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This MAP Tax Bulletin for December 2023 was contributed by Salvador Llanillo and Bernardo, Attorneys at Law.

Revenue Regulations

RR No. 13-2023 dated November 10, 2023

Prescribes the guidelines to enable Registered Business Enterprises (RBE) classified as Domestic Market Enterprise (DME) during the transitory period to register as VAT-taxpayers with the BIR pursuant to the Amended IRR of CREATE

RR No. 13-2023 provides for optional VAT Registration for covered RBEs. RBEs classified as DMEs which are located inside the Economic or Freeport Zone may retain their availment of the 5% Gross Income Earnings (GIE) during the 10-year transitory period as long as they secure a Certification from the concerned Investment Program Agency stating that:

1. VAT is excluded from the 5% GIE in lieu of all taxes incentive granted to it; and
2. The 5% GIE shall be in lieu of all taxes except VAT.

Non-VAT registered RBEs that have been issued the Certification should update their registration with the concerned Revenue District Office (RDO) to reflect their registration from non-VAT to VAT taxpayer.

Lastly, RR No. 13-2023 applies prospectively and the guidelines under this RR may only be availed of upon the effectivity of the amendment of the IRR.

RR No. 14-2023 dated November 10, 2023

Amends Section 2.57.2 of RR No. 2-98 and imposes creditable withholding tax on certain income payments by Joint Ventures / Consortium (JV/C)

RR No. 14-2023 subjects payments made by JV/Cs to suppliers of goods to a withholding tax rate of 1% and to suppliers of services to a rate of 2%. It also subjects to a 15% rate the share of each co-venturer or member from the net income of the JV/C that is not taxable as a corporation prior to actual or constructive distribution.

Revenue Memorandum Circulars

NOTE: No relevant RMCs for November.

RMC No. 120-2023 dated 29 November 2023
Announces the availability, use and acceptance of Digital TIN ID

Individual taxpayers may secure, through the BIR Online Registration and Update System (ORUS), a Digital TIN ID which shall be honored and accepted as a valid government-issued identification document of the taxpayers for their transactions in government agencies and institutions, local government units, employers, banks, financial institutions, and other relying parties, subject to authentication and verification just by scanning the Quick Response (QR) Code appearing in the Digital TIN ID.

The Taxpayer Guide for the application for Digital TIN ID may be accessed through https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2023%20RMCs/RMC%20No.%20120-2023%20Attachment.pdf.

A fine of not less than Php10,000.00 and an imprisonment of not less than one (1) year but not more than ten (10) years, in addition to other penalties under the Tax Code, are prescribed for any person convicted and found to have misrepresented or failed to supply correct and accurate information in his/her Digital TIN ID application.

RMC No. 121-2023 dated November 29, 2023
Announces the updated features and functionalities of the Online Registration and Update System (ORUS)

The Online Registration and Update System (ORUS) has been updated to include the following three (3) additional features and functionalities: (i) Taxpayer Identification Number (TIN) Inquiry; (ii) access to Digital TIN ID; and (iii) availability of MyEG, an electronic solutions provider, as one of the available online payment facilities in ORUS.

Supreme Court Decisions

NOTE: No relevant SC cases for November.

Court of Tax Appeals Decisions

A. CTA En Banc Cases

National Development Co. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2572 (C.T.A. Case No. 9633), November 13, 2023

In this case, the National Development Co. (NDC), a Government-Owned and Controlled Corporation (GOCC), filed a judicial claim for refund in the amount of Php42,603,172.88 representing allegedly erroneously collected VAT from the 2nd quarter of 2015 to the 3rd quarter of 2016. The Court of Tax Appeals (CTA)-Third Division denied NDC's claim for lack of merit. In its Petition before the CTA En Banc, NDC claimed that it failed to use the 7% standard input VAT for sales to GOCCs, thus resulting

in the amendment of its VAT returns, and that the amended VAT returns resulted in the reduction of the amount of its VAT.

The Petition was denied for NDC's failure to prove its actual input VAT incurred and its own sales to the Government. Section 114 of the National Internal Revenue Code (NIRC), as implemented by Section 4.114-2 of Revenue Regulation No. 16-2005, provides that sales to the Government are taxed at 12% where 5% is withheld by the Government payor. The remaining 7%, which accounts for the standard input VAT (SIV), will then be compared with the actual input VAT attributable to sales to the Government with the difference either forming part of or closed to the seller's expense or cost. Hence, in order to establish that there was erroneous overpayment of VAT, it must be established that there are actual sales to the Government properly substantiated by VAT invoices/ORs upon which the 7% SIV will be derived. Therefore, for failure to offer evidence of VAT invoices/ORs substantiating its sales of goods or services to the Government, NDC is not entitled to claim the refund.

Arrow Freight Corporation . v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2594 (C.T.A. Case No. 9567), [November 15, 2023] (Decision discussion is not about tax but on timeliness of the Motion for Reconsideration)

Commissioner of Internal Revenue v. Integreon Managed Solutions (Philippines), C.T.A. EB Case No. 2630 (C.T.A. Case No. 9876), November 15, 2023

Integreon Managed Solutions (Philippines), Inc. (IMS) was issued Final Assessment Notices (FAN) and a Final Decision on Disputed Assessment (FDDA) finding IMS liable for alleged deficiency income tax (IT), value added tax (VAT), withholding tax on compensation (WTC), and expanded withholding tax (EWT) for taxable year 2014 in the total amount of Php44,224,123.68. IMS questioned the validity of the FAN and FDDA in its Petition for Review. The CTA in Division granted the Petition for Review and canceled the FAN and FDDA on the ground that the assigned Revenue Officer (RO) was not authorized to continue the examination of IMS' books of accounts and other accounting records for TY 2014 through a separate/amended Letter of Authority (LOA). The CIR elevated the case to the CTA En Banc on the ground that an RO, designated solely by virtue of a MOA, is authorized to perform the assessment despite the absence of a new Letter of Authority.

The CTA En Banc denied the Petition for Review of the CIR for lack of merit and affirmed the Decision of the CTA in Division. The CTA En Banc ruled that the RO tasked to examine the books of accounts of taxpayers must be authorized by an LOA, following Section 6(A), 10, and 13 of the NIRC. Otherwise, the assessment for deficiency taxes resulting therefrom is void. The authority of an RO to conduct the audit or investigation of the taxpayer is statutorily conferred only through an LOA. A MOA does not and cannot confer authority to an RO to continue the audit or investigation of a taxpayer's books of account. Hence, the issuance of a new LOA must be made in cases of reassignment or transfer of examination to another RO. Therefore, the FAN and FDDA issued against IMS is void for lack of authority of the RO in this case to continue the audit and recommend the issuance of the assessments against IMS.

B. CTA Division Cases

Star Sports Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 10380, November 6, 2023

In this case, Star Sports Corporation (SSC) received an Advisory on Receipt of Notice of Garnishment informing it that Metrobank had put its corporate account on hold pursuant to Notice of Garnishment from the BIR, However, SSC denies receiving any assessment notice from the BIR.

SSC argues that the assessment is null and void due to the CIR's failure to inform it of the factual and legal basis of the assessment as it allegedly never received any PAN or FAN, thus violating its right to due process. The CTA ruled that the burden of proof is on the BIR to prove SSC's receipt of the PAN and FAN. The CTA cited Barcelon Roxas Securities, Inc. v. Commissioner of Internal Revenue where the Supreme Court declared that the CIR must prove a taxpayer's receipt of an assessment notice when the latter denies receipt of any notice. Such denial shifts the burden of proof onto the CIR. Here, the CIR failed to prove that the PAN and FAN were properly served to SSC or that it was properly informed of the assessment against it.

Section 228 of the NIRC requires that a taxpayer be informed of the assessment against it. If this requirement is not met, the assessment is void. In relation thereto, the CTA explained that a lack of notice is enough to void an assessment based on a taxpayer's right to due process. The CTA further ruled that a Warrant of Distraint and/or Levy (WDL) based on a void assessment is, itself, also void. As the CIR failed to properly serve the Assessment Notices to SSC, the assailed assessment is void and, consequently, the assailed WDL is also void.

Royal Caribbean Cruises Ltd. v. Commissioner of Internal Revenue, C.T.A. Case No. 10256, November 7, 2023

In this case, the Regional Operating Headquarters (ROHQ) in the Philippines of Royal Caribbean Cruises Ltd., a multinational company organized and existing under the laws of Liberia, filed a letter with the BIR requesting a refund of the alleged erroneously paid final withholding tax (FWT) on the salaries and wages received by its qualified managerial employees for the period January 2018 to December 2018.

The ROHQ argued that the claim for refund should be granted because it is only liable for the payment of withholding taxes on wages using the graduated tax rate based on the Tax Reform for Acceleration and Inclusion (TRAIN) Law as vetoed by the President of the Republic of the Philippines. As such, there was an erroneous, illegal, or wrongful collection of tax. The CTA granted the claim for refund. The CTA explained that prior to the effectivity of the TRAIN law, Filipinos employed and occupying the same position as those aliens employed by ROHQs established in the Philippines by multinational companies are taxed at 15% of gross income pursuant to Section 25 of the NIRC. While this provision was retained, another paragraph, Section 25(f) was added therein, which the President vetoed.

There was, however, an apparent confusion when the President vetoed the said provision. Through the issuance of a Revenue Regulation, the Secretary of Finance, upon the recommendation of BIR, interpreted the veto to mean that the 15% preferential tax rate was no longer applicable to employees of RHQs, ROHQs, offshore banking units (OBUs), or petroleum service contractors and subcontractors.

Nevertheless, although the provision in Section 25(f) was vetoed, the 15% preferential tax rate of ROHQ employees in Section 25(c) of the NIRC was not correspondingly vetoed. Hence, the 15% preferential tax rate still applies. Considering the confusion brought about by the amendment introduced to Section 25 of the NIRC, as amended by the TRAIN law, and the subsequent veto thereof by the President, the ROHQ should not be faulted for having paid both the 15% FWT and withholding taxes on wages "to avoid being penalized," as the question of whether the 15% FWT or the regular income tax is applicable may be considered a doubtful question of law. Hence, the ROHQ's claim for refund must prosper.

Nueva Ecija I Electric Cooperative, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 10587 & 10632, November 13, 2023

In this case, the BIR issued a LOA for the examination of the books of accounts and accounting records of Nueva Ecija I Electric Cooperative, Inc. (NEEC), an electric cooperative duly organized by virtue of the National Electrification Administration (NEA) Decree, for all internal revenue taxes for taxable years (TYs) 2012 and 2013. NEEC argued that the assessments for TYs 2012 and 2013 are void since NEEC enjoys permanent exemption from income taxes under Section 39 (a) (1) of PD No. 269. NEEC further argues that the assessments are void for having been issued in violation of its right to due process.

The CTA ruled that the supposed permanent income tax exemption of electric cooperatives under Section 39(a)(1) of PD No. 269, as amended, was effectively withdrawn by subsequent legislation. Thus, at present, electric cooperatives registered with the NEA are subject to income tax with respect to income derived from: (1) electric service operations; and (2) other sources such as interest income from bank deposits and yield or any other monetary benefit from bank deposits and yield or any other similar arrangements.

Nevertheless, the assessment for TY 2012 is void for being violative of Section 246 of the NIRC. The CTA noted that the basis for the income tax assessment against NEEC for TY 2012 was RMC No. 74-2013. However, RMC No. 72-2003 was the prevailing issuance during the whole of TY 2012 and on the date when petitioner was required to file its Final Adjustment Return or Annual Income Tax Return (FAR/AITR) on April 15, 2013. Thus, for the CIR to assess NEEC for deficiency income tax based on RMC No. 74-2013 is tantamount to its retroactive application.

Further, the CTA found that the PAN, FLD and FDDA for TY 2012 are all identical, as well as the PAN, FLD and FDDA for TY 2013. Except for certain minor adjustments in the computation of interest and elimination of assessment items already paid by NEEC, no substantial difference exists between these documents. The BIR failed to consider any of the arguments that NEEC raised in its Reply to the PANs for TYs 2012 and 2013, and in the Protest to FLDs for TYs 2012 and 2013. The BIR likewise failed to provide any justification as to why NEEC's arguments in the Reply and Protest were rejected upon the issuance of the FDDAs. The BIR failed to observe the due process rights of NEEC, thus rendering the assessments for TYs 2012 and 2013 void.

SL Harbor Bulk Terminal Corp. v. Commissioner of Internal Revenue, C.T.A. Case No. 10289, November 15, 2023

In this case, SL Harbor Bulk Terminal ("SL Harbor") filed an administrative claim for tax credit with the BIR for erroneously paid excise taxes on imported bunker fuel and diesel sold to tax-exempt entities registered with the Board of Investments (BOI), Subic Bay Metropolitan Authority (SBMA), and Philippine Economic Zone Authority (PEZA), for the period covering April 1 to June 30, 2018.

SL Harbor's claim for issuance of a tax credit certificate is anchored on Section 135 of the NIRC which states that petroleum products sold by entities which are by law exempt direct and indirect taxes are exempt from excise tax.

The CTA explained that it must be shown that: (1) the entity to which SL Harbor sold the petroleum products is an entity exempt by law from indirect and direct taxes, and (2) SL Harbor paid the claimed excise taxes on the same petroleum products sold to the exempt entity.

Here, the CTA noted that subject local and national tax exemptions take effect only upon the SBMA's issuance of a Certificate of Registration or Certificate of Registration and Tax Exemption ("CRTE") to a business enterprise within the Subic Special Economic Zone. In other words, it is only at the date of issuance of the Certificate of Registration or CRTE, which represents the registration of the concerned business enterprise, that the latter is entitled to the tax exemption granted under RA No. 7227. Based on the Certificates provided by SL Harbor, the same were issued on dates after the period of tax exemption claimed. Hence, the sale of imported petroleum products prior to the issuance of said CRTE is subject to excise taxes. Moreover, the CTA found that it cannot be determined with certainty that SL Harbor paid the excise taxes on the petroleum products sold, considering that it failed to offer in evidence the supply or sales agreements. An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements required by law. Hence, the claim in this case must fail.