TMAP TAX UPDATES
(January 16, 2024 – March 11, 2024)

Prepared by:
Mazars Philippines

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DISCUSSION

A. SUPREME COURT DECISIONS

1. Issuance of a mere Letter Notice (LN) to a taxpayer is not sufficient if no corresponding Letter of Authority (LOA) was issued.

The case involves a petition for review on certiorari filed by the Commissioner of Internal Revenue against Geniographics, Inc. seeking the reversal of the Decision dated August 8, 2022, and the Resolution dated November 28, 2022, of the Court of Tax Appeals (CTA) En Banc. The CTA En Banc affirmed the cancellation of the Final Decision on Disputed Assessment dated September 13, 2017, for deficiency Income Tax and Value-Added Tax, issued by the Commissioner of Internal Revenue against Geniographics, Inc.

The petitioner's grounds for appeal were found to be the same as those already raised and addressed by the CTA Second Division and En Banc. The Court accorded high respect to the findings and conclusions of the CTA, a specialized court in tax matters. It was emphasized that a tax assessment issued without the corresponding Letter of Authority (LOA) from the Commissioner of Internal Revenue or duly authorized representative is considered null and void.

Despite the petitioner's invocation of BIR Revenue Memorandum Order No. 55-2010, which allows the consideration of a Letter Notice (LN) as a notice of audit or investigation in the absence of an LOA, the Court held that such regulation cannot supersede the explicit requirement in the National Internal Revenue Code for an authority from the Commissioner or authorized representatives before a taxpayer examination can be conducted.

The Court also addressed the issue of whether the CTA could rule on an issue not raised before the administrative level. It was clarified that failure to raise certain issues earlier does not prevent the CTA from considering them, especially when they pertain to the intrinsic validity of the assessment itself.

The Court denied the petition for review on certiorari, affirming the decision of the CTA En Banc.

(Commissioner of Internal Revenue v. Geniographics Incorporated, G.R. No. 264572 (Notice), February 26,2024)

2. The simultaneous imposition of deficiency and delinquency interests is no longer allowed.

In view of the passage of Republic Act No. 10963, otherwise known as the **TRAIN Law**, and pursuant to the Court's ruling in the more-recent case in **Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue**, the simultaneous imposition of

deficiency and delinquency interests is no longer allowed. Instead, interest equal to the prevailing legal rate as set by the Bangko Sentral ng Pilipinas shall accrue on any amount of unpaid tax until it is fully paid.

Section 6 of Revenue Regulations No. 21-2018, 44 which implements the TRAIN Law provides:

SECTION 6. Transitory Provision. — In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

Period	Applicable Interest Type and Rate
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

The double imposition of both deficiency and delinquency interest under Section 249 prior to its amendment will still apply insofar as the period between the date prescribed for payment until December 31, 2017.

Taking these into account, deficiency and delinquency interests under the 1997 Tax Code 45 shall be imposed simultaneously but only until December 31, 2017. Beginning January 1, 2018, or upon the TRAIN Law's effectivity, only deficiency interest at the prevailing legal rate of 12% shall accrue on the unpaid amount of tax until fully paid.

(Victoria Manufacturing Corp. v. Commissioner of Internal Revenue, G.R. No. 217731 (Notice), August 9, 2023)

B. REVENUE REGULATIONS

REVENUE REGULATION NO. 02-2024 (February 28, 2024) – Prescribes the policies and guidelines for the publication of revenue issuances and other information materials of the BIR pursuant to Section 245(i) of the Tax Code, as amended by RA No. 11976 (Ease of Paying Taxes Act)

> "SEC. 245. Specific Provisions to be Contained in Rules and Regulations. — The rules and regulations of the Bureau of Internal revenue shall, among other things, contain provisions specifying, prescribing or defining:
>
> xxx
>
> "(i) The manner in which tax returns, information and reports shall be prepared and reported and the tax collected and paid, as well as the conditions under which evidence of payment shall be furnished the taxpayer, and the preparation and publication of tax statistics, AND PUBLICATION OF INFORMATION REQUIRED TO BE PUBLISHED PURSUANT TO ANY LAWS, RULES, AND REGULATIONS. **FOR PURPOSES OF PUBLICATION, THE BUREAU OF INTERNAL REVENUE MAY MAKE USE OF ANY ELECTRONIC MEANS OF PUBLICATION IN THE OFFICIAL GAZETTE, OR ITS OFFICIAL WEBSITE**;"

The BIR revenue issuances and other information materials subject of the Regulations refer to the following:

a. Revenue Regulations;
b. Revenue Memorandum Circulars;
c. Revenue Memorandum Orders;
d. Other revenue issuances;
e. Classification of taxpayers including, but not limited to, Top Withholding Agents;
f. Cannot be located (CBL) taxpayers;
g. Revised Schedules of Zonal Values;
h. List of seized, foreclosed and acquired properties for sale;
i. Notice of sale of seized, foreclosed and acquired properties;
j. Information materials such as, but not limited to, press releases,
k. announcements/advisories and flyers; and
l. Other similar documents or materials that require publication. (collectively, the BIR Issuances)

In line with the objective of modernization of tax administration and continuous enhancement of operational efficiency and effectiveness, the BIR may publish (electronically, or otherwise) the BIR Issuances to implement and/or clarify relevant tax laws, rules and regulations, through the following means:

a. BIR's official website;
b. Official Gazette; or
c. Newspaper of general circulation.

C. REVENUE MEMORANDUM CIRCULARS

1. **REVENUE MEMORANDUM CIRCULAR No. 11-2024 (January 22, 2024) - Clarifies the tax treatment of lease accounting by lessees under Philippine Financial Reporting Standard 16 in relation to Sections 34(A), 34(K), 106, 108, 179, 194 of the Tax-code, as amended, RR No. 19-86, as amended, and RR No. 02-98, as amended.**

The issuance provides detailed guidelines for the taxation treatment of lease agreements, ensuring compliance with relevant tax laws and regulations.

The document defines an operating lease as one where the asset is not fully amortized during the primary lease period, and the lessor's profits are not solely reliant on the rentals during this period. A finance lease, however, involves payments over an obligatory period that are sufficient to amortize the lessor's capital outlay, borrowing costs, and profits.

a. Income Tax Treatment:

- Under both operating and finance leases, lessees can deduct the rent paid or accrued, including expenses specified in the agreement.
- Finance leases may allow for depreciation during the primary lease period, but not less than 60% of the depreciable life of the property.
- Interest expenses for finance leases are not accounted for separately from principal payments for income tax purposes.

b. Criteria for Characterizing Transactions:

- Compelling factors, such as an option to purchase the asset or automatic ownership upon payment of rentals, may indicate a conditional sales contract instead of a lease.
- Intent to treat a transaction as a purchase and sale may exist if portions of periodic payments are specifically applicable to equity or if the purchase option price is nominal.

c. Treatment under PFRS 16:

PFRS 16 treats leases uniformly, recognizing Right of Use Assets (ROUA) and lease liabilities at the lease inception, with depreciation on ROUA and interest expense on lease liabilities.

d. Tax Treatment of Expenses:

- Only actual rent paid or accrued is deductible for income tax purposes, with specific guidelines for disclosure in financial statements.
- Initial direct costs and expenses paid by the lessee but properly for the lessor's account are deductible.

e. Other Tax Implications:

- Short-term leases and leases for low-value assets are treated as operating leases for taxation.
- Gains or losses from lease modifications are not included in taxable income determinations.
- Withholding tax rates vary depending on the nature of the lease transaction (operating or conditional sale).

f. VAT and DST Implications:

VAT and DST are applicable based on the nature of the lease transaction, whether it qualifies as a finance lease or an operating lease.

2. **REVENUE MEMORANDUM CIRCULAR No. 12-2024 (January 22, 2024) - Clarifies the treatment of foreign currency transactions for financial reporting and internal revenue tax purposes.**

The RMC was issued to clarify the distinctions between forex gains/losses recognized in financial statements prepared under the Philippine Financial Reporting Standards (PFRS)/Philippine Accounting Standards (PAS) and those considered as income or allowable deductions for income tax purposes under Sections 32 and 34 (D) of the National Internal Revenue Code (NIRC) of 1997, as amended, as well as Sec. 96 of Revenue Regulations (RR) No. 02-40, RR No. 06-2006, and other related revenue issuances. Additionally, it provided guidelines on the appropriate use of forex rates for recording and reporting foreign currency transactions for tax purposes.

3. **REVENUE MEMORANDUM CIRCULAR No. 13-2024 (January 22, 2024) - Clarifies on the treatment of retirement benefits expense for financial reporting and tax purposes.**

The primary determinant of the deductible expense amount for income tax purposes by the employer hinges on whether the employer has a registered retirement benefit plan with the BIR and declared as reasonable under Section 32(B)(6)(a) of the Tax Code, as amended, within the framework of a Tax Qualified Plan.

If the employer's retirement benefit plan meets the requirement under RA 4917, the employer may deduct the following contributions to the retirement fund.

a. contribution to the Retirement Fund during the taxable year to cover the pension liability accrued during that year (Normal Cost)

b. Contributions to the Retirement Fund during the taxable year in excess of the Normal Cost but only if such amount: (i) has not theretofore been allowed as a deduction; and (ii) is apportioned in equal parts over a period of 10 consecutive years beginning with the year in which the transfer or payment is made.

If an employer does not have a Tax Qualified Plan, the rules under RA 7641 shall apply. Accordingly, only the actual amount of retirement benefits paid to employees can be claimed as deduction from the gross income.

In case of excessive contributions of the employers to the retirement fund under a Tax Qualified Plan, the contributions to the trust during the taxable year in excess of the Normal Cost provided that (a) such amount has not been allowed as a deduction and (b) is apportioned in equal parts over a period of 10 consecutive years beginning with the year in which the transfer or payment is made are allowed as deductions for income tax purposes. However, in the event that portions of the retirement fund in excess of the amount actuarially determined to cover the benefits of the covered employees are reverted to the employer, said reverted amount shall be reported as income and become taxable.

The income of the Retirement Fund from its investments are exempt from income tax provided all the statutory requirements for a reasonable retirement benefit plan are met and complied with.

4. **REVENUE MEMORANDUM CIRCULAR No. 14-2024 (January 24, 2024) - Ceases the payment of Annual Registration Fee pursuant to Republic Act No. 11976 (Ease of Paying Taxes Act).**

In compliance with Republic Act No. 11976 (Ease of Paying Taxes Act), the BIR will no longer collect the Annual Registration Fee (ARF) from business taxpayers. Consequently, business taxpayers are relieved from the obligation of filing BIR Form No. 0605 and paying the Five Hundred Pesos (₱ 500.00) ARF, both for new business and annual renewal. The validity of the BIR Certificate of Registration (COR) containing the Registration Fee for existing business taxpayers will be maintained. Should they wish to update or replace their COR, they can do so at their convenience by surrendering their old COR at the Revenue District Office (RDO) where they are registered, on or before **December 31, 2024**.

5. **REVENUE MEMORANDUM CIRCULAR No. 19-2024 (February 5, 2024) - Clarifies the tax treatment of interest expense paid or incurred on indebtedness in connection with the taxpayer's profession, trade or business and other related matters.**

Interest paid or incurred within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business shall be allowed as a deduction from gross income, subject to certain limitations, when the following requisites, provided in Section 34 (B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as implemented by Revenue Regulations (RR) No. 13-2000 and Section 7(B) of RR No. 5-2021, are met:

a. The indebtedness must be that of the taxpayer;
b. The interest must have been stipulated in writing;
c. The interest must be legally due;
d. The interest payment arrangement must not be between related taxpayers as mandated in Sec. 34 (B)(2)(b), in relation to Sec. 36(B), both of the NIRC of 1997, as amended;
e. The interest must not be incurred to finance petroleum operations;
f. The interest was not treated as "capital expenditure" if such interest was incurred in acquiring property used in trade, business or exercise of profession; and
g. The interest shall be reduced by an amount equivalent to twenty percent (20%) of interest income subjected to Final Tax. However, if the final Withholding Tax rate on interest income of twenty percent (20%) will be adjusted in the future, the interest reduction shall be adjusted accordingly.

In addition, the taxpayer must have withheld the appropriate tax in order to claim the interest expense as a deduction from the gross income.

Only the interest expense directly attributable to the acquisition of any property (e.g., building, car, and machinery) used in trade, business or exercise of profession may be capitalized for tax purposes. Hence, the interest expense incurred in the acquisition of a qualifying asset under PAS 23 may be capitalized for tax purposes only if the asset is used in trade, business or exercise of profession and not if it is intended for sale (e.g., inventories).

Should the taxpayer elect to capitalize the interest expense incurred to acquire property used in trade, business or exercise of profession, which may include a qualifying asset, for tax purposes, the following shall apply:

a. The option to capitalize interest expense shall be irrevocable per specific asset/property.
b. If the loan covers the acquisition of several properties, the interest expense on such loan shall be proportionately capitalized on such properties. For example, if the loan was contracted for the acquisition of a car and machinery, then the interest expense on such loan shall be proportionately capitalized between the car and machinery.
c. If the loan pertains to general borrowings or covers the acquisition of an asset/ property used in trade, business or exercise of profession and qualifying assets intended for sale such as inventories, only the interest expense incurred or paid from the general borrowings directly attributable to the acquisition of the asset/property used in trade, business or exercise of profession may be capitalized by the taxpayer subject to verification by the concerned BIR office upon audit of the taxpayer's Tax Return.
d. If multiple loans were contracted for the acquisition of a single property used in trade, business or exercise of profession, the option to capitalize interest expense shall be applied consistently with all the loans relating to the acquisition of such property.
e. If the interest expense is treated as a capital expenditure, the taxpayer may only claim the periodic depreciation or amortization of such capital expenditure as a deduction from its gross income. The capitalized interest expense shall be depreciated or amortized based on the useful life of the asset. Generally, depreciation or amortization shall commence upon the acquisition of the property. However, if the property is not yet ready for its intended use in the taxpayer's trade, business or exercise of profession, then the depreciation shall commence when the property is already ready for its intended use.

When the taxpayer elects to capitalize interest expense incurred or paid to acquire property used in trade, business or exercise of profession and claims periodic depreciation or amortization on such interest expense, the taxpayer cannot claim as a deduction from gross income the difference of the periodic depreciation or amortization and the interest expense actually incurred or paid should the latter be greater than the former. The taxpayer may only claim the periodic depreciation or amortization of the capitalized interest expense as a deduction from its gross income.

Interest expense is not deductible in full when claimed as an outright expense. The amount of interest expense paid or incurred on indebtedness in connection with the taxpayer's trade, business or profession shall be reduced by an amount equivalent to twenty percent (20%) of interest income subjected to Final Tax pursuant to Section 34(B)(1) of the NIRC of 1997, as amended. However, for corporations subject to the regular Corporate Income Tax rate of twenty percent (20%), the deduction is zero percent (0%) because there is no difference between the tax rates applicable to taxable income and interest income subjected to Final Tax. The limitation shall apply whether or not a tax arbitrage scheme was entered into by the taxpayer or regardless of the date when the interest-bearing loan and the date when the investment was made, as long as, during the taxable year, there is an interest expense incurred and an interest income earned that was subjected to Final Withholding Tax. This rule must be observed irrespective of the loan currency and/or the currency in which investments or deposits were made.

For the proper monitoring of interest expense, the following may be submitted and/or disclosed in the Notes to Financial Statements of the taxpayer:

a. A subsidiary ledger detailing the interest expense capitalized or expensed and/or disclosure of interest capitalized or expensed in the Notes to Financial Statements;
b. Disclosure of the principal payments made and the interest expense paid or incurred in the Notes to Financial Statements; and/or,
c. Documents that will justify the availment of interest capitalization (e.g., Board Resolution specifying the utilization/allocation of loan proceeds for the general borrowing, year-end certification from the financial institution or creditor, loan documents, and other similar documents).

If within the taxable year an individual taxpayer reporting income on the cash basis incurs an indebtedness on which an interest is paid in advance through discount or otherwise, such interest expense paid in advance shall only be allowed as a deduction in the year when the taxpayer has fully paid the indebtedness. If the indebtedness is payable in periodic amortization, the amount of interest expense that corresponds to the amount of the principal amortized or paid during a certain period shall be allowed as a deduction in such taxable year.

Under the accrual method of accounting, the all-events test shall apply. The test requires that the following requisites be met in the recognition of income or expense:

a. The fixing of a right to income or liability to pay; and
b. The availability of a reasonable accurate determination of such income or liability.

Accordingly, interest expense shall be deducted in the year paid or accrued. However, if a corporation prepays the interest at the loan drawdown date, the prepaid interest shall be amortized over the required period. To fully reflect the revenues generated and expenses incurred, the amortized portion shall be deducted from the prepaid interest as the expense for the taxable year within the required period.

Interest expense shall not be deductible from gross income if both the taxpayer and the person to whom the payment has been made or is to be made are persons specified under Section 36(B) of the NIRC of 1997, as amended.

For tax purposes, costs such as service fees and commissions paid to banks and/or lending institutions for borrowing of funds shall not be classified as interest expense but as an ordinary and necessary business expense. Such costs shall be allowed as a deduction from gross income in the year paid or incurred.

The interest expense paid or incurred shall be subject to the following Withholding Tax rates unless otherwise provided by law or regulations:

a. Final Withholding tax of twenty-five percent (25%) on interests paid to non-resident aliens not engaged in trade or business in the Philippines.
b. Final Withholding Tax of twenty percent (20%) on interests from foreign currency loans paid to non-resident foreign corporations, unless entitled to a lower rate under an existing treaty;
c. Final Withholding Tax of ten percent (10%) on interests from foreign currency loans paid by residents other than offshore banking units in the Philippines or other depository banks under the expanded foreign currency deposit system to depository banks under the expanded foreign currency deposit system; and
d. Creditable Withholding Tax of fifteen percent (15%) on interests from any other debt instruments not within the coverage of "deposit substitutes" under RR No. 14-2012 paid to persons residing in the Philippines except interests paid by top withholding agents strictly arising from individual loans obtained from banks that are not securitized, assigned or participated out, as well as interests paid by banks designated as top withholding agents strictly arising from loans made to such banks that are not securitized, assigned or participated out, which shall be subject to a Creditable Withholding Tax of two percent (2%) pursuant to Revenue Memorandum Circular No. 84-2012.

6. REVENUE MEMORANDUM CIRCULAR No. 27-2024 (February 20, 2024) - Circularizes the updated Checklist of Documentary Requirements for BIR Registration-Related Frontline Services

The updated Checklist of Documentary Requirements for BIR registration-related frontline services are prescribed by this Circular.

Pursuant to Paragraph 2 of Rule VII, Section 2(b) of the Implementing Rules and Regulations of Republic Act No. 11032 (Ease of Doing Business and Efficient Government Delivery Act of 2018), the BIR shall only process applications or requests with complete documentary requirements and shall not process deficient or incomplete applications or requests.

7. REVENUE MEMORANDUM CIRCULAR No. 30-2024 (February 26, 2024) - Circularizes the Entry into Force, Effectivity and Applicability of the Philippines-Brunei Double Taxation Agreement.

The Agreement between the Government of the Republic of the Philippines and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (PH-Brunei Tax Treaty) which was entered into force on January 25, 2024. Article 28 (Entry into Force) of the Agreement shall have effect on income derived from sources within the Philippines beginning January 1, 2025.

Tax Treaty Relief Applications or Requests for Confirmation invoking the provisions of the PH-Brunei Tax Treaty should be filed with, and addressed to, the International Tax Affairs Division (ITAD) at Room No. 811, Bureau of Internal Revenue, National Office Building, Senator Miriam P. Defensor-Santiago Avenue, Diliman, Quezon City, Philippines. For this purpose, the concerned tax resident of Brunei, the income payor or withholding agent, or their duly authorized representative, should file a duly accomplished Application for Treaty Purposes (BIR Form No. 0901), together with the required documents, pursuant to Revenue Memorandum Order No. 14-2021, as clarified by Revenue Memorandum Circular No. 77-2021.

8. REVENUE MEMORANDUM CIRCULAR No. 36-2024 (March 11, 2024) - Clarifies the manner of computing the Minimum Corporate Income Tax (MCIT) for Taxable Year 2023

Clarifying the manner of computing the Minimum Corporate Income Tax (MCIT) pursuant to Republic Act No. 11534, otherwise known as the "Corporate Recovery and Tax Incentives for Enterprise Act," prescribing a one percent (1%) MCIT for the period July 1, 2020, until June 30, 2023. **Effective July 1, 2023, the MCIT rate reverted to its old rate of two percent (2%) based on the gross income of the corporation.**

In computing the MCIT, the total annual income shall be divided by 12 months to obtain the average monthly gross income. The rate of **1% applies for the period January 1 to June 30, 2023, and 2% for the period July 1 to December 31, 2023.**

Annual Accounting Period	MCIT 2% / 1%	Annual Accounting Period	MCIT 2% / 1%
FY 7-31-23	1.08 %	FY 1-31-24	1.58
FY 8-31-23	1.17	FY 2-28-24	1.67
FY 9-31-23	1.25	FY 3-31-24	1.75
FY 10-31-23	1.33	FY 4-30-24	1.83
FY 11-31-23	1.42	FY 5-31-24	1.92
CY 12-31-23	1.50	FY 6-30-24	2.00