REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

August 25, 2010

REVENUE MEMORANDUM ORDER NO. 72-2010

SUBJECT : GUIDELINES ON THE PROCESSING OF TAX TREATY RELIEF APPLICATIONS (TTRA) PURSUANT TO EXISTING PHILIPPINE TAX TREATIES

TO : All Revenue Officials and Personnel and Others Concerned

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SECTION 1. ***OBJECTIVE.—*** This Order is issued to streamline the processing of Tax Treaty Relief Applications (TTRA) and to prescribe the documentary requirements for the processing of applications for relief from double taxation pursuant to existing Philippine tax treaties in order to improve efficiency and service to the taxpayers.

SECTION 2. ***TAX TREATY RELIEF APPLICATION.*** **-** In order to achieve the above-mentioned objective, the processing for the application for tax treaty relief is hereby revised and updated. The following Tax Treaty Relief Applications (TTRAs) forms shall henceforth be adopted to implement this RMO:

Form No.	Purpose
BIR Form No. 0901-P	For Business Profits
BIR Form No. 0901-T	For Profits from Shipping and Air Transport
BIR Form No. 0901-D	For Dividend Income
BIR Form No. 0901-I	For Interest Income
BIR Form No. 0901-R	For Royalty Income
BIR Form No. 0901-C	For Capital Gains
BIR Form No. 0901-S	For Income from Services
BIR Form No. 0901-O	For Other Income Earnings

Thus, BIR Form No. 0901 [Application for Relief from Double Taxation] prescribed under RMO 1-2000 and BIR Form No. 1928 [Gains from Sale or Transfer of Shares of Stock in Philippine Corporation] prescribed under RMO 30-2002 are hereby superseded.

SECTION 3. ***GENERAL DOCUMENTARY REQUIREMENTS.*** **—** The following documents are the general documentary requirements which shall be attached to all duly accomplished TTRAs (3 copies) which must be signed by the applicant who may either be the income earner or the duly authorized representative of the income earner, pursuant to existing Philippine tax treaties, *viz*:

1. Proof of Residency.

   Original copy of a consularized certification issued by the tax authority of the country of the income earner to the effect that such income earner is a resident of such country for purposes of the tax treaty being invoked in the tax year concerned.

2. Articles of Incorporation (For income earner other than an individual).

   Photocopy of the Articles of Incorporation (AOI) (or equivalent Fact of Establishment/Creation/Organization) of the income earner with the original copy of a consularized certification from the issuing agency, office or authority that the copy of Articles of Incorporation (AOI) (or equivalent Fact of Establishment/Creation/Organization) is a faithful reproduction or photocopy.

3. Special Power of Attorney.

   a. If applicant/filer is the withholding agent of the income earner or the local representative in the Philippines of the income earner -

      i. Original copy of a consularized Special Power of Attorney (SPA) or a consularized written authorization duly executed by the income earner authorizing its withholding agent or local representative in the Philippines to file tax treaty relief application.

   b. If applicant/filer is the local representative of the withholding agent of the income earner

      i. Original copy of a consularized Special Power of Attorney (SPA) or a consularized written authorization duly executed by the income earner authorizing its withholding agent or local representative in the Philippines to file tax treaty relief application; and

      ii. Original copy of Letter of Authorization from the withholding agent authorizing the local representative to file the tax treaty relief application.

4. Certification of Business Presence in the Philippines.

   a. For Corporation or Partnership

      Original copy of a certification from the Philippine Securities and Exchange Commission that the income earner is or is not registered to engage in business in the Philippines.

   b. For an Individual

      Original copy of a certification from the Department of Trade and Industry that the income earner is or is not registered to engage in business in the Philippines.

5. Certificate of No Pending Case.

Original copy of a sworn statement providing information on whether the issue(s) or transaction involving directly or indirectly the same taxpayer(s) which is/are the subject of the request for ruling is/are under investigation; covered by an on-going audit, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or subject of a judicial appeal. (Annex "A")

SECTION 4. ***BUSINESS PROFITS.*** — The following documents shall be submitted in addition to documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-P when the *"Business Profits"* Article in relation to the *"Permanent Establishment"* Article of the appropriate tax treaty is being invoked, *viz*:

1. Original or certified copy of notarized contract.

2. Certified copy of passport (whole booklet) of the concerned employee(s) of the income earner. If there are more than two employees concerned, the certified copy of their respective passports must be accompanied by a notarized summary of the contents of the passports, specifying the dates of arrival in and departure from the Philippines, whenever applicable.

3. Notarized certification by the Philippine contractor as to the duration of the service to be performed in the Philippines by the concerned employee(s) of the income earner for the entire duration of the subject contract.

SECTION 5. ***SHIPPING.*** — The following documents shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-T when the *"Shipping"* Article, or its equivalent Article, of the appropriate tax treaty is being invoked, *viz*:

1. Certified copy of proof of Registry of Vessel.

2. Certified copy of notarized charter party or engagement contract.

3. Certified copy of the License To Transact Business In The Philippines, as applicable.

SECTION 6. ***AIR TRANSPORT.*** — The following documents shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-T when the *"Air Transport"* Article, or its equivalent Article, of the appropriate tax treaty is being invoked, *viz*:

1. Certified copy of proof of Registry of Airplane.

2. Certified copy of the License to Transact Business in the Philippines, as applicable.

SECTION 7. ***DIVIDEND INCOME.*** — The following documents shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-D when the *"Dividends"* Article of the appropriate tax treaty is being invoked, *viz*:

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:
   a. Details of dividend declaration (with attached related Board Resolution);
   b. 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;
   c. 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;
   d. Acquisition date(s) of the subject shares; and
   e. Mode of acquisition of the subject shares.

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.

SECTION 8. ***INTEREST INCOME.*** — The following documents shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-I when the *"Interest"* Article of the appropriate tax treaty is being invoked, *viz*:

1. If Interest Earnings are from Loans/Borrowings:
   a. Certification from the Corporate Secretary
      Original copy of a duly notarized certificate executed by the Corporate Secretary of the corporate-borrower showing all the following information:
      i. Number, value and type of shares of the nonresident income earner as of the date of record/transaction;
      ii. Percentage of ownership of the nonresident income earner as of the date of record/transaction.

   b. Loan Agreement
      Original or certified copy of the notarized contract of loan or loan agreement. For *Bangko Sentral ng Pilipinas (BSP)*-registered loans, the contract need not be notarized, but a certified copy of the BSP registration must be submitted with the loan document.

   c. Proof of Inward Remittances
      Certified copy of proof inward remittances of the proceeds of the foreign loan.

d. 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.

e. Proof of Loan Guarantee

Certified copy of 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, if applicable.

f. Fact of Establishment (for the guarantor/insurer), if applicable.

Certified copy of documents establishing the foreign government owned financial institution which guaranteed or insured the subject loan on instances when the name of the financial institution is now different (i.e. instances of change in name) from the name indicated in the tax treaty being invoked.

2. If Interest Earnings are from Investments or Deposits:
   a. Original copy of Bank Certification attesting to the nature/type and presence of investments/deposits on said bank including the date the investments/accounts were placed/opened.

SECTION 9. ***ROYALTIES.***— The following documents shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-R when the *"Royalties"* Article of the appropriate tax treaty is being invoked, *viz*:

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

2. When applicable,
   a. 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.
   b. 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.
   c. Certified copy of Intellectual Property Office (IPO) registration.

SECTION 10. ***CAPITAL GAINS.***— Applications for relief from double taxation on gains from sale or transfer or shares of stock in a Philippine Corporation as to the fees, are still covered by Revenue Memorandum Order No. 30-2002 dated November 4, 2002. The following document shall be submitted in addition to the documents required under Section 3 hereof together with

three (3) copies of duly accomplished BIR Form No. 0901-C when the "*Capital Gains*" Article of the appropriate tax treaty is being invoked, *viz*:

a. Contract
Original or certified copy of the notarized Deed of Absolute Sale or notarized Deed or Contract e.g. Deed of Assignment, which actually transfers the ownership of the subject shares of stock.

b. Stock Certificates
Certified copy of the Stock Certificate/s or Subscription Contract covering the subject shares of stock

c. General Information Sheet
Certified copy of the General Information Sheet (GIS) filed with the SEC, showing the name of the subscriber (when shares are not yet fully paid and as a consequence, stock certificates have not been issued).

d. Corporate Secretary Certificate
Original copy of the duly notarized certificate executed by the Corporate Secretary of the Philippine corporation whose shares of stock were sold showing the following information:
    a. number and value of the subject shares of the seller as of the date of sale;
    b. seller's percentage of ownership as of the date of sale;
    c. acquisition date(s) of the subject shares;
    d. mode of acquisition of the subject shares, including dates of previous transfers and parties involved in said transfers; and
    e. buyer's percentage of ownership after the transfer of the subject shares.

e. Comparative Schedule of Comparative Schedule of Property, Plant & Equipment
Original copy of the comparative schedule duly certified by a responsible officer[1] of the Philippine corporation, of the "real property or real property interest/s" of the domestic corporation, reflecting the necessary adjustment for the period from the last audited financial statement to the date of the interim unaudited financial statement submitted under letter (f) of this Section, using the format and observing the guidelines set forth in Part VII of BIR Form No. 0901-C.

f. Financial Statement
    a. Certified copy of the audited financial statements of the Philippine corporation for the year prior to the sale or transfer of the subject shares of stock; and

    b. Original copy of the audited financial statement of the Philippine corporation as of the date of sale. In case the audited financial statement as of the date of the sale is not available, the most recent unaudited or

[1] The Chief Financial Officer, comptroller or any officer in charge of preparing financial statements for the company.

interim financial statement as of the date of sale may be used. Necessary adjustments made to reflect transactions made during the period from the date of such financial statement to the date of the sale must be indicated in a Comparative Schedule of Property, Plant and Equipment.[2]

g. Certified copy of BIR Form No. 0605 and the official receipt reflecting the payment of the processing and certification fee with an authorized agent bank under the jurisdiction of Revenue District Office No. 39.

h. Certified copy of BIR Form No. 2000-OT and the official receipt reflecting the payment of the documentary stamp tax on the subject sale or transfer of the shares of stocks. If the documentary stamp tax shall be borne by the nonresident seller and/or nonresident buyer, the tax shall be paid and the return shall be filed with an authorized agent bank under the jurisdiction of Revenue District Office No. 39. In case the buyer is a resident of the Philippines, the return shall be filed and the tax shall be paid in accordance with Section 200(C) of the National Internal Revenue Code of 1997, as implemented by the prevailing Revenue Regulations.

For all other transactions not considered as a straight sale, as hereunder defined, the applicant income earner, in addition to the abovementioned documents, shall submit the contracts/agreements or any other document evidencing the entire transaction, e.g. transfers of shares of stock. A long form ruling *in lieu* of the certification prescribed under RMO 30-2002 shall be issued for applications involving shares of stock that are not considered as a straight sale.

SECTION 11. ***PERSONAL SERVICES.***— The following documents shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of duly accomplished BIR Form No. 0901-S when the *"Independent Personal Service"* Article or the *"Dependent Personal Service"* Article, as the case may be, or any of their equivalent Article, of the appropriate tax treaty is being invoked, *viz*:

1. Original or certified copy of the notarized service contract.

2. Certified copy of passport (whole booklet) of the concerned employee(s) of the income earner. If there are more than two employees concerned, the certified copy of their respective passports must be accompanied by a notarized summary of the contents of the passports, specifying the dates of arrival in and departure from the Philippines, whenever applicable.

3. Original copy of notarized certification by the Philippine contractor/employer as to the duration of the service performed in the Philippines by the applicant.

SECTION 12. ***OTHER TYPES OF INCOME.*** **—** The following document shall be submitted in addition to the documents required under Section 3 hereof together with three (3) copies of

[2] See Part V of BIR Form No. 1928

duly accomplished BIR Form No. 0901-O when any Article of the appropriate tax treaty, other than those above-mentioned is being invoked, *viz*:

1. A letter request signed by the income earner or the duly authorized representative of the income earner is required providing information on the subject transaction covered by the relevant tax treaty provision(s), the requested tax treaty treatment for such transaction as well as the legal justification for the preferential tax treatment being requested.

2. Original or certified copy of the subject contract, or other document(s) (in its original or certified copies) pertaining to the transaction.

3. Notarized certification by the Philippine contractor as to the duration of the service to be performed in the Philippines by the concerned employee(s) of the income earner for the entire duration of the subject contract.

SECTION 13. ***DEFINITIONS.—***

1. *"Certified copy"* shall mean that the certification must be issued by the proper government agency or the proper custodian of the original document. The certification made by the proper custodian must be accompanied by a notarized certification indicating his/her position or designation in the company where he or she is employed, and the document he or she is certifying.

   If a *certified copy* cannot be obtained, the original copy of the document should be presented to the case officer so that the authenticity and veracity of the information contained therein may be verified, in which case, the said case officer shall certify in the photocopy that he/she had seen and compared the original.

2. *"Consularized"* shall mean that the document should be accompanied by a certificate issued by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the country where such document was executed.

3. *Straight sale* for purposes of applying the "Capital Gains" Article of the appropriate tax treaty, shall mean those transaction that involve simple sale or transfer of shares of stock for consideration and does not include sale or transfer of shares of stock as a result of mergers, consolidations, corporate re-structuring, company spin-off, exercise of right of redemption, buyback of redeemable preferred shares, etc.

4. *First taxable event* for purposes of filing the Tax Treaty Relief Application (TTRA), shall mean the first or the only time when the income payor is required to withhold the income tax thereon or should have withheld taxes thereon had the transaction been subjected to tax; and for 0901-C applications, before the due date of the Documentary Stamp Tax (DST) on the sale of the shares of stock.

SECTION 14. ***WHEN AND WHERE TO FILE THE TTRA.***- All tax treaty relief applications (updated BIR Forms No. 0901-D, 0901-I, 0901-R, 0901-P, 0901-S, 0901-T, 0901-O and 0901-C) relative to the implementation and interpretation of the provisions of Philippine tax treaties shall only be submitted to and received by the International Tax Affairs Division (ITAD). If the forms or any necessary documents are submitted to any other BIR Office, the application shall be considered as improperly filed.

Filing should always be made BEFORE the transaction. *Transaction* for purposes of filing the TTRA shall mean before the occurrence of the first taxable event.

Failure to properly file the TTRA with ITAD within the period prescribed herein shall have the effect of disqualifying the TTRA under this RMO.

SECTION 15. RECEIVING and PROCESSING of TTRA.— All rulings relative to the application, implementation and interpretation of the provisions of Philippine tax treaties shall emanate from ITAD.

ITAD is the sole office charged with the receiving of TTRA, so all filers of TTRA are enjoined to submit their TTRA complete with all the necessary documentary requirements as mentioned in Section 3 and related Section of this RMO to The Chief, International Tax Affairs Division.

Within seven (7) working days from the actual receipt by ITAD of the TTRA, ITAD shall notify the filer of lacking/missing/insufficient documentary requirements with an instruction to submit within fifteen (15) working days from filer's receipt of the Notice of Submission of Documents [format herein attached as Annex "B"] in accordance with this RMO.

If the taxpayer/applicant fails to submit the necessary documents on the designated date mentioned in the Notice of Submission of Documents, the TTRA shall be archived without prejudice to re-filing of TTRA to be reckoned from the date of original TTRA filing covering exactly the same transaction. A Notice of TTRA Archiving [format herein attached as Annex "C"] shall be issued by ITAD to properly notify the taxpayer of such archiving of TTRA. Taxpayers/applicants, re-filing an archived TTRA must submit a copy of the original filing of TTRA together with the complete documentary requirements as earlier required for the continuance of its processing.

Taxpayer/applicant shall not be allowed to withdraw any TTRA/documents already filed with ITAD including those subjected for archiving. In the event that the transaction is discontinued, taxpayer/filer shall file a letter informing such fact to properly close the TTRA but the filer/taxpayer shall not be allowed to withdraw as well, all documents already filed with ITAD, the same shall remain with ITAD for custodianship and safekeeping.

Applications for confirmation of use of preferential tax treaty rates under the treaty, shall be governed by the following rules:

i. *Period Within Which To Issue The Ruling.*— The ruling must be available for release after sixty (60) working days from the date of receipt of the TTRA or from the date the complete documentary requirements are received by ITAD, whichever comes later.

As for matters without issue on income characterization, the ruling must be available for release after thirty (30) working days from the date of receipt of the TTRA or from the date the complete documentary requirements are received by ITAD, whichever comes later.

Of the said periods, the ITAD shall have forty (40) or twenty (20) working days as the case may be to process and evaluate the said application, while the Legal Service/Legal and Inspection Group shall have twenty (20) or ten (10) working days, respectively.

ii. *Signatory Of The Ruling.*— The rulings issued under this Order shall be signed by the Assistant Commissioner for the Legal Service and/or the Deputy Commissioner for Legal and Inspection Group in accordance with existing Revenue Delegation Authority Order (RDAO). However, rulings of first impression or any ruling which will cause the reversal, revocation or modification of any existing ruling shall be signed by the Commissioner of Internal Revenue in accordance with Section 7(B) of the Tax Code as amended.

iii. *Request For Review Of Rulings Adverse To The Taxpayer.*— Any ruling issued which is adverse to the nonresident income earner may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance in accordance with Department Order No. 23-01. No request for reconsideration of the said adverse ruling shall be entertained by this Bureau.

SECTION 16. *"NO-RULING"AREA.*—Requests for rulings not accompanied by complete documents as herein prescribed and those which are based on hypothetical transactions or future transactions are construed and identified as *"No-Ruling Area"*[3]. For this purpose, any request for ruling construed and identified as such shall not be accepted by the ITAD. ITAD shall strictly implement this rule.

SECTION 17. *REQUEST FOR ADDITIONAL DOCUMENTS.*— In the course of review of the tax treaty relief applications, the Bureau thru ITAD reserves the right to request additional documents/revise or update documentary requirements to properly process TTRA's keeping it abreast with changes/modernization of way transactions are done by taxpayers through the issuance of an amendatory RMO to be applied prospectively.

[3] Revenue Bulletin No. 1-2003

SECTION 18. ***CONFIDENTIALITY OF THE DRAFT RULINGS OR RECOMMENDATIONS.*** — The case and reviewing officers shall not disclose to any person, including the tax treaty relief applicant or his/its representatives, the draft BIR Ruling or recommendation for the action taken on the TTRA, unless and until the same has been signed by the proper signatory of this Bureau. *[Section 3(d), Rules IV, Rules Implementing Republic Act No. 6713]*. However, for transparency of information, any applicant/filer can rightfully know the status of his/its TTRA without disclosing the stand of the Bureau (i.e. whether the same will be granted or denied) on the TTRA.

SECTION 19. ***REPORTING.*** - The Chief, ITAD thru the ACIR, Legal Service shall prepare a monthly report of signed and issued rulings, including a list of archived and discontinued taxpayer transactions covered by a TTRA due every 10th day of the following month following the format herein attached as Annex "D".

SECTION 20. ***REPEALING CLAUSE.***— Any revenue issuance which is inconsistent with this Order is deemed revoked, repealed, or modified accordingly.

SECTION 21. ***EFFECTIVITY.*** — This Order shall take effect immediately and shall apply to tax treaty relief applications/requests for ruling filed after the effectivity of this Order.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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