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*Seizing the innovation edge <sup>p2</sup> | Bureau of Internal Revenue <sup>p4</sup> | Court decisions <sup>p6</sup>*

*Executive issuances <sup>p10</sup> | Meet us <sup>p10</sup>*

# *Client advisory letter*



Isla Lipana & Co.

# The most innovative TMT companies expect 90% growth rate over the next five years

**PwC study demonstrates how technology, media and telecom companies can harness breakthrough innovation to grow revenue**

PwC's recent global innovation study, *Seizing the innovation edge*, found that the most innovative 20% of Technology, Media and Telecom (TMT) companies surveyed expect a growth rate of nearly 90% over the next five years, more than twice the TMT average (37.5%) and over four times higher than the least innovative TMT companies (22.2%). The same top 20% innovative TMT companies collectively benefited from an additional \$45 billion in revenue over the last three years, compared with the least innovative companies. This is the equivalent of more than \$1 billion per company, or a 14% revenue uplift.

Data from the report indicates the top 20% of performers account for the revenue increase by establishing and executing a coherent innovation strategy and planning for a greater proportion of breakthrough and radical innovations. The report, the first of three papers exploring innovation within TMT, highlights how innovation is accelerating growth for leading TMT companies.

Dan DiFilippo, Global TMT Leader, PwC, said: "Developing an innovative product or service is not enough to secure and maintain a leadership position in today's market. Companies must have a consistent innovation strategy, which separates them from the competition as our survey results demonstrate. Companies that adopt a coherent innovation strategy, with a greater proportion of radical innovation and a more diverse innovation portfolio, enjoy higher revenue growth and a strengthened competitive position."

## **TMT Today**

Three hundred and seventy four C-suite TMT executives from across 20 countries were interviewed for *Seizing the innovation edge*. Analysis of growth patterns and survey results revealed that many TMT companies are missing out growth that could be achieved through a greater focus on breakthrough and radical innovations.

Survey data suggests that TMT innovation portfolios typically comprise 40-55% incremental innovation, generally considered to be changes to an existing product or service aimed at protecting market share and maintaining margins, yet are responded to quickly by competitors. More

significant changes to technologies and business models, identified as breakthrough innovations, comprise 20-35% of portfolios of TMT companies surveyed. As competitors cannot respond as quickly or meaningfully to these kinds of innovations, companies that employ these changes typically see more pronounced revenue and margin increases. Radical innovations upset the market and act as 'game changers' for the competitive landscape. Only 5-15% of TMT companies' portfolios represent this kind of innovation, which have potential to create outstanding growth in new categories of products and services.

Raman Chitkara, Global Technology Industry Leader, PwC, said: "It's a common assumption that TMT companies are naturally innovative because their industries are rapidly accelerating. The fast pace of growth and change does not, however, necessarily make all TMT companies innovation pioneers. Within each sector, there are companies that have more focus on innovation strategy – those are the ones who statistically reap more return on their investments."

## **Anatomy of Successful Innovation**

PwC's report found that 83% of the TMT executives interviewed realise that innovation is an important contributor to their company's success, and 48% describe innovation as a necessity. Despite this acknowledgement, less than two-thirds of executives interviewed have a well-defined strategy for innovation and roughly half of TMT executives identify their company as "leaders but not leading."

Investment was found to be a contributor to success of the top performers. PwC's innovation survey data suggests TMT companies that spend a higher proportion of their revenue on innovation are more likely to benefit from higher revenue growth. Though this data infers that lack of innovation investment is a barrier to growth, more spending does not guarantee results.

Rob Shelton, PwC's Global Innovation Leader, said: "The common denominator of the top 20% of TMT companies surveyed is a strong culture of innovation; financial investment is one crucial aspect, but it's not the

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# **PwC FY 2013 global revenues grow to US\$32.1 billion**

**PwC predicts global GDP growth of 3% in 2014**

**38,000 new recruits, total workforce climbs to 184,000**

PwC reported record total gross revenues of US\$32.1 billion for the fiscal year ended 30 June 2013. All of PwC's largest firms and each of its major service lines continued to grow, a strong performance amidst challenging markets and circumstances. At constant exchange rates, PwC's total global revenues rose by 4%.

"PwC's firms around the world have continued to increase revenues despite ongoing tough economic conditions and increasingly fierce competition in our markets. That gives testimony to the talent of our people, the strength of the PwC network, and our investment in the quality of the work we do for our clients," said Dennis M. Nally, Chairman of PricewaterhouseCoopers International Ltd. "All of our work around the world is clearly focused on building trust and helping to solve important problems, either for our clients or the wider communities in which we operate."

"Over the next three years we plan to invest over US\$1 billion in the development of PwC's operations around the world, with a particular emphasis on emerging markets, and growing client offerings such as cyber security services and risk assurance."

"Economic growth in the developing markets, though slowing, continues to outpace expansion in the more established economies. After five years of crisis, recession and slow growth, we see some positive signs of sustainable recovery. The US and Japan have returned to growth and the Eurozone is emerging from recession."

"On balance we are cautiously optimistic, and predict real global growth in the coming year of 3%."

"We are very proud of the people who work for PwC. In FY2013 we continued to focus on recruiting the best talent, with the result that PwC now has over 184,000 people across the world," added Dennis Nally.

In FY 2013, PwC again recruited some 20,000 graduates and nearly 15,000 experienced professionals, making PwC one of the largest graduate recruiters in the world. PwC anticipates recruiting even more graduates in FY2014.

*PwC's Global Annual Review 2013 is available at <http://www.pwc.com/gx/en/annual-review/index.jhtml>*

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only one. It is how you spend not how much you spend. Pursuing innovation across a wide range of business models and technology, making collaboration as core competency, and structuring the innovation process to make it repeatable and scalable are key markers of TMT companies that consistently rank among the most innovative."

Forty-five percent of executives surveyed for this report agreed that establishing the right innovation culture internally was a key challenge to facilitating innovation. The series of PwC papers on this topic explore the common attributes shared by the most well-rounded innovative companies, or "Innovation Decathletes." Instead of focusing on one area of innovative expertise, these "Innovation Decathletes" excel at multiple disciplines, and sustain characteristics of an innovation culture including ambition, versatility, risk acceptance, collaboration and endurance, among other traits.

## **Notes:**

In the next paper in the TMT Innovation series, PwC explores the lessons to be learned from the most innovative TMT companies: how do the qualities of an "Innovation Decathlete" manifest themselves in practice, and how can you apply this to your business? The final paper considers how the barriers to innovation can be overcome and shares best practice innovation approaches occurring across the TMT industries.



# Bureau of Internal Revenue

## Revenue Regulations (RR)

### *Amendments to the BIR audit process*

The BIR amended certain provisions of RR No. 12-99, which governs the tax assessment process. Some of the salient amendments are as follows:

1. The BIR will no longer issue a Notice for Informal Conference (NIC). After the field audit, a Preliminary Assessment Notice (PAN) will be issued if there is sufficient basis to assess the taxpayer for deficiency tax.
2. A Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) will be issued if the taxpayer fails to respond within 15 days from the receipt of the PAN or 15 days from submission of the taxpayer's response to the PAN.
3. A taxpayer who disagrees with an FLD/FAN must state in the protest letter he is filing whether he is requesting for reconsideration or reinvestigation.

A request for reconsideration is a plea for re-evaluation of an assessment on the basis of existing records/evidence which were already presented before. Since there is no need for additional evidence, the 60-day rule for submission of supporting document will not apply.

A request for re-investigation is a plea for re-evaluation of an assessment on the merits of newly discovered documents/evidence that a taxpayer intends to present during reinvestigation. The taxpayer will have 60 days from the filing of the protest to submit its supporting documents.

4. In cases where there are several findings, a collection letter will be issued with regard to those deficiency findings which are not protested by the taxpayer or where the taxpayer fails to state the factual and legal basis in support of his protest. This is because such findings shall be considered undisputed and shall become final, executory and demandable.

5. If the protest is not acted upon by the BIR within 180 days from the date of filing of the protest in case of a request for reconsideration, or from date of submission by the taxpayer of the required documents in case of a request for reinvestigation, the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period or wait the final decision of the BIR before appealing to the CTA.
6. The option of the taxpayer to appeal to the CTA or to wait for the Commissioner's decision are mutually exclusive; the resort to an option prohibits the application of the other.
7. The PAN/FLD/FAN and the BIR's Final Decision on Disputed Assessment (FDDA) may be served through personal service, registered mail or by substituted service. The specific procedures on how an FLD/FAN was to be received by a taxpayer, if sent by personal delivery, were taken out. An additional and more convenient mode of service (substituted service) is introduced in cases where the taxpayer is not present at his registered or known address. Furthermore, service to a BIR-accredited tax agent/practitioner appointed by the taxpayer shall be deemed service to the taxpayer.
8. The RR also amends the manner of computing for the 20% delinquency interest that is imposed on unpaid deficiency taxes computed from the date of payment required in the FLD/FAN until it is fully paid. This interest is in addition to the normal 20% deficiency interest.

The provisions of these regulations shall be effective starting 15 December 2013.

(RR No. 18 - 2013 dated 28 November 2013)



# Revenue Memorandum Circular (RMC)

## Revocation of VAT exemption on sale of sub-transmission assets

With the enactment of RA No. 9337, the electric power industry was placed under the VAT system. Specifically, Section 108 of the NIRC was amended to include the sale of electricity by generation companies, transmission and distribution companies under the umbrella of 'sales of services' that are subject to VAT. Moreover, RR No. 4-2007 (amending RR No. 16-2005) imposes VAT on the sale of real property used in the ordinary course of trade or business of the seller, even if such property is not primarily held for sale or lease.

Based on the above, the BIR issued RMC No. 11-2012, which clarified that the sale by the Power Sector Asset and Liabilities Management Corporation (PSALM) of the generation assets and other real property of National Power Corporation (Napocor) is subject to VAT. In line with this, the BIR revoked a previous VAT exemption ruling granted to the National Transmission Corporation (TransCo) covering its sale of sub-transmission assets.

(RMC No. 66-2013 dated 30 September 2013)

## Increased daily minimum wage rates in the National Capital Region

This circular publishes the full text of Wage Order No. NCR-18, which increased the existing basic wage by PHP10 per day starting 4 October 2013. Effective 1 January 2014, half of the existing PHP30 COLA (as provided under a wage

order issued last year) will automatically be integrated into the basic wage. The new minimum wage rate for non-agricultural workers in the NCR is now PHP466 (PHP429 for other sectors), consisting of the basic wage and COLA component.

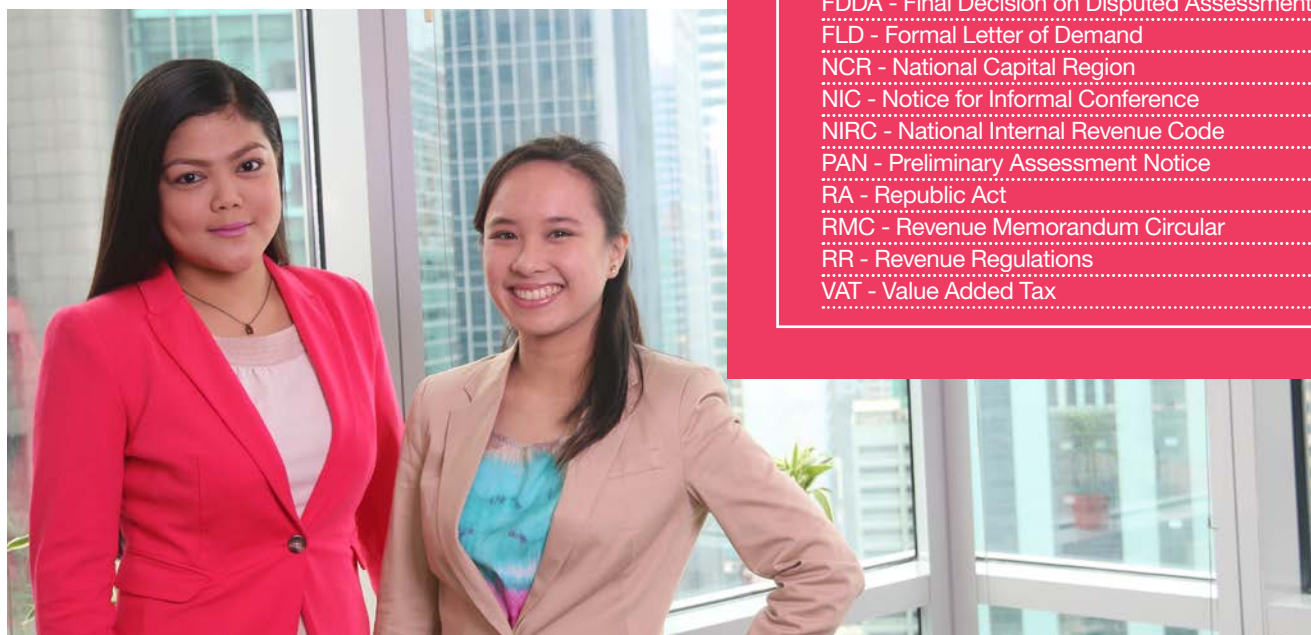
The new wage rates apply to all minimum wage earners in the private sector, excluding household or domestic helpers, persons in the personal service of another, including family drivers; and workers of duly registered Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority pursuant to RA No. 9178. There are specific provisions on how the wage increase would apply to contractors, private educational institutions, workers who are paid on a per piece or task basis, and other special workers.

For purposes of exemption, distressed establishments; retail/service establishments regularly employing not more than ten workers; establishments with total assets (ETA), including those arising from loans but excluding the land on which the business is situated, do not exceed PHP3m; and establishments adversely affected by calamities may file an application for exemption from the wage increase order with the Regional Tripartite Wages and Productivity Board. Within a year from the grant of exemption, a qualified ETA is encouraged to register under the BMBE Law.

(RMC No. 71-2013 dated 18 November 2013)

## Glossary

BIR	- Bureau of Internal Revenue
BMBEs	- Barangay Micro Business Enterprises
CTA	- Court of Tax Appeals
COLA	- Cost of Living Allowance
ETA	- Establishments with Total Assets
FDDA	- Final Decision on Disputed Assessment
FLD	- Formal Letter of Demand
NCR	- National Capital Region
NIC	- Notice for Informal Conference
NIRC	- National Internal Revenue Code
PAN	- Preliminary Assessment Notice
RA	- Republic Act
RMC	- Revenue Memorandum Circular
RR	- Revenue Regulations
VAT	- Value Added Tax



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# Court Decisions

## Court of Tax Appeals (CTA)

### *Refund claim denied due to unsigned BIR Form No. 2307*

The court denied a taxpayer's claim for refund or issuance of a tax credit certificate (TCC) for unutilized excess creditable withholding taxes (CWT) for failing to meet the requirements laid down by the Supreme Court for such claims.

Briefly, the three requisites are: 1) the claim must be filed with the CIR within two years from the date of payment of the tax; 2) the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and 3) it must be shown on the return that the income received was declared as part of the taxpayer's gross income.

While the taxpayer company filed its claim within the two-year period, it failed to meet the other requirements. It failed to fully substantiate the amount of CWT being claimed with relevant withholding tax certificates (BIR Form No. 2307). Moreover, some of the withholding tax certificates submitted were not signed by the payor's authorized representative.

The company also failed to prove that the income from which the claimed CWT arose was declared in its annual ITR. While the taxpayer explained that the discrepancy was due to a timing difference in terms of its income recognition (recorded when earned) and receipt of the withholding tax certificates (issued upon payment) from its payor, the court found the explanation insufficient. According to the CTA, the taxpayer should have presented supporting documents to prove that the income was actually reported, such as detailed general ledger, billing documents, schedules and ITRs of prior years and any other document where the income could be traced.

(CTA Case No. 8066 dated 7 August 2013)

### *Due process is not violated even if FAN is issued before the lapse of the 15-day period for the taxpayer to respond to the PAN*

The CTA ruled in favor of the BIR as regards alleged violations of the due process requirement under the law in relation to a 2005 tax audit.

Under RR No. 12-99, what constitutes a valid notice of informal conference is not the mere act of issuing a notice, but the (a) report of the BIR officer making the audit of the taxpayer's records; and (b) written notice informing the taxpayer of the discrepancies in the payment of his income tax. In this case, the BIR complied with all these requirements after having issued a memorandum report stating the results of his investigation, and subsequently, a PRN with details of the discrepancies, showing the factual and legal bases of the findings.

(Note: After the amendment of RR No. 12-99 by RR No. 18-2013, the BIR is no longer required to issue a notice of or hold an informal conference effective 15 December 2013.)

Also, there was no violation of due process when the BIR issued a FAN before the lapse of the 15-day period granted to the company to respond to the PAN. Due process refers to the right of the taxpayer to be informed of the legal and factual bases of the BIR's assessment and the opportunity to be heard through protest. As in previous decisions, the court ruled that Section 228 of the NIRC refers to the FAN which should be formally protested within 30 days from receipt thereof; otherwise, the same becomes final and executory. A PAN is not, legally speaking, an assessment even if it contains a computation of the tax liabilities and a demand for payment of the tax. Accordingly, a protest against the PAN, unlike a protest against the FAN, is dispensable. In other words, the company may or may not protest the PAN. Thus, the taxpayer was not prejudiced for as long as it was properly served a FAN and was able to file a protest letter within the prescribed period.

***Shared costs between related parties, reimbursed at cost, are not subject to withholding tax***

The BIR disallowed marketing expenses recharged by the taxpayer's parent company for failure to withhold, expanded withholding tax (EWT). The expenses were supported by invoices and official receipts issued by the parent company, including an allocation and breakdown of said expenses.

In its decision, the court pointed to a BIR ruling stating that reimbursement of expenses is not income but merely a return of capital, hence not subject to withholding tax. It also emphasized that based on RAMO No. 1-98, the BIR recognizes the sharing of costs among interrelated group of companies. Since the taxpayer was able to prove that the sharing arrangement exists and involved only mere reimbursements, without any mark-up or additional charges, the court set aside the assessment.

***Sales of services within or outside the Philippines should be segregated; otherwise, the entire amount shall be subject to tax***

With regard to the final withholding tax (FWT) and VAT assessments on the disallowed management fees, the company relied on a ruling issued to them and argued that these represent payments to a non-resident foreign corporation for services performed outside the Philippines. Hence, the fees should not be subject to FWT or withholding VAT.

However, since evidence revealed that certain employees of the foreign service provider actually performed services within the Philippines from time to time, the court ruled that the fees were subject to Philippine tax. Moreover, since it cannot determine which portion of the assessed amount pertains to services rendered outside or within the Philippines, the court was constrained to uphold the BIR's assessment in its entirety.

***Excess tax credits carried forward cannot be disallowed in the current year***

The BIR disallowed the excess tax credits reflected in the company's 2005 ITR and carried over to the succeeding period to recapture the tax benefit forwarded to the succeeding year. The court, however, found the disallowance improper because the tax benefit will be in the succeeding year 2006. At most, the company may only be assessed in 2006.

***Reimbursed expenses are not subject to documentary stamp tax (DST)***

The BIR assessed DST on the amount reported by the taxpayer under the account "Due to an affiliated company". The court cancelled the assessment since the amount pertains to reimbursements of various expenses, supported by invoices and not by any of the instruments mentioned under Section 180 of the NIRC (i.e., bills of exchange or drafts).

(CTA Case No. 7989 dated 8 August 2013)

***A valid waiver must conform to RMO No. 20-90; Prescriptive period to assess EWT is reckoned on a monthly basis***

A company executed four waivers extending the period of assessment of deficiency taxes for the taxable year 1997 on various dates. Subsequently, it received a FAN from the BIR. In the course of the dispute, the company availed of the tax amnesty program under RA No. 9480. Consequently, the court cancelled the assessments for deficiency income tax and VAT, leaving behind the assessment for deficiency withholding tax. Eventually, the court also cancelled the withholding tax assessment after determining that the FAN was issued beyond the three-year prescriptive period.

The Court En Banc affirmed the findings of the Court in Division that the waivers were invalid and without binding effect because the first waiver was not signed by the appropriate BIR signatory as required under RMO No. 20-90; did not indicate the date of the BIR's acceptance; and the fact of receipt by the taxpayer of its copy of the waiver was not indicated in the original copy that was attached to the docket of the case. Even assuming that the first waiver was valid, the second waiver remained invalid because it was executed after the expiration of the extended period indicated in the first waiver.

Since the three-year prescriptive period for assessment of deficiency withholding tax is counted from the last day of filing the monthly returns, the BIR's assessment has already prescribed and should be set aside.

(CTA EB Case No. 913 dated 15 August 2013)

***Glossary***

BIR - Bureau of Internal Revenue
CTA - Court of Tax Appeals
CWT - Creditable Withholding Tax
DST - Documentary Stamp Tax
EWT - Expanded Withholding Tax
FAN - Formal Assessment Notice
FWT - Final Withholding Tax
ITR - Income Tax Return
NIRC - National Internal Revenue Code
PAN - Preliminary Assessment Notice
RA - Republic Act
RAMO - Revenue Audit Memorandum Order
RMO - Revenue Memorandum Order
RR - Revenue Regulations
TCC - Tax Credit Certificate
VAT - Value Added Tax





## Glossary

BIR - Bureau of Internal Revenue
CIR - Commissioner of Internal Revenue
CTA - Court of Tax Appeals
DOF - Department of Finance
FAN - Formal Assessment Notice
FDDA - Final Decision on Disputed Assessment
ITR - Income Tax Return
LGC - Local Government Code
LHD - Load Haul and Dump Equipment
NIRC - National Internal Revenue Code
Q&A - Question and Answer
RA - Republic Act
RMC - Revenue Memorandum Circular
SEC - Securities and Exchange Commission
TCC - Tax Credit Certificate
VAT - Value Added Tax

## **Substantial under-declaration of income warrants a ten-year prescription period**

The court upheld a fraud assessment on a pre-need company for deficiency VAT covering the taxable year 1999.

Under RMC No. 13-96, the gross income of pre-need companies shall be based on the actual receipts on the contract price minus contributions to the trust fund to be set up independently as mandated by the Securities and Exchange Commission (SEC). The amount of such contribution must be indicated on the VAT official receipt; otherwise, the entire amount shall be subject to VAT.

The company treated the trust fund contributions as deductions from its gross income for VAT purposes. However, it failed to indicate such amounts in its VAT official receipts in violation of the RMC. This was after the BIR had already issued a ruling to the taxpayer in 1996 denying the latter's request for a waiver of the invoicing requirement under the RMC.

As a result of the violation, more than 50% of the output tax remained unpaid. The court ruled that there was substantial under-declaration of taxable sales, receipts, or income which constitutes a prima facie evidence of a false and fraudulent return. Consequently, the court ruled that a 50% surcharge would apply and that the assessment had not yet prescribed since the applicable prescriptive period would be ten years from discovery of the fraud.

(CTA Case No. 7190 dated 16 August 2013)

## **Equipment considered immovable property under Article 415 of the Civil Code, subject to real property tax**

The CTA upheld the decision of the lower court that load haul and dump equipment (LHD) used by a mining company is subject to real property tax.

The taxpayer stopped paying real property tax on the equipment following the issuance of DOF Local Finance Circular No. 2-09, which provides that "dump trucks, excavators, bulldozers, payloaders, or similar equipment used in mining operations are considered personal properties and therefore, not subject to payment of real property tax".

However, Article 415 of the Civil Code expressly provides that machinery and other instruments for an industry or work which may be carried on in a building or piece of land are considered as immovable property. Such machinery, as defined under Section 199(o) of the LGC, includes machines and equipment not permanently attached to a real property. Clearly, LHDs fall under the classification of real property subject to realty tax.

The law prevails over administrative regulations implementing it. Hence, the DOF cannot change the classification of LHDs or the equipment/machinery enumerated under Section 199(o) of the LGC from real to personal property through a mere administrative issuance.

(CTA AC No. 96 dated 16 August 2013)



***Period to appeal BIR's decision on assessment should be counted from taxpayer's first receipt of the decision***

After protesting a FAN, a domestic company received the BIR's FDDA on 10 October 2011 through registered mail. On 19 October 2011, it received another copy of the FDDA by personal delivery. Thereafter, the company filed a petition for review before the CTA on 10 November 2011.

Under Section 228 of the NIRC, if the protest is denied in whole or in part, the taxpayer adversely affected by the decision may appeal to the CTA within 30 days from receipt of the said decision, otherwise, the decision shall become final, executory and demandable.

Based on this, the taxpayer had until 9 November 2011 (i.e., 30 days from first receiving a copy of the FDDA) to appeal the BIR's decision to the CTA. Since its judicial appeal was filed out of time (one day late), the BIR's decision on the assessment had already become final and demandable.

(CTA EB Case No. 941 dated 22 August 2013)

***Period to file for refund shall be counted from the payment of the tax or filing of the original ITR (not the amended one)***

On 13 April 2007, a company filed with the BIR its annual ITR for the taxable year 2006. It subsequently filed an amended return showing an increase in CWT arising from prior year's excess credits. On 4 November 2008, the company filed a claim for refund representing the unutilized CWT for taxable year 2006. Due to the CIR's inaction on the claim, the company filed a petition with the CTA on 15 April 2009. The Court subsequently denied the same for being filed out of time, which compelled the company to elevate its petition to the Court En Banc.

Affirming the appealed decision, the Court held that the two-year prescriptive period under Section 204 of the NIRC should be reckoned from the time of the payment of the tax or from the filing of the original return, and not from the date of the filing of the amended return. Thus, the company only had until 13 April 2009 within which to file both its administrative and judicial claims for refund or tax credit. Though the company was able to file an administrative claim with the BIR within the reglementary period, its judicial claim was filed two days beyond the allowed period.

(CTA EB No. 904 (CTA Case No. 7914) dated 30 August 2013)

***The CTA has no jurisdiction to resolve issues on the validity or constitutionality of a law, rule or regulation issued by the administrative agency***

A foreign company is licensed by the SEC to engage in international air transportation services through its branch office in the Philippines. It had an agreement with a domestic hotel to provide room accommodations and other hotel services to its guests, including pilots and cabin crew during flight layovers in the country. In this regard,

it filed a request for ruling with the Law Division of the BIR to confirm that services rendered by a domestic hotel to persons engaged in international air transport, such as accommodation and meals, are subject to 0% VAT under Section 108(B)(4) of the NIRC. Subsequently, the CIR denied the request on the ground that the hotel services are not directly attributable to the transport of goods or passengers from a Philippine port directly to a foreign port, because they were rendered within the hotel's premises. Hence, the sale of services by a hotel is subject to 12% VAT. The said ruling made reference to DOF Letter dated 8 September 2011 and RMC No. 46-08 (Q&A No. 11) which clarified the nature of services that may qualify for zero-rating.

The company then filed a request for review of the ruling with the Secretary of Finance. After the Secretary affirmed the ruling, the company filed a petition for review with the CTA questioning the validity of the ruling and the RMC.

The Court dismissed the petition for lack of jurisdiction. Under Section 7 of RA 9282, while the CTA has jurisdiction to resolve tax disputes in general, this does not include issues involving the constitutionality or validity of a law or rule. The taxpayer was challenging the validity of BIR Ruling No. 99-2011 it received from the BIR, DOF Letter dated 8 September 2011, as well as Q&A No. 11 of RMC 46-2008. As such, the determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts, and not the CTA.

(CTA Case No. 8360 dated 15 August 2013)

***Application of the principle of solutio indebiti***

In its Quarterly VAT return, a domestic company reported excess input tax. However, it inadvertently and erroneously interpreted the excess as tax due, and remitted the amount to the government. Subsequently the company filed an application for refund or TCC to recover the tax erroneously paid to the BIR.

The Court En Banc affirmed the earlier decision of the court in division in granting the refund, applying the principle of solutio indebiti (involving "erroneous payment") under Article 2154 of the New Civil Code. Under this principle, the government has to restore to the taxpayer the sums representing erroneous payment of taxes. It is founded on the legal principle abhorring a person's unjust enrichment at the expense of another.

(CTA EB No. 947 dated 12 September 2013)

# Executive Issuances

## Social Security System (SSS)

### *Revised schedule of SSS contributions*

Effective January 2014, all members of the SSS are subject to the revised schedule of contributions showing an increase of 0.6% in the contribution rate (i.e., from 10.4% to 11%) and in the maximum salary credit (MSC) from PHP15,000 to PHP16,000.

Employers shall shoulder 7.37% (from 7.07%), while employees shall pay 3.63% (from 3.33) of the monthly contribution.

Self-employed, voluntary and OFW members shall pay at the total rate of 11%. Those who have paid their contributions in advance based on the old schedule should settle their underpayments with the SSS, as follows:

1. Those with advance payments at the minimum MSC of PHP1,000 (PHP5,000 for OFWs) should pay an additional PHP6 per month (PHP30 per month for OFWs).
2. Those with advance payments above the minimum MSC may opt to pay the corresponding increase in contributions; otherwise, such payments will be posted at the applicable lower MSC.

(SSS Circular No. 2013-010 dated 2 October 2013)

## Securities and Exchange Commission (SEC)

### *Posting of Annual Corporate Governance Report (ACGR) in company websites*

In line with the peer review process undertaken within the ASEAN region, all publicly listed companies are mandated to post their ACGR (separate from their Annual Report) on their websites in order to provide Corporate Governance experts with adequate source materials for their review. Non-compliance shall trigger a basic penalty of PHP10, 000, with a monthly penalty of PHP1,000 in case of continuous violations, until the report is posted.

(SEC Memorandum Circular No. 18 dated 2 October 2013)

# Meet us

### *Japanese Business Development marks 20th anniversary with a seminar and cocktails*

Celebrating its 20th year in the firm, PwC Philippines' Japanese Business Development (JBD) unit hosted a seminar and cocktails for its clients and friends last 22 October at the Diamond Hotel, Manila.

The event kicked off with a tax and accounting seminar led by **JBD Director Tadaaki Ito** and **JBD Senior Manager Kentaro Tojo**. Ken discussed *Amendment to Philippine Accounting Standards (PAS) 19: Employee Benefits*, and *PAS 16: Property, plant and equipment*, while Ito san shared his knowledge on tax treaty relief applications in the Philippines and of recent BIR issuances. Some 80 participants from Japanese companies listened to our resource speakers talk about current accounting and regulatory trends and tax topics that matter to their business.

The participants enjoyed an evening of good food and drinks at the cocktail party. **Chairman & Senior Partner Alex Cabrera** gave a welcome message and thanked the Japanese guests for their trust and friendship.

**JBD Executive Director Akinori Kusuno** gave tokens of appreciation to former PwC partners who significantly contributed to JBD's establishment and growth: **Mrs. Corazon de la Paz-Bernardo**; **Mr. Fortune Cruz**; and **Mr. Willie Madarang**. Also a special guest that night was **Mr. Tomas Alcantara**, President & Chairman of Alson Consolidated Resources. **Vice Chairman Rick Danao** led everyone to a toast to celebrate this special occasion.

The guests watched a video presentation of JBD's history and later, **Tax Secretary Cza Mercado** entertained them with English and Japanese songs. She was accompanied on the piano by **Mariko Tojo**, wife of Ken Tojo.

Overall, it turned out to be a very successful and well attended event. The guests were also impressed by the beautiful night view of Manila Bay from the top of Diamond Hotel.

The JBD unit, under the leadership of Akinori Kusuno, was established in 1993 to cater to the business needs of Japanese firms operating in the Philippines.



JBD Senior Manager Ken Tojo explains PAS 16 and PAS 19 at the seminar.



JBD Executive Director Aki Kusuno presents the JBD team, from left: Manager Yumi Ishii, Senior Manager Ken Tojo and Senior Manager Tadaaki Ito.



From left: Former PwC partner Willie Madarang, former PwC Chairman & Senior Partner Corazon de la Paz-Bernardo, Alson Consolidated Resources President & Chairman Tomas Alcantara, a Japanese guest, former PwC partner Fortune Cruz, and JBD Executive Director Aki Kusuno.

# Talk to us

For further discussion on the contents of this issue of the *Client Advisory Letter*, please contact any of our partners.



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