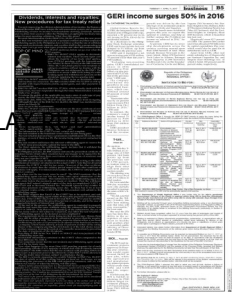


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Date	11 Apr 2017	Language	English
Section	Business	Journalist	ANDREW JAMES GERARD DULAY RUIZ
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## Dividends, interests and royalties: New procedures for tax treaty relief

Towards improving the efficient administration of tax treaties, the Bureau of Internal Revenue (BIR) now adopts the self-assessment system and automatic withholding of taxes on income of non-residents deriving dividends, interest and royalties from sources within the Philippines at applicable tax treaty rates, subject to post reporting validation. What does this mean?

Revenue Memorandum Order (RMO) No. 08-2017 provides the new procedures that non-residents (individuals or juridical entities) and their respective withholding agents in the Philippines have to follow so that the rate of withholding tax used on dividends, interests and royalties shall be the corresponding tax treaty rates. Let's go over what types of income and other BIR issuances RMO

**TOP OF MIND** No. 08-2017 addresses before we go over what the RMO requires.



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1. RMO No. 08-2017 ONLY applies to dividends, interest and royalties. These income types constitute the majority of tax treaty relief applications (TTRAs) pending with the International Tax Affairs Division (ITAD) at the BIR National Office. BUT dividends paid to non-residents residing in countries without tax treaties with the Philippines are not addressed by the RMO. The practice is to secure a BIR ITAD ruling if a withholding agent will withhold at 15 percent on the dividends (applying the tax sparing rule).
2. RMO No. 08-2017 amends RMO No. 72-2010, as far as dividends, interest and royalties are concerned. The BIR considers RMO No.72-2010 as still applicable with regard business profits, capital gains, and other payments to non-residents.
3. RMO No. 08-2017 revokes RMO No. 27-2016, which actually dealt with the same issue, but was suspended through Revenue Memorandum Circular (RMC) No. 69-2016.
4. To inform the public of the applicable tax treaty rates of each type of payments, the RMO has an annex of the applicable tax treaty rates.
5. Effectivity date. RMO No. 08-2017 will take effect 90 days from its signing. Although the date of the RMO is Oct. 24,2016, the RMO was numbered and issued on March 28.

Now we go to the requirements.

RMO No. 08-2017 requires three signatories on the new certificate of residence (for tax treaty relief) BIR Form (CORTT). This CORTT replaces BIR Form No. 0901-D/I/R, and the other documents required for dividends, interest and royalties under RMO No. 72-2010.

The first signatory is the competent (tax) authority of the country where the non-resident resides, certifying that the non-resident is the resident income recipient/beneficial owner of the payments, as defined under the relevant tax treaty.

The second signatory is the non-resident (or its authorized representative). The non-resident certifies (under penalty of perjury) that:

- a. The information in the CORTT is true, correct and complete.
- b. The non-resident is the beneficial owner of the income being paid.
- c. The non-resident does not have a permanent establishment (PE) in the Philippines, or even if there is a PE, the income being paid is not connected to the PE.
- d. The non-resident authorizes the relevant withholding agent to receive the CORTT (and procedurally, submit the same to the BIR).

The third signatory, the withholding agent, declares that it withheld the applicable tax treaty rate on the payments.

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In Philippine practice, the BIR respects and uses the prescribed certificate of residence forms which other countries have and require to be signed (by the BIR). Some countries have their own format of a certificate of residence and may not use/sign the CORTT.

The BIR allows the use of other certificates of residence as long as the other certificates of residence are attached to the actual CORTT. Note that for dividend purposes, the CORTT is valid for two years. However, if the other certificate of residence is used, then the validity period stated in the other certificate of residence will apply. For interest and royalties, the CORTT is valid per agreement or contract.

So when can the tax treaty rates be used? The RMO mentions that the withholding agent can use the tax treaty rates upon submission of the CORTT by the non-resident. This submission to the withholding agent has to be done before the payments are made or credited. Then the withholding agent shall submit original copies of the duly accomplished CORTT to the ITAD and to Revenue District No. 39 (South Quezon City) within 30 days after payment of withholding taxes due. So there has to be at least two original copies of the CORTT that the non-resident will submit to the withholding agent.

The RMO requires that Part II of the CORTT has to be updated, and submitted by the withholding agent within 30 days after payment of withholding taxes due, if the CORTT filed with ITAD and RDO No. 39 is used for another dividend payment within the prescribed period of validity, and in the case of staggered payments of interest and royalties.

At the end of the process, the withholding agent is reminded to properly withhold and remit the taxes withheld using the enhanced BIR forms Nos. 1601-F or 1604-CF. Note that notwithstanding all the submissions, the use of the tax treaty rates is still subject to validation, and either the non-resident or the withholding agent can be declared as non-compliant if:

1. The requirements in the tax treaty being invoked are not met. Hence, there may still be other documents to be submitted to prove that the requirements are complied with. For example, some tax treaties allow a tax treaty withholding tax rate of 10 percent on dividends if the beneficial owner is a company which holds directly at least 10 percent of either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payments of the dividends.
2. Non-filing of BIR forms Nos. 1601-F or 1604-CF and non-payment of the withholding taxes due.
3. Inconsistent information contained in the CORTT when compared to the filed BIR form No. 1601-F.

Non-compliant means that the non-resident and withholding agent cannot avail of the tax treaty rates.

Now what happens to the more than 4,000 pending requests (as of early 2016) pending with the ITAD, majority of which deal with dividends, interest and royalties? The RMO states that the non-residents with pending TTRAs for these types of payments prior to the effectivity of this RMO will be allowed to use the tax treaty rates invoked, subject to compliance checks.

The BIR is currently preparing for a public briefing on RMO No. 08-2017, the date of which, as of this writing, has not yet been set. As always, we are monitoring the processes of the BIR with regard its issuances, and we will inform our readers of when the briefing will take place.

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