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Tax treaty relief application

The recent issuance of Revenue Memorandum Circular (RMC) 8-2017 dispensing with the requirement for filing a tax treaty relief application (TTRA) with the Bureau of Internal Revenue (BIR) as a condition for availing preferential tax rates under existing tax treaties is certainly a great relief among taxpayers making dividend, royalty and interest payments to nonresidents.

Compliance with the filing of TTRA as a condition for availment of tax treaty rates pursuant to the provisions of Revenue Memorandum Order (RMO) 2000, and later, under RMO 72-2010, has not been easy, as some of the required documents are even executed outside the country, making the compliance burdensome. Thus, taxpayers that are not able to produce the requirements on time usually ended up filing the TTRA late, in violation with the rules prescribed under these RMOs, resulting in the BIR's denial for the application of preferential tax rates provided under existing tax treaties. Compliance with the filing of TTRA somehow slowed down negotiation of taxpayer's business dealings with nonresidents, delaying economic activities in general. Truly, the BIR's deletion with these requirements is a relief.

Taxpayers are reminded though that RMC No. 8-2017 applies only to dividend, interest and royalty payments, and not to any other type of income payments, such as business profits, income from services, etc. Also, although the BIR no longer requires the filing of TTRA, RMC

8-2017 still requires the filing of a form called the Certificate of Residence for Tax Treaty Relief (CORTT) Form. This is a newly created BIR Form that basically contains disclosure of certain information, such as nature of the transaction involved, amount of payments to be made, information about the income recipient and the withholding agent, such as registered name, registered address, among others. Preferential treaty rates shall already be applied and used upon submission of a CORTT Form.

In retrospect, the mandatory requirement of filing TTRA for dividend, royalty and interest payments was in fact lifted under RMO 27-2016, but its effectivity was subsequently suspended a week thereafter, upon the assumption of office by the present administration, by virtue of RMC 69-2016, which suspended the effectivity of all revenue issuances promulgated within the period covering June 1 to 30, 2016. The recent issuance of RMC 8-2017 effectively revived RMO 27-2016, albeit with some modifications.

Per the effectivity clause of RMC 8-2017, the circular will take effect 90 days upon signing. As it was signed by the Commissioner only on March 28, the circular will take effect starting June 26. Thus, taxpayers making interest, royalty and dividend payments to nonresidents during the interim period are left in quandary as to whether they should still file TTRA. As RMC 8-2017 is yet to take effect, RMO 72-2010 is, by law, still the prevailing rule. This means that there is still a need to file TTRA.

However, with the BIR's recognition under RMC 8-2017 that filing of TTRA is no longer required, and with recent court decisions disagreeing with the mandatory TTRA filing, it is seemingly absurd and illogical to still file one at the moment, even as we are still awaiting the effectivity of the new circular. Considering this vacuum left unfilled, a clarification is being called for, for the guidance of all concerned.

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