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1. Can a corporation which availed itself of the tax amnesty under Republic Act No. 9480 be held liable for deficiency withholding taxes?

Yes. In *Bureau of Internal Revenue vs. Samuel Cagang* (G.R. No. 230104, March 16, 2022), the Supreme Court upheld the deficiency withholding tax assessment against a taxpayer, notwithstanding the fact that the taxpayer availed itself of a tax amnesty. In this case, the Bureau of Internal Revenue (*BIR*) assessed deficiency income taxes, VAT, and expanded withholding taxes against CEDCO, Inc., where Samuel Cagang (*Cagang*) acted as treasurer. CEDCO argued that since it had already filed its amnesty tax return and paid the corresponding taxes thereon, it cannot be assessed deficiency taxes.

The Supreme Court ruled that the tax amnesty under Republic Act No. 9480 applies only to income taxes, VAT, estate taxes, donor's tax, capital gains tax, excise tax, and other percentage taxes. It does not extend to withholding taxes. As provided in Republic Act No. 9480, the following are disqualified from availing themselves of the tax amnesty:

a) Withholding agents with respect to their withholding tax liabilities;

b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

c) Those with pending cases involving unexplained or unlawfully acquired wealth, revenue or income under the Anti-Graft and Corrupt Practices Act;

d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions, and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

f) Tax cases subject of final and executory judgment by the courts.

When CEDCO availed itself of the tax amnesty, only its liabilities for unpaid income taxes and VAT were deemed fully settled. Its liabilityfor deficiency withholding taxes remained since Republic Act No. 9480 expressly disqualified withholding agents from availing of the taxamnesty with respect to their withholding tax liabilities.

SyCipLaw TIP 1:

A taxpayer who wishes to avail itself of a tax amnesty under a law must review the law granting the amnesty and its implementing rules to ensure that, first, it is qualified and not disqualified from availing itself of the amnesty and, second, all of its tax liabilities are covered by the amnesty. Tax amnesty laws typically provide who are disqualified from availing of the tax amnesty. While nothing prevents the Congress from declaring otherwise, withholding agents are usually disqualified from availing themselves of a tax amnesty with respect to their withholding tax obligations. This is because a withholding agent collects and pays taxes on behalf of another person and not for his/her own behalf. Therefore, a tax amnesty usually does not apply to the liability of a withholding agents as such.

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2. May a company treasurer be held criminally liable for the corporation's failure to withhold taxes?

Yes. In the *Cagang* case discussed above, as the treasurer of CEDCO, Cagang was criminally prosecuted for failure to file tax returns and pay taxes of CEDCO. Cagang's main defense was that CEDCO cannot be assessed deficiency taxes since CEDCO availed of the tax amnesty under Republic Act No. 9480, which covers "all unpaid internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, and have remained unpaid as of December 31, 2005".

The Supreme Court held that, since withholding taxes were not covered by the amnesty, CEDCO remains liable for deficiency withholding taxes. As the treasurer of CEDCO, Cagang may be criminally charged for failure to file tax returns and pay taxes as regards withholding taxes.

3. Is a court order allowing the production and inspection of documents considered a separate tax audit if a Letter of Authority has been previously issued against the taxpayer for the same taxable period?

No. In *Smart Communications, Inc. v. Hon. Arreza* (CTA EB No. 2386, August 15, 2022), the Court of Tax Appeals (*CTA*) En Banc upheld the grant of a motion for production and inspection of documents in a case pending in court, notwithstanding that a Letter of Authority (*LOA*) had already been issued against the taxpayer.

In this case, the City of Makati issued a Notice of Assessment against the taxpayer for deficiency franchise taxes, fees, and charges for taxable years 2012 to 2015. The taxpayer contested the assessment, asserting that it already paid its tax liabilities. Previously, the City of Makati issued a LOA, which compelled the taxpayer to produce its books of account, financial statements, summary/breakdown of gross sales per calendar year, and proof of payment of franchise taxes in other localities. As the taxpayer was unable to produce a summary/breakdown of gross sales, as well as proof of payment of franchise tax in other localities, despite repeated demands, the City of Makati assessed the taxpayer deficiency franchise taxes based on the total gross receipts of the taxpayer appearing on its financial statements. The assessment is based on Section 7A.08 of the Revised Makati Revenue Code, which provides for a presumptive assessment.

The taxpayer assailed the assessment before the Regional Trial Court of Makati (*RTC*). The City of Makati filed with the RTC a motion for production and inspection of documents, seeking to compel the taxpayer to produce its books of account, financial statements, summary/breakdown of gross sales per calendar year, and proof of payment of franchise taxes in other localities. The RTC granted the motion.

On appeal to the CTA, the taxpayer questioned the grant of the motion for production and inspection of documents arguing that it is tantamount to another examination or audit of the taxpayer's books of account for the same taxable period, as well as the conduct of anexamination without a valid LOA, which are not allowed by the Local Government Code and the Revised Makati Revenue Code.

SyCipLaw TIP 2:

If a corporation violates certain provisions of the National Internal Revenue Code, as amended (*Tax Code*), criminal liability may be imposed on the partner, president, generalmanager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation. The identity of these officers may be establishedbased on corporate records, including board resolutions appointing such officers and the General Information Sheets submitted by corporations to the Securities and Exchange Commission. For these named corporate officers, the mere fact of having occupied the position during the period of the corporation's tax violation is sufficient to give rise to probable cause to file criminal charges against such officers for the corporation's violations of the Tax Code.

In ruling that the motion for production and inspection of documents was properly granted, the CTA held that when the taxpayer contested the tax assessment before the RTC, the City of Makati had every right to assert its power to examine the taxpayer's records to ascertain the correct tax liabilities due. The grant of the motion would not amount to another tax audit since it was an exercise of the RTC's power of judicial review. As a court of competent jurisdiction, the RTC has the authority to look into the correctness of the tax assessment against the taxpayer and to require the production of material and relevant evidence necessary for its determination of the factual issues involved in the assessment case, such as the documents in this case.

SyCipLaw TIP 3:

A taxpayer should properly maintain and keep records of its books of account and other accounting records and should be ready to present such books of account and accounting records in the event of a tax audit. In case a court case is filed as regards a disputed assessment, the court can still compel the production of these documents even if the taxpayer did not present the documents to the BIR or the local government during the tax audit. Failure to obey the court's order may result in contempt of court, which is punishable by imprisonment and/or fine.

4. Can a local taxing authority require the production and inspection of documents of a taxpayer's nationwide sales and receipts, as well as its sales and receipts in other localities?

Yes. In the *Smart* case discussed above, the CTA ruled that the City of Makati cannot simply accept the taxpayer's self-assessment as a true and accurate declaration of the taxpayer's income. The local taxing authority has the power to issue a LOA to compel the examination of books, records, and other accounts to ascertain the amount paid, including books, records, and other accounts pertaining to other localities. In this regard, the local taxing authority's examination power under Section 171 of the Local Government Code and Section 7A.07 of the Revised Makati Revenue Code is extensive and necessary to enforce local tax laws. Accordingly, the City of Makati has the authority to compel production of documents showing nationwide sales and receipts, including those documents in localities other than the City of Makati as these documents are relevant and material to the determination of the correct basis and computation of any deficiency local tax in the City of Makati.

SyCipLaw TIP 4:

Taxpayers should be mindful that, while a local government unit (*LGU*) exercises taxing power only within its territorial jurisdiction, it can request the production and inspection of documents showing nationwide revenues, as well as revenues in other localities outside of the LGU's territorial jurisdiction, in order to determine the correct amount of taxes due to the LGU.

5. Is an audit investigation conducted pursuant to a Mission Order, but without a Letter of Authority, valid?

No. An audit and examination of a taxpayer's books and accounting records, to be valid, must be based on a valid LOA.

In *Commissioner of Internal Revenue v. Autostrada Motore, Inc.* (CTA EB No. 2375, July 21, 2022), the CTA En Banc invalidated an assessment that was based solely on a Mission Order and conducted without a LOA. The CTA En Banc ruled that the absence of an LOA violates the taxpayer's right to due process and renders the entire assessment void.

An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. Unless authorized by the Commissioner of Internal Revenue (*CIR*) himself, or by his duly authorized representative, through a LOA, an examination of the taxpayer cannot ordinarily be undertaken. Due process requires the identification of the names of the tax agents authorized to conduct the examination and assessment of the taxpayer's books and accounting records through a LOA. Identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR. There must be a link between the LOA and the revenue officer who will conduct an examination of the taxpayers' books of accounts and accounting records.

The CTA En Banc explained that the purpose of a Mission Order is different from a LOA. A Mission Order is issued to authorize the surveillance pursuant to Section 6(C) of the Tax Code, not the audit and the assessment of the taxpayer. The allowable acts covered by a Mission Order include the tax agent's observation and surveillance of the taxpayer's business operations, verification of specific documents, and the determination of whether the taxpayer complies with the pertinent tax laws and regulations, without conducting a full-blown audit.

In this case, the authority of the revenue officers under the Mission Order was limited to the exercise of the CIR's verification and surveillance powers. The revenue officers were not authorized by a LOA to conduct an examination and inspection of the taxpayer's books of accounts. Thus, the assessments resulting therefrom are void.

SyCipLaw TIP 5:

Taxpayers undergoing an audit investigation should first check whether a LOA has been issued, granting authority to the revenue officer or tax agent conducting the audit investigation. The revenue officer named in the LOA must be the same officer conducting the examination and assessment of the taxpayer's books of accounts and accounting records. Otherwise, the audit investigation and resulting assessment is void for violating the taxpayer's right to due process.

6. Can the reversal of a Bureau of Internal Revenue ruling be given retroactive application if the same would be prejudicial to the taxpayer?

No. Section 246 of the Tax Code prohibits the retroactive application of a reversal of a BIR ruling if the same would be prejudicial to the taxpayer, unless the exceptions under the provision are present, namely, misstatement or misrepresentation of material facts and bad faith. Any change of opinion or position by the CIR with respect to a BIR ruling, which is prejudicial to the taxpayer, shall only be applied prospectively.

In *Commissioner of Internal Revenue v. Meridien East Realty & Development Corporation* (CTA EB No. 2287,July 14, 2022), the CTA En Banc rejected the retroactive application of Revenue Memorandum Circular No. 20-2010 (*RMC No. 20-2010*), which overturned BIR Ruling No. DA-245-05. In the BIR ruling, the BIR initially opined that the transaction was not a sale subject to income tax, expanded withholding tax, documentary stamp tax, and value-added tax. However, RMC No. 20-2010 abandoned the prior position and set out a new one declaring that the transaction was part of a pre-selling arrangement, hence, subject to the aforementioned taxes. Accordingly, the retroactive application of RMC No. 20-2010 would be prejudicial to the taxpayer.

SyCipLaw TIP 6:

A taxpayer has the right to rely upon a BIR ruling issued in his favor until the same has been reversed, amended or overruled by the CIR or by the Supreme Court. However, a reversal of a BIR ruling cannot be retroactively applied if doing so would be prejudicial to the taxpayer, unless the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the BIR, the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based, or the taxpayer acted in bad faith in securing the BIR ruling. While the general rule is that the government cannot be estopped by mistakes or errors by its officials or agents, this rule is not without an exception, such as the provision in the Tax Code on the non-retroactivity of a revocation, modification, or reversal of a BIR ruling.

In this case, the CTA En Banc ruled that the CIR failed to prove the existence of any of the exceptions under Section 246 of the Tax Code which would allow retroactive application of the RMC. The CIR failed to adduce evidence that: (1) the taxpayer deliberately misstated or omitted material facts from its return or in any document required of it by the BIR; (2) the facts subsequently gathered by the BIR are materially different from the facts on which the BIR ruling was based; or (3) that the taxpayer acted in bad faith. The CTA En Banc found that the change of position made by the CIR was not brought about by a subsequent learning of a fact misrepresented or withheld by the taxpayer. Rather, the reversal was merely due to a change of opinion by the CIR on the tax consequences of the same set of facts, which the taxpayer presented in obtaining the ruling. Thus, the deficiency tax assessments against the taxpayer were declared null and void as they arose from the retroactive application of the RMC.

7. If a taxpayer believes that an action taken by one or both contracting states to a Double Taxation Agreement (*DTA*) will subject him to double taxation or taxation in contravention of the DTA, can he avail himself of the Mutual Agreement Procedure provided in the DTA?

Yes. Revenue Regulations No. 10-2022 (*RR No. 10-2022*) provides for the guidelines and procedures for requesting Mutual Agreement Procedure (*MAP*) assistance in the Philippines. A MAP provides the procedure by which the competent authorities of contracting states to a Double Taxation Agreement (*DTA*) may, through mutual agreement, resolve disputes arising from differences or difficulties in the interpretation or application of the DTA.

Typical Scenarios Requiring MAP Assistance

RR No. 10-2022, sets out the typical examples of scenarios that would necessitate a MAP assistance:

a) The withholding tax rate imposed on an item of income earned by a domestic corporation or resident citizen is beyond the maximum rate fixed under the DTA.

b) A taxpayer is deemed a resident of the Philippines and of the other contracting state based on their domestic laws (which triggers the application of the tiebreaker rules under the DTA).

c) A domestic corporation or a resident citizen is taxed in the other country on the business profit or income from independent services despite not having a permanent establishment or a fixed based in that country under the tax convention.

d) A resident citizen or domestic corporation has been or will be subject to taxation not in accordance with the provisions of the applicable tax treaty regarding the amount of profit attributable to the permanent establishment or fixed base.

e) A taxpayer is uncertain whether the convention covers a specific item of income or is unsure of the characterization or classification of the item related to a cross-border issue.

f) A taxpayer is subject to additional tax in one country because of a transfer pricing adjustment to the price of goods or services transferred to or from a related party in the other country.

Filing of a MAP Request

The taxpayer may file a formal request with the BIR International Tax Affairs Division (*ITAD*). The request must be in writing and signed by the taxpayer or its authorized representative. It must also contain the minimum required information and documentation specified by the BIR.

Subject to the provision of the relevant DTA, the taxpayer may file the MAP request with (i) the competent authority of the contracting state of which the taxpayer is a resident, (ii) the competent authority of the contracting state of which the taxpayer is a citizen (only if the DTA with the United States of America is invoked), or (iii) the contracting state of which the taxpayer is a national if the case falls under the Non-Discrimination article of the DTA.

The request must be filed within the time limit specified in the applicable DTA. If the DTA is silent on the time limit, the request must be submitted within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA, *i.e.*, the date of receipt of the Final Assessment Notice, or of a ruling denying the claim for treaty benefit, or any equivalent document which contains the action that results in double taxation.

MAP Process

The MAP request shall be assessed preliminarily to determine compliance with the following requisites: (i) the minimum information and documentation; (ii) existence of a DTA which contains a MAP article; and (iii) the request was filed with the proper competent authority within the prescribed time limit. If any of the requisites is missing, the request shall not be considered as valid. If only the first requisite is missing, the taxpayer shall be notified of the deficiencies to be completed and submitted.

Once the request is determined to be valid, the Rulings and MAP Section of the ITAD (*MAP Office*) shall determine if the taxpayer's objection is justified. If the objection is justified, the MAP Office will then determine whether the Philippine Competent Authority (the BIR Commissioner) could resolve the case unilaterally. Note that MAP requests arising from measures taken in the Philippines may be resolved unilaterally by the Philippine Competent Authority.

Consultation between Competent Authorities

If the MAP Office determined that the request cannot be unilaterally resolved, the Philippine Competent Authority shall endeavor to resolve the case with the competent authority of the other contracting state. Note, however, that both competent authorities are under no obligation to enter into a mutual agreement for every MAP case.

An agreement reached between the competent authorities must be communicated to the taxpayer within thirty (30) days after the consultation or meeting. The taxpayer shall have another thirty (30) days from receipt of notice to convey its acceptance or disapproval to the agreement. Should the taxpayer accept the agreement, the Philippine Competent Authority shall give effect to such mutual agreement and ensure its implementation. If the taxpayer rejects the agreement, it may proceed with any available domestic remedies, *i.e.*, judicial or administrative appeal.

If no agreement is reached between the competent authorities, the taxpayer may pursue any available domestic remedies after receiving a notice of the failure to reach an agreement.

Resolution of a MAP Case

The MAP request may result in any of the following outcomes:

a) Access to MAP is denied (*i.e.*, not an admissible request or denied for any other reasons);

b) Objection is not justified;

c) Objection is resolved via domestic remedy;

d) Unilateral relief will be granted;

e) Competent authority agreement for full or partial elimination of double taxation;

f) Competent authority agreement stating that there is no taxation not in accordance with the tax treaty;

g) No competent authority agreement is reached; and

h) Any other outcome.

All MAP requests must be resolved within an average timeframe of twenty-four (24) months from the receipt of a complete MAP request.

SyCipLaw TIP 7:

MAP provides a new remedy to taxpayers in contesting double taxation arising from the action of a competent authority of a contracting state to a DTA. Taxpayers should take note of the instances where MAP assistance is available and consider whether it may be beneficial in a particular case (considering, among others, any other available domestic remedy and the speed by which such remedy may be completed).

MAP Request and Domestic Remedies

MAP requests may be filed even when there is a pending judicial or administrative appeal, and even where a decision, ruling, or final assessment has already been rendered by the BIR. Moreover, audit settlements reached between the tax authority and the taxpayers do not preclude access to MAP assistance.

However, a MAP request cannot proceed simultaneously with the determination of a judicial or administrative appeal. Hence, the taxpayer must indicate which process shall be held in abeyance pending the outcome of the preferred process. Cases decided by the courts with finality can no longer be a subject of a MAP request.

Taxpayers who avail themselves of the MAP Assistance may request for the suspension of the collection of taxes if a tax assessment is involved. The Philippine Competent Authority may grant such request pursuant to the Tax Code and relevant rules and regulations. In case the request for suspension is granted, but the MAP Office upholds the tax liability, the enforcement of the collection of taxes shall proceed after the MAP decision had been released, mailed, or sent by the BIR to the registered address of the taxpayer.

8. Can the Bureau of Internal Revenue share taxpayer-specific rulings with other jurisdictions?

Yes. Revenue Regulations No. 11-2022 (*RR No.11-22*) provides the procedure for the Spontaneous Exchange of Taxpayer-Specific Rulings (*Transparency Framework*). Under DTAs entered into by the Philippine Government, a competent authority is mandated to exchange information which are necessary to carry out the provisions of the DTA or domestic laws concerning taxes to which the DTA applies.

The Exchange of Information (*EOI*) Section of the BIR ITAD is responsible for exchanging taxpayer-specific rulings to the foreign tax authority of the potential exchange jurisdictions on or before the prescribed deadline.

Information Subject to the Exchange and Potential Exchange Jurisdictions

The rulings subject to the spontaneous exchange of information and the potential exchange jurisdictions are summarized in the table below:

Type of Ruling	Potential Exchange Jurisdictions
Rulings related to a preferential regime	i. The countries of residence of all related parties (subject to a 25% threshold), with which the taxpayer enters into a transaction for which a preferential treatment is granted, or which gives rise to income from related parties benefiting from a preferential treatment; and ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Cross-border unilateral Advance Pricing Arrangements (*APA*) and any other cross-border unilateral tax ruling (such as an Advance Tax Ruling) covering transfer pricing or the application of transfer pricing principles	i. The countries of residence of all related parties with whom the taxpayer enters into transactions covered by the APA or cross-border unilateral tax ruling; and ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling	i. The countries of residence of all related parties with whom the taxpayer enters into transactions covered by the ruling; and ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Permanent Establishment (*PE*) rulings	i. The residence country of the head office, or the country of the PE, as the case may be; and ii. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Related party conduit rulings	i. The country of residence of any related party making payments to the conduit (directly or indirectly); ii. The country of residence of the ultimate beneficial owner (which in most cases will be the ultimate parent company) of payments made to the conduit; and iii. To the extent not already covered by (ii), the residence country of (a) the ultimate parent company and (b) the immediate parent company.

Deadline for the Exchange of Information

The EOI Section of ITAD shall ensure that the exchange of information is transmitted to the relevant jurisdiction within the following timelines:

i. Past rulings – as soon as possible after identifying the potential exchange jurisdictions; and

ii. Future rulings – as soon as possible and no later than three (3) months after the issuance thereof.

Past rulings are limited only to PE rulings or rulings concerning the existence or absence of a PE of a foreign enterprise in the Philippines that were issued either:

a) January 1, 2015 to August 31, 2017; or

b) January 1, 2012 to December 31, 2014, provided they were still in effect as of January 1, 2015.

Future rulings refer to rulings issued beginning September 1, 2017 on the following:

a) Rulings related to a preferential regime;

b) Cross-border unilateral APAs and any other cross-border unilateral tax ruling (such as an Advance Tax Ruling) covering transfer pricing or the application of transfer pricing principles;

c) Cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling;

d) PE rulings; and

e) Related party conduit rulings.

Power of the BIR to Request Information

To properly identify the countries with which the information shall be exchanged, the BIR or its responsible offices may request information and other relevant documents from the taxpayer, both domestic and foreign. Note, however, that all requests for information in relation to the exchange of past rulings must be signed by the Assistant Commissioner for Legal Service of the BIR. For future rulings, the request for information must be signed by the respective heads of offices responsible for the issuance of the taxpayer-specific ruling.

SyCipLaw TIP 8:

Requests for information in relation to the exchange of information on future rulings must have the signature of the respective heads of office of the BIR while requests for information in relation to past rulings must have the signature of the Assistant Commissioner for Legal Service of the BIR. In the absence of the signature of these officers, a taxpayer may resist any request for information in connection with the spontaneous exchange of taxpayer-specific rulings.

9. Are there guidelines and procedures on the manner and payment of penalties for violations by Registered Business Enterprises in the Information Technology-Business Process Management sector of the Work-From-Home requirements?

Yes. The BIR issued Revenue Memorandum Circular No. 120-2022 (*RMC No. 120-22*) on August 18, 2022 providing guidelines and procedures on the manner and payment of penalties relative to violations incurred by Registered Business Enterprises (*RBEs*) in the Information Technology-Business Process Management (*IT-BPM*) sector of the Work-From-Home (*WFH*) arrangement allowed under the Fiscal Incentive Review Board Resolution No. 17-2022 (*FIRB Resolution No. 17-2022*) for the period April 1, 2022 until September 12, 2022.

FIRB Resolution No. 17-2022 allows RBEs to continue implementing the WFH arrangement without adversely affecting their fiscal incentives from April 1, 2022 until September 12, 2022 provided the number of employees under the WFH arrangement shall not exceed thirty percent (30%) of the total workforce of the RBE while the remaining seventy percent (70%) of the total workforce shall render work or service within the geographical boundaries of the ecozone or freeport zone being administered by the investment promotion agency (*IPA*) with which the project or activity is registered. The total workforce refers to the total employees directly or indirectly engaged in the registered project or activity but excludes third-party contractors rendering janitorial or security services and other similar activities.

RMC No. 120-22 took effect immediately and will remain in force until September 12, 2022, which is the end of the current FIRB-sanctioned WFH arrangement.

a) Would a violation of the WFH arrangement for one day result in the suspension of the RBE's income tax incentives for the month?

Yes. Non-compliance of the RBE with the 70:30 WFH arrangement prescribed under FIRB Resolution No. 17-2022 even for only one (1) day shall result in the suspension of its income tax incentives for the month when the violation took place. The RBE will thus be liable to pay as penalty the regular income tax rate of twenty-five percent (25%) or twenty percent (20%) (as applicable) for the month of violation.

RMC No. 120-22 provides sample illustrations for the computation of the penalty for non-compliant RBEs.

b) How will RBEs with violation of the WFH arrangement file and pay their Quarterly Income Tax Returns?

RBEs with violations shall continue to file their Quarterly Income Tax Returns and pay their quarterly income tax following their usual procedure of computation of the tax due as if no violation was committed; however, such non-compliant RBEs must attach an additional schedule showing a separate computation for the penalty on the WFH arrangement violation and the RBEs must pay the penalty using BIR Form No. 0605.

c) When is the deadline to pay the penalty?

The penalty must be paid on or before the due date prescribed for the filing and payment of the quarterly income tax, subject to adjustment upon the filing of the annual income tax return.

SyCipLaw TIP 9:

RBEs in the IT-BPM sector should closely monitor compliance with the 70:30 WFH arrangement because even a single day of violation will result in a penalty. RBEs with violations must file their Quarterly Income Tax Returns and pay their quarterly income tax as if no violation was committed, but they must also pay the penalty using BIR Form No. 0605 on or before the due date prescribed for the filing and payment of the quarterly income tax; otherwise, the RBEs will also be subject to administrative penalties for late payment of the penalty.

d) How will non-compliant RBEs file their annual income tax returns?

RBEs with the Income Tax Holiday (*ITH*) incentive shall continue to file their annual income tax returns (*AITR*) using BIR Form No. 1702-EX. RBEs enjoying the Gross Income Tax (*GIT*) incentive or those with mixed transactions shall continue to file their AITR using BIR Form No. 1702-MX.

However, these RBEs are mandatorily required to complete the required information pertaining to allowable deductions pursuant to existing tax laws and regulations, *i.e.*, RBEs with ITH incentive should complete Part VI-Schedule I of BIR Form No. 1702-EX, while RBEs with the GIT incentive should complete Part IV-Schedule 5 of BIR Form No. 1702-MX.

e) If an RBE committed violations of the WFH arrangement but did not pay the penalty when it filed its quarterly income tax returns, can the RBE still pay the penalty?

Yes. For the fiscal quarter with month/s subject to the penalty that already ended, and returns have been filed, but no penalty has been paid, RBEs may file BIR Form No. 0605 and pay their penalty within ten (10) days after the issuance of RMC No. 120-22 or until August 28, 2022. If the penalty is paid beyond the said period, administrative penalties will be imposed.

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