

Advisory on Tax Treaty Relief Applications

PAGE NOS.

REVENUE MEMORANDUM ORDER
NO. 14-2021
Streamlining the Procedures and Documents
for the Availment of Treaty Benefits

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BUREAU OF INTERNAL REVENUE
REVENUE MEMORANDUM ORDER
NO. 14-2021

**STREAMLINING THE PROCEDURES AND DOCUMENTS
 FOR THE AVAILMENT OF TREATY BENEFITS**

Coverage

All items of income derived by non-resident taxpayers from Philippine sources entitled to relief from double taxation under relevant tax treaty

Guidelines and Procedures

1. Withholding agents or income payors may rely on the following to determine whether to apply a reduced rate or exemption from withholding tax:
 - a. BIR Form No. 0901 or Application Form for Treaty Purposes (“Application Form”);
 - b. Tax Residency Certificate (TRC) duly issued by the foreign tax authority; and
 - c. Relevant provision of the applicable tax treaty.

Non-resident taxpayers intending to avail of tax treaty benefits must always submit said documents to each withholding agent or income payor **prior to the payment of income for the first time**. Failure to do so may lead to withholding using the regular rates prescribed under the 1997 NIRC, as amended.

2. Depending on the tax rate applied, the following shall be filed:

Tax Rate Applied	Responsible Taxpayer	Shall File	When to File
Treaty rates	Withholding agent	Request for Confirmation	any time after the payment of withholding tax but shall in no case be later than the last day of the fourth month following the close of each taxable year

Tax Rate Applied	Responsible Taxpayer	Shall File	When to File
Regular rates	Non-resident	Tax Treaty Relief Applications	at any time after the receipt of income

Both shall be supported by the documentary requirements enumerated in this Advisory. Further, for the TTRA, failure to prove entitlement to treaty benefits may result in the confirmation of the tax rate previously applied on the income, and in the eventual denial of the TTRA.

3. Grant or Denial by the BIR

BIR Finding	Document Issued	Signatory	Effect
Withholding tax rate applied is lower than the rate that should have been applied	BIR Ruling denying the Request for Confirmation or TTRA	Commissioner of Internal Revenue or his duly authorized representative	Withholding agent shall pay the deficiency tax plus penalties
Nonresident taxpayer is not entitled to treaty benefits			
Withholding tax rate applied is proper or higher than the rate that should have been applied	Certificate confirming the nonresident income recipient's entitlement to treaty benefits	Assistant Commissioner for Legal Services	Taxpayer may apply for a refund of excess withholding tax

The BIR may likewise determine whether the subject transaction is subject to other internal revenue taxes under the 1997 NIRC, as amended, such as, but not limited to, value-added tax, other percentage tax, documentary stamp tax, and donor's tax.

Rulings of first impression, shall also be signed by the Commissioner or his duly authorized representative. Further, the BIR Ruling or the Certification shall only be issued to the filer or the authorized representative as mentioned in the Application

Form. Any representative not mentioned shall be allowed to receive the certification or ruling provided he is equipped with a notarized SPA.

4. Applications and Processing

General Rule: One TTRA/Request for Confirmation for each transaction

Exception: Annual updating for long-term contracts (*i.e.* those effective for more than one year) until termination of the contract

Requirements:

- Updated Application Form
- New Tax Residency Certificate (if validity period of previously submitted certificate already lapsed)
- Other relevant documents

Deadline for Annual Updating: Not later than the last day of the fourth month following the close of each taxable year

Period of Processing TTRA: Four (4) months from submission of complete documents or as soon as practicable¹

Documentary Requirements

Original and Certified True Copies of the following documents shall be submitted to ITAD:

GENERAL REQUIREMENTS
Basic General Requirements
1. Letter-request
2. Application Form duly signed by the nonresident income recipient or its/his/her authorized representative
3. Tax Residency Certificate (TRC) for the relevant period, duly issued by the tax authority of the foreign country in which the income recipient is a resident

¹ Provided the ITAD has addressed its backlog

GENERAL REQUIREMENTS	
Basic General Requirements	
4.	Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing the payment/remittance of income
5.	Withholding tax return with Alphalist of Payees
6.	Proof of payment of withholding tax
7.	Notarized Special Power of Attorney (SPA) issued by the nonresident taxpayer to his/her authorized representative(s), which shall expressly state the authority to sign the Application Form as well as to file the TTRA or request for confirmation
Additional General Requirements (for legal persons and arrangements and individuals)	
1.	Authenticated copy of the nonresident legal person or arrangement's Articles/Memorandum of Incorporation/Association, Trust Agreement, or equivalent document confirming its establishment or incorporation, with an English translation thereof if in foreign language
Additional General Requirements (for legal persons and arrangements and individuals)	
2.	Original copy of the Certificate of Non-Registration of Company or certified true copy of License to Do Business in the Philippines duly issued by the SEC for legal persons and arrangements, or original copy of the Certificate of Business Registration/ Presence duly issued by the Department of Trade and Industry (DTI) for individuals
Additional General Requirements (for fiscally transparent entities²)	
1.	A copy of the law of the foreign country showing that tax is imposed on the owners or beneficiaries of the foreign fiscally transparent entity;
2.	List of owners/beneficiaries of the foreign entity;
3.	Proof of ownership of the foreign entity; and

² Recipients of income payments made to a foreign fiscally transparent entity are the owners or beneficiaries thereof; therefore, the provision of the tax treaty is applicable only to the portion that is treated as income of members who are residents of the other contracting state where the fiscally transparent entity is a resident. A member who is a resident of a third state may be given treaty benefits pursuant to the treaty between the Philippines and that third state.

GENERAL REQUIREMENTS

Additional General Requirements (for fiscally transparent entities)

4. TRC duly issued by the concerned foreign tax authority to the owners or beneficiaries of the fiscally transparent entity.

SPECIFIC REQUIREMENTS

For Business Profits of Foreign Enterprises	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Contract duly executed by the parties or their authorized representatives 2. Special Power of Attorney authorizing the signatory(ies) to the contract to sign on behalf of the principal(s) 3. Sworn Certification stating the following: <ol style="list-style-type: none"> i. Services provided by the foreign enterprise ii. Place of performance of such services iii. Individuals who rendered the services on behalf of the foreign enterprise, their positions/designations and professional background iv. Duration of stay in the Philippines of said individuals 4. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of the individual(s) mentioned in 3(iii.) or passport booklets of the concerned individual(s) 5. Certificate of Completion of the project duly signed by the income recipient and duly accepted by the domestic income payor 6. Invoice(s) duly issued by the income recipient in accordance with the invoicing requirements of the country of residence 	<p>BIR Form No. 0901-P</p>

SPECIFIC REQUIREMENTS	
For Profits from the Operation of Ships or Aircraft in International Traffic	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Proof of registry of the international carrier 2. Authority to Operate/Certificate of Accreditation issued by the concerned Philippine government agency in favor of the international carrier 3. License to Transact Business in the Philippines duly issued by the SEC <p><i>If tax exemption is invoked on the basis of reciprocity:</i></p> <ol style="list-style-type: none"> 4. Letter-request, which shall contain a brief overview of its operations and shall state the legal basis of such exemption 5. Competent proof of reciprocity duly issued by the foreign tax authority 	BIR Form No. 0901-T
For Dividends	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Board of Directors' resolution approving the issuance of dividends, which shall include the amount of dividends, and dates of declaration, record and payment, among others 2. Certification under oath by the corporate secretary/ custodian banks/depository account holders/broker dealers stating in detail the legal and beneficial owners of all issued and outstanding shares as of record date, their corresponding subscriptions, date/s of acquisition, percentage of ownership and the allocation of dividend 3. Certified true copy of Audited financial statements (AFS) as of the last fiscal year stamped "received" by the BIR and SEC 4. General Information Sheet for the year immediately preceding the date of declaration 	BIR Form No. 0901-D

SPECIFIC REQUIREMENTS	
For Dividends	Prescribed Application Forms
5. Proof that the shareholding in respect of which the dividends are paid is not effectively connected with the permanent establishment of the foreign enterprise in the Philippines	
For Branch Profit Remittance	Prescribed Application Forms
1. Sworn certification executed by the manager or other authorized representative of the branch office stating the amount earmarked for remittance and the date of remittance	BIR Form No. 0901-PR
2. Audited Financial Statements of the branch office for the taxable year immediately preceding the year of remittance	
For Interest	Prescribed Application Forms
1. Duly executed contract	BIR Form No. 0901-I
2. Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing the remittance of the loan by the nonresident creditor	
3. Proof that the debt-claim in respect of which the interest is paid is not effectively connected with the permanent establishment of the foreign enterprise in the Philippines	
4. Proof that the interest rate is arm's length, if the debtor and creditor are related parties	

SPECIFIC REQUIREMENTS	
For Royalties	Prescribed Application Forms
<ol style="list-style-type: none"> 1. License Agreement duly executed by the parties 2. Proof of ownership or interest over the licensed product, patent, copyright, trademark, tradename, etc. 3. Proof that the right or property in respect of which the royalties are paid is not effectively connected with the permanent establishment of the foreign enterprise in the Philippines 	BIR Form No. 0901-R
For Capital Gains	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Contract duly executed by the parties 2. Special Power of Attorney authorizing the signatory(ies) to the contract to sign on behalf of the principal(s) 	BIR Form No. 0901-C
<ol style="list-style-type: none"> 3. Notarized Corporate Secretary's Certificate stating the nonresident taxpayer's percentage of shareholding prior to the transfer or alienation of shares, date and mode of acquisition (e.g. original subscription, subsequent transfer or by way of stock or property dividends), or any equivalent document executed by the authorized representative of a partnership/trust stating the interest to be alienated 4. Stock certificates 5. Deed of Trust/Nominee Agreement executed between the nominee shareholder and the beneficial owner of shares 6. General Information Sheet of the issuing corporation for the year immediately preceding the date of transaction 	

SPECIFIC REQUIREMENTS	
For Capital Gains	Prescribed Application Forms
<ol style="list-style-type: none"> 7. Audited Financial Statements (AFS) of the issuing corporation, partnership or trust for the taxable year immediately preceding the year of transfer stamped received by the BIR and SEC 8. Interim AFS as of the date of transfer 9. BIR Form No. 1707 or the Capital Gains Tax Return for Onerous Transfer of Shares of Stocks Not Traded Through the Local Stock Exchange) and proof of payment, if applicable 10. BIR Form No. 2000-OT or the Documentary Stamp Tax 11. Declaration/Return (One-Time Transactions) and proof of payment BIR Form No. 0605 (Payment Form) and proof of payment of the processing and certification fee of ₱5,000.00 as required under RMO No. 30-2002 <p><i>Additional requirements in case of redemption or preferred shares</i></p> <ol style="list-style-type: none"> 1. Notarized Board of Directors' resolution authorizing the redemption or buy-back of shares 2. Articles of Incorporation and By-Laws of the issuing corporation <p><i>Additional requirements in case of exchange</i></p> <ol style="list-style-type: none"> 1. AFS of the transferor as of the end of the immediately preceding year, and as of the date of exchange 2. AFS of the transferee as of the end of the immediately preceding year, and as of the date of exchange 	

SPECIFIC REQUIREMENTS	
For Capital Gains	Prescribed Application Forms
<p><i>Additional requirements in case of merger or other types of business restructuring</i></p> <ol style="list-style-type: none"> 1. Restructuring documents (e.g. Approved Plan and/or Articles of Merger/Consolidation/Corporate Reorganization) duly executed by the Parties 2. Certificate or any document duly issued by the company register or any relevant government agency approving or consenting to the corporate restructuring <p><i>Additional requirements in case of dissolution or liquidation</i></p> <ol style="list-style-type: none"> 1. Notarized Board of Directors' Resolution authorizing the dissolution and liquidation of the company 2. Certificate of Dissolution duly issued by the SEC in case of voluntary dissolution <p><i>When shares are issued by the transferor as property dividends</i></p> <ol style="list-style-type: none"> 1. Board of Directors' resolution approving the issuance of property dividends 2. Authenticated copy of transferor's AFS as of the end of the immediately preceding year, and as of the date of transfer 3. Authenticated copy of the transferee's AFS as of or after the date of transfer 	

SPECIFIC REQUIREMENTS	
For Remuneration Derived from the Provision of Professional Services or Other Activities of an Independent Character	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Contract duly executed by the parties or their authorized representatives 2. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of professional or independent contractor, or his(her) passport booklet 3. Certificate of Completion of the project duly signed by the professional or independent contractor and duly accepted by the domestic income payor 4. Invoice(s) duly issued by the income recipient in accordance with the invoicing requirements of the country of residence 	BIR Form No. 0901-S1
For Remuneration Derived from the Provision of Dependent Personal Services	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Employment Contract duly executed by the foreign employer and the foreign employee 2. Contract between the foreign employer and the domestic taxpayer allowing the temporary assignment of the foreign employee in the Philippines 3. Secondment Agreement duly executed by the foreign employer and the foreign employee-seconded 4. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of the foreign employee, or his(her) passport booklet 	BIR Form No. 0901-S2

SPECIFIC REQUIREMENTS	
For Remunerations, Grants, Allowances, etc. Received by Professors, Teachers, Students, Business Apprentices or Trainees	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Employment contract between the professor/teacher/researcher and the domestic income payor 2. Certification duly issued by the Bureau of Immigration, which shall state the dates of arrival in, and departure from, the Philippines of the professor, teacher and researcher, or his(her) passport booklet 	BIR Form No. 0901-S3
For Income Earned by Entertainers/Artists, Sportspersons, or Other Temporary Visitors	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Contract duly executed by the parties 2. Permit or license issued by the concerned Philippine government agency, if applicable 3. Proof of exemption from tax (e.g. proof that the visit to the Philippines is wholly or substantially supported, sponsored, or officially recognized and endorsed by the country of residence, political subdivisions, local authority or statutory body thereof) 	BIR Form No. 0901-S4
For Other Income Not Expressly Mentioned in the Tax Treaty	Prescribed Application Forms
<ol style="list-style-type: none"> 1. Contract duly executed by the parties 2. Special Power of Attorney authorizing the signatory(ies) to the contract to sign on behalf of the principal(s) 	BIR Form No. 0901-O

The BIR may request additional documents deemed necessary for the proper disposition of the case. It may likewise require the presentation of the original copies of the documents.

Further, the BIR may require that the taxpayer also provide a loose documentary stamp to be affixed on the certificate should the application be granted.

Requirement of Authentication

All documents executed in a foreign country must either be:

- Authenticated by the Philippine Embassy stationed therein; or
- Apostilled (if the foreign country is a signatory to the Apostille Convention)

Appeals

All adverse rulings are appealable to the Department of Finance within **thirty (30) days** from receipt.

Any request for CTCs of the complete case docket shall be processed upon payment of certification fee of ₱10.00 per page. Within five (5) days from the date of payment, the complete case docket shall be sequentially numbered, photocopied, stamped, and signed by the Division Chief of the ITAD.

Evaluation of Pending TTRAs for Income Earned in Prior Years

Pending TTRAs for income earned in 2020 and prior years are given **three (3) months** from receipt of the Final Notice to Submit Additional Documents or from effectivity of RMO No. 14-2021, whichever is later, to submit 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 **automatic denial** of the TTRA.

Filing a Claim for Refund

A non-resident taxpayer may file for a claim for refund representing the difference between the withholding tax actually paid and the amount of tax that should have been paid under the treaty. 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.

All claims for refund shall be filed within the two (2)-year prescriptive period under Section 229 of the 1997 NIRC, as amended.

Penalties for Late Filing of Requests for Confirmation

Any violation of RMO No. 14-2021 shall be subject to penalties provided under Sections 250 and 255, and other pertinent provisions of the 1997 NIRC, as amended. The taxpayer may likewise be charged with the crime of perjury under Article 183 of the Revised Penal Code and with other appropriate crimes and offenses.

Transitory Provision

All pending TTRAs shall be processed following the manner laid down in RMO No. 14-2021. For dividends, interest, and royalties, the submission of Certificate of Residence for Treaty Relief (CORTT) Form shall be discontinued.

Source:
Revenue Memorandum Order No. 14-2021