

Tax Bulletin

October 2018



Highlights

BIR Rulings

- ▶ Liquidated damages for failure to deliver an obligation at a guaranteed date represent indemnification for the unexpected loss of assets, and are not subject to VAT. They are, however, subject to income tax, the same being compensation for loss of anticipated profits. **(Page 4)**
- ▶ The sale, importation or lease of passenger or cargo vessel and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations shall be exempt from VAT. **(Page 4)**

BIR Issuances

- ▶ Revenue Regulation (RR) No. 22-2018 further amends Section 10 of RR No. 10-2010, as last amended by RR No. 10-2018, regarding the timetable when a taxpayer shall be notified in writing of a request for exchange of information from a foreign tax authority. **(Page 5)**
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- ▶ Circular No. 1018 provides for the Amendments to the Qualification Requirements of Unit Investment Trust Fund (UITF) Marketing Personnel. **(Page 20)**

Court Decisions

- ▶ False or fraudulent returns must be proven for the extended 10-year prescriptive period to apply. A waiver is considered valid despite its defects if both parties are at equal fault.

The non-conversion of the Letter of Authority (LOA) to an Electronic LOA and the extension of the audit and investigation to more than 120 days do not invalidate the LOA. **(Page 21)**

- ▶ A corporation that declared dividends within the one-year period from the end of the taxable year being assessed is no longer liable for Improperly Accumulated Earnings Tax (IAET).

Additional Paid-In Capital (APIC) should be included in the paid-in capital for purposes of computing the IAET. **(Page 22)**

- ▶ While an accused wife may have been negligent in signing without reading, documents presented by her husband, such negligence does not equate to willful and deliberate intent not to supply correct information that is punishable under Section 255 of the Tax Code. **(Page 24)**
- ▶ Declaration and distribution of property dividends to shareholders is not within the ambit of the term “other disposition of shares of stock” in RRs 6-2008 and 6-2013 as it is a mere equity transaction. **(Page 25)**

BIR Rulings

BIR Ruling No. 1211-2018 dated 28 September 2018

Liquidated damages for failure to deliver an obligation at a guaranteed date represent indemnification for the unexpected loss of assets, and are not subject to VAT. They are, however, subject to income tax, the same being compensation for loss of anticipated profits.

Facts:

A Co., B Co. and C Co. (collectively referred to as the “Contractors”) are engaged in the business of construction services. They entered into an agreement with D Energy Co. for the construction of the latter’s coal-fired power plant under an engineering and construction contract. Under the contract, should the Contractors fail to deliver the plant at a guaranteed completion date, they will be held liable for reasonable liquidated damages.

On the guaranteed completion date, the Contractors were delayed in the delivery of the project. They were made to pay liquidated damages in favor of D Energy Co.

Issues:

1. Are liquidated damages subject to VAT?
2. Are liquidated damages subject to income tax?

Ruling:

1. No. Section 105 of the Tax Code, as amended, provides that any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports good shall be subject to VAT. The phrase “in the course of trade or business” means the regular conduct or pursuit of commercial or an economic activity, including transactions incidental thereto, by any person. The liquidated damages for failure of the Contractors to meet the guaranteed completion date are not considered transactions subject to VAT since they represent the indemnification for unexpected loss of assets.
2. Yes. Liquidated damages are subject to income tax, the same being compensation for the loss of anticipated profits.

BIR Ruling No. 1212-2018 dated 28 September 2018

The sale, importation or lease of passenger or cargo vessel and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations shall be exempt from VAT.

Facts:

Q Co., a domestic corporation, is a common carrier for cargo and passengers in coastwise trade, and is registered with the Maritime Industry Authority (MARINA). It imported one unit of cargo ship with an Authority to Import issued by MARINA.

Issue:

Is the importation of the cargo ship exempt from VAT?

Ruling:

Yes. Section 109 (1) (T) of the Tax Code, as amended, provides that the sale, importation or lease of passenger or cargo vessel and aircraft, including engine, equipment and spare parts thereof, for domestic or international transport operations shall be exempt from VAT.

BIR Issuances

RR No. 22-2018 further amends Section 10 of RR No. 10-2010, as last amended by RR No. 10-2018, regarding the timetable when a taxpayer shall be notified in writing of a request for exchange of information from a foreign tax authority.

RR No. 22-2018 issued on 17 October 2018

- ▶ Section 10 of RR No. 10-2010, as amended by RR No. 10-2018, is further amended as follows:
 1. A taxpayer shall be notified in writing by the Commissioner that a foreign tax authority is requesting for an exchange of information held by financial institutions pursuant to an international convention or agreement on tax matters within the period prescribed as follows:
 - ▶ Within 60 days from the Commissioner's transmittal of all the information requested from and provided for by the concerned financial institution to the requesting treaty partner; OR
 - ▶ After receipt of communication from the requesting foreign tax authority that the investigation has reached its finality in cases where an earlier notification will likely undermine the chance of success of the investigation, and the requesting foreign tax authority has made a substantiated request for the deferment of the notification.
- ▶ The regulations shall take effect after 15 days following complete publication in a newspaper of general circulation.

(Editor's Note: RR No. 22-2018 was published in Malaya on 19 October 2018)

RMO No. 46-2018 prescribes the procedures in the decentralized processing and issuance of tax clearance for bidding purposes.

RMO No. 46-2018 issued on 11 October 2018

- ▶ All prospective government bidders are required to secure a Tax Compliance Verification Sheet (TCVS) from the Collection Section of the Revenue District Office (RDO) where the individual or non-individual taxpayer is registered, except for the following taxpayers,:
 1. Non-Resident Foreign Corporations (NRFC);
 2. Non-Resident Alien Not Engaged in Trade or Business (NRA-NETB); and
 3. Large Taxpayers

- ▶ A taxpayer-applicant for tax clearance for bidding purposes must satisfy the following criteria:
 1. No unpaid annual registration fee (ARF);
 2. No open, valid "stop-filer" cases;
 3. Taxpayers with previously issued tax clearance for bidding purposes must be regular electronic Filing and Payment System (eFPS) users from enrollment up to the filing of the application, but new applicants need not be regular eFPS users and may submit their latest income tax and business tax returns not filed and paid through the BIR's eFPS;
 4. Not tagged as a "Cannot Be Located (CBL)" taxpayer;
 5. No Accounts Receivable/Delinquent Accounts (ARDA);
 6. No pending criminal information filed in any court of competent jurisdiction arising from any tax or tax-related cases.

- ▶ Applicants with delinquent accounts that are the subject of pending applications for compromise settlement or abatement of penalties where the offered amounts are fully paid upon the filing of the compromise or abatement application may still be issued a TCVS and tax clearance for bidding purposes.

- ▶ ARDA refers to an outstanding tax liability of a taxpayer arising from a tax assessment of any unpaid delinquent account, which is considered final, executory and demandable under any of the following instances:
 1. Failure to pay the tax due per return within the time prescribed for its payment;
 2. Tax payment made through a bank draft or check, but was denied by drawee-bank due to insufficiency of funds, accounts closure or for other reasons of dishonor under the Negotiable Instruments Law; and
 3. A final, executory and demandable assessment on the following grounds:
 - ▶ Failure to file a valid protest or request for reinvestigation or reconsideration within 30 days from receipt of the Formal Letter of Demand and Final Assessment Notice (FLD/FAN);
 - ▶ Failure to submit documents in support of the request for reinvestigation within 60 days from filing of the request;
 - ▶ Failure to appeal to the Court of Tax Appeals (CTA) within 30 days from receipt of the decision denying the request for reinvestigation/reconsideration, or in case of BIR inaction, after the lapse of 180 days from submission of required documents;
 - ▶ Failure to appeal the decision of the CTA on the case with the higher court as a result of which the decision became final and executory;
 - ▶ Failure to receive any assessment notice because it was served in the address indicated in the BIR database, and the taxpayer transferred to a new address or closed/ ceased operations without updating and transferring or cancelling its BIR registration under the procedure prescribed in the pertinent issuances; and

- ▶ Decision/Resolution by the CTA/Supreme Court in favor of the BIR, which became final and executory.
- ▶ All applications for the issuance of tax clearance for bidding purposes shall be manually filed with the following BIR offices:
 1. Collection Division of the Revenue Regional Office (RRO) where the taxpayer is registered;
 2. Concerned office of the Large Taxpayers Service (LTS) for large taxpayers; and
 3. Accounts Receivable Monitoring Division (ARMD) for NRA-NETB, NRFC and other entities authorized by the Commissioner of Internal Revenue (CIR).
- ▶ All applications for tax clearance for bidding purposes shall be processed and released within 2 working days from receipt of the application with complete documentary requirements.
- ▶ Only duly accomplished application forms for tax clearance, with complete documentary requirements, shall be accepted by the BIR.
- ▶ Tax clearances for bidding purposes shall only be valid after they have been posted in the BIR website.
- ▶ Tax clearances, which have been revoked for valid reasons, shall likewise be posted in the BIR website by indicating on the previously posted tax clearance, the remark "Revoked effective (date)."
- ▶ Tax clearance may be revoked based on any of the following grounds:
 1. Disapproval of the application for compromise settlement and abatement of penalties;
 2. Submission of spurious documents as attachments to the application;
 3. Non-compliance with the prescribed criteria; or
 4. Misrepresentation to the government procuring agency or to the tax clearance-issuing office.
- ▶ A Preliminary Notice of Revocation (PNR) shall be issued to applicants who have been issued a tax clearance and found to be non-compliant with the prescribed criteria.
- ▶ The PNR shall state the lacking criterion or criteria and a provision that the same must be complied with within 30 days from its receipt.
- ▶ A Notice of Revocation (NR) shall be issued to applicants who fail to comply with the PNR, and those who submitted spurious documents and made misrepresentations, without prejudice to the taxpayer's filing of another application for the issuance of a tax clearance for bidding purposes when the circumstances that lead to the cancellation or revocation of the previously issued tax clearance are no longer existing, or the taxpayer has already been cleared of any criminal charges relative to the submission of spurious documents.

- ▶ Criminal charges shall be filed against taxpayers found to have submitted spurious tax clearances and documentary requirements.
- ▶ Issued tax clearance for bidding purposes may be renewed upon filing of a subsequent application form for tax clearance for bidding purposes and submission of the same requirements.
- ▶ Tax clearances issued shall be deemed revoked or cancelled upon their expiration.
- ▶ The new tax clearance for bidding purposes shall be valid for another period of 1 year from the date of its issuance, unless sooner revoked or cancelled.
- ▶ All tax clearance certificates for bidding purposes issued by the ARMD prior to the effectivity of this RMO shall remain valid until their expiry dates.
- ▶ However, holders of said tax clearance for bidding purposes shall apply for renewal with the corresponding Revenue Regional Offices or LTS at least 2 months prior to its expiry date.
- ▶ Applications for tax clearance, which have been received by the ARMD but have remained pending as of the effectivity date of RR 18-2018, shall still be processed by the ARMD, but those with lacking requirements and failed to meet the prescribed criteria shall be re-filed with the concerned offices prescribed under this RMO.
- ▶ This RMO shall take effect immediately.

RMC No. 85-2018 clarifies certain issues relative to the issuance of eCARs for multiple transactions involving only one certificate of title of real property.

RMC No. 85-2018 issued on 1 October 2018

- ▶ For taxpayers submitting an Extra-Judicial Settlement with Sale or Extra-Judicial Settlement with Waiver of Rights, there are 2 transactions involved: 1) the settlement of the estate; and 2) transfer through sale or donation.
- ▶ In such a case, the Revenue Officer (RO) assigned in the One Time Transaction (ONETT) shall issue 2 distinct eCARs, one of which will authorize the settlement of the estate while another one will authorize the transfer through sale or donation.
- ▶ Two electronic Certificate of Registration (eCARs) shall be presented simultaneously to the Registry of Deeds (RD) since the presentation of only one eCAR to the RD will invalidate the second eCAR transaction in the system, resulting in the issuance of a Notice of Invalid eCAR by the RD.
- ▶ For taxpayers submitting 2 separate documents, such as an Extra-Judicial Settlement and a Deed of Absolute Sale or Deed of Donation, the RO of the ONETT shall first issue an eCAR for the estate settlement, and this will be presented by the taxpayer to the RD for the issuance of a new certificate of title.
- ▶ The new title number that will be issued for the first transaction on the settlement of estate shall be the basis for the issuance of the eCAR for the second transaction, whether sale or donation.
- ▶ The taxpayer may opt to pay for the applicable taxes at the same time to avoid incurring penalties and interest.

RMC No. 86-2018 circularizes the lists of withholding agents required to deduct and remit 1% and 2% CWT for the purchase of goods and services.

RMC No. 86-2018 issued on 11 October 2018

- ▶ The following lists of withholding agents were posted on the BIR website, www.bir.gov.ph, and were further classified as follows:
 1. List of existing withholding agents;
 2. List of additional withholding agents; and
 3. List of withholding agents for deletion from existing list.
- ▶ The obligation to deduct and remit the withheld taxes to the BIR shall continue, commence, or cease, as the case may be, starting 1 November 2018.
- ▶ All previously-published lists of withholding agents are repealed and superseded by this circular.
- ▶ Any taxpayer not found in the published lists is deemed excluded, and therefore not required to deduct the 1% and 2% CWT.

Customs Updates

CMO No. 15-2018 provides for the E2M User Access Policy.

CMO No. 15-2018 dated 28 September 2018

- ▶ This policy defines the Bureau of Customs' (BOC) expectations of users who have been granted access to Electronic to Mobile (E2M) systems and other customs applications.
- ▶ This CMO covers all persons with access to the BOC's E2M system, its related applications and the data stored and processed in and through it.
- ▶ Administrative Provisions
 1. The granting of user's access shall be limited to specific, defined, documented and approved applications, and levels of access rights shall be based on the assigned role or function. The users shall only receive access to the minimum applications and privileges required to perform their job-related functions.
 2. The Terms of Use to be signed by the persons granted E2M access shall include provisions ensuring compliance with Republic Act (RA) No. 10173 or the Data Privacy Act of 2012 and its implementing guidelines.
- ▶ The Deputy Commissioner of BOC's Management Information Systems and Technology Group (MISTG) is the approving authority to grant user's access to the BOC's E2M system and its related applications.
- ▶ User accounts may be restricted, deactivated or revoked at any time without prior notice under certain instances enumerated in the CMO including reasonable grounds to suspect misuse of access and violation of any terms of use or any existing rules and policies affecting E2M access and usage.

- ▶ Deactivation, revocation, restriction and/or re-activation of a user account shall be with approval of the Deputy Commissioner of MISTG.
- ▶ The right and prerogative of the BOC to restrict, suspend, or revoke a user's E2M access shall be independent of and shall not be contingent on the pendency or outcome of any administrative, civil or criminal proceeding.
- ▶ This CMO shall take effect immediately.

(Editor's Note: CMO No. 15-2018 was received by the UP Law Center on 3 October 2018)

CMO No. 17-2018 provides for the Nationwide Implementation of the 1-Assessment System (formerly known as Enhanced Goods Declaration Verification System or EGDVS).

CMO No. 17-2018 dated 11 October 2018

- ▶ This CMO implements Section 109 and other relevant provisions of RA No. 10863, otherwise known as the Customs Modernization and Tariff Act (CMTA), in relation to RA No. 11032, otherwise known as the Ease of Doing Business and Service Delivery Act of 2018. This Order also supplements the provisions of CMO No. 10-2018 and supersedes CMO No. 31-2017.
- ▶ The objective of this CMO is to prevent corruption by institutionalizing the "Zero Contact Policy" (Section 7 of RA No. 11032) and suppress the "suki system" in the cargo clearance process through the random assignment of examiners and appraisers to a given goods declaration, among others.
- ▶ "1-Assessment System" refers to a web-based queue management software/ application that provides bias-free assessment by randomly assigning Appraisers and Examiners to goods declaration filed. It shall apply only to import consumption entries cleared under the formal entry process in all ports of entry, subject to the exceptions provided in the CMO.
- ▶ Exceptions to the 1-Assessment System - goods declaration filed, even if cleared under the formal entry process, as follows:
 1. Shipments under the Super Green Lane (SGL)
 2. Articles withdrawn from the Customs Bonded Warehouse (CBW) for local consumption
 3. Wastages under the Bonded Warehouse Regime and jet operation losses
 4. Goods entered as temporary imports for subsequent re-exportation
 5. Deferred Payment of Government (DPG)
- ▶ The Commissioner of Customs shall issue corresponding Memoranda to the different District Collectors informing them of the schedule of the roll-out of the 1-Assessment System in their respective ports.
- ▶ This CMO shall take effect 15 calendar days after its complete publication in a newspaper of general circulation.

(Editor's Note: CMO No. 17-2018 was published in The Manila Times on 16 October 2018)

CMO No. 18-2018 provides for the Guidelines on the Implementation of CAO No. 1-2018 on the Amended Rules on Consolidated Shipments of "Balikbayan Boxes."

CMO No. 18-2018 dated 11 October 2018

- ▶ This CMO applies to consolidated shipments of Balikbayan Boxes entered through any port of entry sent to families by "Qualified Filipinos While Abroad" (QFWA) which may be entitled to duty and tax exemption pursuant to Section 800 (g) of the CMTA.
- ▶ Balikbayan Boxes brought in through means other than Consolidated Shipments shall be covered by a separate CMO.
- ▶ The objective of this CMO is to prescribe simplified customs clearance procedures for consolidated shipment of Balikbayan Boxes sent by QFWA to their families or relatives, especially the Overseas Filipino Worker (OFWs) in recognition of their significant contribution to the Philippine Economy, among others.
- ▶ The Deconsolidator shall apply for registration every 2 years with the Account Management Office of the BOC upon submission of the required documents, in addition to the registration requirements imposed by other government agencies.
 1. *"Deconsolidator"* refers to a consolidator's agent situated at the country of importation that provides services to ungroup or deconsolidate shipments, orders, goods, etc. to facilitate distribution. It may also refer to a Breakbulk Agent.
- ▶ Operational Provisions
 1. Submission of Electronic - Inward Foreign Manifest (IFM), House Bill of Lading (HBL) and House Airway Bill (HAWB) to the BOC shall be governed by the provisions of existing rules and regulations by the BOC.
 - ▶ To distinguish Consolidated Balikbayan Shipments from other consolidated commercial importations, the words "CONSOLIDATED BALIKBAYAN SHIPMENT" shall be indicated in the field for Description of Goods in the Master Bill of Lading.
 2. Preparation and Submission of Information Sheet - The sender may request copies of the Information Sheet from the Consolidator, or may download the same from the BOC website or from any Value-Added Service Providers (VASPs). The information sheet must be signed and submitted by the Sender in 3 copies to the Consolidator together with the listed documentary requirements for Filipino citizens or for Dual Filipino citizens without Philippine passport.
 3. Lodgment of Goods Declaration - To expedite the cargo clearance process, the Deconsolidator, upon filing of the goods declaration with the Informal Entry Division or its equivalent unit, must submit a soft copy of the Information Sheet together with the required documentary requirements.

Based on the Information Sheet submitted in advance by the Consolidator, the BOC shall make a determination whether a Sender is qualified to avail of the tax and duty free exemption under the *De Minimis* scheme or of the privilege under Section 800 (g) of the CMTA and for the expedited clearance of Balikbayan Box/es.

4. Cargo Clearance Procedures - All Consolidated Balikbayan Shipments processed under this CMO shall be subject to mandatory non-intrusive x-ray inspection by, or under the supervision of, a BOC personnel, unless tagged as "suspect" in which case it be subject to 100% physical examination.
 5. Preparation of Order of Payment - Only 1 order of payment shall be prepared regardless of the number of goods declaration lodged for a single master bill of lading or master airway bill.
 6. Shipments declared as consolidated Balikbayan Boxes but are found to be otherwise shall be considered as misdeclared and shall be subjected to seizure and forfeiture proceedings.
- ▶ The CMO provides for the following forms as Annexes:
1. Annex A: Information Sheet to be accomplished by the sender with regard to information relating to the sender, the Philippine-based recipient and itemized description of the goods; and to be accomplished by the Consolidator and the Deconsolidator for information pertaining to shipment and transport, arrival details, respectively.
 2. Annex B: For consolidated shipments by sea, a sample Certificate of Compliance to be secured from the Consolidator attesting to the electronic submission of the pdf copies of the complete set of the Information Sheet with the required attachments simultaneously to the Deconsolidator and the BOC's Advanced Manifest System (AMS);
 3. Annex C: List of Information to be provided by the Deconsolidator in soft copy together with the documents listed therein to expedite cargo clearance process, upon filing of the goods declaration with the Informal Entry Division (IED) or its equivalent unit.
 4. Annex D: BOC Form for assessment of applicable duty and taxes.
 5. Annex E: Format of Notice of Inspection stating that the box was randomly selected for physical examination by the BOC pursuant to Section 420 of the CMTA as well as the format of the security tamper evident tape with the word "Inspected" by the BOC.
- ▶ This CMO shall take effect immediately.

(Editor's Note: CMO No. 18-2018 was received by the UP Law Center on 16 October 2018)

CSO No. 106-2018 provides for the Creation of the IIAO under the Office of the Commissioner.

Customs Special Order (CSO) No. 106-2018 dated 4 October 2018

- ▶ Pursuant to the CMTA, it is the policy of the State to protect and enhance government revenues and institute professionalism and meritocracy in Customs Tax Administration. In the exigency of service as well as in compliance with the marching order of the President to stop corruption in the BOC, and in view of the aforementioned stated policy, IIAO was created under the Office of the Commissioner.
- ▶ IIAO has the following functions:
 1. Monitor the status of investigations by the Customs Intelligence and Investigation Service (CIIS) - Investigation Division;
 2. Monitor all administrative charges or cases against the BOC officials and employees with the Legal Service (LS);
 3. Submit a weekly report to the Office of the Commissioner of status and update of all the administrative cases against BOC officials and employees or as required by the Commissioner; and
 4. Perform such other functions as directed by the Commissioner.
- ▶ This CSO shall take effect immediately.

CO No. 2018-01 provides for the Rules of Procedure on Disputes involving Tariff Classification.

Commission Order (CO) No. 2018-01 dated 17 October 2018

- ▶ This CMO covers the administrative remedies and procedures in the final determination by the Tariff Commission (TC) of disputes involving tariff classification under Chapter 1, Title XI of the CMTA.
- ▶ The objective of this CMO is to establish a Tariff Classification Dispute Ruling system that is in line with the standards set out in the Revised Kyoto Convention, the World Trade Organization Agreement on Trade Facilitation, the ASEAN Trade in Goods Agreement (ATIGA), the World Customs Organization (WCO) Harmonized System Convention, other relevant international trade agreements, relevant Philippine laws, and international best customs practices, among others.
- ▶ Definition of Terms
 1. ASEAN Harmonized Tariff Nomenclature (AHTN) - an eight-digit commodity nomenclature adopted by the ASEAN Member States to harmonize their tariff nomenclatures at the eight-digit level. It adheres to the six-digit commodity classification code of the Harmonized Commodity Description and Coding System of the WCO but adds two digits, with corresponding commodity description that represent ASEAN subheadings.
 2. Advance Ruling on Tariff Classification - an official written decision issued by the TC which provides the importer or exporter with the appropriate tariff classification of goods under the AHTN prior to importation or exportation.

3. **Tariff Classification** - refers to the act or process of determining the subheading in the AHTN to which goods appropriately belong in accordance with Sections 1610 and 1611 of the CMTA.
 4. **Tariff Classification Dispute** - refers to a situation or case when a declared tariff classification of goods, not subject of a pending application for advance ruling, is in dispute because the BOC has a different classification or the tariff classification for the subject goods is considered difficult or highly technical by the BOC.
 5. **Tariff Classification Dispute Ruling** - an official written decision issued by the TC on the disputed tariff classification which provides the importer, exporter or the BOC with the appropriate classification of goods under the AHTN during the importation or exportation.
- ▶ **Operational Provisions**
1. **Tariff Classification Disputes are initiated through the following:**
 - ▶ Endorsement from the BOC in the case of difficult or highly technical questions on tariff classification, as determined by BOC; or
 - ▶ Filing of case by the importer or exporter when the BOC has a different tariff classification.
 2. **Payment of Fees** - Upon filing of the case, the importer or exporter shall pay the prescribed fees. Failure to pay the fees shall cause the non-acceptance of the case.
 3. **Evaluation of Cases Endorsed by the BOC:**
 - ▶ Within 7 working days from the receipt of the case, the TC shall notify the importer or exporter and, if it deems appropriate, require him/her to submit additional information and/or allow on-site verification to determine the proper tariff classification of the subject goods.
 - ▶ Within 10 working days from receipt of notice, the importer or exporter shall submit additional information and/or allow on-site verification.
 4. **Evaluation of Cases filed by an Importer or Exporter**
 - ▶ After the conduct of the 2 steps mentioned above, within 5 working days from receipt of the case, or receipt of additional information, or conduct of on-site verification, the TC shall notify the BOC that a tariff classification dispute is filed before it and request comments.
 - ▶ Within 10 working days from receipt of the notice and the records of the case, the BOC may file a comment or submit any additional explanation or documents to justify its findings.
 5. **Conduct of Hearing** - If necessary to clarify facts in resolving the pending dispute on tariff classification, after due notice to the parties. The hearing shall be summary and fact-finding in nature and shall be presided by a hearing officer designated by the TC.

6. Issuance of Tariff Classification Dispute Ruling

- ▶ Issued by the TC within 20 working days from receipt of all required information or documents or the termination of the hearing. This period may be extended for another 20 working days upon prior notice to the importer/exporter and BOC.
- ▶ The ruling of the TC on commodity classification shall be binding upon the BOC, unless the Secretary of Finance shall rule otherwise.

7. Publication - the TC shall publish its ruling on its website and deposit a copy of the same in its Records Unit.

- ▶ This CO shall take effect 15 days after its complete publication in the Official Gazette or in a newspaper of general circulation.

(Editor's Note: CO No. 2018-01 was published on The Manila Times on 19 October 2018 and on The Manila Standard on 23 October 2018)

PEZA and BOI Updates

PEZA Memorandum Circular No. 2018-021 circularizes the DOH's clarification on covered providers required to submit the WSP, and extension of the deadline for compliance.

PEZA Memorandum Circular No. 2018-021 dated 1 October 2018

- ▶ In a letter to PEZA dated 13 August 2018, the Department of Health (DOH) has extended the deadline for submission of the Water Safety Plan (WSP) from 31 August 2018 to 28 February 2019.
- ▶ DOH has also clarified the following:
 1. DOH Administrative Order (AO) No. 2014-0027 titled "National Policy on Water Safety Plan for All Drinking-Water Service Providers" applies to all drinking water service providers.
 - ▶ Drinking water is defined as water intended for human consumption or for use in food preparation and related processes.
 2. Water service providers in economic zones are within the scope of DOH AO No. 2014-0027.
 - ▶ While water service providers in economic zones mainly distribute their water for industrial use, the same industrial water is also used for domestic purposes and such comes within the purview of drinking water.

MC No. 2018-07 circularizes the new list of Less Developed Areas entitled to additional incentives under the 2017 Investments Priorities Plan.

BOI Memorandum Circular No. 2018-07 dated 21 September 2018

- ▶ Executive Order (EO) No. 226 or the Omnibus Investments Act mandates that the BOI shall prepare a list of Less Developed Areas (LDA)
- ▶ On top of the incentives provided under EO No. 226, BOI-registered enterprises located in an LDA are also entitled to the following:

1. Pioneer incentives (whether new or expansion of an existing venture)
 2. Additional deduction from taxable income equivalent to 100% of expenses incurred in the development of necessary and major infrastructure facilities and public utilities (with prior approval of the Board, and provided title over the works will be transferred to the Philippine government upon completion)
- ▶ Through Board Resolution No. 21-02 series of 2018, the Board has approved the new list of LDAs, which shall be made applicable to enterprises registered under the 2017 IPP, and consisting of various municipalities/cities in several provinces/regions in the country.
 - ▶ MC No. 2018-07 shall take effect immediately upon complete publication.

(Editor's Note: Published in The Philippine Star on 30 September 2018)

MC No. 2018-08 circularizes additional registrable activities under the 2017 IPP.

BOI Memorandum Circular No. 2018-08 dated October 10, 2018

- ▶ BOI Memorandum Circular (MC) No. 2017-004 provides for the general policies and specific guidelines for the registration of projects and availment of incentives under the 2017 Investment Priorities Plan (IPP).
- ▶ The Board conducted a review of MC No. 2017-004 to consider recent developments in the industry *vis-à-vis* the reasonable and justifiable positions of the private sector and related government agencies, and has deemed it appropriate to include additional registrable activities under Infrastructure and Logistics, specifically:
 1. For air transport:
 - ▶ Allows registration of sale and leaseback or leaseback option of a brand new aircraft
 - ▶ Allows registration of pure lease of new aircraft, which shall be eligible for a two-year Income Tax Holiday
 2. For water transport:
 - ▶ Allows registration of pure lease and bareboat charter of new vessels
 - ▶ MC 2018-08 shall take effect immediately upon complete publication

(Editor's Note: Published in the Philippine Star on 14 October 2018)

SEC Issuances

SEC MC No. 13 adopts new accounting standards and interpretations as part of the rules and regulations on financial reporting.

SEC Memorandum Circular No. 13 series of 2018 dated 15 October 2018

The SEC approved the adoption of the following pronouncements to the Philippine Financial Reporting Standards:

- ▶ Prepayment Features with Negative Compensation [amendments to Philippine Financial Reporting Standard (PFRS) 9] - to be applied for annual periods beginning on or after 1 January 2019;

- ▶ Long-term Interest in Associates and Joint Ventures [amendments to Philippine Accounting Standard (PAS) 28] - to be applied for annual periods beginning on or after 1 January 2019;
- ▶ PFRS Practice Statement 2: Making Materiality Judgments - applicable to financial statements prepared from 8 November 2017;
- ▶ Guidance on Financial Reporting - effective immediately; and
- ▶ PFRS 15, Implementation Issues Affecting the Real Estate Industries - the consensus on the related interpretation or Q&A is effective on the same date of PFRS 15.

(Editor's Note: Published in the Manila Bulletin on 20 October 2018)

SEC MC No. 14 provides relief to the real estate companies in the implementation of Philippine Financial Reporting Standard (PFRS) No. 15 and related interpretations by the Philippine Interpretations Committee (PIC).

SEC Memorandum Circular No. 14 series of 2018 dated October 29, 2018

To address the implementation issues affecting the real estate industry, the SEC provides for optional deferment of PFRS No. 15 and PIC Question and Answer (Q&A) No. 2018-12 with respect to the following items:

- ▶ Land - excluded in the computation of percentage of completion (POC). It may be included in the POC calculation only at historical acquisition cost;
- ▶ Uninstalled materials - included in the POC calculation based on the proportionate work accomplishment of significant building components procured which are specifically and directly identifiable to the project, as long as covered by contracts, purchase orders and partially paid for;
- ▶ Accounting for significant financing component on the transaction price- not considered during the period of deferral.

The above deferral shall be for a period of 3 years and shall be complied with by real estate companies starting 1 January 2021.

(Editor's Note: This MC has not yet been published)

BSP Issuances

Circular No. 1015 provides for the Implementing Guidelines of the CRPP Facility.

BSP Circular No. 1015 dated 5 October 2018

- ▶ The following are the amendments to the revised implementing guidelines for the Currency Rate Risk Protection Program Facility (CRRP Facility) issued under Circular No. 1014 dated 24 September 2018.
- ▶ Subsection 1603.2 of the MORB on implementing guidelines was added to provide that the implementing guidelines covering the mechanics, documentary requirements, and detailed procedural rules of the Facility are provided in Appendix 122.

- ▶ Subsection 1603.5 of the MORB on supervisory enforcement actions was amended to provide the enforcement actions and procedures which shall be employed by the Bangko Sentral in the performance of post-verification of the CRPP contracts through on-site examination or off-site verification to ascertain the eligibility of the underlying foreign currency obligation with the CRPP Facility.
- ▶ Appendix 122 of the MORB on implementing guidelines of the Currency Rate Risk Protection Program (CRPP) Facility (Appendix to Section 1603 of the MORB) is added to MORB by this Circular.
- ▶ Appendix 6 of the MORB was amended to include the reportorial requirements of the CRPP Facility.
- ▶ The templates covering reportorial requirements of the CRPP Facility are attached in this Circular.
- ▶ 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: BSP Circular No. 1015, s. 2018 was published in The Philippine Star on 9 October 2018)

Circular No. 1016 provides for the Compliance Framework for NSSLAs.

BSP Circular No. 1016 dated 5 October 2018

- ▶ The following amendments provide for the adoption of compliance framework for Non-Stock Savings and Loan Associations (NSSLAs).
- ▶ Section 4180S of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) on the selection, appointment, reporting requirements and delisting of external auditors and/or auditing firms, and sanction is renumbered as the new Section 4189S of the MORNBF1.
- ▶ The reference to Section 4180S in the title of Appendix S-8 of the MORNBF1 was changed to Section 4189S.
- ▶ Section 4180S of the MORNBF1 was amended to provide for the compliance risk management, which provides for the policy of the Bangko Sentral to promote the safety and soundness of operations and activities of NSSLAs. Toward this end, the trustees and officers of the NSSLAs shall establish a compliance risk management system. The compliance risk management system shall be designed to specifically identify and mitigate risks that may erode the franchise value of the NSSLAs. As such, a compliance risk management system found to be materially inadequate may be construed as an act, practice or omission prejudicial to the interest of members.
- ▶ Subsection 4180S.1 of the MORNBF1 was added to provide for compliance function which shall have a formal status within the organization. The compliance function shall have the right to obtain access to information necessary to carry out its responsibilities, conduct investigations of possible breaches of the compliance policy, and shall have direct access to the board of trustees or appropriate board-level committee.
- ▶ Subsection 4180S.2 of the MORNBF1 was added to provide for compliance program that shall set out the planned activities of the compliance function, which shall be updated on a regular basis or at least annually.

- ▶ Subsection 4180S.3 of the MORNBF1 was added to provide for a Chief Compliance Officer (CCO) which should have the necessary qualifications, experience, and professional background and should have a sound understanding of relevant laws and regulations and their potential impact on the NSSLAs operations.
- ▶ Subsection 4180S.4 of the MORNBF1 was added to provide for the responsibilities of the board of trustees and senior management.
- ▶ Subsection 4180S.5 of the MORNBF1 is reserved.
- ▶ Subsection 4180S.6 of the MORNBF1 was added allowing the outsourcing of review, assessment, and testing of the compliance program to qualified third parties.
- ▶ 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: BSP Circular No. 1016, s. 2018 was published in The Philippine Star on 15 October 2018)

Circular No. 1017 provides for the Adoption of the Policy Framework on the Grant of Regulatory Relief to Banks/QBs affected by Calamities.

BSP Circular No. 1017 dated 10 October 2018

- ▶ The following amendments provide for the adoption of a policy framework on the grant of regulatory relief to banks/quasi-banks (QBs) affected by calamities.
- ▶ Section X970/4970Q of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) was added to provide for the regulatory relief policy which sets forth the guidelines on the grant of regulatory relief measures to banks/QBs affected by calamities.
- ▶ Item a of Section X970/4790Q of the MORB/MORNBF1 was added to provide for the objectives, namely: 1) set a uniform and systematic approach in granting regulatory relief to banks/QBs affected by calamities; and 2) provide an adequate support to the recovery efforts of banks/QBs.
- ▶ Item b of Section X970/4790Q of the MORB/MORNBF1 was added to provide for definitions. For purposes on this Section, a state of calamity is a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human induced hazard.
- ▶ Item c of Section X970/4790Q of the MORB/MORNBF1 was added to provide for a declaration of state of calamity. The National Disaster Risk Reduction and Management Council (NDRRMC) shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof. The declaration of and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the Regional / Local Disaster Risk Reduction and Management Council.
- ▶ Item d of Section X970/4790Q of the MORB/MORNBF1 was added to provide for a regulatory relief package which may be availed of by all banks/QBs, Thrift Banks (TB), Rural Banks (RBs), Cooperative Banks (Coop Banks), and Rediscounting banks for a period of one (1) year from the date of declaration state of calamity.

- ▶ Item e of Section X970/470Q of the MORB/MORNBFI was added to provide for the eligibility. It states that all banks/QBs with head offices and/or branches/branch-lite units or with end-user borrowers located in areas under state of calamity may avail of the relief package.
- ▶ Item f of Section X970/470Q of the MORB/MORNBFI was added to provide reportorial requirements to avail of the regulatory relief.
- ▶ Item g of Section X970/470Q of the MORB/MORNBFI was added to provide for supervisory enforcement action.
- ▶ 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: BSP Circular No. 1017, s. 2018 was published in The Philippine Star on 17 October 2018].

Circular No. 1018 provides for the Amendments to the Qualification Requirements of UITF Marketing Personnel.

BSP Circular No. 1018 dated 26 October 2018

- ▶ The following are the amendments to Subsection X410.7/4410Q.7/4152T.2 of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), respectively, on qualifications of Unit Investment Trust Fund (UITF) Marketing Personnel.
- ▶ Item "d" of Subsection X410.7/4410Q.7 of the MORB/MORNBFI is hereby renumbered to Subsection X410.15/4410Q.15 and amended to read, as follows:

"Subsection X410.15/4410Q.15 UITF Marketing personnel. xxx.

xxx

To ensure the competence and integrity of all duly designated UITF Marketing Personnel, all personnel involved in the sales of UITF must be certified as a UITF Marketing Personnel through a UITF Certification Program (UCP) administered by a reputable financial services industry association/organization acceptable to the Bangko Sentral. The Certification Program, at a minimum, should have a qualifying examination, a requirement for continuing education, and a requirement for registration of the Certified UITF Marketing Personnel. The Guidelines for the Administration of the UCP are provided in the Appendix-123/Q-77.

It shall be the responsibility of the Trust Entity (TE) to ensure that its UITF Marketing Personnel continuously comply with the qualification requirements prescribed by the Bangko Sentral, and that they conduct themselves with integrity, honesty and with proper representation to the clients of the TE.

- ▶ Subsection 415T.2 of the MORNBFI was amended to provide that the regulations provided under Subsection 4410Q.15 of the MORNBFI shall apply in the case of UITF Marketing Personnel.
- ▶ Transitory Provision. The following provision shall be incorporated as a footnote to Subsection X410.15/4410Q.15 on "UITF Marketing Personnel" of the MORB/MORNBFI.

During the transitory period, UITF Marketing Personnel authorized to sell UITFs under the existing requirements, who shall undergo and fail to pass the UCP, will forfeit their existing qualification and will not be allowed to sell UITF until such time that they obtain the required certification. The Certification requirement shall be fully implemented beginning year 2022.

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

Court Decisions

CIR vs. First Philippine Holdings Corporation; First Philippine Holdings Corporation vs. CIR

CTA (*En Banc*) Case Nos. 1625 and 1626 promulgated 3 September 2018

A false or fraudulent return must be proven for the extended 10-year prescriptive period to apply. A waiver is considered valid despite its defects if both parties are in equal fault.

The non-conversion of the LOA to an Electronic LOA and the extension of the audit and investigation to more than 120 days do not invalidate the LOA.

Facts:

Petitioner CIR assessed Respondent First Philippine Holdings Corporation (FPHC) for various deficiency taxes for taxable year 2009.

FPHC protested and sought the cancellation of the deficiency assessments on the ground of prescription. It also alleged the invalidity of the waivers executed as the Treasurer/Comptroller who signed them was not specifically authorized. FPHC previously issued four Waivers of the Defense of Prescription under the Statute of Limitations with the first Waiver issued on 17 August 2012.

The BIR, meanwhile, insisted that the extraordinary 10-year period to assess should be applied in lieu of the 3 years provided under Sec. 203 of the Tax Code. The BIR also posited that the 3-year prescriptive period does not apply to withholding taxes.

The CTA Second Division ruled in favor of FPHC, holding that the CIR's right to assess deficiency taxes for the period January to July 2009 has prescribed.

Issues:

1. Does the 10-year period to assess apply?
2. Should the waivers be considered valid despite their defects?
3. Does the non-conversion of the Letter of Authority to an Electronic LOA (eLA) and the extension of the audit and investigation to more than 120 days invalidate the LOA?

Rulings:

1. No, the 10-year period does not apply. In case of a false or fraudulent return with intent to evade tax or of failure to file a return, a tax may be assessed and/or collected at any time within 10 years after the discovery of the falsity, fraud or omission, in lieu of the regular 3-year prescriptive period. However, a false or fraudulent return must be proven for the extended prescriptive period to apply.

In the instant case, the CIR raised the allegation on FPHC's substantial under-declaration of its sales exceeding 30% for the first time in its Motion for Reconsideration and it did not submit any evidence to support its claim. The CTA *En Banc* sustained the CTA Second Division's finding that the CIR's computations showing alleged substantial under-declaration of sales without any accompanying supporting evidence is insufficient to establish the fraud or falsity that would warrant an extended prescriptive period.

The CTA *En Banc* confirmed the ruling of the CTA Second Division that the deficiency taxes assessed for the period January to July 2009 have prescribed.

2. Yes, the waivers are valid despite the defects. Citing the Supreme Court's decision in *CIR vs. Next Mobile, Inc.*, GR 212285 promulgated on 7 December 2015, the CTA *En Banc* sustained the CTA Second Division and held that both parties are in *pari delicto* or in equal fault. FPHC was guilty of estoppel for not raising any objection against the validity of the 4 waivers until it was assessed taxes and penalties by the BIR.
3. No. Revenue Memorandum Order 69-2010 prescribes the guidelines on the issuance of eLAs, among others. It does not state that the conduct of the audit pursuant to the previously-issued manual LOA will be invalidated absent immediate compliance with the retrieval and replacement of the eLAs. The replacement of the eLAs is not a precondition for the continuance of the audit investigation.

The CTA *En Banc* endorsed the case back to the CTA Second Division for the determination of deficiency taxes for the un-prescribed period.

Cebu Air, Inc. vs. Commissioner of Internal Revenue

CTA (Special Second Division) Case No. 9106 promulgated 27 September 2018

A corporation that declared dividends within the one-year period from the end of the taxable year being assessed is no longer liable for IAET.

APIC should be included in the paid-in capital for purposes of computing the IAET.

Facts:

Respondent CIR assessed Petitioner Cebu Air, Inc. for, among others, Improperly Accumulated Earnings Tax (IAET) for taxable year 2010. In assessing Cebu Air for IAET, the BIR argued that the corporation failed to prove that the accumulation of earnings and profits is for the reasonable needs of the business pursuant to Section 29 of the Tax Code. It averred that to consider the retained earnings reasonable for the needs of business, the amount retained should only be up to 100% of the paid-up capital or the amount contributed to the corporation, representing the par value of the shares of stock. Any additional paid-in capital (APIC) is considered as excess capital over and above the par and is excluded from Cebu Air's paid-up capital.

On the other hand, Cebu Air insisted that it is a public corporation, and not a closely-held corporation, and as such, it is not subject to IAET. It insisted that JG Summit Holdings, Inc., Cebu Air's ultimate parent company, is owned by more than 20 stockholders. Assuming that it is subject to IAET, Cebu Air posited that APIC should be considered part of the paid-up capital and the BIR should have excluded income earned in 2010 in computing the alleged improperly accumulated earnings because a corporation is given 1 year following the close of the taxable year in which such income was earned to declare dividends.

In its original decision promulgated on 11 January 2018, the CTA Second Division ruled that Cebu Air is liable for IAET as it is a closely-held corporation. Even if the shares of JG Summit were owned by more than 20 individuals, at least 50% in value of the outstanding capital stock or at least 50% of the total combined voting power

of all classes of stock entitled to vote was owned directly or indirectly by and for not more than 20 individuals.

Cebu Air filed a Motion for Reconsideration on the adverse decision. The CIR also appealed the decision, particularly the ruling that APIC is included in the computation of the paid-in capital.

Issues:

1. Is Cebu Air liable for IAET?
2. Should APIC be included in the paid-in capital for purposes of computing the IAET?

Rulings:

1. No. Cebu Air is not liable for IAET on its earnings in 2010 because it declared regular and special cash dividends to all stockholders of record as of 14 April 2011, which it paid on 12 May 2011.

Section 6 of Revenue Regulations No. 2-2001 (IAET Regulations) prescribes that "dividends must be declared and paid not later than one year following the close of the taxable year, otherwise, the IAET, if any, should be paid within 15 days thereafter." Thus, taking into consideration the cash dividends declared and paid within the one-year period from the end of the taxable year being assessed (i.e. calendar year 2010), Cebu Air will no longer have improperly accumulated earnings for taxable year 2010.

2. Yes. The CTA cited the Guidelines on the Determination of Retained Earnings Available for Dividend Declaration issued by the Securities and Exchange Commission which defined 'paid-in capital' to include APIC or premium. APIC is the amount of capital in excess of the par value of the company's shares. If the APIC is to be excluded from the amount that may be retained, it would necessarily form part of the improperly accumulated earnings, which would then be subjected to IAET. IAET is imposed as a penalty for the improper accumulation of earnings and as a form of deterrent to the avoidance of tax upon shareholders who are supposed to pay dividends tax.

APIC should not be considered earnings/profits of a corporation generated from the normal and continuous operations of the business and as such, should be included in the term 'paid-up capital' provided under Revenue Regulations 2-2001 for purposes of determining the amount of earnings that may be accumulated for the reasonable needs of the business.

People of the Philippines vs. Leonila Tolentino Arceo

CTA (Second Division) Criminal Case No. O-271 promulgated 3 September 2018

While an accused wife may have been negligent in signing without reading, documents presented by her husband, such negligence does not equate to willful and deliberate intent not to supply correct information that is punishable under Section 255 of the Tax Code.

Facts:

Accused Leonila Tolentino Arceo, doing business under the name and style of L.T. Arceo Trading, was charged with filing false and fraudulent income tax returns for 2004 and 2005, in violation of Sec. 255 or the NIRC.

The criminal case stemmed from the information that L.T. Arceo Trading, which operates a junk shop that buys scrap materials, was declared the highest bidder

for certain assets sold by the Privatization and Management Office (PMO). The BIR alleged that these purchases were not correctly reported in the Income Tax Returns and Audited Financial Statements (AFS) of the accused and that Arceo's net worth for the covered years was not sufficient to cover the purchases from PMO.

Arceo denied familiarity with and personal involvement in the transaction. She insisted she learned only of the transaction when her husband informed her about the cases filed by the BIR. She said she signed a Special Power of Attorney in favor of her husband's business partners and a loan agreement to finance the scrap purchase upon instruction of her spouse, without reading the documents.

Issue:

Is the accused guilty of willful failure to supply correct and accurate information under Sec. 255?

Ruling:

No. The elements of the offense of willful failure to supply correct and accurate information are as follows, and not all were present in this case:

- a. A person is required to supply correct and accurate information. Arceo has an obligation to provide such information and is in fact aware of such duty;
- b. Failure to supply correct and accurate information at the time required by law. The prosecution proved that there was failure to supply the correct data when the purchases from PMO were not reflected in the income statements of the accused; and
- c. Failure to supply correct and accurate information was done willfully. The testimony of the accused and that of her husband showed lack of knowledge on the transaction with the PMO. This lack of knowledge of the transaction points to the lack of intent on the part of the accused to willfully fail to report the purchases in the ITR and AFS of L.T. Arceo Trading. The husband also admitted hiding the circumstances of the transaction from his wife.

The CTA held that as a dutiful wife obedient and subservient to the husband, the accused dared not to ask the purpose of the documents she signed. Such behavior stems from the underlying and prevalent culture that the husband is the head and provider of the family. If there is one party that should be charged from violation of the NIRC, it should be the husband. While the accused may have been negligent in signing documents presented by her husband, without reading them, said negligence does not equate to willful and deliberate intent to violate Section 255.

Trans-Asia Oil and Energy Development Corp. vs. CIR

CTA (Special Third Division) Case No. 9078 promulgated 28 September 2018

Declaration and distribution of property dividends to shareholders is not within the ambit of the term "other disposition of shares of stock" in RRs 6-2008 and 6-2013 as it is a mere equity transaction.

Facts:

Respondent CIR assessed Petitioner Trans-Asia Oil and Energy Development Corporation (TOEDC) for deficiency donor's tax arising from its distribution of shares of stock in Trans-Asia Petroleum Corporation (TAPC), a wholly owned corporation, as property dividends to its stockholders. TOEDC protested, arguing that it has paid

the final taxes due on the dividends. It also contended that TOEDC did not receive any consideration from the distribution of income to shareholders. What was debited in its books is retained earnings, which is accumulated income after tax or tax-paid income, and not consideration or asset received.

The BIR treated the declaration of property dividend as "other disposition of stock held as capital asset" under Revenue Regulations 6-2008 and 6-2013. Hence, the difference between the total market value and the book value of the property dividend was deemed a gift subject to donor's tax under Section 100 of the Tax Code. The BIR posited that RRs 6-2008 and 6-2013 cover not only sale of shares of stock, which gives rise to realization of capital gains subject to capital gains tax, but also all other disposition of shares of stock held as capital assets. It averred that the final tax paid by TOEDC should not be offset against any donor's tax assessed, insisting that there is no double taxation.

Issue:

Is the transaction subject to donor's tax?

Ruling:

No. TOEDC's declaration and distribution of property dividends to its shareholders in the form of TAPC shares of stock is not within the ambit of the term "other disposition of shares of stock" in RRs 6-2008 and 6-2013. It is a mere equity transaction since TOEDC did not recognize any gain or loss therefrom. Paragraph 23 of the International Financial Reporting Standards 10 provides that changes in a parent's ownership in a subsidiary that do not result in the parent losing control of the subsidiary are equity transactions (i.e. transactions with owners in their capacity as owners).

Dividends comprise any distribution whether in cash or other property in the ordinary course of business by a domestic or resident corporation out of its earnings or profits, even though extraordinary in amount. In recording the property dividends at their carrying/book value, there was no profit or gain realized or recognized in the transaction. Distribution of dividends is a non-reciprocal transfer. There was no consideration given nor received during the transfer which would have triggered the assessment of deficiency donor's tax.

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