



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.



TMAP TAX UPDATES FOR JULY 2015

(Prepared by Castillo Laman Tan Pantaleon and San Jose)

COURT OF TAX APPEALS DECISIONS

Cityland, Inc., v. City of Makati, CTA AC-125, July 2, 2015

The dispute is over the validity of subjecting Cityland to business tax as a real estate developer (or as owner/ operator of real estate developer) based on Section 3A.02(m) of the Revised Makati Revenue Code. Under Section 3A.02(g) in relation to Section 3A.02(m) of the Revised Makati Revenue Code, the business tax on a real estate dealer with domestic gross sales or receipt for the preceding calendar year of P2,000,000.00 or more is P15,000.00 plus 75% of one percent (1%) over P2,000,000.00.

Petitioner Cityland alleges that the said Section 3A.02(m) is by itself invalid, being beyond the taxing powers of a city government under the Local Government Code. Petitioner further posits that respondent is barred by the principle of estoppel from changing petitioner's classification from "real estate dealer" to "real estate developer." Finally, petitioner pleads that even if it may be reclassified for local business taxation purposes as a "real estate developer," it should nonetheless be entitled to the lower tax rate for "real estate dealer."

Ruling

First Issue: The fact that the Billing Assessments issued by the Business Permits Office of Makati City to Cityland from 2000 to 2011 consistently assessed the corporation as a real estate dealer is not conclusive that Cityland has been immutably classed as such a dealer and may no longer be reclassified as a real estate developer. The documents relied upon by Cityland were for business permits, and the City Treasurer was not a signatory to any of them. Cityland cannot rely on these documents to place respondent in estoppel.

Second Issue: Section 3A.02(M) of the Revised Makati Revenue Code is inapplicable to Cityland. By its very language, Section 3A.02(m) of the Revised Makati Revenue Code is limited in application to the "owners and operators of real estate developer." Respondent would have this Court believe that the phrase "owners and operators of real estate developer" means nothing more than "real estate developer." Indeed, this is the more logical and legally-sound construction that can be given to Section 3A.02(m). Unfortunately for the

respondent, the phraseology adopted by the Sangguniang Panlungsod of Makati City is clear enough, giving the Court no ground to engage in interpretation.

Third Issue: Section 3A.02(m) is violative of Section 146 of the Local Government Code. Section 146 of the LGC states that "the tax on a business must be paid by the person conducting the same." This is a statutory limitation on the taxing authority of a local government unit, such as a city. This mirrors Section 178 of the old National Internal Revenue Code (Commonwealth Act No. 466), as amended by R.A. No. 1612 (August 24, 1956), that "the tax on a business must be paid by the person, firm, or company conducting the same."

In a corporation, the stockholders are not the recipients of the gross sales or receipts, but the corporation itself. In a corporation, the stockholders as owners of shares of stocks are not necessarily the ones conducting the business, particularly if such stockholders are not at the same time directors, officers or employees of the corporation; it is the corporation itself, as a juridical entity distinct from its stockholders, that conducts the business. A corporation may, however, also engage another entity to operate the business, or a segment thereof, on its behalf. It is noteworthy that in none of her pleadings did the respondent bother to establish that Cityland's juridical personality and that of its "owners and operators" are one and the same. Instead, the respondent postulated that the "owners and operators" clause in Section 3A.02(m) of the Revised Makati Revenue Code should be disregarded, so that the business tax may be imposed directly on the real estate developer. While the Court agreed with the respondent that the "owners and operators" clause should be deleted -to make Section 3A.02(m) of the Revised Makati Revenue Code compliant with Section 146 of the LGC -the power to do so belongs neither to the Court nor to the respondent, but to the Sangguniang Panlungsod of Makati City.

The Court concluded and held that Section 3A.02(m) of the Revised Makati Revenue Code: (1) is inapplicable to the petitioner, which has not been established to be the owner/operator of a real estate developer; and (2) is an *ultra vires* exercise of local taxing power, being in violation of Section 146 of the Local Government Code, and therefore null and void and cannot be given any effect.

BUREAU OF INTERNAL REVENUE ISSUANCES

Revenue Memorandum Circular No. 33-2015, June 19, 2015

This publishes the Quality Management System Roadmap as a guide for the ISO 9001:2008 Certification of Revenue District Offices (RDOs). The roadmap depicts the end-to-end process to be undertaken by RDOs gearing towards ISO 9001:2008 Certification.

Revenue Memorandum Circular No. 36-2015, June 29, 2015

This prescribes the mandatory one-time submission by all concerned taxpayers of Inventory List (as of June 30, 2015) of all Cash Register Machines (CRMs); Point of Sales Machines (POS), Special Purpose Machines (SPMS) and/or any other similar machines generating sales invoices/receipts used by business establishments in business operations or otherwise, and are physically located in said business premises, for purposes of validation.

The hard copies of the Inventory List¹, together with the soft copies² in DVD-R and the Sworn Declaration³ (signed by any of the Principal Officer duly designated through a Board Resolution), shall be submitted on or before July 31, 2015 to the Large Taxpayers Division (LTD-Makati/Cebu), in case the taxpayer is duly registered with the Large Taxpayers Service or to the concerned Revenue District Office, Revenue Region where the non-large taxpayer is duly registered. Said BIR offices shall cause the immediate verification and approval of pending applications for cancellation/withdrawal for use, either by retirement or sale of the machines, to ensure the achievement of the purpose of the one-time validation/updating of the inventory of machines.

Non-compliance with the submission of the said Inventory List shall be subject to automatic revocation of the taxpayer's permit to use CRM/POS/SPM and other similar sales machines; immediate post-evaluation of the CRM/POS/SPM; imposition of penalty provided under Section 250 of the National Internal Revenue Code of 1997, as amended; and inclusion in the priority audit program of the concerned investigating Revenue Office.

The payment of the appropriate penalty shall not relieve the taxpayer from submission of the prescribed Inventory List. The BIR shall enforce appropriate measures in order to ensure that the taxpayer shall fully comply with the provisions of the Circular.

Revenue Memorandum Circular No. 38-2015, July 13, 2015

This publishes the full text of Circular Letter No. 2015-7 dated June 3, 2015 by the Secretary of the Department of Budget and Management (DBM), entitled "Updated Guidelines for Issuance of Multi-Year Obligational Authority (MYOA)".

The Circular covers all multi-year programs, activities, and projects being implemented by National Government Agencies, Constitutional Offices and SUCs. It also includes multi-year contracts, lease and lease-purchase agreements under the Revised Armed Forces of the Philippines Modernization Program (AFPMP), RA No. 10349.

¹ The Inventory List must use the prescribed schedule in Excel format attached as Annex "A" of RMC No. 36-2015.

² Must be labelled in accordance with the format prescribed in Annex "B" of RMC No. 36-2015.

³ Annex "C" of RMC No. 36-2015.

Prior to the bidding of multi-year contracts for Multi-year projects (both capital and non-capital projects), national government agencies must first secure a MYOA from the DBM. Capital expenditures or outlays requested for issuance of MYOA shall have been included by the agencies in the Comprehensive Integrated Infrastructure Program (CIIP) or in the Three-Year Rolling Infrastructure Program (TRIP) as reinstated by the Committee on Infrastructure (INFRACOM). Evaluation of proposals for funding of capital and non-capital projects shall be by the Investment Coordination Committee (ICC), INFRACOM, and the NEDA Board for projects costing P1billion and above; by the Development Budget Coordination Committee (DBCC) Sub-committee on Program/Project Appraisal (SC-PPA) for projects costing less than P1 billion; or by the DBM for projects costing less than P300 Million.

Revenue Memorandum Circular No. 39-2015, July 13, 2015

This circularizes the updated BIR Citizen's Charter as consolidated (copy attached).

Revenue Memorandum Order No. 12-2015, July 10, 2015

This updated procedures in the Implementation of the Memorandum of Agreement between the Department of Public Works and Highways (DPWH) and the Department of Finance (DOF).

This Order revokes *Revenue Memorandum Order No. 39-92*, as amended by Revenue Administrative Order No. 7-2000, transferring the filing of Application for Contractor's Final Payment Release Certificate by contractors whose principal place of business are located in Metro Manila district offices from the AITEID to the concerned LT Office/RDO where their principal place of business is registered and delegating to the ACIR-LTS and RDs the processing and monitoring of all activities related to this Order.

Revenue Memorandum Order No. 13-2015, July 13, 2015

This provides guidelines and procedures in the establishment and operation of eLounge Facilities in the Revenue District Offices (RDOs).

The mandatory requirements for the creation of an eLounge facility include its location near the Client Service Area at the Client Support Section (CSS); provision of mandatory resources by the RDOs prior to its implementation; and required technical specifications for the Broadband Internet Subscription. The eLounge shall be part of the "queuing system" in support of the RDO's mandate to provide fast and accurate frontline service to BIR clients.

The operation of the eLounge shall be from 8am to 5pm or beyond office hours depending on the client's needs and upon approval of the head of office (RDO). The Clients/Taxpayers shall register at the e-logbook or manually; use the eLounge on a first-come, first-serve basis. Bookkeepers/Accountants/Tax Practitioners are allowed to file for a

maximum of 3 clients only or not exceeding an hours, whichever takes a shorter processing time; use flash drives in the eLounge PCs only after passing through the virus scanner of the personnel-in-charge of the facility; use the facility for BIR transactions only; print only the Filing Reference Number; extract/copy files from the PC only with the approval of the personnel-in-charge; and perform other related functions as may be required.

The establishment of eLounge facilities in the RDOs shall be on a by phase roll-out. All existing Regional Office eLounges shall be turned over immediately to the co-located RDO or RDO nearest the regional office.

EXECUTIVE ORDERS

Executive Order No. 182, s. 2015, May 29, 2015

The Comprehensive Automotive Resurgence Strategy Program “CARS Program,” is adopted and implemented in order to attract new investments, stimulate demand and effectively implement industry regulations that will revitalize the Philippine automotive industry, and develop the country as a regional automotive manufacturing hub.

The thrust of this Program is to provide time-bound, and output or performance-based fiscal support to attract strategic investments in the manufacturing of motor vehicles and parts thereof. Other non-fiscal measures already provided by existing laws, rules and regulations, shall continue to be systematically implemented by the relevant government agencies.

The CARS Program’s coverage is limited to the manufacture of three (3) Models of four-wheeled motor vehicles, and covers the following activities:

- a. Production of the enrolled Models;
- b. Manufacture of Body Shell Assembly and Large Plastic Assemblies of the Model;
- c. Manufacture of Common Parts and Strategic Parts not currently produced in the country at Original Equipment Manufacturer (OEM) standards of the Model/s; and
- d. Shared Testing Facility for vehicles and/or parts.

The Board of Investments is the lead implementing and coordinating agency of the CARS Program. The registered Participants may be entitled to two (2) kinds of fiscal support during the enrolled Model Life, up to a maximum of six (6) years, namely: (1) Fixed Investment Support (FIS); and (2) Production Volume Incentive (PVI). The fiscal support for the registered and eligible Participants shall be evidenced by a non-transferrable Tax Payment Certificate (TPC)-as provided by law. This shall be used to defray the tax and duty obligations of the Participants to the National Government, specifically, excise tax, income tax, import duties, and Value Added Tax (VAT).

Executive Order No. 184, s. 2015, May 29, 2015

This provides for the Tenth Regular Foreign Investment Negative List⁴, replacing the Ninth Regular Foreign Investment Negative List, pursuant to Republic Act (RA) No. 7042, also known as the "Foreign Investments Act of 1991," as amended by RA No. 8179.

The formulation of the Tenth Regular Foreign Investment Negative List was made to reflect changes to List A, pursuant to existing laws. Amendments to List A may be made at any time to reflect changes instituted in specific laws while amendments to List B shall not be made more often than once every two years, pursuant to Section 8 of RA No. 7042, as amended, and its revised implementing rules and regulations.

Executive Order No. 185, s. 2015, June 26, 2015

This modifies the nomenclature and rates of duty on certain imported articles as provided for under the Tariff and Customs Code of the Philippines, as amended, in order to implement the Philippine Tariff Commitments on Certain Products included in the Environmental Goods List under the Asia-Pacific Economic Cooperation (APEC)

Under the 2007 Sydney and 2011 Honolulu Declarations, the APEC leaders made a commitment to address issues on climate change, review the progress of the World Trade Organization (WTO) Doha Development Agenda negotiations on the liberalization of trade in environmental goods and services, and take concrete steps to achieve past ambitions and make green growth a reality, consistent with their WTO obligations. In its 2009 Annual Report, the APEC Committee on Trade and Investment endorsed the APEC Environmental Goods and Services (EGS) Work Program to help in reaching an agreement on actions to support sustainable growth in the region, advance work to increase utilization and dissemination of EGS, reduce existing barriers and refrain from introducing new barriers to trade and investment in EGS, and enhance the capabilities of economies to develop their EGS sectors. Under the 2012 Vladivostok Declaration, the APEC leaders endorsed the APEC List of Environmental Goods enumerating 54 environmental goods that "directly and positively contribute to green growth and sustainable development objectives," with a commitment to reduce applied rates to 5% or less on these environmental goods by the end of 2015, taking into account "economies' economic circumstances, without prejudice to their position in the WTO.

On 19 May 2015, the National Economic and Development Authority (NEDA) Board recommended the reduction of the Most-Favored-Nation (MFN) rates of duty on certain tariff lines under the APEC List of Environmental Goods by 2015. Pursuant to Section 401 of Presidential Decree (PD) No. 1464, or the Tariff and Customs Code of the Philippines (TCCP), as amended, empowering the President, upon the recommendation of NEDA, to increase, reduce or remove existing rates of import duty, as well as to modify the tariff nomenclature, the articles specifically listed in Annex A hereof, as classified under Section

⁴ See Annex of Executive Order No. 184.

104 of the TCCP, as amended, shall be subject to the MFN rate of duty in accordance with the schedule indicated opposite each article. The rates of import duty on tariff headings and subheadings which are not enumerated and those which are listed but represented by the symbol "xxx" shall remain in force and effect.

BUREAU OF CUSTOMS

Customs Memorandum Order No. 13-2015

This provides clarifications on Section 7 of BOC-PEZA Joint Memorandum Order 1-2015. There is no need for the Single Administrative Document (SAD) to be coursed thru the Bonds Division for "Charging/Debiting" as a condition for the approval of the Transshipment Permit nor for "Plow-Back" or Crediting to the General Transportation and Surety Bond (GTSB) of the duties and taxes after goods shall have been duly received at the destination zone and the transshipment process completed. The control measure to insure compliance with the conditions of the approved Transshipment Permit and as a security against diversion of the goods from its authorized destination is that there is sufficient security as described in Section 7.e of JMO 1-2015 which provides that there should be periodic determination of the amount of bond posted conforms to the "Minimum Bond" which is the higher between PHP 1,000,000 and the total of the latest 3 months duties and taxes whichever is higher is complied with and that the remaining validity of the said bond must not less than 30 days. On the other hand, the notification procedures from the port of transshipment to the port of destination and the feedback of the receipt of the transshipment by the receiving port/jurisdiction is the control measure to prevent diversion or its early detection. These facilitative procedures are the intent of JMO 1-2015 and section 3.4 of CMO 3- 2001.

Customs Memorandum Order No. 14-2015

This provides for the revised regulations for Bureau of Customs (BOC) Accreditation of Philippine Economic Zone Authority (PEZA) Locators.

This Order covers all corporations, partnerships, cooperatives or sole proprietorships registered as locators by PEZA. Considering that the documentary requirements and eligibility of locators have already been evaluated and passed upon by PEZA, the BOC shall no longer impose additional documentary requirements for their accreditation with the BOC. All locators that have already been registered and approved by PEZA through the Client Profile Registration System (CPRS)-E2M System shall be activated immediately by the BOC - Management Information System and Technology Group (MISTG) after payment of an activation fee of One Thousand Pesos (Php 1,000.00) at the BOC - Cash Division and presentation of the corresponding official receipt and copy of the CPRS Certificate of Registration to MISTG.

This Order revokes Customs Memorandum Order No. 3-2015 on Regulations for Accreditation of PEZA Locators.

Customs Memorandum Order No. 15-2015

This Order outlines the procedure in the proper operation and sustainment of various types of Program-Provided Equipment (PPE) for detection of Weapons of Mass Destruction (WMD) under the National Coast Watch System (NCWS) Project. It also establishes the duties and responsibilities of the Bureau of Customs as support agency under the NCWS and the respective tasks and accountabilities of various bureau offices/personnel that will perform the handling, storage, safekeeping, maintenance, and repair of the equipment.

Customs Memorandum Order No. 23-2015

It provides for the exemption of PEZA-registered Enterprises from Customs Memorandum Order (CMO) No. 18-2010 entitled "Procedure for the Bulk and Break-Bulk Cargo Clearance Enhancement Program Mandated Under Administrative Order No. 243 as amended by AO 243-A.

Bulk and break-bulk import shipments of production-related requirements by PEZA-registered enterprises, for which PEZA Import Permits have been issued, are excluded from the mandatory coverage of CMO No. 18- 2010 and Customs Administrative Order No. 06-2011 (Supplemental Rates to Implement the Bulk and Break Bulk Cargo Clearance Enhancement Program). These enterprises need not secure a Load Port Survey in the port of origin from any CASCs-accredited cargo surveyor. For PEZA-registered enterprises whose bulk and break-bulk import shipments are not covered by PEZA Import Permits, existing regulations shall remain applicable.

PHILIPPINE ECONOMIC ZONE AUTHORITY

Memorandum Circular No. 2015-015

In line with the continuing efforts toward enhancing ease of doing business with PEZA, the PEZA Electronic Application for Registration System (e-ARS), Phase 1, was activated on May 1, 2015 and can be accessed through the PEZA website (www.peza.gov.ph). [click icon "e-ARS" or the URL ears.peza.gov.ph.]

The e-ARS may now be used for the following applications for registration:

- New and Existing Registered Ecozone Developers – for all types of Ecozones, including applications of Existing Registered Ecozone Developers for inclusion of additional areas to an existing ecozone.
- New and Existing Registered Ecozone Enterprises – for Export; Information Technology (IT); Agro-Industrial; Logistics Services; Tourism; and Medical Tourism Enterprises including applications of such existing registered

Ecozone Enterprises for “New Project,” “Expansion Project,” and “Amendment of Registered Activity.”

Through the e-ARS, the Application Form can be filled up and sent electronically. All required attachments (including signed documents) can be sent by e-mail to eddapps@peza.gov.ph for Ecozone Developers, and to erdapps@peza.gov.ph for Ecozone Enterprises. The Application Fee can be paid in the PEZA Head Office or in the PEZA office in any PEZA economic zone. The PEZA-issued Official Receipt can be scanned and sent by e-mail to the aforementioned e-mail addresses.

The Applicant shall subsequently submit to PEZA the hard copy of all scanned documents sent by e-mail and present the original Official Receipt for the Application Fee, as follows: For Ecozone Developers, within thirty (30) days from date of approval of the application by the PEZA Board; For Ecozone Enterprises, prior to signing of the company’s Registration/Supplemental Agreement with PEZA.

Intergovernmental Agreement (IGA) on FATCA with the United States, July 15, 2015

On July 15, 2015 the Government of the Republic of the Philippines entered into an IGA on tax information sharing with the Government of the United States in order to comply with the U.S. Foreign Account Tax Compliance Act (FATCA).

FATCA requires all financial institutions outside of the United States to periodically transmit information on financial accounts held by American persons to the U.S. Internal Revenue Service (IRS), or face a 30 percent withholding tax on payments made from the U.S. The agreement is an attempt to add greater transparency in financial accounts in order to curb offshore tax avoidance and evasion.

Under the IGA, each Party shall obtain specified information with respect to all Reportable Accounts and shall annually exchange this information with the other Party on an automatic basis pursuant to the provisions of Article 26 of the Convention between the Government of the United States of America and the Government of the Republic of the Philippines with Respect to Taxes on Income, done at Manila on October 1, 1976 (the “Convention”). Financial accounts maintained by Philippine financial institutions held by U.S. persons will be automatically reported to the Bureau of Internal Revenue (BIR). The BIR will then send that information to the IRS in the United States. In turn, the IRS will also provide the BIR information relating to the financial accounts maintained by U.S. financial institutions held by Philippine residents.

The IGA also provides for due diligence procedures to be applied by Philippine Financial Institutions in identifying U.S. Reportable Accounts and accounts held by Nonparticipating Financial Institutions.

Tax Incentives Management and Transparency Act (TIMTA) (SB No. 2669 / HB No. 5831)

The proposed measure aims to address the serious information gap on tax incentives granted to private individuals and corporations without posing additional administrative burden to investors. For the most part, the bill will create a Tax Expenditure Account (TEA) in the annual national budget to reflect the amount of tax incentives granted to private individuals and corporations to foster transparency in the present system of granting tax incentives.

Under the TIMTA bill, the data and information related to the tax incentives claims of registered business entities and the actual amount of tax and duty incentives granted – which are submitted by the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC) to the Department of Finance (DOF) – shall be maintained by the DOF under a single database for monitoring and analysis of tax incentives granted.

Among the controversial provisions of the bill are the forfeiture of incentives for merely failing to timely file an application for incentive claim and the 18 month extension of the prescriptive period within which the BIR may make an assessment.

o o 0 o o