Tax bulletin

June 2015

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Highlights

BIR Rulings

- A contract for the rendition of asset management coordination and administration and support activities is characterized as a contract for the performance of services giving rise to business profits. **(Page 3)**

- A contract for the delivery, installation and testing of a packaged software is characterized as a contract for the performance of services giving rise to business profits. **(Page 4)**

BIR Issuance

- Revenue Memorandum Circular (RMC) No. 30-2015 implements the policy on the non-issuance of provisional permit to use (PTU) for new cash register machines (CRMs), point-of-sale (POS) machines, and other sales machines or receipting software users. **(Page 5)**

BOC Issuance

- Customs Memorandum Order (CMO) No. 18-2015 implements the Memorandum of Understanding (MOU) among the Governments of the ASEAN Participating Member States on the Second Pilot Project for the Implementation of a Regional Self-Certification System, as provided under Customs Administrative Order No. 06-2013. **(Page 6)**

SEC Issuance

- SEC Memorandum Circular (MC) No. 5 amended paragraph 11(a) of SEC MC No. 21, Series of 2013, on the Omnibus Guidelines and Procedures on the Use of Corporate and Partnership Names. **(Page 9)**

BSP Issuance

- Circular No. 881 prescribes the implementing guidelines on the Basel III Leverage Ratio Framework, and adds Subsection X115.6 and Subsection 4115Q.6 to the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), respectively. **(Page 10)**

Court Decisions

- Royalty payments by a PEZA-registered enterprise for the use of intangible property required for its manufacturing activity form part of direct costs and are deductible for purposes of computing the 5% gross income tax.

  The CIR cannot adopt a position contrary to a ruling previously secured by a taxpayer by simply issuing an assessment against such taxpayer. **(Page 11)**

- The Revised Makati Revenue Code imposing local business tax (LBT) on the dividend income of holding companies is an *ultra vires* exercise of local taxing power that cannot be given effect without violating the principle that a tax ordinance must conform with and can neither amend nor repeal a statute. **(Page 12)**

BIR Rulings

A contract for the rendition of asset management coordination and administration and support activities is characterized as a contract for the performance of services giving rise to business profits.

BIR Ruling No. ITAD 172-15 dated June 2, 2015

Facts:

A Co., a resident of Australia, entered into an Offshore Services Agreement with B Co., a domestic corporation. Under the agreement, A Co. agreed to render asset management coordination and administration services, as well as support services to B Co. The services were performed entirely in A Co.'s facilities in Australia for more than one year.

Issues:

1. Are the income payments to A Co. characterized as business profits rather than royalties?
2. Is A Co. subject to Philippine income tax?
3. Is A Co. subject to VAT?

Ruling:

1. Yes. The commentaries on the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital provide the following criteria in distinguishing payments for the provision of know-how (royalties) and for the provision of services (business profits):

    a. Contracts for the supply of know-how concern information that already exist or concern the supply of information after its development, and include specific provisions concerning confidentiality of that information.

    b. In contracts for the provision of services, the supplier undertakes to perform services which may require the use by that supplier of special knowledge, skill and expertise, but not the transfer of such special knowledge, skill or expertise to the other party.

    c. In a contract for the supply of know-how which would give rise to royalties, there would generally be very little more which needs to be done by the supplier other than to supply existing information or reproduce existing material. On the other hand, a contract for the performance of services which would give rise to business profits will involve, in a majority of cases, a greater level of expenditure by the supplier in order to perform his contractual obligations such as salaries and wages for employees engaged in researching, designing, testing and other associated activities.

    Since the agreement does not call for the supply of existing information or reproduction of existing material, but for the rendition of asset management coordination and administration, as well as support activities, it is characterized as a contract for the performance of services rather than a supply of know-how. Also, because the services were rendered continuously for more than one year by designated personnel of A Co. at its facilities and A Co. utilized its resources for this purpose, a greater level of expenditure (such as salaries and other remuneration of personnel) was incurred by A Co. to fulfill its contractual obligation to B Co.

2. No. Under the RP-Australia Tax Treaty, an enterprise of Australia earning business profits in the Philippines shall be taxable in the Philippines only to the extent attributable to a permanent establishment (PE) situated in the Philippines. Since A Co. does not have a PE in the Philippines and it did not render services in the Philippines, A Co. is exempt from Philippine income tax.

3. No. Under Section 108(A) in relation to Section 105 of the Tax Code, services shall be subject to VAT only if they are performed in the Philippines. Since A Co. did not render services in the Philippines, A Co. is not subject to VAT.

BIR Ruling No. ITAD 154-15 dated June 2, 2015

A contract for the delivery, installation and testing of a packaged software is characterized as a contract for the performance of services giving rise to business profits.

Facts:

A Co., a resident of Korea, entered into a contract with the Philippine Securities and Exchange Commission (SEC) for the delivery, testing and commissioning of a packaged software. The packaged software is composed of software originally coded in Korea. Delivery, testing, and commissioning services were performed in the Philippines by A Co.'s personnel for which they spent an aggregate period of 85 days in the Philippines.

Issues:

1. Are the income payments to A Co. characterized as business profits rather than royalties?
2. Is A Co. subject to Philippine income tax?
3. Is A Co. subject to VAT?

Ruling:

1. Yes. The commentaries on the Organisation for Economic Co-operation and Development (OECD) Model Tax Convention on Income and on Capital provide the following criteria in distinguishing payments for the provision of know-how (royalties) and for the provision of services (business profits):

    a. Contracts for the supply of know-how concern information that already exist or concern the supply of information after its development and include specific provisions concerning confidentiality of that information.

    b. In contracts for the provision of services, the supplier undertakes to perform services which may require the use by that supplier of special knowledge, skill and expertise, but not the transfer of such special knowledge, skill or expertise to the other party.

    c. In a contract for the supply of know-how which would give rise to royalties, there would generally be very little more which needs to be done by the supplier other than to supply existing information or reproduce existing material. On the other hand, a contract for the performance of services which would give rise to business profits will involve, in a majority of cases, a greater level of expenditure by the supplier in order to perform his contractual obligations such as salaries and wages for employees engaged in researching, designing, testing and other associated activities.

Since the contract between A Co. and the SEC does not call for the supply of existing information or reproduction of existing material, but for the delivery, installation and testing of a full packaged software, it is characterized as a contract for the performance of services rather than a supply of know-how. Moreover, by reason that a substantial number of personnel was required to implement the project and they performed work in Korea and in the Philippines, A Co. certainly incurred a greater level of expenditure (such as salaries and wages of personnel) to fulfill its contractual obligation to the SEC.

2. No. Under the RP-Korea Tax Treaty, an enterprise of Korea earning business profits in the Philippines shall be taxable in the Philippines only to the extent attributable to a PE situated in the Philippines. In relation to this rule, an enterprise of Korea may be deemed to have a PE in the Philippines if it furnishes services, including consultancy services, through an employee or other personnel, provided such activities continue for a period or periods exceeding 183 days in the aggregate within any 12-month period. Since the services performed by A Co. in the Philippines were only for an aggregate period of 85 days, A Co. is not deemed to have a PE in the Philippines and its income shall not be subject to Philippine income tax.

3. Yes. Under Section 108(A) in relation to Section 105 of the Tax Code, services rendered in the Philippines by non-resident persons are subject to VAT. Hence, the SEC shall withhold 12% VAT on its payments to A Co. for the delivery, installation, and testing of the software in the Philippines.

BIR Issuance

RMC No. 30-2015 implements the policy on the non-issuance of provisional PTU for new CRMs, POS machines, and other sales machines or receipting software users.

Revenue Memorandum Circular No. 30-2015 dated May 28, 2015

- Effective immediately, all Revenue District Offices (RDOs) shall no longer accept or approve applications for provisional PTUs for new CRMs, POS machines, and other sales machines or receipting software users.

- RDOs and offices under the Large Taxpayer Service (LTS) are directed to observe the necessary procedures for all existing provisional PTUs and convert the same to final PTUs on or before July 31, 2015; otherwise the same are considered revoked.

- Taxpayers are encouraged to acquire BIR-accredited CRMs/POs/other sales machines or receipting software. The updated list of accredited CRMs/POs/other sales machines or receipting software and the corresponding suppliers is posted on the BIR website (www.bir.gov.ph).

- All existing final PTUs including provisional PTUs that will be converted to final PTUs not later than July 31, 2015 shall have a validity period of 5 years effective August 1, 2015.

- All new applications for accreditation of machine / software suppliers / distributors / dealers / vendors shall be processed at the BIR National Office only and shall have a validity period of five years upon registration and approval of the corresponding final PTU.

BOC Issuance

CMO No. 18-2015 implements the MOU among the Governments of the ASEAN Participating Member States on the Second Pilot Project for the Implementation of a Regional Self-Certification System, as provided under Customs Administrative Order No. 06-2013.

CMO No. 18-2015 dated June 17, 2015

- *Definition of Terms*

  1. *ATIGA* – refers to the ASEAN Trade in Goods Agreement, to achieve free flow of goods in ASEAN as one of the principal means to establish a single market and production base for the deeper economic integration of the region towards the realization of the ASEAN Economic Community (AEC) by 2015.

  2. *Certified Exporter* - means a producer / manufacturer duly authorized by the BOC to make an Invoice Declaration for goods to be exported.

  3. *Self-certification* - a system which enables a Certified Exporter to make out an Invoice Declaration for the export of goods and declare, by itself, that its products have satisfied the rules of origin (ROO) under the ATIGA by making such a declaration on the commercial invoice.

- General Provisions

  1. Only exporters in good standing with the BOC shall qualify for accreditation. An exporter seeking BOC authorization must apply in writing or electronically, and must offer to the satisfaction of the BOC all guarantees necessary to verify the originating status of the goods for which an Invoice Declaration was made out.

  2. A Self-Certification Implementation & Monitoring Secretariat (SCIMS) under the AOCG is established to implement, supervise and manage all activities pertaining to the 2nd pilot project for self-certification. The SCIMS, in coordination with the Management Information System and Technology Group (MISTG), shall also be responsible for evaluating and approving the certification procedure as certified exporters and for monitoring the correctness of the Invoice Declarations compliance with the law, rules, and regulations pertinent to exportation and ROO.

- Operational Provisions

  1. *Application for Certified Exporters:*

     - Manufacturers / exporters may apply in writing or electronically, through the SCIMS for Metro Manila ports, or the District Collector for outports and sub-ports, its intention to be accredited as 'certified exporter' together with the following supporting documents:

       a. Latest income tax returns;
       b. Unique Reference Number (URN) as PEZA locators and Client Profile Registration System (CPRS) for non-PEZA locators;
       c. Business permit/s;
       d. SEC/DTI registration, where applicable;
       e. List of official/s authorized to sign the Invoice Declaration and their positions, with specimen signatures;
       f. Illustration of the manufacturing process per good to be exported, and;
       g. List of products applied for authorization to make Invoice Declaration.

- The head of the SCIMS or the District Collector (in case of outports) shall forward the application to the Export Coordination Division (ECD) or Export Division (ED) for outports, who shall evaluate the same based on the following criteria:

    a. Exporter is a legitimate manufacturer/producer, who must have been transacting with the BOC for more than one year;
    b. Exporter must have been exporting products with ASEAN member-states for at least one year;
    c. Exporter must have responsible officer/s or person/s authorized to sign the Invoice Declaration, must have sufficient knowledge, competence in ROO application, and have undergone training on the implementation of the Self-Certification System conducted by the BOC; and;
    d. Exporter must be willing to be subjected to regular monitoring and inspection to determine the correctness of its declaration with respect to the goods exported.

- After evaluation, the ECD shall forward its findings and recommendations to the SCIMS within 7 working days for its consideration. The ED of the port concerned, on the other hand, shall forward its finding to the SCIMS, within the same period, through the District Collector, for its consideration.

- If SCIMS finds the application to be meritorious, it shall grant the 'Certified Exporter' status through the issuance of a written Authorization with the corresponding authorization number, including the date of issuance and expiry date of the authorization, within 15 working days from the date of receipt of the application with complete documentary requirements by the SCIMS. If not, it shall issue a letter of disapproval stating the reason/s for the denial.

- A copy of the written authorization shall be furnished to the ECD, copy furnished Bureau of International Trade Relation (BITR), and Department of Trade and Industry (DTI).

2. *Obligations of a Certified Exporter:*

- Allow the BOC to access records and premises for the purpose of monitoring the use of the authorization and verification of the correctness of the declarations made. The records and accounts must allow for the identification and verification of the originating status of goods for which an Invoice Declaration was made, during at least three years from the date of declaration.

- Undertake to make the Invoice Declaration only for goods that such exporter produces and for which he has all the appropriate documents proving the originating status of the goods concerned at the time of declaration.

- Undertake to ensure that the person(s) responsible for making the Invoice Declaration know and understand the Rules on Origin.

- Assumes full responsibility for all Invoice Declarations made out on behalf of the company, including any misuse.

- The Certified Exporter shall submit a quarterly summary report of all Invoice Declarations made during the same period using the prescribed form and shall submit said report to the Port Operations Service within seven days after the end of each quarter.

3. *Export Procedures for Certified Exporters*

    - The Certified Exporter shall file an annual export declaration in accordance with existing laws and issuances.

    - The Certified Exporter shall, in case of export of goods satisfying the origin criteria of the ATIGA, indicate such declarations in the commercial invoice, which should describe the goods in sufficient details to enable them to be identified for origin determination purposes.

    - The declaration on the invoice must be signed by hand.

    - The BOC shall monitor the proper use of the Authorization, including verification and correctness of the Invoice Declarations made.

    - In cases where the Certified Exporter may decide not to submit an Invoice Declaration, he may still claim tariff preference under the ATIGA by applying for the issuance of a CO Form D.

4. *Import Procedures for Certified Exporters*

    - For shipments availing of the preferential rate under the ATIGA from Indonesia and Laos PDR and other participating member states, the existing customs import procedures shall still apply, only that the Certified Exporters of the mentioned countries have the option to claim tariff preference under ATIGA by submitting an invoice declaration in lieu of a CO Form D.

    - The Authorization given shall be valid while the MOU on the Second Pilot Project remains.

- **Grounds for Suspension or Revocation**

    1. Certified Exporter no longer offers the guarantees required or no longer fulfills the conditions referred to in Rule 12(A)(2) of the OCP of the MOU on the Second Pilot Project; and;
    2. Certified Exporter violates this CMO.

- **Penalties**

    1. First violation shall be penalized with a three-month suspension of the Accreditation as Certified Exporter;
    2. Second violation shall be penalized with a six-month suspension of the Accreditation as Certified Exporter; and;
    3. Third violation shall be penalized with a revocation of the Accreditation as Certified Exporter.

- Other Provisions

    1. Certified Exporters making an invoice declaration shall keep the supporting records for not less than three years from the date of the Invoice Declaration.

    2. The BOC shall retain the authorization of the Certified Exporters and all other documents related to such application for not less than three years from the date of the granting of the authorization.

    3. Information as to the correctness of the Invoice Declaration shall be furnished upon request of the importing Member State by the competent authority of the exporting Member State.

    4. Any information communicated between the Participating Member States concerned shall be treated as confidential and shall be used exclusively for the validation of the Invoice Declaration.

- CMO No. 18-2015 takes effect immediately and expressly repeals CMO No. 02-2014.

SEC Issuance

SEC MC No. 5 amended paragraph 11(a) of SEC MC No. 21, Series of 2013, on the Omnibus Guidelines and Procedures on the Use of Corporate and Partnership Names.

SEC Memorandum Circular No. 5 dated May 29, 2015

- SEC MC No. 5 provides that the words and phrases enumerated below can be used in the corporate or partnership name only by the entities mentioned below:

    1. Investment(s) – by entities organized as an investment house or investment company;

    2. Capital – by entities organized as an investment house, investment company or holding company;

    3. "Asset / Investment / Fund / Financial Management," or "Asset / Investment / Fund / Financial Adviser," or any similar words or phrases – by entities organized as investment company advisers or holders of investment management activities (IMA) license from the Bangko Sentral ng Pilipinas;

    4. "National," "Bureau," "Commission," "State," and other words, acronyms, abbreviations that have gained wide acceptance in the Philippines – by entities that perform governmental functions;

    5. "Association" and "Organization" or similar words which pertain to non-stock corporations – by entities primarily engaged in non-profit activities;

    6. "Stock Exchange / Futures Exchange / Derivatives Exchange," "Stock Broker / Securities Broker / Derivatives Broker," "Commodity / Financial Futures Merchant / Broker," "Securities Clearing Agency / Stock Clearing Agency," "Plans" or any similar words or phrases – by entities organized as an exchange, broker dealer, commodity futures broker, clearing agency, or pre-need company under the Securities Regulation Code.

[Editor's Note: SEC MC No. 5, Series of 2015 was published in The Manila Times *and in* The Manila Bulletin *on June 4, 2015.]*

BSP Issuance

Circular No. 881 prescribes the implementing guidelines on the Basel III Leverage Ratio Framework, and adds Subsection X115.6 and Subsection 4115Q.6 to the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), respectively.

BSP Circular No. 881 dated June 9, 2015

- The Basel III Leverage Ratio is designed to act as a supplementary measure to the risk-based capital requirements. The leverage intends to restrict the build-up of leverage in the banking sector to avoid destabilizing deleveraging processes which can damage the broader financial system and the economy. Likewise, it reinforces the risk-based requirements with a simple, non-risk based "backstop" measure.

- The Basel II leverage ratio is defined as the capital measure (the numerator) divided by the exposure measure (the denominator), with this ratio expressed as percentage:

$$\text{Basel III Leverage Ratio (\%)} = \frac{\text{Capital Measure (Tier 1 Capital)}}{\text{Exposure Measure}}$$

- The leverage ratio shall not be less than 5% computed on both solo (head office plus branches) and consolidated bases (parent bank plus subsidiary financial allied undertakings but excluding insurance companies).

- For Subsection X115.6 of the MORB, the guidelines shall apply to universal banks (UBs) and commercial banks (KBs) and their subsidiary banks/quasi-banks (QBs). For Subsection 4115Q.6 of the MORNBFI, the guidelines shall apply to subsidiary quasi-banks (QBs) of universal banks (UBs) and commercial banks (KBs).

- The report submission is summarized below:

Report Date	*Reference Date*	*Deadline of Submission*
31 December 2014 31 March 2015 30 June 2015	30 June 2015	30 banking days on both solo and consolidated bases from end of reference date
30 September 2015 31 December 2015	31 December 2015	15 banking days on solo basis from end of reference date and 30 banking days on consolidated basis from end of reference date
31 March 2016 30 June 2016	30 June 2016	
30 September 2016 31 December 2016	31 December 2016	

- Banks shall not be penalized on any breach on the 5% minimum leverage ratio during the monitoring period, i.e. 31 December 2014 to 31 December 2016. However, late and/or erroneous reports shall be subject to penalties provided under Subsection X192.2 of the MORB and Subsection 4192Q.2 of the MORNBFI, as the case may be. Banks failing to submit the required reports within the prescribed deadlines shall be subject to monetary penalties applicable for delayed reporting under existing regulations. For purposes of imposing monetary penalties, the reports shall be classified as a Category A-1 report.

- Appendix 6/ Appendix Q-3 on reports required of banks/QBs in relation to Subsections X115.6/4115Q.6 of the MORB/MORNBFI are hereby amended to reflect the required Basel III Leverage Ratio reporting and disclosure templates.

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

[Editor's Note: Circular No. 881 was published in The Manila Times *on June 17, 2015.]*

Court Decisions

Lear Automotive Services (Netherlands) B.V. – Philippine Branch vs. CIR
CTA (Second Division) Case 8421 & 8561 promulgated May 21, 2015

Royalty payments by a PEZA-registered enterprise for the use of intangible property required for its manufacturing activity form part of direct costs and are deductible for purposes of computing the 5% gross income tax.

The CIR cannot adopt a position contrary to a ruling previously secured by a taxpayer by simply issuing an assessment against such taxpayer.

Facts:

Respondent CIR assessed Petitioner Lear Automotive Services (Netherlands) B.V. – Philippine Branch (Lear-PH) for, among others, deficiency income tax for taxable years 2007 and 2008 arising from the disallowance of royalty expense from Lear-PH's gross income subject to the 5% tax.

Lear-PH, a PEZA-registered entity, protested the assessments and argued that the royalty fees paid to Lear Automotive Services (Netherlands) B.V. (Lear-BV) for the use of intangible property required for its manufacturing activity, form part of its direct costs and are deductible from gross income. Lear-PH also argued that it had previously secured BIR Ruling No. DA 147-2005 which confirmed that the said royalty payments are part of the cost of finished goods; hence, are deductible for purposes of computing the 5% income tax.

As the CIR denied the protest, Lear-PH filed a Petition for Review with the CTA.

The CIR argued that royalty fees are not deductible from gross income subject to the 5% preferential tax rate as they do not fall within the definition of "cost" under the PEZA Law and the Tax Code. The CIR also argued that royalty is not included in the enumeration of allowable deductions from gross income provided under Section 2, Rule XX of the PEZA Law implementing rules and regulations, and RR No. 11-2005. The CIR claimed that BIR Ruling No. DA 147-2005 cannot be enforced as it misapplied the PEZA Law and RR No. 11-2005.

Issues:

1. Are the royalty fees paid by Lear-PH to Lear-BV deductible for purposes of computing the 5% gross income tax?

2. Can the CIR unilaterally set aside BIR Ruling No. DA 147-2005 by issuing a deficiency assessment?

Ruling:

1. Yes. Lear-PH's royalty payments are deductible expenses for purposes of the 5% gross income tax.

   Section 2 of Rule XX of the PEZA Law IRR enumerates the allowable deductions for purposes of computing the 5% tax on gross income of PEZA-registered enterprises. The Rules did not limit, but merely enumerated, the allowable deductions from gross income. Citing its decision in *East Asia Utilities Corporation vs. CIR, CTA Case 8179, May 21, 2014*, the CTA reiterated that RR No. 11-05 is not meant to be an all-inclusive list 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 the same are not included in the list. The criterion is the direct relation of such item in the rendition of the PEZA-registered services. The item of cost or expense is treated as direct cost if it can be directly attributed in providing the PEZA-registered services.

2. No. The CIR cannot adopt a position contrary to previously issued tax exemption ruling by simply issuing an assessment against a taxpayer. To allow this would cause undue prejudice to Lear-PH which merely relied in good faith on the BIR ruling.

   BIR Ruling DA-147-2005 is binding to the CIR. Under Section 246 of the Tax Code, the CIR is precluded from adopting a position contrary to one previously taken if its results in injustice to the taxpayer *[CIR vs. Philippine Health Care Providers, Inc., GR 1681129, April 24, 2007]*.

Michigan Holdings, Inc. vs. The City Treasurer of Makati City, Nelia A. Barlis
CTA (*En Banc*) Case 1093 promulgated June 17, 2015

The Revised Makati Revenue Code imposing local business tax (LBT) on the dividend income of holding companies is an *ultra vires* exercise of local taxing power that cannot be given effect without violating the principle that a tax ordinance must conform with and can neither amend nor repeal a statute.

Facts:

Respondent City Treasurer of Makati assessed Petitioner Michigan Holdings, Inc. (MHI) for alleged deficiency LBT on dividend income earned for taxable year 2006. MHI protested the deficiency LBT assessment, arguing that dividend income is subject to income tax hence exempt from LBT under Section 133(a) of the Local Government Code (LGC).

As the City Treasurer did not act on its protest within the 60-day period, MHI filed a complaint before the Makati Regional Trial Court (RTC) for the cancellation of the LBT assessment. The RTC dismissed MHI's appeal on the ground that it was directed at the validity of Section 3A.02(p) of the Revised Makati Revenue Code, which should have been questioned before the Secretary of Justice within 30 days from effectivity of the said ordinance as prescribed by Section 187 of the LGC.

MHI filed a Petition for Review with the CTA. The CTA Second Division upheld the ruling of the RTC. MHI elevated the case to the CTA *En Banc*.

Issue:

1. Is MHI prohibited from questioning the legality of the basis of the LBT assessment?

2. Can the Makati City Treasurer levy LBT on MHI's dividend income?

Ruling:

1. No. Section 195 of the LGC does not limit the grounds for contesting an LBT assessment.

   Thus, an aggrieved taxpayer is not barred from challenging the validity of a tax ordinance or a provision thereof upon which the assessment is based. There is nothing in Section 195 of the LGC that requires a taxpayer who relies on this ground to first assail the validity of the ordinance before the Secretary of Justice.

   Section 195 as a taxpayer's remedy against an assessment is separate, distinct, and independent from Section 187 that prescribes the procedure for contesting the constitutionality of a tax ordinance.

2. No. Makati City has no authority to impose LBT on the dividend income of MHI.

   Section 133(a) of the LGC expressly provides that the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax, except when levied on banks and other financial institutions. Section 131 (e) defines "banks and other financial institutions," which excludes holding companies.

   Section 3.A.02(h) of the Revised Makati Revenue Code imposes an LBT on the dividend income of banks and other financial institutions. Section 3.A.02(p), however, makes holding companies, such as MHI, liable for the same business tax.

   Section 3.A.02(p) of the Revised Makati Revenue Code violates the limit set by Section 133(a) of the LGC, which prohibits the imposition of income tax except when levied on banks and other financial institutions. The said provision is therefore an *ultra vires* exercise of local taxing power that cannot be given effect without violating the principle that an ordinance must confirm with and can neither amend nor repeal a statute.

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