Tax Bulletin

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Court Decisions

- A deficiency tax assessment issued pursuant to an LOA signed by a revenue official not authorized to do so is void. Moreover, the mere fact that accumulated earnings were booked under the Head Office account in the AFS does not automatically mean that said earnings were applied for remittance, and hence, subject to BPRT. **(Page 16)**

- The denial of the claim for refund of excess or unutilized input VAT led to the undesirable outcome of a risk and disappearance or diminution of value. Thus, the denied claim should be considered a deductible loss for income tax purposes. **(Page 18)**

- The World Trade Organization (WTO) Agreement, including the attached Multilateral Trade Agreements, was concurred in by the Senate through Resolution No. 97. Consequently, the said Agreements became "a part of the law of the land" or were transformed into municipal or domestic laws and have attained the same force and effect as any other statute. **(Page 19)**

- To claim VAT zero-rating on services rendered to a non-resident foreign corporation (NRFC), it must be established that the recipient of the services is an NRFC doing business outside the Philippines. In order to support this fact, each entity must be supported, at the very least, by both a Certificate of Non-Registration of Corporation/Partnership issued by the Philippine Securities and Exchange Commission and Certificate/Articles of Foreign Incorporation/ Association. **(Page 20)**

BIR Issuances

RR No. 8-2019 amends Sections 9 and 10 of RR No. 12-2018, the Consolidated RRs on Estate and Donor's Tax.

RR No. 8-2019 issued on 25 June 2019

- For the payment of estate tax by installment, the succeeding installments after the filing/first payment through the estate tax return shall be paid within two years from the date of filing of the estate tax return, using Payment Form (BIR Form No. 0605), or a payment form dedicated for this transaction.

- If a bank has knowledge of the death of a person who maintained a bank deposit, it shall allow the withdrawal from said deposit, subject to a final withholding tax (FWT) of 6% of the amount to be withdrawn, provided that the withdrawal shall be made within one year from the date of death of the decedent.

- The bank shall remit the 6% FWT to the BIR by filing a duly accomplished Monthly Remittance Form of Taxes Withheld on the Amount Withdrawn from the Decedent's Deposit Account (BIR Form No. 0620) on or before the 10th day following the month when the withholding was made.

- However, if the tax was withheld on the third month of the quarter, a quarterly remittance return (BIR Form No. 1621), instead of BIR Form No. 0620, shall be filed, and the corresponding FWT shall be paid on or before the last day of the month following the close of the quarter during which the withholding was made.
- The bank shall issue the corresponding BIR Form No. 2306 certifying such withholding tax, with the original and duplicate copies issued to the executor, administrator or any of the legal heirs of the decedent while a third copy is retained by the bank as its reference file.
- The duplicate copy of BIR Form No. 2306 shall be submitted by the executor, administrator or the authorized legal heir to the Revenue District Office (RDO) having jurisdiction over the place where the decedent was domiciled at the time of his or her death, within five days from its receipt.
- The final tax withheld shall not be refunded, but it may be credited from the tax due in instances where the bank deposit account subjected to the FWT has been actually included in the gross estate declared in the estate tax return of the decedent.

RMC No. 68-2019 clarifies certain issues relative to the implementation of the Estate Tax Amnesty.

RMC No. 68-2019 issued on 4 July 2019

- The estate of the decedent who died on or before 31 December 2017 and is not covered by the exceptions enumerated under Sec. 3 of RR No. 6-2019, is qualified to avail of the estate tax amnesty.
- The executor or administrator, legal heirs, transferees or beneficiaries (or filer) shall file the estate tax amnesty return within two years from the effectivity of RR No. 6-2019 or from 15 June 2019 to 12 June 2021.
- A TIN will be issued for the estate of the decedent in case there is no existing TIN.
- All heirs, including minors, without TIN are required to secure their respective TINs.
- BIR Form Nos. 2118-EA Estate Tax Amnesty Return (ETAR) and 0621-EA Acceptance Payment Form (APF) shall be used in the filing and payment of the estate tax amnesty.
- The ETAR shall be filed with the RDO having jurisdiction over the last residence of the decedent, within 2 years from the effectivity of RR No. 6-2019.
- If the estate has a previously issued TIN, the ETAR shall be filed with the RDO which issued the said TIN.
- For a non-resident decedent, the executor or administrator in the Philippines shall file the return with the RDO where such executor/administrator is registered, or if not yet registered, with the RDO having jurisdiction over the legal residence of the executor/administrator. If there is no executor or administrator, the return shall be filed with RDO No. 39.
- If the properties involved are common properties of multiple decedents emanating from the first decedent, and no estate tax returns have been previously filed, the amnesty tax returns for every stage of transfer/succession may be filed together in any one of the RDO having jurisdiction over the last residence of any of the decedents.

- One ETAR in triplicate copies shall be filed for the estate of every decedent.
- The forms are downloadable from the BIR website and are not available in eBIRForms. Hence, the filing and payment of estate tax shall be done manually.
- In case the estate involves multiple decedents, one Extra Judicial Settlement (EJS) Form for every stage of transfer/succession or one EJS covering all the stages of the transfer/succession with respect to the inherited share of the common property/properties emanating from the first decedent shall be submitted.
- In case there is no zonal value available at the time of death, the Fair Market Value (FMV) appearing in the tax declaration issued at the time of death or the succeeding available tax declaration issued nearest to the date of death shall be used as reference in computing the value of the property at the time of the death.
- The tax amnesty rate is 6% based on the decedent's total net taxable estate at the time of death, but subject to a minimum amount of P5,000 per decedent.
- For undeclared properties for previously filed ETARs, the 6% shall be imposed on the value of the undeclared properties at the time of death, without deductions, which are deemed to have been claimed in the previous estate tax return filed, except for the share of the surviving spouse on the undeclared conjugal property.
- In case of undeclared property where the estate has an existing estate tax delinquency, the filer can still avail of the tax amnesty, provided that the undeclared property is not included in the list of properties covered in the existing estate tax delinquency. Further, the ETAR shall be filed with the RDO that issued the assessment.
- Installment is not allowed for purposes of estate tax amnesty payment.
- An estate involving judicial settlement/last will and testament pending in court may avail of the tax amnesty, provided that the filer shall submit a certified true copy of the court resolution or leave of court, together with all documentary requirements for estate tax amnesty within the two-year availment period.
- Any expropriated property will form part of the gross estate of the decedent and can avail of the amnesty if the expropriation happened after the death of the decedent,
- Delinquent estate tax liability is covered by Sec. 3 of RR No. 4-2019 on tax amnesty on delinquencies.
- Failure to submit the APF with proof of payment within the period required is tantamount to non-availment of the Estate Tax Amnesty.
- In case there is no death certificate issued by the Philippine Statistics Authority (PSA), the Certificate of No Record of Death from PSA and any valid secondary evidence, including but not limited to those issued by any government agency/office sufficient to establish the fact of death of the decedent, may be submitted.

- A filer can still avail of the estate tax amnesty even if there is an ongoing investigation on estate tax liabilities since there is no estate tax due that is considered delinquent.
- The holder/buyer in a deed of sale transaction can avail of the estate tax amnesty on behalf of the heirs, provided that such holder/buyer presents the notarized EJS signed by all heirs, together with complete documentary requirements.
- Voluntary payments under Payment Form No. 0605, supposedly for estate tax amnesty, but prior to the effectivity of RR No. 6-2019, shall not be considered valid payment for the amnesty. The voluntary payment, in such case, may be claimed for refund, subject to existing rules and regulations on refund.

RMC No. 73-2019 circularizes the availability of various revised BIR Forms 1604-C, E and F.

RMC No. 73-2019 issued on 23 July 2019

- In line with the implementation of the TRAIN Law, the following revised BIR forms are available for the use of withholding tax agents:

Form No.	Description
1604-C	Annual Information Return of Income Taxes Withheld on Compensation
1604-E	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax
1604-F	Annual Information Return of Income Payments Subject to Final Withholding Taxes

- The revised manual returns are already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Payment/Remittance Forms section. However, the returns are not yet available in the EFPS and eBIRForms.

RMC No. 74-2019 circularizes the availability of enhanced BIR Form Nos. 2306 and 2307.

RMC No. 74-2019 issued on 23 July 2019

- The following enhanced BIR Forms are now available for the use of taxpayers and others concerned:

Form No.	Description
2306	Certificate of Final Tax Withheld at Source
2307	Certificate of Creditable Tax Withheld at Source

- The BIR Forms were enhanced in line with the implementation of the TRAIN Law.

RMC No. 75-2019 circularizes the availability of the revised BIR Form No. 1914 (Application for Tax Credits/Refunds).

RMC No. 75-2019 issued on 26 July 2019

The newly revised BIR Form No. 1914 shall be accomplished and filed by taxpayers applying for tax credits or refunds.

RMC No. 76-2019 circularizes the availability of the new BIR Form Nos. 0620 and 1621.

RMC No. 76-2019 issued on 23 July 2019

- RR Nos. 12-2018 and 8-2019 prescribed, among others, the availabity of the forms/returns that would be used by banks in the monthly and quarterly remittances of the 6% FWT on the amount withdrawn from the decedent's bank deposit account, through BIR Form Nos. 0620 (Monthly Remittances of Taxes Withheld on the Amount Withdrawn from the Decedent's Deposit Account) and 0621 (Quarterly Remittance of Taxes Withheld on the Amount Withdrawn from the Decedent's Deposit Account).
- This RMC was issued to inform the banks that said BIR Forms are not yet available in pre-printed form, as well as in the eFPS and eBIRForms. However, the same can already be downloaded from the BIR website (www.bir.gov.ph) under BIR Forms-Payment/Remittance Form section.
- With respect to banks availing of the Philippine Payment Settlement System (PhipaSS), the forms shall be filed manually until the issuance of the written notice of the forms' availability in the eFPS.

RMO No. 32-2019 amends certain provisions of RMO No. 32-2018, prescribing the audit/investigation of individual and non-individual taxpayers by the Regional Assessment Divisions.

RMO No. 32-2019 issued on 26 June 2019

- Electronic Letters of Authority (eLAs) shall be issued to cover audit/investigation of taxpayers for tax returns for taxable years 2018 and onwards under the jurisdiction of the Regional Office with amount of gross sales/receipts prescribed according to area.
- The eLA shall be issued only to taxpayers who have not been audited/investigated for the last three years. One eLA shall be issued for each taxable year to include all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined. In such a case, the exclusion of the said tax type shall be indicated in the eLA.
- The time frame for the submission of the report of investigation was amended from 90 days to 120 days from the issuance of the eLA.
- The provisions of this Order shall take effect immediately.

RMO No. 38-2019 clarifies the tax exemption of non-stock, non-profit corporations under Section 30 of the NIRC of 1997, as amended.

RMO No. 38-2019 issued on 28 July 2019

- This Order clarifies the nature, character and tax treatment of corporations under Section 30 of the NIRC and devolves to the Revenue Regions, the issuance of Certificate of Tax Exemptions (CTEs) to said corporations.
- This RMO does not include processing of CTEs of non-stock, non-profit educational institutions under Section 30 (H) of the NIRC, which is covered by RMO No. 44-2016.
- This Order discusses the characteristics, corporate purposes and actual operations of the non-stock, non-profit corporations in order to claim income tax exemption under Section 30.

- The RMO prescribes the following tests in determining entitlement to exemptions:

    1. Organizational Test – this requires that the corporation or association's constitutive documents (SEC Registration, Articles of Incorporation and By-Laws) must show that its primary purpose/s of incorporation falls under Section 30 of the NIRC; and

    2. Operational Test - this requires that the regular activities of the corporation or association be exclusively devoted to the accomplishment of the purposes specified in Section 30.

- Corporations falling under Section 30 must be non-profit and must also demonstrate that its earnings or assets do not inure to the benefit of any of its trustees, organizers, officers, members or any specific person.

- The RMO enumerates instances where payments are considered as an "inurement," which will disqualify a corporation from claiming exemption under Section 30 of the NIRC.

- Corporations formed under Section 30 of the NIRC are only exempt from income derived in furtherance of the purpose for which it was organized. All other income derived from any of their properties, real or personal, or any activity conducted for profit are still subject to corresponding internal revenue taxes imposed under the NIRC.

- The tax exemption granted under Section 30 does not cover withholding taxes on compensation income of the employees of the corporation, or the withholding tax on income payments to persons subject to tax pursuant to Section 57 of the NIRC.

- Purchase of goods or properties or services and importation of goods by a corporation organized and operated under Section 30 of the NIRC shall be subject to 12% VAT.

- If the corporation is engaged in the sale of goods or services in the course of a business pursuit, including transactions incidental thereto, its revenues derived shall also be subject to 12% VAT.

- This Order also prescribes the guidelines in the processing and issuance of CTEs and the validity period of the tax exemption ruling, which is three years.

- All applications for CTEs under Section 30, which will be filed with the Law and Legislative Division after the effectivity of this Order, shall be transmitted to the concerned Revenue District Office for their appropriate processing.

RMO No. 40-2019 prescribes the procedures for the proper service of assessment notices in accordance with Section 3.1.6 of RR No. 18-2013.

RMO No. 40-2019 issued on 30 July 2019

- The assessment notice shall be served to the taxpayer through personal service by delivering personally a copy of the assessment notice at his registered or known address or wherever he may be found.

- In case personal service is not possible, the assessment notice shall be served either by substituted service or by mail. However, substituted service can only be resorted to when the party is not present at the registered or known address. Proper procedures in the substituted service shall be observed.

- A standard format in the envelope containing the notice and assessment notice shall be followed.
- Personal or substituted service of assessment notice shall be effected by the RO assigned to the case. However, such service may also be made by any BIR employee duly authorized for the purpose.
- Personal service is complete upon actual delivery of the assessment notice to the taxpayer or his representative.
- Service by registered mail is complete upon actual receipt by the taxpayer or after 5 days from the date of receipt of the first notice of the postmaster, whichever date is earlier.
- Service by ordinary mail is complete upon the expiration of 10 days after mailing.
- This Order shall take effect immediately.

BOC Updates

CAO No. 06 – 2019 prescribes the rules and regulations governing the registration of Third Parties dealing with the BOC.

Customs Administrative Order (CAO) No. 06 – 2019

- Third Parties refer to any person who deal directly with the BOC, for and in behalf of another person, relating to the importation, exportation, movement, storage and clearance of goods.
- The following are considered Third Parties:

    1. Carriers;
    2. Airline Representatives or Airline Ground Handling Agents;
    3. Shipping Lines or their Agents;
    4. Pipeline Operators;
    5. Freight Forwarders;
    6. Consolidators;
    7. Deconsolidators;
    8. Non-Vessel Operating Common Carriers (NVOCCs);
    9. Logistics Providers; and
    10. Arrastre Operators, provided that in case where the operation is part of the services of a Terminal Operator, the rules and regulations governing Customs Facility Warehouse (CFW) shall apply.

- Third Parties with existing permits or duly authorized to engage in such business by other regulatory agencies shall be registered with the BOC, provided that they submit a Permit to Operate or equivalent document and shall comply with the requirements under this CAO.

- Third Parties transacting with the BOC for and in behalf of importers and consignees shall be treated equally as true importers or consignees and shall be liable for acts committed in violation of the Customs Modernization and Tariff Act (CMTA) and related laws.

- Third Parties shall apply for registration with the Account Management Office (AMO) or its equivalent office individually or through their organization. All registration applications shall be approved or disapproved by the BOC within 5 working days from receipt of complete documentary requirements.

- Subject to the provisions of other law, rules and regulation, the registration of Third Parties shall be valid for a period of one year from the date of its approval, unless sooner suspended, revoked or cancelled.

- The BOC may allow one-time registration privilege to registered Third Parties with a high level of customs compliance record under the Authorized Economic Operators (AEOs) and other trade facilitation programs.

- Third Parties must file their application for renewal with the BOC within 30 calendar days prior to the expiration of their registration.

- The registration of Third Parties may be cancelled or revoked on the following grounds:

    1. Deliberate failure or refusal without justifiable reasons to comply with the duties and responsibilities of Third Parties as prescribed in CAO 6 - 2019;

    2. Submission of false, spurious, and forged documents to support the approval of the registration; and

    3. Violation of existing customs laws, rules, and regulations.

- The following are the duties and obligations of Third Parties:

    1. Submission of True and Authentic Documents;

    2. Cooperation in Customs Investigation;

    3. Obligations to Report Violations;

    4. Provide the BOC Access to Records; and

    5. Faithful Compliance with Customs and other Laws, Rules, and Regulations.

- The cancellation or revocation of registration of Third Parties shall be without prejudice to the filing of any criminal charges and/or other administrative sanctions, which may be imposed under the CMTA or by the concerned primary regulating agency, as the case may, be pursuant to their own rules and regulations.

- This CAO shall take effect after 30 calendar days after its publication at the Official Gazette or a newspaper of national circulation.

(Editor's Note: CAO 6 – 2019 was published in the Manila Times *on 10 July 2019)*

CAO No. 08 – 2019 lays down the policies on admission, movement, and re-exportation of containers at the seaports.

CAO No. 08 – 2019

- Containers granted temporary admission in connection with a commercial operation shall not be subject to any form of security, or to payment of duties and taxes within 90 days from the date of discharge of the last package unless the container itself is the object of the importation.
- Containers, which have not been re-exported within the prescribed period, shall be considered as having been imported.
- The shipping line and/or the carrying vessel shall be accountable for the movement, storage, monitoring, and inventory of containers whether carrier-owned, leased or shipper's owned.
- Immediately upon arrival of the carrying vessel, the shipping line agent or representative shall furnish the BOC with the Container Discharging List for loaded and for empty containers, respectively.
- Containers arriving, whether loaded or empty, shall be re-exported within 90 days from the date of discharge of the last package.
- Containers may be re-exported through a Customs office other than that through which they were imported.
- Fifteen days prior to the expiration of the 90 - day period, the BOC shall notify the shipping line concerned, lessor, or shipper, to either re-export the container, or to pay the duties and taxes due thereon. Such notice shall be deemed notice to lodge or file the goods declaration.
- The counting of the period to re-export shall be suspended under the following circumstances:

    1. When there is an alert order issued against the shipment;
    2. When the warrant of seizure and detention has been issued;
    3. When the shipment has been declared abandoned; or
    4. When the shipment is forfeited in favor of the government.

- The running of the period shall resume upon lifting of the alert order or warrant of seizure and detention for the continuous processing of the goods declaration and release of the shipment.
- In cases where the goods have been forfeited or declared abandoned, the period to re-export shall resume when the goods have been completely unloaded, and the empty container is returned to the shipping line.
- After 15 days from final assessment and no duties and taxes have been paid, the containers shall be deemed abandoned if still inside the terminal facility or its accredited inland container depot. In case the overstaying containers are located outside the terminal facility or inland container depot, the BOC shall issue a warrant of seizure and detention against the same.

- In the event that the containers were sold or introduced domestically without payment of duties and taxes, the owner or possessor in good faith of said containers has the obligation to file the goods declaration and pay the corresponding duties, taxes, and penalty or interest, if any, upon demand. Such demand shall be considered as notice of final assessment; otherwise, the said containers shall be seized.

- A penalty of P300,000.00 shall be imposed against the shipping line, lessor or shipper for any of the following violations:

    1. If a container is sold or donated and duties and taxes are not paid at the time of sale or donation.

    2. If a container is used other than for its intended purpose of transporting goods without payment of duties and taxes.

    3. If after the lapse of 15 days from final assessment, no payment of duties and taxes plus interest has been made, unless a declaration to expressly abandon the container in favor of the government has been submitted to the BOC.

    4. Allowing an overstaying container, which is deemed abandoned or subject of a Warrant of Seizure and Detention, to be used by exporters for their export cargoes, without prejudice to the filing of criminal case, if warranted.

- This CAO shall take effect 30 days after its complete publication at the Official Gazette or a newspaper of national circulation.

(Editor's Note: CAO No. 8 – 2019 was published in the Manila Times *on 10 July 2019)*

CMO No. 31-2019 prescribes the updated documentary requirements for accreditation of importers and customs brokers, amending CMO No. 05-2018.

Customs Memorandum Order (CMO) No. 31-2019

The following are the changes in documentary requirements for importer accreditation:

- New Application for Importer Accreditation

    1. Proof of financial capacity to import goods (bank certificate or other forms of financial certification) has been added as a new requirement. However, Top 1,000 Taxpayers and Super Green Lane Companies are exempted from this requirement.

    2. Income Tax Returns (ITR) for the past three years duly received by the BIR, if applicable, are now required.

    3. Proof of lawful occupancy of office address and warehouse is now required.

- Renewal of Importer Accreditation

    1. The following requirements have been added:

        - Duly accomplished and notarized Application Form for Renewal;

- BOC Official Receipt (BCOR) evidencing payment of processing fee;
- If there are updates/changes in company information, necessary supporting documents must be submitted; and
- If there is no change in material information previously declared and submitted, a duly accomplished and notarized Affidavit of No Change in Company Information.

2. The following requirements have been removed:
   - Company profile with pictures of office with proper and permanent signage;
   - Address of warehouse owned or leased by the importer where the imported goods are intended to be stored;
   - Proof of lawful occupancy of office address and warehouse; and
   - Updated list of importable items.
3. Only the latest ITR duly received by the BIR shall be required.

- Renewal of Customs Broker Accreditation

  1. The following requirements have been added:
     - Duly accomplished and notarized Application Form for Renewal;
     - BCOR evidencing payment of processing fee;
     - If there are updates/changes in company information, necessary supporting documents must be submitted; and
     - If there is no change in material information previously declared and submitted, a duly accomplished and notarized Affidavit of No Change in Company Information using the prescribed form.
  2. The following requirements have been removed:
     - Updated Professional Profile;
     - Updated list of clients with complete address and contact details;
     - Updated list of representatives with personal details, photos and specimen signature; and
     - NBI Clearance.
  3. Only the latest ITR duly received by the BIR shall be required.

- Other provisions of CMO No. 5-2018 not affected by the CMO 31 – 2019 shall remain in force and in effect.

(Editor's Note: CMO 31 – 2019 took effect on 8 July 2019)

CMO No. 34 – 2019 lays down the interim guidelines for the accreditation of persons, other than customs brokers, to act as declarants and sign the goods declaration for consumption, warehousing and transit shipments.

CMO No. 34 – 2019

- CMO No. 34-2019 covers the accreditation and registration of persons entitled to act as Declarant and sign the goods declaration for consumption, warehousing or transit other than the Customs Brokers.
- All importers or person empowered to act as agent or Attorney-in-Fact desiring to lodge and process goods declaration at the BOC must file an application for accreditation and obtain a Certificate of Accreditation as Declarant from the BOC.
- An applicant for accreditation as Declarant must be a Filipino citizen of legal age, except where the Importer or Exporter is himself the Declarant and not a Filipino citizen or the responsible officer authorized to act as Declarant is not a Filipino.
- A person duly empowered to act as agent or attorney-in-fact shall only be allowed to represent one importer or exporter.
- The following are grounds for denial of the application for accreditation:

    1. Absence or misrepresentation of material information;
    2. Submission of falsified or spurious documents; or
    3. Prior conviction of an offense pursuant to the CMTA.

- The Certificate of Registration shall be valid for 1 year from the year of issuance unless suspended or revoked for cause.
- The following are the rights and obligations of a Declarant:

    1. The Declarant shall be responsible for the accuracy of the goods declaration and for the payments of duties, taxes, and other charges in the imported goods;
    2. The Declarant shall sign the goods declaration, or in case of juridical persons, shall specifically authorize a responsible officer to sign as a declarant;
    3. All Declarants shall keep at their stated office address, for audit compliance purposes, copies of records covering their transactions for a period of 3 years from the date of transaction;
    4. Statements of the Declarant in the goods declaration shall be made under penalties of falsification or perjury; and
    5. Goods declaration may be processed directly by the Declarant or in case of juridical persons, by officers or employees specifically authorized to process the goods declaration.

- All examination of goods, when required by law or regulation, shall only be done in the presence of the Declarant or his duly authorized representative.

- The following persons registered as a Declarant shall be the authorized to sign the goods declaration:

    1. For corporations and cooperatives, a senior officer specifically authorized to sign the goods declaration as declarant;

    2. For partnership, a partner or a responsible officer specifically authorized to sign the goods declaration as declarant; and

    3. For sole proprietorships, the sole proprietor himself or the responsible officer of the company duly authorized to sign as the declarant, if applicable.

(Editor's Note: CMO No. 34-2019 was published in the Manila Times *on 24 July 2019)*

BOI Update

EO No. 85 extends the duty-free incentive on importations of capital equipment, spare parts, and accessories by BOI-registered enterprises for another year.

EO NO. 85 dated 19 July 2019

- A 0% duty on importations by BOI-registered new and expanding enterprises shall be imposed on capital equipment, spare parts, and accessories classified under Chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 86, 87, 89, 90, and 96 of the Customs Modernization and Tariff Act (CMTA).

- The following are the conditions for the availment of 0% duty:

    1. The importation should be covered by a BOI Certificate of Authority.

    2. The imported capital equipment, spare parts, and accessories are:

        - Not manufactured domestically in sufficient quantity, of comparable quality, and at reasonable prices; and

        - Reasonably needed and will be used exclusively by the enterprise in its registered activity.

- The BOI-registered enterprise cannot sell, transfer, or dispose the imported capital equipment, spare parts and accessories within 5 years from date of importation without prior BOI approval; otherwise, the BOI-registered enterprise shall be solidarily liable to pay twice the amount of the foregone duty or P500,000.00, whichever is higher.

- This EO shall take effect immediately upon complete publication and shall be valid for three years or until a new law is passed amending E.O. 226, whichever comes earlier.

- The BOI, in coordination with the Tariff Commission, shall promulgate an IRR to implement E.O. No. 85.

(Editor's Note: EO No. 85 was published in the Manila Bulletin *on 24 July 2019)*

BSP Issuances

BSP Memorandum No. M-2019-020 publishes Monetary Board Resolution No. 661, approving the lifting of the moratorium on ATM Fees.

BSP Memorandum No. M-2019-020 dated 19 July 2019

The Monetary Board on 19 April 2018 has resolved to approve the lifting of the moratorium on ATM fees subject to the following conditions:

- Filing of a letter-request by each participating BSP Supervised Financial Institution (BSFI) with the BSP indicating their proposed ATM fees and costs incurred with respect to ATM activities;
- Costs declared should be clear and adequately supported;
- The setting of fees, including convenience fees, should adhere to the pricing principles under BSP Circular No. 980 dated 6 November 2017;
- Acquirer-based charging model should already be adopted; and
- Each BFSI should provide appropriate disclosures on ATM fees and charges to the cardholders.

BSP Memorandum No. M-2019-021 prescribes the due diligence measures to be undertaken by BFSIs in dealing with VCEs.

BSP Memorandum No. M-2019-021 dated 23 July 2019

In order to comply with Part 9 of the Manual of Regulations for Banks and Part 8 of the Manual of Regulations for Non-Bank Financial Institutions, BSFIs should, at the minimum, observe the following practices:

- To deal only with duly registered VCEs;
- To conduct risk assessment of the VCEs considering relevant factors, such as business operations, customer types, products/services, distribution channels, jurisdictions they are exposed to and expected account activity;
- Perform enhanced due diligence, including (a) obtaining proof of registration; (b) evaluating the business operations, distribution channels, customer profile, Money Laundering and Terrorist Financing Prevention Program of the VCEs, and obtaining the purpose of the account and anticipated account activity; (c) verifying registration with the Anti-Money Laundering Council; and (d) obtaining additional information and conducting validation procedures as provided under existing rules and regulations; and
- Perform continuing account and transaction monitoring.

Court Decisions

A deficiency tax assessment issued pursuant to an LOA signed by a revenue official not authorized to do so is void. Moreover, the mere fact that accumulated earnings were booked under the Head Office account in the AFS does not automatically mean that said earnings were applied for remittance, and hence, subject to BPRT.

Amparo Shipping Corporation vs. Commissioner of Internal Revenue
CTA Case No. 9387, promulgated on 28 June 2019

Facts:

Amparo Shipping Corporation (Amparo) is a domestic corporation engaged in domestic shipping.

In September 2013, the Officer-in-Charge (OIC)-Assistant Regional Director of the BIR issued a Letter of Authority (LOA) to authorize the examination of Amparo's books of accounts and other accounting records for all internal revenue taxes for taxable year (TY) 2011.

In October 2014, Amparo, through its President, executed a Waiver of the Defense of Prescription, extending the period to assess deficiency taxes for TY 2011 until 31 December 2015.

In May 2015, the BIR issued a Preliminary Assessment Notice (PAN), proposing to assess Amparo for deficiency taxes.

On 18 September 2015, Amparo received the Formal Letter of Demand (FLD) and the Final Assessment Notice (FAN) issued in August 2015. Amparo filed its protest to the FLD on 15 October 2015.

On 11 December 2015, Amparo executed another Waiver of the Defense of Prescription, extending the period to assess until 31 December 2016.

Amparo, then, received the Final Decision on Disputed Assessment (FDDA) from the BIR. Subsequently, Amparo filed a Petition for Review before the CTA, praying for the cancellation of the deficiency tax liabilities in the FDDA.

At the CTA, Amparo argued that the tax deficiency assessment issued by the BIR is void because there was no valid issuance of an LOA. Since the LOA was only issued by the OIC-Assistant Regional Director and not by the Regional Director, the LOA was invalid and any assessment issued pursuant to such invalid authority was therefore, void.

Amparo also argued that the BIR's right to assess has already prescribed since the waiver failed to comply with the requirements under Revenue Memorandum Order No. 20-90. Amparo averred that the date of acceptance by the BIR was not indicated in the waiver.

Issues:

1. Was the LOA issued by the OIC-Assistant Regional Director valid?

2. Has the period to assess Amparo's alleged deficiency tax liabilities for TY 2011 already prescribed?

Ruling:

1. No. The CTA held that pursuant to the Tax Code and pertinent BIR issuances, only the Regional Directors, the Deputy Commissioners and the Commissioner have the requisite authority to sign LOAs. Other revenue officials may sign LOAs, but only upon prior authorization by the CIR. The LOA issued to Amparo for TY 2011 was signed and issued by the OIC-Assistant Regional Director. There was no proof that he was clothed with delegated authority to sign and issue the said LOA in the absence of the Regional Director.

   The fact that the OIC-Assistant Regional Director subsequently became the Regional Director did not cure the defect in the LOA. The validity of the LOA should be reckoned from the time of its issuance.

   Considering that the official who signed the LOA was not authorized to do so, the LOA covering the audit investigation for TY 2011 is void. Consequently, the deficiency tax assessment is, likewise, void.

2. Yes. The CTA found that the waivers were defective, and the right to assess Amparo's tax liabilities has already prescribed.

   The waivers did not indicate the date of acceptance by the BIR, which is necessary to determine whether the waiver was validly accepted before the expiration of the original three-year period. Therefore, the FLD and the FAN are void for being issued beyond the three-year prescriptive period.

Commissioner of Internal Revenue vs. Maersk Global Service Centres (Philippines) Ltd.
CTA (*En Banc*) Case No. 1786, promulgated on 13 June 2019

The denial of the claim for refund of excess or unutilized input VAT led to the undesirable outcome of a risk and disappearance or diminution of value. Thus, the denied claim should be considered a deductible loss for income tax purposes.

Facts:

In calendar year (CY) 2006, Maersk Global Service Centres (Philippines) Ltd. (Maersk) had unutilized and excess input VAT attributable to its zero-rated sale of services. In this regard, Maersk filed a claim for the issuance of a tax credit certificate (TCC) with the Department of Finance (DOF).

However, the claim was denied on the sole ground that Maersk did not strictly comply with the invoicing requirements for zero-rated sales. In view of the DOF's denial of its claim, Maersk wrote off the claim in its books and deducted it from gross income for CY 2010.

For CY 2010, the BIR assessed Maersk with deficiency income tax, disallowing the deduction pertaining to Maersk's denied VAT refund claim. The BIR also assessed final withholding tax (FWT) on branch profits and compromise penalty. The BIR assumed that the entire amount booked as Accumulated Earnings under the Head Office Accounts in Maersk's audited financial statements (AFS) was remitted to its Head Office.

Within 180 days from Maersk's protest without action from the Commissioner of Internal Revenue's (CIR), Maersk filed a Petition for Review with the CTA.

The CTA Third Division ruled in favor of Maersk, prompting the CIR to elevate the case to the CTA *En Banc*.

Issues:

1. Is there a valid and legal basis for Maersk to claim the VAT refund, which was denied and written off, as a deduction for income tax purposes?

2. Is the assessment for FWT on branch profit remittance proper?

Ruling:

1. Yes. The CTA *En Banc* ruled that the denial of the claim for refund of excess or unutilized input VAT led to the undesirable outcome of a risk and disappearance or diminution of value, and thus, should be considered a deductible loss for income tax purposes. The CTA considered the denied claim to have met the requirements of what is a deductible loss for income tax purposes.

Further, the CTA *En Banc* held that the NIRC does not categorically prohibit the use of another mode, other than refund or tax credit, for the recovery of unutilized input taxes attributable to zero-rated sales. If taxpayer desire to fully recover its excess input VAT, the law provides only for two modes: ether by filing a claim for tax refund or tax credit. However, if the taxpayer decides not to fully recover the same, the taxpayer may also resort to other modes of deduction or recovery, such as treating the excess input VAT as part of the cost of purchases or cost of sales, expense or loss, based on sound accounting principles or standards.

2. No. The mere fact that Accumulated Earnings was booked under the Head Office Account in Maersk's AFS does not automatically mean that said accumulated earnings were already applied or earmarked for remittance to the Head Office. In the present case, there is no evidence showing that actual remittance or earmarking for remittance was made by Maersk. Clearly, the BIR made an assessment based merely on a presumption. In order to stand judicial scrutiny, the assessment must be based on facts. The presumption of the correctness of an assessment, being a mere presumption, cannot be made to rest on another presumption. Respondent's BPRT assessment must, therefore, be cancelled and set aside.

Malingas Multi-Purpose Cooperative vs. Commissioner of Customs, Bureau of Customs
CTA Special First Division, CTA Case Nos.9150, promulgated on 11 June 2019

The WTO Agreement, including the attached Multilateral Trade Agreements, was concurred in by the Senate through Resolution No. 97. Consequently, the said Agreements became "a part of the law of the land" or were transformed into municipal or domestic laws and have attained the same force and effect as any other statute.

Facts:

Malingas Multi-Purpose Cooperative (Malingas) and Evergreen Cereal Inc. (Evergreen) filed separate Petitions for Review before the CTA. The petitions assailed the decisions of the Commissioner of Customs (COC) in declaring the excess rice importations of Malingas and Evergreen as prohibited importations subject to forfeiture under Republic Act (RA) No. 8178, as implemented by National Food Authority (NFA) Memorandum Circular No. AO-2K13-003, in relation to Section 250 (f) of the Tariff and Customs Code of the Philippines (TCCP).

Issue:

Did the COC err in declaring the excess rice importations as liable to forfeiture for having been made without a permit based on RA No. 8178 in relation to NFA Memorandum Circular No. AO-2K13-003 and Section 250 (f) of the TCCP?

Ruling:

Yes. The WTO Agreement, including the Multilateral Trade Agreements attached thereto, was concurred in by the Senate through Resolution No. 97. Consequently, the said Agreements became "a part of the law of the land" or were transformed into municipal or domestic laws and has attained the same force and effect as that of any other statute.

Pursuant to the WTO Agreement, WTO member countries, such as the Philippines, are prohibited from imposing quantity restrictions (QRs) on imported products, unless a Special Treatment is accorded, allowing certain countries to impose discretionary import licensing as an exception to the rule. The Philippines applied and enjoyed Special Treatment from 1995 to 2005, which was further extended until 30 June 2012. Thus, the Philippines was allowed to impose discretionary import licensing until 30 June 2012. Another extension of the Special Treatment until 30 June 2017, however, was granted only on 24 July 2014.

Consistent with the WTO Agreement and the terms of the Special Treatment, Congress enacted on 28 March 1996, RA No. 8178 (or the Agricultural Tariffication Act). To implement RA No. 8178, the NFA issued Memorandum Circular No. AO-2K13-03-003, which became effective on 22 March 2013, requiring importers to secure import permits from the NFA and thus, imposing QR on rice.

Between 1 July 2012 until 24 July 2014, when no Special Treatment for rice was in place under WTO Agreement, there was no need for Malingas and Evergreen to secure import permits from the NFA to import rice. Despite the effectivity of NFA Memorandum Circular No. AO-2K13-03-003, under the terms of the WTO Agreement, there was no extended Special Treatment for rice during the period when these subject importations were made. The Philippines, then, was prohibited from imposing QRs on imported rice. Hence, Malingas and Evergreen were not required to secure permits from the NFA at the time they made these subject importations in November and December, 2013.

Since it was legal for Malingas and Evergreen to import rice without need of import permits from the NFA, the seizure and collection proceedings ordered by the COC were made without basis.

Deutsche Knowledge Services Pte. Ltd. vs. Commissioner of Internal Revenue
Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.
CTA *En Banc*, CTA EB Nos. 1763, promulgated on 7 June 2019

To claim VAT zero-rating on services rendered to a NRFC, it must be established that the recipient of the services is an NRFC doing business outside the Philippines. In order to support this fact, each entity must be supported, at the very least, by both a Certificate of Non-Registration of Corporation/Partnership issued by the Philippine Securities and Exchange Commission and Certificate/Articles of Foreign Incorporation/Association.

Facts:

Deutsche is a foreign corporation operating as a regional operating headquarters (ROHQ) in the Philippines. It separately filed administrative claims for refund or issuance of a tax credit certificate (TCC) with the BIR for its alleged unutilized input VAT attributable to its sales of services to its non-resident foreign clients on the basis of Section 108 (B) (2) in relation to Sections 110 (B) and 112 (A) and (C) of the Tax Code, as amended. for calendar year (CY) 2011. When no action was taken by the BIR, Deutsche filed separate Petitions for Review with the CTA Third Division, which partially granted the claim for refund.

Issue:

Is Deutsche entitled to its claim for refund?

Ruling:

Yes, but Deutsche is only entitled to a partial refund.

Not all of Deutsche's sales declared as "zero-rated sales/ receipts" in its Quarterly VAT returns for CY 2011 qualify for VAT zero-rating.

In order to be entitled to a tax credit or refund of excess input VAT attributable to zero-rated or effectively zero-rated sales under Section 108 (B) (2), in relation to Sections 110 (B) and 112 (A) and (C) of the NIRC, as amended, the following must be met:

1. Taxpayer is VAT registered;

2. The claim for refund was filed within the prescriptive period;

3. There must be zero-rated or effectively zero-rated sales;

4. Input taxes were incurred or paid;

5. Such input taxes are attributable to zero-rated or effectively zero-rated sales;

6. Input taxes were not applied against any output tax liability.

For a sale of service transaction to be subject to the 0% VAT rate, the sale transaction must be in the nature of export sales since the payor-recipient of services is doing business outside the Philippines. Thus, under the BSP rules, the proceeds of the export sales must be reported to the BSP. Hence, there is a reason to require the provider of the services under Section 108 (B) (1) and (2) of the NIRC, as amended, to account for the foreign currency proceeds to the BSP.

It must be established that the recipient of the services is a non-resident foreign corporation doing business outside the Philippines. In order to support this fact, each entity must be supported, at the very least, by both a Certificate of Non-Registration of Corporation/ Partnership issued by the Philippine Securities and Exchange Commission and Certificate/ Article s of Foreign Incorporation/ Association.

Only sales of service by Deutsche to entities which have the 2 documents will be treated as subject to 0% VAT.

(Editor's Note: In a two-page Notice of Resolution dated 3 June 2019, the Supreme Court Second Division upheld the CTA ruling partially granting the claim for refund of Deutsche.)

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