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SyCipLaw TIPS

TAX ISSUES AND PRACTICAL SOLUTIONS

(International Edition)

1. What are the new procedures for availing of tax treaty benefits?

The Bureau of Internal Revenue (*BIR*) issued Revenue Memorandum Order (RMO) No. 14-2021, as amended by Revenue Memorandum Circular (*RMC*) No. 077-21, which revised and streamlined the procedures and documents for the availment of tax treaty benefits for all types of Philippine-sourced income that are subject to preferential tax treatment under a tax treaty, including dividend, interest, and royalty income which were previously covered by the Certificate of Residence for Treaty Relief (*CORTT*) Form prescribed under RMO No. 8-2017. RMO No. 14-2021 amends other regulations relating to applications for tax treaty benefits, including RMO Nos. 30-2002, 72-2010, and 8-2017.

RMO No. 14-2021 now allows the withholding agent (*WA*) to apply the preferential rate upon the submission by the non-resident income recipient (*NRIR*) of certain documents to the WA, but subject to the WA filing a Request for Confirmation (*RFC*) with the BIR's International Tax Affairs Division (*ITAD*) and obtaining a Certificate of Entitlement to Treaty Benefit (*COE*). If the WA does not apply the preferential rate under the relevant tax treaty but instead applies the regular rates under the National Internal Revenue Code, as amended (Tax Code), the NRIR, through its authorized representative, may still apply for a Tax Treaty Relief Application (*TTRA*) and a claim for refund with the ITAD.

RMO No. 14-2021 sets out the following process:

(a) Prior to receiving income from the WA in the Philippines, the NRIR shall provide the WA the following, which the latter may rely on to determine the appropriate withholding tax rate: (i) BIR Form No. 0901 or Application Form for Treaty Purposes; (ii) Tax Residency Certificate issued by the foreign tax authority; and (iii) the relevant provision of the applicable tax treaty on whether to apply a reduced rate of, or exemption from, withholding at source on the income derived by a nonresident taxpayer from all sources within the Philippines.

(b) The WA then remits income to the NRIR, in the form of dividends, royalty, interest, etc., and withholds tax at either the treaty rate or the regular rate.

SyCipLaw TIP 1:

Taxpayers must be aware that there are now new procedures for availing themselves of tax treaty relief. In addition to familiarizing themselves with the new procedures, taxpayers must check the detailed list of documentary requirements found in Section 5 of RMO No. 14-2021 for claiming relief from double taxation under a tax treaty. They must also coordinate with, and submit the relevant documents to, the withholding agent so as to enable the withholding agent to determine whether or not to withhold at the treaty rate or the regular rate.

To be safe, a taxpayer who previously filed a TTRA prior to the effectivity of RMO No. 14-2021 must check their application and ensure that they submit additional documents under RMO No. 14-2021 within three months from its effectivity. Similarly, those that previously submitted CORTT Forms should check with the relevant Revenue District Office to ensure that their submission is compliant with the current regulations. Failure to file RFCs and TTRAs under RMO No. 14-2021 within the periods prescribed therein will not result in an automatic denial thereof, but will subject the applicant to penalties for late filing.

(c) If the WA applied the treaty rate on the income, the WA must file with the ITAD an RFC. For capital gains, the WA may file the RFC at any time after the earlier of the payment of the income or the consummation of the transaction up to the last day of the fourth month following the close of the taxable year. For other types of income, the WA may file the RFC after the close of the taxable year up to the last day of the fourth month following the close of the taxable year. To illustrate, if an NRIR had both capital gains and dividend income on May 1, 2021, the RFC for capital gains may be filed any time after May 1, 2021 until April 30, 2022, whereas the RFC for dividends may be filed only from January 1, 2022 to April 30, 2022.

(d) If the BIR determines that the rate applied was correct or higher, the BIR will issue a COE confirming the NRIR's entitlement to the benefit. If the BIR determines that the rate applied was lower or the NRIR is not entitled to treaty benefits, the BIR will issue a BIR ruling denying the request and the WA must pay the deficiency taxes plus penalties.

(e) If, on the other hand, the WA applied the regular rate on the income, the NRIR must file with the ITAD a TTRA within the same period stated in (c) above in order to obtain a tax refund of the excess taxes withheld.

Taxpayers with pending TTRAs for income earned in 2020 and prior years, including those with Notices of Archiving from ITAD, are given three months from the receipt of a Final Notice to Submit Additional Documents (*Final Notice*), or from the effectivity of RMO No. 14-2021, whichever is later, to submit the lacking documents. Taxpayers who were issued a Notice of Archiving will no longer receive a Final Notice. Failure to submit the requested documents would result in the automatic denial of the TTRA for failure of the non-resident income recipient to substantiate or prove the recipient's entitlement to tax treaty benefits.

RMO No. 14-2021 was issued on March 31, 2021 and it took effect immediately, and was thereafter amended by RMC No. 077-21 on June 15, 2021. Accordingly, all pending TTRAs shall be processed following the procedure therein. For dividends, interest, and royalties, the submission of the CORTT Form pursuant to RMO No. 8-2017 shall be discontinued. However, previously submitted CORTT Forms shall still be forwarded to the concerned Revenue District Offices for compliance check. For NRIRs who received income in 2020 and prior years, which income was subjected to the preferential treaty rates but no TTRA or CORTT Form was obtained or filed therefor, the WA has until December 31, 2021 to file an RFC, subject to a penalty of PhP1,000 per failure to file a CORTT Form, as may have been necessary.

SyCipLaw Tip 2:
If a tax treaty refers to the domestic law of one of the contracting states to establish the mechanism for the application of a certain tax treaty provision, the taxpayer claiming a preferential tax treaty rate pursuant to the most favored nation clause of such treaty must prove the relevant provisions of the domestic law as a fact to show the similarity in the subject matter and in the circumstances. The doctrine of processual presumption does not apply in claims for tax treaty relief.

2. What are the requirements for the application of the preferential tax rate pursuant to most favored nation clause?

In *Cargill Philippines, Inc. v. Commissioner of Internal Revenue* (G.R. No. 203346, September 9, 2020), the Supreme Court reiterated the rule that two conditions must concur for the most favored nation clause to apply: (a) similarity in the subject matter (*i.e.*, that royalties derived from the Philippines by a resident of the contracting state and of the third state are of the same kind); and (b) similarity in the circumstances in the payment of tax (i.e., the same mechanism must be employed by the contracting state and the third state in mitigating the effects of double taxation).

In denying the application of the 10% preferential tax rate in this case, the Supreme Court ruled that the similarity in the circumstances of payment of taxes on the royalties derived from the Philippines is a condition for the enjoyment of the most favored nation treatment.

Here, the taxpayer, a US resident, failed to point to the relevant provisions of the United States law to determine the similarity in circumstances in the payment of taxes on royalty in the United States and the Czech Republic (the country with a more favorable tax treaty rate on royalties). This is required since the PH-US Tax Treaty does not provide details on how the credit is to be applied and its limitations; it simply makes reference to the applicable US law (*i.e.*, Article 23(1) of the treaty provides that "in accordance with the provisions and subject to the limitations of the law of the United States… the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of taxes paid or accrued to the Philippines"). On the other hand, the PH-Czech Republic Tax Treaty itself already specifies the limitation on credit. Under the PH-US Tax Treaty, the limitation on credit can only be determined if the internal tax law of the US is presented and the applicant taxpayer failed to establish the relevant US law. Due to such failure, the Court is unable to say for certain that the PH-US Tax Treaty grants similar tax reliefs to US residents as those allowed to Czech Republic residents under the PH-Czech Republic Tax Treaty.

The Supreme Court also stated that the doctrine of processual presumption is not applicable when applying for tax treaty relief, as it is a fundamental taxation principle that a state may tax a person, property, income or business within its territorial limits. A foreign corporation may avail of the benefits of a tax treaty concluded by the Philippines with its country of residence by invoking the treaty provisions and proving that they apply to it. In other words, unless clearly proven that the treaty provisions apply to it, a non-resident foreign corporation will be taxed according to the Tax Code.

3. May a taxpayer claim a tax credit certificate for erroneously paid taxes based on a tax treaty?

Yes. In *Kuwait Airways Corporation v. Commissioner of Internal Revenue* (CTA Case No. 9874, May 28, 2021), Kuwait Airways Corporation (*Kuwait Air*) filed a claim for the issuance of a tax credit certificate for overpaid income taxes after it obtained a ruling from the ITAD that it is subject to income tax of 1.5% (instead 2.5% under the Tax Code) of on its Gross Philippine Billings earned beginning January 1, 2014, pursuant to Article 8 of the PH-Kuwait Tax Treaty. Kuwait Air filed the tax treaty relief application on June 5, 2015, and this was granted by the ITAD on November 16, 2017. Pursuant thereto, Kuwait Air filed its Amended Annual Income Tax Return for the year ending March 31, 2016 on March 21, 2018, and subsequently filed its administrative claim for the issuance of a Tax Credit Certificate on May 16, 2018, then filed its judicial claim on July 11, 2018. The Court of Tax Appeals (CTA) ruled that Kuwait Air was entitled to the issuance of a tax credit certificate since it was able to prove its entitlement to the benefits under the PH-Kuwait Tax Treaty. The CTA added that the Philippine Government is obligated to observe the terms and conditions of the PH-Kuwait Tax Treaty under the rule of pacta sunt servanda, a fundamental maxim of international law that requires the parties to keep their agreement in good faith.

SyCipLaw Tip 3:
Taxpayers who paid Philippine taxes using the regular tax rate when they are entitled to a preferential rate under an applicable tax treaty may still file a claim for the issuance of a tax credit certificate, provided that (a) they are able to prove their entitlement to the preferential tax rate under the applicable tax period, and (b) they file their administrative and judicial claims within the applicable prescriptive period.

SyCipLaw Tip 4:
Heirs wanting to avail of estate tax amnesty now have an extended period of until June 14, 2023 to do so. Under the Tax Amnesty Act, as amended by RA No. 11569, an estate tax amnesty rate of six percent on each decedent's total net taxable estate at the time of death without penalties at every stage of transfer of property will apply; provided, that the minimum estate amnesty tax for the transfer of the estate of each decedent shall be PhP5,000. Prior to 2018, the estate tax rate ranged from zero to twenty percent of the net taxable estate of the decedent.

4. What are the salient provisions of Republic Act No. 11569, the law which amends the estate tax provisions of the Tax Amnesty Act?

On June 30, 2021, President Rodrigo R. Duterte signed Republic Act No. 11569 (*RA No. 11569*) into law. RA No. 11569 amends certain provisions of Republic Act No. 11213, or the Tax Amnesty Act.

The deadline to avail of the estate tax amnesty under the Tax Amnesty Act, as amended by RA No. 11569, has been extended up to June 14, 2023 (the previous deadline was on June 14, 2021).

In addition to the extension of the deadline, RA No. 11569 removed the requirement of the submission of the proof of settlement of the estate, whether judicial or extrajudicial, for the availment of the tax amnesty. This was previously required to be attached to the Estate Tax Amnesty Return to verify the mode of transfer and the proper recipients of the decedent's estate under the Tax Amnesty Act prior to its amendment by RA No. 11569.

The estate tax amnesty covers the estate of decedent/s who died prior to 2018, or on or before December 31, 2017, with or without assessments duly issued, whose estate taxes have remained unpaid or have accrued as of December 31, 2017. The estate tax amnesty shall not extend to (a) delinquent estate tax liabilities which have become final and executory and those covered by Tax Amnesty on Delinquencies, and (b) properties involved in cases pending in appropriate courts as listed under Revenue Regulations No. 6-2019 (Subject: Implementing the Provisions of the Estate Tax Amnesty under Title II of Republic Act No. 11213, Otherwise Known as the "Tax Amnesty Act").

5. Are payments for services rendered abroad by a non-resident foreign corporation subject to Philippine income tax?

No. In *Snowy Owl Energy Inc. v. Commissioner of Internal Revenue* (CTA Case No. 9618, March 13, 2021), Snowy Owl Energy Inc. (*Snowy Owl*), a domestic corporation, entered into a consultancy agreement with Rolenergy Inc. (*Rolenergy*), a Hong Kong-based foreign corporation organized and registered in the British Virgin Islands. The consultancy agreement provides that the rendition of services would be in Hong Kong. The CIR assessed Snowy Owl for deficiency final withholding tax for allegedly failing to withhold the applicable taxes on its consultancy agreement with Rolenergy.

The CTA cancelled the assessment and ruled that since it was proven that the services were performed outside the Philippines by Rolenergy, a non-resident foreign corporation, payments made in exchange for such services are not subject to income tax and consequently to final withholding tax. While the CTA did not provide a list of what evidence will sufficiently prove that services were performed outside the Philippines, it ruled that Snowy Owl sufficiently established that Rolenergy is a non-resident foreign corporation and that the services were performed outside the Philippines as evidenced by its (a) Certificate of Non-Registration of Company issued by the Securities and Exchange Commission (SEC), (b) Certificate of Incumbency from the British Virgin Islands, (c) provisions in the consultancy agreement which state that no work was to be performed in the Philippines, (d) Snowy Owl's minutes of the board meeting approving the consultancy agreement which shows that its board previously agreed that all work or services shall be performed in Hong Kong and not in the Philippines, and (e) a notarized letter from Rolenergy that the services were just desktop review of calculations and were not actually performed in the Philippines.

SyCipLaw Tip 5:
Payments for services rendered outside the Philippines by non-resident foreign corporations are not subject to Philippine income tax. However, the taxpayer/withholding agent should prove that the services were indeed rendered outside the Philippines by submitting the foreign company's Certificate of Non-Registration from the SEC and a Certificate of Incumbency (or certificate of registration) from its country of establishment, together with documents executed prior to the performance of the service which would clearly establish that the services of the foreign company were agreed to be performed offshore.

6. Are the conditions set out in Sections 106(A)(2)(a) and 108(B) of the Tax Code (as amended by TRAIN) already satisfied, thereby rendering certain transactions previously considered to be VAT zero-rated now subject to 12% VAT?

Yes, as of June 28, 2021. Sections 106(A)(2)(a) and 108(B) on value-added tax (*VAT*) of the Tax Code (as amended by the TRAIN Law), provide: :

> SECTION 106. *Value-added Tax on Sale of Goods or Properties*.—
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> (2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:
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> (a) *Export Sales*. — The term '*export sales'* means:
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> (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
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> (2) Sale and delivery of goods to:
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> (i) Registered enterprises within a separate customs territory as provided under special laws; and
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> (ii) Registered enterprises within tourism enterprise zones as declared by the Tourism Infrastructure and Enterprise Zone Authority (*TIEZA*) subject to the provisions under Republic Act No. 9593 or The Tourism Act of 2009.

SyCipLaw Tip 6:
Following the declaration that the conditions specified under Sections 106(A)(2)(a) and 108(B) of the Tax Code as amended by the TRAIN Law have been satisfied, only those sales of goods and services that are actually and directly exported or are sold to a separate customs territory remain to be VAT zero-rated. Therefore, sales of goods and services to exporters, while previously also VAT zero-rated, are now (as of June 28, 2021) subject to 12% VAT. However, it would appear from the Tax Advisory issued by the BIR that, in addition, sales to enterprises which were previously granted incentives by Investment Promotion Agencies are now also subject to 12% VAT and all "Applications for VAT Zero-Rate" which were previously approved by the BIR are ineffective as of June 28, 2021.

(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(4) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;

(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws; and

(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations: Provided, That the goods, supplies, equipment and fuel shall be used for international shipping or air transport operations.

Provided, That subparagraphs (3), (4), and (5) hereof shall be subject to the twelve percent (12%) value-added tax and no longer be considered export sales subject to zero percent (0%) VAT rate upon satisfaction of the following conditions:

(1) The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within ninety (90) days from the filing of the VAT refund application with the Bureau: *Provided,* That, to determine the effectivity of item no. 1, all applications filed from January 1, 2018 shall be processed and must be decided within ninety (90) days from the filing of the VAT refund application; and

(2) All pending VAT refund claims as of December 31, 2017 shall be fully paid in cash by December 31, 2019.

Provided, That the Department of Finance shall establish a VAT refund center in the Bureau of Internal Revenue (BIR) and in the Bureau of Customs (BOC) that will handle the processing and granting of cash refunds of creditable input tax.

An amount equivalent to five percent (5%) of the total VAT collection of the BIR and the BOC from the immediately preceding year shall be automatically appropriated annually and shall be treated as a special account in the General Fund or as trust receipts for the purpose of funding claims for VAT refund: Provided, That any unused fund, at the end of the year shall revert to the General Fund.

Provided, further, That the BIR and the BOC shall be required to submit to the Congressional Oversight Committee on the Comprehensive Tax Reform Program (COCCTRP) a quarterly report of all pending claims for refund and any unused fund.

SECTION 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.*—

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(B) *Transactions Subject to Zero Percent (0%) Rate*. — The following services performed in the Philippines by VAT registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (*BSP*);

(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (*BSP*);

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof: Provided, That these services shall be exclusively for international shipping or air transport operations;

(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production;

(6) Transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country; and

(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.

Provided, That subparagraphs (B)(1) and (B)(5) hereof shall be subject to the twelve percent (12%) value-added tax and no longer be subject to zero percent (0%) VAT rate upon satisfaction of the following conditions:

(1) The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within ninety (90) days from the filing of the VAT refund application with the Bureau: Provided, That, to determine the effectivity of item no. 1, all applications filed from January 1, 2018 shall be processed and must be decided within ninety (90) days from the filing of the VAT refund application;

(2) All pending VAT refund claims as of December 31, 2017 shall be fully paid in cash by December 31, 2019.

Provided, That the Department of Finance shall establish a VAT refund center in the Bureau of Internal Revenue (*BIR*) and in the Bureau of Customs (*BOC*) that will handle the processing and granting of cash refunds of creditable input tax.

An amount equivalent to five percent (5%) of the total value-added tax collection of the BIR and the BOC from the immediately preceding year shall be automatically appropriated annually and shall be treated as a special account in the General Fund or as trust receipts for the purpose of funding claims for VAT refund: Provided, That any unused fund, at the end of the year shall revert to the General Fund.

Provided, further, That the BIR and the BOC shall be required to submit to the COCCTRP a quarterly report of all pending claims for refund and any unused fund.

In Revenue Regulations No. 9-2021 (*RR No. 9-2021*), which became effective on June 28, 2021, the BIR declared that the following conditions have been fully satisfied:

(a) The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within 90 days from the filing of the VAT refund application with the BIR; provided, that, to determine the effectivity of this item, all applications filed from January 1, 2018 shall be processed and must be decided within 90 days from the filing of the VAT refund application;

(b) All pending VAT refund claims as of December 31, 2017 shall be fully paid in cash by December 31, 2019; and

(c) A VAT refund center in the BIR and in the Bureau of Customs that will handle the processing and granting of cash refunds of creditable input tax.

As a result, the following sales of goods that were previously taxed at 0% VAT shall now (as of June 28, 2021) be subject to 12% VAT: (a) sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (*BSP*; the Philippine Central Bank) (see Section 106(A)(2)(a)(3) of the Tax Code); (b) sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed 70% of total annual production (see Section 106(A)(2)(a)(4) of the Tax Code); and (c) those considered export sales under Executive Order No. 226, or the Omnibus Investments Code of 1987, and other special laws (see Section 106(A)(2)(a)(5) of the Tax Code)].

Also, the following sales of services that were previously taxed at 0% VAT shall now (as of June 28, 2021) be subject to 12% VAT: (a) the processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP (see Section 108(B)(1) of the Tax Code), and (b) services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed 70% of the total annual production (see Section 108(B)(5) of the Tax Code).

The BIR, pursuant to RR No. 9-2021, issued a Tax Advisory stating that the filing of "Applications for VAT Zero-Rate" on the sale of goods and services by suppliers of registered business enterprises which were granted incentives by Investment Promotion Agencies (such as the Philippine Economic Zone Authority (*PEZA*), Board of Investments (*BOI*)), pursuant to the Corporate Recovery and Tax Incentives for Enterprises Act (*CREATE*), will no longer be accepted and processed by the BIR starting on June 28, 2021; applications filed prior to the effectivity of RR No. 9-2021 will be processed but will be effective until June 27, 2021 only; while applications that have already been approved will be effective until June 27, 2021 or the effective date stated in the approved applications, whichever is earlier.

7. Who are required to accomplish and file a Related Party Transaction Form and who are required to prepare the Transfer Pricing Documentation?

The BIR issued RMC No. 54-2021 to clarify certain provisions of Revenue Regulations No. 34-2020 (*RR No. 34-2020*), particularly, to address the frequently asked questions regarding the submission of BIR Form No. 1709, or the Information Return on Transactions with Related Part (*RPT Form*), and the preparation of the Transfer Pricing Documentation (*TPD*).

A taxpayer is required to file an RPT Form if the following conditions are present: (a) it is required to file an Annual Income Tax Return (*AITR*); (b) it has transactions with a domestic or foreign related party during the concerned taxable period; and (c) it falls under any of the following categories: (i) large taxpayers, (ii) taxpayers enjoying tax incentives (i.e., BOI-registered and economic zone enterprises, those enjoying Income Tax Holiday (*ITH*) or subject to preferential income tax rate (in general, such as regional operating headquarters and proprietary financial institutions and hospitals)), (iii) taxpayers reporting net operating losses for the current taxable year and the immediately preceding two consecutive taxable years, or (iv) a related party that has transactions with (a), (b) or (c) in this paragraph.

On the other hand, the following are not required to file an RPT Form: (a) those who did not meet the conditions set forth in the enumeration above who are required to submit the RPT Form; (b) those subject to regular corporate income tax as a whole but have transactions subject to preferential tax rate (such as those availing of preferential rates under tax treaties or the Tax Code); (c) international carriers if they are either subject to tax based on their Gross Philippine Billings or gross revenues; (d) international carriers that are exempt from tax under the tax treaty or on the basis of reciprocity; (e) taxpayers operating within the economic zone but are subject to regular corporate income tax; (f) taxpayers who are exempt from income tax under Section 30 (Exemptions from Tax on Corporations) or similar provisions of the Tax Code or special laws; (g) regional or area headquarters and representative offices of foreign corporations that are not allowed by law to derive income from the Philippines; and (h) post-employment benefit plan if their related party transactions consist only of the contributions from their sponsor employers.

A taxpayer is required to prepare a TPD if the taxpayer meets any of the following conditions: (a) annual gross sales/revenue for the subject taxable period exceeds PhP150 million and the total amount of related party transactions with foreign and domestic related parties exceeds PhP90 million; (b) sale of tangible goods involving the same related party exceeds PhP60 million within the taxable year; (c) service, transaction, payment of interest, utilization of intangible goods or other related party transaction involving the same related party exceeds PhP15 million within the taxable year; or (d) if the TPD was required to be prepared during the immediately preceding taxable period for exceeding any of the thresholds in (a) to (c) in this paragraph.

On the other hand, the following are not required to prepare the TPD: (a) those who did not meet any of the conditions set forth in the enumeration above who are required to prepare a TPD; and (b) those who are not required file the RPT Form.

SyCipLaw Tip 7:
Not all taxpayers are required to file an RPT Form. To determine whether a taxpayer is required to file an RPT Form pursuant to Section 2(d) of RR No. 34-2020 (*i.e.*, those falling under categories (c)(i) to (iii) of the enumeration in paragraph 2 above), the taxpayer should first check if its related party itself is required to file an RPT Form for falling under such categories (c)(i) to (iii) and satisfying the conditions in categories (a) and (b) (*i.e.*, it is required to file an AITR and there were transactions during the concerned taxable period).

Not all taxpayers required to file an RPT Form are required to prepare a TPD. To determine whether a taxpayer who is required to file an RPT form is required to prepare a TPD, the financial thresholds must be complied with or a TPD must have been required for the immediately preceding taxable period.

8. Will the Supreme Court's Guidelines on the Conduct of Videoconferencing apply to cases before the Court of Tax Appeals?

Yes. On December 9, 2020, the Supreme Court issued Administrative Matter No. 20-12-01-SC, or the Guidelines on the Conduct of Videoconferencing (*Videoconferencing Guidelines*), which took effect on January 16, 2021. The Videoconferencing Guidelines were issued in light of the exigencies presented by the COVID-19 pandemic, but are expressly made applicable even after the current public health emergency ceases. Pursuant to Par. 3 of Part I of the Videoconferencing Guidelines, it is also applicable to proceedings before the CTA and applies to all actions and proceedings, when the court finds that the conduct of videoconferencing will be beneficial to the fair, speedy, and efficient administration of justice, such as in, but not limited to, the following instances:

(a) acts of God, such as typhoons, floods, earthquakes, or other unforeseen events, and human-induced events, such as fires, strikes, lockdowns, those which limit physical access to the courts, and other instances posing threats to the security and safety of the courts and/or personnel;

(b) periods of public emergencies officially declared by the concerned agency of the government;

(c) the inability or difficulty of a litigant, witness, or counsel to physically appear in court due to security risks in his or her transport in going to and from the court, real and apparent danger to his or her life, security or safety, serious health concerns, vulnerability of the witness due to age, physical condition, disability, or the fact that he or she is a victim of a sexual offense or domestic violence;

SyCipLaw Tip 8:
If a litigant before the CTA intends to file a motion to present a witness via videoconferencing, it should note the required contents of such motion under Par. 2(a) of Part II of the Videoconferencing Guidelines. It can be reasonably expected that, upon the issuance by the DFA of its internal guidelines for the taking of testimonies by videoconferencing, non-resident witnesses may now be able to testify on behalf of litigants in the Philippines without having to travel to the Philippines and appearing physically in court.

(d) when a litigant or witness is an Overseas Filipino Worker or Filipino residing abroad or temporarily outside the Philippines; and

(e) when a litigant or witness is a non-resident foreign national who, while in the Philippines, was involved in any action pending before any court, and would like to appear and/or testify remotely from overseas.

Litigants and witnesses who are Overseas Filipino Workers, Filipinos residing abroad or temporarily outside the Philippines, or non-resident foreign nationals who would like to participate or testify through videoconferencing may do so upon proper motion with the court where the case is pending. Such videoconferencing may be conducted only from an embassy or consulate of the Philippines. A motion must be filed by the litigants interested to avail of videoconferencing, subject to the additional requirement that the concerned embassy or consulate of the Philippines has allowed the use of its facilities for videoconferencing. The movant shall defray all the expenses and costs that may be necessary for the conduct of videoconferencing from an embassy or consulate of the Philippines.

On April 21, 2021, the Secretary of the Department of Foreign Affairs (*DFA*) requested for, and on May 5, 2021 the Supreme Court agreed to, the extension of a moratorium in the implementation of the Videoconferencing Guidelines in relation to the testimony by videoconferencing of witnesses in the embassies or consulates of the Philippines, pending the formulation of internal guidelines and set up of the DFA's and Supreme Court's partnership to train DFA personnel for videoconferencing. The moratorium is effective until June 30, 2021. However, as of this publication, the DFA has not issued any internal guidelines in connection the Videoconferencing Guidelines.