

REVENUE MEMORANDUM ORDER NO. 14-2021 issued on March 31, 2021 streamlines the procedures and documents for the availment of treaty benefits.

The Order covers all items of income derived by non-resident taxpayers from Philippine sources that are entitled to relief from double taxation under the relevant tax treaty.

The withholding agent or income payor may rely on the submitted BIR Form No. 0901 (Application Form for Treaty Purposes), Tax Residency Certificate (TRC) duly issued by the foreign tax authority, and the relevant provision of the applicable tax treaty on whether to apply a reduced rate of, or exemption from, withholding at source on the income derived by a non-resident taxpayer from all sources within the Philippines. Therefore, it is imperative for non-resident taxpayers intending to avail of treaty benefits to always submit said documents to each withholding agent or income payor prior to the payment of income for the first time.

Failure to provide the said documents when requested may lead to withholding using the regular rates prescribed under the Tax Code, as amended, for non-resident foreign corporations or non-resident aliens not engaged in trade or business, as the case may be, and not the treaty rate.

When the treaty rates have been applied by the withholding agent on the income earned by the non-resident, the former shall file with International Tax Affairs Division (ITAD) a request for confirmation on the propriety of the Withholding Tax rates applied on that item of income. On the other hand, if the regular rates have been imposed on the said income, the non-resident shall file a Tax Treaty Relief Application (TTRA) with ITAD. In either case, each request for confirmation and TTRA shall be supported by the documentary requirements specified in the Order.

The request for confirmation shall be filed by the withholding agent at any time after the payment of Withholding Tax but shall in no case be later than the last day of the fourth (4th) month following the close of each taxable year.

The filing of TTRA largely depends upon the non-resident who must invoke and prove his/her/its entitlement to treaty benefit. The non-resident may, at any time after the receipt of income, file a TTRA to prove its entitlement to treaty benefits. Failure to prove the same may result in the confirmation of the tax rate previously applied on the income, and in the eventual denial of the TTRA.

If the BIR determines that the Withholding Tax rate applied is lower than the rate that should have been applied on an item of income pursuant to the treaty, or that the non-resident taxpayer is not entitled to treaty benefits, it will issue a BIR Ruling denying the request for confirmation or TTRA. Consequently, the withholding agent shall pay the deficiency tax plus penalties.

On the contrary, if the Withholding Tax rate applied is proper or higher than the rate that should have been applied, the BIR will issue a certificate confirming the non-resident income recipient's entitlement to treaty benefits. In the latter case, the taxpayer may apply for a refund of excess Withholding Tax.

Generally, one TTRA or request for confirmation shall be filed for each transaction except for long-term contracts (e.g. contracts for services or loan agreements, license agreements, etc.) i.e., those which are effective for more than a year, where an annual updating shall be made until the termination of the contract.

To ensure that the proper rate is applied until the end of the contract, the non-resident taxpayer shall file an updated Application Form, a new TRC [if the validity period of the previously submitted TRC has already lapsed], and other relevant documents not later than the last day of the 4th month following the close of each taxable year.

New TTRAs shall be processed within four (4) months from the submission of complete documents or as soon as practicable provided that the ITAD has addressed all its backlogs. The general and specific documentary requirements to be submitted

to ITAD are specified in the Order. The BIR reserves the right to request additional documents which are deemed necessary for the proper disposition of the case, as well as the right to require the presentation of the original copy of the documents to verify the authenticity of the submitted copies thereof.

All documents executed in a foreign country must either be authenticated by the Philippine Embassy stationed therein or apostilled if the said foreign country is a signatory to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents in order to be acceptable in the Philippines.

To streamline the process of confirming entitlement to treaty benefit or confirming the correctness of the Withholding Tax rates applied on a particular item of income, the BIR shall issue a certification duly signed by the Assistant Commissioner for Legal Service in lieu of the usual BIR Ruling and Compliance Check Report. The ITAD shall always ensure that a loose documentary stamp provided by the applicant is affixed on the Certificate before releasing it.

In cases of denial or a ruling of first impression, a BIR Ruling signed by the Commissioner or his/her authorized representative, which shall contain the factual and legal bases that led to the conclusion, shall instead be issued.

ITAD shall only issue the Certification or BIR Ruling to the filer (non-resident income recipient or withholding agent) or his/her/its authorized representative(s) as mentioned in the Application Form. Any representative not mentioned in the said form shall be allowed to receive the Certification or Ruling provided he/she is equipped with a notarized Special Power of Attorney.

All adverse rulings are appealable to the Department of Finance within thirty (30) days from receipt thereof pursuant to existing rules and regulations. Any request for certified true copy of the complete case docket in support of such appeal shall only be processed upon presentation of proof of payment of certification fee of ₱10.00 per page. Within five (5) days from the date of payment of the certification fee, the complete case docket shall be sequentially numbered, photocopied, stamped and signed by the Division Chief of the ITAD as an attestation that the said copies are authentic and true copy of the original and complete records on file.

Taxpayers with pending TTRAs for income earned in 2020 and prior years, including those with Notice of Archiving, are given three (3) months from receipt of a Final Notice to Submit Additional Documents (Final Notice), or from the effectivity of this Order, whichever is later, to submit the lacking documents. Taxpayers who were issued a Notice of Archiving will no longer receive a Final Notice.

Failure to submit the requested documents would result in the automatic denial of the TTRA for failure of the non-resident income recipient to substantiate or prove his/her/its entitlement to treaty benefits.

If the income of the non-resident taxpayer has been subjected to regular rates, he/she/it may subsequently file a claim for refund of the difference between the amount of Withholding Tax actually paid in the Philippines and the amount of tax that should have been paid under the treaty after obtaining a certificate confirming his/her/its entitlement to treaty benefits. For this purpose, a duly accomplished BIR Form No. 1913 shall be filed together with the letter-request.

The claim for refund may be filed independently of, or simultaneously with, the TTRA. If the claim was not filed simultaneously with the TTRA, the office where it was filed shall coordinate with, and defer to, ITAD the resolution of the non-resident's entitlement to treaty benefit. If, on the other hand, the claim was filed simultaneously with the TTRA, it shall be the responsibility of the ITAD to endorse the claim for refund to the proper office that handles the processing of tax refunds after the resolution of the TTRA. At any rate, all issues relating to the application and implementation of treaty provisions shall fall within the exclusive jurisdiction of the ITAD.

All claims for refund shall be filed within the two-year prescriptive period provided under Section 229 of the Tax Code, as amended.

The ITAD evaluates all requests for confirmation and TTRAs based on the documents submitted by withholding agent or non-resident taxpayer. If, in the course of audit, the tax auditor finds any inconsistencies in the facts and the representations made as bases of the previously issued certificate or ruling, it shall be the responsibility of the tax auditor to inform the ITAD of such findings. In turn, the ITAD shall re-evaluate the case and accordingly issue an amendatory certificate or ruling, whichever is applicable.

In processing requests for confirmation and TTRA, the BIR may likewise determine whether the subject transaction is subject to other internal revenue taxes under the Tax Code, including, but not limited to, the following:

- a. Value-Added Tax (VAT);
- b. Other Percentage Taxes;
- c. Documentary Stamp Tax (DST); and
- d. Donor's Tax.

Any violation of the provisions of this Order, including the failure to file a request for confirmation within the period herein prescribed shall be subject to penalties provided in Sections 250 and 255, and other pertinent provisions, of the Tax Code.

The taxpayer may likewise 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 for failure to supply correct and accurate information in the Application Form and other documents submitted in support of such application.

Upon the effectivity of this Order, all pending TTRAs shall be processed following the manner laid down in Section 7 of this Order. For dividends, interest and royalties, the submission of Certificate of Residence for Treaty Relief (CORTT) Form shall henceforth be discontinued. Nevertheless, previously submitted CORTT Forms shall still be forwarded to the concerned Revenue District Offices for compliance check.