if the recipient is a company the capital of which is wholly or partly divided into shares and that holds directly at least 10 percent of the capital of the Philippine company. However, if the Netherlands company suffers Netherlands company tax on the dividends it receives, 15 percent will apply.
22. The lower rate applies to gross rentals or amounts paid for the use of or the right to use containers.
23. The rate applies if the recipient is a company (excluding a partnership) that holds 25 percent of the capital of the Philippine company during the taxable year preceding the date of dividend payment and during the whole of its prior taxable year.
24. The rate applies if the recipient is a company (including a partnership) that holds at least 15 percent of the outstanding shares of the voting stock of the Philippine company during the taxable year preceding the date of dividend payment and during the whole of its prior taxable year.
25. The rate applies if the recipient of the dividends is a company that holds directly at least 15 percent of the voting shares of the Philippine company.
26. The rate applies if the recipient is a corporation that holds at least 10 percent of the outstanding shares of the voting stock of the paying corporation during the part of the paying corporation's taxable year preceding the date of payment of the dividend and during the whole of its prior taxable year.
27. The lower rate applies to interest with respect to public issues of bonded indebtedness.

### **KPMG in Philippines**

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