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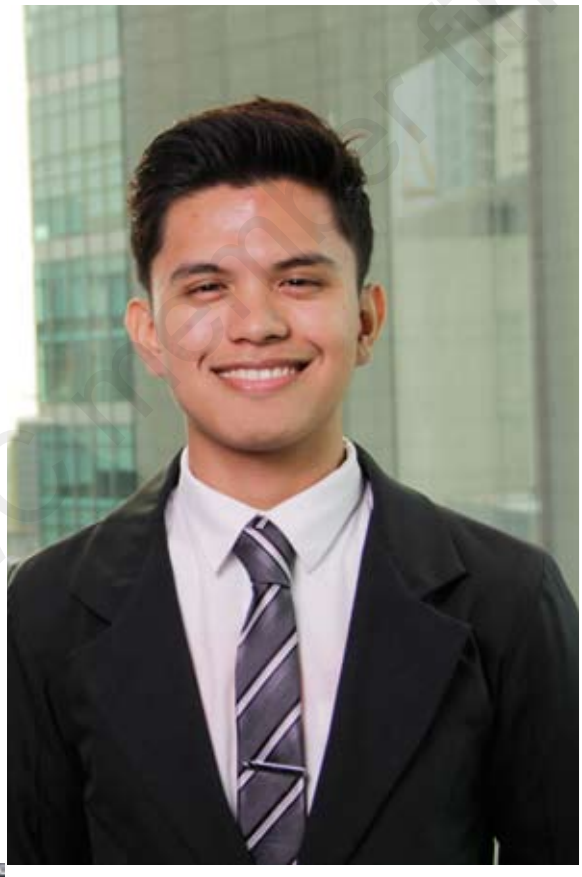
Client advisory letter



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At a glance

Updates, reiterations and clarifications on selected topics

Amendment to IF

Issue

On 20 June 2016, the IASB issued an amendment to IFRS 2, 'Share-based Payment', addressing three classification and measurement issues.

The amendment addresses the accounting for cash-settled, share-based payments and equity-settled awards that include a 'net settlement' feature in respect of withholding taxes.

Impact

The amendment clarifies the measurement basis for cash-settled, share-based payments and the accounting for modifications that change an award from cash-settled to equity-settled. It also introduces an exception to the principles in IFRS 2 that will require an award to be treated as if it was wholly equity-settled, where an employer is obliged to withhold an amount for the employee's tax obligation associated with a share-based payment and pay that amount to the tax authority.

Insight

Measurement of cash-settled awards

Under IFRS 2, the measurement basis for an equity-settled, share-based payment should not be 'fair value' in accordance with IFRS 13. However, 'fair value' was not defined in connection with a cash-settled, share-based payment, and there has been diversity in practice.

The amendment clarifies that the fair value of a cash-settled award is determined on a basis consistent with that used for equity-settled awards. Market-based performance conditions and non-vesting conditions are reflected in the 'fair value', but non-market performance conditions and service conditions are reflected in the estimate of the number of awards expected to vest.

This change has most impact where an award vests (or does not vest) based on a non- market condition. Previously, some argued that the fair value of a cash-settled award was determined using the guidance in IFRS 13 and reflected the probability that non-market and service vesting conditions would be met. The amendment clarifies that non-market and service vesting conditions are ignored in the measurement of fair value.

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RS 2 – Share-based payment

Modification of cash-settled awards

IFRS 2 includes guidance on how to account for a modification that adds a cash alternative to an equity-settled award, but it did not include guidance on how to account for a modification from cash-settled to equity-settled.

A modification to a cash-settled award is reflected immediately in the measurement of fair value. Any incremental value added to an equity-settled award is recognized over any remaining vesting period, and any reduction in value is ignored. The amendment addresses the accounting for a modification that changes both the value and the classification of a cash-settled award and, in particular, clarifies the order in which the changes are applied.

The amendment requires any change in value to be dealt with before the change in classification. The cash-settled award is remeasured, with any difference recognized in the income statement before the remeasured liability is reclassified into equity.

Awards with net settlement features

Tax laws or regulations may require the employer to withhold some of the shares to which an employee is entitled under a share-based payment award, and to remit the tax payable on the award to the tax authority.

The Basis for Conclusions paragraphs added to IFRS 2 by the amendment note that IFRS 2 would require such an award to be split into a cash settled component for the tax payment and an equity settled component for the net shares issued to the employee. However the amendment adds an exception that requires the award to be treated as equity-settled in its entirety. The cash payment to the tax authority is treated as if it was part of an equity settlement. The exception would not apply to any equity instruments that the entity withholds in excess of the employee's tax obligation associated with the share-based payment.

The cash payment to the tax authority might be much greater than the expense that has been recognized for the share-based payment. The amendment says that the entity should disclose an estimate of the amount that it expects to pay to the tax authority in respect of the withholding tax obligation where that is necessary to inform users about the future cash flows.

Who are affected?

Entities that have employee share-based payments will need to consider whether or not these changes will affect their accounting. In particular, entities with the following arrangements are likely to be affected:

- Cash-settled share-based payments that include performance conditions
- Equity-settled awards that include net settlement features relating to tax obligations
- Cash-settled arrangements that are modified to equity-settled share-based payments

The changes are effective from 1 January 2018, with early adoption permitted; and, for entities reporting under IFRS as endorsed by the EU, they are subject to EU endorsement. The transition provisions, in effect, specify that the amendments apply to awards that are not settled as at the date of first application or to modifications that happen after the date of first application, without restatement of prior periods. There is no income statement impact as a result of any reclassification from liability to equity in respect of 'net settled awards'; the recognized liability is reclassified to equity without any adjustment.

The amendments can be applied retrospectively, provided that this is possible without hindsight and that the retrospective treatment is applied to all of the amendments.

Currently, this has not been adopted locally but is expected to be adopted for local reporting.

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Latest on income tax and withholding taxes

Intangibles could be real

Indefeasible right over a submarine cable system subject to real property tax

A corporation engaged in international telecommunications (telco) services was assessed for real property tax (RPT) on its international network of submarine cable systems used in servicing local and international telco companies.

The company disputed the RPT assessment saying that it is a mere co-owner of the "wet segment" of the property, and that it does not own any particular physical part of the cable system. At most, it owns the right to use a certain capacity of the said system. It reported this in its financial books as "Indefeasible Rights in Cable System".

In ruling against the company, the SC held that submarine or undersea communication cables are akin to electric transmission lines which the SC previously declared as subject to RPT. Strictly, both electric lines and communication cables are not directly adhered to the soil but pass through posts, relays or landing stations, but both may be classified as real property under the term "machinery" as found in Article 415(5) of the Civil Code since such pieces of equipment serve the owner's business or tend to meet the needs of his industry/works that are on real estate.

Thus, absent any express exemption by law, the submarine cables are subject to real property tax.

PwC: *Notably, the SC, in concluding that the company is subject to RPT, anchored on Article 415(5) of the Civil Code. Given that the company is saying that it only owns a right to use (indefeasible right) the cable system. We believe it would still be subject to RPT. This is because such right is a real property under Article 415(10) of the Civil Code which states that contracts for public works, and servitudes and other real rights over immovable property are real properties.*

(G.R. No. 180110 dated 30 May 2016)

Direct to delivery

Services to international carriers must be directly related to transport of goods or passenger to be zero-rated

A hotel company filed a claim for refund/TCC of alleged erroneously paid VAT related to its transactions with the international air carrier.

It argued that its services to an international air carrier licensed by the SEC to transact business in the Philippines are VAT zero-rated. The taxpayer provides room accommodations and other hotel services to the international carrier's guests, which include, but are not limited to, pilots and cabin crew during flight layovers in the Philippines, employees on company business, and any other third party for whom occupancy is authorized by the international carrier.

The CTA denied the VAT refund saying that for transactions with international air and shipping carriers to qualify for VAT zero-rating, the taxpayer must not only comply with the requisites provided under the Tax Code, but must likewise prove that:

1. Service rendered pertains to or must be attributable to the transport of goods and passengers.
2. The transport of goods and passengers must emanate from a port in the Philippines.
3. The transport of goods and passengers must be directly to a foreign port.
4. The common international air transport carrier must not dock or stop at any port in the Philippines.

Otherwise, services rendered to international air and shipping carrier, which are not directly related to their transport of goods or passenger, shall be subject to 12% VAT.

(CTA EB No. 1408 dated 12 July 2016)

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Credit is still good

Denied CWT refund can still be carried over

For failure to show that the income received and subjected to CWT was included in its ITR, the taxpayer's claim for refund of excess and unutilized CWT was denied. The taxpayer failed to reconcile the discrepancy between income payments per its income tax return and the certificate of creditable tax withheld.

Although the claim for refund of CWT had been denied, the CTA said that all is not lost for the taxpayer. Citing a Supreme Court decision which still allowed to carry over the excess income tax despite the denial of the refund, the Court elucidated that there would be no unjust enrichment in the event of denial of the claim for refund because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the Tax Code. Unlike the option for refund which prescribed within two years from filing the ITR, there is no prescription for carry over.

PwC: *Note though that in the SC case, the CWT refund was denied because the taxpayer opted to carry over the excess CWT. In this CTA case, the refund was denied for failure to show that the income received and subjected to CWT was included in its ITR. Thus, we have reservation whether the CWT could still be reverted to carry over after the denial.*

(CTA EB No. 1148 dated 4 July 2016)

Glossary

CTA - Court of Tax Appeals
CWT - Creditable Withholding Tax
ITR - Income Tax Return
LBT - Local Business Tax
LGC - Local Government Code
RPT - Real Property Tax
SC - Supreme Court
SEC - Securities and Exchange Commission
TCC - Tax Credit Certificate
VAT - Value-added Tax

Purpose prevails

Holding company may be treated as a financial intermediary subject to LBT

The CTA held that an entity holding assets consisting of shares of stocks and placement of funds on a regular and recurring basis is considered a non-bank financial intermediary whose income may be subject to LBT.

In this case, the City Treasurer of Davao assessed LBT on dividends and interest received by a holding company based on Section 143(f) of the LGC, which imposes tax on business of banks and other financial institutions. The taxpayer insisted that it is a mere holding company and not a bank nor a financial institution, thus not liable to the assessed LBT.

According to the CTA, the scope of the holding company's primary purpose is extensive enough to cover most of the principal functions of a financial intermediary. On this basis, the holding company may be subject to LBT on the dividends from its shares of stock and on interest from its money market placements.

(CTA AC No. 133 dated 21 July 2016)

Anti-royalty

Software maintenance service fees do not constitute as royalty payments

The following criteria are relevant for the purpose of distinguishing between payments for supply of know-how (royalties) and payments for the provision of services:

- Contracts for the supply of know-how concern information that already exists or concern the supply of that type of information after its development or creation and include specific provisions concerning the confidentiality of that information.
- In the case of contracts for the provision of services, the supplier undertakes to perform services which may require the use, by that supplier, of special knowledge, skill and expertise but not the transfer of such special knowledge, skill or expertise to the other party.
- In most cases involving the supply of know-how, there would generally be very little more that need to be done by the supplier under the contract other than to supply existing information or reproduce existing material.
- On the other hand, a contract for the performance of services would, in the majority of cases, involve a very much greater level of expenditure by the supplier in order to perform his contractual obligations.

Based on the foregoing conditions, the CTA ruled that payments made for the maintenance of the software are in the nature of service fees and not royalty payments.

(CTA Case No. 8444 dated 11 July 2016)

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Redeeming dividends

Gains on redeeming preferred shares are not dividends; gains from redeeming previously issued stock dividends may be taxed as dividends

In this case, the BIR attempted to re-characterize the gains from redemption of preferred shares as dividends subject to dividends tax.

The CTA ruled that net capital gains arising from redemption of preferred shares are not considered dividends subject to dividends final withholding tax.

Citing several SC decisions, the CTA explained that ordinary dividend is a distribution in the nature of a recurring return on stock in the ordinary course of business and with intent to maintain the corporation as a going concern.

On the other hand, distributions made when a corporation is winding up its business or recapitalizing and downsizing its activities may be treated as payment in the liquidation (complete or partial) of the corporation. In such case, the excess of the redemption price over the cost of the shares shall be considered as a capital gain subject to ordinary income tax.

The CTA elucidated further that there is only one provision in the Tax Code which treats as dividends the gain derived from redemption or buy back of shares – i.e., when "stock dividends" are redeemed whether pursuant to a partial or complete liquidation of corporations.

Thus, for stock dividends to be taxable, the following conditions must apply:

- There is redemption or cancellation.
- The transaction involves stock dividends.
- The 'time and manner' of the transaction makes it 'essentially equivalent to a distribution of taxable dividends.

However, when the stock dividend represents a mere transfer of surplus to capital account, the distribution shall not be subject to tax. Thus, redemption gain can only be treated as taxable dividends in case when the shares distributed as stock dividends are being redeemed.

The CTA, however, clarified that the law did not intend to automatically characterize as taxable dividend every distribution of earnings arising from redemption of stock dividends as the taxability of said distribution as dividends will still have to be determined on a case to case basis.

(CTA Case No. 8908 dated 19 July 2016)

Source of profit

Representative office not a taxable presence

In this ruling, the BIR held that the income paid to a foreign corporation which has a representative office in the Philippines shall not be subject to the preferential tax rate if the income is effectively connected to the said representative office.

However, if the business transactions that created the income came from a separate and independent transaction from the representative office in the Philippines, then such income shall be subject to the preferential tax rate under the tax treaty. The principle is based on the view that in taxing the profits that a foreign enterprise derives from a particular country, the tax authorities of that country should look at the separate sources of profit that the enterprise derives from their country and should apply to each permanent establishment test, subject to the possible application of other tax treaty provisions.

(BIR ITAD Ruling No. 112-2016 dated 22 June 2016)

Look-through

A branch was allowed to use tax residency of head office for tax treaty purposes

The BIR confirmed that interest paid by a local company to a Hong Kong branch of a Japanese bank is subject to preferential tax treaty rate of 10% under the PH-Japan Tax Treaty.

In this case, the taxpayer submitted a certification of tax residence of the Japanese bank from the Japan tax office.

Moreover, the ITAD ruled that although the nonresident foreign corporation has a permanent establishment in the Philippines (i.e., branch), the subject interest payments it receives from a domestic company under a loan agreement are not effectively connected with said permanent establishment. The loan agreement was entered into by the foreign corporation in its own capacity and the interest payments will not be covered through its Manila branch.

Under Article 11(2) of the tax treaty, if the recipient of such interest is also the beneficial owner, then the foreign corporation may avail of the lower interest rate of 10% on the gross amount of income.

(BIR ITAD Ruling No. 118-2016 dated 29 June 2016)

Matter of trust: Tax me not

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Tax exemption of employees' trust fund extends to interest income from bank deposits

In a ruling, the BIR confirmed that the interest income earned by an employees' provident fund from its bank deposit is exempt from final withholding tax.

Adopting an SC ruling, the BIR reiterated that if an employees' trust fund enjoys a tax-exempt status from income, it sees no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place.

The tax exemption applies provided that in its investment activities, no part of the income of the fund shall be used for or diverted to purposes other than for the exclusive benefit of the members/officials or their beneficiaries. Otherwise, taxation of those earnings would result in a diminution of accumulated income and would reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intent of the law.

(BIR Ruling No. 8-2016 dated 8 January 2016)

Government does not pay tax

An investment institution owned by a foreign government is tax exempt

In this case, the taxpayer, a government investment institution, requested for the confirmation of its exemption from Philippine income tax and consequently, from withholding tax on any income from investments in the Philippines.

The taxpayer represented that its objective is to receive funds from the foreign government allocated for investment, and invest and reinvest those funds in the public interest of the foreign government in such a way so as to make available the necessary financial resources to secure and maintain the future welfare of the foreign government. All funds managed by the taxpayer are coming solely from the foreign government. Most of the taxpayer's equity investments are in publicly listed equities where it owns less than 5%; thus, it has no control with regard to the management of the companies in which it invests.

The BIR confirmed the taxpayer's exemption from Philippine income tax and consequently, from withholding tax. This is based on Section 32(B)(7)(a) of the Tax Code stating that income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments; (ii) financial institutions owned, controlled, or enjoying refinancing from foreign governments; and (iii) international or regional financial institutions established by foreign governments shall not be included in gross income and shall be exempt from tax.

The exemption will continue to be valid subject to the condition that the taxpayer remains as a financial institution owned, controlled and financed by the foreign government.

(BIR Ruling No. 178-2016 dated 16 May 2016)

Sweetness of sugar

Defining raw sugar or raw cane sugar for VAT exemption

RA No. 10864 has lapsed into law which clarified the definition of raw sugar and cane sugar for VAT-exemption purposes. The law states that notwithstanding the process/es involved in its production, raw sugar or raw cane sugar means sugar whose content of sucrose by weight, in the dry state, corresponds to a polarimeter reading of less than 99.5 degrees and such raw sugar or raw cane sugar shall be considered in its original state.

(Republic Act No. 10864 dated 27 July 2016)

Glossary

BIR - Bureau of Internal Revenue
CTA - Court of Tax Appeals
ITAD - International Tax Affairs Division
PH - Philippines
Polarimeter - an instrument for measuring the polarization of light, and especially (in chemical analysis) for determining the effect of a substance in rotating the plane of polarization of light
RA - Republic Act
SC - Supreme Court
VAT - Value-added Tax

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Latest on tax assessments and procedures

Inform thy tax due

Notice of assessment is required for RPT to accrue

The SC ruled that tax declarations and receipt issued for such cannot be validly considered as a notice of assessment.

A tax declaration and a notice of assessment are two separate and distinct documents. An assessment fixes and determines the RPT liability of a taxpayer pursuant to Section 27 of P.D. No. 464 (Real Property Tax Code).

It is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment. As soon as the notice is duly served, an obligation arises on the part of the taxpayer to pay the amount assessed and demanded. The written notice of assessment is what ripens into a demandable tax. Without the notice, there is no valid assessment.

In contrast, a tax declaration is issued pursuant to Section 22 of P.D. No. 464 in which the assessor is merely tasked by the law to determine the assessed value of the property, i.e., the value placed on taxable property for *ad valorem* tax purposes. Thus, no tax accrues as a result of the assessor's issuance of a tax declaration.

In this case, the municipal assessor failed to furnish the company with the mandatory written notice of assessment. Since what was issued by the assessor is a tax declaration, no tax has yet accrued. It is only when the taxpayer had been furnished with the notice of assessment will its obligation to pay the RPT assessed against it accrue.

(G.R. No. 197136 dated 18 April 2016)

Countersign if you must

Alterations on invoices and official receipts without valid countersignatures are defective for VAT refund purposes

In a claim for tax credit certificate/refund for the unutilized input VAT, the CTA disallowed a portion of the claim supported by invoices and official receipts that were altered without countersignatures.

For failure to have the insertions/alterations in the supporting invoices and official receipts countersigned or to have the countersignature verified, the taxpayer did not properly substantiate the disallowed input VAT. While the taxpayer had the right to request its supplier to issue a compliant receipt/invoice, it had the corresponding obligation to check whether the insertions/alterations were properly validated or countersigned by the authorized signatory. Without the countersignature by the authorized signatory or proper validation of the alterations and additions, the said documents failed to satisfy the requirements of the law. Tax refund partakes the nature of tax exemption and is considered a legislative grace; thus, the rule of strict interpretation against the taxpayer-claimant applies.

According to the CTA, the absence of a countersignature verifying the alterations on invoices/official receipts is a fatal defect in a claim for refund.

(CTA EB No. 1269 dated 29 June 2016)

Glossary

BIR - Bureau of Internal Revenue
CTA - Court of Tax Appeals
FAN - Final Assessment Notice
P.D. - Presidential Decree
RPT - Real Property Tax
SC - Supreme Court
VAT - Value-added Tax

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Can't escape tax

Dismissal of tax criminal case does not extinguish civil liability provided there is preponderance of evidence

Despite a previous decision acquitting the accused in the criminal case, the court granted the motion for partial reconsideration of the civil aspect of the case to determine the civil liability of the accused.

It is an elementary rule in criminal procedure that the extinction of the penal action does not carry with it the extinction of the civil liability where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases. Preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term greater weight of evidence or greater weight of the credible evidence.

(CTA EB Crim No. 032 dated 30 June 2016)

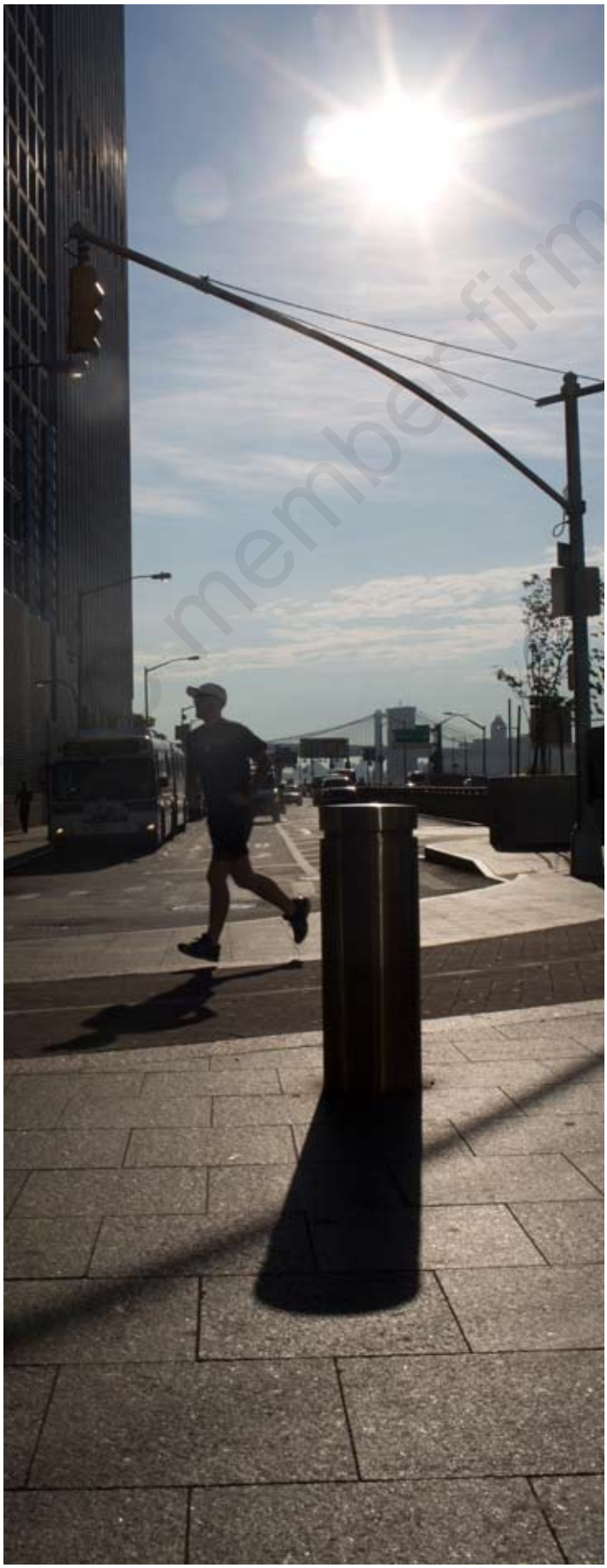
Missed by a day

Late filing of protest renders tax assessment final

The BIR issued an FAN to a taxpayer containing alleged deficiency tax liabilities as a result of its tax audit on the latter's book of accounts and other accounting records. As a response, the taxpayer filed a protest letter on the 31st day from the receipt of the FAN.

Section 228 of the Tax Code provides that a protest shall be filed on or before the 30th day from the receipt by the taxpayer of the FAN. The CTA held that the one-day delay in filing the response to the FAN rendered the tax assessment final, executory and demandable.

(CTA Case No. 8727 dated 1 July 2016)



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Latest on regulatory landscape

Audit can wait

Suspension of BIR field audit effective 1 July 2016

The new CIR has suspended all field audit and other field operations of the BIR relative to examinations and verifications of taxpayer's books of accounts, records and other transactions effective 1 July 2016 until further notice. The salient portions of the circular are as follows:

1. No field audit, field operations, or any form of business visitation in the execution of LOAs/audit notices, letter notices, or mission orders shall be conducted.
2. No written orders to audit and/or investigate taxpayer's internal revenue tax liabilities shall be issued and/or served except in the following cases:
   - Investigation of cases prescribing on or before 31 October 2016, including all cases under LOAs covering all internal revenue taxes for taxable year 2013 and prior years.
   - Processing and verification of estate tax returns, donor's tax returns, capital gains tax returns, and withholding tax returns on the sale of real properties or shares of stocks together with the related documentary stamp tax returns.
   - Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business.
   - Audit of National Government Agencies, Local Government Units and Government-Owned and Controlled Corporations including subsidiaries and affiliates.
   - Other matters/concerns where deadlines have been imposed by law or under the orders of the CIR.
3. Despite the suspension, assessment notices, warrants and seizure notices shall still be served. Also, taxpayers may voluntarily pay their known deficiency taxes without the need to secure authority from concerned Revenue Officials.
4. All BIR officers are required to submit an inventory of all outstanding LOAs/audit notices, and letter notices as of 30 June 2016 to the Office of the Commissioner in Excel format, both in soft copy (CD/DVD) and hard copy, on or before 16 July 2016.

Further to this, the CIR clarified certain issues arising from such suspension, discussed as follows:

1. For cases covered by the exception to the suspension of field audit, the reckoning for the counting of the prescription period differs for each type of tax. To be specific, the reckoning of the prescriptive period shall be counted from the required filing date of the specific tax return:
   - Withholding taxes - from the date required for the filing of the monthly return.
   - VAT - the prescribed filing date of the quarterly return.
   - Income tax - from the required filing date for the annual income tax return.
2. Since audit cannot be conducted on a piece-meal basis, all cases under investigation pertaining to LOAs covering all internal revenue taxes for taxable year 2013 and prior years shall be covered by the exception from suspension of audit/investigation.
3. The processing of request/application for tax refund/tax credit certificate included in the exception refers to those where a specific required timeline to process said request/application is prescribed under existing revenue issuances.

Glossary

BIR - Bureau of Internal Revenue
CIR - Commissioner of Internal Revenue
eFPS - Electronic Filing and Payment System
LOA - Letter of Authority
RMC - Revenue Memorandum Circular
VAT - Value-added Tax

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4. Assessment notices covering taxable year 2013 and prior years, and assessment notices issued and signed by the CIR or its authorized representative as of 30 June 2016 covering taxable year 2014 and onwards, wherein the audit field work has already been completed, can be served despite the suspension. However, the service of the aforementioned notices is without prejudice to the right of the taxpayer to file a protest by way of request for reconsideration/reinvestigation.
5. The following cases are not suspended by RMC No. 70-2016:
   - Processing/verifying of a valid denunciation/complaints received from taxpayers or informers in the preliminary evaluation where a "No Contact with Taxpayer" policy is strictly enforced.
   - Service of reminder letters to taxpayers with open stop-filer cases and follow-up letters for compliance in the submission of the required schedules.
   - Issuance of collection letters and/or seizure notices, notices of levy/tax lien and other similar correspondences for enforcement of collection of delinquent accounts, as well as letters to third parties for verification of property holdings of delinquent taxpayers.
6. All activities connected with the implementation of existing mission orders issued prior to 1 July 2016 including the service of notices/communications relating to the mission order are covered by the suspension under RMC No. 70-2016.

(Revenue Memorandum Circular No. 70-2016 dated 1 July 2016, as clarified by Revenue Memorandum Circular No. 75-2016 dated 15 July 2016)

Back to barracks

Recalling and revoking all Revenue Travel Assignment Orders issued within the period 1 to 30 June 2016

To give the new administration the opportunity to select qualified personnel and make corresponding appointments in line with its policies and with the civil service principles of merit and fitness, all revenue travel assignment orders (RTAOs) issued and published in BIR Outlook/Internal Communications, except RTAOs covering the transfer and designation of Revenue Collection Officers (RCOs) and Revenue Special Orders (RSOs) covering local and international trainings, from the period 1 to 30 June 2016, are recalled and revoked. All affected revenue personnel were directed to return to their previous offices and positions.

(Revenue Memorandum Circular No. 71-2016 dated 5 July 2016)

Fast clearing

Streamlining requirements and process in issuing tax clearances for bidding government contracts

To streamline the requirements and the process in issuing tax clearances required under Executive Order No. 398 when entering into, and as a continuing obligation in, contracts with the government, its departments, agencies and instrumentalities, the CIR circularized the following procedures:

1. Tax clearances shall be processed and released within two working days from the submission of the complete documents.
2. To support the application for tax clearance, the following documentary requirements are necessary:
   - Duly accomplished and notarized application form with two pieces of loose documentary stamp tax
   - Printout of certification fee paid through the BIR's eFPS with payment confirmation
   - Delinquency verification issued by the concerned Large Taxpayers Service or national/regional offices with a validity period of one month from the date of issue. This delinquency verification shall be issued by the concerned BIR Offices within 24 hours from the filing of the application by the taxpayer.
3. The criteria for approving applications for tax clearance shall be governed by the provisions of existing issuances on the matter.

(Revenue Memorandum Circular No. 74-2016 dated 13 July 2016)

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Raising the floor

New minimum wage rates

Upon the effectivity of Wage Order Nos. RTWPB II-17, IVA-17, RXIII-14, and NCR-20, the minimum wage of workers and employees of private establishments shall be as follows:

Sector	Region II	Region IVA	Caraga Region	NCR
Non-Agriculture (including Private Hospitals with bed capacity of 100 or less)	PHP 300	Growth Corridor Area: Plus PHP8/16 Emerging Growth Area: Plus PHP12 (8 for Quezon) Resource-Based Area: Plus PHP6 (8 for Quezon)	PHP 275	PHP 491
Agriculture (Plantation and Non-Plantation)	280	Growth Corridor Area: Plus PHP8/16 Emerging Growth Area: Plus PHP8 (12 for Calatagan) Resource-Based Area: Plus PHP8	275	454
Retail/Service (Establishments employing 10 [15 for NCR] workers or less)	260	Growth Corridor Area: Plus PHP8 Emerging Growth Area: Plus PHP4 Resource-Based Area: Plus PHP4	275	454
Retail/ Service (Establishments employing more than 10 [15 for NCR] workers)	300		275	454
Manufacturing (Establishments regularly employing less than 10 workers)				454
Minimum Wage		PHP283		

(Revenue Memorandum Circular Nos. 76, 77, 78, and 79-2016 dated 7 July 2016)

It's a no

Revocation of guidelines in the investigation of parties in transactions involving the transfer/assignment/sale of properties

The CIR has issued an order recalling RMO Nos. 24 and 25-2016 on the guidelines and procedure relative to the investigation of parties in transactions involving the transfer/assignment/sale of properties. Consequently, all transactions affected by this order shall be governed by pertinent rules existing prior to the issuance of RMO Nos. 24-2016 and 25-2016.

(Revenue Memorandum Order No. 38-2016 dated 1 July 2016)

Give nothing

Observance of the "no gift policy" in the BIR

The BIR reiterated the "No Gift Policy" in adherence to the principle that public office is a public trust and public servants must promote a high standard of ethics in public service. To enforce this policy, the officials and employees of the BIR are directed to politely return any gift that maybe given to them. The Chief of the Internal Security Division was directed to immediately implement the "No Gift Policy".

(Revenue Memorandum Order No. 40-2016 dated 4 July 2016)

Faster CAR

Strict implementation of RMC Nos. 39-2015 and 80-2012 on the issuance of Certificates Authorizing Registration

In view of the continued issuance of Certificates Authorizing Registration (CARs) beyond the prescribed periods, the CIR reiterated the procedures under RMC Nos. 39-2015 and 80-2012, subject to the following directives:

Glossary

AITEID - Audit Information, Tax Exemption and Incentives Division
ARTA - Anti-Red Tape Act
BIR - Bureau of Internal Revenue
BSP - Bangko Sentral ng Pilipinas
CAR - Certificate Authorizing Registration
CIR - Commissioner of Internal Revenue
NCR - National Capital Region
PERA - Personal Equity and Retirement Account
RDO - Revenue District Office
RMC - Revenue Memorandum Circular
RMO - Revenue Memorandum Order
RTWPB - Regional Tripartite Wages and Productivity Board
SEC - Securities and Exchange Commission

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1. The provisions on documentary requirements and period of issuance of CARs under RMC No. 39-2015 (Updated BIR Citizens Charter), covering transactions on sale of real property, transfer or assignment of stocks not traded in the stock exchange, transfers subject to donor's tax, estate tax and other taxes, including documentary stamp tax, as well as Item B(b)(1) of RMC No. 80-2012 (Strict Adherence to Anti-Red Tape Act [ARTA] Provision on *'Accessing Frontline Services'*), on the *Guidelines for the Action of Offices*, shall be strictly implemented.
2. CARs covering the above transactions shall be issued within five days from the submission of complete documentary requirements.
3. Officials and employees found to be in violation of this order shall be subject to administrative and criminal penalties enumerated under Republic Act No. 9485 or ARTA.

(Revenue Memorandum Order No. 41-2016 dated 12 July 2016)

Put money in PERA

Guidelines and procedures in the implementation of the PERA Act of 2008

The guidelines and procedures in the implementation of Republic Act No. 9505, otherwise known as the Personal Equity and Retirement Account (PERA) Act of 2008, are summarized as follows:

- The BIR's PERA Processing Office (i.e., the Audit Information, Tax Exemption and Incentives Division [AITEID] under the Assessment Service) shall accept only Applications for Accreditation filed by pre-qualified PERA Administrator based on "Qualification Certificate" issued by the concerned Regulatory Authority (i.e., BSP, SEC or the Insurance Commission).
- The accreditation of a PERA Administrator shall be valid from the date of issuance of the Certificate of Accreditation until it is suspended or revoked.
- The PERA Administrator shall be designated by the contributor to handle the administration of PERA established by the employee which, together with the contribution made by the employer, if any, shall not exceed the employee's qualified PERA contribution.
- Contributions to PERA can come from employees and/or their employers or self-employed individuals which shall not exceed PHP100,000 per calendar year, or PHP200,000 per calendar year if the contributor is an overseas Filipino.
- A contributor may create and maintain a maximum of five PERAs at any one time, provided that each account shall be confined to only one category of PERA Investment Product.
- A contributor shall be entitled to a 5% tax credit of the aggregate qualified PERA contributions made in a calendar year which shall be allowed to be credited only against their income tax liabilities.
- An Overseas Filipino contributor with taxable income in the Philippines shall be entitled to a 5% tax credit to be claimed against any internal revenue tax liabilities excluding his/her withholding tax liabilities as a withholding agent.
- Tax credits arising from PERA contributions can be used as payment for delinquent accounts but in no case be refundable or convertible into cash or transferable to any other party. A separate issuance will be released for the detailed procedure on the processing and utilization of tax credit.
- A qualified employer's contribution to the employee's PERA can be claimed as a deduction from its gross income, subject to certain conditions.
- Income earned from the investments and re-investments of PERA assets in accredited PERA investment products shall be exempt from income taxes but subject to other taxes applicable to the investment income.
- Qualified PERA Distributions shall be excluded from the gross income of the contributor and shall not be subject to income tax nor estate tax in the hands of the heirs or beneficiaries of the contributor.
- The responsibilities and procedures to be followed by the AITEID, concerned RDOs/offices under the Large Taxpayers Service, and the Information Systems Group are enumerated in this Order.

(Revenue Memorandum Order No. 42-2016 dated 21 July 2016)

School is a different class

Policies and guidelines in issuing tax exemption rulings to qualified non-stock, non-profit educational institutions

The CIR has issued an order to exclude non-stock, non-profit educational institutions from the coverage of RMO No. 20-2013, as amended, subject to the following guidelines and policies, among others:

1. The tax exemption of non-stock, non-profit educational institutions is directly conferred by Paragraph 3, Section 4, Article XIV of the 1987 Constitution and is reiterated in Section 30(H) of the Tax Code.
2. For the constitutional exemption to be enjoyed, jurisprudence and tax rulings affirm the rule that there are only two requisites to be complied with:
   - The school must be non-stock and non-profit.
   - The income is actually, directly and exclusively used for educational purposes.
3. There are no other conditions and limitations.
4. The constitutional exemption upon non-stock, non-profit educational institutions should not be implemented or interpreted in such a manner that will defeat or diminish the intent and language of the Constitution.
5. Non-stock, non-profit educational institutions should file their respective applications for tax exemption with the office of the Assistant Commissioner, Legal Service, Attention: Law Division.

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6. The necessary documentary requirements for non-stock, non-profit educational institutions are provided in this order.
7. Tax Exemption Rulings or Certificates of Tax Exemption of non-stock, non-profit educational institutions shall remain valid and effective, unless recalled for valid grounds. They are not required to renew or revalidate the ruling previously issued to them.
8. The Tax Exemption Ruling shall be subject to revocation if there are material changes in the character, purpose or method of operation of the corporation which are inconsistent with the basis for its income tax exemption.
9. To update the records of the BIR and for purposes of a better system of monitoring, concerned institutions with Tax Exempt Rulings or Certificates of Exemption issued prior to 30 June 2012 are required to apply for new ones.

(Revenue Memorandum Order No. 44-2016 dated 25 July 2016)

DOs of DOF

Rationalizing DOF Department Orders since 1958

As part of the first phase of a more comprehensive consolidation and rationalization effort of the Department of Finance (DOF) to learn from the institution's history and provide a better policy framework for operations, the DOF initially identified the following DOs for review:

- BIR Zonal Values that are tagged as superseded without prejudice to formerly issued assessments and cases that may be pending in court
- LGU Income Classifications that are repealed given that the latest LGU Income Classifications are reflected under DO No. 23-2008
- Policies of the DOF Central Administration Office
- Policies related to tax exemption upon recommendation of the Revenue Office
- Policies regarding other agencies and offices

(Department of Finance - DO No. 29-2016 dated 16 June 2016)

BOI's second look

Rules on Motion for Reconsideration filed under the Omnibus Investments Code

To accord due process to BOI-registered enterprises and to effectively carry out the intent and purposes of E.O. 226, the Board adopted the following rules on motion for reconsideration:

1. A verified motion for reconsideration may be filed within 30 days from the receipt of the Board decision. Only one motion for reconsideration shall be allowed. The motion shall be typewritten, font size 13 with 1.5 spacing on legal size bond paper. The envelope containing the motion shall be properly labeled as "MOTION FOR RECONSIDERATION".
2. The motion for reconsideration shall be based on any of the following grounds:
   - Fraud, accident or mistake which ordinary prudence could not have guarded against and by the reason of which such aggrieved party has probably been impaired in his rights.
   - New evidence has been discovered which materially affects the decision rendered.
   - The decision is not supported by the evidence on record.
   - Errors of law or irregularities have been committed prejudicial to the interest of the party.
   - The decision is contrary to law.

Motions filed outside the aforementioned grounds shall result to their immediate dismissal. A motion can be filed either by registered mail or by personal delivery in three copies with the Records Division of the BOI Central Office or an extension office; however, the filing is deemed perfected upon payment of the necessary filing fee.

(BOI Memorandum Circular No. 2016-002 dated 15 June 2016)

Some are go, others are not

Lifting suspension of some issuances

Subsequent to the suspension of BIR issuances dated 1-30 June 2016 through RMC No. 69-2016, the CIR has issued a circular lifting the suspension of several issuances. However, the following revenue issuances which were discussed in our previous issue remain suspended:

- Accreditation of receipts and invoice printers (RR No. 5-2016 dated 1 June 2016)
- Accounting of "netting" or "offsetting" transactions (RMC No. 61-2016 dated 13 June 2016)
- Tax treatment of passed on gross receipts tax (RMC No. 62-2016 dated 13 June 2016)
- New rules in handling disputed assessments (RMO No. 26-2016 dated 13 June 2016)
- TTRA not needed for dividend, interest and royalty payments (RMO No. 27-2016 dated 23 June 2016)

(Revenue Memorandum Circular No. 80-2016 dated 18 July 2016)

Glossary

BIR - Bureau of Internal Revenue
BOI - Board of Investments
CIR - Commissioner of Internal Revenue
DO - Department Order
DOF - Department of Finance
EO - Executive Order
LGU - Local Government Unit
RMC - Revenue Memorandum Circular
RMO - Revenue Memorandum Order
RR - Revenue Regulation
TTRA - Tax Treaty Relief Application

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Meet us

PricewaterhouseCoopers Services in Brunei now officially open

PricewaterhouseCoopers Services (PwC Brunei) formally opened its doors to clients and friends last 21 July 2016. The office is located at 10th Floor, Units 14 and 15 PGGMB Building, Jalan Kianggeh, Bandar Seri Begawan BS8111, Brunei Darussalam.

Vice Chairman and Assurance Managing Partner **Rick Danao** (left photo) led the office inauguration with his opening remarks and introduced a video presentation showcasing our global network, PwC Philippines and PwC Brunei. He then welcomed Deputy Finance Minister **Yang Mulia Dato Paduka Dr Hj Mohd Amin Liew Abdullah** (right photo), who delivered his welcome speech.

Deputy Permanent Secretary of Investment in Ministry of Finance Yang Mulia Awang Haji Khairudin bin Haji Abdul Hamid and Philippine Ambassador to Brunei Ambassador Meynardo LB. Montealegre also attended the event.

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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Request for copies of text

You may ask for the full text of the *Client Advisory Letter* by writing our Tax Department, Isla Lipana & Co., 29th Floor, Philamlife Tower, 8767 Paseo de Roxas, 1226 Makati City, Philippines. T: +63 (2) 845 2728. F: +63 (2) 845 2806. Email lyn.golez@ph.pwc.com.

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