

REVENUE MEMORANDUM ORDER NO. 46-2020 issued on December 23, 2020 prescribes the guidelines and procedures for the availment of the reduced rate of **fifteen** (15%) on intercompany dividends paid by a domestic corporation to a non-resident foreign corporation (NRFC) pursuant to Section 28 (B)(5)(b) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The reduced rate of 15% may be applied to the cash and/or property dividends declared by all corporations, irrespective of their Corporate Income Tax regimes (i.e. regular rate of 30% or other rates under the Tax Code, or whether granted an Income Tax Holiday or covered by special tax regimes).

The domestic corporation paying the dividends may remit outright the dividends to the NRFC and apply thereon the reduced rate of 15% without securing first a ruling from the BIR. It must determine, however, whether the existing law of the country of domicile allows the NRFC a "deemed paid" tax credit in an amount equivalent to the 15% waived by the Philippines or exempts from tax the dividends received.

In case the country of domicile of the NRFC is a member of the Apostille Convention, a foreign law can also be established by submitting an apostilled copy thereof in lieu of the required certification and authentication.

Within ninety (90) days from the remittance of the dividends or from the determination by the foreign tax authority of the deemed paid tax credit/non-imposition of tax because of the exemption, whichever is later, the NRFC or its authorized representative shall file with the BIR, through the International Tax Affairs Division (ITAD), a request for confirmation of the applicability of the reduced dividend rate of 15%.

Holders of Philippine Depository Receipts (PDRs) may also be entitled to the reduced rate, subject to fulfilment of the conditions set out in the Order.

To streamline the process of confirming entitlement to the reduced rate, the BIR shall issue a certification duly signed by the Assistant Commissioner for Legal Service in lieu of the usual BIR ruling. The ITAD shall always ensure that a loose documentary stamp provided by the applicant is affixed on the Certificate before releasing it.

In case of denial, a BIR ruling signed by the Commissioner or his authorized representative, which shall contain the factual and legal bases that led to the conclusion, shall be issued. Such denial may result in the imposition of a deficiency assessment for the 15% differential, plus penalties.

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

The NRFC may opt to avail of the reduced dividend rate under the Tax Code, irrespective of whether a double tax convention or tax treaty exists between the Philippines and its country of residence. If the taxpayer is not entitled to the reduced rate under the Tax Code, the treaty rate shall automatically be applied provided that the NRFC is able to prove its entitlement to the benefits provided under the treaty.

The general and special documentary requirements specified in the Order shall accompany the first application for the reduced dividend rate of 15% in a given taxable year. The BIR reserves the right to require the presentation of the original copies of documents, for verification purposes, or to request additional information or any related document which may be deemed necessary in the processing of the application.