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Tax brief

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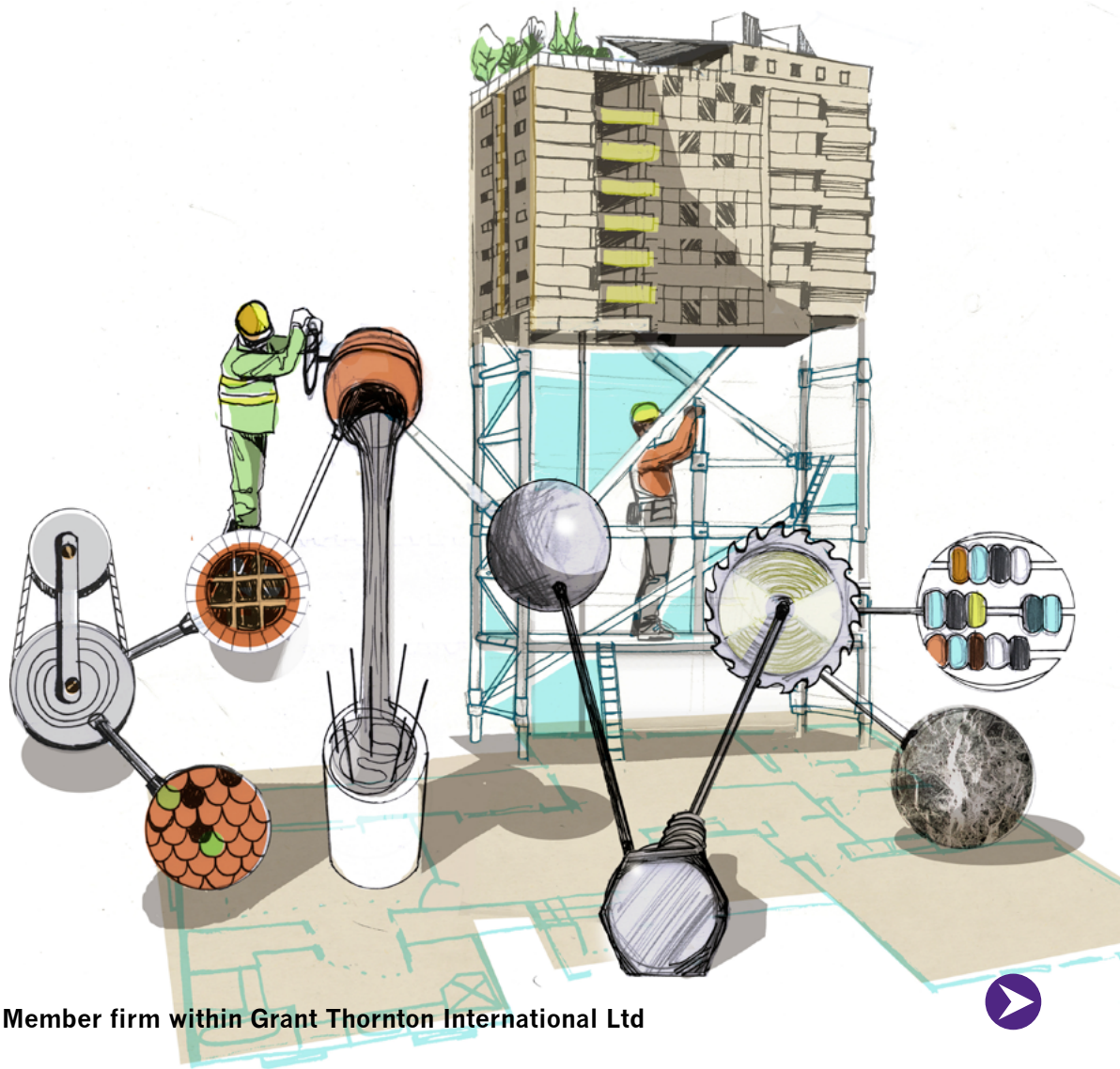

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BIR Rulings

Subsidiary is separate and distinct from parent company

A subsidiary is a company with more than 50 percent of its voting stock controlled by another company – i.e., the parent or holding company. A subsidiary is an entity separate and distinct from its stockholders and from other corporations to which it may be connected.

On the other hand, double taxation means taxing the same person twice by the same jurisdiction over the same thing.

Following the above premises, a condominium corporation -- a taxable entity that is separate and distinct from its parent company -- is liable to pay income and value-added tax (VAT) or percentage tax, whichever is applicable, apart from those paid by its parent/holding company. The Bureau of Internal Revenue (BIR) held that there is no double taxation because the subjects of taxation are different from each other.

(BIR Ruling No. 468-2014, November 20, 2014)

Privileges of low-cost housing developers

The following are the tax privileges and liabilities of a new developer of low-cost, mass housing project granted income tax holiday (ITH) incentive by the Board of Investments (BOI):

1. Under Section 2.57.5(B)(2) of Revenue Regulations No. (RR) 2-98, as amended, the withholding taxes prescribed therein shall not apply to income payments to persons enjoying exemption from income tax provided by Republic Act No. (RA) 1916 and the Omnibus Investments Code of 1987.

   a) Since the developer's low-cost, mass housing project is a BOI-registered project, the income payments received in connection with said housing project is exempt from creditable withholding tax (CWT).

   b) The exemption from CWT covers only income directly attributable to revenue generated from its registered activity.

   c) Such exemption from CWT shall not cover revenues from units with selling price exceeding the P2.5 million threshold for low-cost housing.

2. In the computation of income covered by the ITH, interest income from in-house financing shall not be considered as revenues generated from the registered activity.

3. The entitlement to ITH is not automatic – the developer still has to comply with the specific terms and conditions of BOI registration.

4. BOI-registered enterprises do not enjoy other tax exemption/privileges other than those granted under Executive Order No. (EO) 226. In this regard, the new developer was granted a four-year ITH; but the terms and conditions do not provide for any exemption from other taxes. Thus, the new developer remains subject to VAT and documentary stamp tax (DST) on its sales of residential lots or house and lot units with selling price of more than P1,919,500 and P3,199,20, respectively.

5. A BOI-registered enterprise is constituted as a withholding agent for the government if it acts as an employer, or it makes payments to individuals or corporations subject to withholding taxes at source.

(BIR Ruling No. 472-2014, November 21, 2014)

BIR Rulings

Tax incentives for the NHA and private sectors participating in socialized housing projects

The following are the incentives for the National Housing Authority (NHA) as the primary government agency in charge of providing housing for the underprivileged and homeless, provided under Sections 19 and 20 of RA 7279:

1. Exemption from the payment of all fees and charges of any kind, whether local or national, such as income and realty taxes

2. All documents or contracts executed by, and in favor of, the NHA shall also be exempt from the payment of DST and registration fees, including fees required for the issuance of transfer certificates of title. The exemption from DST extends to the other party (either seller or buyer) that is dealing or transacting with the NHA.

On the other hand, to encourage the private sector to participate in socialized housing projects and further reduce the cost of housing units, private sector firms are exempt from payment of the following:

1. project-related income taxes
2. capital gains tax on raw land used for the project
3. VAT on the project contractor

However, purchases of goods by the developer and contractor shall be subject to VAT, even if the said purchases are to be used for the socialized housing project, since VAT is an indirect tax which can be passed on by the seller of the goods/services.

(BIR Ruling No. 473-2014, November 24, 2014)

Denial of request for ruling for failure to comply with requirements

In Revenue Memorandum Order No. (RMO) 9-2014, the BIR provided the guidelines for the processing of request for ruling with the Law and Legislative Division.

Section 4 of the said RMO provides that the letter request for ruling must be sworn and executed under oath, must contain a list of submitted documents, and must contain the following affirmations:

1. A similar inquiry has not been filed and is not pending in another office of Bureau.

2. There is no pending case in litigation involving the same issue/s and the same taxpayer and related taxpayer.

3. The issue/s subject of the request is not pending investigation or on-going; nor should it be an audit administrative protest, a claim for refund or issuance of tax credit certificate, a collection proceeding, or a judicial appeal.

4. The documents are complete and that no other documents will be submitted in connection with the request.

Moreover, Section 5 of the same RMO provides that the documents accompanying the letter request and material to the transaction for ruling must be certified as true copy of the original document and that the letter request must contain a Special Power of Attorney or authorization in writing in case the request is filed by a representative of the taxpayer.

In the absence of the above, the BIR did not process the letter request. Nevertheless, the BIR confirms that processing can be started once the said letter-request already conforms to the requirements of the RMO.

(BIR Ruling No. 476-2014, November 26, 2014)

BIR Rulings

Joint ventures not taxable as corporation are not subject to CWT

Under RR 02-2012, to be considered as a non-taxable corporation, a joint venture (JV) or consortium formed for the purpose of undertaking construction projects should involve joining or pooling of resources by licensed contractors that are also engaged in construction business. Both the JV and the local contractors should be duly licensed by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI).

The members of a non-taxable JV shall each be responsible for reporting and paying appropriate income taxes on their respective share of the JVs profit.

Having complied with the above requirements, the BIR considered the JV in the ruling not taxable as a corporation, and therefore, not subject to the corporate income tax. Likewise, the gross corporate payments to the JV are not subject to 2 percent CWT and the JV was also not required to file quarterly and final adjustment returns.

The BIR emphasized that the respective net income of the co-venturers derived from the JV is subject to CWT. Thus, before the JV distributes the net income of the co-venturers, it shall withhold tax based on the net income of its co-venturers.

Lastly the BIR reiterated that under the above regulation, the co-venturers are required to enrol to the electronic filing and payment system (eFPS). The enrolment should be done with their respective Revenue District Office where they are registered as taxpayers.

(BIR Ruling No. 475-2014, November 26, 2014)

BIR Rulings

15% tax on dividends paid to a Barbados company

Section 28 of the Tax Code, as amended, provides that a final withholding tax of 15 percent is imposed on cash dividends received by a non-resident foreign corporation from a domestic corporation, subject to the condition that the country of the former allows for crediting of taxes deemed to have been paid in the Philippines equivalent to 15 percent.

In stressing the rationale of the above principle, the BIR cited the case of Commissioner of Internal Revenue (CIR) vs. Procter & Gamble Philippine Manufacturing Corporation (204 SCRA 377), and Singapore Telecom International Pte. Ltd. vs. CIR (CTA Case No. 7406, April 7, 2009), where the Supreme Court (SC) ruled that the preferential treatment of 15 percent of the final withholding tax on dividends received by a non-resident foreign corporation from a domestic corporation applies if the domiciliary law of the non-resident foreign corporation allows [a similar] tax credit for the taxes deemed paid in the Philippines.

Moreover, the BIR quoted that in the case of CIR vs. Wander Philippines, Inc. (G.R. No. 68375, April 15, 1988) the SC ruled that the fact that Switzerland did not impose any tax on the dividends received from the Philippines should be considered as a full satisfaction of the given condition. Thus, the exemption from taxes of the dividends received in the country of domicile of the non-resident corporate stockholder is sufficient for the applicability of the 15 percent tax rate.

In this case, a confirmation was issued by the Government of Barbados, Department of Inland Revenue, that the dividends received by the Barbados company from the Philippine company will not be included in the assessable income of the Barbados company. Such being the case, the BIR holds that the cash dividend of the company domiciled in Barbados are entitled to the 15 percent final withholding tax.

(BIR Ruling No. 467-2014, November 19, 2014)

Court Decisions

Failure to comply with RMO 20-90 renders the waiver invalid

Section 203 of the Tax Code, as amended, provides that the BIR ordinarily has a period of three years within which to assess internal revenue taxes. Any assessment notice issued beyond the three-year prescriptive period shall be deemed invalid. Such rule is subject to certain exceptions, such as upon a written agreement between the tax authorities and taxpayer through the execution of a waiver of the defense of prescription under the statute of limitations of the Tax Code, as amended.

RMO 20-90 sets out the requirements for the validity of waiver. One such requirement is the CIR's (or her authorized representative's) signature on the waiver indicating the BIR's acceptance and agreement to the waiver. The date of such acceptance by the BIR should also be indicated.

Failure to comply with these requirements would render the waiver invalid and would not extend the prescriptive period.

In the instant case, the taxpayer executed a waiver in September 2008 for the taxable year 2005 assessment. Notwithstanding the CIR's signature affixed on the waiver, the Court found the waiver invalid because the requirement under RMO 20-90 to include the date of acceptance was not met. Given the failure to fully comply with the RMO, no valid agreement between the taxpayer and the BIR could have taken place. Consequently, the waiver did not toll the running of the prescriptive period of three years from the filing of the return as required by the Tax Code.

(Joanna Lee O. Santos v. Commissioner of Internal Revenue, CTA Case No. 8214, November 26, 2014)

Out-of-time claim for the VAT refund

Section 112 (C) of the Tax Code is explicit on the mandatory and jurisdictional nature of the 120+30 day period that has been effective since January 1, 1998.

In the present case, since the administrative claim for refund was filed on July 21, 1999, the CIR had 120 days (until November 18, 1999) to act on the application. When the 120-day prescriptive period lapsed without an action by the CIR, the taxpayer should have filed its judicial claim before the Court of Tax Appeals (CTA) within 30 days or until December 18, 1999. However, since the taxpayer filed its judicial claim only on January 9, 2001, the application was, therefore, a year and 22 days late.

As a result of the late filing of said petition, the SC held that the CTA did not properly acquire jurisdiction over the claim. Thus, the SC reversed the decision of the CTA En Banc granting the VAT refund, stating that despite the taxpayer's timely filing its administrative case, the Court is constrained to deny the averred tax refund or credit, as its judicial claim was filed beyond the 120+30 day period, and hence deemed to be filed out of time.

(Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor, GR No. 190021, October 22, 2014)

Court Decisions

Certificate of exemption not a prerequisite for income tax exemption

A certificate of exemption, as prescribed in RMO 20-2013 and RMO 14-2001, is not a prerequisite for the exemption from income tax of a qualified non-stock, non-profit educational institution pursuant to Section 30 of the Tax Code. Since the Tax Code does not provide such requirement for exemption, the BIR cannot add an additional requirement to implement the law.

To qualify for income tax exemption, the entity only has to prove that it is a non-stock, non-profit educational institution and that no part of its income is derived from activities conducted for profit.

(The Abba's Orchard School, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8377, November 4, 2014)

When an assessment based on best evidence obtainable is deemed valid

The Court upheld that the taxpayer's failure to submit to the BIR adequate records substantiating its expenses for taxable year 2007 makes the BIR's assessment based on the "best evidence obtainable" rule justified and in full accord with Section 6(B) of the National Internal Revenue Code (NIRC) of 1997, as amended, as implemented by Revenue Memorandum Circular No. (RMC) 23-2000, specifically Sections 2.3 and 2.4(c) thereof. Hence, the disallowance of 50 percent of the expenses claimed by the taxpayer was deemed justified.

During the administrative proceedings – both before and after the issuance of the preliminary assessment notice (PAN), final assessment notice (FAN), and final decision on the taxpayer's protest – the taxpayer failed to submit relevant documents/records (e.g., expense vouchers, purchase invoices) substantiating expenses incurred for taxable year 2007. Additionally, the direct connection of the said expenses to the taxpayer's trade or business was also not explained.

Not a single explanation was offered by the taxpayer as to why these documents were not presented during trial. The taxpayer neither claims the occurrence of fraud, mistake or inadvertence to its omission to present the documents, nor alleges the commission of excusable negligence which ordinary prudence could not have guarded against.

Further, the proffered documents consisting of mere photocopies of checks and receipts cannot be categorized as in the nature of newly discovered evidence. The concurrence of the following requisites must be established in order that a newly discovered evidence may be appreciated as a ground for granting a motion for new trial: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted.

(Village-Green Hog Farm, Inc. v. CIR, CTA Case No. 8375, Second Division Resolution, November 14, 2014)

BSP Circular

BSP accreditation of PERA market participants and investment products

Pursuant to Republic Act No. 9505, also known as the PERA (Personal Equity and Retirement Account) Act of 2008, the Bangko Sentral ng Pilipinas (BSP) has issued the guidelines for the accreditation of eligible market participants and PERA investment products.

The following are considered as BSP-eligible PERA investment products:

1. Unit investment trust fund (UITF)
2. Debt-instruments such as, but not limited to, long term negotiable certificate of deposits and unsecured subordinated debt
3. Deposits
4. Government-issued securities

Other category of investment products or outlets may be allowed provided that the product is non-speculative, readily marketable, and with a track record of regular income payments to investors.

The following are the eligible market participants:

PERA market participants	Eligible entities
administrator	banks, trust entities, and other entities as may be determined by the BSP as eligible to act as PERA administrator
investment manager	trust entities and other entities as may be determined by the BSP as having the qualifications to be accredited as PERA investment manager
cash custodian	banks
securities custodian	banks and trust entities
investment product provider	any BSP-supervised entity that wishes to offer PERA investment products to contributors

The qualifications and eligibility requirements for each of the market participants are also enumerated in the Circular.

The eligible market participant seeking accreditation must file an application with the Supervision and Examination Section and submit the following documents:

a. certified true copy of the board resolution authorizing the application
b. certification signed by the CEO that the entity possesses all the qualifications and has complied with the accreditation requirements listed in the Circular
c. relevant PERA forms; board-approved policies on fees and charges

As a security for the faithful performance of its duties, an administrator shall be required to hold eligible government securities equivalent to at least 1 percent of the book value of the total volume of PERA assets administered, earmarked in favor of the BSP. The administrator shall issue an authorization to allow the BSP to withdraw and dispose of the securities to settle any claims arising from the breach of duties by the administrator pursuant to a final and executor court order. Eligible securities are also described in the Circular.

Applications for accreditation may be denied, and the accreditation may be revoked or suspended by the BSP after due notice and hearing, if the administrator is found to have committed certain violations and noncompliance enumerated in the Circular.

A fine ranging from P50,000 to P200,000, or imprisonment from six to 12 years at the discretion of the court, may be imposed for certain acts and violations without prejudice to any criminal or civil liabilities under applicable laws.

(BSP Circular No. 860, November 28, 2014)

Highlight on P&A services

Corporate organization and registration

For clients that want to do business in the Philippines, we assist in determining the appropriate and tax-efficient operating business or investment vehicle and structure to address the objectives of the investor, as well as related incorporation issues. We help set up the business and register it with concerned government regulatory agencies, such as the Securities and Exchange Commission, the Bureau of Internal Revenue, the Local Government Unit, the Social Security System and the Bangko Sentral ng Pilipinas. We also assist in notifying and/or securing necessary approvals from government regulatory agencies when there are changes in business activities, business status, or tax-type registration.

If you would like to know more about our corporate organization and registration services, please contact:

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We welcome your suggestions and feedback so that the Tax brief may be made even more useful to you. Please get in touch with us if you have any comments and if it would help you to have the full text of the materials in the Tax brief.

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