TAX Insights

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What's Inside...

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (*includes BIR, SEC, BSP and various government agencies*).

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HIGHLIGHTS for JANUARY 2025

HIGHLIGHTS

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- If a protest does not clearly state whether it is a request for reconsideration or reinvestigation, but it clearly shows that the taxpayer had no intention of submitting additional evidence, it shall be treated as a request for reconsideration. Not submitting documents within 60 days does not automatically make the assessment final. ***(Health Plan Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10262, December 4, 2024)***

- The change in header name from "Charge Invoice" to "Commercial Invoice" does not constitute a system enhancement that will necessitate a new CAS Permit from the BIR. ***(MD Rio Vista-Agri Ventures, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10624, December 10, 2024)***

- An assessment (i.e. FLD) differs from a decision (i.e. FDDA). The invalidity of one does not necessarily result to the invalidity of the other. ***(Goodyear Steel Pipe Corporation v. Commissioner of Internal Revenue, CTA Case No. 10555, December 16, 2024)***

- An OIC designation in the BIR assumes the functions, duties and responsibilities of the vacated position, as if he/she is holding the employment item for the particular office. ***(Grand Union Supermarket, Inc., v. Commissioner of Internal Revenue, CTA Case No. 10390, December 17, 2024)***

- For refund claims under Section 112(C) of the Tax Code, if the CIR fails to act within the 90-day period, the taxpayer must treat the inaction as a deemed denial and file an appeal within 30 days from the lapse of the 90-day period. A subsequent decision by the BIR issued beyond the 90-day period does not reset or suspend the 30-day period to appeal. ***("K" Line Maritime Academy Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10270, December 18, 2024)***

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- **SEC OGC Opinion No. 24-34, dated November 6, 2024, posted December 3, 2024** – When the function of the Chairman of the Board consists merely of presiding at the meetings of the Board, a non-Philippine national may qualify as Chairman of the Board in a corporation engaged in partially nationalized activities.
- **SEC OGC Opinion No. 24-35, dated November 14, 2024, posted December 3, 2024** – A corporation may keep earnings beyond 100% of its paid-in capital only if there are special circumstances that clearly justify it, such as when the company needs to set aside a reserve for likely future liabilities or risks.
- **SEC OGC Opinion No. 24-36, dated November 19, 2024, posted December 3, 2024** – Additional paid-in capital is any contribution of stockholders over the par value of shares.
- **SEC OGC Opinion No. 24-38, dated November 26, 2024, posted December 3, 2024** – A purchase of securities from the unissued shares of a public company is exempt from the mandatory tender offer requirement as long as the acquisition will not result to a fifty percent (50%) or more ownership of securities.
- **SEC OGC Opinion No. 24-39, dated November 26, 2024, posted December 3, 2024** – Paid-up capital includes share premium or the additional paid-in capital.

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

A billing statement is not a deficiency tax assessment which must be the subject of the protest if the taxpayer does not agree, pursuant to Section 195 of the LGC.

The taxpayer applied to renew its business permit in Taguig City. As part of the renewal process, the City Government of Taguig issued a billing statement asking the taxpayer to pay certain fees. These included the Contractor's Tax, Environmental Impact Fee, and other local charges, which the taxpayer paid.

The taxpayer later sent a letter requesting a refund of the amounts paid for business tax and the environmental impact fee. However, the City denied the request, treating it as a tax protest under Section 195 of LGC. The City claimed that the protest should have been filed within 60 days from receipt of the billing statement, and since the taxpayer filed beyond this period, the claim was too late. The taxpayer disagreed and explained that their request should be treated as a claim for refund under Section 196 of the LGC, which gives taxpayers up to two years from the date of payment to file such claims.

The Court agreed with the taxpayer. It ruled that the refund claim was filed on time under Section 196. The Court also said that the billing statement was simply a payment requirement to get a business permit. It was not a formal tax assessment that needed to be protested under Section 195. *(Taguig City Government vs. Kensington Place Condominium Corporation, CTA EB No. 2807 (SCA Case No. 272), December 3, 2024)*

If a protest does not clearly state whether it is a request for reconsideration or reinvestigation, but it clearly shows that the taxpayer had no intention of submitting additional evidence, it shall be treated as a request for reconsideration. Not submitting documents within 60 days does not automatically make the assessment final.

The taxpayer was assessed for alleged tax deficiency taxes. While it was still preparing its response to the PAN, it received a FAN along with other related documents saying it must pay the stated tax liabilities. The taxpayer disagreed and filed a protest against both the PAN and FAN with the Regional Director. Although the protest did not clearly indicate whether it was a request for reconsideration or reinvestigation, it did not contain any request to submit additional supporting documents.

The BIR contends that the taxpayer's protest is a request for reinvestigation and the taxpayer failed to submit additional supporting documents. As a result, the assessment was considered final and enforceable.

The Court ruled in favor of the taxpayer. It explained that the taxpayer's protest was a request for reconsideration, not a reinvestigation, since it didn't ask to submit more evidence. In such cases, not submitting documents within 60 days does not automatically make the assessment final. The Court also found that the BIR violated the taxpayer's right to due process by issuing the FAN before the deadline to respond to the PAN had even passed. Because of this, the tax assessment was declared void. *(Health Plan Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10262, December 4, 2024)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The change in header name from "Charge Invoice" to "Commercial Invoice" does not constitute a system enhancement that will necessitate a new CAS Permit from the BIR.

The taxpayer filed a claim for refund of unutilized input VAT on its alleged zero-rated sales. However, the BIR denied the claim, asserting that the taxpayer's PTUCAS only covered "Charge Invoices," while the taxpayer had issued "Commercial Invoices" instead. The BIR argued that this change in the invoice header amounted to a system enhancement, which required a new PTUCAS. According to the BIR, the use of Commercial Invoices without securing an updated permit rendered the invoices invalid and without probative value. In response, the taxpayer insisted that it issued valid invoices, had a valid PTUCAS and Authority to Print (ATP), and that no actual enhancement was made to its accounting system that would require a new permit.

The Court ruled that the invoices were valid, explaining that simply changing the title from "Charge Invoice" to "Commercial Invoice" did not amount to a system enhancement that would require a new PTUCAS. The contents and format of the invoices remained materially the same, and no substantial changes were made to the taxpayer's accounting system.

However, the taxpayer still failed to prove its entitlement to a refund. The Court found that the taxpayer did not provide enough evidence to show that its sales qualified as zero-rated under the Tax Code. *(MD Rio Vista-Agri Ventures, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 10624, December 10, 2024)*

A facility where sales transactions or activities are conducted is considered a branch and must be separately registered with the BIR office having jurisdiction over it.

The taxpayer filed a claim for refund of input VAT. The claim covered VAT on domestic purchases of goods (excluding capital goods), services, and capital goods allegedly used in its zero-rated sales. The services were performed at the taxpayer's sites, which were registered with the BIR as facilities.

The Court denied the claim for failure to comply with one of the essential requirements for VAT refund. While the taxpayer is VAT-registered, the zero-rated sales must also be properly supported, and the taxpayer must comply with registration requirements. In this case, the sites where the zero-rated transactions occurred were not registered as separate branches, as required by regulation.

Under the BIR regulation, a facility where sales activities occur is considered a branch and must be registered separately with the BIR. Since the taxpayer's sites had sales activities but were only registered as facilities, the Court held that the taxpayer failed to meet the requisite for a VAT refund claim. Thus, the claim was denied. *(Foundever Philippines Corporation (formerly Sitel Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 10620, December 11, 2024)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

The term "actual use" refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof. Furthermore, the term "directly" means "without anything intervening" or "proximately or without intervening agency or person."

The taxpayer sought exemption from RPT on its lands, buildings, and equipment used for electric power transmission. Under the law, the taxpayer is granted an exemption from RPT for machineries and equipment actually, directly, and exclusively used in electric power generation and transmission. Meanwhile, lands, buildings, and other improvements used for such purposes are classified as "Special Class" properties and assessed at only 10 percent of their fair market value. Local officials contested the exemption, claiming that some properties such as warehouses, linemen's quarters, and partially vacant lots were not directly used for electric power transmission.

The Court ruled in favor of the taxpayer. It explained that "actual use" refers to the main purpose for which a property is used, and "directly" means "without anything intervening" or "proximately or without intervening agency or person." Based on the evidence, the Court found that the contested properties were necessary to the taxpayer's operations and supported its transmission functions under its legislative franchise.

Thus, the Court held that the taxpayer's properties were actually and directly used for electric power transmission and qualified either for full exemption or special classification under the law. These facilities were deemed essential to maintaining safe and reliable electricity transmission, and the local government could not validly impose real property taxes on them. *(Heide D. Pangilinan, in her official capacity as the City Assessor, and Florida R. Oca, in her official capacity as the City Treasurer of Cabanatuan City v. The Central Board of Assessment Appeals, CTA EB No. 2827, December 12, 2024)*

Since NFA is a government instrumentality, its real properties which are being used by NFA for public service are exempt from RPT.

The NFA sought reconsideration of a prior CTA Division ruling declaring it a GOCC not exempt from RPT. The NFA argued that it is a government instrumentality and, as such, should be exempt.

The CTA EB granted the motion, citing an SC ruling which clarified that NFA is a government instrumentality, not a GOCC. Under the LGC, national government agencies and instrumentalities are exempt from local taxes, including RPT, unless their properties are used by taxable persons.

Because NFA's real properties are used directly for public service and not by any private entity, they are exempt from RPT. As a result, the CTA EB declared the RPT assessments void. *(National Food Authority v. Municipality of Shariff Aguak, et.al., CTA EB No. 2465, December 13, 2024)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

UPDATES

An assessment (i.e. FLD) differs from a decision (i.e. FDDA). The invalidity of one does not necessarily result to the invalidity of the other.

This is an appeal on the assessment issued by the BIR against the taxpayer. The taxpayer argued that the FDDA issued by the BIR is not a valid assessment as it does not contain any date purporting to be a definite due date to pay the alleged deficiency taxes due.

A void FDDA does not ipso facto render an assessment void. An assessment becomes a disputed assessment after a taxpayer has filed its protest to the assessment in the administrative level. Thereafter, the BIR either issues a decision on the disputed assessment or fails to act on it and is, therefore, considered denied. The taxpayer may appeal the decision on the disputed assessment or the inaction of the BIR. Hence, an FDDA provides an assessment of the BIR but is not the only means that the final tax liability of a taxpayer is fixed.

An assessment differs from a decision. The invalidity of one does not necessarily result to the invalidity of the other. Thus, when the FDDA indicated an invalid date of payment, it did not affect the validity of the FLD per se. In the present case, while the FLD dated August 5, 2016 stated that the taxpayer is requested to pay the alleged deficiency taxes "within the time shown in the enclosed assessment notice," the attached Assessment Notices therewith clearly indicated the date of payment to be September 10, 2016. *(Goodyear Steel Pipe Corporation v. Commissioner of Internal Revenue, CTA Case No. 10555, December 16, 2024)*

An OIC designation in the BIR assumes the functions, duties and responsibilities of the vacated position, as if he/she is holding the employment item for the particular office.

The taxpayer questioned the validity of the waivers it executed to extend the BIR's period to assess taxes. It argued that the waivers were invalid because they were signed and accepted only by BIR officials serving in an Officer-in-Charge (OIC) capacity, allegedly in violation of BIR rules.

The Court upheld the validity of the waivers. It explained that under BIR regulations, an OIC assumes the full duties and responsibilities of the position, and can validly sign and accept waivers. Therefore, the waivers signed by the OIC-Assistant Commissioner were not defective.

However, the Court also found that the BIR's right to assess taxes had partially prescribed. Because of delays and other factors, the tax assessments were no longer enforceable for certain portions of the tax period. *(Grand Union Supermarket, Inc., v. Commissioner of Internal Revenue, CTA Case No. 10390, December 17, 2024)*

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

For refund claims under Section 112(C) of the Tax Code, if the CIR fails to act within the 90-day period, the taxpayer must treat the inaction as a deemed denial and file an appeal within 30 days from the lapse of the 90-day period. A subsequent decision by the BIR issued beyond the 90-day period does not reset or suspend the 30-day period to appeal.

The taxpayer filed a claim for refund under Section 112(C) of the Tax Code. After the lapse of the 90-day period within which the CIR was mandated to act, the taxpayer received a decision from the BIR. Believing that the 30-day period to appeal should only begin from receipt of the CIR's decision, the taxpayer filed its Petition for Review before the Court of Tax Appeals beyond the 30 days reckoned from the expiration of the 90-day period.

Section 112(C) provides that if the CIR fails to act on a claim for refund within 90 days from submission of complete documents, such inaction shall be deemed a denial, in which case the taxpayer may appeal to the CTA within 30 days from the expiration of the 90-day period. Jurisprudence has consistently held that the 30-day period to appeal is mandatory and jurisdictional and begins to run the day after the lapse of the 90 days, regardless of whether a decision is subsequently received.

The CTA dismissed the petition for lack of jurisdiction. It ruled that the taxpayer should have treated the CIR's inaction as a denial upon the expiration of the 90-day period and filed the appeal within the 30-day window thereafter. The belated receipt of the decision from the BIR did not suspend or reset the period to appeal. Accordingly, the failure to timely file the Petition rendered the Court without jurisdiction to entertain the case. (*"K" Line Maritime Academy Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 10270, December 18, 2024*)

RR No. 18-2024
December 17,2024
This implements Section 32(B)(5) of the NIRC, as amended by Republic Act No. 12066, or the CREATE MORE Act

Pursuant to Section 32(B)(5) of the NIRC of 1997, as amended by Republic Act. No. 12066, or the CREATE MORE , income of any kind shall be excluded from the computation of gross income, as defined under Section 32 (A) of the NIRC, and shall be exempt from income tax to the extent required by any treaty obligation binding upon the Government of the Philippines, or his/her authorized representative(s), including agreements entered into by the President, or his/her authorized representative(s), with economies and administrative regions, and duly concerned in by at least two-thirds of all the members of the Senate.

This does not imply recognition of the statehood of any economy or administrative region mentioned, nor does it depart from any policy the Philippines has adopted or agreed to implement..

The Power of the President of the Philippines to Enter into Treaties and International Agreements is based on the following legal provisions:

a. Section 21 of Article VII (Executive Department) of the 1987 Philippine Constitution, which states that no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate; and

b. Section 19 of Book III, Title I, Chapter 7 of Executive Order No. 292 (the Administrative Code of 1987), which provides that the President shall exercise such other powers as are provided for in the Constitution.

Definition of Terms:

a. *International agreement* refers to a contract or understanding, regardless of nomenclature, entered into between the Philippines and another government in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments;
b. *Treaty* refers to an international agreement entered into by the Philippines that requires legislative concurrence after executive ratification. This term may include compacts like conventions, declarations, covenants, and acts;
c. *Government of the Philippines* refers to corporate governmental entity through which the functions of government are exercised throughout the Philippines, including save as the contrary appears from the context, the various arms through which the political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial city, municipal, or barangay subdivisions, or other forms of local government;
d. *Economies* used to describe the members of the Asia-Pacific Economic Cooperation (APEC) because the APEC cooperative process is

predominantly concerned with trade and economic issues, with members engaging with one another as economic entities rather than as sovereign nations; and

e. *Administrative regions* refer to territorial units that a country is divided in, having an administration with some government functions and powers, and with its jurisdiction covering the total area inside its borders.

RMC No. 132-2024
December 9, 2024
This clarifies the tax treatment of the PAGCOR, its licensees and contractees

PAGCOR's income classification and their respective taxability:

I. Income from operations under PAGCOR's franchise/gaming operations is subject to *five (5%) franchise tax* including, among others: (a) Income from its casino operations; (b) Income from dollar pit operations; (c) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.

II. Income from other related services/operations or from non-gaming operations, such as, but not limited to, income from operating necessary and related services, shows and entertainment are subject to corporate income tax and value added tax.

III. Collection and remittance of qualifying fee from players
PAGCOR must also collect a qualifying fee from players and remit the same.

Tax Treatment of PAGCOR Licensees and Contractees

Income received by: (1) PAGCOR from its gaming operations; and (2) PAGCOR's Contractees and Licensees from their gaming operations, is subject to five percent (5%) franchise tax, in lieu of all other national and local taxes, including indirect taxes such as VAT.

Tax Treatment of PAGCOR's Licensees Located in Ecozones/Freeports

Income Source	Tax Treatment
1. Income From Gaming Operations	- Not subject to Special Corporate Income Tax (SCIT), Income Tax Holiday (ITH), or corporate income tax. - Subject to 5% franchise tax (in lieu of all other taxes, including VAT) as per PD No. 1869, as amended.

2. Income From Other Related Services/Operations or Non-Gaming Operations Covered by Registered Activity with IPA	a. **Under SCIT**: - Exempt from regular corporate income tax and VAT. b. **Under ITH**: - Exempt from corporate income tax but subject to VAT.
3. Income From Other Related Services/Operations or Non-Gaming Operations Not Covered by Registered Activity with IPA	- Subject to regular corporate income tax, VAT, and other applicable taxes under the Tax Code.

Remittance of the Franchise Tax to the BIR

Aspect	Details
Franchise Tax Remittance	- PAGCOR's licensees/contractees must remit the 5% franchise tax directly to the BIR.
	- Payment is made to the Revenue District Office (RDO) where the licensee or contractee is registered.
	- Use **BIR Form No. 2553** with **Alphanumeric Tax Code OT 010** for remittance.
License Fees	- Paid to PAGCOR based on the aggregate gross gaming revenue.
	- Serves as consideration for the authority granted by PAGCOR to operate a casino.
Franchise Tax	- A tax incentive provided to PAGCOR and its licensees/contractees for income from gaming operations.
	- Collected by the BIR and concerned Local Government Units.
Legal Basis	- Governed by Department of Finance Department Order No. 03-08 (February 13, 2008).

BIR ISSUANCE

RMC No. 133-2024, December 18, 2024

This amends certain provisions on the issuance of eCAR relative to One-Time Transaction

This provides the new venue for processing and issuance of eCAR for transactions pertaining to sale of personal property, as follows:

"b. Sale of personal property – RDO where the Tax Identification Number (TIN) of the seller/transferor is registered or RDO which has jurisdiction over the residence of seller/transferor."

RMO No. 049-2024, December 9, 2024

This provides the creation of Alphanumeric Tax Code for FWT representing Franchise Tax on payments to NRFC supplier of PAGCOR.

These guidelines are issued to ensure the proper identification and monitoring of final withholding tax payments representing Franchise Tax on remittances to non-resident foreign corporation (NRFC) suppliers of PAGCOR. Accordingly, the following Alphanumeric Tax Code (ATC) has been created

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
WC810	Final Tax representing Franchise Tax on payments to Non-resident Foreign Corporation supplier of PAGCOR related to its gaming operations	**5%**	RR No. 2-980	1601-FQ/2306

BSP Memorandum No. M-2024-037, December 10, 2024

This provides new guidelines on the submission of the documentary and reportorial requirements under BSP Circular No. 1198.

All OPS shall use the prescribed formats provided in the appendices attached to the memorandum. Failure to conform with the format will result in the reportorial requirements not being submitted subject to applicable penalties for delayed or unsubmitted reporting.

OPS that are non-banks shall submit the following documents within 6 months from the effectivity of this circular:

1. Certification of Compliance;
2. Gap Assessment; and
3. Documentary requirements for those engaged in merchant acquisition.

OPS that are banks shall submit the following documents within 6 months from the effectivity of this circular:

1. Gap assessments
2. Notice of MPAA and other documentary requirements.

In addition, all OPS shall submit their AFS within 120 days after the end of the reference year. The AFS shall contain a Certification of the External Auditor indicating Compliance with relevant confidentiality clauses, disclosure requirements, and other matters affecting the condition or soundness of the OPS.

OPS-MAL shall submit the following documents within 15 days after the end of their reference quarters:

1. monthly Data Entry Templates for each reference quarter; and
2. List of delisted merchants with reasons for delisting.

OPS-MAL shall submit a Notice to the BSP of significant changes 30 days prior to the effective date of the change. Changes in average monthly value of collected funds shall be submitted within 60 days after its occurrence.

SEC OGC Opinion No. 24-34, dated November 6, 2024, posted December 3, 2024

When the function of the Chairman of the Board consists merely of presiding at the meetings of the Board, a non-Philippine national may qualify as Chairman of the Board in a corporation engaged in partially nationalized activities.

The Corporation inquired whether a foreigner is disqualified from acting as a Chairman under the Anti-Dummy Law of a sixty percent (60%) Filipino-owned corporation engaged in partially nationalized activities even if he is not performing any executive function.

In previous SEC-OGC Opinions, the Commission opined that, when the function of the Chairman of the Board as provided for in the by-laws consists merely of presiding at the meetings of the Board, a non-Philippine national may qualify as Chairman of the Board.

Thus, for as long as the Chairman does not perform any executive function and merely presides at board meetings, the answer is in the negative.

SEC OGC Opinion No. 24-35, dated November 14, 2024, posted December 3, 2024

A corporation may keep earnings beyond 100% of its paid-in capital only if there are special circumstances that clearly justify it, such as when the company needs to set aside a reserve for likely future liabilities or risks.

The Corporation is engaged in the recruitment and placement of seafarers for overseas employment. In light of the recent increase in the SSS employer contribution and the potential liabilities arising from seafarer claims—such as medical and hospitalization expenses, sickness allowance, death, and disability benefits—the Corporation intends to restrict a portion or all of its retained earnings to cover these possible obligations. It seeks clarification on whether such actions are allowable under Section 42(c) of the RCC, which permits the retention of surplus profits in excess of 100% of paid-in capital under certain circumstances, specifically for probable contingencies.

Under Section 42(c) of the RCC, three conditions must be met to justify the excess retention of earnings: (1) there must be a contingency or contingent liability; (2) the contingency must be probable, not merely possible; and (3) special circumstances must exist within the corporation that necessitate such retention. In this case, the potential liabilities from seafarer claims are viewed as contingent but speculative, as their occurrence is uncertain or dependent on factors such as the outcome of legal cases or actions of third parties (e.g., principals). On the other hand, the increase in the SSS employer contribution is a definite and existing obligation under the law and therefore does not constitute a contingent liability.

Given these considerations, the Corporation cannot invoke Section 42(c) of the RCC to justify the restriction of retained earnings for either the potential seafarer claims or the increased SSS contributions. The former does not meet the threshold of probability required under the law, and

the latter is a certain expense, not a contingency. Thus, the retention of earnings beyond the 100% paid-in capital cap is not legally permissible in this instance.

SEC OGC Opinion No. 24-36, dated November 19, 2024, posted December 3, 2024

Additional paid-in capital is any contribution of stockholders over the par value of shares.

The Corporation, which is a real estate development corporation primarily engaged in real estate acquisition and leasing, has the opportunity to purchase a real estate which is way beyond its paid-up capital. Thus, the Corporation intends to raise funds for the acquisition of the property by allowing an investor to subscribe to preferred shares but instead of subscribing at par, the investor will subscribe and pay for the preferred shares at a premium.

The Corporation inquired, among others, on the following:

- Whether the premium is considered additional paid-in capital ("APIC");
- Whether there is a limitation on the amount of premium for each preferred share; and
- Whether the premium paid can be used by the Corporation to acquire a land which it will own and develop.

As to the first query, the premium paid or the amount received over the par value of its shares is APIC. APIC is defined as "any contribution of stockholders over the par value of shares. Incidentally, a share premium is also defined as the amount received by a firm over the par value of its shares."

As to the second query, generally, there is no limitation on the amount of premium for the preferred shares.

As to the third query, from the moment the corporation receives the premium paid, ownership thereof is transferred to the corporation, and the corporation, being now the owner of the funds, can disburse the same for the operation of its business, such as for acquisition of land.

SEC OGC Opinion No. 24-38, dated November 26, 2024, posted December 3, 2024

A purchase of securities from the unissued shares of a public company is exempt from the

The Corporation, in order to raise capital, is considering calling on existing shareholders to subscribe to additional shares up to a maximum of 100% of their current shareholding. The shares to be issued will be taken from the unissued shares of the Corporation. In line with this, the Corporation inquired whether mandatory tender offer rule still apply.

The Commission explained that a purchase of securities from the unissued shares of a public company is exempt from the mandatory tender offer requirement as long as the acquisition will not result to a fifty percent (50%) or more ownership of securities by the purchaser or such percentage that is sufficient to gain control of the board.

mandatory tender offer requirement as long as the acquisition will not result to a fifty percent (50%) or more ownership of securities.

SEC OGC Opinion No. 24-39, dated November 26, 2024, posted December 3, 2024

Paid-up capital includes share premium or the additional paid-in capital.

The corporation inquired whether the definition of "paid-up capital" under the Retail Trade Liberalization Act of 2000 ("RTLA"), as amended, includes additional paid-in capital ("APIC").

The Commission confirmed the Corporation's position that the definition of "paid-up capital" under the 2000 RTLA should include share premium or the APIC for purposes of determining compliance with the minimum paid-up capital requirement thereto.

Published Articles

Business Mirror

Tax Law for Business

A REFRESHER ON THE NEW TAX LAWS IN 2024

By Atty. Rodel C. Unciano

As we bid goodbye to 2024 today, let's take a look one more time at some of the more significant features of the tax legislations during the year that have once again reshaped the landscape of taxation in the Philippines.

We welcomed the year 2024 with the signing into law of the Ease of Paying Taxes (EOPT) Act in January, followed by the Real Property Valuation and Assessment Reform Act (RPVARA) towards the middle of the year, then the imposition of value-added tax (VAT) on digital services in October and the Corporate Recovery and Tax Incentives for Enterprises to Maximize Opportunities for Reinvigorating the Economy (CREATE MORE) in November. And to cap the year, a short but tourist-welcoming piece of legislation was passed and signed into law which created a VAT refund mechanism for non-resident tourists.

With the effectivity of Republic Act (RA) No. 11976 or the EOPT Act, we now have a uniform use of VAT invoice for both sale, barter, exchange, or lease of goods or properties, and for every sale, barter, or exchange of services. So, for VAT compliance and for the purpose of claiming input tax credit, only VAT invoice is the acceptable proof to substantiate the claim for input tax credit, whether it is a purchase of goods or purchase of services.

While invoice is now the primary document supporting sale of both goods and services, the taxpayer is not precluded from issuing supplementary document other than sales or commercial invoice. But for purposes of VAT, supplementary documents are not valid proof to support the claim of input taxes by the buyers/purchasers of goods and/or services. All VAT-registered persons and those required to register for VAT are now required to issue VAT invoice as the

principal document and are required to comply with the amended invoicing requirements under the EOPT Act.

On the other hand, RA 12001, or the RPVARA has modified the real property valuation system in the country through the development and maintenance of a just, equitable, impartial, and nationally consistent real property valuation based on internationally accepted valuation standards, concepts, principles, and practices. With the signing of the RPVARA into law, we should now follow a single valuation based on matters of imposition of real property taxes and relevant national taxes on transactions involving real properties.

While the valuation of real properties still remains with the concerned local government units, the same is now subject to review and approval by the Bureau of Local Government Finance and the Secretary of Finance to ensure that the valuation is in accordance with the national valuation standards.

In October, RA 12023 was likewise passed into law imposing VAT on digital services. As defined, the term 'digital service' shall refer to any service that is supplied over the Internet or other electronic network with the use of information technology and where the supply of the service is essentially automated. It includes online marketplace or e-marketplace and online platform, among others.

Meanwhile, RA 12066, or the CREATE MORE has reformed the bundle of tax incentives available to Registered Business Enterprises (RBE) duly registered with the Fiscal Incentives Review Board (FIRB) and other Investment Promotion Agencies (IPA).

Subject to certain conditions and period of availment, types of incentives that may be granted to registered projects or activities include 1) Income Tax Holiday (ITH), 2) Special Corporate Income Tax (SCIT) Rate, 3) Enhanced Deductions Regime (EDR), 4) Duty exemption on importation of capital equipment, raw materials, spare parts, or accessories, 5) VAT exemption on importation and VAT zero-rating on local purchases, and 6) RBE Local Tax.

ITH is an exemption from income tax on registered project or activity and is available for both export and domestic market enterprises. The SCIT is a tax equivalent to five percent (5%) of gross income earned and is in lieu of all national and local taxes and local fees and charges. Only registered export enterprises may avail SCIT.

Under CREATE MORE, EDR has been made a separate tax regime where qualified enterprises shall be taxed at a rate equivalent to twenty percent (20%) of taxable income derived from

registered projects or activities. This is in addition to the enhanced deductions enumerated under the law.

The RBE local tax may be imposed by the concerned local government unit through an ordinance issued by the concerned Sanggunian, at a rate of not more than two percent (2%) of an RBE's gross income during the ITH and EDR. This shall be in lieu of all local taxes and local fees and charges imposed by the local government unit. RBE local tax shall not be imposed on RBEs under SCIT.

As regards duty exemption, CREATE MORE modified the rules such that the exemption shall now apply to the importation of capital equipment, raw materials, spare parts, or accessories directly attributable to the registered project or activity of RBEs, including goods used for administrative purposes, unlike the old provision where the exemption applies only to those exclusively used in the registered project or activity.

For VAT, the exemption on importation and VAT zero-rating on local purchases shall only apply to goods and services directly attributable to the registered project or activity of a registered export enterprise, or a registered high-value domestic market enterprise, including expenses incidental thereto.

Finally, with the signing into law of RA 12079, a non-resident tourist shall now be eligible for a VAT refund on locally purchased goods if the goods are purchased in person by the tourist in duly accredited stores, the goods are taken out of the Philippines by the tourist within sixty (60) days from the date of purchase and that the value of goods purchased per transaction is equivalent to at least Three Thousand Pesos (P3,000.00).

Happy New Year!

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Glossary of Common Terms, Abbreviations, and Acronyms

AN	-	Assessment Notices
BIR	-	Bureau of Internal Revenue
BOC	-	Bureau of Customs
CIR	-	Commissioner of Internal Revenue
COC	-	Commissioner of Customs
CTA	-	Court of Tax Appeals
CWT	-	Creditable Withholding Tax
CY	-	Calendar Year
DST	-	Documentary Stamp Tax
EB	-	*En Banc*
ET	-	Excise Tax
EWT	-	Expanded Withholding Tax
FWT	-	Final Withholding Tax
FY	-	Fiscal Year
LGC	-	Local Government Code
LOA	-	Letter of Authority
FAN	-	Final Assessment Notice
FDDA	-	Formal Decision on Disputed Assessment
FLD	-	Formal Letter of Demand
IT	-	Income Tax
MR	-	Motion for Reconsideration
NIC	-	Notice of Informal Conference
NIRC	-	National Internal Revenue Code
PAN	-	Preliminary Assessment Notice
Petition	-	Petition for Review
Protest	-	Protest to the Final Assessment Notice/Formal Letter of Demand
PD	-	Presidential Decree
PT	-	Percentage Tax
Reply	-	Reply to the Preliminary Assessment Notice
RA	-	Republic Act
RDO	-	Revenue District Office
RMC	-	Revenue Memorandum Circular
RMO	-	Revenue Memorandum Order
RR	-	Revenue Regulations
RTC	-	Regional Trial Court
SC	-	Supreme Court
TPI	-	Third Party Information
TY	-	Taxable Year
VAT	-	Value-Added Tax
WDL	-	Warrant of Distraint and/or Levy
WG	-	Warrant of Garnishment
WTC	-	Withholding Tax on Compensation