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

July 8, 2019

REVENUE MEMORANDUM ORDER NO. 51-2019

SUBJECT: Guidelines and Procedures for the Processing and Issuance of Tax Residency Certificate

TO: All Internal Revenue Officers and Others Concerned

I. OBJECTIVES

The International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue is authorized to process the issuance of a Tax Residency Certificate (TRC). The TRC is secured by Philippine residents deriving income from sources within the jurisdiction of a Contracting State intending to avail the preferential tax treatment under the effective tax treaties of the Philippines.

Apart from eliminating or avoiding the effects of double taxation with respect to taxes on income and on capital, thereby encouraging foreign trade and investment, Contracting States conclude a tax treaty to avoid the risks of double non-taxation. This is done by allocating taxing rights between the Contracting States and ensuring that an income is not left untaxed through schemes resorted to by taxpayers who seek to obtain unintended treaty benefits.

In granting treaty benefits, it must be established and made clear that only residents of a Contracting State who are subject to comprehensive liability to tax or full tax liability are entitled thereto. In other words, only residents of a Contracting State who are subject to tax on the basis of their worldwide income are entitled to claim treaty benefits.

Issues now arise as a result of the different tax structures of the Contracting States. In some States, taxpayers are considered residents for treaty purposes by reason of length of stay and place of effective management therein, irrespective of citizenship and place of incorporation. On the other hand, only resident citizens and domestic corporations are considered residents for treaty purposes in the Philippines because only them are subject to tax on their worldwide income. Resident aliens and resident foreign corporations are regarded as residents for domestic tax purposes but not for treaty purposes as they are only taxed on their income from Philippine sources.

Despite this delimitation, ITAD has observed that there are numerous taxpayers who seek to obtain unintended treaty benefits. ITAD has been receiving various applications for TRC from resident aliens and resident foreign corporations claiming to be Philippine residents for treaty purposes so as not to be taxed on their income derived from another State. Thus, the need to clarify, through the issuance of this Revenue Memorandum Order (RMO), who are considered "residents of a Contracting State."

Moreover, it has been observed that Philippine residents with foreign-sourced income applying for a TRC have been submitting spurious contracts between them and their foreign clients, billing statements, receipts or invoices or any proof of transaction, so as not to reveal the true nature and amount of their income abroad.

Therefore, in order to regulate the issuance of TRCs and prevent any misuse or abuse thereof, the Bureau deems it necessary to issue this RMO to:

1. prescribe the requirements and procedures for the processing and issuance of TRCs;
2. establish the creation of a database of Philippine residents with foreign-sourced income; and
3. monitor the reporting or declaration of such income in the Income Tax and Value-Added Tax or Percentage Tax Returns, as the case may be, of the concerned income earners.

II. POLICIES

1. ITAD shall, consistent with the provisions of Revenue Administrative Order No. 1-2019, be charged with the receiving and processing of all applications for the issuance of TRCs.

2. In general, all applicants engaged in trade or business or practice of profession must be registered with the Bureau of Internal Revenue under a regular Tax Identification Number ("**TIN**"). Taxpayers registered under TINs generated for One-Time Transactions (ONETT) or under Executive Order (EO) No. 98 only must update their registration by filing BIR Form No. 1905 before securing a TRC. This rule does not apply to applicants whose only source of income is any type of passive income or pension received from foreign sources, in which case, registration under EO No. 98 shall suffice.

   All applicants engaged in business or practice of profession of an independent nature or character, including consultancy services, must comply with the registration (primary and secondary) requirements set forth under the pertinent revenue issuances (secure a Certificate of Registration from the appropriate district office and apply for an Authority to Print Invoices or Receipts, principal or supplementary, register books of accounts, among others).

3. TRCs are issued on the basis of tax residency in the Philippines of the applicant. The burden of proving the fact of residency, pursuant to effective and applicable tax treaties, rests upon the applicant.

   In determining whether or not a taxpayer is a resident of a Contracting State, consideration must be given to the taxpayer's liability to tax in the country of residence so that only taxpayers subject to comprehensive liability to tax or full tax liability are considered residents.

4. Pursuant to the above-mentioned objectives, the Bureau has designed its own TRC so as to eliminate or minimize any attempt to conceal the real nature and amount of

income earned abroad, and for this reason, ITAD shall no longer sign the TRC forms of foreign jurisdictions.

The prescribed TRC shall include, among others, the name of the taxpayer, TIN, place of business, period covered, nature of transaction or type of income, amount of income, based on the registration information appearing in the Integrated Tax System (ITS) of the Bureau and based on the documentary requirements submitted by the applicant.

In case the registration details as appearing in the ITS are different from the representations of the applicant, updating of registration information shall be required first before processing the TRC.

5. Upon the effectivity of this RMO, ITAD will no longer accept TRC applications of resident aliens, including *pensioners*, and resident foreign corporations (e.g. *regional operating headquarters, regional or area headquarters*) for the reason cited above.

6. With the issuance of this RMO, proper linkage between the assessment offices of this Bureau and ITAD shall be established. ITAD shall act as repository of documents substantiating the foreign-sourced income of Philippine taxpayers and shall furnish the appropriate Revenue District Office (RDO) or Large Taxpayers Division (LTD) of all documents submitted by the applicant. In turn, the concerned RDO or LTD shall verify whether or not the foreign-sourced income was properly disclosed or declared and the corresponding tax was paid by the income earner. If not, the RDO or LTD, following the procedures for conducting tax investigation, shall assess or determine the deficiency tax and enforce the collection thereof including penalties, if applicable.

   A sample letter notifying the concerned taxpayer for failure to declare his foreign-sourced income is hereto attached as **Annex "A"**.

III. PROCEDURES

1. The taxpayer shall submit a letter-request addressed to the Chief of ITAD, together with the supporting documentary requirements (**Annex "B"** for corporations and **Annex "C"** for individuals) to ITAD. The Officer of the Day (OD) shall conduct an initial check of the documents submitted. The OD shall acknowledge receipt of the TRC application and issue a Notice to Submit (if, based on the OD's initial verification, the taxpayer failed to submit all the required documents.

   All documents must, in general, be a certified true copy of the original. In all cases, the original copy of the document must be presented for comparison and verification.

2. The letter request shall contain the name of the taxpayer, the type of income derived abroad, the amount of such income, the period covered, and a narration of the attachments. In case a documentary requirement is not applicable or available, a statement to that effect should be indicated in the letter-request and the reason therefor.

If, in the course of processing the application for a TRC, ITAD finds it necessary to request for documents other than those listed in Annex "B" or Annex "C" hereof, the applicant shall be duly notified and be given enough time to submit additional documents.

Any application submitted to any BIR Office other than the ITAD shall be deemed as not filed. Moreover, all documents submitted shall remain with the ITAD even if the application is subsequently withdrawn or cancelled at the initiative of the applicant.

3. The ITAD shall verify, through the Integrated Tax System (ITS), the veracity of the information (such as the TIN) adduced by the applicant. For this purpose, ITAD shall have sufficient access to the ITS.

4. The ITAD shall act promptly and expeditiously on all applications for TRC. Normal processing time is fourteen (14) working days from submission of complete documents.

5. The above Certificate shall be signed by the Assistant Commissioner for Legal Service and shall also bear the seal of the said Office.

6. The signed Certificate shall be released by the ITAD only to the applicant or his/her authorized representative upon presentation of a Special Power of Attorney and the appropriate proof of identification. The ITAD shall ensure that a loose documentary stamp provided by the applicant is affixed on the TRC before releasing it.

IV. DENIAL OF APPLICATION

A letter of denial shall be issued if, based on the submitted documents, either the taxpayer is not entitled to the same (e.g. taxpayer did not derive any income abroad but is only seeking reimbursement of expenses paid on behalf of the foreign client) or has submitted fake documents. Unless and until the taxpayer declares the real nature of transaction abroad and submits authentic documents, the Bureau will be constrained to issue a denial.

V. REPEALING CLAUSE

All revenue issuances or portions thereof inconsistent herewith are hereby revoked and/or amended accordingly.

VI. EFFECTIVITY

This Order shall take effect immediately.

(Original Signed)
CAESAR R. DULAY
Commissioner of Internal Revenue