

December 2014

Tax bulletin



SGV
Building a better
working world

A member firm of Ernst & Young Global Limited

Highlights

BIR Ruling

- ▶ A joint venture (JV) for construction is not taxable as a corporation if it complies with the conditions prescribed under Revenue Regulations (RR) No. 10-2012. **(Page 3)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 10-2014 further amends Section 3 of RR No. 9-2001 and expands the coverage of taxpayers required to file returns and pay taxes through the eFPS. **(Page 4)**
- ▶ RR No. 11-2014 further amends Section 2.57.2 of RR No. 2-98 on income payments subject to creditable withholding tax (CWT), and lifts the suspension of the implementation of the CWT on locally produced raw sugar. **(Page 5)**
- ▶ Revenue Memorandum Circular (RMC) No. 82-2014 publishes the full text of Joint Circular No. 002-2014 of the Department of Finance (DOF), Department of Budget and Management (DBM), Bureau of Customs (BOC) and BIR, which prescribes the mechanism for qualified VAT-registered persons to receive the cash equivalent of their outstanding VAT tax credit certificates (TCCs). **(Page 8)**
- ▶ RMC No. 86-2014 clarifies the valuation of contributions or gifts actually paid or made, in computing taxable income as part of substantiation requirements under RR No. 13-98. **(Page 10)**
- ▶ RMC No. 89-2014 clarifies the implementation of the increase in excise tax rates on locally manufactured cigarettes effective January 1, 2015 pursuant to RR No. 17-2012 implementing RA No. 10351, in relation to the new internal revenue stamps prescribed under RR No. 7-2014, as amended. **(Page 11)**

BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 28-2014 prescribes the procedure for the cash refund of input VAT on importations attributable to zero-rated transactions under Section 112 of the Tax Code. **(Page 11)**
- ▶ Customs Administrative Order (CAO) No. 8-2014 prescribes the guidelines on the imposition of Customs Documentary Stamp (CDS) and Import Processing Fee (IPF) for Informal Entries. **(Page 13)**

DOF Issuance

- ▶ DOF Department Order (DO) No. 107-2014 prescribes updated rules on accreditation of PEZA locators with the BOC. **(Page 13)**

SEC Issuances

- ▶ SEC Memorandum Circular (MC) No. 21 prescribes guidelines on the computation of corporate term. **(Page 13)**
- ▶ SEC MC No. 22 prescribes the guidelines for the use of a Notification Update Form for foreign corporations licensed to do business in the Philippines. **(Page 14)**

- ▶ SEC MC No. 23 adopts measures in the filing of Audited Financial Statements (AFS) and General Information Sheet (GIS) for companies whose fiscal year ends on December 31, 2014. **(Page 14)**
- ▶ When the Articles of Incorporation of a domestic corporation provide that one of its purposes is to affiliate or contract with other international organizations for the furtherance of its objective to support indigent children worldwide, the domestic corporation may remit donations to a foreign non-profit corporation to carry out this purpose. **(Page 15)**

BSP Issuances

- ▶ Circular No. 861 amends Subsection X269.1 of the Manual of Regulations for Banks (MORB) to add an additional eligibility requirement for availing of the BSP rediscounting facility. **(Page 16)**
- ▶ Circular No. 862 amends certain sections of the MORB and Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) on examinations by the BSP. **(Page 16)**
- ▶ Circular No. 863 announces the replacement and demonetization of the New Design Series Banknotes (5-,10-,20-,50-,100-,200-,500-, and 1000-Piso Denominations). **(Page 17)**

Court Decisions

- ▶ Interest income from loans and advances to affiliates is considered as revenue realized from services rendered in the normal course of trade or business and is subject to 12% VAT. **(Page 17)**
- ▶ Service fees payable by a Philippine company to a non-resident foreign corporation are exempt from final withholding tax (FWT) if it can be established that (a) the services are performed by a foreign corporation not engaged in trade or business in the Philippines, and (b) the said income is derived from sources outside the Philippines.

Moreover, to be exempt from withholding VAT, it must be proved that the (a) payee is a non-resident foreign corporation, and (b) the services were rendered outside the Philippines. **(Page 19)**

BIR Ruling

BIR Ruling No. 475-2014 dated November 26, 2014

Facts:

A Co. and B Co. are both domestic corporations engaged in the construction business and are both licensed by the Philippine Contractors Accreditation Board (PCAB). A Co. and B Co. formed an unincorporated JV, also licensed by the PCAB, for a construction project. As co-venturers, A Co. and B Co. agreed to contribute all the necessary resources for the proper implementation of the project, and to share in the JV's profits and losses.

A JV for construction is not taxable as a corporation if it complies with the conditions prescribed under RR No. 10-2012.

Issues:

1. Is the JV subject to corporate income tax?
2. Are the co-venturers subject to corporate income tax?
3. Are there other administrative requirements on the part of the co-venturers?

Ruling:

1. No. Under Section 22(B) of the Tax Code, the term "corporation" shall include partnerships, no matter how created or organized, but does not include JVs formed for the purpose of undertaking construction projects. This was implemented by RR No. 10-2012 which prescribes certain conditions which must be met for the non-taxability of a JV, thus:
 - (i) the JV is for the undertaking of a construction project,
 - (ii) the JV should involve joining or pooling of resources by PCAB-licensed local contractors,
 - (iii) the local contractors are engaged in the construction business, and
 - (iv) the JV itself is also registered with the PCAB.

Since the JV between A Co. and B Co. complies with all these requirements, the JV between A Co. and B Co. is not subject to income tax as a corporation; consequently, income payments to it are not subject to the 2% creditable withholding tax (CWT).

2. Yes. The co-venturers are separately subject to the regular corporate income tax under Section 27(A) of the Tax Code on their taxable income during each taxable year respectively derived by them from the JV. The respective net income of the co-venturers derived from the JV is also subject to CWT under Section 57 of the Tax Code. Before the JV distributes the net income of the co-venturers, it shall withhold the tax due on such net income.
3. Yes. The co-venturers are required to enroll themselves to the BIR's Electronic Filing and Payment System (eFPS). The enrollment should be done at the Revenue District Office (RDO) where they are registered as taxpayers.

BIR Issuances

RR No. 10-2014 further amends Section 3 of RR No. 9-2001 and expands the coverage of taxpayers required to file returns and pay taxes through the eFPS.

Revenue Regulations No. 10-2014 dated December 10, 2014

- ▶ Definitions:
 1. Taxpayer Account Management Program (TAMP) - Taxpayers, whether individual or juridical entities, that have been identified by RDO based on selection criteria pursuant to existing revenue issuances.
 2. Accredited Importers with BIR Importer Clearance Certificates (ICCs) and Broker Clearance Certificates (BCCs) - All importers and customs brokers [individuals, partnerships, corporations, cooperatives, associations (whether taxable or non-taxable)], unless otherwise exempted, who secured accreditation from the BIR following existing revenue issuances, including prospective importers required to secure BIR-ICC and BIR-BCC.
- ▶ It is now mandatory for TAMP taxpayers and accredited importers, including prospective importers required to secure the ICC and BCCs, to make use of the eFPS facility in filing their returns and making tax payments.

- ▶ These Regulations shall take effect on all returns to be filed by the newly covered taxpayers to use the eFPS facility on January 1, 2015 or after 15 days following publication in a newspaper of general circulation, whichever comes later.

(Editor's Note: RR No. 10-2014 was published in the Manila Bulletin on December 11, 2014.)

RR No. 11-2014 further amends Section 2.57.2 of RR No. 2-98 on income payments subject to CWT, and lifts the suspension of the implementation of the CWT on locally produced raw sugar.

Revenue Regulations No. 11-2014 dated December 5, 2014

- ▶ The pertinent provisions of Section 2.57.2 of Revenue Regulations No. 2-98, as amended, are hereby further amended as follows:

"Income payments subject to creditable withholding tax and rates prescribed thereon. - Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines:

XXX XXX XXX

- (M) *Income payment made by the top twenty thousand (20,000) private corporations to their local/resident supplier of goods and local/resident supplier of services other than those covered by other rates of withholding tax. - Income payments made by any of the top twenty thousand (20,000) private corporations, as determined by the Commissioner, xxx. For this purpose, an agricultural product in their original state as used in these Regulations, shall only include corn, coconut, copra, palay, rice, cassava, coffee, fruit, vegetable, marine food product, poultry and livestock.*

XXX XXX XXX

- (S) *Income payments made to suppliers of agricultural products. - Income payments made to agricultural suppliers such as, but not limited to, payments made by hotels, restaurants, resorts, caterers, food processors, canneries, supermarkets, livestock, poultry, fish and marine product dealers, hardwares, factories, furniture shops and all other establishments, in excess of the cumulative amount of Three Hundred Thousand Pesos (P300,000.00) within the same taxable year. - One percent (1%);*

The term "agricultural suppliers" refers to suppliers/sellers of agricultural, forest and marine food and non-food products, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption, and breeding stock and genetic materials therefor. "Livestock" shall include cow, bull and calf, pig, sheep, goat and other animals similar thereto. "Poultry" shall include fowl, duck, goose, turkey and other animals similar thereto. "Marine product" shall include fish and crustacean such as, but not limited to, eel, trout, lobster, shrimp, prawn, oyster, mussel and clam, shell and other aquatic products.

Meat, fruit, fish, vegetable and other agricultural and marine food products, even if they have undergone the simple processes of preparation or preservation for the market, such as freezing,

drying, salting, smoking or stripping, including those using advanced technological means of packaging, such as shrink wrapping in plastics, vacuum packing, tetra-pack and other similar packaging method, shall still be covered by this subsection.

An agricultural food product shall include, but shall not be limited to the following: corn, coconut, copra, palay, cassava, coffee, etc. Polished and/or husked rice, corn grits and ordinary salt shall be considered as agricultural food products.

XXX XXX XXX

(W) *Income payments made by the top five thousand (5,000) individual taxpayers to their local/resident suppliers of goods and local/resident suppliers of services other than those already covered by other rates of withholding tax.* - Income payments made by the top 5,000 individual taxpayers engaged in trade or business in the Philippines, as determined by the Commissioner xxx For this purpose, agricultural products in their original state as used in these Regulations, shall include only corn, coconut, copra, palay, rice, cassava, coffee, fruit, vegetable, marine food product, poultry and livestock.

XXX XXX XXX

(Z) *Income payments to Real Estate Investment Trusts (REITs).* - Income payments made to corporate taxpayers duly registered with the Large Taxpayers Regular Audit Division 3 (now Regular LT Audit Division 3) of the Bureau of Internal Revenue, as REITs for purposes of availing of the incentive provisions of Republic Act No. 9856, otherwise known as "The Real Estate Investment Trust Act of 2009", as implemented by RR No. 13-2011. - One percent (1%);

(AA) *Income payments on locally produced raw sugar.* - Proprietors or operators of sugar mills/refineries on their mill share, and direct buyers of Quedans or Molasses Storage Certificates from the sugar planters on locally produced raw sugar and molasses shall withhold the creditable income tax and remit the same to the BIR based on the applicable base price of ONE THOUSAND PESOS (P1,000.00) per FIFTY (50) kilogram (kg.) bag and FOUR THOUSAND PESOS (P4,000.00) per metric ton, respectively, subject, however, to adjustment, when deemed necessary by the Commissioner, upon consultation with the Administrator of the Sugar Regulatory Administration (SRA). - One percent (1%).

For purposes of this subsection, the following terms shall have the following meaning:

- i. *Buyers of Quedan or Molasses Storage Certificates* - refer to traders or industry users duly accredited by the SRA who bid and/or purchase the Quedans or Molasses Storage Certificates from the sugar planters.
- ii. *Mill Share* - refers to payments to a sugar mill/refinery by the sugar planter for the milling of sugarcane. As such, it is equivalent to a sale of locally produced raw sugar.
- iii. *Molasses Storage Certificate* - refers to the warehouse receipt issued by a sugar mill/refinery to the owner, as stated therein, attesting to the fact that the volume of molasses is stored at the mill's facilities,

with the commitment that it will be delivered to the holder of said document upon demand.

- iv. *Sugar Mill/Refinery* - refers to a domestic company engaged in the business of milling sugarcane into raw sugar, or in the refining of raw sugar.
- v. *Sugar Planter* - refers to the original owner of sugarcane brought to the mill for milling purposes.
- vi. *Sugar Regulatory Administration (SRA)* - refers to an agency of the Philippine government under the Department of Agriculture, responsible for promoting the growth and development of the sugar industry, through greater participation of the private sector, and for improving the working conditions of the laborers, created by Executive Order No. 18, Series of 1986.
- vii. *Quedan* - refers to a warehouse receipt issued by a sugar mill/ refinery to the owner as stated therein, attesting to the fact that the volume and class of sugar is kept at the said sugar mill/refinery, and with the commitment that it will be delivered to the holder of said document by the sugar mill's/ refinery's warehouseman upon demand. Quedan is issued in the name of the proprietor or operator of the sugar mill/refinery, for its mill share, and to the sugar planter, as owner of the sugarcane, as certified by SRA representative at the sugar mill/refinery.
- viii. *Trader* - refers to a domestic company or person given the authority and license by the SRA to engage in the business of trading sugar, molasses, or muscovado, as the case may be.

The Regional Director, through the recommendation of the Revenue District Officer, which has jurisdiction over the physical location of the sugar mills/refineries, shall issue the Authorization Allowing the Release of Locally Produced Raw Sugar/Molasses (Annexes "A" or "B", as applicable) to the proprietors or operators, for purposes of allowing the transfer/withdrawal of their mill share, or to the buyers of Quedans or Molasses Storage Certificates on the locally produced raw sugar, or molasses, for further processing into a refined sugar, consumption or other purposes: Provided, however, that, copies of proofs of payment of the creditable withholding tax due thereon (i.e., duly validated Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601-E] and Bank Payment/Deposit Slip/ Revenue Official Receipt [BIR Form No. 2524]) shall have been submitted and attached to the written request for said authorization.

Provided, finally, That, notwithstanding the presentation of proof of exemption from the payment of income tax (e.g., BIR ruling, special law, etc.), the concerned proprietor, or operator of the sugar mill/ refinery, or any buyer of Quedan or Molasses Storage Certificate is still required to withhold and remit the creditable withholding tax."

- ▶ These Regulations shall take effect on January 1, 2015 following publication in a newspaper of general circulation.

(Editor's Note: RR No. 11-2014 was published in the Manila Bulletin on December 23, 2014.)

RMC No. 82-2014 publishes the full text of Joint Circular No. 002-2014 of the DOF, DBM, BOC and BIR, which prescribes the mechanism for qualified VAT-registered persons to receive the cash equivalent of their outstanding VAT TCCs.

Revenue Memorandum Circular No. 82-2014 dated November 20, 2014

▶ **Definitions:**

1. VAT TCC - refers to any of the following TCCs issued in accordance with existing laws and regulations to the taxpayer named therein, acknowledging that the grantee-taxpayer named therein is entitled to a tax credit:
 - ▶ Import VAT TCC - VAT TCC issued solely by the BOC pursuant to Section 112 of the Tax Code;
 - ▶ VAT Drawback TCC - TCC issued jointly by the BOC and the One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF-OSS) pursuant to Section 106 (e) of the Tariff and Customs Code of the Philippines (TCCP);
 - ▶ VAT TCC issued solely by the BIR pursuant to Section 112 of the Tax Code; and
 - ▶ VAT TCC issued jointly by the BIR and the DOF-OSS pursuant to Section 122 of the Tax Code.
2. Monetization - refers to the mechanism of granting the cash equivalent of VAT TCCs under Section 3(A) of this Joint Circular.
3. Cash Conversion - refers to the mechanism of granting the cash equivalent of VAT TCCs under Section 3(B) of this Joint Circular.
4. Revalidation - refers to the one-time extension of the validity period of TCCs prior to their expiration at the end of the fifth (5th) year from the date of issue of the original TCC.

▶ **Coverage**

1. The following VAT TCCs are qualified for monetization:
 - ▶ VAT TCCs for which the BIR had issued the corresponding Notices of Payment Schedule (NPS) pursuant to Executive Order (EO) No. 68, series of 2012, and DOF-BIR-DBM joint Circular No. 2-2012; and
 - ▶ VAT Drawback TCCs approved for monetization by the BOC pursuant to EO No. 68, series of 2012, and DOF-BOC-DBM Joint Circular No. 3-2012.
2. The following VAT TCCs are qualified for cash conversion, notwithstanding the existing administrative regulations, guidelines or conditions prohibiting or restricting the cash conversion of VAT TCCs:
 - ▶ All other VAT TCCs outstanding as of 31 December 2012 which are not covered by the immediately preceding subsection; and
 - ▶ VAT TCCs issued after December 31, 2012.

▶ **Monetization of VAT TCCs with BIR-issued NPS**

1. Holders of NPS may present the same to the BIR for payment at any time, on or before the maturity dates indicated in the NPS.
2. Upon presentation of the NPS to the BIR by the NPS holder or his authorized representative, the BIR shall pay the amount indicated in accordance with existing budgeting, accounting and auditing law, rules and regulations.

3. Within 45 calendar days from the presentation of the NPS, the BIR shall directly pay the amount equivalent to the total face value of said NPS, net of any delinquent tax liability, to the account of the NPS holder, pursuant to the Modified Disbursement Payment System (MDPS) of the government.
 - ▶ For NPS presented on or before the 15th day of the month, the 45-day processing period shall commence on the first day of the immediately following month.
 - ▶ For NPS presented after the 15th of the month, the 45-day processing period shall commence on the 16th day of the immediately following month.
- ▶ **Monetization of Import VAT-TCCs and VAT Drawback TCCs**
1. The BOC shall, within 10 days from the date of effectivity of this Circular, send written notices advising holders of import VAT TCCs and VAT Drawback TCCs qualified for monetization that the corresponding cash equivalent thereof may be claimed from the BOC, subject to existing budgeting, accounting and auditing law, rules and regulations.
 2. Qualified import VAT TCC holders are given one year from receipt of such notice to claim payment from the BOC.
 3. Within 45 calendar days from the presentation of the notice, the BOC shall directly pay the amount equivalent to the outstanding balance of the TCC, net of any delinquent tax liability, to the account of the TCC holder, pursuant to MDPS of the government.
 - ▶ For notices presented on or before the 15th month, the 45-day processing period shall commence on the first day of the immediately following month.
 - ▶ For notices presented after the 15th of the month, the 45-day processing period shall commence on the 16th day of the immediately following month.
- ▶ **Cash Conversion of VAT TCCs**
1. Applications for cash conversion of Import VAT TCCs and Drawback VAT TCCs shall be filed directly with the BOC, while those for cash conversion of all other VAT TCCs shall be filed directly with the BIR.
 2. An application shall be deemed complete if it is accompanied by the following documents:
 - ▶ Letter of Application;
 - ▶ Original TCC;
 - ▶ Proof of authority of representative: (a) Secretary's Certificate on the Board Resolution designating the TCC holder's authorized representative in the case of corporations, and (b) Special Power of Attorney in the case of partnerships and sole proprietorships, and;
 - ▶ For import VAT and VAT Drawback TCCs, a certification from the BOC Collection Service that the applicant has no tax and/or duty liabilities or a statement of the outstanding account, as the case may be.

3. The application shall be evaluated against the following criteria:
 - ▶ That the TCC was duly issued by the government;
 - ▶ That there is no tampering on the certificate;
 - ▶ That the requesting party is the rightful TCC owner;
 - ▶ That the TCC is not yet expired; and
 - ▶ That the TCC has remaining creditable/outstanding balance.
4. Within 45 calendar days from the filing of the application, the BIR or BOC, as the case may be, shall pay the amount equivalent to the outstanding balance of the TCC, net of any delinquent tax liability, to the account of the TCC holder, pursuant to MDPS of the government.
 - ▶ For applications filed on or before the 15th of the month, the 45-day processing period shall commence on the first day of the immediately following month.
 - ▶ For applications filed after the 15th month, the 45-day processing period shall commence on the 16th day of the immediately following month.

▶ ***Rights of TCC Holders***

A holder of a covered VAT TCC who fails or does not intend to avail of the provisions of this Circular shall retain the right to:

- ▶ Credit his VAT TCCs against tax and/or duty liabilities in accordance with existing rules on TCC utilization;
- ▶ Apply, subject to conditions of law and pertinent rules and regulations, for VAT-TCC revalidation under Section 230(B) of the Tax Code.

▶ ***Non-Issuance of VAT TCCs by the BIR and the BOC***

Upon the effectivity of EO No. 68-A, the BIR and the BOC shall no longer issue VAT TCCs, unless applied for by the VAT taxpayer pursuant to Section 112 (A) of the Tax Code or Section 106 (e) of the TCCP, in which case taxpayers who apply for, and are issued, VAT TCCs may apply for cash conversion.

RMC No. 86-2014 clarifies the valuation of contributions or gifts actually paid or made, in computing taxable income as part of substantiation requirements under RR No. 13-98.

Revenue Memorandum Circular No. 86-2014 dated December 5, 2014

- ▶ Section 8 of RR No. 13-98 requires donors claiming donations and contributions to an accredited non-stock, non-profit corporation/NGO as tax deductions to submit to the BIR a Certificate/s of Donation, indicating the following: (a) actual receipt by the accredited non-stock, non-profit corporation/NGO of the donation or contribution and the date of receipt thereof; and (b) the amount of the charitable donation or contribution, if in cash, and if property, whether real or personal, the acquisition cost of the said property.
- ▶ The information required under RR No. 13-98 shall be declared in a Certificate of Donation (BIR Form No. 2322) in the format prescribed under this Circular.
- ▶ BIR Form No. 2322 consists of 2 parts: (a) a donee certification; and (b) a donor's statement of values:
 1. The donee certification, which is signed by an authorized representative of the donee organization, shall state the following:

- ▶ Date of receipt of the subject matter of the donation, whether cash or property;
 - ▶ Description of the donated properties
2. The donor's statement, which is signed by the donor or authorized representative, shall provide the description, acquisition cost and net book value of the donated properties, and shall be accompanied by the deed of sale/ bill of sale to prove the acquisition cost of the properties.

RMC No. 89-2014 clarifies the implementation of the increase in excise tax rates on locally manufactured cigarettes effective January 1, 2015 pursuant to RR No. 17-2012 implementing RA No. 10351, in relation to the new internal revenue stamps prescribed under RR No. 7-2014 as amended.

Revenue Memorandum Circular No. 89-2014 dated December 19, 2014

- ▶ All local manufacturers of cigarettes shall compute and pay the differential increase between the new excise tax rates and the current rates, according to the tax classification of their cigarette products, based on the number of internal revenue stamps, whether or not actually affixed to the packs of cigarettes, being held in their possession as of December 31, 2014.
- ▶ The total excise taxes shall be paid to the BIR not later than the last working day of December 2014.
- ▶ For purposes of validating the said tax payment, a physical inventory of all internal revenue stamps held in possession by all manufacturers of cigarettes as of December 31, 2014, whether or not actually affixed on cigarette packs, shall be conducted by BIR authorized representatives.
- ▶ The inventory shall be reconciled with the BIR Internal Revenue Stamp Integrated System (IRSIS) and in case of discrepancy, the deficiency excise taxes shall assessed and collected upon demand.

BOC Issuances

CMO No. 28-2014 prescribes the procedure for the cash refund of input VAT on importations attributable to zero-rated transactions under Section 112 of the Tax Code.

Customs Memorandum Order No. 28-2014 dated December 16, 2014

Coverage

CMO No. 28-2014 covers all claims for refund of input VAT on importations attributable to zero-rated transactions under Section 112 of the Tax Code.

Operational Provisions

1. Upon receipt of the docket from the BIR approving the claim of a particular importer for refund of the input VAT on his importation, the Tax Credit Secretariat (TCS) shall check that the following are included in the docket:
 - ▶ Copy of the claimant's application for VAT refund;
 - ▶ BIR endorsement to the BOC containing its determination of the validity of the claim for VAT refund on importation, with the corresponding Authority for the BOC to issue VAT credit/refund; and
 - ▶ Original or certified true copies of the import entry and internal revenue declarations (IEIRDs), BOC Official Receipts or the Statement of Settlement of Duties and Taxes, Single Administrative Documents and List of Importations for the period of the claim.

2. If the above documents are found to be complete, the entire docket shall be endorsed to the Chief, Revenue Accounting Division (RAD) of the BOC for verification of payments of duties and taxes, using tax credits or if cash payments, the amounts must have been remitted to the Bureau of Treasury (BTr).
 3. After receipt of the docket from the Chief, RAD and his certification attesting collection and remittance to the BTr of the payment/s made, the TCS shall in turn endorse the docket to the Chief Accountant, Accounting Division, Financial Management Office (FMO) for validation and computation of the amount to be refunded based on the certification of payment issued by RAD, and issue and Evaluation Report thereon.
 4. Upon receipt of the docket from the FMO with the corresponding Evaluation Report, the TCS shall determine whether the claimant will avail of a cash refund or for the issuance of TCC.
 5. The Secretariat shall then prepare the corresponding endorsement for signature of the Commissioner, or his duly authorized Tax Credit Approving Authority, authorizing payment of the cash refund or issuance of a Tax Credit Certificate based on the amount computed or recommended by the FMO. The signed resolution/endorsement authorizing payment shall be forwarded to the Accounting Division, FMO for preparation of the cash refund or issuance of TCC.
- ▶ ***Manner of Payment of Cash Refund***
 1. The release of cash payment for refund of VAT on importation shall be subject to the availability of funds appropriated for the purpose.
 2. The procedure in budget execution shall be subject to existing budgeting laws, rules and regulations, in consultation with the DBM.
 - ▶ ***Clearance of No Outstanding Liability***
 1. Claimants shall be required to secure a Clearance from the Collection Service attesting that the importer-claimant has no outstanding liability with the BOC, which shall be submitted to the TCS before preparation of the Endorsement authorizing payment.
 2. In cases where a particular claimant has determined liabilities as borne by the records of the Collection Service, he shall be required to settle first his liabilities before his claim for VAT refund will be processed for payment.
 - ▶ ***Treatment of Pending Applications***

Applicants whose claims are pending processing with the BOC, or those whose TCCs have yet to be issued, are given the option to apply for a cash refund upon submission of a formal letter to the TCS manifesting their preference for payment of cash refund in lieu of TCCs.
 - ▶ CMO No. 28-2014 took effect immediately upon signing thereof on December 16, 2014.

CAO No. 8-2014 prescribes the guidelines on the imposition of the Customs Documentary Stamp (CDS) and Import Processing Fee (IPF) for Informal Entries.

Customs Administrative Order No. 8-2014 (no date supplied)

- ▶ The CDS and IPF rates for informal entries in all ports of the Philippines shall be as follows:
 1. Revised Amount of CDS - P15 for each importation filed through the informal entry
 2. IPF - No amount shall be collected as IPF on any importation filed through the informal entry. The BOC shall cease to collect IPF on any importation filed through the informal entry.
- ▶ CAO No. 8-2014 shall take effect immediately upon publication in a newspaper of general circulation or the Official Gazette and three copies are deposited in the UP Law Center.

(Editor's Note: CAO No. 8-2014 was published in The Manila Times on December 10, 2014.)

DOF Issuance

DOF DO No. 107-2014 prescribes updated rules on accreditation of PEZA locators with the BOC.

Department Order No. 107-2014, dated November 28, 2014

- ▶ All locators of PEZA Special Economic Zones throughout the Philippines, duly registered with PEZA, are exempted from the requirements of DOF DO No. 12-2014 as amended by DO No. 18-2014, and shall be eligible for accreditation as importers with the BOC Account Management Office (BOC-AMO).
- ▶ The BOC may still require the submission of documents and information about PEZA locators prior to granting accreditation. Whenever possible, the BOC shall obtain the documents and information it needs about PEZA locators from the documents and information already in the possession of PEZA.
- ▶ PEZA locators that will import goods into the Philippines will have to comply with the documentary requirements provided in the relevant rules of procedure of customs. Failure to do so will subject them to sanctions and penalties as provided by the TCCP.
- ▶ The Commissioner of Customs shall issue rules and regulations pursuant to this Order within 15 days from issuance.
- ▶ All orders, circulars, memoranda, issuances contrary to or inconsistent therewith are hereby revoked and / or modified, and all concerned shall be guided accordingly.
- ▶ DOF DO No. 107-2014 took effect immediately.

SEC Issuances

SEC MC No. 21 prescribes guidelines on the computation of corporate term.

SEC Memorandum Circular No. 21 dated November 28, 2014

- ▶ The first day of the corporate term is the day when the existence of a corporation commences, which is the date of incorporation as stated in the Certificate of Incorporation.

- ▶ The last day of the corporate term is the day before the corresponding numbered day of the same month of incorporation in the year of the existence of the corporation.
- ▶ The above guidelines for the computation of the corporate term, including the termination of the first and last days thereof, shall apply prospectively.

[Editor's Note: SEC MC No. 21 was published in The Philippine Star and The Manila Times on December 4, 2014.]

SEC MC No. 22 prescribes the guidelines for the use of a Notification Update Form for foreign corporations licensed to do business in the Philippines.

SEC Memorandum Circular No. 22 dated December 4, 2014

- ▶ SEC MC No. 22 requires foreign corporations licensed by the SEC to submit a single form known as "Notification Update Form" (NUF) containing all subjects of notifications for purposes of reporting before their submission of a General Information Sheet (GIS).
- ▶ The NUF is a report to be accomplished and signed under oath by the President or resident agent of the concerned foreign corporation containing all information subject to any change in the following:
 1. Principal office address;
 2. Accounting period;
 3. List of directors and officers, subsidiaries and affiliates; and
 4. Other notifications to the SEC.
- ▶ The NUF must be submitted by the concerned foreign corporation within thirty days from the occurrence of changes in any of the aforementioned subjects.
- ▶ The NUF shall integrally form part of the records of the corporation on file with the SEC and shall be made available to the public.
- ▶ All updates in the NUF which remain effective at the time when the submission of the annual GIS becomes due and which are likewise required, information therein must be integrated in the said GIS.
- ▶ The NUF neither replaces nor dispenses with the requirement of a GIS, which must be submitted within 30 days from the anniversary date of the issuance of license of the concerned foreign corporation.

[Editor's Note: SEC MC No. 22 was published in the Business Mirror and in the Manila Bulletin on December 10, 2014.]

SEC MC No. 23 adopts measures in the filing of the AFS and GIS for companies whose fiscal year ends on December 31, 2014.

SEC Memorandum Circular No. 23 dated December 9, 2014.

- ▶ SEC MC No. 23 provides the filing schedule of AFS and GIS for 2015 of all corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations.
- ▶ The period of filing, depending on the last numerical digit of their SEC registration or license number, will be as follows:
 1. April 13, 14, 15, 16, 17 - "1" and "2"
 2. April 20, 21, 22, 23, 24 - "3" and "4"

3. April 27, 28, 29, 30 - "5" and "6"
 4. May 4, 5, 6, 7, 8 - "7" and "8"
 5. May 11, 12, 13, 14, 15 - "9" and "0"
- ▶ The filing schedule which commences on April 13, 2015 shall not apply to the following corporations:
 1. Those whose fiscal year ends on a date other than December 31, 2014.
 2. Those whose securities are listed on the Philippine Stock Exchange (PSE).
 3. Those whose AFS are being audited by the Commission on Audit (COA).
 - ▶ Prior to April 13, 2015, all corporations may file their AFS regardless of the last numerical digit of their registration or license number.
 - ▶ Late filings shall be accepted starting May 18, 2015 and shall be subject to the prescribed penalties, which shall be computed from the date of the last day of filing schedules.

[Editor's Note: SEC MC No. 23 was published in the Philippine Star on December 12, 2014.]

SEC-OGC Opinion No. 14-35 dated November 27, 2014

When the Articles of Incorporation of a domestic corporation provide that one of its purposes is to affiliate or contract with other international organizations for the furtherance of its objective to support indigent children worldwide, the domestic corporation may remit donations to a foreign non-profit corporation to carry out this purpose.

Facts:

A Co.-US is a non-profit organization based in the US dedicated to improving the lives of children living in dire poverty. C Co.-Philippines is a domestic corporation. As stated in C Co.-Philippines' Articles of Incorporation, it was created for the purpose, among others, of "affiliating or contracting with other local and international organizations for purposes of carrying out its objective of providing for the socio-economic development of indigent children." C Co.-Philippines will remit some or all of its received donations to A Co.-US which will have the final determination as to which program will be funded from the donations remitted.

Issue:

May a domestic corporation, under its purposes, remit some or all of its received donations to a foreign non-profit entity?

Ruling:

Yes. Section 36 (9) of the Corporation Code provides that corporations have the power to make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes. It is based on the modern view that business corporations are not organized solely as profit-making enterprises but also as economic and social institutions with a corresponding public responsibility to aid the betterment of economic and social conditions in the community in which such corporations are doing business.

Moreover, C Co.-Philippines' act of remitting or donating to A Co.-US is in accordance with its corporate purposes as stated in its Articles of Incorporation. A purpose clause can be reasonably stretched or construed to cover matters or objects which could not have been expressly enumerated at the time of incorporation due to their huge number or changes in economic conditions but can be impliedly included therein.

A reading of the purposes in the Articles of Incorporation would show that C Co.-Philippines “may affiliate or contract with other local and international organizations for the purpose of carrying out the association’s objective.” The intended act of C Co.-Philippines of remitting some or all of its donations to A Co.-US can be considered as an act of contracting with other international organizations.

BSP Issuances

Circular No. 861 amends Subsection X269.1 of the MORB to add an additional eligibility requirement for availing of the BSP rediscounting facility.

BSP Circular No. 861 dated December 1, 2014

- ▶ Circular No. 861 amends Subsection X269.1 of the MORB to add a fourth eligibility requirement, as follows:

“**X269.1 Eligibility Requirements at the Time of Availment.** Banks availing of the BSP rediscounting facility must have at the time of availment:

x x x

d. No chronic reserve deficiency in deposit/deposit substitute liabilities immediately preceding the loan drawdown/availment.

For purposes of determining compliance with the reserve requirement, a bank will be considered non-compliant with the reserve requirement for the reference week when its actual net reserve position for said reference week cannot be determined due to delayed submission or non-submission of the relevant reserve report.”

- ▶ The Circular shall take effect on December 1, 2014.

[Editor’s Note: Circular No. 861 was published in the Manila Standard Today on December 4, 2014.]

BSP Circular No. 862 amends certain sections of the MORB and MORNBF1 on examinations by the BSP.

BSP Circular No. 862 dated December 17, 2014

- ▶ Section X658 of the MORB is amended to read as follows:

“**X658 Examination by the Bangko Sentral.** The term “examination” shall refer to an investigation of an institution under the supervisory authority of the Bangko Sentral ng Pilipinas (BSP) to determine whether the institution is operating on a safe and sound basis, inquire into its solvency and liquidity, and assess the effectiveness of its compliance function to ascertain that it is conducting business in accordance with laws and regulations. Consistent with a risk-based approach to supervision, the scope of examination may include, but need not be limited to, the following:

- a. Appraisal of the overall quality of corporate governance;
- b. Assessment of risk management system, which shall include the evaluation of effectiveness of management oversight and self-assessment functions (e.g. internal audit, risk management and compliance), adequacy of policies, procedures, and limits, effectiveness of risk measurement, monitoring and management information system, and robustness of internal control;

- c. Review of the institution's operations and overall risk profile;
- d. Evaluation of financial performance, capital adequacy, asset quality and liquidity; and
- e. Any other activity relevant to the above.

x x x"

- ▶ Section 4661Q of the MORNBF is amended to replicate the above amendment of Section X658 of the MORB.
- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 862 was published in the Business Mirror on December 23, 2014.]

Circular No. 863 announces the replacement and demonetization of the New Design Series Banknotes (5-, 10-, 20-, 50-, 100-, 200-, 500-, and 1000-Piso Denominations)

BSP Circular No. 863 dated December 29, 2014

- ▶ The replacement process of the New Design Series (NDS) banknotes consisting of the 5-, 10-, 20-, 50-, 100-, 200-, 500-, and 1000-Piso Denominations shall start on January 1, 2015.
- ▶ The NDS banknotes can be exchanged within a prescribed period with the BSP or its authorized agent banks and financial institutions (universal/commercial banks, thrift banks, and rural banks) at par with the New Generation Currency (NGC) Series banknotes consisting of 20-, 50-, 100-, 200-, 500- and 1000-Piso denominations.
- ▶ The NDS banknotes shall remain legal tender or acceptable as payment instrument in any transaction until December 31, 2015.
- ▶ Effective January 1, 2016, the NDS banknotes shall cease to be legal tender but may still be exchanged or replaced until December 31, 2016 with the BSP or its authorized agent banks and financial institutions at par without charge. Subsequent thereto, the NDS banknotes shall cease to be a liability of the BSP and shall be demonetized together with those called in and surrendered for replacement.

Court Decisions

Waterfront Philippines, Inc. vs. CIR

CTA (*En Banc*) Case No. 1070 promulgated December 4, 2014

Facts:

Interest income from loans and advances to affiliates is considered as revenue realized from services rendered in the normal course of trade or business and is subject to 12% VAT.

Respondent Commissioner of Internal Revenue (CIR) assessed Petitioner Waterfront Philippines, Inc. (Waterfront) for alleged deficiency taxes for taxable year 2006, including VAT on interest income derived from loans granted to affiliates.

The CIR claims that in the ordinary course of business, Waterfront extends and obtains cash advances and loans to and from related parties to meet working capital requirements and to finance the construction and operation of its hotel projects, in furtherance of the primary purpose stated in the Articles of Incorporation. The CIR alleges that said interest income is subject to VAT. Waterfront protested the assessment.

Upon denial of its protest by the CIR, Waterfront filed a Petition for Review with the Court of Tax Appeals (CTA). The CTA First Division initially ruled that the interest income from loans or advances granted to affiliates by Waterfront, which is not engaged in the business of lending money, is not subject to VAT.

The CIR filed a Motion for Reconsideration and argued that Waterfront was assessed for deficiency VAT not as a lending investor but for interest income realized from loans and advances granted to related parties in the ordinary course of trade or business. The CTA First Division issued an Amended Decision ordering Waterfront to pay the assessed deficiency VAT. Upon denial of its Motion for Reconsideration of the Amended Decision, Waterfront filed a Petition for Review with the CTA *En Banc*.

Issue:

Is the interest income derived by Waterfront from loans and advances granted to affiliates subject to VAT?

Ruling:

Yes. The interest income from loans and advances extended by Waterfront to its affiliates is considered revenue from services rendered in the ordinary course of trade or business and is subject to VAT.

Section 105 of the Tax Code defines “in the course of trade or business” as the regular conduct or pursuit by any person of a commercial or an economic activity, including transactions incidental thereto. Section 108 of the Tax Code also provides that VAT is due on the “sale or exchange of services” or the performance of all kinds of services in the Philippines for others for a fee or consideration regardless of whether the performance of such services calls for the exercise or use of physical or mental faculties.

The CTA cited *Diaz, et al. vs. Secretary of Finance, et al.* promulgated on July 19, 2011, where the Supreme Court held that VAT is imposed on all kinds of services in the Philippines for a fee. The enumeration of services subject to VAT in Section 108 of the Tax Code is not exclusive. The listing of specific services illustrates how broad the VAT coverage is. Every activity that can be imagined as a form of service rendered for a fee should be deemed included unless a specific provision of law excludes it. Waterfront failed to point to a provision of law that specifically excludes extending cash advances with interest to affiliates to the definition of services subject to VAT.

Waterfront extended cash advances to its affiliates, which is clearly a performance of service for a fee (with interest as the fee or consideration) that is covered by the VAT provisions of the Tax Code. While the act of extending cash advances with interest to affiliates may be an isolated transaction, the same is incidental to the course of trade or business as said activity is within the ambit of the ‘catch-all’ purpose stated in Waterfront’s Amended Articles of Incorporation, wherein the corporation is authorized “to do any and all things necessary, suitable, convenient, proper or incidental to the accomplishment of the above purposes.”

The CTA likewise cited the Supreme Court’s decision in *CIR vs. COMASERCO* promulgated on March 30, 2000 where it was ruled that as long as the entity provides a service for a fee, remuneration or consideration, then the service is subject to VAT. Applying the *COMASERCO* and *Diaz* cases, the CTA *En Banc* held that extending cash advances with interest to related parties is a form of service for a fee, for which VAT may be imposed.

Visayas Geothermal Power Company vs. CIR

CTA (First Division) Case 8425 promulgated November 17, 2014

Service fees payable by a Philippine company to a non-resident foreign corporation are exempt from the FWT if it can be established that (a) the services are performed by a foreign corporation not engaged in trade or business in the Philippines, and (b) the said income is derived from sources outside the Philippines.

Moreover, to be exempt from withholding VAT, it must be proved that the (a) payee is a non-resident foreign corporation, and (b) the services were rendered outside the Philippines.

Facts:

Respondent CIR assessed Visayas Geothermal Power Company (VGPC) for deficiency FWT and final withholding VAT for taxable year 2002 on service fees paid to MidAmerican Energy Holdings Company (MidAmerican), a US corporation.

The CIR alleged that VGPC failed to declare and pay in its monthly remittance returns the FWT and withholding VAT due on the fees paid to MidAmerican covering corporate management, financial planning support, and technical and administrative support services for the operation of a power plant in the Philippines, as provided under a Service Agreement.

VGPC protested the assessment and argued, among others, that MidAmerican Energy's services were performed outside the Philippines. VGPC also claimed that the CIR's right to assess deficiency taxes for taxable year 2002 has prescribed.

Issues:

1. Are the service fees paid by VGPC to MidAmerican Energy subject to FWT?
2. Are the service fees subject to withholding VAT?
3. Has the right of the CIR to assess VGPC prescribed?

Ruling:

1. Yes. Section 28 (B) (1) of the Tax Code prescribes that a non-resident foreign corporation is liable for income tax on income derived from all sources within the Philippines. VGPC failed to prove that the CIR's assessment is incorrect.

Tax assessments by tax examiners are presumed correct and made in good faith. All presumptions are in favor of the correctness of a tax assessment unless proven otherwise. In order for a non-resident foreign corporation to not be subjected to FWT, it must prove that it is (a) a foreign corporation not engaged in business in the Philippines; and (b) its source of income is outside the Philippines. VGPC failed to establish that the services were rendered outside the Philippines. The Service Agreement merely stipulates the kinds of services that will be performed by MidAmerican but not the manner and the place where the said services will be performed.

2. Yes. Section 108 (A) of the Tax Code prescribes a 12% VAT on the 'sale or exchange of services' performed in the Philippines.

To be exempt from withholding VAT, VGPC must prove that (a) MidAmerican is a non-resident foreign corporation, and (b) the services were rendered outside the Philippines. Although VGPC proved that MidAmerican Energy is a non-resident foreign corporation, it failed to prove that the services were performed outside the Philippines.

3. No. The right of the CIR to assess VGPC has not yet prescribed. While taxes should be assessed within 3 years after the last day prescribed by law for the filing of the return, the prescription is extended to 10 years in the case of a false or fraudulent return.

Since VGPC failed to prove that MidAmerican Energy's income is derived from sources outside the Philippines and that it rendered services outside the Philippines, the FWT and VAT returns are considered false, justifying the application of the 10-year prescriptive period.

