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1. May a revenue officer ("RO") conduct an examination of a taxpayer's accounts based on a Letter of Authority ("LOA") that contains the name of another RO and a Memorandum Referral signed by the Revenue District Officer?

No. In *Republic of the Philippines vs. Robiegie Corporation* (G.R. No. 260261, October 3, 2022), the Supreme Court ("*SC*") held that a new LOA is needed if the Bureau of Internal Revenue ("*BIR*") will reassign, from one RO to another, the examination or investigation of a taxpayer's records. In this case, the SC also explained that the reassignment of an RO may be delegated by the Commissioner of Internal Revenue ("*CIR*") to his or her duly authorized representatives under the National Internal Revenue Code of 1997, as amended ("*NIRC*").

Robiegie Corporation is a corporation engaged in operating a drugstore. The BIR issued an LOA dated July 27, 2009 (the "*2009 LOA*") authorizing RO Jose Francisco David, Jr. ("*RO David*") to examine Robiegie Corporation's books of account and other accounting records. Subsequently, the 2009 LOA was reassigned to RO Cecille D. Dy ("*RO Dy*") pursuant to a Memorandum Referral signed by the BIR Revenue District Officer.

In light of the findings of RO Dy pursuant to the 2009 LOA, the CIR assessed Robiegie Corporation with a total tax deficiency of PhP10,804,991.21, consisting of deficiency value added tax, deficiency expanded withholding tax, and compromise penalty. Failing to find any leviable or garnishable property of Robiegie Corporation, the BIR filed a complaint before the Court of Tax Appeals ("*CTA*") to collect deficiency taxes.

Robiegie Corporation argued that the assessments made by RO Dy were null and void because she had no authority to conduct an investigation. It argued that the 2009 LOA authorized only RO David, not RO Dy, to examine Robiegie Corporation's books of account. Without a valid LOA, any investigation is not permitted. On the other hand, the CIR argued that an investigation conducted by an RO pursuant to a memorandum of assignment under an LOA issued in favor of another RO is valid.

The SC ruled against the CIR and upheld the ruling of the CTA finding that the assessments made by RO Dy were null and void for lack of authority. The SC agreed with the CTA's finding that a validly issued LOA is needed for the valid conduct of a taxpayer investigation. Citing its previous decisions, the SC echoed that the reassignment of the examination of a taxpayer's books of accounts to another RO necessitates the issuance of a new LOA pursuant to existing law (Sections 5, 6 (A) and 13 of the NIRC) and BIR regulations.

The SC held that the investigatory powers of the ROs flow from an LOA, which is the statutorily designated means by which the CIR delegates its investigative powers to the BIR ROs. Differently stated, an RO may only examine taxpayers in the course of carrying out, in conformance to or agreement with, or according to, a validly issued LOA. The SC further explained that the CIR's power to reassign BIR officers and employees under Section 17 of the NIRC cannot be invoked to defeat the statutory LOA requirement. While Section 17 gives the CIR the power to reassign ROs who perform assessment or collection functions, such mandate is separate and distinct from the CIR's investigatory power, which is governed by other provisions of the NIRC (i.e., Sections 5, 6(A) and 13) requiring the issuance of a new LOA in favor of a new RO.

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The SC also disagreed with the CIR's arguments that issuing new LOAs would overburden the CIR and would violate the "one LOA per taxable year" rule of the BIR. The SC explained that the CIR may validly delegate the power to his or her duly authorized representatives, such as the Deputy Commissioners and the Revenue Regional Directors. Moreover, the "one LOA per taxable year" rule of the BIR provides that the CIR has the discretion to determine which among the LOAs will prevail in case there are multiple LOAs. Hence, the CIR or his or her duly authorized representatives may issue a new LOA to a newly assigned RO and make such LOA prevail over the old one.

Given the absence of a valid LOA issued in RO Dy's name, the SC dismissed the petition and affirmed the dismissal of the complaint against Robiegie Corporation.

SyCipLaw TIP 1:

When subject to an audit by the BIR, a taxpayer should make sure that the examining RO has been duly authorized by the CIR or his duly authorized representative to make the examination or investigation. Thus, the taxpayer should, among others, check if the examining RO is the same person named in the LOA.

2. May an isolated transaction of a corporation be subject to value-added tax ("VAT")?

Yes, if it is clearly established that the isolated transaction is related or connected with the corporation's main business activity which is subject to VAT. In *Lapanday Foods Corporation v. CIR* (G.R. No. 186155, January 17, 2023), the SC ruled that, although merely occasional or isolated, a transaction may be still be embraced in the definition of the phrase "in the course of the trade or business of the taxpayer" – thus, subject to VAT- so long as it may be established that such transaction is incidental to the seller's or service provider's main business activity.

Lapanday Foods Corporation ("*Lapanday*") is a management services company primarily engaged "in the managing, promoting, administering, or assisting in any business or activity of corporations, partnerships, association, individual or firms." Lapanday used its credit line to facilitate inter-company loans to its affiliates, *i.e.*, its parent company and two subsidiaries.

The CIR assessed Lapanday deficiency VAT on its interest income from these inter-company loans. On appeal, the CTA affirmed the deficiency VAT assessment and ruled that the inter-company loans were incidental to the business of Lapanday, and any interest income earned through the related party loans was subject to VAT.

The SC reversed the ruling of the CTA and held that Lapanday's inter-company loans were not subject to VAT.

The SC explained that while isolated transactions may be subject to VAT and the definition of the phrase "in the course of trade or business" includes transactions incidental to the main business activity, the CTA erred in holding that the inter-company loans made by Lapanday were incidental to the latter's main line of business as a management service provider. The SC emphasized that its conclusion is rooted not only in the fact that the loans were merely isolated and not for commercial or economic purpose, but also on the apparent lack of any showing of a connection between the granting of financial assistance and Lapanday's primary purpose of providing management services to clients. The SC applied the principle of

ejusdem generis in interpreting the term "assisting" in Lapanday's primary purpose (which term, according to the court, should be bestowed a meaning similar to those of "managing," "administering," or "promoting") and even considered the *proviso*, which precludes Lapanday from managing its clients' funds, securities, portfolios, and similar assets.

Given its findings, the SC set aside the finding of the CTA and nullified the assessment for deficiency VAT.

SyCipLaw TIP 2:

The SC decision in *Lapanday Foods* highlights the broad scope of VAT because of the definition of the phrase "in the course of trade or business," which means "the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto." When entering into any transaction with its affiliates, especially transactions that are not part of its regular business, a taxpayer should not only ensure that the transaction is within its corporate powers and authority, but also consider all possible tax implications, including any VAT.

3. In assailing a tax assessment, can a taxpayer who receives a Warrant of Distraint and/or Levy, instead of a Final Decision on Disputed Assessment, already elevate the case to the CTA?

Yes. In *Yap v. BIR* (CTA Case No. 10019, March 9, 2023), the CTA First Division ruled that "[i]n instances when respondent, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, the SC has considered this an implied denial [and] [t]he taxpayer's remedy then was to appeal to this Court within thirty (30) days from the date that it was notified of the warrant or collection suit."

In this case, the taxpayer received several Formal Letters of Demand ("*FLDs*") finding it liable for deficiency taxes for taxable years 2011, 2012, and 2013. The taxpayer filed a protest to assail the tax assessment with the BIR. On July 10, 2018, the BIR issued a Preliminary Collection Letter ("*PCL*"), demanding the payment of the taxpayer's tax liabilities. On January 31, 2019, the taxpayer received a Warrant of Distraint and/or Levy ("*WDL*"). After receipt of the WDL, the taxpayer immediately filed a petition for review before the CTA on February 1, 2019.

The BIR argued that the CTA has no jurisdiction over the case because the 30-day period to file a petition for review should be counted from July 10, 2018, or the date of the taxpayer's receipt of the PCL. Accordingly, the BIR asserts that the petition for review was filed out of time. On the other hand, the taxpayer argued that the 30-day period should be counted from January 31, 2019, or the date of its receipt of the WDL. Accordingly, the taxpayer asserts that the petition for review was timely filed.

In ruling in favor of the taxpayer, the CTA First Division cited Section 7(a)(1) of Republic Act ("*RA*") No. 1125, as amended by RA No. 9282 (the "*CTA Law*"), which confers upon the CTA jurisdiction to decide not only cases on disputed assessments and refunds of internal revenue taxes, but also "other matters" arising under the NIRC, as amended. The CTA First Division cited *Philippine Journalists, Inc. v. CIR* (G.R. No. 162852, December 16, 2004), where the SC expressly ruled that Section 7(a)(1) of the CTA Law "gives the CTA the jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the Waiver of Statute of Limitations was validly effected." The CTA First Division concluded that "the validity of a WDL is an issue that falls under 'other matters arising from the NIRC' that is within the jurisdiction of [the CTA] to decide upon." The CTA First Division also ruled that "[i]n instances when respondent, without categorically deciding the taxpayer's protest or request for reconsideration or reinvestigation, proceeds with distraint and levy or institutes an action for collection in the ordinary courts, the SC has considered this an implied denial [and] [t]he taxpayer's remedy then was to appeal to this Court within thirty (30) days from the date that it was notified of the warrant or collection suit."

It is worth noting that the CTA First Division also acknowledged cases like *CIR v. Avon Products Manufacturing, Inc.* (G.R. No. 201398-99 and 201418-19, October 3, 2018), where a collection letter having the character of finality, such as the PCL here, has been considered by the Supreme Court as the CIR's final decision that is appealable to the CTA. The CTA First Division ruled that it is clear "that such collection letter may fall under the category of 'other matters' pursuant to the earlier quoted *Philippine Journalists* case, which, as shown, categorically ruled that [the CTA's] jurisdiction also includes the power 'to determine if the warrant of distraint and levy issued by the BIR is valid.'"

The CTA First Division cautioned, however, that the SC is still the final arbiter on the issue on whether the 30-day period to file a petition for review should be counted from the date of the taxpayer's receipt of the PCL or the WDL.

SyCipLaw TIP 3:

A taxpayer may receive a PCL and/or a WDL even as the taxpayer's administrative protest is still pending with the BIR. In such a case, the taxpayer must bear in mind that receipt of the PCL or the WDL may be considered as the reckoning point for the 30-day period to file a petition for review before the CTA. While there is authority to support both positions – that the reckoning point is from receipt of the PCL and the WDL – we suggest that, until the SC finally settles the issue, the taxpayer should consider receipt of the PCL as the reckoning point for filing the petition with the CTA. If the taxpayer waits for the WDL and the SC finally rules that the receipt of the PCL is the reckoning point, then the taxpayer would have lost its judicial remedy to question the tax assessment.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the SC.

4. Is a PEZA-registered entity enjoying a preferential tax rate of 5% on gross income in lieu of national and local taxes liable for documentary stamp tax ("*DST*")?

No. In *CIR v. Cebu Light Industrial Park, Inc.* (CTA EB Case No. 2466, March 8, 2023), the CTA En Banc ruled that under Section 24 of RA No. 7916, as amended by RA No. 8748 (*"Special Economic Zone Act of 1995"*), "save for real property taxes on land owned by developers, national and local taxes may not be imposed on business establishments operating within the ECOZONE, in lieu of a special tax rate of 5% of its gross income. Among the national internal revenue taxes is the DST."

In this case, the taxpayer is a duly registered Philippine Economic Zone Authority ("*PEZA*") Developer/Operator of the Cebu Light Industrial Park Ecozone, enjoying a preferential tax rate of 5% on gross income in lieu of national and local taxes under RA No. 7916, as amended. On September 10, 2013, the taxpayer received a Final Decision on Disputed Assessment ("*FDDA*") from the Regional Director, denying its protest and finding it liable for deficiency income tax, expanded withholding tax ("*EWT*"), and DST for taxable year 2005. The assessment for DST arose from the taxpayer's advances to stockholders, which were considered as loans under Section 179 of the NIRC. The taxpayer administratively appealed the FDDA to the CIR. While the appeal was pending, the taxpayer received, on April 10, 2016, a letter from a certain Ms. Dizon, then Asst. Regional Director ("*ARD Letter*"), informing the taxpayer that "all issues stated and findings per FDDA [are] hereby reiterated". The taxpayer wrote to the CIR to seek confirmation whether the ARD Letter is the latter's final decision on the matter. Pending the reply, the taxpayer received, on May 5, 2017, a PCL from the OIC-Assistant Chief, Collection Division. This prompted the taxpayer to seek recourse to the CTA on June 2, 2017, which is within the 30-day period from its receipt of the PCL.

The CTA First Division partially granted the petition for review, canceling the assessments for EWT and DST. Aggrieved, the CIR filed a petition for a review before the CTA En Banc, raising two arguments: [a] on jurisdiction – that the taxpayer only had 30 days from its receipt of the ARD Letter, or until May 10, 2016, to file the appeal before the CTA; and [b] on DST – that Section 173 of the NIRC provides that in the event that a party enjoys DST exemption on a taxable document, the party who is not exempt shall be directly liable for its payment.

On the jurisdictional issue, the CTA En Banc ruled that the ARD Letter is not considered an FDDA appealable to the CTA in light of the admission made by the CIR in the parties' joint stipulation of facts and issues that it is the PCL received by the taxpayer on May 5, 2016 that will be considered as the decision appealable to the CTA. The CTA En Banc cited Rule 129, Section 4 of the Rules of Court which states that a written admission made by a party in the course of the proceedings does not require proof, save when such admission was made through palpable mistake or the imputed admission was not, in fact, made. The CTA En Banc also ruled that "[a] party who judicially admits a fact cannot later challenge [the] fact as judicial admissions are a waiver of proof; production of evidence is dispensed with."

On the DST issue, the CTA En Banc simply pointed out that Section 24 of Republic Act No. 7916, as amended, is clear that save for real property taxes on land owned by developers, national and local taxes may not be imposed on business establishments operating within an ECOZONE, in lieu of a special tax rate of 5% of its gross income. Since DST is among the national internal revenue taxes, the taxpayer cannot be made liable for DST.

SyCipLaw TIP 4:

A PEZA-registered entity operating within an ECOZONE and enjoying a preferential tax rate of 5% of its gross income, in lieu of paying national and local taxes, is not liable for DST.

On the jurisdictional issue, while the CTA En Banc decided the case on the basis of a judicial admission by the CIR, the taxpayer should consider the SC's ruling in *Tanduay Distillers, Inc. v. CIR* (G.R. No. 256740, February 13, 2023). In the *Tanduay* case, the Supreme Court ruled that the CTA is not bound strictly by the issues raised by the parties . The SC did not consider the parties' stipulation in *Tanduay* that the denial of the administrative claim for refund was done purely on a legal basis, and that there was no question as to the amount of excise taxes paid. (*See* the March 2023 edition of TIPS for a discussion of the *Tanduay* case). Thus, it would be prudent for the taxpayer to still present evidence to support its factual allegations even though the parties already agreed to stipulate on such factual allegations.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the SC.

5. Is a consularized Letters Patent of Amalgamation sufficient to prove that a foreign corporation is not doing business in the Philippines, for purposes of qualifying for value-added tax zero-rating under Section 108(B)(2) of the NIRC?

No. In *CIR v. Manulife Data Services, Inc.* (CTA EB No. 2183, March 31, 2023), the CTA En Banc ruled that "consularized Letters Patent of Amalgamation merely proves that [a company] is a foreign corporation [and] [s]uch does not prove whether [the company] is not doing business in the Philippines, which is another requirement to qualify for zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended."

In this case, the taxpayer filed an administrative claim for refund of its alleged excess input VAT for calendar year 2013. The CTA Special Third Division disallowed the amounts pertaining to sales made to The Manufacturers Life Insurance Company ("*MLIC*") because there was no Securities and Exchange Commission ("*SEC*") Certificate of Non-Registration of Company issued to it. According to the CTA Special Third Division, without the SEC Certificate of Non-Registration of Company, MLIC cannot be considered a non-resident foreign corporation ("*NRFC*") not doing business in the Philippines, which is a requirement for the services to qualify for VAT zero-rating under the NIRC.

In its appeal with the CTA En Banc, the taxpayer contends that the consularized Letters Patent of Amalgamation issued by Canadian authorities proves that MLIC is a corporation duly registered and existing under the laws of a foreign jurisdiction, and that MLIC has filed with the Insurance Commission a request for authority to close its Philippine business and withdraw its license. On the other hand, the CIR contends that the taxpayer's failure to present the SEC Certificate of Non-Registration of Company is fatal to its claim that MLIC is not engaged in trade or business within the Philippines. The CIR also contends that, at one point in time, MLIC established a branch locally, *i.e.*, The Manufacturers Life Insurance Company – Philippine Branch ("*MLIC-PH*").

Affirming the CTA Special Third Division, the CTA En Banc ruled that the taxpayer failed to prove that its sales of services to MLIC are qualified for VAT zero-rating. The CTA En Banc reiterated that for a sale or supply of services to be subject to the VAT rate of zero percent under Section 108(B)(2) of the NIRC, the recipient of the services must be a foreign corporation, and the said corporation must be doing business outside the Philippines. The CTA En Banc ruled that, to be considered as an NRFC doing business outside the Philippines, the

entity must be supported, at the very least, by both: [a] an SEC Certificate of Non-registration of Corporation/Partnership; and [b] a Certificate/Article of Foreign Incorporation/Association. Parenthetically, the CTA En Banc emphasized that notwithstanding the presentation of said documents, "there must [likewise] be *no indication* that the recipient of the services is doing business in the Philippines."

Here, the CTA En Banc found that the taxpayer failed to discharge its burden to prove that MLIC is a non-resident person not engaged in business in the Philippines, and which is outside the Philippines. As observed by the CTA En Banc, MLIC's failure to secure the SEC Certificate of Non-Registration of Company was probably because MLIC-PH had not yet been issued a Certificate of Dissolution at that time, and it was still considered as doing business in the Philippines. Furthermore, the presentation of MLIC's letter to the Insurance Commission for the authority to close its Philippine business and withdraw its license was also considered as insufficient evidence to prove that MLIC is a non-resident person not engaged in business in the Philippines, as this merely evidences MLIC's intention not to continue with a specific business in the Philippines.

SyCipLaw TIP 5:

One of the requisites for VAT zero-rating under Section 108(B)(2) of the NIRC, which would entitle a taxpayer to claim an input VAT refund, is that the recipient of the service rendered by the taxpayer must be a foreign corporation doing business outside the Philippines. In order to be considered as an NRFC doing business outside the Philippines, the entity must be supported, at the very least, by both: [a] a SEC Certificate of Non-Registration of Corporation/Partnership; and [b] proof of incorporation, association, or registration in a foreign country (*i.e.*, certificate/article of foreign incorporation, association, or registration). Also, if the CIR presents evidence indicating that the recipient of the services is doing business in the Philippines, the taxpayer should present rebuttal evidence to prove the contrary.

A motion for reconsideration of the decision is currently pending.

CTA decisions, while persuasive, do not become part of the law of the land, unlike decisions of the SC.

6. What is the process for filing the annual income tax return for calendar year 2022 and the payment of the corresponding taxes?

In Revenue Memorandum Circular ("*RMC*") No. 32-2023, the BIR set out the guidelines for the filing of Annual Income Tax Returns ("*AITR*") for Calendar Year 2022 ("*CY 2022*"), as well as the payment of corresponding taxes due thereon. For CY 2022, taxpayers had until April 17, 2023 to file the AITR and pay the taxes.

The guidelines are as follows:

a. Taxpayers may file the AITR for CY 2022 and pay the taxes due to any Authorized Agent Bank ("*AAB*") and Revenue Collection Officer ("*RCO*"), notwithstanding the Revenue District Office ("*RDO*") jurisdiction, without imposition of penalties for wrong venue filing.

b. Taxpayers mandated to use the Electronic Filing and Payment System ("*eFPS*") must file the AITR electronically and pay the taxes due through the eFPS-AABs where they are enrolled. The said taxpayers must use the eBIRForms in the filing of the AITR if filing cannot be made through the eFPS due to the following reasons:

    i. enrollment to the BIR-eFPS and eFPS-AAB is still in process;
    ii. the enhanced forms are not yet available in eFPS;
    iii. the unavailability of BIR-eFPS covered by a duly released advisory; or
    iv. the unavailability of the eFPS-AAB system as informed by the AAB.

c. Tax returns filed through the eBIRForms no longer have to be filed through the eFPS.

d. For electronically filed returns through the eBIRForms, payment of the taxes due may be made through any AABs or to any RCOs of the RDO or through the following Electronic Payment (ePayment) Gateways:

i. the Development Bank of the Philippines' Pay Tax Online (for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card);
ii. the Land Bank of the Philippines' Link.Biz Portal (for taxpayers who have ATM account with LBP and/or holders of BancNet ATM/Debit/Prepaid Card and taxpayers utilizing PCHC PayGate or PESONet facility for depositors of RCBC, Robinsons Bank, Union Bank, BPI, PSBank and Asia United Bank)
iii. the Union Bank's Online/The Portal Payment Facility (for taxpayers who have an account with Union Bank of the Philippines) and InstaPay via UPAY (for individual Non-Union Bank account holders)
iv. Tax Software Provider/Taxpayer Agent — GCash/Maya/MyEG

e. Taxpayers who will manually file their AITR and pay taxes due thereon through RCOs of the RDO may pay in cash up to twenty thousand pesos (PhP20,000.00) only or through a check payable to the "Bureau of Internal Revenue" regardless of the amount.

f. For taxpayers with "No Payment AITRs", the tax returns must be filed electronically through the eBIRForms. The following taxpayers may manually file their "No Payment AITRs" with the RDO in three (3) copies using the electronic or computer-generated returns or photocopied returns in its original format and in Legal/Folio size bond paper:

i. senior citizens or Persons with Disabilities filing their own returns;
ii. employees deriving purely compensation income from two or more employers, concurrently or successively at any time during the taxable year, or from a single employer, although the income of which has been correctly subjected to withholding tax, but whose spouse is not entitled to substituted filing; and
iii. employees qualified for substituted filing under Sec. 2.83.4 of Revenue Regulation ("*RR*") No. 2-98, as amended, but opted to file an ITR and are filing for purposes of promotion, loans, scholarships, foreign travel requirements, etc.

g. For Electronically filed AITRs without any attachment required, the printed copy of the e-filed tax returns need not be submitted to the Large Taxpayers Service ("*LTS*")/RDO. The generated Filing Reference Number (FRN) from the eFPS or the email confirmation from eBIRForms will serve as the proof of filing of returns. Additionally, for electronically filed AITRs, taxpayers may submit its attachments to the BIR's Electronic Audited Financial Statement (eAFS) System or to the LTS/RDO where the taxpayer is registered within fifteen (15) days from the date of the tax filing deadline. Only the attachments will be stamped received by the LTS/RDO. The printed copy of AITR need not be stamped "Received."

SyCipLaw TIP 6:

Taxpayers should take note of the guidelines issued by the BIR in the filing of their AITRs and payment of taxes to avoid mistakes in their filings and payments. They should also aim to file before the deadline to take into account any issues that may arise when doing the filings (*e.g.*, technical issues, the BIR refusing to accept manually filed AITRs for any reason, etc.). Otherwise, in addition to the tax due, taxpayers may incur penalties for late filing of the AITR and payment of tax due such as the 25% surcharge on the amount due and 12% interest on the unpaid amount of tax.

7. What is the scope of the current guidelines and procedures under Revenue Memorandum Order ("*RMO*") No. 10-2013, as amended by RMO No. 8-2014 governing the BIR's issuance and enforcement of *Subpoena Duces Tecum ("SDT")*?

In RMC No. 33-2023, the BIR clarified that the guidelines under RMO No. 10-2013 as amended by RMO No. 8-2014 regarding the issuance and enforcement of SDT also apply to the assessment of tax compliance of taxpayers in general and are not limited to taxpayers under audit or investigation who failed to comply with the written notice for information or relevant records.

As such, the guidelines and procedures in RMO No. 10-2013, as amended, will also apply in the examination of any books, papers, records, or other data which may be relevant or material in evaluating the tax compliance of taxpayers who are liable to pay tax or required to file a tax return.

For registered taxpayers, their tax compliance may be evaluated through the examination of the following documents:

i. payment of the annual registration fee;
ii. issuance of sales invoices or official receipts;
iii. keeping of books of accounts;
iv. timely filing of requisite tax returns and the payment of taxes due thereon;
v. withholding of tax on income payments subject to withholding and the timely remittance of tax withheld;
vi. filing of required information returns, such as the summary list of sales/purchases, annual alpha list of payees, etc. on or before the due dates prescribed by law or existing revenue issuances, whenever applicable; or
vii. other data which may be relevant or material in making such inquiry.

For unregistered taxpayers, the concerned BIR office will notify them to register and pay voluntarily any unpaid taxes due on past transactions. In case of failure to register and/or pay the tax obligations, the concerned BIR office will endorse the case to the Regional Investigation Division or National Investigation Division for the conduct of preliminary investigation in preparation for the filing of a "Run After Tax Evaders" case and/or for other tax enforcement actions, as may be warranted.

SyCipLaw TIP 7:

The BIR has clarified that SDTs may also be issued in tax compliance evaluations by the BIR. Accordingly, a taxpayer who is not under audit or investigation should be mindful to reply to a written notice from the BIR for the presentation of information or relevant records, otherwise, the BIR may issue an SDT to compel the submission of the same.

8. Is there data sharing between the SEC and the BIR?

Yes. The BIR published the Data Sharing Agreement ("*DSA*") between the SEC and the BIR in RMC No. 34-2023.

Pursuant to the DSA, the SEC will share with the BIR its data on corporations and other registered/licensed entities including beneficial ownership information. These data may contain personal information and sensitive personal information such as, but not limited to, the complete name, specific residential address, date of birth, nationality, tax identification number; and percentage of ownership, if applicable, of the incorporators, stockholders, directors, trustees, members, officers, and beneficial owners of registered corporations, partners in a partnership and other persons licensed by the SEC.

On the other hand, the SEC may request intelligence information necessary for the performance of its function from the BIR, provided that the request for information does not violate any applicable laws, rules, and regulations.

Each party will provide the relevant data and/or document to the other party either through electronic upload, e-mail, or personal service.

The DSA will remain valid and binding for five years from the date of signing, unless pre-terminated by either party for reasonable ground, without prejudice to entering into a new data-sharing agreement before or upon the expiration thereof.

The SEC and BIR are required to comply with the Data Privacy Act of 2012 and all other applicable data protection laws and issuances. Furthermore, the data subject whose right is violated and/or affected may exercise his/her rights provided for by the Data Privacy Act, its Implementing Rules and Regulations ("*IRR*"), and other National Privacy Commission ("*NPC*") issuances.

SyCipLaw TIP 8:

Pursuant to the DSA, the BIR now has timely access to beneficial ownership data, as well as other personal data, disclosed by registered entities to the SEC. The data subjects may nonetheless resort to the remedies and protection afforded to data subjects under the Data Privacy Act, its IRR, and other NPC issuances.

9. What are the amendments to RMO No. 6-2023 in relation to the policies, guidelines, and procedures for the BIR's audit program?

RMO 6-2023 sets out the updated and consolidated policies, guidelines and procedures for the BIR audit program. It sets out cases to be covered by electronic letters of authority and tax verification notices. RMO No. 8-2023 amended RMO 6-2023 to include cases with discrepancy notices and policy cases/industry issues under the directive of the CIR as mandatory cases to be covered by electronic LOAs. The BIR also revised the template of letters terminating an audit to include a stipulation regarding the discovery of fraud.

Pursuant to RMO No. 8-2023, the last paragraph of the termination letter should include the following: "This is without prejudice to any possible action that may arise should there be information uncovered in the future that will render the tax returns audited as 'fraudulent' or 'false return' or to any findings relative to claims for tax refunds of covered types/transactions pertaining to the same period."

SyCipLaw TIP 9:

The new provision in termination letters regarding the discovery of fraud will not result in the re-opening of audit cases that have already been closed or terminated. The BIR may only re-open the terminated audit case once the BIR has uncovered information that renders the audited tax returns as "false" or "fraudulent".

10. When is the deadline for the bond-free period for registered business enterprises ("*RBEs*") in the Information Technology-Business Process Management ("*IT-BPM*") sector that transferred their registration to the Board of Investments ("*BOI*") to move equipment and other assets outside the economic zone or freeport zone?

The extended deadline is June 30, 2023. Under FIRB Resolution No. 026-22, the Fiscal Incentives Review Board ("*FIRB*") extended the deadline for RBEs in the IT-BPM sector to transfer their registration to the BOI to January 31, 2023. Under FIRB Resolution No. 33-22, RBEs that opted to register with the BOI by January 31, 2023 were not required to post a bond for all equipment or assets brought outside the economic or freeport zone until they secure a Tax Exemption Indorsement ("*TEI*") from the Department of Finance – Revenue Office ("*DOF-RO*") on March 31, 2023, whichever is earlier. The TEI serves as proof of the value added tax and customs duty exemption of new and imported goods and facilitates the free movement of goods to and from the economic and freeport zones. Existing goods that were imported by covered RBEs as of January 31, 2023 will be covered by a blanket TEI. However, the FIRB noted that as of March 2, 2023, the DFO-RO has not issued a blanket TEI.

The FIRB thus issued Resolution No. 12-23 extending the bond-free period under FIRB Resolution No. 33-22 from March 31, 2023 to June 30, 2023 to allow covered RBEs to process the TEIs of goods imported as of January 31, 2023.

SyCipLaw TIP 10:

RBEs in the IT-BPM sector that transferred their registration to the BOI during the period January 1 to 31, 2023 should ensure that their equipment and assets imported as of January 31, 2023 are brought outside the ecozone or freeport zone and a TEI has been secured from the DOF-RO by June 30, 2023, otherwise they will be required to post a bond for the movement of said assets outside of the ecozone. It remains to be seen whether the FIRB will allow another extension of the bond-free period.

11. In a tax-free exchange pursuant to a merger, are the unrestricted retained earnings of the absorbed corporation subject to final withholding tax on dividends?

No. In Department of Finance ("*DOF*") Opinion No. 9-2022, the DOF reversed BIR Ruling No. S40M-017-2022 dated January 17, 2022 where the BIR ruled that the retained earnings of the absorbed corporation in a tax-free merger are subject to final withholding tax on dividends constructively received by its shareholders. The said BIR Ruling refers to the statutory merger between Toyota Cubao Incorporated ("*TCI*") as the absorbed corporation, and Toyota Manila Bay Corporation ("*TMBC*") as the surviving corporation. The BIR ruled that the statutory merger is a tax-free exchange pursuant to Section 40(C)(2) of the NIRC. However, the BIR ruled that the unrestricted retained earnings of TCI are subject to the final withholding tax.

The DOF reversed the BIR's findings and ruled that in a tax-free exchange pursuant to a merger, the unrestricted retained earnings of the absorbed corporation are not subject to final withholding tax on dividends.

According to the DOF, "[a] merger is the combining of two (2) or more corporations into one constituent corporation (surviving corporation). … … [W]hen all the assets and liabilities of the absorbed corporation […] are transferred to the surviving corporation […], solely in exchange for shares of stocks, this necessarily includes all the accumulated earnings outstanding in the books of the absorbed corporation as of the time of the merger. The retained earnings of the [absorbed corporation] are considered in determining the number of shares to be issued by [surviving corporation]."

The DOF explained further that the provisions for tax-free exchanges merely defer the recognition of gain or loss and tax laws provide that this rule applies to both the surviving corporation and to the shareholders of the absorbed corporation. The substituted basis of the properties or shares is used to determine the gain or loss in their subsequent transfers. The shareholders of the absorbed corporation thus keep the capital gains or losses on the transfer as unrealized upon receipt of the new shares from the surviving corporation. The shareholders will realize capital gains, if any, that may be subject to income tax only upon the subsequent transfer of the shares received.

SyCipLaw TIP 11:

In a tax-free merger under Section 40(C)(2) of the NIRC, the unrestricted retained earnings of the absorbed corporation are not subject to the final withholding tax on dividends, especially when the retained earnings of the absorbed corporation are considered in determining the number of shares to be issued by the surviving corporation to the shareholders of the absorbed corporation. This presupposes that no cash or other property (other than the shares) are received by the shareholders. Otherwise, the provisions of Section 40 (C)(3) on exchanges not solely in kind shall apply.

In a tax-free exchange, the recognition of gain or loss is merely deferred, and the substituted basis of the properties exchanged in the tax-free exchange will be used to determine the gain or loss in case of subsequent transfers. The shareholder will thus still be subject to income tax on gains, if any, on the subsequent transfer of the shares received.

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