

Asia Internet Coalition (AIC) Industry Submission on Philippines Tax Treaty Relief Application (“TTRA”)

22 April 2024

To

Romeo D. Lumagui, Jr.
Commissioner of Internal Revenue
Bureau of Internal Revenue (BIR)
Republic of the Philippines

On behalf of the [Asia Internet Coalition](#) (AIC) and its members, I am writing to express our recommendations on the enforcement of the Tax Treaty Relief Application (“TTRA”). AIC is an industry association of leading internet and technology companies in the Asia Pacific region with a mission to promote the understanding and resolution of Internet and ICT policy issues in the Asia region.

We request further streamlining of processes to access tax treaty benefits with respect to business profits derived by nonresidents without permanent establishments in the Philippines. In our view, the current enforcement of the Tax Treaty Relief Application (“TTRA”) or the Request for Confirmation (“RFC”) administrative processes in order to avail benefits under income tax treaties concluded by the Philippines with treaty partners are not aligned with international best practices and are disincentivizing international trade with customers based in the Philippines. We also note that there is no basis in domestic legislation in the Philippines for the Bureau of Internal Revenue (“BIR”) to require that nonresidents or their Philippines income payor to seek confirmation of entitlement to treaty benefits from the BIR before tax treaty relief may be claimed.

We kindly ask that the treaty eligibility process adopted by the BIR is aligned to international best practices either through an automated exemption/ entitlement process, or else through a revised streamlined process, including reduced required documentation and processing time. This should ensure the Philippines is not adopting an approach that is out of line with those adopted by neighboring jurisdictions, and the country remains competitive for international trade and investment by foreign companies.

We believe that streamlining taxpayers’ access to treaty benefits will be a key driver of growth both for businesses in the Philippines and for the wider Filipino economy. It should also free up resource at the BIR as Philippines tax officers should not be spending time reviewing unnecessary documents, when access to tax treaty benefits for specified income sources should not be denied if the claimant is a resident of a tax treaty country eligible for treaty

benefits. Moreover, the availability of treaty benefits between customers in the Philippines and, for example, U.S. or Japanese companies will only strengthen international trade relationships between these countries,

1. Current Burdensome Process

Under various double tax treaties with the Philippines, payments made by customers resident in the Philippines for services rendered by a non-resident company without permanent establishment in the Philippines should not be subject to withholding tax. However, to avail of this treaty benefit, the taxpayer resident in the Philippines must file a RFC to the BIR for the BIR to confirm entitlement to tax treaty relief. Alternatively, the non-resident recipient of the income can file a TTRA after the income has been received net of tax, to request for the suffered withholding tax to be refunded. Such tax will not be refunded to the nonresident income recipient until the BIR confirms the treaty entitlement, which may be some years later.

The need for any application of entitlement to tax treaty benefits is unnecessarily onerous and represents a barrier to international trade, which tax treaties by their nature are intended to facilitate. The RFC and TTRA applications, particularly for business income, have to be supported by onerous documentation requirements, some of which required apostilization, and have to be handled on a customer-by-customer basis. Further, for business income, nonresidents or its income payor is required apply for the TTRA or RFC (as applicable) every year.

2. General Recommendation

We respectfully ask that the current **TTRA and RFC process to confirm entitlement to tax treaty relief be eliminated** as access to treaty benefits has already been agreed by the two competent authorities to an income tax treaty and should be automatically available. For example, in Thailand and Australia, no approval or notification is required to apply tax treaty relief claims.

If BIR chooses to maintain its application process, the current approval / confirmation process should be **replaced with a simple and streamlined notification process** as is the practice elsewhere in the world without the onerous documentation requirements as currently mandated by the BIR. For example, Indonesia, Singapore, India, and many other countries have an informational or notification process only with minimal documentation requirements.

3. Specific Recommendations

As mentioned, if BIR chooses to maintain its application process, we recommend a simple and streamlined notification process as elaborated below:

First, we request that the process is moved to an **online process to reduce the administrative burden and costs**. There should be no requirement for an in-person meeting or hard copy documentation. The neighboring countries including Singapore and Indonesia allow for online submissions and notifications. We also understand that in addition to a highly manual process, several of the documents required in a TTRA or RFC need to be authenticated or notarized by third parties, which takes time and is costly for foreign companies wishing to do business with customers in the Philippines. It is also administratively burdensome as the same documents have to be notarized multiple times since the TTRA/ RFC has to be made on a customer by customer basis. These requirements should be removed, i.e. no notarization required, in order to align with best practices and enhance trade.

Second, we recommend **reducing the documentation requirements in the current application process** which nonresidents/ payors in the Philippines must file to obtain confirmation from the BIR in respect of a TTRA/ RFC. The BIR should only require a notification/ informational form and a scanned copy (i.e. not authenticated) of the non-resident's tax residency certificate ("TRC"). We strongly recommend eliminating the onerous documentation, particularly the following: articles/memorandums of incorporation of non-resident companies, certificate of non-registration of company (i.e. for nonresident) issued by Securities and Exchange Commission, contracts and invoices, bank documents evidencing payment and sworn statements are all removed from the process.

We do not know of another country which requires an income payor to comply with such burdensome documentation requirements to confirm its supplier's / service provider's entitlement to treaty benefits before making a payment. Whilst we appreciate some documentary evidence should be provided to evidence treaty eligibility, other jurisdictions have limit the documentation required only to that needed to confirm treaty eligibility. This is usually just the scanned copy of the nonresident's TRC and a simplified notification form giving basic details of the treaty resident, etc.

Further, not only is it a long and onerous process to collate the required documentation, but sometimes the documentation is simply not obtainable by the Philippines payor because the non-resident suppliers may not be willing to share legal documents such as articles of association or giving any sworn certifications. It is important to also emphasize that other countries in the region only require scanned copies of documents. We are not aware of other jurisdictions that require original documents or notarized documents.

Third, we request this process is **streamlined in regards to processing time, i.e. the application process is informational only and approved automatically** as is the practice in other countries around the world. We recommend that BIR remove the need to issue a Certificate of Entitlement ("COE") to confirm entitlement to treaty benefits. As mentioned earlier, access to treaty relief should be given "as agreed" to an eligible resident of the tax treaty. If any filing needs to be made to the BIR, this should only be a notification to inform the BIR that

access to treaty relief has been made without a need to wait for the BIR to response/ issue a COE to confirm entitlement.

As mentioned, other countries in the region provide a very simplified and fast process time. For example, in **Thailand and Australia**, no approval or notification is required for accessing tax treaty benefits. There is also no need to provide any documents including a copy of the nonresident's TRC. In **Indonesia**, only an online submission of a form and a TRC are required and the confirmation via an issuance of a downloadable e-receipt upon successful uploading of the form is generated instantaneously. Only one income payor for the same income type needs to go through this process and provides a copy of the e-receipt to the nonresident. The nonresident will use the same e-receipt and provides it to its other income payor of the same income type "confirming" that it is entitled to the tax treaty benefits. **Singapore** similarly adopts a streamlined process for an online notification for accessing treaty benefits. This is accompanied by a scanned copy of a TRC which does not need to be original or notarized. In **India**, the customer simply fills out an informational form to the banks, i.e. there is no 'pre-approval' process to obtain an Exemption Certificate from the tax authority in advance. We are available to discuss further with you on how the notification process for accessing tax treaty claims should look like, by drawing references and examples of how other countries have done it.

While we welcome the changes to the RFC administration process issued in 20-2022¹, this applies only for passive or recurring income like dividends, interests, royalties, etc. It does not solve the wider streamlining issue since (i) business profits and income from services are still subject to annual TTRA/ RFC applications and (ii) foreign companies will often provide services to many different income payors in the Philippines. Each income payor therefore still needs to go through the same RFC process, requiring foreign companies to provide all the aforementioned documentary support in respect of every client they serve in the Philippines, even where services provided may be identical between payors.

Finally, we would like to highlight that our contacts within the Philippines business community tell us that in addition to being cumbersome and time consuming, submitting the TTRA or RFC requests also can have **unintended consequences for nonresidents or payors respectively in the Philippines**, such as triggering tax authority audits for the party seeking confirmation. BIR also indicates that failure to request an RFC in line with RMO 14-2021 before making payments using the treaty rate of withholding tax, could lead to possible penalties and criminal liabilities on taxpayers. These are not considered good practices nor have we seen other jurisdictions have such detrimental repercussions in respect to their treaty benefit approval processes.

¹ This provides that an income payor who has already been issued a COE by BIR in respect of payments to a nonresident provider shall no longer be required to file a new RFC or TTRA every time that income of similar nature is paid to the same nonresident.

In sum, these requirements are extremely onerous for both foreign companies and Filipino income payors, and lead to significant uncertainty for our Filipino customers in terms of whether treaty relief will be granted. The result is that many Filipino customers may decide to withhold 25% tax on service payments, or directly bear the 25% tax (where the contracts have gross up tax provisions) instead of going through the RFC process. Our experience is that Filipino customers do this in part to protect against the potential adverse consequences we mention above, such as future audit challenges and penalties. This directly increases the costs of doing business for foreign companies and Philippines companies and discourages foreign investments in the Philippines.

As responsible stakeholders, we appreciate the ability to participate in this ongoing discussion and the opportunity to provide inputs into the policy-making process in the Philippines. Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact us directly at our Secretariat at Secretariat@aicasia.org or +65 8739 1490.

Thank you for your time and consideration and we look forward to hearing from you.

A handwritten signature in blue ink that reads "Jeff Paine".

Sincerely,
Jeff Paine
Managing Director, Asia Internet Coalition (AIC)