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SGV

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Highlights

BIR Rulings

- The disposition by the Privatization and Management Office (PMO) of its listed shares of stocks by way of "block sale" through the Philippine Stock Exchange (PSE) is exempt from the payment of stock transaction tax. **(Page 4)**

- The sale of a real property, which is not held primarily for sale to customers or held for lease in the ordinary course of trade or business, or used in the trade or business of the seller, shall not be subject to VAT. **(Page 5)**

- Personnel of the BIR cannot divulge information gained from taxpayers concerning the latter's business, income or estate, and such other information as may be relevant to the business of any taxpayer. **(Page 5)**

- Real properties owned by taxpayers not engaged in the real estate business, upon showing of proof that the same have not been used in business for more than two years prior to the consummation of the taxable transactions involving the said real properties, and though classified as ordinary assets, shall be automatically converted into capital assets. **(Page 6)**

- The BIR cannot issue definitive rulings or opinions on issues or transactions based on hypothetical situations. **(Page 6)**

BIR Issuances

- Revenue Regulations (RR) No. 6-2017 further amends certain provisions of RR No. 7-2014, prescribing the affixture of internal revenue stamps on imported and locally manufactured cigarettes and the use of the Internal Revenue Stamp Integrated System (IRSIS) for the ordering, distribution and monitoring of such stamps. **(Page 7)**

- Revenue Memorandum Order (RMO) No. 25-2017 prescribes the procedures, guidelines and rules on the transfer of Large Taxpayers (LT) from LTD-Makati/ Cebu to other LTS Audit Divisions and LTD-Davao, as well as the administrative and reportorial requirements applicable to newly-enlisted LTs. **(Page 7)**

- RMO No. 28-2017 amends certain provisions of RMO No. 42-2016, prescribing the reportorial requirements in the implementation of the Personal Equity and Retirement Account (PERA) Act of 2008. **(Page 9)**

- Revenue Memorandum Circular (RMC) No. 89-2017 amends RMC No. 51-2007, prescribing the rules on the processing of claims for the issuance of a tax refund/tax credit certificate (TCC). **(Page 10)**

BOC Issuances

- Customs Memorandum Order (CMO) No. 19-2017 provides for the amendment of CMO No. 53-2010 dated 8 December 2010 entitled Supplemental Guidelines in the Implementation of CMO 27-2009 Re: Post Entry Modification of single administrative documents (PMS) and SAD cancellation (SC) dated 22 September 2017. **(Page 11)**

- CMO 20-2017 provides for the amendments to CMO 35-2015 dated 23 September 2015 entitled "Revised Rules for the Electronic/Manual Issuance and Lifting of Alert Orders at all Ports of Entry." **(Page 12)**

- CMO 23-2017 provides for the revocation of all delegated authority to sign on behalf of the Agency (i.e., BOC). **(Page 12)**

- CMO 24-2017 provides the Mandatory Response Time to Act on Official Communication. **(Page 13)**

- Executive Order (EO) No. 46 dated 20 October 2017 revives the post clearance audit function [formerly known as "post-entry audit"] of the BOC through the Post Clearance Audit Group (PCAG) and institutionalizes the functions of the financial analytics and intelligence unit of the Department of Finance (DOF). **(Page 13)**

BSP Issuances

- Circular No. 974 provides for the Amendments to the Manual of Regulations for Banks (MORB) and Non-Bank Financial Institutions (MORNBFI) as of 31 March 2017. **(Page 15)**

- Circular No. 975 provides for the Issuance of Bonds and Commercial Papers. **(Page 15)**

- Circular No. 976 provides for the Amendments to the Expanded Report on Real Estate Exposures (ERREE) and the Submission of the Report on Project Finance Exposures (RPFE). **(Page 16)**

SEC Opinion and Issuances

- A corporation engaged in providing ticketing services is not engaged in retail trade, hence, not subject to foreign equity restrictions under the Retail Trade Liberalization Act of 2000. **(Page 17)**

- SEC MC No. 10 adopts the new and revised accounting standards and interpretations as part of its rules and regulations on financial reporting. **(Page 18)**

- SEC MC No. 11 adopts the use of SEC Form 12-1 Simplified Registration Statement (SRS) for Hospitals. **(Page 19)**

- SEC MC No. 12 provides for the Guidelines on the Online Submission of Risk-Based Capital Adequacy Reports of Broker Dealers in Securities. **(Page 19)**

BLGF Opinions

- The use of Presumptive Income Level Assessment Approach (PILAA) in computing the Local Business Tax (LBT) is restricted to situations where the taxpayer is unable to provide proof of its income. **(Page 19)**

- The concerned local government may impose a tax on the 70% of the gross receipts or cost of contract of a project if the contractor maintains a project office in the project site. The LGU where the satellite office of a financing company of motorcycle dealer is located may only collect Mayor's permit fee and other regulatory fees if no transactions are made in the satellite office. **(Page 20)**

- The absence of any branch office, sales outlet or warehouse repudiates the requirement of securing a business permit as there is no fixed business establishment to regulate and inspect, and to which a license may be issued. **(Page 21)**

PEZA Update

- PEZA Memorandum Order No. 2017-012 implements the issuance of PEZA Certifications on Available Incentives and on Entitlement to 5% Gross Income Tax via email. **(Page 21)**

Court Decisions

- A tax dispute solely between government agencies and offices, including GOCCs, involving purely questions of law shall be administratively settled or adjudicated by the Secretary of Justice.

  The sale by Power Sector Assets and Liabilities Management Corporation (PSALM) of power plants previously owned by the National Power Corporation (NPC) is not subject to VAT because it was not undertaken in the course of trade or business but was made pursuant to a governmental function mandated by the Electric Power Industry Reform Act of 2001 (EPIRA) to privatize NPC generation assets. **(Page 22)**

- While a tax assessment is not necessary before a criminal prosecution, a civil action for collection of the tax requires that the assessment procedure be complied with. Thus, for a criminal case to include a judgment of civil liability, there must be a formal assessment issued against the taxpayer. **(Page 24)**

- The exemption from income and other taxes granted to PAGCOR under its charter shall inure to the benefit of its licensees and franchisees, such as bingo operators. Accordingly, services rendered to PAGCOR and PAGCOR-authorized bingo operators are subject to 0% VAT, pursuant to Section 108(B)(3) of the Tax Code. **(Page 25)**

- The sale of services by a VAT-registered supplier from the customs territory to a PEZA-registered enterprise is subject to 0% VAT.

  To qualify for VAT zero-rating, it is not required that the service should be rendered within the ECOZONE or that the service be directly connected to the registered activities of the PEZA enterprise. **(Page 26)**

- Under Section 252 of the Local Government Code (LGC), payment under protest is mandatory if the taxpayer questions the reasonableness or correctness of the real property tax assessment. **(Page 28)**

BIR Rulings

The disposition by the PMO of its listed shares of stocks by way of "block sale" through the PSE is exempt from the payment of stock transaction tax.

BIR Ruling No. 474-2017 dated 04 October 2017

Facts:

The Privatization Management Office (PMO), a government agency organized under the Department of Finance by virtue of Executive Order No. 323, is currently holding listed shares of stocks as one of its transferred assets for privatization and disposition. The PMO intends to undertake the disposition of said listed shares of stocks by way of a block sale through the PSE under the PSE's Revised Trading Rules.

Issue:

Is the PMO exempt from the stock transaction tax incident to the proposed block sale?

Ruling:

Yes. Pursuant to Section 34 of Proclamation No. 50, series of 1986, the PMO as well as corporations and assets held by it, shall be exempt from all taxes, fees, charges, imposts and assessments arising from or occasioned by the passing of title over such corporations or assets from the government institutions to the Trust and/or from the Trust to a private acquisitor or buyer.

Note: Block sale, as defined in the Revised Trading Rules of the PSE, is a pre-arranged transaction which is executed through the facilities of the Exchange.

BIR Ruling No. 476-2017 dated 12 October 2017

The sale of a real property, which is not held primarily for sale to customers or held for lease in the ordinary course of trade or business, or used in the trade or business of the seller, shall not be subject to VAT.

Facts:

X Retirement Plan sold its 16.72% undivided share in a parcel of land in favor of the SSS.

Issue:

Is the sale subject to VAT?

Ruling:

No. Pursuant to Section 109(P) of the Tax Code, and Section 4.109-1 of RR No. 16-05, the sale of real property, which is not held primarily for sale to customers or held for lease in the ordinary course of trade or business, or used in the trade or business of the seller, shall not be subject to VAT. While it is true that a retirement fund or pension trust is only entitled to exemption from income tax under Section 60(B) of the Tax Code, and that it may still be subject to other applicable taxes imposed under other provisions of the same Code, the sale by X Retirement Plan of the subject lot in favor of the SSS is not subject to VAT. This is because X Retirement Plan is not engaged in the real estate business and said property was not held primarily for sale to customers or held for lease in the ordinary course of trade or business, or used in the trade or business of the seller.

BIR Ruling No. 477-2017 dated 13 October 2017

Personnel of the BIR cannot divulge information gained from taxpayers concerning the latter's business, income or estate, and such other information as may be relevant to the business of any taxpayer.

Facts:

ABC requested for any and all income tax statements of XYZ from the time XYZ registered with the BIR up to present, as well as information or documents on the nature of XYZ's TIN registration. ABC represented that the request for information and documents is indispensable to the pursuit of justice in a pending civil case filed against XYZ.

Issue:

Is the BIR allowed to divulge the information of XYZ?

Ruling:

No. Under Section 270 of the Tax Code, the BIR cannot divulge information gained from taxpayers concerning the latter's business, income or estate as well as the secrets, operation, style or work, or apparatus of any manufacturer or producer, or

confidential information regarding the business of any taxpayer. The intent of Section 270 of the Tax Code is to protect taxpayers from having their otherwise sensitive and private information unnecessarily revealed to other parties.

Note that there are exceptions to the "unlawful divulgence" rule, which are: (1) disposition of income tax returns under Section 71 of the Tax Code; (2) disclosure of income tax returns under Section 26 of RA No. 6388 in case of an individual who files a certificate of candidacy and executes a waiver for the examination of his returns; and (3) information given by the BIR pursuant to a request by a foreign tax authority under an existing tax treaty. The subject request does not fall under any of the above exceptions.

BIR Ruling No. 480-2017 dated 18 October 2017

Real properties owned by taxpayers not engaged in the real estate business, upon showing of proof that the same have not been used in business for more than two years prior to the consummation of the taxable transactions involving the said real properties, and though classified as ordinary assets, shall be automatically converted into capital assets.

Facts:

A Co., a domestic corporation primarily engaged in all kinds of printing, publishing, binding and engraving works and designs, owns real properties which were never used in business and had remained idle since their acquisition. No improvement was ever introduced to these properties and reflected in A Co.'s Audited Financial Statements as investment properties.

Issue:

Are the real properties considered capital assets?

Ruling:

Yes. A Co. is a taxpayer not engaged in the real estate business, not being a real estate dealer, developer or lessor and whose primary purpose is to carry on the business involving printing activities. The parcels of land had been idle and vacant since 2011, and had not been used in the ordinary course of trade or business. Hence, in accordance with RR No. 7-2003, they are classified as capital assets.

BIR Ruling No. 481-2017 dated 19 October 2017

The BIR cannot issue definitive rulings or opinions on issues or transactions based on hypothetical situations.

Facts:

XYZ Co., a domestic corporation primarily engaged in the real estate property development, requested for a ruling on the taxability of an intended sale of real property to a tax-exempt school.

Issue:

Can the BIR issue a definitive ruling or opinion based on a hypothetical situation?

Ruling:

No. Under Revenue Bulletin No. 01-03, the ruling function of the BIR is limited to the determination of purely legal issues, as opposed to questions of fact. The Revenue Bulletin declared that certain issues or subject matter as "No Ruling Areas," such as request for rulings on issue/s or transactions based on hypothetical situations, on which the appropriate office of the BIR is instructed not to accept any such request for rulings.

Considering that the transaction is neither existing nor partially executed, the BIR cannot as yet issue a definitive ruling or opinion on the above matter.

BIR Issuances

RR No. 6-2017 further amends certain provisions of RR No. 7-2014, prescribing the affixture of internal revenue stamps on imported and locally manufactured cigarettes and the use of the IRSIS for the ordering, distribution and monitoring of such stamps.

RR No. 6-2017 dated 25 September 2017

The provisions of Sections 2, 6, 9 and 13 of RR No. 7-2014, as amended by RR No. 9-2015, are hereby further amended as follows:

- The definition of "Internal Revenue Stamp" has been amended to take into account the following changes:

    1. There are now five different color designs of the stamps, according to whether the cigarettes are packed by hand or by machine (bearing a unitary tax rate) for locally manufactured or imported cigarettes, or for export.

    2. The stamps may now be ordered in banderols or pre-cut/stack or in sheets according to the machine requirements of the importer or the local manufacturers.

- The price per piece of the internal revenue stamp is now fifteen centavos (P0.15), which shall be paid to APO Production Unit, Inc. (APO), after the approval of the order for the stamps and prior to their release from the APO-designated plant.

- The internal revenue stamp shall be affixed at the upper portion of the immediate container of the cigarettes, which may be in hard packs, soft packs, tin cans and now in packages of 5 sticks and/or 10 sticks.

- Cigarettes packed in 5 sticks and/or 10 sticks bundled in packs of 20 and other packaging combinations of not more than 20 shall be taxed as one, but, the internal revenue stamps affixed to these cigarettes shall be equivalent to the number of packs bundled together.

- All locally manufactured packs of cigarettes to be removed from the place of production shall be affixed with the new internal revenue stamps not later than 1 January 2018.

- No importation and subsequent release of cigarettes from the customs house shall be allowed unless the new internal revenue stamps shall have been affixed to all imported cigarettes effective 1 June 2018.

- Effective 1 September 2018, all locally manufactured and/or imported cigarettes found in the Philippine market shall have been affixed with the new stamps.

- This Regulation shall take effect 15 days after publication in any leading newspaper of general circulation.

[Editor's Note: RR No. 5-2017 was published in the Manila Bulletin *on 14 October 2017]*

RMO No. 25-2017 prescribes the procedures, guidelines and rules on the transfer of LT from LTD-Makati/Cebu to other LTS Audit Divisions and LTD-Davao, as well as the administrative and reportorial requirements applicable to newly-enlisted LTs.

RMO No. 25-2017 dated 04 October 2017

- Newly-enlisted/transferred Large Taxpayers (LTs) are required to accomplish and submit BIR Form No. 1905 (Application for Registration Information Update) for e-TIS purposes.

- Once the transfer has been effected, the Large Taxpayers Assistance Division (LTAD)/Excise Large Taxpayers Regulatory Division (ELTRD)/Large Taxpayer Division (LTDs) Cebu and Davao (collectively referred to as "new" LTS office/ LTD) shall generate new Certificates of Registration (COR) and ensure receipt of the same by taxpayers upon presentation of the previously-issued CORs.

- Upon effective date of transfer, all books of accounts and other accounting records, reports, schedules, documents or information required to be registered/submitted shall be registered/submitted to the "new" LTS office/ LTD.

- If the concerned taxpayers have already registered/submitted the above records/ reports to the "old" Revenue District Office (RDO)/Large Taxpayers Service (LTS) Office, such registration/ submission shall be considered substantial compliance, but the submitted records shall be transmitted to the "new" LTS office/LTD within 60 days from the effective date of the transfer.

- All applications/letters of taxpayer [e. g. Authority to Print, Permit to Use/ Adopt Computerized Accounting Systems (CAS) and Components thereof, witnessing of inventory destruction, cancellation of permit to use CRM/ POS machines, accreditation of CRM/ POS machines] that are pending with the "old" RDO/LTS Office/LTD as of the effective date of the transfer shall be processed by the "new" LTS Office/LTD concerned.

- All newly-enlisted large taxpayers shall enroll with the Electronic Filing and Payment System (eFPS) within 30 days from receipt of the notification as LT.

- All tax returns of the newly-enlisted LTs shall be filed with the "new" LTS Office/ LTD having jurisdiction over them, using the eFPS facility.

- Those who are not enrolled with the eFPS shall submit their application at the LTS Office having jurisdiction over the said taxpayer.

- During the transition period, those who are not enrolled with eFPS shall be allowed to manually file their tax returns and pay taxes at the Authorized Agent Banks (AABs) near the LT's head office.

- If the location of the LT has no AABs, the LT may pay the tax due thru the Revenue Collection Officer (RCO) assigned at the municipality.

- Ongoing tax investigations, including refund claims, pursuant to Letters of Authority (LAs)/Letter Notices (LNs) issued prior to the effective date of the transfer shall be continued by the issuing office.

- Thereafter, all LAs/LNs, regardless of taxable year, shall be issued by the "new" LTS Office/LTD.

- All deficiency tax assessments issued against transferred/newly-enlisted taxpayers, e.g. Preliminary Assessment Notice (PAN), Formal Letter of Demand, (FLD, Final Assessment Notice (FAN), Final Decision on Disputed Assessment (FDDA), shall be handled by the "old" RDO/LTS Office that issued such assessment until settlement/termination of the case.

- In relation to stop-filer cases [Returns Compliance System (RCS) cases], the open RCS cases shall be transferred to the "new" LTS Office from the "old" RDO/LTS Office/LTD.

- All applications and documentary requirements for tax credit certificate (TCC) utilization, including TCCs with outstanding balances, as of the effective date of the transfer, shall be filed with the "new" LTS office having jurisdiction over such taxpayer.
- Newly-enlisted large taxpayers must adopt and secure the permit to use CAS within 6 months after having been officially notified in writing of their status as LTs, and those who cannot comply may submit a letter-request for extension.
- All applications for ATP, permit to adopt/ use CAS and other secondary registration received by the "old" RDO/LTS Office/LTD shall be processed by the "new" LTS Office/ LTD.
- For applications for permit to use/ adopt CAS and accreditation of CRM/POS systems where a complete systems walkthrough has already been undertaken by the "old" RDO/LTS Office concerned, the permit/ certificate for accreditation shall be issued by the "old" RDO/LTS Office concerned.

RMO No. 28-2017 amends certain provisions of RMO No. 42-2016, prescribing the reportorial requirements in the implementation of the Personal Equity and Retirement Account (PERA) Act of 2008.

RMO No. 28-2017 dated 13 October 2017

- The following reports summarized in Annex "B" of RMO No. 42-2016 shall be discontinued upon effectivity of the Order:

No.	Name of Report per RMO No. 42-2016	Annex No. per RMO No.42-2016
1	Employer-Employee PERA Contribution	B.A-1(R)
2	Self-Employed PERA Contribution	B.A-2(R)
3	Overseas Filipino PERA Contribution	B.A-3(R)
4	Employer-Employee PERA Contribution	B.B-1(R)
5	Self-Employed PERA Contribution Overseas	B.B-2(R)
6	Filipino PERA Contribution	B.B-3(R)
7	Alpha List per Employer of Employees Making Qualified PERA Contributions and the Actual Total Amount of Qualified PERA Contribution	B.C-1(R)
8	Alpha List of Qualified Self-Employed Contributors and the Actual Amount of Qualified PERA Contributions	B.C-2(R)
9	Alpha List of Qualified Overseas Filipino PERA Contributors and the Actual Amount of Qualified PERA Contributions	B.C-3(R)
10	Employer-Employee PERA Contributor	B.D-1(R)
11	Self-Employed PERA Contributor	B.D-2(R)
12	Overseas Filipino PERA Contributor	B.D-3(R)
13	Employer-Employee PERA Contributor	B.E-1(R)
14	Self-Employed PERA Contributor	B.E-2(R)
15	Overseas Filipino PERA Contributor	B.E-3(R)

- The revised reports of Annex "B" of RMO No. 42-2016 to be submitted by the PERA Administrator are listed below:

No.	Name of Report per RMO No. 42-2016	Name of Report as per RMO No. 28-2017	Annex No.
1	Quarterly Report on PERA Transaction	Quarterly Report on PERA Contributions	B.1(R)
2	Alpha List Per Employees Making Qualified PERA Contributions and the Actual Total Amount of Qualified PERA Contribution	Alpha List of PERA Contributions	B.2(R)
3	Quarterly Report on PERA Distributions and Early Withdrawals	Quarterly Report on PERA Distributions and Early Withdrawals	B.3(R)

RMC No. 89-2017 amends RMC No. 51-2007, prescribing the rules on the processing of claims for the issuance of a tax refund/ TCC.

RMC No. 89-2017 issued on 19 October 2017

- Claims for VAT refund/TCC by direct exporters:

1. All claims by direct exporters shall be filed and processed by the VAT Credit Audit Division (VCAD), except those under the jurisdiction of the LTS, who may opt to file with the concerned LT Division where they are registered.

2. The electronic LAs (eLAs) involving claims filed with the VCAD shall be approved and signed by the Assistant Commissioner – Assessment Service (ACIR-AS).

3. The following are the authorized approving revenue officials:

Amount Claimed	And/ Or	Amount Granted	Approving Revenue Official
Not more than P75 million		Below P50 million	ACIR-AS
More than P75 million up to P150 million		P50 million up to P100 million	Deputy Commissioner – Operations Group (DCIR-OG)
More than P150 million		More than P100 million	Commissioner of Internal Revenue (CIR)

- Claims for VAT refund/TCC of indirect exporters and tax refund/TCC on income and other taxes filed by taxpayers registered with the RDOs:

1. All claims processed by the RDO shall be reviewed by the concerned Assessment Division prior to transmittal to the Regional Director.

2. The Regional Director shall be the authorized approving official for claims amounting to P10 million and below.

3. For claims exceeding P10 million, the reports on said claims shall be signed by the Regional Director, who shall recommend the approval/issuance of the tax refund/TCC.

4. The docket of the claim shall be transmitted to the Tax Audit Review Division (TARD) for further review prior to approval of the revenue officials in accordance with the thresholds set above.

5. All memorandum reports recommending claims within the applicable thresholds set above shall be signed by the ACIR – AS prior to final approval by the DCIR – OG/CIR.

- Existing claims originating from the Regional Offices exceeding P1 million in the possession of the National Office at the time of the approval of this Circular shall be acted upon in accordance with the thresholds set above.

- Time frame to process claims for VAT refund/TCC under Section 112 (A) of the Tax Code, as amended:

1. The 120-day period shall start from the actual date of filing of the application.

2. For claims processed by the RDOs amounting to more than P10 million and all claims processed by the VCAD, the docket of the claim shall be indorsed/forwarded to the TARD for review within 80 calendar days from the date of the filing of the application for VAT refund/TCC.

3. The RDOs, Regional Offices and VCAD shall ensure compliance with the required 80-day period to process the claims and submit the dockets with the reports.

4. No VAT refund/TCC docket shall be accepted by the National Office beyond the 80-day period, regardless of the date when the eLA was issued, except for justifiable reasons, e.g. fortuitous events, unexpected suspension of work, etc.

5. The TARD shall ensure that the docket of the claim shall be transmitted to the approving official not later than 100 days from the filing of the application for VAT refund/TCC.

6. The approving officials shall act on the recommended claims for VAT refund/TCC not later than 120th day from receipt of application by the processing offices.

7. In the absence of a duly appointed DCIR – OG, claims for tax refund/TCC for approval of said official shall be approved by the CIR.

BOC Issuances

CMO No. 19-2017 provides for the amendment of CMO No. 53-2010 dated 8 December 2010 entitled Supplemental Guidelines in the Implementation of CMO 27-2009 Re: PMS and SC dated 22 September 2017.

CMO No. 19-2017 dated 03 October 2017

- No SAD Cancellation shall be allowed unless approved by the Office of the Commissioner (OCOM).

- The District Collector shall forward all requests for SAD cancellation to the OCOM which shall issue the corresponding clearance and shall return the approved request to the District Collector concerned.

- This Order shall take effect immediately.

[Editor's Note: CMO 19-2017 was received by the UP Law Center on 11 October 2017]

CMO 20-2017 provides for the amendments to CMO 35-2015 dated 23 September 2015 entitled "Revised Rules for the Electronic/Manual Issuance and Lifting of Alert Orders at all Ports of Entry."

CMO No. 20-2017 dated 09 October 2017

- The assigned customs examiner shall be required:

    1. Within 48 hours from the receipt of the Alert Order, to conduct a non-intrusive inspection or physical examination of the alerted shipment/s in lieu of the conduct of a 100% examination of shipment/s within seven days;

    2. To submit duly accomplished Alert Order Report Form (Annex "B') to the District Collector, Alerting Office and OCOM, within 24 hours from completion of the examination.

- It shall be the duty and the responsibility of the concerned District Collector to subject the alerted shipments to non-intrusive inspection or to coordinate with the terminal operator for the conduct of the physical examination.

- Alerted shipments found to have no discrepancy after non-intrusive inspection or physical examination must be released within 48 hours from the return of findings from the examiner.

- The Alerting Officer shall be required to designate at least two representatives (previously only one), who shall witness the conduct of the non-intrusive inspection or physical examination of the alerted shipment.

    1. If despite due notice, no representative from the alerting office appears, the District Collector shall assign another customs officer to witness the conduct of the inspection or examination. In all cases, representatives to the conduct of inspection or physical examination must be career personnel.

- *Automatic Review by OCOM prior to Disposition of Alerted Shipments*. The approval of the District Collector of the recommendation which results in the release of the shipment shall be forwarded through the fastest means available to the OCOM for automatic review within 24 hours. After the confirmation of the OCOM, the goods shall be immediately released.

- All reference to physical examination as used under CMO 35-2015 shall mean to include the option to conduct the non-intrusive inspection.

- The CMO is for immediate compliance pending full implementation of the CMTA provisions on issuance and lifting of Alert Orders.

[Editor's Note: CMO 20-2017 was received by the UP Law Center on 11 October 2017]

CMO 23-2017 provides for the revocation of all delegated authority to sign on behalf of the Agency (i.e., BOC).

CMO No. 23-2017 dated 18 October 2017

- Citing Section 102 of Presidential Decree 1445 (Government Auditing Code of the Philippines), which provides that "The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency. Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government."

- All delegated authority to sign on behalf of the Head of Agency are hereby revoked.

- This order shall take effect immediately and shall last until sooner revoked.

[Editor's Note: CMO 23-2017 was received by the UP Law Center on 20 October 2017]

CMO 24-2017 provides the Mandatory Response Time to Act on Official Communication.

CMO No. 24-2017 dated 23 October 2017

- *Scope and Coverage*. The CMO shall apply to all Groups, Districts or Offices and personnel of the BOC (organic, detailed, contractual, job order and under contract of service) who handle or act on communication/memorandum including but not limited to written or verbal communication, correspondence to and from other agencies, inter-office memos and all other forms not specifically covered by Republic Act Nos. 6713 and 9485.

- *Statement of Policy*. The BOC as an agency or through its Groups, District Offices sets a 5-day mandatory timeframe to respond to all clients, be it external or internal, efficiently and effectively.

    1. *Effect of Non-Compliance*. Failure to comply with the provisions of this CMO may be grounds for administrative and disciplinary sanctions against any erring public officer or employee as provided under existing laws and regulations.

    2. The CMO shall take effect upon signing.

Editor's Note: CMO 23-2017 was received by the UP Law Center on October 25, 2017.

EO No. 46 dated 20 October 2017 revives the post clearance audit function (formerly known as "post-entry audit") of the BOC through the PCAG and institutionalizes the functions of the financial analytics and intelligence unit of the DOF.

Executive Order (EO) No. 46 dated 20 October 2017

- *Reversion of the Post Clearance Audit (PCA) function to the BOC*. The PCA function shall be transferred from the DOF-Fiscal Intelligence Unit (FIU) to the BOC. For this purpose, the operations of the BOC-PEAG are hereby revived and such group is renamed as the PCAG under the supervision of the Commissioner of Customs.

- *Composition and functions of the PCAG*.

    1. The PCAG shall be headed by the Assistant Commissioner of the BOC, duly appointed by the President of the Philippines, upon the recommendation of the Commissioner of Customs through the Secretary of Finance.

    2. The Assistant Commissioner shall exercise direct supervision and control in the management of the following operating units each headed by a Director II with the following functions:

        - Trade Information and Risk Analysis office (TIRAO):

            a. Review available trade data to determine compliance markers of industry and set benchmarks to develop an audit program;

b. In coordination with the Management Information System and Technology Group (MISTG) develop a computer-aided risk-based management system;

c. Recommend potential priority audit candidates; and

d. Develop policies and guidelines in connection with the audit process.

- Compliance Assessment Office (CAO):

a. Prepare the audit work plan, scope and approach for the approved priority audit candidates;

b. Conduct the audit examination, inspection, verification and investigation process;

c. Prepare and submit the required audit reports on audit findings and recommendations to the Commissioner of Customs for approval; and

d. Establish and maintain a customs compliance program.

3. The PCAG is mandated to conduct, within three years from the date of final payment of duties and taxes or customs clearance, an audit examination, inspection, verification, and investigation of records pertaining to any goods declaration, which shall include statements, declarations, documents, and electronically generated or machine readable data, for the purpose of ascertaining the correctness of the goods declaration and determining the liability of the importer for duties, taxes, and other charges, including any fine or penalty.

- *Renaming the DOF-FIU and defining its functions*. The DOF-FIU shall be instituted and renamed as the Financial Analytics and Intelligence (FAI) Unit, and its functions are as follows:

1. Act as the data analytic unit of the DOF for purposes of revenue management;

2. Require, as it may deem necessary, agencies, bureaus and offices attached to DOF to submit all relevant trade and industry data related to revenue generation, subject to existing laws, rules and regulations;

3. Review matters that may be deemed fiscally adverse to the government, including those elevated by agencies, bureaus and offices attached to DOF for the approval and conformity of the Secretary of Finance;

4. Provide recommendations to the Secretary of Finance on policies and actions to be taken on the basis of its analysis of the available data; and

5. Perform such other functions as may be necessary or incidental in carrying into effect the provisions of this Order, and as may be provided by law.

- *Turn-over of PCAs*. The DOF-FAI, as may be practicable, transmit to the BOC-PCAG all files and documents of any pending post clearance audits following the effectivity of this EO.

- This Order shall take effect fifteen days following its publication in a newspaper of general circulation.

[Editor's Note: Published in the Manila Bulletin *on 25 October 2017 and takes effect on 9 November 2017.]*

BSP Issuances

Circular No. 974 provides for the Amendments to the Manual of Regulations for Banks and Non-Bank Financial Institutions as of 31 March 2017.

BSP Circular No. 974 dated 29 September 2017

- This Circular provides for the amendments to the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) as of 31 March 2017.

- The following statement is added as a footnote to Section X206 Clearing Operations:

  "The new check clearing process shall be implemented on 20 January 2017. For participant banks which will not be compliant with the CICS standard on 20 January 2017, they shall execute a Letter of Commitment stating, among others, the actions that they will be taking to be compliant with the CICS standard until 21 April 2017."

- Annex A of Appendix 89 (Regulatory Relief for Banks affected by Calamities) of the MORB and Annex A of Appendix Q-67 [Regulatory Relief for Non-Bank Financial Institutions with Quasi-Banking Functions (NBQBs) affected by Calamities] of the MORNBFI are amended to add the grant of regulatory relief to covered areas affected by typhoon "Niña" pursuant to Memorandum No. M-2017-002 dated 18 January 2017, depicted in Annexes A and A-1 of this Circular.

- The Computation Sheet for Capital Repatriation illustrated in Annex B of this Circular, referred to under Circular No. 942 dated 20 January 2017 shall be incorporated as Attachment 1 of Appendix N-8-c.

- The provisions under Memorandum No. M-2017-003 are codified in the MORNBFI P-Regulations as shown in Annex C of this Circular.

[Editor's Note: BSP Circular No. 974, s. 2017 was published in Manila Standard *on 5 October 2017]*

Circular No. 975 provides for the Issuance of Bonds and Commercial Papers

BSP Circular No. 975 dated 10 October 2017

- This Circular provides for the amendments to pertinent provisions of the MORB and MORNBFI on the issuance of bonds and commercial papers by banks with quasi-banking authority and quasi-banks.

- Section X239 of the MORB and Section 4239Q of the MORNBFI, are hereby amended to read as follows:

  "**Section X239/Section 4239Q (2008 - 4217Q) Issuance of Bonds and Commercial Papers**. All banks with quasi-banking authority/quasi-banks (QBs) issuing bonds or commercial papers shall comply with Republic Act No. 8799 or the Securities Regulation Code and its Implementing Rules and Regulation, and

other applicable rules and regulations issued by the Securities and Exchange Commission (SEC). Banks/QBs that will issue bonds and/or commercial papers shall ensure that they have adequate control system and effective liquidity risk management in place in accordance with Section X176/4176Q of the MORB/ MORNBFI."

- Subsection X239.3 of the MORB and Subsection 4239Q.3 of the MORNBFI on the notification of the issuance of bonds to the BSP, are hereby amended to read as follows:

  "**Subsection X239.3/4239Q.3 (2008 - 4217Q.4) Notice to Bangko Sentral ng Pilipinas**. Within five (5) banking days from approval by the bank's/QB's (Quasi-Banks) board of directors of the bond issue, the bank/QB shall notify the appropriate department of the SES of the approval of the bond issue, in accordance with Appendix 6/Appendix Q-3."

- Section X348 of the MORB is hereby amended to read as follows:

  "**Section X348 Committed Credit Line for Commercial Paper Issues**. The following guidelines shall govern committed credit line agreements of banks with corporations proposing to issue commercial papers, pursuant to pertinent rules and regulations of the SEC.

- Subsections X239.1, X239.2, X239.4, X239.5 and Appendices 13 and 14 of the MORB and Subsections 4239Q.1, 4239Q.2, 4239Q.4, 4235Q.10, Appendices Q-7 and Q-8 of the MORNBFI are hereby deleted.

- Appendix 6 of the MORB shall be amended by including the report on *"Notice to Bangko Sentral on BOD's approval of the bond issue"* as required in Subsection X239.3 of the MORB.

- Appendix Q-3 of the MORNBFI shall be amended by: (a) renaming the required report in Subsection 4239Q.3 from *"Notice to Bangko Sentral on SEC's approval of bond issue together with the documents required by the SEC for the creation and registration of the bond issue" to "Notice to Bangko Sentral on BOD's approval of the bond issue;"* and (b) changing the submission deadline from "3rd business day from SEC approval" to "five banking days from approval by the QB's board of directors."

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

[Editor's Note: BSP Circular No. 975, s. 2017 was published in The Manila Times *on 14 October 2017]*

Circular No. 976 provides for the Amendments to the ERREE and the Submission of the RPFE.

BSP Circular No. 976 dated 10 October 2017

- This Circular provides for the amendments to (1) the ERREE of Banks, and (2) the submission of the RPFE to gather more granular information regarding these exposures which are useful inputs in arriving at a comprehensive assessment of the quality of bank loans and vulnerability of banks on risks arising from these exposures.

- **Limits on Real Estate Exposures**. Section 1397 of the MORB, as amended, on the limits on real estate exposures and other real estate property is hereby further amended to (1) clarify the definition of loans to finance infrastructure projects for public use that are currently exempt from the twenty percent (20%) limit on real estate loans, the expanded definition of real estate exposures and the Real Estate Stress Test (REST) limits, and (2) update the definition of socialized and low-cost housing units in accordance with the latest definition of the Housing and Urban Development Coordinating Council (HUDCC).

- **Report on Real Estate Exposures of Banks**. Subsection X397.5 of the MORB is hereby added to set forth guidelines on the submission of the Expanded Report on Real Estate Exposures. The revised reportorial templates covering the amendments to the relevant Schedules under the Expanded Report on Real Estate Exposures are shown under Annexes A-1a (Bank Report) to A-1b (Banking Group Report) of this Circular. Specific guidelines on the mode and manner of electronic submission of the revised reportorial template of the Expanded Report on Real Estate Exposures shall be covered by a separate issuance.

- **Report on Project Finance Exposures**. Subsection 1192.19 of the MORB is hereby added to set forth the guidelines on the submission of the Report on Project Finance Exposures. The reportorial templates for the Report on Project Finance Exposures are shown under Annexes B-1a (Bank Report) to B-1b (Banking Group Report) of this Circular. Specific guidelines on the mode and manner of electronic submission of the reportorial template of the Report on Project Finance Exposures shall be covered by a separate issuance.

- Appendix 6 "Reports Required of Banks" of the MORB is amended by this Circular.

- **Amendments to the Financial Reporting Package (FRP) for Banks**. The line item instructions and template of the Financial Reporting Package for Banks is revised to align with the guidelines set forth in this Circular.

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

[Editor's Note: BSP Circular No. 976, s. 2017 was published in the Business Mirror *on 20 October 2017]*

SEC Opinion and Issuances

SEC-OGC Opinion No. 17-12 dated 19 September 2017

A corporation engaged in providing ticketing services is not engaged in retail trade, hence, not subject to foreign equity restrictions under the Retail Trade Liberalization Act of 2000.

Facts:

P Co. is engaged in providing ticketing services through various sales channels that include venue box offices, physical outlets in shopping malls and online. It sells tickets on behalf of event producers, venue owners and to the general public to events such as musical performances, concerts, theaters, sporting events and the like. It also sells ticket printers and paper ticket stocks and provides support services to other ticketing companies.

Issue:

Are the ticketing activities of P Co. and the selling of ticket printers and paper ticket stocks to other ticketing companies considered as "retail trade" and, thus, covered by the Retail Trade Liberalization Act (RTLA)?

Held:

No. Sec. 3 of the RTLA defines "retail trade" as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption. The case of *Balmaceda v. Union Carbide (G.R. No. L-30442)* defined the phrase "goods for consumption" as the final and end use/s of a product which directly satisfy human wants and desires and are needed for home and daily life. A ticket is not a merchandise or good that can on its own be consumed for personal gratification or satisfaction of the holder. Rather, a ticket is a document or an evidence of contract ensuring the holder the right of access or a seat reservation to the venue or theatrical performance. Its utility is not the direct source of human satisfaction since what it only confers to the holder is a future right or privilege to enter a place or participate in an event.

On the other hand, the selling of ticket printers and paper ticket stocks to other ticketing companies does not also constitute retail trade. Under the Implementing Rules and Regulations of the RTLA, sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them is not considered retail.

Accordingly, since the foregoing activities of P Co. do not constitute retail trade, it is not covered by the foreign ownership restriction imposed under the RTLA.

SEC MC No. 10 adopts the new and revised accounting standards and interpretations as part of its rules and regulations on financial reporting.

SEC Memorandum Circular No. 10 series of 2017 dated 29 August 2017

The SEC approved the adoption of the following amendments to the Philippine Financial Reporting Standards and shall be applied for annual reporting periods beginning on or after 1 January 2018:

- Amendments to PFRS 4, Applying PFRS 9, Financial Instruments with PFRS 4, Insurance Contracts;
- PFRS 15, Revenue from Contracts with Customers
- Clarifications to PFRS 15, Revenue from Contracts with Customer
- PIC Questions and Answers (Q&A) No. 2016-01: Confirming Changes to PIC Q&As-Cycle 2016 (the effective date of the amendments is included in the Q&As affected); and
- PIC Q&A No. 2016-04: Application of PFRS 15 "Revenue from Contracts with Customers" on Sale of Residential Properties under Pre-Completion Contracts

[Editor's Note: Published in the Manila Standard *and* Philippine Daily Inquirer *on 15 September 2017]*

SEC MC No. 11 adopts the use of SEC Form 12-1 SRS for Hospitals.

SEC Memorandum Circular No. 11 series of 2017 dated 29 September 2017

The SEC, pursuant to the Securities Regulations Code and its Implementing Rules and Regulations, adopts the following guidelines for registration of securities of hospitals:

- SEC Form 12-1 SRS replaces SEC Form 12-1;
- The SEC has 28 days, from the date of filing, to either approve or reject a registration of securities; and
- Group B SEC accredited External Auditors or Auditing Firms may be engaged by hospitals seeking registration of securities.

[Editor's Note: Published in the Manila Bulletin *on 6 October 2017]*

SEC MC No. 12 provides for the Guidelines on the Online Submission of Risk-Based Capital Adequacy Reports of Broker Dealers in Securities.

SEC Memorandum Circular No. 12 series of 2017 dated 09 October 2017

In line with the continuing program to foster efficient business operations, particularly in the performance of its monitoring and enforcement function, Broker Dealers in Securities are now allowed to submit their Risk Based Capital Adequacy (RBCA) Reports online under the following guidelines:

- The online submission of the RBCA Reports shall be through the use of a Public Key Infrastructure (PKI) technology provided by the Department of Information and Communication Technology (DICT);
- The RBCA Reports shall be submitted before 12 a.m. of the day following the due date of submission or next business day if the deadline falls on a holiday or a weekend;
- The Broker Dealer shall surrender the PKI Certificate issued in favor the Associated Person/representative terminated or replaced. The new Associated Person/representative shall apply for a new PKI Certificate with the DICT;
- The "Terms of Use for the Online Submission of RBCA Report" shall be physically delivered to the SEC before availing of the on-line submission of RBCA Report;
- The RBCA Reports may be submitted online using the PKI Certificate beginning 5 December 2017. However, Broker Dealers will still have the option to manually submit the RBCA Reports to the SEC Head Office from December 2017 to May 2018.

[Editor's Note: Published in The Philippine Star *on 13 October 2017]*

BLGF Opinions

The use of PILAA in computing the LBT is restricted to situations where the taxpayer is unable to provide proof of its income.

BLGF Opinion dated 04 September 2017

Facts:

T Co. applied for renewal of its business permit for the year 2016 in the City of Tagbilaran and declared its gross receipts from the preceding year amounting to Php 27,627,642.75. However, the City Treasurer of Tagbilaran applied the Presumptive Income Level Assessment Approach ("PILAA") and the income used for purposes of computing the local business tax ("LBT") of T Co. amounted to Php 42,735,648.00.

Issue:

Is the use of the PILAA valid in computing the LBT due from T Co.?

Ruling:

No. Based on Section 143 of the Local Government Code, the local government unit may impose taxes on businesses based on their gross sales or receipts of the preceding calendar year. As clearly provided by law, if a taxpayer has submitted or declared its gross sales or receipts, the local treasurer shall compute the LBT based on its gross receipts. The use of the PILAA is restricted to situations where the taxpayer is unable to provide proof of its income.

Thus, the City of Tagbilaran has no authority to impose LBT on T Co. based on PILAA, provided that T Co. shall duly submit or present its income tax return or audited financial statement for 2016, which should be used as basis for computing its LBT.

BLGF Opinion dated 04 September 2017

The concerned local government may impose a tax on the 70% of the gross receipts or cost of contract of a project if the contractor maintains a project office in the project site. The LGU where the satellite office of a financing company of motorcycle dealer is located may only collect Mayor's permit fee and other regulatory fees if no transactions are made in the satellite office.

Facts:

The Municipality of Odiongan, Romblon sought an opinion on the following local business tax ("LBT") issues in its municipality.

Issues:

1. Whether or not the municipality has the right to oblige contractors to pay tax whose office is located elsewhere but with projects in the municipality's jurisdiction; and

2. Whether or not a financing company of motorcycle dealer maintaining a satellite office is required to apply for a business license in the municipality where such office is located.

Ruling:

1. Under Section 5 (b) (2) (i) and (ii) of Local Finance Circular No. 03-95 dated May 22, 1995, the concerned local government may impose a tax on the 70% of the gross receipts or cost of contract of a project if the contractor maintains a project office in the project site. The term "project office," as applied to contractors, shall mean *the office or headquarters used in administering the project or construction being undertaken in the pursuit of business. However, it may not be a fixed place where administrative work is conducted as the term "office" usually connotes, but one that may be transferred from one project site to another.*

2. An LGU where the satellite office of a financing company of motorcycle dealer is located, but where no transactions are made, may only collect Mayor's permit fee and other regulatory fees, as may be provided for under a duly enacted local tax ordinance.

The absence of any branch office, sales outlet or warehouse repudiates the requirement of securing a business permit as there is no fixed business establishment to regulate and inspect, and to which a license may be issued.

BLGF Opinion dated 03 October 2017

Facts:

P Co. is engaged in job contracting and outsourcing of services to various clients for different industries. Its principal office is in Valenzuela City, where it secures its business permit. P Co. renders services, which last for approximately one to two days, in the factory of its client located in Tanauan, Batangas. P Co. does not maintain an office in Batangas.

Issues:

Is P Co. required to secure a business permit in Tanauan, Batangas where it renders project-based services?

Ruling:

No. Sec. 147 of the Local Government Code (LGC) of 1991 provides for the imposition and collection of reasonable fees and charges on business which shall be commensurate with the cost of regulation, inspection and licensing before any person may engage in such business.

The absence of any branch office, sales outlet or warehouse repudiates the requirement of securing business permit as there is no fixed business establishment to regulate and inspect, and to which a license may be issued.

The presence of P Co.'s personnel in Tanuan is merely to fulfill its contractual obligation to its client and is only temporary in nature.

P Co. shall however pay an occupational fee for any of its workers employed in other jurisdictions pursuant with Sec. 147 and 151 of the LGC.

PEZA Update

PEZA Memorandum Order No. 2017-012 implements the issuance of PEZA Certifications on Available Incentives and on Entitlement to 5% Gross Income Tax via email.

PEZA Memorandum Order No. 2017-012 dated 27 September 2017

- Issuance of PEZA Certification on Available Incentives (ERD Form No. 03-01) and PEZA Certification on Entitlement to 5% Gross Income Tax (ERD Form No. 00-01) shall be via email effective 15 October 2017

- **Coverage**: PEZA Enterprises (PEZA-registered Export, I.T., Tourism, Medical Tourism, Agri-Export, Facilities, ELSE's, Utilities Enterprises) and PEZA Developers / Operators (Ecozone / IT Park / IT Center Developer-Operators) entitled to PEZA incentives

- **Guidelines/procedure**:

    1. All requests for Certification shall be made on the "Request for Certification Form" (PEZA Form No. ERD.2.F.006).

        - The Request Form should be signed by the responsible official of the PEZA enterprise (CEO, President, Vice President, General Manager, Finance Manager, Logistics Manager, or equivalent), whose email address shall be indicated on the form.

2. The accomplished Request Form shall be scanned and emailed to the Office of the Director General (ODG) at odg@peza.gov.ph.

3. ODG will forward the Request Form to the Enterprise Services Division (ESD), which shall (i) verify the enterprise's compliance with PEZA reportorial requirements, and (ii) validate that the signee of the Request Form is an officer of the PEZA enterprise indicated in the Ecozone Monthly Performance Report (EZMPR) submitted to PEZA.

    - Only PEZA enterprises with complete reports shall be endorsed by ESD to the Incentives Management Division (IMD).

4. IMD shall evaluate the request and email the system-generated Certification (pdf copy) to the corresponding Zone Administrator / Zone Manager / Officer-in-Charge (ZA/ZM/OIC). ZA/ZM/OIC shall inform the concerned PEZA Enterprise or PEZA Developer/Operator that the Certification is available for release.

    - Upon payment of filing fee of PHP120.00, ZA/ZM/OIC shall email the Certification/s to the enterprise's official who signed the Request Form

5. Each Certification shall bear a Quick Response (QR) Code which contains the name of the enterprise, certificate control number, and date of issuance. The QR Code can be scanned through www.peza.gov.ph/vatscan.

6. The PEZA enterprise may print multiple copies of the Certifications. The PEZA enterprise shall be solely accountable and liable for the dissemination of the Certifications issued in its name, and any misuse, abuse, and illegal use thereof.

Court Decisions

Power Sector Assets and Liabilities Management Corporation vs. CIR
Supreme Court *En Banc*, G.R. No. 198146, promulgated 08 August 2017

A tax dispute solely between government agencies and offices, including GOCCs, involving purely questions of law shall be administratively settled or adjudicated by the Secretary of Justice.

The sale by PSALM of power plants previously owned by the NPC is not subject to VAT because it was not undertaken in the course of trade or business but was made pursuant to a governmental function mandated by the EPIRA to privatize NPC generation assets.

Facts:

Petitioner Power Sector Assets and Liabilities Management Corporation (PSALM) is a government-owned and controlled corporation (GOCC) created under the Electric Power Industry Reform Act of 2001 (EPIRA). PSALM's primary purpose is to manage the orderly sale, disposition, and privatization of the National Power Corporation (NPC) generation assets, real estates and other disposable assets, and Independent Power Producer contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

In 2006, PSALM conducted public bidding for the privatization of the Pantabangan-Masiway Hydroelectric Power Plant and the Magat Hydroelectric Power Plant. The BIR subsequently issued a letter to the NPC demanding immediate payment of deficiency value added tax (VAT) for the sale of the power plants. NPC indorsed the letter to PSALM.

The BIR, NPC and PSALM executed a Memorandum of Agreement (MOA) where they agreed that NPC/PSALM shall remit the basic deficiency VAT under protest, without prejudice to the outcome of the resolution of the issues before the

appropriate courts or body. The parties also agreed that any resolution in favor of NPC/PSALM shall be immediately executory without need of notice or demand, and that a ruling from the Department of Justice (DOJ) favorable to NPC/PSALM shall be tantamount to an application for refund, which the BIR will immediately process and approve.

PSALM remitted the basic deficiency VAT under protest, and filed with the DOJ a petition of adjudication of the dispute with the BIR to resolve the issue of whether the sale of the power plants should be subject to VAT. Ruling in favor of PSALM, the DOJ declared that to subject the sale to VAT would run counter to the purpose of obtaining optimal proceeds for the sale.

The Commissioner of Internal Revenue (CIR), on the other hand, argued that the DOJ had no jurisdiction as the dispute involved tax laws administered by the BIR which is within the jurisdiction of the Court of Tax Appeals (CTA). The CIR added that the sale is subject to VAT under Section 105 of the National Internal Revenue Code (NIRC), which covers incidental transactions as subject to VAT.

On appeal, the Court of Appeals (CA) annulled the DOJ decision and ruled that PSALM's petition was a protest against a deficiency VAT assessment, which is within the authority of the CIR to resolve.

PSALM appealed the case to the Supreme Court.

Issues:

1. Does the DOJ have jurisdiction over the case?

2. Is the sale by PSALM of the power plants subject to VAT?

Rulings:

1. Yes. The DOJ has jurisdiction over the case.

   The original jurisdiction is with the CIR, who issues the preliminary and final tax assessments. However, if the government entity disputes the tax assessment, the dispute becomes one between the BIR (represented by the CIR) and another government entity, PSALM in this case.

   The dispute is between PSALM and NPC, which are both wholly government-owned corporations, and the BIR, a government office, over the imposition of VAT on the sale of the power plants. Under Presidential Decree (PD) No. 242 (now embodied in the 1987 Administrative Code), all disputes and claims solely between government agencies and offices, including GOCCs, shall be administratively settled or adjudicated by the Secretary of Justice or the Solicitor General, depending on the issues and government agencies involved.

   PD No. 242 provides that for cases involving only questions of law, such as in the present case, it is the Secretary of Justice who has jurisdiction. The decision of the Secretary of Justice may be appealed to the Office of the President where the amount involved exceeds one million pesos. If further denied, the aggrieved party can appeal to the CA.

   For tax disputes involving private entities and the BIR, exclusive appellate jurisdiction is vested with the CTA.

2. No. The sale of the power plants is not subject to VAT since it is not made "in the course of trade or business" as contemplated under Section 105 of the NIRC. The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial activity including transactions incidental thereto.

   The sale of power plants by PSALM is not in pursuit of a commercial or economic activity but a governmental function mandated by the EPIRA to privatize NPC generation assets.

   Under the EPIRA, the power plants, which were previously owned by NPC, were transferred to PSALM for the specific purpose of privatizing such assets. These power plants were not previously used in PSALM's business. The sale of the power plants cannot be considered as an incidental transaction made in the course of NPC's or PSALM's business.

People of the Philippines vs. Joel C. Mendez
CTA (*En Banc*) Criminal Case No. 038, promulgated 08 September 2017

While a tax assessment is not necessary before a criminal prosecution, a civil action for collection of the tax requires that the assessment procedure be complied with. Thus, for a criminal case to include a judgment of civil liability, there must be a formal assessment issued against the taxpayer.

Facts:

Accused Joel C. Mendez was criminally charged with violation of Section 255 of the Tax Code for failure to file his income tax return (ITR) for 2001. Upon arraignment, Mendez pleaded "not guilty." The BIR investigated Mendez based on an anonymous complaint for non-issuance of official receipts. The BIR obtained third party information from various sources including the Land Transportation Office to prove that he purchased a vehicle in 2001; the Bureau of Immigration to prove that he travelled overseas twice in 2001; and print media to show that Mendez advertised his clinics, which were operational in 2001. The BIR used the Expenditure Method to determine the income tax liability of Mendez. The method is based on the theory that if the taxpayer's expenditure during the given year exceeds his reported income or when there was no income reported at all, and the source of such expenditure is unexplained, it may be inferred that such expenditures represent unreported income.

Mendez countered that some of his clinics were established beginning 2003. He also claimed that the newspaper advertisements made in 2001 were only for promotion purposes, although his clinics were not yet in operation. While he admitted rendering services to some celebrity-clients, he insisted these services were rendered in exchange for free commercial plugs. As there was no income, Mendez argued that there was no need to register and file a return with the BIR in 2001.

The CTA Special First Division held that Mendez is guilty beyond reasonable doubt with violation of Section 255 of the Tax Code for failure to file a return in 2001. However, the court found that Mendez cannot be held civilly liable as no formal assessment was issued by the BIR.

Both parties filed a Motion for Reconsideration, which was denied, prompting the elevation of the case to the CTA *En Banc*.

Issues:

1. Is Mendez criminally liable for failure file his ITR for 2001?

2. Is Mendez civilly liable for unpaid taxes and penalties?

Rulings:

1. Yes. The CTA *En Banc* ruled that Mendez is required to file an ITR and all income he derived should form part of his gross income subject to tax. It held that (a) Mendez, as a practicing doctor and rendering medical services under an active and operating business entity, is required to make or file a return; (b) he failed to file the return at the time required by law; and (c) such failure was willful, in violation of Section 255 of the Tax Code.

   As a medical doctor, he is presumed cognizant of his obligation to register with the BIR and pay taxes on his businesses. The BIR was also able to establish that there was no record of tax filing in the BIR system. Mendez' failure to submit his accounting records and other business documents despite notice and opportunities given is proof of willful and deliberate intent on his part to suppress evidence that would have been adverse to him.

2. No. For a criminal case to include a judgment of civil liability, there must be a formal assessment on the taxpayer.

   Quoting the Supreme Court's decision in *Adamson vs. Court of Appeals, G.R. Nos. 120935 and 124557 promulgated on May 21, 2009*, a formal assessment should (1) be addressed to the taxpayer; (2) contain a demand on the taxpayer to pay the tax liability and must set a period for payment; and (3) be mailed or sent to the taxpayer by the Commissioner. In this case, the purported assessment had none of the requisites. It is not a formal assessment but a mere estimate or schedule of deficiency tax which did not even bear the signature of the CIR.

   While a tax assessment is not necessary before there can be a criminal prosecution, a civil action for collection of the tax requires that the assessment procedure be complied with.

CIR vs. Perception Gaming, Inc.
CTA (*En Banc*) Case No. 1431, promulgated 28 September 2017

The exemption from income and other taxes granted to PAGCOR under its charter shall inure to the benefit of its licensees and franchisees, such as bingo operators. Accordingly, services rendered to PAGCOR and PAGCOR-authorized bingo operators are subject to 0% VAT, pursuant to Section 108(B)(3) of the Tax Code.

Facts:

Respondent Perception Gaming, Inc. (PGI) filed with the BIR a claim for refund of erroneously paid VAT and unutilized input VAT attributable to its zero-rated sales of service for the first quarter of 2010. PGI initially subjected to 12% VAT its gross receipts from the sale and lease of gaming machines to entities authorized by the PAGCOR to operate gaming centers or "bingo operators."

As the CIR failed to act on the claim, PGI filed a Petition for Review with the CTA. PGI argued that since PAGCOR and PAGCOR-authorized bingo operators are exempt from VAT under RA No. 9487 (or the PAGCOR Charter), its gross receipts from the lease of gaming equipment and performance of technical services in connection with the bingo operations of PAGCOR and its operators are subject to 0% VAT. The BIR, on the other hand, insisted that the lease of gaming equipment to PAGCOR's operators is subject to 12% VAT because, while the operators are exempt from taxes, its exemption only covers taxes for which it is directly liable and not the VAT passed-on to them by PGI. Moreover, since PGI does not deal directly with PAGCOR but only with its operators, PAGCOR's exemption cannot be extended in its favor.

The CTA First Division granted the refund claim. The CIR filed a Motion for Reconsideration, which was denied for lack of merit. Thereafter, it filed a Petition for Review with the CTA *En Banc*.

Issue:

Is PGI's sale of services to PAGCOR operators subject to 0% VAT?

Ruling:

Yes. The CTA *En Banc* upheld the decision of the First Division and ruled that PGI's sale of services to PAGCOR operators are subject to 0% VAT.

Under Section 13 (2) (a) and (b) of the PAGCOR Charter, PAGCOR is not the only entity exempted from taxes. The tax-exempt status is likewise expressly conferred on other entities that PAGCOR and its operators contract with in connection with casino operations. These entities include the PAGCOR-authorized bingo operators since PAGCOR is authorized under RA No. 9487 to license third parties to operate gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai.

Since PAGCOR and PAGCOR-authorized bingo operators are exempt from VAT under the PAGCOR Charter, the services rendered to them are effectively subject to 0% VAT pursuant to Section 108(B)(3) of the Tax Code.

[Editor's Note: The Supreme Court, in Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, G.R. No. 212530 promulgated 10 August 2016, previously affirmed that the preferential tax treatment of PAGCOR under its Charter inures to the benefit of and extends to its contractees and licensees.]

ZMG Ward Howell, Inc. vs. Commissioner of Internal Revenue
CTA (Second Division) Case No. 9004, promulgated 18 September 2017

The sale of services by a VAT-registered supplier from the customs territory to a PEZA-registered enterprise is subject to 0% VAT.

To qualify for VAT zero-rating, it is not required that the service should be rendered within the ECOZONE or that the service be directly connected to the registered activities of the PEZA enterprise.

Facts:

Respondent CIR assessed ZMG Ward Howell (ZMG) for alleged deficiency VAT on its sale of service to PEZA-registered entities operating within ECOZONEs. ZMG, an executive search firm, placed candidates for senior and mid-level executive positions to clients, a service which the BIR argued is not directly related to the registered activities of the PEZA enterprises. Moreover, the BIR posited that since ZMG's service was rendered outside the ECOZONE, its sale of service is subject to 12% VAT.

ZMG protested the assessment and argued its sale of services to PEZA entities should be considered effectively zero-rated under Section 108(B)(3) of the Tax Code. It argued that the law does not qualify as to the place where the service should be rendered and the condition for such service.

Upon receipt of the Final Decision on Disputed Assessment denying its protest, ZMG filed a Petition for Review with the CTA.

Issues:

1. Are services rendered within the customs territory by a VAT-registered supplier to a PEZA-registered enterprise subject to 0% VAT?

2. Is ZMG liable for deficiency VAT?

Ruling:

1. Yes. The sale by a VAT-registered person of services performed within the customs territory to PEZA-registered entities is subject to 0% VAT.

   Section 108(B)(3) of the Tax Code is clear when it provides that to qualify for VAT zero-rating, a sale of service must satisfy the following:

   a. Sale of service is performed in the Philippines;
   b. Service is performed by a VAT-registered person; and
   c. Service is rendered to persons or entities exempted under special laws or international agreements to which the Philippines is a signatory.

   Revenue Regulations 16-05, as amended, echoes the wording of the above provision of the Tax Code when it provides for effectively zero-rated sale of services by local suppliers to persons or entities granted indirect tax exemption under special laws or international agreements.

   The Philippine VAT system adheres to two interrelated principles: Cross Border Doctrine and Destination Principle. Under the Destination Principle, goods and services are taxed only in the country where they are consumed. Thus, exports are zero-rated while imports are taxed. The Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority.

   The CTA cited the Supreme Court ruling in *CIR vs. Toshiba Information Equipment (Phils.), Inc., G.R. No. 150154, promulgated on August 9, 2005*, which affirmed that PEZA enterprises are VAT-exempt entities hence, their purchase of goods or services from suppliers in the customs territory are VAT zero-rated in accordance with Revenue Memorandum Circular No. 74-99.

   The CIR's argument that the service should be rendered within the ECOZONE and should be directly connected to the PEZA-registered activities to qualify for VAT zero-rating is untenable. Such position is contrary to the plain wording of the law, established jurisprudence, and even the BIR's own revenue issuance.

   The CTA acknowledged the ruling of the Supreme Court in *CIR vs. American Express International, Inc. (Philippine Branch), G.R. No. 152609 promulgated on June 29, 2005*, which held that the tax situs of a zero-rated service is the place where the service is rendered. The CTA clarified, however, that the said ruling simply means that the service must be performed in the Philippines in order for the country to acquire jurisdiction to subject the sale transaction to VAT. It does not mean that the location of the service will determine whether to impose VAT on the sale of service at 0% or at the regular rate of 12%. It is for the purpose of acquiring jurisdiction to impose VAT that Section 108(B) of the Tax Code requires the performance of the service by VAT-registered persons be done in the Philippine before such transaction may qualify for VAT zero-rating.

2. Yes. Although its sale of service could qualify for VAT zero-rating, ZMG failed to present its BIR Certificate of Registration to prove that it is a VAT-registered supplier. By failing to prove that it is a VAT-registered entity, ZMG failed to discharge the burden of proving that its sale of services subject of the deficiency assessment qualifies for VAT zero-rating.

National Grid Corporation of the Philippines vs. Central Board of Assessment Appeals
CTA (*En Banc*) Case No. 1392, promulgated 05 September 2017

Under Section 252 of the LGC, payment under protest is mandatory if the taxpayer questions the reasonableness or correctness of the real property tax assessment.

Facts:

The Municipal Assessor of San Francisco, Agusan del Sur assessed Petitioner National Grid Corporation of the Philippines (NGCP) for alleged deficiency real property tax (RPT) for 2011-2012 on properties declared in the name of TRANSCO as owner and NGCP as beneficial user. NGCP filed a petition with the Local Board of Assessment Appeals (LBAA) assailing the RPT assessment, arguing that it is exempt from payment of RPT on the subject properties under Section 9 of RA 9511, the law granting a franchise to NGCP and Section 234 (c) of the Local Government Code. The Municipal Assessor filed a motion to dismiss citing lack of jurisdiction on the part of LBAA due to NGCP's failure to pay the tax under protest pursuant to Section 252 of the Local Government Code (LGC).

The LBAA dismissed the petition. NGCP appealed to the Central Board of Assessment Appeals (CBAA), which set aside the LBAA's decision. The CBAA partially denied NGCP's RPT exemption on some real properties but classified the other properties as under the special classes of real property subject to the assessment level of 10%.

Upon denial by the CBAA of the Motion for Partial Reconsideration, NGCP filed a Petition for Review with the CTA *En Banc*.

Issue:

Did the LBAA acquire jurisdiction over NGCP's petition against the RPT assessment?

Ruling:

No. The LBAA did not acquire jurisdiction as NGCP failed to pay under protest pursuant to Section 252 of the LGC.

The protest contemplated under Section 252 of the LGC is required where reasonableness or correctness of the amount assessed is being impugned. If the taxpayer disputes the reasonableness of the real property assessment, it is required to 'first pay the tax' under protest. On the other hand, if the taxpayer questions the very authority and power of the assessor to issue the assessment, or questions the authority and power of the treasurer to collect the tax, the matter becomes a legal question, which is properly cognizable by the proper trial court.

In other words, there can be two situations when a taxpayer may question the real property tax assessment: (1) question the reasonableness or correctness of the assessment, or (2) question the legality or validity of the assessment.

In the first scenario where the taxpayer questions the reasonableness, correctness, or excessiveness of the assessment, the taxpayer must first pay the tax under protest as mandated by Section 252 of the LGC. If the protest is denied, the taxpayer may file an appeal with the LBAA within 60 days from receipt of the decision. An adverse decision of the LBAA is appealable to the CBAA within 30 days from receipt of the decision. If the taxpayer is not satisfied with the ruling of the CBAA, it may appeal with the CTA *En Banc*.

In the second scenario, the question deals with the legality or validity of the assessment, i.e. authority and power of the assessor to impose the assessment and of the treasurer to collect real property tax. In such case, the taxpayer may appeal directly to the regional trial court. The decision of the RTC is appealable to the CTA.

In this case, NGCP questioned before the LBAA of Agusan del Sur the correctness of the assessment. As correctly observed by the LBAA, NGCP failed to pay under protest the questioned assessment as required under Section 252 of the LGC. The payment of the tax is mandatory to vest LBAA with jurisdiction to entertain the petition.

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