

PREFERENTIAL TAXATION: DOUBLE TAXATION/TAX TREATIES

12.12.24 [THURSDAY] 6:30-9:30

WILLIE B. SANTIAGO, LAWYER & CERTIFIED PUBLIC ACCOUNTANT
MCLE LECTURER & CPALE REVIEWER





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MONEY

Filtered By: Money

Senate concurs with ratification of PH-Brunei pact vs. double taxation

By HANA BORDEY, GMA Integrated News

Published December 14, 2023 12:46am



At a Glance

News

'ENOUGH FOR BACKLOGS AND NEW LICENSES'

LTO: No more paper licenses as 4M plastic cards 'secured'

DRAFT JOINT STATEMENT





Business profits




Independent personal services/professional services

taxed only in the state where the company did business

taxed only in the worker's state of residence provided that he doesn't stay for an aggregate period of over 183 days in any 12 months

1601-FQ: A GOOD SOURCE OF INFO!

1601-FQ January 2018 Page 2		Quarterly Remittance Return of Final Income Taxes Withheld				 1601-FQ 01/18 P2	
TIN		Withholding Agent's Name (Last Name for Individual OR Registered Name for Non-Individual)					
Part IV - Schedules							
Schedule 1 – Details of Final Tax Based on Tax Treaty Rates							
Seq. No.	Treaty Code/Country	ATC	Nature of Income Payment (Refer to Schedule 3)	Amount of Income Payment	Tax Rate	Amount of Tax Withheld (not creditable)	
(A)	(B)	(C)	(D)	(E)	(F)	(G) = (E x F)	
1							
2							
3							
4							
5							
Total Taxes Withheld (Sum of Items 1 to 5) (To Part II Item 21)							
Schedule 2 – Tax Treaty Code							
Treaty Code	Country	Treaty Code	Country	Treaty Code	Country	Treaty Code	Country
AU	Australia	FI	Finland	KW	Kuwait	SG	Singapore
AT	Austria	FR	France	MY	Malaysia	ES	Spain
BH	Bahrain	DE	Germany	NL	Netherlands	SE	Sweden
BD	Bangladesh	HU	Hungary	NZ	New Zealand	CH	Switzerland
BE	Belgium	IN	India	NG	Nigeria	TH	Thailand
BR	Brazil	ID	Indonesia	NO	Norway	UAE	United Arab Emirates
CA	Canada	IL	Israel	PK	Pakistan	GB	United Kingdom
CN	China	IT	Italy	PL	Poland	US	United States of America
CZ	Czech Republic	JP	Japan	RO	Romania	VN	Vietnam
DK	Denmark	KR	Korea	RU	Russia		
Schedule 3 – Nature of Income Payment							

NEW RATES ON PASSIVE INCOME FOR RESIDENT FOREIGN CORPORATION

[SEC 6 & 7 CREATE LAW] [RR 5-2021]

PASSIVE INCOME	OLD RATE	NEW RATE	EFFECTIVITY DATE
CGT on CG derived on sale of shares of stocks not traded in LSE	5%/10%	15% subject to Tax Sparing Rule	April 11, 2021
FWT on interest income from FCDU	7.5%	15%	April 11, 2021

NEW RATES ON PASSIVE INCOME- NON-RESIDENT FOREIGN CORPORATION

[SEC 6 & 7 CREATE LAW] [RR 5-2021]

PASSIVE INCOME	OLD RATE	NEW RATE	EFFECTIVITY DATE
<u>Gross income</u> from all PH sources such as interest, dividend, rent, royalty, salary, premium, annuity	30%	25%	Jan 1, 2021
Capital gains from sale of shares of stocks not traded in LSE	5%-10%	15%	April 11, 2021
Inter-corporate dividends received from domestic corp.	30%	25%-15% on tax sparing	Jan 1, 2021

NEW RATES ON PASSIVE INCOME- DOMESTIC CORPORATION

[SEC 6 & 7 CREATE LAW] [RR 5-2021]

PASSIVE INCOME	OLD RATE	NEW RATE	EFFECTIVITY DATE
Inter-corporate dividends	Exempt	Exempt	
Foreign-sourced dividends from non-resident foreign corporations	30% unless TTRA covered	25% or 20% or exempt subject to Sec. 5 RR 5-2021 conditions on qualified activities for participation exemption	April 11, 2021

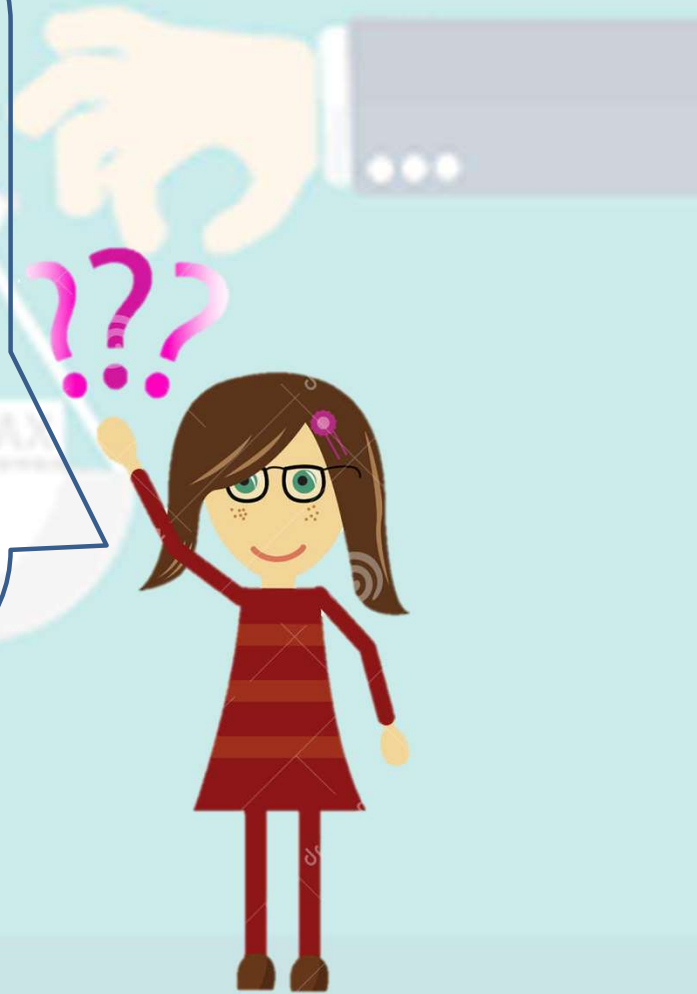
**ON ISSUE ON PRESCRIPTION OF
WITHHOLDING TAXES**

- **Withholding tax assessments are subject to prescription**
- Citing SC case CIR VS La Flor Dela Isabela, Inc, G.R. 211289
Jan 14, 2019
- CTA held that withholding tax assessment is not merely an
**imposition of penalty on the
withholding agent**
 - collection of withholding taxes falls squarely within the
purview of SEC 203 NIRC
 - 3-year prescriptive period under SEC 203 NIRC, thus, applies to
withholding tax assessments [PET PLANS, INC. VS CIR, CTA CASE 10002, MARCH 23, 2023]

Particulars	Tax Rate	ATC	
		Individual	Corporate
Interest on foreign loans payable to Non-Resident Foreign Corporations (NRFCs)	20%		WC180
Interest and other income payments on foreign currency transactions/loans payable to Offshore Banking Units (OBUs)	10%		WC190
Interest and other income payments on foreign currency transactions/loans payable to Foreign Currency Deposit Units (FCDUs)	10%		WC191
	10%	WI202	
	30%		WC212
Property dividend payment by domestic corporation to citizens and resident aliens/NRFCs	10%	WI203	
	30%		WC213
Cash dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)	15%		WC222
Property dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)	15%		WC223
Cash dividend payment by domestic corporation to non-resident Alien engage in trade or business within the Philippines (NRAETB)	20%	WI224	
Property dividend payment by domestic corporation to NRAETB	20%	WI225	
Share of NRAETB in the distributable net income after tax of a partnership (except general partnership) of which he is a partner, or share in the net income after tax of an association, joint account or a joint venture taxable as a corporation of which he is a member or a co-venturer	20%	WI226	
On other payments to NRFCs	30%		WC230
Distributive share of individual partners in a taxable partnership, association, joint account or joint venture or consortium	10%	WI240	
All kinds of royalty payments to citizens, residents aliens and NRAETB (other than WI380 and WI341), domestic and resident foreign corporations	20%	WI250	WC250
On prizes exceeding P10,000 and other winnings paid to individuals	20%	WI260	
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	15%		WC280
On the gross rentals, lease and charter fees derived by non-resident owner or lessor of foreign vessels	4.5%		WC290
On the gross rentals, charters and other fees derived by non-resident lessor or aircraft, machineries and equipment	7.5%		WC300
On payments to oil exploration service contractors/sub-contractors	8%	WI310	WC310
Payments to Non-resident alien not engage in trade or business within the Philippines (NRAETB) except on sale of shares in domestic corporation and real property	25%	WI330	
On payments to non-resident individual/foreign corporate cinematographic film owners, lessors or distributors	25%	WI340	WC340
Royalties paid to NRAETB on cinematographic films and similar works	25%	WI341	
Final tax on interest or other payments upon tax-free government bonds, mortgages, deeds of trust or other obligations			

INTERESTS

Our foreign affiliate charges us for interest on loans. Is there a need to secure TTRA or RFC?



KNOW WHAT INTEREST IS COVERED UNDER TREATY RELIEF

INTEREST (17)

Kind of Principal: Bonds and Debentures Sale on credit of any industrial, commercial or scientific equipment
 Loan Government made/guaranteed loan/secured loan
 Bank Deposits Others specify _____

In case of interest derived from Securities (bonds and debentures and other similar obligations)

18. Description	19. Quantity of Securities	20. Date of acquisition	21. Amount of Interest

DOCUMENTARY REQUIREMENTS

Original or certified true copy of documents

Interest

- Bank documents/certificate of deposit/money transfer **evidencing remittance of the loan**
- Proof that the debt-claim in respect of which interest is paid is not effectively connected with permanent establishment of foreign enterprise
- Duly executed contract
- Proof that interest rate is arm's length, if debtor & creditor are related parties

*Prescribed Application Form:
BIR Form 0901-I*



Use Only Item:

Bureau of Internal Revenue

BIR Form No. <h1 style="margin: 0;">0901-I</h1> February 2021 (ENCS) Page 1	<h2 style="margin: 0;">Application for Treaty Purposes</h2> <h3 style="margin: 0;">(Relief from Philippine Income Tax on Interest)</h3> <p style="font-size: small; margin: 5px 0 0 0;">Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer</p>	 0901-I 02/21ENCS P1
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Part I - Legal Basis of Claim for Relief

1 Article		1A of the Tax Treaty between the Philippines and	
2 Tax Treatment Under the Treaty	<input type="checkbox"/> Exempt from Income Tax	<input type="checkbox"/> Subject to Preferential Rate	2A Tax Rate . %

Part II - Identification of Income Recipient

3 Name of Income Recipient			
4 Local Taxpayer Identification Number (TIN)	5 RDO Code	6 Foreign TIN	
- - - - -			
7 Classification of Income Recipient in the Country of Residence (if Non-Individual)			
<input type="checkbox"/> Taxable Corporation	<input type="checkbox"/> Taxable Partnership	<input type="checkbox"/> Foundation	<input type="checkbox"/> Estate
<input type="checkbox"/> Exempt Corporation	<input type="checkbox"/> Exempt Partnership	<input type="checkbox"/> Trust	<input type="checkbox"/> Others, specify
8 Date of Birth/Establishment (MM/DD/YYYY)	/ /	9 Citizenship	
10 Place Where the Company was Established or Organized			
11 Place of Head Office or Main Office			
12 Place Where the Business is Managed and Controlled			
13 Country Where the Recipient is Taxable as Resident and Where he/she/it is to pay tax			
14 Contact Number (Landline/Mobile No.)		15 Email Address	
16 With Permanent Establishment (PE) in the Philippines?		17 With License to do Business in the Philippines?	
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No	
18 Registered Name of the PE			

Tax on Nonresident Foreign Corporation

pay tax equal to
25% of gross
income received
during taxable
year from all
sources within
PH



salesforce

Sec 28 (B)(1) NIRC

TAX TREATY APPLICATION WITH BIR ITAD



Who may avail of treaty benefits?

At least one of the parties involved in the transaction should be resident of the contracting state (PH) (Country of Residence of income recipient)





REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

March 31, 2021

REVENUE MEMORANDUM ORDER NO. 14-2021

SUBJECT : Streamlining the Procedures and Documents for the Availment of Treaty Benefits

TO : All Internal Revenue Officers and Others Concerned

STREAMLINING THE PROCEDURES & DOCUMENTS FOR THE AVAILMENT OF TREATY BENEFITS

RMO 14-2021 [MARCH 31, 2021]

For BIR BCS/
Use Only Item:



Republic of the Philippines
Department of Finance
Bureau of Internal Revenue

BIR Form No. 0901-C February 2021 (ENCS) Page 1	Application for Treaty Purposes (Relief from Philippine Income Tax on Capital Gains) <i>Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer</i>	 0901-C 02/21ENCS P1
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For BIR BCS/
Use Only Item:



Republic of the Philippines
Department of Finance
Bureau of Internal Revenue

BIR Form No. 0901-D February 2020 (ENCS) Page 1	Application for Treaty Purposes (Relief from Philippine Income Tax on Dividends) <i>Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer</i>	 0901-D 02/21ENCS P1
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For BIR BCS/
Use Only Item:



Republic of the Philippines
Department of Finance
Bureau of Internal Revenue

BIR Form No. 0901-I February 2021 (ENCS) Page 1	Application for Treaty Purposes (Relief from Philippine Income Tax on Interest) <i>Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes</i>	
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RMO 14-2021



- Withholding agent/income payor may rely on submitted **BIR Form 0901** or Application Form for Treaty Purposes
- Tax Residency Certificate (TRC)
- duly issued by foreign tax authority & relevant provision of applicable tax treaty



RESIDENCE CERTIFICATE



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country: **JAPAN**

This public document

2. has been signed by **HIGUCHI Keijii**
3. acting in the capacity of **District Director of Kawagoe Tax Office**
4. bears the seal/stamp of **-same as above-**

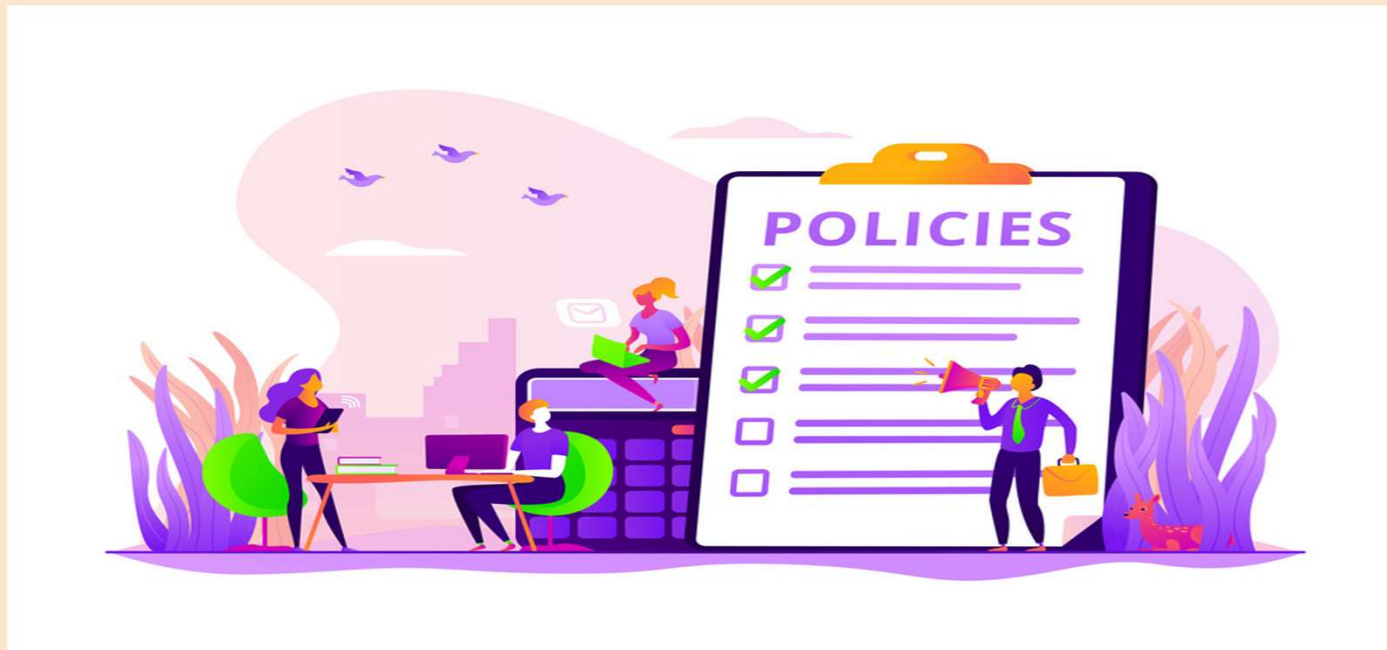


For purposes of determining whether *to apply reduced rate of, or exemption from, withholding* at source on income derived by nonresident TP from all sources within PH

- ❑ To confirm such tax exemption & avoid future tax assessments
- ❑ filing for Tax Treaty Relief Availment in BIR National Office – ITAD
- ❑ may be necessary or required



Comparing **RMO 14-2021** against its predecessors (**RMO 30-2002, 72-2010 & 08-2017**), there are new general & specific documentary requirements that must be submitted to avail of treaty relief





General requirements

- (1) bank documents, certificate of deposit, telegraphic transfer, telex or money transfer evidencing payment or remittance of income
- (2) withholding tax return with "Alpha-list of Payees"
- (3) proof of payment of withholding tax

Some Specific Requirements

- (1) certificate of completion of projects signed by recipient & withholding agent/payor (i.e. performance of services)
- (2) Invoices issued by income recipient



CHECKLIST OF GENERAL & SPECIFIC REQUIREMENTS

**CHECKLIST OF REQUIREMENTS FOR TAX TREATY RELIEF APPLICATION OR
REQUEST FOR CONFIRMATION OF ENTITLEMENT TO TREATY BENEFIT**
(For dividends)

General requirements	Remarks*
Letter-request	✓
BIR Form No. 0901-D duly signed by the nonresident income recipient/withholding agent or its/his/her authorized representative	✓
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	✓
Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing the payment/remittance of income	✓
Withholding tax return with Alphabet of Payees	✓
Proof of payment of withholding tax	✓
Notarized Special Power of Attorney (SPA) issued by the nonresident income recipient or withholding agent to his/hers/its authorized representative(s), which shall expressly state the authority to sign the Application Form and/or to file the TTRA or request for confirmation, if applicable	✓
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	✓
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 Securities and Exchange Commission for non-individuals 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 a fiscally transparent entity	
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	
List of owners/beneficiaries of the foreign entity	
Proof of ownership of the foreign entity	
TRC duly issued by the concerned foreign tax authority to the owners or beneficiaries of the fiscally transparent entity	
Specific requirements	
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	✓
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	✓
Certified true copy of the audited financial statements (AFS) as of the taxable year immediately preceding the date of declaration, which was duly filed with the BIR and SEC	✓
General Information Sheet for the year immediately preceding the date of declaration	✓
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	

* ✓ - submitted; X - not submitted; N/A - not applicable

Present see attached Certified True Copy of Audited Financial Statement of Permanent Establishment of MUSA CORP. LOUISIANA

Name of Taxpayer: _____

Evaluated by: _____ Date: _____
Case Officer

RECEIVED
MAY 31 2022
BUREAU OF INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE
RECEIVED
MAY 04 2022
1:28 PM
LEGAL SERVICE

DIVIDENDS

Schedule 3 – Nature of Payment		Tax Rate	ATC	
Particulars	Individual		Corporate	
Interest on foreign loans payable to Non-resident Foreign Corporations (NRFCs)		20%		WC180
Interest and other income payments on foreign currency transactions/loans payable to Offshore Banking Units (OBUs)		10%		WC190
Interest and other income payments on foreign currency transactions/loans payable to Foreign Currency Deposit Units (FCDEUs)		10%		WC191
Cash dividend payment by domestic corporation to citizens and resident aliens/NRFCs		10%	WI202	
		30%		WC212
Property dividend payment by domestic corporation to citizens and resident aliens/NRFCs		10%	WI203	
		30%		WC213
Cash dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)		15%		WC222
Property dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)		15%		WC223
Cash dividend payment by domestic corporation to Non-resident Alien engage in Trade or Business within the Philippines (NRAETB)		20%	WI224	
Property dividend payment by domestic corporation to NRAETB		20%	WI225	
which he is a partner, or share in the net income after tax of an association, joint account or a joint venture taxable as a corporation of which he is a member or a co-venturer		20%	WI226	
On other payments to NRFCs		30%		WC230
Distributive share of individual partners in a taxable partnership, association, joint account or joint venture or consortium		10%	WI240	
All kinds of royalty payments to citizens, residents aliens and NRAETB (other than WI380 and WI341), domestic and resident foreign corporations		20%	WI250	WC250
On prizes exceeding P10,000 and other winnings paid to individuals		20%	WI260	
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered		15%		WC280
On the gross rentals, lease and charter fees derived by non-resident owner or lessor of foreign vessels		4.5%		WC290
On the gross rentals, charters and other fees derived by non-resident lessor or aircraft, machineries and equipment		7.5%		WC300
On payments to oil exploration service contractors/sub-contractors		8%	WI310	WC310
Payments to Non-resident alien not engage in trade or business within the Philippines (NRANETB) except on sale of shares in domestic corporation and real property		25%	WI330	
On payments to non-resident individual/foreign corporate cinematographic film owners, lessors or distributors		25%	WI340	WC340
Royalties paid to NRAETB on cinematographic films and similar works		25%	WI341	
Final tax on interest or other payments upon tax-free government bonds, mortgages, deeds of trust or other obligations				

For BIR BCS/
Use Only Item:



Republic of the Philippines
Department of Finance
Bureau of Internal Revenue

BIR Form No.
0901-D
February 2020 (ENCS)
Page 1

Application for Treaty Purposes (Relief from Philippine Income Tax on Dividends)



Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer

0901-D 02/21ENCS P1

Part I - Legal Basis of Claim for Relief

1 Article	10, 2.A as amended	1A of the Tax Treaty between the Philippines and	J A P A N
2 Tax Treatment Under the Treaty	<input type="checkbox"/> Exempt from Income Tax	<input checked="" type="checkbox"/> Subject to Preferential Rate	2A Tax Rate 1 0 . 0 0 %

Part II - Identification of Income Recipient

3 Name of Income Recipient			
[REDACTED]			
4 Local Taxpayer Identification Number (TIN)	5 RDO Code	6 Foreign TIN	
2 [REDACTED] 0 0	0 3 9	4010401082896	
7 Classification of Income Recipient in the Country of Residence (if Non-Individual)			
<input checked="" type="checkbox"/> Taxable Corporation	<input type="checkbox"/> Taxable Partnership	<input type="checkbox"/> Foundation	<input type="checkbox"/> Estate
<input type="checkbox"/> Exempt Corporation	<input type="checkbox"/> Exempt Partnership	<input type="checkbox"/> Trust	<input type="checkbox"/> Others, specify [REDACTED]
8 Date of Birth/Establishment (MM/DD/YYYY)	0 4 / 0 1 / 1 9 6 4	9 Citizenship	JAPANESE
10 Place Where the Company was Established or Organized			
M I N A T O - K U T O K Y O J A P A N			
11 Place of Head Office or Main Office			
M I N A T O - K U T O K Y O J A P A N			
12 Place Where the Business is Managed and Controlled			
M I N A T O - K U T O K Y O J A P A N			
13 Country where the recipient is taxable as resident and where he/she/it is to pay tax		JAPAN	
14 Contact Number (Landline/Mobile No.)	15 Email Address		
[REDACTED]	[REDACTED] o m		
16 With Permanent Establishment (PE) in the Philippines?		17 With License to do Business in the Philippines?	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
18 Registered Name of the PE			
[REDACTED] E S, L T D.			
19 Taxpayer Identification Number of the PE	0 0 0 0 0 0 0 0 - 0 0 0 0 0	20 RDO Code	0 3 3

Application for Treaty Purposes
(Relief from Philippine Income Tax
on Dividends)



0901-D 02/21ENCS P2

Part IV – Details of Dividends and Withholding Tax

33	Type of Shares Held	Number of Shares Held	Number of Voting Shares Held	Date/s of Acquisition (MM/DD/YYYY)	Percentage of Ownership
	<input checked="" type="checkbox"/> Common <input type="checkbox"/> Preferred	24,968 77,550	24,968 77,550	June 2003 March 2019	33% 33%
	<input type="checkbox"/> Voting <input type="checkbox"/> Non-Voting				

34	Amount of Dividend (in foreign currency)	Amount in Dividend (in local currency)	Date of Declaration (MM/DD/YYYY)	Date of Record (MM/DD/YYYY)	Date/s of Payment (MM/DD/YYYY)
	USD 171,173.02 net of Withholding tax	Php 9,250,000.00 Gross	04/05/2021	12/31/2020	06/04/2021

35 Name of Nominee Shareholders (Use additional sheet/s if necessary)

Name	Number of Shares Held
PLEASE SEE SEC GIS 2020	PLEASE SEE SEC GIS 2020

36 Is the Income Effectively Connected with the PE in the Philippines? Yes No

37 Amount of Withholding Tax Paid 9 2 5 0 0 0 . 0 0

38 Date of Payment (MM/DD/YYYY) 0 6 / 0 4 / 2 0 2 1

Part V – Additional Disclosures for Flow-Through/Fiscally Transparent Entity (Dividends are Treated as Income of the Members/Partners of the Entity and Not of the Entity Itself (Use additional sheet/s if necessary))

39	Name of Member of the Foreign Company	Country of Residence	Percentage of Ownership in the Foreign Company	Share in the Dividends Received by the Foreign Company
	N/A	N/A	N/A	N/A

SECRETARY'S CERTIFICATE

I, **[REDACTED]** Filipino, of legal age and with office address at the **[REDACTED]**, Manila, after being duly sworn in accordance with law, hereby depose and state that:

1. I am the duly elected and incumbent Corporate Secretary of **[REDACTED] AGENCIES, INC.** (the "Corporation"), a corporation duly organized and existing under and by virtue of Philippine laws with principal office address at **[REDACTED] Building, No. 526 T. M. [REDACTED] mita, Manila;**

2. At the Board of Directors' Meeting held on held on 05 April 2021, the Board of Directors of the Corporation approved the declaration of cash dividends in the amount of Twenty-Seven Million Seven Hundred Fifty Thousand Pesos (Php27,750,000.00) to be taken from the Corporation's unrestricted retained earnings as of December 31, 2020 payable to following stockholders of record of the Corporation:

Name	Issued and Outstanding Shares	Subscriptions	Date of Acquisition	Percentage	Amount of Dividend	Date paid to stockholders
M C [REDACTED]	207,444	49,993	June 23, 2003	67%	Php18,500,000.00	June 04, 2021
		157,451	March 27, 2019	67%		
M [REDACTED]	102,548	24,998	June 23, 2003	33%	Php9,250,000.00	June 04, 2021
		77,550	March 27, 2019	33%		

That from the funds held in trust by [REDACTED] ion [REDACTED]) for the Corporation, [REDACTED] in behalf of the Corporation paid the dividend to M [REDACTED], Ltd. last June 04, 2021;

3. Based on the Corporation's records as of date hereof, the beneficial owner who have at least 20% shares of ownership/voting rights or who ultimately owns or effectively controls the Corporation (regardless of shareholding) are as follows:

Name	Position	% of ownership / % of voting rights
[REDACTED]	Chairman/President	48.06

BIR Form No.

2306

January 2018 (ENCS)

Certificate of Final Tax Withheld at Source



2306 01/18ENCS

Fill in all applicable spaces. Mark all appropriate boxes with an "X".

1 For the Period

From

0,6,0,1,2,0,2,4

(MM/DD/YYYY)

To

0,6,3,0,2,0,2,4

(MM/DD/YYYY)

Part I – Income Recipient/Payee Information

2 Taxpayer Identification Number (TIN)

[REDACTED] - 0,0,0,0,0

3 Payee's Name (Last Name, First Name, Middle Name for Individual OR Registered Name for Non-Individual)

[REDACTED]

4 Registered Address

[REDACTED]

4A ZIP Code

[REDACTED]

5 Foreign Address, if applicable

Calle Mesena 80, 28033 Madrid, Spain

5A ICR No. (For Alien Payee Only)

[REDACTED]

Part II – Withholding Agent/Payor Information

6 Taxpayer Identification Number (TIN)

0, [REDACTED] 0,0,0,0,0

7 Payor's Name (Last Name, First Name, Middle Name for Individual OR Registered Name for Non-Individual)

AC [REDACTED] PHILIPPINES INC.

8 Registered Address

[REDACTED] er 2, Ayala Ave. cor. Paseo de Roxas, San Lorenzo, Makati City, Philippines

8A ZIP Code

1,2,2,3

Part III – Details of Income Payment and Tax Withheld (Attach additional sheet if necessary)

Nature of Income Payment	ATC	Amount of Payment	Tax Withheld
Cash dividend payment by domestic corporation to NRFCs	WC212	284,400,000.00	28,440,000.00



Republika ng Pilipinas
Kagawaran ng Pananalapi
Kawanihan ng Rentas Internas

eFPS Payment Details

TIN [REDACTED]
Name [REDACTED] RP.
Tax Period : 10/31/2022
Reference Number : 442200050740859
Tax Type : WF - Monthly Remittance Form of Final Income Taxes Withheld

Payment Transaction Number : 220900221
Date : 11/10/2022
Cash Amount Paid : 79,677,298.50
Bank : 176000 - BANCNET-CHINATRUST

Origin	Bank Code	Amount	Number	Date	Status	Message	CBR BCS No.
Online Confirmation	176000	79,677,298.50	650638	11/10/2022	Authorized	0 - Successful	55075
Batch Confirmation	176000	79,677,298.50	00000020221112650638	11/11/2022	Authorized	0 - Successful	55075
Batch Acknowledgment	176000	79,677,298.50	00000020221112650638	11/11/2022	Authorized	0 - Successful	55075

Total Payments (Successful/Unsuccessful): 79,677,298.50

Total Payments (Successful) : 79,677,298.50

Print

Close

15% dividend rate if recipient is **beneficial owner of dividends**



CORTT Form is not required anymore. *RMC 14-2021*



request for confirmation shall be **filed by withholding agent** depending on the type of income. *RMC 77-2021*





**CASH DISTRIBUTION
RECEIVED BY MERCURY MEDIA
ARISING FROM PDRS ISSUED
BY ABS-CBN HOLDINGS IS NOT
CONSIDERED AS DIVIDEND,
THEREFORE, IT IS NOT SUBJECT
TO A LOWER TAX RATE OF 15%**

[BIR RULING ITAD 009-2024, FEB 21, 2024]




- ❑ Mercury Media is a non-resident foreign corporation & PDR holder
- ❑ 1 share of ABS-CBN Holding in ABS-CBN corresponds to 1 PDR
- ❑ PDR holder may be considered a shareholder & a recipient of dividends if he/she/it **has the option to purchase the shares underlying the PDR**

❑ Dividends paid by a domestic corporation to a nonresident foreign corporation (NRFC) are **subject to income tax of 15%** provided that country of residence of NRFC shall allow tax credit against the tax due from NRFC taxes deemed to have been paid in PH equivalent to 15%

[SEC 28(B)(5)(b) NIRC]

- ❑ PDR holder allowed by PH law to own the underlying shares & may exercises the option to purchase the said shares
- ❑ which makes **him eligible to receive dividends**



- 
- ❑ PH Constitution **limits ownership & management of mass media**, such as ABS-CBN, to Filipino citizens or entities fully owned & managed by Filipino citizens

- ❑ Is **not** corporation wholly owned by Filipino citizen
- ❑ Does not have any **option or right to purchase or own**, any share of a corporation
- ❑ Does **not have legal right or option** under PDR instrument to purchase the underlying ABS-CBN share



MercuryMedia

DECISION/RULING



- Cash distribution received by Mercury Media from ABS-CBN Holdings are not cash dividend subject to lower tax rate of 15%
- Cash distribution are interest subject to 30% [25%]

Schedule 3 – Nature of Income Payment			
Particulars	Tax Rate	ATC	
		Individual	Corporate
Interest on foreign loans payable to Non-Resident Foreign Corporations (NRFCs)	20%		WC180
Interest and other income payments on foreign currency denominated loans payable to Offshore Banking Units (OBUs)	10%		WC190
Interest and other income payments on foreign currency time deposits/loans payable to Foreign Currency Deposit Units (FCDUs)	10%		WC191
Cash dividend payment by domestic corporation to citizens and resident aliens/NRFCs	10%	WI202	
	30%		WC212
Property dividend payment by domestic corporation to citizens and resident aliens/NRFCs	10%	WI203	
	30%		WC213
Cash dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)	15%		WC222
Property dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)	15%		WC223
Cash dividend payment by domestic corporation to non-resident alien engaged in trade or business within the Philippines (NRAETB)	20%	WI224	
Property dividend payment by domestic corporation to NRAETB	20%	WI225	
Share of NRAETB in the distributable net income after tax of a partnership (except General Professional Partnership) of which he is a partner, or share in the net income after tax of an association, joint account or a joint venture taxable as a corporation of which he is a member or a co-venturer	20%	WI226	
On other payments to NRFCs	30%		WC230
	10%	WI240	
All kinds of royalty payments to citizens, residents aliens and NRAETB (other than WI380 and WI341), domestic and resident foreign corporations	20%	WI250	WC250
On payments exceeding 10 pesos and other winnings paid to individuals	20%	WI260	
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	15%		WC280
On the gross rentals, lease and charter fees derived by non-resident owner or lessor of foreign vessels	4.5%		WC290
On the gross rentals, charters and other fees derived by non-resident lessor or aircraft, machineries and equipment	7.5%		WC300
On payments to oil exploration service contractors/sub-contractors	8%	WI310	WC310
Payments to Non-resident alien not engage in trade or business within the Philippines (NRANETB) except on sale of shares in domestic corporation and real property	25%	WI330	
On payments to non-resident individual/foreign corporate cinematographic film owners, lessors or distributors	25%	WI340	WC340
Royalties paid to NRAETB on cinematographic films and similar works	25%	WI341	
Final tax on interest or other payments upon tax-free government bonds, mortgages, deeds of trust or other obligations			

Royalty AGREEMENT

This Royalty Agreement (this "Agreement") is effective on January 1, 2011 (the "Effective Date") between [REDACTED], a Japan corporation, with its principal place of business at 1620, Matoba, Kawagoe-shi, Saitama, 350-1101 Japan [REDACTED] and [REDACTED] Corporation. With its principal place of business at No. [REDACTED] Laguna Technopark, Biñan, Laguna, Philippines, (the "Company") (collectively the "parties" or individually a "party").

RECITALS

WHEREAS, [REDACTED] possesses certain valuable technical know-how expertise regarding the manufacturing of aluminum and magnesium parts;

WHEREAS [REDACTED] is willing to provide such expertise to the Company through the provision

**ROYALTY & BUSINESS PROFITS PAYMENTS TO
NRFC ORGANIZED & DOMICILED IN HUNGARY
ARE SUBJECT TO TAX TREATY RELIEF**

BIR ITAD RULING NO. 56-20, JULY 15, 2020



FACTS

- H CO. is a NRFC organized & domiciled in Hungary
- NRFC has no PE in PH
- Payments are for share in
 - Channel Net Revenues
 - Meets the definition of royalties as provided in the Ph-Hungary tax treaty
 - Ad Net Revenues
 - Business profits being in the ordinary course of business

**“Article 11
ROYALTIES**

1. *Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
 2. *Such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State. However, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed the lesser of:*
 - a) 15 percent of the gross amount of the royalties,
 - b) the lowest rate of Philippine tax that may, under similar circumstances, be imposed on royalties derived by a resident of a third State.
- Ph-Hungary Tax Treaty provides the **lowest rate at 10%**; hence, royalty payments to Hungarian NRFC are subject to 10% instead of 30%

**“Article 7
BUSINESS PROFITS**

1. *The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.”*



- Given that there is no PE in PH
- business profits are **exempt from income tax**

BIR RULING

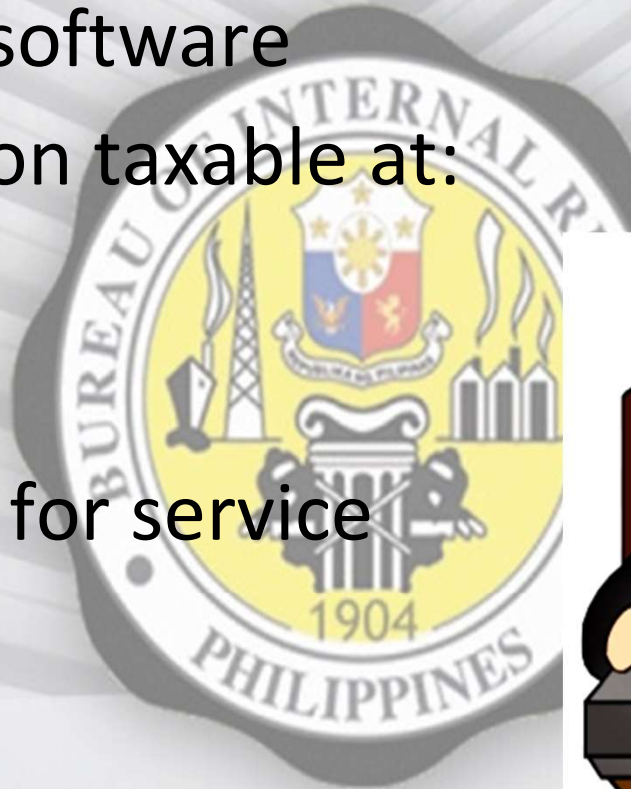
672-19

❑ income payments to
NRFC on software
distribution taxable at:

❑ 25% &

❑ 12% VAT

❑ provision for service



❑ E Co., a Singapore Company = income payments related to services performed outside PH in connection to Software Distribution Agreement executed with V Co. (PH domestic entity) shall:

- ~~❌~~ subject to income tax
- ~~❌~~ withholding tax & VAT in PH

BIR RULING 672-19

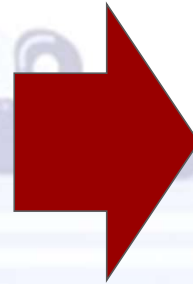


- ❑ E Co. is organized under SG laws
- ❑ not registered as corp. or as partnership in PH
- ❑ as evidenced by SEC Certification of Non-Registration

BIR RULING 672-19, OCT 30, 2019

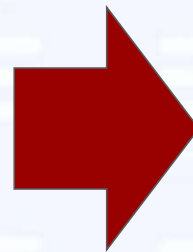


NRFC



PH income tax of
30% [now 25%]
Gross income (all
sources within PH)

**TAX SITUS
RULE**



source of income is
property, activity or
service that
produced the
income

Foreign licensor/owner = resident of country which has existing tax treaty with PH

- ❑ income to such owner are subject to reduced tax rates
- ❑ For such lower tax rates under Tax Treaty, BIR requires



Tax treaty

❑ request for confirmation

❑ tax treaty relief application

❑ In the absence, BIR will impose **25%**
FWT

SEC 108 (A) NIRC



- VAT shall be imposed on gross receipts derived from sale or exchange of services &
- use or lease of properties
- exchange of services** = performance of all kinds of services in PH
- for others for a fee, remuneration or consideration



**REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS**

September 1, 2005

REVENUE MEMORANDUM CIRCULAR NO. 44 – 2005

SUBJECT : Taxation of Payments for Software

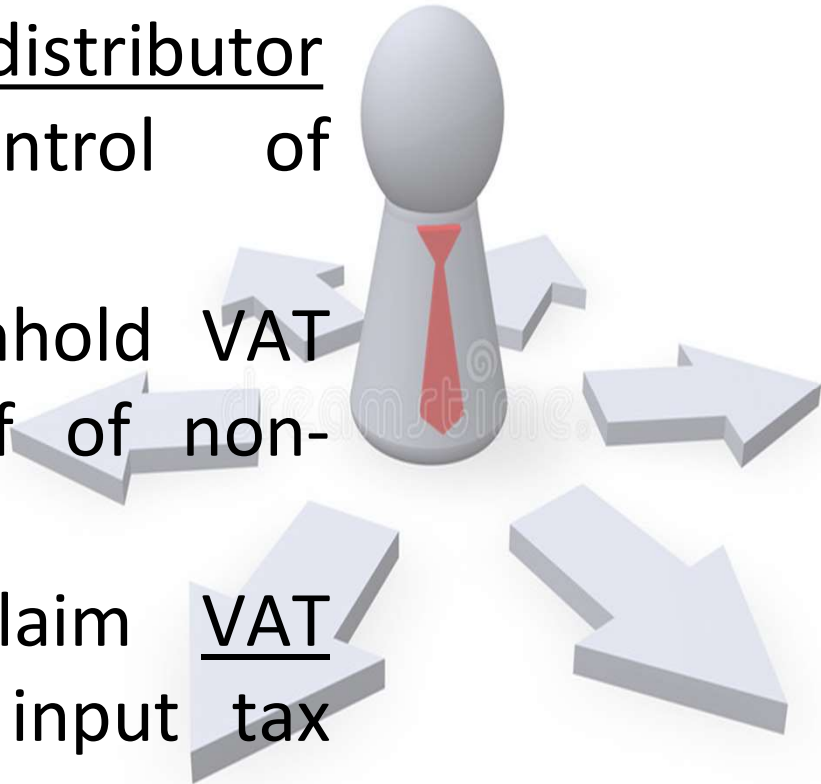
TO : All Internal Revenue Officers and Other Concerned

ff transactions shall be subject to **12% VAT**:

1. Royalty payments for use of copyright over software
2. Payments made to resellers/distributors or retailers who are engaged in trade or business of distributing or selling software
3. Payments for services rendered in PH in connection with purchased software



- ❑ If payments are made to non-resident licensor/reseller/distributor
- ❑ person in control of payment
- ❑ required to withhold VAT for & on behalf of non-resident licensor
- ❑ licensee may claim VAT withheld as its input tax upon filing its **VAT return**



TAXATION OF DIFFERENT CLASSIFICATION OF PAYMENTS RECEIVED AS CONSIDERATION FOR SOFTWARE

Local subsidiaries, resellers & distributors-local end-user may acquire license to use software, authorized by foreign licensor/owner of software to distribute its products in PH

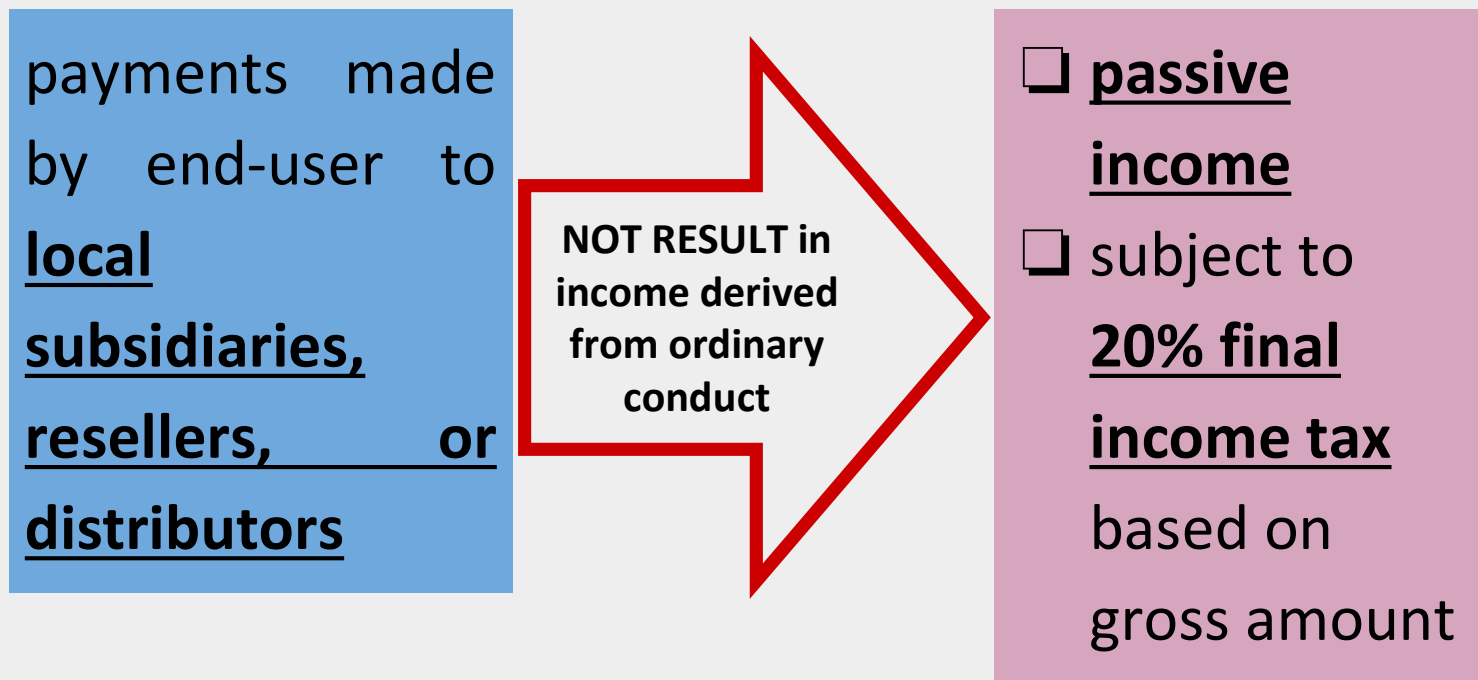
- Payments made by end-user as royalties are treated as business income=**30% [now 25% or 20%]** on net taxable income of domestic corp.



RMC 77-2003

- ❑ **end-user**=withhold 2% income tax of gross amount of payments
- ❑ which shall be creditable against tax due on taxable income of local subsidiaries, resellers, or distributors
(Sec 2.57.2)
- ❑ provided that end-user is **any** of the ff. persons required to withhold such tax:
 - ❑ (a) **juridical person**, whether or not engaged in trade or business
 - ❑ (b) **individual**, with respect to payments made in connection with his trade or business
 - ❑ (c) **government office** including GOCC, provincial, city, or municipal government & barangay

TAXATION OF DIFFERENT CLASSIFICATION OF PAYMENTS RECEIVED AS CONSIDERATION FOR SOFTWARE



RR 2-98

Application for Treaty Purposes (Relief from Philippine Income Tax on Royalties)

Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer



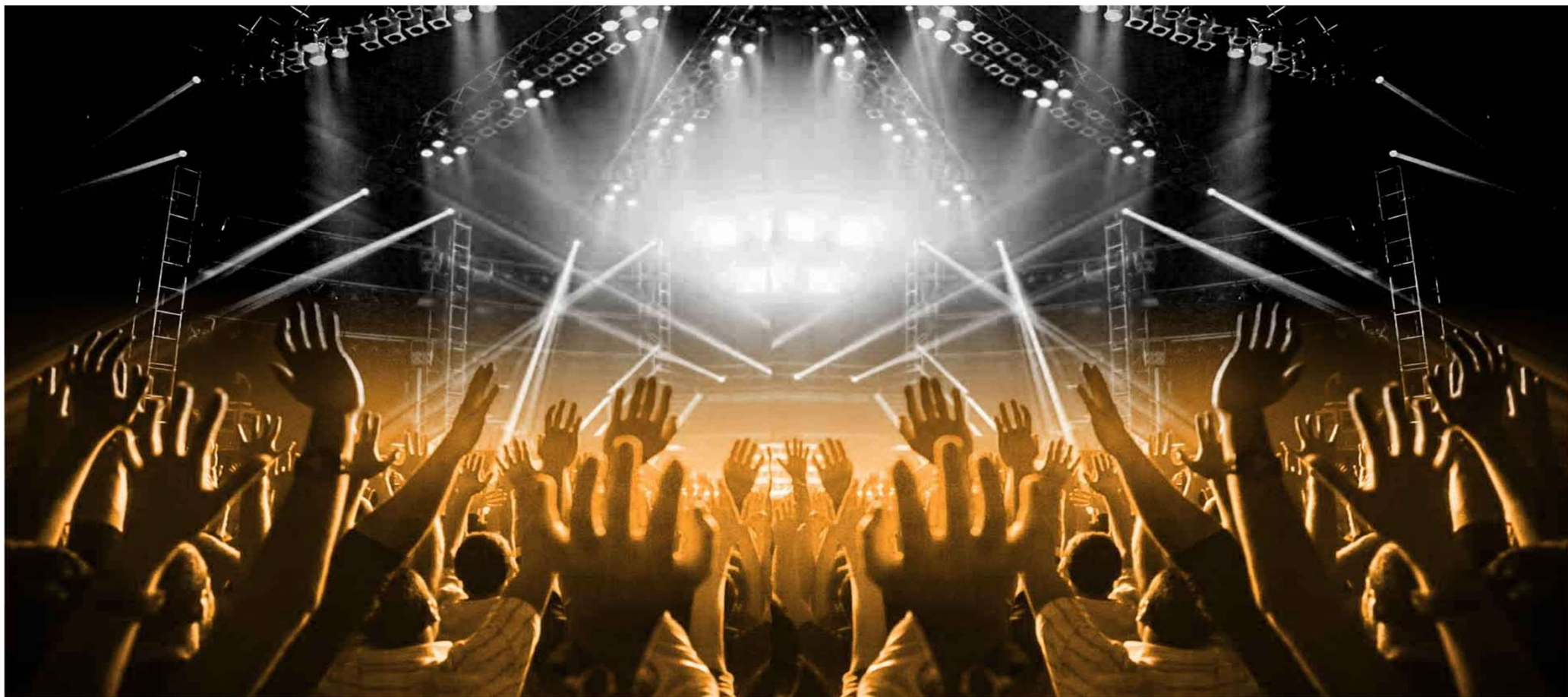
0901-R 02/21ENCS P1

Part I - Legal Basis of Claim for Relief

1 Article	1A of the Tax Treaty between the Philippines and	
2 Tax Treatment Under the Treaty	<input type="checkbox"/> Exempt from Income Tax	<input type="checkbox"/> Subject to Preferential Rate
2A Tax Rate	.	%

Part II - Identification of Income Recipient

3 Name of Income Recipient (Last Name, First Name, Middle Name for Individual OR Registered Name for Non-Individual)		
4 Local Taxpayer Identification Number (TIN)	5 RDO Code	6 Foreign TIN
7 Classification of Income Recipient in the Country of Residence (if Non-Individual)		
<input type="checkbox"/> Taxable Corporation	<input type="checkbox"/> Taxable Partnership	<input type="checkbox"/> Foundation
<input type="checkbox"/> Exempt Corporation	<input type="checkbox"/> Exempt Partnership	<input type="checkbox"/> Trust
		<input type="checkbox"/> Estate <input type="checkbox"/> Others, specify
8 Date of Birth/Establishment (MM/DD/YYYY)	9 Citizenship	
10 Place where the Company was established or organized		
11 Place of Head Office or Main Office		
12 Place Where the Business is Managed and Controlled		
13 Country Where the Recipient is Taxable as Resident and Where he/she/it is to Pay Tax		
14 Contact Number (Landline/Cellphone No.)	15 Email Address	
16 With Permanent Establishment (PE) in the Philippines?		17 With License to do Business in the Philippines?
<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No
18 Registered Name of the PE		
19 Taxpayer Identification Number of the PE	20 RDO Code	



BIR ITAD RULING 004-24, FEB 23, 2024



Articles 5 (Permanent Establishment),
7 (Business Profits) and 17 (Artistes
and Athletes)

Philippines-Korea tax treaty

BIR Ruling No. ITAD 004-24

Date: 23 FEB 2024

ABAD ALCANTARA AND ASSOCIATES

8th Floor, Citibank Center

8741 Paseo de Roxas

1226 Makati City

Gentlemen:

This refers to your tax treaty relief application filed on February 7, 2019 requesting confirmation that the income payments made by **Ticketnet, Inc.** (Ticketnet) to **MyMusicTaste Co., Ltd.** (MyMusic) are exempt from income tax pursuant to Article 7 (Business Profits), in relation to Article 5 (Permanent Establishment), of the Convention between the Republic of the Philippines and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Philippines-Korea Tax Treaty).

The Case: TicketNet & MyMusic Korea Gangnam



- ❑ **TicketNet**, a Philippine company, made payments to MyMusic Korea Gangnam (MyMusic) for services rendered
- ❑ **MyMusic** is a Korean company located in Gangnam, a renowned high-street district in Seoul

T. Co.'s Request & Agreement Details

- Confirmation of income tax exemption for payments to MyMusic, a non-resident foreign corporation (NRFC)

- Basis: Article 7 (Business Profits) & Article 5 (Permanent Establishment) of the Philippine-Korea Tax Treaty

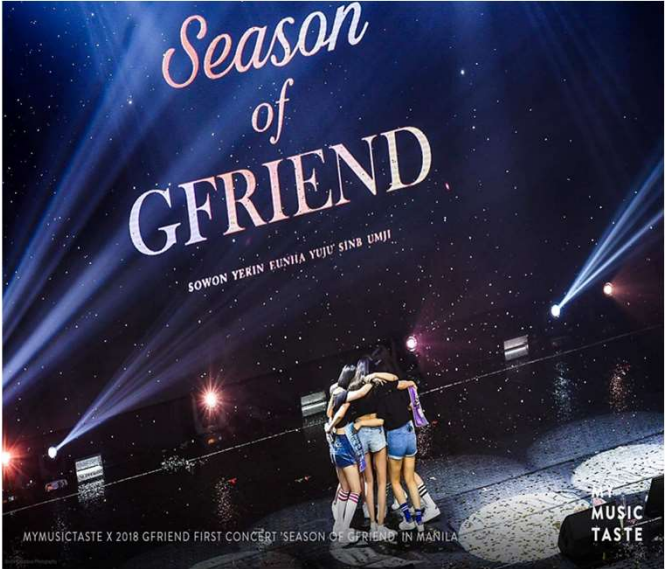
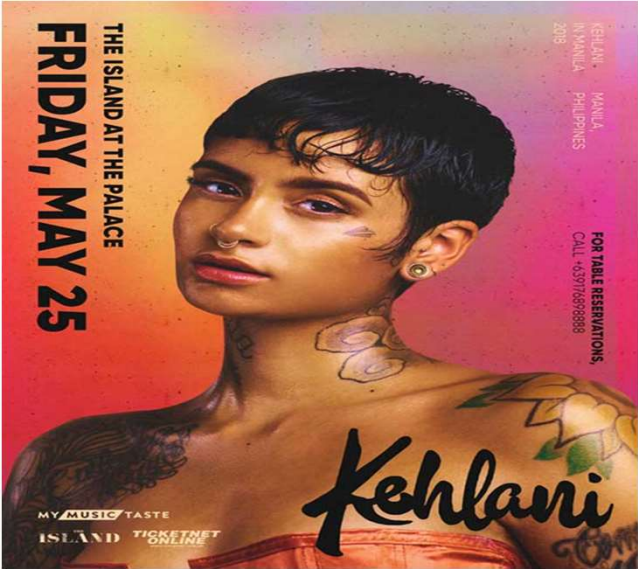
MyMusic's Role:

- Designates Ticketnet as its ticket outlet in PH
 - 5%-6% based on gross ticket sales

Concerts/Shows



Concerts/Shows



BIR's Initial Findings



- Absence of a Permanent Establishment (PE) in PH:
- MyMusic doesn't have a physical or legal presence in PH that conducts business
- Think of it like Smart Araneta Coliseum in PH-a permanent establishment for hosting events
- MyMusic doesn't have an equivalent presence in PH
- This supports income tax exemption under *Article 7*

Withholding Agent's Responsibility

- Role of Ticketnet:
 - Acts as a withholding agent
 - Must withhold tax on income accrued to MyMusic before remittance

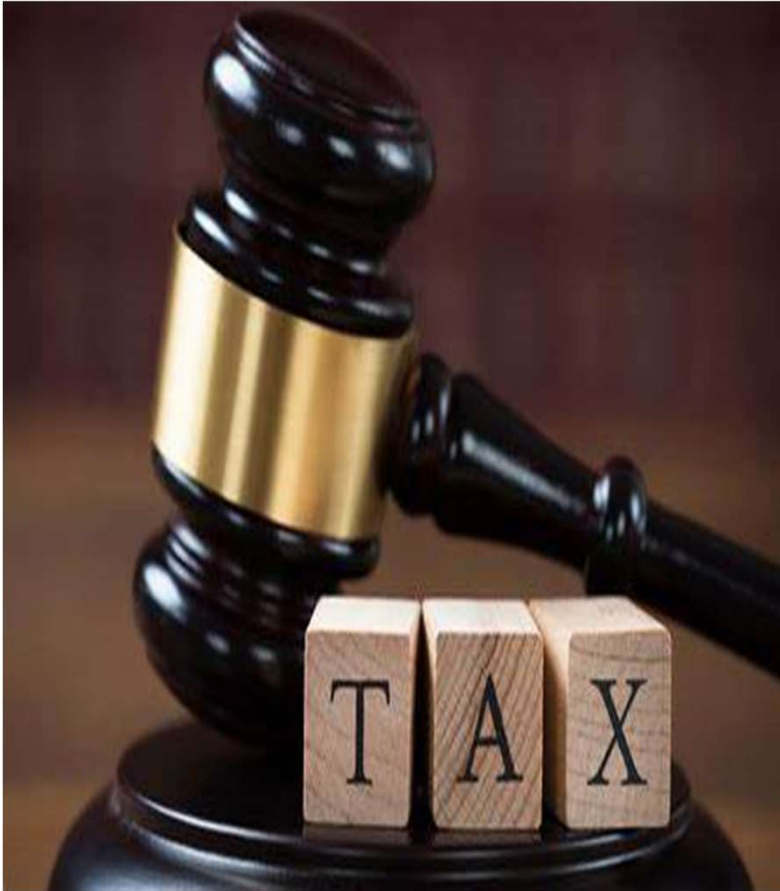


VAT on Ticket Sales

Final Withholding VAT:

- Ticket revenues derived by MyMusic are subject to 12% Final Withholding VAT (FVAT)
- Justification: Services deemed consumed in PH

Philippine Tax Laws & FVAT



- Under PH tax laws
- services consumed in PH may be subject to FVAT
- regardless of where they are performed

- Income payments to MyMusic are subject to withholding tax
- Ticketnet must withhold the tax before remittance
- Ticket sales are also subject to 12% FVAT

Schedule 3 – Nature of Income Payment

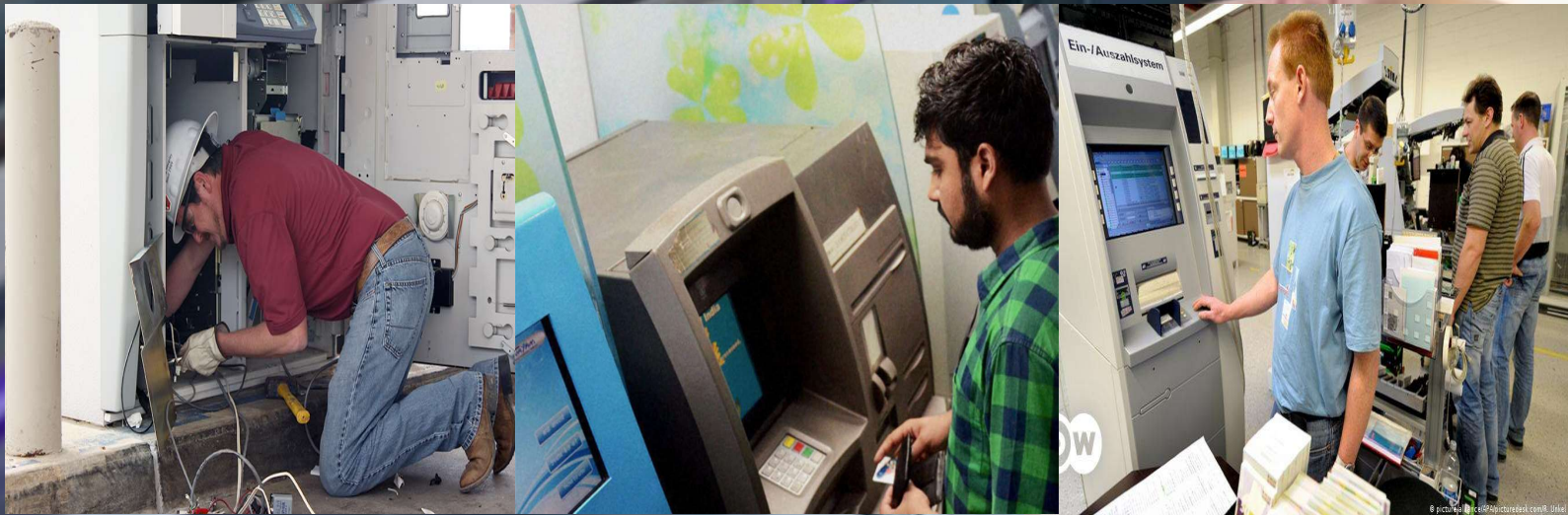
Particulars	Tax Rate	ATC	
		Individual	Corporate
Interest on foreign loans payable to Non-Resident Foreign Corporations (NRFCs)	20%		WC180
Interest and other income payments on foreign currency transactions/loans payable to Core Banking Units (OBUs)	10%		WC190
Interest and other income payments on foreign currency transactions/loans payable to Foreign Currency Deposit Units (FCDUs)	10%		WC191
Cash dividend payment by domestic corporation to citizens and resident aliens/NRFCs	10%	WI202	
	30%		WC212
Property dividend payment by domestic corporation to citizens and resident aliens/NRFCs	10%	WI203	
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Cash dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)	15%		WC222
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Share of NRAETB in the distributable net income after tax of a partnership (except General Professional Partnership) of which he is a partner, or share in the net income after tax of an association, joint account or a joint venture taxable as a corporation of which he is a member or a co-venturer	20%	WI226	
On other payments to NRFCs	30%		WC230
Distributive share of individual partners in a taxable partnership, association, joint account or joint venture or consortium	10%	WI240	
All kinds of royalty payments to citizens, residents aliens and NRAETB (other than WI380 and WI341), domestic and resident foreign corporations	20%	WI250	WC250
On prizes exceeding P10,000 and other winnings paid to individuals	20%	WI260	
Branch profit remittances by all corporations except BFZA/CPMA/CDA registered	15%		WC280
On the gross rentals, lease and charter fees derived by non-resident owner or lessor of foreign vessels	4.5%		WC290
On the gross rentals, charters and other fees derived by non-resident lessor or aircraft, machineries and equipment	7.5%		WC300
	8%	WI310	WC310
Payments to Non-resident alien not engage in trade or business within the Philippines (NRANETB) except on sale of shares in domestic corporation and real property	25%	WI330	
On payments to non-resident individual/foreign corporate cinematographic film owners, lessors or distributors	25%	WI340	WC340
Royalties paid to NRAETB on cinematographic films and similar works	25%	WI341	
Final tax on interest or other payments upon tax-free covenant bonds, mortgages, deeds of trust or other obligations	20%	WI350	

RENTAL
PAYMENTS

On the gross rentals, lease and charter fees derived by non-resident owner or lessor of foreign vessels
On the gross rentals, charters and other fees derived by non-resident lessor or aircraft, machineries and equipment

ROYALTY INCOME IS SUBJECT TO 25% TAX FOLLOWING THE NON-APPLICABILITY OF THE MFN CLAUSE

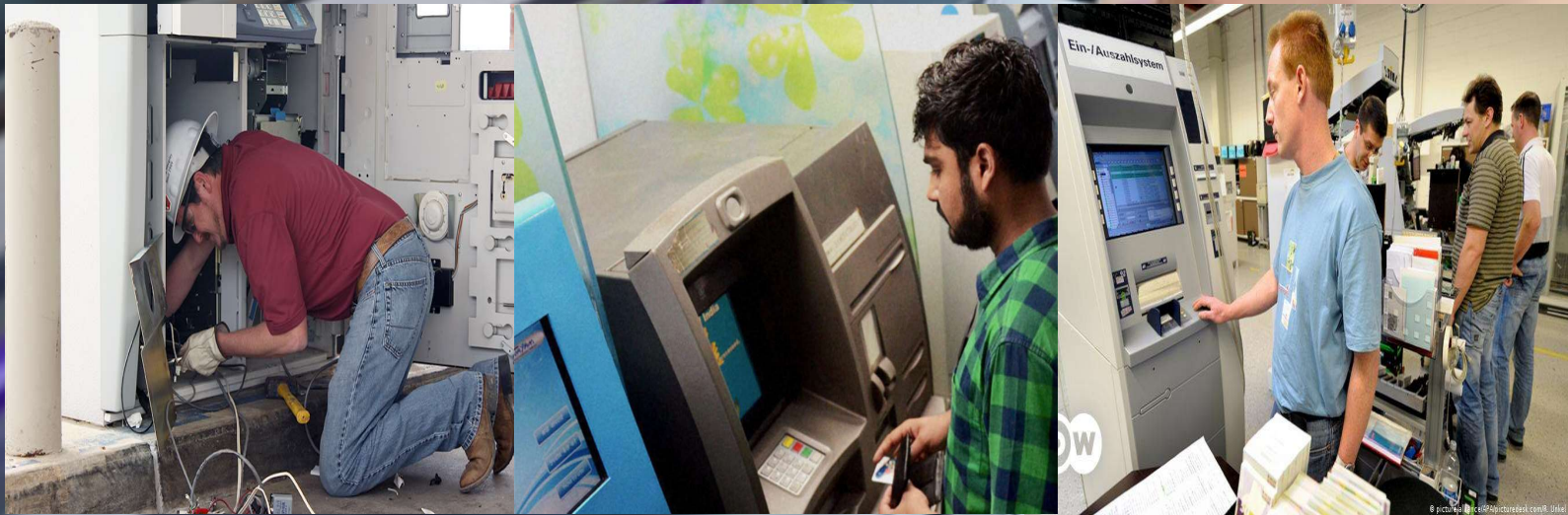
BIR RULING ITAD 044-21, SEPT 29, 2021



DIEBOLD
INNOVATION DELIVERED®

RENTALS FOR MACHINERIES & OTHER EQUIPMENTS
ARE SUBJECT TO 7.5% INCOME TAX BASED ON
GROSS RENTALS OR FEES

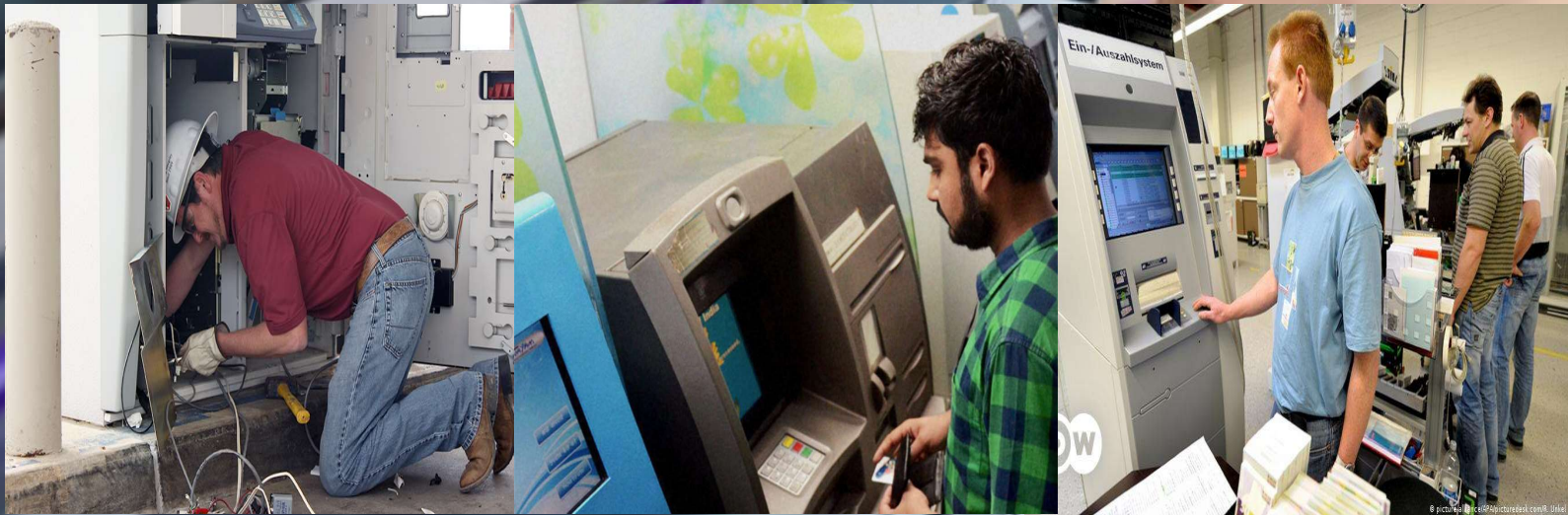
BIR RULING ITAD 044-21, SEPT 29, 2021



DIEBOLD
INNOVATION DELIVERED®

BUSINESS PROFITS OF AN NRFC ARE TAXABLE **IF ATTRIBUTED TO PE IN PH**

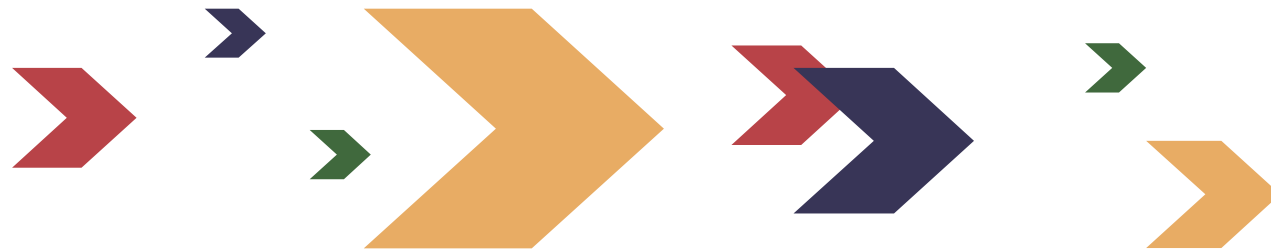
BIR RULING ITAD 044-21, SEPT 29, 2021



DIEBOLD
INNOVATION DELIVERED®

Diebold Philippines, Inc.

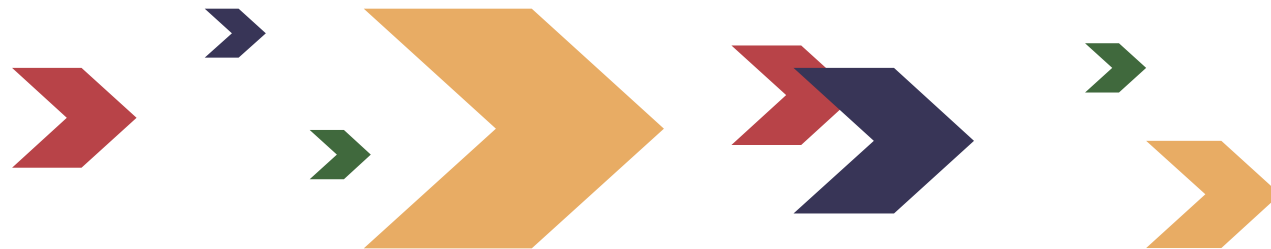
Are royalty payments made by Diebold PH to Diebold US subject to 10% preferential income tax rate pursuant to MFN clause under PH-US Tax treaty?



Diebold Philippines, Inc.

MFN clause not applicable
royalty income derived by Diebold US shall be
subject to 25% income tax rate

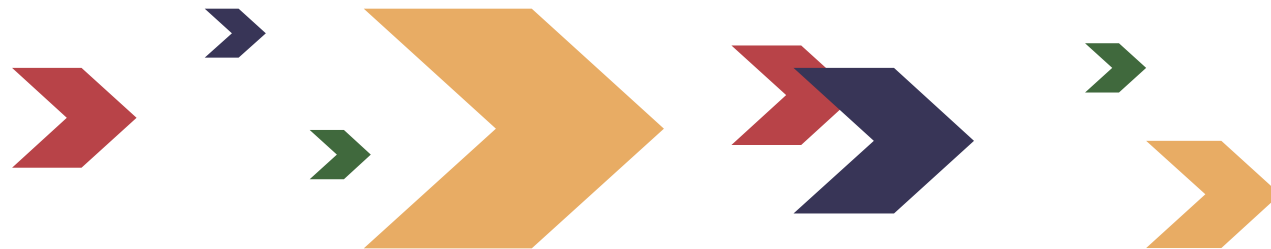
- 📌 two conditions must be met for MFNC to apply
 - (1) similarity in subject matter &
 - (2) similarity in circumstances in the payment of tax



Diebold Philippines, Inc.

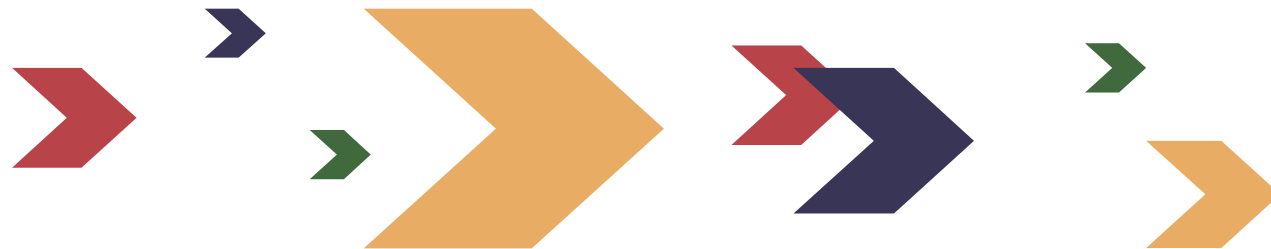
● rentals for the use of machineries & other equipment subject to 7.5% of gross rentals or fees

● Also subject to 12% FVAT



Diebold Philippines, Inc.

business profits of Diebold US shall be taxable only in US unless it has PE in PH



Schedule 3 – Nature of Income Payment

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		Individual	Corporate
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On payments to Non-resident alien not engage in trade or business within the Philippines (NRANETB) except on sale of shares in domestic corporation and real property	8%	WI310	WC310
On payments to non-resident individual/foreign corporate cinematographic film owners, lessors or distributors	25%	WI330	
	25%	WI340	WC340
	25%	WI341	
Final tax on interest or other payments upon tax-free covenant bonds, mortgages, deeds of trust or other obligations	20%	WI350	

SERVICE PAYMENTS

On payments to oil exploration service contractors/sub-contractors
 Payments to Non-resident alien not engage in trade or business within the Philippines (NRANETB) except on sale of shares in domestic corporation and real property
 On payments to non-resident individual/foreign corporate cinematographic film owners, lessors or distributors

Business Support Agreement

This Agreement is made and entered into this 1st day of January, 2015, by and between [REDACTED]”) and L [REDACTED] ([REDACTED]).

RECITALS:

[REDACTED] desires to derive business support from [REDACTED], having expertise in die-cast production, to improve [REDACTED]’s productive economies and efficiencies.

[REDACTED] desires to deliver to [REDACTED] such support on the terms and conditions set forth in this Agreement.

AGREEMENT

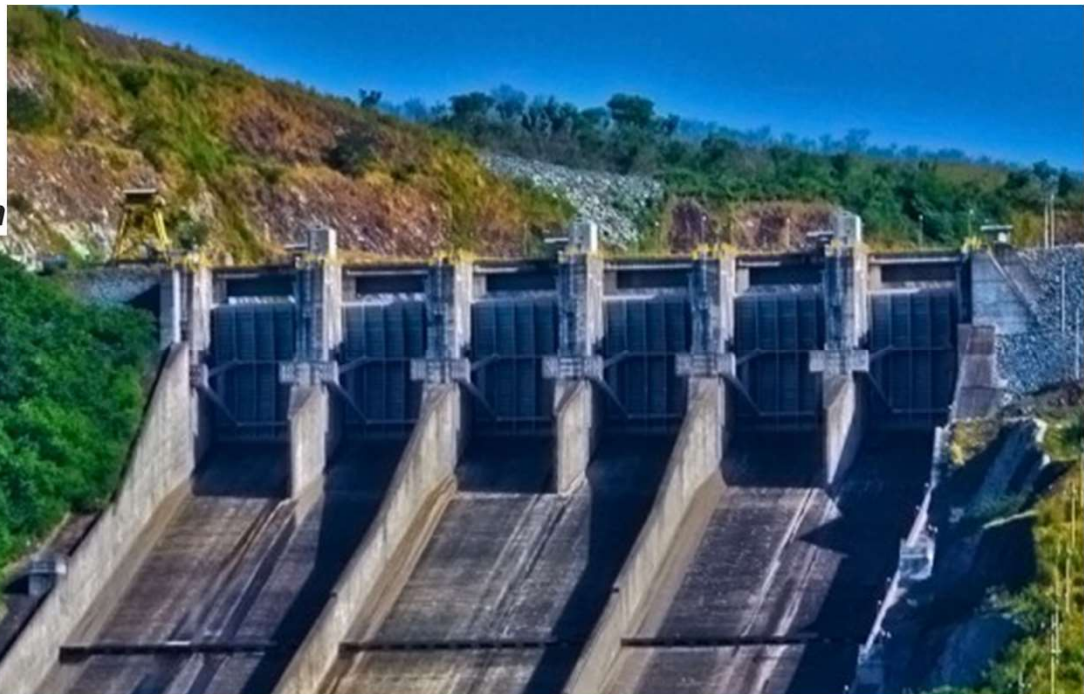
NOW IT IS HEREBY AGREED AS FOLLOWS:

Article 1 (Details of Services)

1.1. [REDACTED] shall render to [REDACTED] the business support services (the “Business

INCOME OF NRFC IS TAXABLE IF IT HAS PERMANENT
ESTABLISHMENT IN THE PHILIPPINES;
INCOME PAYMENT TO NRFC MAY BE SUBJECT TO 12% FVAT
PURSUANT TO PHILIPPINE-JAPAN TAX TREATY; EMPLOYMENT,
IF EXERCISED IN THE PHILIPPINES FOR MORE THAN 183 DAYS,
IS A TAXABLE TRANSACTION IN THE PHILIPPINES

BIR ITAD RULING 036-21, JULY 9, 2021



SERVICE FEES SUBJECT TO 25% FWT DUE TO CREATION OF PERMANENT ESTABLISHMENT



2011			
Employees	Arrival	Departure	Days of physical presence in the Philippines
EEE	May 15, 2011	May 24, 2011	10
EEE	June 6, 2011	June 18, 2011	13
DD	August 10, 2011	August 11, 2011	2
AA	September 20, 2011	September 24, 2011	5
EEE AA	November 28, 2011	December 3, 2011	6
Total			36

2012			
Employees	Arrival	Departure	Days of physical presence in the Philippines
PP	February 17, 2012	February 28, 2012	12
DD	March 11, 2012	March 13, 2012	3
AA	April 24, 2012	April 27, 2012	4
AA DDD	May 27, 2012	June 8, 2012	13
EEE DD	June 27, 2012	June 30, 2012	4
EEE	July 26, 2012	October 25, 2012	92
EEE	October 30, 2012	November 11, 2012	13
EEE	November 20, 2012	December 29, 2012	40
Total			181

2013			
Employees	Arrival	Departure	Days of physical presence in the Philippines
EEE	January 7, 2013	July 20, 2013	195
EEE	July 28, 2013	October 5, 2013	70
EEE	October 11, 2013	December 31, 2013	82
Total			347
2014			
Employees	Arrival	Departure	Days of physical presence in the Philippines
14			22
14			1
14			2
14			145
14			38
14			93
Total			301
2015			
Employees	Arrival	Departure	Days of physical presence in the Philippines
BBB	January 7, 2015	August 7, 2015	213
BBB	August 21, 2015	August 31, 2015	11
BBB	September 4, 2015	October 3, 2015	30
BBB	October 30, 2015	November 10, 2015	12
BBB	November 13, 2015	December 21, 2015	39
GO	December 22, 2015	December 30, 2015	9
Total			314
2016			

NRFC consistently furnished consultancy services in PH through its employees for more than 6 months or 180 days in any 12-month period beginning 2012



005.2022

SUBJECT: Request for Review of BIR International Tax Affairs Division (BIR-ITAD) Ruling 036-2021 dated 9 July 2021



 **Kansai Electric Power**
power with heart


SRPC
PHILIPPINES
San Roque Power Corporation



BIR-ITAD Ruling ITAD 036-21

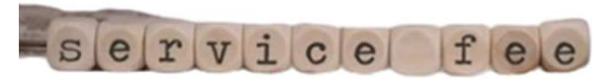
 **Kansai Electric Power**
power with heart



PERMANENT

**6 MONTHS OR
180 DAYS** in any
12-MONTH period
beginning **2012**

REQUEST



Avoidance of Double Taxation & the Prevention of Fiscal Evasion with Respect to Taxes on Income

FACTS



- ❑ Is a corporation duly organized & existing under & virtue of PH Law



- ❑ Is a NRFC organized & existing under the laws of Japan.

- through predecessor-in-interest, entered into Operation & Maintenance Consulting Agreement (Service Agreement)





Filed a Tax Treaty Relief Operation



DECEMBER 04, 2014



- ❑ Performed service for more than 183 days in 2013, 2015, 2016, 2017 & 2018

Takeshi Higashijima



Ikeno Yasutomo



Takaki Ishii



- ❑ Nonresident alien individuals not engaged in business or trade in PH

SEC 25 (B) NIRC

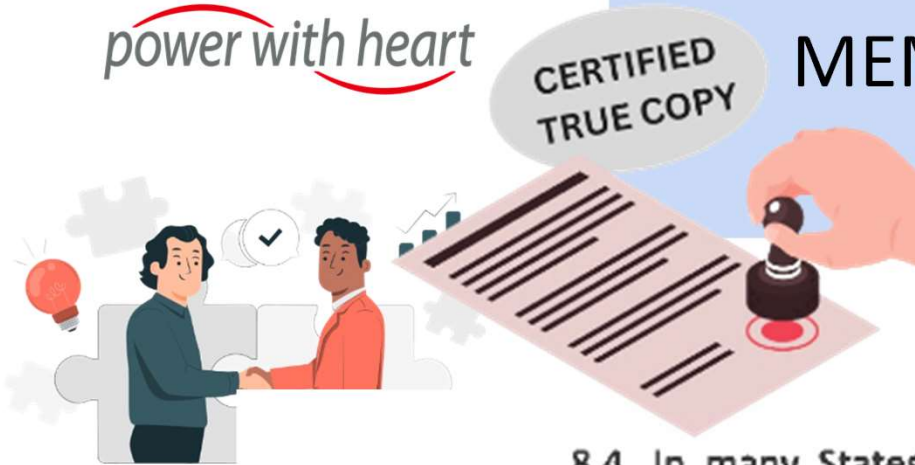


GROSS INCOME

25%



SECONDMENT AGREEMENT & MEMORANDA FOR SECONDMENT AGREEMENT



8.4. In many States, however, various legislative or jurisprudential rules and criteria (e.g. substance over for rules) have been deployed for the purpose of distinguishing cases where services rendered in an employment relationship (contract OF service) from cases where such services should be considered to be rendered under a contract for the provision of services between two separate enterprises (contract FOR services). xxx Subject to the limit described in paragraph 8.11 and unless the context of a particular convention requires otherwise, it is a matter of domestic law of the State of source to determine whether services rendered by an individual in that State are provided in an employment relationship and that determination will govern how that State applies the Convention.

xxx

8.11 xxx The relief provided under paragraph 2 of Article 15 would be rendered meaningless if States were allowed to deem services to constitute employment services in cases where there is clearly **no employment relationship** or to **deny the quality of employer** to an enterprise carried on by a **non-resident** where it is clear that the enterprise provides services, through its **own personnel**, to an enterprise carried on by a **resident**. Conversely, where services rendered by an individual may properly be regarded by a State as rendered in an employment relationship rather than as under a contract for services concluded between two enterprises, that State should logically also consider that the individual is not carrying on the business of the enterprise that constitutes the individual's formal employer; this could be relevant, for example, for purposes of determining whether that enterprise has a permanent establishment at the place here the individual performs his activities.

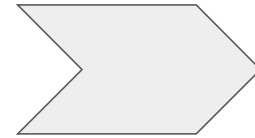
8.15 Where an individual who is formally an employee of one enterprise provides services to another enterprise, the financial arrangements made between the two enterprises will clearly be relevant, although not necessarily conclusive, for the purposes of determining whether the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided. xxx It is important to note, however, that the question of whether the remuneration of the individual is directly charged by the formal employer to the enterprise to which the services are provided is only one of the subsidiary factors that are relevant in determining whether services rendered by that individual may properly be regarded by a State as rendered in an employment relationship rather than as under a contract for services concluded between two enterprises.

Secondment Agreement



- ❑ OECD Commentaries reveal that during the secondment period, the secondment individuals considered employee of SRPC & not represent KEPCI
- ❑ SA provides seconded employees & will be assigned to the operations & maintenance of the Power Facility in the Philippines

Senior Vice President for Operation Site Administrator



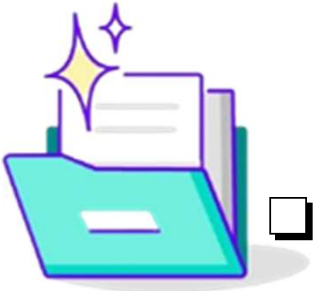
Secondment Employee



- ❑ Secondment is under the provision of SRPC & not the KCPI



Secondment Agreement



- ❑ SRPC shall pay the salary & other compensation to the second employees together with transportation, accommodation & all the other expense
- ❑ SRPC can the seconded employees if ever the performance duties is unsatisfactory or inappropriate

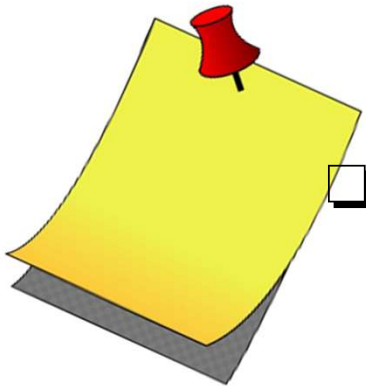
Calendar Year	Number of Days
2012	23
2013	39
2014	22
2015	35
2016	46
2017	62
2018	36

- ❑ KCPI consultancy service to SRPC not exceed up to 180 days per year, based on the details above
- ❑ KCPI does not have any permanent establishment in the Philippines

- ❑ In service that have been rendered in the Philippines are subjected to 12% VAT under **SEC 108(A) NIRC**
- ❑ As noted in Request for Review, KEPCI & SRPC did not request for the exemption of 3 individuals as SRPC considered them as their employees
- ❑ Withheld the appropriate taxes

DEPARTMENT OF FINANCE

Petition for review is **GRANTED**



- Upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered **NULL & VOID**

**SERVICE FEES PAID BY DOMESTIC CORPORATION
TO NRFC ARE EXEMPT FROM FWT & FVAT UNDER
TAX TREATY AGREEMENT**

BIR ITAD RULING 035-21, JULY 7, 2021



 **MIASCOR
CATERING**

MIASCOR
AVIATION SERVICES



- entire duration of Service Agreement
- no employee was sent to PH
- not deemed to have PE-**exempt from income tax**
- will perform services in Singapore
- exempt from VAT**



SERVICE FEES PAID TO JAPAN NRFC WITH NO PE IS EXEMPT FROM FWT & FVAT THOUGH THERE IS SERVICE RENDERED IN PH SINCE TP IS PEZA

BIR ITAD RULING 033-21, JUNE 18, 2021



Philippines-Japan Tax Treaty

- ✓ PARAGRAPH 1, ARTICLE 7:
- ✓ PARAGRAPH 1, 2, AND 6, ARTICLE 5:

profits of enterprise of Contracting State shall be taxable only if there is an existing permanent establishment situated therein & profits are attributable to permanent establishment



Even if the services are performed in PH



12% VAT
exempt



DOF OPINION 007.2019

JUNE 3, 2019

- ENTITY CONDUCTING BUSINESS IN PH FOR MORE THAN 183 DAYS THROUGH ITS PERSONNEL ARE DEEMED TO BE MAINTAINING PERMANENT ESTABLISHMENT
- FOREIGN CORP CREATED WITH PERMANENT ESTABLISHMENT IS CONSIDERED A RESIDENT FOREIGN CORP, THUS, SUBJECT TO INCOME TAX & VAT

BIR

- ❑ RP International Resources Pte. Ltd. (RPIR), a foreign corp organized & existing under SG laws
- ❑ Service fees subject to income & VAT





RPIR & ASPL, entered a 2-year Professional Service Agreement (PSA), the former agreed to pay PF to the latter & its affiliates

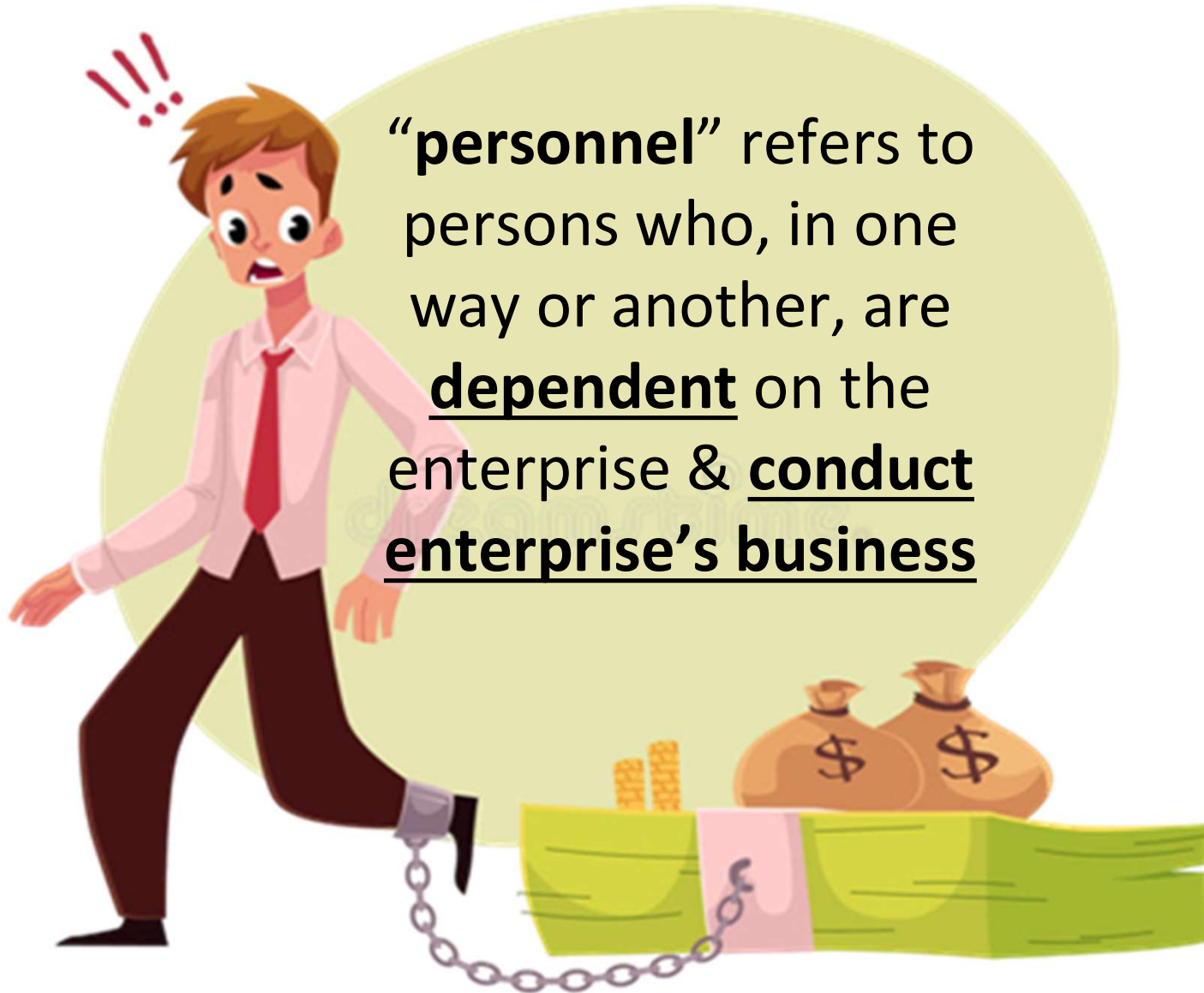
- ❑ performance of services by RPIR employees in PH for more than 183 days created PE subject to Income tax & VAT

ARGUMENTS:

❑ No PE, personnel who were deployed were not its employees

❑ PSA is not conclusive proof of an employer-employee relationship

❑ merely performed “recruitment” services, to liaise with 3rd parties who are actual employers of experts



“**personnel**” refers to persons who, in one way or another, are **dependent** on the enterprise & **conduct enterprise’s business**



RULING

- there are factors indicative of RPIR's control &
- said personnel are dependent on RPIR
- in one way or another, in conducting its business in PH
- RPIR failed to name & disclose various third-party providers
- these experts are deemed personnel of RPIR



RULING

- services performed by these personnel for more than 183 days in PH create PE herein &
- therefore, subject to income tax & VAT
- RPIR is RFC since it deployed personnel to API for 909 days
- which implies continuity of its commercial dealings & arrangements within PH

For BIR BCS/
Use Only Item:



Republic of the Philippines
Department of Finance
Bureau of Internal Revenue

BIR Form No. <h2 style="margin: 0;">0901-P</h2> February 2021 (ENCS) Page 1	<h1 style="margin: 0;">Application for Treaty Purposes</h1> <h2 style="margin: 0;">(Relief from Philippine Income Tax on Business Profits of Foreign Enterprises)</h2> <p style="font-size: small; margin: 0;">Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer</p>	<p style="font-size: x-small; text-align: right; margin: 0;">0901-P 02/21ENCS P1</p>
Part I - Legal Basis of Claim for Relief		
1 Article	1A of the Tax Treaty between the Philippines and	
2 Tax Treatment Under the Treaty <input type="checkbox"/> Exempt from Income Tax <input type="checkbox"/> Subject to Preferential Rate		2A Tax Rate . %
Part II – Identification of Income Recipient		
3 Registered Name		
4 Local Taxpayer Identification Number (TIN)	5 RDO Code	6 Foreign TIN
7 Complete Address (indicate street, post code, city, country)		
8 Date of Establishment (MM/DD/YYYY)	9 Commercial Register Number	
10 Contact Number (Landline/Mobile No.)	11 Email Address	
12 With Permanent Establishment (PE) in the Philippines? <input type="checkbox"/> Yes <input type="checkbox"/> No		13 With License to do Business in the Philippines? <input type="checkbox"/> Yes <input type="checkbox"/> No
14 Registered Name of the PE		
15 Taxpayer Identification Number of the PE	16 RDO Code	
17 Address of the PE		

TAX TREATY DOES NOT APPLY TO PERSON WHO IS NEITHER RESIDENT OF OR BOTH OF THE CONTRACTING STATES

BIR RULING ITAD 043-21, SEPT 29, 2021



**PROFITS ATTRIBUTABLE TO PE IN THE
OTHER CONTRACTING STATE ARE
SUBJECT TO TAXES SITUATED THEREIN**



- ❑ Alpine is not entitled to the benefits under the Tax Treaty
- ❑ Alpine is subject to income tax rate at the regular rate of 30%
- ❑ Loc&Stor shall withhold 12% VAT





Treaty benefits shall only be accorded to residents of either or both states



It is not automatic but is subject to presentation of **proof of residency or TRC** in contracting state



Failure to establish might result in the imposition of regular tax in the state of source.



BIR Form No. <h1 style="margin: 0;">0901-PR</h1> February 2021 Page 1	<h2 style="margin: 0;">Application for Treaty Purposes</h2> <h3 style="margin: 0;">(Relief from Philippine Income Tax on Branch Profit Remittances)</h3> <p style="font-size: small; margin: 0;">Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer</p>	<p style="font-size: x-small; margin: 0;">0901-PR 02/21 P1</p>
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Part I - Legal Basis of Claim for Relief

1 Article	<input type="text" value=""/> 1A of the Tax Treaty between the Philippines and	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;">2 Tax Treatment Under the Treaty</td> <td style="width: 10%; padding: 5px;"><input type="checkbox"/> Exempt from Income Tax</td> <td style="width: 10%; padding: 5px;"><input type="checkbox"/> Subject to Preferential Rate</td> <td style="width: 20%; padding: 5px;">2A Tax Rate</td> <td style="width: 10%; padding: 5px;">%</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> <td style="text-align: center;">.</td> <td></td> </tr> </table>	2 Tax Treatment Under the Treaty	<input type="checkbox"/> Exempt from Income Tax	<input type="checkbox"/> Subject to Preferential Rate	2A Tax Rate	%				.	
2 Tax Treatment Under the Treaty	<input type="checkbox"/> Exempt from Income Tax	<input type="checkbox"/> Subject to Preferential Rate	2A Tax Rate	%								
			.									

Part II - Identification of Income Recipient

3 Name of Income Recipient		
4 Local Taxpayer Identification Number (TIN)	5 RDO Code	6 Foreign TIN
7 Classification of Income Recipient in the Country of Residence		
<input type="checkbox"/> Taxable Corporation <input type="checkbox"/> Taxable Partnership <input type="checkbox"/> Foundation <input type="checkbox"/> Exempt Corporation <input type="checkbox"/> Exempt Partnership <input type="checkbox"/> Others, specify <input style="width: 100px;" type="text"/>		
8 Date of Establishment (MM/DD/YYYY)	9 Place where the company is established	
10 Address of the Head Office or Main Office		
		10A ZIP Code
11 Place Where the Business is Managed and Controlled		
12 Country Where the Recipient is Taxable as Resident and Where it is to Pay Tax		
13 Contact Number (Landline/Cellphone No.)	14 Email Address	

Part III - Details of Income Payor



BRANCH PROFIT OF SHELL PH
TO SHELL NETHERLANDS
SUBJECT TO LOWER 10%
INCOME TAX]

BRANCH PROFIT REMITTED
TO HEAD OFFICE ABROAD
SUBJECT TO RELIEF EITHER
THROUGH TAX EXEMPTION
OR TAX REDUCTION]

BIR RULING ITAD 032-21, JUNE 18, 2021]

DOCUMENTARY REQUIREMENTS

Original or certified true copy of documents

Remuneration Derived from the Provision of Professional Services or Other Activities of an Independent Character

- Contract duly executed by the parties or their authorized representatives
- Bureau of Immigration Certification or Passport booklet
- Certificate of Completion of the project
- Invoice(s) duly issued by income recipient



Prescribed Application Form:

BIR Form 0901- S1

For BIR BCS/
Use Only Item:



Republic of the Philippines
Department of Finance
Bureau of Internal Revenue

<p>BIR Form No. 0901-C February 2021 (ENCS) Page 1</p>	<h2 style="margin: 0;">Application for Treaty Purposes</h2> <h3 style="margin: 0;">(Relief from Philippine Income Tax on Capital Gains)</h3> <p style="font-size: small; margin: 5px 0;">Enter all required information in CAPITAL LETTERS using BLACK ink. Mark all applicable boxes with an "X". Two copies MUST be filed with the BIR and one held by the Taxpayer</p>	<p style="font-size: x-small; margin-top: 5px;">0901-C 02/21ENCS P1</p>
Part I - Legal Basis of Claim for Relief		
1 Article	1A of the Tax Treaty between the Philippines and	
2 Tax Treatment Under the Treaty	<input type="checkbox"/> Exempt from Income Tax <input type="checkbox"/> Subject to Preferential Rate	2A Tax Rate . %
Part II - Identification of Income Recipient		
3 Name of Income Recipient		
4 Local Taxpayer Identification Number (TIN)	5 RDO Code	6 Foreign TIN
7 Classification of Income Recipient in the Country of Residence (if Non-Individual)		
<input type="checkbox"/> Taxable Corporation <input type="checkbox"/> Taxable Partnership <input type="checkbox"/> Foundation <input type="checkbox"/> Estate		
<input type="checkbox"/> Exempt Corporation <input type="checkbox"/> Exempt Partnership <input type="checkbox"/> Trust <input type="checkbox"/> Others, specify 		
8 Date of Birth/Establishment (MM/DD/YYYY)	/ /	9 Citizenship
10 Place Where the Company was Established or Organized		
11 Place of Head Office or Main Office		
12 Place Where the Business is Managed and Controlled		
13 Country where the recipient is taxable as resident and where he/she/it is to pay tax		
14 Contact Number (Landline/Mobile No.)	15 Email Address	
16 With Permanent Establishment (PE) in the Philippines?		17 With License to do Business in the Philippines?

**CGT EXEMPTION ON TRANSFER OF
SHARES BETWEEN 2 NRFC OVER LOCAL
SHARES OF STOCKS**

BIR ITAD RULING 041-21, SEPT 29, 2021



Stockholders' Equity of MHPS as of February 1, 2014 (in JPY/¥)	¥	1,000
<i>Divide by:</i> Outstanding Shares		1,000
Fair market value (FMV) per share		1,000
<i>Multiply by:</i> MHPS Shares issued to MHI		682
Total FMV of MHPS shares issued to MHI in exchange for the rights and obligations transferred to MHPS	¥	682,000
<i>Multiply by:</i> Foreign exchange rate as of January 30, 2014 (1¥ = ₱.4418)		0.4418
FMV of shares issued to MHI in exchange for its rights and obligations transferred to MHPS	₱	301,223.6
<i>Multiply by:</i> Percentage of MTSC shares over the net assets transferred by MHI to MHPS*		0.0015792
FMV of MPHS shares received in exchange for the MTSC shares as of February 1, 2014	₱	475.0

FMV of MTSC shares based on its Balance Sheet as of January 31, 2014 (in PHP)		₱236,701,505.42
<i>Divide by:</i> Exchange rate as of January 31, 2014		0.4418
FMV of MTSC shares (in JPY)		¥535,766,196.06
<i>Divide by:</i> Assets and liabilities (net assets) transferred by MHI to MHPS per SAL		339,274,000,000.00
*Percentage of MTSC shares over the net assets transferred by MHI to MHPS		0.0015792

Fair market value of the MPHS shares	₱	2
<i>Less:</i> Cost of the MTSC shares		100,000,000.00
Net capital gains	₱	2

Property and equipment and computer hardware, software and network	₱106,494,282.57
<i>Divide by: Total assets</i>	356,819,619.87
Real property interest	29.84%

- Since MTSC's assets **do not consist principally (>50%) of immovable property**
- gains realized by MHI from sale of its shares in MTSC to MHPS shall only be taxable in Japan (*PH-Japan tax treaty*)
- exempt from PH income tax**
- Subject to donor's tax & DST

Schedule 3 – Nature of Income Payment			
Particulars	Tax Rate	ATC	
		Individual	Corporate
Interest on foreign loans payable to Non-Resident Foreign Corporations (NRFCs)	20%		WC180
Interest and other income payments on foreign currency transactions/loans payable to Offshore Banking Units (OBUs)	10%		WC190
Interest and other income payments on foreign currency transactions/loans payable to Foreign Currency Deposit Units (FCDUs)	10%		WC191
Cash dividend payment by domestic corporation to citizens and resident aliens/NRFCs	10%	WI202	
	30%		WC212
Property dividend payment by domestic corporation to citizens and resident aliens/NRFCs	10%	WI203	
	30%		WC213
Cash dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)	15%		WC222
Property dividend payment by domestic corporation to NRFCs whose countries allowed tax deemed paid credit (subject to tax sparing rule)	15%		WC223
Cash dividend payment by domestic corporation to non-resident alien engaged in trade or business within the Philippines (NRAETB)	20%	WI224	
Property dividend payment by domestic corporation to NRAETB	20%	WI225	
Share of NRAETB in the distributable net income after tax of a partnership (except General Professional Partnership) of which he is a partner, or share in the net income after tax of an association, joint account or a joint venture taxable as a partnership	20%	WI226	
On other payments to NRFCs	30%		WC230
	10%	WI240	
All kinds of royalty payments to citizens, residents aliens and NRAETB (other than WI380 and WI341), domestic and resident foreign corporations	20%	WI250	WC250
On prizes exceeding P10,000 and other winnings paid to individuals	20%	WI260	
Branch profit remittances by all corporations except PEZA/SBMA/CDA registered	15%		WC280
On the gross rentals, lease and charter fees derived by non-resident owner or lessor of foreign vessels	4.5%		WC290
On the gross rentals, charters and other fees derived by non-resident lessor or aircraft, machineries and equipment	7.5%		WC300
On payments to oil exploration service contractors/sub-contractors	8%	WI310	WC310
Payments to Non-resident alien not engage in trade or business within the Philippines (NRAETB) except on sale of shares in domestic corporation and real property	25%	WI330	
On payments to non-resident individual/foreign corporate cinematographic film owners, lessors or distributors	25%	WI340	WC340
Royalties paid to NRAETB on cinematographic films and similar works	25%	WI341	
Final tax on interest or other payments upon tax-free government bonds, mortgages, deeds of trust or other obligations			

CATCH ALL PAYMENTS

SUBSTITUTION FEES FROM LOANS
EXTENDED IN PH: EXEMPT FROM INCOME
TAX; SUBJECT TO VAT

BIR RULING ITAD 034-21, JULY 7, 2021



SUMITOMO METAL MINING CO., LTD.

NIAAC

NICKEL ASIA CORP.


Substitution fees

- Exempt from income tax – S Co. has no permanent establishment in PH
- Subject to VAT – loans related to substitution fees were extended in PH




IN-LINE INSPECTION SERVICES RENDERED BY FOREIGN CONTRACTORS

BIR ITAD RULING 028-21 [JUNE 8, 2021]



The image features the logo for NDT GLOBAL, which includes the text "INSPECTION INTELLIGENCE" and "GLOBAL" in blue, with "NDT" in a large, bold blue font. To the right of the logo is the flag of the United Arab Emirates, consisting of three horizontal stripes of green, white, and black, with a red vertical stripe on the left.

	Date of Arrival	Date of Departure
	July 24	October 8
	August 30	October 26
	June 9	October 26



The background of the slide is a grayscale photograph of an industrial park. A large sign in the background reads "FIRST PHILIPPINE INDUSTRIAL PARK". In the foreground, there is a roundabout with a motorcycle and a white van.

- Service fees paid by FPIC to NDT are **exempt from income tax** (RP-UAE treaty)
 - Not engaged in trade/business in PH
 - 140 days only
 - No PE
 - NDT is **liable to VAT**
- Services were all rendered in PH



WHERE ARE WE ON RFC & TTRA?



February 17, 2022

REVENUE MEMORANDUM CIRCULAR NO. 20-2022

Subject: Guidance on the Filing of Requests for Confirmation, Tax Treaty Relief Applications and Tax Sparing Applications

To: All Revenue Officers, Employees and Others Concerned

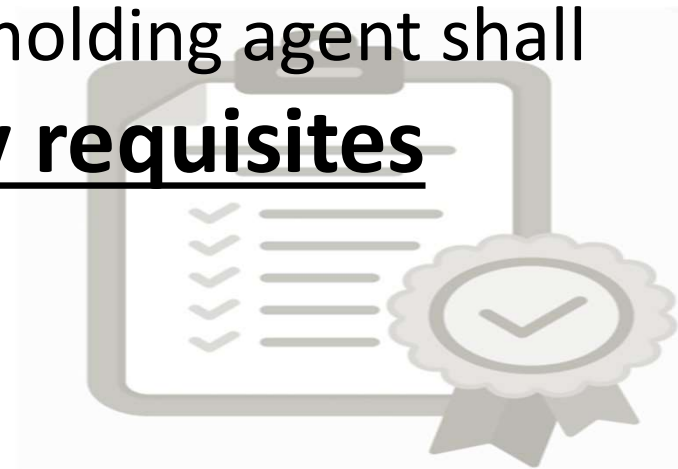
I. Background

GUIDANCE ON FILING OF RFC & TTRA

RMC 20-2022 [FEB 17, 2022]



- ❑ TPs who were already issued w/ COE
- ❑ shall **no longer file RFC/TTRA every time** income of similar nature is paid to the same nonresident
- ❑ In applying the confirmed treaty benefit to future income payments
- ❑ income payor or withholding agent shall always be **guided by requisites** mentioned in COE



- For income from non-recurring transactions, RFCs or TTRAs shall still be filed
- annual updating that is required for long-term contract of services, shall only submit:
 - TRC of nonresident for relevant year
 - Sworn Certification that requisites are met
 - CTC of their passports/Certification issued by BI
 - Certificate of Completion of the project
 - Invoice duly issued by income recipient
 - Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing payment remittance of income

WHEN TO FILE?

- ❑ **capital gains**-any time after the transaction transpired
 - but not later than the last day of the 4th month ff the close of TY when income is paid or when the transaction is consummated
- ❑ **all other types of income**-close of TY but not later than last day of the 4th month ff the close of such TY when income is paid or payable, or when the expense/asset has accrued or is recorded in the books, whichever comes first

SWORN CERTIFICATION

I, _____, in my capacity as _____
of _____, with principal business address at
_____, hereby depose and state that:

- 1. _____ was contracted by _____
_____ to render the following services:
 - a.
 - b.
 - c.
- 2. Such services were performed entirely/partly in the Philippines or entirely outside the Philippines;
- 3. For the services performed in the Philippines, the following employees or personnel of _____ were deployed on the following date/s:

Name	Designation	Details of Services Rendered	Duration of Stay

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UPDATES**



willie.santiago@dmdcpa.com.ph