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HIGHLIGHTS  
BIR Issuances

RR No. 10-2000 provides for the tax exemption as 'de minimis' benefit of monetized value of leave credits, regardless of number of days, paid to government officials and employees (Page 2)

RR No. 13-2000 provides the guidelines on the deductibility of interest expense on a principal residence (Page 6)

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HIGHLIGHTS

IN THIS ISSUE	
Voluntary Assessment and Abatement Program	2
The Excise Tax System: A Review	4
The BOC Policy of Informed Compliance	11

**Voluntary Assessment and Abatement Program**

The BIR, through computerization, now has the ability to generate firm and precise data on sales underdeclarations by matching information provided by third parties (e.g., summary lists, etc.) with the declarations made by taxpayers. The BIR is now giving taxpayers with underdeclarations a chance to avoid criminal prosecution through Revenue Regulations (RR) No. 13-2002 or the Assessment and Abatement Program (VAAP), as amended by RR No. 17-2002.

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# Highlights

## BIR Rulings

- ▶ The 10% preferential tax treaty rate applies to dividends paid to a Japanese corporation when the dividends are not effectively connected with the business activity of its Philippine branch. **(Page 4)**
- ▶ Payments for technical assistance are characterized as business profits when the services are not merely for the supply of know-how or other royalty-bearing property.

Guarantee fees paid by a domestic corporation to a non-resident foreign corporation are characterized as Other Income under Article 22 of the RP-Japan Tax Treaty. **(Page 4)**

## BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 1-2016 implements the policy for the centralized processing and issuance of the Authority to Release Imported Goods (ATRIG) for excisable products. **(Page 6)**
- ▶ RMO No. 4-2016 further amends the rules on the processing of applications for compromise settlement and abatement cases. **(Page 6)**

## BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 44-2015 allows the BOC to access export declarations, particularly those with drawback claims. **(Page 7)**
- ▶ CMO No. 2-2016 directs the immediate disposal of overstaying cargoes. **(Page 7)**
- ▶ CMO No. 3-2016 prescribes the email policy for the BOC. **(Page 8)**
- ▶ CMC No. 7-2016 disseminates BIR RMO No. 1-2016 dated 6 January 2016. **(Page 8)**

## SEC Issuance

- ▶ SEC Memorandum Circular (MC) No. 1 prescribes the filing schedule for Audited Financial Statements (AFS) and General Information Sheets (GIS) for companies whose fiscal year ends on 31 December 2015. **(Page 8)**

## BSP Issuances

- ▶ Circular No. 897 amends the Manual of Regulations for Banks (MORB) on the BSP's Clean Note and Coin Policy. **(Page 9)**
- ▶ Circular No. 898 amends the cooling-off provisions of the BSP's Regulations on Financial Consumer Protection. **(Page 10)**
- ▶ Circular No. 899 amends the MORB and the Manual of Regulations for Non-bank Financial Institutions (MORNBFII) on the Guidelines on Outsourcing. **(Page 11)**

- ▶ Circular No. 900 prescribes the Guidelines on Operational Risk Management of BSP-supervised financial institutions, and amends the MORB and MORNBF1 for this purpose. **(Page 13)**

### **SEC Opinion**

- ▶ Stockholders are not allowed to appear and vote via teleconferencing and video conferencing in stockholders' meetings under the present Corporation Code. **(Page 14)**

### **BLGF Opinions**

- ▶ Tax declarations may be issued to a non-Filipino who acquired private lands through hereditary succession, provided new Transfer Certificates of Title are presented. **(Page 15)**
- ▶ Professionals, like dentists and doctors, are exempted from securing a Mayor's Permit and paying local business tax (LBT) for the practice of their profession. **(Page 16)**

### **Court Decisions**

- ▶ To be valid, a waiver of the statute of limitations must strictly comply with the requirements prescribed by the regulations.

However, a taxpayer cannot impugn the validity of the waiver after benefiting from it as he is deemed estopped by his bad faith. In such a case, the validity of the waiver may be upheld. **(Page 16)**

- ▶ The BIR has 120 days to decide on a claim for VAT refund, reckoned from the date of submission by the taxpayer of complete documents in support of the application. It is the taxpayer who determines when the complete documents have been submitted. **(Page 18)**
- ▶ A "Build-To-Own or Build-Your-Own" scheme, which involves the pooling of funds for the construction of condominium units, is not considered a sale or transfer of real property that is subject to expanded withholding tax (EWT) and documentary stamp tax (DST). **(Page 20)**
- ▶ The unspent subsidy or foreign inward remittance received by a representative office from its parent company is not considered income subject to income tax and VAT. **(Page 21)**
- ▶ For local business tax purposes, 30% of all sales recorded in the principal office shall be taxable in the city or municipality where the principal office is located while 70% shall be taxable in the city or municipality where the plant or project office is located.

An office which does not issue invoices, records sales, or operate any aspect of the business is considered an administrative office and cannot share in the allocation of the LBT from annual gross sales. **(Page 22)**

## **BIR Rulings**

### **BIR Ruling No. ITAD 341-15 dated 7 December 2015**

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The 10% preferential tax treaty rate applies to dividends paid to a Japanese corporation when the dividends are not effectively connected with the business activity of its Philippine branch.

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#### **Facts:**

A Co., a Japanese company, is licensed to do business in the Philippines through a Philippine Branch (A Co.-PH Branch). A Co.-PH Branch's main business is to participate in construction projects.

A Co. owns 40% of the shares in B Co., a domestic corporation. B Co. declared cash dividends. A Co.-PH Branch is not privy to any of A Co.'s investments in B Co. Moreover, the rights and obligations of A Co. arising from the investment in B Co. are solely for its account and are not connected with the business activity of A Co.-PH Branch.

#### **Issues:**

1. Are the dividends paid to A Co. effectively connected with A Co.-PH Branch?
2. Are the dividends declared and paid by B Co. to A Co. entitled to the 10% preferential tax rate under the RP-Japan Tax Treaty?

#### **Ruling:**

1. No. When the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation and not of the branch. Here, the rights and obligations of A Co. in its investment in B Co. are solely for its own account and are not in any way effectively connected with the business activity of A Co.-PH Branch. Thus, the dividends paid by B Co. to A Co. cannot be considered effectively connected with A Co.-PH Branch.
2. Yes. Under the RP-Japan Tax Treaty, dividends paid by a Philippine corporation to a Japanese resident are subject to the 10% preferential tax rate if the recipient Japanese corporation holds directly at least 10% of the voting shares in the Philippine corporation, or of the total shares issued by the domestic corporation, during the period of 6 months preceding the date of payment of the dividends.

### **BIR Ruling No. ITAD 375-15 dated 29 December 2015**

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Payments for technical assistance are characterized as business profits when the services are not merely for the supply of know-how or other royalty-bearing property.

Guarantee fees paid by a domestic corporation to a non-resident foreign corporation are characterized as Other Income under Article 22 of the RP-Japan Tax Treaty.

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#### **Facts:**

A Co., a non-resident foreign corporation based in Japan, entered into the following contracts with B Co., a domestic corporation registered with the Philippine Economic Zone Authority (PEZA) as an ecozone export enterprise:

- ▶ Memorandum for Technical Assistance whereby A Co. provided technical assistance to B Co. for the manufacture of fiber optics components. A Co. sent its personnel to the Philippines for 5 days in 2005, 41 days in 2006, and 11 days in 2007. B Co. paid A Co. the actual or allocated costs and charges incurred for the services;
- ▶ Loan Agreements whereby A Co. granted loans to B Co. B Co. paid interest to A Co.;

- ▶ Execution of Letters of Guarantee in favor of a bank whereby A Co. guaranteed the full and punctual payment by B Co. of any loans of B Co. B Co. paid guarantee fees to A Co.

**Issues:**

1. Are B Co.'s payments to A Co. under the Memorandum for Technical Assistance characterized as business profits?
2. Are B Co.'s payments for the technical assistance provided by A Co. exempt from Philippine income tax under the RP-Japan Tax Treaty? Are B Co.'s payments exempt from VAT?
3. Is the interest paid by B Co. to A Co. on the Loan Agreements subject to the preferential treaty rate under the RP-Japan Tax Treaty?
4. Are the guarantee fees paid by B Co. to A Co. exempt from Philippine income tax under the RP-Japan Tax Treaty?
5. Are the loan agreements subject to DST?

**Ruling:**

1. Yes. In a contract for the supply of know-how, there would generally be little more which needs to be done by the supplier other than to supply existing information or reproduce existing materials. On the other hand, a contract for the performance of services involves, in a majority of cases, a very much greater level of expenditure by the supplier in order to perform his contractual obligations to the other party, such as salaries and wages for employees engaged in researching, designing, testing, drawing and other associated activities or payments to subcontractors for the performance of similar services.

Under the Memorandum for Technical Assistance, A Co. does not supply existing information or reproduce existing material, but provides services to B Co. in the manufacture of fiber optics components, where B Co. is charged based on the actual or allocated cost of the services. Moreover, A Co. certainly incurred a greater level of expenditure (such as salaries and other remuneration of the personnel) to fulfill its contractual obligations to B Co. Such being the case, the payments by B Co. to A Co. under the Memorandum constitute business profits rather than payments for know-how or royalties.

2. Yes. Since A Co. is not engaged in trade or business in the Philippines to which a branch, an office, or other fixed place of business is relevant, and since it did not render services in the Philippines for more than an aggregate of six months within any taxable year, it does not have a permanent establishment in the Philippines. Such being the case, service fees paid by B Co. to A Co. are exempt from income tax pursuant to Article 7 paragraph 1 of the RP-Japan Tax Treaty.

Yes. Under existing jurisprudence and regulations, sale of services by a non-resident foreign corporation to a PEZA registered enterprise are treated as VAT-exempt.

3. Yes. Under Article 11 of the RP-Japan Tax Treaty, interest paid to a resident of Japan is subject to final withholding tax (FWT) of (a) 10% if the interest is paid in respect of government securities, or bonds or debentures, and (b) 15% in all other cases. However, effective January 1, 2009, the rate is simplified to 10%.

Thus, interest payments by B Co. to A Co. which are not in respect of government securities, bonds or debentures, are subject to 15% FWT (for those paid before 1 January 2009) and 10% FWT (for those paid on 1 January 2009 and onwards), pursuant to Article 11 paragraph 2 of the RP-Japan Tax Treaty.

4. Yes. Under Article 22 of the RP-Japan Tax Treaty, items of income of a resident of Japan from wherever sources and which are not dealt with in any specific article of the treaty are taxable only in Japan. Since the guarantee fees cannot be considered as business profits, interest, income from real property, profits from shipping and air transport, dividends, royalties nor capital gains, and since A Co. has no permanent establishment in the Philippines, such guarantee fees are exempt from income tax.
5. Yes. Loan agreements are subject to DST at the rate of P1.00 for every P200 (or a fraction thereof) of the principal amount of the loan in accordance with Section 179 of the Tax Code.

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## **BIR Issuances**

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RMO No. 1-2016 implements the policy for the centralized processing and issuance of the ATRIG for excisable products.

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### **Revenue Memorandum Order No. 1-2016 dated 6 January 2016**

- ▶ The Excise LT Regulatory Division (ELTRD) of the BIR National Office shall process and issue all applications for ATRIGs for excisable products.
- ▶ ATRIGs issued by the BIR Regional Offices and Excise Tax Areas (EXTAs) shall be considered null and void upon the effectivity of the RMO, which was on 7 January 2016.
- ▶ All ATRIGs manually processed and issued by the Regional Offices for VAT-exempt transactions shall be stamped with the phrase, "NOT VALID FOR ALL EXCISABLE PRODUCTS".

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RMO No. 4-2016 further amends the rules on the processing of applications for compromise settlement and abatement cases.

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### **Revenue Memorandum Order No. 4 -2016 dated 25 January 2016**

- ▶ All applications for compromise settlement, which have been evaluated by the Regional Evaluation Board (REB) or the Large Taxpayers Service Evaluation Board (LTS/EB) and recommended for denial, shall be considered denied with finality.
- ▶ By virtue of the final denial of such applications, the outstanding tax liabilities and penalties that were the subject of the compromise application shall be immediately collected.
- ▶ The same rule will apply to applications for abatement or cancellation of internal revenue tax liabilities which have been evaluated by the LTS Sub-Technical Working Committee (TWC) and recommended for denial.
- ▶ The notice of denial, together with the entire docket of the application, shall be transmitted to the Chief of the Accounts Receivable Monitoring Division (ARMD) for recording and monitoring within 10 days from the denial.

- ▶ Within 5 days from receipt, the ARMD Chief shall submit the notice of denial and the docket to the Commissioner of Internal Revenue (CIR) for approval, without any further review or evaluation.
- ▶ Upon approval by the Commissioner, the documents shall be returned to the ARMD Chief for recording and subsequently transmitted to the originating revenue office for the appropriate service of the notice of denial and the immediate collection of the taxpayer's outstanding tax liabilities.
- ▶ The existing procedure on the processing of applications for compromise settlement or abatement shall be followed for applications that have been recommended for approval by the REB, the LTS/EB and LTS sub-TWC, as the case may be.
- ▶ The LTS sub-TWC/EB and REBs shall evaluate and decide applications for compromise settlement or abatement within 15 calendar days from receipt of the application.
- ▶ The RMO does not apply to applications for compromise settlement or abatement that have been transmitted and are pending with the Technical Working Group (TWG/ NEB/ TWC) of the BIR National Office as of 29 January 2016.

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## **BOC Issuances**

CMO No. 44-2015 allows the BOC to access export declarations, particularly those with drawback claims.

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### **Customs Memorandum Order No. 44-2015 dated 22 December 2015**

- ▶ The BOC Customs Intelligence and Investigation Service (CIIS) may, through a written authority from the OIC, access Export Declarations/Entries for purposes of verification, spot-checking and confirmation of derogatory information received against export shipments, particularly those with drawback claims/tax refunds.
- ▶ The exporter must present a duly accomplished Shipment Information Slip for Drawback Claims, together with the supporting documents, to the CIIS OIC where the export cargo is to be loaded at least two working days prior to the stuffing of the export cargo to the container. Failure to comply is a ground for denial of drawback claims.
- ▶ This Order supersedes CMO No. 67-88 dated 28 June 1988.
- ▶ CMO No. 44 - 2015 takes effect immediately.

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CMO No. 2-2016 directs the immediate disposal of overstaying cargoes.

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### **Customs Memorandum Order No. 2-2016 dated 4 January 2016**

- ▶ All district collectors, deputy collectors for operations, and other BOC officers are directed to proceed with and complete the disposal of all overstaying cargoes (whether by auction, donation, or condemnation) on or before 31 March 2016.
- ▶ This is to decongest all ports of such cargoes through the immediate disposition of all overstaying cargoes.

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CMO No. 3-2016 prescribes the email policy for the BOC.

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#### **Customs Memorandum Order No. 3-2016 dated 18 January 2016**

- ▶ To promote email usage and awareness of the benefits of paperless communication system, CMO No. 34-2015 was issued whereby all BOC officials were provided Electronic Mail (email) accounts to serve as the official electronic communications facility for use in operations and in officially communicating to the general public.
- ▶ As a rule, only email accounts using the official domain, @customs.gov.ph, shall be used in the performance of official duties of BOC employees. All emails must be digitally signed, and shall use a standard email signature which includes the complete employee name, position/designation, unit/section/division/office, complete office number, telephone/fax number, and URL.
- ▶ The email server shall not be used for personal or commercial purposes and for the promotion of business and other matters outside the BOC. Emails not related to the performance of official duties and responsibilities falls under the Prohibited Use of the E-mail Service and may be subject to administrative sanctions, which includes termination from government service.
- ▶ CMO No. 3-2016 takes effect immediately.

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CMC No. 7-2016 disseminates BIR RMO No. 1-2016 dated 6 January 2016.

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#### **Customs Memorandum Circular No. 7-2016 dated January 19, 2016**

- ▶ RMO No. 1-2016, which took effect on 6 January 2016, provides that all applications for ATRIGs for exciseable products shall be processed and issued centrally at the BIR National Office - Excise LT Regulatory Division (ELTRD). ATRIGs issued by any other office shall be considered null and void.
- ▶ ATRIGs manually processed and issued by Regional Offices for VAT exempt transactions must be stamped with the phrase "NOT VALID FOR ALL EXCISABLE PRODUCTS."
- ▶ CMO No. 7-2016 circularizes RMO No. 1-2016 to all Deputy Commissioners, Directors and Division Chiefs, District / Port Collectors of the BOC, as well as to others concerned.

### **SEC Issuance**

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SEC MC No. 1 prescribes the filing schedule for the AFS and GIS for companies whose fiscal year ends on 31 December 2015.

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#### **SEC Memorandum Circular No. 01 Series of 2016 dated 11 January 2016**

- ▶ The filing schedule of AFS for 2015 of all corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, depending on the last numerical digit of their SEC registration or license number, will be as follows:

April 18, 19, 20, 21, 22	:	1 and 2
April 25, 26, 27, 28, 29	:	3 and 4
May 2, 3, 4, 5, 6	:	5 and 6
May 10, 11, 12, 13	:	7 and 8



- ▶ The filing schedule which commences on 18 April 2016 shall not apply to the following corporations:
  - ▶ Those whose fiscal year ends on a date other than 31 December 2015
  - ▶ Those whose securities are listed on the Philippine Stock Exchange (PSE)
  - ▶ Those whose AFS are being audited by the Commission on Audit (COA)
- ▶ All corporations may file their AFS regardless of the last numerical digit of their registration or license number before 18 April 2016.
- ▶ Late filings or filing after respective due dates shall be accepted starting 23 May 2016, and shall be subject to the prescribed penalties which shall be computed from the date of the last filing schedule.
- ▶ All corporations shall file their GIS within 30 calendar days from:
  - ▶ Stock Corporations - date of annual stockholders' meeting per By-Laws
  - ▶ Non-Stock Corporations - date of annual members' meeting per By-Laws
  - ▶ Foreign Corporations - anniversary date of the issuance of the SEC license

## BSP Issuances

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Circular No. 897 amends the MORB on the BSP's Clean Note and Coin Policy.

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### BSP Circular No. 897 dated 6 January 2016

- ▶ Subsection X950.5 of the MORB shall be amended as follows:

**“X950.5 (2008 - X610.6) Clean note and coin policy.** As part of banks' duties as authorized agents of the Bangko Sentral, banks are enjoined to accept unfit Philippine currency notes and coins from the depositing public. Banks shall also accept, without handling fees or charges, non-mutilated coins for deposit, regardless of denomination, from the public. Further, banks shall re-circulate such coins received from the depositing public.

To effect an expeditious withdrawal from circulation of unfit Philippine currency notes classified under Subsection X950.6, banks and their branches shall observe the following guidelines and procedures when making cash deposits with the Cash Department (CD) or any of the Regional offices/Branches of the Bangko Sentral.

xxx

- d. Provincial branches of banks may make direct deposits of currency notes, duly identified and sorted, with the nearest Bangko Sentral Regional Office/Branch. In areas where there are no Bangko Sentral Regional Offices/Branches, provincial branches of banks shall arrange with their respective Head Offices the shipment of their unfit or dirty notes for deposit with the CD, Bangko Sentral in Quezon City. Cost of shipment and other related expenses to be incurred shall be solely for the account of the bank concerned.

Coins submitted by banks to Bangko Sentral for deposit/determination of redemption value shall be packed/bagged in accordance with the following procedure:

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The CD and the Regional Offices/Branches of Bangko Sentral may refuse acceptance of cash deposits that do not conform to these guidelines and procedures.

In order to ensure that banks comply with the provisions under this Subsection, banks are required to incorporate measures on the implementation thereof in their compliance programs. Moreover, banks should conduct periodic compliance testing to cover their compliance with these requirements.”

- ▶ Subsection X950.8 on Penalties is retitled to “Enforcement Actions” and amended accordingly.
- ▶ This Circular shall take effect fifteen (15) calendar days after its publication either in the official Gazette or in a newspaper of general circulation.

*[Editor’s Note: Circular No. 897 was published in the Philippine Daily Inquirer on 12 January 2016.]*

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Circular No. 898 amends the cooling-off provisions of the BSP’s Regulations on Financial Consumer Protection.

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#### **BSP Circular No. 898 dated January 14, 2016**

- ▶ Subsection X1002.3 (c) (1) of the MORB, and Subsections 41002Q.3(c)(1), 4402P.3(c)(1), 4402S.3(c)(1) of the MORNBF, are hereby amended as follows:

“As may be appropriate, provide the customer with a “cooling-off” period of a reasonable number of days (at least two banking days) immediately following the signing of any agreement or contract, particularly for financial products or services with a long-term savings component or those subject to high pressure sales contract.

Cooling-off shall be applicable to a customer who is a natural person and to financial instruments whose remaining term is equal to or beyond one year.”

- ▶ Subsection X1002.3(c)(2) of the MORB and Subsections 41002Q.3(c)(2), 4402P.3(c)(2), 4402S.3(c)(2) and 4702N.3(c)(2) of the MORNBF are hereby amended as follows:

“Permit the customer to cancel the agreement without penalty to the customer of any kind on his or her written notice to the BSP-supervised financial institutions (BSFI) during the cooling-off period. The BSFI may, however, collect or recover a reasonable amount of processing fees. It is further recognized that there may be a need for some qualification to an automatic right of cooling off. For example, the right shall not apply where there has been a drawdown of a credit facility and a BSFI shall be able to recover any loss arising from an early withdrawal of a fixed rate term deposit which loss arises because of a difference in interest rates. This would be in addition to any reasonable administrative fees associated with closure of the term deposit.”

- ▶ The effectivity of the cooling-off provisions shall be deferred to 16 January 2016.
- ▶ The Deputy Governor of the Supervision and Examination Sector may issue implementing memoranda to the BSFIs.

*[Editor’s Note: Circular No. 898 was published in the Philippine Star on 19 January 2016.]*

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Circular No. 899 amends the MORB and the MORNBF1 on the Guidelines on Outsourcing.

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**BSP Circular No. 899 dated January 18, 2016**

- ▶ These guidelines shall be read in conjunction with the guidelines on operational risk management.
- ▶ Section X162 Statement of Principle on Outsourcing and Subsections X162.4 and X162.9 of the MORB shall now read as follows:

**“Section X162 Statement of Principle on Outsourcing.** A bank may outsource to third parties or to related companies in the group, in accordance with existing BSP regulations, certain services or activities to have access to certain areas of expertise or to address resource constraints, Provided, that it has in place appropriate processes, procedures, and information system that can adequately identify, monitor, and mitigate operational risks arising from the outsourced activities. Provided further, that the bank’s board of directors and senior management shall remain responsible for ensuring that outsourced activities are conducted in a safe and sound manner and in compliance with applicable laws, rules and regulations.”

- ▶ Subsection X162.3 which provides for the definition of outsourcing is now renumbered as X162.1.
- ▶ Subsection X162.5 which provides for the authority to outsource is now renumbered as X162.3.
- ▶ Subsection X162.4 is now amended to read as follows:

**“Subsection X162.4 Governance and Managing of Outsourcing Risks.** Key risk areas related to outsourcing such as strategic; reputation/legal; operational, compliance, country and concentration risks should be evaluated before entering into and while managing outsourcing contracts. In this regard, banks shall:

- a. Perform risk assessments of a business activity and evaluate the implications of performing the activity in-house or having the activity outsourced.

The following factors shall be considered in the assessment:

- (1) Level of importance to the bank of the activity to be outsourced and potential impact on bank’s operations, financial condition, reputation, and ability to achieve its objectives, strategies and plans, should the service provider fail to perform the services;
- (2) Outsourcing costs in proportion to total operating expense and compared with costs of developing own infrastructure and expertise;

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In cases when the risk management system is deemed inadequate for purposes of managing outsourcing-related risks, the BSP may direct the bank to terminate, modify, make alternative arrangements or re-integrate the outsourced activity into its operations, as may be necessary.

- b. Establish policies and criteria to select the “best” service provider for the outsourced activities and to get said services at a reasonable price. xxx

In cases when the clients are prejudiced due to errors, omissions, and frauds by the service provider, the bank shall be liable in providing the appropriate remedies or remuneration as may be allowed under existing laws or regulations, without prejudice to the bank’s right of recourse to the service provider.

- c. Establish, maintain, and regularly test business continuity and contingency plans for situations wherein the service provider cannot deliver the required services. The contingency plan must indicate whether another service provider will be tapped or the service/activity will be brought back in-house. This should in turn consider the costs, time, and resources that would be involved.

Contingency arrangements in respect of daily operational and systems problems should be covered in the service provider’s own contingency plan. The contingency plan must be reviewed regularly to ensure that it remains relevant and really for implementation.

- d. Ensure that it has adequate resources to manage and monitor outsourcing relationships on a continuing basis. Banks are expected to develop acceptable performance metrics to assess outsourcing contracts. They shall also maintain records of all outsourcing activities which should be updated and reviewed regularly.
- e. Ensure that personnel with oversight and management responsibilities for service providers have the appropriate level of expertise and stature to manage the outsourcing arrangement. The oversight process, including the level and frequency of management reporting, should be risk-focused. Banks should design and implement risk mitigation plans for higher risk service providers. These may include certain requirements or processes such as additional reporting by the service provider or heightened monitoring. Further, more frequent and stringent monitoring is necessary for service providers that exhibit performance, financial compliance, or control concerns.

Xxx”

- ▶ Subsection X162.6 on documentations is now renumbered as X162.5. Subsection X162.7 on intra-group outsourcing is now renumbered as X162.6. Subsection X162.8 on offshore outsourcing is now renumbered as X162.7. Subsection X162.10 on transitory provision is now renumbered as X162.8.

- ▶ Subsection X162.9 is now amended to read as follows:

**“Subsection X162.9 Supervisory Enforcement Actions.** Consistent with Circular No. 875 dated 15 April 2015, the BSP may deploy enforcement actions to promote adherence with the requirements set forth in this Circular and bring about timely corrective actions. The BSP may issue directives to improve the management of outsourcing arrangements, or impose sanctions to limit the level of or suspend any business activity that has adverse effects on the safety or soundness of the BSFI, among others. Sanctions may likewise be imposed on a BSFI and/or its directors, officers and / or employees.”

- ▶ Section 4162Q and 4190N shall now read as follows:

“Section 4162Q **Guidelines on Outsourcing**. The rules on outsourcing of banking functions as shown under Section X162 of the MORB and Appendix Q-37 of the MORNBF1 shall likewise apply to QBs.”

“Section 4190N **Guidelines on Outsourcing**. The rules on outsourcing of banking functions as shown under Section X162 of the MORB and Appendix Q-37 of the MORNBF1 shall likewise apply to NBFIs.”

- ▶ 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: Circular No. 898 was published in the Manila Times on 21 January 2016.]*

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Circular No. 900 prescribes the Guidelines on Operational Risk Management of BSP-supervised financial institutions, and amends the MORB and MORNBF1 for this purpose.

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### **BSP Circular No. 900 dated January 18, 2016**

- ▶ Sections X179.1/4179Q/4198N/4179T are hereby added to the MORB/MORNBF1 providing the policy statement for Operational Risk Management, and shall read as follows:

“**Policy Statement.** It is the thrust of the Bangko Sentral ng Pilipinas (BSP) to promote the adoption of effective risk management systems to sustain the safe and sound operations of its supervised financial institutions (BSFIs). Cognizant that operational risk is inherent in all activities, products and services, and is closely tied in with other types of risks (e.g., credit, liquidity and market risks), the BSP is issuing these guidelines to clearly set out its expectations and define the minimum prudential requirements on operational risk management. These guidelines align existing regulations to the extent possible, with international standards and best practices. BSP expects its BSFIs to adopt an operational risk management framework, as part of the enterprise-wide risk management system, that is suited to their size, complexity of operations, and risk profile.”

- ▶ Operation Risk which is defined in Subsections X179.1/4179Q.1/4198N.1/4179T.1 refers to the risk of loss resulting from inadequate or failed internal processes, people and systems; or from external events. This definition includes legal risk, but excludes strategic and reputational risk. Operational risk is inherent in all activities, products and services, and cuts across multiple activities and business lines within the financial institution and across the different entities in a banking group or conglomerate where the financial institution belongs.
- ▶ Subsections X179.2/4179Q.2/4198N.2/4179T.2 prescribe the duties and responsibilities of Board of Directors, Senior Management and Business Units.
- ▶ Subsection X179.3, Subsections X4179Q.e/4198N.3/4179T.3 prescribe the Roles and Functions of Operating Risk Management Function, Compliance Function and Internal Audit.
- ▶ Subsections 179.4/4179Q.4/4197N.4/4179T.4 provide for the Operational Risk Management Framework.
- ▶ Subsections X179.5/4179Q.5/4198N.5/4179T.5 provide for the human resource-related risk.

- ▶ Subsections X179.6/4179Q.6/4198N.6/4179T.6 provide for the management of information technology-related risk.
- ▶ Subsections X179.7/4179Q.7/4198N.7/4179T.7 provide for the management of integrity of prudential reports or reports submitted to BSP.
- ▶ Subsections X179.8/4179Q.8/4198N.8/4179T.8 provide for the management of legal risk exposures.
- ▶ Subsections X179.9/4179Q.9/4198N.9/4179T.9 provide for the management of operational risk arising from financial inclusion initiatives.
- ▶ Subsections X179.10/4179Q.10/4198N.10/4179T.10 provide for the notification/reporting to BSP.
- ▶ Subsections X179.11/4179Q.11/4198N.11/4179T.11 provide for the supervisory enforcement actions.
- ▶ BSFIs shall comply with the standards on operational risk management within a period of two years from the effectivity date of this issuance. In this regard, a BSFI should be able to show its plan of actions with specific timelines, as well as the status of initiatives being undertaken to fully comply with the provisions of this circular, upon request of the BSP starting June 2016.
- ▶ This Circular shall take effect 15 calendar days after its publication either in the official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 900 was published in the Malaya on 21 January 2016.]*

## **SEC Opinion**

### **SEC Opinion No. 16-01 dated 9 January 2016**

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Stockholders are not allowed to appear and vote via teleconferencing and videoconferencing in stockholders' meetings under the present Corporation Code.

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**Facts:**

An opinion was requested from the SEC if appearance and voting by stockholders via teleconferencing and videoconferencing are allowed in stockholders' meetings. The request pointed out that the term "in person" may be construed as to include attending and voting done by actual person, despite not being physically present in the meeting. It also argued that the Corporation Code was passed way back in 1980 when such modes were not yet an established business practice as compared to today where technology is an integral part of business.

**Issue:**

Are stockholders allowed to appear and vote via teleconferencing and videoconferencing during stockholders' meetings?

***Ruling:***

No, stockholders cannot appear and vote via teleconferencing and videoconferencing in stockholders' meetings under the present Corporation Code.

Section 51 of the Corporation Code provides that *"stockholders' or members' meetings, whether regular or special, shall be held in the city or municipality where the principal office of the corporation is located, and if practicable in the principal office of the corporation."* This provision presupposes that the attendees to a stockholders' or members' meeting are in the same place during the meeting. This is in contrast to teleconferencing, where the participants are in different places although their communication with each other is facilitated through an electronic medium, making their presence in the meeting merely "virtual" or electronic.

**BLGF Opinions**

**BLGF Opinion dated 4 December 2015, signed 5 January 2016**

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Tax declarations may be issued to a non-Filipino who acquired private lands through hereditary succession, provided new Transfer Certificates of Title are presented.

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***Facts:***

Mr. X is an American citizen and the widower of Mrs. Y, a Filipina, who died without a will in March 2014. At the time of Mrs. Y's death, she left 2 parcels of land and a residential building, all located in Cebu.

As the sole heir of Mrs. Y, Mr. X executed an Affidavit of Self-Adjudication and thereafter requested the Assessor's Office for the issuance of the tax declarations in his name. However, the Assessor denied the request of Mr. X based on the constitutional prohibition on alien ownership of private lands.

***Issue:***

Can a tax declaration be issued to an American citizen who inherited real properties by intestate succession?

***Ruling:***

Yes. The requirement under Section 7, Article XII of the 1987 Constitution to transfer or convey private lands only to individuals, corporations or associations qualified to acquire or hold lands of public domain does not apply if the land is acquired by hereditary succession. Moreover, the exception did not distinguish whether the heir is a Filipino or not. Thus, a non-Filipino may own and hold private lands provided that the same are acquired by hereditary succession.

However, in the processing of the transfer of the tax declaration, Mr. X must submit the necessary documentary requirements which include the new Transfer Certificates of Title of the subject properties as evidence for the issuance of the new tax declaration in his name.

Once an evidence of transfer has been presented, the assessor concerned cannot ask for other documents to validate the primary document submitted.

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### **BLGF Opinion dated 3 December 2015, signed 5 January 2016**

Professionals, like dentists and doctors, are exempted from securing a Mayor's Permit and paying LBT for the practice of their profession.

Likewise, medical clinics are not subject to the graduated tax since they are considered necessary for the exercise of the medical profession. Thus, to impose a graduated tax on a medical clinic on the premise that it is a "business establishment rendering or offering to render professional services" would be to impose LBT on the practice of profession.

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#### **Facts:**

Dr. X and the members of the doctor's association of a Muntinlupa hospital requested for a refund of all payments made for the Mayor's Permit and LBT except regulatory fees, from 2012 up to the current year, on the ground that they are exempt therefrom.

#### **Issues:**

1. Are professionals, like dentists or doctors, required to secure a Mayor's Permit and pay LBT?
2. Are medical clinics subject to the graduated tax rate similarly imposed upon business establishments?

#### **Ruling:**

1. No. Professionals who are required to take government examinations, like dentists or doctors, are not required to secure a Mayor's Permit and to pay LBT as a consequence of the exercise of their profession.

Under Section 139(b) and Section 147 of the Local Government Code (LGC), a professional shall be entitled to practice his profession in any part of the Philippines once he pays the professional tax in one province. After such payment, a professional practicing his profession will be exempt from any other national or local tax, license or fee, including the Mayor's Permit or LBT.

2. No. Medical clinics are considered necessary for the exercise of the medical profession. Thus, to impose a graduated tax on a medical clinic on the premise that it is a "business establishment rendering or offering to render professional services" would be to impose a local tax on the practice of profession.

However, if the Local Government Unit concerned imposes such tax on medical clinics through a specific ordinance, its validity can only be questioned or challenged in the proper courts of law.

### **Court Decisions**

#### **Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)**

Supreme Court (Third Division), G.R. No. 212825 promulgated 7 December 2015

#### **Facts:**

Petitioner CIR assessed Respondent Next Mobile, Inc. (Next Mobile) for alleged deficiency taxes for taxable year 2001.

Next Mobile filed its protest and argued that the BIR's right to assess deficiency taxes for 2001 had already prescribed since the 5 Waivers of the Statute of Limitations signed by Next Mobile's Finance Director were null and void and did not extend the BIR's 3-year period to assess the company.

Upon denial by the BIR of its protest, Next Mobile appealed to the Court of Tax Appeals (CTA), which ruled in its favor. The CTA explained that the Waivers executed by the Finance Director did not extend the BIR's 3-year prescriptive period

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To be valid, a waiver of the statute of limitations must strictly comply with the requirements prescribed by the regulations.

However, a taxpayer cannot impugn the validity of the waiver after benefiting from it as he is deemed estopped by his bad faith. In such a case, the validity of the waiver may be upheld.

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to assess, as the Waivers were not properly executed according to the procedures in Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 and were, therefore, not binding on Next Mobile.

On the BIR's claim that the 10-year period for assessment applies because of the filing of a false or fraudulent return, the CTA ruled that the BIR failed to substantiate its allegation by clear and convincing proof that Next Mobile filed a false or fraudulent return.

The CIR appealed to the Supreme Court.

**Issue:**

Are the Waivers valid and binding upon Next Mobile?

**Ruling:**

Yes. The Waivers are valid and binding upon Next Mobile.

Ordinarily, a Waiver must strictly comply with the requirements of RMO No. 20-90. Otherwise, it is invalid and ineffective to extend the BIR's prescriptive period to assess taxes.

RDAO No. 05-01 further provides that the BIR's authorized revenue official has the duty to ensure that the Waivers are duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The waiver should not be accepted by the concerned BIR office and official unless duly notarized.

In the present case, the Waivers had the following flaws:

- ▶ They were executed by the Finance Director without a notarized board authority;
- ▶ The dates of acceptance by the BIR were not indicated in the Waivers;
- ▶ The fact of receipt by Next Mobile of its copy of the Second Waiver was not indicated on the face of the Waiver.

The BIR has failed, for five times, to perform its duties in relation to the Waivers, including verifying the authority of the Finance Director to execute the Waivers, demanding presentation of a notarized document evidencing the same, refusing acceptance of the Waivers when no such document was presented, affixing the dates of its acceptance on each Waiver, and indicating on the Second Waiver the date of receipt by Next Mobile.

However, both Next Mobile and the BIR are at fault. Both parties knew the infirmities of the Waivers and yet they continued to deal with each other on the strength of these documents without bothering to rectify these infirmities.

Next Mobile, after deliberately executing defective Waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. By virtue of the Waivers, Next Mobile was given the opportunity to gather and submit documents to substantiate its claims during the investigation. Next Mobile was able to postpone payment of taxes, contest and negotiate the assessment against it. Yet, after enjoying these benefits, Next Mobile challenged the validity of the Waivers when the consequences were not in its favor. Next Mobile's act of impugning these Waivers after benefiting from them and allowing the BIR to rely on the same is an act of bad faith.

On the other hand, the BIR's negligence is so gross that it amounts to malice and bad faith. The BIR knew that the Waivers should conform strictly to RMO No. 20-90 and RDAO No. 05-01, as recognized in Revenue Memorandum Circular (RMC) No. 6-2005, in order to be valid.

The general rule is that when a waiver does not comply with the requisites for its validity as specified under RMO No. 20-90 and RDAO No. 05-01, it is invalid and ineffective to extend the prescriptive period to assess taxes. However, due to its peculiar circumstances, the case is an exception to the rule and the Waivers are deemed valid.

The BIR's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for the errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is in bad faith.

The case is referred back to the CTA for determination of the merits of Next Mobile's petition asking for nullification of the BIR's assessment notices.

### **Pilipinas Total Gas vs. Commissioner of Internal Revenue**

Supreme Court *En Banc*, G.R. No. 207112 promulgated 8 December 2015

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The BIR has 120 days to decide on a claim for VAT refund, reckoned from the date of submission by the taxpayer of complete documents in support of the application. It is the taxpayer who determines when the complete documents have been submitted.

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#### **Facts:**

On 15 May 2008, Pilipinas Total Gas, Inc. ("Total Gas") filed with the BIR a claim for refund of excess input VAT, together with supporting documents, covering the first two quarters of Calendar Year 2007. On 28 August 2008, Total Gas submitted additional supporting documents.

For failure of the BIR to act on its claim, Total Gas filed an appeal with the CTA on 23 January 2009. The CTA Division dismissed the petition for being prematurely filed. It explained that Total Gas failed to complete the necessary documents enumerated in RMO No. 53-98 to substantiate its claim.

On appeal, the CTA *En Banc* also denied Total Gas' petition and concluded that the CTA has no jurisdiction over the case since the claim for refund was filed late, as the Court reckoned the 120 days for the BIR to rule on the claim on 15 May 2008, the day Total Gas filed its administrative claim.

In the same decision, the CTA *En Banc* affirmed the CTA Division's ruling that Total Gas failed to submit complete supporting documents and hence, the judicial claim was prematurely filed because the 120-day period for the CIR to decide on the claim had yet to commence.

Total Gas questioned the decision of the CTA *En Banc* as the Court stated that the petition was filed both belatedly and prematurely. Total Gas argued that the reckoning point of the 120-day period should be 28 August 2008, the date it filed its additional documents since it is only then that the submission of all documents was completed.

#### **Issue:**

Did Total Gas timely file its claim for VAT refund with the CTA?

***Ruling:***

Yes, Total Gas filed its claim for VAT refund with the CTA on time.

Section 112 (C) of the Tax Code provides that the Commissioner shall grant a refund or issue the tax credit certificate for creditable input VAT "within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed." In case of denial of the claim, or the failure of the BIR to act on the application within the prescribed period, the taxpayer may, within 30 days from the receipt of the denial or after the expiration of the 120-day period, appeal the decision or the unacted claim with the CTA.

It is the taxpayer who ultimately determines when complete documents have been submitted. The 120-day period within which the BIR must decide the VAT claim is reckoned from the date the taxpayer submitted its last supporting documents and not from the date the claim for tax refund was filed.

RMC No. 49-2003, which clarifies issues on the processing of claims for VAT refund, provides that from the date an administrative claim is filed, a taxpayer has 30 days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for VAT refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit additional documents to support his claim, the 120-day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the Tax Code. The taxpayer has 30 days from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA.

These rules should only be made applicable to claims for refund filed prior to 11 June 2014, such as the present case.

As it now stands, RMC No. 54-2014 mandates that the application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in its Annex A. In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents. The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the CIR based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

Thus, the right to reckon the 120-day period has been withdrawn from the taxpayer by RMC No. 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. The taxpayer is also barred from submitting additional documents after the claim is filed.

In the present case, since Total Gas submitted its additional documents on 28 August 2008, it should be the reckoning point of the 120-day period for the BIR to decide. Hence, its appeal with the CTA on 23 January 2009 was filed within the prescribed period.

The case is returned to the CTA Division for trial on whether Total Gas is entitled to the VAT refund.

### **G&W Architects, Engineers and Project Consultants Co. vs. Commissioner of Internal Revenue**

CTA (First Division) Case 8358, 8426 and 8489, promulgated 3 November 2015

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A "Build-To-Own or Build-Your-Own" scheme, which involves the pooling of funds for the construction of condominium units, is not considered a sale or transfer of real property that is subject to EWT and DST.

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#### **Facts:**

Respondent CIR assessed Petitioner G&W Architects, Engineers and Project Consultants, Co. ("G&W") for alleged deficiency EWT and DST for 2004 covering the transfer of 340 units in four condominium projects.

G&W protested the assessments based on four BIR rulings issued between 2003 and 2007, where the BIR confirmed that its "Build-To-Own or Build-Your-Own" scheme is not a taxable transaction as it does not constitute a sale or disposition of real property. Under the arrangement, unit owners pool their funds for the construction of condominium units and execute the following agreements:

- a. Contract to Manage and Execute the Construction between G&W and the unit owners;
- b. Trust Agreements established by the unit owners naming a trustee to hold in trust the pooled funds of the unit owners and the land where the project will be located; and,
- c. Depository and Disbursing Agreements between the trustee and the unit owners.

As the CIR failed to act on the protest, G&W filed Petitions for Review with the CTA.

At the CTA, the CIR alleged that under the so-called co-development/building-to-own/build-your-own and similar schemes, the developer simply made it appear that it merely managed the construction of the condominium projects and that the funds as contributed by the individual investors were management fee only. The assignment and delivery of the developed units to joint owners (individual investors), were supposedly not taxable being merely a transfer of property held in trust by the trustee for the individual trustors. The CIR claims that the build-to-own concept is considered pre-selling/selling that should have been subjected to EWT and DST. The CIR also noted that it issued RMC No. 55-2010 stating that G&W misrepresented facts in the request for ruling, declared the rulings as null and void, and ordered an audit and investigation.

#### **Issue:**

Is the "Build-To-Own or Build-Your-Own" scheme considered a sale of real property that is subject to EWT and DST?

#### **Ruling:**

No. The transaction between G&W and the unit owners was for a sale of services, not a sale of property. Nothing in the contracts indicate that the ownership of the land and the condominium units will first be transferred from Fort Bonifacio Development

Corporation to G&W in its personal capacity and that after construction, the ownership of the land and condominium units will be transferred from G&W to their clients. G&W only earned fees for the management and construction of the units.

All of the acts of G&W including the execution and preparation of the necessary contracts as a consequence of the construction of the units, were executed for and on behalf of the unit owners pursuant to the Contract to Manage and Execute the Construction. There can be no transfer of ownership of the condominium units between G&W and clients considering that G&W merely acts for and on behalf of the unit owners.

The CIR failed to establish the fact of actual sale of condominium units from G&W to the unit owners. The construction funding which the BIR considered as payment for the sale of the condominium units is actually the amount held in trust by the trustee bank under the Trust Agreement/Depository and Disbursement Agreement, which will be exclusively used for the construction of the project and purchase of the land. G&W had no complete control over the said amount hence, no part of the said fund can be considered as payment for the transfer of the condominium units from which the assessed EWT can be deducted.

The presumption of correctness of an assessment does not apply in this case since the CIR's conclusion that the transaction between G&W and the unit owners is a sale or transfer of real property is not based on actual facts. The CIR could have looked for other sources to determine the true intention in entering into the Contract of Management and Execution of the condominium projects but it chose to resort to presumptions and relied heavily on the nullification of the BIR rulings and Housing and Land Use Regulatory Board's ruling that build-to-own scheme violates PD No. 957 or the Subdivision and Condominium Buyers' Protective Decree. Quoting the Supreme Court's decision in *CIR vs. Hantex, GR 136975, dated March 31, 2005*, the CTA reiterated that to stand the test of judicial scrutiny, the assessment must be based on actual facts.

*[Editor's Note: Presiding Justice Roman G. Del Rosario dissented arguing that G&W's "Build-To-Own or Build-Your-Own" concept of purportedly pooling condominium unit owners' funds to be used for the construction of condominium units on behalf of the fund owners constitute a taxable sale, exchange or disposition of real property that is subject to EWT and DST.]*

### **Commissioner of Internal Revenue vs. Shinko Electric Industries Co. Ltd.**

CTA (*En Banc*) Case 1180, promulgated 4 January 2016

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The unspent subsidy or foreign inward remittance received by a representative office from its parent company is not considered income subject to income tax and VAT.

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#### **Facts:**

Petitioner CIR assessed Respondent Shinko Electric Industries Co. Ltd. ("Shinko") for alleged deficiency income tax and VAT arising from the unspent subsidy or foreign inward remittance from Shinko's parent company in Japan. Shinko protested the assessment, arguing that it is a representative office fully subsidized by its head office and does not derive income in the Philippines.

Due to the CIR's inaction, Shinko filed a Petition for Review with the CTA.

At the CTA, Shinko argued that as a representative office, its business activity is limited to information dissemination, promotion of the parent company's products, quality control of products as well as all other activities which may be legally undertaken by a representative office. Shinko was never involved in any of the sales transactions of its parent company.

The CIR, on the other hand, posited that Shinko is a foreign business entity which is allowed to derive income in the Philippines, and hence, taxable as a regional operating headquarter (ROHQ).

The CTA Third Division granted the petition and cancelled the assessments. Upon denial of its Motion for Reconsideration, the CIR elevated the case to the CTA *En Banc*.

**Issue:**

Is Shinko's unspent subsidy or foreign inward remittance received from its parent company considered income subject to income tax and VAT?

**Ruling:**

No. Shinko is a representative office, which does not derive income in the Philippines subject to tax. As a representative office, Shinko is fully subsidized by its parent company. The unspent subsidy or foreign inward remittances from its parent company should not be treated as income subject to income tax and VAT.

The CIR erred in mainly relying on Shinko's SEC registration which states that it performs "promotion and quality control of the parent company's products" to conclude that Shinko is already involved in qualifying services provided by ROHQs such as marketing control and sales promotion, as well as research and development services and product development. The fact that Shinko does not have its own Articles of Incorporation already strengthens its contention that it is a mere representative office of a foreign company, as stated in its application with the SEC itself.

Shinko has proven with sufficient evidence that it deals with the clients here in the Philippines on behalf of its parent company in Japan. On the other hand, ROHQs are only allowed to offer qualifying services to affiliates, branches or subsidiaries declared in their registration with the SEC. The purpose of Shinko is precisely to promote and market the products of its parent company to clients, which an ROHQ is not allowed to do so.

**The City of Makati vs. The Municipality of Bakun and Luzon Hydro Corporation**  
CTA (*En Banc*) Case 1179 promulgated 14 January 2016

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For local business tax purposes, 30% of all sales recorded in the principal office shall be taxable in the city or municipality where the principal office is located while 70% shall be taxable in the city or municipality where the plant or project office is located.

An office which does not issue invoices, records sales, or operate any aspect of the business is considered an administrative office and cannot share in the allocation of the LBT from annual gross sales.

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**Facts:**

The Municipality of Bakun assessed Luzon Hydro Corporation ("LHC") for alleged deficiency local business tax (LBT) on the ground that the 70% LBT allocation should be divided only between Bakun, where LHC maintains a plant, and the Municipality of Alilem, where LHC has its principal office and a plant. Initially, LHC equally allocated 70% of its annual gross sales and receipts to Alilem, Bakun, and Makati City, where it maintains a project office. LHC noted that it operates in Makati as an extension of its principal office in Alilem.

LHC filed a special civil action for interpleader at the Makati Regional Trial Court (RTC) to determine to which local government units (LGUs) it should pay LBT and how it should allocate the 70%.

The RTC considered LHC's Makati office as a project office and not a mere administrative office and ruled that Makati is entitled to share in the 70% LBT allocation, prompting Bakun to file a Petition for Review at the CTA.

The CTA First Division ruled in favor of Bakun and held that LHC does not maintain a branch or sales office in Makati, thus, it is not entitled to a portion of the LBT proceeds. As host to LHC's administrative office, Makati is only entitled to collect Mayor's permit fees and other regulatory fees from Respondent. Aggrieved, Makati City elevated the case to the CTA *En Banc*.

**Issue:**

Is Makati City entitled to share in the 70% LBT allocation of LHC?

**Ruling:**

No. Under Section 150 of the Local Government Code (LGC), the 30%-70% LBT allocation applies to, among others, plants and project offices, where 30% of all sales recorded in the principal office shall be taxable in by the LGU where the principal office is located while 70% shall be taxable in the city or municipality where the plant or project office is located.

The CTA *En Banc* ruled that Alilem is clearly entitled to 30% as the municipality with jurisdiction over LHC's principal office. As to the 70%, Alilem and Bakun are entitled to a share considering that LHC's electric power plant facilities are located in these municipalities.

During trial, it was established that the invoices or records of all sales to National Power Corporation are not handled by LHC's Makati office nor does it operate any aspect of the business or primary purposes of LHC as provided in its Articles of Incorporation. The Makati facility can be considered as a mere administrative office and not a project office and as such, the LGU is not entitled to a portion of the 70% LBT allocation.

To be considered a branch or sales office for purposes of collection of taxes, it is not enough that the branch or sales office conducts operation of the business as an extension of the principal office, the branch or sales office shall likewise record the sale or transaction. The tax due thereon shall accrue and shall be paid to the municipality where such branch or sales outlet is located pursuant to Article 243 (b) of Administrative Order No. 270, in relation to Section 150 (a)(b)(d) of the LGC.

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