TMAP Tax Updates for November 2017
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BIR Issuances

Availability of eBIR Forms Package Version 6.3

The Bureau of Internal Revenue (BIR) released the latest version of eBIR Forms Package Version 6.3, which must be used by the following taxpayers in the preparation and filing of their tax returns:

- Accredited tax agents/practitioners and their clients
- Accredited printers of principal and supplementary receipts and invoices
- One-Time Transaction (ONETT) taxpayers who are classified as real estate dealers/developers; those who are considered habitually engaged in the sale of real property and regular taxpayers already covered
- Taxpayers filing a "No Payment" return
- Government-owned or -controlled Corporations
- Local Government Units (LGUs) except barangays
- Cooperatives registered with National Electrification Administration and Local Water Utilities Administration

Beginning 6 November 2017, only returns filed through eBIRForms Package Version 6.3 will be accepted. The use of earlier versions of the eBIRForms Package will result in the unsuccessful filing of tax returns through eBIRForms.

(BIR Memorandum issued by Commissioner Cesar Dulay, 18 October 2017)

Affixture of new stamps on cigarettes

All imported and locally manufactured cigarettes, whether for domestic sale or for export, shall be affixed with new internal revenue stamps. The new internal revenue stamp shall be printed in five different color designs according to whether the cigarettes are packed by hand or by machine (bearing a unitary tax rate), for locally manufactured cigarettes, or imported cigarettes or for export. The Internal Revenue Stamps may be ordered in banderols or pre-cut/stack or in sheets according to the machine requirements of the importer or the local manufacturers.

After the approval of the order of internal revenue stamps and prior to its release from the APO Production Unit, Inc., designated plant, the internal revenue stamps shall be paid in the amount of P0.15 per piece by the importer or local manufacturer of cigarettes to APO Production Unit, Inc., which shall print the internal revenue stamps.

The internal revenue stamp shall be affixed to the upper portion of the immediate container of the cigarettes (e.g., hard pack, soft pack, tin can, including packages containing cigarettes packed in five sticks and/or 10 sticks, etc.), regardless of the number of sticks contained therein.

All locally manufactured cigarettes to be removed from place of production shall be affixed with internal revenue stamps not later than 1 January 2018. With respect to imported cigarettes, no importation and subsequent release of cigarette from a customs house shall be allowed unless the new internal revenue stamps are affixed thereto effective 1 June 2018. On the other hand, effective 1 September 2018, all cigarettes manufactured in the Philippines and/or imported into the Philippines found in the market shall have been affixed with the new stamps.

(Revenue Regulations 06-2017, 12 October 2017)

Mandatory requirement to secure TIN for all One-Time Transactions (ONETT)

The BIR clarified that the requirement to secure a Taxpayer Identification Number (TIN) is mandatory for one-time transaction (ONETT) taxpayers filing the following tax returns:

a. Donor's tax - TIN of donee/s
b. Estate tax - TIN of heir/s
c. Sale of shares of stock - TIN of buyer/s

The taxpayers with the abovementioned transactions should secure their TIN prior to their application for electronic Certificate Authorizing Registration (eCAR).

(Revenue Memorandum Circular No. 90-2017, 30 October 2017)

Revised rules on tax refund claims

The BIR issued the following revised procedures in the filing and processing of claims for tax refund of taxpayers:

1. *Requests for refund of direct exporters*

a. All claims by direct exporters shall be filed with and processed by the Value-added Tax (VAT) Credit Audit Division (VCAD), except for large taxpayers (LTs), which shall have the option to file their refund with the concerned LT Division where they are registered or with the VCAD.
b. The electronic Letters of Authority (eLAs) on VAT refund claims filed with the VCAD shall be approved and signed by the Assistant Commissioner of Assessment Service (ACIR - AS).
c. All claims processed by the VCAD shall be reviewed by the Tax Audit Review Division (TARD) prior to approval of the claim. Depending on the amount of

refund, the approving officer shall be the Associate Commissioner of Internal Revenue (ACIR)- Assessment Service, the Deputy Commissioner of Internal Revenue (DCIR) – Operations Group, or the Commissioner of Internal Revenue (CIR).

2. *Requests for refund involving income tax and other taxes of taxpayers registered with Revenue District Offices (RDOs) and VAT refund claims of indirect exporters*

    a. All claims filed with and processed by an RDO shall be reviewed by the concerned Assessment Division prior to transmittal to the Regional Director.
    b. The Regional Director is authorized to approve claims amounting to P10 million and below. For claims exceeding P10 million, the claim for refund shall be signed by the Regional Director, who shall recommend the approval or issuance of a tax refund or a tax credit certificate (TCC).
    c. The docket of the claim shall be transmitted to the TARD for further review prior to the approval of the revenue officials in accordance with the prescribed thresholds.

3. *Requests for refund exceeding P1 million filed with Regional Offices and in possession of the National Office* - All existing claims from Regional Offices exceeding P1 million in the possession of the National Office shall be acted upon in accordance with the prescribed thresholds.

4. *Period for processing claims for VAT refund/TCC under Section 112 (A) of the Tax Code*
    a. The 120-day period prescribed under 112 (C) of the Tax Code, as amended, shall start from the actual date of filing of the application.
    b. For claims processed by the RDOs amounting to more than P10 million and all claims processed by the VCAD, the docket of the claim shall be indorsed/forwarded to the TARD for review within 80 calendar days from the date of the filing of application for VAT refund/TCC.
    c. The Regional Offices and VCAD shall ensure compliance with the required 80-day period to process the claims and submit the dockets with the reports. For this purpose, no VAT refund/TCC docket shall be accepted by the National Office beyond the 8O-day period, regardless of the date when the eLA was issued, except for justifiable reasons, e.g., fortuitous events, unexpected suspension of work or declared holidays, etc. The TARD shall ensure that the docket of the claim is transmitted to the approving official not later than 100 days from the filing of the application for VAT refund/TCC.
    d. The approving officials shall act on the recommended claims for VAT refund/TCC not later than 120 days from receipt of application by the processing offices. In the absence of a duly appointed DCIR – Operations Group (OG), claims for tax refund/TCC for approval shall be approved by the CIR.

(Revenue Memorandum Circular No. 89-2017, 24 October 2017)

Grant of authority to the Chief of Assessment to sign eCAR

In the absence of both the Revenue District Officer (RDO) and the Assistant RDO, the Commissioner of Internal Revenue has granted authority to the Chief of Assessment Section (CAS) to sign the electronic Certificate Authorizing Registration (eCAR) by designating the CAS as one of the signatories in the eCAR pursuant to Revenue Memorandum Order (RMO) 55-2016.

(Revenue Memorandum Order No. 30-2017, 6 November 2017)

Court Decisions

PEZA enterprises subject to IAET on unregistered activities

An enterprise registered with the Philippine Economic Zone Authority (PEZA) is subject to national internal revenue taxes, including improperly accumulated earnings tax (IAET) on its income from activities that are outside its registered activity/ies.

In the instant case, a PEZA-registered enterprise under income tax holiday (ITH) that is engaged in the manufacture of wooden pallets, crates, and other packaging materials was assessed by the BIR for deficiency income tax and IAET on the grounds that it violated its registration agreement when it subcontracted the manufacture of wooden pallets to a third party without securing the Letter of Authority from PEZA.

Consequently, the BIR deemed the income derived by the PEZA-registered enterprise from the sale of its wooden pallet as income from an unregistered activity, and thus not entitled to the exemption from national internal revenue taxes. The BIR further argued that the subcontracting constitutes trading, which is outside the registered activity of the PEZA-registered enterprise and is therefore not qualified to tax exemption.

The PEZA-registered enterprise contends that it is not within the power of the BIR to categorically declare that it violated its PEZA Registration Agreement and is not qualified to avail of its tax and fiscal incentives provided for under Republic Act (RA) No. 7916 (PEZA Law). It further argued that the subcontracting between the company and the third party does not constitute "trading" of wooden pallets.

The Court of Tax Appeals (CTA) stressed that the power and duty to assess national internal revenue taxes vested upon the BIR as provided under Sections 2 and 6 of the Tax Code and Revenue Regulations (RR) No. 27-2002 necessarily includes the power to determine whether a PEZA-registered enterprise is qualified to avail of the preferential income tax rate granted to PEZA-registered entities. Hence, in the exercise of its power to assess, the BIR may also declare whether the PEZA enterprise violated its PEZA registration agreement and whether it is qualified to avail of the tax and fiscal incentives provided under RA No. 7916.

Considering that the PEZA-registered enterprise's activity is outside the activity registered with PEZA, the CTA held that it is not qualified to enjoy the ITH or 5% preferential tax rate under RA No. 7916 and is also not exempt from any national internal revenue taxes. Hence, the CTA held that the PEZA enterprise is subject to IAET on its accumulation of earnings in excess of 100% of paid-up capital pursuant to Section 29 of the Tax Code, as implemented by RR No. 2-2001.

(AGM Packaging System Ltd. Corp. v. Commissioner of Internal Revenue, CTA Case No. 8947, 20 October 2017)

Letter Notice (LN) not a substitute for an LOA

Under Section 6 of the Tax Code, after a return has been filed by a taxpayer, the CIR or his duly authorized representative may authorize the examination of a taxpayer and the assessment of the correct amount of tax. In relation to this, Section 13 of the Tax Code provides that, subject to rules and regulations, a revenue officer, pursuant to a Letter of Authority (LOA), may examine taxpayers in order to collect the correct amount of tax or to recommend the assessment of any deficiency tax due.

As guide in the performance of its function, the BIR issued RMO No. 43-90 on 20 September 1990 for the purpose of prescribing the revised policy guidelines for the audit/investigation and issuance of LOAs to audit. RMO 43-90 specifically states that all audits/investigations, whether field audit or office audit, should be conducted under an LOA.

In the instant case, the taxpayer was issued a Letter Notice (LN), which was based on the computerized matching conducted by the BIR from third party sources data vis-a-vis the taxpayer's VAT returns. The LN served as basis for the issuance of a Notice of Informal Conference (NIC) for alleged deficiency income tax, VAT, and withholding tax of the taxpayers and, subsequently, the Preliminary Assessment Notice (PAN), Final Assessment Notice (FAN), Preliminary Collection Letter, Final Notice before Issuance of Warrant of Distraint and Levy (Final Notice), and Warrant of Distraint and/or Levy (WDL).

According to the CTA, the requirement that an LOA must first be issued before a taxpayer can be examined was not complied with when no LOA was issued to the taxpayer. It held that an LN can be substituted for an LOA, and that the BIR cannot seek refuge under an LN to justify its assessment against the taxpayer.

The CTA cited the case of Medicard Philippines, Inc. v. Commissioner of Internal Revenue (GR 222743, 5 April 2017), where the Supreme Court held that an LN is entirely different and serves a different purpose from an LOA.

According to the SC, under RMO No. 32-2005, due process demands that after an LN has served its purpose, the revenue officer should have properly secured an LOA before proceeding with further examination and assessment of the taxpayer.

Hence, since the BIR has no authority to examine the taxpayer due to the absence of an LOA, the CTA held that the assessment issued by the BIR is void.

(Commissioner of Internal Revenue v. Esper R. Vargas, Jr., CTA EB No. 1470 re CTA Case No. 8750, 20 October 2017)

Non-declaration of zero-rated amount in VAT return does not make the transaction subject to VAT

Under Section 106(A)(2)(a)(1) of the Tax Code, the following requisites must be satisfied for a taxpayer to have zero-rated sales via actual exportation: (1) seller is a VAT-registered person; (2) there is sale and actual shipment of goods from the Philippines to a foreign country; and (3) the exported articles were paid in foreign currency and duly accounted for under Bangko Sentral ng Pilipinas (BSP) rules and regulations.

In the instant case, the taxpayer, which is engaged in the exportation of pearls, was assessed for deficiency VAT for failure to indicate in its quarterly VAT return its export sales as zero-rated sales. According to the BIR, a declaration of the zero-rated amount in the quarterly VAT return is required for zero-rated sales to exist. Further, the BIR argued that while the taxpayer presented the sales invoices, export declarations, commodity clearances, and airway bills to establish actual exportation of its pearls, additional documents evidencing actual receipts by the buyer-consignee of the pearls purchased must also be presented for the transaction to qualify for zero-rated sales.

In response, the taxpayer argued that failure to state the amount of zero-rated sales in its quarterly VAT returns is not fatal to its claim that it has zero-rated sales. According to the taxpayer, both the Independent Certified Public Accountant (ICPA) and the CTA verified all the documents relative to its sales of pearls to its foreign clients and found the existence of said zero-rated sales. Further, proof that its products were actually received by its buyer is not required. The proof of payments in US dollar, duly accounted for under the BSP rules and regulations, demonstrates that its cultured pearls were indeed exported.

According to the CTA, a plain reading of Section 106(A)(2)(a)(1) of the Tax Code reveals that a declaration as to the amount of zero-rated sales in the VAT return is not a condition sine qua non to establish the existence of petitioner's zero-rated sales. Moreover, the presentation of proof of receipt by the buyer of the articles or commodities exported is not required under the Tax Code. The CTA held that what is only decreed by the relevant provision is proof of sale and actual shipment of goods from the Philippines to another country and, hence, non-declaration of zero-rated amount in VAT return does not make the transaction subject to VAT.

(Port Barton Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 8490, 19 October 2017)

BPRT assessment on accumulated earnings

Under Section 28(A)(5) of the Tax Code, any profits remitted by a branch to its head office shall be subject to a tax of 15%, which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities that are registered with PEZA).

In the instant case, the taxpayer was assessed for deficiency branch profit remittance tax (BPRT) on the amount it allegedly earmarked for remittance to its head office. The BIR contended that there was a constructive remittance of profit in view of the recognition of the accounts receivable and the increase in the taxpayer's retained earnings. The BIR assessment is centered on the taxpayer's "Accumulated Earnings" account of the Audited Statement of Financial Position, which shows the composition of the Head Office Account, as follows:

	As of December 31	
	2010	2009
Head Office Account Assigned Capital	P11,129,800	P11,129,800
Accumulated Earnings	166,043,000	126,069,120
Total Head Office Account	P177,172,800	P137,158,920

The taxpayer claimed that the BIR erred in assuming that it applied for, and earmarked for remittance, its accumulated earnings to the head office when in fact it did not.

The CTA noted in its review of taxpayer's Head Office Account for calendar years (CYs) 2009 and 2010 that it is comprised of two different items, i.e., Assigned Capital and Accumulated Earnings. As regards the Assigned Capital account, the assigned capital of P11,129,800 in CY 2010 remained the same in CY 2009. On the other hand, as regards the Accumulated Earnings account, all of the taxpayer's net income in CY 2010 was added to its Accumulated Earnings account, which resulted in the total balance of P166,043,000 as of 31 December 2010.

The CTA held that it was erroneous for the BIR to conclude that the entire earnings of the taxpayer as of CY 2010 (i.e., P166,043,000) partakes of the nature of an indirect remittance to the head office, which should be subjected to BPRT. Under the branch accounting principles in the Philippines, the net income is a standard component or entry in the Head Office Account, which is added to the accumulated earnings of the previous year (i.e., CY 2009) in order to arrive at the accumulated earnings as of the end of the current year (i.e., CY 2010). The mere fact that accumulated earnings was booked under the Head Office Account does not automatically mean that said accumulated earnings were already applied or earmarked for remittance to the head office.

In addition, the CTA held that Section 28(A)(5) of the Tax Code requires that profits be applied or earmarked for remittance to the head office. In the present case, however, there is no evidence that the taxpayer actually did either - apply for remittance or earmark for remittance its net income as of CY 2010 to its head office. In the absence of evidence showing that the actual remittance or earmarking for remittance was made by the taxpayer, the CTA cancelled the deficiency BPRT assessment against the taxpayer.

[Maersk Global Services Centres (Philippines) Ltd. v. Commissioner of Internal Revenue, CTA Case No. 8934, 11 October 2017]

No requirement for input VAT to be "directly" attributable to zero-rated sales for refund purposes

Under Section 112(A) of the Tax Code, any VAT-registered person whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a TCC or refund of its excess unutilized input VAT attributable to its zero-rated sales.

In the instant case, the taxpayer-refund claimant is a PEZA-registered enterprise engaged in the production and export of mixed nickel-cobalt sulphide. It filed a claim for refund of its excess unutilized input VAT on its purchase of goods and services, which are attributable to its zero-rated sales. This includes the VAT paid on its various purchases of goods that were consumed outside the economic zone as well as for hotel accommodations, travel agency services, demurrage and storage services and rental fees, association dues, and expenses on its leased properties, which were all expended or done outside the economic zone.

The BIR asserts that to be entitled to refund of its unutilized input VAT, the taxpayer must prove, among others, that the input VAT is directly attributable to zero-rated or effectively zero-rated sales. The BIR pointed out that while it agrees that the taxpayer-refund claimant actually incurred input VAT on its purchase of goods and services -- for example for the construction of its laborers' row house, bus terminal, and dormitory -- it, however, believes that these are not directly essential for the manufacture of its export products per its PEZA-sanctioned activity.

Contrary to the BIR's insistence, the CTA maintained that Section 112(A) of the Tax Code does not decree that the input tax should be directly attributable to petitioner's zero-rated sales. Input taxes that bear a direct or indirect connection to a taxpayer's zero-rated sales satisfies the requirement of the law. According to the CTA, what is incumbent upon the taxpayer-refund claimant to establish is first, the existence of input VAT, and second, that the input VAT is attributable to its zero-rated sales.

In relation to this, while the taxpayer-refund claimant satisfied the first requisite by presenting various official receipts that comply with the invoicing requirements under Section 113(A) of the NIRC, as amended and verified as valid source of input, it failed to establish that the input taxes are attributable to its zero-rated sales. No sufficient proof was presented to establish that its input taxes bear a relation to the taxpayer's zero-rated activity. Considering that the taxpayer was only able to demonstrate the existence of input but not the relation of the input it incurred to its zero-rated sale, the CTA denied its claim for refund.

(Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA Case No. 8905, 19 October 2017)

Donor's tax liability may not be transferred to donee

Under Section 99(B) of the Tax Code, a donor's tax at the rate of 30% shall be paid by the donor on a gift made to the donee, who is a stranger. In the case of gifts made by a nonresident, the return may be filed with the Philippine Embassy or Consulate in the country where he is domiciled at the time of the transfer, or directly with the Office of the Commissioner pursuant to Section 103(B) of the Tax Code.

In the instant case, the BIR assessed and demanded from the donee the payment of donor's tax relative to the alleged donation it received from its affiliate abroad.

The CTA En Banc held that it is clear under Section 99(B) of the Tax Code that the person or entity liable to pay the tax is the donor, or the person or entity transferring the property to another. The CTA further held that since the donor's tax is a direct tax, the burden to pay it may not be transferred to the donee. The CTA maintained that mere exigency and convenience, such as the fact that in this case, the donee is located in the Philippines, may not be used as an excuse to collect donor's tax from a donee. Hence, for lack of legal basis, the deficiency donor's tax assessment issued by the BIR against the taxpayer was cancelled by the CTA.

(Commissioner of Internal Revenue v. Toenec Philippines, Inc., CTA EB Case No.1520 re CTA Case No. 8653, 23 October 2017)

Reckoning of 30-day period to appeal with CTA in case of issuance of revised FDDA

Under Section 3.1.4 of RR No. 18-2013, if a protest is denied in whole or in part by the Commissioner's duly authorized representative, the taxpayer may either: (a) appeal to the Court of Tax Appeals (CTA) within 30 days from date of receipt of the said decision; or (b) elevate his protest through request for reconsideration to the Commissioner within 30 days from date of receipt of the said decision.

In the instant case, the taxpayer received the Final Decision on Disputed Assessment (FDDA) signed by the Assistant Commissioner assessing it for deficiency income tax, VAT, compensation withholding tax, fringe benefit tax, capital gains tax, and DST on 3 June 2015. Hence, the FDDA was considered issued by the Commissioner's duly authorized representative. However, the taxpayer sought reconsideration of the FDDA issued by the OIC-Assistant Commissioner, which led to the latter's issuance of the revised FDDA.

The CTA held that the revised FDDA signed by the Assistant Commissioner that is considered the decision of the Commissioner's duly authorized representative, which may either be: appealed to the CTA or protested through request for reconsideration to the Commissioner, both within 30 days from date of receipt of the revised FDDA.

The taxpayer received the Revised FDDA on 15 December 2015. Counting 30 days from 15 December 2015, the CTA held that the taxpayer had until 14 January 2016 to file the Petition for Review to the CTA, or request for reconsideration to the Commissioner. Considering that the taxpayer chose to file a Petition for Review to the Court, which was filed on 14 January 2016, the filing of Appeals is well within the 30-day reglementary period provided in Section 228 of the Tax Code, as amended, in relation to Section 3.1.5 of RR No. 12-99.

(Capitol Steel Corporation v. Commissioner of Internal Revenue, CTA Case No. 9240, 26 October 2017)

Excess input VAT subject of claim for refund that was denied for non-compliance with invoicing requirements may be claimed as deduction for tax purposes

Under Section 34(D)(1)(a) of the Tax Code, a loss actually sustained during the taxable year, which is not compensated by insurance or otherwise, shall be deductible from gross income if the loss is incurred in trade or business.

In the instant case, the taxpayer had excess unutilized input VAT from various purchases of goods and services that are attributable to services it rendered to persons engaged in international shipping or international air transport operations, which are treated as zero-rated sale of service. In this regard, the taxpayer filed a claim for issuance of a TCC with the One-Stop-Shop Inter-Agency Tax Credit and Duty Drawback Center of the Department of Finance (DOF). However, the claim was denied by the DOF on the sole ground that the taxpayer did not strictly comply with the invoicing requirements for zero-rated sales.

In view of the DOF's denial of the taxpayer's refund claim, the taxpayer wrote off the amount of denied refund claim in its books and claimed it as a deduction from gross income. The BIR then assessed the taxpayer for deficiency income tax and disallowed the deduction, explaining in the final assessment notice that the amount of denied refund claim, which was treated as bad debt, was not properly supported with the necessary documents in order to be considered a valid deduction from gross income.

The CTA noted that as applied to deductions in general, the proper characterization of the account as a valid deduction from gross income depends on the actual nature of the account. As explained by the CTA, the taxpayer’s use of the account name "bad debts" does not necessarily equate to the bad debt expense, as identified in the Tax Code. The CTA noted that the account, in this case, refers to a deductible loss.

Pursuant to Section 34(D)(1)(a) of the Tax Code and Section 96 of RR No. 02-40, an actual loss may be claimed as a deduction from gross income if the following requisites are present:

1. The loss is actually sustained by the taxpayer
2. The loss is sustained during the taxable year
3. The loss is not compensated by insurance or other forms of indemnity
4. The loss is incurred in the taxpayer's trade, profession, or business
5. The loss is evidenced by a closed and completed transaction

According to the CTA, the denied VAT refund claim is a valid loss, which should be properly deducted from its gross income, given the following circumstances: (1) the taxpayer actually sustained a loss when the DOF denied its claim for refund considering that with the denial of its claim for refund, the taxpayer no longer had any reasonable expectation to classify the same as a receivable; (2) the loss was sustained when the taxpayer received the DOF's denial letter; (3) the taxpayer was not compensated for the loss; (4) the taxpayer incurred the loss in the conduct of its trade or business (i.e., the denied input VAT arose from the taxpayer's zero-rated sale of services); and (5) the DOF categorically slated in its denial letter that the taxpayer's claim for issuance of TCC "cannot be given due course."

[Maersk Global Services Centres (Philippines) Ltd. v. Commissioner of Internal Revenue, CTA Case No. 8934, 11 October 2017]

PEZA Issuance

Online submission and issuance of PEZA certificate of tax incentives

Effective 15 October 2017, all requests for issuance of PEZA Certification on Available Incentives and Certification on Entitlement to 5% gross income tax (GIT) by qualified PEZA enterprises and developers/operators should be done through email pursuant to the following guidelines and procedures:

1. All requests for certifications on available incentives and entitlement to the 5% gross income tax shall be submitted using the “Request for Certification Form” (PEZA Form No. ERD.2.F.006), which should be signed by the responsible official (CEO, President, Vice-President, General Manager, Finance Manager, Logistics Manager or equivalent) of the PEZA-registered enterprise. The email of the responsible officer should be indicated on the request form.
2. The accomplished “Request Form” should be scanned and emailed to the Office of the PEZA Director General at odg@peza.gov.ph for entry in the PEZA Document Tracking System (PEZA DTS). The Request Form shall be forwarded to the Enterprise Services Division, which shall check the PEZA enterprise’s compliance with its reportorial obligations. Only PEZA enterprises and developers/operators with complete PEZA reports shall be endorsed by ESD to the Incentives Management Division (IMD) for processing and

subsequent PEZA approval/signing of the Certifications on Available Incentives and Entitlement to 5% GIT.

3. After evaluation and approval of issuance of the certification/s by the PEZA signing authority, the IMD shall email the system-generated signed Certification/s to the concerned PEZA zone administrator (ZA)/zone manager(ZM)/officer-in-charge (OIC), who shall inform the PEZA enterprise or PEZA developer/operator of release of the certification upon payment of P120 filing fee. The PEZA ZA/ZM/OIC shall email the Certification/s to the official of the PEZA enterprise who signed the Request Form. The Certification/s may be printed in case additional copies are required by the PEZA enterprise/developer/operator.

(PEZA Memorandum Order No. 2017-12, 27 September 2017)

BLGF Opinions

Requirement to secure business permit for project-based services

A company engaged in providing outsourced services is not required to secure a business permit in the LGUs where it deploys its personnel considering that the presence of its personnel in the localities is temporary and merely to fulfill its contractual obligation to its clientele.

In the instant case, a company engaged in job contracting and outsourced services to various clients from different industries and locations has its principal office in Valenzuela City, where it secures its business permit. Pursuant to its business, the company rendered services to one of its clients by deploying its personnel to its client office, which is located in Tanuan, Batangas, where the company does not maintain any office.

The Bureau of Local Government Finance (BLGF) opined that the company is not required to secure a business permit from Tanuan, Batangas considering that its presence in said locality is only to carry out its contractual obligation to its client.

Moreover, the absence of any branch office, sales outlet, or warehouse repudiates the requirement of securing the business permit since there is no fixed business establishment to regulate, inspect, and issue the business license to justify the imposition of business permit.

This notwithstanding, the company is required to pay occupational fee for any of its workers employed in other jurisdictions pursuant to Section 147 in relation to Section 151 of the Local Government Code (LGC), as may be authorized under a duly enacted ordinance of the City.

(BLGF Opinion issued to Paywell Marketing and Industrial Corporation, 30 October 2017)

Sales allocation rule for power generating company

Under Section 150 (b) of Republic Act No. 7160 or the LGC, the following sales allocation shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

a. 30% of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located
b. 70% of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.

Moreover, under Section 150 (d) of the LGC, in case a manufacturer, assembler, producer, exporter or contractor has two or more factories, project offices, plants, or plantations located in different localities, 70% of sales recorded in the principal office shall be prorated among the localities where the factories, project offices, plants, and plantations are located in proportion to their respective volume or production during the period for which the tax is due.

In the instant case, a power generation company with principal office in Cebu City acquired and operated a power plant in Navotas City. Due to difficulty in hiring competent administrative officers and personnel willing to work in flood-prone Navotas City, the company established an administrative office in Malabon City. The administrative office does not generate sales orders or receive collections from sales of power of the company.

The BLGF opined that while the LGC does not specifically define a "project office", the CTA interpreted a "project office" as the "equivalent to the factory of a manufacturer," such that the office must be indispensable to the main purpose of the business. Otherwise, it is merely an administrative office.

Considering the definition of project office, the BLGF opined that the Malabon office should not be subjected to local business tax (LBT) and no gross receipts should be allocated to the same. However, Malabon City may collect Mayor's permit and other regulatory fees or service charges imposed pursuant to Section 147 in relation to Section 151 of the LGC.

Moreover, pursuant to Section 150(b), 70% of all sales recorded in the principal office in Cebu City should be subject to LBT in Navotas City while the remaining 30% should be subject to LBT in Cebu City.

(BLGF Opinion issued to Therma Mobile, Inc., 27 October 2017)