

Client advisory letter



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Millennial workers want greater flexibility, work/life balance, global opportunities

Study of 44,000 PwC employees both dispels and confirms Gen Y global study stereotypes

The Millennial generation, those born between 1980 and 1995, seek more workplace flexibility, better balance between their work and home life, and opportunity for overseas assignments as keys to greater job satisfaction, according to the largest, most comprehensive study conducted into the attitudes and behaviors of Gen Y – a two-year undertaking initiated by PwC.

The research both confirmed and dispelled stereotypes about the Millennials – who already make up about two-thirds of PwC's global workforce. While younger workers are more tech savvy, globally focused, and willing to share information, the study found they did not feel more entitled or less committed than their older, non-Millennial counterparts, and are willing to work just as hard. The global survey also found that many of the Millennials' attitudes are consistently shared by their more senior colleagues.

PwC's NextGen: A global generational study, which was conducted in conjunction with the University of Southern California and the London Business School, represents the most ambitious research into the millennial generation, or 'Generation Y'. The study included responses from 44,000 employees throughout PwC's global network of professional service firms, with almost one quarter of the responses coming from Millennials. The research, compilation and analysis of its findings took place over two years.

The study sought to measure factors relating to workplace retention, loyalty and job satisfaction. It compared responses among Millennials to those of non-Millennials at the same stage of their careers to assess generational differences between the two sets of employees.

"The breadth and scope of this research is unprecedented. It captures a broad array of insights into the motivations, priorities and work preferences of the youngest generation now in the workforce, as well as of their more senior colleagues," said Dennis Finn, Vice Chair and Global Human Capital Leader at PwC. "The Millennial generation is already transforming long-held management practices within the workplace. Employers who want to recruit Millennial



employees and keep them engaged and happy will need to adapt to meet their needs."

Among the major findings of *PwC's NextGen* study:

Millennial employees want greater flexibility...and so does everyone else.

Millennials and non-Millennials alike want the option to shift their work hours to accommodate their own schedules and are interested in working outside the office where they can stay connected by way of technology. Employees across all generations also say they would be willing to forego some pay and delay promotions in exchange for reducing their hours.

- Given the opportunity, 64% of Millennials (and 66% of non-Millennials) would like to occasionally work from home, and 66% of Millennials (and 64% of non-Millennials) would like the option to occasionally shift their work hours.
- Across the board, 15% of all male employees and 21% of all female employees say they would give up some of their pay and slow the pace of promotion in exchange for working fewer hours.

Millennials put a premium on work/life balance.

Unlike past generations, who put an emphasis on their careers and worked well beyond a 40-hour work week in the hope of rising to higher-paying positions later on, Millennials are not convinced that such early career sacrifices are worth the potential rewards. A balance between their personal and work lives is more important to them.

Other findings

- 71% of Millennials (vs. 63% of non-Millennials) say that their work demands significantly interfere with their personal lives.
- Globally-focused.* More than one third (37%) of Millennials would like the opportunity to go on a global assignment (vs. 28% of non-Millennials).
- Transparent.* Almost half (43%) of Millennials say they have discussed their pay with co-workers (vs. 24% of non-Millennials).
- Not entitled.* Millennials say they do not deserve special treatment and are equally as committed as non-Millennials.

PwC's *NextGen* study also uncovered similarities and differences among Millennial employees around the world. For example, Millennial workers in each participating PwC office aspire to have greater work/life balance, but the issue appears to be less of a priority among workers in the East region (Pacific nations) than in other parts of the world.

"PwC's study discovered that the stereotypes about Millennial employees are more false than true. Millennials' attitudes are similar to those of older employees," Finn said.

"The compelling nature of this research will enable PwC to lead by example, and has already helped guide us toward making cultural and structural changes in how we manage, promote and compensate our people," he added. "By 2016 almost 80% of our entire workforce will be Millennials. We are passionate about providing them, and all our people, with the best environment to maximize their personal development and performance."

About PwC's NextGen Study

Working with researchers at the University of Southern California and London Business School, PwC conducted a comprehensive study of its global workforce, the one of the largest undertaking of its kind. Some 44,000 online surveys were completed anonymously by PwC employees in 18 global territories, across all of the firm's business lines and by employees from all generations. Researchers also completed more than 300 interviews, both one-on-one and in focus groups, and more than 1,000 Millennials participated in an online social media "jam" in which they shared their perspectives and opinions on a range of workplace and career issues. To pinpoint and compare findings between Millennials and non-Millennials, a sub-set of employees at the same career stage (9,120 Millennials and 4,030 non-Millennials at the senior associate and manager levels) was culled from the larger research for subsequent analysis. The news release specifically compares those results.

More on the *PwC's NextGen Study* may be found at <http://www.pwc.com/gx/en/hr-management-services/publications/nextgen-study.jhtml>.



Bureau of Internal Revenue

Revenue Regulation (RR)

New guidelines in registering CRM and POS machines or business and sale machines generating receipts and invoices, and in issuing corresponding MIN sticker

The BIR is continuously improving its processes (both electronic and manual) on requiring the inspection, evaluation and registration of cash register machines (CRM) and point-of-sale system (POS) machines, and business or sale machines generating receipts and invoices (collectively referred to as "Machines"). This effort to improve has posed increasing difficulties to stakeholders, causing growing complexities in implementing the said process, specifically in issuing machine identification number (MIN) sticker for each machine. To address this problem, the BIR saw it proper to impose a standard and uniform MIN sticker to identify the duly registered sales machines, to align the existing process with the ongoing enhancement of the BIR's eAccReg system and the period eSales reporting required under existing regulations. This RR was issued containing the following amendments to RR No. 11-2004, as amended by RR No. 5-2005:

1. A manufacturer, dealer, vendor or distributor must register the Machine to be sold or distributed on behalf of the buyer-user not later than five days from the date of the sale of the Machine and before the same is used by the buyer-user.
2. Registration shall be done manually with the RDO, LTAD I and II, LTDO, or electronically through the BIR's Electronic Mail (e-mail) or website, and which shall require disclosure of certain information, i.e., (a) TIN of the buyer; (b) VAT or non-VAT number of the taxpayer-buyer; (c) serial number, brand model of the Machine sold; and (d) present reading and date of reading.
3. If the application for Permit to Use the Machine (PTU) is filed electronically, the applicant manufacturer, distributor, dealer or vendor will be provided a system-generated permit and MIN sticker which shall be forwarded to the buyer and shall serve as the buyer's authorization to use the Machine.
4. The PTU shall be kept in the place where the Machine is located and authorized to be used to be readily available for verification during Tax Compliance Verification Drive (TCVD) activities or during audit or investigation.
5. Failure to register the Machine shall subject the offender to a penalty of PHP25,000 for the first offense, and PHP50,000 for the second offense. If warranted, the offender may also be charged criminally and penalized accordingly.
6. The RR shall take effect upon system rollout and after 15 days following its publication in a newspaper of general circulation.

(RR No. 4-2013 dated 5 December 2013)



Glossary

BIR - Bureau of Internal Revenue
CRM - Cash Register Machines
LTDO - Large Taxpayers District Office
LTAD - Large Taxpayers Assistance Division
MIN - Machine Identification Number
POS - Point-of-Sale System
PTU - Permit to Use
RDO - Revenue District Office
TIN - Tax Identification Number
TCVD - Tax Compliance Verification Drive
VAT - Value Added Tax

Revenue Memorandum Order (RMO)

Guidelines on redeeming Notice of Payment Schedule

This RMO provides the procedures and guidelines on redeeming and paying the NPS relative to the VAT TCC Monetization Program under EO No. 68 dated 27 March 2012, as jointly implemented by the BIR, DBM and DOF. The redemption process will involve the participation of various offices of the BIR (i.e., Financial Services, Budget Division, Accounting Division, Accountable Forms Division, Excise Regulatory Division, General Services Division and Administrative Division), the DBM and DOF. The BIR's General Services Division will prepare and release the check payment to the NPS holder or his or its representative upon submission of the following:

1. Official Receipt of the NPS holder as evidence of its receipt of the refund check
2. SPA executed by the NPS holder authorizing his or its representative to claim the refund check in his or its behalf, if applicable
3. Board Resolution approving the issuance of the SPA to authorized representative, if applicable
4. Proper Identification Card of the NPS holder or the authorized representative.

(RMO No. 5-2013 dated 15 March 2013)

Uniform criteria imposed in the continuing audit of tax returns

RDOs are mandated to follow a uniform criteria in the continuing audit of tax returns according to the following policies and guidelines:

1. All taxpayers are considered as possible candidates for audit.
2. Priority shall be given to the following taxpayers:
 - a. Professionals and sole proprietorships whose income tax due is less than PHP200,000 per annum; whose gross revenue is less than 40% compared to the previous year's reported gross revenue; or whose tax payment for each tax type is



less than 35% as compared to the previous year's tax payment.

- b. Those engaged in but not limited to the industries as follows:
 - Importers, manufacturers, wholesalers and retailers of wristwatches and jewelry
 - Petroleum gasoline dealers
 - Hotels, motels, pension houses or lodging houses or inns, dormitories or boarding houses
 - Real estate industry
 - Schools, particularly for foreigners (e.g., English school for Koreans), review centers
 - Contractors of NGOs, LGUs and government owned and controlled corporations
 - Retailers/Wholesalers
 - Restaurants, fast food chains, catering services, bars, coffee shops
 - Hospitals, clinics, medical/dental laboratories
 - Establishments/clinics for beauty enhancements
 - Manufacturers/dealers of beauty and health supplement
 - Amusement/entertainment/event centers
 - Advertising agencies
 - Business processing outsourcing companies
 - E-commerce industry
 - Manpower and other recruitment services agencies
 - Other industries peculiar to the area of jurisdiction of the district office
- c. Those who fall below the established benchmarks of tax compliance.
- d. Those who maintained an ending inventory with value of 100% or more of its gross sales.

This RMO takes effect immediately.

(RMO No. 4-2013 dated 8 March 2013)

Glossary
BIR - Bureau of Internal Revenue
DBM - Department of Budget and Management
DOF - Department of Finance
EO - Executive Order
NGO - Non-Governmental Organization
NPS - Notice Payment Schedule
RDO - Revenue District Office
SPA - Special Power of Attorney
TCC - Tax Credit Certificate
VAT - Value Added Tax

Prescribing the use of EOI Work Manual for the EOI Unit

The EOI Unit of the ITAD of the BIR shall be responsible for managing and implementing the EOI provision in Philippine tax treaties. The internal process within the EOI Unit shall be governed by the EOI Work Manual to ensure compliance with international standards for implementing the EOI provision of the Philippine tax treaties and with requirements of our domestic laws and regulations and revenue issuances on EOI.

The ITAD, in consultation with the Deputy Commissioner of the Legal and Inspection Group, shall be responsible for updating and enhancing the Work Manual. The final version of the EOI Work Manual can be found in the BIR portal.

This Order takes effect immediately.

(RMO No. 3-2013 dated 19 February 2013)

Revenue Memorandum Circular (RMC)

Strict implementation in the electronic filing of tax returns and electronic payment of taxes due thereon

Electronic filing of tax returns and payment of taxes due thereon must be strictly complied with by taxpayers who have been mandated under existing regulations to file their tax returns and pay their taxes through the EFPS, particularly, large taxpayers and non-large taxpayers, corporations with complete computerized system or with paid-up capital stock of PHP10m and above, taxpayers joining public bidding, and enterprises enjoying fiscal incentives granted by under special laws. Manual filing of tax returns or payment of taxes by EFPS taxpayers shall be considered a violation of Section 275 of the Tax Code, except in cases authorized by the BIR such as system unavailability upon written notification by the Deputy Commissioner of the Information Systems Group. Non-compliance with this requirement shall subject EFPS taxpayers to compromise penalty of PHP1,000 for each violation. The first and second violations may be compromised, but not the succeeding offenses.

(RMC No. 30-2013 dated 1 April 2013)

Revision of BIR Form Nos. 1700, 1701 and 1702

The disclosure of Supplemental Information (consisting of other income not subject to 5% to 32% income tax rates such as capital gains subject to capital gains tax, passive income subject to final withholding tax, and exempt income) in the annual ITRs is optional for purposes of income tax filing covering calendar year 2012, due on or before 15 April 2013. Thus, BIR Forms 1700 (Annual Income Tax Return for Individuals Earning Purely Compensation Income) and 1701 (Annual Income Tax Return for Self-Employed, Professionals, Estates, and Trusts) are amended accordingly. BIR Form 1702 (Annual

Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayer) is likewise renamed as a November 2011 version.

However, for individual taxpayers who report their income using BIR Forms 1700 and 1701, the requirement to disclose Supplemental Information will already be mandatory for income tax filing covering and starting calendar year 2013. (RMC No. 21-2013 dated 28 February 2013)

Revised schedule for submission of AFS and other ITR attachments

Taxpayers availing of the EFPS are required to submit their AFS (including attachments) to their respective RDO, LTS, or LTDO where they are registered within 15 days from e-filing of their returns as provided under RMO No. 5-2002. To make sure the submission of AFS (including attachments) is organized and orderly, EFPS taxpayers shall be assigned their respective dates of filing based on the last digit of their respective SEC registration or license number as follows:

Last Digit of SEC License/Revenue	Submission Date
1,2,3,4	15-19 April
5,6,7	22-26 April
8,9,0	29-30 April

Large taxpayers who will file their ITRs before 15 April 2013 may submit their AFS and required attachments regardless of the last numerical digit of their SEC registration or license number.

(LTS Operations Memorandum dated 27 March 2013)

Acceptance of tax returns and payments of internal revenue taxes by AABs on 6 April 2013 and 13 April 2013

The BIR has instructed all AABs to accept tax payments on 6 April 2013 and 13 April 2013 and to extend their banking hours up to 5.00pm for the period 1 to 15 April 2013.

Under Section 2.1.2 of the Memorandum of Agreement executed by the AABs, the BIR and the Bureau of Treasury, the AAB has the obligation to open bank operations two (2) Saturdays immediately before 15 April of every year and extend banking hours from 3.00pm to 5.00pm from 1 April to income tax payment deadline.

(Bank Bulletin No. 2013-03 dated 27 March 2013)

Glossary

AAB - Authorized Agent Bank
AFS - Annual Financial Statement
BIR - Bureau of Internal Revenue
EOI - Exchange of Information
EFPS - Electronic Filing and Payment System
ITAD - International Tax Affairs Division
ITR - Income Tax Return
RMO - Revenue Memorandum Order
SEC - Securities and Exchange Commission

BIR Rulings

Sale of factory and office building by a PEZA entity is subject to 30% regular corporate income tax, VAT, DST

Company X is an ecozone export enterprise duly registered with PEZA. It owns a factory and a building located at the Mactan Ecozone which are used in its registered activity. Company X sold the factory and building to another PEZA-registered entity.

The BIR confirmed that the sale of the factory and building was not made in connection with Company X's registered activity. As such, income derived from the sale shall be subject to 30% regular corporate income tax, consequently to CWT under RR No. 2-98, 12% VAT, and 1.5% DST.

(BIR Ruling No. 115-2013 dated 22 March 2013)

Sale of foreclosed property in a public auction considered a one taxable transaction

Several individual co-owners of a condominium unit with parking lots obtained a loan from a bank and as security for the repayment of the loan, mortgaged the condominium unit and the parking lots which they co-owned. Due to non-payment of their loan amortizations, the loan turned past due and the Bank foreclosed on the mortgaged properties. In the public auction conducted, Mr. C emerged as the highest and winning bidder of the mortgaged properties and was issued a COS to evidence his purchase of the properties in the foreclosure sale. In due time, the one-year redemption period expired without the co-owner-borrowers exercising their right of redemption.

In light of the fact that condominium unit and parking lots were owned by several co-owners, Mr. C requested for a ruling clarifying how many taxable transfers were there in the foreclosure sale of the mortgaged properties.

The BIR held that the foreclosure sale resulted to one taxable sales transaction only, i.e., from the borrower-owners to Mr. C as highest bidder, and that upon the expiration of the period of redemption, the foreclosure sale shall be subject to the 6% CGT under Sec 24(D)(1), Tax Code and the 1.5% DST under Section 196 Tax Code.

(BIR Ruling No. 111-2013 dated 22 March 2013)

RHQs are exempt from income tax and VAT

Company A is duly established RHQ of a foreign company. It acts as a communication and coordinating center to the affiliates, subsidiaries of the foreign company in the Asia Pacific Region and does not derive income from sources within the Philippines.

The BIR confirmed that Company A is exempt from income tax and VAT since it is not engaged in any income-generating activity. Moreover, sales made to Company A shall be subject to zero-percent VAT pursuant to RA No.

Glossary

BIR - Bureau of Internal Revenue
COS - Certificate of Sale
CGT - Capital Gains Tax
CWT - Creditable Withholding Tax
DST - Documentary Stamp Tax
LGU - Local Government Unit
PEZA - Philippine Economic Zone Authority
RHQ - Regional Headquarters
VAT - Value added Tax

8756 (Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses Act). However, for compliance purposes, the BIR will still conduct a periodic examination of Company A's books of accounts and records.

(BIR Ruling No. 110-2013 dated 21 March 2013)

Donation of land to the LGU by a real estate developer is subject to 12% VAT

A real estate developer donated two parcels of land to an LGU and asked for a confirmatory ruling on the tax exemption of the transaction. The BIR confirmed that the donation is exempt from donor's tax based on Section 101(A)(2) of the Tax Code since the donation is made to a political subdivision of the Government, and to the 1.5% DST imposed under Section 196 of the Tax Code since the conveyance of real property is without valuable consideration.

However, the donation shall be subject to 12% VAT since the donor is a VAT-registered real estate developer and the real property donated is classified as an ordinary asset under RR No. 16-2005.

(BIR Ruling No. 108-2013 dated 21 March 2013)

Transfer of shares of stock held in-trust to the beneficial owner is not subject to CGT, donor's tax and DST

GOCC is a domestic corporation engaged in the business of tollway and construction business. It was granted a



Glossary

BCDA - Bases Conversion Development Authority
BIR - Bureau of Internal Revenue
CA - Court of Appeals
CGT - Capital Gains Tax
CTA - Court of Tax Appeals
DST - Documentary Stamp Tax
FBDC - Fort Bonifacio Development Corporation
GOP - Government of the Philippines
JV - Joint Venture
LGU - Local Government Unit
OCT - Original Certificate of Title
PD - Presidential Decree
PN - Promissory Note
RA - Republic Act
VAT - Value added Tax

franchise to operate, construct and maintain toll facilities in the North and South Luzon Expressways by virtue of PD No. 1113. GOCC is also a stockholder of a JV Company, a tollway corporation.

GOCC's franchise later expired. The SC confirmed in one case that with the expiration of GOCC's franchise, its assets and facilities were automatically turned over, by operation of law, to the government at no cost. Subsequently in another case, the SC clarified that GOCC's participation in the construction, maintenance, and operation of the tollways covered by its expired franchise is "limited to doing the same in trust for the National Government", which includes GOCC's shares participation in the JV Company. Consequently, a Deed of Compliance to Transfer Shares of Stock to the National Government covering GOCC's shares of stock in the JV Company was executed by GOCC in favor of the National Government in order for the latter to consolidate its title over said shares.

The BIR confirmed that the transfer of the JV shares of stock under the name of the GOCC to the National Government is a transfer made without consideration, and as such, is not subject to CGT and DST. The transfer is not also subject to donor's tax since the same was a mere transfer of legal title to the National Government, who is the beneficial owner of the shares.

(BIR Ruling No. 058-2013 dated 1 February 2013)

Court decisions

Supreme Court (SC)

DST is an excise tax on the exercise of a privilege and not a tax on compliance with an obligation mandated by law

Congress enacted RA No. 7227 creating the BCDA to raise funds through the sale to private investors of military camps located in Metro Manila. In 1995, the BCDA established FBDC for to raise funds to enable it to develop a 440-hectare area in Fort Bonifacio, Taguig City for mixed residential, commercial, business, institution, recreational, tourism, and other purposes. At the time of its incorporation, FBDC was a wholly-owned subsidiary of BCDA.

To achieve this purpose, on 7 February 1995, the GOP transferred by land grant to FBDC, through Special Patent, a 214-hectare land in Fort Bonifacio. FBDC in turn executed a PN for PHP71.2bn in favor of the GOP. The GOP for its part, assigned the PN to BCDA which assigned it back to FBDC as full and complete payment of BCDA's subscription to FBDC's authorized capital stock. GOP executed the following day, 8 February 1995, a Deed of Absolute Sale with Quitclaim in favor of FBDC covering the same 214-hectare land also for the same amount of PHP71.2bn. On this basis, the Register of Deeds issued an OCT in favor of FBDC, replacing Special Patent. Within the same month, Congress enacted RA No. 7917 declaring exempt from all forms of taxes the proceeds of the Government sale of the Fort Bonifacio land. Subsequently, since it has already fulfilled its task of raising funds for specified government projects, BCDA sold at public bidding 55% of its shares in FBDC to private investors, retaining ownership of the remaining 45%.

FBDC was later assessed for deficiency DST on the GOP's sale to it of the Fort Bonifacio property. FBDC protested the assessment invoking RA No. 7917, but was denied by the BIR. On appeal, the CTA affirmed the validity of the assessment stating that the Special Patent issued by the GOP is separate and distinct from the Deed of Absolute Sale and that the former is exempt from DST but not the latter. This was likewise confirmed by the CA.

The SC declared void the assessment for deficiency DST and explained that the GOP merely complied with its obligation under RA No. 7227 to capitalize BCDA from the proceeds of the sale of its land assets when it ceded ownership of the Fort Bonifacio land to FBDC through the issuance of the Special Patent and subsequent assignment of the negotiable PN to BCDA. This transaction effectively served as the legislative appropriation for the project since it enabled BCDA to fully and completely pay for its subscription to FBDC's authorized capital. Consequently, taxing the proceeds of the sale would be to tax an appropriation made by law which is not within the power of the CIR.

Additionally, the SC pointed out that charging DST on the transaction is inconsistent with the nature of DST as an excise tax which is levied on the exercise of privileges conferred by law, e.g., sale of property. The sale of the Fort Bonifacio land was not an exercise of a privilege by the GOP, but an obligation imposed by law which was to sell lands in order to fulfill a public purpose.

Lastly, the GOP's subsequent execution of the Deed of Absolute Sale cannot be regarded as a separate transaction subject to DST. The GOP's sale of the land to FBDC under the Special Patent was a complete and valid sale that conveyed ownership of the land to FBDC, and that the Deed of Absolute Sale was only a formality, not a vehicle for conveying ownership. Simply stated, the GOP's sale of the land is one transaction, which was twice documented.

(G.R. Nos. 164155 & 175543 dated 25 February 2013)

Glossary

BCDA - Bases Conversion Development Authority
BIR - Bureau of Internal Revenue
CA - Court of Appeals
CIR - Commissioner of Internal Revenue
CTA - Court of Tax Appeals
DST - Documentary Stamp Tax
FBDC - Fort Bonifacio Development Corporation
FWT - Final Withholding Tax
GOP - Government of the Philippines
GRT - Gross Receipts Tax
PN - Promissory Note
RA - Republic Act
SC - Supreme Court



The 20% FWT on a bank's passive interest income should not form part of its taxable gross receipts

Company Z, a commercial banking corporation, paid its 1996 quarterly GRT on interest income from loan investment, commissions, service and collection charges, foreign exchange profit and other operating expenses. It likewise included in the computation of the GRT the 20% final withholding tax on its passive interest income. In the same year, the CTA rendered a decision in the case of *Asian Bank Corporation v. Commissioner of Internal Revenue* that the 20% final withholding tax on a bank's passive interest income should not form part of its taxable gross receipts.

On this basis, Company Z filed a formal claim for refund of the overpaid GRT for 1996 representing the 20% final withholding tax paid on the passive interest income with the BIR. The claim was denied and then elevated to the CTA. The CTA agreed on the legal basis of the claim but nonetheless, dismissed Company Z's Petition for its failure to prove that the 20% FWT formed part of the 1996 GRT. The claim was similarly dismissed for the same reason by the CA.

On appeal to the SC, the claim was denied on the ground that the claim has no legal basis. The SC pointed out that in a string of cases, it has been consistently ruled that the

amount of interest income withheld, in payment of the 20% final withhold tax, forms part of the bank's gross receipts in computing the GRT on banks. The term gross receipts must be used in its plain and ordinary meaning, i.e., "whole, entire, total, without deduction." The exclusion of the 20% final withholding tax from the gross receipts operates as a tax exemption which the law must expressly grant. However, Company Z failed to point to any specific provision of law allowing the deduction, exemption, or exclusion from taxable gross receipts, the amount withheld as final tax.

(G.R. No. 175108 dated 27 February 2013)

Court of Tax Appeals (CTA)

The amendment on the Petition for Refund is a court's discretion, subject to minimal limitations

Company M was assessed deficiency business tax for 2007 based on Sections 19 and 21(a) of the Manila Revenue Code (Code). Company M protested the assessment through its letter to the City Treasurer dated 7 February 2007 on the ground that Section 21 of the MRC has been declared null and void by the SC in a previous case. The protest was denied which later prompted Company M to pay the 2007 assessment under protest on 16 February 2007. Company M subsequently filed a formal claim for refund dated 2 July 2007 with the City Treasurer. The claim for refund included erroneous business taxes paid for 2005, 2006 and 2007. When no action was done on the claim, Company M filed a Petition for Refund with the RTC.

The City Treasurer filed its Answer with Motion to Dismiss. Moreover, during the trial when it became apparent that there was a discrepancy in amount pertaining to the 2007 refund, the RTC allowed Company M to amend its Petition for Refund to reflect the correct amount as borne by the evidence submitted. The RTC later ruled in favor of Company M, which prompted the City Treasurer to file a Petition for Review with the CTA.

The Petition for Review raised two issues. First, Company M failed to observe a condition sine qua non before resort to court was made as there was no valid demand/claim for refund that was filed in accordance with Section 196 of the LGC, effectively violating the doctrine of exhaustion of administrative remedies. Second, the amendment of Company M's Petition for Refund during the trial was improper pursuant to Section 2 of the Rules of Court.

The CTA decided in favor of Company M. On the first issue, the CTA stated that Company M was able to sufficiently establish that there was a valid demand for refund through its letter of 2 July 2007 which covered the taxable years 2005, 2006 and 2007. While there was a discrepancy on the amounts pertaining to 2007, the same does not negate the fact that a written claim for refund was filed with and received by the City Treasurer. Besides, nowhere in Section 196 of the LGC does it provide that the demand/claim for refund has to be the exact amount to the last decimal point or else consider one's claim for nothing. This is a too literal reading of the law which undermines the fundamental principle of equity.

On the second issue, the amendment of the Petition for Refund was done with proper Leave of Court in accordance with Section 3, Rule 10 of the Rules of Court which gives the courts the discretion whether to grant a motion to amend or not, provided there is no intent to delay. The trial court allowed Company M to amend its Petition because there was no intent to delay, and that it was in order to conform or to authorize presentation of evidence in view of the discrepancy in the amount of the claim/demand.

(CTA AC NO. 97 dated 25 March 2013)

Period to assess and collect local taxes should be made within five (5) years from the date they become due

Company N was assessed deficiency franchise tax for the taxable years 2001 to 2007 through the LGU's assessment letter dated 18 March 2008. The assessment was validly protested, but denied at the LGU level and later elevated to the CTA. One of the issues raised was prescription.

The CTA ruled that the assessments for deficiency franchise tax for the years 2001, 2002 and 2003 have already prescribed under Section 194(a) of the LGC, which provides that local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. Under Section 167 of the LGC, local taxes become due within the first twenty (20) days of January or of each subsequent quarter as the case may be. Based on these provisions the periods for assessing Company N for franchise tax for the years 2001 to 2003 should have been sent not later than 20 January 2008. Since the assessment notice of the LGU was issued only on 18 March 2008, the LGU can no longer pursue the assessment and collection of taxes for said periods.

(CTA Case AC No. 84 dated 1 March 2013)

Glossary

CTA - Court of Tax Appeals

GRT - Gross Receipts Tax

LGC - Local Government Code

LGU - Local Government Unit

MRC - Manila Revenue Code

RTC - Regional Trial Court

Executive issuances

Securities and Exchange Commission (SEC)

Mandatory submission of ACGR by listed companies

All listed companies are required to submit an ACGR in accordance with the following guidelines:

1. Three copies of a fully accomplished ACGR shall be submitted on 13 May 2013 and every five years thereafter.
2. Only changes or updates shall be required to be indicated on the second to fourth year from the effectivity of this Circular.
3. Late filing of the ACGR shall be subject to a basic penalty of PHP20,000.00. Continuous failure to comply with this requirement shall be subject to a monthly penalty of PHP20,000.00 until the ACGR is filed.
4. The submission of the Certification of Attendance of Director in Board meetings and Certification of Compliance with the Manual of Corporate Governance is discontinued.
5. The “Corporate Governance” section in the Annual Report (SEC Form 17-A) shall be deleted.

(SEC Memorandum Circular No. 5 dated 20 March 2013)

Glossary

ACGR - Annual Corporate Governance Report
CTA - Court of Tax Appeals
LGU - Local Government Unit
LGC - Local Government Code
RA - Republic Act
SEC - Securities and Exchange Commission
SRC - Securities Regulation Code

Amendment to the filing requirements of non-stock and non-profit organizations and foundations

To provide relevant information to users of financial statements of non-stock and non-profit organizations and foundations, Part 1, Paragraphs 4(A) & (B) of SRC Rule 68, as amended, was further amended which basically requires that the annual audited financial statements and interim financial statements of Non-Stock and Non-Profit Organizations and Foundations shall be accompanied by a sworn statement of the organization's President and Treasurer on the accuracy and completeness of the supporting schedules, as follows:

1. Schedule of Receipts or Income Other Than Contributions and Donations indicating the nature and amount of each item
2. Schedule of Contributions and Donations prepared in accordance with the SEC prescribed Form
3. Schedule of Disbursements according to sources and activities indicating the nature and amount of each item and details of material disbursements (10% or more of the total).

In the case of schedule no. 2 above, the reportable contributions or donations shall consist of grants, bequests, devices, and gifts of money or property amounting to PHP100,000.00 or more from each contributor or donor. A contributor or donor includes individuals, partnerships, corporations, associations, trusts and organizations.

In the case of foundations, the sworn statement of the President and Treasurer shall, in addition to the foregoing, also certify the accuracy and completeness of the schedule of application of funds containing information on activities accomplished, on-going and planned, i.e., (a) complete name, address, and contact number of project officer-in-charge; and (b) complete address and contact number of project office, including the relevant supporting documents such as copies of the certifications from the Office of the Mayor or the Head of either the Department of Social Welfare and Development or Department of Health, on the

Glossary

BSP - Bangko Sentral ng Pilipinas
ICD - Institute of Corporate Directors
PLC - Publicly Listed Company
SEC - Securities and Exchange Commission

existence of the subject program or activity in the locality on which it exercises jurisdiction.

This Circular shall cover annual financial statements for the period ended 31 December 2012 and onwards.

(SEC Memorandum Circular No. 4 dated 7 March 2013)

Assessment Run for prospective companies to be included in the top PLCs in year 2015

The Institute of Corporate Directors (ICD) will do a series of runs evaluating publicly listed companies (PLCs) using the ASEAN Corporate Governance Scorecard (ACGS). The ACGS is a methodology that should reflect global principles and internationally recognized good practices in corporate governance applicable to PLCs. This is in preparation for the 2015 target participation to the top publicly listed companies list.

The first evaluation run will be in May 2013 and all PLCs are advised to participate. A summary of the results will be submitted to the SEC afterwards.

(SEC Corporation Finance Department dated 22 March 2013)

Bangko Sentral ng Pilipinas (BSP)

FAQs on the Basel III Implementing Guidelines

In line with the BSP's introduction of Basel III in December 2010 and issuance of the Basel III implementing Guidelines on Minimum Capital Requirements in January 2013, the BSP released a Memorandum clarifying frequently asked questions (FAQs) relating to the implementation of said Guidelines. Clarifications include new standards in capital adequacy and liquidity, new capital requirements, other banking entities covered by the Basel III reforms, capital conservation buffer, risk disclosure requirements.

(BSP Memorandum No. M-2013-008 dated 5 March 2013)

Other issuances



Republic Act (RA)

An Act recognizing the principle of reciprocity as a basis to grant income tax exemptions to international carriers

Congress enacted a law which amended Sections 28(A)(3), 109, 118, and 236 of the 1997 Tax Code, basically clarifying the taxation of international carriers doing business in the Philippines (both air and shipping) under the Tax Code in relation to existing tax treaties or international agreements, as follows:

1. For income tax purposes, international air and shipping carriers shall be subject to the 2½% tax on their “Gross Philippine Billings” as defined under the law. However, international carriers may avail of a preferential rate or exemption from the 2½% tax on the basis of an applicable tax treaty or international agreement to

which the Philippines is a signatory. The same tax exemption shall likewise apply to international carriers whose home country grants income tax exemption to Philippine carriers on the basis of reciprocity.

2. Transport of passengers by international carriers is a VAT-exempt transaction.
3. The 3% percentage tax on international carriers shall be based on their gross receipts derived from transport of cargo from the Philippines to another country.

(RA No. 10378 approved on 7 March 2013)

Amendments to the IPC

Congress passed this law amending certain provisions of the Intellectual Property Code of the Philippines (IPC) to strengthen the protection of international property rights in the Philippines. Among the major amendments is the creation of a new Bureau in the Intellectual Property Office (IPO) to be known as the Bureau of Copyright and Other Related Rights (BCORR), thus increasing the Bureaus under the IPO to seven. The BCORR shall resolve disputes relating to the terms of a license; accept, review, and decide on applications for accrediting collective management organizations or similar entities; conduct studies and researches in the field of copyright and related rights; and give other copyright and related rights service and charge reasonable fees for it.

Other amendments include the grant of authority to the IPO Director and the Deputies Director General to visit establishments believed to be violating the IPC and other related laws; rights of assignee or licensee; rights of the copyright on its designation to a society of artists, writers, and composers, including their right-holders to collectively manage their economic or moral rights on their behalf; infringement; disclosure of information; and adoption of intellectual property policies.

(RA No. 10372 approved on 28 February 2013)

Glossary

BCORR - Bureau of Copyright and Other Related Rights
BSP - Bangko Sentral ng Pilipinas
IPC - Intellectual Property Code of the Philippines
IPO - Intellectual Property Office
PLC - Publicly Listed Companies
RA - Republic Act
SEC - Securities and Exchange Commission

Meet us



Firm sponsors ICT-Philippines Awards 2013

Isla Lipana & Co., for the third consecutive year served as official judging observer and tabulators of the Information and Communications Technology (ICT) Awards-Philippines.

The ICT Awards is a prestigious event widely anticipated and attended by major players in the IT Outsourcing and BPO industry. **Tax Managing Partner & Markets Leader Atty. Alex Cabrera** (in photo, extreme left) presented the finalists and the winner for the “ICT Quality Program of the Year”, an award category sponsored by the firm. The award went to Wipro BPO Philippines Ltd.

Advisory Managing Partner Rose Javier led the team that certified the integrity of the judging process and selection of winners. She was ably supported by **Advisory Director Robby Bassig** and **Associates Ferolyn Navallasca and Napoleon Ehada**.

The 7th ICT Awards Philippines was held at the Makati Shangri-La last 14 March 2013. Organized by the Canadian Chamber of Commerce of the Philippines and the Business Processing Association, Philippines, the ICT Awards recognizes outstanding performance and contributions of organizations and individuals in branding the Philippines as the world's BPO destination of choice.

Respected leaders and personalities in the ICT community attended the gala event, including Senator Edgardo Angara, Rep. Dante Tiñga and officers of ICT players: PLDT, Globe, Accenture, IBM, HP, Maersk, Manulife, Teleperformance, Dell, P&G, Thomson Reuters and Sutherland.

PwCFA hosts Joint Crediting Mechanism Workshop

PricewaterhouseCoopers Financial Advisors, Inc. (PwCFA) held a Joint Crediting Mechanism (JCM) Workshop at the Tower Club, Philamlife Tower last 8 March 2013.

Advisory Executive Director Gene Morales facilitated the discussion.

Representatives from the Philippine and Japanese Governments participated in the workshop. Attending for the Philippines were delegates from the National Power Corporation (NAPOCOR), Climate Change Commission (CCC), and the Department of Environment and Natural Resources (DENR). From Japan, representatives from the Ministry of Economy, Trade and Industry (METI) attended and facilitated parts of the workshop.

The event opened with a welcoming remarks from **Advisory Managing Partner Rose Javier** and **PwC Japan Advisory President Shigeru Shiina**, followed by an overview on JCM by **METI Director Mr. Hachiyama**. **PwC Japan Senior Manager Mr. Nakama** introduced the e-trike feasibility study that was done in partnership with PwCFA.

METI Chief Mr. Okada presented the Flash and Binary Geothermal Power Generation feasibility study and Energy Conservation Facilities. An exchange of ideas and inputs between the two countries ensued. Mr. Shiina concluded the workshop, encouraging further discussions between METI and the Philippine government agencies.

The other participants at the workshop were **PwC Japan Senior Associate Yosuke Sakao**; **Japanese Business Development Manager Yumi Ishii**; and **Advisory Associates Luisa Gonzalez, Jillian Torres and Misty Zara**.



Talk to us



JBD holds Transfer Pricing seminar for Toyota Group
The Japanese Business Development (JBD) group of Isla Lipana & Co. conducted a Transfer (TP) Pricing Seminar in Japanese for the Toyota Group. The event was held at the Toyota Boshoku Philippines Corporation office in Laguna last 15 March 2013.

Tax Partner Atty. Carlos Carado, Senior Manager Tadaaki Ito and Manager Ken Tojo of JBD were the resource speakers. The seminar was attended by Presidents and CFOs of Toyota Group of Companies in the Philippines.

The Toyota Group include: Toyota Boshoku Philippines Corporation; Toyota Autoparts Philippines, Inc.; Fujitsu Ten Corp. of the Philippines; Philippine Auto Components, Inc.; Technol Eight Philippines Corporation; SUN Logistics Technology, Inc.; Philippine HKR, Inc.; TRP, Inc.; Aichi Forging Company of Asia, Inc.; and Koyo Manufacturing (Philippines) Corporation.

Mr. Ito welcomed the participants and delivered part one of the presentation. Mr. Ken Tojo discussed the main topic as lead speaker. At the open forum, Atty. Carado listened to the questions of Japanese officers and clarified many of their concerns on the New TP Guidelines. The Transfer Pricing seminar for Toyota Group was a result of strong business relationship between Mr. Kobayashi, Director of Toyota Autoparts and JBD.

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



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Request for copies of text

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Disclaimer

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