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Highlights

BIR Rulings

- Under the Inventors and Inventions Incentives Act of the Philippines, inventors are exempt from income tax on the sale of the invented products for the first 10 years from the date of the first sale on a commercial scale. **(Page 4)**

- Sale of properties under the High Density Housing (HDH) Program, a modified Community Mortgage Program (CMP), shall be subject to the applicable revenue taxes. **(Page 4)**

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- Royalties related to imported goods form part of the transaction value which is subject to customs duties and taxes.

  Arrastre and wharfage fees are considered "other charges" under Section 107 of the Tax Code that are included in the tax base to determine the VAT on importation. **(Page 17)**

- The ONETT Computation Sheet is not the assessment contemplated under Section 228 of the Tax Code that would require a protest. It does not formally inform a taxpayer of its tax liabilities and there is no formal demand to pay the same.

  Not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. **(Page 18)**

- The donee is not liable for any donor's tax due on the donation made by a non-resident donor. **(Page 19)**

- Payments by a non-stock, non-profit educational institution to a religious congregation are deemed donations subject to donor's tax, in the absence of proof that the same were made for services rendered. **(Page 20)**

- The enumeration in RR No. 11-2005 on the direct costs that are deductible from gross income is not exclusive. PEZA–registered enterprises subject to the 5% tax based on Gross Income Earned (GIE) are allowed to deduct expenses which are in the nature of direct costs, even if these are excluded from the list. **(Page 21)**

BIR Rulings

BIR Ruling No. 11-16 dated 8 January 2016

Under the Inventors and Inventions Incentives Act of the Philippines, inventors are exempt from income tax on the sale of the invented products for the first 10 years from the date of the first sale on a commercial scale.

Facts:

Mr. X, a certified member of the Filipino Inventors Society, is the registered patent holder of an invention which is being commercially produced by a single proprietorship owned by Mr. X.

Issue:

Is Mr. X. exempt from payment of income tax?

Ruling:

Yes. Under Section 6 of RA No. 7459, or the "Inventors and Inventions Incentives Act of the Philippines," an inventor is exempt from income tax on the sale of the invented products during the first 10 years from the date of the first sale on a commercial scale.

However, an inventor is still liable to pay the following taxes:

- 20% final withholding tax (FWT) on interest from Philippine currency bank deposits, yield or any monetary benefit from deposit substitutes, trust funds and similar arrangements, and 7½% FWT on interest from foreign currency deposits;
- Capital gains tax (CGT) on sales of shares of stock;
- CGT on sales of real property;
- Income tax on income not arising from the inventor's productive activity such as interest, royalties, prizes, winnings and dividends;
- VAT on the gross receipts/revenues derived from the sale of the invented products, and VAT on his purchases;
- Other percentage taxes;
- Excise taxes directly payable in connection with the sale of the invented products; and
- DST on documents, instruments and papers.

BIR Ruling No. 36-2016 dated 12 January 2016

Sale of properties under the HDH Program, a modified CMP, shall be subject to the applicable revenue taxes.

Facts:

A Co. sold a parcel of land to the Social Housing Finance Corporation (SHFC) for the housing project of a homeowners association under RA No. 7279, or the Urban Development and Housing Act. The acquisition of the land identified for socialized housing was made through the HDH Program, a modified CMP wherein SHFC and the member beneficiary/relocatee enters into a usufruct agreement with option to buy the land.

Issue:

Is the sale of the land under the HDH Program exempt from CGT and other taxes?

Ruling:

No. Property sold under the CMP, which aims to assist the underprivileged and informal settlers to own the lots they occupy, are exempt from CGT in accordance with Section 32 of RA No.7279. However, the HDH program, which only gives the beneficiary the option to buy the housing unit within the usufruct period or else surrender the land at the end of the usufruct period, is not a CMP. Consequently, the sale of the land by A Co. to SHFC under the HDH Program shall be treated as ordinary sale of real property that is subject to all applicable revenue taxes.

BIR Issuances

Revenue Regulations (RR) No. 1-2016 amends the rules in RR No. 3-2005 on the issuance of a tax clearance to persons desiring to enter into government contracts.

Revenue Regulations No. 1-2016 dated 10 February 2016

- The following provisions of RR No. 3-2005 are amended, as follows:

    1. For the issuance of the tax clearance required for persons entering into government contracts, only income and business tax returns that have been filed and the taxes of which have been paid through the Electronic Filing and Payment System (eFPS) shall be accepted.

    2. The tax clearance shall be valid for a period of six months from the date of issuance and shall be issued by the Accounts Receivable Monitoring Division (ARMD) (formerly the Collection Enforcement Division) upon compliance with the following requirements:

        - No unpaid annual registration fee;
        - No open valid "stop-filer" cases;
        - Regular user of the eFPS for at least two consecutive months prior to the application, and for those who have been previously issued a tax clearance for bidding purposes, they must be regular eFPS users from the time of enrollment with the system up to the time of the application;
        - No criminal charge pending with the Department of Justice or any competent court; and
        - No delinquent account and/or judicially protested tax assessments with a decision favorable to the BIR.

            - A delinquent account shall refer to the outstanding tax liabilities from either self-assessed taxes or as a result of an audit or third party information through the issuance of an assessment notice, which was not protested within the prescribed period.

            - Tax assessments that are timely protested, or elevated to the Court of Tax Appeals or to a higher court within the prescribed period, which have not become final, executory, and demandable, shall not be considered delinquent accounts. However, the timely filing of the administrative protest and the case must be certified by the handling office, and this certification shall form part of the documentary requirements for the filing of a tax clearance.

            - Taxpayers with court decisions on tax assessments decided in favor of the BIR, who file an appeal or a motion for reconsideration on time, as well as taxpayers with applications for abatement or compromise settlement, shall be issued a tax clearance, provided an escrow deposit with any authorized agent bank shall be made equivalent to the tax liabilities protested.

3. The Tax Clearance shall indicate among others:

    - The taxpayer's current assets and current liabilities as indicated in the latest audited financial statements submitted to the BIR;

    - The taxpayer's deficiency tax assessments which have been timely protested administratively or have been elevated to a competent court.

    - The above information shall serve as reference of the Procuring Government Agency in computing the bidder's Net Financial Contracting Capacity (NFCC).

4. The names of prospective bidders/taxpayers who are found to have submitted a spurious tax clearance shall be submitted to the BIR's Prosecution Division for the filing of appropriate criminal charges.

5. No tax clearance shall be issued until the criminal case has been resolved or the administrative penalties have been lifted.

- These regulations shall take effect 15 days after publication in a newspaper of general circulation.

(Editor's Note: RR No. 1-2016 was published in the Manila Bulletin *on 11 February 2016.)*

RMC No. 14-2016 lists the BIR's Priority Programs for CY 2016.

Revenue Memorandum Circular No. 14-2016 dated 15 February 2016

The BIR has identified the following priority programs for CY 2016 and its objectives for implementing such programs:

- **RATE Program** – seeks to discourage tax evasion by impressing on the public that it is a punishable crime and, in the process, enhance the taxpayers' voluntary compliance and confidence in the tax system;

- ***Oplan Kandado*** - aims to continue the imposition of administrative sanctions involving suspension of business operations and temporary closure of business establishments for non-compliance with essential VAT requirements;

- **Electronic Tax Information System-1 (eTIS-1)** – aims to improve the BIR core Tax Administration System by providing a single, web-based automated solution;

- **Exchange of Information (EOI) Program** - aims to comply with the Intergovernmental Agreement in implementing the Foreign Account Tax Compliance Act (FATCA) requirements and to automate EOI with other countries;

- **VAT Audit Program** - aims to institutionalize the VAT Audit Program at Regional Offices;

- **Enhancement of Electronic Certificate Authorizing Registration System (eCAR)** - seeks to set up a web-based application that can process the transfer of ownership of real and/or personal properties;

- **Site Expansion of the eCAR System** - aims to expand the coverage of the eCAR System to other Regional Offices;

- **Taxpayer Registration Information Update (TRIU) Program** - aims to update and clean up the BIR Registration database, allowing taxpayers to register and update online their registration data anywhere and anytime and have real-time access to the registration record;

- **Online Application and Processing of Tax Clearance for Bidding Purposes** - aims to develop an automated system that will facilitate the processing of tax clearances for bidding purposes;

- **Geographical Information System (GIS)** - seeks to introduce a system to the Metro Manila Regions that will provide data and location intelligence to valuation and taxation functions, as well as the visualization of information gathered from Registration, eSales, zonal valuation and collection;

- **Asset Information Management Program Phase 2** – aims to build up a taxpayers' database management system of asset-related and other relevant information from processed Tax Amnesty Returns, Statement of Assets, Liabilities and Net Worth (SALN), Third-Party Information and other existing internal information within the BIR;

- **Workflow Management System** – aims to immediately track and monitor documents through a paperless environment;

- **Centralized Arrears and Forfeited Asset Management Project** – seeks to adopt a centralized approach and develop a web-based application in the management and disposition of Accounts Receivable/Delinquent Accounts and seized/ forfeited properties;

- **Automated Internal Revenue Allotment Computation System (AIRACS)** – seeks to automate the computation of the share of Local Government Units and other government agencies in the internal revenue tax collections;

- **Enhanced Mobile Revenue Collection Officers System (MRCOS)** – aims to enhance existing downloadable mobile application systems in order to cater to a broad range of mobile devices;

- **Collection Reconciliation System** – seeks to reconcile tax collection data from the BIR, AABs, *Bangko Sentral ng Pilipinas* and Bureau of Treasury and improve BIR's reportorial requirements for policy making;

- **Use of credit/debit prepaid cards as an alternative mode of payment of taxes;**

- **Expansion of Satellite CAATS Offices in Regional Offices** - aims to continue the use of computerized audit tools and techniques for investigating taxpayers with computerized books of accounts or financial records and to create Satellite CAATS Offices in selected regional offices;

- **Online System Accreditation of Importers and Custom Brokers** – intends to make the accreditation of importers and customs brokers faster and more convenient;

- **Centralization of Document Processing to the Regional Offices** – aims to continue monitoring and assistance to the Regional Offices in establishing their Document Processing Divisions (DPDs), evaluation of existing processes and procedures, enhancement of policies, and formulation of issuances;

- **Electronic Official Registry Book (eORB)** – aims to set up an automated facility on excisable products that will allow electronic submission of ORBs;

- **Internal Revenue Stamps Integrated System (IRSIS) for Distilled Spirits and Wines** – seeks to set up a web-based application for the management and the provision of security features in the revenue stamps for alcohol products;

- **Transfer Pricing Program** – seeks to complement the Transfer Pricing (TP) Guidelines with the Commercial Database Subscription for TP, development of a TP test-case for Large Taxpayers and other related issuances on Advance Pricing Arrangements, TP Documentations and TP Risk Assessments;

- **Industry Issues Resolution (Legal)** – seeks to address and tackle industry tax issues and concerns of large taxpayers on matters declared as "No Ruling Areas;"

- **Human Resources Information System (HRIS)/Comprehensive Human Resource Information System (CHRIS)** – aims to set up a fully- automated HRIS that supports the requirements of the Civil Service Commission program to institutionalize meritocracy and excellence in Human Resources; and

- **Supporting Capacity Development for the BIR (e-Learning Systems)** – seeks to increase the efficiency and professionalism of the BIR by applying technology and e-Learning systems and creating computer-based modules for the employees.

RMC No. 15-2016 announces the entry into force, effectivity and applicability of the renegotiated Philippine-Germany Tax Treaty.

Revenue Memorandum Circular No. 15-2016 dated 15 February 2016

- The renegotiated *Agreement between the Republic of the Philippines and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital* (the Philippine-Germany Tax Treaty) entered into force on December 18, 2015.

- The treaty took effect with respect to taxes covered, including taxes withheld at source, on January 1, 2016.

- Below are the major amendments under the renegotiated Philippines-Germany Tax Treaty:

  1. *Article 2, Taxes Covered:*

     - Covered taxes now include taxes on the total amount of wages or salaries paid by enterprises;

     - Covered Philippine taxes now include income tax on individuals, corporations, estates and trusts, and the stock transaction tax.

  2. *Article 4, Resident (Fiscal Domicile):*

     - A partnership is deemed to be a resident of Germany if its place of effective management is in Germany.

  3. *Article 5, Permanent Establishment (PE):*

     - A fixed place of business includes the furnishing of services, including consultancy services, for a period aggregating more than 6 months within any 12-month period;

- A person, other than an agent of independent status, who acts on behalf of an enterprise and has the authority to conclude contracts, will not be considered a PE if the activities are of a preparatory or auxiliary character;

4. *Article 10, Dividends:*

    - Dividends are now subject to a 5% preferential withholding tax (WT) rate if the beneficial owner is a company (other than a partnership) which holds directly 70% of the capital of the company paying the dividends.

    - The 10% WT rate applies if the beneficial owner holds directly at least 25% of the capital of the company paying the dividends.

    - In all other cases, the 15% WT rate will apply.

5. *Article 11, Interest:*

    Interest is now subject to a 10% preferential WT rate.

6. *Article 12, Royalties:*

    - A standard 10% preferential WT rate is imposed on royalties paid to a resident of either the Philippines or Germany.

    - The definition of royalties has been expanded to include payments for the right to use a person's name, picture or any other similar personality rights and on payments received as consideration for the registration of entertainers' or sportsmen's performances by radio or television.

RMC No. 19-2016 clarifies the tax treatment of the Monthly Provisional Allowance and Officer's Allowance given to military personnel.

Revenue Memorandum Circular No. 19-2016 dated 19 February 2016

- Section 3 of RA No. 9040 exempts from income tax certain pay and allowances granted to AFP personnel, such as Longevity Pay, Mandatory Allowances, Collateral Pay and Collateral Allowances.

- Sections 7 and 9 of Executive Order (EO) No. 201 granted a Monthly Provisional Allowance and Monthly Officer's Allowance to military personnel in the meantime while the Base Pay Schedule is being modified and rationalized.

- The Monthly Provisional Allowance and Monthly Officer's Allowance under EO No. 201 are not among those enumerated as exempt from income tax under RA No. 9040 and are, therefore, subject to income tax

RMC No. 24-2016 reiterates DOF Order No. 149-95 on the tax exemption of interest income from Philippine currency bank deposits and yield from deposit substitute instruments of non-stock, non-profit educational institutions.

Revenue Memorandum Circular No. 24-2016 dated 24 February 2016

- In order to substantiate the non-imposition of the 20% and 7 ½% final WT on interest income from Philippine currency bank deposits and yield from deposit substitute instruments, non-stock non-profit educational institutions are reminded to submit to the concerned Revenue District Office (RDO) the following requirements, together with the annual information return and duly audited financial statements, on an annual basis:

    - Certification from their depository banks as to the amount of interest income earned from passive investment not subject to the 20% final WT imposed by Sec 24(e) of the Tax Code;

- Certification of actual utilization of said income;

- Board Resolution of the school administration of the proposed projects (*i.e.*, *construction and/or improvement of school building and facilities; acquisition of equipment*, *books and the like*) to be funded out of money deposited in banks or placed in money markets.

Revenue Memorandum Order No. 7- 2016 prescribes new policies and procedures on the issuance of certifications on internal revenue tax payments.

Revenue Memorandum Order No. 7- 2016 issued on 9 February 2016

- Applications for the issuance of certifications on internal revenue tax payments shall be processed by the following offices:

BIR Office	Taxpayers	Year of Payments
Revenue Accounting Division (RAD)	All taxpayers, whether large or not	‣ 1999 and prior years if made through the Authorized Agent Banks (AABs) ‣ 1989 and prior years if made through the Revenue Collection Officers (RCOs)
‣ Large Taxpayer Document Processing and Quality Assurance Division (LTDPQAD) ‣ Large Taxpayer Division (LTD)- Makati; and ‣ LTD- Cebu	Large taxpayers	‣ 2000 and subsequent years; OR ‣ Effective date of enlisting as a large taxpayer, as the case may be
Collection Section under the concerned RDOs	Taxpayers under the jurisdiction of the Revenue District Offices (RDOs)	All other years not covered in the enumeration above

- All concerned revenue offices must ensure that the confidentiality provisions under Section 270 of the Tax Code, as amended, are not violated in the course of processing the applications.

- A processing fee based on the number of tax payments to be certified shall be paid by the applicant.

- No certification of tax payment shall be issued without the payment of the certification fee and the affixture of the documentary stamp on the face of the issued certification.

- The certification shall be signed by the head or assistant head, as the case may be, of the processing/ issuing revenue office.

CMO No. 4 - 2016 prescribes the maximum number of transactions to be transmitted to the E2M Systems thru the facility of the VASPs.

BOC Issuance

Customs Memorandum Order No. 4 - 2016 dated 25 January 2016

- This CMO Order covers all data transmitted to the BOC by E2M Systems through the accredited VASPs, to ensure the efficiency and effective operation of the E2M server by de-clogging the unnecessary transmission of data, and to ensure that the VASP shall control and allow data transmission from its clients that are not duplicates of previously transmitted data without E2M system response.
- Data transmitted by the different stakeholders of BOC shall be controlled by the VASP in 50 records per sending. After receipt of the response for the first 50 records transmitted, the next sending can be done.
- In case there is no response from E2M within five minutes, clients shall inform the VASP immediately. If the VASP cannot troubleshoot the problem, it shall elevate it to the MISTG Helpdesk thru email, text messages and/or telephone calls.
- The MISTG Helpdesk shall immediately inform the MISTG 3rd Level Technical Support if the issues raised by the VASPs are beyond their capabilities. The MISTG shall also inform the Assessment, Operations and Coordination Group regarding the late submissions arising from failed transmissions after its evaluation.
- VASPs must strictly comply with this or face consequences to be meted by the VASP Accreditation Committee.
- All rules and regulations inconsistent with this Order are considered repealed, superseded and modified accordingly.
- This Order takes effect immediately.

(Editor's Note: CMO No. 4-2016 was released by the BOC on 3 February 2016.)

Circular No. 901 amends Section X151 of the MORB on the activities and services allowable for MBOs.

BSP Issuances

BSP Circular No. 901 dated 29 January 2016

- Section X151 of the MORB shall be amended to read as follows:

  "**Section X151. Establishment/Relocation/Voluntary Closure/Sale of Branches.** The Bangko Sentral shall promote and maximize the delivery of efficient and competitive banking services especially to underserved markets xxx

  xxx

  In addition to the non-transactional banking related activities and services allowable for regular OBOs, MF-OBO/MBOs may also engage in any or all of the following limited transactional banking activities and services:

  "(1) Approve, open and accept micro-deposits including initial deposit and service withdrawals thereof: *Provided*, that appropriate internal controls are in place. As contemplated under Appendix 45 of the MORB, the average daily savings account balance for a micro-deposit account shall not exceed Forty Thousand Pesos (P40,000.00) unless a higher amount has been approved by the BSP;

xxx

"subject to the following conditions:

"a. An MF-OBO/MBO shall only perform xxx

"b. The bank shall ensure the timely accounting and proper recording of all financial transactions of its MF-OBO/MBOs, and observe adequate internal control procedures to ensure the safety of funds and reliability of financial records and reports emanating from all transactions; and

"c. The bank's compliance program shall take into account MF-OBO/MBOs and their activities.

xxx"

- This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 901 was published in the Manila Bulletin *on 4 February 2016.]*

Circular No. 902 provides for the phased lifting of the moratorium on the grant of new banking licenses or establishment of new domestic banks.

BSP Circular No. 902 dated 15 February 2016

- The Monetary Board in its Resolution No. 114 dated 21 January 2016, approved the phased lifting of the moratorium on the grant of new banking licenses or establishment of new domestic banks.
- The lifting of the moratorium is done in a two-phased approach. In Phase 1, the grant of the new universal/commercial banking license shall be allowed in connection with the upgrading of an existing domestic thrift bank. In Phase 2, the moratorium on the establishment of new domestic banks shall be fully lifted and locational restrictions shall be fully liberalized starting 1 January 2018.
- Section X102 of the MORB on basic guidelines in establishing banks shall be amended to read as follows:

  "Section X102 Basic Guidelines in Establishing Domestic Banks. A new banking organization must have suitable/fit shareholders, adequate financial strength, a legal structure in line with its operational structure, a management with sufficient expertise and integrity to operate the bank in sound and prudent manner.

  In establishing a new banking organization, the documentary requirements to be submitted to the Bangko Sentral are listed in Appendix 37.

  The revised rules and regulations governing the organization, membership, establishment, administration, activities, supervision and regulation of cooperative banks are found in Appendix 38."

- Subsection X102.2 of the MORB on suspension of the grant of new banking licenses or the establishment of new banks shall be amended as follows:

"Sec X102.2 (2008 – X102.1) Establishment of new domestic banks.
There shall be a moratorium on the establishment of new domestic banks, except as follows: (i) grant of new universal/commercial banking license in connection with the upgrading of an existing thrift bank under Phase 1, and (ii) establishment of new banks in cities or municipalities where there are no existing bank offices, both of which shall comply with the required minimum capitalization under Subsec. X111.1 and other qualification requirements prescribed under existing regulations.

The moratorium shall be fully lifted and locational restrictions shall be fully liberalized under Phase 2 starting 1 January 2018."

- Subsection X102.3 of the MORB on the partial lifting of the general moratorium on the licensing of new thrift banks and rural banks is hereby renamed and amended to read as follows:

"§X102.3 (2008 – X102.2) Establishment of microfinance-oriented banks.

"The entry of microfinance-oriented thrift and rural banks shall be governed by the following guidelines:

xxx

c. Subject to the standard branching requirements under Sec. X151, microfinance-oriented banks may apply for establishment of a branch after one (1) year of profitable operations but the Monetary Board may require additional capital to be infused for every branch in addition to the minimum capital of the TB/RB.

d. Existing non-bank microfinance organizations applying for authority to establish, or convert into a microfinance-oriented TB or RB may also be allowed to convert their existing branches/offices into branches of the bank proposed to be established by simultaneously applying for authority for the purpose. However, the standard requirements for the establishment of branches, particularly the capitalization requirement, have to be complied with. Moreover, there must be a proof that the area is not fully served by any existing RB."

- Subsections X102.6 (reserved) and X102.7 of the MORB on the application and license fees for new domestic bank shall be read as follows:

"§ X102.5 (2008 - X102.3) Conversion of microfinance-oriented thrift banks/ rural banks

"x x x

"§ X102.6 (Reserved)

"§ XLO2.7 Application and license lees for new domestic banks

"Applications for new domestic banking licenses, except for applications to establish a bank with head office located in cities or municipalities where there are no existing banking offices as well as to merge and acquire a distressed bank, shall be subject to both application and license fees below:

Bank Category	Application Fee	License Fee
	(In Million Pesos)	
Universal Banks	0.500	25.000
Commercial Banks	0.400	20.000
Thrift Banks		
- Head Office in National Capital Region (NCR)	0.100	5.000
- Head Office in All Other Areas Outside NCR	0.040	2.000
Rural and Cooperative Banks		
- Head Office in NCR	0.010	0.500
- Head Office in All Other Areas Outside NCR (All Cities up to 3rd class municipalities)	0.004	0.200
- Head Office in All Other Areas Outside NCR (4th class to 6th class municipalities)	0.002	0.100

The application fee shall be non-refundable and shall be paid upon filing of the written application to establish a bank. The license fee, net of the application fee, shall be paid after the Monetary Board has approved said application.

The aforementioned fees shall also apply to existing domestic and foreign banks that are upgrading to the next higher bank category."

- Appendix 37 of the MORB on the basic guidelines in establishing banks is amended to rationalize licensing requirements and processes (Annex A).
- This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 902 was published in the Philippine Star *on 23 February 2016.]*

SEC Opinions

SEC Opinion 16-02 dated 12 February 2016

Under the Anti-Dummy Law, corporations engaged in partly nationalized undertakings are prohibited from employing an alien who shall intervene in the management, operation, administration and control thereof.

Facts:

A Co. is engaged in partly nationalized undertakings such as developing real estate projects in conjunction with modern construction methods and systems, and in acquiring, leasing, purchasing and developing subdivision and condominium projects. Mr. JW, a British national and a holder of Special Resident Retiree Visa (SRRV), is a stockholder in A Co. Mr. JW was informed by the Philippine Retirement Authority (PRA) that he could assume the position of President/Chairman of the Board and increase his stockholdings from 25% to 40%, the threshold for foreign nationals under the Constitution.

Issue:

Can Mr. JW increase his shareholding in A Co. from 25% to 40% and be A Co.'s President/Chairman?

Ruling:

No. Section 2-A of the Anti-Dummy Law, which applies to corporations engaged in wholly or partly nationalized activities or business undertakings, prohibits the employment by any person, corporation, or association of an alien who shall intervene in the management, operation, administration or control thereof, whether as officer, employee, laborer, when the exercise or enjoyment of the property or of the franchise, privilege, or business engaged in by such person, corporation or association "is expressly reserved by the Constitution or the law to the citizens of the Philippines" or "corporations or associations at least 60% of the capital of which is owned by such citizens". However, it allows such an alien to be elected as a director in proportion to his allowable participation or share in the corporation's capital.

Thus, the Anti-Dummy Law being applicable to A Co., Mr. JW cannot act as President/Chairman of the Board, nor can he increase his shareholdings to 40% if there are other foreign stockholders in the corporation. On the other hand, if there are no other foreign stockholders in the corporation, he can increase his shareholdings from 25% to 40%, but cannot act as President/Chairman of the Board.

SEC – OCG Opinion 16-04 dated 16 February 2016

Foreign equity participation cannot be allowed in the registration of corporations that intend to engage in the practice of interior design.

Facts:

An opinion was requested from the SEC regarding the existing policy on the registrability of a domestic corporation with foreign equity, or foreign corporation organized to engage in the practice of interior design in the Philippines under RA No. 10350, or the Philippine Interior Design Act of 2012.

Issue:

Can a domestic corporation with foreign equity be registered with the SEC and practice interior design in the Philippines?

Ruling:

No. Foreign equity participation cannot be allowed in the registration of corporations that intend to engage in the practice of interior design. Section 14, Article XII of the 1987 Constitution declared that the practice of all professions in the Philippines shall be limited to Filipino citizens. This means that no less than 100% participation is required to be held by Filipino citizens, except when expressly allowed by law.

BLGF Opinions

BLGF Opinion dated 13 January 2016

A cooperative with accumulated reserves and individual net savings of not more than P10,000,000 is exempt from RPT.

Facts:

Coop A is a teachers and employees multi-purpose cooperative duly registered with the Cooperative Development Authority (CDA). In its application for RPT exemption, the CDA opined that real properties of the cooperative should not be subject to Real Property Tax (RPT) under RA No. 9520, otherwise known as the "Cooperative Code of the Philippines."

Issue:

Is Coop A exempt from RPT?

Ruling:

It depends. A cooperative can only enjoy exemption from RPT if its accumulated reserves and individual net savings are not more than P10,000,000.

Article 61(1) of RA No. 9520 provides that "cooperatives with accumulated reserves and undivided net savings of not more than Ten Million Pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature." While RPT was not specifically mentioned, this provision qualifies as an explicit declaration by law of tax exemption that encompasses RPT.

BLGF Opinion (2nd indorsement) dated 15 January 2016

Machineries being used by fast-food stores operate as general purpose machineries. As such, they are not considered machineries for RPT purposes.

Facts:

A City Assessor requested for an opinion on the taxability of machineries and equipment being used by fast-food chains.

Issues:

1. Are the machineries and equipment being used by fast-food stores such as fryers, grillers, soft drinks dispensers, ice makers, etc. considered "machinery" under the Local Government Code (LGC) and thus subject to RPT?

2. Is the opinion rendered by BLGF to another entity on the same issue applicable to other fast-food companies?

Ruling:

1. No. Machineries of movable nature such as those being used by fast-food stores do not fall within the definition of "machinery" and are not subject to RPT. Under Art. 290(o) of the LGC, machines which are not directly and exclusively used to meet the needs of a particular industry, business or activity are not machineries per se.

   Machineries being used by fast-food stores, such as fryers, grillers, soft drink dispensers, ice makers and other similar machineries in the fast-food business operate as general purpose machineries. If they are faulty, the store can resort to other means. The absence of general purpose machines will not stop such fast food chain from continuing their business – it would only slow down the operations and affect financial viability of the business. Hence, these machines do not constitute "the essential and principal element of an industry, work or activity without which, such industry, work or activity cannot function."

2. No. A ruling issued to an entity may not be used by other fast-food companies since tax exemption cannot be expressly granted nor implied without due process.

   Fast-food companies that do not claim exemption cannot be granted exemption automatically. It is the duty of the declarant to invoke exemption or request for an opinion on exemption from RPT.

Court Decisions

Colgate-Palmolive Philippines, Inc. vs. Commissioner of Customs
CTA (First Division) Case No. 7806 promulgated 26 January 2016

Royalties related to imported goods form part of the transaction value which is subject to customs duties and taxes.

Arrastre and wharfage fees are considered "other charges" under Section 107 of the Tax Code that are included in the tax base to determine the VAT on importation.

Facts:

The Commissioner of Customs (COC) assessed Petitioner Colgate-Palmolive Philippines, Inc. (CPPI) for deficiency duties on royalty/license fees paid to Colgate Palmolive Corporation (CPC) in relation to its importation of goods, as well as deficiency VAT on arrastre and wharfage fees. The COC also assessed CPPI for penalties equivalent to twice the amount of deficiency duties and taxes.

CPPI protested the assessments. Upon denial of its protest, CPPI filed a Petition for Review with the Court of Tax Appeals (CTA).

CPPI argued that while the imported goods were manufactured under patent, there was no royalty involved in the production or sale of the same and the payment of royalty to CPC was not a condition for the sale of the products to CPPI. CPPI also argued that subjecting to VAT the arrastre and wharfage charges constitutes double taxation.

On the other hand, the COC argued that CPPI is liable for the assessed deficiency duties as the bulk of the royalty paid to CPC was on account of the imported goods and the royalty payment was made as a condition of sale under the Memorandum of Agreement (MOA) between the parties. The COC further asserted that the arrastre and wharfage fees fall within the phrase "other charges" under Section 107 of the Tax Code, hence included in the tax base for VAT purposes.

Issues:

1. Is CPPI liable for deficiency customs duties on royalty paid to CPC?

2. Are arrastre and wharfage fees subject to VAT?

3. Is CPPI liable for penalties equivalent to twice the amount of deficiency duties and taxes?

Ruling:

1. Yes. Royalties related to imported goods form part of the transaction value which is subject to customs duties and taxes.

   In order for royalties and license fees to be added as part of the dutiable value under the Transaction Value Method (Method 1) pursuant to Section 201 of the TCCP, the following conditions are indispensable:

   a. The royalties and license fees are related to the goods being valued;
   b. These are paid by the buyer directly or indirectly; and,
   c. The payment of royalties and license fees is a condition of sale of the goods to the buyer.

   All requirements are met in the present case. Under the MOA, CPPI pays CPC royalty fees at the rate of 5% of the net sales as a consideration for the use of CPC's patents and trademarks, trade names, packaging trade dress and its know-how. The 5% fee similarly applies to products sold whether imported or locally manufactured. CPPI could not have sold the licensed products in the Philippines without the payment of royalties.

2. Yes. Arrastre and wharfage fees are considered "other charges" included in the tax base for VAT on importation.

   Section 107 of the Tax Code imposes the 12% VAT on every importation of goods "based on the total value used by the Bureau of Customs in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges." Arrastre is the amount which the merchandise owner has to pay for the handling, receiving and custody of the imported merchandise. Wharfage is a charge against the cargo which is loaded or unloaded in the safety and security of the port.

   There is no double taxation as the VAT on other charges is imposed on the sale of service based on the gross receipts derived from such sale. The VAT on other charges under Section 107 of the Tax Code is for the importation of goods.

3. No. The COC failed to observe CMO No. 2-2002 in relation to CMO No. 1-2002, which prescribes the manner and procedure by which penalties may be imposed.

   The COC violated CPPI's right to due process. CPPI did not receive a complaint on the supposed determination of imposable penalties for its failure to pay the correct customs duties and taxes, as prescribed by CMO No. 1-2002. In administrative proceedings, due process may not be ignored because it is not merely a statutory right but a right guaranteed by the Constitution.

Landbank of the Philippines vs. Commissioner of Internal Revenue
CTA (Second Division) Case 8684 promulgated 21 January 2016

The ONETT Computation Sheet is not the assessment contemplated under Section 228 of the Tax Code that would require a protest. It does not formally inform a taxpayer of its tax liabilities and there is no formal demand to pay the same.

Not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.

Facts:

The BIR assessed the Landbank of the Philippines (Landbank) for deficiency expanded withholding tax (EWT) and documentary stamp tax (DST) on the consolidation of a land title in its name as the winning bidder. The BIR also imposed a 25% surcharge of the basic tax, interest of 20% per annum, and compromise penalties for alleged late payment of the taxes due.

Landbank paid the taxes and penalties as computed in the One-Time Transaction (ONETT) Computation Sheet. Landbank then filed a protest with the BIR against the imposition of the surcharge, interest and compromise penalties. In the same protest letter, Landbank sought the refund of the penalties paid.

Upon denial of its protest, Landbank filed a Petition for Review with the CTA.

Records show that the redemption period expired on September 29, 2012, a Saturday, and both Landbank and the CIR agreed that the right to redeem could still be legally exercised until October 1, 2012. As such, Landbank argued that its deadline to pay the EWT and DST was extended to 10th and 5th day, respectively, of the month following the sale or on November 10 and 5, respectively. On the other hand, the CIR asserted that the extension of the right to redeem does not apply to the remittance of the EWT and DST, which were nonetheless due on October 10 and October 5, respectively.

Issues:

1. Does the CTA have jurisdiction over the CIR's inaction on Landbank's protest based on the ONETT Computation Sheet?

2. Is Landbank entitled to a refund of the penalties paid?

Ruling:

1. No. The CTA has jurisdiction only on the inaction of the CIR over Landbank's disputed assessment pursuant to Section 228 of the Tax Code, as amended. The ONETT Computation Sheet is not the assessment contemplated under Section 228 that would require a protest. It does not formally inform a taxpayer of its tax liabilities and there is no formal demand to pay the same. Without the formal demand for payment, Landbank has no way to determine the period within which to protest the tax liabilities computed by the CIR. Thus, the CTA did not acquire jurisdiction over the Petition.

   In *CIR vs. PASCO Realty and Development Corp.*, GR No. 128315 promulgated on June 29, 1999, the Supreme Court explained that not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments. An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.

2. No. To be able to claim a refund under Section 229 of the Tax Code, Landbank must have first filed an administrative claim before the BIR. No such administrative claim for refund or issuance of a tax credit certificate was filed by Landbank with the BIR.

Toenec Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (First Division) Case 8653 promulgated 27 January 2016

The donee is not liable for any donor's tax due on the donation made by a non-resident donor.

Facts:

The CIR assessed Petitioner Toenec Philippines, Inc. (TPI) for deficiency donor's tax plus penalties on the additional paid-in capital (APIC) infused by its non-resident stockholder, Toenec Japan. TPI protested the assessment arguing that the APIC is not a donation but a capital contribution, hence, not subject to donor's tax.

Upon denial of its protest, TPI filed a Petition for Review with the CTA. The CIR argued that the amount remitted was not an investment but a donation as disclosed in TPI's Audited Financial Statements.

Issue:

Is TPI liable to donor's tax?

Ruling:

No. The donee cannot be held liable for any donor's tax due on the donation by a non-resident donor. Even assuming that the capital infusion is a donation, Toenec Japan as the donor and not TPI, is liable for donor's tax.

Section 98 of the Tax Code imposes donor's tax upon the transfer by any person, resident or non-resident, of property by gift. The gift tax or donor's tax is a tax on the privilege of transmitting one's property to another without adequate and full valuable consideration. The person or entity liable to pay donor's tax is the donor, or the person or entity transferring the property to another. If the donor is a non-resident, the return must be filed with the Philippine Embassy or with the Office of the Commissioner, particularly with the RDO 39.

Citing the Supreme Court's decision in *Maceda vs. Macaraeg*, GR No. 88291, promulgated on June 8, 1993, the CTA ruled that donor's tax is a "direct tax" and as such, the tax burden cannot be transferred to another party.

Toenec Japan is the donor who is liable for donor's tax. While the imposition of tax is a matter of law, mere exigency and convenience may not be used as an excuse to collect donor's tax from a resident donee simply because the latter is located in the Philippines.

Lourdes College vs. Commissioner of Internal Revenue
CTA (*En Banc*) Case No. 1164 promulgated 2 February 2016

Payments by a non-stock, non-profit educational institution to a religious congregation are deemed donations subject to donor's tax in the absence of proof that the same were made for services rendered.

Facts:

The CIR assessed Lourdes College, a non-stock, non-profit educational corporation for, among others (a) donor's tax on the amounts it paid to the Congregation of the Religious of the Virgin Mary (CRVM), and (b) fringe benefits tax (FBT) on the scholarship grants for its personnel.

Lourdes College protested the assessments, arguing that the payments were not donations but income of CRVM for services rendered by 10 sisters who served as officials of the school. The payments were given to CRVM in lieu of the sisters, who were not allowed to receive income under their vow of poverty.

Upon denial of its protest, Lourdes College filed a Petition for Review with the CTA. The CIR argued that the assessment was proper as the school failed to sufficiently prove that its payment represents compensation for services rendered by the CRVM sisters.

The CTA Second Division ruled in the CIR's favor and held that the school cannot invoke exemption from payment of donor's tax since it did not prove that the amount paid is income of CRVM. Lourdes College appealed to the CTA *En Banc*.

Issues:

1. Is Lourdes College liable for donor's tax on its payments to CRVM?

2. Is Lourdes College liable for FBT on its scholarship grants to personnel?

Ruling:

1. Yes, Lourdes College is subject to donor's tax on its payments to CRVM. Its declaration that the payment was made for services rendered by the 10 sisters was not sufficient. Lourdes College should have presented documents to prove that the payment to CRVM was for services rendered. Without any supporting documents, the purpose for the payment could not be readily determined.

   Under Section 101(A)(3) of the Tax Code, gifts in favor of a religious corporation may be exempt from donor's tax provided not more than 30% of said gifts shall be used by the congregation for administration purposes. However, the exemption from donor's tax cannot be invoked in this case as the purpose of the payment by Lourdes College to CRVM was unclear.

2. Yes, Lourdes College is subject to FBT on its scholarship grants to personnel. It failed to submit sufficient documentary evidence to prove that the amount for the scholarship grants was incurred and paid in connection with the scholarship programs granted by the school for its personnel.

   Fringe benefits are generally taxable unless the same is required by the nature of, or necessary to the trade, business or profession of the employer, or given for the convenience and advantage of the employer.

   The CTA found that the respective positions of the grantees and the amounts granted were not specifically stated in the agreements. The agreements also did not directly, indirectly or impliedly mention that such expenditure shall be treated as incurred for the convenience and furtherance of the employer's business.

Commissioner of Internal Revenue vs. East Asia Utilities Corporation
CTA (*En Banc*) Case No. 1207 promulgated 3 February 2016

The enumeration in RR No. 11-2005 on the direct costs that are deductible from gross income is not exclusive. PEZA–registered enterprises subject to the 5% tax based on GIE are allowed to deduct expenses which are in the nature of direct costs, even if these are excluded from the list.

Facts:

Respondent East Asia Utilities Corporation (EAC) is a PEZA-registered Ecozone Utilities Enterprise that operates a power plant within the Mactan Export Processing Zone. As a PEZA-registered enterprise, EAC is subject to the 5% tax on GIE in lieu of national and local taxes. The CIR assessed EAC for alleged deficiency income tax for taxable year 2006 arising from disallowance of expenses that the BIR treated as not part of direct costs under RR Nos. 2-2005 and 11-2005.

The CIR disallowed EAC's claimed deductions for SSS and Pag-IBIG employer cost, medical/health and accident/life insurance, uniform/working gear, employee activities, training and development, insurance and freight, hauling and trucking services, brokerage fees, other inventory incidental costs, safety programs and services, other professional fees, insurance for power plant and other assets, general office expenses, and taxes and licenses.

Upon denial of its protest, EAC filed a Petition for Review with the CTA. EAC argued that the enumeration of direct costs under RR No. 11-2005 is not exclusive for purposes of computing the 5% tax on GIE. EAC asserted that the list is intended as a guide to determine the items of direct costs that are deductible from gross income.

The CTA Second Division ruled, among others, that the enumeration of direct costs under RR No. 11-2005 is not exclusive. The issue was elevated to the CTA *En Banc* upon the Division's denial of the motion for reconsideration.

At the CTA *En Banc*, the CIR argued that even if the list of deductions under RR No. 11-05 is not exclusive, the disallowance of the expenses should be sustained as these are not related to EAC's rendition of its PEZA-registered services.

Issue:

Is the enumeration of direct costs deductible from gross income under RR No. 11-05 exclusive?

Ruling:

No, the enumeration of direct costs in RR No. 11-05 is not exclusive.

It is clear in RR No. 11-05 that the list is not meant to be all-inclusive but merely enumerates the expenses that can be considered as direct costs. PEZA–registered enterprises may be allowed to deduct expenses which are in the nature of direct costs even though these are not included in the list.

The criterion in determining whether the item of cost or expense should be part of direct cost is the relation of such item in the conduct of its PEZA-registered activities. If the cost or expense can be directly attributed to providing the PEZA-registered services, then it should be treated as direct cost.

Section 27(E)(4) of the Tax Code, as amended, defines cost of services as "xxx direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the services and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: xxx". The rest of the costs can be classified as operating expenses which are defined as "primary recurring costs associated with central operations, other than cost of goods sold, which are incurred to generate sales."

Upon evaluation, the CTA *En Banc* sustained the Second Division's ruling that certain expenses form part of direct costs that are deductible from gross income, including: SSS and Pag-IBIG employer cost, medical/health and accident/life insurance, uniform/working gears, technical training and development, hauling and trucking services, insurance and freight, brokerage fees, other inventory incidental cost, insurance for power plant and other assets, safety program and services, and other professional fees.

On the other hand, the following expenses were deemed operating expenses, hence not deductible from gross income: employee activities, non-technical training and development, DOE electrification fund, general office expenses, business expenses, taxes and licenses.

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