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Revenue Regulations

Mandatory eFPS coverage for TAMP taxpayers and importers/customs brokers

The BIR has made it mandatory for taxpayers under the Taxpayer Account Management Program (TAMP) and accredited importers/customs brokers to file their returns and pay taxes through the Electronic Filing and Payment System (eFPS). In particular, the following taxpayers shall be covered by the eFPS:

1. Taxpayer Account Management Program (TAMP) taxpayers – These are top business taxpayers that account for at least 80% of district collections as identified by the Revenue District Offices (RDOs).
2. Accredited importers with BIR-Importer Clearance Certificate (ICC) and BIR-Customs Broker Clearance (BCC) – All accredited importers and custom brokers (individuals, partnerships, corporations, cooperatives, associations) and prospective importers required to secure the BI-ICC and BIR-BCC.

The taxpayers newly covered by the eFPS shall use the eFPS facility starting January 1, 2015 or after 15 days following the publication of RR 10-2014 in a newspaper of general circulation, whichever comes later.

(Revenue Regulation No. 10-2014, December 10, 2014)

(Note: RR 10-2014 was published on December 11, 2014 and thus, it became effective on December 16, 2014)

Imposition of 1% CWT on raw sugar and REITs

The BIR has further expanded the coverage of income payments subject to withholding tax by imposing a 1% creditable withholding tax (CWT) on income payments to corporate taxpayers registered with the Regular Large Taxpayer Regular Audit Division 3 as Real Estate Investment Trusts (REITs).

Likewise, a 1% CWT shall apply to income payments made by proprietors or operators of sugar mills/refineries on their mill share, and direct buyers of quedans or molasses storage certificates to sugar planters on their locally produced raw sugar and molasses. The one percent CWT shall be based on the applicable base price of P1,000 per 50 kilogram bag and P4,000 per metric tons of raw sugar and molasses. The BIR has also made uniform the P300,000 threshold for purpose of applying the one percent CWT on income payments made to agricultural suppliers by hotels, resorts, caterers, food processors, canneries, supermarkets, livestock, poultry, fish and marine product processors, factories, furniture shops and all other establishments.

Previously, the P300,000 threshold only applies to income payments made by the top 20,000 private corporations and top 5,000 individual taxpayers to their agricultural suppliers. It now applies to all income payors of agricultural suppliers, regardless whether the income payor is a top 20,000 corporate taxpayer/top 5,000 individual taxpayer or not.

The new rules on CWT on income payments to agricultural products and REITs are effective on January 1, 2015.

(Revenue Regulations No. 11-2014, December 22, 20014)

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Revenue Memorandum Circular (RMC)

Clarification on valuation of contributions or gifts for deductibility purposes

Taxpayers claiming donations as deductions from gross income must properly value their contributions or gifts as part of substantiation requirement under Revenue Regulations No. 13-98. Thus, in order to determine the proper value of donations for purposes of deductibility of donations from the gross income of the donors, the BIR has required the submission of BIR Form 2322 (Certificate of Donation) which will contain the information on the value of the donations.

BIR Form 2322 consists of two parts, i.e., donee certification and donor's statement of values. The donee certification shall indicate the actual receipt and description of donation (i.e., cash or property). The donee certification must be signed by an authorized representative of the donee organization. On the other hand, the donor's statement shall contain the acquisition costs, and net book values of the properties donated as reflected in the financial statements of the donor. The copy of deed of sale/bill of sale is required to prove the acquisition cost of the properties.

The Certificate of Donation (BIR Form 2322) should be submitted by the donee to the BIR and donor within 30 days from receipt of donation. The donee shall be responsible for the consecutive numbering of each Certificate of Donation following the BIR prescribed format.

(Revenue Memorandum Circular No. 86-2014, December 5, 2014)

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BIR Rulings

VAT on income payments made by PEZA companies to nonresident foreign corporations

Under Section 108 of the Tax Code, royalty payments as well as fees paid for services rendered in the Philippines by a nonresident foreign corporation are subject to VAT. The VAT imposed on payments to non-residents is treated as a "passed on" VAT which shall be withheld and paid by the resident withholding agent using BIR Form No. 1600.

However, in case the recipient of the technical know-how and/or services rendered within the Philippines by a nonresident foreign corporation is a Philippine Economic Zone Authority (PEZA)-registered enterprise, it cannot be charged the VAT. Citing the case of Commissioner of Internal Revenue v. Seagate Technology (GR 153866, February 11, 2005), the BIR held that a company registered with the PEZA as a resident withholding agent operating within an economic zone cannot bear the burden of VAT since it is an entity exempt from internal revenue laws under Republic Act No. 7916 (PEZA Law). Moreover, economic zones are considered separate customs territories, which means that in such zones there is the legal fiction of foreign territory. Under the cross-border principle of VAT system, no VAT shall form part of the cost of goods destined for consumption outside the territorial border of the taxing authority.

The transactions exempt from VAT pursuant to RA 7916 are effectively zero-rated. However, instead of VAT zero-rating which is not available to nonresident foreign suppliers, the BIR held that the provision for exempt transactions under Section 109(K) of the Tax Code shall apply. Hence, service as well as royalty fees paid by PEZA-registered enterprises to the nonresident foreign corporation shall be exempt from VAT.

[BIR ITAD Ruling Nos. 311-14 (November 4, 2014) and 316-14 (November 24, 2014)]

Software payments as business profits

Payments made to non-resident foreign corporations for computer software may be treated either as business income or royalties depending on the nature of the transaction involving software.

Under RMC 44-2005, if a person acquires a copy of a software but does not acquire any rights, (or only acquires a de minimis grant of such rights) and the transaction does not involve the provision of services or of know-how, the transfer of the copy of the software is classified solely as a transfer of a copyrighted article and payments for which constitutes business income.

Where the license agreement entered into by a domestic corporation with a nonresident foreign corporation only grants the former with a non-transferable and non-exclusive perpetual license to use a proprietary computer software, the BIR held that such income payment may be treated as business income if what is being transferred is only a copy of software for its use, and there is no transfer of ownership. As business profit, the same income shall only be taxable in the Philippines in case the enterprise (nonresident foreign corporation) carries on business in the Philippines through a permanent establishment.

In the instant case, inasmuch as no services were be performed in the Philippines, then the nonresident foreign corporation shall be deemed not to have a permanent establishment in the Philippines to which the payment of the service fees may be attributed and therefore, the income payment shall be exempt from income tax.

[BIR ITAD Ruling Nos. 312-14 (November 4, 2014) and 314-14 (November 11, 2014)]

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Court of Tax Appeals (CTA) decisions

Refund of excess CWT due to dissolution

Under Section 76 of the Tax Code, excess income tax credit or overpaid income tax in a given year of a corporation may either be refunded or carried over and applied against its income tax liabilities in the succeeding taxable years. Once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall then be allowed.

As an exception to the irrevocability rule, a corporation which permanently ceases its operations before full utilization of the tax credits it opted to carry over may be allowed to claim the refund of its remaining tax credits. However, in order to be excluded from the irrevocability rule, it has to prove that it has indeed permanently ceased its business operations.

Under Sections 52(C) and 235 (e) of the Tax Code, a corporation shall within 30 days after adoption by the corporation of a resolution or plan for its dissolution or liquidation must render a correct return to the Commissioner of Internal Revenue (CIR). Moreover, the dissolving corporation shall, prior to the issuance of the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, secure a Certificate of Tax Clearance from the BIR which certificate shall be submitted to the SEC. Thus, to be considered legally dissolved for tax purposes, the dissolving corporation must secure a: (a) Certificate of Tax Clearance from the BIR; and (b) Certificate of Dissolution from the SEC.

In the instant case, while the taxpayer-refund claimant duly informed the BIR of its intention to cease business operations and permanently close the corporation and was issued a Certificate of No Outstanding Liability by the BIR, the CTA held that there was no indication that the taxpayer has already been dissolved or has permanently ceased its business operations as it failed to present its SEC-approved amended articles of incorporation and SEC Certificate of Dissolution. Hence, for failure to prove that it has legally dissolved for tax purposes, the taxpayer-refund claimant request for refund of unutilized creditable withholding tax was denied by the CTA.

(NEC Logistics Philippines, Inc., v. Commissioner of Internal Revenue, CTA Case No. 8533, December 18, 2014)

Amortization of input VAT on capital goods attributable to VAT-zero rated sales

Under Section 110(A)(2) of the Tax Code, if the aggregate acquisition cost of the capital goods, excluding the VAT component thereof, exceeds P1 Million pesos in a calendar month, the input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. The requirement to amortize input tax on capital goods pursuant to Section 110 of the Tax Code applies to input taxes to transactions subject to VAT which include VAT zero-rated sale transactions.

In the instant case, the taxpayer filed a claim for refund of its input VAT paid on purchases or capital goods which are directly attributable to its zero-rated sales. The taxpayer-refund claimant did not amortize its input VAT on imported capital goods pursuant to Section 110(A)(2) of the Tax Code. The taxpayer argued that the need to amortize input VAT on importation of capital goods in 60 months or the estimated useful life of the capital goods, whichever is shorter under Section 110(A)(2) of the Tax Code and Section 4.110-3 of RR 16-2005 applies only when the input VAT will be credited or applied against output VAT. Considering that there is no output VAT against which the input VAT can be credited in a zero-rated sale transaction, the taxpayer argued that amortization of input VAT on capital goods is not applicable.

The CTA held that Section 110(A)(2) of the Tax Code which requires amortization of input tax on capital goods purchased or imported with acquisition cost of P1 Million and treated as depreciable asset applies to all input taxes on capital goods available as tax credits against the taxpayer's VATable transactions, be it VAT zero-rated or subject to 12% VAT. The CTA pointed out that both taxable sales and zero-rated sales are considered transactions subject to output VAT. The difference lies only on the VAT rate used, i.e., 12% for taxable sales and 0% for zero-rated sales. Considering that the output tax due is 0% in the case of zero-rated sales transactions, the creditable input tax attributable thereto in a taxable quarter becomes unutilized or excess input tax which may be the subject of a claim for refund or tax credit certificate under Sections 110(B) and 112(A) of the Tax Code, as amended,

On the argument that the amortization of input VAT on capital goods runs counter to the provisions of Section 112(A) of the Tax Code as the claim for refund can be filed effectively beyond the two years from the close of the taxable quarter when the sales were made, the CTA maintained that the amortization of input VAT merely delays the crediting of the input tax and not the filing of the claim. Hence, it held that VAT-registered taxpayers are not deprived of their privilege to credit their input tax as long as they file their claim within two (2) years from the close of the taxable quarter when the sales were made. Accordingly, the CTA held that only the amount of excess input VAT on capital goods exceeding P1 Million which was amortized by the taxpayer may be claimed for tax refund.

(Commissioner of Internal Revenue v. Northwind Power Development Corporation, CTA EB Nos. 1037 and 1042 re CTA Case No. 8119, December 16, 2014 and Taganito Mining Corporation v. Commissioner of Internal Revenue, CTA EB No. 935 and 936 re CTA Case No. 8090, December 16, 2014)

VAT on intercompany loans

Interest income from loans granted by a domestic corporation to its related parties is subject to VAT.
The CTA en banc held that the act of extending loans to related parties is deemed included in the definition of "sale or exchange of service" in Section 108 of the Tax Code which defines the phrase as the performance of all kinds of services for others for a fee, remuneration or consideration.

Applying the Supreme Court decision in the case of COMASERCO (GR 125355) and Diaz (GR 193007), the CTA en banc held that "every activity that can be imagined as a form of service rendered for a fee should be deemed included in the phrase "sale or exchange of service under Section 108 of the Tax Code. According to CTA en banc, the extending of cash advances with interest to related parties is a form of service for a fee which is covered by the provisions of Section 108 of the Tax Code that should be subject to VAT.
The CTA en banc further held that whether a profit is realized or not is immaterial. As long as there is financial assistance or service for a fee, remuneration or consideration, such service rendered is subject to VAT.

(Waterfront Philippines, Inc., v. Commissioner of Internal Revenue, CTA EB Case No. 1070 re CTA Case No. 8024, December 04, 2014)

Establishing the fact of doing business outside the Philippines

Under Section 108(B)(2) of the Tax Code, in order for the supply of services to a foreign corporation to qualify for zero-percent VAT, the VAT-registered taxpayer that performed the service/s must prove that: (a) the service is other than processing, manufacturing or repacking of goods; (b) payment for such services is in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations; and (c) the recipient of such services is doing business outside the Philippines.

To prove that the nonresident foreign corporations for whom the services are performed are doing business outside the Philippines, the taxpayer-refund claimant which is a Regional Operating Headquarter (ROHQ) presented the following: (a) Securities and Exchange Commission (SEC) Certificate of Non-Registration of the foreign corporation; (b) Certifications from different government agencies in the country of origin of the foreign corporation as duly authenticated by the nearest consulate of the Philippines; (c) Intragroup Services Agreement; and (d) list of shareholdings of the foreign corporation.

The CTA found the documents *per se* do not constitute sufficient proof that the taxpayer's clients are nonresident foreign corporations doing business outside the Philippines. The CTA noted that while the SEC Certificates of Non-Registration show that the foreign corporations are not registered corporations/ partnerships in the Philippines, the same do not prove that such entities are nonresident foreign corporations doing business outside the Philippines. Likewise, the Intra-Group Service Agreements only show the names of the taxpayer's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Moreover, the Articles of Association and Certificates of Registration/Incorporation of the foreign company only prove that the foreign corporations were incorporated/organized abroad. However, they also do not establish that such entities are not doing business in the Philippines.

To be considered as non-resident foreign corporation doing business outside the Philippines, the CTA held that each entity must be supported, at the very least, by both SEC Certificate of Non-Registration and Certificate/Articles of Foreign Incorporation/ Association/ Registration. Thus, only services rendered by the ROHQ to its clients which have both SEC Certificate of Non-Registration Corporation and Certificate of Foreign Incorporation qualify for VAT zero rating for purposes of its claim for VAT refund.

(Deutsche Knowledge Services, PTE Ltd. v. Commissioner of Internal Revenue, CTA Case No. 7808, December 16, 2014)

Appealing an RPT assessment

Under Section 252 of the Local Government Code (LGC), as amended, a taxpayer must first pay the real property tax assessment and thereafter file his/its written protest to the assessment within 30 days from the payment of the tax. The treasurer has 60 days from receipt of the protest to decide on the same. In case of denial of the protest or lapse of the 60-day period, Section 226 and 229 of the LGC afford the taxpayer the remedy of filing an appeal with the Local Board of Assessment Appeals (LBAA), and later on with the Central Board of Assessment Appeals (CBAA).

In the instant case, the taxpayer is a large-scale mining company which uses mobile mining equipment known as load haul and dump equipment in its mining operations. The company was assessed for real property tax (RPT) on its loader equipment. The Company wrote a letter to the treasurer of the concerned Local Government Unit (LGU) to cancel its assessment based on Local Finance Circular (LFC) 02-09 declaring mobile equipment which are used in mining operations such as dump trucks, excavators and payloaders as personal properties, and therefore not subject to RPT.

In response to its protest, the treasurer issued a letter denying the taxpayer's request with an attached notice of assessment. However, instead of appealing the denial to the LBAA as provided under Section 252 and 226 of the LGC, the taxpayer directly filed an appeal with the Regional Trial Court (RTC) questioning the denial of its request for cancellation of tax assessment invoking Section 195 of the LGC.

In this regard, Section 195 of the LGC provides that when the local treasurer or his duly authorized representative finds that correct taxes, fees or charges have not been paid, he shall issue a notice of assessment stating the nature of tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. Within 60 days from the receipt of the assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment, otherwise, it shall become final and executory.

The CTA held that the taxpayer erroneously invoked Section 195 of the LGC, as amended since the procedure laid down therein applies for protesting a local business tax assessment, and not RPT assessment. The procedure for protesting RPT assessment is provided under Section 252 and 226 of the LGC which require filing of an appeal with the LBAA, instead of direct appeal with the RTC.

In justifying its direct appeal with the RTC, the taxpayer contends that the issue involves the exemption of mobile equipment from RPT which is a pure question of law that justifies its direct resort to the RTC. Citing the Supreme Court (SC) decision in the case of National Power Corporation v. Province of Quezon and Municipality of Pagbilao (GR 171586, January 25, 2010), the CTA held that a claim of exemption, whether full or partial, is a question of fact as it pertains to the correctness of the assessment and not on the authority of the local assessor to assess the RPT. The CTA further held that a claim from payment of RPT does not actually question the assessor's authority to assess and collect RPT, but pertains to the reasonableness or correctness of the assessment by the local assessor, a question of fact which should be resolved, at the very first instance, by the LBAA.

Considering that the LBAA and not the RTC has jurisdiction to rule on the correctness of the assessment, the RTC has not acquired jurisdiction over the taxpayer's appeal. Thus, for failure to file an appeal with the LBAA, the assessment had become final and executory which makes it beyond the review by the CTA.

(Lepanto Consolidated Mining Company v. Marieta Bondad, in her capacity as Municipal Treasurer, and Joel D. Tingbaoen, in his capacity as Municipal Assessor, of the Municipality of Mankayan, Benguet, CTA EB Case No. 1092 re:CTA AC No. 96, December 16, 2014)

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