Tax bulletin

August 2015

SGV

Building a better working world

Highlights

BIR Rulings

- If shares of stock, which are not listed and traded on the stock exchange, are sold for less than their fair market value (FMV), the excess of the FMV over the selling price shall be subject to donor's tax. **(Page 3)**

- Transactions of a cooperative which are not related to its principal business are subject to tax. **(Page 4)**

- Manpower agencies, such as those providing janitorial and clerical services, are subject to VAT on their gross receipts based on the whole contract price. **(Page 4)**

- Profits remitted by a Philippine branch to its head office in Japan are subject to the preferential 10% branch profits remittance tax (BPRT) rate under the Protocol to the Philippines-Japan Tax Treaty. **(Page 5)**

- Purchases of supplies and services by an Australian firm in the course of implementing an activity, which is funded by the Government of Australia under the RP-Australia General Agreement on Development Cooperation (GADC), are subject to 0% VAT, while importations of professional and technical materials are exempt from VAT. **(Page 5)**

- The purchase of an automobile by an officer of the World Health Organization (WHO) for his personal use is subject to VAT and excise tax. **(Page 6)**

BIR Issuances

- Revenue Memorandum Circular (RMC) No. 45-2015 clarifies the VAT withholding on projects funded by the Overseas Economic Cooperation Fund (OECF) under the Exchange of Notes between the Governments of the Philippines and Japan. **(Page 6)**

- Revenue Memorandum Order (RMO) No. 16-2015 amends RMO No. 19-2012 dated July 31, 2012, which provides the guidelines of the VAT Audit Program of the Large Taxpayers Service (LTS). **(Page 7)**

BOC Issuance

- Customs Memorandum Order (CMO) No. 24-2015 prescribes the procedures in processing the importer's or consignee's requests for an extension of the period to file entry declarations, continuous processing of entries, untagging of abandonment and other similar requests, in order to establish a clear, transparent and effective procedure in the disposition of deemed abandoned articles. **(Page 8)**

BSP Issuance

- Circular No. 885 prescribes the guidelines for the segregation of customer funds and securities received by banks in the performance of their securities brokering functions. **(Page 9)**

SEC Issuances

- SEC Memorandum Circular (MC) No. 9 extends for the last time to 31 December 2015 the period for amending the Articles of Incorporation or Articles of Partnership on the principal office address. **(Page 10)**

- The board of directors may be permitted to continue as "trustees" to complete a corporate liquidation even after the three-year liquidation period. **(Page 10)**

BLGF Opinion

- The sales branches and warehouses of an entity primarily engaged in the manufacturing of liquor or alcoholic beverages should also be classified as "manufacturer," not as "dealer," for local business taxes purposes. The branches and warehouses are merely incidental to the primary purpose of manufacturing alcoholic beverages. **(Page 11)**

Court Decisions

- A taxpayer is not disqualified from availing itself of the tax amnesty under RA No. 9480 during the pendency of its appeal with the Supreme Court disputing a deficiency tax assessment.

  The obligation to withhold tax on compensation arises at the time the salary was paid or accrued or recorded as an expense in the employer's books, whichever comes first. **(Page 12)**

- The simultaneous receipt of the PAN and FAN violates the right to due process as taxpayers are deprived of the opportunity to contest the PAN within the 15-day period as prescribed by the regulations.

  PEZA-registered enterprises are exempt from the Improperly Accumulated Earnings Tax (IAET). Revenue Regulations (RR) No. 02-01 does not distinguish between PEZA enterprises enjoying Income Tax Holiday or the 5% special tax, to qualify them as exempt from IAET. **(Page 13)**

BIR Rulings

BIR Ruling No. 194-15 dated June 10, 2015

If shares of stock, which are not listed and traded on the stock exchange, are sold for less than their FMV, the excess of the FMV over the selling price shall be subject to donor's tax.

Facts:

A Co. owns 100% of the shares in B Co., a domestic corporation engaged in the business of manufacturing inkjet printers. Due to decline in revenue and profit margins, A Co. decided to sell its shares in B Co. to C Co. for less than the FMV of the shares. A Co. justified the selling price as follows: (i) the sale was an ordinary commercial arms-length transaction motivated by legitimate business reasons; (ii) the selling price was arrived at after negotiation by A Co. with C Co. and another unrelated party, and (iii) there was no intent to donate on A Co.'s part when it sold the shares to C Co.

Issue:

Is the excess of the FMV over the selling price subject to donor's tax?

Ruling:

Yes. Under Section 100 of the Tax Code in relation to RR No. 6-2008, as amended by RR No. 6-2013, in cases where shares of stock which are not listed and traded on the stock exchange are sold for a consideration which is less than FMV, the excess of the FMV over the selling price shall be deemed a gift subject to donor's tax. Section 100 of the Tax Code does not mention any exemption from this rule. Hence, the excess of the FMV over the selling price shall be subject to donor's tax at the rate of 30%.

BIR Ruling No. 195-15 dated June 10, 2015

Transactions of a cooperative which are not related to its principal business are subject to tax.

Facts:

Coop A is a cooperative registered with the Cooperative Development Authority. Its primary purpose is to provide employment and business opportunities to its members. Based on its Certificate of Tax Exemption secured from the BIR, Coop A is a cooperative transacting with members only, and is entitled to certain tax exemptions and incentives such as exemption from excise tax. However, A Co. sold gold to the Bangko Sentral ng Pilipinas (BSP).

Issue:

Is Coop A's sale of gold to the BSP exempt from excise tax?

Ruling:

No. Engaging in the mining or small scale mining of gold is not related to the cooperative's principal business. Thus, excise tax arising from sale of gold pursuant to such activity is not included in Coop A's exemption from excise tax.

BIR Ruling No. 213-2015 dated June 19, 2015

Manpower agencies, such as those providing janitorial and clerical services, are subject to VAT on their gross receipts based on the whole contract price.

Facts:

A Co., a manpower agency engaged in the business of providing janitorial services, joined a public bidding conducted by the Land Transportation Office (LTO). In conducting the bid, the LTO does not consider that the whole contract price is subject to the 12% VAT; it only considers the administrative fee and supplies charges as being subject to the 12% VAT, following the treatment of agency fees/ gross receipts of security agencies in RMC No. 39-2007.

Issue:

Is RMC No. 39-2007 applicable to manpower agencies?

Ruling:

No. RMC No. 39-2007 does not apply to manpower agencies, e.g., janitorial and clerical services agencies, other than security agencies since there is nothing in the RMC which would suggest this. Thus, the basis for VAT on A Co.'s contracts with its clients should be the whole contract price and not only the administrative fee and supplies charges.

Profits remitted by a Philippine branch to its head office in Japan are subject to the preferential 10% BPRT rate under the Protocol to the Philippines-Japan Tax Treaty.

BIR Ruling No. ITAD 204-15 dated June 5, 2015

Facts:

A Co., a Japanese corporation, is licensed to do business in the Philippines through its A Co-Phil Branch. A Co-Phil Branch remitted profits to A Co.

Issue:

Is the remittance of profits by A Co-Phil Branch subject to the 10% BPRT rate under the RP-Japan Tax Treaty, or the regular 15% BPRT rate under Sec 28(A)(5) of the Tax Code?

Ruling:

The 10% BPRT rate. Under Item 5 of the Protocol to the RP-Japan Tax Treaty, a Philippine branch remitting profits to its head office in Japan may be subject to tax on such profits, but said tax shall not exceed 10% of the amount of the earnings remitted.

Purchases of supplies and services by an Australian firm in the course of implementing an activity, which is funded by the Government of Australia under the RP-Australia GADC, are subject to 0% VAT, while importations of professional and technical materials are exempt from VAT.

BIR Ruling No. ITAD 209-15 dated June 23, 2015

Facts:

A Co., an Australian firm, was subcontracted by the Government of Australia to implement a program created and funded by the Australian government pursuant to the RP-Australia GADC. As part of the implementation, A Co. purchases project supplies and services and imports professional and technical materials into the Philippines.

Issues:

1. Are the local purchases of project supplies and services of A Co. subject to 0% VAT?

2. Are the importations of professional and technical materials of A Co. exempt from VAT?

Ruling:

1. Yes. Direct purchases within the Philippines of project supplies, equipment, materials and other goods for the execution of development activities by Australian personnel or institutions, firms and organizations engaged under the GADC, such as A Co., are subject to 0% VAT. Direct purchases of services of such Australian personnel or institutions, firms and organizations under the GADC are likewise subject to 0% VAT, provided the services are rendered by individuals or general professional partnerships registered in the Philippines.

2. Yes. Importations of professional and technical materials, equipment and other goods by Australian personnel or institutions, firms and organizations, for professional use while engaged in activities under the GADC and paid for from the funds of the Australian government, are exempt from VAT.

The purchase of an automobile by an officer of the WHO for his personal use is subject to VAT and excise tax.

BIR Ruling No. ITAD 238-15 dated July 27, 2015

Facts:

Mr. X, an officer of the World Health Organization (WHO), purchased a second-hand automobile for his personal use from Mr. Y, also an officer of the WHO.

Issue:

Is the sale exempt from VAT and excise tax?

Ruling:

No, the sale is subject to VAT and excise tax.

Under the Host Agreement between the Philippines and the WHO, it is the WHO which is exempt from VAT. Such exemption applies only to vehicles purchased under the name of the WHO for its official use. There is no provision in the Host Agreement which accords VAT exemption to officials/officers of WHO. Thus, the sale of the automobile to Mr. X is subject to VAT in accordance with Section 106 of the Tax Code.

There is also no provision in the Host Agreement which exempts officials/officers of the WHO from the payment of excise tax on the sales of automobiles. Thus, the sale of the automobile to Mr. X is subject to excise tax in accordance with Section 149 of the Tax Code.

BIR Issuances

RMC No. 45-2015 clarifies the VAT withholding on projects funded by the OECF under the Exchange of Notes between the Governments of the Philippines and Japan.

Revenue Memorandum Circular No. 45-2015 dated August 24, 2015

- Under the Exchange of Notes between the Philippines and Japan on OECF-funded projects undertaken in the Philippines, a standard provision is that the Philippine Government shall assume all fiscal levies and taxes imposed on Japanese companies operating as suppliers, contractors and/or consultants engaged in such projects in the Philippines.

- To implement the tax assumption under the Exchange of Notes, RMC No. 42-99 dated June 2, 1999 exempted the invoice billings of Japanese contractors from the then 8.5% **creditable** withholding VAT under the then Tax Code, as amended by RA No. 8424.

- However, RA No. 9337 amended the Tax Code on July 1, 2005 and provided for a 5% **final** VAT withholding on each purchase of goods and services by Philippine government agencies.

- In OECF-funded projects, since the Government of the Philippines, itself or through its executing agencies or instrumentalities, assumes all fiscal levies or taxes imposed in the Philippines on Japanese firms or nationals operating as suppliers, contractors or consultants pursuant to the terms of the Exchange of Notes:

    1. The Government of the Philippines, itself or through its executing agencies or instrumentalities, shall assume the 5% final VAT withholding. For this purpose, the executing government agency shall include the amount thereof in its budget;

2. The 5% final VAT withholding will be paid out from the funds of the Government as a final settlement of the tax due on the income received by the Japanese contractors;

3. The Japanese contractors of the OECF-funded projects cannot include in its billings the whole 12% VAT that will be assumed by the Philippine Government or its instrumentalities or agencies in accordance with the Exchange of Notes.

4. RMC No. 42-99 no longer finds application to cases or transactions occurring after July 1, 2005, the date of effectivity of RA No. 9337.

RMO No. 16-2015 amends RMO No. 19-2012 dated July 31, 2012, which provides the guidelines of the VAT Audit Program of the LTS.

Revenue Memorandum Order No. 16-2015 dated July 21, 2015

- The provisions of RMO No. 19-2012 are amended to read as follows:

"II. COVERAGE

A.1. xxx

1.9. Taxpayers whose VAT compliance is below the available established industry benchmarks (Selection Code: BIB);

1.10. Taxpayers with discrepancy in sales/revenues reported per e-Sales Report/Summary List of Sales (SLS) versus VAT Returns (Selection Code: DES); and

1.11. Taxpayers whose excess input tax carried forward in the VAT return of the succeeding quarter (line 20) is different from the input tax reflected in the VAT return of the previous quarter (line 23-A and 29) (Selection Code: EIT).

A.2. xxx xxx xxx

2. AUDIT POLICIES AND PROCEDURES

xxx

2.4. xxx xxx xxx

To facilitate the reporting of VAT audit cases, the Revenue Officers (ROs) assigned to the audit case shall observe the following:

2.4.1. ROs are directed to perform only the audit procedures under Revenue Audit Memorandum Order (RAMO) No. 1-99 applicable to the risks identified for case selection and as a result of pre-audit analysis.

2.4.2. To provide an audit trail for the scope of the audit and to ensure that the audit activity planned and the books and records to be examined will address the identified risks, an audit plan must be completed by the ROs (for each allocated case) following their pre-audit analysis and agreed upon with their supervisor. If further risk areas are identified during the audit, this plan should be adjusted accordingly.

2.4.3. Only documentary requirements prescribed under RMO No. 53-98 that are applicable and relevant to the audit case shall be attached to the docket.

However, the RO is not precluded from applying the full provisions of the aforementioned revenue issuances depending on the risks/areas of assessment found.

xxx

2.9. The initial workload of each RO under this program shall be thirty (30) cases. In no case shall the number of cases handled by an RO exceed 30 cases, subject to replenishment after every submission of the report of investigation/closure of each case.

xxx

However, excess in the allowable limit of 30 cases as a result of returned case/s shall not be considered as a violation of this Order.

Xxx"

BOC Issuance

CMO No. 24-2015 prescribes the procedures in processing the importer's or consignee's requests for an extension of the period to file entry declarations, continuous processing of entries, untagging of abandonment and other similar requests, in order to establish a clear, transparent and effective procedure in the disposition of deemed abandoned articles.

Customs Memorandum Order No. 24-2015 dated July 26, 2015

- *General Provisions*
  - An importation is deemed abandoned:
    - When the owner, importer, consignee of the imported article expressly signifies in writing to the Customs Collector his intention to abandon; or
    - When the owner, importer, consignee or interested party, after due notice, fails to file an entry within a non-extendible period 30 days, from the date of discharge of the last package from the vessel or aircraft, or having filed such entry, fails to claim his importation within a non-extendible period of 15 day from the date of posting of the notice to claim such importation.
  - Effects of abandonment:
    - Any person who abandons an article or who fails to claim his importation shall be deemed to have renounced all his interests and property rights therein;
    - An abandoned article shall *ipso facto* be deemed the property of the Government and shall be disposed of in accordance with the provisions of the Tariff and Customs Code of the Philippines (TCCP).
  - Exceptions:

    At the written request of the importer or consignee, the District Collector of Customs may extend the time limit for goods declaration for reasons deemed valid, such as:

- If the failure to file entry was due to fraud, accident, mistake, excusable negligence, or force majeure;
- If the failure to claim importation was caused by an Alert or Hold Order issued by an authorized BOC official;
- When there is erroneous tagging (as "abandoned") of the particular shipment in the E2M within the period before a shipment is deemed "abandoned"; or
- In case the importer or consignee is a government agency, instrumentality or corporation.

- The request for extension of time to file entry declarations, for lifting of abandonment, for continuous processing of entries, untagging of abandonment and other similar requests shall be filed solely with the Office of the Deputy Collector for Operations within five working days from discovery by the importer or consignee, or his representative of the cause.

  If the importer or consignee is a government agency, instrumentality or corporation, the request may be filed at any time before the property subject of importation is auctioned off.

  No request shall be allowed after the property subject of such request has been auctioned off.

- The Deputy Collector for Operations shall resolve the request promptly with the concurrence of the District Collector.

  Where the request is approved by the District Collector, the same shall be forwarded to the Deputy Collector for Operations for the immediate untagging of abandonment in the E2M System, and for the filing of the entry declaration (if not yet filed) and/or continuous processing of the entry filed.

  Where such a request is disapproved, no abandonment proceeding is required and the subject article shall *ipso facto* be deemed the property of the Government.

- CMO No. 24-2015 takes effect immediately and shall govern all pending requests for extension of time to file entry declarations, requests for lifting of abandonment, continuous processing of entries, untagging of abandonment and other similar requests.

BSP Issuance

Circular No. 885 prescribes the guidelines for the segregation of customer funds and securities received by banks in the performance of their securities brokering functions.

BSP Circular No. 885 dated August 14, 2015

- Part IX of the Manual of Regulations for Banks (MORB) is amended to prescribe the guidelines governing the segregation of customer funds and securities received by banks that are duly registered by the Securities and Exchange Commission (SEC) to act as securities brokers.

- The following sections of the Financial Reporting Package (FRP) issued under Circular No. 512 dated 3 February 2006 are further amended to conform to the guidelines provided in Part IX of the MORB: Manual of Accounts (No. 30, 31, 32 and 33); Income Statement Accounts (No. 5); and Contingent Accounts (No.9).

- Amendments to the Balance Sheet, Income Statements Schedules 1, 2, 3, 5, 6, 7 and 38 under Circular No. 512, as amended, dated 3 February 2006, are attached as Annex B of Circular 885.

- Amendments to the Balance Sheet, Income Statement, Schedules 1, 2, 6C, 7B and 38 under Circular No. 644, as amended, dated 10 February 2009, are attached as Annex C.

- Banks acting as securities brokers shall report their securities brokering transactions in the FRP report format (both solo and consolidated basis) issued under Circular No. 512, as amended, dated 3 February 2006 and Circular No. 644, as amended, dated 10 February 2009, beginning with the reporting period ending 30 September 2015.

- The submission of the additional report required under Section 1 of this Circular shall commence from the reporting period ending 30 September 2015. This report shall be submitted every 15th banking day after end of reference month. The additional report shall be considered a provisional report template which may be revised by the BSP 6 months from 30 September 2015 upon due notice to the concerned banks.

- Guidelines on the preparation and submission of the reports required under this Circular shall be covered by a separate issuance.

- This 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. 885 was published in The Standard *on August 24, 2015.]*

SEC Issuances

SEC MC No. 9 extends for the last time to 31 December 2015 the period for amending the Articles of Incorporation or Articles of Partnership on the principal office address.

SEC Memorandum Circular No. 9 dated July 2, 2015

[Editor's Note: SEC MC No. 9 was published in The Manila Times *and in* The Philippine Star *on August 21, 2015.]*

The board of directors may be permitted to continue as "trustees" to complete the corporate liquidation even after the three-year liquidation period.

SEC-OGC Opinion No. 15-07 dated July 21, 2015

Facts:

A private educational institution was left unattended until its corporate existence expired. After its legal dissolution, it ceased operation and left its only remaining asset idle for a long time. The Chairman of the Board and School President died, and was survived by his wife who was a board member and the remaining majority stockholder of the defunct corporation. Due to old age, the wife decided to appoint her two children to act as trustees/liquidators for the benefit of the stockholders.

Issue:

Is the board of directors allowed to act as "trustees" to complete the corporate liquidation beyond the liquidation period where no trustees were designated?

Ruling:

Yes, the board of directors itself may be permitted to continue as "trustees" by legal implication to complete the corporate liquidation, if the 3-year liquidation period has expired without a trustee being designated by the corporation within that period.

While Section 122 of the Corporation Code gives a dissolved corporation 3 years to continue as a body corporate for purposes of liquidation, the disposition of the remaining undistributed assets must necessarily continue even after such period.

BLGF Opinion

BLGF Opinion dated July 7, 2015 signed on August 3, 2015

The sales branches and warehouses of an entity primarily engaged in the manufacturing of liquor or alcoholic beverages should also be classified as "manufacturer," not as "dealer," for local business taxes purposes. The branches and warehouses are merely incidental to the primary purpose of manufacturing alcoholic beverages.

Facts:

X Co. is a domestic corporation primarily engaged in the business of manufacturing liquor or alcoholic beverages. Its principal office is located in Quezon City. It maintains two manufacturing plants located in Santa Rosa City and Biñan City. The Company also has 21 sales branches and warehouses situated in various cities and provinces in the Philippines.

Issue:

Should the sales branches and warehouses of X Co. be classified as "manufacturer" and not as "dealer" for local business tax (LBT) purposes?

Held:

Yes. The sales branches and warehouses of X Co. should be classified as "manufacturer" under Section 143(a) of the Local Government Code (LGC), considering that the maintenance of the branches and warehouses is merely incidental to the Company' s primary purpose of manufacturing alcoholic beverages.

Article 242(2) of the LGC Implementing Rules and Regulations (IRR) defines a branch or a sales office as a fixed place in a locality which conducts operations of the business as an extension of the principal office. Hence, a branch or a sales office, which is a mere extension of the principal office, is deemed engaged in the same business or activity being conducted by the latter.

Moreover, the term "manufacturer" as defined under Section 131(o) of the LGC includes various types of manufacturing activities intended to produce finished products for the purpose of sale or distribution to others, and not for his own use or consumption. As such, even if a manufacturer engages in selling activities, it remains a manufacturer pursuant to the definition of a "manufacturer".

X Co. may not be considered as a dealer of fermented liquors since the term "dealer" as defined under Section 131(k) contemplates a middleman or one who sells the products of another. Thus, it excludes one who sells what he manufactures.

Finally, Article 232(b) of the LGC IRR prohibits classifying and taxing a business entity as a wholesaler, distributor or dealer, where the business entity is properly classified as manufacturer.

Court Decisions

ING Bank N.V. vs. Commissioner of Internal Revenue
Supreme Court (Second Division), G.R. No. 167679, promulgated July 22, 2015

A taxpayer is not disqualified from availing itself of the tax amnesty under RA No. 9480 during the pendency of its appeal with the Supreme Court disputing a deficiency tax assessment.

The obligation to withhold tax on compensation arises at the time the salary was paid or accrued or recorded as an expense in the employer's books, whichever comes first.

Facts:

Respondent Commissioner of Internal Revenue (CIR) assessed ING Bank N.V. for, among others, alleged deficiency income tax, onshore tax, branch profit remittance tax (BPRT), withholding tax on compensation (WTC), and documentary stamp tax (DST) for taxable years 1996 and 1997. ING protested the assessments.

As the CIR failed to act on the protest, ING filed a Petition for Review with the Court of Tax Appeals (CTA) for the cancellation of the said assessments. The CTA partially granted ING's petition but sustained the assessments for deficiency WTC for 1996 and 1997, deficiency onshore tax for 1996, and deficiency DST on Special Savings Accounts (SSAs) for 1996 and 1997.

ING appealed to the Supreme Court. While the case was pending, ING availed itself of the tax amnesty program under RA No. 9480 with respect to its deficiency DST and onshore tax liabilities.

The CIR argued that ING is not qualified for tax amnesty because RMC No. 19-2008 excludes from the coverage of the program "cases which were ruled by any court (even without finality) in favor of the BIR prior to amnesty availment of the taxpayer." ING countered that said exclusion in the circular is not found in RA No. 9480 and its implementing rules, and that only cases decided with finality are excluded from the coverage of the tax amnesty program.

ING also argued that it is not liable for WTC on its accrued bonuses in 1996 and 1997, which were paid in subsequent years, because the obligation to withhold tax on compensation arises at the time of payment of the salaries or bonuses, and not upon accrual. The CIR argued that the bonuses were determined in 1996 and 1997 and recognized by ING as expenses although distributed in the succeeding year. Since the bonuses were not subjected to withholding tax in the year they were claimed as expenses, the same should be disallowed as deductible business expense.

Issues:

1. Is ING entitled to the immunities and privileges under the tax amnesty under RA No. 9480?

2. Is ING liable for deficiency WTC?

Ruling:

1. Yes, ING is entitled to the immunities and privileges under the tax amnesty program.

   Section 8 of RA No. 9480 provides that only cases that involve final and executory judgments are excluded from the program. Thus, ING is not disqualified from availing of the tax amnesty program during the pendency of its appeal of the deficiency tax assessments before the Supreme Court.

   ING complied with all the requirements under the tax amnesty law; thus, there is no more issue regarding its liability for deficiency DST on its SSAs and onshore tax.

2. Yes, ING is liable for WTC.

   Section 72 of the 1977 NIRC [now Section 79 of the 1997 NIRC] which states that "[every] employer *making payment of wages* shall deduct and withhold upon such wages a tax" must be read and construed in harmony with Section 29(J) of the 1977 Tax Code [now Section 34(K) of the 1997 Tax Code], which provides that any amount, paid or payable, shall be allowed as a deduction from gross income only if it is shown that the tax required to be deducted and withheld from the amount has been paid to the BIR.

   Reading the two provisions together, the obligation of the payor/employer to deduct and withhold the related tax arises at the time the income was paid or accrued or recorded as an expense in the payor's/employer's books, *whichever comes first*.

   Since ING accrued or recorded the bonuses as deductible expense in its books, its obligation to withhold the related tax due from the deductions for accrued bonuses arose at the time of accrual and not at the time of actual payment.

Commissioner of Internal Revenue vs. Yumex Philippines Corporation
CTA (*En Banc*) Case 1139 promulgated August 11, 2015

The simultaneous receipt of the PAN and FAN violates the right to due process as taxpayers are deprived of the opportunity to contest the PAN within the 15-day period as prescribed by the regulations.

PEZA-registered enterprises are exempt from the Improperly Accumulated Earnings Tax (IAET). RR No. 02-01 does not distinguish between PEZA enterprises enjoying Income Tax Holiday or the 5% special tax, to qualify them as exempt from IAET.

Facts:

Petitioner CIR assessed Respondent Yumex Philippines Corporation (YPC) for alleged deficiency income tax, fringe benefits tax (FBT) and IAET for taxable year 2007. YPC paid the deficiency income tax and FBT assessments, but continued to protest the IAET assessment, arguing that it is not subject to IAET because it is a PEZA-registered enterprise.

The CIR denied the protest and issued a Final Decision on Disputed Assessment reiterating the deficiency IAET assessment. YPC filed a Petition for Review with the CTA. In its Petition for Review, YPC alleged that it received on the same day both the Preliminary Assessment Notice (PAN) dated December 16, 2010 and the Formal Assessment Notice (FAN) dated January 10, 2011.

The CTA Third Division granted the petition and ordered the cancellation of the deficiency IAET assessment. Upon denial of its Motion for Reconsideration, the CIR appealed to the CTA *En Banc*.

The CIR alleged that since the issue of the same-day receipt of the PAN and FAN was neither raised by YPC in its Petition for Review nor in any of its pleadings, the assessment should not be invalidated. The CIR argued that since YPC agreed to pay the assessments for deficiency income tax and FBT, it is estopped from questioning the validity of the assessment process. The CIR further argued that YPC has the burden of disproving there was improper accumulation of earnings.

Issues:

1. Was YPC's right to due process violated when it received both the PAN and the FAN on the same day?

2. Is YPC subject to the IAET?

Ruling:

1. Yes. YPC's right to due process was violated when it received both the PAN and the FAN on the same day, because it was deprived of the opportunity to contest the PAN within the 15-day period allowed under the rules. Moreover, the irregular issuance of the PAN and FAN was in fact raised as an issue in YPC's pleadings.

   YPC's payment of the deficiency income tax and FBT assessments did not cure the invalidity of the subject assessment for deficiency IAET.

2. No. While IAET, as a rule, is imposable on domestic corporations, the said tax may not be imposed on enterprises duly registered with the PEZA pursuant to RA No. 7916, as implemented by RR No. 02-01.

   Section 4(g) of RR No. 02-01 does not distinguish between PEZA enterprises enjoying Income Tax Holiday, or the 5% special tax regime, on its registered activities to qualify them as exempt corporations for IAET purposes.

We welcome your comments, ideas and questions. Please contact
Ma. Fides A. Balili via e-mail at
Ma.Fides.A.Balili@ph.ey.com or at telephone number 894-8113 and
Mark Anthony P. Tamayo via e-mail at
Mark.Anthony.P.Tamayo@ph.ey.com or at telephone number 894-8391.