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Tax news
Interpret and integrate

BIR Issuances

Tax treatment of NSSLAs

The Bureau of Internal Revenue (BIR) issued the following clarification on the taxability of non-stock savings and loan associations (NSSLAs) for income tax, gross receipts tax (GRT), and documentary stamp tax (DST):

1. Income tax - An NSSLA is exempt from income tax on the income it receives, including its interest income from bank deposits pursuant to Republic Act No. (RA) 8367, otherwise known as Revised Non-Stock Savings and Loans Association Act of 1997. However, income derived from any of its properties, real or personal, or any activity conducted for profit, regardless of disposition, shall be subject to applicable taxes imposed under the Tax Code.

2. Gross receipts tax - As a non-bank financial intermediary (NBFI), an NSSLA is subject to GRT on income derived from its operations, unless otherwise exempted under special rules.

3. Documentary stamp tax - An NSSLA is subject to DST, among others, on loan agreements, mortgages, pledges, foreclosures, and sales. Pursuant to Revenue Regulations No. (RR) 09-2000, whenever an NSSLA is one of the parties to a taxable transaction, the NSSLA shall be responsible for the remittance of the DST due regardless of who will bear the burden of paying the DST.

(Revenue Memorandum Circular No. 09-2016, January 26, 2016)

Simplified procedure in processing application for abatement and compromise settlement

To further facilitate and expedite the processing of applications for compromise settlement, as well as abatement or cancellation of internal revenue tax liabilities, the BIR issued the following guidelines:

1. All applications for compromise settlement, abatement, or cancellation of internal revenue tax liabilities filed under the respective jurisdiction of the Revenue Regions and Large Taxpayers Service (LTS), regardless of the amount of the threshold prescribed under the provisions of Section 204 (A) for compromise settlement, that have been evaluated by the Regional Evaluation Board (REB), or, as the case may be, by the LTS sub-Technical Working Committee (TWC), for

abatement cases or the LTS Evaluation Board (LTSEB), for compromise settlement cases, resulting in a recommendation for denial of the application, shall be considered FINAL and the outstanding tax liabilities and/or penalties shall be collected immediately from the concerned taxpayer-applicant.

2. The corresponding Notice of Denial shall be prepared with the initials of the authorized members of the LTS-sub-TWC/EB and REB duly affixed thereto. The duly accomplished Notice of Denial, together with the entire docket of the application, shall be transmitted to the Chief, Accounts Receivable Monitoring Division (ARMD), for recording and monitoring purposes, within 10 days immediately after the denial by the concerned LTS sub-TWC/EB or regional TWG/REB, as the case may be. Subsequently, the Chief, ARMD shall, within five days from receipt thereof, directly submit the said Notice, together with the entire docket of the application, to the Commissioner of Internal Revenue for signature, without the need for further review or evaluation of the substantive aspect of the LTSEB/REB by the NOTWG/TWC.

3. After the approval of the notice by the Commissioner, the approved notice and the entire docket of the application shall be returned to the Chief, ARMD for recording purposes and the same shall be immediately transmitted to the originating revenue office for the appropriate service of the Notice to the taxpayer and the immediate collection enforcement of the outstanding tax liabilities. The prescribed Notice shall be prepared by the Office of the Regional Director for regional cases, or the Office of the LTS for LTS cases, as the case may be.

4. In case the recommendations of the REB/LTS-EB is to approve the taxpayer's application, the pertinent procedural requirements set forth under RR 30-2002 and RR 13-2001, as amended by RR 4-2012, Revenue Memorandum Order (RMO) No. 20-2007, and other relevant revenue issuances for the filing of the said applications at the concerned regional, LTS, or National offices up to the approval thereof by the concerned TWG/NEB/TWC/CIR at the National Office shall still be observed.

5. The LTS sub-TWC/EB and all regional TWGs/REBs shall evaluate and release their respective board's decision within 15 calendar days from receipt of any application for compromise settlement or abatement.

6. The above rules shall not apply to all applications for compromise settlement and abatement of penalties that are transmitted to and pending with the TWG/NEB/TWC in the National Office as of 29 January 2016, but the pertinent procedural requirements set forth under RR 30-2002, and RR 13-2001, as amended by RR 4-2012, RMO No. 20-2007, and other relevant revenue issuances shall apply instead.

(Revenue Memorandum Order No. 04-2016, January 26, 2016)

Centralized processing of ATRIGS

All applications for Authority to Release Imported Goods (ATRIGs) for excisable products shall be processed and issued centrally at the BIR National Office, more particularly by the Excise LT Regulatory Division (ELTRD).

ATRIGs issued by the Regional Offices and Excise Tax Areas (EXTAs) upon the effectivity of the order on 7 January 2016 shall be considered null and void. All ATRIGs manually processed and issued by the Regional Offices for value-added tax (VAT) exempt transactions shall be stamped with the phrase, "NOT VALID FOR ALL EXCISABLE PRODUCTS".

(Revenue Memorandum Order No. 01- 2016, January 7, 2016)

Court Decisions

Donor's tax liability of donor may not be transferred to donee

Under Section 99(B) of the Tax Code, a donor's tax at the rate of 30% shall be paid by the donor on gift made to the donee, who is a stranger. In the case of gifts made by a nonresident, the return may be filed with the Philippine Embassy or Consulate in the country where he is domiciled at the time of the transfer, or directly with the Office of the Commissioner pursuant to Section 103(B) of the Tax Code.

In the instant case, the BIR assessed and demanded from the donee the payment of donor's tax relative to the alleged donation it received from its affiliate abroad. The Court of Tax Appeals (CTA) held that it is clear under Section 99(B) of the Tax Code that the person or entity liable to pay the tax is the donor, or the person or entity transferring the property to another. The CTA further held that since the donor's tax is a direct tax, the burden to pay it may not be transferred to the donee.

The CTA maintained that mere exigency and convenience may not be used as an excuse to collect donor's tax from a donee simply because the donee is located in the Philippines. Hence, for lack of legal basis, the deficiency donor's tax

assessment issued by the BIR against the taxpayer was cancelled by the CTA.

(Toenec Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8653, January 27, 2016)

Arrastre and wharfage fees subject to VAT
Under Section 107 of the Tax Code, the importation of goods shall be subject to 12% VAT based on the total value used by the Bureau of Customs (BOC) in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges. In its decision, the CTA held that the phrase "other charges" should include the wharfage fees payable to the Philippine Ports Authority (PPA) and arrastre fees payable to International Container Terminal Services, Inc. (ICTSI).

In the instant case, the taxpayer was assessed for unpaid VAT on arrastre and wharfage dues, which are considered part of “other charges” subject to VAT pursuant to Section 107 of the Tax Code.

The taxpayer argued that the phrase "other charges" in Section 107 of the National Internal Revenue Code (NIRC) of 1997, as amended, must be limited to such of the same nature as customs duties and excise taxes, which are state taxes, and that it should not include wharfage and arrastre fees, which are not imposed by the state but were paid for the services rendered.

The taxpayer further contended that that the imposition of VAT on arrastre and wharfage fees would amount to double taxation since it has to pay input VAT for arrastre and wharfage fees on top of its payment of wharfage fees to the PPA and arrastre fees to ICTSI.

The CTA held that section 107 of the Tax Code is clear, plain, and unequivocal in providing that VAT on importation of goods is imposed on the total value used by the BOC in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, which should include arrastre and wharfage fees.

According to the CTA, double taxation means taxing the same property twice when it should be taxed only once, that is, taxing the same person twice by the same jurisdiction for the same thing. It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as direct duplicate taxation, the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.

The CTA explained that the subject matter of Section 107 of the Tax Code is the importation of goods, the tax base of which is the total value used by the BOC in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges. In Section 108 of the Tax Code, as amended, the subject matter is the sale or exchange of services, including the use or lease of properties and the tax base thereof is the gross receipt derived from such sale or exchange of services. The two taxes levied under Sections 107 and 108 of the Tax Code, as amended, are not imposed on the same subject matter for the same purpose.

As further explained by the CTA, the taxpayer is not the taxpayer under Section 108 of the Tax Code. It merely shoulders the tax burden passed on by the seller of the service. This proceeds from the well-established principle that in indirect taxes, like VAT, the incidence of taxation falls on one person but the burden thereof can be shifted or passed on to another person.

The VAT under Section 107 of the Tax Code, on the other hand, is imposed on the taxpayer for being the importer of the product as the law clearly provides that such tax is to be paid by the importer prior to the release of such goods from customs custody. Hence, the imposition of VAT on wharfage and arrastre charges under Section 107 of the Tax Code does not constitute double taxation.

(Colgate-Palmolive Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 7806, January 26, 2016)

Proof of receipt of assessment
If the taxpayer denies receipt of assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. When the service is made by registered mail, Section 13, Rule 13 of the Rules of Court provides that proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof, the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

In the instant case, the registry receipt is the sole proof of service of notice for informal conference, while only the registry return receipt was presented to prove the alleged sending of final assessment notice (FAN). The CTA noted that the BIR did not offer the affidavit of the person mailing the said notices. Furthermore, the registry return receipt reveals that neither the date of delivery, nor the signature or name of addressee, or the signature of addressee's agent was filled up. Hence, for failure to prove that the taxpayer indeed received the assessment, the CTA declared the assessment issued to the taxpayer null and void.

(Mid-Land QC Realty Corporation v. Commissioner of Internal Revenue, CTA Case No. 8711, January 22, 2016)

FAN issued prior to 15-day period to reply to PAN

Under RR 12-99, as amended, a taxpayer who receives a Preliminary Assessment Notice (PAN) is given 15 days from receipt within which to file his reply to the PAN. If the taxpayer fails to respond within said 15 days, he shall be considered in default, which will trigger the issuance of the FAN by the BIR.

In the instant case, the taxpayer received the PAN dated 19 December 2011 on 4 January 2012 assessing it for deficiency taxes. On 11 January 2012, or seven days after the issuance of the PAN and before the lapse of the 15-day period to reply to the PAN, the taxpayer received the FAN. The taxpayer argued that its right to due process was violated when the FAN was issued before its protest to the PAN could be resolved.

The CTA held that part of the due process is that the taxpayer shall be given an opportunity to respond to the PAN pursuant to Section 228 of the Tax Code and RR 12-99, as amended. For failure to strictly comply with the notice requirements prescribed under Section 228 of the Tax Code and RR 12-99, the CTA held that the BIR violated due process and, thus, it deemed the assessment issued by the BIR void for having been conducted without authority.

(Strawberry Foods Corporation v. Commissioner of Internal Revenue, CTA Case No. 8569, January 7, 2016)

Bureau of Local Government Finance Opinions

LBT on passive income

While cities and municipalities may impose local business tax (LBT) on entities engaged in business within their respective territorial jurisdictions based on gross sales or receipts, passive income such as intercorporate dividends should not form part of the gross sales or receipts, which is subject to LBT, except when derived by a bank or financial institution.

Under Section 131(n) of the Local Government Code (LGC), the term "gross sales or receipts" means 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 return, excise tax, and VAT.

On the other hand, Section 143(f) provides that a municipality may impose tax on a business based on the gross sales or receipts of banks and other financial institutions, which shall include interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, and insurance premium.

It is clear from Section 131(n) in relation to Section 143(f) of the LGC that business tax on dividends and other forms of passive income can only be imposed on banks and other financial institutions. Hence, in case the business enterprise is not a bank nor a financial institution, its income arising from its passive income -- such as intercorporate dividends which are considered merely incidental, having been earned outside of its primary purpose -- should not form part of its gross receipts subject to LBT under Section 143 of the LGC.

(BLGF Opinion issued to Ortigas Company Limited Partnership (OCLP), January 11, 2016)

Reckoning of the three-year exemption from RPT on machinery and equipment of PEZA enterprises under ITH

Pursuant to Article 78 of Book VI of Executive Order No. 226, in relation to Philippine Economic Zone Authority (PEZA) Memorandum Circular No. 2004-24, machineries and equipment used for production by PEZA-registered zone enterprises under income tax holiday (ITH) shall be exempted from payment of real property tax (RPT) during the first three years of use of such machineries and equipment.

When such machineries and equipment shall be subject to RPT, the BLGF opined that a PEZA-registered enterprise should pay the RPT on its machineries and equipment on the fourth year of its operation. Thus, the reckoning date of the start of commercial operations of the machinery shall be the “SCO Date of Registration Agreement”, or the date of actual operations based on the ocular inspection report of the assessor, whichever came earlier.

In the instant case, considering that the PEZA-registered enterprise started its commercial operations in October 2013, the BLGF clarified that the exemption from RPT of the PEZA enterprise on its production machineries shall be effective up to 2016, and will be taxable on the fourth year of operations.

(BLGF Opinion issued to Taganito HPAL Nickel Corporation (THPAL), January 11, 2016)

Situs rule on LBT

A company engaged in the manufacture and sale of wooden furniture with principal office, factory, and showroom located in different localities is

subject to the LBT, depending on whether or not its factory, showroom, or principal office is being used as its sales office.

Both the company's principal office and factory are located within the same local government unit (LGU), while its showrooms are located in shopping malls in different localities. The showrooms maintained by the company consummate sales independent from that of the principal office and, correspondingly, they issue collection receipts and sales invoices of their own.

While an office that merely serves as a showroom is not subject to LBT, if it also accepts orders and/or issues sales invoices, it shall be considered a sales office and shall be subject to the following sales allocation rule: (a) all sales made and recorded in the principal office where the factory is also located shall be 100% taxable in the LGU where both are located; (b) sales made by the company in the locality where there is no branch office or sales outlet shall be recorded in the principal office and, together with the sales made by the principal, shall be 100% taxable in the LGU where it is located; and (c) all sales made and recorded in the sales office/branch office (showroom) shall be 100% taxable in each locality where the sales office/branch office is located.

(BLGF Opinion issued to Philux Incorporated, January 14, 2016)

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