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Global Tax Update

Philippines

Deloitte Tohmatsu Tax Co.

February 2015

1. Revenue Regulations

(1) Mandatory eFPS coverage for TAMP taxpayers and importers/customs brokers

The BIR has made it mandatory for taxpayers under the Taxpayer Account Management Program (TAMP) and accredited importers/customs brokers to file their returns and pay taxes through the Electronic Filing and Payment System (eFPS). In particular, the following taxpayers shall be covered by the eFPS:

1) Taxpayer Account Management Program (TAMP) taxpayers – These are top business taxpayers that account for at least 80% of district collections as identified by the Revenue District Offices (RDOs).

2) Accredited importers with BIR-Importer Clearance Certificate (ICC) and BIR-Customs Broker Clearance (BCC) – All accredited importers and custom brokers (individuals, partnerships, corporations, cooperatives, associations) and prospective importers required to secure the BI-ICC and BIR-BCC.

The taxpayers newly covered by the eFPS shall use the eFPS facility starting January 1, 2015 or after 15 days following the publication of RR 10-2014 in a newspaper of general circulation, whichever comes later.

(Revenue Regulation No. 10-2014, December 10, 2014)
(Note: RR 10-2014 was published on December 11, 2014 and thus, it became effective on December 16, 2014)

2. BIR Rulings

(1) VAT on income payments made by PEZA companies to nonresident foreign corporations

Under Section 108 of the Tax Code, royalty payments as well as fees paid for services rendered in the Philippines by a nonresident foreign corporation are subject to VAT. The VAT imposed on payments to non-residents is treated as a “passed on” VAT which shall be withheld and paid by the resident withholding agent using BIR Form No. 1600.

However, in case the recipient of the technical know-how and/or services rendered within the Philippines by a nonresident foreign corporation is a Philippine Economic Zone Authority (PEZA)-registered enterprise, it cannot be charged the VAT. Citing the case of Commissioner of Internal Revenue v. Seagate Technology (GR 153866, February 11, 2005), the BIR held that a company registered with the PEZA as a resident withholding agent operating within an economic zone cannot bear the burden of VAT since it is an entity exempt from internal

revenue laws under Republic Act No. 7916 (PEZA Law). Moreover, economic zones are considered separate customs territories, which means that in such zones there is the legal fiction of foreign territory. Under the cross-border principle of VAT system, no VAT shall form part of the cost of goods destined for consumption outside the territorial border of the taxing authority.

The transactions exempt from VAT pursuant to RA 7916 are effectively zero-rated. However, instead of VAT zero-rating which is not available to nonresident foreign suppliers, the BIR held that the provision for exempt transactions under Section 109(K) of the Tax Code shall apply. Hence, service as well as royalty fees paid by PEZA-registered enterprises to the nonresident foreign corporation shall be exempt from VAT.

BIR ITAD Ruling Nos. 311-14 (November 4, 2014) and 316-14 (November 24, 2014)

(2) Software payments as business profits

Payments made to non-resident foreign corporations for computer software may be treated either as business income or royalties depending on the nature of the transaction involving software.

Under RMC 44-2005, if a person acquires a copy of a software but does not acquire any rights, (or only acquires a de minimis grant of such rights) and the transaction does not involve the provision of services or of know-how, the transfer of the copy of the software is classified solely as a transfer of a copyrighted article and payments for which constitutes business income.

Where the license agreement entered into by a domestic corporation with a nonresident foreign corporation only grants the former with a non-transferable and non-exclusive perpetual license to use a proprietary computer software, the BIR held that such income payment may be treated as business income if what is being transferred is only a copy of software for its use, and there is no transfer of ownership. As business profit, the same income shall only be taxable in the Philippines in case the enterprise (nonresident foreign corporation) carries on business in the Philippines through a permanent establishment.

In the instant case, inasmuch as no services were be performed in the Philippines, then the nonresident foreign corporation shall be deemed not to have a permanent establishment in the Philippines to which the payment of the service fees may be attributed and therefore, the income payment shall be exempt from income tax.

BIR ITAD Ruling Nos. 312-14 (November 4, 2014) and 314-14 (November 11, 2014)

3. Court of Tax Appeals (CTA) decisions

(1) Amortization of input VAT on capital goods attributable to VAT-zero rated sales

Under Section 110(A)(2) of the Tax Code, if the aggregate acquisition cost of the capital goods, excluding the VAT component thereof, exceeds P1 Million pesos in a calendar month, the input tax should be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. The requirement to amortize input tax on capital goods pursuant to Section 110 of the Tax Code applies to input taxes to transactions subject to VAT which include VAT zero-rated sale transactions.

In the instant case, the taxpayer filed a claim for refund of its input VAT paid on purchases or capital goods which are directly attributable to its zero-rated sales. The taxpayer-refund claimant did not amortize its input VAT on imported capital goods pursuant to Section 110(A)(2) of the Tax Code. The taxpayer argued that the need to amortize input VAT on importation of capital goods in 60 months or the estimated useful life of the capital goods, whichever is shorter under Section 110(A)(2) of the Tax Code and Section 4.110-3 of RR 16-2005 applies only when the input VAT will be credited or applied against

output VAT. Considering that there is no output VAT against which the input VAT can be credited in a zero-rated sale transaction, the taxpayer argued that amortization of input VAT on capital goods is not applicable.

The CTA held that Section 110(A)(2) of the Tax Code which requires amortization of input tax on capital goods purchased or imported with acquisition cost of P1 Million and treated as depreciable asset applies to all input taxes on capital goods available as tax credits against the taxpayer's VATable transactions, be it VAT zero-rated or subject to 12% VAT. The CTA pointed out that both taxable sales and zero-rated sales are considered transactions subject to output VAT. The difference lies only on the VAT rate used, i.e., 12% for taxable sales and 0% for zero-rated sales. Considering that the output tax due is 0% in the case of zero-rated sales transactions, the creditable input tax attributable thereto in a taxable quarter becomes unutilized or excess input tax which may be the subject of a claim for refund or tax credit certificate under Sections 110(B) and 112(A) of the Tax Code, as amended,

On the argument that the amortization of input VAT on capital goods runs counter to the provisions of Section 112(A) of the Tax Code as the claim for refund can be filed effectively beyond the two years from the close of the taxable quarter when the sales were made, the CTA maintained that the amortization of input VAT merely delays the crediting of the input tax and not the filing of the claim. Hence, it held that VAT-registered taxpayers are not deprived of their privilege to credit their input tax as long as they file their claim within two (2) years from the close of the taxable quarter when the sales were made. Accordingly, the CTA held that only the amount of excess input VAT on capital goods exceeding P1 Million which was amortized by the taxpayer may be claimed for tax refund.

(Commissioner of Internal Revenue v. Northwind Power Development Corporation, CTA EB Nos. 1037 and 1042 re CTA Case No. 8119, December 16, 2014 and Taganito Mining Corporation v. Commissioner of Internal Revenue, CTA EB No. 935 and 936 re CTA Case No. 8090, December 16, 2014)

(2) VAT on intercompany loans

Interest income from loans granted by a domestic corporation to its related parties is subject to VAT.

The CTA en banc held that the act of extending loans to related parties is deemed included in the definition of "sale or exchange of service" in Section 108 of the Tax Code which defines the phrase as the performance of all kinds of services for others for a fee, remuneration or consideration.

Applying the Supreme Court decision in the case of COMASERCO (GR 125355) and Diaz (GR 193007), the CTA en banc held that "every activity that can be imagined as a form of service rendered for a fee should be deemed included in the phrase "sale or exchange of service under Section 108 of the Tax Code. According to CTA en banc, the extending of cash advances with interest to related parties is a form of service for a fee which is covered by the provisions of Section 108 of the Tax Code that should be subject to VAT.

The CTA en banc further held that whether a profit is realized or not is immaterial. As long as there is financial assistance or service for a fee, remuneration or consideration, such service rendered is subject to VAT.

(Waterfront Philippines, Inc., v. Commissioner of Internal Revenue, CTA EB Case No. 1070 re CTA Case No. 8024, December 04, 2014)

(3) Establishing the fact of doing business outside the Philippines

Under Section 108(B)(2) of the Tax Code, in order for the supply of services to a foreign corporation to qualify for zero-percent VAT, the VAT-registered taxpayer that performed the service/s must prove that: (a) the service is other than processing, manufacturing or repacking of

goods; (b) payment for such services is in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations; and (c) the recipient of such services is doing business outside the Philippines.

To prove that the nonresident foreign corporations for whom the services are performed are doing business outside the Philippines, the taxpayer-refund claimant which is a Regional Operating Headquarter (ROHQ) presented the following: (a) Securities and Exchange Commission (SEC) Certificate of Non-Registration of the foreign corporation; (b) Certifications from different government agencies in the country of origin of the foreign corporation as duly authenticated by the nearest consulate of the Philippines; (c) Intragroup Services Agreement; and (d) list of shareholdings of the foreign corporation.

The CTA found the documents per se do not constitute sufficient proof that the taxpayer's clients are nonresident foreign corporations doing business outside the Philippines. The CTA noted that while the SEC Certificates of Non-Registration show that the foreign corporations are not registered corporations/ partnerships in the Philippines, the same do not prove that such entities are nonresident foreign corporations doing business outside the Philippines. Likewise, the Intra-Group Service Agreements only show the names of the taxpayer's customers to whom it rendered services but the same do not establish that such customers are non-resident foreign corporations doing business outside the Philippines. Moreover, the Articles of Association and Certificates of Registration/Incorporation of the foreign company only prove that the foreign corporations were incorporated/organized abroad. However, they also do not establish that such entities are not doing business in the Philippines.

To be considered as non-resident foreign corporation doing business outside the Philippines, the CTA held that each entity must be supported, at the very least, by both SEC Certificate of Non-Registration and Certificate/Articles of Foreign Incorporation/ Association/ Registration. Thus, only services rendered by the ROHQ to its clients which have both SEC Certificate of Non-Registration Corporation and Certificate of Foreign Incorporation qualify for VAT zero rating for purposes of its claim for VAT refund.

(Deutsche Knowledge Services, PTE Ltd. v. Commissioner of Internal Revenue, CTA Case No. 7808, December 16, 2014)

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