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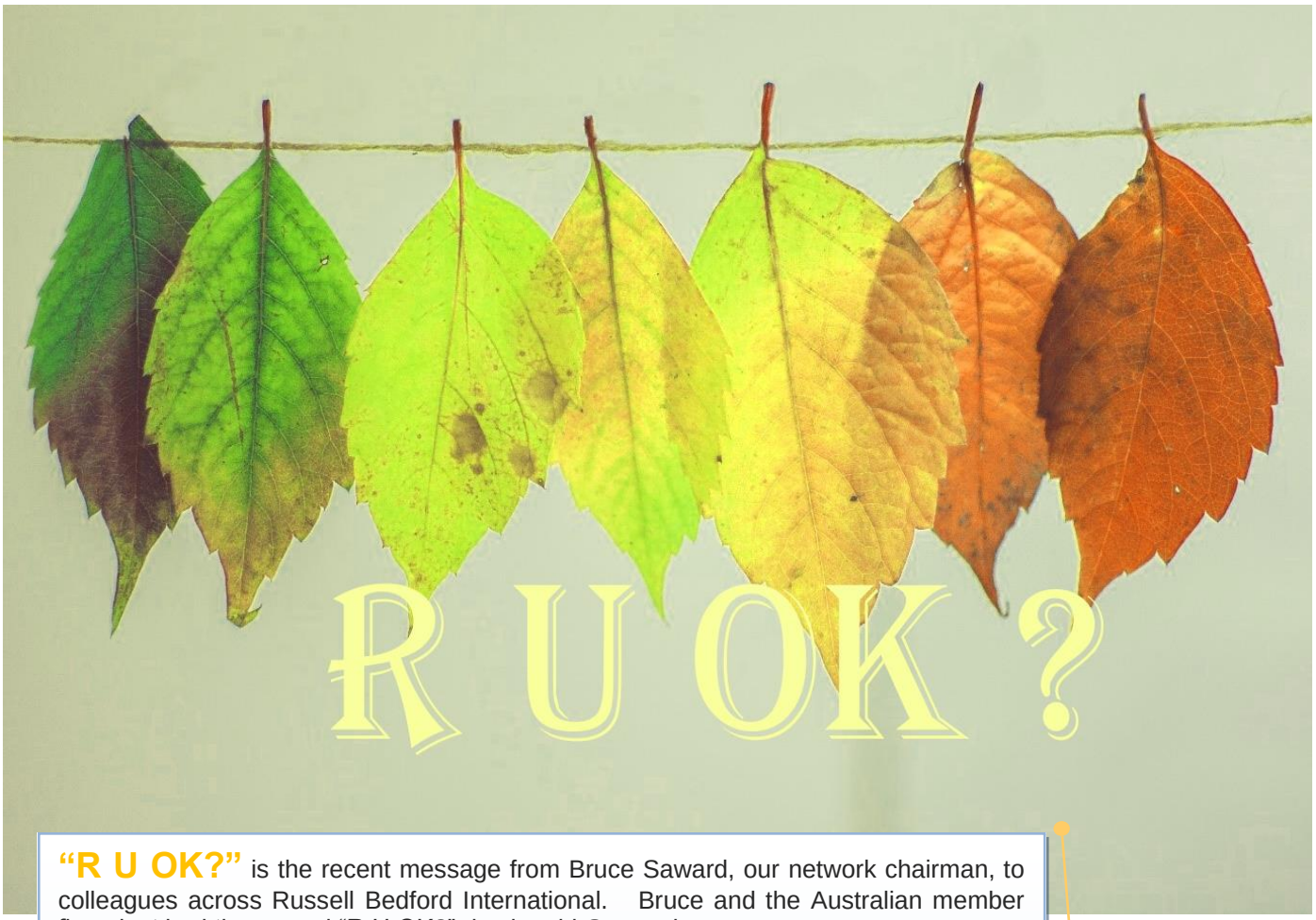

"R U OK?" is the recent message from Bruce Saward, our network chairman, to colleagues across Russell Bedford International. Bruce and the Australian member firms just had the annual "R U OK?" day in mid-September.

Reporting on the event, Bruce said "*This year has been full of unprecedented experiences and I am amazed at the way people in our firm, our client community and the Russell Bedford community have adapted, innovated and got on with business. However, it is likely that we are all feeling the fatigue and pressure of this; both in our professional and personal lives*." He spoke of his recent experience of receiving a SMS from a Russell Bedford colleague that simply said "*I hope you are well and healthy. All the best*". That resulted in a follow up phone call where they were able to share stories and encourage one another. To our readers, we would also like to say "R U OK?" and encourage you to communicate in short or long messages as they suit you.

On regulatory updates, we bring to you in this edition changes in tax laws in China, Hong Kong, Japan, Malaysia and the Philippines, and relief measures in response to Covid-19 in Indonesia and Singapore.

Inside this issue:

CHINA

CHINA ADOPTS LAWS ON CONSTRUCTION, DEED TAXES

Chinese lawmakers adopted two new tax laws on 20 August 2020, one on urban construction and maintenance tax, and the other dealing with deed tax.

The two taxes have already existed for many years in China but were regulated by provisional regulations. The urban construction and maintenance tax (UCMT) started in 1985 and deed tax in 1950.

"Any organization or individual liable to pay VAT and consumption tax shall be a payer of the UCMT;"

The Deed Tax Law, which is based on the provisional regulations on deed tax, simplified tax-return procedures and appropriately extends preferential tax policies, for example, exempting legal heirs from deed tax on the ownership of land and houses they inherited. By combining the declaration and payment of the deed tax, the law will reduce the burden on taxpayers and improve the efficiency of tax collection and management, said an official with the Ministry of Finance.

UCMT is a local surtax (another similar fee is education surcharge with a rate of 3%) attached to turnover taxes, i.e., VAT and consumption tax. Any organization or individual liable to pay VAT and consumption tax shall be a payer of the UCMT; Payment of the UCMT shall be based on VAT and consumption tax which a taxpayer actually pays. The UCMT rate is 7%, 5% and 1% respectively depending on the localities of the taxpayers: 7% rate for city area, 5% rate for county and township area and 1% rate for other areas.

Prior to 1 December 2010, foreign enterprises, foreign invested enterprises and foreign individuals in China were exempted from payment of UCMT and education surcharge. Since China joined the WTO in 2010, a unified tax system has been implemented to both foreign and domestic entities, and as a result, the two surtaxes have been applied to foreign-related entities.

Compared with the previous provisional regulations, the main contents were not substantively changed. They are part of the normal upgrade of regulations to laws. The two laws are effective from 1 September 2021.

HONG KONG

ASSESSING PRACTICE OF LEASE EXPENDITURES

On 17 September 2020 the Inland Revenue Department (IRD) released the long-awaited practice notes relating to tax treatment of lease expenditure which has been impacted by the financial reporting standard, HKFRS 16 on Leases. The standard is modelled on IFRS 16 and became effective from annual reporting periods beginning on or after 1 January 2019.

According to the IRD practice notes, following the adoption of HKFRS 16 for accounting purposes, the IRD will adopt the following assessing practice:

<u>Lessor</u>

Current profits tax treatment for lessors remains unchanged since there is no substantial change in accounting treatment for lessors.

Lessee

Lessees will be allowed deduction of expenditures (i.e. interest on lease liability and depreciation on right-of-use (ROU) asset charged in the profit and loss account) in respect of leased assets recognized in accordance with the principles in HKFRS 16, subject to the following conditions:

- the lease is not a sale for tax purposes (i.e. not hire-purchase);
- the deduction relates to expenditures/losses that have been incurred/ realized; and
- the legal characterization of the expenditures is consideration for the ROU for a period of time.

The IRD accepts that HKFRS 16 does not deviate from the accrual basis of accounting which is applicable to computing assessable profits. Under HKFRS 16, the expenditures charged in the profit and loss account will equal the depreciation relating to the leased asset and interest relating to the corresponding lease liability. This allows spreading of the lessee's gross rental payments which is consistent with the accrual concept. The IRD accepts there is no requirement for an expenditure to be charged to the year in which the lease payment contractually falls due.

In straightforward cases, over the term of the lease, the total deductions in the profit and loss account in respect of the leased asset (i.e. interest and depreciation) will equal the total lease payments.

Deduction based on contractual payment

As there is no disparity in the aggregate deductions over the term of the lease between HKFRS 16 and contractual payments, the IRD also accepts deduction on the basis of contractual payments so long as the basis was consistently applied and there was no indication of any element of tax avoidance.

Hire purchase

Where a lease in relation to plant or machinery is regarded as a sale for tax purposes (e.g. hire purchase), the lessee is eligible to claim interest expense and depreciation allowances based on the rates as provided in the tax law.

Impairment revaluation adjustment

Under HKFRS 16, if the ability to derive benefit from a leased asset is adversely affected, an impairment loss of the leased asset is required to be recognized in the profit and loss account, with a corresponding reduction in the carrying amount of the ROU asset. Consequently, depreciation of the ROU asset would be reduced in subsequent years.

The IRD's position is that (i) the impairment provision will be allowed deduction over the remaining term of the lease on a straight-line basis; and (ii) the interest on ROU asset and the revised depreciation charge under HKFRS 16, which is based on the revalued amount of the ROU asset after the impairment, shall be allowed deduction.

If there was a subsequent partial or full reversal of the impairment loss, the carrying amount of the ROU asset would be increased. The interest and depreciation (increased) charged in the profit and loss account continued to represent the spreading of lease payments as accounted for in accordance with HKFRS 16. Thus, the impairment reversal would be spread over the remaining term of the lease on a straight-line basis and taxed accordingly. The interest and depreciation (increased) charged in the profit and loss account would be allowed for deduction.

"Lessees will be allowed deduction of expenditures in respect of leased assets…"

REGULATION UPDATES FROM THE MINISTRY OF FINANCE

Russell Bedford SBR

"The amount of Article 21 Employee Income Tax must be paid in cash to the employees, and this incentive must not be considered as the employee's taxable income. "

In advancing the provision of previous tax incentives, Government of Indonesia released further regulations to support businesses in coping with the impact of COVID-19 pandemic. Ministry of Finance Regulation (PMK) Number 86/PMK.03/2020 was issued on July 16, 2020 to regulate the extension and procedural changes in tax incentives provided by the Government. This regulation stipulates the following tax incentives:

1. **Article 21 Employee Income Tax**

   The Government of Indonesia will continue to bear the Article 21 Employee Income Tax payable up to December 2020 for employees who:

   a. Receive income from:

   - An employer with Business Classification (KLU) that are included in Attachment A of PMK-86 (covering 1,1189 KLUs), and KLU was reported in Fiscal Year 2018 Corporate Income Tax Return;
   - An employer who has KITE (relaxation for importations of goods for export purpose); and
   - An employer who has bonded zone license;

   b. Has a tax identification number (NPWP); and

   c. Receives an annual fixed and regular gross income of not more than IDR 200 million

   The amount of Article 21 Employee Income Tax must be paid in cash to the employees, and this incentive must not be considered as the employee's taxable income.

   This incentive was previously offered to only 1,062 industry types and company with KITE.

2. **Final Tax Incentive for SMEs**

   The Government of Indonesia will bear the 0.5% final income tax for SMEs, enterprises with annual gross turnover of not more than IDR4.8 Billion, for the period up to December 2020. SMEs who want to access this incentive only need to submit Monthly Realisation Report and no longer need to submit Statement Letter.

3. **Article 22 Income Tax on Imports**

   The Government of Indonesia exempted Article 22 Income Tax on Imports from April to December 2020 for taxpayers who fulfil the following criteria:

   a. The KLU is listed in Attachment H of PMK-86 (covering 721 KLUs) and the KLU was reported in FY 2018 Corporate Income Tax Return,

   b. a KITE company,

   c. a company under bonded zone license

   The recipient of this tax incentive is required to submit Monthly Realisation Report. Previously, this tax incentive was offered to 431 industry types and company with KITE.

4. **Value Added Tax (VAT)**

   Government provides preliminary VAT refund facility for low-risk VAT entrepreneurs (PKP) for the period up to December 2020, where PKP meets the following criteria:

   a. The KLU is listed in Attachment P of PMK-86 (covering 716 KLUs) and the KLU was reported in FY 2018 Corporate Income Tax Return,

   b. a KITE company,

   c. a company under bonded zone license

   This VAT refund facility can be accessed by PKP with above criteria with overpayment amount stated in the VAT return at the maximum of IDR 5 billion. This facility can be accessed by submitting the VAT refund request by the latest on January 31st, 2021.

   This incentive previously covered only 431 industry types and company with KITE.

In addition to this, the Ministry of Finance Regulation (PMK) no. 86/PMK.03/2020 also specifies an expansion of 30% reduction of Article 25 Income Tax to cover 1,013 KLU up to December 2020. Nevertheless, looking at the low production and sales rate among businesses in Indonesia, on August 14th, 2020, Government of Indonesia issued Ministry of Finance Regulation (PMK) no. 110/PMK.03/2020 which offer a further expansion on the sector which will be given tax incentives as well as additional tax reduction rate.

This regulation specifically regulates incentives for:

1. **Final Income Tax for Construction Services**

   The Government of Indonesia will bear the Final Income Tax for Construction Services involved in the Acceleration Program for Irrigation Water Use (P3-TGAI). This tax incentive can be accessed for the period up to December 2020 and taxpayers only need to submit Monthly Realisation Report to access this tax incentive. This incentive aims to support the improvement of irrigation water supply as a critical labour-intensive work for our agricultural sector.

2. **Additional Income Tax Reduction to 50%**

   A reduction of Article 25 Income Tax instalments is now given at 50% rate, previously was 30%, for taxpayers who qualify the following criteria:

   a. The KLU is listed in Attachment M of PMK-110 (covering 1,013 KLUs) and the KLU was reported in FY 2018 Corporate Income Tax Return,

   b. a KITE company,

   c. a company with bonded zone license

   This Income Tax Instalment reduction can be accessed for the period up to December 2020. This tax instalment relief for taxpayers is given due to the current economic situation with the objective to boost production and sales among businesses.

"A reduction of Article 25 Income Tax installments is now given at 50% rate, previously was 30%, for taxpayers who qualify."

JAPAN

THE REORGANIZATION OF THE INTERNATIONAL TAXATION DEPARTMENT IN THE NATIONAL TAXATION BUREAU OF JAPAN

信成国際税理士法人
SHINSEI INTERNATIONAL TAX CO.

How will the transfer pricing examinations change in the future?

■ **New Organization Regarding International Taxation**

In July of this year, there was a reorganization of the International Taxation Department. It is worth mentioning that the Transfer Pricing Division, which specializes in transfer pricing examinations from the Large Enterprise Department at the Regional Taxation Bureaus of Tokyo and Osaka, has been dismantled. As a result, transfer pricing examinations are now conducted as one of the checked points in regular corporation examinations, except in exceptional cases.

"…transfer pricing examinations are now conducted as one of the checked points in regular corporation examinations..."

■ **The Background and Purpose of Reorganization**

Executives of the National Tax Agency explained that the reorganization was due to the expansion of taxation problems relating to international transactions and the problems, themselves, becoming more complicated simultaneously.

The purpose of the reorganization are as follows:

(1) Flexible research on complex foreign-related transactions that differ for each business model,

(2) It is necessary to conduct a wide range of examinations focusing on foreign-related transactions for many companies,

(3) Efficiently proceed with examination related to international taxation.

Besides, executives explained that the NTA wanted to centralize corporate management through organizational restructuring, evaluate the risk of overall international taxation under comprehensive corporate supervision in terms of international taxation, and then conduct examinations to identify specific fields such as transfer pricing matters. They would manage and operate the corporation from the perspective of international taxation without separating them.

What the executives explained was that international taxation would be strengthened. It meant that we would conduct general examinations of international tax matters, including transfer pricing at the same time, instead of the conventional examinations targeting only transfer pricing matters.

In other words, the issue of transfer pricing is treated as an item in the examinations.

■ **Why Did the NTA Reorganize?**

In my opinion, this reorganization has brought about significant changes in the environment surrounding transfer pricing examinations recently. Specifically, the changes can be pointed out below:

- Preparation of transfer pricing documents introduced and newly established by the 2016 tax reform, especially the influence of local files,
- Impact of the implementation of the current General Rules for National Taxes, which came into effect in January 2013,
- State defeat in transfer pricing taxation case,

- Fostering knowledge and litigation know-how regarding transfer pricing of taxpayers and tax accountants involved (including lawyers)

- By obliging the creation of local files for foreign-related transactions over a certain amount, the examiners will confirm the facts and grasp the actual situation, which used to take much time, and so on.

Also, when conducting examinations concerning transfer pricing in the foreground, taxpayers should be aware of them. In some cases, tax accountants who were specialists in transfer pricing, and taxpayers' sense of caution became stricter.

Therefore, it is more efficient for the authorities to examine the transfer pricing as one check item in ordinary examinations.

■ Future Issues and Responses

Here, let us predict two points about the future on this matter:

First, transfer pricing examinations are more likely to be conducted, even if the amount of foreign-related transactions were of relatively small numbers.

Secondly, since the transfer pricing issues are considered in regular examinations, the taxpayers' guards for responding to the examinations are lowered. As the examinations progress, the transfer pricing issues become the most prominent.

Therefore, during the examination, taxpayers should avoid making statements that suggest the intention of transferring income and profit shifting and vague explanations to the examiners.

Additionally, it is crucial to create transfer pricing policies in advance.

■ Conclusion

We should understand that the reorganization of transfer pricing examinations should be regarded as strengthened and generalized, rather than seen as a setback. The number of transfer pricing examination cases has been expanding, and we think that the number of them will also increase in the future.

Just as transfer pricing experts in Japan already informed in various media such as magazines, transfer pricing issues have also been taking up in the examinations of corporations under the tax offices' jurisdiction. Under the Examination Department of the National Tax Bureau's jurisdiction, the transaction scales are large in general. Therefore, being imposed, the taxpayers should pay attention to their examinations from the point of view transfer pricing taxation legislation.

In many cases, it can be said that the need for taxpayers and tax accountants to be involved accumulating knowledge about transfer pricing taxation legislation and prepared for examinations has increased more than ever.

" ... the need for taxpayers and tax accountants to be involved accumulating knowledge about transfer pricing taxation legislation and prepared for examinations has increased more than ever."

MALAYSIA

GUIDELINES ON DETERMINING A "PLACE OF BUSINESS"

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Section 12 of the Income Tax Act 1967 ('the Act") sets out the bases upon which business income of a person is derived from Malaysia. This includes the deeming derivation provision in respect of the business income that is attributable to a Place of Business ("POB") in Malaysia.

The Inland Revenue Board ("IRB") has recently issued the "Guidelines on the Application of Sections 12(3) and 12(4) of the Act" ("the Guidelines") to provide guidance in determining POB for non-resident persons carrying on activities in Malaysia. The concept of Section 12(3) and 12(4) of the Act which was introduced in Budget 2019 and gazetted in the Finance Act 2018, is quite similar to the definition of a permanent establishment found in double tax treaties.

Notwithstanding these two new subsections, the Guidelines state that the tax treaty provisions would prevail in determining the existence of a POB for a non-resident person from a tax treaty country.

We have summarised in the table below salient points covered in the guidelines on the determination of a POB.

"If activities are moved between locations, the determination of POB would be based on geographical or commercial coherence factors."

Sections 12(3) and 12(4)			
POB	**Deemed POB**		
	Building site, construction, installation or assembly project, or supervisory activities related to such projects	**Dependent agent acting exclusively or almost exclusively**	
A POB may exist if the person has a certain degree of space at its disposal in carrying on its business. Two critical components to be considered when ascertaining the POB: (a) Duration test - A certain degree of permanence at a geographical point. (b) Location test - There must exist a fixed place of business. If activities are moved between locations, the determination of POB would be based on geographical or commercial coherence factors.	Carried on for a period or periods exceeding **five months in aggregate in any 12-month** period.	(a) Habitually concludes contracts; or (b) Habitually plays a principal role leading to the conclusion of contracts that are routinely concluded without material modification.	(a) Habitually maintains stock of goods or merchandise in that place of business, from which such person delivers goods or merchandise; or (b) Regularly fills orders on behalf of that person. A POB will be created only if the agent also conducts sales related activities in addition to the activities undertaken in (a) and (b) above.

MALAYSIA

(Continued)

It must be noted that in real life, the determination of POB largely depends on the facts and circumstances of each case. Each case would have to be examined on its own merits.

As a non-resident person with income deemed to be derived from Malaysia, the non-resident has to fulfil the following obligations:

(a) Register as a taxpayer with the IRB;

(b) Prepare statement of accounts for income and expenses which are attributable to the operations in Malaysia;

(c) Prepare and submit the income tax returns and pay income tax to the IRB on the due date; and

(d) Comply with the record keeping requirements.

GUIDELINES ON CORPORATE TERM

PHILIPPINES

MFP
M. F. Padernal and Co.

The Securities and Exchange Commission (SEC) issued in August 2020 SEC Memorandum Circular No. 22, Series of 2020, to implement guidelines on the perpetual existence of corporations in accordance with Section 11 of the Revised Corporation Code (RCC) of the Philippines, which was issued in February 2019.

Under the SEC Memorandum Circular, the following guidelines have been promulgated:

Corporations Incorporated Under RCC

Corporations under the RCC shall have perpetual existence unless its articles of incorporation provide a specific corporate term.

Corporations Incorporated under the Corporation Code of the Philippines and the Corporation Law

a. The corporate term of a corporation with certificate of incorporation issued prior to the effectivity of the RCC, and which continues to exist, shall be deemed perpetual upon the effectivity of the RCC, without any action on the part of the corporation. The corporation may amend its Articles of Incorporation to reflect its perpetual corporate term, by a vote of majority of its Board of Directors or Trustees and by a vote of its stockholders representing majority of its outstanding capital stock, including the non-voting shares, or majority of the members, in case of a non-stock corporation. However, all other provisions to be amended in one same amended articles of incorporation shall require the vote of majority of its Board of Directors or Trustees and vote of its stockholders representing two-thirds (2/3) of its outstanding capital stock or members, in case of a non-stock corporation.

b. A corporation with certificate of incorporation issued prior to the effectivity of the RCC and which continues to exist, that elect to continue with their present corporate

" …amend its Articles of Incorporation to reflect its perpetual corporate term, by a vote of majority of its Board of Directors or Trustees and by a vote of its stockholders..."

PHILIPPINES

(Continued)

" The corporate term of corporations which fails to comply with the required notification shall be treated as perpetual after the lapse of the two-year period."

term pursuant to the Articles of Incorporation, shall notify the Commission by filing a Notice with attached Directors' Certificate, certifying that the decision was approved in a meeting duly held for the purpose by majority vote of the Board of Directors or Trustees and by the vote of the stockholders representing majority of the outstanding capital stock, including the non-voting shares, or majority of the members in case of a non-stock corporation.

c. The corporate term of corporations which fails to comply with the required notification shall be treated as perpetual after the lapse of the two-year period.

Corporations incorporated under the RCC whose articles of incorporation provide for a specific term of existence and existing corporations under the old code or law that opted to retain its specific corporation term, may file an amendment to extend or shorten the corporate term, subject to the required two-thirds (2/3) vote.

Corporations incorporated under the RCC whose articles of incorporation provide for a specific term of existence and existing corporations under the old code or law that notified the Commission of the decision to retain the specific corporate term, may subsequently amend its specific corporate term to perpetual term of existence, subject to the required two-thirds (2/3) vote.

Corporations incorporated under the RCC whose articles of incorporation provide for a specific term of existence and existing corporations under the old code or law existing at the time of effectivity of the RCC whose corporate terms were treated perpetual for failure to comply with the notification requirement, as well as corporations that amended their articles of incorporation to reflect their perpetual term of existence, may subsequently amend its perpetual term of existence to specific corporate term, subject to the required two-thirds (2/3) vote.

Any change in the corporate term pursuant to Section 11 shall be without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of the RCC.

OBLIGATIONS OF PERSONS CONDUCTING BUSINESS TRANSACTIONS THROUGH ANY FORMS OF ELECTRONIC MEDIA

" … shall include not only partner sellers/merchants, but also other stakeholders involved such as the payment gateways, delivery channels, internet service providers, and other facilitators."

The Bureau of Internal Revenue (BIR) issued a Circular giving due notice to all persons doing business and earning income in any manner or form, specifically those who are into digital transactions through the use of any electronic platforms and media, and other digital means, to ensure that their businesses are registered pursuant to the provisions of the Tax Code, as amended, and that they are tax compliant. These shall include not only partner sellers/merchants, but also other stakeholders involved such as the payment gateways, delivery channels, internet service providers, and other facilitators.

All those who will register their business activity and/or update their registration status not later than July 31,

2020 shall not be imposed with penalty for late registration. Likewise, they are encouraged to voluntarily declare their past transactions, subject to pertinent taxes and pay the taxes due thereon, without corresponding penalty, when declared and paid on or before the said date. All those who will be found later doing business without complying with the registration/update requirements, and those who failed to declare past due taxes/unpaid taxes shall be imposed with the applicable penalties under the law, and existing revenue rules and regulations.

EXEMPTION FROM VALUE-ADDED TAX OF CERTAIN PRESCRIBED MEDICINES

On July 8, 2020, the BIR issued Revenue Regulations (RR) No. 18-2020 further amending Section 109(AA) of the National Internal Revenue Code (NIRC) of 1997, as amended by RA No. 10963 (TRAIN Law), providing for Value-Added Tax (VAT) Exemption on the sales and importations of drugs and medicines prescribed for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis and kidney diseases.

Section 4.109-1 of RR No. 16-2005, as amended by RR No. 13-2018, is further amended to read as follows: "Sec. 4.109-1. VAT-Exempt Transactions. — xxx xxx xxx (B) Exempt transactions. — (l) Subject to the provisions of Section 4.109-2 hereof, the following transactions shall be exempt from VAT: (a) xxx xxx xxx xxx xxx xxx (aa) Sale or importation of prescription drugs and medicines for: (i) Diabetes, high cholesterol, and hypertension beginning January 1, 2020; and (ii) Cancer, mental illness, tuberculosis, and kidney diseases beginning January 1, 2023. The exemption from VAT under this subsection shall only apply to the sale or importation by the manufacturers, distributors, wholesalers and retailer of drugs and medicines included in the "list of approved drugs and medicines" issued by the Department of Health (DOH) for this purpose. xxx xxx xxx" The VAT on importation of prescription drugs and medicines for diabetes, high cholesterol and hypertension included in the DOH-Food and Drug Administration (DOH-FDA) approved list from the effectivity of RA No. 11467 on January 27, 2020 until the effectivity of these Regulations, shall be refunded pursuant to Section 204(C) of the Tax Code of 1997, as amended, in accordance with the existing procedures for refund of VAT on importation, provided that the input tax on the imported items have not been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns. The same shall not be allowed as input tax credit pursuant to Section 110 of the Tax Code of 1997, as amended, for purposes of computing the VAT payable of the concerned taxpayer/s for the said period.

" … VAT Exemption on the sales and importations of drugs and medicines prescribed for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis and kidney diseases."

PHILIPPINES

AMENDMENTS OF THE RULES ON THE TAXATION OF SALE, BARTER, EXCHANGE OR OTHER DISPOSITION OF SHARES OF STOCK HELD AS CAPITAL ASSETS

(Continued)

" For common shares of stock, the book value based on the latest available financial statements duly certified by an independent public accountant prior to the date of sale..."

Revenue Regulations No. 20-2020 issued by the BIR on August 17, 2020 amends certain provisions of Revenue Regulations (RR) No. 06-2008 (Consolidated Regulations Prescribing the Rules on the Taxation of Sale, Barter, Exchange or Other Disposition of Shares of Stock held as Capital Assets). In the case of shares of stock not listed and traded in the local stock exchanges, the following rules shall apply:

a. For common shares of stock, the book value based on the latest available financial statements duly certified by an independent public accountant prior to the date of sale, but not earlier than the immediately preceding taxable year, shall be considered as the prima facie fair market value.

b. For preferred shares of stock, the liquidation value, which is equal to the redemption price of the preferred shares as of balance sheet date nearest to the transaction date, including any premium and cumulative preferred dividends in arrears, shall be considered as fair market value.

c. In case there are both common and preferred shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation and dividing the result by the number of outstanding common shares as of balance sheet date nearest to the transaction date.

d. For this purpose, the book value of the common shares of stock or the liquidation value of the preferred shares of stock need not be adjusted to include any appraisal surplus from any property of the corporation not reflected or included in the latest audited financial statements, to determine the fair market value of the shares of stock. The latest audited financial statements shall be sufficient in determining the fair market value of the shares of stock subject of the sale, barter, exchange, or other disposition.

VOLUNTARY ASSESSMENT AND PAYMENT PROGRAM FOR TAXABLE YEAR 2018

Revenue Regulations No. 21-2020 issued by the BIR on September 4, 2020 prescribes the policies, procedures and guidelines in the implementation of the Voluntary Assessment and Payment Program (VAPP) for Taxable Year 2018 under certain conditions. The Regulations shall apply to all internal revenue taxes covering the taxable year ending December 31, 2018, and fiscal year 2018 ending on the last day of the months of July 2018 to June 2019, including taxes on One-Time Transactions (ONETT) such as Estate Tax, Donor's Tax, Capital Gains Tax, as well as ONETT-related Creditable Withholding Tax/Expanded

Withholding Tax and Documentary Stamp Tax.

Any person, natural or juridical, including estates and trusts, liable to pay internal revenue taxes for the above specified period/s who, due to inadvertence or otherwise, erroneously paid his/its internal revenue tax liabilities or failed to file tax returns/pay taxes, may avail of the benefits under the Regulations, except those falling under any of the following instances:

a. Those taxpayers who have already been issued a Final Assessment Notice (FAN) that have become final and executory, on or before the effectivity of the Regulations;

b. Persons under investigation, as a result of verified information filed by a tax informer under Section 282 of the NIRC of 1997, as amended, with respect to the deficiency taxes that may be due out of such verified information;

c. Those with cases involving tax fraud filed and pending in the Department of Justice or in the courts; and

d. Those with pending cases involving tax evasion and other criminal offenses under Chapter II of Title X of the NIRC of 1997, as amended.

Qualified persons can avail of the benefits of the VAPP until December 31, 2020, unless extended by the Secretary of Finance. To avail of the benefits of the VAPP, the taxpayers need to submit the requirements listed in these Regulations to the BIR.

" Qualified persons can avail of the benefits of the VAPP until December 31, 2020..."

RELATED PARTY TRANSACTIONS FORM

Revenue Memorandum Circular No. 76-2020 issued by the BIR on July 29, 2020 clarifies certain issues on the filing of BIR Form No. 1709 [Related Party Transaction (RPT) Form], and its attachments pursuant to Revenue Regulations (RR) No. 19-2020. The RPT Form shall be accomplished and filed manually by Philippine taxpayers with related party transactions (RPTs) regardless of the amount and volume of transactions. Individuals who are considered related parties of a reporting company are also required to submit the RPT Form in their individual capacities. A transfer pricing documentation (TPD) is required to be attached in the RPT Form. Since the law took effect on July 25, 2020, the RPT Form is now required to be submitted as an attachment to the Annual Income Tax Return (AITR) for fiscal year ending March 31, 2020, tentative or otherwise, irrespective of the date of filing of the said AITR, and to all AITRs to be submitted after such date. AITRs for calendar year 2019 or for fiscal year ending before March 31, 2020 are not covered by RR No. 19- 2020.

If the parent company has a TPD already covering the transactions with subsidiaries, the subsidiaries can use the same TPD, provided the taxpayer relied upon such TPD in determining the transfer prices. The local file is preferred, however, since it provides a more detailed information relating to specific intercompany transactions. The TPD should include the date of creation or preparation so as to ensure its applicability to the RPTs conducted in the taxable year concerned. The TPD should be prepared prior to or at the time of the transaction, or after the transaction but not later than the date of filing of the tax return for the

" …shall be accomplished and filed manually by Philippine taxpayers with RPTs regardless of the amount and volume of transactions."

fiscal/calendar year in which the transaction takes place. The TPD has to be updated yearly if there are significant changes in the business model, the factors or conditions considered in drafting the TPD, and the nature of the RPTs. The TPD for the immediately preceding year may apply to subsequent RPTs if the transaction for which the past TPD was prepared is of the same type as the transaction undertaken in the taxable year concerned and was undertaken with the same related party/ies; and if the taxpayer can prove that the same conditions, which were made the bases for the past TPD, are squarely applicable to the RPTs in the taxable year concerned, including, but not limited to the following:

" Dividends and redemption of shares between and among related parties, though not usually covered by a TPD, should likewise be disclosed…"

a. the relationship between the taxpayer and its related party;

b. the conditions made or imposed between them;

c. the transfer pricing method/s used for the transaction; and

d. the arm's length conditions.

RR No. 19-2020 requires full disclosure of all RPTs, which is defined as transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged. Unlike the disclosure of related party transactions in the notes to the financial statements, the Regulations require more details to be disclosed in Parts II and III of the RPT Form, which are not usually disclosed by the company in the financial statements. Said details are specified in the Circular. Dividends and redemption of shares between and among related parties (either paid or payable, received or receivable), though not usually covered by a TPD, should likewise be disclosed in the RPT Form.

The contracts to be attached to the RPT Form are those executed by the parties to substantiate the RPTs in the taxable year concerned. Thus, if the related parties executed a contract in the taxable year concerned but are intended for transactions to be entered into in a subsequent year, said contract is not required to be attached. On the other hand, contracts executed in the previous year, but are still enforceable and applicable to the RPTs in the taxable year concerned, must be attached. Any taxes paid to a foreign country by a Philippine taxpayer must be declared in, and the proof of payment thereof must be attached to the RPT Form, so the BIR would be able to compute the correct amount of foreign taxes to be credited against the tax due for the taxable year concerned, provided said foreign taxes were not claimed as deductions during the year. If the taxpayer earned an income from its related party in a foreign country but has to still pay the tax thereon after the filing of the RPT Form, the taxpayer still has to declare in the RPT Form such income and indicate in the column for withholding taxes that it did not pay any tax thereon. The taxpayer must attach the relevant contract, proof of receipt of such income, and a copy of the Tax Residency Certificate issued by International Tax Affairs Division (ITAD) and submitted to the foreign country when it obtained treaty benefits. However, if the taxpayer paid the corresponding tax after the filing of the RPT Form, the taxpayer must inform the tax examiner during audit of such fact and present the proof of payment thereof. Normally, it will be the related party abroad that will have a copy of the "proof of payment of foreign taxes or ruling duly issued by the foreign tax authority". However, the Philippine taxpayer is typically the one who bears the Income Tax on any income derived abroad. Therefore, it has the right to know how much taxes it must pay in the foreign country and the right to obtain any document related to the

payment of foreign taxes, such as a copy of the return filed for said income and/or a copy of the ruling issued by the foreign tax authority.

The BIR, in turn, has the right to obtain the relevant information and documents from the Philippine taxpayer and, in so doing, may enforce all its rights to obtain the same within the bounds of the law. This is without prejudice, however, to the BIR enforcing its right to obtain said information pursuant to existing and effective tax treaty. To be acceptable as proof, the document showing payment of foreign taxes or copy of foreign ruling duly issued by the relevant foreign tax authority must be duly authenticated or apostilled. The Tax Treaty Relief Application (TTRA) to be indicated in the RPT Form must be those filed with the ITAD relative to the income payments made by the Philippine taxpayer to its related party/ies. It is imperative then for the tax examiners to coordinate with the ITAD as to the status of these pending TTRAs.

PHILIPPINES

(Continued)

JOBS GROWTH INCENTIVE SCHEME

SINGAPORE

STEVEN TAN RUSSELL BEDFORD PAC
PUBLIC ACCOUNTING CORPORATION

The Singapore Government has set aside $1 billion to support businesses in Singapore to hire locals under the Jobs Growth Incentive (JGI) scheme. Eligible firms will **automatically** receive the JGI payouts from **March 2021 onwards**.

Who is eligible for the JGI?

To be eligible for the JGI, firms who have made timely mandatory CPF contributions must achieve the following increases in their local workforce between September 2020 and February 2021 (inclusive), compared to their August 2020 local workforce:

1) Increase in overall local workforce; **and**
2) Increase in local employees earning gross wages of at least $1,400 per month

Firms must also have been established on or before 16 August 2020 to be eligible.

How is each payout computed?

The JGI is computed on a monthly basis based on the eligible firm's mandatory CPF contributions.

For all new mature local hires aged 40 and above, the Singapore Government will co-fund up to 50% of the first $5,000 of gross monthly wages.

For all other new local hires, the Singapore Government will co-fund up to 25% of the first $5,000 of the gross monthly wages.

To receive the JGI for the full 12 months for each new local hire employed in the eligible period from September 2020 to February 2021 (inclusive), firms must continually meet the eligibility criteria for the entire 12 -month period. Otherwise, they would receive the JGI for months where they meet the eligibility criteria.

To encourage firms to retain their existing local employees as far as possible, the JGI payout will be adjusted downwards if any existing employees (in the firm's employment as at August 2020) leave the firm after August 2020.

" … must achieve the following increases in their local workforce between September 2020 and February 2021 (inclusive), compared to their August 2020 local workforce..."

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

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