

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).

20/F Chatham House
Valero cor. Rufino Sts.



Salcedo Village
Makati Zip Code



www.bdblaw.com.ph
info@bdblaw.com.ph



T: (632) 403-2001
F: (632) 403-2001 loc. 130



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HIGHLIGHTS for DECEMBER 2020

- **Banks are the parties liable for the payment of DST under RR No. 9-2000. It has no legal personality to file a claim for refund for DST erroneously paid by the other party to the transaction.** (*Bank of the Philippine Islands v. Commissioner of Internal Revenue, CTA EB No. 2126 dated December 2, 2020*)
- **In determining whether the transfer falls under Sec. 40 (C)(2) of the Tax Code, the subsequent sale of properties transferred does not diminish the fact that the transfer was due to legitimate business purpose.** (*Luzviminda Land Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10035 dated December 3, 2020*)
- **A LOA served or presented to the concerned taxpayer beyond the 30-day mandatory period is considered null and void.** (*People of the Philippines v. Cross Country Oil and Petroleum Corp., CTA EB Crim No. 071 dated December 4, 2020*)
- **Forfeiture of imported goods shall only be done if it is proved that the misdeclaration in the shipment's quantity was caused by the importer himself.** (*Garchitorena v. Hon. Isidro S. Lapeña, in his capacity as Commissioner of Customs, CTA Case no. 9972 dated December 9, 2020*)
- **The filing of the administrative claim before the CIR and petition for review before the CTA on the same day does not constitute "prior filing" set forth under Section 229 of the Tax Code.** (*Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2166 dated December 11, 2020*)
- **The sale of goods or properties between PEZA-registered entities are VAT-exempt.** (*Wells Fargo Enterprise Global Services, LLC-Philippines v. Commissioner of Internal Revenue, CTA EB No. 2087 dated December 14, 2020*)
- **The filing of the administrative claim before the CIR and petition for review before the CTA on the same day does not constitute "prior filing" set forth under Section 229 of the Tax Code.** (*Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2166 dated December 11, 2020*)
- **The sale of goods or properties between PEZA-registered entities are VAT-exempt.** (*Wells Fargo Enterprise Global Services, LLC-Philippines v. Commissioner of Internal Revenue, CTA EB No. 2087 dated December 14, 2020*)

HIGHLIGHTS for DECEMBER 2020

BIR ISSUANCES

- **RR No. 31-2020, December 18, 2020** – This amends the criteria and amount of threshold set in RR No. 7-2019 in determining who the top withholding agents are.
- **RR No. 32-2020, December 21, 2020** – Availment of tax amnesty on delinquencies was further extended until June 30, 2021.
- **RR No. 33-2020, December 21, 2020** – VAPP may be availed of until June 30, 2021.
- **RR No. 34-2020, December 21, 2020** – This prescribes the guidelines and procedures for the submission of BIR Form No. 1709, Transfer Pricing Documentation and other supporting documents.
- **RMC No. 136-2020, December 17, 2020** – This clarifies the suspension of the statute of limitations under Section 203 and 222 of the Tax Code, in relation to RR No. 11-2020.
- **RMC No. 138-2020, December 23, 2020** – This clarifies the fiscal year covered for purposes of the Availment of NOLCO under the Bayanihan to Recover as One Act.
- **RMO No. 46-2020, December 23, 2020** – This provides the guidelines and procedures for the availment of the reduced rate of 15% under the tax-sparing provision of the Tax Code on dividends paid to a non-resident foreign corporation.

SEC ISSUANCES

- **SEC Memorandum Circular No. 34, Series of 2020, December 15, 2020** – This defers the application of some accounting standards on real estate companies, particularly referring to accounting for significant financing component and the exclusion of land in the calculation of percentage of completion borrowing costs.
- **SEC Memorandum Circular No. 35, Series of 2020, December 28, 2020** – This allowed the staggered booking of provision for credit losses of licensed financing companies and lending companies and accredited microfinance NGOs for a certain period.

HIGHLIGHTS for DECEMBER 2020

BSP ISSUANCES

- **BSP Circular No. 1105, December 2, 2020** – This provides the guidelines on the establishment of digital banks.
- **BSP M-2020-088, December 9, 2020** – Non-stock savings and loan associations are allowed to recognize as income the accrued interest earned during the mandatory one-time 60-day grace period provided under Bayanihan to Recover as One Act for a certain period, subject to certain conditions.
- **BSP M-2020-089, December 11, 2020** – This provides for the electronic submission of the Annexes to the Computation of Open Foreign Exchange (FX) Position.
- **BSP M-2020-093, December 16, 2020** – This provides guidelines on the electronic submission of EPFS Monthly Report template of all BSP-supervised financial institutions with EPFS license.

IC ISSUANCES

- **IC CL-2020-112, December 9, 2020** – This provides the guidelines on formal closure of liquidation proceedings for pre-need companies under liquidation and final disposal and distribution of assets including unclaimed benefits.
- **IC LO-2020-16, December 11, 2020** – This answers inquiry on the application of the Insurance Code to HMOs.

COURT OF TAX APPEALS DECISION HIGHLIGHTS

Banks are the parties liable for the payment of DST under RR No. 9-2000. It has no legal personality to file a claim for refund for DST erroneously paid by the other party to the transaction.

Pursuant to RR No. 9-2000, the banking institution is the proper payor of the DST as regards to transactions entered into, such as loan agreements. In instances when DST was erroneously filed by the other party, the bank has no legal standing to claim for the refund on behalf of the other party, since it is not the real party in interest. (*Bank of the Philippine Islands v. Commissioner of Internal Revenue, CTA EB No. 2126 dated December 2, 2020*)

In a claim for VAT refund, purchases of goods or properties must be supported by VAT invoices, while purchases of services must be supported by VAT ORs.

In order to be entitled to input tax credits, the same must be evidenced by VAT invoices (for domestic purchases of goods or properties) or ORs (for domestic purchases of services) issued in accordance with Section 113 of the Tax Code. Strict compliance with substantiation and invoicing requirements is necessary considering VAT's nature and VAT system's tax credit method, where tax payments are based on output and input taxes and where the seller's output tax becomes the buyer's input tax that is available as tax credit or refund in the same transaction. It ensures the proper collection of taxes at all stages of distribution, facilitates computation of tax credits, and provides accurate audit trail or evidence for BIR monitoring purposes.

It is clear that the office of a VAT invoice is separate and distinct from a VAT official receipt or vice versa; that in a claim for refund of unutilized or excess input VAT, purchases of goods or properties must be supported by VAT invoices, while purchases of services must be supported by VAT ORs; that VAT invoices and VAT ORs are not interchangeable; and that failure to comply with the invoicing requirements will result to the disallowance of the claim for input VAT. (*AIG Shared Services Corporation (Philippines) v. Commissioner of Internal Revenue, CTA Case No. 9351 dated December 2, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made.

In this case, the BIR merely reiterated the same findings as stated in the PAN, without giving any reason for rejecting the refutations and explanations made by the taxpayer in its reply to PAN. To stress, without addressing the said refutations and explanations, the BIR did not give the particular facts upon which the FLD/Assessment Notices are based. Consequently, the taxpayer was left unaware on how the BIR appreciated the explanations or defenses that were raised against the PAN.

A significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Such requirement must be embodied in the FLD/FAN. Specifically, the BIR must give the particular facts upon which his or her conclusion are based, and those facts must appear in the record. As a corollary, the concerned taxpayer must not be left unaware on how the BIR or his duly authorized representatives appreciated the explanations or defenses raised in connection with the assessment. (*Chun Lang Chan v. Commissioner of Internal Revenue, CTA Case No. 9758 dated December 3, 2020*)

In determining whether the transfer falls under Sec. 40 (C)(2) of the Tax Code, the subsequent sale of properties transferred does not diminish the fact that the transfer was due to legitimate business purpose.

No gain or loss will be recognized on the exchange of property when two (2) conditions are met: first, there must be legal merger, and second, such business restructuring was done for a bona fide business purpose.

The BIR's contention that the merger was not for a bona fide purpose, considering that the Ipil Property was later sold, is unavailing. As an incident of its ownership, the taxpayer possesses the right to dispose of its property. It must also be noted that the Ipil Property was just one of the properties transferred by virtue of the merger. Verily, its subsequent sale seven (7) years thereafter cannot negate altogether the bona fide purpose of the merger. (*Luzviminda Land Holdings, Inc. v. Commissioner of Internal Revenue, CTA Case No. 10035 dated December 3, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The CTA possesses power to rule over petition for certiorari under Rule 65 of the Rules of Court.

This case involves real property tax assessment on EDSA MRT III real properties imposed by the Mandaluyong City Government.

In 2007, an RTC Order was received by the Republic, denying its application for issuance of a writ of preliminary injunction. However, instead of filing a petition for certiorari with the CTA, the Republic filed the petition with the Court of Appeals. It was only on November 28, 2016 that the Republic filed the original petition for certiorari with the CTA.

The CTA ruled that the pronouncement in Grecia case is clear. The CTA has the power to rule over petition for certiorari under Rule 65. The Court allowed the petition despite being filed out of time since the lack of a clear pronouncement as to the jurisdiction of the CTA over petitions for certiorari under Rule 65 of the Rules of Court during the filing of the CA Petition is a peculiar legal and equitable circumstance warranting the relaxation of the 60-day reglementary period to file a petition for certiorari. To deny the Republic of petition for certiorari will cause grave injustice to them and, likewise, runs counter to the principles of substantial justice and equity. (*Mandaluyong City Government v. Republic of the Philippines (Department of Transportation) and Metro Rail Transit Corporation, CTA EB no. 2078, December 04, 2020*)

The CTA possesses certiorari jurisdiction under Rule 65 of the Rules of Court over interlocutory orders issued by the RTC over which it has appellate review. (*Rappler Holdings Corporation v. Hon. Ana Teresa T. Cornejo-Tomasacruz, CTA Case No. 10323 dated December 4, 2020; Commissioner of Internal Revenue v. the Court of Tax Appeals-Special Third Division and Kilusang Magkaibigan Multi-Purpose Cooperative, CTA EB no. 2060 dated December 7, 2020*)

A LOA served or presented to the concerned taxpayer beyond the 30-day mandatory period is considered null and void.

The LOA was only served to the taxpayer on May 30, 2013 or 45 days after its issuance on April 15, 2013, without the same being revalidated. Considering that the failure to serve the LOA on time is in direct contravention of the mandate of Revenue Audit Memorandum Order No. 1- 00, which requires the LOA to be served to the taxpayer within 30 days from the date of its issuance, the same becomes void and without force and effect. Any revenue officer rendering an audit of a taxpayer pursuant to a defective LOA has no authority to examine the same, rendering the resulting assessment void. (*People of the Philippines v. Cross Country Oil and Petroleum Corp., CTA EB Crim No. 071 dated December 4, 2020*)

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

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Forfeiture of imported goods shall only be done if it is proved that the misdeclaration in the shipment's quantity was caused by the importer himself.

The requisites for the forfeiture of imported goods are: (1) the wrongful making by the owner, importer, exporter or consignee of any declaration or affidavit, or the wrongful making or delivery by the same person of any invoice, letter or paper – all touching on the importation or exportation of merchandise; and (2) that such declaration, affidavit, invoice, letter or paper is false.

In this case, the BOC did not allege that the importer caused the execution of the supposedly spurious document [invoice] but only the existence of irregularity. This alone justifies the setting aside of the BOC's order of forfeiture. Moreover, the allegation of BOC failed to disclose that the importer willfully sought to defraud the government in declaring the FOB value. Equally, the BOC agents have also not supported their claim for higher valuation. However, despite the unfounded valuation, the importer was able to pay the custom duties corresponding thereto leaving no reason for BOC to deny the release of the importer's shipment. (*Garchitorena v. Hon. Isidro S. Lapeña, in his capacity as Commissioner of Customs, CTA Case No. 9972 dated December 9, 2020*)

The filing of the administrative claim before the CIR and petition for review before the CTA on the same day does not constitute "prior filing" set forth under Section 229 of the Tax Code.

In interpreting the meaning of the word "prior," which means "preceding in time or order" or "taking precedence," the taxpayer has overstretched the meaning thereof, to justify its supposed compliance with the legal requirement of "prior filing." Even if admittedly, the administrative claim for refund was filed with the CIR prior to the filing of the judicial claim with the CTA, it was nevertheless, done on the same day. The filing of both the administrative claim and judicial claim for refund on the same day, is akin to the concurrent filing of the subject claims, and falls short of fulfilling its primary purpose, which is to give the CIR an opportunity to act on the administrative claim. (*Philippine Airlines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 2166 dated December 11, 2020*)

COURT OF TAX APPEALS DECISION HIGHLIGHTS

The sale of goods or properties between PEZA-registered entities are VAT-exempt.

RMC No. 74-99 provides that the sale of goods by a PEZA registered entity to another PEZA entity (or Intra Ecozone Sales of Goods), is exempt from VAT. There is no distinction made as to whether or not the goods are to be used for a PEZA-registered activity. Hence, a determination thereon becomes immaterial as the exemption is not dependent thereon. (*Wells Fargo Enterprise Global Services, LLC-Philippines v. Commissioner of Internal Revenue, CTA EB No. 2087 dated December 14, 2020*)

Claims for deductions on gross income must be supported by any document or other evidence other than mere testimony of the taxpayer's officer.

In this case, other than the testimony of the Finance Manager, no other evidence was provided in order to corroborate the claim of quality or price adjustment. The details of the factors constituting the amount were not further explained nor supported by any document or any other evidence.

In claiming a deduction from gross income, the taxpayer has the burden of proving that the amount representing quality/price adjustments complied with the substantiation requirements as set forth under Section 34(A)(1)(b) of the Tax Code. (*Classic Fine Foods Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9391 dated December 17, 2020*)

BIR ISSUANCES HIGHLIGHTS

RR No. 31-2020, December 18, 2020

This amends the criteria and amount of threshold set in RR No. 7-2019 in determining who the top withholding agents are.

RR No. 7-2019	RR No. 31-2020	
Gross sales/receipts or gross purchases or claimed deductible itemized expenses – P12,000,000.00	RDO Group Classification	Gross Sales/Receipts or Gross Purchases of At Least
	Groups A and B	P12,000,000.00
	Groups C, D and E	P5,000,000.00

The amount of claimed itemized expenses is no longer a criteria in RR No. 31-2020.

RR No. 32-2020, December 21, 2020

This further extends the availment of tax amnesty on delinquencies was further extended until June 30, 2021

RR No. 33-2020, December 21, 2020

This extends the period of availment of Voluntary Assessment and Payment Program (VAPP) until June 30, 2021.

This further adds that those taxpayers who avail of the VAPP on withholding taxes shall be allowed to claim deduction on the corresponding income payment pursuant to RR No. 6-2018.

The revenue regulation also further provided that no denial of application or invalidation of a previously issued Certificate of Availment shall be valid unless the taxpayer is formally notified by the Division Chief (LT Office) or the Revenue District Office where the taxpayer is registered, stating the factual reasons therefor. The taxpayer can appeal the said denial or invalidation to the Assistant Commissioner-Large Taxpayer Service (ACIT-LTS) or Regional Director (RD) within thirty (30) days from receipt of such notice.

BIR ISSUANCES HIGHLIGHTS

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RR No. 34-2020, December 21, 2020

The following are required to file and submit BIR Form No. 1709 (Information Return on Transactions with Related Party) (RPT Form), together with the Annual Income Tax Return (AITR):

- a) Large taxpayers;
- b) Taxpayers enjoying tax incentives, i.e. Board of Investments (BOI)-registered and economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential income tax rate;
- c) Taxpayers reporting net operating losses for the current taxable year and the immediately preceding two (2) consecutive taxable years; and
- d) A related party, as defined under Section 3 of RR No. 19- 2020, which has transactions with (a), (b) or (c). For this purpose, key management personnel (KMP), as defined under Section 3(7) of RR No. 19-2020, shall no longer be required to file and submit the RPT Form, nor shall there be any requirement to report any transaction between KMP and the reporting entity/parent company of the latter in the RPT Form.

The preparation and submission of Transfer Pricing Documentation (TPD) under RR No. 02-2013 shall be mandatory for taxpayers enumerated above who meet the following materiality thresholds:

1. Annual gross sales/revenue for the subject taxable period exceeding ₱150,000,000 and the total amount of related party transactions with foreign and domestic related parties exceeds ₱90,000,000.

In computing the above threshold, the following items shall be included:

- i. Amounts received and/or receivable from related parties or paid and/or payable to related parties during the taxable year but excluding compensation paid to KMP, dividends and branch profit remittances; and
- ii. Outstanding balances of loans and non-trade amounts due from/to all related parties.

Related party transactions covered by an Advance Pricing Agreement (APA) need not be disclosed in the RPT Form but shall nonetheless be included in the computation of the amount of related party transactions following the prescribed formula; or

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RR No. 34-2020, December 21, 2020

2. Related party transactions meeting the following materiality threshold:
 - i. If involving sale of tangible goods in the aggregate amount exceeding ₱60,000,000 within the taxable year;
 - ii. If involving service transaction, payment of interest, utilization of intangible goods or other related party transaction in the aggregate amount exceeding ₱15,000,000.00 within the taxable year; or
3. If TPD was required to be prepared during the immediately preceding taxable period for exceeding either (a) or (b) above.

The TPDs and other supporting documents as set out in Section 6 of RR No. 19-2020 shall no longer be attached to the RPT Form but shall be submitted within thirty (30) calendar days upon receipt of request by the Commissioner or his/her duly authorized representatives, pursuant to a duly issued Letter of Authority covering all internal revenue taxes (AITR), subject to non-extendible period of 30 calendar days based on meritorious grounds.

A new simplified version of BIR Form No. 1709 was also made available.

RMC No. 130-2020, December 10, 2020

The following are the polices and guidelines on the conduct of online meetings/conferences with taxpayer/s and/or taxpayer/s' representatives on official matters with the BIR:

1. The conduct of all online meetings/conferences with taxpayer/s and/or taxpayer/s, representatives shall be hosted by the BIR.
2. In sending invitation, revenue officials and employees shall only use the prescribed BIR email address (name.surname@BIR.gov.ph). Personal email shall not be used for this purpose.
3. All meetings/conferences must be pre-approved in writing by the concerned Division Chief for National Office/Regional Director for Regional Offices/Revenue District Officer for Revenue District Offices.
4. All revenue officials and employees initiating the conduct of meeting/conference must file a memorandum request stating the following information:
 - a. Name of taxpayer and/or authorized taxpayer/s' representative;
 - b. Taxpayer Identification Number;
 - c. Name of persons who will attend the online meeting/conference, stating therein their official positions;
 - d. Date and time of the meeting;

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RMC No. 130-2020, December 10, 2020

- e. Agenda; and
 - f. Details of Assessment: eLOA No., Date, Taxable year covered (if applicable).
5. In order to be allowed to represent the taxpayer/s, all representative/s shall have a duly notarized Special Power of Attorney (SPA) from the taxpayer including those with BIR Certificate of Accreditation pursuant to RR No. 11- 2006, as amended by RR No. 4-2010 and RR No. 14-2010.
 6. Meetings/conferences shall only be conducted if taxpayer/s and/or taxpayer/s' representatives have requested the virtual meeting schedule through the BIR eAppointment System and clicked "Agree" to **BIR eAPPOINTMENT USER AGREEMENT**, or submitted a duly accomplished **BIR VIRTUAL MEETING AGREEMENT** for those BIR offices with no BIR eAppointment facility.
 7. The proceedings shall be strictly confidential. To ensure that no untoward divulgence/disclosure may happen, recording of the meeting/conference in whatever form is strictly prohibited. Any unauthorized recording or disclosure shall be subject to appropriate criminal, civil and administrative liability.
 8. In cases of power interruption and/or poor connectivity, the online meeting/conference may be rescheduled on a date and time agreed upon by both parties.

RMC No. 136-2020, December 17, 2020

Item 32 in the matrix provided under RR No. 11-2020 pertains to the suspension of the statute of limitations provided under Section 203 and 222 of the Tax Code. The said matrix provided that the suspension shall start from March 16, 2020, when the state of emergency was declared due to COVID-19 virus until sixty days after the lifting of the quarantine. With such suspension, the counting of the three (3)-year prescriptive period for the period to assess and the five (5)-year period to collect, shall exclude the number of days covered by the period of suspension, which is a total of 137 days.

	Original Prescriptive Date	New Prescriptive Date
Case 1	March 15, 2020	March 15, 2020
Case 2	March 16, 2020	July 31, 2020
Case 3	April 15, 2020	August 30, 2020
Case 4	June 15, 2020	October 30, 2020
Case 5	July 15, 2020	November 29, 2020
Case 6	April 15, 2021	August 30, 2021

BIR ISSUANCES HIGHLIGHTS

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**RMC No. 138-2020,
December 23, 2020**

This clarifies what falls under the definition of fiscal year for purposes of availing of the net operating loss carry-over (NOLCO) incurred for taxable years 2020 and 2021 under Bayanihan to Recover as One Act. Under the Act, NOLCO incurred for such taxable years may be carried over for the next five (5) consecutive taxable years immediately following the year of such loss.

In the RMC, the BIR clarified that a fiscal year will fall on a particular taxable year depending on the number of months it has on the two (2) years involved. Thus, a fiscal year ending on March 31, 2020 will fall on taxable year 2019 since it has nine (9) months in 2019 and only three (3) months in 2020. In the case of fiscal year ending on June 30, 2021, the beginning of which is July 1, 2020, it is considered as taxable year 2020 since it has more days in 2020 (184 days) than in 2021(181 days).

Based on the above, the following fiscal year ending on the stated months are counted as:

Taxable year 2020		Taxable year 2021	
FY ending July 31, 2020	FY ending January 31, 2021	FY ending July 31, 2021	FY ending January 31, 2022
FY ending August 31, 2020	FY ending February 28, 2021	FY ending August 31, 2021	FY ending February 28, 2022
FY ending September 30, 2020	FY ending March 31, 2021	FY ending September 30, 2021	FY ending March 31, 2022
FY ending October 31, 2020	FY ending April 30, 2021	FY ending October 31, 2021	FY ending April 30, 2022
FY ending November 30, 2020	FY ending May 31, 2021	FY ending November 30, 2021	FY ending May 31, 2022
	FY ending June 30, 2021		FY ending June 30, 2022

Those companies with fiscal years ending before July 31, 2020 and fiscal years ending after June 30, 2022 which incurred net operating loss are only allowed to carry over the loss as a deduction from its gross income for the next three (3) consecutive taxable years under Sec. 34 (D)(3) of the Tax Code, as amended. They cannot avail of the extended period to carry over the loss for another two (2) years.

BIR ISSUANCES HIGHLIGHTS

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RMO No. 43-2020, December 1, 2020

The following documents shall accompany each TRC application:

For individuals

1. Duly accomplished BIR Form No. 0902 [Application Form for TRC for Treaty Purposes];
2. Certified true copy of the following proofs of income:
 - i. Contract duly signed by both parties, if available, or any competent proof of transaction;
 - ii. BIR-registered invoice/receipt issued by the taxpayer to the income payor and the relevant Authority to Print Receipts and/or Invoices or Permit to Use Computerized Accounting System/Loose-leaf Receipts or Invoices/; and
 - iii. Proof of remittance if the foreign source income was already received by the domestic taxpayer;
3. Photocopy of the passport booklet or Residency Certificate issued by the Barangay;
4. Chairman if the applicant never left the Philippines;
5. Annual Income Tax Return for the immediately preceding year; and
6. Notarized Special Power of Attorney or authorization letter issued by the applicant to his/her authorized representative(s), which shall expressly state the authority to sign BIR Form No. 0902 as well as to file the TRC application.

For non-individuals

1. Duly accomplished BIR Form No. 0902, which must be signed by the taxpayer or its authorized representative;
2. Proof of establishment in the Philippines (e.g. latest Articles of Incorporation or Partnership);
3. Certified true copy of the following proofs of income:
 - i. Contract duly signed by both parties, if available, or any competent proof of transaction;
 - ii. BIR-registered invoice/receipt issued by the taxpayer to the income payor and the relevant Authority to Print Receipts and/or Invoices or Permit to Use Computerized Accounting System/Loose-leaf Receipts or Invoices/; and
 - iii. Proof of remittance if the foreign source income was already received by the domestic taxpayer;

BIR ISSUANCES HIGHLIGHTS

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RMO No. 43-2020, December 1, 2020

The Revised Guidelines and Procedures in issuing Tax Residency Certificates (TRC) are as follows:

1. Instead of a letter-request, the applicant shall submit, together with the required attachments, a duly-accomplished BIR Form No. 0902, which shall be signed by the taxpayer or his/her/its authorized representative.
2. Upon receipt of the application, the assigned case officer (CO) shall evaluate the completeness of the application and its supporting documents.
3. The CO shall inform the applicant of any deficiency in the accompanying requirements within three (3) working days either via registered mail or electronic mail (e-mail).
4. All TRC applications shall be acted upon within fourteen (14) working days from the submission of complete documentary requirements.
5. The BIR shall continue to issue its own TRC Form, which shall be signed by the Assistant Commissioner for Legal Service only. All TRC applications filed with the Revenue District Offices or Large Taxpayers Divisions shall be immediately indorsed to the ITAD.

To avoid being subjected to the regular tax imposed in the source state, Philippine taxpayers deriving income from another contracting state are hereby advised to always secure a TRC and present the same before the foreign tax authority to be entitled to treaty benefits. Those who fail to secure a TRC shall not be allowed to claim foreign tax credits in excess of the appropriate amount of tax that is supposed to be paid in the source state had the income recipient invoked the provision/s of the treaty and proved his/her/its residency in the Philippines.

RMO No. 46-2020, December 23, 2020

Non-resident foreign corporations (NRFC) applying for a reduced rate of 15% on dividends under the tax-sparing provision of the Tax Code must be guided by the following:

1. The reduced rate of 15% may be applied to the cash and/or property dividends declared by all corporations.
2. The domestic corporation paying the dividends may remit outright dividends to the NRFC and apply thereon the reduced rate of 15% without securing first a ruling from the BIR. It must determine, however, whether the existing law of the “country of domicile” allows the NRFC a “deemed paid” tax credit in the amount equivalent to the 15% waived by the Philippines or exempts from tax the dividends received.
3. The existence of a foreign law is a question of fact which must be proven before the Philippine courts.

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***RMO No. 46-2020,
December 23, 2020***

4. Within 90 days from the remittance of dividends or from the determination by the foreign tax authority of the deemed paid tax credit/non-imposition of tax because of the exemption, whichever is later, the NRFC or its authorized representative, shall file with the BIR, through ITAD, a request for confirmation of the applicability of the reduced dividend rate of 15%.

5. Holders of Philippine Depositary Receipts (PDRs) may also be entitled to the reduced rate, provided that (a) the PDR is coupled with a right to purchase the underlying shares; and (b) the said right can be legally exercised.

6. The BIR shall issue a certification duly signed by the Assistant Commissioner for Legal Service in lieu of the usual BIR ruling. In case of denial, a BIR ruling signed by the Commissioner or his authorized representative, which shall contain the factual and legal bases that led to the conclusion, shall be issued. Said denial may result in the imposition of a deficiency assessment for the 15% differential, plus penalties.

7. All unfavorable rulings are appealable to the Department of Finance within 30 days from receipt thereof pursuant to existing rules and regulations.

8. The reduced rate of 15% applies even if a tax treaty exists between the Philippines and the NRFC's country of residence.

The following documents shall accompany the first application for the reduced dividend rate of 15% in a given taxable year:

A. General Requirements

1. Letter-request which shall provide a background of the transaction, the relief sought and the legal basis;
2. Duly-accomplished BIR Form No.0901-TS;
3. Original apostilled/duly authenticated TRC;
4. Apostilled/duly authenticated copy of the NRFC's Articles of Incorporation or proof of establishment in its country of residence;
5. Original apostilled/duly authenticated SPA issued by the NRFC to its authorized representative;
6. Certified true copy of the Board of Directors' resolution of the domestic corporation approving the issuance of dividends, which shall include the amount of dividends, and dates of declaration, record and payment, among others;

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**RMO No. 46-2020,
December 23, 2020**

7. Original sworn statement executed by the corporate secretary of the domestic corporation/custodian banks/depository account holders/broker dealers stating the legal and beneficial owners, if applicable, of all issued and outstanding shares as of record date, their corresponding subscriptions, date/s of acquisition, percentage of ownership and the allocation of dividend;
8. Certified true copy of the General Information Sheet (GIS) of the domestic corporation for the year or period immediately preceding the date of declaration, whichever is more applicable;
9. Certified true copy of Audited Financial Statements of the domestic corporation stamped "received" by the BIR and Securities and Exchange Commission, which was used as basis of such dividend declaration;
10. Proof of remittance of the dividend payments.

B. Special Requirements

i. If the dividend is taxable in the country of domicile

1. Duly authenticated or apostilled copy of the law of the country of domicile allowing a tax credit for taxes actually paid in the Philippines and for taxes deemed paid in the Philippines equivalent to at least 15% of the dividends; and
2. Duly authenticated or apostilled copy of any document issued by, or filed with, the foreign tax authority, showing the amount of deemed paid tax credit actually granted by the foreign tax authority.

ii. If the dividend is exempt from tax in the country of domicile

1. A duly authenticated or apostilled copy of the law of the country of domicile; and
2. A duly authenticated or apostilled copy of any document issued by the foreign tax authority, confirming that the NRFC is exempt from income tax on dividends received from the Philippine corporation.

For subsequent applications during the year involving the same NRFC

1. Letter-request which shall provide a background of the transaction, the relief sought and the legal basis;
2. Duly-accomplished BIR Form No.0901-TS;
3. Original apostilled/duly authenticated SPA issued by the NRFC to its authorized representative, if there is a change in the previous SPA;

BIR ISSUANCES HIGHLIGHTS

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RMO No. 46-2020, December 23, 2020

4. Certified true copy of the Board of Directors' resolution of the domestic corporation approving the issuance of dividends, which shall include the amount of dividends, and dates of declaration, record and payment, among others;
5. Certification under oath by the corporate secretary of the domestic corporation/custodian banks/depository account holders/broker dealers stating the legal and beneficial owners, if applicable, of all issued and outstanding shares as of record date, their corresponding subscriptions, date/s of acquisition, percentage of ownership and the allocation of dividend;
6. GIS for the year or period immediately preceding the date of declaration, if different from a previously submitted GIS;
7. Original apostilled/authenticated certification issued by the NRFC, or its authorized representative, confirming that there is no substantial change in the domestic law of the country of domicile of the NRFC;
8. Apostilled or duly authenticated copy of any document issued by, or filed with, the foreign tax authority, showing the amount of deemed paid tax credit actually granted by the foreign tax authority; and
9. Proof of remittance of the dividend payments.

iii. For the dividends accruing to PDRs:

1. Duly authenticated and executed PDR Agreement; and
2. Proof of remittance of dividend payments to the PDR holder.

Any violation of this RMO shall be subject to penalties provided in Section 250 (for failure to file certain information returns) and other pertinent provisions of the Tax Code.

Note: Does failure to comply with the 90-day period to apply for request for confirmation of the reduced 15% dividend rate result to imposition of the deficiency balance rate of 15% or to imposition only of administrative penalty under Section 250 of the Tax Code? In case of tax audit, what if a tax treaty also applies, can the taxpayer still invoke the rate under the tax treaty, even if the taxpayer previously availed of the tax-sparing provision but failed to comply with the 90-day period or even if the taxpayer complied with the 90-day period, the request for confirmation was denied?

SEC ISSUANCES HIGHLIGHTS

SEC Memorandum Circular No. 34, Series of 2020, December 15, 2020

The SEC, in providing relief to the real estate industry, defers the application of (s) PIC Q&A No. 2018-12, with respect to the accounting for significant financing component and the exclusion of land in the calculation of percentage of completion and (b) IFRIC Agenda Decision on Over Time Transfers of Constructed Goods under PAS 23 Borrowing Cost, for another period of three (3) years or until 2023.

A real estate company may opt not to avail of any of the relief provided above and therefore will comply in full with the requirements in respect of the relief not availed of.

SEC Memorandum Circular No. 35, Series of 2020, December 28, 2020

The SEC, in providing relief to licensed financing companies (FCs) and lending companies (LCs), and accredited microfinance NGOs (MF-NGOs), allowed staggered booking of provision for credit losses, for annual period ending on or after December 31, 2020 (to consider those with fiscal year-end) for a maximum period of five (5), years using straight-line amortization method to be recognized in the profit or loss.

FCs, LCs and MF-NGOs shall continue to report actual past due and non-performing loans and provision for credit losses in their reports.

BSP ISSUANCES HIGHLIGHTS

***BSP Circular No. 1105,
December 2, 2020***

A digital bank offers financial products and services that are processed end-to-end through a digital platform and/or electronic channels with no physical branch/sub-branch or branch-lite unit offering financial products and services. The minimum capitalization of digital banks shall be Php 1.0 billion.

A digital bank may perform any or all of the following services:

- a. grant loans, whether secured or unsecured;
- b. accept savings and time deposits, including basic deposit accounts;
- c. accept foreign currency deposits, as defined under R.A. No. 6426, as amended;
- d. invest in readily marketable bonds and other debt securities, commercial papers and accounts receivable, drafts, bills of exchange, acceptances or notes arising out of commercial transactions;
- e. act as correspondent for other financial institutions;
- f. act as collection agent for non-government entities;
- g. issue electronic money products;
- h. issue credit cards;
- i. buy and sell foreign exchange; and
- j. present, market, sell and service microinsurance products.

With prior BSP approval and subject to such guidelines as may be established by it, digital banks may perform other activities not covered by the foregoing enumeration.

The application and documentary requirements for the establishment of digital banks are further provided under Appendix 33 of the Circular.

***BSP M-2020-088,
December 9, 2020***

Non-stock savings and loan associations (NSSLAs), for purposes of net income distribution to members for the year 2020, are allowed to recognize as income the accrued interest earned during the mandatory one-time 60-day grace period provided under Bayanihan to Recover as One Act on the members' unclassified loans outstanding from September 15, 2020 until December 31, 2020, net of general allowance for credit losses (ACL) of 1% of outstanding accrued interest receivable, subject to the following conditions:

1. The submission of a Board of Trustees' (BOT) certification as to accuracy and integrity of income recognition which will be subject to BSP verification in the next on-site examination;

BSP ISSUANCES HIGHLIGHTS

BSP M-2020-088, December 9, 2020

2. That the distribution of accrued interest income, net of ACL, will not result in: (i) insufficiency of funds caused by the use of accrued interest income as part of net amount available for net income distribution; (ii) borrowing of funds to finance the net income distribution; (iii) curtailment of the lending operation; or (iv) liquidity problems;

3. That the availing NSSLAs does not have deficiency in ACL on loans and other risk assets based on its latest approved Report of Examination.

Availing NSSLAs are given until December 31, 2020 to submit, through the Financial Supervision Department IX, BSP, the following:

1. Letter-notification stating the NSSLAs' intention to avail of the aforesaid regulatory relief signed by its President or officer of equivalent rank;
2. Resolution of the BOT, authorizing the NSSLAs to avail of the regulatory relief; and
3. Justifications showing the current circumstances of the NSSLAs and/or reasons for availment, including support thereto, attributable to the COVID-19 pandemic.

BSP M-2020-089, December 11, 2020

The following guidelines are being issued to facilitate the processing of reports pursuant to Section 101 of the Manual of Regulations on Foreign Exchange Transactions and to minimize the need to submit in hardcopy during this time of ongoing Covid-19 pandemic:

1. Covered banks shall electronically submit to the Department of Supervisory Analytics beginning cut-off December 15, 2020 (due for submission on December 18, 2020), the Portable Document Format (PDF) of the following Annexes in one PDF file and the corresponding Excel File using the template which can be downloaded from http://www.bsp.gov.ph/ses/reporting_templates:
 - a. Details of Accounts Excluded in the Computation of Net Open Foreign Exchange Position (Annex O);
 - b. Consolidated Foreign Exchange Position Report (CFXPR) (Annex Q);
 - c. Summary of Delta-Weighted Positions of Foreign Currency Options per Currency (Annex R);
 - d. Foreign Currency Options Purchased/Sold Outstanding (Annex R.1);
 - e. Summary of Notional Amounts of Foreign Currency Options per Currency (Annex S); and
 - f. Foreign Currency Options Purchased Outstanding (Annex S.1).

BSP ISSUANCES HIGHLIGHTS

***BSP M-2020-089,
December 11, 2020***

2. The PDF of the Annexes O and Q, which should be duly signed by the authorized official of the bank, and together with the other PDF of the other annexes and their corresponding Excel file, shall be electronically transmitted within three (3) banking days from reference date, to the prescribed e-mail address, DSA-CFXPR@bsp.gov.ph, using the required format for the subject provided in the memorandum.

***BSP M-2020-093,
December 16, 2020***

All BSP-supervised financial institutions with Electronic Payment and Financial Services (EPFS) license shall observe the following revised process and deadline for the submission of the EPFS monthly report template covering the years 2018, 2019, and 2020:

1. The new deadline for the submission of the monthly report template for the years 2018, 2019, and 2020 shall be on or before January 29, 2021.
2. Only one report each covering the years 2018 and 2019, respectively, shall be submitted using the monthly report template. The submissions for 2018 and 2019 shall be considered as a December submission covering the cumulative transactions for that particular year and shall use the following subject line - EPFS, DD MMMM YYYY.
3. The reports for the years 2018 and 2019 using the monthly report template shall be submitted in separate emails along with the corresponding Control Prooflist and following the file names prescribed under Memorandum M-2020-080.
4. The monthly reports beginning January 2020 shall cover each particular month, and shall be submitted as one month per email for a total of 12 email submissions all due on or before January 29, 2021.

IC ISSUANCES HIGHLIGHTS

UPDATES

IC CL-2020-112, December 9, 2020

This covers all pre-need companies currently or prospectively under liquidation.

The company or liquidator or both jointly may apply for final formal closure if the following conditions are met:

1. Directive for liquidation has become final;
2. Funds for distribution have been separately earmarked exclusively for the planholders;
3. Distribution should have already been completed except that there are a number of checks still remaining unclaimed or distribution has been ongoing for at least five (5) years solely because of the remaining unclaimed, unreleased, suspended, or abandoned benefits, or at least 50% of the distribution checks have already been claimed/released;
4. Contingent fund has been earmarked for contingent liabilities or suspended benefits, if any;
5. Distribution plan for unclaimed, unreleased, or suspended benefits, if any, or abandoned benefits or net abandoned benefits if any and, if the circumstances in case of redistribution of abandoned benefits are present, has been submitted and approved; and
6. The appropriate mode for final business closure or dissolution has been determined and approved.

The following are the allowed modes of final formal closure:

1. If the remaining corporate assets are not sufficient to satisfy the company's corporate liabilities and the company has no intention to continue its corporate life – Liquidation proceedings under Section 52 (a) and (b) of the Pre-Need Code and the provisions of the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.
2. If the remaining corporate assets are sufficient to satisfy the company's corporate liabilities or if there are no remaining corporate liabilities and the company has no intention to continue its corporate life:
 - a. Shortening of corporation term; and
 - b. Dissolution proceedings under the Revised Corporation Code.
3. If the remaining corporate assets are sufficient to satisfy the company's corporate liabilities or if there are no remaining corporate liabilities and the company has an intention to continue its corporate life under a different purpose and name - Amendment of corporate primary purpose and name under the Revised Corporation Code.

IC ISSUANCES HIGHLIGHTS

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IC CL-2020-112, December 9, 2020

Under this mode, the company shall formally cease to operate as a pre-need company but shall continue its corporate life operating a business other than pre-need or insurance-related endeavors.

4. Other special modes approved by the Commission taking into consideration the special circumstances of the company.

Liquidation proceedings shall be declared officially closed after completing the following steps:

1. Filing of a Sworn Application specifying the presence of the conditions under Section 3 hereof.
2. Evaluation of the Application and supporting documents.
3. Issuance of Formal Statement of Completion of Liquidation Proceedings.

The Formal Statement of Completion of Liquidation Proceedings shall be published in a newspaper of general circulation once a week for two consecutive weeks together with an announcement of the continuation of distribution if applicable.

The Circular also provides for procedures for declaration of abandonment of benefits:

1. Determination by the liquidator of the amount and schedule of abandoned assets.
2. Sending of letter notices to the last known address of each planholder.
3. Publication of Notice to the Public to finally claim the benefit check within 90 days.
4. Payment of the benefit liquidation value to those who came forward.
5. Publication of Formal declaration of presumed error or presumed waiver of right and the list of abandoned benefits.
6. Re-computation of liquidation value.
7. Redistribution of additional liquidation value as a result of publication of formal declaration of the list of abandoned benefits.

Application for Declaration of Abandonment of Benefits may be filed before or after the formal closure is approved. However, submission of Distribution plan for unclaimed, unreleased, suspended, or abandoned benefits is an indispensable requirement for the application for formal closure.

IC ISSUANCES HIGHLIGHTS

***IC CL-2020-112,
December 9, 2020***

Abandoned benefits shall be redistributed as follows:

1. If the liquidation value as computed is less than the maturity value for matured plans or the contract price for fully paid but not yet matured plans or the amount paid for plans not yet fully paid the abandoned benefits shall be applied to fill the difference fully or proportionately, as the case may be.
2. The excess or net abandoned benefits, if any, shall be held in trust by the Insurance Commission and shall be disposed of in accordance with law or regulation.

In the event the distribution has not yet been completed at the time of formal closure, the Insurance Commission shall continue the distribution.

***IC LO-2020-16,
December 11, 2020***

This refers to the request for an opinion to confirm whether there is an explicit provision mandating the applicability of the Insurance Code to Health Maintenance Organizations (HMOs).

The Insurance Commission opined that the basis for the Commission's exercise of jurisdiction over its regulated entities is not the Insurance Code, as amended, in general, but the particular law or executive issuance governing each specific industry. As such, the pre-need industry is governed by R.A. No. 9829 or the Pre-Need Code, and HMOs are governed by Executive Order (EO) No. 192, Series of 2015, which transfers the jurisdiction to regulate and supervise the establishment, operations and financial activities of HMOs from the Department of Health to the Insurance Commission.

The foregoing considered, the Commission confirms that there is no explicit provision, be it in the Insurance Code, as amended, or EO No. 192, mandating the applicability of the Insurance Code, as amended, to HMOs.



TAX SPARING: REQUIREMENTS FOR AVAILMENT

By

Fulvio D. Dawilan

A number of taxpayers had recently been soliciting advice regarding their entitlement, as well as the procedures and other requirements for availing the tax-sparing provision in the Tax Code. This is triggered in part by the need to declare dividends to avoid the imposition of the improperly accumulated earnings tax (IAET). Our advice were made based on the prevailing rules at that time.

The general rule is that dividends received from the Philippines by non-resident foreign corporations are subject to income tax at the rate of 30%. This is paid in the form of final withholding tax, which is required to be remitted to the tax authority by the corporation paying the dividends. There are, however, instances where this 30% tax rate may be reduced. One is through the availment of the preferential tax rates provided in the tax treaties, if any, between the Philippines and the country of residence of the recipient of the dividends. The other instance is through the availment of the tax sparing provision in our Tax Code.

TAX SPARING: REQUIREMENTS FOR AVAILMENT

By

Fulvio D. Dawilan

DISCLAIMER: The contents of this Insights are summaries of selected issuances from various government agencies, Court decisions and articles written by our experts. They are intended for guidance only and as such should not be regarded as a substitute for professional advice.

This tax-sparing credit provision allows the reduction of the 30% tax rate to 15%, on the condition that the country in which the non-resident foreign corporation is domiciled allows a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to the difference between the regular tax rate and the 15% tax on dividends. This tax-deemed paid happens to be also at 15% (30%-15%) based on current tax rate. A decision of the Supreme Court (G.R. No. 68375, April 15, 1988) interpreted this rule to include an instance where the country of residence of the corporate stockholder does not impose any tax on the dividends derived from the Philippines.

Thus, there are two instances where the tax sparing provision will apply, which are: (a) the country of residence of the corporate shareholder allows a credit of 15% tax deemed to have been paid in the Philippines, and (b) the country of residence of the corporate shareholder does not impose any tax on the dividends. This means that a tax relief is available in the home country of the foreign corporation, either through a grant of tax credit in the home country for the tax waived by the Philippines or by not imposing any tax on the dividends. The tax treatment of the dividends in those countries should therefore be considered. A reference has to be made to the applicable laws of the country where the income recipient/shareholder has its tax residence.

These two instances had been made clear by the Court decisions and by the issuances by our tax authority. Thus, the countries where corporate shareholders could reside and avail of the reduced tax on dividends are more or less established. These will of course change with the changes in the tax laws of those countries.

What remains to be unclear are the procedures in availing the tax-sparing provision. The current tax laws and the implementing regulations prescribed no particular guidance in availing or establishing entitlement to the tax-sparing provision. An attempt was made in the past through Revenue Memorandum Order No. 27-2016, requiring an application for a ruling to avail of the 15% tax-sparing rate. However, this was suspended and never took off. Taxpayers were left with no specific guidelines to be followed in availing of the 15% tax rate.

Perhaps realizing the need to provide a system for foreign corporations intending to avail of the reduced tax on dividends and to simplify the manner of confirming the entitlement to such rate, as well as to provide uniformity in the documentary requirement, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Order No. 46-2020 (December 23, 2020). Among other features, the RMO provides that the domestic corporation paying the dividends may remit outright the dividends to the foreign corporation and apply the reduced tax rate of 15% without securing first a ruling from the BIR. The paying corporation should, however, determine whether the existing law of the home country of domicile of the payee allows a “deemed paid” tax credit in an amount equivalent to the 15% waived by the

TAX SPARING: REQUIREMENTS FOR AVAILMENT

By

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Philippines or exempts from tax the dividends received. However, within 90 days from the remittance of the dividends or from the determination by the foreign tax authority of the deemed paid tax credit/non-imposition of tax because of the exemption, whichever is later, the foreign corporation shall file with the International Tax Affairs Division of the BIR a request for confirmation for the applicability of the reduced dividend rate of 15%. There is therefore a requirement for an after-the-fact confirmation of the reduced rate. The BIR will issue a certification in lieu of a ruling.

The application for the reduced tax rate requires certain documentary requirements both coming from the foreign corporation and the domestic-paying corporation. Aside from the usual corporate documents of the foreign corporation, the documentary requirements include: (a) authenticated or apostilled copy of the law of the country of domicile allowing a tax credit for taxes actually paid in the Philippines and for taxes deemed paid in the Philippines equivalent to at least 15%, and (b) duly authenticated or apostilled copy of any document issued by, or filed with, the foreign tax authority showing the amount of deemed paid tax credit actually granted by the foreign tax authority. These requirements apply if the dividend is taxable in the country of residence. If the dividend is exempt in the country of residence, these documents will instead be required: (a) duly authenticated or apostilled copy of the law of the country of domicile, and (b) duly authenticated or apostilled copy of any document issued by the foreign tax authority confirming that the foreign corporation is exempt from tax on dividends received from a Philippine corporation.

We will reserve for the subsequent articles the discussion on the concerns already being raised related to the requirement for application and the documents required upon application. What is important at this juncture is for the taxpayers to be aware of this new rule and be ready for its compliance.

As a last note, the 30% tax rate mentioned above may soon be reduced once the Corporate Recovery and Tax Incentives for Enterprises Act is passed. The same holds true for the “tax-deemed paid” of 15%. Also, included in this proposed law is the repeal of the Improperly Accumulated Earnings Tax. Hence, the declaration of dividends may no longer be anchored on the need to avoid the IAET, but based on business considerations.

For inquiries on the article, you may call or email

ATTY. FULVIO D. DAWILAN

Managing Partner

T: +63 2 8403 2001 loc. 310

fulvio.dawilan@bdblaw.com.ph

THE BDB TEAM

OUR EXPERTS



BENEDICTA DU-BALADAD

Founding Partner, Chair & CEO
T: +63 2 8403 2001 loc. 300
dick.du-baladad@bdblaw.com.ph



FULVIO D. DAWILAN

Managing Partner
T: +63 2 8403 2001 loc. 310
fulvio.dawilan@bdblaw.com.ph



IRWIN C. NIDEA, JR.

Senior Partner
T: +63 2 8403 2001 loc. 330
irwin.c.nideajr@bdblaw.com.ph



RODEL C. UNCIANO

Partner
T: +63 2 8403 2001 loc. 140
rodel.unciano@bdblaw.com.ph