

July 2013

Tax bulletin



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

Highlights

BIR Rulings

- ▶ For a non-stock, non-profit organization to be issued a certificate of tax exemption, it has to prove, by actual operation for at least 3 years, that it is exempt from income tax under Section 30(E) of the Tax Code, subject to other requirements. **(Page 4)**
- ▶ Under the RP-Korea Tax Treaty, dividends paid by a domestic corporation to a resident of Korea are subject to the preferential tax rate of 10% on the gross amount of dividends if the resident of Korea is a company (other than a partnership) directly holding at least 25% of the capital of the domestic company. **(Page 5)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 12-2013 further amends RR No. 2-98 on the requirements for deductibility of certain income payments. **(Page 5)**
- ▶ Revenue Memorandum Circular (RMC) No. 46-2013 clarifies the taxability of benefits granted to government employees' organizations duly approved/ accredited by the Civil Service Commission through Collective Negotiations Agreements. **(Page 6)**
- ▶ RMC No. 50-2013 clarifies the effects of filing tentative tax returns. **(Page 6)**
- ▶ Revenue Memorandum Order (RMO) No. 18-2013 amends RMO No. 7-2013 and prescribes the procedures in the issuance of Certificates Authorizing Registration (CARs) and Tax Clearances (TCLs) for transactions or transfers falling within the jurisdiction of Revenue District No. 6. **(Page 6)**
- ▶ RMO No. 20-2013 prescribes the policies and guidelines in the issuance of tax exemption rulings to qualified non-stock, non-profit corporations and associations under Section 30 of the Tax Code. **(Page 7)**
- ▶ RMO No. 21-2013 amends RMO No. 35-2012, as amended by RMO No. 20-2006, and prescribes the guidelines and procedures in the processing and issuance of Authority to Release Imported Goods (ATRIG) for excise tax purposes. **(Page 11)**

SEC Issuance

- ▶ SEC Memorandum Circular (MC) No. 12 amends Investment Company Act (ICA) Rules 35-1(d), 3, 4 and 6. **(Page 12)**

BSP Issuances

- ▶ Circular No. 803 amends Section X303 of the Manual of Regulations for Banks (MORB) and Section 4303Q of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF) on Single Borrower's Limit (SBL). **(Page 12)**

- ▶ Circular No. 804 re-opens the Syrian Pound (SYP) Currency Exchange Facility (CEF) for Overseas Filipino Workers (OFWs) returning from Syria. **(Page 13)**

BLGF Opinions

- ▶ A municipality cannot impose local business tax (LBT) based on the presumed sale of 70% of all the bags of cement produced in the plant located within its jurisdiction, because Section 143 of the Local Government Code of 1991 specifically provides that the LBT (except in the case of Peddler's Tax) should be based on gross sales or receipts realized during the preceding calendar year.

A tax law should be applied prospectively unless it is expressly provided to apply retroactively. **(Page 13)**

- ▶ For LBT purposes, where there is no branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality. **(Page 14)**

Court Decisions

- ▶ Failure to report input taxes in the VAT returns cannot be considered as erroneous payment of tax that may be the subject of a claim for refund under Section 229 of the Tax Code. **(Page 15)**
- ▶ The net worth method of reconstructing income does not apply if there is a decrease in the net worth of a taxpayer. The net worth method is based on the theory that a taxpayer understated his income if his net worth for a given year has increased by an amount larger than the reported income for the same period.

The receipt of MERALCO refunds is subject to income tax but not to output VAT, because it did not arise from the sale of goods or services. However, the refund results in an over-claim of input VAT in prior years if, upon refund, the related input tax was not deducted from the current input taxes on payments for electric consumption.

Excess tax credits carried over by a taxpayer in the succeeding taxable year should not be disallowed in the current year's tax audit since any benefit that may be derived from the carry-over will pertain to the succeeding taxable year. At most, the taxpayer may only be assessed in the tax audit for the succeeding taxable year. **(Page 16)**

- ▶ A waiver is an agreement between the taxpayer and the Commissioner of Internal Revenue (CIR) to extend the period within which the government may assess or collect taxes. To be valid, the waiver must be made before the expiration of the original prescriptive period or of the extended period previously agreed upon. **(Page 17)**

BIR Rulings

BIR Ruling No. 244-2013 dated July 8, 2013

For a non-stock, non-profit organization to be issued a certificate of tax exemption, it has to prove, by actual operation for at least 3 years, that it is exempt from income tax under Section 30(E) of the Tax Code, subject to other requirements.

Facts:

A Co. is a non-stock, non-profit corporation engaged primarily in providing homes for the elderly. It requested for the issuance of a certificate of tax exemption as a non-stock, non-profit corporation organized and operated exclusively for charitable purposes under Section 30(E) of the Tax Code.

Issues:

1. Can a certificate of tax exemption be issued to A Co.?
2. Is A Co. subject to any internal revenue taxes?
3. Is A Co. subject to any tax reporting obligations?

Ruling:

1. No. An organization has to prove by actual operation for at least 3 years that it is an organization exempt from income tax under Section 30(E) of the Tax Code. For this purpose, an organization can file the necessary annual information return, instead of an income tax return (ITR), on or before the 15th day of the 4th month following the end of its taxable year, as required under Section 24 of Revenue Regulations (RR) No. 2-40.

Based on the information return, the BIR will conduct an investigation on the activities undertaken by the organization during the period, and a certificate of tax exemption may be issued depending on the results of the investigation. After the 3-year period, A Co. is required to submit a number of documents required under Revenue Memorandum Circular (RMC) No. 14-2001.

2. Yes. A Co. is subject to the following internal revenue taxes:
 - ▶ Income tax on income derived from its properties, real or personal, or any activity conducted for profit, regardless of the disposition thereof
 - ▶ 20% final withholding tax (FWT) on interest income from bank deposits and yield or any monetary benefit derived from deposit substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines
 - ▶ 7½% FWT on interest income derived from a depository bank under expanded foreign currency deposit system
3. Yes. A Co. is subject to the following tax reporting obligations:
 - ▶ File on or before the 15th day of the 4th month following the end of the accounting period a Profit and Loss Statement and Balance Sheet with the Annual Information Return under oath, stating its gross income and expenses incurred during the preceding period and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as sources of disposition of income

- ▶ Act as a withholding agent of the government if it acts as an employer and its employee receives compensation income subject to withholding tax (WT), or if it makes income payments to individuals or corporations subject to the Expanded/Creditable WT
- ▶ Maintain books of accounts and other pertinent records of tax-exempt organizations or grantees of tax incentives, which shall be subject to BIR examination
- ▶ Pay the annual registration fee of P500
- ▶ Issue duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered which are not directly related to the activities for which the association is registered

[Editor's note: The BIR recently issued RMO No. 20-2013 dated July 22, 2013, which prescribes the policies and guidelines in the issuance of tax exemption rulings to qualified non-stock, non-profit corporations and associations under Section 30 of the Tax Code. Under this RMO, corporations and associations under Section 30 of the Tax Code, including those which have been issued tax exemption rulings/certificates prior to June 30, 2012, should apply for tax exemption/revalidation with the BIR Revenue District Office where they are registered. See salient provisions of RMO No. 20-2013 on page 7 below.]

BIR Ruling No. ITAD 184-13 dated July 3, 2013

Under the RP-Korea Tax Treaty, dividends paid by a domestic corporation to a resident of Korea are subject to the preferential tax rate of 10% on the gross amount of dividends if the resident of Korea is a company (other than a partnership) directly holding at least 25% of the capital of the domestic company.

Facts:

A Co., a non-resident foreign corporation based in Korea, holds 99.99% of the capital of B Co., a domestic corporation. On January 29, 2013, B Co. declared cash dividends in favor of A Co, and remitted said dividends on February 28, 2013. A Tax Treaty Relief Application to use the 10% preferential tax on dividends under the RP-Korea Tax Treaty was filed with the BIR-International Tax Affairs Division (ITAD) on February 8, 2013.

Issue:

Are the dividends declared and paid by B Co. to A Co. entitled to the 10% preferential tax rate?

Ruling:

Yes. Under the RP-Korea Tax Treaty, dividends paid by a domestic corporation to a resident of Korea are subject to the preferential tax rate of 10% on the gross amount of dividends, if the resident of Korea is a company (other than a partnership) directly holding at least 25% of the capital of the domestic company.

BIR Issuances

RR No. 12-2013 further amends RR No. 2-98 on the requirements for deductibility of certain income payments.

Revenue Regulations No. 12-2013 dated July 12, 2013

- ▶ Section 2.58.5 of RR 2-98, as amended, is further amended to read as follows:

"Section 2.58.5. Requirements for Deductibility - Any income payment which is otherwise deductible under the Code shall be allowed as a

deduction from the payer's gross income only if it is shown that the income tax required to be withheld has been paid to the Bureau in accordance with Sections 57 and 58 of the Code.

No deduction will also be allowed notwithstanding payments of withholding tax at the time of the audit investigation or reinvestigation/reconsideration in cases where no withholding of tax was made in accordance with Sections 57 and 58 of the Code."

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

(Editor's Note: RR No. 12-2013 was published in the Manila Bulletin on July 13, 2013)

RMC No. 46-2013 clarifies the taxability of benefits granted to government employees' organizations duly approved/accredited by the Civil Service Commission through CNAs.

Revenue Memorandum Circular No. 46-2013 dated May 26, 2013

- ▶ In BIR Ruling No. DA-(ECB-023) 642-09 dated November 4, 2009, the BIR ruled that incentives arising from Collective Negotiations Agreements (CNAs) qualify as "other benefits" under Section 32(B)(7)(e) of the Tax Code.
- ▶ CNA benefits are exempt from income and WT provided that, when added to the 13th month pay and other benefits, such benefits shall not exceed the P 30,000.00 threshold.
- ▶ Any excess over the threshold shall be taxable to the employee, whether rank-and-file or supervisory.

RMC No. 50-2013 clarifies the effects of filing tentative tax returns.

Revenue Memorandum Circular No. 50-2013 dated July 15, 2013

- ▶ A 'Tentative Tax Return' shall be considered as a final return, unless a final amended return is filed by the concerned taxpayer.
- ▶ However, once an electronic Letter of Authority or any other notice of audit is received, taxpayers are barred from making amendments to the tentative tax returns filed.
- ▶ Pursuant to Section 6 (A) of the Tax Code, tax returns marked as 'tentative' may also be the subject of examination by the BIR.

RMO No. 18-2013 amends RMO No. 7-2013 and prescribes the procedures in the issuance of CARs and TCLs for transactions or transfers falling within the jurisdiction of Revenue District No. 6.

Revenue Memorandum Order No. 18-2013 dated June 25, 2013

- ▶ Item (B) of RMO No. 7-2013 is amended to read as follows:

"B) For Certificates Authorizing Registration (CARs) and Tax Clearances (TCLs) for Transactions and Transfers within the Area of Jurisdiction of Revenue District No. 6 -

1. The Commissioner of Internal Revenue shall sign/approve all CARs and TCLs covering transactions and transfers within the area of jurisdiction of *Revenue District No. 6 (Urdaneta, East Pangasinan)* of the Bureau.

2. For this purpose, the process of receiving, processing, evaluating and recommending for the approval/disapproval of applications for CARs and TCLs under RMO No. 15-2003 shall continue to be observed. However, the

concerned *Revenue District Officer or Assistant Revenue District Officer under Revenue District No. 6* shall only affix their initials (to signify their recommendation for approval) in the subject CARs or TCLs, and shall forward the applications and corresponding dockets to the Office of the Commissioner of Internal Revenue, through the *Revenue Regional Director, Revenue Region No. 1 (Calasiao, Pangasinan)*, for final approval by the Commissioner."

RMO No. 20-2013 prescribes the policies and guidelines in the issuance of tax exemption rulings to qualified non-stock, non-profit corporations and associations under Section 30 of the Tax Code.

Revenue Memorandum Order No. 20-2013 dated July 22, 2013

Applications for Tax Exemption Rulings

- ▶ Corporations and associations enumerated under Section 30 of the Tax Code, including those which have been issued tax exemption rulings/certificates prior to June 30, 2012, shall file their respective Applications for Tax Exemption/Revalidation with the Revenue District Office (RDO) where they are registered.
- ▶ Only corporations or associations that are duly qualified under Section 30 of the Tax Code shall be issued Tax Exemption Rulings.

General Documentary Requirements

- ▶ A duly qualified corporation or association shall submit the following documents:
 1. Original copy of application letter for issuance of Tax Exemption Ruling, which shall cite the particular paragraph of Section 30 of the Tax Code on which the application for exemption/revalidation is being based
 2. Certified true copy of the latest Articles of Incorporation and By-Laws issued by the Securities and Exchange Commission (SEC)
 3. Original copy of Certification under Oath by an executive officer of the corporation or association as to:
 - ▶ All previous amendments/changes in the Articles of Incorporation and By-Laws
 - ▶ Manner of activities
 - ▶ The sources and disposition of income
 - ▶ If there are no amendments/changes, the Certification shall state this fact
 4. Certified true copy of the Certificate of Registration with the BIR
 5. Original copy of the Certification under Oath by the Treasurer of the corporation or association as to the amount of income, compensation, salaries or any emoluments paid by the corporation or association to its trustees, officers and other executive officers, except that a corporation sole, which, by its nature, does not have trustees, corporate officers or executive officers need not submit the certification required under this subparagraph
 6. Original copy of the Certification issued by the RDO where the corporation or association is registered, stating that the corporation or association is not the subject of any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal, or if there be any, the Original copy of the Certification issued by the RDO on its status
 7. Certified true copies of the ITRs or Annual Information Returns and Financial Statements of the corporation or association for the last 3 years

8. Original copy of a statement under Oath by an executive officer of the corporation or association as to its *modus operandi* which shall include:
 - ▶ A full description of the past, present, and proposed activities of the corporation or association
 - ▶ A narrative description of anticipated receipts and contemplated expenditures
 - ▶ A detailed description of all revenues which it seeks to be exempted from income tax, provided that all other revenues which are not included in the statement/ application shall be subject to income tax.

Additional Requirements for Educational Institutions

- ▶ A non-stock and non-profit educational institution under Section 30 (H) of the Tax Code shall submit the following additional documents:
 1. Certified true copy of government recognition/permit/accreditation to operate as an educational institution issued by the Commission on Higher Education (CHED), Department of Education (DepEd), or Technical Education and Skills Development Authority (TESDA)
 2. If the government recognition/permit/accreditation to operate as an education institution was issued more than five (5) years prior to the Application for Tax Exemption/Revalidation, an original copy of a current Certificate of Operation/Good Standing, or other equivalent document issued by the appropriate government agency (i.e., CHED, DepEd, or TESDA) shall be submitted as proof that the non-stock and non-profit educational institution is currently operating as such
 3. Original copy of Certificate of utilization of annual revenues and assets by the Treasurer, or his equivalent, of the non-stock and non-profit educational institution, with the Certificate showing a breakdown of the following:
 - a. Any amount in cash or in kind (including administrative expenses) paid or utilized to accomplish one or more purposes for which the educational institution was created or organized, including grants of scholarship to deserving students and professorial chairs for the enhancement of professional course
 - b. Any amount paid to acquire an asset used (or held for use) directly in carrying out one or more purposes for which it was created or organized, including the upgrading of existing facilities to support the conduct of the above activities
 - c. Any amount in cash or in kind invested in an activity related to the educational purposes for which it was created or organized
 - d. Any amount set aside for a specific project, which must be supported by a Board Resolution issued by the school administration on proposed projects (i.e., construction and/or improvement of school buildings and facilities, acquisition of equipment, books and the like) to be funded out of the money deposited in banks or placed in money markets, on or before the 15th day of the fourth month following the end of its taxable year.

General Guidelines in the Evaluation of Application for Tax Exemptions/Revalidation

- ▶ In the evaluation of the Applications for Tax Exemptions/Revalidation, the Revenue District Officer (RDO) shall:
 1. Ascertain whether or not the corporation or association falls under any of the organizations enumerated under Section 30 of the Tax Code by examining its Articles of Incorporation and By-Laws and other constitutive documents.

The Articles of Incorporation must clearly state that:

- ▶ It is a non-stock, non-profit corporation or association
- ▶ The purpose for which it was created is one of those enumerated under Section 30 of the Tax Code
- ▶ No part of the corporation or association's net income shall inure to the benefit of any private individual
- ▶ The trustees of the non-profit corporation or association do not receive any compensation or remuneration.

The corporation or association's constitutive documents shall:

- ▶ Limit its purpose to those described in Section 30 of the Tax Code
- ▶ Not expressly permit activities that do not further its tax-exempt purposes
- ▶ Permanently dedicate its assets to its tax-exempt purposes.

A branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax-exempt corporation under Section 30 of the Tax Code.

2. Determine whether or not the corporation or association is operating as an organization under Section 30 of the Tax Code, by examining its *modus operandi*, financial statements and other relevant documents. The examination must show that:
 - ▶ Its earnings do not inure to the benefit of any private individual
 - ▶ It does not operate for the benefit of private interest such as those of its founder or the founder's family
 - ▶ It does not operate for the purpose of conducting a trade or business that is not related to its tax-exempt purpose.
3. Verify the corporation or association's sources of revenues and other transactions to determine which are taxable and non-taxable.

Despite its being a tax-exempt institution, it is subject to the corresponding internal revenue taxes imposed under the Tax Code on its income derived from any of its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof (i.e., rental payment from their buildings/premises), which income is subject to income tax.

4. Verify whether or not the corporation or association has stop-filer cases, accounts receivable (AR) cases, etc., and require compliance by the corporation or association.
5. Verify whether or not the corporation or association is the subject of any pending investigation, on-going audit, pending tax assessment, administrative protest, claim for refund or issuance of tax credit certificate, collection proceedings, or a judicial appeal; and determine if the issues involved warrant a denial of the application for tax exemption/revalidation.

Specific Guidelines in the Evaluation of the Application for Tax Exemption/Revalidation

- ▶ Corporations or associations which apply for Tax Exemption Ruling under Section 30 (E) of the Tax Code must meet all the following requirements:
 1. It must be a non-stock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans;

2. It should meet the following tests:
 - ▶ Organizational Test - requires that the corporation or association's constitutive documents exclusively limit its purposes to one or more of those described in Section 30 (E) of the Tax Code.
 - ▶ Operational Test - mandates that the regular activities of the corporation or association be exclusively devoted to the accomplishment of the purposes specified in Section 30 (E) of the Tax Code. A corporation or association fails to meet this test if a substantial part of its operations may be considered '*activities conducted for profit*'.
3. All the net income or assets of the corporation or association must be devoted to its purpose/s and no part of its net income or asset accrues to or benefits any member or specific person. Any profit must be plowed back and must be devoted or used altogether for the furtherance of the purpose for which the corporation or association was organized;
4. It must not be a branch of a foreign non-stock, non-profit corporation.

Procedure

- ▶ Upon receipt of the complete documentary requirements (docket) for the Application for Tax Exemption/Revalidation, the RDO shall pre-evaluate the same and shall determine whether or not the applicant qualifies as an exempt corporation or association under Section 30 of the Tax Code.
- ▶ If based on the pre-evaluation, the RDO is of the position that the corporation or association is qualified, he shall prepare a written recommendation stating the factual and legal bases and endorse the docket to the Office of the Regional Director for review.
- ▶ If the Regional Director concurs with the RDO's recommendation, the docket shall be forwarded to the Office of the Assistant Commissioner, Legal Service, Attention: Law Division; otherwise, the docket shall be returned to the RDO for appropriate action.
- ▶ The Law Division shall further review and evaluate the documents submitted by the applicant and the RDO's recommendation. If the same is in order, it shall prepare the appropriate Tax Exemption Ruling for approval and signature of the Commissioner or his duly authorized representative; otherwise, the docket shall be returned to the Regional Director for appropriate action.
- ▶ If based on the pre-evaluation, the RDO is of the position that the corporation or association does not qualify, he shall notify in writing the applicant of such findings, stating the factual and legal bases for the denial.
- ▶ The applicant may appeal the denial to the Regional Director within 30 days from the date of receipt of the written notice of denial.
- ▶ If the application for Tax Exemption/Revalidation is denied, the corporation or association shall be held liable for income tax and shall be accordingly assessed for deficiency taxes, inclusive of penalties and interest.
- ▶ If there is incomplete submission of the documentary requirements, the corporation or association shall be notified of such findings and the documents already submitted shall be returned to the applicant for submission/completion.
- ▶ A Tax Exemption Ruling issued under this Order shall be valid for a period of 3 years from the date of effectivity specified in the Ruling, unless sooner revoked or cancelled.

Validity of the Tax Exemption Ruling

- ▶ A Tax Exemption Ruling issued under this Order shall be valid for a period of 3 years from the date of effectivity specified in the ruling, unless sooner revoked or cancelled.
- ▶ The Tax Exemption Ruling shall be deemed revoked if there are material changes in the character, purpose, or method of operation of the corporation or association which are inconsistent with the basis for its income tax exemption. The revocation takes effect as of the date of the material change.
- ▶ Tax Exemption Rulings may be renewed upon filing of a subsequent Application for Tax Exemption/Revalidation, under the same requirements and procedures provided in this RMO; otherwise, the exemption shall be deemed revoked upon the expiration of the Tax Exemption Ruling.
- ▶ The revalidated Tax Exemption Ruling shall be valid for another period of 3 years, unless sooner revoked or cancelled.
- ▶ If a corporation or association which has been issued a Tax Exemption Ruling fails to file its annual information return, it shall automatically lose its income tax-exempt status beginning in the taxable year for which it failed to file an annual information return, in addition to the sanctions imposed under Section 250 of the Tax Code.
- ▶ Tax exemption rulings or certificates issued to corporations or associations listed under Section 30 of the Tax Code prior to June 30, 2012 shall be valid until December 31, 2013.
- ▶ Tax exemption rulings or certificates issued after June 30, 2012 shall continue to be valid for a period of 3 years from date of issuance, unless sooner revoked or cancelled.

RMO No. 21-2013 amends RMO No. 35-2012, as amended by RMO No. 20-2006, and prescribes the guidelines and procedures in the processing and issuance of an ATRIG for excise tax purposes.

Revenue Memorandum Order No. 21-2013 dated July 22, 2013

- ▶ Item II, paragraph 1, of RMO No. 35-2002, as amended by RMO No. 20-2006, is amended to read as follows:

"II. POLICIES AND GUIDELINES

1. xxx

With respect to the importation of automobiles defined under Republic Act No. 9224, one (1) Authority to Release Imported Goods (ATRIG) shall be issued for each unit of automobile with a net importer's price of over two million one hundred thousand pesos (P2,100,000.00), excluding value-added and excise taxes; Provided, however, that in cases of importation having a single Bill of Lading but consisting of several automobiles with importer's selling prices of P2,100,000.00 or less and over P2,100,000.00, excluding value-added and excise taxes, one (1) ATRIG shall still be issued for every unit of automobile, regardless of the net importer's selling price; Provided, finally, that, pending enhancement of the Philippine National Single Window System on ATRIG, a separate notarized application for ATRIG shall be filed and signed by the importer or his duly authorized representative, with the prescribed documentary stamp affixed thereon, for each and every unit of automobile pursuant to this sub-paragraph."

SEC MC No. 12 amends ICA Rules 35-1 (d), 3, 4 and 6.

SEC Issuance

SEC Memorandum Circular No. 12 dated July 9, 2013.

- ▶ SEC MC 12 amends Investment Company Act (ICA) Rules 35-1 (d), 3, 4 and 6, as follows:
 - ▶ The maximum investment of a company in any single enterprise shall not exceed an amount equivalent to *15% of the investment company's net asset value* except obligations of the Philippine Government.
 - ▶ For liquidity purposes, *at least 5% of an open-ended company fund shall be invested in liquid/semi-liquid assets.*

For this purpose, an open ended-company fund shall submit a liquidity contingency plan to the SEC before it implements a decreased investment of less than 10% in liquid/semi-liquid assets.

- ▶ The total operational expenses of an investment company shall not exceed 10% of its average investment fund or net worth as shown in its previous Audited Financial Statements.
 - ▶ The formula shall be "Expense Ratio (%) = Total Operating Expenses ÷ Average Net Asset Value x 100"
 - ▶ The average daily net asset value shall be indicated in the investment company's Quarterly and Annual Reports.

[Editor's Note: SEC MC No. 12 was published in The Philippine Star and Manila Standard Today on July 11, 2013.]

BSP Issuances

Circular No. 803 amends Section X303 of the MORB and Section 4303Q of the MORNBF1 on SBL.

BSP Circular No. 803 dated July 5, 2013

- ▶ The Single Borrower's Limit (SBL) of 25% of the bank's net worth may be increased by an additional 15% subject to the following conditions:
 1. The additional loans, credit accommodations and guarantees are granted to finance oil importation of oil companies which are not affiliates of the lending bank engaged in energy and power generation.
 2. The oil companies qualify under the credit underwriting standards of the lending bank, and the lending bank shall comply with the guidelines in managing large exposures and credit risk concentration.
 3. The resulting credit risk shall be considered by the bank in its internal assessment of capital adequacy relative to its overall risk profile and operating environment.
 4. The additional 15% shall only be allowed for a period of 3 years from March 3, 2011 or until March 3, 2014.
 5. The loans, credit accommodations and guarantees outstanding after such date and in excess of the 25% of the bank's net worth shall not be increased but shall be reduced, and not be increased, thereafter.

- ▶ The 15% increase in the SBL allowed for banks under the MORB applies as well to non-bank financial institutions, subject to the same conditions as enumerated above.
- ▶ The Circular will take effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 803 was published in Manila Standard Today on July 12, 2013.]

Circular No. 804 re-opens the SYP CEF for Overseas Filipino Workers returning from Syria.

BSP Circular No. 804 dated July 12, 2013

- ▶ The Syrian Pound (SYP) Currency Exchange Facility (CEF) shall be available for another six (6) months from the date of the effectivity of the Circular.
- ▶ The implementation of the SYP CEF shall be governed by Circular No. 780, Series of 2013, except on the period of availability as mentioned above.
- ▶ The Circular will take effect 10 calendar days after its publication in two (2) newspapers of general circulation.

[Editor's Note: Circular No. 804 was published in The Philippine Star and Philippine Daily Inquirer on July 18, 2013.]

BLGF Opinions

BLGF Opinion dated June 11, 2013 (signed on July 1, 2013)

A municipality cannot impose LBT based on the presumed sale of 70% of all the bags of cement produced in the plant located within its jurisdiction because Section 143 of the Local Government Code of 1991 specifically provides that the LBT (except in the case of Peddler's Tax) should be based on gross sales or receipts realized during the preceding calendar year

A tax law should be applied prospectively unless it is expressly provided to apply retroactively.

Facts:

X Co. is a domestic corporation engaged in the business of manufacturing cement and ready-mix concrete products, with principal office in Taguig City. It operates various manufacturing plants located in Davao, La Union, Misamis Oriental and Bulacan, and maintains 20 branches or sales outlets in various localities.

In August 2008, X Co. secured an opinion from the BLGF on the proper allocation of gross receipts for purposes of computing X Co.'s Local Business Tax (LBT) due to various local government units (LGUs). The BLGF opined that the LGU where the plant is located shall have authority to tax 70% of all sales recorded in the principal office. However, sales or receipts made in a branch or sales outlet shall be recorded in such branch or sales outlet and shall be taxable by the LGU where the branch or sales outlet is located, to the exclusion of the locality where the manufacturing plant is located.

Subsequently, X Co. received a Notice of Assessment from the Municipality of Norzagaray, Bulacan for alleged deficiency LBT. The Municipality claimed that it may impose LBT upon the presumed value of 70% of all bags of cement produced by the Bulacan Plant, regardless of whether these are sold, or if indeed sold, irrespective of the place where the sales transactions were made or consummated, contrary to the BLGF opinion issued to X Co. in 2008.

X Co. sought clarification from the BLGF regarding the assessment of the Municipality of Norzagaray. X Co claimed that in case the 2008 BLGF opinion is revised, the same must be applied prospectively since a revision would have a direct impact on the gross receipts allocated and the LBT payments of X Co. to the various LGUs.

Issue:

Is the claim of the Municipality of Norzagaray correct?

Ruling:

No. The BLGF reiterated the principle laid out in its 2008 opinion, wherein it said that 30% of all sales or receipts recorded in the principal office shall be taxable by the LGU where the principal office is located, and the remaining 70% shall be taxable by the Municipality where the plant is situated. On the other hand, the Municipality shall not share in the allocation pertaining to sales recorded in the branch or sales outlet elsewhere except if such branch or sales outlet is located in Norzagaray.

In addition, the BLGF further opined that the Municipality of Norzagaray cannot impose LBT based on the presumed sale of 70% of all the bags of cement produced in the plant located within its jurisdiction because Section 143 of the LGC specifically provides that LBT (except in the case of Peddler's Tax) should be based on gross sales or receipts realized during the preceding calendar year.

Section 131 of the LGC defines gross sales or receipts as including the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding discounts if determinable at the time of sales, sales returns, excise tax, and VAT.

Finally, the BLGF also applied the fundamental principle that a tax law should be applied prospectively unless it is expressly provided to apply retroactively. Rulings, opinions and views issued by the BLGF are issued in order to determine and establish the rights and obligations of the parties in a particular case, specifically between an LGU and a taxpayer.

BLGF Opinion dated June 14, 2013

For LBT purposes, where there is no branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be recorded in the principal office and the taxes due shall accrue and shall be paid to such city or municipality.

Facts:

X Co. is a domestic leasing corporation with principal office in the City of Manila. It is the registered owner of real properties located outside Manila which are held for lease to third parties. X Co. does not maintain any office space or personnel in the locations where the said properties are being leased. Such being the case, the company's principal office in Manila records all revenue from the lease of said real properties and issues the corresponding invoices/official receipts for the same.

Issue:

Is the rental income derived by X Co. from the lease of properties located in various localities subject to LBT in the City of Manila where the principal office of X Co. is located?

Ruling:

Yes. Section 150 of the LGC provides that for LBT purposes, where there is no branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes due shall accrue and be paid to such city or municipality.

Since X Co. does not maintain any branch or sales outlet elsewhere, the gross rental receipts of X Co. from the lease of its properties located in various localities shall be taxable by the City of Manila where the principal office is located.

Court Decisions

Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (Special Second Division) Case Nos. 7986 & 8028 promulgated June 14, 2013

Failure to report input taxes in the VAT returns cannot be considered as erroneous payment of tax that may be the subject of a claim for refund under Section 229 of the Tax Code.

Facts:

Petitioner Coca-Cola Bottlers Philippines, Inc. (CCBPI) failed to declare certain input taxes in its VAT returns for the 3rd and 4th quarters of 2007. CCBPI alleged overpayment of VAT for the said taxable periods since the undeclared input taxes were not credited against output tax.

Since CCBPI could not amend its VAT returns due to the issuance of a BIR Letter of Authority for 2007, it filed with the BIR claims for refund of alleged overpaid VAT for the 3rd and 4th quarters of 2007. As the BIR failed to act on the claims, CCBPI filed Petitions for Review with the Court of Tax Appeals (CTA).

Issue:

Is CCBPI entitled to its claims for refund?

Ruling:

No. CCBPI Cola is not entitled to the refunds as the amounts claimed represent undeclared input taxes, not erroneously paid taxes, as contemplated under Section 229 of the Tax Code. Section 229 of the Tax Code allows the recovery of any national internal revenue tax (including VAT) which was erroneously or illegally assessed or collected.

CCBPI's input taxes for the 3rd and 4th quarters of 2007 should have been declared in its quarterly VAT returns so that these could be creditable against the output tax for the same taxable periods. Since it failed to report the input taxes in its VAT returns, it could not offset the undeclared input taxes against the output VAT. Under RR No. 16-2005, input taxes must be substantiated and reported in the VAT returns to be able to claim credit against the output tax. While CCBPI was able to substantiate a portion of its claims, the input taxes were not reported in its VAT returns.

Victoria Manufacturing Corporation vs. Commissioner of Internal Revenue
CTA (Special First Division) Case No. 8187 promulgated June 23, 2013

The net worth method of reconstructing income does not apply if there is a decrease in the net worth of a taxpayer. The net worth method is based on the theory that a taxpayer understated his income if his net worth for a given year has increased by an amount larger than the reported income for the same period.

The receipt of MERALCO refunds is subject to income tax but not to output VAT, because it did not arise from the sale of goods or services. However, the refund results in an over-claim of input VAT in prior years if, upon refund, the related input tax was not deducted from the current input taxes on payments for electric consumption.

Excess tax credits carried over by a taxpayer in the succeeding taxable year should not be disallowed in the current year's tax audit since any benefit that may be derived from the carry-over will pertain to the succeeding taxable year. At most, the taxpayer may only be assessed in the tax audit for the succeeding taxable year.

Facts:

The BIR assessed Petitioner Victoria Manufacturing Corporation (VMC) deficiency income tax, VAT and expanded withholding tax (EWT) for taxable year 2006.

Included in the deficiency income tax and VAT assessments are alleged "unaccounted sources of income" from the following: (i) packaging, factory and spare parts inventory which VMC reported in its financial statements in 2005 but failed to report as beginning inventory in the Cost of Goods Manufactured and Sold for 2006 (the BIR used the net worth method for the income tax assessment), and (ii) MERALCO refunds received by VMC in 2006. The BIR also disallowed VMC's excess tax credits that were carried over to the succeeding year 2007.

VMC claimed that the inventories were used in 2005 that is why they did not form part of 2006 beginning inventory. VMC also argued that the net worth method for determining taxable income does not apply. It further argued that the MERALCO refund was simply deducted from its 2006 monthly electricity bills, thereby significantly reducing VMC's deductible expense for electricity resulting in more income tax payments in 2006.

Issues:

1. Did the BIR correctly apply the net worth method of determining taxable income?
2. Are the MERALCO refunds part of VMC's taxable income and VAT taxable receipts?
3. Was it correct for the BIR to disallow excess tax credits carried over in the succeeding taxable year?

Ruling:

1. No. The BIR was not correct in employing the net worth method in determining the taxable income of VMC.

As a method of reconstructing income, the net worth method is based on the theory that a taxpayer understated his income if his net worth for a given year has increased by an amount larger than his reported income for the same period. Under Revenue Audit Memorandum Order No. 1-00, it is used when one or more of the following conditions prevail:

- ▶ The taxpayer maintains no books and records.
- ▶ The taxpayer's books and records are not available.
- ▶ The taxpayer's books and records are inadequate.
- ▶ The taxpayer withholds books and records from investigation by authorized Revenue Officers.

An examination of VMC's comparative audited balance sheets for years 2005 and 2006 shows that VMC's net worth decreased. Moreover, none of the abovementioned conditions which may call for the use of net worth method is present. Hence, the income tax assessment based on the use of this method should be cancelled.

2. Yes. MERALCO refunds are part of VMC's taxable income pursuant to Section 32(A) of the Tax Code, which defines gross income as all income derived from whatever source. However, the MERALCO refunds are not gross receipts subject to output VAT because the refund did not arise from either a sale of goods or sale of services.

The receipt of MERALCO refunds in 2006 resulted in VMC's overclaiming of its input tax for its MERALCO billings prior to 2006. Thus, upon receipt of the refund, VMC should have deducted the related input tax from its current input taxes on payments for electric consumption.

3. No. Excess tax credits for 2006 which were carried over by VMC in 2007 should not be disallowed because any tax benefit that may be derived from the carry-over of the said amount pertains to the succeeding taxable year. At most, VMC may only be assessed in the tax audit for taxable year 2007.

Commissioner of Internal Revenue vs. SMC Stock Transfer Service Corporation

CTA (*En Banc*) EB Case No.889 promulgated June 26, 2013

A waiver is an agreement between the taxpayer and the Commissioner of Internal Revenue (CIR) to extend the period within which the government may assess or collect taxes. To be valid, the waiver must be made before the expiration of the original prescriptive period or of the extended period previously agreed upon.

Facts:

In the course of the BIR's investigation of its books of account for taxable year 2004, SMC Stock Transfer Service Corporation (SMC-STSC) issued three Waivers of the Statute of Limitations under the Tax Code, as follows:

| | Date Executed | Date Accepted | Effectivity |
|---------------|-------------------|-------------------|-------------------------|
| First Waiver | October 26, 2007 | October 26, 2007 | Up to January 31, 2008 |
| Second Waiver | February 14, 2008 | February 14, 2008 | Up to May 15, 2008 |
| Third Waiver | August 4, 2008 | August 5, 2008 | Up to December 31, 2008 |

SMC-STSC filed its 2004 ITR and quarterly VAT returns before the last day prescribed by law.

On January 5, 2009, SMC received the BIR's Formal Letter of Demand and Assessment Notices for alleged deficiency income tax and VAT for the year 2004. Upon denial of its protest by the BIR, SMC-STSC filed a Petition for Review with the CTA.

Issue:

Can the BIR still assess and collect the deficiency taxes for 2004 from SMC?

Ruling:

No. The BIR's right to assess and collect the taxes from SMC had already prescribed.

Under Section 203 of the Tax Code, internal revenue taxes shall be assessed within 3 years after the last day prescribed by law for the filing of the return or from the date the return was filed, whichever is later. Section 222(b) provides an exception such that the period may be extended by a written agreement made before the expiration of the 3-year prescriptive period. The period agreed upon may subsequently be extended by another written agreement made before its expiration.

However, Section 222(b) of the Tax Code does not authorize an extension of the prescriptive period once prescription has attached.

Based on the dates of the filing of SMC-STSC's ITR and VAT returns, the BIR had until April 15, 2008 within which to assess SMC for deficiency income tax, and until April 25, 2007, July 25, 2007, October 25, 2007 and January 25, 2008 within which to assess deficiency VAT covering the first, second, third and fourth quarters of 2004, respectively.

When the first waiver was executed and accepted, the BIR's 3-year period to assess SMC for deficiency VAT for the first to third quarters of 2004 had already lapsed. Moreover, the second and third waivers were executed and accepted after the lapse of the period of extension previously agreed upon in the first waiver. Thus, the second and third waivers are invalid as there was no more period to extend at the time of their execution and acceptance.

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