



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

TMAP TAX UPDATES FOR SEPTEMBER 2015

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BIR ISSUANCES

Revenue Regulations No. 9-2015 (September 2, 2015)

Revenue Regulations No. 9-2015 amends section 9 of Revenue Regulations No. 7-2014 and requires cigarettes manufactured for export to: (i) comply strictly with all existing BIR rules and regulations relating to registration of brands, manufacture, import, utilization and withdrawal of raw materials, work in process and finished products, labels and posting of export bonds, among others; and (ii) have labels stating clearly that it is strictly for sale in the country of destination for which it was allowed to be manufactured for, which should not be similar to the labels of cigarettes sold in the Philippines. Any cigarette found in any area in the Philippines without any internal revenue stamp affixed shall be presumed to have been withdrawn without payment of excise tax due.

Revenue Memorandum Circular No. 45-2015 (August 24, 2015)

Revenue Memorandum Circular No. 45-2015 clarifies the withholding of VAT on payments made by the Philippine Government to Japanese contractors pursuant to the Exchange of Notes between the Republic of the Philippines and the Japanese Government for Overseas Economic Cooperation Fund (OECF)-funded projects undertaken in the Philippines. In particular, it provides that: (i) the Philippine Government shall assume the final withholding VAT at the rate of 5% of the gross payment, which will be paid out from the fund of the Philippine Government as a final settlement of the tax due on the income received by the Japanese contractors; and (ii) Japanese contractors of OECF-funded projects cannot include in their respective billings the whole 12% VAT to be assumed by the Philippine Government.

Revenue Memorandum Circular No. 56-2015 (September 3, 2015)

Revenue Memorandum Circular No. 56-2015 acknowledged that adjustments/amendments to the original data in the eSales reports were made



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necessary by the implementation of Revenue Regulations No. 5-2005 and Revenue Memorandum Orders No. 12-2012, which resulted in the reconstitution of reports made through eSales. Thus, provided that no electronic Letter of Authority/Letter Notice has been issued covering the particular month, the submission of amended monthly eSales report with a written justification addressed to the concerned Large Taxpayers Service Investigating Office/Revenue District Office has been allowed, subject to the validation or verification by the concerned Large Taxpayers Service Investigating Office/Revenue District Office of the monthly eSales report.

Revenue Memorandum Order No. 18-2015 (September 3, 2015)

Revenue Memorandum Order No. 18-2015 recognizes that the BIR's Integrated Tax System (*i.e.*, eAccReg and eSales reporting systems) can only cater up to 999 branch codes of corresponding TINs and thus, prescribes policies and workaround procedures in the processing of the registration of branch offices of taxpayers in excess of 999.

BIR RULINGS

BIR Ruling No. 270-2015 (August 14, 2015)

VMG-PH (a regional or area headquarters) will not be subject to income tax as long as it does not render any of the qualifying services (*i.e.*, general administration and planning, business planning and coordination, etc.) in the performance of its functions and in acting as a supervisory, communications and coordinating center for its affiliates in the region. Otherwise, it shall be taxed as a regional operating headquarters.

Nonetheless, VMG-PH shall be constituted as withholding agent compensation received by its employees subject to withholding tax and income payments to its suppliers that are subject to expanded withholding tax.

On the other hand, VMG-PH (as a regional or area headquarters) is exempt from VAT and the sale or lease of goods or properties to it is subject to 0% VAT, as provided under Article 65 of the Omnibus Investment Code of 1987, as amended.

BIR Ruling No. 271-2015 (August 24, 2015)



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PPDC is a corporation registered with the BOI as a new-developer of low-cost mass housing project on a non-pioneer status and is thus entitled to an income tax holiday on its BOI-registered activity for a period of 4 years. Accordingly, the income payments it received in connection with (and directly attributable to) its low-cost mass housing project are exempt from withholding tax prescribed under Revenue Regulations No. 2-1998. Such exemption shall not apply to its income from the sale of units with price exceeding PHP 3,000,000.00.

In-house financing shall not be considered part of the registered activity of PPDC and any interest income generated from financing shall not be covered by the income tax holiday. In any case, PPDC is not automatically entitled to the income tax holiday incentive as it is subject to compliance with the specific terms and conditions of its BOI registration.

BIR Ruling No. 272-2015 (August 24, 2015)

Pursuant to Republic Act No. 7279 (The Urban Development and Housing Act of 1992), income earned from activities related to socialized housing projects for target beneficiaries shall be exempt from income tax. Thus, the sale by DRDC to qualified beneficiaries of units in its socialized housing project duly registered with the HLURB is exempt from income tax and consequently, from creditable expanded withholding tax prescribed under Revenue Regulations No. 2-1998. However, the conveyance of such units shall still be subject to documentary stamp tax imposed under Section 196 of the Tax Code since it is not covered by the tax exemption granted under The Urban Development and Housing Act of 1992.

Further, in accordance with the Urban Development and Housing Act of 1992 and Section 4.109-1(B)(1)(p)(3) of Revenue Regulations No. 16-2005, the sale by DRDC to qualified beneficiaries of units in the socialized housing project is also exempt from VAT. The purchases of goods/articles by DRDC shall, however, be subject to VAT even if the said purchases are to be used for the socialized housing project. Nonetheless, DRDC shall issue non-VAT official receipts on its gross receipts from the socialized housing project.

BIR Ruling No. 275-2015 (August 24, 2015)



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Transfer of real property by a landowner to a tenant by way of disturbance compensation as a result of extinguishment of tenancy relationship due to reclassification/conversion of agricultural land into non-agricultural land under the Agricultural Land Reform Code is exempt from capital gains tax and documentary stamp tax pursuant to Section 66 of the Comprehensive Agrarian Reform Law.

BIR Ruling No. 292-2015 (August 27, 2015)

Dividends received by CGPC, a non-resident foreign corporation duly organized and existing under the laws of the State of Delaware of the U.S.A., from HURC, a domestic corporation, is subject to 15% final withholding tax instead of 30% in accordance with Section 28(B)(5)(b) of the Tax Code since the US tax law grants:

- a) A tax credit for the amount of the dividend tax actually paid (*i.e.*, withheld) from the dividend payments; and
- b) A “deemed paid” tax credit for a proportionate part of the corporate income tax actually paid to the Philippines.

This is consistent with the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Procter and Gamble Philippine Manufacturing Corp. and Court of Tax Appeals* (G.R. No. 66838, December 2, 1991).

BIR Ruling No. ITAD-241-15 (August 14, 2015)

The World Scout Bureau/Asia Pacific Regional Office is exempt only from taxes and duties on import or export of motor vehicles to be used for official purposes pursuant to the Memorandum of Agreement between the Government of the Republic of the Philippines and the World Organization of the Scout Movement. Thus, the World Scout Bureau/Asia Pacific Regional Office is subject to taxes on its local purchase of motor vehicles for official purposes.

BIR Ruling No. ITAD-242-15 (August 14, 2015)

The donation of a vehicle by the Apostolic Nunciature to Tulay ng Kabataan Foundation, Inc., which is a charitable organization, is exempt from the payment of



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donor's tax pursuant to Section 101(B)(2) of the Tax Code, provided that not more than 30% of the donation shall be used by Tulay ng Kabataan Foundation, Inc. for administration purposes. However, as the said donation is a transfer of motor vehicle, it is subject to excise tax under Republic Act No. 9224 as implemented by Revenue Regulations No. 25-03, which shall be paid by the non-exempt transferee (considered to be the purchaser) of the subject motor vehicle. See also **BIR Ruling No. ITAD-276-15** (September 15, 2015) re donation of a vehicle by the Apostolic Nunciature to the Roman Catholic Bishop of Sorsogon.

BIR Ruling No. ITAD-243-15 (August 28, 2015)

JAL is a corporation organized and existing under the laws of Japan with a branch office in the Philippines. It is engaged in domestic and international air transportation services. Pursuant to Article 8 of the Philippines-Japan tax treaty, JAL is subject to the preferential tax rate of 1 ½% Gross Philippine Billings Tax instead of 2 ½%. However, being an international carrier doing business in the Philippines, JAL is subject to the common carrier's tax of 3% on the transport of cargo as provided under Section 118(A) of the Tax Code, as amended, and as implemented by Revenue Regulations No. 15-2013.

BIR Ruling No. ITAD-244-15 (August 28, 2015)

In determining whether service fees paid by PIC to IMC in connection with a management and engineering consulting agreement is subject to the preferential tax rate under the Philippines-Japan tax treaty, the days of physical presence in the Philippines of personnel involved shall include a part of a day, the day of arrival, the day of departure, and all other days spent inside the Philippines such as Saturdays and Sundays, national holidays, vacation, days of sickness, and death or sickness in the family.

BIR Ruling No. ITAD-246-15 (September 8, 2015)

The tax exemption privilege of an Embassy and its diplomatic agents does not include exemption from VAT on its local purchases of goods and services. However, on the basis of the principle of reciprocity, the purchase by the Embassy of the Lao People's Democratic Republic and/or its personnel is confirmed to be subject to 0% VAT as the



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DFA has confirmed that the Government of the Republic of Laos allows a similar exemption to the Philippine Embassy and/or its personnel on their purchase of motor vehicles in Laos.

COURT OF TAX APPEALS DECISIONS

People of the Philippines v. Ong Lapuz (CTA Criminal Case No. 0-519, August 3, 2015)

Section 7 of Republic Act No. 1125, as amended, provides that jurisdiction over criminal cases committed in violation of the Tariff and Customs Code where no specified amount of taxes and fees are being claimed against the accused is vested with the regular courts, and the jurisdiction of the Court of Tax Appeals shall only be appellate.

Cebu Mitsumi, Inc. v. Commissioner of Internal Revenue (CTA Case No. 8531, August 5, 2015)

In the absence of a letter of authority, any assessment issued is a nullity. The doctrine of estoppel cannot be applied to consider the taxpayer as barred from contesting the validity of the assessment due to its failure to raise the issue of lack of letter of authority despite several opportunities to do so as this would have the effect of giving validity to the questioned assessments, which are null and void.

Commissioner of Internal Revenue v. Yumex Philippines Corporation (CTA EB Case No. 1139 (CTA Case No. 8331), August 11, 2015)

If it is shown that the concerned corporation is an enterprise registered with the Philippine Economic Zone Authority (PEZA) under Republic Act No. 7916, such fact already excludes said PEZA enterprise from imposition of improperly accumulated earnings tax, without further qualification (*i.e.*, income tax holiday or special 5% tax regime).

APEX Chemical Corporation v. Commissioner of Internal Revenue (CTA Case No. 8698, August 26, 2015)

The fact that the taxpayer chose to submit the protest without supporting documents does not invalidate the fact of filing a protest. The lack of documentation will only



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matter in the evaluation of the merits of the protest, but should not result in the finality of the assessment.