ISSN 2094-1226/April 2015

CARs not in the BIR list are not official [p6] | *FDDA issued before the 60-day period to submit documents is void* [p9] | *Foreign equity: suspicion of "dummy" triggers grandfather rule* [p10]

Client advisory letter

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Isla Lipana & Co.

At a glance

Updates, reiterations and clarifications on selected topics

Accounting for le
A deeper understand

Why PAS 19?

Philippine Accounting Standard (PAS) 19 applies to all types of employee benefits, although it is in the area of accounting for defined benefit pension plans that PAS 19 results in most complexity.

Let us now shift our focus from the defined benefit pension plans and understand the most common short term benefit we all enjoy: leave credits.

Leave credits are short-term benefits expected to be settled within 12 months from the balance sheet date. These are compensated absences where employees do not provide services to employers during a period of time but employee benefits continue to be paid. Typical examples include:

- Annual/ vacation / holiday/ leave
- Sick leave
- Maternity leave

Distinguishing between accumulating absences from non-accumulating absences

PAS 19 distinguishes accumulating absences that may be carried forward and used in future periods, from non-accumulating absences that lapse if not used in full.

Accumulating absences are typically earned by employees as they provide services while non-accumulating absences are not related to services. Sick leave and maternity leave are usually non-accumulating while annual leave entitlements may be accumulating or non-accumulating (depending on company's policies).

Where the benefit is accumulating, that is, it is earned over time and capable of being carried forward, a reporting entity should provide for the expected cost of accumulated benefit. On the other hand, where benefit is non-accumulating, a reporting entity should not recognize a liability or expense until the absence occurs.

However, a non-accumulating benefit may be treated as being accumulating in the context of an interim reporting period.

Identifying absences as accumulating or non-accumulating is important as it will determine the

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ding of (PAS) 19 – Employee Benefits

timing of recognizing an expense. The expected cost of compensated absences is recognized as follows:

- In the case of accumulating compensated absences – when the employees render services that increase their entitlement to future compensated absences.
- In the case of non-accumulating compensated absences – when the absences occur.

Accumulating compensated absences – vesting or non-vesting?

Accumulating compensated absences are further categorized as either vesting or non-vesting.

If the benefits are vesting, employees who leave are entitled to cash payment in respect of any unused entitlement. Non-vesting benefits, on the other hand, are lost if an employee leaves without using them.

This distinction will influence measurement.

The amount recognized as a liability is the "additional amount that the entity expects to pay as a result of the unused entitlement that has accumulated at the balance sheet date".

Therefore, if benefits are non-vesting, the amount recognized as a liability will take into account the possibility that employees will leave before they utilize their entitlement.

The principles described above are summarized in the flow chart below.

Disclosure requirements

PAS 19 does not require specific disclosure in respect of benefits payable during employment. However, other standards might require some disclosure, for example:

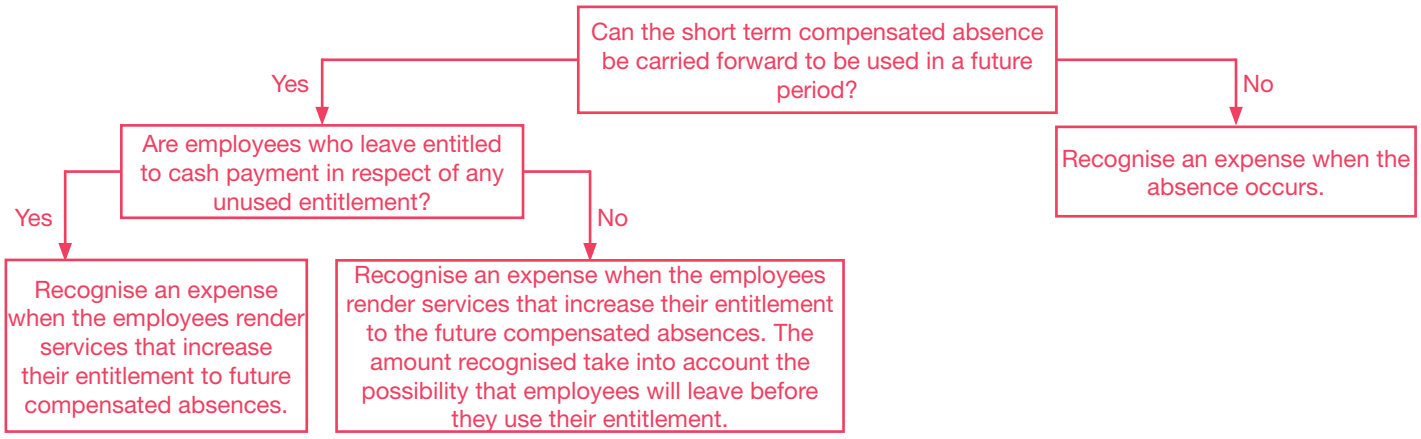
- PAS 1 requires disclosure of employee benefits expense and accounting policy for short-term employee benefits,
- PAS 24 requires disclosure of employee benefits payable to key management personnel.

Deductibility for tax purposes

As a general rule, employee benefits are deductible only when there is a corresponding withholding tax upon payout.

Under Sec 2.83.6 of the Tax Code, the withholding tax on compensation shall apply to compensation actually or constructively paid. Compensation is constructively paid when it is credited to the account of or set apart for an employee so that it may be drawn upon at any time although not actually reduced to possession. To constitute payment in such a case, the compensation must be credited or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that it may drawn at any time, and its payment brought with his control and disposition.

Accounting for leave credits *to be continued to page 15*



Latest on income and withholding taxes

Withholding tax rule on sugar further amended

One percent (1%) CWT now applies to purchases of sugar on higher of actual selling prices, or base prices below:

- For locally produced raw cane sugar and raw sugar, the base price is PHP1,000 per 50kg bag
- For molasses, the base price is PHP4,000 per metric ton

These base prices may be adjusted based on prevailing market prices[1].

Further, buyers of refined sugar, whether locally produced or imported, should withhold the 1% CWT based on the actual selling price.

Sugar owners that are small sugar planters with gross receipt for a year amounting to PHP300,000 or less are exempted from (i) payment of registration fee after submission of minimal basic documentary requirements, (ii) compliance with the issuance of registered receipts or invoices, (iii) maintaining books of accounts, (iv) preparing Financial Statements as support to the ITR, and (v) filing of monthly and advance percentage taxes. However, they are still required to file the ITR.

(Revenue Regulations No. 7-2015 dated 31 March 2015)

1 In the previous RR, the adjustment of base prices can be done upon consultation with the Administrator of Sugar Regulatory Administration.

Glossary

BIR - Bureau of Internal Revenue
BOI - Board of Investments
CTA - Court of Tax Appeals
CWT - Creditable Withholding Tax
ITR - Income Tax Return
PD - Presidential Decree
PEZA - Phillipine Economic Zone Authority
PH - Republic of the Philippines
RA - Republic Act
TTRA - Tax Treaty Relief Application
VAT - Value-Added Tax

BIR reconsiders a TTRA previously denied

Citing the Supreme Court ruling[2] which voided the BIR's prior filing of TTRA requirement, a taxpayer requested the BIR to review the denial of its TTRA that was not filed before the transaction.

The BIR revised its previous ruling and allowed the taxpayer to apply the 10% preferential tax treaty rate on dividends under the PH-Netherlands Tax Treaty.

(BIR ITAD Ruling No. 58-15 dated 25 March 2015)

Sales to socialized housing beneficiaries have tax perks

A developer and owner of a housing project sought for tax exemption on the sale of socialized housing units under the Urban Development and Housing Act of 1992[3].

The BIR ruled that the sale of socialized housing shall be exempt from income taxes and, consequently, from expanded withholding tax and VAT provided that (1) the sale is made to eligible socialized housing beneficiaries[4] and (2) the maximum price shall be PHP450,000 for house and lot packages and PHP180,000 for home lot only.

The exemption, however, does not cover documentary stamp taxes on the documents conveying the properties[5]. Likewise, the VAT on purchases of goods/articles by the project contractor is not covered by the exemption, even if such purchases are to be used for the socialized housing project.

(BIR Ruling No. 63-2015 dated 10 March 2015)

2 G.R. No. 188550 dated 19 August 2013
3 Republic Act No. 7279
4 Section 5(A) of Revenue Regulations No. 11-97
5 Section 196 of the Tax Code

Latest on VAT

Advance payment of VAT/ percentage tax on sugar

Owners/sellers of raw and refined sugar are required to pay 12% VAT or 3% percentage tax in advance before any warehouse receipt or quedans are issued, or before the sugar is withdrawn from any sugar refinery/mill.

For raw sugar classified as "A" or those intended for export to the United States (US), no advance VAT shall be collected to avoid refunds. However, deficiency VAT plus penalties shall be collected if upon audit the raw sugar is eventually discovered as not actually exported to the US and not paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

For raw sugar classified as "D" (intended for export to the World Market) and "E" (for sale to food processors/ exporters operating customs bonded warehouse or to ecozone enterprises), advance VAT shall be collected to be refunded upon showing of compliance with zero-rating requirements.

In case of VAT-exempt and non-VAT taxpayers, the advance 3% percentage tax shall be collected on the refined or raw sugar notwithstanding its classification.

Sugar transactions that are exempt from the payment of advance VAT are the following: (1) withdrawal of raw cane sugar or muscovado; (2) withdrawal of sugar by a duly accredited and registered agricultural cooperative of good standing, subject to certain conditions; and (3) withdrawal of sugar by a duly accredited and registered agricultural cooperative to be sold to another agricultural cooperative, subject to certain conditions.

The certificate of advance payment, as well as the payment form, should be attached to the VAT returns to support the claim for credit of advance VAT/percentage tax.

(Revenue Regulations No. 6-2015 dated 31 March 2015)

Sales to 100% exporter is effectively VAT zero-rated

Sales of goods or services by a VAT-registered supplier to a BOI-registered manufacturer whose products are 100% exported are considered export sales. A BOI certification to this effect is crucial for purposes of VAT zero-rating.

This was emphasized by the CTA in a petition for review covering a refund of excess input tax attributable to zero-rated sales. The CTA denied the refund for failure of the claimant to formally offer as evidence the BOI certification confirming that the buyer's produce was 100% exported.

(CTA Case No. 8610 dated 6 March 2015)

Royalties paid by PEZA entity to non-resident are VAT-exempt

Generally, VAT is imposed on the royalties paid to a non-resident licensor and the Philippine payor is required to withhold the VAT. However, the use of or lease of properties to person or entities exempt from VAT under special law, e.g., P.D. No. 66 and R.A. No. 7916 (PEZA Law) are effectively zero-rated[6]. Given that zero-rating is not available to nonresident suppliers, the VAT exemption under Section 109(K) of the Tax Code becomes applicable. Thus, payment of royalty by a PEZA-registered entity to a non-resident is exempt from VAT.

(BIR ITAD Ruling No. 80-15 dated 25 March 2015)

6 As defined under Section 108 of the Tax Code, the phrase "sale or exchange of services" means the performance of all kinds of services in the Philippines for others for a fee, including the supply of scientific, technical or commercial knowledge information.

Latest on tax compliance matters

A BIR letter cannot amend an RR

- *An OIC-Assistant Commissioner or even the CIR cannot amend RRs issued by the Secretary of Finance*

According to the CTA, an OIC-Assistant Commissioner has no authority to "correct" an alleged error committed by the CIR and to "change" by a mere letter to a taxpayer the import of RR No. 16-2005. He cannot give RR No. 16-2005 an interpretation that effectively held the inclusion of "services" in Section 4.106-5 of RR No. 16-2005 to be an inadvertent or typographical error.

The OIC-Assistant Commissioner should have raised the matter to the CIR for issuance of a ruling and/or to recommend to the Secretary of Finance the issuance of the appropriate amendment or a new revenue regulation. It is the Secretary of Finance who possesses the mandate[7] to issue rules and regulations implementing the amended VAT provisions. Not even the CIR can unilaterally declare erroneous and immediately amend any of the provisions of RR No. 16-2005 for want of authority; the CIR can only interpret, but not amend, RRs issued by the Secretary of Finance.

Otherwise, the OIC-Assistant Commissioner (or other parties, including the CIR or aggrieved taxpayers) should have obtained from competent authorities, possibly from the courts, a ruling that an administrative issuance, such as Section 4.106-5 of RR No. 16-2005, is inconsistent with the Tax Code, as amended.

(CTA Case No. 8662 dated 2 February 2015)

7 Under Section 23 of R.A. No. 9337 dated May 2005, amending the VAT provisions of the 1997 Tax Code.

CARs not in BIR list are not official

To prevent the transfer of ownership of real properties without the proper payment of transfer taxes, and to stop the usage of fake CARs/eCARs, the BIR requires all Revenue District Officers to furnish the concerned Register of Deeds with a list of manually and electronically issued CARs that are still valid for transfer as of 20 March 2015. The list of CARs shall be furnished weekly starting 23 March 2015 until the implementation of the BIR/Land Registration Administration CAR Verification System.

Any CARs not included in the list are deemed fake, and not issued by the BIR.

(Revenue Memorandum Order No. 10-2015 dated 24 March 2015)

Glossary

AAB - Authorized Agent Bank
BIR - Bureau of Internal Revenue
CAR - Certificate Authorizing Registration
CIR - Commissioner of Internal Revenue
CTA - Court of Tax Appeals
eFPS - Electronic Filing & Payment System
ITR - Income Tax Return
OIC - Officer-in-charge
RMO - Revenue Memorandum Order
RA - Republic Act
RR - Revenue Regulations
TAMP - Taxpayer Account Management Program
VAT - Value-Added Tax

BIR issues revised consolidated schedule of compromise penalties

The CIR has issued an Order to adopt and implement a uniform application of the compromise penalties involving violations of the Tax Code, to update the Schedule of Compromise Penalties specified under RMO No. 19-2007, and to delete from the coverage of RMO No. 19-2007 acts commonly resorted as means of tax evasion.

In addition, the Order reiterates and/or revised the following guidelines prescribed under RMO No. 19-2007:

1. In criminal violations of the Tax Code that do not involve the commission of fraudulent acts, the compromise penalties imposed in the "Revised Schedule of Compromise Penalties" (Annex A of the RMO) shall be strictly followed.

2. Any deviations must be approved by the CIR, concerned Deputy Commissioner or the Regional Director.

3. Cases involving fraud shall be referred to the concerned Division for the institution of criminal action.

4. Compromise penalties should not form part of an assessment notice reflecting deficiency basic tax, surcharge and interest. It should appear in a separate assessment notice/demand letter.

5. Compromise penalties are only amounts suggested in settlement of criminal liability and may not be imposed to the taxpayer. Where a taxpayer refuses to pay the suggested penalty, the case shall be referred to the appropriate office for criminal action.

6. The schedule of compromise penalties shall not prevent the CIR or his duly authorized representative from accepting a compromise amount higher than what is provided for.

(Revenue Memorandum Order No. 7-2015 dated 22 January 2015)

eFiling of identified withholding tax forms has been deferred

The CIR has temporarily deferred the electronic filing of identified withholding tax forms (BIR Form Nos. 1600, 1601-C, 1601-E, 1601-F, 1602, 1603, and 1606) in order to prioritize the eFiling of the annual ITRs due on 15 April 2015.

The said withholding tax returns may be filed manually through the use of (i) the regular printed forms or (ii) the offline eBIRForms, and may be paid to the concerned AABs. "No Payment" Returns may be filed at the concerned Revenue District Office provided that receipt of the returns shall be acknowledged through the Mobile Revenue Collection Officers System. In both instances, returns filed manually should be refiled electronically after 15 April 2015 but not beyond 30 April 2015.

No penalties shall be imposed provided the subject returns have been re-submitted electronically on or before 30 April 2015.

(Revenue Memorandum Circular No. 15-2015 dated 1 April 2015)

eFiling of "No Payment" ITRs has been deferred

Electronic filing of "No Payment" ITRs" using eBIRForms has been deferred until 15 June 2015.

In an issued Circular, the CIR emphasized the following points:

1. Taxpayers may manually file "No Payment" Returns on or before 15 April 2015 with the Revenue District Office where they are registered through the use of the official printed forms or the offline eBIRForms Package. However, said taxpayers must re-file the returns electronically on or before 15 June 2015.

2. The BIR shall waive the penalties on filing using a mode/venue different from that prescribed under RR No. 5-2015, provided the ITRs are re-submitted electronically in the BIR's systems on or before 15 June 2015.

3. Taxpayers who are newly enrolled to eFPS (e.g., TAMP taxpayers) whose registration with AABs have not been completed shall observe the following: a) Electronically file their returns and manually pay through the AABs/ Revenue Collection Officers (RCOs) not later than 15 April 2015 following existing procedures; b) Complete their ePayment registration and comply with eFile and ePay on all succeeding returns not later than 15 June 2015.

4. In the event that the ePayment registration has not been completed on or before 15 June 2015, all returns filed electronically and paid over the counter from 15 April 2015 shall be subjected to penalties pursuant to RR No. 5-2015.

(Revenue Memorandum Circular No. 18-2015 dated 10 April 2015)

Latest on tax assessments/ refund procedures

In CWT refund, succeeding quarterly ITR is not essential

According to the SC, the Tax Code[8] does not mandate the submission and presentation of the quarterly ITRs of the succeeding quarters of a taxable year in a claim for refund. The law merely requires the filing of the ITR/ Final Adjustment Return (FAR) for the preceding – not the succeeding – taxable year.

Likewise, Section 5 of RR No. 12-94[9] merely provides that claims for refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.

Given that the taxpayer had already presented its annual ITR for 2004, which sufficiently reveals the aggregate amounts of income, deductions and credits for all quarters of the taxable year, submission of the quarterly ITRs for 2004 is unnecessary.

(G.R. No. 206526 dated 28 January 2015)

Reporting the revenues related to the CWT refund is critical

The CTA ruled that while the individual cash receipts journals were presented to prove that receipts of payments were issued, the same is not enough. The taxpayer should have presented the detailed sales schedules and reconciliation schedules of its revenue with corresponding tax withheld as reported in its ITR and FS. Moreover, in its ITR, while a revenue was reflected under Schedule 1 on the "Schedule of Sales/Revenues/Receipts/Fees", there is no entry whatsoever in the "Creditable Tax Withheld" column. This is also the case for the other income, which were reflected in Schedule 4 or the "Schedule of Non-Operating and Taxable Other Income" of the same ITR. Thus, said declarations can be taken to mean that no part of the taxpayer's revenue and other reported income were ever subjected to creditable withholding tax.

Glossary

BIR - Bureau of Internal Revenue
CIR - Commissioner of Internal Revenue
CTA - Court of Tax Appeals
CWT - Creditable Withholding Tax
DST - Documentary Stamp Tax
EWT - Expanded Withholding Tax
FAN - Final Assessment Notice
FDDA - Final Decision on Disputed Assessment
FLD - Formal Letter of Demand
ITR - Income Tax Return
PAN - Preliminary Assessment Notice
RR - Revenue Regulations
SC - Supreme Court
VAT - Value-Added Tax

8 Section 76 of the Tax Code
9 Amending Section 10(a) of RR No. 6-85

Certificate of creditable tax is sufficient proof

While it is incumbent upon the taxpayer to prove that the proper tax was withheld on its income, said burden of evidence shifts to the CIR when the taxpayer presents a withholding tax certificate **complete** in its relevant details and with a written statement that it was made under the penalties of perjury.

There is no need to show actual remittance of taxes withheld. Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits.

(CTA Case No. 8630 dated 30 January 2015)

Withholding agent can refund an erroneously withheld and remitted tax

- *Over-withheld and remitted tax may be refunded upon proof that the payee did not use the CWT to pay its income tax liabilities.*

The claimant-bank mistakenly withheld and remitted to the BIR withholding taxes equivalent to 6% of the bid price of foreclosed real properties, instead of only 5% EWT on sales of ordinary assets.

In support of its refund claim, the bank presented evidence to show that the developer had not in fact utilized the withheld taxes, namely:

1. Developer corporation's audited financial statement reflecting the mortgaged property as included in the asset account "Properties and Equipment".

2. Developer corporation's ITR showing that the excess CWT claimed for refund had never been utilized.

3. Testimony of the developer corporation's accountant that the amount, subject of the bank's claim for refund, was not included among the CWT stated in the developer corporation's ITR.

The Supreme Court granted the refund of the excess 1% CWT because the developer corporation never utilized the CWT certificates as tax credit. Because the developer contested the validity of the foreclosure sale via litigation, then it also did not recognize the foreclosure sale and the CWT withheld from the sale price. Furthermore, it continues to recognize the land as its asset by reflecting the mortgaged property in its financial statements. Finally, the developer never included the CWT in its ITR. Thus, there was sufficient proof that the amount claimed for refund by the bank was indeed never utilized.

(G.R. No. 206019 dated 18 March 2015)

FDDA issued before the 60-day period to submit documents is void

- *BIR must wait for the lapse of the 60-day period within which the taxpayer may submit the relevant supporting documents before issuing the FDDA.*

The CTA, citing a Supreme Court case[10], reiterated the prerogative of the taxpayer to determine the sufficiency of its relevant documents supporting its protest against tax assessments.

In this case, the CTA held that the issuance of the FDDA was premature considering that the 60-day period for submission of relevant supporting documents had not expired. The taxpayer could have utilized the remaining 25-day period to gather documents deemed to be relevant to support its claim and thereafter, submit the same to the BIR.

Despite the taxpayer's failure to submit any documents for the BIR examiner's scrutiny, it is the BIR's duty to remain passive until the lapse of the 60-day period as provided under Section 228 of the Tax Code and RR No. 12-99. Failure to observe the timetable means that the BIR had violated the taxpayer's rights to due process. The premature issuance of the FDDA rendered the deficiency assessment invalid.

(CTA Case No. 8438 dated 31 March 2015)

Constructive service of PAN and FAN when proper

- *Constructive service of PAN and FAN must be witnessed by two revenue officers (ROs) other than the RO making the constructive service in order to be effected.*

Constructive service must be attested to, witnessed and signed by at least two ROs other than the revenue officer who constructively served the notice for delivery to be valid pursuant to RR No. 12-99.

If a notice is served personally, but the taxpayer refused to acknowledge receipt of the notice, the same shall be constructively served by leaving it in the premises of the taxpayer as attested by two ROs along with a written report of the matter, which shall form part of the record of the case.

The CTA clarified that failure to comply with the aforesaid requirements is a violation of due process on the ground of improper service of the notice.

10 G.R. No. 172045-46 dated 16 June 2009

Letter of Authority for "unverified prior years" is void

Where the BIR issued a Letter of Authority to examine a taxpayer's accounting records for "the period 1997 and unverified prior years", a tax assessment based on records from January to March 1998 is invalid. Under Section C of RMO No. 43-90, the practice of issuing LOAs covering audit of "unverified prior years" is prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years must be specifically indicated in the LOA. Thus, an LOA that goes beyond the authority given to it is invalid and consequently renders the corresponding assessments void.

(CTA EB Crim. No. 028 dated 6 March 2015)

Deficiency withholding tax is not a penalty

The CTA *En Banc* held that an assessment of withholding tax is not an imposition of penalty; thus the principle of prescription applies. In this case, the BIR invoked an old SC decision[11] which held that the imposition of deficiency withholding tax is a penalty for failure to withhold the required taxes. Hence, the three-year prescriptive period does not apply.

The CTA *En Banc* clarified that the cited SC ruling is not controlling as it is merely an obiter (opinion of the Court) and the same was decided under the old Tax Code. The CTA cited more recent SC cases[12] discussing the personal liability of the withholding agent for the tax he should withhold.

Also, the CTA *En Banc*, in this case, discussed an SC[13] case which held that validity of waivers may not be questioned once the taxpayer embraced the BIR findings through payment of reduced assessment.

(CTA EB Case No. 1050 dated 24 March 2015)

Latest on regulat

Foreign equity: suspicion of "dummy" triggers grandfather rule

To check compliance with the 60%-40% Filipino-foreign nationality rule for exploration of natural resources, the citizenship of the individual stockholders of each layer of corporations investing in a mining joint venture must first be determined. This is the Control Test. However, in case of doubt despite having satisfied this requirement, the Grandfather Rule (which requires that the citizenship of individuals who ultimately own or control the shares of stock of the corporation must be considered) remains applicable to accurately determine actual foreign participation, whether direct or indirect. The former does not preclude the latter.

Filipinos should be the principal beneficiaries in the exploration of natural resources. Suspicious indications that true beneficial ownership and control of a corporation resides in foreign stakeholders and not in Filipinos are the following: 1) the foreign investors provide practically all the funds, 2) they provide practically all the technological support for the joint venture, and 3) they manage the company and prepare all economic viability studies while being minority stockholders. In these instances, computation of equity composition would be based on common shareholdings, not on preferred or redeemable shares.

(G.R. No. 195580 dated 28 January 2015)

11 GR No. L-53961 dated 30 June 1987
12 GR Nos. 118498 & 124377 dated 12 October 1999
13 GR No. 170257 dated 7 September 2011

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Mandatory foreign exchange reports for reinsurance transactions

All insurance/reinsurance companies and brokers doing business in the Philippines are required to submit a monthly consolidated report on foreign exchange receipts and remittances, following the Commission-prescribed format, within 15 days following the reporting month, duly certified as to correctness and completeness by a company officer with a rank of General Manager/Department Manager or higher. This reporting format shall be effective March 2015 and thereafter. Prompt submission is advised to avoid penalty.

Applications for remittances abroad of net profits or dividends must be supported by: (1) sworn statement of the authorized officer of the applicant company attesting to the fact that the remittances shall be from net profits remaining on hand after satisfying the following requirements of the Insurance Code – (a) statutory deposit, (b) risk-based capital, and (c) full policy reserve funds inclusive of loss reserves and liabilities for expenses and taxes; and (2) copy of the latest audited financial statements of the applicant.

(Insurance Commission Circular Letter No. 2015-09 dated 13 March 2015)

Glossary

BIR - Bureau of Internal Revenue
CTA - Court of Tax Appeals
LOA - Letter of Authority
RMO - Revenue Memorandum Order
SEC - Securities and Exchange Commission
SC - Supreme Court

Guidelines on consolidation and merger of insurance companies

The Insurance Commission has issued the rules and regulations on mergers and consolidations among insurance companies doing business in the Philippines. The salient features of the guidelines are as follows:

1. Companies that intend to consolidate or merge into a single corporation must notify the Insurance Commissioner in writing at least 30 days prior to the board's approval. **A Plan of Merger/Consolidation** must be submitted to the stockholders or members of the companies for adoption and approval. After approval, all policyholders and creditors shall be notified within 20 days from the execution of the agreement.

2. The company to be absorbed or dissolved must discharge all its accrued liabilities; otherwise, the liabilities shall, with the consent of creditors, be transferred to and assumed by the absorbing/acquiring company. Policies subject to cancellation by the company to be absorbed must be cancelled pursuant to the terms of the policies. Proof as to the discharge of its accrued liabilities must always be in writing and submitted to the Commissioner.

3. The Commissioner shall approve or deny the Plan of Merger/Consolidation and the articles of merger/consolidation based on its financial examination of the companies and review of the required documents specified in the Circular. If approved, the insurance companies must submit the articles, together with the endorsement of the Commissioner, to the SEC.

4. Upon approval by the SEC, the companies must surrender their certificates of authority to transact insurance business, and the surviving company or the newly formed company must secure a new certificate to transact insurance business.

5. All proposed mergers must be completed within 12 months from the time of notice to the Commissioner; however, requests for extension filed before the end of the 12-month period may be granted.

(Insurance Commission Circular Letter No. 2015-11 dated 18 March 2015)

Proper identification of insurance agents

The Insurance Commission mandates all insurance agents and general agents to: (1) include the phrase "insurance agency", "insurance general agency" or "insurance agents" in their business/corporate name upon registration with the SEC or DTI; or (2) place the phrase "Authorized by the Insurance Commission to act as an Insurance Agent" (or "General Agent" as the case may be) beside or below the company name that would appear in official documents, company signages, communications, and other similar materials.

Existing licensed insurance agents should comply not later than six months from the date of this Circular. A fine of PHP10,000 shall be imposed for non-compliance.

(Insurance Commission Circular Letter No. 2015-12 dated 18 March 2015)

Guidelines for the filing of 2014 Annual Statements for MBAs

In connection with the filing of 2014 annual documents, the yellow Annual Statement (3 sets) showing the financial condition of MBAs as of 31 December 2014 shall be signed and sworn to by the president, chief operating officer/ general manager, secretary, treasurer, actuary and chief accountant, and shall be on legal size bond paper (8½ x 14 inches), using either Times New Roman font size #12 or Arial font size #10. The Statement should be "Soft Cover Binding", permanent adhesive. Note that the updated list of required documents and other schedules, which are attachments to the Statement, must be submitted in a separate folder. The exact formats, columnar headings and footnote instructions found in every page of the blank forms of the prescribed Statement shall be strictly observed. Any irregularity or incompleteness on the required form and content would be deemed unacceptable. The deadline to avoid penalty is on or before 30 April 2015.

(Insurance Commission Circular Letter No. 2015-12-A dated 19 March 2015)

Guidelines for the filing of 2014 Annual Statements for life insurance companies

The blue Annual Statement (three sets) showing the financial condition of life companies as of 31 December 2014 shall be signed and sworn to by the president, chief operating officer/general manager, secretary, treasurer, actuary and chief accountant, and shall be on legal size bond paper (8½ x 14 inches), using either Times New Roman font size #12 or Arial font size #10. The Statement should be "Soft Cover Binding", permanent adhesive. Note that the list of the required documents and other schedules, which are attachments to the Statement, had been updated and must be submitted in a separate folder. The exact formats, columnar headings and footnote instructions found in every page of the blank forms of the prescribed Statement shall be strictly observed. Any irregularity or incompleteness on the form and content would be deemed unacceptable. The deadline to avoid penalty is on or before 30 April 2015.

(Insurance Commission Circular Letter No. 2015-12-B dated 19 March 2015)

Amended guidelines for the imposition of penalties arising from post-entry audits

Upon finding the importer liable for deficiency duties and taxes, the Fiscal Intelligence Unit of the Department of Finance (DOF-FIU), or the government body tasked to conduct post-entry audit, shall issue a Final Audit Report and Recommendation (FARR) including an advice on the appropriate administrative sanctions either in the FARR or in a separate report, clearly stating the basis and duly supported by documents.

Glossary

BI - Bureau of Immigration
BOC - Bureau of Customs
CTA - Court of Tax Appeals
DTI - Department of Trade and Industry
MBA - Mutual Benefit Associations
PEZA - Philippine Economic Zone Authority
SEC - Securities and Exchange Commission

The DOF-FIU shall then forward the FARR, or the separate report containing the same, to the Customs Commissioner, who shall determine whether there is sufficient basis for the recommendations through the conduct of hearings, a review of the FARR by other BOC departments, or by requiring the importer or customs broker to provide additional information within 15 days from receipt of the findings.

If the Commissioner accepts the DOF-FIU's recommendations, he shall issue a collection letter or a formal assessment and demand letter to the importer, either directing the latter to pay deficiency duties, fines and other sanctions within ten (10) working days from receipt, or ordering the Bureau to hold the delivery or release of subsequent imported articles to answer for the fine or as a penalty. The importer has 30 days from receipt of the collection letter or formal assessment and demand letter to file an appeal to the CTA.

To determine the degree of culpability of the importer and the appropriate administrative penalty, certain indicators, as well as aggravating and mitigating circumstances, may be considered during the proceedings.

(Customs Administrative Order No. 3-2015 dated 20 March 2015)

Procedures for electronic processing of transshipments to PEZA zones

The following BOC guidelines shall govern the mandatory electronic processing of transshipments of PEZA locators to PEZA zones starting 4 May 2015.

Based on the Joint Memorandum Order (JMO) issued by the BOC and PEZA, all PEZA locators importing goods for transshipment from any port of discharge to any PEZA locations must file a transshipment entry through the BOC's e2m system at the port of discharge where the goods arrive. Manual filing shall only be allowed if the BOC certifies that the e2m system is down for more than two hours.

PEZA locators must enroll with PEZA through PEZA-accredited Value-Added Service Providers (PEZA VASPs) and submit the required information/documents to be able to use the electronic Import Permit System (e-IPS) for tax and duty-free importation of goods. PEZA locators and their authorized representatives must also enroll for the electronic lodgment of e-IP applications.

PEZA locators processing transshipment entries in the port of discharge are now required to post a General Transportation Surety Bond with the Bonds Division to guarantee the direct, immediate and faithful delivery of goods to their destination. The bond must have a remaining validity period of at least 30 days from the date of filing of an entry; otherwise, the locators shall be required to post another bond. Furthermore, boat notes will no longer be issued for transshipment to PEZA zones and the underguarding of shipments will not be required.

For transshipments consisting of more than one container, the port of discharge (PD) and destination PEZA (DPZ) zone shall manually monitor the departure from the PD and arrival at the DPZ until the entire entry is tagged "arrived" in the e2m system.

Non-compliance by the PEZA locators to the guidelines shall be subject to certain penalties.

(Customs Memorandum Order No. 8-2015 dated 17 March 2015)

Exemption of PEZA-endorsed 47(a)(2) visa holders from immigration fees and clearances

Effective immediately, holders of PEZA-endorsed Special Non-immigrant Visas under Section 47(a)(2) of C.A. No. 613, as amended, as well as their respective spouses and dependents, shall be exempt from obtaining alien certificates and all types of BI clearances including the payment of Emigration Clearance Certificate (ECC) and Special Return Certificate (SRC) fees. This means that passports previously stamped with "Subject to Payment of ECC and SRC Fees" do not need to have their visas re-stamped with "Exempt from ECC and SRC Fees" by the BI. They may just present a copy of the subject BI Operations Order, along with this Memorandum Circular, in case asked by the BI officer at the airport.

(PEZA Memorandum Circular No. 2015-011 dated 23 March 2015)

Meet us

A partnership for creative solutions

Clean Hands All Around: TI-PH and PwC commit to creative solutions. (L-R): From TI-PH: Executive Director Dr. Cleo Calimbahin, Acting President and Chairman of the Board Engr. Antonio Navarro, Board Member Atty. Rene Bañez, From PwC: Managing Partner and CEO Rose Javier, Chairman and Senior Partner Atty. Alex Cabrera, Senior Manager Aurelio Gueco and Director Grace Aries.

Transparency International-Philippines (TI-PH) and PricewaterhouseCoopers Consulting (Philippines) Inc. (PwC) commit to work together in using creative solutions to curb corruption in the country.

The signing of the Memorandum of Agreement (MOA) between TI-PH and PwC marks the official partnership between the two organizations, which are both dedicated to improving good governance, integrity and transparency in the Philippines. PwC has agreed to review an internal policy of one of TI-PH's partners in government and provide that agency with fraud prevention training to assist in its anti-corruption efforts.

The MOA was signed by TI-PH Acting President and Chairman of the Board of Trustees Engr. **Antonio Navarro** and PwC Managing Partner and CEO **Rose Javier**.

Witnesses to the signing were TI-PH Executive Director Dr. **Cleo Calimbahin** and PwC Senior Manager **Aurelio Gueco**. They were fortunate to be joined by TI-PH Board Member Atty. **Rene Bañez** and Isla Lipana & Co./PwC Philippines Chairman and Senior Partner Atty. **Alex Cabrera**.

TI-PH and PwC are committed to work together towards a better Philippines.

Cholo Domondon shares mining insights at the 7th Nickel Global 2015

Assurance Director **Pocholo 'Cholo' Domondon** was one of the presenters during the first day of the 7th Nickel Global held from 30 to 31 March 2015 at the Hotel InterContinental Manila.

The Nickel Global summit is hailed as the biggest nickel event for Chinese businesses and investors where more than 200 attendees from the mining industry gather to learn about trends and opportunities.

Cholo delivered an overview on investing and doing business in mining nickel and other precious metals in the Philippines to the participants comprising mostly of Chinese nationals. Cholo was one of three keynote speakers invited by the Enmore Group, and was joined by Mr. **Artemio Disini**, Chairman of the Chamber of Mines, and Mr. **Faisal Emzita**, Board Director of the Indonesian Chamber of Commerce and Industries.

The event was attended by local and foreign miners and smelters including Eramen Minerals, Shanghai Nickel, Mitsui & Co. Mineral Resources, Mitsubishi Corporation, Eramet and PT Jindal Stainless, stakeholders and investors.

Accounting for leave credits

Accounting for leave credits *continued from page 3*

A mere provision for employee benefits such as monetized sick and vacation leaves are disallowed to be deductible for income tax purposes. To be allowed as deductible, the subsequent payout of the benefits should approximately be the same as the amount of the accrual.

As a general rule, accrued expenses, can be allowed as deduction when the liability of the expense becomes fixed, rather than contingent or estimated, and the amount of the liability can be determined with reasonable accuracy. The propriety of an accrual must be judged by the fact that a taxpayer knew, or can reasonably be expected to have known, at the closing of its books for the taxable year, the amount of expenses to be accrued. The accrual method of accounting largely presents a question of fact such that the taxpayer bears the burden of proof of establishing the accrual of an item of income or deduction *(Commissioner of Internal Revenue v. Isabela Cultural Corp., G.R. No. 172231. 12 February 2007)*.

Talk to us

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

Alexander B. Cabrera
Chairman & Senior Partner,
concurrent Tax Partner
T: +63 (2) 459 2002
alex.cabrera@ph.pwc.com

Malou P. Lim
Tax Managing Partner
T: +63 (2) 459 2016
malou.p.lim@
ph.pwc.com

Lawrence C. Biscocho
T: +63 (2) 459 2007
lawrence.biscocho@
ph.pwc.com

Carlos T. Carado II
T: +63 (2) 459 2020
carlos.carado@
ph.pwc.com

Fedna B. Parallag
T: +63 (2) 459 3109
fedna.parallag@
ph.pwc.com

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.

www.pwc.com/ph

PwC refers to the Philippines member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity.
Please see www.pwc.com/structure for further details.

PwC Philippines helps organizations and individuals create the value they're looking for. We're a network of firms in 157 countries with more than 195,000 people who are committed to delivering quality in assurance, tax and advisory services. Find out more by visiting us at pwc.com/ph.

Disclaimer
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