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

December 1, 2020

REVENUE MEMORANDUM ORDER NO. 43-2020

SUBJECT: Streamlining the Process of Issuing Tax Residency Certificates (TRCs), Amending for this Purpose Pertinent Provision of Revenue Memorandum Order (RMO) No. 51-2019

TO: All Internal Revenue Officers and Others Concerned

Section 1. Objective

When RMO No. 51-2019 took effect, the Bureau of Internal Revenue (BIR), through the International Tax Affairs Division (ITAD), has started to implement stricter rules on the issuance of TRCs to avoid misuse and abuse thereof as well as the claiming of unintended treaty benefits. Towards this end, the BIR designed and issued its own TRC Form instead of stamping the TRC Forms of its treaty partners to confirm tax residency in the Philippines. The BIR also discontinued the issuance of TRCs to resident aliens and resident foreign corporations since they are not subject to worldwide taxation and are not, therefore, considered residents of the Philippines for treaty purposes.

Notably, the evaluation of TRC applications has been the subject of arguments between the tax authority and taxpayers, especially with regard to the appreciation by the former of the submitted proof of transaction, and time-consuming. Though pressed for time, the ITAD, the sole office in the Bureau that processes TRCs, is still expected to meet the demand for issuance of TRCs in a timely manner considering that the Anti-Red Tape Authority (ARTA) strictly monitors the implementation of the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 ("Ease of Doing Business Act") in government offices.

For the aforestated reasons, there is a need to streamline the process of issuing TRCs.

Section 2. Documentary Requirements

The following documents shall accompany each TRC application:

For individuals

1. Duly accomplished BIR Form No. 0902 [Application Form for Tax Residency Certificate (TRC) for Treaty Purposes];
2. Certified true copy of the following proofs of income:
   i. Contract duly signed by both parties, if available, or any competent proof of transaction;
   ii. BIR-registered invoice/receipt issued by the taxpayer to the income payor and the relevant Authority to Print Receipts and/or Invoices or Permit to Use Computerized Accounting System/Loose-leaf Receipts or Invoices/; and

iii. Proof of remittance if the foreign source income was already received by the domestic taxpayer;

3. Photocopy of the passport booklet or Residency Certificate issued by the Barangay Chairman if the applicant never left the Philippines;
4. Annual Income Tax Return for the immediately preceding year;
5. Notarized Special Power of Attorney (SPA) or authorization letter issued by the applicant to his/her authorized representative(s), which shall expressly state the authority to sign BIR Form No. 0902 as well as to file the TRC application.

For non-individuals

1. Duly accomplished BIR Form No. 0902, which must be signed by the taxpayer or its authorized representative;
2. Proof of establishment in the Philippines (e.g. latest Articles of Incorporation or Partnership);
3. Certified true copy of the following proofs of income:
   i. Contract duly signed by both parties, if available, or any competent proof of transaction;
   ii. BIR-registered invoice/receipt issued by the taxpayer to the income payor and the relevant Authority to Print Receipts and/or Invoices or Permit to Use Computerized Accounting System/Loose-leaf Receipts or Invoices/; and
   iii. Proof of remittance if the foreign source income was already received by the domestic taxpayer;
4. List of partners if the applicant is a general professional partnership (GPP);
5. Annual Income Tax Return for the immediately preceding year;
6. Notarized Special Power of Attorney (SPA) or authorization letter issued by the applicant to its authorized representative(s), which shall expressly state the authority to sign BIR Form No. 0902 as well as to file the TRC application.

Section 3. Revised Guidelines and Procedures

1. Instead of a letter-request, the applicant shall submit, together with the required attachments prescribed in the preceding section, a duly accomplished BIR Form No. 0902, which shall be signed by the taxpayer or his/her/its authorized representative.
2. Upon receipt of the application, the assigned case officer (CO) shall evaluate the completeness of the application and its supporting documents.
3. The CO shall inform the applicant of any deficiency in the accompanying requirements within three (3) working days either via registered mail or electronic mail (e-mail).
4. All TRC applications shall be acted upon within fourteen (14) working days from the submission of complete documentary requirements.
5. The BIR shall continue to issue its own TRC Form, which shall be signed by the Assistant Commissioner for Legal Service only. All TRC applications filed with the Revenue District Offices (RDOs) or Large Taxpayers Divisions (LTDs) shall be immediately indorsed to the ITAD.

Section 4. Processing of Third-Party Information

As the repository of information related to the foreign source income of Philippine taxpayers, the ITAD shall, within a reasonable period of time after the close of each taxable year or whenever necessary, convey the relevant information to the concerned RDO or LTD that has jurisdiction over the applicant, or the National Investigation Division, as the case may be. In turn, the investigating office shall verify whether the foreign source income was declared by the taxpayer for tax purposes and collect deficiency taxes and penalties, if warranted.

The investigating office may likewise request for information from the foreign tax authority, through the Exchange of Information Unit of the ITAD, to further verify the accuracy of the declared income. If, based on the information received and/or other competent proof obtained, the taxpayer made a false declaration under oath, the taxpayer may 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.

To complete the process, the investigating office shall furnish the ITAD the results of its investigation within thirty (30) calendar days from the termination thereof.

Section 5. Treatment of Foreign Tax Credits When the Taxpayer Fails to Secure a TRC

Tax treaties operate to avoid international juridical double taxation in order to encourage foreign investments, among others. International juridical double taxation is defined as the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter and for identical periods. When a State agrees to be bound by the provisions of a treaty, it does so on the understanding that by allocating taxing rights, said State either would lose its right to tax some items of income or may share taxing rights with the other state. In the former, the source state does not tax the income which according to the tax treaty shall only be taxed in the residence state (or vice versa). In the latter case, either of the contracting states may impose tax on an item of income with or without a limit, and the country of residence is obliged to allow as credit the taxes paid in the other state.

It bears stressing, however, that treaty benefits shall only be accorded to residents of either or both states. The grant thereof is not automatic but is subject to presentation of proof of residency or a TRC in a contracting state. Failure to establish the fact of residency in a contracting state might result in the imposition of the regular tax in the state of source, i.e., without the benefit of the treaty.

To avoid being subjected to the regular tax imposed in the source state, Philippine taxpayers deriving income from another contracting state are hereby advised to always secure a TRC and present the same before the foreign tax authority to be entitled to treaty benefits. Those who fail to secure a TRC shall not be allowed to claim foreign tax credits in excess of the appropriate amount of tax that is supposed to be paid in the source state had the income recipient invoked the provision/s of the treaty and proved his/her/its residency in the Philippines. The Philippines should not be made to suffer for the failure of its tax residents to claim treaty benefits.

To achieve this purpose, tax auditors shall always ensure that Philippine taxpayers are only allowed the appropriate amount of tax credit which is equal to the amount of taxes that would be imposed on that item of income pursuant to the treaty.

To illustrate, assume X Corporation to have derived business profits of ₱10,000,000 in Country A, a treaty partner of the Philippines. Under Country A's tax law, business income derived by a nonresident is normally subject to tax at 30% while the tax treaty states that the business profits derived by an enterprise of the Philippines without a permanent establishment in Country A shall only be taxed in the Philippines. If X Corporation invokes the provision of the treaty and proves its residency in the Philippines, Country A would not have the right to tax the said business profits since under the treaty, the prior right to tax belongs to the residence state. As a result, X Corporation must pay a tax equivalent to 30%, the corporate tax rate in the Philippines, or ₱3,000,000 to the Philippine government only and not in Country A.

On the other hand, if X Corporation fails to prove its residency in the Philippines, Country A would impose the regular tax rate of 30% on the said income. In this case, Country A would then be justified in not applying the provisions of the treaty for X Corporation's failure to prove its entitlement thereto. Now, if X Corporation would be allowed to apply as credit against its tax due in the Philippines the taxes paid in the source state, the Philippines, instead of collecting, would be losing ₱3,000,000.

In such case, the tax auditor shall not allow as foreign tax credit the taxes paid in Country A but shall instead advise X Corporation to secure a TRC and file a claim for tax refund in Country A.

Section 6. Amendatory/Repealing Clause

The provisions of RMO No. 51-2019 that are inconsistent herewith are hereby repealed, amended or modified accordingly.

Section 7. Effectivity

This Order shall take effect immediately.

(Original Signed)
CAESAR R. DULAY
Commissioner of Internal Revenue