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IN TAX | OCTOBER 2008**Letter from the Editor-in-Chief**

Our Valued Clients,

Financial institutions and insurance companies have been the focus of the tax authorities in the past months. For instance, the Bureau of Internal Revenue (BIR) amended a fairly recent issuance - RMC No. 30-2008, which clarifies the taxability of insurance companies. Also noteworthy is the issuance of Revenue Regulations (RR) 8-2008, which rationalized the gross receipts tax on banks and non-bank financial intermediaries.

A number of issuances relating to procedure have also been released:

- RR No. 11-2008 which consolidates the process for primary registration with the BIR
- Revenue Memorandum Circular No. 56-2008 which lays down the procedures on the handling of applications for cancellation of business registrations

We have also highlighted in this issue positive developments in international trade and customs:

- The agreement between the Bureau of Customs, and the Subic and Clark free ports on the reconciliation of customs procedures, processes and systems
- The signing of a Memorandum of Agreement between the Department of Energy and the BoC that would further efforts to combat the technical smuggling of oil products
- Conclusion of the ASEAN-India Trade in Goods Negotiations

We hope you find this edition of In Tax of interest in your respective lines of business. If you have any questions or clarifications, please feel free to contact us.

Very truly yours,

Emmanuel P. Bonoan

Chief Operating Officer

Vice Chairman, Tax & Corporate Services

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SUPREME COURT

Healthcare agreement is an insurance contract subject to DST

A healthcare agreement is in the nature of an insurance contract and therefore subject to DST under Section 185 of the 1997 Tax Code. Under the law, a contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. The event insured against must be designated in the contract and must either be unknown or contingent.

Petitioner's healthcare agreement is primarily a contract of indemnity. Contrary to petitioner's claim, its health care agreement is not a contract for the provision of medical services. Petitioner does not actually provide medical or hospital services but merely arranges for the same and pays for them up to the stipulated maximum amount of coverage. It is also incorrect to say that the healthcare agreement is not based on loss or damage because, under the said agreement, petitioner assumes the liability and indemnifies its member for hospital, medical and related expenses (such as professional fees of physicians). The term "loss or damage" is broad enough to cover the monetary expense or liability a member will incur in case of illness or injury.

(Philippine Health Care Providers, Inc. vs. CIR, G.R. No. 167330, 12 June 2008)

Failure to indicate option of tax refund or tax credit not fatal to a claim for refund

Section 76 of the 1997 Tax Code offers two options: (1) filing for tax refund and (2) availing of tax credit. The two options are alternative and the choice of one precludes the other. However, failure to indicate a choice will not bar a valid request for a refund, should this option be chosen by the taxpayer later on. The reason for requiring that a choice be made in the Final Adjustment Return upon its filing is to ease tax administration, particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight. *(CIR vs. PERF Realty Corporation, G.R. No. 163345, 4 July 2008)*

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If you have any comments, questions and suggestions you may contact us at 885-7000 loc. 339 or write us an email on manila@kpmg.com. We would be glad to hear from you.

Revenue Regulations (RR) No. 17-99 contrary to Section 145 of the 1997 Tax Code

By adding the qualification that the tax due after the 12% increase becomes effective shall not be lower than the tax actually paid prior to 1 January 2000, RR No. 17-99 [implementing Sections 141, 142, 143 and 145 (A) and (C) (1), (2), (3) and (4) of the 1997 Tax Code relative to the increase of the excise tax on distilled spirits, wines, fermented liquors and cigars and cigarettes packed by machine by 12% on January 1, 2000] effectively imposes a tax which is the higher amount between the *ad valorem* tax being paid at the end of the three (3)-year transition period and the specific tax under paragraph C, sub-paragraph (1)-(4), as increased by 12% — a situation not supported by the plain wording of Section 145 of the 1997 Tax Code. (*CIR vs. Fortune Tobacco Corporation, G.R. Nos. 167274-75, 21 July 2008*)

BUREAU OF INTERNAL REVENUE (BIR)

Rationalization of Gross Receipts Tax (GRT) on banks and non-bank financial intermediaries

Regulations have been issued to rationalize the imposition of Gross Receipts Tax (GRT) under Sections 121 and 122 on banks and non-bank financial intermediaries performing quasi-banking functions and on other non-bank financial intermediaries by clarifying that the transactions of the Bangko Sentral ng Pilipinas (BSP) in the exercise of its primary and ancillary functions as the central monetary authority are outside the coverage of the GRT.

Salient points of the regulations are as follows:

- *Nature of GRT and its imposition under Sections 121 and 122 of the Tax Code, as amended*

GRT is a form of percentage tax which is imposed on persons and entities who sell/lease goods or services in the course of trade or business in the Philippines. It is a tax imposed on the privilege of doing business, is a broad-based, low-rate tax imposed on all income received by a business without any deductions for costs of doing business.

Pursuant to Sec. 121 of the Tax Code, GRT is imposed on banks and non-bank financial intermediaries performing quasi-banking functions, and on persons performing similar

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banking activities. Sec.122 of the same Tax Code, on the other hand, imposes GRT on *other* non-bank financial intermediaries or financing companies, and on persons performing similar *financing activities.*

- *BSP as Central Monetary Authority*

Republic Act No. 7653 created the BSP as an independent central monetary authority with the following responsibilities:

1. To provide policy directions in the areas of money, banking and credit;
2. To supervise the operations of banks; and
3. To exercise regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

BSP, as central monetary authority, has the primary objective to maintain price stability conducive to a balanced and sustainable growth of the economy. Also, it shall promote and maintain monetary stability and the convertibility of the peso.

Lastly, new regulations made the pronouncement that BSP, while dispensing with its responsibilities in relation to its objectives as a central monetary authority, is in the performance of governmental functions and not in the pursuit of commercial or business activities. Hence, any revenue generated by BSP from its operations as such will not transform such activities into a business undertaking subject to GRT.

(Revenue Regulations No. 8-2008 dated 20 August 2008)

Consolidated regulation on primary registration

A consolidated regulation has been issued which aims to primarily develop a clean and accurate registration data which is kept and maintained only under a single data warehouse. This new regulation consolidates and updates all existing revenue regulations pursuant to Section 236, Registration Requirements of the Tax Code of 1997 in relation to the following:

1. Registration, updates and cancellation procedures;
2. Documentary requirements;
3. Registration forms;
4. Annual registration fee;
5. Certification fee; and
6. Penalties for registration-related violations.

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Primary registration is defined in the regulation as the process by which a person, whether an individual, including estates and trusts or a corporation and other juridical entities, upon application and full compliance with the registration requirements, is registered with and consequently included in the registration database of the BIR. It may involve one or two stages depending on the purpose of the taxpayer in applying for registration.

Stages of Primary Registration:

A. Initial Stage includes the following:

1. General rules in the application and issuance of TIN
2. Persons who are required or who may secure TIN
3. BIR forms and documentary requirements
4. Venue in securing TIN; and
5. Issuance of TIN card.

B. Second Stage is required to complete the registration requirements under Section 236(A) of the Tax Code of 1997, as amended.

Other important features of this regulation are as follows:

1. Persons and establishments who are entitled to the issuance of the Certificate of Registration (COR) and pertinent information contained therein under Section 8;
2. Grounds for the denial of application for TIN and registration including updates thereto under Section 9;
3. Payment of annual registration fee and those entities exempt therefrom under Section 10;
4. Registration of tax type under Section 11;
5. Procedure and requirements for the transfer of TIN records and business registration under Section 12;
6. Updates in registration under Section 13;
7. Cancellation of registration under Section 14; and
8. Penalty provisions under Section 20.

It also provides for the mandatory conduct of tax briefings for newly registered taxpayers and issuance of basic registration information flyers/leaflets. (*Revenue Regulations No. 11-2008 - Due to the voluminous details included in the RR, a special issuance of the In-Tax will be published to lay out the details of this issuance for the guidance of all concerned.*)



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Rules issued in computing share of beneficiary provinces in tobacco excise tax collections

Guidelines have been issued regarding the manner of computing the basis of the fifteen percent (15%) allocable share of the beneficiary provinces in the excise tax collection from locally manufactured Virginia-type cigarettes pursuant to the Republic Act (RA) No. 7171 (An Act to Promote the Development of the Farmers in the Virginia Tobacco-Producing Provinces).

Based on the rules, the computation of the 15% share of the beneficiary provinces shall be based on the actual excise taxes collected annually from locally manufactured Virginia-type cigarettes. *(Revenue Regulations No. 12-2008 dated 23 September 2008)*

Procedures on the handling of applications for cancellation of business registrations

Procedures have been issued on the handling of application for cancellation of business registration thru the filing of a "Notice of Closure or Cessation of Business" to the RDO where registered and by accomplishing the prescribed registration updates form.

This application for cancellation of business registration shall be granted under the following situations:

1. Whenever the taxpayer decides to voluntarily close shop;
2. When a partnership/corporation decides to dissolve;
3. In cases of merger or consolidation resulting to the dissolution of the absorbed entity/ies; or
4. Upon the death of the individual doing business under a sole proprietorship.

Together with the accomplished "Notice of Closure or Cessation of Business", the taxpayer shall submit to the BIR, for evaluation, the following:

1. List of Inventory of Goods, Supplies and Capital Goods;
2. List of Unused Sales Invoice, Official Receipts and Other Accounting Forms;
3. List of Certificates, Permits, Notices, etc. issued to the taxpayer by the BIR.

Further, the taxpayer shall physically submit and/or surrender to the RDO all unused Sales Invoices, Official Receipts and other accounting forms, for destruction. Moreover, all BIR-issued Notices, Permits, Certificates of Registration (COR), etc. shall be surrendered for cancellation. For purposes of physical submission as required by these procedures, for taxpayers with Head Office (HO) and



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branches, these shall be brought to the RDO where the HO is registered.

Destruction shall be done by the BIR personnel charged to receive the unused Sales Invoice, Official Receipts and Other Accounting Forms in the presence of the taxpayer. After destruction, the taxpayer is strictly directed to properly dispose of the destroyed documents and shall be made liable if these shall be used as source of spurious input taxes.

All surrendered BIR-issued Notices, Permits, Certificates, etc. shall be stamped "CANCELLED" to disallow their reuse and shall be returned to the taxpayer for safekeeping or proper disposition. A list of the names of the taxpayers who have ceased business operation shall be circularized every month. (*Revenue Memorandum Circular No. 56-2008 dated 25 July 2008*)

Clarification on the taxation of foreclosed assets

New regulations have been issued relating to the payment of capital gains tax, creditable expanded withholding tax, value added tax and documentary stamp tax. The new rules specifically addresses the following:

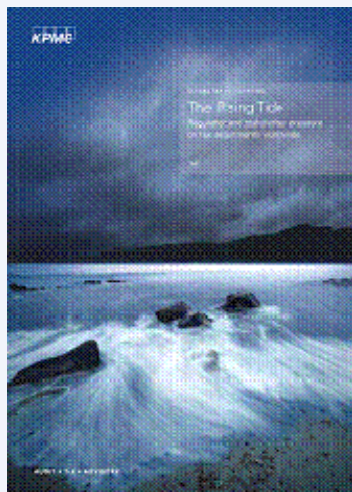
- *Time within which to reckon the redemption period of foreclosed assets*

For purposes of reckoning the one-year redemption period for individual mortgagors or the three-month redemption period for juridical persons/mortgagors, this redemption period shall be reckoned from the date of the confirmation of the auction sale which is the date when the certificate of sale is issued.

- *Period within which to pay capital gains tax or creditable withholding tax and documentary stamp tax on the foreclosure of real estate mortgage by those governed by the General Banking Laws of 2000 (i.e., mortgagee bank/quasi-bank/trust company)*

In case of failure to redeem the foreclosed property within the time stated above, the following taxes shall fall due:

1. If the asset is a capital asset of the mortgagor- the *capital gains tax* shall become due within thirty (30) days following the expiration of the redemption period (1 year for individual mortgagors and 3 months for juridical mortgagors).



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2. If the asset is an ordinary asset of the mortgagor- the *creditable expanded withholding tax* shall be due and paid within ten (10) days following the end of the month in which the redemption period expires.
3. If the property foreclosed is under the circumstances which warrant the imposition of *value-added tax* (VAT) under Section 106 of the Tax Code (implemented by Revenue Regulations No. 4-2007), the VAT shall be paid by the mortgagor on or before the 20th day or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes.
4. The *documentary stamp tax* and the filing of the return thereof shall have to be made within five (5) days from the end of the month when the redemption period expires.

The taxes due on the foreclosure sale must be based on the *bid price of the highest bidder* pursuant to Revenue Regulations 4-99.

Under the foregoing, the mortgagee banks, quasi-banks, and trust companies are considered the *statutory sellers* in the foreclosure sales of these foreclosed real properties, and are thus, expected to have paid the applicable taxes within the required period once the redemption period has expired and will not have to wait for another or subsequent buyer before taxes on said foreclosed property shall be paid.

- *Venue for the payment of these taxes*

Generally, the venue for the filing of the returns and payment of taxes on foreclosure sale, except the VAT, shall be at the place where the real property foreclosed is located.

The VAT, if applicable, must, in all cases involving foreclosure sale of real property, be paid by the VAT-registered mortgagor by filing the required return in the RDO where the mortgagor is registered.

If the statutory seller (mortgagee bank/quasi-bank/trust company) is a Large Taxpayer, the venue for the payment of capital gains tax/creditable withholding tax, and documentary stamp tax on the foreclosure sale of real properties mortgaged with them shall be with the concerned office of the Large Taxpayer Service (RR 4-2008).

- *Issuance of Certificate Authorizing Registration (CAR)*

Upon submission of proof of payment of taxes by the statutory seller, the CAR is issued without waiting for the VAT compliance of the mortgagor, in all cases where the property is subject to VAT. (*Revenue Memorandum Circular No. 58-2008 dated 15 August 2008*)

Amendments to RMC No. 30-2008

Portions of RMC No. 30-2008 have recently been amended following dialogue and consultations by the BIR with the representatives of the insurance industry.

The portions amended are as follows:

- *On the portion of the RMC 30-2008 relating to the determination of the Minimum Corporate Income Tax for life and non-life insurance companies*

The costs of service or direct cost and identifiable direct revenue-related deductions shall now include the following:

1. Salaries, wages and other employee benefits of personnel directly engaged in underwriting, claims and benefits, actuary, policy owner services (such as but not limited to policy changes and amendments, policy endorsements/assignments, policy benefits and features, changes in forfeiture options, and policy reinstatements);
2. Commissions on direct writings/reinsurance;
3. Cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies;
4. Inspection and medical fees.

The foregoing are in addition to those already mentioned in RMC 30-2008 such as claims, losses, maturities and benefits net of reinsurance recoveries; additions required by law to reserve fund; and reinsurance ceded.

Moreover, investment expenses should not form part of the direct cost nor a deductible expense in the determination of the net taxable income. However, investment expenses relating to the investment income that has not been subjected to final tax, although do not form part of the direct cost, shall be allowed as deduction to arrive at the taxable income.

- *On the portion of the RMC 30-2008 relating to the taxability of the various business activities of life insurance companies for business tax and documentary stamp tax*

Business Tax

1. Direct Writings/Premiums

It is stressed that premium on Health and Accident Insurance, whether received by a life or non-life insurance company, shall be considered as premium on life insurance and, therefore, subject to Premium Tax at the rate of five percent (5%) and not Value-added Tax.

2. Management Fees, Rental Income, or Other Income/Fees

Re-issuance fees, reinstatement fees, renewal fees and penalties paid to the life insurance company are considered income of the life insurance company for services rendered to customers and therefore subject to VAT under Section 108 or Percentage Tax under Sec 116, whichever is applicable.

3. Investment Income Realized from the Investment of Funds Obtained from Others

Income earned by the insurance company whereby it uses the funds solicited and pooled from its policy holders to invest in various marketable securities, instruments, other financial products *including investment in real estate* (which funds are recognized as liabilities by the life insurance company and can be withdrawn by the policy holders anytime) is considered as income earned from performing a quasi-banking activities or similar banking activities and subject to gross receipts tax imposed under Sec. 121 of the Tax Code, as amended.

4. Manner of Apportionment to Determine Exempt Investment Income and Investment Income Subject to Gross Receipts Tax

That portion of the investment income which is considered to have been earned from performing *quasi-banking activities or similar banking activities*, are subject to gross receipt tax pursuant to Sec.121 of the Tax Code, as amended.

Documentary Stamp Tax

1. The imposition of documentary stamp tax (DST) for the individual certificates issued to each and every employee covered by group insurance policy pursuant to Section 188 of the Tax Code, as amended shall be strictly enjoined once the new regulations become effective.
 2. With regard to health and accident insurance policy issued, the basis for the payment of DST shall be Sec. 183 of the Tax Code, as amended, since it partakes the nature of a life insurance contract.
 3. For certificates issued to the policyholder evidencing his contribution to the Variable Unit Link (VUL) fund which partake the nature of deeds of trust shall *not* be subject to the imposition of DST prescribed by Sec. 195 of the Tax Code, as amended, considering that the premiums on variable contracts have already been subjected to DST under Sec. 183 of the same Tax Code.
- *On the portion of RMC 30-2008 dealing with the taxability of non-life insurance companies for business and documentary stamp tax purposes*

Business Tax

1. Premiums received from a health and accident insurance contract underwritten by the non-life insurance companies, inasmuch as the same partakes the nature of a life insurance policy, is subject to the payment of the premium tax imposed by Sec. 123 of the Tax Code, as amended.
2. Again, the basis for the payment of DST on health and accident insurance policies even if issued by non-life insurance companies shall still be Sec. 183 of the Tax Code, as amended.
3. Likewise, the Certificate of Cover (COC) issued to motor vehicle insurances shall be subject to DST under Sec. 188 of the Tax Code, as amended, which shall be strictly complied with upon the issuance of new regulations.

(Revenue Memorandum Circular No. 59-2008 dated 23 August 2008)

Filing of tax returns for newly transferred taxpayers

Newly transferred taxpayers whose transfer of registration is still in process should file their tax returns and pay their internal revenue taxes at the Authorized Agent Bank (AAB) under the jurisdiction of the new Revenue District Office (RDO). However, the old RDO Code shall be indicated on the return. The same rule shall apply in areas without AABs and to those covered by RMC No. 4-2007 (Issuance and use of Revenue Official Receipts during specified deadlines in areas where there are AABs).

No penalty shall be imposed to taxpayers for the wrong-venue in filing the returns and no procedural penalty will be imposed to AABs in these circumstances.

The above procedure is adopted in order not to distort the collection goal of the affected RDO brought about by such transfer and all internal revenue tax collections shall be credited to the old RDO until the end of the year of transfer. (*Revenue Memorandum Circular No. 66-2008 dated 12 August 2008*)

Clarification on acceptance and reporting of tax returns and payments

All accepted tax returns and payments received shall be validated and reported by the AABs on the day of acceptance or transaction.

It is required that the date of collection in the Batch Control Sheet (BCS) report should be the actual day when the return was filed and the payment was made including payment by checks received by AABs after clearing cut-off time. If the transaction is reported on and/or if the BCS is dated the following day, the said collection shall be considered late and shall be subject to appropriate penalty.

The Bureau of Internal Revenue (BIR) will not accommodate an additional one day in BCS reporting since the float period has already been increased under Revenue Regulations (RR) No.2-2008 dated 10 January 2008. (*Revenue Memorandum Circular No. 67-2008 dated 14 August 2008*)

BUREAU OF CUSTOMS

Subic – Clark Customs Procedures to be Harmonized

An agreement has recently been signed between the Subic-Clark Alliance for Development Council (SCADC), the Subic Bay Metropolitan Authority (SBMA), the Clark Development Corporation (CDC) and the Bureau of Customs (BoC) to improve the

competitiveness of the Subic and Clark free ports. The said agreement reconciles the customs procedures, processes and systems in the two free ports through the adoption of a National Single Window (NSW). The said NSW will allow importers in the two free ports to make only a single submission of documents to the BoC which will be shared with the relevant agencies in order to obtain clearance for imported cargo. Also, a Joint Memorandum Order (JMO) was signed between the BoC, SBMA and the CDC which provides for an automated facility for the transit and admission of cargo between Subic and Clark. The agreement and the JMO are expected to establish better connectivity between the two ports by effecting a harmonized set of Immigration, Customs and Quarantine (ICQ) procedures.

DoE and BoC sign MoA for information sharing on oil imports

A Memorandum of Understanding (MoA) may soon be signed between the Department of Energy (DoE) and the BoC that would further efforts to combat the technical smuggling of oil products. The proposed MoA has been envisioned as a means to better implement Republic Act (RA) 8479 or the Downstream Oil Industry Deregulation Act of 1998 which requires that the DoE be notified (for all inbound and outbound oil shipments) of the name of the importer, the country of origin, the quantity of oil product, the type of oil product, the name of the vessel, and the port of entry prior to its arrival or departure. There have been recent reports that compliance with the said requirement is not being properly observed with several importers not making complete declarations to the DoE. To remedy this, the proposed MoA will facilitate information sharing between the DoE and BoC, and would call on the latter to immediately hold shipments of importers who fail to make the proper declarations to the DoE. Those found not to have made the proper declaration would be penalized by a prison term of 3 months to a year, and fined an amount between Php 50,000 and Php 300,000.

ASEAN-India Trade in Goods Negotiations Concluded

At the recently concluded consultations between Association of Southeast Asian Nations (ASEAN) Economic Ministers and the Minister of Commerce and Industry of the Republic of India, it was announced that negotiations for trade in goods under the ASEAN-India Free Trade Agreement (AIFTA) have been concluded. According to the ministers, modalities have been reached for tariff reduction (to be implemented beginning 1 January 2009) and its text would be finalized in time for the ASEAN-India Summit in December 2008. Also to be signed in the said Summit is the ASEAN-India



Agreement on Dispute Settlement Mechanism. Talks for agreements trade in services and investment between ASEAN and India are expected to commence soon after. Once in effect, the AFTA is anticipated to create an open market worth US\$ 2,381 billion.

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