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Tax bulletin



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PHILIPPINE TAX FIRM
OF THE YEAR
AND
TRANSACTION TAX TEAM
OF THE YEAR

Highlights

BIR Rulings

- ▶ In a Tax-Exempt Certification of a non-stock, non-profit corporation, the Bureau of Internal Revenue (BIR) may incidentally rule that donations to an applicant are not exempt from donor's tax if it finds that more than 30% of the donations to the applicant are used for administrative purposes. **(Page 3)**
- ▶ Under Revenue Memorandum Order (RMO) No. 1-2000, any availing of tax treaty relief shall be preceded by a tax treaty relief application (TTRA) filed with the BIR-International Tax Affairs Division (ITAD) at least 15 days before the intended transaction or payment of income. **(Page 4)**

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- ▶ RR No. 2-2014 prescribes the new Income Tax Return (ITR) forms that will be used for the taxable year covering and starting with taxable year ended December 31, 2013. **(Page 6)**
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- ▶ RMC No. 6-2014 extends up to February 28, 2014 the provisional accreditation of printers of manually printed receipts and invoices. **(Page 9)**

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- ▶ A subcontractor of service contractors engaged in petroleum operations under Presidential Decree (PD) No. 87 is not subject to local business tax (LBT) on income arising from its contracts. **(Page 11)**

Court Decisions

- ▶ This is a Resolution of the Supreme Court which affirms, with finality, its August 19, 2013 Decision in *Deutsche Bank AG Manila Branch vs Commissioner of Internal Revenue* (GR No. 188550) (1) declaring that the failure to strictly comply with the requirement under RMO No. 1-2000 to file a TTRA 15 days prior to availing of the provisions of a tax treaty should not deprive a taxpayer of the benefit of a tax treaty; and (2) granting the refund of excess branch profits remittance tax (BPRT) paid by Deutsche Bank AG Manila Branch to the BIR. **(Page 11)**

- ▶ Even if the civil aspect of collecting a deficiency tax is included in a criminal case against an officer of a corporation for violation of the provisions of the Tax Code, the liability to pay the deficiency tax subject of the violation remains with the corporation.

The doctrine of 'piercing the corporate veil' where an officer is held liable for the liability of the corporation applies only in 3 cases, namely: (1) defeat of public convenience, or when the corporate fiction is used as a vehicle to evade an existing obligation; (2) fraud cases, or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) alter ego cases, or when a corporation is a mere alter ego or business conduit of a person, or when the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. (Page 12)

- ▶ Branch 143 of the Makati Regional Trial Court (RTC) issued a writ of preliminary injunction preventing the BIR, its agents and representatives from implementing RMO No. 20-2013 which imposes on non-stock, non-profit educational institutions the requirement to submit an application for tax exemption to the BIR, subject to approval by the Commissioner, as a prerequisite for the enjoyment of the tax exemption under Section 4(3), Article XIV, of the Constitution. (Page 13)

BIR Rulings

BIR Ruling No. 477-13 dated December 19, 2013

In a Tax-Exempt Certification of a non-stock, non-profit corporation, the BIR may incidentally rule that donations to an applicant are not exempt from donor's tax if it finds that more than 30% of the donations to the applicant are used for administrative purposes.

Facts:

A Co., a non-stock, non-profit educational institution, requested for a confirmation of its income tax and VAT exemption under Sections 30(H) and 109(H) of the Tax Code, respectively.

Issues:

1. Is A Co. exempt from tax on revenues and assets used for educational purposes?
2. Is A Co. exempt from VAT on its gross receipts from operations as a non-stock, non-profit educational institution?
3. Is A Co. exempt from tax on income from currency bank deposits and deposit substitutes used for educational purposes?
4. Is A Co. exempt from tax on revenues derived from assets used in the operation of cafeterias/canteens and bookstores?
5. Are donations to A Co. exempt from donor's tax?
6. Is A Co. subject to other withholding or reporting obligations?

Ruling:

1. Yes. Under Section 4, Article XIV, of the 1987 Constitution and Section 30(H) of the Tax Code, all revenues and assets of non-stock, non-profit educational institutions are exempt from tax if they are actually, directly and exclusively used for educational purposes. Any income from trade, business or other activity which is not related to the exercise or performance by such educational institutions of their educational purposes or functions shall be subject to tax.

2. Yes. Under Section 109 of the Tax Code, gross receipts from its operations as a non-stock, non-profit educational institution are exempt from VAT. However, other activities not connected with its primary purpose are subject to 12% VAT or to 3% percentage tax, whichever is applicable.
3. Yes. Interest income from currency bank deposits and yield from deposit substitute instruments used actually, directly and exclusively for educational purposes are exempt from the 20% FWT and 7½% tax on interest income imposed under Section 27(D)(1) of the Tax Code. To avail of the exemption, the taxpayer is required to submit to the Revenue District Office (RDO) concerned an annual information return and duly audited financial statements, together with the following:
 - ▶ Certification from its depository banks as to the amount of interest income earned from passive investment not subject to the 20% FWT and 7½% tax on interest income under the expanded foreign currency deposit system;
 - ▶ Certification on actual utilization of the said income; and
 - ▶ Board Resolution by the school administration on proposed projects to be funded out of the money deposited in banks or placed in money markets, on or before the 15th day of the 4th month following the end of its taxable year.
4. Yes. Revenues derived from assets used in the operation of A Co.'s cafeterias/ canteens and bookstores are exempt from tax if they are owned and operated by A Co. as ancillary activities and the same are located within its premises.
5. No. Donations received by A Co. as a non-stock, non-profit educational institution are not exempt from donor's tax imposed under Section 101(A)(3) of the Tax Code, considering that more than 30% of donations to A Co. were used or are being used for administrative purposes as shown in the submitted documents, such as the financial statements, submitted to the BIR.
6. Yes, A Co. is subject to the following reporting and withholding obligations:
 - ▶ A Co. is constituted as a withholding agent of the government if it acts as an employer and its employees receive compensation income subject to withholding tax, or if it makes income payments to persons subject to tax.
 - ▶ A Co. is liable to pay the annual registration fee of P500.00.
 - ▶ A Co. should issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which A Co. is registered.

BIR Ruling No. ITAD 358-13 dated December 20, 2013

Facts:

A Co. and B Co., both non-resident foreign corporations based in Japan, granted loans to C Co., a domestic corporation located in the Clark Freeport Zone. The loans were guaranteed by D Co., a financial institution wholly owned by the Japanese Government. The syndicated loan agreement between A Co. and B Co. on the one hand, and C Co. on the other hand, was entered into on November 7, 2006. The first interest payment on the loan was due on February 14, 2007. The TTRA requesting for income tax exemption of the interest payments was filed on February 28, 2008.

Under RMO No. 1-2000, any availment of the tax treaty relief shall be preceded by a TTRA filed with the BIR-ITAD at least 15 days before the intended transaction or payment of income.

Issues:

1. Are all the interest payments entitled to relief under the RP-Japan Tax Treaty?
2. Is the loan agreement subject to documentary stamp tax (DST)?

Ruling:

1. No. Only the interest payments made beginning 15 days after the TTRA was filed are entitled to the treaty relief.

Under RMO No. 1-2000, any avilment of tax treaty relief shall be preceded by a TTRA filed with the BIR-ITAD at least 15 days before the intended transaction or payment of income. Since the TTRA was filed only on February 28, 2008, interest payments before March 14, 2008 (the 15th day after the filing of the TTRA) are not entitled to the tax exemption. Instead, they shall be subject to the regular income tax rate of 20% under Section 28(B)(5)(a) of the Tax Code.

However, interest payments made on March 14, 2008 up to December 31, 2008 are entitled to the 15% preferential tax rate. Furthermore, interest payments made beginning January 1, 2009 and onwards are exempt from tax by virtue of the Protocol to the RP-Japan Tax Treaty, which provides for tax exemption on interest arising from loans guaranteed by a financial institution owned by the government of Japan

2. Yes. The loan agreement is subject to DST imposed under Section 179 of the Tax Code at the rate of P1.00 on each P200 of the amount of the loan.

[Editor's Note: This ruling still applies the requirement of RMO No. 1-2000 despite (1) the Supreme Court's August 19, 2013 decision in Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue (G.R. No. 188550) that the failure to strictly comply with the requirement under RMO No. 1-2000 to file a TTRA 15 days prior to avilment of the provisions of a tax treaty, should not deprive a taxpayer of the benefit of a tax treaty, and (2) the Supreme Court's October 23, 2013 Resolution denying with finality the Solicitor General's motion for reconsideration of the August 19, 2013 decision.]

BIR Issuances

RR No. 1-2014 amends RR No. 2-98, as amended by RR No. 10-2008, specifically on the submission of the alphabetical list of employees/payees of income payments.

Revenue Regulations No. 1-2014 dated December 17, 2013

- ▶ Section 2.83.3 of RR No. 10-2008 is further amended to read as follows:

"Section 2.83.3 Requirement for list of payees - All withholding agents shall, regardless of the number of employees and payees, whether the employees/payees are exempt or not, submit an alphabetical list of employees and list of payees on income payments subject to creditable and final withholding taxes which are required to be attached as integral part of the Annual Information Returns (BIR Form No. 1604CF/1604E) and Monthly Remittance Returns (BIR Form No. 1601C, etc.), under the following modes:

- (1) As attachment in the Electronic Filing and Payment System (eFPS);
- (2) Through Electronic Submission using the BIR's website address at esubmission@bir.gov.ph; and

- (3) Through Electronic Mail (email) at dedicated BIR addresses using the prescribed CSV data file format, the details of which shall be issued in a separate revenue issuance.

In cases where any withholding agent does not have its own internet facility or of unavailability of commercial establishments with internet connection within the location of the withholding agent, the alphalist prescribed herein may be electronically mailed (e-mail) thru the e-lounge facility of the nearest RDO or revenue region of the BIR.

The submission of the herein prescribed alphalist where the income payments and taxes withheld are lumped into one single amount (e.g., "Various employees", "Various payees", "PCD nominees", "Others", and so on) shall not be allowed. The submission thereof, including any alphalist that does not conform with the prescribed format thereby resulting to the unsuccessful uploading into the BIR system shall be deemed not as received and shall not qualify as a deductible expense for income tax purposes.

Accordingly, the manual submission of the alphabetical lists containing less than ten (10) employees/payees by withholding agents under Annual Information Returns BIR Form No. 1604CF and BIR No. 1604E shall be immediately discontinued beginning January 31, 2014 and March 1, 2014, respectively, and every year thereafter."

- ▶ These regulations take effect after 15 days immediately following publication in a leading newspaper of general circulation.

(Editor's Note: RR No. 1-2004 was published in the Manila Bulletin on January 13, 2014.)

RR No. 2-2014 prescribes the new ITR forms that will be used covering and starting with taxable year ended December 31, 2013.

Revenue Regulations No. 2-2014 dated January 24, 2014

- ▶ All taxpayers required to file their ITRs under Section 51 (A) (1) of the Tax Code and those not required to file under Section 51 (A) (2) but who opted to do so, shall use the applicable forms covering and starting with taxable year ended December 31, 2013 as follows:
 1. BIR Form No. 1700 version June 2013 (Annual Income Tax Return for Individuals Earning Purely Compensation Income);
 2. BIR Form No. 1701 version June 2013 (Annual Income Tax Return for Self-employed Individuals, Estates and Trusts);
 3. BIR Form No. 1702-RT version June 2013 (Annual Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayers Subject Only to the REGULAR Income Tax Rate);
 4. BIR Form No. 1702-EX version June 2013 (Annual Income Tax Return for Use Only by Corporations, Partnerships and Other Non-Individual Taxpayers EXEMPT Under the Tax Code, as amended, [Section 30 and those exempted in Section 27 (C)] and Other Special Laws, with NO Other Taxable Income); and
 5. BIR Form No. 1702-MX version June 2013 (Annual Income Tax Return for Corporations, Partnerships and Other Non-Individuals with Mixed Income Subject to Multiple Income Tax Rates or with Income Subject to Special/ Preferential Rate).

- ▶ The revised income tax forms come with barcodes designed to be read by an OCR for ease in scanning.
- ▶ The requirement for entering centavos in the ITR has been eliminated. If the amount is 49 centavos or less, drop down the centavos (e.g., PhP 100.49 = PhP 100.00). If the amount is 50 centavos or more, round up to the next peso (e.g., PhP 100.50 = PhP 101.00).
- ▶ Corporations, partnerships and other non-individuals are mandated to use the itemized deductions in the following cases:
 1. Those exempt under the Tax Code, as amended [Section 30 and those exempted under Section 27 (C)] and other special laws, with no other taxable income;
 2. Those with income subject to special/preferential tax rates; and
 3. Those with income subject to income tax rate under Section 27 (A), and 28 (A) (1) of the Tax Code, as amended, and also with income subject to special/preferential tax rates.

Juridical entities whose taxable base is gross revenue or receipts (e.g., non-resident foreign international carriers) are not entitled to the itemized deductions nor to the optional standard deduction (OSD) under Section 34 (L) of the Tax Code, as amended.
- ▶ Individual taxpayers who are not entitled to avail of the OSD and thus use only the itemized deduction method are the following:
 1. Those exempt under the Tax Code, as amended, and other special laws with no other taxable income [e.g., Barangay Micro Business Enterprise (BMBE)];
 2. Those with income subject to special/preferential tax rates; and
 3. Those with income subject to the income tax rate under Section 24 of the Tax Code, as amended, and also with income subject to special/preferential tax rates.
- ▶ Taxpayers who already filed using old forms for their 2013 ITRs (manual and/or electronic) must re-file using the new income tax forms upon their availability.
- ▶ RR No. 2-2014 shall take effect starting taxable year ended December 31, 2013 and after 15 days following publication in two newspapers of general circulation.

[Editor's Notes: RR No. 2-2014 was published in the Manila Bulletin and The Philippine Star on February 6, 2014.

Although Section 34(L) of the Tax Code explicitly allows –

- ▶ *An individual citizen and/or an individual resident alien engaged in trade, business or profession who are subject to tax under Section 24;*
- ▶ *A domestic corporation subject to tax under Section 27(A); and*
- ▶ *A resident foreign corporation subject to tax under Section 28(A)(1),*

to claim the OSD in lieu of Itemized Deductions, RR No. 2-2014 nevertheless prescribes the mandatory use of Itemized Deductions in the above cases.

A perusal of the new ITR forms disclose the following additional requirements:

- ▶ *Additional information to be provided by corporate taxpayers:*
 1. *Name, tax identification number (TIN) and accreditation of external auditor/ accredited tax agent*
 2. *Details of Sales/Revenues/Receipts/Fees, Cost of Sales, Other Taxable Income Not Subjected to Final Tax, Ordinary and Special Allowable Itemized Deductions (previously required to be disclosed as part of the Notes to the Audited Financial Statements)*
 3. *Balance Sheet accounts (i.e., Assets, Liabilities and Equity)*
 4. *Registered name, TIN, capital contributions and percentage of ownership of top 20 stockholders, partners or members*
 5. *Supplemental information about Gross Income/Receipts Subjected to Final Withholding, Sale/Exchange of Real Properties, Sale/Exchange of Shares of Stock, Other Income Subjected to Final Tax*
 6. *Details of Gross Income/Receipts Exempt from Income Tax*
 7. *ITRs filed through an authorized representative must be supported by an authorization letter indicating the TIN of the authorized representative attached to the ITRs.]*

RMC No. 3-2014 circularizes the modification of BIR Ruling No. DA (C-133) 431-2008 regarding the tax treatment of transfers of real property as payment for the redemption of preferred shares.

Revenue Memorandum Circular No. 3-2014 dated January 6, 2014

- ▶ In BIR Ruling No. DA (C-133) 431-2008 dated November 17, 2008, Fort Bonifacio Development Corporation (FBDC) transferred real properties to the Bases Conversion and Development Authority (BCDA) as payment for the redemption of the FBDC preferred shares held by BCDA. In that ruling, the BIR ruled that the transfer of real properties from FBDC to BCDA is not subject to income tax, VAT, donor's tax, and DST.
- ▶ A review of the ruling was sought on the argument that the transaction between FBDC and BCDA should have been subjected to VAT as a transaction "deemed sale".
- ▶ In a memorandum to the Regional Director of Revenue Region 8, Makati City, the Commissioner of Internal Revenue (CIR) modified the ruling as follows:
 - ▶ When preferred shares are redeemed for retirement, the capital gain or capital loss derived upon redemption shall be recognized on the basis of the difference between the amount/value received at the time of redemption and the cost of the preferred shares. The capital gain or capital loss shall be subject to the regular income tax rate under the Tax Code, as amended, on individual taxpayers or to the corporate income tax rate under the Tax Code, in case of corporations. In this case, BDCA is subject to corporate income tax and CWT as prescribed under Section 57 of the Tax Code on any gain realized by it on the redemption of shares by FBDC;
 - ▶ The transfer of real properties by FBDC to BCDA to redeem its shares, although not occurring in the regular conduct or in the course of FBDC's trade or business and is a transaction which is not done with regularity, is subject to VAT, the same being considered a transaction "deemed sale". The conveyance of the property is in the nature of a transfer, use or consumption not in the course of business of goods or properties, which are originally intended for sale or for use in the course of business. The VAT shall be based on the gross selling price, which is defined as the consideration or fair market value, whichever is higher;

- ▶ The transfer of the real property in redemption of the preferred shares is subject to DST pursuant to Section 196 of the Tax Code, which imposes a DST on all conveyances, deeds, instruments, or writings whereby any land, tenement or other realty shall be transferred or otherwise conveyed to the purchaser or any person designated by such purchaser.

RMC No. 6-2014 extends up to February 28, 2014 the provisional accreditation of printers of manually printed receipts and invoices.

Revenue Memorandum Circular No. 6-2014 dated January 20, 2014

- ▶ It has been observed that only a few RDOs thru the National/Regional Accreditation Board (N/RAB) were able to conduct the required post evaluation/ocular inspection of several deemed accredited printers with provisional accreditation numbers for the issuance of the final Certificate of Accreditation (or Revocation) prior to the expiration of the provisional accreditation.
- ▶ For this reason, the provisional accreditation of these printers is extended to February 28, 2014.

SEC Issuance

SEC MC No. 1 prescribes the guidelines for reporting changes and updates in the ACGR.

SEC Memorandum Circular No. 1 dated January 10, 2014

- ▶ To avoid any confusion that may arise with regard to the manner of reporting changes and updates in the Annual Corporate Governance Report (ACGR), the SEC adopted the following guidelines:
 - ▶ The company shall notify the SEC using Form 17-C within five days from the occurrence of the reportable change for changes or updates required to be reported or disclosed under Section 17 of the Securities Regulation Code (SRC) (Periodic and Other Reports of Issuers).
 - ▶ The company shall notify the SEC through an advisement letter stating the changes or updates made, within five days from the occurrence of the reportable change for changes not required to be reported or disclosed under Section 17 of the SRC. The company shall update the pertinent portion of the ACGR and file with the SEC an advisement letter on director's attendance within 5 days from the end of the company's fiscal year.
 - ▶ Said change or update shall likewise be made in the ACGR posted in the company's website within the same period.
 - ▶ SEC will verify said revisions or updates upon receipt of either SEC Form 17-C or advisement letter.
 - ▶ The submission of the ACGR to the SEC shall be 5 years from its initial submission and every 5 years thereafter.
 - ▶ SEC MC No.1 will take effect immediately.

[Editor's Note: SEC MC No. 1 was published in the Manila Standard Today and Manila Bulletin on January 20, 2014.]

Circular No. 823 amends Section X181 (2008 - X171) of the MORB on Bank Protection.

BSP Issuance

BSP Circular No. 823 dated January 10, 2014

- ▶ Each bank shall have a Chief Security Officer. Banks with an extensive physical network of branches and/or offices that regularly handle cash, i.e. at least ten (10) branches and/or other cash handling banking offices, shall designate a full-time Chief Security Officer. A bank falling outside said criterion is considered to have reduced security risk exposure and may designate a senior officer to act as concurrent Chief Security Officer, provided there is no conflict of interest.
- ▶ The minimum qualifications of the Chief Security Officer are as follows:
 - ▶ At least 30 years of age;
 - ▶ A college graduate;
 - ▶ At least 5 years experience in the field of law enforcement and/or security operations, 2 years of which are in a managerial position; and
 - ▶ Possess all the qualifications and none of the disqualifications provided for under Sections X142 and X143 of the MORB.
- ▶ All Chief Security officers, including those acting in concurrent capacity, shall be responsible for the following:
 - ▶ Developing and administering a security program appropriate to the risk profile of the bank;
 - ▶ Constituting a security management team, as appropriate;
 - ▶ Conducting a security awareness program among bank employees on a continuing basis;
 - ▶ Investigating bank robberies/hold-ups, recommending the filing of appropriate charges in court as the evidence may warrant and assisting in the prosecution of the perpetrator(s) thereof;
 - ▶ Establishing an effective working relationship with BSP, PNP and other law enforcement agencies in the prevention of bank crimes and other natural and man-made hazards;
 - ▶ Implementing new techniques, methods and equipment to enhance bank protection measures in a cost effective manner.
- ▶ Banks are given 3 months from the date of effectivity to submit a certification to the BSP whether or not they are compliant with the Circular. Non-compliant banks shall submit an acceptable plan of action to achieve compliance within 6 months.
- ▶ The Circular takes effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 823 was published in Business World on January 17, 2014.]

BLGF Opinion

BLGF Opinion dated December 2, 2013 (signed on January 7, 2014)

A subcontractor of service contractors engaged in petroleum operations under PD No. 87 is not subject to LBT on income arising from its contracts.

Facts:

X Co. is organized and existing under the laws of the Cayman Islands and is duly licensed by the SEC to do business in the Philippines through a branch office, primarily to provide oilfield services and products, as well as completion, drilling, cementing, logging, well testing, perforating, production testing and work-over, stimulation services and licensing of software and consulting services and providing oilfield equipment and technology to oil and gas industries.

X Co. entered into several service contracts with petroleum service contractors of the Government of the Philippines, and is entitled to fiscal incentives under PD No. 87, otherwise known as "The Oil Exploration and Development Act of 1972."

X Co. claims that as a subcontractor of service contractors engaged in petroleum operations under PD No. 87, it is subject to final income tax equivalent to 8% of its gross income in lieu of any and all taxes, whether national or local. Such being the case, income arising from the said contracts is not subject to the LBT.

Issue:

Is X Co. is subject to LBT on its income arising from contracts with petroleum service contractors of the Government of the Philippines?

Ruling:

No. As a subcontractor of service contractors engaged in petroleum operations under PD No. 87, X Co. is not subject to LBT on income arising from the contracts with petroleum service contractors, by virtue of its being subject to the 8% final tax on gross income which is in lieu of any and all taxes, national and local, under PD No. 1354, otherwise known as the law "*Imposing Final Income Tax on Subcontractors and Alien Employees of Service Contractors and Subcontractors engaged in Petroleum Operations in the Philippines under PD No. 87.*"

In claiming the exemption from local taxes, it is incumbent upon the subcontractor to present proof that the petroleum service contractor has deducted and withheld the 8% final tax from its income payments to the former for remittance to the BIR.

Court Decisions

This is a Resolution of the Supreme Court which affirms, with finality, its August 19, 2013 Decision (1) declaring that the failure to strictly comply with the requirement under RMO No. 1-2000 to file a TTRA 15 days prior to availing of the provisions of a tax treaty should not deprive a taxpayer of the benefit of a tax treaty; and (2) granting the refund to Deutsche Bank AG Manila Branch of excess branch profit remittance tax (BPRT) paid to the BIR.

Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue
Supreme Court (First Division) G.R. No. 188550
Resolution dated October 23, 2013

People of the Philippines vs. Wong Yan Tak

CTA (*En Banc*) EB Criminal Case No. 024 promulgated December 18, 2013

Even if the civil aspect of collecting a deficiency tax is included in a criminal case against an officer of a corporation for violation of the provisions of the Tax Code, the liability to pay the deficiency tax subject of the violation remains with the corporation.

The doctrine of 'piercing the corporate veil' where an officer is held liable for the liability of the corporation applies only in 3 cases, namely: (1) defeat of public convenience, or when the corporate fiction is used as a vehicle to evade an existing obligation; (2) fraud cases, or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) alter ego cases, or when a corporation is a mere alter ego or business conduit of a person, or when the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

Facts:

Respondent Wong Yan Tak, President of Pic N' Pac Mart, Inc. (PNPMI), was charged with violation of Section 255, in relation to Sections 253(d) and 256, of the Tax Code. Petitioner People of the Philippines, represented by the BIR, alleged that Wong Yan Tak failed to pay the 2002 deficiency VAT liabilities of PNPMI, despite notices and demands.

The Court of Tax Appeals (CTA) Third Division found Wong Yan Tak guilty of violating Section 255 of the Tax Code for his willful failure to pay the deficiency VAT liability of PNPMI, and imposed a penalty of imprisonment and a fine. The CTA Third Division also ordered Wong Yan Tak to pay the BIR the corporation's 2002 deficiency VAT plus 20% delinquency interest.

On reconsideration, the CTA Third Division ruled that the deficiency VAT liability should be collected from PNPMI and not from Wong Yan Tak, and cancelled its order insofar as the civil liability is concerned.

The BIR filed a Petition for Review with the CTA *en banc* and asked that the amended decision be set aside and the original decision ordering Wong Yan Tak to pay the deficiency VAT liabilities of PNPMI be reinstated.

Issue:

Should Wong Yan Tak, as president of PNPMI, be held civilly liable for the 2002 deficiency VAT assessed on PNPMI?

Ruling:

No, Wong Yan Tak should not be held civilly liable for the deficiency VAT assessment of PNPMI.

When a corporation is charged for violation of the provisions of the Tax Code and is subsequently found liable, the penalty of imprisonment is lodged upon its responsible officers under Section 253(d) of the Tax Code. However, such is not the case in the imposition of deficiency tax in the form of a civil action instituted in a criminal action. The corporation remains liable.

The liability of the corporation is itself the very obligation covered by the assessment addressed to the corporate taxpayer and not to accused Wong Yan Tak. The liability of the accused arises from the wrongful or willful act of not paying the deficiency tax liability of the corporation.

Even if the civil aspect of collecting a deficiency tax is included in a criminal case against an accused officer of a corporation for violation of the provisions of the Tax Code, the liability to pay the deficiency tax subject of the violation remains with the corporation.

Section 253(a) of the Tax Code, which states that any person convicted of a crime penalized under the Tax Code shall be subject to the penalties imposed therein in addition to being liable for the payment of tax, does not apply. Wong Yan Tak was convicted not in his personal capacity for non-payment of his personal tax liability but in his capacity as the president of PNPMI, the entity statutorily liable to pay the deficiency VAT assessment.

Because of the separate juridical personality of a corporation, the corporate obligation of PNPMI is not the debt of Wong Yan Tak.

The doctrine of piercing the corporate veil, where the officer is held liable for the liability of the corporation, applies only in three (3) basic areas, namely: (1) defeat of public convenience, or when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (2) fraud causes, or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (3) alter ego cases, or when a corporation is a mere alter ego or business conduit of a person, or when the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

It was not alleged, much less proven, that Wong Yan Tak committed an act as President of PNPMI that would allow the piercing of the corporate veil. The deficiency tax which the BIR seeks to recover was a liability of PNPMI as the statutory taxpayer. However, since PNPMI was not impleaded in the Petition for Review, no jurisdiction was acquired over the corporation and any proceeding taken against it would infringe on its right to due process.

**St. Paul College of Makati vs. Hon. Kim Jacinto S. Henares,
in her official capacity as Commissioner of Internal Revenue**

Regional Trial Court Branch 143, Makati City

Civil Case No. 13-1405 promulgated January 22, 2014

Branch 143 of the Makati Regional Trial Court (RTC) issued a writ of preliminary injunction preventing the BIR, its agents and representatives from implementing RMO No. 20-2013 which imposes on non-stock, non-profit educational institutions the requirement to submit an application for tax exemption to the BIR, subject to approval by the Commissioner, as a prerequisite for the enjoyment of the tax exemption under Section 4(3), Article XIV, of the Constitution.

Facts:

Respondent CIR issued RMO No. 20-2013 dated July 22, 2013, which imposes a registration and approval requirement on non-stock, non-profit educational institutions, as a prerequisite to their enjoyment of the tax exemption under Section 4(3) of Article XIV of the Constitution. Particularly, the RMO requires the educational institutions to submit an application for tax exemption to the BIR, subject to approval by the CIR in the form of a Tax Exemption Ruling (TER), which is valid for a period of three (3) years and subject to renewal. The TER is in addition to the filing of an annual information return which is required under Department of Finance Order No. 137-87.

Section 4(3) of Article XIV of the Constitution provides that "All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties."

Petitioner St. Paul College of Makati (St. Paul College), a non-stock, non-profit educational institution, filed with the Makati RTC a petition to declare the RMO unconstitutional, with an application for a writ of preliminary injunction. The RTC issued a Temporary Restraining Order on January 3, 2014 enjoining the CIR, its agents and representatives from implementing RMO No. 20-2013. On January 8, 2014, the RTC conducted a summary hearing on the issuance of a writ of preliminary injunction. On January 22, 2014, the RTC issued a writ of preliminary injunction, subject to the posting of an injunction bond by St. Paul College, preventing the BIR, its agents and representatives from implementing the RMO No. 20-2013.

The RTC ruled that the two (2) requisites for the issuance of a writ of preliminary injunction are present in this case, namely: (a) the existence of a clear and unmistakable right that must be protected; and (b) an urgent and paramount necessity for the writ to prevent serious damage.

There exists a clear and unmistakable right to be protected in the present case. Prior to the issuance of the RMO, non-stock, non-profit educational institutions like St. Paul College do not need to secure certification or ruling of tax exemption as a prerequisite to enjoy the tax exemption under the Constitution. With the issuance of the RMO, St. Paul College and other institutions similarly situated who fail to comply with the requirement, even if they have filed the required annual information return, would be deemed non-compliant and will be subjected to the penalties under Section 250 of the Tax Code. Thus, the RMO appears to divest the institutions of their tax exemption privilege granted by the Constitution.

[Editor's Note: Under Rule 58 of the Rules of Court, a preliminary injunction may be issued by the court ordering a party to refrain from a particular act pending trial of the case. If after trial it appears that the applicant is entitled to have the act complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party from commission of the act.]

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