Philippines Tax Profile

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1 Corporate Income Tax

1.1 General Information

Tax Rate

The corporate income tax rate for both resident and non-resident companies is 30% (except for certain items of passive income which may be taxable at a different rate). However, beginning on the 4th taxable year immediately following the year in which such corporation commenced its business operations, the tax rate shall be the higher of the 30% which is based on net income (regular corporate income tax) or 2% based on gross income (minimum corporate income tax).

Residence

An entity is regarded as a resident of the Philippines if it is carrying on business in the Philippines. This includes any entity that is incorporated in the Philippines or a resident foreign corporation that is licensed to do business in the Philippines. Generally, the tax authorities rely on the incorporation or registration as an indication of Philippine tax residence.

A domestic corporation is taxable on its worldwide income. However, a foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on Philippine-sourced income. Income is considered to be sourced in the Philippines if the income is derived from property or activities within the Philippines.

Basis of Taxation

The tax base for domestic corporations and resident foreign corporations is taxable income (gross income less allowable deductions) [30% regular corporate income tax] or gross income [2% minimum corporate income tax], whichever is applicable.

On the other hand, the tax base for non-resident foreign corporations is gross income [30% corporate income tax]. The minimum corporate income tax is not applicable to non-resident foreign corporations.

Tax Losses

Operating losses incurred in a tax year may be carried over as a deduction from gross income for 3 consecutive years immediately following the year of such loss, provided that there is no substantial change in the ownership of the business or enterprise. Such loss incurred shall not be allowed as deduction in a year in which the taxpayer was exempt from income tax. For mines, other than oil and gas wells, the net operating loss without the benefit of incentives incurred in any of the 10 years of operation may be carried over as a deduction from taxable income for the next 5 years immediately following the year of such loss, and any portion of such loss which exceeds the taxable income of such first 1st year shall be deducted in like manner from the taxable income of the next remaining 4 years.

Tax Consolidation/Group relief

There are no group relief provisions for losses in the Philippines. Each company within a corporate group is taxed as a separate entity

Transfer of Shares

Transfer of shares that are not listed and traded on the Philippine Stock Exchange shall be subject to capital gains tax at the rate of 5% for the first Php 100,000 and 10% in excess thereof. Under Republic Act No. 10963 [or the Tax Reform for Acceleration and Inclusion ('TRAIN') law] effective 01 January 2018], if the transferor is a domestic corporation, the capital gains tax rate has been increased to a flat rate of 15% regardless of the amount of net capital gains.

Stamp duty will also apply to the transfer of shares at a rate of PHP 1.50 on each Php 200, or fractional part thereof, of the par value of such shares.

Transfer of Assets

Sale of real property is subject to capital gains tax at the rate of 6% (on the higher of the gross selling price or fair market value).

Stamp duty of Php 15 for every Php 1,000 will apply to the transfer of real property.

Capital Duty (Non-Tax Planning)

Original issuance of shares of stock is subject to stamp duty of Php 2 on each Php 200, or fractional part thereof, of the par value of such shares.

As a general rule, no minimum authorized capital stock is required as long as the paid up capital is not less than Php 5,000 provided that at least 25% of the authorized capital stock has been subscribed at the time of incorporation, and at least 25% of the total subscription has been paid upon subscription.

Exceptions to the above rules are as follows:

- Branch Office must have a capital of at least USD 200,000
- Subsidiary with more than 40% foreign equity must also have a minimum paid up capital of at least USD 200,000
- Representative Office must have at least USD 30,000
- Regional Area Headquarter must have at least USD 50,000
- Regional Operating Headquarter must have at least USD 200,000

Inform capital duties due on company's liquidation, if any. Mere return of capital is not subject to tax. However, capital gain derived by a stockholder from the surrender of his shares in a liquidated corporation shall be subject to regular corporate income tax. On the part of the liquidating corporation, it shall not be liable for income tax either on its transfer to the stockholders of the assets distributed in liquidation or for its receipt of the surrendered shares.

CFC Rules

No CFC regime exists in the Philippines.

Thin Capitalization

The Philippines has no formal thin capitalization laws or regulations. However, the tax authority has issued guidelines which identify thin capitalization and earning stripping as among the tax avoidance schemes between related companies.

Interest Deductibility Restrictions

The 'tax arbitrage rule' reduces the allowable deduction for interest expenses by 33% of the interest income subjected to final tax.

Amalgamations of Companies

Mergers and consolidations are tax-free exchange transactions. However, gain or loss shall be recognized on subsequent transfers of properties subject to the merger or consolidation.

General Anti-Avoidance

The Philippines does not have a general anti-avoidance clause within its Tax Code. However, any person who willfully attempts in any manner to evade or defeat any tax imposed under the Tax Code shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Php 30,000 but not more than Php 100,000 and suffer imprisonment of not less than 2 years but not more than 4 years. (Section 254, Tax Code).

The tax authority generally follows substance of transactions over form.

Anti-Treaty Shopping

None

Other Specific Anti-avoidance Rules

None, other than transfer pricing provisions.

Rulings

Taxpayers may seek clarification with the tax authority by submitting a letter-request for ruling, containing full disclosure of all material facts, including the documents needed for substantiation. Once issued, this ruling is applicable to all future transactions referred to in the ruling. Rulings may only be relied upon by the taxpayer to whom they are issued.

Taxpayers may also approach the tax authority to clarify proper tax treatment, especially uncertain provisions of tax laws and regulations. This is done on an informal and "no-name" basis. This type of clarification is non-binding and is only based on facts and circumstances represented during the inquiry.

Hybrid Instruments

None

Hybrid Entities

None

Related Business Factors

A domestic corporation or subsidiary is typically used for conducting business in the Philippines. A foreign corporation may also establish a branch in the Philippines.

There is a capital requirement of USD 200,000 for a subsidiary if the foreign equity in the subsidiary is more than 40%.

Similarly, a branch office of a foreign company will need to have capital of USD 200,000.

Foreign ownership restrictions are applicable for nationalized activities.

1.2 Determination of taxable income and deductible expenses

1.2.1 *Income*

General

"Taxable income" means the pertinent items of gross income specified in the Tax Code less the deductions authorized by the Tax Code or other special laws while "gross income" means all income derived from whatever source such as compensation, gross income derived from the conduct of trade or business or the exercise of a profession, gains from dealing in property, etc.

Branch Income

Profits of a Philippine branch remitted to its parent company are subject to 15% branch profits remittance tax. A lower rate may be provided under the applicable tax treaty. Philippine branches whose activities are registered with the Philippine Economic Zone Authority ('PEZA') are not subject to branch profit remittance tax.

Capital Gains

Net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in any domestic corporation (not sold through the stock exchange) are taxed at the following rates:

- First Php 100,000, taxed at 5%
- In excess of Php 100,000, taxed at ten percent 10%

However, under the TRAIN law effective 01 January 2018, if the transferor is a domestic corporation, the capital gains tax rate will be levied at a flat rate of 15% regardless of the amount of net capital gains.

Losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges.

A final tax of 6% (on the higher of the gross selling price or fair market value) is imposed on the gain of a domestic corporation presumed to have been realized on its sale, exchange or disposition of land and/or buildings that are not actually used in business and are treated as capital assets.

Income from the sale of capital assets other than shares of stocks, land and buildings not used in the course of business, are treated as an ordinary income and subject to the normal corporate income tax.

Capital gains derived by a resident and non-resident foreign corporation on the disposition of its shares in a Philippine subsidiary are generally subject to 5% / 10% capital gains tax, which may be exempt under an applicable tax treaty – the usual condition under most treaties is that the property of the subsidiary does not consist principally [more than 50% of the entire assets] of immovable property situated in the Philippines. Capital gains derived by a domestic corporation will be subject to 15% capital gains tax.

A tax treaty relief application (TTRA) must be filed before availing of the exemption under the applicable tax treaty.

Dividend Income

Dividends received by a domestic corporation or a resident foreign corporation from another domestic corporation are not taxable. Cash and/or property distributions paid by a domestic corporation to non-resident corporate shareholders are subject to 30% income tax, except where the recipient is a resident of a country that either has entered into a tax treaty with the Philippines or allows a credit for taxes paid in the Philippines.

Interest Income

Interest income from bank deposits or monetary benefit from deposit substitutes, trust funds, etc. received by a domestic corporation or a resident foreign corporation is subject to final withholding tax of 20%. Interest income from foreign currency bank deposits are subject to final withholding tax of 15%. All types of interest income other than that received from bank deposits are considered as ordinary income subject to regular corporate income tax or minimum corporate income tax, whichever is applicable.

On the other hand, interest income derived by a non-resident foreign corporation is generally subject to a final withholding tax of 30%. However, interest income on foreign loans is subject to a final withholding tax of 20%. These rates may be reduced under an applicable tax treaty.

Other Significant Items

All types of income (except for certain items of passive income which may be taxable at a different rate) received by a domestic corporation are considered as ordinary income subject to regular corporate income tax or minimum corporate income tax, whichever is applicable. The same is true for resident foreign corporations except certain types of resident foreign corporations such as international carriers, offshore banking units, regional or area headquarters, or regional operating headquarters, the income of which is subject to a different tax treatment.

1.2.2 *Expenses*

General

The Tax Code enumerates certain types of expenses which are allowed as deductions from gross income.

Minimum Taxation Requirements for the Deductibility of Losses

Losses actually sustained during the taxable year and not compensated for by insurance or other forms of indemnity shall be allowed as deductions if incurred in trade, business or profession if the loss arises from fires, storms, shipwreck, or other casualties, or from robbery, theft or embezzlement.

Capital Losses

Losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges. Unrealized capital losses are not deductible.

Goodwill is not subject to depreciation. The tax authorities have consistently held that no amount of goodwill paid may be deducted or amortized for tax purposes unless the same business or the assets related to the goodwill are sold. Thus, for tax purposes, since goodwill is not deductible or recoverable over time in the form of depreciation or amortization allowances, the taxpayer can only recover goodwill on a disposal of the asset, or a part of it, to which the goodwill attaches. In this case, the gain or loss is determined by comparing the sale price with the cost or other basis of the assets, including goodwill.

Carry Forward

Operating losses incurred in a tax year may be carried over as a deduction from gross income for 3 consecutive years immediately following the year of such loss, provided that there is no substantial change in the ownership of the business or enterprise. Such loss incurred shall not be allowed as deduction in a year in which the taxpayer was exempt from income tax. For mines, other than oil and gas wells, the net operating loss without the benefit of incentives incurred in any of the first 10 years of operation may be carried over as a deduction from taxable income for the next 5 years immediately following the year of such loss, and any portion of such loss which exceeds the taxable income of such 1st year shall be deducted in like manner from the taxable income of the next remaining 4 years

Carry Back

None

Bad Debts

The following requisites must be complied with in order for bad debts to be deductible from gross income:

(1) There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;

(2) It must be connected with the taxpayer's trade, business or practice of profession;

(3) It must not be sustained in a transaction entered into between related parties enumerated under Section 36 (B) of the Tax Code;

(4) It must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and

(5) It must be actually ascertained to be worthless and uncollectible as of the end of the taxable year.

The Commissioner of Internal Revenue will consider all pertinent evidence, including the value of the collateral, the financial condition of the debtor, or the assigning of the case for collection to an independent collection lawyer who is not under the employ of the taxpayer, who shall report on the legal obstacle and the virtual impossibility of collecting the same from the debtor, and who shall issue a statement under oath showing the propriety of the deductions thereon made for alleged bad debts.

Change of Control Rules

A net operating loss carry-over shall be allowed only if there has been no substantial change in the ownership of the business in that: (i) not less than 75% in nominal value of outstanding issued shares is held by or on behalf of the same persons; or (2) not less than 75% of the paid-up capital of the corporation is held by or on behalf of the same persons.

Depreciation/Capital allowance

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including reasonable allowance for obsolescence) of property used in trade or business.

Double Deductions

Not allowed

Interest Expenses

The following requisites must be complied with in order for interest to be deductible from gross income:

(1) There must be an indebtedness;

(2) There must be an interest expense paid or incurred upon such indebtedness;

(3) The indebtedness must be that of the taxpayer;

(4) The indebtedness must be connected with the taxpayer's trade, business or exercise of profession;

(5) The interest must have been stipulated in writing;

(6) The interest must be legally due;

(7) The interest payment arrangement must not be between related taxpayers as mandated in Section 34 (B)(2)(b) in relation to Section 36 (B) of the Tax Code;

(8) The interest must not be incurred to finance petroleum operations;

In case of interest incurred to acquire property used in trade, business or exercise of profession, the same was not treated as a capital expenditure.

Inventories

The Bureau of Internal Revenue requires the submission of an annual inventory list and other schedules.

Other Significant Items

No deduction from gross income shall be allowed unless the taxpayer shall substantiate with sufficient evidence, such as official receipts or other adequate records: (i) the amount of the expense being deducted, and (ii) the direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer. In addition, Any amount paid or payable shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue

1.3 Tax Compliance

Compliance Requirements

Payment of corporate income tax is made through a self-assessment system where the taxpayer files a tax return reflecting the revenues, deductions and the tax due. The annual income tax return is due on the 15th day of the 4th month following the close of the calendar or fiscal year.

Mandatory Electronic Filing

The Bureau of Internal Revenue ('BIR') has two electronic platforms for filing: the Electronic Filing and Payment System ('eFPS') and the Online BIRForms System.

The following corporate taxpayers are mandated to use eFPS:

- Taxpayer Account Management Program Taxpayers;
- Accredited Importer and Prospective Importer required to secure the BIR-ICC & BIR-BCC;
- National Government Agencies;
- All Licensed Local Contractors;
- Enterprises Enjoying Fiscal Incentives (PEZA, BOI, Various Zone Authorities, Etc.);
- Top 5,000 Individual Taxpayers;
- Corporations with Paid-Up Capital Stock of Php10 Million and above;
- Corporations with Complete Computerized Accounting System (CAS);
- Procuring Government Agencies with respect to Withholding of VAT and Percentage Taxes;
- Government Bidders;
- Insurance companies and Stock brokers;
- Large Taxpayers; and
- Top 20,000 Private Corporations.

The following corporate taxpayers are mandated to use the BIR's Online eBIRForms System:

- Accredited Tax Agents/Practitioners & all its client-taxpayers who authorized them to file in their behalf;
- Accredited printers of Principal and Supplementary Receipts/Invoices;
- One-Time Transaction taxpayers;
- Those engaged in business, or those with mix income (both compensation and business income) who shall file a "NO PAYMENT" Return;
- Government-Owned or Controlled Corporations (GOCCs);
- Local Government Units, except barangays; and
- Cooperatives, registered with National Electrification Administration and Local Water Utilities Administrations.

Requirement to Prepare Tax Computation / Return in Functional Currency

Taxpayers filing tax returns in the Philippine peso may pay the tax in functional currency computed using the functional currency buying rate of the collecting bank vis-à-vis the Philippine peso at the time of payment. The collecting bank shall, however, report to the BIR said collection in peso as converted/translated.

Despite the permission to pay in functional currency, all figures in the tax returns shall always be in peso.

Documents to File with Tax Return

The following have to be submitted together with the Annual Corporate Income Tax Return:

- Certificate of Income Payments not Subjected to Withholding Tax (BIR Form 2304), if applicable;
- Certificate of Creditable Tax Withheld at Source (BIR Form 2307), if applicable;

- Summary Alphalist of Withholding Taxes;
- Duly approved Tax Debit Memo, if applicable;
- Proof of Foreign Tax Credits, if applicable;
- Income tax return previously filed and proof of payment, if amended return is filed for the same taxable year;
- Account Information Form and/or the Certificate of the independent Certified Public Accountant (‘CPA’) with Audited Financial Statements, if the gross quarterly sales, earnings, receipts or output exceed Php 3 million (under the TRAIN law);
- Proof of prior year’s excess tax credits, if applicable; and
- Certificate of Entitlement to Incentives provided by Investment Promotions Agencies.

Language to File Return, Computation and Supporting Documentation(s)

All tax returns are in English. Books of accounts, however, can be in English, Filipino or Spanish.

Filing Extension Availability and Details

This is not available for corporate taxpayers.

Payment of Estimated Tax

Income taxpayers are required to file and/or pay on a cumulative basis during the first three quarters within 60 days from the end of each taxable quarter.

Interim Tax Returns

Same as above

Penalties for Non-Compliance

Compromise penalties listed in Revenue Memorandum Order (RMO) No. 07-2015 will be imposed. RMO 07-2015 provides for the Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code. Depending on the nature of the violation, the maximum compromise penalty imposed is Php100,000.00. However, there are violations that cannot be compromised.

Penalties and/or Interest for Underpayment of Taxes

Surcharge of 25% and deficiency interest of 20% per annum. Kindly note that with the TRAIN Law, the rate of interest is now set at twice the prevailing bank interest rate.

Statute of Limitation

In the absence of fraud, 3 years from the filing deadline or actual filing deadline whichever comes later. In case of fraud, 10 years from date of discovery.

1.4 Financial Statements/Accounting

Details of Local Accountant Requirements

The Philippine tax authority mandates that companies with gross annual sales, earnings or receipts exceeding Php 3,000,000 shall have its books of accounts audited and determined yearly by independent CPAs.

The independent CPAs must be qualified and accredited by the Board of Accountancy ('BOA') and the Philippine tax authority [locally known as the BIR]. For regulated or other special industry companies, the registration and accreditation with the Philippine Securities Exchange Commission ('SEC') and other government agencies must be secured on top of the BOA and BIR accreditation, prior to conduct an audit, to opine and to sign the audited financial statements ('AFS').

The other government agencies may include but are not limited to the following:

- Bangko Sentral ng Pilipinas – for audit of banks and non-bank financial intermediaries;
- Cooperative Development Authority – for audit of cooperatives; and
- Insurance Commission ('IC') – for audit of entities registered with the IC.

Fiscal Year

The option to adopt either a calendar or fiscal year is a management discretion in the Philippines. Future change thereof must be approved by the BIR at any time not less than 60 days prior to the beginning of the new accounting period.

Retention Period for Statutory Financial Statements / Working papers

All taxpayers are required to preserve its books of accounts, including subsidiary books and other accounting records for a period of 10 years reckoned from the day following the deadline of filing the tax return or if filed after the statutory deadline, from the date of filing the return for the taxable year when the last entry was made in the books of accounts.

Requirements to Retain Physical Copies Locally/Electronically Stored Data to Reside on In-country Server

Taxpayers shall retain hardcopies of the books of accounts, including subsidiary books and other accounting records, for the first 5 years. Thereafter, the taxpayer may retain only an electronic copy of the hardcopy in an electronic storage which complies with the requirement of the BIR.

The independent CPAs who audited the records and certified the financial statements has the responsibility to maintain and preserve electronic copies of the audited and certified financial statements including audit working papers for a period of 10 years from the date of filing the annual income tax return or the statutory deadline of the tax return, whichever is later.

Requirements to Prepare Financial Statements in Local Currency

SEC registered companies may determine its functional currency for its financial statements based on the factors prescribed in the Philippine Financial Reporting Standard ('PFRS'). In general, the BIR applies the same principles in determining validity of the functional currency for financial reporting purposes, as follows:

- The currency that mainly influences sales prices for goods and services (this will often be the currency in which sales prices for its goods and services are denominated and settled);
- The currency of the country whose competitive forces and regulations mainly determine the sales price of its goods and services;
- The currency that mainly influences labor, material and other costs of providing goods or services (this will often be the currency in which such costs are denominated and settled);
- The currency in which funds from financing activities are generated; and
- The currency in which receipts from operating activities are usually retained.

Notwithstanding the foregoing, the BIR mandates that tax return reporting shall still be accomplished using the Philippine pesos.

What GAAP must the Financial Statements be Prepared Under?

The PFRS or the Philippine Accounting Standards ('PAS') serves as the guidance of Philippine companies for its preparation of financial statements. The PFRS is an adoption of the International Financial Reporting Standards ('IFRS'), issued by the International Accounting Standards Board.

The promulgation of the PFRS as the generally accepted accounting principle in the Philippines rests upon the Philippine Financial Reporting Standard Council ('FRSC') while the governing body for the monitoring of compliance with the Philippine accounting framework is the Philippine SEC.

Thus, the PFRS and its implementing rules issued by the SEC through Financial Reporting Bulletins serve as the guiding principles of the companies under the jurisdiction of SEC for the preparation of its financial statements.

Prescribed Format and Details for Financial Statements

The details provided in the financial statements should follow the standards prescribed by PFRS.

The Philippine Tax Code mandates taxpayers to keep and use relevant and appropriate set of bookkeeping records duly authorized by the Philippine Secretary of Finance wherein all transactions and results of operations are shown and from which all taxes due to the Philippine Government may readily and accurately be ascertained and determined.

Periodicity of Local Books to be Closed

The taxpayers should follow the PFRS rules in closure of the books. However, the BIR requires that the last entry of the business transaction for the taxable year when the books of accounts are closed should be properly covered by the financial report and the books of accounts for presentation to the BIR.

Filing Due Date

The SEC generally issues an Annual Memorandum Circular which provides the deadline for filing of AFS of companies following a calendar year. The staggered SEC filing deadlines depends on the last numerical digit of the company's SEC registration.

The corporations following a fiscal year shall submit its AFS within 120 calendar days from the end of the fiscal year except for the following corporations:

- Brokers/dealers registered with SEC –within 110 calendar days from end of the fiscal year; and
- Corporations with Securities listed on the Philippine Stock Exchange ('PSE') and those with Securities registered but not listed in the PSE and Public Companies – within 105 calendar days after the end of the fiscal year.

The SEC requires that the AFS, other than the consolidated financial statements, shall be stamped received by the Philippine tax authority.

The BIR requires qualified corporations to submit an AFS as attachment with its annual income tax return, which is due to be manually submitted on or before the 15th day of April, or on or before the 15th day of the fourth month following the close of the fiscal year, as the case may be. For the electronic filers of annual income tax return, the AFS should be manually submitted as attachment with its annual income tax return on or before the 15th day following the electronic filing of the annual income tax return or the statutory deadline, whichever is later.

In addition to the AFS, the BIR requires that the books of accounts and other accounting records be submitted to the revenue district offices having jurisdiction over the companies registered address on the following statutory deadlines:

- For taxpayers using a BIR approved computerized accounting system – on or before the 30th day of the month following the close of the taxable year
- For taxpayers using permanently-bound loose leaf books of accounts – on or before the 15th day of the month following the close of the taxable year

For taxpayers registered with manual books of accounts – there is no required resubmission annually however, taxpayers are required to re-stamp the manual books of accounts in case the initial books has been fully exhausted or used.

Filing Format of Financial Statements

The AFS are required to be filed manually by Philippine companies. The format and disclosures provided therein should follow the standards of the PFRS.

Filing Extension Availability and Details

None

Penalties for Non-Compliance

The BIR will impose penalties for non-compliance. RMO 07-2015 provides for the Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code. Depending on the nature of the violation related to books of accounts, the maximum compromise penalty imposed is Php 50,000.00. However, there are violations not available for compromise.

The SEC will also impose penalties for non-compliance. The penalties depend on the type of the Philippine entity and frequency of the violations committed.

1.5 Incentives

Intellectual Property Incentives

None

R&D Incentives

A multinational company may establish a Regional Operating Headquarters ('ROHQ') to render R&D services and product development to affiliates, branches or subsidiaries. The ROHQ shall be subject to a 10% preferential tax rate on taxable income, and shall be exempted from all kinds of local taxes, fees and charges imposed by the local government. Based on tax reforms effective 1 January 2018, gross income received by an alien individual employed by ROHQ established in the Philippines are now subject to the graduated income tax rates (up to 35% of such gross income).

R&D expenses are deductible if they are paid or incurred during the taxable year as ordinary and necessary expenses of the business, and not charged to capital account. At the taxpayer's election, development R&D expenses may be treated as a deferred expense, in lieu of a tax deduction, provided that it shall be amortized over a period not less than 60 months.

Special Tax Regimes for Specific Industries or Sectors

BOI/PEZA-registered activities with pioneer status – 6 years income tax holiday (ITH)

BOI/PEZA-registered activities with non-pioneer status – 4 years ITH

PEZA-registered activities after the lapse of income tax holiday – 5% gross income tax regime

Regional Operating Headquarters – 10% preferential rate on taxable income

Other Incentives

A number of other tax incentives are available in the Philippines for enterprises engaged in preferred areas of investment and registered with the Board of Investments (BOI) or the PEZA, including tax holidays/exemptions, tax credits, additional tax deductions and simplification of customs procedures.

Further, tax incentives are available for regional headquarters, enterprises operating in developing regions and special economic zones.

1.6 International Taxation

Double Taxation Relief

If there is an existing tax treaty between Philippines and a particular country, the preferential tax rate in the treaty may be invoked by applying a tax treaty relief application ('TTRA') with the BIR. However, for dividends, royalties and interests, a Certificate of Residence for Tax Treaty Relief ('CORTT') Form must be submitted in lieu of the TTRA.

Foreign-Exchange Controls

There are no foreign exchange control rules.

International Withholding Tax Rates

The following items can be subject to withholding tax at 30%:

- Interest
- Rent
- Royalties
- Salaries
- Dividends
- Premiums (except reinsurance premiums)
- Annuities
- Emoluments or other fixed or determinable annual, periodic or casual gains, profits and income, and capital gains, except capital gains on sale of shares stock

The exceptions to this are:

- Interest on foreign loans, subject to withholding tax at 20%.
- Income of a non-resident cinematographic film owner, lessor or distributor which is subject to withholding tax at 25%.
- Income of a non-resident owner or lessor of vehicles which is subject to withholding tax at 4.5%; and
- Income of a non-resident owner or lessor of aircraft, machinery and other equipment which is subject to withholding tax at 7.5%.

These rates may be reduced if a relevant tax treaty applies.

The withholding tax on dividends paid to a non-resident foreign corporation may be reduced to a lower rate if the country in which the corporation is domiciled allows a credit for taxes deemed paid in the Philippines (tax sparing).

Withholding Tax Rates under the Income Tax Treaties

Philippines – Treaty Withholding Rates Table				
	Dividends		Interest	Royalties
	Individuals, companies	Qualifying companies		
	(%)	(%)	(%)	(%)
Domestic Rates				
Companies:	[1]15	Exempt[2]	20[3]/7 ½	20/10[4]
Individuals:	10		20[5]/15	20/10[4]
Treaty Rates				
Australia	25	15[6]	15/10[7]	25/15[8]
Austria	25	10[9]	15/10[10]	15/10[11]
Bahrain	15	10[12]	10	15[13]/10
Treaty Rates				
Bangladesh	15	10[14]	15	15

[1] The 15% rate shall apply to non-resident foreign corporation imposed on the amount of cash and/or property dividends received from a domestic corporation subject to the condition that the country in which the nonresident foreign corporation is domiciled shall allow a credit against the tax due from the nonresident foreign corporation.
[2] Dividends received by a domestic corporation or a resident foreign corporation from another domestic corporation shall not be subject to tax.
[3] The 20% rate applies from the amount of interest on currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements. The 7 ½% applies to interest derived from depository banks under the expanded foreign currency deposit.
[4] The 10% rate applies to books, literary works and musical compositions.
[5] The 20% rate applies from the amount of interest on currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements. The 15% applies to interest derived from depository banks under the expanded foreign currency deposit.
[6] The 15% rate applies where relief, either by rebate or credit under Article 24 of the treaty is given to the beneficial owner of the dividends.
[7] The 10% rate applies to interest arising in the Philippines from publicly issued bonds, debentures or similar obligations.
[8] The 15% rate applies to royalties paid by an enterprise registered with the Philippine Board of Investments (BOI) and engaged in preferred areas of activities. For the USA, the treaty provides a most-favored-nation clause.
[9] The 10% rate applies of the beneficial owner is a company that holds directly at least 10% either of the voting shares of the company paying the dividends or of the total shares issued by that company during the period of six months immediately preceding the date of payments of the dividends. For Japan, the 10% rate also applies to dividends paid by the enterprise registered with the BOI and engaged in preferred areas pf activities.
[10] The 10% rate applies to interest arising in the Philippines form publicly issued bonds, debentures or similar obligations. The 10% rate likewise applies to interest paid by an enterprise registered with the BOI and engaged in preferred areas of activities.
[11] The 10% rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred areas of activities.
[12] The 10% rate applies if the beneficial owner is a company that holds directly at least 10% of the capital of the paying company. Except for Belgium, China, Czech Republic and Qatar, the treatise exclude partnerships. For France and Spain, the rate applies to voting shares (vis-à-vis capital).
[13] The 15% rate applies if arising from the use of, or the right to use, any copyrighted work including cinematographic films or tapes for television or broadcasting while the 10% rate applies in all other cases. For China and Germany, the 10% rate applies to royalties arising from the use of, or the right to use, any patent or trademark, design or model, plan, secret formula or process, or from the use of, or the right to use industrial, commercial, or scientific equipment, or of information concerning industrial, commercial or scientific experience. Further, for technology transfers which are subject to approval under Philippine law, the contract giving rise to such royalties must be approved by the Philippine competent authorities.
[14] The 10% rate applies if the beneficial owner is a company (excluding partnerships) that holds directly at least 25% of the capital of the paying company. For Germany, the rate applies to ownership (vis-à-vis holding).

Belgium	15	10[12]	10	15
Brazil	25	15[15]	15/10[7]	25[16]/15
Canada	25	15[17]	15/10[7]	25[18]
China (People's Rep.)	15	10[12]	10	15/10[13]
Czech Republic	15	10[12]	10	15[19]/10
Denmark	15	10[14]	10	15
Finland		15[17]	15/10[7]	25/15[20]
France	15	10[12]	15/10[7]	15
Germany	15	10[14]/5[21]	10	10
Hungary	20	15[22]	15	15[18]
India	20	15[17]	15/10[23]	15[24]
Indonesia	20	15[25]	15[26]/10[27]	25/15[28]
Israel	15	10[12]	10	15[18]
Italy	15		15/10[7]	25/15[29]

[15] The 10% rate applies if the beneficial owner is a company. For Brazil, it includes a partnership.
[16] The 25% rate applies to royalties arising from the use or the right to use trademarks and cinematographic films, films or tapes for television or radio broadcasting.
[17] For Canada, the 15% rate applies if the company controls at least 10% of the voting power of the company paying the dividend. For Norway and the United Kingdom, the rate applies if the beneficial owner is a company that controls directly or indirectly at least 10% of the voting power of the company paying the dividends. For Finland, the 15% rate applies if the recipient is a company (excluding partnerships) owning at least 10% of the voting stock of the company paying the dividends. For India, the 15% rate applies if the beneficial owner is a company that owns at least 10% of the shares of the company paying the dividends.
[18] The treaty provides a most-favored-nation clause.
[19] The 10% rate applies to royalties arising from the use of, or the right to use, any copyrighted work (other than royalties arising from the use of, or the right to use, any copyright of cinematograph films, and films or tapes for television or radio broadcasting as 15% rate applies to the same), any paten, trademark, design or model, plan, secret formula or process, or from the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
[20] The 15% rate applies to royalties paid by an enterprise registered with and engaged in preferred areas of activities, and also royalties in respect of cinematographic films or tapes for television or broadcasting, and royalties for the use of, or the right to use, any copyrighted work.
[21] The 5% rate applies if the beneficial owner is a company (other than a partnership) which holds directly at least 70% of the capital of the company paying the dividends.
[22] The 15% rate applies if the beneficial owner is a company that holds directly at least 25% of the company paying the dividends.
[23] The 10% rate applies if the interest received by the financial institution (including insurance companies). The same applies to interest arising from publicly issued bonds, debentures or similar obligations.
[24] The 15% rate applies to royalties paid by an enterprise which is registered with the BOI.
[25] The 15% rate applies if the beneficial owner is a company that owns at least 25% of the capital of the company paying the dividends.
[26] The 15% rate applies if recipient is a beneficial owner and when the interest arising from the Contracting State is paid to a resident of the other contracting state in respect to bonds, debentures and other similar obligations of the government of that State or a political subdivision or local authority. It also applies to interest paid for loans made, guaranteed or insured or a credit extended, guaranteed or insured by the Central Bank of the Philippines or Bank of Indonesia, or other lending institution as may be specified and agreed in letters exchanged between the competent authorities.
[27] The 10% rate applies in respect to public issues of bonds, debentures, or similar obligations.
[28] The 15% rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred areas of activities.
[29] The 15% rate applies to royalties paid by an enterprise registered with the BOI and engaged in preferred areas of activities and also to royalties on cinematographic films or tapes for television or broadcasting.

Japan	15	10[9]	10	15[30]/10
Korea (Rep.)	25	10[31]	15/10[10]	15/10[11]
Kuwait	15	10[31]	10	20
Malaysia	25	15[15]	15	25/15[32]
Netherlands	15	10[33]	15/10[40]	15/10[34]
New Zealand	15		10	15
Nigeria	15	12 ½[31]	10	20
Norway	25	15[17]	15	25[35]/7 ½ [36]
Pakistan	25	15[37]	15/10[7]	25/15[38]
Poland	15	10[14]	10	15
Qatar	15	10[12]	10	15
Romania	15	10[39]	15/10[40]	25[41]/15/10
Russia	15		15	15
Singapore	25	15[42]	15/10[7]	25/15[43]

[30] The 15% rate applies if the royalties are paid in respect to the use of or the right to use cinematograph films and films or tapes for radio or television broadcasting.

[31] The 10% rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends. The rate also applies to dividends paid by enterprises registered with the BOI and engaged preferred pioneer areas of investment. In the case of Nigeria, the rate of 12 ½% applies if the beneficial owner is a company (excluding partnerships) which holds at least 25% of the capital of the paying company.

[32] The 15% rate applies if paid by a registered enterprise as well as royalties from the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting.

[33] The 10% rate applies if the recipient is a company the capital of which is wholly or partially divided into shares and which holds directly at least 10% of the capital paying the dividends.

[34] The 10% rate applies is the royalties are paid by an enterprise registered and engaged in preferred areas of activities in that State.

[35] The rate applies when 25% of the gross amount of royalties, including 25 per cent of the gross rentals or amount paid for the use of, or the right to use, motion picture films, films or tapes for radio or television broadcasting.

[36] The 7 ½% rate applies to gross rentals or amount paid for the use of or the right to use containers. Further, this treaty provides a most-favored-nation clause.

[37] The 15% rate applies if the beneficial owner is a company (excluding partnership) which holds directly at least 25% of the capital of the paying company during the part of the paying company's taxable year which precedes the date of payment of the dividends and during the whole of its prior taxable year, if any.

[38] The 15% rate applies if the royalties are paid by an enterprise registered with and engaged in preferred areas of activities in that Contracting State.

[39] The 10% rate applies if the recipient is a company (excluding partnership) and during the part of the paying company's taxable year which precedes the date of payment of the dividends and during the whole of its prior taxable year (if any), owns at least 25% of the outstanding shares of the voting stock of the paying corporation.

[40] The 10% rate applies if such interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or on any loan of whatever kind granted by a bank, or on publicly issued bonds, debentures or similar obligations.

[41] The 10% rate applies if the royalties are paid by an enterprise registered with the BOI and engaged in preferred pioneer areas of activities. The 15% rate applies if royalties are, in respect of cinematographic films and tapes for television broadcasting. The 25% rate applies in all other cases.

[42] The 15% rate applies if the recipient is a company (including partnership) and during the part of the paying company's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), owns at least 15% of the outstanding shares of the voting stock of the paying company.

[43] The 15% rate applies where the royalties are paid by an enterprise registered with the BOI and engaged in preferred areas of activities and also royalties in respect of cinematographic films or tapes for television or broadcasting.

Spain	15	10[12]	15/10[35]	20[44]/15/10
Sweden	15	10[14]	10	15
Switzerland	15	10[12]	10	15
Thailand	20	15[45]	25[46]/15/10	25/15[47]
Turkey	15	10[48]	10	15[49]/10
United Arab Emirates	15	10[12]	10	10
United Kingdom	25	15[17]	15/10[7]	10
United States	25	20[50]	15/10[7]	25/15[8]
Vietnam	15	10[14]	15	15

Other Agreements

Not applicable

Income Tax Treaties for the Avoidance of Double Taxation (Negotiated, not yet in force at time of publication)

New treaties and protocols have been negotiated with Finland, Italy, Taiwan at the time of writing but are not yet in force.

Agreements for the Exchange of Information

Australia, Austria, Bahrain, Bangladesh, Belgium, Brazil, Canada, Chile, China, Czech Republic, Denmark, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Korea, Kuwait, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Poland, Qatar, Romania, Russia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, United Arab Emirates, United Kingdom, United States of America, Vietnam, Yugoslavia

Indirect Offshore Disposal Rules

Not applicable.

[44] The 10% rate applies where the royalties are paid by an enterprise registered with the BOI and engaged in preferred areas of activities. The 20% rate applies in respect of cinematographic films or tapes for television broadcasting. The 15% rate applies in all other cases.

[45] The 15% rate applies if the company paying the dividends is a Philippine company or if the company paying the dividends is a Thai company engaged in industrial undertaking.

[46] The 10% rate applies when 10 per cent of the gross amount of interest arises in Thailand and is received by a Philippine financial institution (including insurance companies) or it arises in the Philippines in respect of public issues of bonds, debentures or similar obligations. The 15% rate applies if 15 per cent of the gross amount of interest arises from the Philippines.

[47] The 15% rate applies where the royalties are paid by an enterprise registered with the BOI engaged in preferred areas of activities and also royalties in respect of cinematographic films or tapes for television or broadcasting.

[48] The 10% rate applies when 10 per cent of the gross amount of dividends if the beneficial owners is a company (excluding partnership) which holds directly at least 25 per cent of the capital of the paying company.

[49] The 10% rate applies when 10 per cent of the gross amount of royalties arising from use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trademark, design or model, plan, secret formula or process, or from the use of or the right to use, industrial, commercial or scientific experience. The 15% rate applies when the gross amount of royalties arising from the use of, or the right to use, any cinematographic films or tapes for television or radio broadcasting.

[50] The 20% rate applies when the recipient is a corporation and during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), owns at least 10% of the outstanding shares of voting stock of the paying corporation.

2 Transfer Pricing

Requirements

Section 50 of the National Internal Revenue Code ('NIRC') of 1997, as amended, authorizes the Commissioner of Internal Revenue to distribute, apportion or allocate gross income or deductions between or among two or more organizations, trades or businesses owned and controlled directly or indirectly by the same interests, to ensure that taxpayers clearly reflect income attributable to controlled transactions and to prevent the avoidance of taxes with respect to such transactions. The Philippines adopts and uses "Arm's Length Principle" as the most appropriate standard to determine transfer prices of related parties.

Under Revenue Regulations (RR) No. 02-2013 dated 23 January 2013 (Philippine Transfer Pricing Rules), taxpayers are required to make a contemporaneous preparation of transfer pricing documentation to demonstrate that their transfer prices are consistent with the arm's length principle. It is contemporaneous if it exists or is brought to existence at the time the associated parties develop or implement any arrangement that might raise transfer pricing issues or review these arrangements when preparing tax returns. Such documents should be retained by the taxpayers within the period specifically provided by the NIRC as retention period, unless a different period is otherwise provided, and be submitted to the Bureau of Internal Revenue when required or requested to do so.

The Philippine Transfer Pricing Rules are largely based on the arm's length methodologies as set out under the Organization for Economic Cooperation and Development ('OECD') Transfer Pricing Guidelines.

Country-by-Country Reporting

There are no current guidelines with regard to this matter.

Master and Local Files Reporting

There are no current guidelines with regard to this matter.

Common Reporting Standard

There are no current guidelines with regard to this matter.

3 Indirect Tax

Indirect Tax

Value Added Tax (VAT)

Standard Rate

The standard rate of VAT is 12% which is imposed on the sale, in the course of trade/business, of goods, services and property in the Philippines as well as the importation of goods to the Philippines.

Zero-rated Sales

Certain sales of goods or services are subject to 0% VAT such as export sales; those considered export sales under special laws; sales to persons or entities whose exemption under special laws and international agreements effectively subjects such sales to 0 rate; services rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules of the Central Bank of the Philippines.

However, under the TRAIN law effective 01 January 2018, certain sales will be subject to 12% VAT and no longer be considered export sales subject to 0% VAT rate upon satisfaction of the following conditions:

(1) The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within 90 days from the filing of the VAT refund application with the BIR. All applications filed from 1 January 2018 shall be processed and must be decided within 90 days from the filing of the VAT refund application; and

(2) All pending VAT refund claims as of 31 December 2017 shall be fully paid in cash by 31 December 2019.

Exempt Transactions

The Tax Code enumerates certain exempt transactions which have been expanded pursuant to the TRAIN law effective 01 January 2018. Exempt transactions include, among others, services subject to percentage tax; sale of residential lot valued at Php1,500,000 and below, of house and lot, and other residential dwellings valued at Php 2,500,000 and below, provided that beginning 01 January 2021, the VAT exemption shall only apply to sale of house and lot, and other residential dwellings with selling price of not more than Php 2,000,000; lease of a residential unit with a monthly rental not exceeding Php 15,000; transfer of property pursuant to tax-free exchange transaction; sale or lease of goods or properties or the performance of services other than the enumerated transactions, the gross annual sales and/or receipts do not exceed the amount of Php 3,000,000.

Input Tax

If at the end of any taxable quarter, the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter/s. However, any input tax attributable to 0-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes.

Refund or Credit of Input Tax

Any VAT-registered person, whose sales are 0-rated, may within 2 years after the close of the taxable quarter when the sales were made [or within 2 years from the date of cancellation in case of cancellation of VAT registration], apply for the issuance of a tax credit certificate or refund of creditable input tax due attributable to such sales to the extent that such input tax has not been applied against output tax.

Under the TRAIN law effective 01 January 2018, it was expressly stated that in proper cases, the Commissioner of Internal Revenue shall grant a refund for creditable input taxes within 90 days from the date of submission of the official receipts or invoices and other documents in support of the application. In case of denial of the claim for tax refund, the taxpayer may within 30 days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals. However, failure on the part of any official or employee of the Bureau of Internal Revenue to act on the application within the 90 day period shall be punishable under Section 269 of the Tax Code.

Invoicing Requirements

A VAT-registered person shall issue:

(1) A VAT invoice for every sale, barter or exchange of goods or properties; or

(2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

Return and Payment of VAT

Every person liable to pay VAT shall file a quarterly return of the amount of his gross sales or receipts within 25 days following the close of each taxable quarter provided that VAT-registered persons shall pay VAT on a monthly basis. However, under the TRAIN law effective 01 January 2018, it is provided that beginning 1 January 2023, the filing and payment shall be done within 25 days following the close of each taxable quarter.

Withholding of VAT

(1) The government, including government-owned or controlled corporations, shall deduct and withhold a final VAT of 5% of the gross payment. However, beginning 1 January 2021, the VAT withholding system shall shift from final to a creditable system;

(2) Payment for lease or use of properties to non-resident owners shall be subject to 12% withholding VAT at the time of payment.

Payments for purchases arising from projects funded by Official Development Assistance as defined under Republic Act No. 8182 shall not be subject to the final withholding VAT system.

Tax on VAT Exempt Persons

Percentage tax of 3% of his gross quarterly sales or receipts

However, under the TRAIN law effective 1 January 2018, it is provided that cooperatives and beginning 1 January 2019, self-employed and professionals with total annual gross sales and/or receipts not exceeding Php 500,000 shall be exempt from the 3% percentage tax.

4 Personal Taxation

Top Rate

Individual income tax.

Individuals, depending on the tax status, are subject to progressive tax rates. The maximum rate starting taxable year 2018 is 35%. Individuals classified as non-resident aliens not engaged in trade or business in the Philippines are subject to 25% flat income tax rate on compensation/earnings/salary earned from Philippine sources.

Social Security

Every employer is required to deduct an amount from the salary of each employee premium contributions remittable to a social security fund and medicare system to finance the retirement, sickness, disability, health and other social security benefits of the employee.

The employer is also required to remit a counterpart contribution for the employee. The amount of premium contributions by the employer and employee depends on the salary bracket of each employee, based on a pre-calculated table of contributions.

International Social Security Agreements

Austria	France	Switzerland
Belgium	Netherlands	United Kingdom & Northern Ireland
Canada	Quebec	
Denmark	Spain	

Visa Requirements

Business travelers who are classified as non-restricted nationals have a 30-day visa free entry privilege to the Philippines and an additional 29-day visa-free stay where a visa waiver is applied for. On the other hand, business travelers who are classified as a restricted nationals are required to secure their proper Philippine visas prior to entry.

A working visa and an employment permit must be secured by an individual who enters the Philippines to engage into a professional undertaking, commercial operation or gainful employment.

Further Information

For more detailed personal taxation information, refer to:

KPMG's Thinking Beyond Borders

5 Other Taxes

Stamp Duty

The 'documentary stamp duty' is an excise tax and is imposed on documents, instruments, loan agreements and acceptances, assignments, sales or transfers of obligations, rights or property and other business instruments. The rate of tax depends on the nature of the document and transaction.

Documentary stamp duty applies to transactions effected and consummated outside the Philippines and documents signed abroad where the obligation or right arises from Philippine sources or the property is located within the Philippines.

The TRAIN law effective 1 January 2018 amends the documentary stamp duty rates on certain transactions.

Property Taxes

Property taxes imposed by the local government units include:

- Transfer tax on real property ownership; and
- Real property taxes are levied on the assessed value of the property and improvements. Each local unit may provide for the rate of tax to be imposed, but shall not exceed 2% of the assessed value of the property if located in a city or municipality within Metro Manila, or 1% if located in a province or municipality outside of Metro Manila. In addition to the basic tax, a levy of 1% based on the assessed value of the property is also imposed to accrue to the Special Education Fund.

Inheritance Tax

Estate tax is imposed upon the transfer of the net estate of every decedent. Under the TRAIN law effective 01 January 2018, estate tax is fixed at a flat rate of 6% of the net estate.

Gift Tax

Gift tax is levied on the transfer by any person (resident or non-resident) of property by donation and is imposed even if the transfer is in trust or otherwise (direct or indirect), and the property is real or personal, tangible or intangible.

The rates of tax are progressive from 2% to 15% based on the net gifts. Under the TRAIN law effective 1 January 2018, gift tax is fixed at a flat rate of 6% of the total gifts in excess of Php 250,000 exempt gift made during the calendar year.

Percentage Tax

Percentage tax is a business tax that is based on gross sales or receipts of the taxpayer. The tax rate depends on the type of establishment or business. A person who is exempt from VAT and is not a VAT-registered person or entity is subject to percentage tax of 3%. However, the person may apply for optional registration as a VAT-registered person and shall be liable to the VAT. This includes persons whose annual sales or receipts do not exceed Php 3,000,000 under the TRAIN law effective 1 January 2018 and have not elected to register for VAT.

Stock Transaction Tax

A stock transaction tax of one-half of 0.5% [now 6/10 of 1%) under the TRAIN law effective 1 January 2018 on gross selling price is imposed on the sale, barter, exchange or other disposition of shares through the stock exchange. A tax is also imposed on the sale, barter, exchange, or other disposition of shares of stock in closely held corporations through IPO.

Other Taxes

Home Development Mutual Fund; National Health Insurance; Local taxes.

6 Trade & Customs

6.1 Customs

Customs Duty

Generally, customs duties are levied on all articles imported into the Philippines. The rates vary depending on the classification and country of origin of the imported goods. If it originates from a country which is a member of the General Agreement on Tariffs and Trade (GATT) or Association of South East Asian Nations (ASEAN), the goods may be subject to preferential tariff treatment under the Generalized System of Preference or the ASEAN Common Effective Preferential Tariff. Customs duties are payable before the release or withdrawal of the goods from the customs house or bonded warehouse.

Excise Duty

Excise tax is levied on certain goods locally manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition, and on certain goods imported to the Philippines (in addition to VAT and customs duties).

Generally, the excise tax is payable before products are removed from the place of production. For imported items, the tax is payable before the release of articles from customs warehouse.

Items subject to excise tax include (amongst others); alcohol, tobacco products, petroleum, mineral products, automobiles, and miscellaneous articles such as all goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; goods made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth), opera glasses and lorgnettes, perfumes and toilet waters, and yachts and other vessels intended for pleasure or sports, and sweetened beverages.

Effective 1 January 2018, Republic Act (RA) No. 10963, otherwise known as the TRAIN Act imposed new excise tax rates on cigars and cigarettes, automobiles, petroleum products, mineral products, and added sweetened beverages to the list of goods subject to excise tax.

6.2 Free Trade Agreements (FTA)

In Force

ASEAN Free Trade Agreement

ASEAN-China Free Trade Area

ASEAN-India Free Trade Agreement

Japan-Philippines Economic Partnership Agreement

ASEAN-Korea Free Trade Agreement

ASEAN-Australia/New Zealand Free Trade Agreement

Concluded/Signed (pending domestic ratification)

None

In Negotiation

ASEAN-European Union Free Trade Agreement

7 Tax Authority

Tax Authority

Bureau of Internal Revenue (BIR)

Link to the Bureau of Internal Revenue

Tax Audit Activity

Under the law, the tax authority has 3 years from the last day prescribed by law for the filing of a return, or the date the return is filed, whichever is later, to examine a company's books and issue deficiency tax assessment. No proceeding in court without assessment for the collection of such taxes shall begin after the expiration of the 3-year period.

In the case of a false or fraudulent return with intent to evade payment of tax or of failure to file a return, the tax may be assessed, or proceeding in court for the collection of such tax may be filed without assessment at any time within 10 years from the discovery of the falsity, fraud, or omission.

The tax bureau has implemented a benchmarking system whereby taxpayers are classified based on tax returns filed. Those classified as high or medium risk taxpayers shall be prioritized in audit. The tax authority uses information generated by the Reconciliation of Listings for Enforcement ('RELIEF') as well as third party information in order to enhance the targeting and focus of their tax audit activity.

The tax audit starts with the service of a Letter of Authority duly signed by the Commissioner or his duly authorized representative to the taxpayer. The approach to tax audits is largely a manual approach including detailed consideration of invoices and key documents.

If the taxpayer is not amenable with the Revenue Officer's findings, an Informal Conference shall be conducted to afford the taxpayer the opportunity to present his side of the case, which shall not extend beyond 30 days from the date of receipt of the Notice for Informal Conference. If it is found that the taxpayer is still liable for deficiency tax or taxes, the Revenue Officer shall endorse the case within 7 days from conclusion of the Informal Conference to the Assessment Division of the BIR for issuance of deficiency tax assessment.

Appeals

If a Final Assessment Notice (FAN) is not acceptable to a taxpayer, a protest must be filed within 30 days from the date of receipt of the assessment notice, otherwise the assessment becomes final, executory and demandable.

For requests for reinvestigation, all relevant supporting documents should be submitted within 60 days from filing of the protest.

If the protest to the FAN is denied in whole or in part, the taxpayer may either (i) appeal to the Court of Tax Appeals within 30 days from receipt of the said decision, or (ii) elevate his protest through request for reconsideration to the Commissioner within 30 days from receipt of the said decision, whose decision or inaction may likewise be appealed with the CTA.

If the protest is not acted upon within 180 days from the date of filing the protest (for protest requesting reconsideration) or from the date of submission of the supporting documents (for protest requesting reinvestigation), the taxpayer may either (i) appeal to the CTA within 30 days after the expiration of the 180-day period, or (ii) await the final decision on the disputed assessment.

Tax Governance

KPMG advocates strict compliance with tax laws and regulations. Proper documentation is likewise necessary for the purposes of substantiation of any tax position filed.

The BIR does not currently offer any specific incentives or schemes to encourage good tax governance by taxpayers.

However all businesses are advised to establish policies and controls in relation to their various tax compliance obligations, as appropriate to their business size and complexity.

Current Topics for Focus by Tax Authorities

While the BIR's audit activity can generally be seen to target all areas of taxation in the Philippines, we have seen in recent years an increasing focus by the BIR on:

- Tax evasion by individuals engaged in the practice of their professions
- Cross-border transactions
- Tax reporting and compliance
- The withholding tax system

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