SyCip Salazar Hernandez & Gatmaitan

SyCipLaw Center, 105 Paseo de Roxas
Makati City, 1226, Philippines
T: +632 8982 3500 |+632 8982 3600
F: +632 8817 3145 | +632 8817 3896
www.syciplaw.com

SyCipLaw TIPS TAX ISSUES AND PRACTICAL SOLUTIONS (International Edition)

1. Is a holding company considered a non-bank financial intermediary ("NBFI") liable for local business taxes imposed by a city?

Generally, no. In *City of Davao v. ARC Investors, Inc., (G.R. No. 249668 (Resolution), July 13, 2022)*, the Supreme Court noted that while local government units ("**LGU**") have the power to impose local business taxes ("**LBT**") on the privilege of doing business within their territorial jurisdictions, this is limited to those engaged in the businesses set out in the Local Government Code ("**LGC**"). LGUs may impose business taxes, on banks or other financial institutions under Section 143(f) of the LGC. LBT are imposed on their gross receipts from "interest, commissions and discounts from lending activities, income from financial leasing, dividends, rentals on property and profit from exchange or sale of property, insurance premium." The Supreme Court held that in order for an entity to be considered a non-banking financial institution ("**NBFI**") under the LGC, applying the National Internal Revenue Code of 1997, as amended ("**Tax Code**") and pertinent banking laws and regulations, the following requisites must concur:

SyCipLaw TIP 1:

Holding companies whose activities are limited to holding shares of stock should not be subject to LBT on dividends they receive. However, if they start engaging in other activities, they may be subject to LBT if such activities are taxed under the LGC.

a. The person or entity is authorized by the *Bangko Sentral ng Pilipinas* to perform quasi- banking functions;

b. The principal functions of said person or entity include the lending, investing, or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others; and

c. The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis, to wit:

   i. Receive funds from one (1) group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
   ii. Use principally the funds received for acquiring various types of debt or equity securities;
   iii. Borrow against, or lend on, or buy or sell debt or equity securities.

Based on the foregoing requisites, a holding company owning shares and deriving dividends and interests from them cannot be said to be "doing business" as a bank or NBFI.

The Court underscored the distinctions between a holding company and financial intermediaries by reiterating that the investment activities of holding companies are merely incidental to their main purpose which is to hold shares for purposes of controlling their policies (as opposed to directly engaging in operating activities).

The Court also held that the primary test for the distinction contemplates "regularity of function, not on an isolated basis, with the end in mind for self-profit." Since a holding company's investment activities lack the element of regularity or recurrence for the purpose of earning a profit, it cannot be considered to be "doing business" as an NBFI that may be subject to local business taxation

SyCip Salazar Hernandez & Gatmaitan

Managing Partner:
Hector M. de Leon, Jr.

Tax Department Head:
Carina C. Laforteza

Tax Department Partners:
Carlos Roberto Z. Lopez
Ramon G. Songco
Benedicto P. Panigbatan
Russel L. Rodriguez
Ronald Mark C. Lleno
Hiyasmin H. Lapitan
Leah C. Abutan
John Christian Joy A. Regalado
Ma. Patricia B. Paz-Jacoba
Joanna Marie O. Joson
Maria Viola B. Vista
Maria Christina C. Ortua-Ang

Of Counsel:
Rolando V. Medalla, Jr.

Special Counsel:
Catherina M. Fernandez

Tax Department Senior Associates:
Austin Claude S. Alcantara
Mark Xavier D. Oyales
Camille Angela M. Espeleta-Castillo
Kristina Paola P. Frias
Hailin D.G. Quintos-Ruiz
Renz Jeffrey A. Ruiz

Tax Department Associates:
Spencer M. Albos
Diane Elaine B. Bataller
Kevin Joseph C. Berbaño
Roman George P. Castillo

Editor:
Ronald Mark C. Lleno (Partner)

Contributors:
Carina C. Laforteza
Benedicto P. Panigbatan
Russel L. Rodriguez
Ronald Mark C. Lleno
Joanna Marie O. Joson
Maria Viola B. Vista
Maria Christina C. Ortua-Ang
Catherina M. Fernandez
Diana Elaine B. Bataller
John Alfred H. Mendoza
Ma. Carina Theresa G. Guanio

Coordinators:
Marie M. Ingcoco
Joanne V. Lacsina
Angelita O. Dizon

For more information regarding the issuances discussed in this briefing, please contact:
Carina C. Laforteza
cclaforteza@syciplaw.com

The Court took note of *Bureau of Local Government Finance Opinion dated February 22, 2011*, where the Bureau of Local Government Finance clarified that any tax imposed on interest, dividends, and gains from the sale of shares assumes the nature of income tax (which LGUs are not allowed to impose) unless such tax is imposed on banks and financial institutions. This is because, unlike banks which derive such gross receipts in the ordinary course of their business as financial institutions, in the hands of non-bank and non-financial institutions, such receipts are merely passive investment income.

2. Does the failure to file an application for tax treaty relief under Revenue Memorandum Order ("RMO") No. 1-2000 automatically bar the taxpayer from subsequently availing of such benefits?

No. In *Commissioner of Internal Revenue v. Lufthansa German Airlines – Philippine Branch* (G.R. No. 238977, June 13, 2022), the Supreme Court issued a Resolution reiterating the proper construction of RMO No. 1-2000 as held in its decisions in *Deutsche Bank AG v. Commissioner of Internal Revenue* (G.R. No. 188550, August 19, 2013) and *Air Canada v. Commissioner of Internal Revenue* (G.R. No. 169507, January 11, 2016). The Court ruled that, while RMC No. 1-2000 prescribes the procedures for the processing of tax treaty relief applications, the Bureau of Internal Revenue ("**BIR**") can not impose additional requirements that would negate the availment of reliefs provided for under international agreements, especially when the tax treaty does not impose such requirement. Once a taxpayer is proven to be entitled to relief under a tax treaty, then the taxpayer should be allowed to pay its tax liabilities using the rates provided in the treaty.

The Court also noted that there is nothing in RMO No.1-2000 that would indicate a deprivation of entitlement to the reliefs provided by a tax treaty for failure to comply with the 15-day period provided therein. An outright denial of relief under a tax treaty for failure to comply with such period is also not in harmony with the objectives of the contracting states to ensure that benefits granted under tax treaties are enjoyed by duly entitled persons or corporations.

SyCipLaw TIP 2:

While a timely application for availment of the benefits of a tax treaty is recommended, failure to file an application within the prescribed period should not divest the otherwise entitled person or corporation of its rights under the treaty. The grant of the application operates to merely confirm the entitlement of the taxpayer to such benefits.

The BIR has already issued amendments to the procedures for applying for tax treaty relief. Under RMO No. 14-2021 dated March 14, 2021, as clarified by RMC No. 77-2021 dated June 15, 2021, a withholding agent can file the request for confirmation of tax treaty rates with the BIR International Tax Affairs Division at any time after the close of the taxable year but no later than the last day of the fourth month following the close of the taxable year when the income is paid or becomes payable, or when the expense/asset is accrued or recorded, whichever comes first.

3. Does the Commissioner of Internal Revenue have a fresh or separate 180-day period to decide an administrative appeal (that is, a request for reconsideration of the denial by a representative of the Commissioner, of a taxpayer's protest against a tax assessment)?

No. In *Commissioner of Internal Revenue v. Ruben U. Yu* (CTA EB No. 2352 [CTA Case No. 9595] dated August 16, 2022), the Court of Tax Appeals ("**CTA**") En Banc clarified that the 180-day period referred to in Section 228 of the Tax Code, as amended, applies only to the period within which the Commissioner of Internal Revenue ("**CIR**"), or his duly authorized representative, may act on the protest against the tax assessment. Thus, if the taxpayer files an administrative appeal to request for reconsideration of the decision of the CIR's duly authorized representative on the protest, the CIR is not given a fresh or separate 180-day period to decide the administrative appeal.

In this case, the taxpayer filed a protest on December 3, 2015, disputing the correctness and validity of the tax assessment issued against him and requesting a reinvestigation. The taxpayer had 60 days from that date, or until February 1, 2016, to submit the required supporting documents. Thereafter, the CIR's duly authorized representative (in this case, the Regional Director), had 180 days from February 1, 2016, or until July 30, 2016, to act on the taxpayer's protest. The taxpayer opted to wait for the Regional Director's decision instead of filing an appeal with the CTA within 30 days from July 30, 2016, which is the end of the 180-day period. On August 22, 2016, the Regional Director issued a revised tax assessment, demanding for immediate payment of the taxpayer's deficiency taxes ("**RD Decision**").

Upon receipt of the RD Decision, the taxpayer had the option of either (a) appealing the RD Decision to the CTA, or (b) elevating his protest through a request for reconsideration of the RD Decision to the CIR ("**Administrative Appeal**"), both within 30 days from receipt of the decision. Here, the taxpayer opted to file an Administrative Appeal with the CIR on September 20, 2016.

In view of the CIR's inaction on the Administrative Appeal, the taxpayer filed a petition for review with the CTA on April 17, 2017. The taxpayer was under the impression that the CIR had a fresh or separate 180-day period to act on the Administrative Appeal and, thus, he filed his petition for review with the CTA within 30 days from the lapse of the said 180-day period.

SyCipLaw TIP 3:

Taxpayers should take note when the 180+30-day period will expire. If the CIR or his authorized representative fails to act within the 180-day period, the taxpayer may file an appeal to the CTA within 30 days from the expiration of the 180-day period. However, if the taxpayer decides to wait for the final decision of the CIR's authorized representative and appeals such decision to the CIR, there is no fresh or separate 180-day period for the CIR to decide on the administrative appeal. In such a case, the taxpayer has no choice but to wait for the CIR to decide on the administrative appeal before elevating the case to the CTA within 30 days from receipt of the CIR's decision.

In ruling that the petition for review filed by the taxpayer was premature, the CTA En Banc emphasized that "in case of the inaction of the CIR on the protested assessment, the taxpayer has two options, either: (1) file a petition for review with the CTA within thirty (30) days after the expiration of the one hundred eighty (180)-day period; or (2) await the final decision of the CIR on the disputed assessment and appeal such final decision to the CTA within thirty (30) days after the receipt of a copy of such decision."

Here, the taxpayer filed his petition for review beyond the 180+30-day period since he erroneously believed that the filing of the Administrative Appeal gave the CIR a fresh or separate 180-day period. The CTA declared that since the 180+30-day period had already expired, the petition for review was prematurely filed and the *only* option for the taxpayer was to wait for the CIR's decision on Administrative Appeal before he can file an appeal to the CTA within 30 days from receipt of that decision.

4. Is a Certificate of Compliance from the Energy Regulatory Commission required for the availment of zero-rated Value Added Tax ("VAT") for sales of electricity and generation services?

Yes. In *First Gen Hydro Power Corporation v. Commissioner of Internal Revenue* (CTA EB No. 2456 [CTA Case No. 9889], August 18, 2022), the CTA En Banc clarified that for sales of electricity and generation services to qualify for VAT zero-rating, the VAT-registered taxpayer must comply with the requirement of submitting a Certificate of Compliance ("**COC**") issued by the Energy Regulatory Commission ("**ERC**") as required under the Electric Power Industry Reform Act ("**EPIRA**").

In this case, the taxpayer argued that it should be refunded the amount of ₱15,950,720.98, representing excess and unutilized input VAT attributable to its zero-rated sales to several entities (including Philippine Electric Market Corporation, Nueva Ecija II Electric Cooperative, and National Grid Corporation of the Philippines). The taxpayer asserted that the sale of power or fuel generated through renewable sources of energy should be entitled to VAT zero-rating even without the issuance and presentation of a COC issued by the ERC.

The CTA disagreed with the taxpayer and denied its claim for refund for failure to present a COC from the ERC. As provided under Section 108(B)(3) of the Tax Code, "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." The CTA held that based on this, the sale of electricity to the National Power Corporation ("**NPC**") is effectively VAT zero-rated since it consists of sales of services rendered to an entity exempted under special law. The NPC Charter, as amended by Section 10 of Presidential Decree No. 938, states that the NPC is exempted from "the payment of all forms of taxes, duties, fees, [and] imposts."

On the other hand, the CTA En Banc ruled that Section 6, in relation to Section 4 of the EPIRA provides that to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish that (a) it is a generation company, and (b) it derived sales from power generation. The CTA En Banc cited *CIR v. Toledo Power Company* (G.R. Nos. 196415 & 196451, December 2, 2015), where the Supreme Court ruled that "[u]nder the EPIRA, all new generation companies and existing generation facilities are required to obtain a COC from the ERC. New generation companies must show that they have complied with the requirements, standards, and guidelines of the ERC before they can operate. As for existing generation facilities, they must submit to the ERC an application for a COC together with the required documents within ninety (90) days from the effectivity of the EPIRA Rules and Regulations."

The CTA En Banc made a distinction between the requirements to qualify for VAT zero-rating for (a) sales of electricity and generation services made to the NPC directly, which do not require the submission of a COC issued by the ERC since these sales qualify for VAT zero-rating based on Section 108(B)(3) of the Tax Code and the NPC Charter, and (b) sales of electricity and generation services made to other entities, which require the presentation of a COC issued by the ERC.

We note, however, that the CTA En Banc failed to consider that the exemption from VAT of the NPC under the NPC Charter has been repealed by Republic Act No. 9337 or the Value-Added Tax Reform Act in 2005. Further, the petitioner's sale of hydropower is generated through renewable sources of energy and already qualifies for VAT zero-rating under Section 108(B)(7) of the Tax Code, and Section 15(g) of Republic Act No. 9513 or the Renewable Energy Act of 2008 ("**RE Act**"). Thus, for sale of power generated through renewable sources of energy, it appears that the requirements for VAT zero-rating under the EPIRA should no longer apply and there should be no distinction for the requirements to qualify for VAT zero-rating for sales of generated power made to the NPC and to other entities.

SyCipLaw TIP 4:

Taxpayers engaged in the sale of electricity and generation services must be aware of the additional requirements to qualify for VAT zero-rating under special laws. Under the EPIRA, these sales may only be subjected to zero-rated VAT after a COC has already been issued by the ERC, in addition to complying with the invoicing requirements provided under the Tax Code. The requirement on submission of the COC, however, will not apply to sales of electricity generated from renewable sources of energy, in which case, the requirements under the RE Act will apply. In such case, the developer of renewable shall qualify for VAT zero-rating after securing, among others, (1) Certificates of Registration from the Department of Energy ("DOE") and from the Board of Investments; and (2) a Certificate of Endorsement by the DOE pursuant to Revenue Regulations No. 7-2022 (discussed in detail in the July 2022 SyCipLaw TIPS).

A motion for reconsideration of the Decision is currently pending.

CTA decisions, while persuasive, do not become the law of the land, unlike decisions of the Supreme Court.

5.1 Has the suspension of tax audits and other field operations been lifted?

Yes, RMC No. 121-2022 dated August 22, 2022 lifted the suspension of field audit and other field operations on all outstanding Letters of Authority ("**LOA**")/Audit Notices and Letter Notices under RMC NO. 77-2022 dated May 30, 2022 issued under the previous administration. However, no LOAs, written order to audit and/or investigate taxpayers' internal revenue tax liabilities shall be issued and/or served except in the following cases:

a. Cases enumerated under RMC No. 77-2022:

   i. Investigation of cases prescribing on or before October 31, 2022;
   ii. Processing and verification of estate tax returns, donor's tax returns, capital gains tax returns, and withholding tax returns on the sale of real properties or shares of stocks, together with the documentary stamp tax returns related thereto;
   iii. Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business;
   iv. Audit of National Government Agencies, Local Government Units and Government Owned and Controlled Corporations including subsidiaries and affiliates; and
   v. Other matters/concerns where deadlines have been imposed or under the orders of the CIR.

b. In case of reissuance/s to replace previously issued LOA/s due to change of revenue officer and/or group supervisor.

SyCipLaw TIP 5:

The resumption of the conduct of BIR tax audits and enforcement activities and operations is inevitable. Taxpayers should expect the BIR to continuously intensify its efforts to improve tax collections. Hence, a taxpayer must always be prepared to show compliance with tax laws and regulations.

Errors in compliance, if there are any, must be corrected. For instance, errors in tax returns can be addressed by amending the return within three (3) years from the date of filing, provided that the taxpayer has not received any notice for audit or investigation of such return from the BIR. Errors in compliance, if they remain uncorrected, can be costly - requiring the payment of interest, surcharge, and even compromise penalty. Non-compliance, *e.g.,* failure to register as a taxpayer or failure to issue receipts/ invoices, can give rise to even worse consequences such as imprisonment.

5.2 Has the suspension of the conduct of enforcement and other field operations covered by outstanding mission orders ("MOs") and the prohibition on the issuance of new MOs been lifted?

Yes, RMC No. 127-2022 dated September 7, 2022 lifted and removed the suspension and prohibition of the following activities under RMC No. 77-2022:

a. All field audit and other field operations of the BIR covered by outstanding MOs authorizing the conduct of enforcement activities and operations of any kind, such as but not limited to ocular inspections, surveillance activities, stock-taking activities, and the implementation of the administrative sanction of suspension and temporary closure of business; and

b. The issuance of new MOs authorizing such activities and operations.

6. Are all receipts/invoices covered by the removal of the five (5)-year validity period on receipts/ invoices under Revenue Regulations ("RR") No. 6-2022 dated June 30, 2022?

No. RMC No. 123-2022 dated August 31, 2022 clarified that since RR No. 6-2022 dated May 23, 2022, which became effective on July 16, 2022, only receipts/ invoices with a validity date of July 16, 2022 and onwards are covered by the removal of the five (5)-year validity period and may still be issued until fully exhausted. On the other hand, all receipts/invoices which have expired on or before July 15, 2022 are no longer valid for use.

a. What should the taxpayer do with the unused/expired receipts/invoices?

All unused and expired receipts/invoices must be surrendered together with an inventory listing to the Revenue District Office where the Head Office or Branch is registered on or before the 10th day after the validity period of the expired receipts/invoices for the destruction of such receipts/invoices.

b. What are the consequences if a taxpayer continues to use the receipts/invoices that expired?

Issuing expired receipts/invoices is tantamount to use of unregistered receipts or invoices and the taxpayer who continues to do so shall be subject to penalty amounting to PhP20,000 for the first offense and PhP50,000 for the second offense.

c. How does RR No. 6-2022 affect the registration of Computerized Accounting System ("**CAS**")/ Computerized Books of Accounts ("**CBA**") and/or its Components?

The phrase, "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ACKNOWLEDGMENT CERTIFICATE" as previously required in Revenue Memorandum Order No 9-2021 shall no longer be required as a mandatory field to be reflected on the generated receipts/invoices.

d. How does RR No. 6-2022 affect the accreditation of Cash Register Machines ("**CRM**")/ Point-of-Sale ("**POS**") Machines and other sales receipting software?

All applications for accreditation of CRM/POS and other sales receipting software shall no longer require the phrases "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" and the "Valid Until (mm/dd/yyyy)" of the Permit to Use to be reflected on the footer of the generated receipts/ invoices.

e. How should taxpayers with registered CRM/POS Machines or CAS/CBA comply with the provision of RR No. 6-2022?

Taxpayers with registered CRM/POS Machines or CAS/CBA shall be required to reconfigure their CRM/POS Machines or CAS/CBA to remove the phrases "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ACKNOWLEDGMENT CERTIFICATE", "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE", and "Valid Until (mm/dd/yyyy)".

The reconfiguration must be done on or before December 31, 2022. The reconfiguration shall be considered as minor enhancements and written notifications to the concerned RDO shall no longer be required.

SyCipLaw TIP 6:

Taxpayers should check whether the receipts/ invoices that they continue to issue have a validity date of July 16, 2022 and onwards. They should likewise check the validity date of the receipts/ invoices that they receive from suppliers.

Issuing expired receipts/invoices are subject to penalties. Also, the expenses and the input value-added tax credit covered by such expired receipts/ invoices may be disallowed by the BIR.

7. May a Philippine corporation change the tax accounting treatment of certain of its assets, i.e., from inventory to fixed assets, to align with its foreign parent company's policy?

Yes, subject to consent of the BIR. In *BIR Ruling No. OT-353-2022* dated July 19, 2022, the BIR allowed Coca-Cola Femsa Philippines, Inc. ("**CCFPI**") to change the accounting treatment of its bottles and cases. CCFPI's old policy was to record the bottles and cases as 30% inventory and 70% fixed assets. Following a change in ownership, CCFPI needed to align the accounting treatment of its assets with the policy of its Mexican parent company which recorded the bottles and cases as 100% fixed assets.

The BIR likewise allowed CCFPI to claim depreciation, both for tax and financial accounting purposes, on the bottles and cases. However, since CCFPI continued to collect the deposit value of the bottles for every sale of Coke products in returnable glass bottles, the BIR ruled that amounts collected for unreturned bottles must be: (i) reported as part of CCFPI's income, and (ii) deducted from the depreciation expense claimed by CCFPI. The BIR cited Section 34(F) of the Tax Code, which allows as a depreciation deduction a reasonable allowance computed in accordance with rules and regulations for the exhaustion, wear and tear for property used in trade or business. Under current regulations, the BIR and the taxpayer may agree as to the estimated useful life and depreciation of any property. The rate agreed upon will be binding on both the taxpayer and the BIR.

SyCipLaw TIP 7:

While no single method of accounting may be prescribed for all taxpayers, the law allows each taxpayer to adopt such forms and systems of accounting as are in its judgment best suited to its purpose. When a taxpayer changes the method of accounting employed in keeping its books, such as when such methods need to conform to the policy of its parent company following a change in ownership, the taxpayer must first file an application to secure the consent of the CIR before adopting such new method in order to minimize risks of possible deficiency assessments from the BIR that such new accounting method may trigger. The application to change the method of accounting must be filed within 90 days after the beginning of the taxable year to be covered by the return and shall be accompanied by a statement specifying all amounts which would be duplicated or entirely omitted as a result of the proposed change.

8. Can a foreign corporation with tax residence in Hungary invoke the most-favored-nation ("MFN") clause under the Philippines-Hungary Tax Treaty and claim the lowest rate provided for royalties under the Philippines-United Arab Emirates ("UAE") Tax Treaty?

No. In *BIR Ruling No. ITAD 013-22* dated July 14, 2022, the BIR held that the MFN clause will not apply to the transaction involving Aviemore Holdings Limited Liability Company ("**Aviemore**"). Aviemore is a resident of Hungary and receives royalty income from the Philippines arising from the lease of its intellectual property.

Under Article 11(2)(b) of the Philippines-Hungary Tax Treaty, royalties arising in the Philippines and paid to a resident of Hungary are subject to tax at 15% or at the lowest rate of Philippine tax that may, under similar circumstances, be imposed on royalties derived by a resident of a third State. Aviemore invoked Article 12(2) of the Philippines-UAE Tax Treaty, which provides that royalties arising in the Philippines and paid to a resident of UAE are subject to a preferential tax rate of 10%.

The BIR declared that the applicability of the MFN clause is not automatic and is subject to certain conditions. The BIR, citing the case of *Cargill Philippines, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 203346, September 9, 2020), said two conditions must be met for the MFN clause to apply: (i) similarity in the subject matter, i.e., royalties derived from the Philippines by a resident of Hungary and of the third State must be of the same kind or class, and (ii) similarity in circumstances in the payment of tax, i.e., the tax consequences of royalty payments under the two treaties must be under similar circumstances. The taxpayer must show that the method employed for eliminating or mitigating the effects of double taxation under the treaty with Hungary and the third State are the same.

The BIR agreed that the first condition was satisfied in the case of Aviemore. However, the BIR did not agree that the methods employed for eliminating or mitigating the effects of double taxation under the tax treaties with Hungary and UAE are the same. The BIR compared the relevant provisions of the two treaties and found that while both countries adopt the credit method for eliminating double taxation, they differ as to the amount that may be credited. UAE uses the full credit method, while Hungary employs the ordinary credit method which limits the tax credit to only that part of its own tax which is appropriate or proportionate to the Philippine-sourced income. Thus, the BIR concluded that the second condition was not complied with, and the MFN clause cannot apply.

SyCipLaw TIP 8:

In order to successfully invoke the MFN clause under the applicable tax treaties, a taxpayer must show that there is similarity not only in the subject matter, but also in the circumstances with regard to the payment of tax in the countries involved. A close scrutiny of the relevant provisions of tax treaties is crucial to check whether the same mechanism is employed by the contracting state and the third State in mitigating the effects of double taxation.

For feedback, please e-mail info@syciplaw.com.