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Prepared by Deloitte Philippines' tax professionals, this newsletter summarizes the latest Philippine tax regulations and other updates.

TAX-2022-005

Clarifications on the revised procedures for treaty relief applications

The Bureau of Internal Revenue (BIR) issued the following clarifications on issues regarding the revised guidelines for availing of treaty benefits.

- 1. On the effect of failure to submit TRC by nonresidents*

Failure to submit the tax residency certificate (TRC) duly issued by the competent authority of the treaty partner will result in the denial of the nonresident's claim. The issue of residency will also not contravene the pronouncement of the Supreme Court (SC) in the case of *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue (G.R. No. 188550, 19 August 2013)* as the case is premised on the nonresident's failure to file

a tax treaty relief application (TTRA) within the 15-day period prescribed under Revenue Memorandum Order (RMO) No. 1-2000.

2. On the application of proper withholding tax rate

If the nonresident submitted to the income payor a TRC and the appropriate BIR Form No. 0901 prior to the payment of income, the income payor may apply the provisions of the applicable treaty provided that all the conditions for the availment thereof, other than residency, have been satisfied. Otherwise, the regular rates imposed under the National Internal Revenue Code of 1997, as amended (Tax Code), should be applied.

3. On the party required to file a request for confirmation (RFC)

When an item of income is subjected to taxation in accordance with the provisions of the relevant tax treaty, the withholding agent is required to file an RFC to ensure that the tax treatment is proper.

If the treaty rate is applied on the nonresident's income, the income payor, domestic or foreign, should file the RFC. The nonresident or any other person may, however, be authorized to file such request, provided a Special Power of Attorney is executed.

4. On the process of and deadline for filing RFC

The RFC with complete documentary requirements shall be filed on or before the dates prescribed below:

| Type of income | Date of filing |
|-----------------------|---|
| Capital gains | At any time after the transaction but shall not be later than the last day of the fourth month following the close of the taxable year when the income is paid or when the transaction is consummated |
| Other types of income | At any time after the close of the taxable year but not later than the last day of the fourth month following the close of such taxable year when the income is paid or becomes payable, or when the expense/asset is accrued or recorded in the books, whichever comes first |

The general requirements shall be submitted only when they are applicable to the case. Thus, if an expense has not yet been paid but has already been accrued in the books of the withholding agent, the proof of remittance is not required to be submitted.

Further, one consolidated RFC per nonresident income recipient, regardless of the number and type of income payments made during the year, shall be filed. The case folder shall, however, be pre-arranged by the filer per type of income following the sequence of documents as stated in the list of requirements.

5. On the resubmission of TRC

One original and authenticated TRC shall be submitted to each income payor per year. Alternatively, a certified true copy of the original may be submitted to other payors of income if the original copy is no longer available, with a notation as to whom the original copy was previously submitted.

The same rule applies to the proof of establishment or incorporation, Certificate of Non-Registration or License to Do Business in the Philippines duly issued by the Securities and Exchange Commission, and Certificate of Business Registration/Presence duly issued by the Department of Trade and Industry.

6. On the submission of TTRA

If the regular withholding tax rate was applied, the nonresident or its authorized representative should file a TTRA with complete documentary requirements and a claim for refund at any time after the payment of the withholding tax.

7. On the annual updating of long-term contracts

The annual updating is not mandatory for long-term contracts involving the payment of interests and royalties and other types of income where the condition for entitlement to treaty benefits is not dependent on time threshold. The BIR will issue a one-time certification that is presumed valid for the duration of the contract as long as there is no relevant and significant change in the facts upon which the ruling was based. It shall be the duty of the withholding agent to ensure that the nonresident continues to be a resident of the same country for the duration of the contract, and for this purpose, it may require the submission of TRC at the beginning of each year.

On the other hand, the annual updating is mandatory for long-term contracts where the existence of a Permanent Establishment (PE) is dependent on time threshold. For contract of services, the Certificate of Entitlement to Treaty Benefit (COE) shall be limited to a particular period of engagement.

8. On proving that an item of income is not connected to the nonresident's PE in the Philippines

The foreign enterprise may submit the audited financial statements (AFS) of the PE to prove that the income is not effectively connected to its PE in the Philippines. A Sworn Certification signed by the principal officer of the PE, which shall contain the material facts that may lead the BIR to believe that the income is not effectively connected with the PE and that the PE is not material to the realization of such income, may be submitted in lieu of the AFS if the latter is not yet available at the time of filing. The International Tax Affairs Division (ITAD) may, however, still require the presentation of the PE's AFS when available.

9. On the proof for arm's length imposition of interest rate on loan/debt-claims

The best proof of arm's length transfer prices for controlled transactions, such as interest rate imposed on loan or debt-claims, is the transfer pricing

documentation (TPD) of the nonresident creditor. If a full TPD is not available, the nonresident may prove, through its Transfer Pricing Policy for Intercompany Loans or any equivalent transfer pricing study, that the interest rate imposed on the loan or debt-claim is arm's length.

10. On the submission of interim FS for capital gains transactions

The BIR prefers the audited interim FS when computing the real property interest of issuing domestic corporation at the time of the transaction. Alternatively, the unaudited interim FS and lapsing schedule as of the date of transfer or alienation of the property may be submitted.

11. On the failure to submit RFC within the deadline

There will be no automatic denial for failure to file RFC within the prescribed period. Denials will be based purely on the merits of the case, but a penalty for late filing shall be imposed.

12. On the extension of period for submitting additional documents

In meritorious cases, the nonresident or withholding agent may be granted an extended period within which to submit the required documents but in no case shall it exceed 30 days.

13. On the issuance of nonresident's entitlement to treaty benefits

If the RFC or TTRA is approved, the BIR will issue a COE instead of the usual BIR Ruling. The COE will still contain the material facts of the case and a ruling confirming the nonresident's entitlement to treaty benefit.

For TTRAs relating to interests, dividends, and royalties, which were filed prior to the effectivity of RMO 8-2017, the BIR may still issue a Compliance Check Report to be consistent with the manner of approving similar applications prior to the effectivity of the new RMO.

14. On the discontinuance of Certificate of Residence for Tax Treaty Relief (CORTT)

If the nonresident has income payments in 2020 and prior years subjected to treaty rates but no TTRA or CORTT was filed thereof, the withholding agent has until the last working day of this year to file an RFC with complete documentary requirements. Failure to file the same within the prescribed deadline would be subject to the provisions of Sections 250 and 255 of the Tax Code. Moreover, a penalty of P1,000 per failure to file a CORTT Form for dividends, interests, and royalties paid after the effectivity of RMO 8-2017 until 31 December 2020 shall be imposed.

Please find attached copy of the RMC No. 77-2021 for your reference and guidance.

Contact us

Should you have any comments or questions arising from this newsletter, please contact either the listed contacts below, or any member of the [Philippines Tax & Legal team](#).

Walter L. Abela Jr.

Tax Partner

+63 2 8581 9034

wabela@deloitte.com

Alvin Noel R. Saldaña

Tax Principal

+63 2 8581 9046

asaldana@deloitte.com

Senen M. Quizon

Tax Principal

+63 2 8857 1569

smquizon@deloitte.com

Elaine E. De Guzman

Tax Partner

+63 2 8581 9048

eedeguzman@deloitte.com



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