REVENUE REGULATIONS NO. 5-2023 issued on May 5, 2023 amends Revenue Regulations No. 5-2021 on the requirements in availing the Income Tax exemption of foreign-sourced dividends received by a Domestic Corporation.

In general, foreign-sourced dividends received by domestic corporations are subject to Income Tax. However, the same shall be exempt if all of the following conditions concur:

a. The dividends actually received or remitted into the Philippines are reinvested in the business operations of the domestic corporation within the next taxable year from the time the foreign-sourced dividends were received or remitted;
b. The dividends received shall be used to find the working capital requirements, capital expenditures, dividend payments, investment in domestic subsidiaries and infrastructure project; and
c. The domestic corporation holds directly at least twenty percent (20%) in value of the outstanding shares of the foreign corporation and has held the shareholdings uninterruptedly for a minimum of two (2) years at the time of the dividends distribution. In case the foreign corporation has been in existence for less than two (2) years at the time of dividends distribution, then the domestic corporation must have continuously held directly at least twenty percent (20%) in value of the foreign corporation's outstanding shares during the entire existence of the corporation.

Absent of any one of the above conditions, the foreign-sourced dividends shall be considered as taxable income of the Domestic Corporation in the year of actual receipt or remittance, subject to surcharge, interest, and penalties, as applicable.

For this purpose, in order to avail of the income tax exemption, the Domestic Corporation shall:

a. attach a "Sworn Statement", following the template provided in these Regulations (Annex A), to the Annual Income Tax Return (AITR) pertaining to the taxable year in which the foreign-sourced dividends were received; and
b. attach to the AITR pertaining to the year immediately following the year of receipt of the foreign-sourced dividends a "Sworn Declaration" using template provided herein (Annex B).

   Compliance with the above requirements is sufficient in order to avail of the Income Tax exemption. However, in case of partial or non-utilization of the foreign-sourced dividends, the domestic corporation shall pay the corresponding Income Tax due thereon, inclusive of surcharge, interest and penalties, by amending the AITR filed for the particular period. In the event that the amendment is already prohibited due to existence of audit, the Income Tax shall be paid using payment form (BIR Form 0605).

Further, no credit or deduction under Section 34(C) of the Tax Code shall be allowed for any taxes of foreign countries paid or incurred by the Domestic Corporation in relation to the exempt foreign-sourced dividends. Finally, any taxes of foreign countries paid or incurred by the domestic corporation in relation to the exempt foreign-sourced dividends shall be disregarded in computing the limitations provided under Section 34(C)(4) of the Tax Code.