

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

October 24, 2016

REVENUE MEMORANDUM ORDER NO. 8-2017

SUBJECT : Procedure for Claiming Tax Treaty Benefits for Dividend, Interest and Royalty Income of Nonresident Income Earners

TO : All Internal Revenue Officers and Others Concerned

SECTION 1. Background –

The Philippines, a jurisdiction with a total of 40 effective tax treaties, with 2 more treaties waiting to enter into force and 2 pending ratification, qualifies as a jurisdiction with substantial network of tax treaties. To achieve the intent of these treaties of reducing double taxation and preventing fiscal evasion, administrative procedures in applying the provisions of these tax treaties must be duly established and enforced.

The United Nations recognizes that the ‘single most important factor bearing on the compliance by nonresidents with domestic tax law is the use of source withholding by the source State.’¹ Moreover, the UN states that the ‘use of final withholding taxes to collect tax from nonresidents is widespread and recognized internationally as a mechanism to collect tax.’²

Towards this end, the Bureau of Internal Revenue (BIR), in its efforts to improve the efficient administration of Philippine tax treaties, adopts the self-assessment system and automatic withholding of taxes on income of nonresidents deriving Dividend, Interest and Royalty from sources within the Philippines at applicable tax treaty rates subject to post reporting validation.

SECTION 2. Objectives –

This Order seeks to provide for the new procedures in claiming preferential tax treaty benefits on dividend, interest and royalty income of nonresidents pursuant to effective tax treaties of the Philippines, thereby amending for this purpose, Revenue Memorandum Order (RMO) No. 72-2010.

The foregoing objectives are achieved through:

- a. Creation of a new Certificate of Residence for Tax Treaty Relief (CORTT) Form;
- b. Enhancing BIR Forms 1601-F and 1604-CF;

¹ 1.3 Connection between tax compliance and source withholding, Chapter IV, United Nations Handbook on Selected Issues in Administration of Double Tax Treaties for Developing Countries.

² Ibid.

- c. Full disclosure of income derived by nonresidents by filing accurate and timely BIR Forms 1601-F and 1604-CF by the withholding agent/income payor;
- d. Compliance check on the availment of tax treaty relief and the withholding tax obligations of the withholding agent/income payor; and
- e. Post reporting validation of final withholding tax payments on income of nonresidents deriving dividends, interest and royalty income in the Philippines.

SECTION 3. Coverage –

This Order shall apply only to DIVIDENDS, INTERESTS AND ROYALTIES, and not to any other type of income such as but not limited to business profit, income from services, *et. al.* For income other than dividends, interest and royalties, the provisions in RMO 72-2010 shall continue to apply, and obtaining a ruling shall continue to be required.

The reduced tax rate of 15 percent on intercorporate dividends paid to nonresident foreign corporations under Section 28 B (5) (b) of the National Internal Revenue Code (NIRC) shall be covered by a separate issuance.

SECTION 4. Definition –

1. **Nonresidents** – are not residents of the Philippines and not citizens thereof.

For purposes of this Order, they are classified into:

- a. **Nonresident alien not engaged in trade or business (NANETB)** -The aggregate period of stay in the Philippines does not exceed 180 days during any calendar year.
 - b. **Nonresident foreign corporations (NRFC)** - are corporations organized under foreign laws and not engaged in trade or business in the Philippines.
2. **Beneficial Owner** –refers to the recipient of dividend, interest or royalty income that has the right to use and enjoy the said income unconstrained by a contractual or legal obligation to pass on the payment received to another person.³
 3. **Certificate of Residence for Tax Treaty Relief (CORTT) Form** – This is the newly created BIR Form that replaces the old 0901 Forms intended for tax treaty relief application for dividend, interest and royalty incomes. This is composed of two parts:

Part I:

- A. Applicable Tax Treaty;
- B. Information of Income Recipient/Beneficial Owner (Individual);

³ OECD Commentary on Model Tax Convention on Income and Capital, par. 12.4 of Art. 10; par. 10.2 of Art. 11; and par. 4.3 of Art. 12

- C. Information of Income Recipient/Beneficial Owner (Non-Individual); and
- D. Certification of Competent Authority or Authorized Tax Office of Country of Residence

Part II:

- A. Information of Withholding Agent/Income Payor;
- B. Details of Withholding of Tax;
- C. Type of Income Earned within the Philippines in Respect to which Relief is claimed;
- D. Declaration of Income Recipient/Beneficial Owner; and
- E. Declaration of Withholding Agent/ Income Payor.

The CORTT Form shall serve as proof of residency of the nonresidents. Residency is a minimum requirement for the availment of preferential tax treaty rates or tax exemption under all effective tax treaties of the Philippines.

4. **Noncompliant** – The nonresident and/or the withholding agent/income payor is noncompliant and ineligible to avail of preferential treaty rates or tax exemption based on any of the following reasons:
 - a) Failure to meet the requirements of the provision of the tax treaty being invoked;
 - b) Non-filing of 1601-F or 1604-CF and non-payment of withholding taxes due as required by the Tax Code; and
 - c) Discrepancy between the information contained in the CORTT Form and the information on the 1601-F. There is discrepancy when the pieces of information provided in the CORTT Form and 1601-F are inconsistent.
5. **Competent Authority (CA)** – authorized person from the taxing jurisdiction of a treaty partner to certify residency of nonresident income earners for tax treaty purposes.

SECTION 5. General Policies and Guidelines

1. The mandatory tax treaty relief applications (TTRA) shall no longer be filed with the International Tax Affairs Division (ITAD). In lieu of the TTNA, preferential treaty rates for dividends, interests and royalties shall be applied and used **outright** by the withholding agents upon submission of a CORTT Form by the nonresident. The use of the preferential rates shall be done through withholding final taxes at applicable treaty rates as shown in Annex A of this Order.
2. Nonresidents are allowed to use the prescribed certificate of residency of their country of residence (“prescribed certificate of residency”). However, nonresidents are still required to accomplish A, B and C of Part I of the CORTT Form for monitoring purposes. If the prescribed certificate of residency is used, it shall be attached to the CORTT Form.

3. For dividend income purposes, the CORTT Form shall be valid for two (2) years from date of issuance. However, if a prescribed certificate of residency of the country of residence is used, the date of validity of the latter document will prevail over the two (2) year period given. For interest and royalty income purposes, the CORTT Form shall be valid per contract.
4. Withholding agents or income payors can withhold at a reduced rate or exempt the nonresident based on the duly accomplished CORTT Form submitted to them.
5. Failure to submit a CORTT Form to the withholding agent/income payor would mean that the nonresident is not claiming any tax treaty relief and therefore such income be subject to the normal rate provided under the National Internal Revenue Code of 1997, as amended (Tax Code).
6. The ITAD and Revenue District Office (RDO) No. 39 shall be in charge of receiving and recording information stated in the CORTT.
7. Pertinent information from the CORTT Form and data collected from 1601-F and 1604-CF on availment of treaty rates and income payment made to nonresidents, in general, shall be accumulated and monitored by ITAD and RDO No. 39. Such data shall be used for conducting risk analysis, formulating policies, developing the country's treaty negotiating positions and generating management reports.
8. Compliance check and post reporting validation on withholding tax obligations and confirmation of appropriateness of availment of treaty benefits shall be part of BIR's regular audit investigations conducted by the RDO where the domestic withholding agent is registered.

SECTION 6. Procedure for the Availment of Tax Treaty Relief

1. Nonresidents claiming tax treaty relief shall submit a duly accomplished CORTT Form (Part I and II) or the prescribed certificate of residency with Part I (A, B and C) and II of the CORTT Form to their withholding agents/income payors before income is paid or credited.
2. The withholding agent/income payor shall file BIR Form 1601-F and BIR Form 1604-CF and shall pay the withholding taxes due in accordance with the Tax Code and existing Revenue Issuances.
3. The withholding agent/income payor shall submit an original of the duly accomplished CORTT (Part I and II) or the prescribed certificate of residency with Part I (A, B and C) and II of the CORTT Form to ITAD and RDO No. 39 within 30 days after payment of withholding taxes due on dividend, interest and royalty income of nonresident based on applicable tax treaty.
4. The withholding agent shall submit an updated Part II of the CORTT Form within 30 days after payment of withholding taxes due in the following cases:
 - a) If the CORTT Form filed with ITAD and RDO No. 39 is used for another dividend payment within its prescribed period of validity; and
 - b) In case of staggered payment of interest and royalty income.

SECTION 7. Penalties –

Any violation of the provisions of this Order shall be subject to penalties provided in Section 250 and other pertinent provisions of the NIRC, as amended.

Failure to supply accurate and complete information in the CORTT Form and BIR Forms 1601F and 1604-CF will render the nonresident and withholding agent noncompliant. Noncompliance shall be a ground for the denial of the use of preferential treaty rates and the disallowance of the pertinent expense/s of the withholding agent.

Furthermore, withholding agents/income payors that willfully fail to pay any tax, make a return, keep any record, or supply correct and accurate information or withhold or remit taxes withheld, or aids or abets any manner to evade any such tax or the payment thereof shall be liable under Sections 251 and 255 of the Tax Code.

SECTION 8. Transitory Provision –

Nonresidents who already filed TTRAs with the BIR on dividend, interest and royalty income prior to the effectivity of this Order will be allowed to use the tax treaty rates invoked based on effective tax treaties of the Philippines with other countries. However, the same will be subjected to compliance check.

For existing TTRAs with the BIR with supporting documents, ITAD will use the submitted information in creating a database for purposes of tax treaty relief availment. If the requisite certificate of residency is not available in the submitted documents, the withholding agents/income payor will be requested to submit the same.

SECTION 9. Repealing Clause – The provisions of RMO 72-2010 and any revenue issuance inconsistent with this Order are deemed revoked, repealed, or modified accordingly.

SECTION 10. Effectivity – This Order shall take effect after 90 days upon signing to afford nonresident income earners time to secure the required CORTT Form or prescribed certificate of residency from their respective countries of residence.

(Original Signed)

CAESAR R. DULAY

Commissioner of Internal Revenue