TD 95/D3 - Income tax: what is the maximum rate of dividend withholding tax that will be imposed by the Philippines under Article 10(2)(a) of the Australia - Philippines Double Taxation Agreement ('the DTA') on outgoing dividends paid to residents of Australia now that Australia gives double tax relief to such dividends by way of an outright exemption rather than a credit or rebate?

This cover sheet is provided for information only. It does not form part of *TD 95/D3 - Income tax: what is the maximum rate of dividend withholding tax that will be imposed by the Philippines under Article 10(2)(a) of the Australia - Philippines Double Taxation Agreement ('the DTA') on outgoing dividends paid to residents of Australia now that Australia gives double tax relief to such dividends by way of an outright exemption rather than a credit or rebate?*

This document has been finalised by TD 95/50.

Australian Taxation Office

Taxation Determination TD 95/D3

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft Taxation Determination

Income tax: what is the maximum rate of dividend withholding tax that will be imposed by the Philippines under Article 10(2)(a) of the Australia - Philippines Double Taxation Agreement ('the DTA') on outgoing dividends paid to residents of Australia now that Australia gives double tax relief to such dividends by way of an outright exemption rather than a credit or rebate?

1. 15 per cent.

2. Subparagraph (2)(a) of Article 10 of the DTA provides that the Philippines will limit its maximum rate of dividend withholding tax to 15 per cent on dividends derived by an Australian company from a Philippine company where double tax relief in respect of those dividends is allowed in Australia by way of a tax credit or rebate. For all other dividends, the maximum rate of withholding tax under the DTA is 25 per cent.

3. The issue has arisen whether the Philippines will continue to apply the 15 per cent maximum dividend withholding tax limit specified in the DTA to those dividends covered by subparagraph 2(a) of Article 10, given that relief from double taxation in Australia is now given by way of an outright exemption of the relevant dividends from income rather than by way of a credit or rebate, or whether the higher limit of 25 per cent will apply.

4. With the introduction in Australia of an accruals system of taxing foreign source income of Australian residents from the beginning of the 1990-91 year of income, dividends derived by Australian companies from companies that are residents of countries with tax systems comparable to that of Australia's (such as the Philippines) are exempt from tax, where the resident company has a voting interest of at least 10 per cent in the non-resident company. Prior to the introduction of the accruals system, Australia would have allowed a foreign tax credit for the Philippine tax paid in respect of those dividends.

5. The Philippine Bureau of Internal Revenue has confirmed that it will continue to apply the 15 per cent maximum rate of tax limit on dividends paid by a Philippine company to an Australian company holding more than 10 per cent of the interest/paid-up share capital of the Philippine company. This accords with the intention of the paragraph, which is, broadly, to provide for a lower rate of Philippine withholding tax where Australia allows tax relief for that tax. In this

regard, an outright exemption from tax provides at the least as much relief from double taxation as would the allowing of a credit or rebate for the Philippine tax paid on those dividends.

6. For individuals and companies holding less than the required interest/share in the Philippine company, the maximum rate of Philippine withholding tax on dividends is 25 per cent.

Commissioner of Taxation
23/3/95

FOI INDEX DETAIL: Reference No.
Related Determinations:
Related Rulings:
Subject Ref: Australia-Philippines Double Tax Agreement; dividend withholding tax
Legislative Ref: Income Tax (International Agreements) Act 1953 Section 11D, Schedule 14
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