TMAP Tax Updates for September 2017
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BIR Issuances

Policy on classifying inactive taxpayers

The Bureau of Internal Revenue (BIR) issued the following policies and guidelines in classifying or tagging inactive business taxpayers.

Classification criteria

The following taxpayers engaged in trade or business shall be classified as inactive taxpayers:

1. Registered business taxpayers who failed to file all the required internal revenue tax returns for all tax types that they are registered for and failed to pay the tax due thereon for the last two consecutive years from the date of the last returns filed, or date of registration covering the following scenarios:
    a. with issued taxpayer identification number (TIN) and Certificate of Registration (COR) only
    b. with issued TIN via electronic registration (eREG) without COR
    c. with issued TIN without COR
    d. with issued TIN through Securities and Exchange Commission (SEC) with Philippine Standard Industrial Classification (PSIC) "0000" – Unclassified.
2. Taxpayers that have notified the BIR district office of the temporary cessation of their business operations.
3. Cannot be located (CBL) taxpayers, i.e., taxpayers that cannot be located or contacted after the conduct of the ocular inspection/verification/Tax Compliance Verification Drive (TCVD), or taxpayers that cannot be served Letter Notices, Letter of Authorities, and Tax Verification Notices due to failure of revenue officers to locate the subject taxpayers after exhausting all possible means to do so.

Policies and guidelines

The following policies and guidelines shall be observed in tagging/classifying the status of taxpayers.

1. Inactive self-employed individuals who are registered as employees (mixed-income earner) shall not be tagged as inactive taxpayers. However, any unused official receipts/invoices for which a valid authority to print (ATP) has been previously granted to his/her business shall be deemed cancelled/invalidated upon end-dating of its registered business tax types and shall be duly surrendered to the concerned Revenue District Office (RDO) for destruction.
2. The cash register machine/point of sale (CRM/POS) permits issued, as well as any unused official receipts/invoices for which a valid ATP has been previously granted to all business taxpayers tagged as inactive shall be deemed cancelled/invalidated as of date of tagging.

3. In case of TIN issued to the estate of a decedent under the one-time transaction (ONETT), upon full payment of the estate tax by the heirs, administrator or executor, the issued TIN for the estate shall be tagged as inactive. However, in case additional properties are discovered after payment of the estate tax, the TIN previously issued for such estate shall be updated to active status to facilitate the filing of the amended estate tax return, and shall be tagged inactive upon full settlement of the tax liabilities of the estate. In case the decedent's business is operated by heirs under the "estate of decedent", the TIN shall not be cancelled. It shall be treated as a separate individual taxpayer until closed/liquidated by the heirs, in accordance with existing rules and procedures.
4. Business taxpayers under the list of inactive taxpayers who are found to be existing and operational will be given a prescribed reminder letter requiring them to respond within five working days upon receipt of such letter. If no response is received from the taxpayer within the prescribed period, the RDO/Large Taxpayer's Division (LTD) shall recommend closure of business operation pursuant to Section 115 of the Tax Code, as amended, and file appropriate criminal/civil charges based on existing rules and regulations.
5. Registered individual business taxpayers who have erroneous taxpayer type classification during registration must submit a duly notarized affidavit to that effect with their respective RDOs. The RDO, through the Client Support Section (CSS) Chief, shall conduct validation if taxpayers have not filed and paid any tax returns on the erroneous tax/form type. In cases where a return was filed and/or paid, open cases thereto shall be considered valid and shall be subjected to corresponding penalties. Otherwise, all existing open cases shall be deemed invalid and shall be subject to "datafix" by their respective Regional Data Centers (RDCs).
6. Permanent closure of business shall be effected only upon submission of the necessary documents prior to changing the status from "inactive" to "ceased/dissolved" and resolution/closure of valid "stop-filer" cases. However, upon filing of closure of business, the RDO through the CSS Chief must effect the end-dating of tax types and form types to prevent the creation of invalid "stop-filer" cases and immediate commencement of investigation if necessary.
7. Penalties shall be imposed on taxpayers who failed to file/pay tax returns up to the time of filing the application for closure of business. The taxpayer shall then be required to submit the duly accomplished BIR Form 1905 and fulfill all other necessary requirements for the closure of the business registration.
8. Business taxpayers that had been tagged as inactive but are determined to have business transactions in the future shall be reactivated to have their status reverted to "active". The applicable form types and tax types shall be re-opened/registered/encoded. Once reverted to active status, the taxpayers shall be required to apply for a new set of invoices/receipts, if applicable.

(Revenue Memorandum Order No. 18-2017, 14 August 2017)

Monitoring of top taxpayers in revenue regions

The tax compliance of the top taxpayers from the following 12 revenue regions that contribute the largest share in the total BIR collections shall be subject to strict monitoring to ensure their compliance with their tax filing, payment, and other tax compliance obligations.

1. Revenue Region No. 1 – Calasiao, Pangasinan
2. Revenue Region No. 4 – San Fernando, Pampanga
3. Revenue Region No. 5 – Caloocan City
4. Revenue Region No. 6 – Manila
5. Revenue Region No. 7 – Quezon City
6. Revenue Region No. 8 – Makati City
7. Revenue Region No. 9A –CaBaMiRo (Cavite, Batangas, Mindoro, and Romblon)
8. Revenue Region No. 9B – LaQueMar (Laguna, Quezon, and Marinduque)
9. Revenue Region No. 12 – Negros Island Region
10. Revenue Region No. 13 – Cebu City
11. Revenue Region No. 16 – Cagayan de Oro
12. Revenue Region No. 19 – Davao City

The top taxpayers in the Top 12 Revenue Regions shall be composed of the top 500 non-individual taxpayers of the select revenue regions who satisfy the criteria for large taxpayers but have not been notified by the Commissioner of Internal Revenue; national government agencies, local government units, government-owned and -controlled corporations, and state universities and colleges are excluded.

A regional monitoring team shall be created to monitor the tax compliance of the top taxpayers in the revenue regions, to undertake profiling by sector/industry for benchmarking purposes, to act on processed third-party data matching, and to recommend candidates for tax audit.

(Revenue Memorandum Order No. 17-2017, 7 August 2017)

Venue for filing permit to use loose-leaf books of accounts

To improve its services as part of its ease of doing business initiative, the BIR changed the venue for processing of application and issuance of permit-to-use (PTU) loose-leaf books of accounts and accounting records from the BIR Revenue Regional Offices to the RDO where the principal office of the taxpayer is registered, with the requirements remaining the same, as follows:

1. Duly-accomplished BIR Form No. 1900
2. Sample format and printout to be used
3. In lieu of the investigation, a sworn statement specifying the following: (a) identifying the books to be used, invoices/receipts and other accounting records together with the serial numbers of principal and supplementary invoices/receipts to be printed; and (b) commitment to permanently bind the loose-leaf forms within 15 days after the end of each year or upon termination of its use.

In case of application involving the taxpayer’s head office, the PTU loose-leaf issued to the head office shall cover all identified registered branches and shall be valid in any RDO where the taxpayer has registered branches at the time of issuance. A certified true copy of the PTU issued by the RDO of the head office must be furnished to each branch authorized to use the approved loose-leaf.

(Revenue Memorandum Circular No. 68-2017, 15 August 2017)

Court of Tax Appeals (CTA) Decisions

Section 50 of the Tax Code does not include the power to impute interest income on non-interest bearing loans

Under Section 50 of the Tax Code, the Commissioner of Internal Revenue (CIR) is authorized to distribute, apportion, or allocate gross income or deductions between or among organizations owned and controlled directly or indirectly by the same interests, if the Commissioner determines that such distribution, apportionment, or allocation is necessary to prevent evasion of taxes and to clearly reflect the income of any such organization.

In the instant case, the BIR assessed a freeport enterprise engaged in the restaurant business for deficiency income tax by imputing interest income on its non-interest bearing loans extended to its affiliates pursuant to Section 50 of the Tax Code. The taxpayer argued that the advances to affiliates were in the nature of working capital contributions, and the BIR has no authority to charge income on advances made to its related parties if no income actually exists.

The Court of Tax Appeals (CTA) held that pursuant to the Supreme Court (SC) decision in the case of Commissioner of Internal Revenue vs. Filinvest Development Corporation (G.R. Nos. 163653 and 167689, 19 July 2011), the CIR’s powers of distribution, apportionment, or allocation of gross income and deductions under Section 43 of the 1993 Tax Code (now Section 50 of the Tax Code), and Section 179 of Revenue Regulations No. 2 do not include the power to impute "theoretical interests" to the controlled taxpayer's transactions. In relation to this, the SC further held that pursuant to Article 1956 of the Civil Code, no interest shall be due unless it has been expressly stipulated in writing.

The CTA held that there was no evidence on record showing any agreement on interest between the taxpayer and its affiliates on the loans or advances. According to the CTA, it was also not shown that the taxpayer received cash from the alleged interest as the BIR merely based its assessment on the account description and amount presented in the taxpayer's audited balance sheet and nothing else.

Considering that there was no evidence on record showing an agreement on interest between the taxpayer and its affiliates on the loans and advances, the CTA held that the imputation of interest income has no legal and factual bases, hence, it ordered the cancellation of deficiency income tax assessment on the non-interest bearing loans extended by the taxpayer to its affiliates.

(Yi Wine Club v. Commissioner of Internal Revenue, CTA Case No. 8809, 4 August 2017)

Failure to indicate the due date to pay deficiency tax invalidates the FAN

In the case of Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation (G.R. No. 128315, 29 June 1999), the SC held that for a tax assessment to be valid, an assessment must be sent to and received by a taxpayer, and must contain not only a computation of tax liabilities but also a demand for payment within a specific period.

In the instant case, the final assessment notice (FAN) and final letter of demand (FLD) that were issued to the taxpayer bore no due date for the payment of the taxpayer's alleged surcharge, interest, and compromise penalty. The CTA noted that while the FLD specifically states that the taxpayer is requested to pay its deficiency surcharge and interest through the duly authorized agent bank where the taxpayer is enrolled within the time shown in the enclosed assessment notice, the due date in the enclosed FAN was left blank.

The CTA held that since the FAN did not indicate the period to pay the deficiency tax (consisting of surcharge, interests, and compromise penalty), it cannot be considered a valid formal assessment notice. Hence, the FAN and, consequently, the FLD and final decision on disputed assessment (FDDA), which demanded the payment of the deficiency tax (consisting of surcharge, interests, and compromise penalty), as contained in the void FAN, was cancelled by the CTA.

(Saturn Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9085, 18 August 2017)

Zero-rated sale need not occur in the same year of VAT refund claim

In the case of a claim for refund of excess unutilized input value-added tax (VAT) attributable to zero-rated sales, there is nothing in the Tax Code that requires a taxpayer to have zero-rated sales in prior period or within the period covered by the claim before filing a refund of its input taxes. What the law requires is that the taxpayer have zero-rated or effectively zero-rated transactions.

In the instant case, the taxpayer-refund claimant is a company engaged in the business of acquiring and developing real estate for sale or lease. In pursuance of its business, the company purchased on 14 September 2012 several parcels of land located in a special economic zone. On 7 January 2013, the same land was leased to an enterprise registered with the Philippine Economic Zone Authority (PEZA) for a period of 25 years, which the company treated as a VAT-zero rated sale transaction. The company filed a claim for refund or issuance of tax credit certificate for its unutilized input VAT incurred

arising from the purchase of land attributable to the zero-rated lease of its land to the PEZA-registered enterprise.

The BIR argued that the company cannot claim refund of its unutilized input VAT for 2012 since there are no zero-rated transactions for 2012. The BIR further contended that assuming the claim for refund is possible, as the property is merely rented out for 25 years, ownership remains with the respondent and the refund can only be made when the property is eventually sold. The BIR claimed that only the portion of unutilized input VAT that is attributable to such zero-rated sale can be refunded, which in the taxpayer's case refers to the contract of lease for a period of 25 years.

On the other hand, the company argued that the phrase "attributable to zero-rated sales" does not refer only to sales that have already occurred in the past but can also refer to sales yet to be made, and there is nothing in the Tax Code that requires a taxpayer to have zero-rated sales in prior period or within the period covered by the claim before filing a refund of its input taxes.

The CTA held that neither the law nor the implementing regulations provide that in a claim for refund of input VAT there should be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid. The law does not provide that the input tax in the purchase of land be refunded only when it is sold or input tax thereon be apportioned to the period of lease. Also, neither the law nor the implementing regulations provide that the option to carry over to the succeeding quarters any unutilized input tax or to file a claim for refund and to avail of an option precludes choosing that of the other.

According to the CTA, what the law and the implementing regulations provide is that a taxpayer who has zero-rated or effectively zero-rated transactions are allowed to apply for the issuance of a tax credit certificate or a tax refund for input taxes paid, in addition to the option to carry forward the input taxes against future output tax liabilities. To be entitled to the issuance of a tax credit certificate or tax refund, the input taxes should not have been applied against output taxes, the input tax must be attributable to zero-rated or effectively zero-rated sales, and the claim should be made within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

[Commissioner of Internal Revenue v. KEP (Philippines) Realty Corporation, CTA EB NO. 1504 re CTA Case No. 8983, 18 August 2017]

Referral memorandum is not equivalent to LOA

Under Section 6(A) of the Tax Code, an authorization from the CIR or from his duly authorized representative is needed in order to examine any taxpayer. Pursuant to Sections 10 and 13 of the Tax Code, a Letter of Authority (LOA) from the Revenue Regional Director is needed before a Revenue Officer can examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due.

In the instant case, the person who conducted the examination of the taxpayer's records is not among the revenue officers authorized in the LOA issued to the taxpayer: The person replaced one of the revenue officers named in the LOA. According to the

BIR, the taxpayer was informed of the reassignment and continuance of audit by the revenue officer pursuant to the Referral Memorandum issued by the Revenue District Officer.

The CTA held that the Referral Memorandum for the re-assignment and continuance of audit signed by the Revenue District Officer is not equivalent to an LOA. The CTA maintained that the Referral Memorandum signed by the Revenue District Officer does not give authority to the revenue officer who conducted the examination of the taxpayer's records. Moreover, pursuant to Sections 10 and 13 of the Tax Code, as amended, it is the Revenue Regional Director who may issue an LOA, not the Revenue District Officer.

In support of its findings, the CTA cited the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 222743, 05 April, 2017), where the SC ruled that an assessment is void in the absence of an LOA and that a Letter of Notice even if signed by the CIR does not convert it to an LOA. Moreover, citing the case of *Commissioner of Internal Revenue vs. Sony Philippines, Inc.* (G.R. No. 178697, 17 November 2010), the CTA held that even if there is a valid LOA, it is equally important that the revenue officer so authorized must not go beyond the authority given, otherwise the assessment or examination is a nullity.

Considering that the revenue officer examined the taxpayer's records without authority, the CTA held that the examinations and the tax deficiency assessments issued against the taxpayer are void.

(Composite Materials, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1314 re CTA Case No. 8306, 15 August 2017)

Mistake or error does not automatically make a return a false return

As an exception to the three-year prescriptive period, Section 222 of the Tax Code provides that in case of false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within the 10 years after the discovery of the falsity, fraud, or omission.

In the instant case, the BIR alleged that the company filed a false return due to the late payment of the final withholding tax (FWT) on dividends that it declared in favor of its stockholders on 22 December 2006, which was paid on 2 February 2007. In relation to this, the company filed its FWT return (BIR Form No. 1601-F) and paid the tax on the cash dividends through the eFiling and Payment System (eFPS) with the payment confirmed on 12 March 2007.

The BIR assessed the company with surcharge of 50% and 20% interest for late payment of the FWT on cash dividends pursuant to the preliminary assessment notice and assessment notice/final letter of demand, which the company received on 28 January 2013, and 27 February 2013, respectively. The BIR maintained that the company should have filed its FWT return and paid the tax on 10 February 2007, instead of 10 March 2007, pursuant to Section 2.57.4 of Revenue Regulations No. 2-98, as amended.

The BIR asserted that the taxpayer willfully filed a false return when it indicated that the FWT return was for the month of February 2007 instead of January 2007, which warrants the imposition of the 50% surcharge. The BIR further contended that the false entry in the FWT return is sufficient to justify the application of the 10-year prescriptive period under Section 222 (A) of the Tax Code, and following the definition of a false return as merely a deviation from the truth whether intentional or not, as explained in the SC case of *Aznar v. Court of Tax Appeals.*

On the other hand, the company maintained that the assessment is already barred by prescription since the assessment notice was issued almost three years after the expiration of the three-year prescriptive period. Moreover, it maintained that it did not file a false return with intent to evade tax, which would justify the application of the 10-year prescriptive period.

While the CTA En Banc is aware of the recent SC decision in *Commissioner of Internal Revenue v. Asalus Corporation* (G.R. No. 221590, 22 February 2017), which reiterated the declaration in the *Aznar* case that a "mere showing that the returns filed by the taxpayer were false, notwithstanding the absence of intent to defraud, is sufficient to warrant the application of the 10-year prescriptive period under Section 222 of the NIRC", it maintained that in the later case of *Commissioner of Internal Revenue v. Philippine Daily Inquirer* (G.R. No. 213943, 22 March 2017), the SC stated that the entry of wrong information due to mistake, carelessness, or ignorance, without intent to evade tax, does not constitute a false return.

According to the CTA En Banc, each and every error does not and should not result in the operation of the 10-year prescriptive period. Otherwise, on the strength of the *Aznar* definition of "false returns", BIR examiners conducting regular tax audits, who, logically as a matter of course, would always come up with tax findings of either under-declaration of income or over-declaration of deductions, or both, could mercilessly and arbitrarily raise the argument of "false return" giving rise to the 10-year prescriptive period.

Thus, in the instant case, while the CTA En Banc agrees that the act of considering the cash dividends as income payments for the month of February (instead of January) and paying the withholding tax due only on 10 March 2007 (instead of 10 February 2007) was a mistake, it does not consider such mistake a falsity that would trigger the operation of the 10-year prescriptive period considering the following:

a) There was no design to mislead or deceive on the part of the company, since the mistake in filing arose from the company's mistake in applying RR 2-98 with respect to the period when to withhold the FWT.
b) There was no intentional non-disclosure or omission so as to put the BIR at a disadvantage in the investigation since the BIR was not prevented from issuing the deficiency assessment within the general three-year prescriptive period.
c) There was no evidence or proof to show that the company intentionally declared its dividend transaction in March 2007 instead of February 2007 to establish that there was fraudulent intent or willful intent to evade the payment of the correct amount of tax, or the penalties and interest.

Considering that the CTA En Banc found no evidence to prove that the company filed a false return, which would warrant the application of the 10-year prescriptive period, it deemed the assessment for penalties and interest already prescribed, having been issued beyond the three-year prescriptive period.

(Commissioner of Internal Revenue v. Hoya Glass Disk Philippines, CTA EB No. 1524 and 1529 re CTA Case No. 8703, 16 August 2017)

Refund of excess input VAT by renewable energy developers

Under Sections 106(A)(2)(c) and 108(8)(3) of the Tax Code in relation to Section 15(g) of Republic Act (RA) No. 9513, or the Renewable Energy Act of 2008, purchases of goods, properties, and services by renewable energy (RE) developers from local suppliers that are needed for the development, construction, and installation of its plant facilities and for the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors, are subject to zero-percent VAT.

Likewise, pursuant to Section 108(8)(7) of the Tax Code, as amended, the sale of power generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels is subject to zero-percent VAT.

In the instant case, the taxpayer-refund claimant is a renewable energy developer whose suppliers passed on to it the VAT from its local purchases. Considering that the input VAT on its local purchases were attributable to its zero-rated sale of electricity, it sought refund of the VAT passed on by its local suppliers.

The CTA held that being an RE developer, the taxpayer-refund claimant is entitled to zero-rated VAT on its purchases of local supply of goods, properties, and services needed for the development, construction, and installation of its plant facilities and for the whole process of exploring and developing renewable energy sources up to its conversion into power. As such, the CTA maintained that as an RE developer, the taxpayer-refund claimant should not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases were zero-rated, that is, no output tax was paid by the suppliers. Accordingly, no input tax should have been shifted or passed on to the taxpayer.

The CTA held that the proper recourse is not a claim for refund against the BIR, but for the taxpayer to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services, since its purchase of local goods, properties, and services needed for the development, construction, and installation of the plant facilities as well as its

purchase of goods, properties, and services for the whole process of exploration and development of renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors or contractors, are subject to zero-percent VAT.

(Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 8871, 8937, 8999 and 9042, 2 August 2017 and Hedcor, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8875, 1 August 2017)

FAN received simultaneously with the PAN is void

Under Section 3 of Revenue Regulations No. 12-99, as amended, the CIR or his duly authorized representative is required to issue a preliminary assessment notice (PAN) against the taxpayer whenever there is a finding of any deficiency tax due. The taxpayer shall be required to respond to the PAN within 15 days from receipt thereof. The taxpayer's failure to respond within the prescribed period will result in the taxpayer being considered in default, and shall lead to the issuance of the FLD/ FAN.

In the instant case, the taxpayer received both the PAN (dated 27 December 2013) and the FLD and FAN (dated 14 January 2017) on 7 January 2017. The taxpayer argued that the assessments are void for having been improperly issued and in violation of its right to due process. The taxpayer alleged that it received FLD/FAN on 7 January 2017 before the FLD and FAN's supposed date of issuance on 14 January 2014, and even before it could respond to the PAN.

The CTA reiterated its ruling in several cases that the issuance of the FLD/FAN prior to the lapse of the 15-day period given to the taxpayer to respond to the PAN is a violation of the taxpayer's right to due process. The CTA noted that the taxpayer received the PAN through registered mail on 7 January 2014 and, thus, it had 15 days therefrom, or until 22 January 2014, to file its response/protest. However, the taxpayer received both the PAN and the FAN on the same day, that is on 7 January 2014, which clearly shows that the FLD/FAN was issued and received prior to the lapse of the 15-day period given the taxpayer to respond to the PAN. According to the CTA, this constitutes a denial of the taxpayer's right to due process.

The CTA noted that the irregularity in the dates of issuance and receipt of the FAN emphasizes more clearly the importance of the observance of the mandatory 15-day period granted to the taxpayer to reply to the PAN before a FAN can be issued. As held by the CTA, time is essential in the procedure of administrative protest because any escalation in the levels of the protest, i.e., FLD/FAN leaves the taxpayer with fewer options, such as going to the CTA on appeal or entering into a compromise settlement, among others, which all entail financial costs to the taxpayer. Hence, according to the CTA, the mandatory period granted to assail the PAN is integral to the right of due process granted by law to the taxpayer.

(Travel Warehouse, Inc. v Commissioner of Internal Revenue, CTA Case No. 9103, 7 August 2017)

Bureau of Customs (BOC) issuance

Establishment of Authorized Economic Operator (AEO) Program

The Bureau of Customs (BOC) has established an Authorized Economic Operator (AEO) Program in the Philippines to comply with the commitment of the government to implement its international trade agreements for the purpose of simplifying and facilitating global trade.

The AEO shall have three components, namely: (a) cargo security system, (b) trade clearance system, and (c) mutual recognition arrangement. The AEO may be fully implemented or implemented by phases, depending on available resources and capacity of the BOC. Importers, exporters, customs bonded warehouse and customs facility warehouse, customs brokers, non-vessel operating common carriers, freight forwarders, international freight forwarders with offices in the Philippines, shipping lines or airlines and their agents, authorized agent banks, local transport operations and their facilities and equipment, and foreign suppliers may participate in the AEO.

In order to be accredited, the applicant must meet the standard of reliability and trustworthiness, which shall be measured by level of its risk, the nature of its business, and the conduct of its importation as against customs revenue, compliance, and cargo security. To assess the risk, the BOC shall, among others, look into the business ownership, corporate or business profile, and customs compliance history.

The processing of AEO applications shall consist of three levels, Level 1 being the lowest with limited benefits and Level 3 being the highest with additional benefits to members. Depending on the level of accreditation, some of the benefits that a member shall enjoy are as follows:

- Exemption from renewal of accreditation
- Dedicated help desk for AEO applicants
- Dedicated processing lane with no documentary, physical, and non-intrusive inspection
- Advance clearance process
- Periodic lodgement where single goods declaration is allowed for a given period
- One-time exemption certificate that will cover all importation of goods that are duty- and tax-exempt
- Expedited customs clearance for exports.

(Customs Administrative Order No. 5-2017, 18 August 2017)

Bureau of Local Government Finance (BLGF) Opinion

Commencement of period to pay RPT on machinery/equipment of PEZA enterprises under ITH

Under Section 23 of Republic Act No. 7916 (PEZA Law) in relation to Article 78 of the Executive Order No. 226 (Omnibus Investment Code of 1987), a PEZA-registered enterprise under income tax holiday (ITH) is exempt from real property tax (RPT) during the first three years of its use of its machinery and equipment used in production operations.

In the instant case, the PEZA-registered enterprise is under ITH for a period of four years, which commenced in October 2013. During its ITH period, the PEZA enterprise was exempted from RPT starting from 2013 for the machinery and equipment operated in October 2013, and thus, on the fourth year of operation of its machinery and equipment in October 2017, it shall become liable to pay the RPT. But since it will already be under the 5% gross income tax, the issue is whether the PEZA enterprise shall no longer be liable to pay RPT beginning 1 October 2017, or whether it should be exempt for the whole year of 2017.

The Bureau of Local Government Finance (BLGF) discussed that under Section 246 of the Local Government Code (LGC), the RPT shall accrue on the first day of January and shall be applied for the whole year. Hence, the BLGF opined that it is proper that the PEZA enterprise pay its RPT for the whole year, falling on the fourth quarter tax due, considering that its RPT has already accrued on the first day of the year even if its ITH would expire before the fourth quarter in 2017. It further opined that while it is true that the gross income tax (GIT) incentive shall be applied to the PEZA enterprise at the time of expiration of its ITH, it cannot apply to RPT since its accrual begins on the first day of January on the year following its operations. According to the BLGF, the GIT incentive claimed by the PEZA enterprise shall be applied the following year, which will commence on 1 January 2018.

(BLGF Opinion dated 11 July 2017 issued to the Municipal Treasurer of Claver, Surigao Del Norte in response to query on commencement of RPT exemption of PEZA-registered enterprises)