

REVISED PROCEDURES FOR TAX TREATY RELIEF APPLICATIONS AND PROCESSING THEREOF

BIR REVENUE MEMORANDUM ORDER NO. 10-92, February 01, 1992

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SECTION 1. Rationale- Pursuant to RMO 2-86, the International Tax Affairs Division (ITAD which assumed the functions of the defunct International Taxation Division) is mandated the task of processing and verification of all applications for tax treaty relief in order to achieve efficiency and uniformity.

Furthermore, it is to the best interest of both the taxpayer of the BIR that any availment by the taxpayer of the tax treaty provisions be preceded by an application for tax treaty relief with the ITAD. In this way, the consequences of any erroneous interpretation and/or application of the treaty provisions (i.e. claim for tax refund/ credit for overpayment of taxes, or deficiency tax liabilities for underpayment) can be averted once taxpayers apply with and are informed by the BIR of the proper tax treaty treatment before proceeding with the transaction and/or paying the tax liability covered by the tax treaty.

SECTION 2. Coverage - This order cover exclusively applications for tax treaty relief including claims or requests for tax exemption beneficial treaty rate, refund or tax credit of taxes on the following income items under existing tax treaties, to wit:

- a. dividends
- b. interests
- c. royalties
- d. business profits
- e. gains from sale of shares of stocks
- f. salaries, compensation, etc.
- g. income from services (entertainment profession, etc.)
- h. profits from the operation of ships and air crafts.
- i. all other income covered by tax treaties

SECTION 3. Procedures for Applications - Applications for tax treaty relief (BIR Form No TC-001 or TC-002) must be filed with the ITAD not later than fifteen (15) days before this transactions (ie., payment of dividends, royalties etc. to non-residents, etc.) covered by tax treaties are effected. These applications must be accompanied by supporting documents justifying the relief sought by the taxpayer/applicant, as prescribed in ANNEX A. (See below)

For cases of claims for tax refund/credit, the applications/claims must be filed with the ITAD within the two-year period prescribed by Section 230 of the National Internal Revenue Code. These shall also be accompanied by the supporting documents prescribed in ANNEX A.

SECTION 4. Procedures for Processing Applications - The ITAD shall process these applications and determine whether or not the taxpayer/applicant is entitled to the relief requested. There shall be a written approval by the Commissioner/authorized revenue official granting any allowable exemption or beneficial treaty rate. This

approval shall pertain to the, specific transaction being applied and shall be valid for a limited and specified time period, j depending on the circumstances.

For claims of tax refund/credit, the ITAD shall prepare a written memorandum decision for the approval of the Commissioner/authorized revenue official, which correspondingly shall be the basis for the processing of such refund/ credit pursuant to existing rules and procedures, including, but not limited to, the verification of the Revenue Accounting Division of the remittance of applicable taxes, the verification of the Accounts Receivable and Billing Division of any outstanding tax liabilities of the concerned taxpayer, etc. Any tax credit certificate processed shall be prepared for the account of "non-resident taxpayer/recipient of the income", which shall be applied against any final withholding taxes that have to be paid on future income payments to such taxpayer.

SECTION 5. Requirements and Responsibilities - The taxpayer shall always attach the proof of application/approval in availing the tax treaty provisions. This can either be the duly accomplished BIR Form TC-001 or TC-002 (as duly received by ITAD) or, when available, the written approval of the Commissioner/ authorized revenue official. When applicable, this shall be attached to the withholding tax return covering the final withholding taxes based on the preferential treaty rate for the income payments to non-residents.

Pursuant to Section 29 of Central Bank Circular No. 1318 which provides that banks shall first "ensure that taxes, when required, have been paid and the remittance is net of such taxes," the accredited collection bank processing the outward remittance of income payments to non-residents shall require the presentation of the proof of application/approval mentioned in the previous paragraph.

All audit offices and units in the National office (including the Withholding Tax Division), Regional Offices and the District Offices which come across cases of tax treaty availment of taxpayers not covered by any application/ approval shall notify the ITAD of this matter by forwarding to ITAD a report of tax treaty availment ANNEX B)* and pertinent documents not later than fifteen (15) days from discovery.

The ITAD shall notify the competent authorities of the countries of residence of taxpayers availing of the tax treaty provisions, if circumstances warrant.

SECTION 6. Repealing Clause - Provisions of all previous revenue issuances, including RMO 2-86, inconsistent herewith are hereby revoked or modified accordingly.

SECTION 7. Effectivity - This order takes effect immediately.

Adopted: 1 Feb. 1992

(SGD.) JOSE U. ONG

Commissioner

Annex 'A'

Documents To Be Submitted In Connection

With the Tax Treaty Relief

Applications Involving The Availment

Of Tax Treaty Rate/ Exemption/or

Claims For Tax Refund/Tax Credit

(NOTE: The documents that will be required for presentation may vary depending on the circumstances governing the relief application)

A

Dividends

1. Letter providing information on transactions covered by treaty provisions and requested tax treaty treatment for such transactions and legal justification.
2. BIR application form TC-001 in triplicate.
3. Proof of residence of income recipient such as a certification by the tax authority of its country or a certified copy of the articles of incorporation.
4. Certification from Phil. Securities Exchange Commission that income recipient is/is not registered to engage in business in the Philippines.
5. Central Bank Approval of Inward Remittance of Foreign Investments in Shares of Stocks.
6. Central Bank approval of outward remittance of dividends.
7. Bank Drafts evidencing actual remittance of dividends.
8. Copies of Payment Orders, Confirmation Receipts and/or any other proof of payment of final withholding tax on dividends.
9. Photocopies of Withholding Tax Returns where erroneous payments are reflected.
10. Certificate of the Secretary of Philippine corporation showing the number and value of the share of applicant and percentage of latter's ownership in the Philippine corporation as of_____.
11. Certified copy of Board resolution approving declaration of dividends.
12. Certified copy of BOI registration.
13. Original copy of special power of attorney authorizing representative or withholding agent in the Philippines to file claim for tax refund/ credit or relief application.
14. Others _____

B

Interest

1. Letter providing information on transactions covered by treaty provisions and requested tax treaty treatment for such transactions and legal justifications.
2. BIR Application Form TC-001 in triplicate.
3. Proof of residence of income recipient such as a certification by the tax authority of its country or a certified copy of the articles of incorporation.
4. Certification from the Phil. Securities Exchange Commission that income recipient is not registered to engage in business in the Philippines.
5. Central Bank approval of Inward Remittance of Foreign Loan.
6. Central Bank approval of Outward Remittance of Interests.
7. Bank Drafts evidencing actual remittance of interests.
8. Copies of Payment Orders, Confirmation Receipts and/or any other proof of payment of final withholding tax

on interest.

9. Photocopies of Withholding Tax returns where erroneous payments are reflected.
10. Certified copy of BOI registration.
11. Certified copy of Contract of Loan or Loan Agreement.
12. Proof of Loan guarantee or insurance or a Certification of financing (direct or indirect) by the foreign government or any financial institution wholly owned by the foreign government or any financial institution designated in the treaty _____.
13. Original copy of special power of attorney authorizing representative or withholding agent in the Philippines to file claim for tax refund/ credit or relief application.
14. Others _____

C

Royalties

1. Letter providing information on transaction covered by treaty provisions and requested tax treaty treatment for such transactions and legal justifications.
2. BIR application form-TC-001 in triplicate.
3. Proof of residence of income recipient such as a certification by the tax authority of its country or a certified copy of the articles of Incorporation.
4. Certification from Phil. Securities Exchange Commission that income recipient is not registered to engage in business in the Philippines.
5. Central Bank approval of outward remittance of royalties.
6. Bank Drafts evidencing actual remittance of royalties.
7. Copies of Payment Orders, Confirmation Receipts, or other proof of payment of withholding tax on royalties.
8. Photocopies of Withholding Tax Returns where erroneous payments are reflected.
9. Certified copy of BOI registration.
10. Certified copy of BPTTT registration.
11. Certified copy of Royalty Agreement or Technology Transfer Agreement, or Licensing Agreement.
12. Original copy of special power of attorney authorizing withholding agent/representative in the Philippines to file claim for refund/credit or relief application.
13. Others _____

D

Gains from the Sale of Shares of Stock

1. Letter providing information on transactions covered by treaty provisions and requested tax treaty treatment for such transactions and legal justifications.

2. BIR application form TC-001 In triplicate.
3. Proof of residence of income recipient such as a certification by the tax authority of its country or a certified copy of the articles of incorporation.
4. Certification from Phil. Securities Exchange Commission that income recipient is not registered to engage in business in the Philippines.
5. Documents pertaining to the acquisition by the applicant of the shares of stocks.
6. Latest Tax Declarations of real properties and/or real property interests of the Philippine corporation which shares of stocks are sold.
7. Deed of Sale of shares of stocks.
8. Certificate of Secretary of Philippine corporation which shares of stocks are sold showing the number and value of the shares of seller and percentage of letter's ownership in the corporation as of _____
9. Detailed schedule of Fixed Assets of Philippine corporation.
10. Audited Financial Statement as of _____ of the Philippine corporation.
11. Others _____

E

Profits from Shipping and Aircraft

1. Letter providing information on transactions covered by treaty provisions and requested tax treaty treatment for such transactions and legal justifications.
2. BIR application form TC-002 in triplicate.
3. Proof of residence of income recipient such as a certification by the tax authority of its country or a certified copy of the articles of incorporation.
4. Proof of registry of vessel.
5. Charter contract.
6. Photocopies of income tax returns where erroneous payments are reflected and evidence of payments of taxes.
7. Others _____

F

Income from Services

1. Letter providing information on transactions covered by treaty provisions and requested tax treaty treatment for such transactions and legal Justifications.
2. BIR application form TC-001 in triplicate.
3. Proof of residence of income recipient such as a certification by the tax authority of its country.
4. Photocopies of passport of applicant showing pages of dates of arrival and departure.
5. Service Contract.
6. Certification by the Philippine contractor/ employer of the duration of service performed by the applicant.

7. Copies of Payment Orders and Confirmation Receipts and/or any other proof of payment of withholding tax on income from services.
8. Photocopies of Withholding Tax Returns f where erroneous payments are reflected.
9. Others _____

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