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Tax bulletin

SGV

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Highlights

BIR Issuances

- Revenue Memorandum Circular (RMC) No. 61-2014 circularizes the revocation of BIR Ruling No. DA (OSL-A1) 001-2008 dated October 17, 2008, which declared that creditable withholding taxes (CWT) are covered by the Tax Amnesty Program (TAP) under Republic Act (RA) No. 9480 for 2005 and prior years. **(Page 3)**

- Revenue Memorandum Order (RMO) No. 29-2014 prescribes the format and procedures for issuing certifications on the existence of outstanding tax liabilities of taxpayers. **(Page 4)**

BSP Issuances

- Circular No. 842 prescribes the required reports under the Basel III Risk-Based Capital Adequacy Framework for Universal and Commercial Banks and their Subsidiary Banks and Quasi-Banks. **(Page 5)**

- Circular No. 843 provides for the establishment and implementing guidelines of the Libyan Dinar (LYD) Currency Exchange Facility (CEF). **(Page 5)**

- Circular No. 844 prescribes the guidelines for the cross-selling of collective investment schemes and other amendments to Circular No. 801 on the Revised Cross-Selling Framework. **(Page 7)**

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- SEC Memorandum Circular (MC) No. 16 prescribes the guidelines for corporations and partnerships on amending their principal office address in their articles of incorporation whenever they move to a new location. **(Page 9)**

- SEC MC No. 17 requires all exchanges, transfer agents, broker dealers, investment houses, investment companies, investment company advisers, and other covered institutions under the supervision of the SEC, to participate in and support the activities of the Money Laundering/Terrorist Financing (ML/TF) National Risk Assessment (NRA) Working Group or its various sub-working groups. **(Page 9)**

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- A foreign corporation, which has actively participated in government bidding and which enters into a contract with a domestic corporation, is considered engaged in business in the Philippines and is required to obtain a license from the SEC. **(Page 11)**

- A corporation registered with the SEC whose certificate of registration has been revoked is considered automatically dissolved, and there is no more need for the SEC to issue any Certificate of Dissolution. **(Page 11)**

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BIR Issuances

RMC No. 61-2014 circularizes the revocation of BIR Ruling No. DA (OSL-A1) 001-2008 dated October 17, 2008, which declared that CWT are covered by the TAP under RA No. 9480 for 2005 and prior years.

Revenue Memorandum Circular No. 61-2014 dated July 28, 2014

- On October 17, 2008, BIR Ruling No. DA (OSL-A1) 001-2008 was issued, which basically ruled that the failure to withhold CWT is covered by the TAP under RA No. 9480, and that it is the failure to withhold final withholding taxes that is not covered by the TAP.

- BIR Ruling No. (OSL-A1) 001-2008 is revoked for lack of legal basis and lack of jurisdiction of the issuing officer, for the following reasons:

    1. Section 8(a) of RA No. 9480 and RMC No. 19-2008 provide that the tax amnesty shall not extend to withholding agents with respect to their tax liabilities;

    2. RMC No. 69-2007 also provides that the TAP covers all national internal revenue taxes such as income tax, estate tax, donor's tax and capital gains tax, value added tax, other percentage taxes, excise taxes and documentary stamp taxes, **except withholding taxes AND taxes passed on and already collected from the customers for remittance to the BIR**, these taxes/funds being considered as funds held in trust for the government.

        The use of the word "taxes" in the second item - i.e., "taxes passed on and already collected" - indicates that the second item is of a different class than the first item - i.e., withholding taxes.

        The phrase "taxes passed on and already collected from the customers for remittance to the BIR" cannot be interpreted to refer to withholding taxes in light of the decision of the Supreme Court in *Asia International Auctioneers vs. Commissioner of Internal Revenue* (G.R. No. 179115, September 26, 2012). In this case, the Court declared that the only "taxes that may be passed on" are indirect taxes, which will not include withholding taxes. Indirect taxes, like VAT and excise tax, are different from withholding taxes. To distinguish, in indirect taxes, the incidence of

taxation falls on one person, but the burden thereof can be shifted or passed on to another person, such as when the tax is imposed on goods before reaching the consumer who ultimately pays for it. On the other hand, in case of withholding taxes, the incidence and burden of taxation fall on the same entity, the statutory taxpayer. The burden of taxation is not shifted to the withholding agent who merely collects, by withholding, the tax due from income payments to entities arising from certain transactions and remits the same to the government. Due to this difference, the deficiency VAT and excise tax cannot be "deemed" as withholding taxes merely because they all fall under the category of indirect taxes.

3. BIR Ruling No. DA (OSL-A1) 001-2008, being one of first impression, should have been signed by the Commissioner of Internal Revenue (CIR). Section 7 of the Tax Code provides that the CIR cannot delegate the power to issue rulings of first impression.

   Prior to BIR Ruling No. DA (OSL-A1) 001-2008, the Bureau did not have the opportunity to rule on the issues raised in the said ruling. Since the ruling is one of first impression, the CIR should have reviewed and issued the same. The Assistant Commissioner of the Legal Service did not have the authority to issue BIR Ruling No. DA (OSL-A1) 001-2008.

RMO No. 29-2014 prescribes the format and procedures for issuing certifications on the existence of outstanding tax liabilities of taxpayers.

Revenue Memorandum Order No. 29-2014 dated July 25, 2014

- All revenue offices shall strictly use the prescribed forms to cover and prepare requests for certification on the existence of tax liabilities, and certifications on the status of cases pending legal or judicial resolution.
- The prescribed forms are divided into 2 portions: the upper portion contains the pertinent information for the request for certification, which shall be accomplished by the head of the requesting revenue office. The lower portion contains the details of the certification, to be accomplished by the concerned revenue office which determines the existence of the outstanding tax liabilities, or the status of cases pending legal or judicial resolution.
- The accomplished form shall be transmitted by the heads of the requesting and issuing revenue offices, respectively, using their e-mail addresses created by the BIR.
- At the option of the heads of the revenue offices concerned, the prescribed form may be affixed with their signature, scanned, and transmitted to the addressee through their official email. For this purpose, it shall be the responsibility of the head of the revenue office to ensure that only valid and authentic certifications are transmitted to the requesting office using his/her official email account.
- The issuing revenue office shall send the prescribed form, with the duly-accomplished lower portion containing the requested certification, within 24 hours after receipt receiving the email from the requesting revenue office.
- The certifications issued by all revenue offices concerned shall be valid only for one month from date of issue.
- The above requirements shall not apply to certifications requested by and issued directly to taxpayers or other offices outside the BIR.

BSP Issuances

Circular No. 842 prescribes the required reports under the Basel III Risk-Based CAR for Universal and Commercial Banks and their Subsidiary Banks and Quasi-Banks.

BSP Circular No. 842 dated July 25, 2014

- Banks and quasi-banks which are subsidiaries of universal/commercial banks shall submit a report of their risk-based capital adequacy ratio (CAR):

    1. On a solo basis (head office plus branches), within 15 banking days after the end of reference quarter; and

    2. On a consolidated basis (parent bank plus subsidiary financial allied undertakings, but excluding insurance companies), within 30 banking days after the end of reference quarter.

- All universal and commercial banks as well as their subsidiary banks and quasi-banks shall be subject to all other reporting requirements (i.e., Basel III Capital Adequacy Summary Report) under the Basel III risk-based capital as may be prescribed by the BSP.

- Failure to submit and late submission shall be subject to applicable penalties under the Manual of Regulations for Banks, the Manual of Regulations for Non-Bank Financial Institutions, and existing regulations.

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

[Editor's Note: Circular No. 842 was published in Malaya *on August 8, 2014.]*

Circular No. 843 provides for the establishment and implementing guidelines of the LYD CEF.

BSP Circular No. 843 dated August 7, 2014

- Overseas Filipino Workers (OFWs) and their family members who returned from Libya shall be eligible to avail of the Currency Exchange Facility (CEF) at a maximum amount equivalent to not more than PHP20,000.00 per person. Only Libyan Dinar (LYD) considered as legal tender in Libya may be converted to PHP.

- The BSP and Authorized Agent Banks (AABs) shall use as reference rate the latest available rate at the time of exchange and disseminated by the BSP Treasury Department. The BSP shall purchase LYD from AABs at the same rate at which the AABs purchased the LYD in accordance with the reference rate on the date of AABs' purchase.

- The facility shall be open from 29 May 2014 and will be available for 4 months from the effectivity date of the Circular.

- Exchange through an authorized representative is allowed only in cases of physical incapacity or death of the eligible person. The following may be an authorized representative: (a) legal spouse, (b) child, (c) parent, or (d) brother/sister.

- The person concerned or his authorized representative shall fill out the CEF Conversion Slip and submit the following documents:

    1. For exchange by the person concerned:

        - Original passport or travel document issued by the Philippine Embassy in Tripoli, with exit stamp by authorities from Libya or other countries that served as exit points for repatriation; or

- Certified true copy of the travel document in cases where the original copy is required to be surrendered to another Philippine government agency. The copy must be signed by an authorized official of said government agency.

2. For exchange through an authorized representative:

   - Documents under item 1 above;

   - Proof of identity of the representative, which may consist of:

     (a) One valid photo-bearing ID issued by the Philippine government or private entities registered with or supervised/regulated by the BSP, SEC or Insurance Commission; or
     (b) Similar IDs issued by the foreign government in case the authorized representative is a non-Philippine resident.

   - In case of physical incapacity of the eligible person:

     (a) Name/s of OFW/family member/s and representative;
     (b) Relationship of representative to OFW/family member/s; and
     (c) Reason/s for appointing a representative, with medical certificate.

   - In case of a deceased returnee:

     (a) Letter from representative indicating the name/s of OFW/family member/s and representative and circumstance/s of the OFS/ family member's death;
     (b) Proof of filiation;
     (c) Copy of death certificate or report of death;

   - Other additional documentary proof/s as may be required by the BSP/AABs.

- AABs, particularly those with branch offices at Philippine international airports, shall extend their banking hours to accommodate those who wish to avail of the facility. All bank branch offices located at airports/seaports shall post signage(s)/public advisory(ies) about the CEF program in conspicuous places.

- AABs shall not collect any kind of service fee from those availing of the program.

- AABs shall submit to the BSP the Consolidated Summary of Purchases under the CEF, together with copies of Conversion Slips, within 3 banking days from the end of reference week.

- The currency purchased by AABs under the CEF shall be surrendered to the BSP within 10 banking days from purchase.

- The Circular shall take effect 2 days after publication.

[Editor's Note: Circular No. 843 was published in The Philippine Star *and in the* Philippine Daily Inquirer *on August 9, 2014.]*

Circular No. 844 prescribes the guidelines for the cross-selling of collective investment schemes and other amendments to Circular No. 801 on the Revised Cross-Selling Framework.

BSP Circular No. 844 dated August 11, 2014

- The amended Statement of Principles is focused on providing an enabling environment for cross-selling activities, and defines the responsibilities of banks for managing the attendant risks and upholding consumer protection.

- The important terms with amended definitions include:

    1. *Cross-selling* means the presentation and/or sale of a financial product, other than a bank's own financial product, to a bank client inside bank premises through written or verbal communications.

    2. *Financial conglomerate* refers to a group of interrelated entities providing significant services in at least 2 different financial sectors (banking, securities and insurance). A banking group is subsumed within the context of a financial conglomerate. A financial product provider must have been disclosed and reported as part of the group structure pursuant to Section 6(a)(1) of Circular No. 749 dated 27 February 2012.

    3. *Financial product of an allied undertaking* refers to financial products created by a financial product provider belonging to the same financial conglomerate.

    4. *Financial product provider* means a financial entity which creates the financial product. The financial product provider should be regulated or supervised by the BSP, the SEC or the Insurance Commission.

    5. *Investment risk* refers to the potential loss of the principal amount (either full or partial) invested by the investor. It also refers to the possibility of not achieving targeted rates of return for a given investment transaction.

- Financial products which may be cross-sold inside bank premises now includes collective investment schemes (CIS) of financial product providers belonging to the same financial conglomerate. These refer to:

    1. Mutual funds registered with the SEC;
    2. Unit Investment Trust Funds (UITFs); and
    3. Variable Unit-Linked life insurance policies (VULs).

- The new Subsection X172.6 contains the requirements applicable to cross-selling of CIS. It requires banks to ensure that CIS as financial products comply with the regulations of the government bodies governing their issuance. Financial product providers must observe the following minimum practices:

    1. *Product Highlight Sheet (PHS).* Potential clients must be provided with a PHS, which summarizes the key information of the financial product which will be material to the proper understanding by the client of the product, its features and risks.

    2. *Client Suitability Assessment (CSA).* A CSA of each client shall be undertaken prior to the acquisition of an investment product. The CSA should determine the client's understanding of, tolerance for and capacity in managing various risks.

    3. *Investment Policy Statement (IPS).* The IPS formalizes the investment philosophy of the client as well as any investment directive of the client with respect to the handling of his investible funds.

4. *Disclosure of Conflict of Interest*. Financial product providers should disclose any material information which can give rise to an actual or potential conflict of interest to the client. Financial product providers should take all reasonable steps to ensure fair dealings with the client.

5. *Standard Disclosure Statement*. All promotional materials, PHS and contracts of CIS should contain the following standard disclosure statement:

> *"This is not a deposit product. Earnings are not assured and principal amount invested is exposed to risk of loss. This product cannot be sold to you unless its benefits and risks have been thoroughly explained. If you do not fully understand this product, do not purchase or invest in it."*

- Subsection X172.8 on Authority to Cross-Sell provides that, for initial financial products for cross-selling, the application letter shall be accompanied by the following:

  1. Notarized Secretary's Certificate on the approval of the board of directors of the cross-selling of financial products; and

  2. Notarized Certification signed by the bank's President/Country Officer and Compliance Officer on the bank's compliance with pertinent banking laws, rules and regulations on cross-selling.

  Once approved, the bank may continuously undertake cross-selling activities unless otherwise ordered by the Monetary Board. Approval of subsequent applications is delegated to the SES Subsector Head, except for the CIS financial products, approval of which is delegated to the Deputy Governor, SES. All approvals under delegated authority are subject to confirmation by the Monetary Board.

  The Monetary Board may suspend cross-selling activities whenever a bank no longer meets the original conditions of the approval, and/or by virtue of any subsequent issuances by the BSP governing the conduct of cross-selling activities. The bank may re-submit an application to enter into cross-selling arrangements only when the Capital Adequacy, Asset Quality, Management, Earnings, Liquidity and Sensitivity to Market Risk (CAMELS) composite rating or its equivalent is at least "3" in the latest report of examination or any noted major supervisory concerns have been satisfactorily addressed.

- Subsection X172.9 on Complaints Handling now provides that the bank and the financial product provider are jointly responsible for the resolution of complaints arising from cross-selling transactions.

- Rediscounting privileges or access to BSP credit facilities are no longer automatically suspended in case of violation, but may be imposed when the Monetary Board deems appropriate and allowed by law considering the gravity of the offense.

- The Circular shall take effect fifteen (15) days following its publication either in the Official Gazette or in a newspaper of general circulation.

- Within 30 days from effectivity, banks shall review all existing cross-selling arrangements and determine compliance with the revised rules and report all deviations to the BSP. All financial products approved for cross-selling prior to the effectivity of the Circular shall be given 1 year within which to comply with the requirements of the new Circular.

[Editor's Note: Circular No. 844 was published in Malaya Business Insights *on August 15, 2014.]*

SEC Issuances

SEC MC No. 16 prescribes the guidelines for corporations and partnerships on amending their principal office address in their articles of incorporation whenever they move to a new location.

SEC Memorandum Circular No. 16 dated May 29, 2014

- *For Corporations:*

    1. If a corporation or partnership indicates a general principal office address (e.g., a city, town, municipality or "Metro Manila"), it is required to file amended Articles of Incorporation (AOI) or Articles of Partnership (AOP) to specify their complete address.

    2. If a corporation indicates a specific and complete principal office address in its AOI and has moved to another location within the same city or municipality:

        - The corporation is not required to file amended AOI;
        - The corporation must declare its new or current specific address on its General Information Sheet (GIS) within 15 days from transfer to its new location; and
        - The corporation is not precluded from filing amended AOI to indicate its new location within the same city or municipality of its former address.

    3. If a corporation indicates a specific and complete principal office address in its AOI and has moved to another location in another city or municipality:

        - The corporation must file amended AOI to indicate its new location in the other city or municipality.

- *For Partnerships:*

    1. Considering that a partnership has no obligation to file the GIS, it is required to file amended AOP every time it transfers to a new location within the same city or municipality, or to a new location in another city or municipality.

[Editor's Note: SEC MC No. 16 was published in the Manila Bulletin *and* Manila Times *on August 15, 2014.]*

SEC MC No. 17 requires all exchanges, transfer agents, broker dealers, investment houses, investment companies, investment company advisers, and other covered institutions under the supervision of the SEC, to participate in and support the activities of the ML/TF NRA Working Group or its various sub-working groups.

SEC Memorandum Circular No. 17 dated August 20, 2014

- The National Risk Assessment (NRA) is an organized and systematic effort to identify and evaluate the sources and methods of money laundering and terrorist financing (ML/TF), and weaknesses in the anti-money laundering/ counter-terrorist financing systems, and other vulnerabilities that have an impact, either direct or indirect, on the country conducting the assessment.

- The ML/TF NRA Working Group is headed by the Anti-Money Laundering Council (AMLC) and is participated in by various government agencies, including the SEC.

- The ML/TF NRA Working Group and its various sub-working groups are currently in the process of gathering data and information in order to conduct a comprehensive assessment of the national ML/TF risks.

- SEC MC No. 17 directs all exchanges, transfer agents, broker dealers, investment houses, investment companies, investment company advisers, and other covered institutions under the supervision of the SEC to furnish the following information or data and to provide such other information as may be required by the ML/TF NRA Working Group or its various sub-working groups:

    1. Information for Threat Analysis
    2. Information for National Combatting Ability Analysis
    3. Information for Specific Sectors
    4. Information for Product Analysis

        - For Banking, Securities and Insurance Sector
        - For Other Financial Institutions/DNFBPs (Casinos, Real Estate, Lawyers, Dealers in Precious Metals and Other Stones, Remittance Agents, Accountants and Others)

    5. Information for Financial Inclusion Products/ Services

[Editor's Note: SEC MC No. 17 was published in the Business Mirror *and* The Philippine Star *on August 27, 2014.]*

SEC Opinions

SEC-OGC Opinion No. 14-20 dated August 5, 2014

Foreign stockholders of an educational institution that is 60% Filipino are not allowed to become members of the Board of Directors or Trustees, nor to be elected as chairman of said governing body.

Facts:

P School is an educational institution, the primary purpose of which is to "offer technical and vocational education and training, specifically by operating a course-based language tutorial center catering to foreign and Filipino students, regardless of educational background." P School is 60% owned by Filipinos and 40% owned by Japanese nationals.

Issue:

Can the Japanese stockholders of P School sit as members of the Board of Directors of the school in proportion to their shareholdings?

Ruling:

No, foreigners are not allowed to become members of the Board of Directors/Trustees of educational institutions. Neither can a foreigner be elected as chairman of said governing body.

As a rule, the Anti-Dummy Law provides that the election of foreigners to the board of directors may be allowed as long as the corporation is not engaged in a wholly nationalized activity, and only in proportion to their share in the capital of such corporation. However, said provision shall not apply to educational institutions which are governed by Article XIV of the Constitution, which provides that the control and administration of educational institutions shall be vested in citizens of the Philippines.

SEC-OGC Opinion No. 14-21 dated August 5, 2014

A foreign corporation, which has actively participated in government bidding and which enters into a contract with a domestic corporation, is considered engaged in business in the Philippines and is required to obtain a license from the SEC.

Facts:

A Co. is a foreign corporation organized and existing under the laws of Belgium. After undergoing required bidding projects, A Co. entered into a contract with a wholly-owned government corporation (GOCC) for an Automated Fare Collection System (AFCS). A Co. has not engaged in any other business activity within the Philippines other than the said AFCS project.

Issue:

Is A Co. required to obtain a license to do business in the Philippines?

Ruling:

Yes, A Co. actively participated in a government bidding process for a government project, and having done so is considered to be doing business in the Philippines. This is in line with its main business of selling, designing and installing automated ticketing and fare collection machines and equipment.

Further, the contract entered into by A Co. provides that the duration of the whole work is to be completed in 22 months, which exceeds the 180-day period as provided in the Foreign Investments Act (FIA). In the absence of any statement to the contrary, there is reasonable presumption that the representatives and agents of A Co. will be in the Philippines from the commencement until its end of the project.

SEC-OGC Opinion No. 14-22 dated August 8, 2014.

A corporation registered with the SEC whose certificate of registration has been revoked is considered automatically dissolved, and there is no more need for the SEC to issue any Certificate of Dissolution.

Facts:

T Co. is a corporation duly registered with the SEC. In 2003, the SEC issued an order revoking T Co.'s certificate of registration for non-filing of its annual reports. T Co. filed for a petition to lift order of revocation, but this request was denied by the SEC in 2014.

Issue:

Is T Co. automatically dissolved upon revocation of its certificate of registration?

Ruling:

Yes, the effect of the Order of Dissolution is automatic in that there is no more need for the SEC to issue any Certificate of Dissolution. Once a corporate franchise is revoked, the corporation is dissolved.

However, T Co. may still undergo the process of liquidation by disposing its remaining assets even beyond the period of liquidation. The 3-year period under Section 122 of the Corporation Code should not, however, be construed to prevent a corporation from pursuing activities which would complete the final liquidation of a dissolved corporation.

If the 3-year extended life of T Co. has expired without a trustee or receiver having been expressly designated by the corporation within that period, the board of directors itself may be permitted to continue as "trustees" by legal implication to complete the corporate liquidation. Thus, the surviving Board of Directors may act or appoint themselves as "trustees" for T Co. in order to carry out the liquidation of the corporation.

BLGF Opinion

BLGF Opinion dated August 4, 2014

Homeowners' associations are not subject to LBT on association dues, membership fees and other assessment/ charges collected from its members and other entities, provided that such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages. They are, however, subject to regulatory fees and charges.

Facts:

The Chief of the Business Permits and Licensing Office of Muntinlupa City seeks clarification on the imposition of local business tax (LBT), licenses and fees on homeowners' associations on the association dues, membership fees and other assessment/charges collected from its members and other entities.

Issues:

1. Are homeowners' associations subject to LBT on association dues, membership fees and other assessment/charges collected from its members and other entities?
2. Are homeowners' associations subject to licenses and fees?

Ruling:

1. No. Homeowners' associations are not subject to LBT on association dues, membership fees and other assessment/charges collected from its members and other entities.

   Section 18 of RA No. 9904 *(Magna Carta for Homeowners and Homeowners' Associations and For Other Purposes)* provides that "in recognition of the associations' efforts to assist the LGUs in providing such basic services, association dues and income derived from rentals of their facilities shall be tax-exempt." As such, association dues, membership fees and other assessment/charges collected by homeowners' associations, regardless of whether such associations are non-stock/non-profit or not, are exempt from LBT. However, such exemption is subject to the condition that such income and dues shall be used exclusively for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities within the respective subdivisions or villages.

2. Yes. Homeowners' associations are subject to regulatory fees and charges imposed under the police powers of the local government units, as there is no law which provides for exemption from such fees and charges.

Court Decisions

Aces Philippines Cellular Satellite Corporation vs. Commissioner of Internal Revenue
CTA (2nd Division) Case 8567 promulgated July 23, 2014

Satellite airtime service fees paid to a non-resident foreign corporation are considered income from sources within the Philippines that are subject to FWT.

Facts:

Respondent CIR assessed Petitioner Aces Philippines Cellular Satellite Corporation (Aces) for, among others, deficiency final withholding tax (FWT) for taxable year 2006. The CIR alleged that Aces is liable for the 35% *[now 30%]* FWT on the satellite airtime fees paid to Aces International Limited (AIL), a non-resident foreign corporation.

Aces protested the assessment and argued that it is not liable for deficiency FWT because the payments to AIL arise from satellite airtime services rendered outside the Philippines. Aces further argued that even assuming that services are rendered within the Philippines, it should only be subject to 7.5% FWT for the use of AIL's equipment. The CIR denied the protest. Aces filed a Petition for Review with the Court of Tax Appeals (CTA).

Issue:

Are the satellite air time service fees paid by Aces to AIL considered income from sources within the Philippines that are subject to 35% [now 30%] FWT?

Ruling:

Yes. Section 28(B)(1) of the Tax Code provides that income of a non-resident foreign corporation *from all sources within the Philippines is subject to 35% (now 30%)* income tax. The important factor that determines the source of income of personal services is not the residence of the payor, or the place where the contract for service is entered into, or the place of payment, but the place where the services were actually rendered. The source or origin of income is determined by the *situs* where the activity or service was performed.

The activity that produces the income is the undertaking of providing satellite communication time to be delivered by AIL and utilized by Aces and its subscribers in the Philippines. Services include the use of satellite airtime for voice or data calls but exclude satellite utilization time for call setup, unanswered calls and incomplete call. Thus, the activity that produced the income took place in the Philippines. The evidence presented by Aces is insufficient to support its claim that the service fees paid to AIL should be considered as income from sources outside the Philippines.

Moreover, the 7.5% FWT under Section 28(B)(4) of the Tax Code will not apply since Aces failed to present evidence to prove that the fee paid to AIL is for the use of equipment. The agreement presented did not stipulate that the payment of satellite airtime fees is for the rental or use of the satellite equipment of AIL.

Aegis PeopleSupport, Inc. [formerly PeopleSupport (Philippines), Inc.] vs. Commissioner of Internal Revenue
CTA (*En Banc*) Case EB 996 promulgated August 4, 2014

Foreign exchange gains derived by a contact center from currency hedging contracts are not attributable to its registered activity, hence, are not covered by the Income Tax Holiday (ITH) incentive.

Facts:

Petitioner Aegis PeopleSupport, Inc. (Aegis) is a PEZA-registered company which was granted the ITH incentive on its registered activity to engage in establishing a contact center to provide outsourced customer care services and business process outsourcing. Aegis filed with Respondent Commissioner (CIR) a claim for tax credit or refund of erroneously paid income tax on foreign exchange gains realized from its hedging contracts.

As the CIR failed to act on the claim, Aegis filed a Petition for Review with the CTA. Aegis argued that the foreign exchange gain is covered by its ITH incentive, since the income was realized from the sale of US dollars earned through the performance of its registered activity of establishing and operating a contact center, and the purchase of Philippine pesos needed to pay operational expenses.

The CTA First Division denied the claim on the ground that Aegis' foreign exchange gain derived from its hedging activities is not effectively connected with its registered activity. Aegis filed an appeal with the CTA *En Banc*.

Issue:

Are the foreign exchange gains derived by Aegis from currency hedging contracts attributable to its registered activity and covered by the ITH incentive?

Ruling:

No. The ITH incentive does not necessarily include all kinds of income which Aegis may receive during the period of entitlement. To enjoy the incentive granted under applicable laws, the income must be effectively related with the conduct of its registered trade or business.

While Aegis may have showed that it derived service fees in US dollars from its clients, and these dollars were used to purchase Pesos to pay for the ordinary and necessary expenses of its customer-support business, the foreign exchange gains derived from its hedging contracts are not related to its registered activity as a contact center.

Aegis' hedging activity involves the sale of specified amounts of dollars to the bank on pre-determined dates and at pre-determined exchange rates. The said hedging activity is outside of its registered activity as a contact center. Accordingly, the ITH on its registered activity may not be extended to the said foreign exchange gains.

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