Tax Bulletin

October 2019

A member firm of Ernst & Young Global Limited

Highlights

BIR Issuances

- Revenue Memorandum Circular (RMC) No. 102-2019 clarifies certain matters relative to the implementation of the Estate Tax Amnesty pursuant to the provisions of Title II of the Tax Amnesty Act. **(Page 3)**

- RMC No. 103-2019 prescribes the revised Estate Tax Amnesty Return, Certificate of Availment and clarifies the allowable deductions from the gross estate for Non-Resident Aliens pursuant to the provisions of the Estate Tax Amnesty under Title II of the Tax Amnesty Act, as implemented by RR No. 6-2019. **(Page 4)**

- RMC No. 105-2019 clarifies the proper tax treatment of maternity leave benefits under Republic Act No. 11210 titled the "105-Day Expanded Maternity Leave Law." **(Page 5)**

- RMC No. 106-2019 circularizes the availability of revised BIR Form No. 2000-OT [Documentary Stamp Tax Declaration/Return (One Time Transactions)] January 2018 (ENCS). **(Page 5)**

- RMC No. 107-2019 extends the validity period of Certificates of Accreditation and Permits to Use pursuant to the provisions of RMC No. 55-2016, as amended, and RMC No. 30-2015. **(Page 5)**

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BIR Issuances

RMC No. 102-2019 clarifies certain matters relative to the implementation of the Estate Tax Amnesty pursuant to the provisions of Title II of the Tax Amnesty Act

RMC No. 102-2019 issued on 4 October 2019

- If the estate involves several stages of succession, and the succeeding decedents, during their lifetime, owned separate properties other than the properties emanating from the first decedent, the Estate Tax Amnesty Return shall be individually filed at the Revenue District Office (RDO) having jurisdiction over the last residence of each decedent. The option to file at only one RDO is not available in this instance.

- A supplemental Extra Judicial Settlement (EJS) covering the undeclared real or personal property is required in availing of the estate tax amnesty.

- An EJS is required if the heirs want to avail of the estate tax amnesty, but do not want to adjudicate the respective share of each heir as they will form an estate/trust.

- If an estate tax return had been filed prior to 2018 for which a tax clearance was issued, but the Certificate Authorizing Registration (CAR) was not released, and there is no more tax due, the heirs should, instead of availing the tax amnesty, request for the issuance and release of the CAR.

- If the decedent has an ongoing investigation in an RDO, which is different from the revenue district that has jurisdiction over his domicile, the estate tax amnesty shall be filed with the RDO having jurisdiction over the last residence of the decedent. The ongoing investigation shall be consolidated in the RDO where the estate tax return shall be filed.

- If the decedent has an ongoing investigation, the Electronic Certificate Authorizing Registration (eCAR) shall be issued only after the submission of a report of investigation by the Revenue Officer on the other internal revenue tax liabilities, and after payment of deficiency taxes, if any. However, if the filer insists, the eCAR may be issued, provided that the filer posts a bond based on the proposed assessment on other tax liabilities to be issued by the revenue officers.

- Where an eCAR has been issued for a regular estate tax transaction, but a deficiency tax was noted by the Assessment Division upon review, the filer can avail of the estate tax amnesty as long as the deficiency estate tax is not yet a delinquent account and the decedent died on or before 31 December 2017. There is no need to issue a new eCAR as the issuance of a Certificate of Availment (CA) is sufficient.

- If the owner's copy of the Transfer Certificate of Title (TCT) was lost, the filer can still apply for the estate tax amnesty, provided that a certified true copy of the Original Certificate of Title (OCT)/TCT/Condominium Certificate of Title (CCT) of the subject property issued by the Register of Deeds (RD)/Land Registration Authority (LRA) shall be submitted.

- If the RD's copy of the OCT/TCT/CCT was lost, the Owner's Copy of the OCT/TCT/CCT, together with Certificate of Loss issued by RD, may be submitted. However, only the CA shall be issued in the meantime. The eCAR shall be issued only when the certified true copy of the reconstituted title is submitted.

- Judicial expenses pertaining to the issue of heirship of the properties of the estate, which was previously filed/settled extrajudicially and for which a CAR had been issued, is not an allowable expense against the estate pursuant to RMC No. 68-2019.

- Medical expenses are treated as a special item of deduction under Section 86 (A) of the Tax Code, as implemented by RR No. 2-2003, which should not affect the share of the surviving spouse.

- In case the decedent has many heirs, an EJS signed by all heirs is required. Self-adjudication is allowed if there is only one heir.

- A general waiver or renunciation of rights, interest and participation is not subject to Donor's Tax and Documentary Stamp Tax.

RMC No. 103-2019 prescribes the revised Estate Tax Amnesty Return, Certificate of Availment and clarifies the allowable deductions from the gross estate for Non-Resident Aliens pursuant to the provisions of the Estate Tax Amnesty under Title II of the Tax Amnesty Act, as implemented by RR No. 6-2019.

RMC No. 103-2019 issued on 4 October 2019

- This Circular was issued to prescribe the revised Estate Tax Amnesty Return (ETAR) - July 2019 Version, which is downloadable through the BIR website.

- Special deductions on Family Home, Standard Deduction, and Medical Expense should not be included among the deductions from the gross estate in computing the share of the surviving spouse.

- The format of the Certificate of Availment has been revised to reflect the note: *"In case there are properties covered under Section 3 of RR No. 6-2019 which are included in the application for estate tax amnesty, the application pertaining to such properties shall be considered null and void."*

- Likewise, the statement for the allowable deductions from the gross estate of non-resident has been revised as follows: *"Starting from 1 July 1939, deductions enumerated hereunder shall only be allowed if the executor , administrator, or anyone of the heirs, as the case may be, includes in the return required to be filed, the value at the time of death of that part of the gross estate, of the non-resident alien, situated in the Philippines."*

RMC No. 105-2019 clarifies the proper tax treatment of maternity leave benefits under Republic Act No. 11210 titled the "105-Day Expanded Maternity Leave Law."

RMC No. 105-2019 issued on 9 October 2019

- The workers availing of the maternity leave period and benefits must receive their full pay.
- Employers from the private sector shall be responsible for payment of the salary differential between the actual cash benefits received from the SSS by the covered female workers and their average weekly or regular wages for the duration of the maternity leave.
- The salary differential is considered as a benefit exempt from Income and Withholding Taxes.

RMC No. 106-2019 circularizes the availability of revised BIR Form No. 2000-OT [Documentary Stamp Tax Declaration/Return (One Time Transactions)] January 2018 (ENCS).

RMC No. 106-2019 issued on 11 October 2019

- The revised BIR Form No. 2000-OT is available in the BIR website (www.bir.gov.ph) for the manual filing of returns. The form cannot yet be submitted electronically; thus, the taxpayers shall use the manual return in filing paying the tax due thereon.
- The taxpayers shall download the form, print and completely fill out the details. Payment of the tax due thereon shall be made thru the authorized agent banks located within the territorial jurisdiction of the Revenue District Office (RDO), or in cases where there are no AABs, the return shall be filed and paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO.

RMC No. 107-2019 extends the validity period of Certificates of Accreditation and Permits to Use pursuant to the provisions of RMC No. 55-2016, as amended, and RMC No. 30-2015

RMC No. 107-2019 issued on 15 October 2019

- This Circular was issued in relation to RMC No. 55-2016, as amended by RMC 36-2018, which clarified the five-year validity period of Certificates of Accreditation issued to developers/dealers/supplier-vendors/pseudo suppliers of Cash Register Machines, Point-of-Sale Machines and other sales machines/ receipting software, as well as the Permits to Use.
- In this regard, the validity period of or effectivity date for both the Certificates of Accreditation and PTUs shall be based on the Date of Issuance, as follows:

DATE OF ISSUANCE	EFFECTIVITY DATE	VALID UNTIL
Prior 1 August 2020	1 August 2020	31 July 2025
1 August 2020 onwards	Actual Date of Issuance	Five years from date of issuance

BOC Issuances

CAO No. 12-2019 implements the provisions of the CMTA on transshipment of foreign goods

Customs Administrative Order (CAO) No. 12-2019

- Transshipment refers to the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office, which is the office of both importation and exportation.

- Goods intended for transshipment shall be exempt from duties and taxes provided that a Transshipment Goods Declaration is filed, particularly indicating the nature of the goods, and duly supported by commercial or transport documents or evidence as required by the Bureau of Customs (BOC).

- Goods intended for transshipment must be loaded in the exporting means of transport within 30 calendar days from the date of arrival. The exportation commences upon the actual loading on board the exporting carrier of the transshipment goods.

- The 30-day period may be extended for valid causes such as those beyond the control of the shipper or agent or other analogous situation, provided that the transshipment goods must be loaded on board the exporting carrier within a reasonable period when the causes for such extension cease to exist.

- In case of failure to load within the period allowed, the transshipment goods shall be treated as regular importation. When the owner or interested party fails to file the goods declaration within the prescribed period, the goods shall be subject to abandonment.

- The transfers of transshipment goods from the carrier to the designated customs facility or warehouse ("CFW") shall be accompanied by a transfer note or any document or system to be adopted or utilized for such purpose.

- Goods subject to prohibitory laws or international conventions in which the Philippines is a signatory shall not be discharged from the carrier even for transshipment purposes.

  If such goods were discharged at the port, these shall be seized by the BOC and proceeded against without prejudice to the filing of appropriate prosecution against the persons liable for administrative or criminal offenses, if any.

- Hazardous and nuclear wastes discharged at the port shall be immediately returned to the country of origin by the importing carrier or agent either before or after the seizure proceeding, without prejudice to the filing of administrative and criminal charges, if any, against any persons liable involved. The transporting vessel shall also be seized and proceeded against in accordance with the CMTA.

- Transshipment goods with derogatory information shall be subjected to non – intrusive inspection or physical examination for verification. Prohibited goods for transshipment shall be seized by the BOC.

- Transshipment of goods shall be subject to payment of fees to the BOC. The CAO also provides for a schedule of penalties in cases of violations relating to the transshipment of goods.

- CAO 12 - 2019 shall take effect 30 days after its publication in the Official Gazette or a newspaper of national circulation.

(Editor's Note: CAO No. 12 –2019 was published in The Manila Times *on 9 October 2019)*

CAO No. 13-2019 implements the provisions of the CMTA on establishing and supervising of CBWs.

CAO No. 13-2019

- When the business of the port and trade requires, customs warehouses for the storage of imported goods or for other special purposes shall be established.

- Customs warehouses, including expansion, extensions and additional facilities, shall be supervised and controlled by the District Collector. This authority extends to the warehouse and facilities of duly authorized members, client, exporters and sub-contractors of Customs Bonded Warehouses (CBWs).

  However, in cases where the client-exporter of Industry – Specific Customs Bonded Warehouses ("ICBW") or sub-contractor of Manufacturing CBWs is also a locator in Free Zones, then supervision and control shall be made in coordination with the government agency concerned.

- The following are the different types of CBWs:

  1. Manufacturing Customs Bonded Warehouse (MCBW) – a warehouse facility established for the manufacture of products utilizing raw materials or components that are imported duty and tax – free conditioned on the exportation of the finished products within the period prescribed or withdrawal for domestic consumption upon payment of duties and taxes. It includes:

     - Miscellaneous Manufacturing Bonded Warehouse (MMBW);
     - Garments and Textiles Manufacturing Bonded Warehouse (GTMBW);
     - Customs Common Bonded Warehouse (CCBW);
     - ICBW; and
     - Private Bonded Manufacturing Warehouse (PvtBMW).

  2. Bonded Non-Manufacturing Warehouse (BNMW) – a facility where goods are stored duty-and-tax-free conditioned on the eventual withdrawal of the goods for consumption, or for export, or for transit, or for any other clearance regime, within the specified period. It includes:

     - Public Bonded Warehouse;
     - Private Bonded Warehouse;
     - Airlines Customs Bonded Warehouse and Airlines Catering Customs Bonded Warehouse; and
     - Multinational Regional Bonded Warehouse.

- CBWs may be created or dissolved based on prevailing economic circumstances.

- The BOC shall be responsible for the issuance of an Authority to Operate CBWs, including the imposition of requirements for their establishment and operation, setting forth the rights and obligations of operators, and the penalties and sanctions for violation of these rules.

- The application for authority to operate a CBW, including applications for accreditation as member, subcontractor or client – exporter of an existing warehouse, shall be filed with the District Collector where the CBW is located. The District Collector shall act on the application, subject to the approval of the Commissioner of Customs.

- The Authority to Operate a CBW, including warehouse extensions, additional facilities issued pursuant to this Order, shall be valid for 3 years counted from the date of approval of the application for establishment, as stated in the Certificate of Authority to Operate. A renewed Authority to Operate shall also be valid for a period of 3 years.

- Goods duly entered for warehousing in CBWs shall be exempt from duty and tax within the allowed period for storage unless withdrawn for consumption, exportation or transit to a free zone or another CBW, in which case, such withdrawal will be subject to the applicable rules and regulations on liquidation of the warehousing entry.

- A CBW may import articles based on its approved formula of manufacture as duly authorized.

- A goods declaration for warehousing shall be filed at the port where the goods for warehouse are discharged. Provisional goods declaration may be allowed by the BOC under warehousing subject to the rules and regulations on the filing of a provisional goods declaration.

- The CBWM operator shall, within the prescribed storage period, apply for withdrawal of the bonded goods for production.

- All goods for export by a CBW shall be stuffed only upon prior examination by a customs officer who shall issue the Certificate of Identification.

- The CBW operator shall lodge an export declaration for finished products, which are manufactured in CBWs within the prescribed period.

- Wastages, rejects, and by-products in the manufacture of export products shall be properly accounted for and disposed of in accordance with existing rules and regulations.

- The CBW operator shall cause the liquidation of any warehousing entries and the cancellation of the bonds related to the finished products.

- Below are the periods of storage in CBWs:

Goods entered for warehousing	Maximum of 1 year from its arrival at the warehouse
Perishable goods	3 months from arrival at the warehouse, extendible for valid reasons and upon written request, for another 3 months
Bonded raw materials withdrawn within the prescribed storage period	1 year from arrival at the CBW

- Without prejudice to the criminal and other liabilities imposed under the CMTA and other laws, the operator of the CBW shall be subject to penalties on the following offenses:

Offense	Penalty
Diversion or Unauthorized Withdrawal or Repacking	1st Offense – Duties, taxes and charges due on the goods withdrawn, surcharge of 50% of duties, taxes, customs fees, and charges, found to be due and unpaid 2nd Offense – Suspension of warehousing privileges for 6 months 3rd Offense or if withdrawal is attended with fraud – Closure of CBW
Unauthorized Relocation	1st Offense – Duties, taxes and charges due on the goods withdrawn, surcharge of 50% of duties, taxes, customs fees, and charges, found to be due and unpaid 2nd Offense – Suspension of warehousing privileges for 6 months 3rd Offense– Closure of CBW
Late Filing of Application for Renewal of Authority to Operate (*for members of CCBW and ICBW*)	91-119 days before expiration – P100,000 61-90 days before expiration – P150,000 31-60 days before expiration – P200,000 1-30 days before expiration – P250,000 and suspension of privilege as CBW operator
Late Filing of Application for Renewal of Authority to Operate (*for other CBWs*)	61-89 days before expiration – P150,000 31-60 days before expiration – P200,000 1-30 days before expiration – P250,000 and suspension of privilege as CBW operator
Late Re-exportation	Up to 6 months – 2% per month of the collectible duties and taxes counted from date of expiration of the bond to date of actual exportation Beyond 6 months – Penal amount of the bond + 2% per month of the collectible duties and taxes counted from date of expiration of the bond to date of actual expiration
Late submission of documents required for reconciliation or liquidation of raw materials, liquidation of entries or cancellation of re-export or surety bonds	1-30 days from expiration of bond = P1,000 31-60 days from expiration of bond = P2,000 61-90 days from expiration of bond = P3,000 91-120 days from expiration of bond = P4,000 121-150 days from expiration of bond = P5,000 151-180 days from expiration of bond = P6,000 Beyond 6 months from expiration of bond = Penal amount of the bond

- Any existing contracts of private operators with concerned government agencies and regulatory bodies, including the powers and privileges already granted by virtue of such contracts, shall not be impaired or adversely affected.

- All existing CBWs shall be re-evaluated, reclassified and reorganized to ensure compliance with the requirements of CAO No. 13-2019. This shall be without prejudice to the rights, conditions, and obligations which were already acquired or vested prior to the effectivity of CAO No. 13-2019.

- CAO No. 13-2019 shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of general circulation.

(Editor's Note: CAO No. 13-2019 was published in The Manila Times *on 9 October 2019)*

SEC Updates

SEC-OGC Opinion No. 19-33 dated 9 September 2019

The SEC license granted to a foreign corporation to do business in the Philippines is coterminous with the corporate life of such corporation.

Facts:

F Co, a foreign stock corporation organized and existing under the laws of Japan, was issued a license to do business in the Philippines by the SEC (SEC license) on 23 October 1970.

Under Japanese laws, the term of a corporation incorporated under the laws of Japan is perpetual and indefinite, unless its Articles of Incorporation (AOI) provide a specific term. F Co's Articles of Incorporation did not provide a definite corporate term; hence its corporate term is deemed perpetual or indefinite.

On the other hand, Section 11 of the old Corporation Code provides that a corporation shall exist for a period not exceeding 50 years from the date of incorporation unless such period is extended.

A query was raised on whether F Co has to renew its license before October 2020, the 50th year of its license, in view of Section 11 of the old Corporation Code.

Issue:

Is F Co required to renew its SEC license before October, 2020?

Ruling:

No. Under Section 143 of the Revised Corporation Code (RCC) (formerly Section 126 of the Old Corporation Code), foreign corporations that have been granted a license to do business may continue to do so for as long as it retains its authority to act as a corporation under the laws of the country of its incorporation, unless such license is sooner surrendered, revoked, suspended, or annulled under the RCC other special laws.

Thus, as long as F Co exists legally in its place of incorporation, its license to do business remains valid, unless sooner surrendered or revoked under Philippine law.

A domestic company whose corporate term has expired may continue selling its remaining assets as part of the process of liquidation.

SEC-OGC Opinion No. 19-34 dated 9 September 2019

Facts:

A Co is a domestic company whose corporate term has expired and is currently under liquidation. It is now in the process of titling and selling portions of the land returned to it by the Department of Agrarian Reform in 2014.

Issue:

Is A Co allowed to continue selling and transferring ownership of its remaining assets?

Ruling:

Yes. The sale and transfer of the remaining assets of A Co is in line with the purpose of liquidation.

Under Section 139 of the Revised Corporation Code (formerly Section 122 of the Old Corporation Code), a corporation whose corporate existence is terminated shall continue as a body corporate for 3 years for purposes of liquidation to enable it to settle and close its affairs, dispose of and convey its property, and distribute its assets.

Within the 3-year period, A Co may convey all of its properties to trustees for the purpose of completing the liquidation. There is no time limit within which the trustees must complete the liquidation.

The act of selling online through e-commerce is just a new mode of delivering retail services and can be considered as necessary or incidental to the power of the corporation to engage in retail trade.

SEC-OGC Opinion No. 19-35 dated 9 September 2019

Facts:

B Co is planning to launch its e-commerce program. Under its Amended Articles of Incorporation, its business is to engage in retail trade, but does not mention e-commerce among its authorized purposes.

Issue:

Is B Co required to further amend its Amended Articles of Incorporation to include e-commerce as part of its purpose as a retail business?

Ruling:

No. As long as a corporation is authorized to engage in retail trade, it may do so by any means available.

Under the Retail Trade and Liberalization Act of 2000 (RTLA), retail trade is defined as any act, occupation, or calling of habitually selling to the general public merchandise, commodities, and goods for consumption.

The law does not distinguish between retail trade carried on through physical stores and through online channels. B Co's act of selling online through the use of e-commerce is just a new mode of delivering its retail services and could be more appropriately considered as necessary or incidental to the power of the corporation to engage in retail trade.

Non-stock non-profit corporations may pursue income-generating activities, which are essential, incidental or reasonably necessary to enable the corporation to carry out powers expressly granted and for furthering the purpose/s for which it was established.

SEC-OGC Opinion No. 19-39 dated 18 September 2019

Facts:

X Foundation, a non-stock, non-profit corporation, was formed for the purpose of preserving and enhancing Philippine Art and Culture by, among other things, establishing and maintaining museums and libraries, supporting ethnic artisans and craftsmen and undertaking related activities.

As part of its initiative to make the appreciation of Philippine art and culture more accessible to the community, X Foundation has set up an online store that will carry products, featuring Philippine culture and the works of art of Filipino artists.

Issue:

Is online selling allowed under the existing Articles of Incorporation of the foundation?

Ruling

Yes. Although, as a general rule, non-stock non-profit corporations are not authorized to pursue commercial business activities, they may do so when such income-generating activities are essential, incidental or reasonably necessary to enable the corporation to carry out powers expressly granted it and for the furtherance of the purpose/s for which it was established.

In this case, the online selling of products that feature Philippine culture and the works of Filipino artists to generate income may be considered as necessary and incidental to the primary purpose of preserving, enhancing and encouraging Philippine art and culture.

Moreover, a corporation authorized and registered as engaged in selling may do so online because online selling is just a mode or means of selling.

The sale of specially manufactured prosthetic implants or artificial limbs is a contract for a piece of work and as such, does not fall within the purview of retail trade.

SEC-OGC Opinion No. 19-41 dated 19 September 2019

Facts:

I Co is a limited liability company organized and existing under the laws of Japan. It is engaged in the business of prosthetics, which involves the design, fabrication, and assembly of prosthetic implants or artificial limbs for natural persons with missing body parts. The prosthetics methodology of I Co takes into consideration the unique body build of each individual.

I Co is planning to establish a 100% Japanese-owned manufacturing company in the Philippines by 2020.

Issue:

Is the business of prosthetics a retail trade activity subject to nationality restrictions for ownership?

Ruling:

No. Under the Civil Code, where the goods are to be manufactured specially for the customer and upon his special order, it is a contract for a piece of work and not a contract of sale. The business of prosthetics may be considered a contract for a piece of work because it entails tailor-fitting the artificial limbs based on a unique or customized design, which depends on the unique measurements of a particular customer.

Even assuming that the business of prosthetics is considered a contract of sale, it would not be considered retail trade for the following reasons:

- For sales transactions to be considered as retail, the following elements should concur: (1) the seller should be habitually engaged in selling; (2) the sale must be direct to the general public; and (3) the object of sale is limited to merchandise, commodities, or goods for consumption.
- The sale is not direct to the general public. The sale of specially manufactured prosthetic implants or artificial limbs implies that commodity is not available to the general market and requires an order customized by and for a particular individual.
- Also, the prosthetic products are not consumer goods, since by their nature, they are not ready for consumption and entails tailor-fitting the artificial limbs based on a unique or customized design.

SEC-OGC Opinion No. 19-44 dated 4 October 2019

The business of event management and catering constitutes retail trade and is subject to foreign equity restrictions.

Facts:

P Co, a domestic corporation with 40% foreign equity, is engaged in event management services, which includes party catering services. It has no intention of operating a restaurant and aims to provide, by itself, its subsidiaries or subcontractors, catering services during events only.

Issue:

Does the business of event management and catering constitute retail trade?

Ruling:

Yes. As an event caterer, P Co shall be considered a retailer.

To be considered as retail, the following elements should concur: (1) the seller should be habitually engaged in selling, (2) the sale must be direct to the general public, and (3) the object of sale is limited to merchandise, commodities, or goods for consumption.

The presence of the first and third elements is clear. As to the second element, P Co alleges that the catering business is tailor-made (e.g. theme, menu, design) to particular customers and is, thus, not available to the general public. However, the element of exclusivity is lacking. In the catering business, the customer of P Co is no less than the general public since every customer celebrating an event is a potential customer. Thus, the second element is also present.

The sale of merchandise as an incident to the primary purpose does not constitute retail trade.

SEC-OGC Opinion No. 19-46 dated 7 October 2019

Facts:

D Co is a domestic corporation engaged in the establishing and operating optical clinics managed by professionally registered optometrists. The optical clinics, through the duly licensed Filipino optometrists, conduct eye checkup and recommend appropriate prescription lenses and eyeglass frames to their patients.

In renewing its business permit, the company was informed that the operation of the optical clinics constitutes engaging in retail trade. As such, the company is violating the Retail Trade Liberalization Act because of its 37% foreign equity.

Issue:

Is the company engaged in retail trade?

Ruling:

No. To be considered as retail, the following elements should concur: (1) the seller should be habitually engaged in selling; (2) the sale must be direct to the general public; and (3) the object of sale is limited to merchandise, commodities, or goods for consumption.

The lenses and frames are not readily available for sale to the general public and are made only after the prescription of the attending optometrist and specific only to a particular patient.

Moreover, the sale of prescribed lenses and eyeglass frames is incidental to the rendering of optometry services and is not being pursued as an independent business. Engaging in the selling of merchandise as an incident to the primary purpose does not constitute retail trade.

COURT DECISIONS

For a VAT refund to prosper, it is not necessary that there should be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid.

Commissioner of Internal Revenue vs. Maibarara Geothermal, Inc.
CTA (*En Banc*) Case No. 1863 promulgated 4 October 2019

Facts:

Respondent Maibarara Geothermal, Inc. ("MGI"), a company engaged in the development of renewable energy (RE), filed a claim for refund of unutilized input VAT incurred for taxable year 2012 attributable to its zero-rated sales. As the CIR failed to act on the refund application within the 120-day period, MGI filed a Petition for Review with the CTA.

The CTA 3rd Division denied the claim, holding that MGI's purchases related to RE are VAT zero-rated and no output VAT should have been passed on by its suppliers. As such, MGI is not entitled to a refund.

MGI filed a motion for reconsideration, contending that it is entitled to a refund of unutilized input VAT on purchases not directly related to RE development and conversion. The CTA Division amended its decision to rule in MGI's favor. Aggrieved, the BIR elevated the case to the CTA *En Banc*.

The BIR argued that MGI is not eligible for a refund of its input VAT on importation from taxable year 2012 since it had no zero-rated sales in 2012 to which said input VAT could be attributed. MGI only started operations in the first quarter of 2014.

Issue:

Is MGI entitled to refund input VAT on purchases not directly related to RE development and conversion?

Ruling:

Yes. Neither the NIRC nor the Consolidated VAT Regulations require that for a refund of input VAT attributable to zero rated sales to prosper, there should be zero-rated or effectively zero-rated sales at the time the claimed input VAT was incurred or paid.

What the law and regulations provide is that a taxpayer who has zero-rated or effectively zero-rated sales is allowed to apply for refund of input taxes paid, in addition to the option to carry forward the input taxes against future output tax liabilities.

As long as the following requisites for a VAT refund were met, MGI is entitled to a refund: (1) the claimant is VAT registered; (2) the input tax should not have been applied against output tax; (3) the input tax is attributable to zero-rated or effectively zero-rated sales; and (4) claim is made within 2 years from the close of the taxable quarter when the sales were made,. It is immaterial that there was no reported zero-rated sale for taxable year 2012.

RE developers are only exempt from tariff duties, under certain conditions but its importations are not zero-rated or exempt from VAT. The input VAT on importation may be refunded.

Mercury Group of Companies, Inc. vs. Commissioner of Internal Revenue
CTA (Special Second Division) Case No. 9531 promulgated 6 September 2019

Services rendered within intracompany divisions are not "services performed for another person" subject to VAT, as they are considered one and the same entity. The BIR cannot disallow the expenses of a taxpayer, who opted for OSD, due to non-withholding of taxes under to Section 34(K) of the NIRC.

Facts:

Respondent CIR assessed Petitioner Mercury Group of Companies, Inc. ("MGCI") for alleged deficiency taxes for taxable year 2009. MGCI protested upon the issuance of a Final Assessment Notice (FAN). While the BIR considered some items, MGCI was still found liable for deficiency income tax, VAT and expanded withholding tax (EWT) in the Final Decision on Disputed Assessment. This prompted MGCI to file a Petition for Review with the CTA within 30 days from the receipt of the adverse decision.

At the CTA, MGCI assailed, among others, the BIR's deficiency VAT assessment on management fees from Trinity and Insurance Divisions of MGCI, which are intracompany transactions. Trinity and Insurance Divisions are considered profit centers, and the interdivision accounts are used only to keep track of expenses and profitability of each department. These are not transactions of MGCI with customers, but are part of an internal control mechanism.

MGCI also averred that the BIR should not have disallowed the Optional Standard Deduction (OSD) it opted to use in its annual income tax return. It posited that when it filed its quarterly ITRs, the BIR's Electronic Filing and Payment System (eFPS) has not been updated to include the option of OSD. However, these quarterly returns prove that it elected OSD as the deductions claimed are exactly 40% of the gross income declared. As it opted for OSD, MGCI took the position that its expenses should not be disallowed for failure to subject each expense to EWT.

Issues:

1. Is MGCI liable for deficiency VAT on its intracompany transactions?

2. Can the BIR assess MGCI for deficiency EWT for failing to subject each expense to EWT?

Rulings:

1. No. The management fees from Trinity and Insurance Divisions are only recorded for monitoring purposes as intracompany transactions. MGCI and these divisions are treated as one entity for financial reporting and income tax purposes. Being considered one and the same entity, the services rendered by MGCI to these divisions are not "services performed for another person" subject to VAT under the NIRC.

2. No. Since MGCI opted for OSD as a mode of deduction, its expenses cannot be disallowed due to non-withholding of EWT pursuant to Section 34(K) of the NIRC. Section 34 pertains to any amount paid or payable, which is otherwise deductible. This phrase pertains to itemized deductions.

   The requirement of withholding prior to allowing OSD would be absurd and even unfair as it may result in instances where the taxpayer may be forced to withhold taxes on expenses which were not actually paid for the sake that the whole OSD amount claimed may be allowed for income tax purposes.

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Expiry date: no expiry

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