REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

March 31, 2021

REVENUE MEMORANDUM ORDER NO. 14-2021

SUBJECT : **Streamlining the Procedures and Documents for the Availment of Treaty Benefits**

TO : **All Internal Revenue Officers and Others Concerned**

SECTION 1. Background

In the relevant commentary on Article 1 of the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention, the OECD made mention that a state can automatically limit the tax that it levies in accordance with the relevant provisions of the double taxation convention *(hereinafter referred to as tax treaty)*, subject to possible prior verification of treaty entitlement, or it can impose the tax provided for under its domestic law and subsequently refund the part of the tax that exceeds the amount that it can levy under the provisions of the tax treaty. In the Philippines, availment of treaty benefits has always been an issue and has been subjected to varying interpretations after the pronouncement made by the Supreme Court in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*.[1]

The main issue in this case relates to the implementation of Revenue Memorandum Order (RMO) No. 1-2000, which requires that any availment of the tax treaty relief must be preceded by an application with the International Tax Affairs Division (ITAD) at least fifteen (15) days before the transaction. The Court said that outright denial of a tax treaty relief for failure to strictly comply with the prescribed period is not in harmony with the objectives of the contracting state to ensure that the benefits granted under tax treaties are enjoyed by duly entitled persons or corporations. While the Court did not rule on the propriety of filing Tax Treaty Relief Applications ("TTRAs") for the purpose of availing treaty benefits, it, however, held that at most, the TTRA should merely operate to confirm the entitlement of the taxpayer to the relief. In other words, the Bureau may still require the filing of TTRAs to confirm entitlement thereto but in a manner that would not unduly divest the taxpayers from availing the intended treaty benefits; hence, the need for an issuance to update the administrative guidelines for the processing of TTRAs.

Moreover, much as the Bureau would want to process the TTRAs strictly in accordance with the prescribed processing time under the Republic Act No. 11032 or the *Ease of Doing Business and Efficient Government Service Delivery Act of 2018* ("Ease of Doing Business Act") and its implementing rules and regulations so as to give the nonresident aliens not engaged in trade or business (NRANETBs) and nonresident foreign corporations (NRFCs) *(collectively , referred hereto as nonresident income recipients/taxpayers)* certainty in regard to the tax treatment of whatever income they derive

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[1] G.R. No. 188550, August 19, 2013.

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from all sources within the Philippines, and to expedite the disposition of cases which have been pending for quite a long time, however, it is constrained by the following circumstances on the ground: (*i*) volume of backlogs; (*ii*) limited number of personnel who are responsible for evaluating and processing TTRAs; and, (*iii*) the process of confirming treaty benefits *via* the issuance of a BIR Ruling entailing a thorough study and evaluation of the facts involved vis-à-vis the applicable provisions of the tax treaty, National Internal Revenue Code (Tax Code) of 1997, as amended, and existing jurisprudence.

SECTION 2. Objectives

To settle at once all issues related to the availment of treaty benefits and to deliver efficient service to the taxpayers in compliance with the Ease of Doing Business Act, this Order is hereby issued:

1. to update the guidelines and procedures in availing tax treaty relief;
2. to streamline the processing of TTRAs;
3. to reformat the manner of confirming entitlement to treaty benefits;
4. to address pending TTRAs for income earned in prior years and before the effectivity of this Order;
5. to define the respective functions of the concerned offices of the Bureau in regard to the assessment and collection of the withholding tax due on the income payments to nonresident taxpayers as well as refund of withholding taxes paid in excess of the treaty rates; and
6. to prescribe the penalties for the late filing of requests for confirmation and TTRAs.

SECTION 3. Coverage

This Order shall cover all items of income derived by nonresident taxpayers from Philippine sources that are entitled to relief from double taxation under the relevant tax treaty.

SECTION 4. Guidelines and Procedures

1. The withholding agent or income payor may rely on the submitted BIR Form No. 0901 or Application Form for Treaty Purposes *(hereinafter referred to as Application Form)*, Tax Residency Certificate (TRC) duly issued by the foreign tax authority, and the relevant provision of the applicable tax treaty on whether to apply a reduced rate of, or exemption from, withholding at source on the income derived by a nonresident taxpayer from all sources within the Philippines. Therefore, it is imperative for nonresident taxpayers intending to avail of treaty benefits to always submit said documents to each withholding agent or income payor prior to the payment of income for the first time.

   Failure to provide the said documents when requested may lead to withholding using the regular rates prescribed under the Tax Code, as amended, for nonresident foreign corporations or nonresident aliens not engaged in trade or business, as the case may be, and not the treaty rate.

2. When the treaty rates have been applied by the withholding agent on the income earned by the nonresident, the former shall file with ITAD a **request for**

confirmation on the propriety of the withholding tax rates applied on that item of income. On the other hand, if the regular rates have been imposed on the said income, the nonresident shall file a **TTRA** with ITAD. In either case, each request for confirmation and TTRA shall be supported by the documentary requirements set out hereunder.

3. The request for confirmation shall be filed by the withholding agent at any time after the payment of withholding tax but shall in no case be later than the last day of the fourth month following the close of each taxable year.

   The filing of TTRA largely depends upon the nonresident who must invoke and prove his/her/its entitlement to treaty benefit. The nonresident may, at any time after the receipt of income, file a TTRA to prove its entitlement to treaty benefits. Failure to prove the same may result in the confirmation of the tax rate previously applied on the income, and in the eventual denial of the TTRA.

4. If the BIR determines that the withholding tax rate applied is lower than the rate that should have been applied on an item of income pursuant to the treaty, or that the nonresident taxpayer is not entitled to treaty benefits, it will issue a BIR Ruling denying the request for confirmation or TTRA. Consequently, the withholding agent shall pay the deficiency tax plus penalties.

   On the contrary, if the withholding tax rate applied is proper or higher than the rate that should have been applied, the BIR will issue a certificate confirming the nonresident income recipient's entitlement to treaty benefits. In the latter case, the taxpayer may apply for a refund of excess withholding tax.

5. Generally, one TTRA or request for confirmation shall be filed for each transaction except for long-term contracts (e.g. contracts for services or loan agreements, license agreements, etc.) i.e., those which are effective for more than a year, where an annual updating shall be made until the termination of the contract. To ensure that the proper rate is applied until the end of the contract, the nonresident taxpayer shall file an updated Application Form, a new TRC [if the validity period of the previously submitted TRC has already lapsed], and other relevant documents not later than the last day of the fourth month following the close of each taxable year.

   Thus, for instance, if a contract for consultancy services has a term of five (5) years starting from January 1, 2020 until December 31, 2024, five (5) TTRAs shall be filed on or before April 30 of the following year to determine at the earliest possible time whether or not the nonresident taxpayer already has a permanent establishment in the Philippines.

6. New TTRAs shall be processed within four (4) months from the submission of complete documents or as soon as practicable provided that the ITAD has addressed all its backlogs.

SECTION 5. Documentary Requirements

The original or certified true copy of the following documents shall be submitted to ITAD when claiming relief from double taxation:

A. General Requirements

1. Letter-request
2. Application Form duly signed by the nonresident income recipient or its/his/her authorized representative
3. Tax Residency Certificate (TRC) for the relevant period, duly issued by the tax authority of the foreign country in which the income recipient is a resident
4. Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing the payment/remittance of income
5. Withholding tax return with Alphalist of Payees
6. Proof of payment of withholding tax
7. Notarized Special Power of Attorney (SPA) issued by the nonresident taxpayer to his/her authorized representative(s), which shall expressly state the authority to sign the Application Form as well as to file the TTRA or request for confirmation

Additional general requirements for legal persons and arrangements, and individuals

1. Authenticated copy of the nonresident legal person or arrangement's Articles/Memorandum of Incorporation/Association, Trust Agreement, or equivalent document confirming its establishment or incorporation, with an English translation thereof if in foreign language
2. Original copy of the Certificate of Non-Registration of Company or certified true copy of License to Do Business in the Philippines duly issued by the Securities and Exchange Commission (SEC) for legal persons and arrangements, or original copy of the Certificate of Business Registration/Presence duly issued by the Department of Trade and Industry (DTI) for individuals

Additional general requirements for fiscally transparent entities

It must be emphasized that the recipients of income payments made to a foreign fiscally transparent entity are the owners or beneficiaries thereof; therefore, the provision of the tax treaty is applicable only to the portion that is treated as income of members who are residents of the other contracting state where the fiscally transparent entity is a resident. A member who is a resident of a third state may be given treaty benefits pursuant to the treaty between the Philippines and that third state.

For this purpose, the foreign company should attach the following to the Application Form:

1. A copy of the law of the foreign country showing that tax is imposed on the owners or beneficiaries of the foreign fiscally transparent entity;
2. List of owners/beneficiaries of the foreign entity;
3. Proof of ownership of the foreign entity; and

4. TRC duly issued by the concerned foreign tax authority to the owners or beneficiaries of the fiscally transparent entity.

B. Specific Requirements

In addition to the general requirements, the following must be submitted:

Type of Income	**Specific Requirements**	**Prescribed Application Forms**
Business profits of foreign enterprises	1. Contract duly executed by the parties or their authorized representatives 2. Special Power of Attorney authorizing the signatory(ies) to the contract to sign on behalf of the principal(s) 3. Sworn Certification stating the following: i. services provided by the foreign enterprise ii. place of performance of such services iii. individuals who rendered the services on behalf of the foreign enterprise, their positions/designations and professional background iv. duration of stay in the Philippines of said individuals 4. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of the individual(s) mentioned in 3(iii.) or passport booklets of the concerned individual(s) 5. Certificate of Completion of the project duly signed by the income recipient and duly accepted by the domestic income payor 6. Invoice(s) duly issued by the income recipient in accordance with the invoicing requirements of the country of residence	BIR Form No. 0901-P
Profits from the Operation of Ships or Aircraft in International Traffic	1. Proof of registry of the international carrier 2. Authority to Operate/Certificate of Accreditation issued by the concerned Philippine government agency in favor of the international carrier 3. License to Transact Business in the Philippines duly issued by the SEC	BIR Form No. 0901-T

	If tax exemption is invoked on the basis of reciprocity 4. Letter-request, which shall contain a brief overview of its operations and shall state the legal basis of such exemption 5. Competent proof of reciprocity duly issued by the foreign tax authority	
Dividend	1. Board of Directors' resolution approving the issuance of dividends, which shall include the amount of dividends, and dates of declaration, record and payment, among others 2. Certification under oath by the corporate secretary/custodian banks/depository account holders/broker dealers stating in detail the legal and beneficial owners of all issued and outstanding shares as of record date, their corresponding subscriptions, date/s of acquisition, percentage of ownership and the allocation of dividend 3. Certified true copy of Audited financial statements (AFS) as of the last fiscal year stamped "received" by the BIR and SEC 4. General Information Sheet for the year immediately preceding the date of declaration 5. Proof that the shareholding in respect of which the dividends are paid is **not** effectively connected with the permanent establishment of the foreign enterprise in the Philippines	BIR Form No. 0901-D
Branch profit remittance	1. Sworn certification executed by the manager or other authorized representative of the branch office stating the amount earmarked for remittance and the date of remittance 2. Audited Financial Statements of the branch office for the taxable year immediately preceding the year of remittance	BIR Form No. 0901-PR
Interest	1. Duly executed contract 2. Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing the remittance of the loan by the nonresident creditor	BIR Form No. 0901-I

	3. Proof that the debt-claim in respect of which the interest is paid is **not** effectively connected with the permanent establishment of the foreign enterprise in the Philippines 4. Proof that the interest rate is arm's length, if the debtor and creditor are related parties	
Royalties	1. License Agreement duly executed by the parties 2. Proof of ownership or interest over the licensed product, patent, copyright, trademark, tradename, etc. 3. Proof that the right or property in respect of which the royalties are paid is **not** effectively connected with the permanent establishment of the foreign enterprise in the Philippines	BIR Form No. 0901-R
Capital gains	1. Contract duly executed by the parties 2. Special Power of Attorney authorizing the signatory(ies) to the contract to sign on behalf of the principal(s) 3. Notarized Corporate Secretary's Certificate stating the nonresident taxpayer's percentage of shareholding prior to the transfer or alienation of shares, date and mode of acquisition (e.g. original subscription, subsequent transfer or by way of stock or property dividends), or any equivalent document executed by the authorized representative of a partnership/trust stating the interest to be alienated 4. Stock certificates 5. Deed of Trust/Nominee Agreement executed between the nominee shareholder and the beneficial owner of shares 6. General Information Sheet of the issuing corporation for the year immediately preceding the date of transaction 7. Audited Financial Statements (AFS) of the issuing corporation, partnership or trust for the taxable year immediately preceding the year of transfer stamped received by the BIR and SEC 8. Interim AFS as of the date of transfer 9. BIR Form No. 1707 or the *Capital*	BIR Form No. 0901-C

	Gains Tax Return for Onerous Transfer of Shares of Stocks Not Traded Through the Local Stock Exchange) and proof of payment, if applicable 10. BIR Form No. 2000-OT or the *Documentary Stamp Tax Declaration/Return (One-Time Transactions)* and proof of payment 11. BIR Form No. 0605 (Payment Form) and proof of payment of the processing and certification fee of ₱5,000.00[2] **Additional requirements:** **In case of redemption of preferred shares** 1. Notarized Board of Directors' resolution authorizing the redemption or buy-back of shares 2. Articles of Incorporation and By-Laws of the issuing corporation **In case of exchange** 1. AFS of the transferor as of the end of the immediately preceding year, and as of the date of exchange 2. AFS of the transferee as of the end of the immediately preceding year, and as of the date of exchange **In case of merger or other types of business restructuring** 1. Restructuring documents (e.g. Approved Plan and/or Articles of Merger/Consolidation/Corporate Reorganization) duly executed by the parties 2. Certificate or any document duly issued by the company register or any relevant government agency approving or consenting to the corporate restructuring **In case of dissolution and liquidation:** 1. Notarized Board of Directors' resolution authorizing the dissolution	

[2] Revenue Memorandum Order No. 30-2002.

	and liquidation of the company 2. Certificate of Dissolution duly issued by the SEC in case of voluntary dissolution **When shares are issued by the transferor as property dividends** 1. Board of Directors' resolution approving the issuance of property dividends 2. Authenticated copy of transferor's AFS as of the end of the immediately preceding year, and as of the date of transfer 3. Authenticated copy of the transferee's AFS as of or after the date of transfer	
Remuneration Derived from the Provision of Professional Services or Other Activities of an Independent Character	1. Contract duly executed by the parties or their authorized representatives 2. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of professional or independent contractor, or his(her) passport booklet 3. Certificate of Completion of the project duly signed by the professional or independent contractor and duly accepted by the domestic income payor 4. Invoice(s) duly issued by the income recipient in accordance with the invoicing requirements of the country of residence	BIR Form No. 0901-S1
Remuneration Derived from the Provision of Dependent Personal Services	1. Employment Contract duly executed by the foreign employer and the foreign employee 2. Contract between the foreign employer and the domestic taxpayer allowing the temporary assignment of the foreign employee in the Philippines 3. Secondment Agreement duly executed by the foreign employer and the foreign employee-secondee 4. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of the foreign employee, or his(her) passport booklet	BIR Form No. 0901-S2

Remunerations, grants, allowances, etc. received by professors, teachers, student, business apprentice or trainees	1. Employment contract between the professor/teacher/researcher and the domestic income payor 2. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of the professor, teacher and researcher, or his(her) passport booklet	BIR Form No. 0901-S3
Income earned by entertainers/artists, sportspersons or other temporary visitors	1. Contract duly executed by the parties 2. Permit or license issued by the concerned Philippine government agency, if applicable 3. Proof of exemption from tax (e.g. proof that the visit to the Philippines is wholly or substantially supported, sponsored, or officially recognized and endorsed by the country of residence, political subdivisions, local authority or statutory body thereof)	BIR Form No. 0901-S4
Other income not expressly mentioned in the tax treaty	1. Contract duly executed by the parties 2. Special Power of Attorney authorizing the signatory(ies) to the contract to sign on behalf of the principal(s)	BIR Form No. 0901-O

The Bureau reserves the right to request additional documents which are deemed necessary for the proper disposition of the case, as well as the right to require the presentation of the original copy of the documents to verify the authenticity of the submitted copies thereof.

SECTION 6. Requirement of Authentication

All documents executed in a foreign country must either be authenticated by the Philippine Embassy stationed therein or apostilled if the said foreign country is a signatory to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (HCCH 1961 Apostille Convention) in order to be acceptable in the Philippines.

SECTION 7. Manner of Granting and Denying Treaty Benefits

To streamline the process of confirming entitlement to treaty benefit or confirming the correctness of the withholding tax rates applied on a particular item of income, the BIR shall issue a certification duly signed by the Assistant Commissioner for Legal Service in lieu of the usual BIR Ruling and Compliance Check Report. The ITAD shall always ensure that a loose documentary stamp provided by the applicant is affixed on the Certificate before releasing it.

In cases of denial or a ruling of first impression, a BIR Ruling signed by the Commissioner or his/her authorized representative, which shall contain the factual and legal bases that led to the conclusion, shall instead be issued.

ITAD shall only issue the certification or BIR Ruling to the filer (nonresident income recipient or withholding agent) or his/her/its authorized representative(s) as mentioned in the Application Form. Any representative not mentioned in the said form shall be allowed to receive the certification or ruling provided he/she is equipped with a notarized Special Power of Attorney.

SECTION 8. Appeals

All adverse rulings are appealable to the Department of Finance (DOF) within thirty (30) days from receipt thereof pursuant to existing rules and regulations.

Any request for certified true copy of the complete case docket in support of such appeal shall only be processed upon presentation of proof of payment of certification fee of ₱10.00 per page. Within five (5) days from the date of payment of the certification fee, the complete case docket, i.e., each and every page of the records of the case including a copy of the subject BIR Ruling, shall be sequentially numbered, photocopied, stamped and signed by the Division Chief of the ITAD as an attestation that the said copies are authentic and true copy of the original and complete records on file.

SECTION 9. Evaluation of Pending TTRAs for Income Earned in Prior Years

While the Court held in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* that the TTRA should merely operate to confirm the entitlement of the taxpayer to the relief, it did not give a blanket authority upon the taxpayer to request for such confirmation whenever it/he/she deems appropriate.

Therefore, by virtue of this Order, taxpayers with pending TTRAs for income earned in 2020 and prior years, including those with Notice of Archiving, are given three (3) months from the receipt of a Final Notice to Submit Additional Documents (Final Notice), or from the effectivity of this Order, whichever is later, to submit the lacking documents. Taxpayers who were issued a Notice of Archiving will no longer receive a Final Notice.

Failure to submit the requested documents would result in the automatic denial of the TTRA for failure of the nonresident income recipient to substantiate or prove his/her/its entitlement to treaty benefits.

SECTION 10. Filing a Claim for Refund

If the income of the nonresident taxpayer has been subjected to regular rates, he/she/it may subsequently file a claim for refund of the difference between the amount of withholding tax actually paid in the Philippines and the amount of tax that should have been paid under the treaty after obtaining a certificate confirming his/her/its entitlement to treaty benefits. For this purpose, a duly accomplished BIR Form No. 1913 shall be filed together with the letter-request.

The claim for refund may be filed independently of, or simultaneously with, the TTRA. If the claim was not filed simultaneously with the TTRA, the office where it was filed shall coordinate with, and defer to, ITAD the resolution of the nonresident's entitlement to treaty benefit. If, on the other hand, the claim was filed simultaneously with the TTRA, it shall be the responsibility of the ITAD to endorse the claim for refund to the proper office

that handles the processing of tax refunds after the resolution of the TTRA. At any rate, all issues relating to the application and implementation of treaty provisions shall fall within the exclusive jurisdiction of the ITAD.

All claims for refund shall be filed within the two-year prescriptive period provided under Section 229 of the Tax Code, as amended.

SECTION 11. Responsibilities of the Assessment Arms of the Bureau. —

The ITAD evaluates all requests for confirmation and TTRAs based on the documents submitted by withholding agent or nonresident taxpayer. If, in the course of audit, the tax auditor finds any inconsistencies in the facts and the representations made as bases of the previously issued certificate or ruling, it shall be the responsibility of the tax auditor to inform the ITAD of such findings. In turn, the ITAD shall re-evaluate the case and accordingly issue an amendatory certificate or ruling, whichever is applicable.

SECTION 12. Other Applicable Taxes —

In processing requests for confirmation and TTRA, the BIR may likewise determine whether the subject transaction is subject to other internal revenue taxes under the Tax Code, including, but not limited to, the following:

1. Value-added tax (VAT);
2. Other percentage taxes;
3. Documentary stamp tax (DST); and
4. Donor's tax.

SECTION 13. Penalties for Late Filing of Requests for Confirmation

Any violation of the provisions of this Order, including the failure to file a request for confirmation within the period herein prescribed shall be subject to penalties provided in Sections 250 and 255, and other pertinent provisions, of the Tax Code.

The taxpayer may likewise be charged with the crime of perjury under Article 183 of the Revised Penal Code and with other appropriate crimes or offenses as may be warranted under existing laws, in addition to the payment of deficiency taxes for failure to supply correct and accurate information in the Application Form and other documents submitted in support of such application.

SECTION 14. Transitory Provision –

Upon the effectivity of this Order, all pending TTRAs shall be processed following the manner laid down in Section 7 of this Order.

For dividends, interest and royalties, the submission of Certificate of Residence for Treaty Relief (CORTT) Form shall henceforth be discontinued. Nevertheless, previously submitted CORTT Forms shall still be forwarded to the concerned Revenue District Offices (RDOs) for compliance check.

SECTION 15. Repealing Clause. —

The provisions of RMO Nos. 30-2002, 72-2010 and 8-2017, and other pertinent revenues issuances or portions thereof that are inconsistent herewith are hereby repealed, amended or modified accordingly.

SECTION 16. Effectivity. —

This Order shall take effect immediately.

CAESAR R. DULAY
Commissioner of Internal Revenue
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