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Highlights

BIR Rulings

- Retirement gratuities granted to qualified employees under Section 13-A of RA 8291 (GSIS Law) are exempt from income tax and withholding tax on compensation. On the other hand, retirement gratuities granted to employees who have not met all the qualifications shall be subject to income tax and withholding tax on compensation. **(Page 4)**

- Investment earnings of a retirement fund, including those from government securities issued by the Bureau of Treasury, shall be exempt from income taxes, provided all the conditions stated under Section 60 (E) of the Tax Code are met. **(Page 5)**

- Per diem granted to the directors of a non-stock, non-profit corporation for every meeting attended violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person and disqualifies the said corporation from the issuance of a tax exemption certificate. Accordingly, it should be considered as an ordinary corporation subject to the regular income tax rate of 30% and other internal revenue taxes imposed under the Tax Code, as amended. **(Page 5)**

- Emolument for quarterly meetings paid to the trustees of a non-stock, non-profit educational institution and hospital is not in accordance with the definition of "non-stock" and "non-profit" and disqualifies the organization for the issuance of a certificate of tax exemption. Accordingly, it should be considered as a proprietary educational institution and hospital subject to the preferential rate of 10%. **(Page 6)**

- Honoraria and allowances given to public school teachers and other qualified citizens who serve during the Barangay and Sangguniang Kabataan (SK) Elections shall not be subject to income tax and withholding tax on compensation; provided, that the annual taxable income of such persons do not exceed the Php250,000 threshold under the TRAIN Law. **(Page 7)**

- Usufructuary does not need to secure a Certificate Authorizing Registration (CAR) before causing the annotation of the Contract of Usufruct on the title of the subject property. **(Page 7)**

BIR Issuances

- Revenue Regulation (RR) No. 16-2018 further amends RR No. 10-2015 in relation to the use of non-thermal paper for all Cash Register Machines (CRMs), Point-of-Sale (POS) machines and other invoice or receipt generating machine or software. **(Page 8)**

- Revenue Memorandum Order (RMO) No. 20-2018 amends the policies and procedures on the processing of tax credit certificates (TCCs) for cash conversion. **(Page 8)**

- RMO No. 23-2018 prescribes the policies, guidelines and procedures in availing the 8% income tax rate option for individuals earning from self-employment and/or practice of professions. **(Page 9)**

- Revenue Memorandum Circular (RMC) No. 30-2018 amends the documentary requirements for new business registrants. **(Page 12)**

- RMC No. 33-2018 announces the entry into force, effectivity and applicability of the renegotiated Philippines-Thailand Tax Treaty. **(Page 13)**

- RMC No. 34-2018 announces the entry into force, effectivity and applicability of the Philippines-Sri Lanka Tax Treaty. **(Page 14)**

- RMC No. 36-2018 extends the validity period of the Certificate of Accreditation issued to developers/dealers/suppliers/vendors/pseudo-suppliers of Cash Register Machines (CRM), Point-of-Sale (POS) machines and/or other sales machines/ receipting software. **(Page 14)**

- RMC No. 39-2018 reiterates the imposition of VAT on goods disposed of or existing as of the date of change in or cessation of a person's VAT registration, pursuant to Sec. 4.106-8 of RR No. 16-2005, implementing Sec. 106(C) of the Tax Code, as further amended by the TRAIN Law. **(Page 14)**

- RMC No. 41-2018 clarifies the issuance of a Tax Identification Number (TIN) to corporations in relation to their corporate term under the Corporation Code of the Philippines. **(Page 15)**

- RMC No. 43-2018 announces the creation of a fast lane for all One-Time Transactions (ONETT) Involving simple transactions. **(Page 16)**

BOC Updates

- Customs Memorandum Order (CMO) 05-2018 is supplemental to CMO No. 11-2014 and provides for the Revised Guidelines for Registration of Importers and Customs Brokers with the Bureau of Customs (BOC). **(Page 16)**

- CMO 06-2018 provides for the Submission of Advance Cargo Manifests and Other Documents to the BOC's Advanced Manifest System. **(Page 18)**

PEZA Issuances

- PEZA Memorandum Circular No. 2018-009 circularizes DENR Memorandum Circular No. 2017-011, which clarifies the requirements for importing recyclable materials containing hazardous substances. **(Page 20)**

- PEZA Memorandum Circular No. 2018-010 requests all PEZA-registered enterprises to observe the Expanded Breastfeeding Promotion Act of 2009. **(Page 20)**

BSP Issuances

- Circular No. 1001 provides for the Credit Limits for Project Finance Exposures. **(Page 21)**

- Circular No. 1002 provides for Amendments to the Guidelines on Proposed Investments from Third Party Investors (TPIs) and the Requirements on Transactions Requiring prior Monetary Board approval involving Additional Subscription of Shares of Stock. **(Page 22)**

- Circular No. 1003 provides for the Guidelines on the Establishment and Operations of Credit Card Issuers to Implement Republic Act No. 10870 or the Philippine Credit Card Industry Regulations Law. **(Page 23)**

- Circular No. 1004 provides for the Reduction in Reserve Requirements. **(Page 23)**

Court Decisions

- For sale of services to qualify for VAT zero-rating, the recipient of the services must be a foreign corporation engaged in business outside the Philippines and not doing business in the Philippines. A foreign corporation that appointed a local agent is deemed engaged in business in the Philippines. **(Page 24)**

- Under the TRAIN Law, the 12% deficiency interest is computed from the date prescribed for its payment until the full payment thereof or upon issuance of a notice and demand by the CIR, whichever comes earlier. **(Page 25)**

BIR Rulings

BIR Ruling No. 612-18 dated 5 April 2018

Retirement gratuities granted to qualified employees under Section 13-A of RA 8291 (GSIS Law) are exempt from income tax and withholding tax on compensation. On the other hand, retirement gratuities granted to employees who have not met all the qualifications shall be subject to income tax and withholding tax on compensation.

Facts:

X and Y, employees of ABC Center, a government hospital, wanted to avail of the retirement benefits under RA 8291 (GSIS Law). Section 13-A of the GSIS law grants a retirement gratuity to retirees who meet the following qualifications: (1) must have rendered at least 15 years of service; (2) must be at least 60 years of age upon retirement; and (3) must not be permanent total disability pensioners. Only X met all the qualifications. However, both X and Y have applied for and were granted retirement gratuities under the GSIS law.

Issues:

1. Is the retirement gratuity received by X subject to withholding tax on compensation?

2. Is the retirement gratuity received by Y subject to withholding tax on compensation?

Ruling:

1. No. Pursuant to Sec. 32 (B) (6) (f) of the Tax Code, benefits from the GSIS under RA 8291, including retirement gratuities received by government officials and employees, shall not be included in their gross income and shall be exempt from income tax. Accordingly, the gratuity pay of retiring employees, who are qualified to avail of the retirement benefits under RA 8291, shall be excluded from their gross income and shall not be subjected to withholding tax on compensation.

2. Yes. For officials and employees who are not qualified to avail of the retirement benefits under Section 13 of RA 8291, the benefits that they will receive shall be considered as part of their compensation income, which are subject to income tax and withholding tax on wages under Section 79 of the Tax Code. Consequently, the retirement gratuity received by Y shall be subject to withholding tax on compensation.

Investment earnings of a retirement fund, including those from government securities issued by the Bureau of Treasury, shall be exempt from income taxes, provided all the conditions stated under Section 60 (E) of the Tax Code are met.

BIR Ruling No. 613-18 dated 6 April 2018

Facts:

C Provident Plan (the Plan) is a non-stock, non-profit corporation established by C Corporation (the Corporation) as an employees' retirement plan for the exclusive benefit of its officials and employees. The Plan was incorporated with the primary purpose of establishing and maintaining a Fund, the source of which shall be derived from the individual contributions of the members and counterpart contributions of the Corporation. All the earnings of the Fund accumulated by the Plan from investments, including those from government securities issued by the Bureau of Treasury, shall be distributed to the members in the form of benefits in cases of retirement, resignation or separation from service.

Issue:

Are the earnings of the Fund accumulated by the Plan exempt from income tax?

Ruling:

Yes. Section 60 (B) of the Tax Code lays down the following requirements in order for the earnings of a retirement fund to be exempt from income tax: (1) the contributions are made to the trust by the employer, or employees, or both; (2) such contributions are made for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and (3) under the trust instrument it is impossible (in the taxable year and at any time thereafter prior to the satisfaction of all liabilities with respect to employees under the trust) for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of the employees.

The Plan has met all of the above conditions that qualifies the earnings of the Fund as exempt from income tax:

a. The Plan sources its funds from contributions made by both employer and employees;

b. The contributions are made for the purpose of distributing to such members in the form of benefits in cases of retirement, resignation or separation from service, all the earnings of the Fund accumulated by the Plan from investments, including those from government securities issued by the Bureau of Treasury.

c. The Plan was incorporated for the exclusive benefit of the member-employees/ officials or their beneficiaries.

Per diem granted to the directors of a non-stock, non-profit corporation for every meeting attended violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person and disqualifies the said corporation from the issuance of a tax exemption certificate. Accordingly, it should be considered as an ordinary corporation subject to the regular income tax rate of 30% and other internal revenue taxes imposed under the Tax Code, as amended.

BIR Ruling No. 718-18 dated 16 April 2018

Facts:

D Inc., a non-stock, non-profit corporation, applied with the BIR for the issuance of a tax exemption certificate pursuant to Section 30 (J) of the Tax Code, which exempts non-stock, non-profit corporations from corporate income tax in respect to income received by them as such. The by-laws of D Inc. provides that the members of the board of directors (BOD) shall receive a per diem for every board meeting attended, the amount of which shall be fixed by the members.

Issue:

Is D Inc. entitled to the issuance of a tax exemption certificate?

Ruling:

No. RMC No. 51-2014 has clarified that, in order for an entity to qualify as a non-stock and/or non-profit corporation/association/organization exempt from income tax under Section 30 of the Tax Code, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person.

Giving per diem to the members of the BOD clearly violates the requirement that no part of the net income or assets of the corporation shall inure to the benefit of any individual or specific person. Consequently, D Inc. is not entitled to the issuance of a certificate of tax exemption and shall be treated as an ordinary corporation subject to the 30% income tax rate pursuant to Section 27(A) and other internal revenue taxes imposed by the Tax Code.

BIR Ruling No. 755-18 dated 30 April 2018

Emolument for quarterly meetings paid to the trustees of a non-stock, non-profit educational institution and hospital is not in accordance with the definition of "non-stock" and "non-profit" and disqualifies the organization for the issuance of a certificate of tax exemption. Accordingly, it should be considered as a proprietary educational institution and hospital subject to the preferential rate of 10%.

Facts:

XYZ Medical School Foundation Inc. (XYZ), a non-stock, non-profit educational institution and hospital, applied with the BIR for the issuance of a tax exemption certificate pursuant to Section 30 (E) and (H) of the Tax Code, which exempts non-stock, non-profit corporations or associations and non-stock, non-profit educational institutions, respectively, from corporate income tax. The treasurer of XYZ certified under oath that the members of the Board of Trustees (BOT) are receiving emoluments of Php2,000 every quarterly meeting.

Issue:

Is XYZ entitled to the issuance of a tax exemption certificate?

Ruling:

No. "Non-stock" means no part of the corporation's income is distributable as dividends to its members, trustees, or officers and that any profit obtained as an incident to its operation shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized. "Non-profit" means that no net income or asset accrues to or benefits any member or specific person, with all the net income or asset devoted to the institution's purposes and all its activities conducted not for profit.

XYZ's payment of emoluments to the BOT is not in accordance with the definition of "non-stock" because it is considered a distribution of equity (including net income) of XYZ to its trustees. The payment is also not in accordance with the definition of "non-profit" because the payment from its net income accrues to the benefit of its trustees. Consequently, XYZ is not entitled to the issuance of a certificate of tax exemption and shall be treated as a proprietary educational institution and hospital subject to the 10% preferential rate pursuant to Section 27 (B) of the Tax Code.

Honoraria and allowances given to public school teachers and other qualified citizens who serve during the Barangay and SK Elections shall not be subject to income tax and withholding tax on compensation; provided, that the annual taxable income of such persons do not exceed the Php250,000 threshold under the TRAIN Law.

BIR Ruling No. 759-18 dated 8 May 2018

Facts:

The COMELEC pays honoraria and allowances to public school teachers and other qualified citizens who serve during Barangay and SK Elections. Pursuant to BIR Ruling No. 494-18, honoraria and allowances, no matter how negligible the amount, are wealth that flow into the hands of the recipient, hence subject to income tax and consequently, withholding tax on compensation. The Alliance of Concerned Teachers (ACT) disagrees with such ruling, arguing that the compensation package of teachers who will serve in the upcoming Barangay and SK election will not exceed the Php250,000 threshold under the TRAIN Law, hence should not be subject to income tax and withholding tax on compensation.

Issue:

Are the honoraria and allowances received by the public school teachers and other qualified citizens who serve during the Barangay and SK elections, but whose income does not exceed the PHP 250,000 threshold, subject to income tax and withholding tax on compensation?

Ruling:

No. If the annual taxable income, which includes the honoraria and allowances, of teachers who will serve in the Electoral Board does not exceed Php250,000, such honoraria and allowances shall not be subject to income tax and withholding tax under the TRAIN Law.

Usufructuary does not need to secure a CAR before causing the annotation of the Contract of Usufruct on the title of the subject property.

BIR Ruling 810-18 dated 10 May 2018

Facts:

A Co. and B Co. entered into a Contract of Usufruct over a parcel of land owned by A Co. The contract stipulates that A Co. reserves the right to sell, transfer, dispose of, mortgage, charge, hypothecate, create liens over or encumber the property to, or in favor of a third party. The contract also stipulates that the usufructuary, B Co., shall cause the annotation of the contract on the TCT of the land. Pursuant to Section 58 (E) of the Tax Code, a CAR must be secured from the BIR stating that the transfer of real property has been reported and the CGT or creditable withholding tax, if any, has been paid before the Register of Deeds may effect the registration of any document transferring real property on the title covering the same.

Issue:

Is B Co. required to secure a CAR before causing the annotation of the Contract of Usufruct on the TCT of the subject property?

Ruling:

No. Usufruct gives the usufructuary the right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. Clearly, a Contract of Usufruct does not involve transfer, conveyance or disposition of any portion of the real property or its ownership.

Here, the Contract of Usufruct is not a sale or transfer of real property because the A Co. retains ownership thereof as it is expressly stated in the contract that A Co. reserves the right to sell, transfer, dispose of, mortgage, charge, hypothecate, create liens over or encumber the property to, or in favor of a third party. Consequently, there being no sale, conveyance, transfer or disposition of the land registered in the name of A Co., B Co. is not required to secure a CAR before causing the annotation the Contract of Usufruct on the TCT of the subject property.

BIR Issuances

RR No. 16-2018 further amends RR No. 10-2015 in relation to the use of non-thermal paper for all CRMs, POS machines and other invoice or receipt generating machine or software.

RR No. 16-2018 dated 25 May 2018

- All taxpayers using CRM, POS machines or other invoice or receipt generating machines have the option to use the type of paper depending on their business requirements, subject to the retention and preservation of accounting records for the period within which the Commissioner is authorized to make an assessment and collect taxes.
- All tape receipts issued shall now show the serial number of the CRM/POS machine as an additional information required under Section 5 of RR No. 10-2015.
- A buyer or customer may return the issued tape receipt to the seller and request for the issuance of a manual invoice or receipt, if it is required as a proof of payment to claim the amount as expense (for income tax purposes) or input tax (for VAT purposes).
    1. The corresponding sales for the tape receipts that have been replaced by manual invoice or receipt shall be deducted from the sales to be reported in the eSALES system of the BIR.
    2. Such deduction shall be reflected as an adjustment in the CRM Sales Book/ Back end report.
    3. The returned tape receipt shall be attached to the duplicate copy of the manually issued invoice or receipt and shall be the basis in adjusting the sales.
    4. However, the sales shown in the manual invoice / receipt shall still be included, but separately indicated, in the Summary List of Sales (SLS) required to be submitted by VAT-registered taxpayers.
- Any person who fails to comply with the provisions of these regulations shall be subject to penalties imposed under existing revenue issuances.
- These regulations shall take effect 15 days after their publication in a newspaper of general circulation.

(Editor's Note: RR No. 16-2018 was published in the Manila Bulletin *on 28 May 2017.)*

RMO No. 20-2018 amends the policies and procedures on the processing of TCCs for cash conversion.

RMO No. 20-2018 dated 3 May 2018

- All requests for cash conversion shall be filed with the office that originally processed or investigated the claim for issuance of the TCC, except in the following cases:

1. Claims originally filed with the Revenue District Offices (RDO), but were subjected to further review and approval by the concerned offices in the National Office, shall be filed with the Tax Audit and Review Division (TARD)

2. Revalidated TCCs, which shall be filed with the Miscellaneous Operations Monitoring Division (MOMD) of the Collection Service (CS) for revalidated TCCs.

- The original copy of the TCC must be surrendered to the concerned processing office as part of the supporting documents for cash conversion.

- If the taxpayer-claimant is found to have an Outstanding Tax Liability (OTL) upon verification by the MOMD during the processing of the request and/or by the Accounting Division prior to the final approval of the refund, the taxpayer-claimant may use the TCC for payment of the OTL, if applicable.

- Any request for cash conversion of the amount reflected in the TCC or its unutilized portion may be allowed, provided that TCCs, which remain unutilized after five (5) years from date of issue, shall not be allowed to be converted into cash, unless revalidated before the end of the fifth year.

- No cash conversion shall be allowed for TCCs issued under the following cases:

  1. TCC issued as a result of the availment of incentives granted pursuant to special laws for which no actual payment was made.

  2. Previously transferred or assigned TCCs prior to RR No. 14-2011.

- The following are the documents required for the processing and approval of requests for conversion of TCC into cash refund:

  1. Letter request of taxpayer-claimant for conversion of TCC to cash refund;

  2. Original copy of the TCC for conversion;

  3. Original copy of the Secretary's Certificate or Special Power of Attorney (SPA) executed by the taxpayer-claimant, authorizing his/its representative to apply for TCC cash conversion on his/its behalf, whichever is applicable;

  4. Board Resolution approving the issuance of a Secretary's Certificate/SPA to the authorized representative, whichever is applicable; and

  5. Any government-issued identification card of the taxpayer-claimant or his/its authorized representative.

RMO No. 23-2018 prescribes policies, guidelines and procedures in availing the 8% income tax rate option for individuals earning from self-employment and/or practice of professions.

RMO No. 23-2018 dated 21 May 2018

- The following criteria must be satisfied in order to qualify and avail the 8% income tax rate option:

  1. The individual is earning from self-employment and/or practice of profession;

  2. The gross sales/receipts and other non-operating income do not exceed the P3,000,000.00 VAT threshold during the taxable year;

3. The taxpayer is registered and subject only to percentage tax under Section 116 of the Tax Code, or is exempt from VAT or other percentage taxes; and,

4. The taxpayer must have signified his intention to elect the 8% income tax rate by filing any of the following:

    - New Business Registrant

        a. Upon registration using BIR Form No. 1901 and/or 1701Q; or

        b. On the initial quarter return (BIR Form No. 2551Q and/or 1701Q) of the taxable year after the commencement of a new business/ practice of profession.

    - Existing Individual Business Taxpayers

        a. Filing of BIR Form 1905 (Application for Registration Information Update) at the beginning of the taxable year to end-date the form type of quarterly percentage tax, provided, that the option to avail the 8% income tax shall be selected in filing the initial quarterly income tax return;

        b. 1st Quarterly Percentage Tax Return, and/or;

        c. 1st Quarterly Income Tax Return.

- The 8% income tax rate option is not available to the following individuals, who shall be taxed based on the graduated income tax rates:

    1. Purely compensation income earners;

    2. VAT-registered taxpayers, regardless of the amount of gross sales/ receipts and other non-operating income;

    3. Taxpayers exempt from VAT or other percentage taxes whose gross sales/ receipts and other non-operating income exceeded the P3,000,000.00 VAT threshold during the taxable year;

    4. Taxpayers who are subject to other percentage taxes under Title V of the Tax Code, except those subject under Section 116 of the Tax Code;

    5. Partners of a General Professional Partnership (GPP);

    6. Individuals enjoying income tax exemption.

- An individual who is exempt from income tax, such as registered Barangay Micro Business Enterprises (BMBEs), is bound to its availment of the privilege under Republic Act (RA) No. 9178 for the entire period of its BIR registration and is not allowed to avail of the 8% income tax rate option.

- The option to avail of the 8% income tax rate by self-employed individuals is effective only for the covered taxable year when the election was made; otherwise, all individuals shall be subject to the graduated income tax rates at the beginning of each taxable year:

    1. The availment of the 8% income tax rate option is required to be signified and selected every taxable year if the taxpayer wishes to be covered by such rate.

2. Once the 8% income tax rate option is elected, the same shall be irrevocable, and no amendment of option shall be made for the taxable year it was made.

- A self-employed individual, who is qualified and availed the 8% income tax rate option, shall not be required to file the quarterly percentage tax return, but shall be required to file the following:

    1. Quarterly Income Tax Return, unless exempted by any revenue issuances;

    2. Annual Income Tax Return (Financial Statement is not required to be attached).

- The P250,000.00 reduction from taxable gross sales/ receipts and other non-operating income is not applicable to mixed income earners since it is already incorporated in the first tier of the graduated income tax rates applicable to compensation income.

- The taxable income for individuals earning income from self-employment/ practice of profession shall be based on the following:

Scenario	Tax Base
If the taxpayer opted to be taxed at graduated rates or has failed to signify the 8% income tax rate option	Net Taxable Income
If the 8% income tax rate is availed by self-employed individuals earning income from purely self-employment and/or practice of profession	Gross sales/ receipts and other non-operating income in excess of P250,000.00
Mixed income earner, who availed the 8% income tax rate	Gross sales/ receipts and other non-operating income, without the P250,000.00 reduction

- The self-employed individual availing the 8% income tax rate shall still be registered with "Percentage Tax – Quarterly" tax type, and the BIR Form No. 2551Q form type shall be end-dated.

- The 2551Q form type shall be automatically registered in the BIR registration system at the beginning of each following year to confirm that the taxpayer is subject to graduated income tax rates at the beginning of the year and required to file the quarterly percentage tax return unless:

    1. An application for registration information update to avail the 8% income tax rate for the said taxable year has been submitted to the concerned RDO, or;

    2. The 8% income tax rate option was selected in the filing of the 1st quarterly percentage or income tax return.

- A Non-VAT individual taxpayer who availed the 8% income tax rate and whose gross annual sales and/or receipts subsequently exceed the amount of P3,000,000.00 anytime during the current taxable year when the option was made, shall automatically be subjected to graduated income tax rates and be held liable for VAT, prospectively, starting the first day of the month following the month when the threshold was breached, subject to the following rules:

1. The taxpayer shall attach an audited Financial Statement (FS) in filing the annual income tax return.

2. A tax credit for the previous quarter/s income tax payments under the 8% income tax rate option shall be allowed.

3. The taxpayer shall immediately update his registration within the month following the month he exceeded the VAT threshold to reflect the change in tax profile from non-VAT to a VAT taxpayer.

4. Percentage tax shall be imposed from the beginning of the taxable year or commencement of business/ practice of profession until the taxpayer is liable to VAT.

- A VAT-registered person whose gross sales and/or receipts for 3 consecutive years did not exceed the VAT threshold amount of P3,000,000.00, may update his or her registration from VAT to non-VAT in order to qualify and avail the 8% income tax rate option, on or before the first quarter of a taxable year, following the rules and regulations on registrations, updates, verification, and the inventory and cancellation of VAT invoices/ receipts.

RMC No. 30-2018 amends the documentary requirements for new business registrants.

RMC No. 30-2018 dated 3 May 2018

- In line with the Data Privacy Act of 2012 and to promote ease of doing business, the following changes have been made to Annexes A1 to A3 of RMC No. 93-2016, prescribing documentary requirements for new business registrants:

1. Removal of Books of Accounts in securing a Certificate of Registration (COR) and Authority to Print (ATP).

    - Books of Accounts for new business registrants shall be registered by the taxpayer within 30 calendar days from the date of business registration.

    - Failure to register within the prescribed period shall be subject to penalties pursuant to existing revenue issuances.

2. In case an authorized representative will transact with the BIR on behalf of the taxpayer, the following shall be required:

    - For Individual

        a. Special Power of Attorney (SPA); and

        b. Identification Card (ID) of the authorized person.

    - For Non-Individual

        a. Board Resolution indicating the name of the authorized representative;

        b. Secretary's Certificate; and

        c. ID of the authorized person.

RMC No. 33-2018 announces the entry into force, effectivity and applicability of the renegotiated Philippines-Thailand Tax Treaty.

RMC No. 33-2018 dated 17 May 2018

- The renegotiated Philippines-Thailand Tax Treaty shall apply to income that arises in the Philippines beginning 1 January 2019.
- Below are the major amendments under the renegotiated Philippines-Thailand Tax Treaty:

1. Article 4, Resident:
    - In case a non-individual is a resident of both contracting states, its status shall be determined based on the following order of criteria:
        a. Place of incorporation;
        b. Place where its effective management is situated; and
        c. By mutual agreement, if place of effective management cannot be determined.
2. Article 5, Permanent Establishment (PE):
    - Preparatory or auxiliary activities shall not give rise to PE status.
    - An insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a PE in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative, who is not an agent of an independent status.
3. Article 7, Business Profits:
    - An enterprise, which has a PE in the other state, may be taxed in the said state for its income attributable to:
        a. That PE; or
        b. Sales in the other State of goods or merchandise of the same or similar kind as those sold through the PE; or
        c. Other business activities carried on in the other State of the same or similar kind as those effected through the PE.
4. Article 10, Dividends:
    - Dividends are now subject to a 10% preferential withholding tax (WHT) rate if the beneficial owner is a company (excluding partnerships), which holds directly at least 25% of the capital of the paying company.
    - In all other cases, the 15% WHT rate will apply.
5. Article 11, Interest:
    - Interest is subject to a 10% preferential WHT rate if it is received by any financial institution (including insurance company).
    - In all other cases, the 15% WHT rate will apply.

6. Article 12, Royalties:

    - A standard 15% preferential WHT rate is imposed on royalties paid to a resident of either the Philippines or Thailand.

RMC No. 34-2018 announces the entry into force, effectivity and applicability of the Philippines-Sri Lanka Tax Treaty.

RMC No. 34-2018 dated 17 May 2018

- The Philippines-Sri Lanka Tax Treaty shall apply to income that arises in the Philippines beginning 1 January 2019.
- The highlights of the Philippines-Sri Lanka Tax Treaty are as follows:

    1. Article 10, Dividends:

        - Dividends are subject to a 15% WHT rate if the beneficial owner is a company (excluding partnership).
        - In all other cases, the 25% WHT rate shall apply.

    2. Article 11, Interest:

        - Interest is subject to a 15% WHT rate.

    3. Article 12, Royalties:

        - Royalties are subject to a 15% preferential WHT rate if paid by an enterprise registered with, and engaged in preferred areas of activities.
        - In all other cases, the 25% WHT rate shall apply.

RMC No. 36-2018 extends the validity period of the Certificate of Accreditation issued to developers/dealers/suppliers/ vendors/pseudo-suppliers of CRM, POS machines and/or other sales machines/ receipting software.

RMC No. 36-2018 dated 21 May 2018

- The following rules shall govern the extension of the validity dates of Certificates of Accreditation of developers/dealers/suppliers/ vendors/pseudo-suppliers of CRM, POS machines and/or other sales machines/ receipting software:

    1. Certificates of Accreditation issued on or before 31 July 2015 shall be valid until 31 July 2020.
    2. Certificates issued on 1 August 2015 onwards shall follow the five-year validity period based on actual date of issuance.

- Both primary and supplementary invoices/receipts must reflect the corresponding Date of Issuance and Validity Period of Accreditation.

RMC No. 39-2018 reiterates the imposition of VAT on goods disposed of or existing as of the date of change in or cessation of a person's VAT registration pursuant to Sec. 4.106-8 of RR No. 16-2005, implementing Sec. 106(C) of the Tax Code, as further amended by the TRAIN Law.

RMC No. 39-2018 issued on 24 May 2018

- This circular emphasizes that goods or properties originally intended for sale or use in business, including capital goods, disposed of or existing as of the date of change of status of a taxpayer from VAT to Non-VAT or upon cessation of operations are subject to VAT imposed under Sec. 106(C), as implemented by Sec. 4.106-8 of RR No. 16-2005.

- Thus, taxpayers who changed their status from VAT to Non-VAT, due to the increase in the VAT threshold of P3,000,000.00 as provided under the TRAIN Law, shall file quarterly VAT returns and pay the tax due on the inventories existing as of the date of change of status.

RMC No. 41-2018 clarifies the issuance of a TIN to corporations in relation to their corporate term under the Corporation Code of the Philippines.

RMC No. 41-2018 dated 24 May 2018

- A corporation whose corporate life has been extended by the SEC prior to the expiry of its corporate life, shall not be issued a new TIN. However, the taxpayer shall update its registration record by submitting BIR Form 1905, attaching the newly issued SEC Certificate of Registration and amended Articles of Incorporation bearing the same name as a proof of its corporate life extension.

- A corporation or partnership that has been issued a second or new SEC COR to correct typographical errors (Corporate Name errors, and so on) shall not be issued a new TIN. However, it shall update its registration with the RDO where such corporation/partnership is registered.

- A corporation or partnership whose SEC registration has been revoked or expired shall cease to exist as an entity to do business.

- Expired corporations are those with corporate terms that have lapsed without being renewed or extended.

    1. While SEC allows the re-registration of an expired corporation using the same corporate name as reflected in the SEC COR, such corporation is a new corporation bearing a new SEC Registration Number and a new pre-generated TIN as confirmation that the same is a separate and distinct entity from the expired corporation.

    2. The pre-generated TIN issued through the SEC to the newly registered corporation, using the name of the expired corporation shall be confirmed by the BIR using BIR Form No. 1903 for the issuance of BIR Certificate of Registration and application for Authority to Print principal/supplementary invoices/receipts, simultaneous with the application for cancellation of the old TIN of the expired corporation.

    3. The new TIN shall be used in all future transactions with the BIR.

    4. The TIN of the expired corporation or partnership shall be used by the said corporation in the process of liquidation/winding-up of the business and shall be cancelled upon issuance of clearance by the BIR.

    5. The registration as a Large Taxpayer (LT) shall be carried over by the newly registered corporation that assumed the business name and operations of the expired corporation.

    6. Registration will have to be made with the LT Division where the old corporation was registered.

- In the merger of corporations, the TIN of the surviving corporation shall be retained while the TIN of the merged corporation shall be cancelled. In the consolidation of corporations, a new TIN shall be issued to the new corporation and the TINs of the consolidated corporations shall be cancelled.

RMC No. 43-2018 announces the creation of fast lane for all ONETT Involving simple transactions.

RMC No. 43-2018 dated 28 May 2018

- All One-Time Transaction (ONETT) Teams are directed to create a fast lane to cater to individuals or corporations filing Capital Gains Tax or Donor's Tax Returns with only one (1) Deed of Sale/Exchange/Donation involving 1 to 3 properties.

- In compliance with the provisions of the "Anti Red Tape Act of 2007" (ARTA), these transactions shall be processed and the corresponding eCARs released within 3 working days upon submission of complete documentary requirements.

BOC Updates

CMO 05-2018 is supplemental to CMO No. 11-2014 and provides for the Revised Guidelines for Registration of importers and Customs Brokers with the BOC.

CMO No. 05-2018 dated 24 April 2018

- Department of Finance (DOF) Department Order (DO) No. 11-2018 dated 9 February 2018 previously provided for the reversion of the authority to accredit and register importers and customs brokers solely to the BOC.

- The same DO removed from the list of requirements for accreditation and registration of importers and customs brokers the submission of Bureau of Internal Revenue (BIR) Importer Clearance Certificate (BIR-ICC) or BIR Brokers Clearance Certificate (BIR-BCC).

- The following are the documentary requirements for accreditation of importers and customs brokers:

    1. For new importer, the following pertinent documents are to be submitted:

        a. Application Form (notarized and completely filled out);

        b. Bureau of Customs Official Receipt (BCOR) evidencing payment of Processing Fee (Php 1,000);

        c. Corporate Secretary Certificate (Corporation) / Affidavit (Sole Proprietorship) / Partnership Resolution (Partnership) / BOD Resolution (Coop) designating its authorized signatories in the import entries;

        d. Two (2) valid government issued IDs (with picture) of Applicant and Responsible Officers;

        e. NBI Clearance of applicant (issued within three (3) months prior to the application);

        f. Latest General Information Sheet (Corporation) / DTI (Sole Proprietorship) / Articles of Partnership / Cooperative Development Authority (Cooperatives);

        g. Personal Profile of Applicant, President and Responsible Officers (with 2x2 ID picture);

        h. Company Profile with pictures of office w/ proper and permanent signage;

        i. Address of warehouse owned or leased by the importer where the imported goods are intended to be stored;

j. Proof of Lawful Occupancy of Office Address and Warehouse;

k. List of Importables;

l. Printed CPRS Record and updated "STORED' CPRS notification;

m. Indorsement from the collector, if applicable;

n. BIR Registration (2303);

o. Latest Income Tax Return (ITR) duly received by the BIR; and

p. Valid Mayor's Permit.

2. For renewal of importer's application, the importer shall submit the following pertinent documents:

   a. Updated General Information Sheet (Corporations) / DTI (Sole Proprietorship) / Articles of Partnership /Certificate of Compliance (Cooperatives);

   b. Company Profile with pictures of office with proper and permanent signage;

   c. Address of warehouse owned or leased by the importer where the imported goods are intended to be stored;

   d. Proof of Lawful Occupancy of Office Address and Warehouse;

   e. Updated List of Importables;

   f. Printed CPRS Record and updated "STORED" CPRS notification;

   g. ITR for the past three (3) years; and

   h. Valid Mayor's Permit.

3. Customs Broker (New Applicants)

   a. Application Form (notarized and completely filled out);

   b. BOC Official Receipt (BCOR) evidencing payment of Processing Fee (Php 1,000);

   c. Valid Professional Regulations Commission (PRC) card;

   d. List of clients with complete address and contact details;

   e. List of representatives with personal details, photos and specimen signature;

   f. Printed CPRS profile with stored notification;

   g. BIR Registration (2303);

   h. Latest ITR duly received by the BIR;

i. NBI Clearance; and

j. Certificate of Good Standing issued by a PRC accredited national organization of Customs Brokers.

4. Customs Broker (Renewal Requirements)

a. Updated Professional Profile;

b. Valid PRC card;

c. Updated list of clients with complete address and contact details;

d. Updated list of representatives with personal details, photos and specimen signature;

e. Printed CPRS profile with stored notification;

f. Printed CPRS profile with stored notification;

g. ITR for the past three (3) years;

h. NBI Clearance; and

i. Certificate of Good Standing issued by a PRC accredited national organization of Customs Brokers.

5. This CMO shall take effect 15 calendar days after its publication at the Official Gazette or a newspaper of national circulation.

(Editor's Note: CMO 05-2018 was received by the UP Law Center and published in The Manila Times *on 2 May 2018.)*

CMO 06-2018 provides for the Submission of Advance Cargo Manifests and Other Documents to the BOC's Advanced Manifest System.

CMO No. 06-2018 dated 7 May 2018

- This Order covers sea freight and air freight in all of the Philippine Ports of Entry on the submission of advance manifest and other required documents from the foreign carriers, shipper, consignee, accredited cargo surveying company (ACSC), and their authorized agent to the Bureau's Advanced Manifest System.

- Operational Provisions:

1. A true and complete copy of the cargo manifest and Consolidated Cargo Manifest (CCM) shall be electronically sent in advance by the shipping company, Non-vessel operating common carrier (NVOCC), freight forwarder, cargo consolidator, or their authorized agents within the cut-off period of 24 or 12 hours prior to the arrival of the carrying vessel at the port of entry depending whether transit time from the port of origin to the port of entry is at least or less than 72 hours.

2. A true and complete copy of the cargo manifest and CCM shall be electronically sent in advance by the airline, air express operator, air freight forwarder and de-consolidator before the cut-off period of one (1) hour from the arrival of the aircraft at the port of entry if the port of loading is in Asia, or four (4) hours if port of loading is outside of Asia.

3. The electronic submission of the Cargo Manifest and CCM shall be in a searchable Portable Document Format (PDF) through the accredited Value-Added Service Provider (VASP)/Accredited Information Processor (AIP) of the BOC's Advanced Manifest System and to the Cargo Targeting System ("CTS").

4. The cargo description in the Cargo Manifest and the CCM shall be precise enough to enable the BOC to identify the goods intended to be discharged in the port and take pre-emptive action if warranted. Other required information include information as to the value of the goods and freight charges.

5. Failure to submit the required information within the prescribed period shall be subject to imposition of fines prescribed under Section 1412 of the Customs Modernization and Tariff Act (CMTA) which provides for a fine no less than P100,000 but not more than P300,000. However, late submission may be excused if due to force majeure, technical problems of the BOC and other analogous circumstances.

6. Other documents for submission in searchable PDF through the VASP/AIP to the BOC Advanced Manifest System:

Document Type	Submitting Party	Prescribed Period
Master Bill of Lading/Airway Bill and House Bill of Lading/Airway Bill, as the case maybe	The shipping company, NVOCC, freight forwarder, cargo consolidator, or their authorized agents	At least 24 hours prior to the arrival of the vessel or aircraft
Commercial Invoice and Packing List	The carrier or its authorized agent shall obtain the documents from the shipper	At least 24 hours prior to the arrival of the vessel or aircraft
Stowage Plan and Containers Discharging List	The shipping line, NVOCC, or their authorized agent	At least 24 hours prior to the arrival of the vessel or aircraft if the transit time is at least 72 hours or 12 hours prior if less
Load Port Survey Report	BOC's accredited cargo surveying company	At least 24 hours prior to the arrival of the vessel
Supplemental Cargo Manifest covering cargoes/containers not listed in the inward foreign manifest (IFM) and/or Stowage Plan	The shipping company, Non-vessel operating common carrier (NVOCC), freight forwarder, cargo consolidator, or their authorized agents	Not later than 48 hours (if cargo container is listed in the IFM but not in the Stowage Plan or 24 hours, if not listed in both, from the date of discharge of the last package from the vessel

- This CMO shall take effect immediately.

(Editor's Note: The BOC issued a Memorandum dated 29 May 2018 suspending the implementation of CMO No. 06-18 until further notice.)

PEZA Issuances

PEZA Memorandum Circular No. 2018-009 circularizes DENR Memorandum Circular No. 2017-011, which clarifies the requirements for importing recyclable materials containing hazardous substances.

PEZA Memorandum Circular No. 2018-009 dated 30 April 2018

- DENR Memorandum Circular (MC) No. 11 Series of 2017 highlights the following:

    1. All importers of recyclable materials containing hazardous substances shall be required to secure an Environmental Compliance Certificate (ECC) based on project type;

    2. The requirement to secure an ECC shall be consistent to the limiters set under the project type "3.6.4. Storage facilities for toxic or hazardous materials substances or products (including for those in PCL)" of DENR MC No. 2014-005: Revised Guidelines for the Coverage Screening and Standardized Requirements under PEIS.

- All ecozone locators with importations of recyclable materials containing hazardous substances that have been previously issued a Certificate of Non-Coverage (CNC) shall coordinate with their respective PEZA Environmental Safety Group (ESG) / Environmental Health and Safety Division (EHSD) for their ECC application following DENR MC No. 2017-011.

- Online processing of the Treatment, Storage and Disposal Facility (TSD)/ Transporter Registration Certificate (TRC) for new/renewal/amendment is currently deferred indefinitely. Manual application of permits shall take effect.

PEZA Memorandum Circular No. 2018-010 requests all PEZA-registered enterprises to observe the Expanded Breastfeeding Promotion Act of 2009.

PEZA Memorandum Circular No. 2018-010 dated May 4, 2018

- All PEZA-registered enterprises are requested to observe the Expanded Breastfeeding Promotion Act of 2009, which requires companies to:

    1. Create a written breastfeeding policy to support breastfeeding in the workplace.

    2. Establish lactation stations – Existing health clinics within the establishment may be utilized as breastfeeding/lactation stations.

    3. Allow lactation breaks – Breaks should not be less than 40 minutes for every 8-hour working period.

    4. Make information on breastfeeding available in the workplace.

- Other salient points:

    1. Available incentives – Establishments may secure from DOH a "Working Mother-Baby-Friendly Certificate" to avail of tax incentives for the provision of suitable facilities or services within the lactation station.

    2. Exemption – Enterprises who have no nursing or lactating or pregnant employees and no female clients may secure an exemption from DOLE subject to DOLE Department Order No. 2015-143.

3. Sanctions for non-compliance – Administrative sanction for unjustifiable refusal or failure to comply with the need of a nursing employee to take lactation breaks or the establishment of lactation area includes a fine of not less than PHP 50,000.

BSP Issuances

Circular No. 1001 provides for the Credit Limits for Project Finance Exposures.

BSP Circular No. 1001 dated 30 April 2018

- The following provisions of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-bank Financial Institutions (MORNBFI) were amended to provide the credit limits that shall be applied to project finance exposures of banks/quasi-banks (QBs).

- Item e of Section X303 of the MORB on credit exposure limits to a single borrower was amended to provide, among others, that loans, credit accommodations, and guarantees granted by a bank to an entity (often a special purpose entity or SPE) for the purpose of project finance as defined under Subsec X330.2 shall be subject to a separate individual limit of 25% of the net worth of the lending bank.

- Section 4303Q of the MORNBFI on loan limit to a single borrower was amended to provide, among others, the total liabilities of an entity (often a special purpose entity or SPE) for the purpose of project finance as defined under Subsec. 4330q.1 shall be subject to a separate individual limit of 25% of the combined capital accounts of a quasi-bank (QB).

- Subsection X328.5/4328Q.5 of the MORB/MORNBFI was amended to impose additional certain conditions on loans, other credit accommodations and guarantees granted by a bank/QB an entity (often a special purpose entity or SPE) that is a subsidiary or affiliate of the bank/QB for the purpose of project finance.

- Subsection X303.4 of the MORB on exclusions from loan limit was amended to: (1) insert as item "a" credit exposures considered as non-risk, which was previously presented as item "e" of Section X303 of the MORB; (2) renumber the existing enumerations from items "a to g" to "b to h", and (3) transfer existing item "h" to item "a.(6)"

- Subsection 4303Q.1 of the MORNBFI on exclusions from loan limit was amended to: (1) insert as item "a" credit exposures considered as non-risk, which was previously presented in the first paragraph of Section 4303Q of the MORNBFI; and (2) renumber the existing enumerations from items "a to d" to "b to e".

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

(Editor's Note: Published in The Philippine Star *on 8 May 2018; p.B4.)*

Circular No. 1002 provides for Amendments to the Guidelines on Proposed Investments from TPIs and the Requirements on Transactions Requiring prior Monetary Board approval involving Additional Subscription of Shares of Stock.

BSP Circular No. 1002 dated 10 May 2018

- The following provisions of the MORB on the proposed investments from third party investors (TPI) and on the requirements on transactions requiring prior MB approval involving additional subscription of shares of stock were amended.

- Item b (2) of Section X111.4 of the MORB on guidelines on proposed investments from TPIs for purposes of complying with the minimum capital requirements was amended to require submission by banks of the following documentary requirements for transaction which requires prior Bangko Sentral approval under Subsec X126.2b: Certified copies of documents showing that the amount of proposed investment of the TPI is deposited/placed in an independent bank[1], such as, certificate of escrow deposit or certificate of deposits with hold-out agreement showing the availability/hold out of funds for the said purpose, together with the corresponding waiver of secrecy of deposits/investments.

- Item d of Section X111.4 of the MORB on guidelines on proposed investments from TPIs for purposes of complying with the minimum capital requirements was amended to provide, among others, that the investment of the TPI would not be considered for purposes of addressing capital deficiency if the requirements mentioned under this Section are not complied with, except in cases when the TPI exhibits strong financial capacity and firm commitment[2] to address the capital deficiency of a bank based on assessment, taking into consideration the submitted documents and other available pertinent information.

- Item b (3) of Subsection X126.2 of the MORB on transactions requiring prior Monetary Board approval was amended to require that pending approval by the Monetary Board, the fund infused by the subscriber shall be placed in an independent bank, such as, in the form of an escrow deposit or deposit with hold-out agreement showing availability/hold-out of funds for the said purpose.

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

(Editor's Note: Published in the Philippine Star *on 19 May 2018.)*

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1 Refers to a third party bank.

2 Examples are the following:

- The bank and its eligible TPI-bank communicated the TPI's intent to acquire/merge/consolidate with the bank but needs more time for the completion of the due diligence audit and finalize the agreement between the parties;

- Submission of documents showing the eligibility and seriousness of the commitment of the TPI such as certificate of escrow deposits in an independent bank and other documents such as audited financial statements and income tax returns of the TPI which show its financial capacity to acquire the bank.

Circular No. 1003 provides for the Guidelines on the Establishment and Operations of Credit Card Issuers to Implement Republic Act No. 10870 or the Philippine Credit Card Industry Regulations Law.

BSP Circular No. 1003 dated 16 May 2018

- The following provisions of the MORNBFI and the MORB were amended to provide guidelines on the establishment and operations of bank and non-bank credit card issuers to implement Republic Act (RA) No. 10870 or the Philippine Credit Card Industry Regulations Law.
- Section 4301N and Appendix N-10; and Section 4320Q and Appendix Q-61 of the MORNBFI on credit card operations were deleted and superseded by the Guidelines on the Establishment and Operations of Non-Bank Credit Card Issuers (Annex A and its Appendices) which shall be incorporated as C Regulations of the MORNBFI.
- The provisions of Section X320, and its Subsections, of the MORB governing the establishment and operations of Bank Credit Card Issuers were amended.
- This Circular shall take effect 15 days following its publication either in the Official Gazette or in any newspaper of general circulation in the Philippines.

(Editor's Note: Published in the Philippine Star *on 22 May 2018.)*

Circular No. 1004 provides for the Reduction in Reserve Requirements.

BSP Circular No. 1004 dated 24 May 2018

- The following provisions of the MORB and the MORNBFI were amended consistent with the 100-basis-point reduction in the reserve requirement ratios of selected reservable liabilities of universal/commercial banks (UBs/KBs).
- Subsection X253.1 of the MORB on required reserves against deposit and deposit substitute liabilities was amended to decrease the rates of required reserves against deposit and deposit substitute liabilities in local currency of UBs/KBs starting reserve week 1 June 2018.
- This Circular also amends Subsection X405.5/4405Q.5 of the MORB/MORNBFI on reserves against trust and other fiduciary accounts (TOFA) – Others
- Section 4253Q of the MORNBFI on reserves against deposit substitutes was amended to provide that Non-Bank Financial Institutions Performing Quasi-Banking Functions (NBQBs) shall maintain required reserves equivalent to eighteen percent (18%) of deposit substitute liabilities as defined in Section 95 of R.A. No. 7653 starting reserve week 1 June 2018.
- This Circular shall take effect on 1 June 2018 after its publication either in the Official Gazette or in a newspaper of general circulation.

(Editor's Note: Published in The Philippine Star *on 25 May 2018; p.B6.)*

Court Decisions

Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (*En Banc*) Case No. 1532 promulgated 5 April 2018

For sale of services to qualify for VAT zero-rating, the recipient of the services must be a foreign corporation engaged in business outside the Philippines and not doing business in the Philippines. A foreign corporation that appointed a local agent is deemed engaged in business in the Philippines.

Facts:

Petitioner Amadeus Marketing Philippines, Inc. (AMPI) filed with Respondent Commissioner of Internal Revenue (CIR) a claim for refund for unutilized input VAT attributable to zero-rated sales of services for the second to fourth quarters of 2010 to Amadeus IT Group S.A. (AIGS), a corporation organized under the laws of Spain. As the CIR failed to act on the claim within the 2-year prescriptive period, AMPI filed a Petition for Review with the Court of Tax Appeals (CTA). The BIR argued, among others, that AMPI's sales are not considered VAT zero-rated as it failed to prove that AIGS is a foreign corporation doing business outside the Philippines.

The CTA Division ruled that AMPI is not entitled to the claim for refund since AIGS is considered engaged in business in the Philippines. Aggrieved, AMPI filed a Petition for Review with the CTA *En Banc* arguing that AIGS is not doing business in the Philippines because it is merely collecting royalties pursuant to a Distribution Agreement. AMPI added that AIGS performed only a singular act, which is to grant AMPI the permission to use its intellectual property.

Issue:

Is AMPI entitled to the claim for refund?

Ruling:

No. AMPI is not entitled to the refund because AIGS is considered a foreign corporation doing business in the Philippines.

For services to be considered VAT zero-rated under Section 108 (B) (2) of the Tax Code, the foreign corporation who is the recipient of the services must be engaged in business outside the Philippines and not doing business in the Philippines. When the provider and recipient of services are both doing business in the Philippines, their transaction falls squarely under Section 108(A) governing domestic sale or exchange of services.

While the Articles of Association of AIGS and the Certificate of Non-Registration issued by the Securities and Exchange Commission (SEC) established that AIGS is a foreign entity incorporated in Spain, the court ruled that AIGS conducts business in the Philippines. The continuity of AIGS's commercial dealings is exemplified by the appointment of a local agent, AMPI, who is its "sole distributor" in the Philippines.

(Editor's Note: Justice Manahan dissents with the majority opinion arguing that the mere appointment of a local agent or distributor does not necessarily constitute doing business in the Philippines as the foreign counterpart does not play an active role in the pursuit of business. AMPI may be categorized as an agent of independent status, thus, not deemed doing business in the Philippines.)

Under the TRAIN Law, the 12% deficiency interest is computed from the date prescribed for its payment until the full payment thereof or upon issuance of a notice and demand by the CIR, whichever comes earlier.

Tektite Insurance Brokers, Inc. vs. Commissioner of Internal Revenue
CTA (Fist Division) Case No. 8903 promulgated 12 April 2018

Facts:

Respondent CIR assessed Petitioner Tektite Insurance Brokers, Inc. (TIBI) for deficiency taxes covering taxable year 2010. TIBI protested the assessments, which was denied by the BIR on the ground that TIBI's protest was not valid for failure to state the facts, the applicable laws, rules and regulations in disputing the assessments, as prescribed in Revenue Regulations (RR) 12-99, as amended by RR 18-2013. The BIR claimed that the Final Assessment Notice (FAN) and Final Letter of Demand (FLD), which was received by TIBI on 18 June 2014, have become final, executory and demandable.

TIBI filed a Petition for Review at the CTA, arguing that the assessment was issued beyond the 3-year prescriptive period as there was no valid waiver which extended the BIR's period to assess. On 3 November 2017, the CTA First Division ruled in favor of the BIR and sustained the assessment. In addition to the basic deficiency tax, the court imposed 20% deficiency and delinquency interest.

Aggrieved, TIBI file a Motion for Reconsideration.

Issues:

1. Is the waiver valid?

2. How are the deficiency interest and delinquency interest imposed under the TRAIN Law?

Rulings:

1. Yes. The CTA First Division ruled that as long as both parties voluntarily agreed to execute a waiver and the waiver complied with the requirements under Revenue Memorandum Order 20-90 and Revenue Delegation Authority Order 5-01 or when both parties are at fault, the waiver's validity would be upheld. Quoting the Supreme Court's decision in *CIR vs. Next Mobile, G.R. 212825 promulgated on 7 December 2015*, the court held that by way of exception, the validity of a defective waiver may be upheld if there is a finding that both the BIR and the taxpayer are in *pari delicto* in causing the deficiencies of the waiver.

   Since TIBI and the BIR continued to deal with each other despite having knowledge of the infirmities attendant to the waiver, the waiver they executed is valid and sufficient to extend the prescriptive period to assess.

2. After the promulgation of the assailed decision and the filing of TIBI's Motion for Reconsideration, the TRAIN Law, which amends Section 249 of the NIRC, took effect on 1 January 2018. Thus, the TRAIN Law applies in this case.

   Section 249, as amended by the TRAIN Law, categorically incorporates 3 provisos that cannot be applied without setting aside the original provisions:

   a. The TRAIN Law proscribes the simultaneous imposition of deficiency interest and delinquency interest, which the old version allows;

   b. The TRAIN Law prescribes a rate of double the legal interest rate for loans or forbearance of any money in the absence of express stipulation as set by the BSP (currently at 6% per annum), which is lower than the 20% under the old version; and,

   c. Deficiency interest is allowed to be computed from the date prescribed for its full payment *until the full payment thereof or upon issuance of a notice and demand by the CIR*, whichever comes earlier, while the old version confined its computation strictly from the date prescribed for its payment until the full payment thereof.

Accordingly, deficiency interest is imposed at 12% per annum computed from 11 April 2011, the date prescribed for payment until 18 June 2014, the date of TIBI's receipt of FAN and the FLD. On the other hand, 12% delinquency interest is imposed computed from 18 July 2014, the due date appearing in the FAN/FLD until full payment.

(Editor's Note: In Moog Controls Corporation – Philippine Branch vs. CIR, CTA Case No. 9077 promulgated on 22 February 2018, the CTA Second Division prescribed a clear delineation on the effectivity of TRAIN Law. Moog was ordered to pay (a) 20% deficiency interest from 15 February 2010 until 31 December 2017, (b) 20 % delinquency interest from 8 June 2015 until 31 December 2017. The 12% delinquency interest was only applied from 1 January 2018 until the amount is fully paid.)

We welcome your comments, ideas and questions. Please contact Victor C. De Dios via e-mail at victor.c.de.dios@ph.ey.com or at telephone number 8910307 loc. 7929 and Reynante M. Marcelo via e-mail at reynante.m.marcelo@ph.ey.com or at telephone number 894-8335.