Global Tax Update

Philippines

Deloitte Tohmatsu Tax Co.

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Revenue Regulation

(1) Additional tax-exempt de minimis benefits

The Bureau of Internal Revenue (BIR) has expanded the list of de minimis benefits that are exempted from income tax on compensation to include benefits under collective bargaining agreements (CBAs) and productivity incentive schemes with total combined annual monetary value not exceeding P10,000 per employee per taxable year.

To be considered a de minimis benefit, the total amount of benefits to be received by an employee from the combined CBA and productivity incentive schemes should not exceed P10,000 per employee per taxable year. (Note: RR 1-2015 took effect upon its publication on 6 January 2015)

(Revenue Regulations No. 1-2015, January 5, 2015)

(2) PEZA enterprises exempt from securing BIR ICC

The BIR has circularized Department of Finance (DOF) Order No. 107-2014 exempting enterprises duly-registered with the Philippine Economic Zone Authority (PEZA) from the requirement to secure an importer's clearance certificate (ICC) from the BIR before applying for accreditation as importers with the Bureau of Customs - Account Management Office (BOC-AMO).

To determine which PEZA enterprises shall be exempt from the requirement to secure BIR ICC, the BOC may request a certified list of registered locators from PEZA. The BOC may also require the submission of documents and/or obtain information about PEZA locators in the possession of PEZA.

PEZA locators that will import goods into the Philippines will have to comply with the documentary requirements provided in the relevant rules of procedure of customs. Failure to do so will subject them to sanctions and penalties as provided by the Tariff and Customs Code of the Philippines, as amended, and by pertinent customs laws and regulations.

(Revenue Memorandum Circular No. 4-2015, January 13, 2015)

(3) Withholding tax on effectively connected income

The income payment made by a domestic corporation to its head office abroad, which has a branch office in the Philippines, shall not be entitled to preferential tax treatment if the income is effectively connected to the branch office. However, if the business transactions that created the income came from a separate and independent transaction from the branch in the

Philippines, then such income may be subject to the preferential tax rate under the tax treaty.

In case of dividends paid to a resident of Japan by a domestic corporation that has a branch in the Philippines, Section 28(B)(1) of the Tax Code provides that such dividends shall be subject to 30 percent tax. However, the same dividends may be subject to a reduced tax rate pursuant to the Philippines-Japan Tax Treaty.

Under paragraphs 2 and 3 of Article 10 of the Philippines-Japan Tax Treaty, dividends arising from the Philippines and paid to a resident of Japan may be taxed at a lower rate of 10 percent or 15 percent under certain conditions. However, the preferential tax rates shall not apply if the nonresident foreign corporation has a permanent establishment in the Philippines and the subject dividend income is effectively connected to a permanent establishment, which includes, among others, a branch.

In the instant case, the recipient of the dividends is a foreign corporation organized and existing under the laws of Japan, with a branch in the Philippines. The shares held or acquired by the nonresident foreign corporation in the domestic corporation were acquired without the participation of its branch in Philippines. Moreover, the Philippine branch does not hold any shares of stock in the domestic corporation.

Citing the case of Marubeni Corporation v. Commissioner of Internal Revenue (GR 76573, September 14, 1989), a foreign corporation is considered the same juridical entity as its branch if the former's business is conducted through its branch office, following the principal-agent relationship theory. However, where the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside, and the transaction becomes one of the foreign corporation, not the branch.

Considering that the rights and obligations of the nonresident foreign corporation arising from its investment in the domestic corporation are solely for its own account and are not in any way effectively connected with the business activity of its branch in the Philippines, the BIR held that the dividends paid by the domestic corporation to its nonresident foreign shareholder in Japan are not considered as effectively connected to the Philippine branch of the nonresident foreign corporation. Accordingly, the dividends paid by the domestic corporation to the nonresident foreign corporation are subject to lower income tax rate pursuant to the Philippines-Japan Tax Treaty.
(BIR Ruling No. ITAD 339-14, December 22, 2014)

(4) Submission of complete documents for VAT refund purposes

Under Section 112(C) of the Tax Code, the Commissioner of Internal Revenue (CIR) has 120 days from the date of submission of complete documents within which to grant or deny a VAT-registered taxpayer's claim for refund of its unutilized input VAT attributable to its zero-rated or effectively zero-rated sales. If after the 120-day period the CIR fails to act on the application for refund/credit, the remedy of the taxpayer is to appeal the inaction to the CTA within 30 days.

In the instant case, the VAT-refund claimant is a PEZA-registered enterprise under income tax holiday (ITH) that is engaged in the manufacture of nickel/cobalt mixed sulfide for export. The company filed an application for refund of its unutilized input VAT from its domestic purchases of goods and services attributable to its VAT zero-rated sales.

The BIR maintained that the taxpayer's refund should be denied due to its failure to comply with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to RMO No. 53-98, as amended. The BIR argued that the taxpayer's filing of a judicial claim for refund is premature since the 120-day period had yet to run due to the taxpayer's failure to submit the complete documents.

Citing the case of Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc. (GR 172045-46, June 16, 2009), the term “relevant supporting documents” should be understood as those documents necessary to support the legal basis for disputing a tax assessment. The BIR can only inform the taxpayer to submit additional documents; it cannot dictate what type of supporting documents should be submitted. Moreover, in the case of Team Sual v. Commissioner of Internal Revenue, CTA EB Nos. 649 and 651, March 21, 2012, the CTA held that should the taxpayer decide to submit only certain documents, or should the taxpayer fail or opt not to submit any document at all in support of its application for refund or tax credit certificate under Section 112 of the Tax Code, it is reasonable and logical to conclude that the 120-day period should be reckoned from the filing of the application.

The CTA concluded that the submission of supporting documents lies within the sound discretion of the taxpayer. As the affected party, the taxpayer is in the best position to determine which documents are necessary and essential to garnering a favorable decision.

The CTA held that the taxpayer’s non-compliance with the submission of documentary requirements prescribed under RMO 53-98, as amended, did not render the refund claim premature considering that the taxpayer filed its judicial claim for refund within the 120+30 day period under Section 112(C) of the Tax Code, reckoned from the filing of its application for refund with the BIR.
(Commissioner of Internal Revenue v. Coral Bay Nickel Corporation, CTA EB No. 1133 re CTA Case No. 8252, January 7, 2015)

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