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Tax news
Interpret and integrate

Revenue Regulations

Additional tax-exempt de minimis benefits

The Bureau of Internal Revenue (BIR) has expanded the list of de minimis benefits that are exempted from income tax on compensation to include benefits under collective bargaining agreements (CBAs) and productivity incentive schemes.

To be considered a *de minimis* benefit, the total amount of benefits to be received by an employee from the combined CBA and productivity incentive schemes should not exceed P10,000 per employee per taxable year.

(Note: RR 1-2015 took effect upon its publication on 6 January 2015)
(Revenue Regulations No. 1-2015, January 5, 2015)

Revenue Memorandum Circular

Online eBIR forms

The BIR has announced the availability of the offline eBIR Forms Package Version 4.7 in the BIR website, particularly the following tax returns, which can be submitted online through the electronic filing and payment system (eFPS), except for taxpayers using the eBIRForms System.

BIR form	Form description	Version date
1702-RT	Annual income tax return for corporation, partnership and other non-individual taxpayer subject only to the regular corporate income tax	June 2013

1702-MX	Annual income tax return for corporation, partnership and other non-individual taxpayer with mixed income subject to multiple income tax rates	June 2013
1702-EX	Annual income tax return for use only of corporation, partnership and other non-individual taxpayer exempt under the Tax Code, as amended	June 2013
1701	Annual income tax return for self-employed individuals, estates and trusts	June 2013
1700	Annual income tax return for individuals earning compensation income	June 2013
2200A	Excise tax return for alcohol products	April 2014
2200TT	Excise tax return for tobacco products	April 2014

For taxpayers using the eBIRForms System, the online submission of the abovementioned tax forms to the eFPS is not yet available.

(Revenue Memorandum Circular No. 2-2015, January 9, 2015)

PEZA enterprises exempt from securing BIR ICC

The BIR has circularized Department of Finance (DOF) Order No. 107-2014 exempting enterprises duly-registered with the Philippine Economic Zone Authority (PEZA) from the requirement to secure an importer's clearance certificate (ICC) from the BIR before applying for accreditation as importers with the Bureau of Customs - Account Management Office (BOC-AMO).

To determine which PEZA enterprises shall be exempt from the requirement to secure BIR ICC, the BOC may request a certified list of registered locators from PEZA. The BOC may also require the submission of documents and/or obtain information about PEZA locators in the possession of PEZA.

PEZA locators that will import goods into the Philippines will have to comply with the documentary requirements provided in the relevant rules of procedure of customs. Failure to do so will subject them to sanctions and penalties as provided by the Tariff and Customs Code of the Philippines, as amended, and by pertinent customs laws and regulations.

(Revenue Memorandum Circular No. 4-2015, January 13, 2015)

Lifting of ban on importation of airline tickets

The BIR has circularized Administrative Order No. (AO) 45, dated 28 November 2014, issued by the President lifting the prohibition on the use and importation of airline tickets issued outside the Philippines for international air transportation of passengers originating from the Philippines.

Under Letter of Instruction No. 1479, the use and importation of airline tickets issued outside the Philippines for international air transportation of passengers originating from the Philippines were banned to discourage black marketing in foreign exchange and evasion of payment of travel and other taxes.

However, technological advances as well as changes in related laws have rendered the ban on the importation of airline tickets obsolete and inconsistent with the promotion and facilitation of travel. Hence, AO 45 was issued lifting the ban on the use and importation of airline tickets.

(Revenue Memorandum Circular No. 5-2015, January 22, 2015)

Condonation of RPT liabilities of independent power producers

The BIR has circularized Executive Order No. (EO) 173 (31 October 2014) reducing and condoning the real property tax (RPT) liabilities on property, machinery, and equipment actually and directly used by independent power producers

(IPPs) for the production of electricity under the Build-Operate-Transfer (BOT) contracts.

Pursuant to EO 173, the real property tax liabilities of IPPs for all years up to 2014 on their property, machinery, and equipment shall be reduced to an amount equivalent to the tax due, if computed based on an assessment level of 15 percent of the fair market value of said property, machinery, and equipment depreciated at the rate of 2 percent per annum less any amounts already paid by the IPPs. On the other hand, the concerned IPPs shall be relieved from paying the fines, penalties, and interest on their deficiency RPT liabilities.

(Revenue Memorandum Circular No. 6-2015, January 22, 2015)

Revenue Memorandum Order (RMO)

Reduction of documentary requirements for accreditation of importers and customs brokers

The BIR has reduced the number of documents that importers and customs brokers must submit in securing their ICC/Brokers' Clearance Certificate (BCC) for accreditation purposes with the BOC.

To expedite the accreditation process, importers or customs brokers who are applying for accreditation are no longer required to submit the certified true copy of the Certificate of Registration issued by the BIR, and the Securities and Exchange Commission (SEC) Registration and Articles of Incorporation. However, they are still required to secure and submit all other certifications specified under Revenue Memorandum Order No. (RMO) 10-2014 in securing their ICC/BCC.

The certifications must conform to the prescribed format in RMO 10-2014; otherwise, the application for accreditation of the importer/broker shall be automatically denied. Only applications with certifications which are fully compliant with all the prescribed criteria shall be accepted by the BIR Accounts Receivable Monitoring Division (ARMD).

Importers/brokers who were given provisional ICCs/BCCs must submit the required certifications at least one month prior to the expiry of the six-month validity period of their provisional ICC/BCC. The six-month validity period of the provisional ICC/BCC shall no longer be extended once the required certifications/documents are not submitted, without prejudice to the refiling of another application with the ARMD once the same are already available. After verification of the documents by ARMD, a regular ICC/BCC shall be issued and its validity may be extended to three years, counted from the date of issuance of the provisional ICC/BCC.

(Revenue Memorandum Order No. 1-2015, January 7, 2015)

BIR Rulings

Reciprocity as basis for GPB tax exemption of international carriers

As a general rule, an international carrier doing business in the Philippines shall pay a tax of two and one-half percent (2 ½ %) on its gross Philippines billings (GPB) pursuant to Section 28(A)(3)(a) of the Tax Code, as amended. However, an international air carrier may avail of exemption on the tax imposed on its gross revenue derived from the carriage of persons and their excess baggage through an applicable tax treaty to which the Philippines is a signatory, or reciprocity.

As basis of GPB tax exemption, reciprocity requires that Philippine carriers operating in the home country of an international carrier are actually enjoying the income tax exemption. To prove this, Revenue Regulations (RR) 7-2013 requires that in the absence of exchange of notes between the Philippines and home country of the international carrier, the international carrier must submit competent proof of reciprocity which should include, among others, the original copy of consularized certification issued by the tax authority of the home country of the international carrier stating that Philippine carriers are granted income tax exemption under its laws, and the official publication of the laws of the home country of the international carrier relied upon (in English translation) to establish that its home country grants income tax exemption to Philippine carriers.

In the instant case, after having established through competent proof that Qatar grants reciprocal tax exemption to Philippine air carriers based on Section 3, Article 4(7) of the Income Tax Law of Qatar issued by way of Law 21, the BIR held that Qatar Air, an international carrier, is

exempted from income tax on its GPB on carriage of persons and excess baggage.
However, pursuant to Section 7 of RR 7-2013, the BIR requires that Qatar Air, through their authorized personnel or representative, shall submit to the BIR International Tax Affairs Division (ITAD), a sworn certification stating that there is no change in the domestic laws of its Home Country granting income tax exemption to Philippine carriers. The sworn certification shall be submitted on or before January 31 of each year from the time the international carrier was issued a ruling by the BIR confirming its GPB tax exemption on the basis of reciprocity. Failure to submit the sworn certification shall be a ground for the revocation of such ruling.

(BIR Ruling No. ITAD 011-15, January 21, 2005)

Tax treatment of additional retirement gratuity
Under Section 32(B)(6)(b) of the Tax Code, retirement benefits under a BIR-approved retirement plan to be received by qualified employee-members shall be exempt from income tax subject to two conditions: (a) the official or employee has been in the service of the same employer for at least 10 years; and (b) the employee is at least 50 years old at the time of retirement.

Retirement benefits under the BIR-approved retirement plan received by employees who meet both the age and length of service requirements are exempt from income tax. However, in case the employer provides other benefits such as additional gratuity pay, such other benefits provided for in the retirement plan shall not be covered by the tax exemption unless they are also expressly exempt from tax pursuant to the other provisions of the Tax Code.

(BIR Ruling No. 496-2014, December 12, 2014)

Withholding tax on effectively connected income
The income payment made by a domestic corporation to its head office abroad, which has a branch office in the Philippines, shall not be entitled to preferential tax treatment if the income is effectively connected to the branch office. However, if the business transactions that created the income came from a separate and independent transaction from the branch in the Philippines, then such income may be subject to the preferential tax rate under the tax treaty.
In case of dividends paid to a resident of Japan by a domestic corporation that has a branch in the Philippines, Section 28(B)(1) of the Tax Code provides that such dividends shall be subject to 30 percent tax. However, the same dividends may be subject to a reduced tax rate pursuant to the Philippines-Japan Tax Treaty.

Under paragraphs 2 and 3 of Article 10 of the Philippines-Japan Tax Treaty, dividends arising from the Philippines and paid to a resident of Japan may be taxed at a lower rate of 10 percent or 15 percent under certain conditions. However, the preferential tax rates shall not apply if the nonresident foreign corporation has a permanent establishment in the Philippines and the subject dividend income is effectively connected to a permanent establishment, which includes, among others, a branch.

In the instant case, the recipient of the dividends is a foreign corporation organized and existing under the laws of Japan, with a branch in the Philippines. The shares held or acquired by the nonresident foreign corporation in the domestic corporation were acquired without the participation of its branch in Philippines. Moreover, the Philippine branch does not hold any shares of stock in the domestic corporation.

Citing the case of Marubeni Corporation v. Commissioner of Internal Revenue (GR 76573, September 14, 1989), a foreign corporation is considered the same juridical entity as its branch if the former's business is conducted through its branch office, following the principal-agent relationship theory. However, where the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside, and the transaction becomes one of the foreign corporation, not the branch.

Considering that the rights and obligations of the nonresident foreign corporation arising from its investment in the domestic corporation are solely for its own account and are not in any way effectively connected with the business activity of its branch in the Philippines, the BIR held that the dividends paid by the domestic corporation to its nonresident foreign shareholder in Japan are not considered as effectively connected to the Philippine branch of the nonresident foreign corporation. Accordingly, the dividends paid by the domestic corporation to the nonresident foreign corporation are subject to lower income tax rate pursuant to the Philippines-Japan Tax Treaty.

(BIR Ruling No. ITAD 339-14, December 22, 2014)

Court of Tax Appeals (CTA) decisions

Proper classification of power generating companies for LBT purposes

The nature of business of a power generating company falls within the category of "manufacturer/producer" and not "contractor" of electricity for local business tax (LBT) purposes. In the instant case, after initially being classified as a manufacturer/producer, a power generating company's classification was changed to "Services – Other Co.", resulting in the imposition of higher LBT. The concerned local government unit (LGU) contends that the power generating company does not only supply electricity but also manages, operates, maintains, and even repairs power plants for a fee. For this reason, the LGU contends that the company's actual nature of business corresponds with the definition of a "Contractor" under Section 131 (h) of the Local Government Code (LGC) of 1991.

The LGU further argued that the power generating company is a "service-enterprise" based on the general terms and conditions of its Certificate of Board of Investment (BOI) registration, which means the company must submit reporting requirements to the Infrastructure & Service-Oriented Industries Department.

The Court of Tax Appeals (CTA) held that based on the definitions of "Contractor" and "Manufacturer" provided under Section 131 (h) and (o), respectively, of the LGC of 1991, and Sections 3A.01(t) and 3A.01(II) of the Makati Revenue Code, a company that is engaged in the business of transforming fuel into electricity and selling it to the end user falls within the scope of manufacturer/producer. The CTA further held that the additional undertakings of the company, such as management, operation, maintenance and repair of power plants, are merely ancillary to and in aid of its primary function as a producer of electricity, and are not even services, but rather additional undertakings that ensure the safe and continuous delivery of the electricity sold.

On the argument that the BOI Certificate of Registration classified the power plant company under the category of "Infrastructure & Service-Oriented Industries", the CTA maintained that the said classification is not definitive of the company's real business purposes. The Certificate of Registration does not explain the classification but only enumerates the documents for submission of the company.

(City of Makati v. Trans-Asia Power Generation Corporation, CTA EB Case No. 1086, re: CTA AC Case No. 87, January 21, 2015)

Under-declaration of purchases as basis of tax assessment

The finding of an under-declaration of purchase should not by itself result in the imposition of deficiency income tax and value-added tax (VAT). Citing the case of Commissioner of Internal Revenue v. Court of Appeals, et. al. (GR 108576, January 20, 1999), the CTA held that for a taxpayer to be validly assessed for income tax, the following elements should be present: (a) there must be gain or profit; (b) the gain or profit is realized or received actually or constructively; (c) it is not exempted by law or treaty from income tax.

The CTA maintained that income tax should be assessed when there is an income and such income is received or realized by the taxpayer, and not when there is an undeclared purchase.

The CTA observed that in the instant case, the BIR imposed the income tax on the taxpayer simply because there was an under-declaration on purchases, which is not sufficient basis to assess the taxpayer for deficiency income tax.

The CTA further held that for income tax purposes, a taxpayer is free to deduct a lesser amount from its gross income, or not claim any deduction at all. What is prohibited by the income tax law is claiming a deduction beyond the amount authorized therein. According to the CTA, even granting there is an undeclared purchase, the same is not prohibited by law. Hence, the taxpayer can exercise its discretion on whether or not it will declare a lesser amount of deductions or none at all.

In the same vein, the CTA held that no deficiency VAT assessment should arise from the under-declared purchase. Under Section 105 of the Tax Code, VAT is imposed on the seller of goods and assessed on the “gross selling price or gross value in money of the goods or properties sold” and is “to be paid by the seller or transferor”.

According to the CTA, in the imposition or assessment of VAT in the sale of goods or properties, it is critical to show that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. For this reason, the CTA maintained that VAT should not be imposed on the supposed under-declared purchase of the taxpayer, and hence, it ordered the cancellation of the taxpayer’s VAT assessment.

(Commissioner of Internal Revenue v. Agrinurture, Inc., CTA EB No. 1054 re CTA Case No. 8345, January 13, 2015)

Submission of complete documents for VAT refund purposes

Under Section 112(C) of the Tax Code, the Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of complete documents within which to grant or deny a VAT-registered taxpayer’s claim for refund of its unutilized input VAT attributable to its zero-rated or effectively zero-rated sales. If after the 120-day period the CIR fails to act on the application for refund/credit, the remedy of the taxpayer is to appeal the inaction to the CTA within 30 days.

In the instant case, the VAT-refund claimant is a PEZA-registered enterprise under income tax holiday (ITH) that is engaged in the manufacture of nickel/cobalt mixed sulfide for export. The company filed an application for refund of its unutilized input VAT from its domestic purchases of goods and services attributable to its VAT zero-rated sales.

The BIR maintained that the taxpayer’s refund should be denied due to its failure to comply with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to RMO No. 53-98, as amended. The BIR argued that the taxpayer’s filing of a judicial claim for refund is premature since the 120-day period had yet to run due to the taxpayer’s failure to submit the complete documents.

Citing the case of Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc. (GR 172045-46, June 16, 2009), the term “relevant supporting documents” should be understood as those documents necessary to support the legal basis for disputing a tax assessment. The BIR can only inform the taxpayer to submit additional documents; it cannot dictate what type of supporting documents should be submitted. Moreover, in the case of Team Sual v. Commissioner of Internal Revenue, CTA EB Nos. 649 and 651, March 21, 2012, the CTA held that should the taxpayer decide to submit only certain documents, or should the taxpayer fail or opt not to submit any document at all in support of its application for refund or tax credit certificate under Section 112 of the Tax Code, it is reasonable and logical to conclude that the 120-day period should be reckoned from the filing of the application.

The CTA concluded that the submission of supporting documents lies within the sound discretion of the taxpayer. As the affected party, the taxpayer is in the best position to determine which documents are necessary and essential to garnering a favorable decision.
The CTA held that the taxpayer’s non-compliance with the submission of documentary requirements prescribed under RMO 53-98, as amended, did not render the refund claim premature considering that the taxpayer filed its judicial claim for refund within the 120+30 day period under Section 112(C) of the Tax Code, reckoned from the filing of its application for refund with the BIR.

(Commissioner of Internal Revenue v. Coral Bay Nickel Corporation, CTA EB No. 1133 re CTA Case No. 8252, January 7, 2015)

SEC Issuances

Extended deadline for amendment of principal office address

The SEC has extended up to 30 June 2015 the deadline for corporations and partnerships whose articles of incorporation or articles of partnerships indicate a general address as their principal office address, to file an amended articles of incorporation or amended articles in order to specify their complete address.

Under SEC Memorandum Circular No. 6, series of 2014, the SEC directed all existing corporations and partnerships whose articles of incorporation or articles of partnerships indicate only a general address -- such as “Metro Manila” -- to specify their complete address. These corporations and partnerships should file amended articles of incorporation or articles of partnerships indicating, if feasible, the street number, street name, barangay, city or municipality, and if feasible, the name of the building, the number of the building, and the name or the number of the room or unit where they hold office.

Affected corporations and partnerships were originally given until 31 December 2014 to effect the change in their principal address. This deadline has been extended to 30 June 2015 to give affected corporations and partnerships more time to acquire the necessary endorsement from other regulatory agencies.
(SEC Memorandum Circular No. 1, Series of 2015, January 7, 2015)

Filing of annual corporate governance report (for newly listed companies)
The SEC has required all newly listed companies to submit their Annual Corporate Governance Report (ACGR) on May 30 following the one year anniversary of their listing in the Philippine Stock Exchange (PSE). For companies listed from 1 January to 30 May, their ACGR shall be submitted on 30 May of the following year. On the other hand, companies listed from 31 May to 31 December must submit their ACGR on 30 May two years thereafter.
Illustrations:

A. If the company is listed on 15 January 2014, the ACGR should be submitted according to the following schedule:

First filing	30 May 2015
Subsequent filing (2nd to 4th year)	In accordance with SEC Memorandum Circular Nos. 1 and 12, series of 2014
5th year filing	30 May 2020

B. If the company is listed on 15 November 2014, the ACGR should be submitted according to the following schedule:

First filing	30 May 2016
Subsequent filing (2nd to 4th year)	In accordance with SEC Memorandum Circular Nos. 1 and 12, series of 2014
5th year filing	31 May 2021

(SEC Memorandum Circular No. 3, Series of 2015, January 14, 2015)

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