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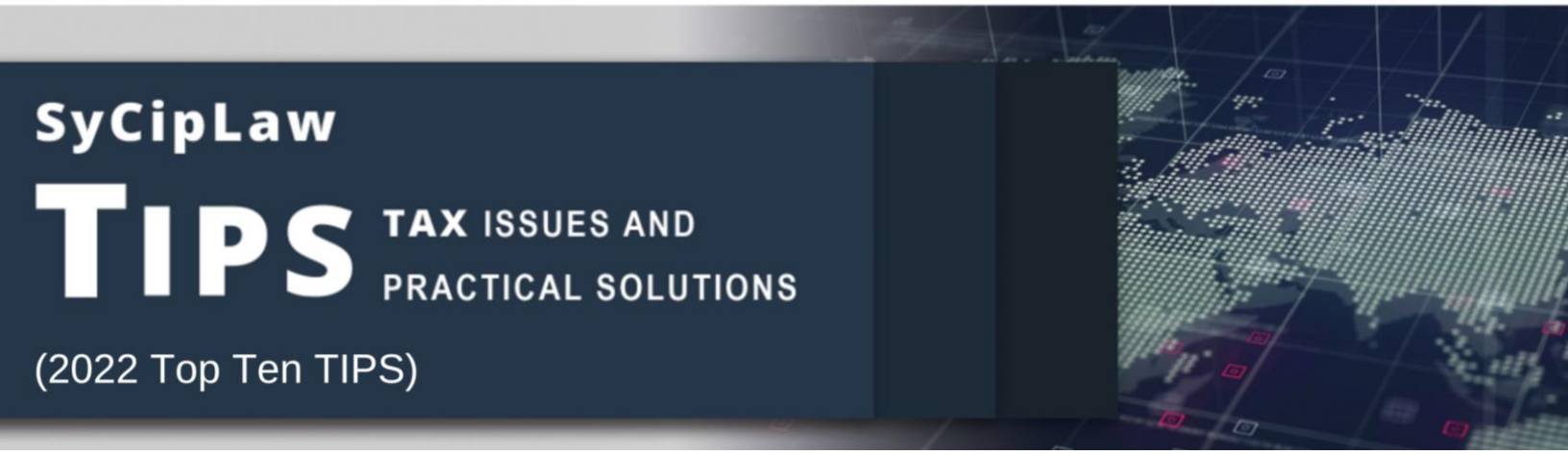

February 2022

1. Filing of Requests for Confirmation, Tax Treaty Relief Applications, and Tax Sparing Applications Made Easy

In 2021, the BIR issued Revenue Memorandum Order *(RMO)* No. 14-2021 to streamline the procedures and requirements for the availment of tax treaty benefits. A prior application with the BIR for tax treaty relief is no longer required. Instead, withholding agents or income payors may apply the applicable tax treaty rates to income payments made to non-resident payees provided that they file with the BIR after the end of their taxable year a consolidated request for confirmation *(RFC)* of the applicability of such treaty rates. If, on the other hand, the withholding agent applies the regular rates under the Tax Code to income payments made to a non-resident payee, the latter may file a tax treaty relief application *(TTRA)* to confirm the payee's entitlement to tax treaty benefits if it wants to get a refund for the excess income taxes withheld. The non-resident income payee may already file a claim for refund together with the TTRA, but the claim for refund will be processed only after non-resident income payee's entitlement to the tax treaty benefit has been confirmed.

The BIR will issue a Certificate of Entitlement to Treaty Benefit *(COE)* if the RFC or TTRA is approved. There are two types of COEs: (i) COEs for recurring transactions (applicable to income such as dividends, branch profit remittances, interest, royalties); and (ii) COEs for a particular transaction or for a period of engagement (applicable to business profits, capital gains, income from services).

In February 2022, the BIR issued Revenue Memorandum Circular (*RMC*) No. 20-2022 to clarify that taxpayers who were already issued COEs for recurring transactions no longer need to file an RFC or TTRA every time income of a similar nature is paid to the same non-resident payee. This is intended to ease the volume of applications filed with and processed by the BIR as it was observed that more than 50% of the requests filed with it are in respect of recurring transactions.

Notwithstanding this, the withholding agent or income payor must still comply with the requisites mentioned in the COE every time a payment is made to the non-resident. As an example, RMC No. 20-2022 provides that if the COE mentions tax residency as a requirement for the availment of the tax treaty benefit, the withholding agent or income payor must require the non-resident payee to submit a Tax Residency Certificate for the relevant year before making any payment to the non-resident payee. The same principle applies to the Certificate of Entitlement to the Reduced Dividend Rate issued for tax sparing applications.

If the requirements set out in the COE issued by the BIR are not present (for example, because there is a change in the tax residence), then the taxpayer must file a new RFC, TTRA, or tax sparing application. The withholding agent or income payor should keep records of the COEs and proof of satisfaction with the requisites laid down in the COEs for purposes of tax audits.

In case of non-recurring transactions, the taxpayer must follow the procedure in RMO No. 14-2021 and RMC No. 77-2021 when filing its RFC or TTRA.

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For transactions involving long-term contracts (i.e., contracts effective for more than a year), which require annual updates to be submitted to the BIR until the termination of the contract, RMC No. 20-2022 specifies the relevant documents to be submitted for purposes of the annual update.

SyCipLaw TIP 1:

While, in recurring transactions, a withholding agent or income payor is no longer required to secure a COE each time it makes the same nature of payment to the same non-resident payee, the withholding agent or income payor must ensure that (i) the COE it has already obtained expressly provides that the COE applies to future payments to the same non-resident payee; (ii) the facts and circumstances under which the COE was issued are the same as those present when a payment is to be made; (iii) all the conditions and documentary requirements set out in the COE are in place when the payment is made; and (iv) all relevant documents and records are preserved and can be presented in case of a tax audit. Failure to comply with the requisites in the COE will expose the withholding agent or income payor to deficiency withholding taxes notwithstanding that it has secured a COE for the transaction.

2. RBE's VAT Zero-rating under CREATE

March 2022

2a. Clarifications on Revenue Regulations No. 21-2021 on VAT zero-rated transactions under the CREATE Act

Prior to the Corporate Recovery and Tax Incentives for Enterprises (*CREATE*) Act, the Philippines adhered to the cross-border doctrine where Ecozones and Freeport zones are considered as foreign territories, even if they are situated within the Philippines. In effect, the sale of goods and services by a VAT-registered seller to registered enterprises in Ecozones and Freeport zones are treated as constructive exports subject to 0% VAT. However, in RMC No. 24-2022, the BIR declared that the cross-border doctrine has been rendered ineffectual and inoperative for VAT purposes under the CREATE Act. This confirms the BIR's position on whether the cross-border doctrine will still apply notwithstanding that Economic zones and Freeport zones are recognized and managed as separate customs territories under the law creating them and such provisions were not repealed by the CREATE Act.

Based on current law and regulations, only goods and services that are directly and exclusively used in the registered project or activity of Registered Business Enterprises (*RBEs*) qualify for VAT zero-rating on local purchases.

Direct and exclusive use

Under Revenue Regulations (*RR*) No. 21-2021, "direct and exclusive use in the registered project or activity" refers to "raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out." RMC No. 24-2022 further clarified that expenses for administrative purposes are excluded from the

definition and that registered export enterprises should adopt a method for allocating local purchases between those used in the registered export enterprise's registered project or activity and for administrative purposes. If the local purchases are used in both the registered export enterprise's registered project or activity and for administrative purposes and the proper allocation cannot be made, the local purchase will be subject to the 12% VAT.

RMC No. 24-2022 also defined the term "other expenditures" as costs that are indispensable to the project or activity which include expenses that are necessary or required to be incurred depending on the nature of the registered project or activity of the export enterprise. The RMC expressly mentions that services for administrative expenses such as legal, accounting, and other related services are not considered expenses directly attributable to and exclusively used in the registered project or activity.

We note that, similar to the definition of "direct and exclusive use" in the amendment to the implementing rules of the CREATE Act, RMC No. 24-2022 also uses the term "directly attributable" to describe what is meant by other expenditures that are "directly and exclusively used" in a registered export enterprise's registered project or activity. The use of the term "directly attributable to and exclusively used" appears to be less restrictive than the term "direct and exclusive use" and could cover a broader range of expenditures. However, we note that the term "attributable" is not found in the CREATE Act. Thus, it is still not clear how the BIR will view the VAT treatment of local purchases during audit if a registered export enterprise claims that a local purchase of goods or services is VAT zero-rated since it is directly attributable to its registered project or activity.

Supporting documents

Prior to the transaction, a registered export enterprise must provide its suppliers with a photocopy of its (i) BIR Certificate of Registration (BIR Form No. 2303); (ii) Certificate of Registration and VAT certification issued by the concerned Investment Promotion Agency (*IPA*); and (iii) a sworn declaration stating that the goods and/or services being purchased shall be used directly and exclusively in the registered export enterprise's registered project. The suppliers must also secure prior approval from the BIR in order that their sales to the registered export enterprises will be accorded the VAT zero-rating. Without the prior approval of the BIR, the suppliers run the risk that their VAT zero-rated sales will be disallowed. The suppliers will also be required to submit the approved application for VAT zero-rating if they file a claim for refund of input VAT under Section 112(A) of the Tax Code.

Input VAT recovery

In cases where VAT is erroneously passed on by a local supplier to a registered export enterprise, the latter can seek reimbursement from the former and the previously issued invoice or receipt to the registered export enterprise must be returned to the local supplier for cancellation and replacement.

If VAT is paid or incurred for purchases not directly and exclusively used in the registered project or activity of the registered export enterprise, the registered export enterprise may (i) claim the VAT as an input VAT credit under Section 110 if it is also enjoying the income tax holiday incentive; (ii) file a claim for VAT refund upon expiration of its VAT registration if the registered export enterprise has no sales subject to VAT; or (iii) charge the VAT to cost or expense account if it is non-VAT registered.

If the RBE is categorized as a Domestic Market Enterprise (*DME*), the DME is not entitled to VAT zero-rating on its local purchases. Sales of goods or services to a registered DME are subject to 12% VAT. The registered DME may recover the input VAT by (i) deducting the input VAT against its output VAT, if VAT-registered; (ii) filing a claim for refund if it has zero-rated sales; or (iii) charge the VAT to cost or expense account if it is non-VAT-registered.

VAT treatment on the sale of goods and services during the effectivity of RR No. 9-2021

RMC No. 24-2022 also seeks to clarify the VAT treatment for the sale of goods and services during the effectivity of RR No. 9-2021 (i.e., from June 27, 2021 to June 30, 2021) and sales during the effectivity of RR No. 9-2021 but covered by the retroactive application of RR No. 21-2021 (i.e., from July 1, 2021 to July 27, 2021). RR No. 9-2021 implemented the TRAIN Law provision subjecting to 12% VAT certain transactions that were previously subject to 0% VAT. For sales of goods and services that transpired from June 27, 2021 to June 30, 2021, such sales should be subject to l2% VAT. If the sales transpired from July 1, 2021 to July 27, 2021, the seller and the purchaser have the option to treat the transaction as either subject to 12% VAT or revert the transaction from being subjected to 12% VAT to 0% VAT.

SyCipLaw TIP 2a:

Registered export enterprises and their suppliers may still have concerns regarding the implementation of the changes to the VAT incentives brought about by the TRAIN Law and the CREATE Act with the issuance of RMC No. 24-2022. Registered export enterprises would likely wish to be able to avail themselves of the VAT incentive and may be more inclined to argue that an expenditure qualifies for VAT zero-rating, while suppliers may be more inclined to adopt a cautious approach since the wrong VAT treatment can result in deficiency VAT assessments against the suppliers. The RMC also does not provide much by way of guidance where a service incurred is arguably related or is attributable to a registered activity. For example, legal advice sought in connection with a lease contract of a registered export enterprise located in an ecozone or research and development costs incurred for the enhancement of a registered project or activity would appear to be directly used in the registered business or activity of the enterprise. In the meantime, affected taxpayers will have to be guided by the rules and procedures set out in RMC No. 24-2022 to minimize non-compliance issues.

April 2022

2b. What are the latest updates on the VAT rules under the CREATE Act and its implementing rules?

The BIR issued RMC No. 49-2022 to amend certain portions of RMC No. 24-2022 which clarified issues relative to RR No. 21-2021 and certain issues pertaining to the effectivity and VAT treatment of transactions by RBEs, particularly the registered export enterprises.

The issuance of RMC No. 49-2022 was in response to the request of taxpayers affected by the deferment of RR No. 9-2021, which provided for the imposition of 12% VAT on certain transactions that were taxed at zero percent (0%) VAT under the Tax Code, and to align RMC No. 24-2022 with the provisions of the CREATE Act and its implementing rules and regulations.

VAT sales during the deferment of RR No. 9-2021: Q&A No. 10

The BIR recognized that there are transactions other than the sales of goods and services to registered export enterprises and DMEs located in Ecozones and Freeport zones that may have been affected by the deferment of RR No. 9-2021. RMC No. 49-2022 confirmed that the non-retroactivity provision under Section 246 of the Tax Code will apply; thus, all transactions that have been treated by the seller as VAT zero-rated for the period July 1, 2021 to December 9, 2021 will remain VAT zero-rated, even if the transactions are not qualified for VAT zero-rating.

If the seller applied the 12% VAT to the said transactions, the seller has the option of retaining the 12% VAT declaration or reverting the transaction from VATable to VAT zero-rated.

Sale of goods and services by DMEs located in Ecozones or Freeport zones: Q&A No. 17

RMC No. 49-2022 clarified the VAT treatment of sales by registered non-export locators or domestic market enterprises (*DMEs*) located in Ecozones and Freeport zones depending on whether the sellers were registered prior to the CREATE Act or during its effectivity.

If the *seller is registered prior to the CREATE Act*, its sales of goods may be exempt from VAT, zero-rated, or subject to VAT depending on the buyer of these goods and whether the seller is under the 5% Gross Income Tax (*GIT*) regime or under the income tax holiday (*ITH*). Below are the applicable VAT treatment:

- **VAT Exempt** – Sales of DME-locators under the 5% GIT regime to the extent of their registered activity to enterprises inside the Ecozones or Freeport zones or from the customs territory.
- **0% VAT** – Sales of DME-locators under the ITH regime to registered export enterprises provided that these goods are directly and exclusively used in the latter's registered activity.
- **12% VAT** – Sales of DME-locators under the ITH regime to non-export locators or DMEs within the Ecozones and Freeport zones, and to enterprises from the customs territory.

If the *seller is registered during the effectivity of the CREATE Act*:

- **0% VAT** - Sales to registered export enterprises provided the goods and services are directly and exclusively used in the registered project or activity.

- **12% VAT** - Sales to DMEs within the Ecozones and Freeport zones, and to enterprises from the customs territory.

Change of registration from VAT to non-VAT: Q&A No. 31

Under RMC No. 24-2022, registered export enterprises shifting from the ITH to the 5% GIT or Special Corporate Income Tax (*SCIT*) regime or already enjoying 5% GIT regime but are still VAT-registered at the time the CREATE Act took effect have two (2) months from the expiration of their ITH or the effectivity of RMC No. 24-2022, respectively, to change their registration status from a VAT-registered entity to non-VAT. However, RMC No. 49-2022 clarified that if the registered export enterprise has activities other than those registered with the IPA that are subject to VAT (i.e., VAT at 12% and 0%), it must remain a VAT taxpayer and report the sales in the VAT returns as VATable, zero-rated and/or VAT-exempt, as the case may be.

Prior approval for VAT zero-rating: Q&A No. 33

While RMC No. 24-2022 emphasized that the registered export enterprise's local supplier of goods/services should secure prior approval from the BIR for its sales to be accorded VAT zero-rating, RMC No. 49-2022 clarified that for sales transactions that are qualified for VAT zero-rating but the taxpayer failed to secure an approved application for VAT zero-rating with the BIR, prior application may not be required until March 9, 2022 (the date of effectivity of RMC No. 49-2022), provided the sellers have the following documents: (i) certificate of registration and VAT certification issued by the IPA where their export enterprise buyers are registered; (ii) sworn affidavit executed by the registered export enterprise-buyer, stating that the goods and/or services bought are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, and the percentage of allocation to be directly and exclusively used for the production of goods and/or completion of services to be exported; and (iii) other documents to corroborate entitlement to VAT zero-rating such as but not limited to duly certified copies of purchase orders, job orders or service agreements, sales invoices and/or official receipts, delivery receipts, or similar documents to prove existence and legitimacy of the transaction.

SyCipLaw Tip 2b:

Non-export locators should be guided by the provisions of RMC No. 49-2022 in determining whether their sales of goods/services are VAT exempt, VAT zero-rated, or VATable. A distinction must be made between businesses that have registered prior to the CREATE Act and after its effectivity, since DMEs under the CREATE Act can no longer have sales that are exempted from VAT. Local suppliers of goods/services must note that prior approval from the BIR is necessary to validate whether the requisites are complied with before the availment of the zero-rating incentive by the supplier of the registered export enterprise.

However, qualified sales transactions that occurred prior to the effectivity of RMC No. 49- 2022 may not require prior application provided that the seller is still able to present the documents required by the BIR in the application for VAT zero- rating.

Update: The BIR issued RMC No. 152-2022 dated December 7, 2022 further clarifying the implementation of the transitory provisions of RR No. 21-2021 as explained by RMC Nos. 24-2022 and 49-2022. RMC No. 152-2022 will be discussed in the January 2023 edition of TIPS.

July 2022

2c. Is there a prescribed format for the sworn declaration to be executed by RBEs to avail themselves of the VAT zero-rating on their local purchase of goods and services?

Yes. RMC No. 84-2022 provided the template for the sworn declaration to be executed by RBE.

The sworn declaration is submitted pursuant to RMC No. 24-2022, which provides that prior to a transaction, the RBE must provide suppliers with a photocopy of the RBE's BIR – Certificate of Registration (BIR Form No. 2303), VAT certification issued by the concerned IPA, and the sworn declaration to avail of the VAT zero-rate incentives.

In the sworn declaration, the RBE must provide a description of its registered project or activity and the goods or services purchased and expressly state that the goods or services purchased from its suppliers are indispensable to the RBE's registered project or activity without which the project or activity cannot be carried out. The RBE will also declare, under the penalty of perjury, that the attestations in the sworn declaration are true and correct to the best of its knowledge and belief.

SyCipLaw TIP 2c:

RBEs must take careful consideration when issuing the sworn declaration given the possibility of a perjury charge for untruthful statements in the sworn declaration. It is not clear whether a finding from the BIR that the goods or services purchased are not directly or exclusively used in the RBE's registered project or activity will subject the declarant to any criminal charge for perjury. The affirmation appears to be tempered by the phrase that the statements made in the sworn declaration are based on the declarant's best knowledge and belief and may be raised as a defense by the declarant. A perjury charge will require proof beyond reasonable doubt that the false statement was made willfully and deliberately.

May-June 2022

3. Can an officer of a corporation be held criminally liable for the corporation's failure to pay taxes solely on the basis of a letter to the BIR signed by such officer expressing the corporation's willingness to enter into a compromise?

No. A letter to the BIR signed by a corporate officer expressing their willingness to enter into a compromise cannot be considered as an implied admission of guilt of the corporate officer, as the Tax Code, as amended expressly allows a compromise even for violations of its penal provisions.

In *Genoveva S. Suarez v. People of the Philippines and the Bureau of Internal Revenue* (G.R. No. 253429, October 6, 2021), the Supreme Court ruled that the petitioner, who was the Executive Vice-President of a corporation assessed for deficiency taxes, cannot be held liable under Section 255 in relation to Sections 253(d) and 256 of the Tax Code. Section 253 expressly identified the following corporate officers who may be held liable for violations of the Tax Code committed by the corporation: partner, president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation. An Executive Vice-President is not one of the corporate officers enumerated under the Tax Code. Further, the petitioner cannot be regarded as an employee responsible for the violation, as there was no evidence presented that the petitioner has actively participated in or has failed to prevent the violation of the corporation. Lastly, the letter to the BIR expressing her willingness to settle the corporation's tax liabilities through compromise canned be used as an implied admission of guilt pursuant to the provisions of the Rules on Evidence. Offers of compromise for matters that are allowed by law to be compromised cannot be received in evidence as an implied admission of guilt. The Tax Code explicitly states that all criminal violations of the Tax Code may be compromised except: (a) those already filed in court, or (b) those involving fraud. Thus, the Tax Code itself allows compromise even for violations of its penal provisions.

SyCipLaw TIP 3:

For a corporate officer to be held liable for the corporation's violations of the Tax Code, the officer must have been the employee or officer responsible for the violation. Absent any evidence that the corporate officer has actively participated in or has failed to prevent the violation by the corporation, the officer cannot be considered as an employee responsible for the violation. A letter by the officer to the BIR expressing their willingness to settle the corporation's tax liabilities through compromise cannot be considered as an implied admission of guilt of the corporate officer or the corporate taxpayer.

July 2022

4. May a taxpayer await the decision of the Commissioner of Internal Revenue (CIR) on an administrative appeal of a denial of protest before filing a petition for review despite the issuance of the Preliminary Collection Letter, the Final Notice Before Seizure and the Warrant of Distraint and/or Levy?

Yes. In *Light Rail Transit Authority v. Bureau of Internal Revenue* (G.R. No. 231238, June 20, 2022), the Supreme Court held that in cases of inaction by the CIR on appeals of denials of protest, the taxpayer has the "option" to await the CIR's decision on appeal before filing a petition for review before the Court Tax Appeals (*CTA*). The Supreme Court held that the petition for review can be filed notwithstanding the expiration of the 180-day period for the CIR to resolve protests of assessments.

In *Light Rail Transit Authority (LRTA)*, the Regional Director issued a final decision on disputed assessment (*FDDA*) denying LRTA's protest to the formal assessment notice. LRTA assailed the FDDA by filing an administrative appeal to the CIR. Pending resolution of the taxpayer's appeal of the FDDA, the Revenue District Officer issued a Preliminary Collection Letter, followed by a Final Notice Before Seizure and a Warrant of Distraint and/or Levy. After some time, the Regional Director, acting on the appeal of LRTA to the CIR declared the case final, executory, and demandable (*Denial of the Administrative Appeal*). LRTA received the Denial of Administrative Appeal on August 12, 2014 and filed a Petition for Review before the CTA on September 11, 2014, or within 30 days from the receipt of the denial. Acting upon the motion to dismiss filed by the CIR, the CTA dismissed the case for lack of jurisdiction.

Under the circumstances, the Supreme Court finds that the CTA erred in dismissing the case for lack of jurisdiction. The Supreme Court held that if the denial of the protest is elevated to the CIR, the protest shall be decided by the CIR. The FDDA was timely elevated to the CIR; hence, it never became final, executory, and demandable. As shown by the taxpayer's replies to the Revenue District Officer when the latter issued the Preliminary Collection Letter and Final Notice Before Seizure, the taxpayer genuinely chose to await the CIR's final decision on its appeal. In both reply letters, the taxpayer said that "it will act on the matter as soon as we receive the CIR's decision on our appeal." The option was made in good faith, not as an afterthought or "legal maneuver" to claim that the assessment had not yet become final.

Furthermore, considering that the taxpayer awaited the decision of the CIR on its appeal, it is immaterial that it filed its Petition for Review beyond the 180-day period for the BIR to act on disputed assessments.

The Supreme Court said that contrary to the ruling of the Court of Tax Appeals En Banc, the Final Decision on Disputed Assessment cannot be considered as the decision appealable to the Court of Tax Appeals under Section 7(a)(1) of Republic Act No. 1125, as amended. This interpretation will render nugatory the remedy of appeal to the Office of the CIR of the denial of protest issued by his or her duly authorized representative, a remedy which was properly and timely availed of by the taxpayer. Subsection 3.1.5 of Revenue Regulations No. 12-99 is clear that if the protest is elevated to the CIR, "the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner." The FDDA was timely elevated to the CIR; hence, it never became final, executory, and demandable.

Neither can the 30-day period for filing a petition for review be reckoned from the taxpayer's receipt of any of the following issuances: the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy. Like the Final Decision on Disputed Assessment, these were not final decisions on the appeal by the CIR. They remained tentative given the pendency of the taxpayer's appeal with the CIR. More importantly, all of these were issued on the premise that "delinquent taxes" exist, an incorrect premise.

SyCipLaw TIP 4:

If a taxpayer administratively appeals the denial of its protest to the CIR, but receives a Warrant of Distraint or a Preliminary Collection Letter, the taxpayer may still await the final decision of the CIR on the disputed assessments before filing a petition for review with the Court of Tax Appeals. While the first paragraph of the LRTA decision seems to suggest that the taxpayer has the "option" to wait, suggesting that the taxpayer has also an option to file a petition for review without waiting for the decision of the CIR, the Supreme Court has ruled that the Preliminary Collection Letter, the Final Notice Before Seizure, the Warrant of Distraint and/or Levy are not final decisions of the CIR and are in fact void. A taxpayer may have to wait for the final decision of the CIR before filing a petition for review if the basis of the CTA's jurisdiction is anchored on "[d]ecisions of the Commissioner of Internal Revenue in cases involving disputed assessments." If the taxpayer does receive a warrant of distraint or preliminary collection letter, it should inform the office that issued the warrant or letter that it has filed an administrative appeal and is awaiting the CIR's decision on such appeal.

August 2022

5. Can the reversal of a Bureau of Internal Revenue ruling be given retroactive application if the same would be prejudicial to the taxpayer?

No. Section 246 of the Tax Code, as amended, prohibits the retroactive application of a reversal of a BIR ruling if the same would be prejudicial to the taxpayer, unless the exceptions under the provision are present, namely, misstatement or misrepresentation of material facts and bad faith. Any change of opinion or position by the CIR with respect to a BIR ruling, which is prejudicial to the taxpayer, shall only be applied prospectively.

In *Commissioner of Internal Revenue v. Meridien East Realty & Development Corporation* (CTA EB No. 2287 [CTA Case No. 9130], July 14, 2022), the CTA En Banc rejected the retroactive application of RMC No. 20-2010, which overturned BIR Ruling No. DA-245-05. In the BIR ruling, the BIR initially opined that the transaction was not a sale subject to income tax, expanded withholding tax, documentary stamp tax, and value-added tax. However, the RMC abandoned the prior position and set out a new one declaring that the transaction was part of a pre-selling arrangement, hence, subject to the aforementioned taxes. Accordingly, the retroactive application of the RMC would be prejudicial to the taxpayer.

In this case, the CTA En Banc ruled that the CIR failed to prove the existence of any of the exceptions under Section 246 of the Tax Code, as amended, which would allow retroactive application of the RMC. The CIR failed to adduce evidence that: (1) the taxpayer deliberately misstated or omitted material facts from its return or in any document required of it by the BIR; (2) the facts subsequently gathered by the BIR are materially different from the facts on which the BIR ruling was based; or (3) that the taxpayer acted in bad faith. The CTA En Banc found that the change of position made by the CIR was not brought about by a subsequent learning of a fact misrepresented or withheld by the taxpayer. Rather, the reversal was merely due to a change of opinion by the CIR on the tax consequences of the same set of facts, which the taxpayer presented in obtaining the ruling. Thus, the deficiency tax assessments against the taxpayer were declared null and void as they arose from the retroactive application of the RMC.

SyCipLaw TIP 5:

A taxpayer has the right to rely upon a BIR ruling issued in his favor until the same has been reversed, amended or overruled by the CIR or by the Supreme Court. However, a reversal of a BIR ruling cannot be retroactively applied if doing so would be prejudicial to the taxpayer, unless the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the BIR, the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based, or the taxpayer acted in bad faith in securing the BIR ruling. While the general rule is that the government cannot be estopped by mistakes or errors by its officials or agents, this rule is not without an exception. The doctrine of equitable estoppel may be invoked against public authorities where the interest of justice clearly requires it, such as in this case.

September 2022

6. 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 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 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.

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.

SyCipLaw TIP 6:

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.

September Supplement

7. Work-from-home Arrangement and Transfer of Registration of Registered Business Enterprises in the IT-BPM Sector

7a. Are RBEs in the Information Technology-Business Process Management (IT-BPM) allowed to adopt a work-from-home arrangement beyond September 14, 2022?

Yes. The Fiscal Incentives Review Board (*FIRB*) issued a Resolution dated September 14, 2022 which further extended the effect of FIRB Resolution No. 17-2022 which temporarily allows RBEs in the IT-BPM sector to adopt a 70-30 work-from-home (WFH) arrangement. RBEs in this sector are allowed to adopt WFH arrangements not exceeding 30% of their total workforce **until December 31, 2022**. With this Resolution, the FIRB recognizes that there is a pressing need to address the request of RBEs in the IT-BPM sector to adopt more flexible work arrangements on a long-term basis. Notwithstanding this, RBEs must still comply with the conditions prescribed in the earlier FIRB Resolutions No. 19-21, 17-22, and other relevant issuances.

Under FIRB Resolution No. 17-22, the number of employees under a WFH arrangement must not exceed 30% of the total workforce of the RBE, while the remaining 70% of the total workforce must render work or service within the geographical boundaries of the Ecozone or Freeport zone being administered by the IPA where the project/activity is registered. The term "total workforce" refers to the total employees that are directly or indirectly engaged in the registered project or activity of the RBE and does not include third-party contractors rendering janitorial or security services and other similar services.

SyCipLaw TIP 7a:

RBEs should carefully monitor the 70-30 WFH ratio to continue availing themselves of their fiscal and non-fiscal incentives. Since the FIRB adopted Resolution No. 26-2022 as a temporary measure only, RBEs should be prepared to conduct their operations exclusively within the Ecozone or Freeport zone once the period allowing the 70:30 WFH arrangement expires on January 1, 2023 to minimize disruptions to their operations and avoid the imposition of penalties under Revenue Memorandum Circular No. 120-2022 (discussed in our August TIPS).

7b. Can RBEs in the IT-BPM sector transfer their registration from the IPA administering an Ecozones **or Freeport zone where their project is located, to the Board of Investments (BOI) without losing their tax incentives?**

Yes. FIRB Resolution No. 26-2022 has granted RBEs in the IT-BPM sector the option to transfer their registration from the IPA administering an Economic zone or Freeport zone (e.g., Philippine Economic Zone Authority or PEZA) to the BOI until December 31, 2022. However, only those RBEs with remaining tax incentives under Section 311 of the Tax Code, as amended, or those with approved incentives on or before September 14, 2022 under the CREATE Act shall be allowed to transfer their registration. Although RBEs registered with the IPA and the BOI would be receiving the same incentives under the CREATE Act, what makes this an attractive option is that RBEs that transfer their registration to the BOI will be able to adopt a 100% WFH arrangement beyond December 31, 2022.

The monitoring of the RBE's compliance and availment of their remaining incentives remains with the IPA where they are located even after the transfer of the RBE's registration to the BOI.

SyCipLaw TIP 7b:

RBEs in the IT-BPM sector who are unable to comply with the 100% onsite work arrangement by January 1, 2023 should carefully consider the option of transferring their registration to the BOI. Unless further extended by the FIRB, this option granted to RBEs in the IT-BPM sector to transfer registration to the BOI is merely a temporary option and is available only until December 31, 2022. RBEs should act without delay in order to meet the December 31, 2022 deadline to transfer their registration to the BOI.

Update: The FIRB issued Resolution No. 033-2022 dated December 23, 2022, extending the effectivity of FIRB Resolution No. 26-2022, and allowing existing RBEs in the IT-BPM sector to transfer their registration from an IPA to the BOI until **January 31, 2023**.

7c. What are the guidelines for the transfer of registration of RBEs in the IT-BPM sector from an IPA to the BOI?

The Department of Trade and Industry (*DTI*) issued DTI Memorandum Circular No. 22-19 series of 2022 on October 18, 2022, which provides the guidelines on the registration with the BOI of existing RBEs in the IT-BPM sector pursuant to FIRB Resolution No. 26-22. Below are the procedures for the transfer of registration to the BOI:

1. The affected RBE must file its request with the concerned IPA using the prescribed Request to Register with BOI Form;

2. The concerned IPA shall endorse to the BOI Infrastructure and Services Industries Service (ISIS) the request and provide the following documents:

    a. Scanned copy of the RBE's original Certificate of Registration with Terms and Conditions or Agreement issued by the concerned IPA; and

    b. Scanned copy of the "Request to Register with BOI Form" duly accomplished by the RBE.

    The endorsement by the concerned IPA shall be treated as a certification of its non-objection on the registration with the BOI and that the RBE is compliant with the terms and conditions of registration and is in good standing.

3. After compliance with the required endorsement and payment of the PhP2,250 fee, the BOI will issue the BOI Certificate of Registration indicating the remaining tax incentives and the period of entitlement thereof. The BOI Certificate of Registration shall include an annotation of the original IPA Certificate of Registration. The original Certificate of Registration issued by the IPA shall likewise include a corresponding annotation of the BOI Certificate of Registration.

4. The concerned IPA will continue to administer the remaining incentives of the transferee RBEs within the corresponding period of entitlement as indicated in the issued BOI Certificate of Registration.

5. The concerned IPA will monitor the transferee RBEs' compliance with the terms and conditions of registration. The BOI, when necessary, may require the concerned IPA to provide a report on the compliance of the RBEs and their tax incentives availment.

    Any findings of violations decided by the concerned IPA or by final resolution of the courts affecting the operations of the project shall be immediately reported by the RBE or concerned IPA to the BOI. Any misrepresentation or falsification in the documents or other supporting papers submitted to the BOI, or failure to maintain qualifications for registration shall constitute a ground for cancellation of the registration.

6. The transferee RBE shall ensure that the number of its laptops/other equipment outside the Ecozone or Freeport does not

exceed the number of its employees under the WFH arrangement. Upon approval of the concerned IPA, additional laptops/other equipment may be allowed if reasonably needed to perform the registered project or activity.

Within 30 days from the issuance of the BOI Certificate of Registration, covered RBEs shall submit to the concerned IPA a list of equipment/other assets brought of the Ecozone or Freeport, including the quantity, acquisition cost, book value, year of acquisition, and the total number of employees under the WFH arrangement.

No bond is required for the movement of equipment within and outside the Ecozones or Freeports.

The BOI and concerned IPA, in coordination with the FIRB Secretariat, will, when necessary, provide any additional procedures and mechanisms to carry out the transfer of registration of RBEs in the IT-BPM sector.

After the lapse of the periods of the remaining tax incentives, the existing registered projects of the transferee RBEs will not be entitled to additional incentives but they may be eligible to apply if the activity is listed in the Strategic Investment Priority Plan (*SIPP*) and there is a new investment or qualified expansion.

SyCipLaw TIP 7c:

RBEs in the IT-BPM sector who wish to transfer their registration to the BOI are required to secure the endorsement of the IPA, which must certify that the RBE is compliant with the terms and conditions of its registration and is in good standing. RBEs wishing to apply for a transfer of registration should assess their compliance with their Registration Agreement/Supplemental Agreement and the rules and regulations as well as reporting and other obligations with the IPA. Any non-compliance should be promptly remedied to avoid delays in obtaining the favorable endorsement of the IPA.

8. Taxation of Equity-based Compensation

October 2022

8a. Is equity-based compensation received by supervisory or managerial employees still taxed as fringe benefits?

No, not anymore. Beginning October 29, 2022, which is the effective date of RR No. 13-2022, equity-based compensation received by both managerial and supervisory employees as well as rank-and-file employees, once exercised or availed of by the employee, are considered compensation taxable under Section 32 of the Tax Code, as amended.

Prior to RR No. 13-2022, RMC No. 79-2014 provided preferential treatment to equity-based compensation received by supervisory or managerial employees, which were excluded from compensation and subjected to the fringe benefits tax paid by the employer. RR No. 13-2022 has removed this distinction, hence, equity-based compensation, whether in the form of stock options, restricted share awards, stock appreciation rights, or restricted stock units, will be subject to income tax and consequently, to withholding tax, on compensation, upon the exercise by the employee, regardless of rank. Once exercised or availed of by the employee, the stock option or award is considered additional compensation equivalent to the difference of the book value or fair market value of the shares, whichever is higher, at the time of the exercise of the stock option, and the price fixed on the date that it was granted.

Note that the reporting requirements under RMC No. 79-2014 are retained, including the submission by the issuing corporation of a statement under oath containing mandatory information regarding the stock option within 30 days from the grant of the option and the additional report within 10 days from the exercise of the option.

SyCipLaw TIP 8a:

With the issuance of RR No. 13-2022, the burden of taxes is shifted from the employer to the employee holding a supervisory or managerial role, since the additional compensation received after the option is exercised is no longer subject to fringe benefits tax but to withholding tax on compensation. Although the shift in the treatment of equity compensation may be less costly to the employer, companies should explore how to better design stock option plans for their employees considering that, taxwise, receiving stock options may be less appealing to employees.

November 2022

8b. What are the guidelines on the procedures and requirements for the payment of taxes upon the exercise of equity-based compensation granted by employers to their employees?

On November 8, 2022, the BIR issued RMC No. 143-2022 setting out the guidelines on the implementation of RR No. 13-2022 dated October 7, 2022 (discussed in our October 2022 TIPS). RR No. 13-2022 provides that regardless of the employee's rank, equity-based compensation shall be treated as compensation subject to income tax, and consequently, to withholding tax on compensation, upon the employee's exercise of such equity-based compensation.

Is the grant of equity-based compensation subject to Capital Gains Tax (CGT) and Documentary Stamp Tax (DST)?

No, the grant of equity-based compensation, whether with or without an option price, is not subject to CGT, since there is no realized gain on the part of the employer-grantor. The grant is likewise not subject to DST.

Is the sale, barter, or exchange by the employee-grantee of the granted equity-based compensation subject to tax?

Yes, the sale is treated as a sale, barter, or exchange of stocks not listed on the stock exchange may be subject to the 15% CGT imposed under Section 24(C) of the Tax Code, as amended, or to the 6% donor's tax.

If the equity-based compensation was granted with an option price, the difference between the sales price and the option price shall be subject to CGT.

If the equity-based compensation was granted without an option price, the cost base of the option for purposes of computing the capital gains is zero.

If the transfer was without consideration, the transfer is subject to donor's tax and the tax base shall be the fair market value (*FMV*) of the option at the time of the donation.

What taxes will be due on the exercise of the equity-based compensation?

When the option is exercised, the difference between the book value and FMV of the shares, whichever is higher, at the time of the exercise and the price fixed on the grant date, shall be considered additional compensation subject to income tax and to withholding tax on compensation (*WTC*). This rule applies to the exercise of equity-based compensation granted by employers involving its own shares or shares of stock it owns to its employees, whether rank-and-file, supervisory, or managerial employees.

Upon exercise, DST shall be imposed on the actual issuance of shares to the employee/grantee in line with Sections 174 and 175 of the Tax Code.

If the granted equity-based compensation is transferable to the employee-grantee's successor/heirs in case of death, what taxes will be due upon exercise of the same by such successors/heirs within the prescribed exercise period?

The difference between the book value and FMV of shares, whichever is higher, at the time of the exercise of the granted equity-based compensation and the price fixed on the grant date, shall be considered as a donation subject to the 6% donor's tax.

What are the tax return requirements of the employer-grantor for equity-based compensation?

For equity-based compensation exercised starting October 29, 2022, the employer-grantor shall file the following BIR Forms starting November 2022:

1. BIR Form No. 1601-C (Monthly Remittance Return of Income Taxes Withheld);
2. BIR Form No. 1604-C (Annual Information Return of Income Taxes Withheld on Compensation); and
3. BIR Form No. 2316 (Certificate of Compensation Payment/Tax Withheld).

For equity-based compensation exercised by managerial or supervisory employees prior to October 29, 2022 (which is the effectivity date of RR No. 13-2022), the employer-grantor is still required to file the following tax returns relating to the equity-based compensation:

1. BIR Form No. 1603-Q (Quarterly Remittance of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other Than Rank and File) –

    a. On or before October 31, 2022 relating to equity-based compensation exercised during the third quarter of year 2022; and/or

    b. On or before January 31, 2023 relating to the equity-based compensation exercised any time from October 1 to 28, 2022;

2. BIR Form No. 1604-F (Annual Information Return of Income Payments Subjected to Final Withholding Taxes); and

3. BIR Form No. 2306 (Certificate of Final Tax Withheld at Source).

What other reportorial requirements should the employer-grantor comply with regarding equity-based compensation?

Within thirty (30) days from the grant of the equity-based compensation, the employer/grantor (the issuing corporation) must submit to the Revenue District Office where it is registered a statement under oath indicating the following:

a. Terms and Conditions of the stock option;

b. Names, TINs, positions of the grantees;

c. Book value, FMV, par value of the shares subject of the option at the grant date;

d. Exercise price, exercise date and/or period;

e. Taxes paid on the grant, if any; and

f. Amount paid for the grant, if any.

During the exercise period, the employer/grantor must file a report on or before the 10th day of the month following the exercise stating the following:

a. Exercise Date;

b. Names, TINs, positions of those who exercised the options;

c. Book value, FMV, par value of the shares subject of the option at the exercise date/s;

d. Mode of settlement (i.e., cash, equity); and

e. Taxes withheld on the exercise, if any.

SyCipLaw TIP 8b:

Employers-grantors should take note of the changes in the tax treatment of employee stock options plans especially as they relate to the taxation of stock options granted to managerial and supervisory employees. Employers-grantors should also be mindful of the reporting requirement upon granting the equity-based compensation and upon the exercise of such equity-based compensation and the appropriate tax returns to be filed upon the exercise of their employees' equity-based compensation prior to or after the effectivity of RR No. 13-2022. While neither RR No. 13-2022 nor RMC No. 143-22 expressly provides the penalties for failure to comply with the requirements, the employer-grantor may be subject to the corresponding penalties provided under the Tax Code such as fines and/or imprisonment for wrong venue or for failing to supply information as may be required under the BIR's rules and regulations.

November 2022

9. For the sale of service (other than processing, manufacturing, or repacking of goods) to a foreign corporation doing business outside the Philippines to be considered a VAT zero-rated sale, does the relevant service agreement have to specifically state that the services are to be performed only in the Philippines?

Yes. In *Procter & Gamble International Operations SA-ROHQ v. Commissioner of Internal Revenue* (CTA Case Nos. 9768 & 9829, October 5, 2022), the CTA First Division ruled that the taxpayer, which is the Regional Operating Headquarters of a foreign corporation, is not entitled to VAT refund, or the issuance of tax credit certificate (*TCC*) of its unutilized input VAT allegedly attributable to zero-rated sales of service, for its failure to establish that the services it rendered to its client-affiliates abroad were performed in the Philippines. The CTA found that the service agreements between the taxpayer and its client-affiliates do not categorically state that the services shall be performed by the taxpayer in the Philippines only.

In this case, the taxpayer filed with the Bureau of Internal Revenue – Large Taxpayers Services Regular Audit Division, an administrative claim for refund of and/or the issuance of a TCC for the first quarter of fiscal year (*FY*) 2016, covering the period from July 1 to September 30, 2015, in the amount of PhP37,374,865.93, and the second quarter of FY 2016, covering the period from October 1 to December 31, 2015, in the amount of PhP14,367,836.27.

The CIR neither approved nor denied the administrative claim for refund for the period covering July 1 to September 30, 2015. On the other hand, the CIR denied the administrative claim for refund for the period covering October 1 to December 31, 2015. Thus, the taxpayer filed separate petitions for review for both claims, which were eventually consolidated and heard by the CTA.

In denying both claims for refund, the CTA ruled that it is indispensable that the taxpayer is able to prove that the services it rendered to its client-affiliates were rendered in the Philippines and not abroad in order for such sales to be treated as VAT zero-rated sales,. Here, all the service agreements contain a standard provision providing that the taxpayer shall not be construed to provide services to its client-affiliates outside of the taxpayer's normal place of business "other than on an occasional basis." The CTA interpreted the phrase "other than on an occasional basis" to mean that the taxpayer may render services both in the Philippines and abroad. Thus, the taxpayer failed to prove that the services here were actually performed in the Philippines only and not abroad.

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.

SyCipLaw TIP 9:

In order to ensure that the taxpayer may successfully claim a VAT refund for its unutilized input VAT attributable to sale of services (other than processing, manufacturing or repacking of goods) to a foreign corporation doing business outside the Philippines, or to a non-resident person not engaged in business who is outside the Philippines under Section 108(B)(2) of the Tax Code, the relevant service agreement between the taxpayer and its client-affiliate should categorically provide that the contracted services will be performed only in the Philippines. If the services are rendered outside the Philippines, then the services will be exempt from VAT but no claim for refund of input VAT may be made.

November 2022

10. Can corporate officers be held guilty of a violation of the Tariff and Customs Code for misdeclared, misclassified, and undervalued imported goods of the company?

Yes, if there is a showing that they actively participated in or had the power to prevent the company's wrongful act but were grossly negligent. In *Fernandez, et al. v. People of the Philippines* (G.R. No. 249606, July 6, 2022), the Supreme Court held that that the President, Vice-President, Treasurer, and Corporate Secretary of Kingson Trading International Corporation (*Kingson*), which violated Section 3602 in relation to Section 2503 of the Tariff and Customs Code of the Philippines (*TCCP*), cannot hide behind the cloak of the separate corporate personality of the corporation to escape criminal liability. Citing jurisprudence, the Supreme Court said that to be held criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act. The Court ruled that, as responsible corporate officers of Kingston, the petitioners are criminally liable by assenting to the commission by Kingson or by being grossly negligent in directing Kingson's affairs.

In *Fernandez*, Kingson imported steel products from China and paid around PhP5 million in total duties and taxes. The Bureau of Customs found that Kingson underdeclared the value of the imported goods by almost 50%. The Commissioner of Customs seized and forfeited the imported goods.

Kingson filed a Petition for Review with the CTA assailing the forfeiture while the Government filed a criminal complaint against the corporate officers of Kingson for violation of Section 3602 in relation to Section 2503 of the TCCP.

The CTA First Division, CTA En Banc and the Supreme Court all found that the entry of the imported goods was made by means of false or fraudulent shipping documents and that there was intent to evade the payment of taxes and duties in violation of Section 3602 in relation to Section 2503 of the TCCP. A review of the certified true copies of the export documents from China in relation to the Import Entry and Internal Revenue Declaration (*IEIRD*) and other supporting documents filed by Kingson showed glaring discrepancies as to the consignee's name, description of the imported shipment, and value of shipment, specifically:

1. The consignee in the export documents is not Kingson, but Solid Sea Products H.K;

2. The description of the shipment in Kingson's documents state "2,406 bundles of steel products (SCM 440 round bar)," whereas the counterpart export documents indicate: "1,436 bundles of 10MM x 6M and 970 bundles of 12MMx6M or a total of 2,406 bundles;"

3. The value of shipment as declared by Kingson is US$692,254.00, while the counterpart export documents indicate a value of US$1,281,271.86; and

4. Kingson declared the shipment under Tariff Classification heading number No. 7228.60 at 1% rate of duty, while the actual classification of the same shipment based on the chemical analysis of the same steel product showed that it falls under heading number 7214.2000 at 7% rate of duty.

Under Section 2503 of the TCCP, undervaluation, misdeclaration in weight, measurement or quantity of more than thirty percent (30%) shall constitute *prima facie* evidence of fraud and the imported goods shall *ipso facto* be forfeited in favor of the Government. The Supreme Court ruled that both Kingson and petitioners failed to provide any plausible explanation for the glaring discrepancies (between the import documents that Kingson filed and the counterpart export documents from the Chinese government), the burden of evidence having shifted to them. Hence, it can be concluded that Kingson and the petitioners willfully and intentionally misdeclared, misclassified, and reduced the value of the shipment by more than 30% to lower the amount of taxes and duties that Kingson should have paid.

The Supreme Court also stressed that Section 1301 of the TCCP imposes a definite burden on persons authorized by law to make the import entry and held that the statements under oath contained therein constitutes *prima facie* evidence of the importer's knowledge and consent of violations of the provisions of the TCCP when the importation was found to be unlawful. In this case, the Corporate Secretary's active part in the fraud was shown by her signature in the IEIRD containing the fraudulent information as Kingson's attorney-in-fact under the declaration that she "certify[ies] that the information contained in all pages of this Declaration and the documents

submitted are to the best of our knowledge and belief are true and correct."

As regards the President, Vice-President and Treasurer of Kingson, the Supreme Court ruled that there was circumstantial evidence to prove that these corporate officers, who are also the incorporators, board members, and stockholders of Kingson, undoubtedly knew of the importation of steel from China. First, their denial of the alleged fraud, insisting that Kingson's declarations were merely based on the documents provided by the foreign shipper, is pregnant with an admission, *i.e.*, that they were personally aware of the details of the shipment and the contents of the submitted importation documents. Second, the Corporate Secretary testified that when the defect in the documents was discovered, the corporate officers of Kingson had a meeting to rectify the same and an addendum was executed to correct the error. And finally, the corporate officers failed to rebut the fact that they assented or even permitted the falsification to happen, not only of the documents appended to the IEIRD, but also of the falsified chemical analysis in a bid to secure a lower tariff classification rate.

SyCipLaw TIP 10:

The officer authorized to sign certified import documents, such as the IEIRD or the Single Administrative Document (*SAD*), should ensure the accuracy and truthfulness of the information provided in the said documents. The statements contained therein should be supported by proper and correct documentation.

Other corporate officers who exercise direct control and supervision in the management and conduct of the company affairs, although not signatories in the documents, must also do their part to ensure that importation is made in accordance with law.

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