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REPUBLIC OF THE PHILIPPINES
DEPARMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

June 23, 2016

REVENUE MEMORANDUM ORDER NO. 27-2016

SUBJECT : Procedure for Claiming Tax Treaty Benefits for Dividend, Interest and Royalty Income of Nonresident Income Earners

TO : All Internal Revenue Officers and Others Concerned

SECTION 1. Background –

The Philippines, a jurisdiction with a total of 40 effective tax treaties, with 2 more treaties waiting to enter into force and 2 pending ratification, qualifies as a jurisdiction with substantial network of tax treaties. To achieve the intent of these treaties of reducing double taxation and preventing fiscal evasion, administrative procedures in applying the provisions of these tax treaties must be duly established and enforced.

The United Nations recognizes that the 'single most important factor bearing on the compliance by nonresidents with domestic tax law is the use of source withholding by the source State.'[1] Moreover, the UN states that the 'use of final withholding taxes to collect tax from nonresidents is widespread and recognized internationally as a mechanism to collect tax.'[2]

Towards this end, Bureau of Internal Revenue (BIR), in its efforts to improve the efficient administration of Philippine tax treaties, adopts the automatic withholding of taxes on income of nonresidents deriving Dividend, Interest and Royalty from sources within the Philippines at applicable tax treaty rates subject to regular audit.

SECTION 2. Objectives –

This Order seeks to provide for the new procedures in claiming preferential tax treaty benefits on dividend, interest and royalty income of nonresidents pursuant to effective tax treaties, thereby amending for this purpose, Revenue Memorandum Order (RMO) No. 72-2010.

The foregoing objectives are achieved through:

a. Full disclosure of withholding tax agents on income derived by nonresidents by filing accurate and timely BIR Forms1601-F and1604-CF;
b. Mandatory audit investigation for final withholding tax payments on income of nonresidents deriving dividends, interest and royalty income in the Philippines; and
c. Enhancing BIR Forms 1601-F and 1604-CF.

[1] 1.3 Connection between tax compliance and source withholding, Chapter IV, United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries.
[2] Ibid.

SECTION 3. Coverage –

This Order covers dividend, interest and royalty income earned by nonresidents, as defined below, from sources within the Philippines.

SECTION 4. Definition –

Nonresidents – are not residents of the Philippines and not citizens thereof.

For purposes of this Order they are classified into:

a. **Nonresident Alien not engaged in trade or business (NANETB)** -The aggregate period of stay in the Philippines does not exceed 180 days during any calendar year.

b. **Nonresident foreign corporations (NRFC)** - are corporations organized under foreign laws and not engaged in trade or business in the Philippines.

Beneficial Owner – refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.[3]

SECTION 5. General Policies

1. In lieu of the mandatory tax treaty relief applications (TTRA), preferential treaty rates for dividends, interests and royalties are granted outright by withholding final taxes at applicable treaty rates as shown in Annex A of this Order.

2. Withholding agents shall file the appropriate BIR Form No. 1601-F and 1604-CF in accordance with existing regulations. Incomplete information provided on the form shall lead to penalties as provided under Section 8 of this Order.

3. Data collected from 1601-F and 1604-CF on the availment of treaty rates and income payment made to nonresidents in general, shall be monitored by the International Tax Affairs Division (ITAD) and Revenue District Office (RDO) No. 9. Such data shall be used for conducting risk analysis, formulating policies, developing the country's treaty negotiating positions and generating management reports.

4. Compliance check on withholding tax obligations and confirmation of appropriateness of availment of treaty benefits shall be part of BIR's regular audit investigations conducted by the RDO where the domestic withholding agent is registered.

5. Applications for ruling under Section 28 B (5) (b) of the National Internal Revenue Code (NIRC) for a preferential rate of 15 percent on intercorporate dividends paid to NRFC shall apply to NRFC which country of residence/domicile:

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[3] Financial Action Task Force (FATF) Guidance on Transparency and Beneficial Ownership

a. Has no effective tax treaty with the Philippines;
b. Has a worldwide system of taxation; and
c. Allows credit against the tax due from the NRFC dividend taxes deemed to have been paid in the Philippines equivalent to fifteen percent (15%).

SECTION 6. Guidelines for the Availment of Preferential Treaty Rates

1. A duly accomplished BIR Form No. 1601-F and 1604-CF 1904-shall be filed before the appropriate RDO where the domestic withholding agents of nonresidents are registered. All particulars in the form must be properly filled up and timely filed in accordance with the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended.

2. Payment of pertinent final taxes due shall be made to Authorized Agent Banks.

3. In the event of audit investigation, withholding agents shall keep the following supporting documents in the records of the office pursuant to Revenue Regulations (RR) No. 5-2014[4] for substantiation of the claim for preferential treaty rates:

    a. Consularized Proof of Residency;

    b. For Dividends –

        1. Certification from Corporate Secretary.
        Original copy of a duly notarized certificate executed by the Corporate Secretary of the domestic corporation showing all the following information:

            i. Details of dividend declaration (with attached related Board Resolution);
            ii. Number, value and type of shares of the nonresident income earner as of the date of record/transaction, and as of the date of payment of the subject dividends;
            iii. Percentage of ownership of the nonresident income earner as of the date of record/transaction, and as of the date of the payment of subject dividends;
            iv. Acquisition date(s) of the subject shares; and
            v. Mode of acquisition of the subject shares.

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        2. Board of Investments (BOI) Registration, if applicable.

        Certified copy of Board of Investments registration of the payor of the dividends, including a Sworn Statement that such registration has not been cancelled at the time of the transaction.

[4] Amending Revenue Regulations No. 17-2013 dealing with the "Preservation of Books of Accounts and Other Accounting Records".

c. For Interest –

1. Original or certified copy of the notarized contract of loan or loan agreement.

2. Board of Investments (BOI) Registration, if applicable
Certified copy of Board of Investments registration of the payor of the interest, including a Sworn Statement that such registration has not been cancelled at the time of the transaction.

d. For Royalties –

1. Original or certified copy of the duly notarized Royalty Agreement, Technology Transfer Agreement, or Licensing Agreement;

2. When applicable,

i. Certified copy of Board of Investments registration of the payor of the royalties, including a Sworn Statement that such registration has not been cancelled at the time of the transaction;
ii. A certified copy of the registration of the payor of the income or withholding agent with the Philippine Economic Zone Authority (PEZA) of the payor of the royalties including a Sworn Statement that such registration has not been cancelled at the time of the transaction.
iii. Certified copy of Intellectual Property Office (IPO) registration.

The BIR reserves the right to request other additional documents in the course of audit.

SECTION 7. Intercorporate Dividends

In availing of the reduced rate of 15 percent on intercorporate dividends received by NRFC under Section 28 (B) (5) (b) of the NIRC, the NRFC shall file a separate application with the ITAD of the BIR with the following supporting documents:

a. Application letter;
b. Authenticated proof of residency;
c. A consularized copy of the law of the country of the NRFC expressly stating that the country in which the NRFC is domiciled allows a credit against the tax due from the NRFC taxes deemed to have been paid in a foreign country (Philippines) equivalent to fifteen percent (15%);

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d. Certification from the Corporate Secretary of the domestic corporation stating the important details of the dividend declaration; and
e. Special Power of Attorney, if applicable.

SECTION 8. Penalties –

Any violation of the provisions of this Order shall be subject to penalties provided in Section 250 and other pertinent provisions of the NIRC, as amended.

Failure to supply accurate and complete information on BIR Forms 1601F and 1604-CF shall be a ground for the denial of availment of preferential treaty rates and the disallowance of the pertinent expense/s of the withholding agent.

SECTION 9. Type of Income Applicable to –

This Revenue Memorandum shall apply only to DIVIDENDS, INTEREST AND ROYALTIES, and not to any other type of income such as but not limited to business profit, income from services, et. al. For income other than dividends, interest and royalties, the provisions contained in and the procedures required in RMO 72-2010 shall continue to apply, and obtaining ruling shall continue to be required.

SECTION 10. Transitory Provision –

All application/s for preferential treaty rates on dividends, interest and royalties already filed before the ITAD prior to the effectivity of this Order shall still be processed and the corresponding ruling shall be issued.

SECTION 11. Repealing Clause – The provisions of RMO 72-2010 and any revenue issuance inconsistent with this Order are deemed revoked, repealed, or modified accordingly.

SECTION 12. Effectivity – This Order takes effect immediately.

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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