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December 6, 2017

SUBMITTED VIA E-MAIL

Ms. Trinidad A. Rodriguez,
Executive Director, National Tax Research Center
Manila, Philippines
ning.rodriquez@ntrc.gov.ph

Re: Recommendations for Development of Tax Reform Proposals Under
TRAIN 4 and Requests for Clarification of RMO No. 8-2017

Dear Ms. Rodriguez,

We appreciate the opportunity to submit this letter on behalf of the members of the Association of Global Custodians ("AGC" or "Association")¹ to provide comments for the National Tax Research Center's ("NTRC") consideration in the development of the tax reform proposals under the Tax Reform for Acceleration and Inclusion Act ("TRAIN") 4 and recommendations for improving the existing treaty relief process.

The attached submission sets forth the Association's comments, which focus specifically on (1) simplifying the withholding tax on interest and dividends to reduce administrative burden, (2) simplifying the tax relief and reclaim processes, and (3) simplifying the process to apply for a Philippines tax identification number ("PTIN"). In addition, the attached submission requests that guidance be issued clarifying the requirements and processes under RMO No. 8-2017.

¹ The Association is an informal group of 12 member banks that provide securities safekeeping and asset serving functions to cross-border institutional investors worldwide, including investment funds.

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Please do contact the undersigned should you wish to discuss the Association's comments.

Sincerely yours on behalf of the Association,

A handwritten signature in black ink that reads "Mary C. Bennett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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**COMMENTS OF THE ASSOCIATION OF GLOBAL CUSTODIANS FOR CONSIDERATION
IN DEVELOPING TRAIN 4 AND ON IMPROVING THE EXISTING TREATY RELIEF
PROCESS**

The Association understands that the Philippines government has proposed tax reform legislation, the Tax Reform for Acceleration and Inclusion Act (“TRAIN”) and that TRAIN Package 4, which seeks to reform the capital income tax system, is currently under development. We understand that the goal of TRAIN 4 is to redesign taxation of the financial sector to make it simpler, fairer, and more efficient. In support of this tax reform effort, the AGC respectfully requests that the National Tax Research Center take the following comments into consideration in developing TRAIN 4:

1. Simplify the withholding tax on interest to reduce administrative burden.
2. Simplify the tax relief and reclaim processes.
3. Simplify the process to apply for a Philippines tax identification number (“PTIN”).

The Association is aware that other associations, such as the Bankers Association of the Philippines (“BAP”), have submitted comments to the NTRC related to TRAIN 4, and the AGC believes that its comments on administrative matters are generally consistent with the recommendations submitted by other groups.

On March 28, 2017, the Bureau of Internal Revenue (“BIR”) issued Revenue Memorandum Order (“RMO”) No. 8-2017, which prescribes procedures for claiming tax treaty benefits for dividend, interest, and royalty income of non-resident income earners. Under RMO No. 8-2017, a non-resident should submit a Certificate of Residence for Tax Treaty Relief (“CORTT”) form to a withholding agent to receive a preferential treaty rate for dividends, interest, and royalties.

Members of the Association have experienced disparity in how some issuers interpret the documentation requirements, and the Association respectfully requests that the BIR or the NTRC issue additional guidance streamlining and clarifying RMO No. 8-2017 to prevent issuers from imposing their own specific documentation requirements and require issuers to apply the documentation requirements consistently.

The Association understands that there is a pending Revenue Memorandum Circular (“RMC”) to clarify RMO No. 8-2017 and that the RMC would prescribe standards for submitting documentation and requirements such as (1) the number of copies of CORTT forms required by issuers, (2) discretionary requirement of a Letter of Undertaking by several listed companies, and (3) which party is responsible for completing Part II of the CORTT form. The Association supports the issuance of an RMC clarifying RMO No. 8-2017 and prescribing standards for complying with the requirements of RMO No. 8-2017.

Discussion

1. Simplify the withholding tax on interest and dividends to reduce administrative burden.

The AGC recommends that the Philippines simplify the withholding tax rates on interest and dividends to provide one statutory rate for residents and non-residents. Decreasing the withholding tax rate may result in a multiplier effect on non-resident investments in fixed income instruments. Moreover, decreasing the withholding tax on interest and dividends may reduce administrative burdens if the withholding rate is sufficiently reduced so that the non-resident investor does not need to apply for treaty reduction or may consider foregoing applying for treaty relief. At a minimum, the withholding rate for non-resident non-individuals should be brought in line with the range of tax rates in the APAC region, currently ranging from 5% to 20%.

In addition, the Association recommends that the capital gains tax (“CGT”) exemption should be available for listed securities that are traded off exchange. If the NTRC believes that these transactions should be subject to tax, consider subjecting these transactions to the securities transactions tax, which should be collected by brokers or other intermediaries.

2. Simplify the tax relief and reclaim processes.

The AGC understands that the Philippines budget process has an impact on tax reclaim requests, and that the BIR is unable to provide tax reclaims due to the budgetary impacts of doing so. Lacking a market-level tax reclaim process puts the Philippines at a competitive disadvantage with respect to other taxing jurisdictions, where tax reclaims are an established market practice. Having an option to obtain tax relief via a tax reclaim mechanism will improve investor confidence in the Philippines as a global investment market.

In the Association’s experience, due to the lack of a tax reclaim mechanism, investors that have obtained a valid BIR ruling nevertheless had to sue the BIR in court in order to receive a refund of overpaid taxes. The legal process can be very time-consuming, and we are aware of investors who have waited for more than five years for the litigation to conclude. The AGC recommends that the BIR develop a streamlined administrative tax reclaim process to apply specifically to non-resident investors.

3. Simplify the process to apply for a Philippines tax identification number (“PTIN”).

The current procedures to apply for a PTIN, which require engaging with local tax advisor services to submit the application, are complicated, expensive and time-consuming. The AGC respectfully requests that the process be simplified to allow an application to be submitted without in-person representation. Alternatively, local custodian banks should be permitted to facilitate the submission of the PTIN application on behalf of non-resident applicants, even in circumstances where the local custodian bank does not complete the application.

In addition, the AGC recommends that a process be developed that would allow a non-resident investor to check and confirm that it does not have any existing TINs with the BIR. Larger

organizations, such as global banks with multiple businesses and departments, are at risk that one business or department may have previously applied for a TIN without informing other businesses and departments. Discrete businesses within large organizations may be precluded by internal restrictions (i.e., “Chinese walls”) in obtaining a confirmation of existence of PTIN within the organization. External confirmation with the BIR of a valid PTIN issued to a non-resident applicant will address duplication of PTIN applications by the same organization, thereby further reducing administrative burden on the BIR.

Finally, the AGC recommends that an electronic process to apply for a PTIN should be developed and made available.

4. Issue additional guidance streamlining and clarifying RMO No. 8-2017

While RMO No. 8-2017 was intended to simplify the procedures for claiming tax treaty relief on dividends, interest and royalties without the need to submit a mandatory tax treaty relief application (“TTRA”), some of the requirements for the CORTT process are unclear or unnecessarily burdensome. Prior to the issuance of RMO No. 72-2010 and RMO No. 8-2017, tax treaties were self-implementing. The RMOs establish a paper-intensive process which has not been implemented consistently by issuers.

The AGC supports the effort to issue the RMC clarifying RMO No. 8-2017 and, to address the AGC’s concerns about inconsistent application, we make the following recommendations:

- The AGC recommends that one CORTT or COR should be applied to multiple securities (for example, both equities and fixed income). Allowing the submission of a single document on an annual basis would be consistent with the practice of other markets, and would reduce the administrative burdens imposed on non-resident investors, market participants, issuers, and tax authorities.
- The AGC recommends that a clear deadline should be established for when the CORTT form needs to be provided because, in the Association’s experience, some issuers have set different deadlines for submission, which requires custodians and their clients to continually adjust their internal processes for preparing and completing the CORTT form.
- The AGC recommends that electronic filing of the CORTT should be permitted.
- The AGC recommends that the RMC should revise Section 2 of the CORTT form to identify which parties should complete which parts of the CORTT. Furthermore, the CORTT should be simplified so that it only provides investor eligibility information (such as tax residency certification, factual information about the investor, and a beneficial ownership declaration). The CORTT should not require third party or investment-specific information, such as withholding agent information or assets to which tax treaty relief is being provided, because income-event specific reporting is already separately performed by the withholding agent. At a minimum, third-party or investment-specific

information should not be required on the CORTT for securities that are traded on the Philippines Stock Exchange and government debt held by the Bureau of the Treasury.

- A CORTT should be submitted without a Special Power of Attorney or the CORTT form should be revised to include a statement authorizing its submission.
- Currently, there is a requirement to certify or provide a Certificate of Residency (“COR”) for all three copies of the CORTT upon initial submission to the issuer. This requirement imposes a high cost and increases the administrative burden for non-residents. In some cases, it may cause delays for clients to provide CORTT forms within market time frames. The AGC recommends that the RMC provide that only one original CORTT/COR is required to be maintained by the local custodian, and permit local custodians to make certified copies of the CORTT/COR.
- Although the AGC understands that existing rules permit a non-resident to sign a power of attorney authorizing a signatory to sign the CORTT on a non-resident’s behalf, the AGC recommends that the RMC expand who may qualify as an authorized signatory and that the declaration in section D of CORTT form part 2 be modified. The RMC should expand who may qualify to execute the CORTT because an authorized signatory may not satisfy the definition of a “principal officer.” To address these situations, the Association recommends that the requirement be modified to provide that an authorized signatory includes a “principal officer or duly authorized signatory.” A party who could execute the CORTT in the investor’s jurisdiction should be treated as a duly authorized signatory. In addition, the declaration language in section D of the CORTT form, part 2 should be modified to qualify that, in a case where a principal officer or duly authorized signatory signs the CORTT, the declarations, representations, and responsibilities described in the CORTT are understood to be solely the declarations, representations, and responsibilities of the beneficial owner.
- Withholding agents should be allowed to rely on attestations made on the COR or CORTT form in determining the tax relief withholding rate. This would be consistent with the approach taken by other jurisdictions, which do not impose withholding tax liability on the withholding agent if the agent relies on the documentation provided to it by the investor.

In addition, some listed companies have different interpretations, treatment, and requirements when investors apply for a tax exemption. For example, some listed companies require a BIR ruling, while others require additional documentation. Receiving a BIR ruling imposes additional costs on investors (for example, investors must hire local tax advisors to assist in receiving a ruling) and is a time-consuming process. The AGC recommends that there should be a straightforward application process with a definitive list of requirements that must be satisfied. For example, a standard BIR ruling for qualified entities across all relevant taxable items, instead of being specific to a particular tax, would improve administrability and reduce burden. Other options could include providing an application window similar to Bangko Sentral ng Pilipinas’ (“BSP”) registration window for foreign direct investments or covering tax

exemption through the proposed Non-resident Taxpayer Identification Number (“NTIN”) process.