# TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

# TAX UPDATES

**November 2014**

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## BIR Issuances

**Extended deadline for internal revenue stamps for cigarettes**
*(Revenue Regulations No. 9-2014, November 5, 2014)*

The deadlines for affixture of internal revenue stamps for tobacco products through the Internal Revenue Stamp Integrated System (IRSIS) under Revenue Regulations No. 7-2014 have been extended, as follows:

| | RR 7-2014 | New Deadline |
|---|---|---|
| For all locally manufactured packs of cigarettes | October 1, 2014 | December 1, 2014 |
| For all locally manufactured cigarettes found in the market | February 1, 2015 | March 1, 2015 |
| For imported cigarettes in the domestic market | February 1, 2015 | April 1, 2015 |

**Tax treatment of Stock Option Plans and other Option Plans**
*(RMC 79-2-14, November 3, 2014)*

RMC 79-2014 summarized and clarified the tax treatment of stock options plans and other option plans and imposed compliance requirement for corporations issuing stock options.

**A. Taxation of Stock Options**

1. ***Grant of Option.*** If the option was granted for a price, the full price of the option shall be considered capital gains subject to tax. If no payment was received from the grantee-employee, no tax shall be due and the grantor cannot claim deductions for the said option in the year it was given. DST on sale of shares (Sec. 175 of the Tax Code) is due upon issuance of the Option at the rate of P0.75 for every P200.

2. ***Sale or Transfer of Option.*** The sale, barter or exchange of stock option is treated as a sale of shares of stock not listed on the stock exchange. Hence, CGT shall be due on the transfer or sale of stock options if transferred for a consideration. If the transfer is without consideration, the transfer of the stock options shall be subject to donor's tax based on the fair market value of the option at the time of the donation.

3. ***Exercise of Options: (a) Equity-settlement Option.*** If g*rantee is an employee*- In the event the option is exercised, the difference between the book value/ fair market value of the shares, whichever is higher at the time of the exercise of the stock option, and the price fixed on the grant date shall be treated as compensation to the rank and file employee or fringe benefit to the supervisory or managerial employee.
   *If grantee is a supplier of goods and services*- the difference between the book value/ fair market value of the shares, whichever is higher at the time of the exercise of the stock option, and the price fixed on the grant date, shall be considered as additional consideration for services rendered or goods supplied and shall be subject to the proper withholding tax at source and other taxes.
   *If grantee is neither an employee nor a supplier.* In all other instances not covered by the above two scenarios, the difference in the amounts shall be considered donation subject to donor's tax.

   ***(b) Cash-settlement Option where*** there is no actual issuance of shares but the grantor pays the grantee the difference between the market value of the stock at the exercise date and the exercise price. Tax treatment shall be the same as with equity-settlement option above.

**B. Compliance requirements for grantors**

In addition to the above clarifications, RMC 79-2014 also mandates new compliance requirements for corporations issuing stock options.

1. ***Upon grant of the Option.*** - Within 30 days, the grantor shall submit to the RDO a statement under oath indicating the following:
   a) Terms and conditions of the stock option
   b) Names, TINs and positions of the grantees
   c) Book value, fair market value, par value of the shares subject of the option at the grant date
   d) Taxes paid on the grant, if any
   e) Amount paid for the grant, if any.

2. ***Upon exercise of the option*****.** On or before the 10th day of the month following the month of the exercise of the option, another report on the following shall be submitted:
   a) Exercise date
   b) Names, TINs, positions of those who exercised the option
   c) Book value, fair market value, par value of the shares subject of the option at the exercise date
   d) Mode of settlement ( i.e. cash, equity)
   e) Taxes withheld at exercise, if any
   f) Fringe benefits tax paid, if any.

**Petition for Review; G.R. No. 197228; Duty Free Philippines**, *v.* **BIR; October 08, 2014**

**Facts:** Duty Free Philippines (petitioner) filed a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax Appeals (CTA) Special First Division's Decision dated 4 June 2010 and Resolution dated 9 June 2011 in C.T.A. Case No. 7282. Petitioner directly appealed to the SC under Rule 45 of the 1997 Rules of Civil Procedure, assailing the aforesaid Decision and Resolution of the CTA Division.

In its Comment, respondent BIR raised the issue of the mode of appeal of petitioner. Respondent alleged that petitioner chose the wrong mode of appeal by directly availing itself of the remedies before the SC without first elevating the case to the CTA *en banc* as provided under Rule 16 of the Revised Rules of the CTA.

**Issue:** Whether or not Duty Free Philippines' mode of appeal was proper.

**Held:** The Petition is flawed with procedural infirmity. Section 2, Rule 4 of the Revised Rules of the CTA reiterates the exclusive appellate jurisdiction of the CTA en banc relative to the review of the court divisions' decisions or resolutions on motion for reconsideration or new trial in cases arising from administrative agencies such as the BIR. Clearly, this Court is without jurisdiction to review decisions rendered by a division of the CTA, exclusive appellate jurisdiction over which is vested in the CTA en banc.

**CTA Case Digest (November 2014)**

**Minute Resolution; CTA EB Case No. 1066 (CTA Case No. 7122); CIR vs. Pilipinas Shell Petroleum Corporation; November 3, 2014**

**Facts:** In CTA Case No. 1722, a Petition for Review was filed by Pilipinas Shell Petroleum Corporation (PSPC) on January 3, 2005 praying that Commissioner of Internal Revenue (CIR) be ordered to refund or issue a tax credit certificate amounting to P80,425,554.99 for excise taxes allegedly erroneously paid by PSPC on its sales of petroleum products to international carriers for their use or consumption outside the Philippines. The Court's Former First Division partially granted the Petition. A Petition for Review on Certiorari was filed by CIR before the Supreme Court, which was denied by way of a Minute Resolution.

**Issue:** Whether or not a Minute Resolution issued by the Supreme Court dismissing the Petition for Review on Certiorari be valid.

**Ruling: YES.** This Court has no authority to declare a Supreme Court decision as a void judgment. This is a Court of limited jurisdiction and declaring a Supreme Court ruling as void is not one of those.

Minute resolutions issued by this Court are as much precedents as promulgated decisions, hence, binding upon the parties to the action. As stated by the Supreme Court in *Alonso v. Cebu Country Club, Inc.,* a minute resolution binds the parties therein, and calls for *res judicata*'*s* application. Since the

Supreme Court has already ruled, with finality, that PSPC is entitled to a refund for the excise taxes it paid on petroleum products sold to international carriers, nothing left for CIR but to respect the same. By reason of *res judicata*, the binding effect of the ruling in G.R. No. 1884779 in relation to this instant case cannot anymore be assailed.

**CTA Case No. 8377; The Abba's Orchard School, Inc. v CIR; November 4, 2014**

**Facts:** Petitioner claims that it is a non-stock non-profit educational institution, therefore exempt from the payment of tax on income solely derived from its school related activities. Petitioner further explains that the alleged failure to withhold the necessary taxes from services were payments from professional fees made in favor of a general professional partnership, which is considered exempt from EWT.

**Issues:** Whether or not a Certificate of Exemption from the BIR is a condition precedent to the enjoyment/ entitlement of the income tax exemption guaranteed by Section 4, Article XIV of the 1987 Constitution and Section 30(H) of the NIRC.

**Held: No.** In the case of Republic of the *Philippines vs. Sunlife Assurance Co. of Canada*, the Supreme Court held that when the Tax Code does not provide for a requirement to be exempt, the BIR cannot add an additional requirement to implement the law.

In the present case, there is no dispute that Petitioner is a non-stock, non-profit educational institution. However, this does not automatically except Petitioner form income tax. It must also show that its income has been utilized actually, directly and exclusively for educational purposes and that no part of its income has been derived from activities conducted for profit. Having failed to prove the latter, the Petitioner was made liable to pay the deficiency income taxes.

**Proof of Doing Business outside the Philippines; CTA Case No. 8405, First Division; Nokia (Philippines), Inc. vs. CIR; November 7, 2014**

**Facts:** Petitioner filed an administrative claim with the BIR for the refund or issuance of TCC for its alleged unutilized input VAT.

**Issue:** Whether the petitioner is entitled to refund or TCC for its alleged input VAT payments attributable to its zero rated sales

**Held: NO.** The following elements must be present for a transaction to be treated as subject to the zero percent (0%) VAT under Section 1 08(8)(2), to wit:

1) the services must be performed in the Philippines;
2) the recipient of such services is doing business outside the Philippines;
3) the services must be other than processing, manufacturing or repacking goods; and
4) the consideration for the services is paid for in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

In this case, it was clearly established that the recipient of the service, Nokia Corporation, is a foreign corporation, by virtue of the following documents, viz: (1) Certificate of Non-Registration of Company dated May 17, 2011 55 issued by the Philippine Securities and Exchange Commission, stating that the latter's record do not show the registration of Nokia OY J (Nokia Corporation); (2) Extract from the Trade Register of Finland; and (3) Certificate of Fiscal Residence issued by the tax authority of Finland.

However, we cannot say that Nokia Corporation is a "nonresident foreign corporation" or "a foreign corporation not engaged in trade or business within the Philippines". In fact, petitioner's evidence discloses that Nokia Corporation is doing or engaging in business in the Philippines. Based on the foregoing, the services rendered or to be rendered by petitioner primarily consists of "handling any specific or general business matter that may arise with respect to Nokia 's business in the Philippines". Thus, petitioner's services to Nokia Corporation is anticipatory and is premised on the fact that the latter has an existing business in the Philippines. Such being the case, Nokia Corporation cannot be treated as a "nonresident foreign corporation" or "a foreign corporation not engaged in trade or business within the Philippines".

**Best Evidence Rule; CTA Case No. 8375, Second Division; Resolution; Village-Green Hog Farm, Inc. vs. CIR; November 14, 2014**

**Facts:** During the administrative proceedings, there was failure on the part of the petitioner to submit to respondent adequate records that could substantiate the amount of the expenses for taxable year 2007. Petitioner claims that his wariness to present documents was due to past experience when the BIR lost the documents submitted. Thus, the BIR issued a deficiency tax assessment based on best evidence rule which was affirmed by the Court.

Petitioner interposes the following grounds for reconsideration: [1] that there was no utter refusal on the part of petitioner to submit its records, thus, the use of the best evidence obtainable rule is inappropriate; and [2] that in the event petitioner is found liable for any deficiency tax, it should not be held liable for deficiency and delinquency interest; and [3] petitioner begs the indulgence of the Court to submit additional and adequate proof of legitimate farm inputs, as well as proof on actual remittances to SSS, PHILHEALTH, and PAG-IBIG.

**Issue:** Whether resort to the best evidence rule is appropriate?

**Held: YES.** The Court maintains that respondent's resort to the Best Evidence Obtainable in assessing petitioner for deficiency income tax by disallowing 50% of petitioner's expenses is justified and in full accord with Section 6(B) of the NIRC of 1997, as amended, as implemented by RMC 23-2000, specifically Sections 2.3 and 2 .4(c) thereof.

In this instance, not a single explanation was offered by petitioner as to why the documents were not presented and offered during trial. There was no allegation/ explanation that these documents were not

available during trial, and petitioner neither claims the occurrence of fraud, mistake or inadvertence to its omission to present the documents subject herein, nor alleges the commission of excusable negligence which ordinary prudence could not have guarded against.

Further, the proffered documents consisting of mere photocopies of checks and receipts, cannot be categorized as in the nature of newly discovered evidence which may be a ground for granting a motion for new trial.

**CTA Case No. 8310; Philippine Airlines, Inc. vs. CIR and Commissioner of Customs; November 14, 2014**

**Facts:** Petitioner seeks to refund the total sum of P3,945,615.62, representing specific taxes imposed on petitioner's various importations of liquors, wine and cigarettes for international flight consumption.

Petitioner posits that it is exempt from payment of specific taxes by virtue Section 13 of PD 1590 because the phrase "in lieu of all other taxes" means that the imposable taxes upon petitioner are limited only to its basic corporate income tax and franchise tax.

On the other hand, CIR argues that only government-owned and operated duty free shops, like the Duty-Free Philippines, have been expressly granted tax exemptions and such exemption covers payment of duties only as provided by Section 131(A) of the NIRC, as amended by RA 8424 and RA 9334. Accordingly, said provision does not expressly grant petitioner the same tax exemption with respect to excise taxes on its importation of wine, liquors and cigarettes. Moreover, respondent CIR argues that RA 9334 is more specific in its tax treatment of said goods and the phrase "the provision of any special or general law notwithstanding" clearly shows the intent to withdraw petitioner's exemption from excise taxes thereon. Thus, RA 9334 is deemed to have expressly withdrawn the conditional tax exemption granted to petitioner by PD 1590.

**Issues:** Whether or not petitioner is exempt from payment of specific taxes on all its importations of cigarettes, liquor and wine for its catering and commissary supplies

**Held: YES.** The argument of petitioner is meritorious. Section 13 of PD 1590 clearly states that the tax paid by the grantee, i.e., basic corporate income tax or franchise tax, whichever is lower, shall be in lieu of all other taxes.

For two decades following the grant of its franchise by Presidential Decree No. 1590 in 1978, PAL was only being held liable for the basic corporate income tax or franchise tax, whichever was lower; and its payment of either tax was in lieu of all other taxes, except real property tax, in accordance with the plain language of Section 13 of the charter of PAL. Therefore, the exemption of PAL from "all other taxes" was not just a presumption, but a previously established, accepted, and respected fact, even for the BIR.

This Court has consistently ruled that RA 9334 did not amend PD 1590 so as to strip the petitioner of the benefits granted by Section 13. Republic Act No. 1590 is a special law, which governs the franchise of petitioner. Between the provisions under P.O. No. 1590 as against the provisions under the NIRC of 1997, as amended by RA No. 9334, which is a general law, the former necessarily prevails.

However, petitioner is not entitled to claim the refund for failure to prove the following:
1. The imported liquors, wines and cigarettes must be commissary and catering supplies;
2. The imported liquors, wines and cigarettes are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto; and
3. The imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price.

**Remedies on Local Assessment; CTA EB N0.1008 (CBAA CASE NO. L-62; LBAA CASE NO. 2003-02); THE City Assessor Of Paranaque City vs. AFP Retirement And Separation Benefit System (AFPRSBS); November 03, 2014**

Facts: On January 28, 2004, the respondent received from the petitioner copies of the Revised Declarations of Real Properties, together with copies of Real Property Tax Order of Payment (RPTOP), increasing substantially (by 50%) the assessed value of the above-described parcels of land owned by the respondent beginning the year 2004 by reason of Paranaque City Ordinance No. 03-06 Series of 2003.

The Appellant assailed and contested the afore-said re-assessment and increase in the assessed value made on the subject properties of the Appellant. The Local Board of Assessment Appeals, however, in a Resolution denied the Appeal and pronounced that considering the issues raised by herein Appellant are anchored as to whether or not of (sic) Paranaque City Ordinance No. 03-06 Paranaque, Series of 2003 is valid and/or constitutional, settlement of such question must be resolved in the proper forum.

The CBAA in its Decision dated October 11, 2012 reversed and set aside the LBAA Resolution.

Issue: Whether or not the CBAA is correct in reversing LBAA's Resolution dated March 7, 2005 wherein the LBAA ruled that it has no jurisdiction over the original appeal filed by respondent AFPRSBS.

Held: YES. Section 226 of the LGC of 1991, as amended, clearly provides dissatisfied owners of real property with an administrative forum where they can file their protest to question assessments made by local assessors. Specifically, an aggrieved taxpayer can file an outright appeal before the LBAA against an adverse action of the assessor in the assessment of real property within sixty (60) days from receipt of the written notice of assessment.

In *Systems Plus Computer College of Caloocan City vs. Local Government of Caloocan City*, the Honorable Supreme Court confirmed that, under Section 226 of the LGC of 1991, the remedy of appeal to the LBAA is available from an adverse ruling or action of the provincial, city or municipal assessor in the assessment of property.

Truth to tell, it is erroneous for the LBAA to deny respondent AFPRSBS' appeal on the flimsy ground that it invokes a pure question of law when such appeal is precisely the administrative remedy specified by law to question a city government's action on assessment. The rule is trite that before seeking the

intervention of the courts, it is a precondition that the aggrieved party should first avail of all the means afforded by the administrative processes.

**Valid Waiver for Defense of Prescription; CTA EB CASE NO. 1010 and 1015, En Banc; CIR vs. Ajinomoto Philippines Corporation; November 03, 2014**

**Issue:** Whether or not the waiver executed by petitioner is valid?

**Held: NO.** In several cases, the Supreme Court consistently held that "a waiver of the statute of limitations under the NIRC, to a certain extent being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed." Under the principle of stare decisis, CIR's petition must be denied.

Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver.

In the instant case, the respondent failed to comply their own BIR issuances. The following defects of the waiver as found by this Court's Division, to wit:

1. The waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent.
2. The waivers failed to indicate the date of acceptance.
3. The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.

**Proof of guilt beyond reasonable doubt; CTA CRIM CASE NO. 0-071 & 0-085, Third Division; People of the Philippines vs. Bienvenido s. Dimson; November 12, 2014**

**Issue:** Whether or not the prosecution failed to prove the guilt of the accused beyond reasonable doubt

**Held: NO.** Accused was charged of willful non-payment of deficiency income taxes. All the elements of the crime were sufficiently proven by the prosecution. Accused is the person responsible for the acts of the corporation; accused was aware that there was demand on him to pay deficiency taxes; and accused willfully failed to pay the assessed tax liabilities in both cases at the time it was legally required to be paid.

It bears stressing that the willfulness of the act of the accused was manifested through his failure to make the necessary amendments or corrections in the ITRs, if he had really no intention to defraud the government. The prosecution was able to prove that the accused was properly notified by the BIR regarding the assessment notices. Accused did not submit evidence before the administrative body to refute the assessments.

In fine, accused was not able to give convincing evidence to back up his assertion that he indicated the income only "for purposes of complying with the DPWH requirement."

**CTA EB Case No. 1067; Energy Development Corporation (PNOC) vs. CIR; November 3, 2014**

**Facts:** This Court's Division partially granted EDC's petition for refund of the Php34,393,008.72 out of the Php131,623,246.06 claimed attributed to EDC's substantiated zero-rated sales for the year 2008. EDC sought a reconsideration on the ground that there is nothing in RA 9337 which authorizes the disallowance of input VAT based on the failure to indicate the word VAT or TIN-VAT on the VAT receipt or invoices. Said motion was denied for lack of merit, hence, the present petition was filed by EDC.

**Issues:** Whether the Court in Division was correct in partially disallowing the refund.

**Held:** A taxpayer claimant must not only establish that he is entitled to the claim, he must also show proof of compliance with the substantiation requirements as mandated by law and regulations.

Receipt or invoice which does not comply with the invoicing requirements as mandated by the law and regulations shall not be considered as a "VAT Invoice" or "VAT official receipt" and shall not give rise to any input tax. The requirement showing the amount of tax as a separate item in the invoice or receipt proceeds from the rule-making authority of the Secretary of Finance.

**VAT on interest; CTA EB Case No. 1155; KEPCO PHILIPPINES CORPORATION vs. CIR; November 3, 2014**

**Facts:** Petitioner extended financial assistance with interest to its affiliates, namely: Kepco Ilijan Corporation (KEILCO) and Kepco Philippines Holdings, Inc. (KPHI).

**Issue:** Whether or not petitioner is liable to pay 2007 deficiency VAT on interest income on loans extended to affiliates.

**Held:** Under the law, VAT is imposable on transactions incidental to taxpayer's main business activity. Interest income on loan assistance extended by petitioner to its affiliates, being incidental to its business, is deemed a transaction "in the course of trade and business". Thus, subject to VAT.

When petitioner extended interest bearing loans to its affiliates, it provided financial assistance for a fee or remuneration or consideration, regardless of whether petitioner has realized profit or not. Such financial assistance is considered sale of service covered by VAT. Here, the loans granted by petitioner to KEILCO and KPHI are intended to be allocated for the construction of the generating power plant to be located in Ilijan, Batangas and for the purchase of shares of stock in SPC, a publicly listed generation company in Cebu, respectively. Evidently, these loan transactions are in furtherance of petitioner's main line of business of rehabilitation, operation, maintenance, management not only of its power generating plants but also "other power generating plants and related facilities for the conversion into electricity of fuel" as shown in its amended articles of incorporation.

**CTA AC No. 107; MARIETTA A. BONDAD and DONALD DAGANOS vs. LEPANTO CONSOLIDATED MINING COMPANY; November 4, 2014**

**Issues:** Whether or not Lepanto is entitled to 50% of the tax rate under Section 143 (c) of the LGC.

Whether or not the term "exporters" in Section 143(c) of the LGC is limited by the phrase "essential commodities"

**Held:** Respondent is entitled to the preferential tax rate of 50% prescribed by Section 143(c) of the LGC to exporters.

The term exporter in Section 143(c) of the LGC is not limited to essential commodities. In the present case, respondent is an exporter of minerals. As the term exporters in the aforesaid laws are not limited by the phrase "essential commodities," as clarified by the Implementing Rules of the LGC and the Model Local Government Revenue Code, respondent is therefore entitled to the preferential rate of 50% of the tax imposed as stated in Section 143(c) of the LGC.

**CTA Case No. 8549, Second Division; Maersk Global Services Centres (Philippines), Ltd. vs. CIR; November 14, 2014**

**Issue:** Whether or not the setting up of the provision for bad debts or allowance for impairment losses for unrecoverable input taxes for financial accounting purposes negates Petitioner's right to refund the unutilized and excess input VAT attributable to zero-rated sales?

**Held: NO.** As correctly pointed out by petitioner, there is no law or ruling that prohibits a taxpayer from claiming a refund of excess input tax if it has a contra-asset account for its recorded input tax claim for financial reporting purposes.

Further, allowances for uncollectible accounts that have not been written off, such as petitioner's allowance for unrecoverable input tax, are not deductible for income tax purposes, thus, have no tax consequence pursuant to Section 34(E)(1) of the NIRC of 1997, as amended. In the event that the claim for refund is granted, the entry for the allowance is simply reversed for financial reporting purposes but remains to have no income tax consequence.

## SEC Issuances

**Extension of Compliance with Memo Circular 9-104**
**(**SEC Memorandum Circular No 20-2014, November 10, 2014)
MC 9-2014 mandates all Corporate Governance covered companies to file their respective Manual of Corporate Governance reflecting the amendments to the Revised Code on Corporate Governance. The deadline has been extended from 31 July 2014 to 31 December 2014.

Basic penalty of P20,000 is for noncompliance and continuous failure to comply is subject to P2,000 monthly penalty.