

**TMAP TAX UPDATES**  
(December 16, 2021 – January 15, 2022)

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## DISCUSSION

### A. COURT OF TAX APPEALS DECISION

1. **A Philippine Branch or an ROHQ which is a mere extension of a foreign corporation in the Philippines cannot be a subsidiary of another foreign entity, hence entitled to a refund of unutilized input taxes attributable to services rendered to that other foreign entity.**

Applicant-taxpayer, a Philippine branch (ROHQ to the precise) of MSCI HongKong Limited, filed an application for refund of unutilized input taxes attributable to zero-rated services rendered to, among others, MSCI, Inc., a company based in Delaware, USA. Not satisfied with the partial grant of the claim by the Court in Division, the CIR filed a Petition before the Court En Banc. The CIR mainly argued that MSCI is the applicant-taxpayer's parent company, and such, the applicant-taxpayer is deemed an instrumentality of MSCI, Inc. through which the latter engages in business in the Philippines. As such, MSCI, Inc. cannot be said to be a non-resident foreign corporation not engaged in trade or business in the Philippines, as it is doing business in the Philippines through a wholly-owned entity (the applicant-taxpayer itself). The CIR argues that the services rendered to MSCI, Inc. does not comply with the requirement that the services must be rendered to non-residents not doing business in the Philippines to be entitled to VAT zero-rating. Accordingly, the BIR further argued that the claim should be denied as it is not attributable to zero-rated sales.

The Court En Banc denied CIR's petition. It held that the applicant-taxpayer is the Philippine Branch or an ROHQ of MSCI Hong Kong Limited and is not a subsidiary of MSCI, Inc. A Philippine Branch or an ROHQ, which is a mere extension of a foreign corporation (MSCI HongKong Limited) in the Philippines, cannot be considered as a subsidiary of another foreign entity (MSCI, Inc.). As such, MSCI, Inc. cannot be considered to be doing business in the Philippines. Hence, the services rendered to it qualify for VAT zero-rating. Accordingly, there is basis for the grant of refund for the input taxes related to those services. (*Commissioner of Internal Revenue vs. MSCI Hongkong Limited, CTA EB No. 2258 [CTA Case No. 9661], December 15, 2021*)

### B. REVENUE REGULATIONS

1. **REVENUE REGULATIONS NO. 20-2021 (December 1, 2021) – Taxation of POGOs**

This provides for the implementation of the RA No. 11590 or an Act taxing POGOs.

- Offshore Gaming Licensees (OGLS)

| OGL                                                            | Tax Treatment                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Gaming Operations (whether Philippines based or Foreign based) | In lieu of all other direct and indirect internal revenue and local taxes, either subject to:<br>(a) 5% of the Gross Gaming Revenue or Receipts (GGR); or<br>(b) 5% of the agreed predetermined minimum monthly revenue from gaming operations, <u>whichever is higher</u> . |

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Non-Gaming Operations | <p><u>Philippine-based OGLs</u> - Income tax of 25% of the taxable income derived during each taxable year from sources <i>within</i> and <i>without</i> the Philippines.</p> <p><u>Foreign-based OGLs</u> – Income tax of 25% of the taxable income derived during each taxable year from sources <i>within</i> the Philippines.</p> <p>Non-gaming revenues of all OGLs shall be subject to VAT or Percentage Tax, <u>whichever is applicable</u>.</p> |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

➤ Accredited Service Providers (ASPs)

|                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Income Tax</b>                                        | <p>a. <u>ASPs organized within the Philippines</u> – 25% of the taxable income derived during each taxable year from sources <i>within</i> and <i>without</i> the Philippines.</p> <p>b. <u>ASPs organized outside the Philippines</u> – 25% of the taxable income derived during each taxable year from sources <i>within</i> the Philippines.</p>                                                                              |
| <b>VAT</b>                                               | Sale of services/goods or properties by VAT-registered service providers/persons to OGLs subject to gaming tax – subject to zero-rated VAT rate: <i>Provided, that</i> the VAT zero-rating shall only apply if the OGLs are paying the 5% gaming tax. <i>Provided further</i> , that in cases wherein the services provided/goods supplied are used in non-gaming operations of the OGLs, the zero percent rate shall not apply. |
| <b>Withholding Tax on Purchase of Goods and Services</b> | ASPs shall withhold and remit the applicable withholding taxes.                                                                                                                                                                                                                                                                                                                                                                  |

➤ Foreign Employees of POGO Entities

- (1) Shall have a TIN;
- (2) Pay 25% final withholding tax on their gross income;
- (3) The minimum final withholding tax due for any taxable month from said persons shall not be lower than P12,500.00; and
- (4) Any income earned from all other sources within the Philippines shall be subject to income tax.

**2. REVENUE REGULATIONS NO. 21-2021 (December 3, 2021) – Amendments of the provisions on VAT Zero-rating**

This amends provisions of RR No. 16-2005, as amended, to implement Sections 294 (E) and 295 (D), Title XIII of the Tax Code, as amended by the CREATE Act, and Section 5, Rule 2 and Section 5, Rule 19 of the CREATE Act IRR.

*Addition to the list of sales of goods or properties subject to zero percent VAT [Section 4.106-5(c) of RR 16-2005]*

- Sale of raw materials, inventories, supplies, equipment, packaging materials, and goods to a registered export enterprise, to be used directly and exclusively in its registered project or activity pursuant to Sections 294(E) and 295(D) of CREATE and Section 5 Rule 2 of its IRR for a maximum period of 17 years from the date of registration, unless otherwise extended under the SIPP
- The term “registered export enterprise” shall refer to an export enterprise as defined under Section 4(M), Rule 1 of the CREATE Act IRR, that is also a registered business enterprise as defined in Section 4(W) of the same IRR
- The above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating until the expiration of the transitory period

*Addition to the list of sales of services subject to zero percent VAT [Section 4.108-5(b)(3) of RR 16-2005]*

- Sale of services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, to a registered export enterprise, to be used directly and exclusively in its registered project or activity pursuant to Sections 294(E) and 295(D) of CREATE and Section 5 Rule 2 of its IRR for a maximum period of 17 years from the date of registration, unless otherwise extended under the SIPP
- The term “registered export enterprise” shall refer to an export enterprise as defined under Section 4(M), Rule 1 of the CREATE Act IRR, that is also a registered business enterprise as defined in Section 4(W) of the same IRR
- The above-described sales to existing registered export enterprises located inside ecozones and freeport zones shall also be qualified for VAT zero-rating until the expiration of the transitory period

## **C. REVENUE MEMORANDUM CIRCULAR**

### **1. REVENUE MEMORANDUM CIRCULAR NO. 3-2022 (January 14, 2022) – Clarifies the preparation of assessment notices for compromise penalty**

This clarifies the proper procedure in the preparation of assessment notices for compromise penalty(ies) pursuant to the provisions under Revenue Memorandum Order No. 7-2015 with regards to compromise penalties and Revenue Regulations No. 12-99, as amended by RR No. 18-2013, in the issuance of a deficiency tax assessment.

For uniformity in the preparation of assessment notices, the prescribed formats under RR No. 18-2013, such as Preliminary Assessment Notice (PAN) and Formal Letter of Demand, shall now be composed of Part I and Part II, where Part I shall pertain to deficiency basic tax(es) and civil penalties, while Part II shall pertain to the assessed compromise penalty(ies) relative to violations uncovered during the conduct of audit.

Likewise, preparation of BIR Form No. 0605 – Payment Form for the settlement/payment of the deficiency basic tax and civil penalties in “Part I” of the assessment notices and BIR Form No. 0605 for compromise penalty(ies) in Part II shall be done separately.

#### **D. REVENUE MEMORANDUM ORDER**

##### **1. REVENUE MEMORANDUM ORDER NO. 3-2022 (January 14, 2022) – Creates the Alphanumeric Tax Code (ATC) for revenue source under RA No. 9505 (PERA Act of 2008)**

This creates a specific ATC for revenue source under R.A. No. 9505 otherwise known as “PERA Act of 2008” to facilitate the proper identification and monitoring of remittances for Final Income Taxes Withheld pursuant to the implementation of RA No. 9505. The following ATC is hereby created:

| ATC   | Description                                                                                                                            | Tax Rate | Legal Basis                 | BIR Form No. |
|-------|----------------------------------------------------------------------------------------------------------------------------------------|----------|-----------------------------|--------------|
| WI730 | Total income earned from the time of its opening to its withdrawal under the Personal Equity and Retirement Account (PERA) Act of 2008 | 20%      | RA No. 9505 / RA No. 6-2021 | 1601-FQ      |

##### **2. REVENUE MEMORANDUM ORDER NO. 4-2022 (January 14, 2022) – Modifies the Alphanumeric Tax Code (ATC) of selected revenue source under RA No. 11534 (CREATE Act)**

This modifies the existing ATC for BIR Form Nos. 1702Q, 1702-RT, and 1702-MX pursuant to RA 11534 (CREATE Act) to facilitate the proper identification and monitoring of tax collection from Corporate Income Tax pursuant to the implementation of RA No. 9505. The following ATC is hereby modified:

| EXISTING (per ATC Handbook) |                                                                                                                                                                               |          |              |             | MODIFIED / NEW |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|--------------|-------------|----------------|
| ATC                         | Description                                                                                                                                                                   | Tax Rate | BIR Form No. | Legal Basis | Tax Rate       |
| IC010                       | Domestic Corporation, in general<br>July 01, 2020 onwards                                                                                                                     | 30%      |              |             | 25% or 20%     |
| IC030                       | Proprietary Educational Institutions<br>July 01, 2020 to June 30, 2023                                                                                                        | 10%      |              |             | 1%             |
|                             | Proprietary Educational Institutions<br>July 01, 2023 onwards                                                                                                                 | 30%      |              |             | 10%            |
|                             | Proprietary Education Institutions whose gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income from all sources |          |              |             | 25% or 20%     |

|       |                                                                                                                                                                                                    |     |                           |                                     |            |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---------------------------|-------------------------------------|------------|
|       | July 01, 2020 onwards                                                                                                                                                                              |     | 1702Q / 1702-RT / 1702-MX | R.A. No. 11534<br><br>RR No. 5-2021 |            |
| IC031 | Non-Stok, Non-Profit Hospitals<br>July 01, 2020 to June 30, 2023<br>July 01, 203 onwards                                                                                                           | 10% |                           |                                     | 1%<br>10%  |
|       | Non-Stok, Non-Profit Hospitals whose gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income from all sources<br>July 01, 2020 onwards | 30% |                           |                                     | 25% or 20% |
| IC040 | GOCC, Agencies & Instrumentalities<br>July 01, 2020 onwards                                                                                                                                        | 30% |                           |                                     | 25% or 20% |
| IC041 | National Government and LGUs<br>July 01, 2020 onwards                                                                                                                                              | 30% |                           |                                     | 25% or 20% |
| IC020 | Taxable Partnership<br>July 01, 2020 onwards                                                                                                                                                       | 30% |                           |                                     | 25% or 20% |
| IC055 | Minimum Corporate Income Tax (MCIT)<br>July 01, 2020 to June 30, 2023<br>July 01, 203 onwards                                                                                                      | 2%  |                           |                                     | 1%<br>2%   |
| IC070 | Resident Foreign Corporation, In General                                                                                                                                                           | 30% |                           |                                     | 25%        |
| IC190 | Offshore Banking Units (OBU's)<br>Foreign Currency Transaction not subjected to Final Tax                                                                                                          | 10% |                           |                                     | 25%        |
|       | Other Than Foreign Currency Transaction                                                                                                                                                            | 30% |                           |                                     | 25%        |
| IC101 | Regional Operating Headquarters<br>January 01, 2022                                                                                                                                                | 10% |                           |                                     | 25%        |
| IC191 | Foreign Currency Deposit Units (FCDUs)<br>Foreign Currency Transaction not subjected to Final Tax                                                                                                  | 10% |                           |                                     | 25%        |
|       | Other Than Foreign Currency Transaction                                                                                                                                                            | 30% |                           |                                     | 25%        |

## **E. SIGNIFICANT PENDING TAX LEGISLATIONS**

### **1. Remaining packages of the Comprehensive Tax Reform Program**

- a. Real Property Valuation and Assessment Reform – Bill seeks to adopt market value as the single real property valuation base for assessment of real property taxes to be used for various transactions by all government agencies.
- b. Passive Income and Financial Intermediary Taxation Act (“PIFITA”). The proposed law seeks to reform the taxation of capital income and financial services in the country, by redesigning the financial sector taxation into simpler, fairer and more efficient tax system.

2. Ease of Paying Taxes Act – This is an initiative to ease the administrative burden of taxpayers, further enhance tax compliance and, at the same time, provide mechanisms for the protection of the rights and welfare of taxpayers.
3. Digital Taxation – This is a bill seeking to impose a 12 percent value-added tax on digital service providers that operate through online platforms, and the mechanisms for compliance.