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## **TOP OF MIND**

By **ANGELIE B. SANTAMINA**

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# Tax treaty relief application: What to do now?

With the appointment of Caesar Dulay as the new BIR commissioner comes Revenue Memorandum Circular (RMC) No. 69-2016 which suspends the effectivity of all issuances promulgated and issued during the period of June 1-30. Among the list of suspended issuances is Revenue Memorandum Order (RMO) No. 27-2016, issued on June 23, which detailed the (supposedly) new procedures on claiming reduced tax treaty rates.



The Philippines is a signatory to over 40 tax treaties. These tax treaties lay down conditions for nonresident income recipients to qualify for a tax relief on various types of income. Relief may either be in the form of a tax exemption or a lower preferential tax rate. As mechanisms to confirm entitlement of tax reliefs, the BIR issued several Revenue Memorandum Orders (RMOs), RMO No. 27-2016 being the latest. All with the end goal of improving efficiency and service to taxpayers.

Briefly stated, RMO No. 27-2016 provides that the applicable preferential treaty rates for dividends, interest and royalty are granted outright by withholding final taxes at the proper tax treaty rates subject to regular audit in lieu of the mandatory filing of tax treaty relief application (TTRA), thereby amending RMO No. 72-2010. This means that unlike the requirement of filing for tax treaty relief in RMO No. 72-2010, RMO No. 27-2016 recognized the immediate or instant application of the treaty rates for these income types. A compliance check on withholding tax obligation and confirmation of the appropriateness of claiming treaty benefits shall be part of BIR's regular audit investigation conducted by the Revenue District Office (RDO) where the domestic withholding agent is registered. For income such as business profits, profits from shipping and air transport, capital gains, income from services and other income earnings, the provisions contained in and the procedures required in RMO No. 72-2010 shall continue to apply.

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Just as non-resident foreign income earners and their agents are still studying the implications of this new RMO, commissioner Dulay, on his first day, starts his term with the suspension thereof. The suspension shall last until commissioner Dulay provides an issuance to the contrary. With its suspension, all concerned parties shall observe status quo.

Given the circumstances and until proper authorities decide the fate of RMO No. 27- 2016, for those planning to claim tax benefits and to the curious minds alike, it appears the provisions of RMO No. 72-2010 remain to be the rule on TTRA filing. A discussion of which will follow.

The RMO prescribed the documentary requirements for the applications for relief from double taxation pursuant to existing Philippine tax treaties. For specific type of income such as business profits, profits from shipping and air transport, dividend, interest, royalty, capital gains, income from services and other income earnings, a specific TTRA form is assigned.

Documentary requirements must accompany all duly accomplished TTRAs. The filer may either be the income earner or the duly authorized representative of the income earner. The BIR also reserves the right to request additional documents/revise or update documentary requirements to properly process TTRA filed with it.

Now, where to file the TTRA with the BIR? The International Tax Affairs Division (ITAD) receives all submitted TTRAs. Those submitted to any other BIR Office shall be considered as improperly filed.

Now that we know what and where to file, the next question is: When do we file it? Ideally, a TTRA is filed prior to the first taxable event. The taxable event shall mean the first or the only time when the income payor is required to withhold the income tax thereon or should have withheld taxes thereon had the transaction been subjected to tax. However, as articulated by the Supreme Court in *Deutsche Bank AG Manila Branch vs. commissioner of Internal Revenue* (G.R.

No. 188550 dated Aug. 19, 2013), a TTRA may be filed anytime and the rule on prior filing is not an indispensable requirement anymore.

With the receipt of the ITAD of the application and documentary requirements, the filer shall be notified if there are lacking requirements. Upon receipt of the ITAD of the completed documents, the docket will be assigned to a reviewing officer who will evaluate the TTRA. It will be processed and evaluated by the ITAD, the Legal Service/Legal and Inspection Group, and the deputy commissioner for Legal and Inspection Group. Lastly the commissioner of Internal Revenue will review the TTRA and sign the ruling with an approval or denial.

A request for ruling which is based on hypothetical transactions or future transactions shall not be accepted and ruled upon by the ITAD.

The grant of tax treaty relief application may seem tedious for the taxpayer who is entitled to the benefits of the tax treaty. As emphasized over and over again, the filing of the TTRA is not an additional requirement imposed by the BIR to qualify for the tax benefits, but is a confirmation that the applicant is indeed entitled to the reliefs/benefits granted by the tax treaties.

*Angelie B. Santamina is a supervisor from the tax group of KPMG R.G. Manabat & Co. (KPMG RGM&Co.), the Philippine member firm of KPMG International. KPMG RGM&Co. has been recognized as a Tier 1 tax practice, Tier 1 transfer pricing practice, Tier 1 leading tax transactional firm and the 2016 National Transfer Pricing Firm of the Year in the Philippines by the International Tax Review.*

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