SyCip Salazar Hernandez & Gatmaitan

SyCipLaw Center, 105 Paseo de Roxas
Makati City, 1226 Philippines
T: +632 8982 3500 | +632 8982 3600 | +632 8982 3700
F: +632 8817 3570 | +632 8848 2030
www.syciplaw.com

1. Are payments made to a nonresident foreign corporation for satellite services delivered in the Philippines taxable in the Philippines?

Yes. In *Aces Philippines Cellular Satellite Corporation v. The Commissioner of Internal Revenue* ("*CIR*") (G.R. No. 226680, August 30, 2022), the Supreme Court ("*SC*") held that payments to a non-resident foreign corporation, Aces Bermuda, for satellite air time are income within the Philippines. In this case, the SC determined that, *first*, the source of the income is the gateways' receipt of the call in the Philippines and, *second*, the situs of that income is the Philippines.

Aces Bermuda had two contracts with Aces Philippines, a subsidiary of PLDT. The first contract is the Gateway Agreement where Aces Bermuda supplied Aces Philippines with the equipment, software, data, and documentation necessary for the construction and operation of gateways in the Philippines. The second contract is the Air Time Purchase Agreement where Aces Bermuda sold satellite communications time to Aces Philippines, its exclusive provider/distributor of the Aces Satellite System service to Philippine subscribers.

The CIR assessed Aces Philippines deficiency final withholding tax ("*FWT*") on satellite air time fees paid to Aces Bermuda on the theory that such payments constituted Philippine-sourced income. Aces Philippines took the position that the income from these payments was not sourced from within the Philippines because Aces Bermuda: (i) performed the relevant service completely outside of the Philippines, and (ii) does not own equipment in the Philippines.

Aces Philippines argued that Aces System's operations can be broken down into *two separate segments* after a Philippine subscriber makes a call using the satellite user terminal: *first,* the satellite located in outer space receives the call and beams the signal to the Network Control Center in Indonesia, which, in turn, would determine the exact Philippine gateway the call shall be routed to. *Second,* the Philippine gateway receives the call, routes it using its switch, and processes it for termination. According to Aces Philippines, the act of transmission, which takes place in outer space, is the activity that produces the income for Aces Bermuda.

The SC ruled against Aces Philippines and upheld the ruling of the Court of Tax Appeals ("*CTA*") that Aces Philippines is liable for FWT on its payments to Aces Bermuda. The SC agreed with the CTA's finding that the source of income or the income-generating activity takes place not during the act of transmission of the satellite signals from outer space but upon receipt of the telephone call which is routed by the satellite signal to a gateway located within the Philippine territory. The SC identifies the gateway's receipt of the call as the income source as it coincides with (i) the completion or delivery of the service of Aces Bermuda, and (ii) the inflow of economic benefits in favor of the latter. The fulfillment of Aces Bermuda's undertaking requires the satellite to have transmitted/routed the call (first segment) and a gateway to have received the call as routed by the satellite (second segment). At the point of transmission (i.e., the first segment), Aces Philippines has not yet been given access to the Aces Satellite System. It is only when the call is actually routed to its gateway (i.e., the second segment) that Aces Philippines is able to connect its local subscriber to the intended recipient of the call. It is only upon the gateway's receipt of the call (which takes place in the Philippines) that Aces Bermuda's service is considered completed or delivered.

Further, the SC said that under the Air Time Purchase Agreement, Aces Philippines will not be charged anything at the point of

For more information regarding the issuances discussed in this briefing, please contact:
Carina C. Laforteza
cclaforteza@syciplaw.com

transmission inasmuch as there has not been any usage at that time and satellite air time fees expressly exclude satellite utilization time for call set-up, unanswered calls, and incomplete calls. In other words, the satellite air time fees accrue only when the satellite air time is delivered to Aces Philippines (i.e., upon the gateway's receipt of the routed call) and is utilized by the Philippine subscriber for a voice or data call. The accrual of fees payable to Aces Bermuda signifies the inflow of economic benefits.

The SC ruled that the situs of Aces Bermuda's income is the Philippines because (i) the income-generating activity is directly associated with the gateways located within the Philippine territory, and (ii) engaging in the business of providing satellite communication services in the Philippines is a government-regulated industry that necessarily invokes Philippine sovereignty and government intervention/protection. According to the SC, the fact that Aces Bermuda's income generation is dependent on the operations of facilities within the Philippines contributes to the income's Philippine situs. While Aces Philippines is the legal owner of the Philippine gateways, it cannot be denied that these gateways were constructed primarily to serve the needs and requirements of the Aces Satellite System.

The SC ruled that the location of Aces Bermuda's main asset in outer space cannot be determinative of the income source and situs of Aces Bermuda's income. The SC said that clearly (a) Aces Bermuda's income attaches to property operated and maintained in the Philippines, and (b) making Aces Bermuda's satellite services available to Philippine subscribers, albeit through its local service provider (Aces Philippines) is an endeavor that requires the intervention of the Philippine government. Thus, it is only fair that Aces Bermuda's income be subject to Philippine taxation and that Aces Bermuda be held accountable for its share in compensating the government for the protection it accords to Aces Bermuda's arrangements, operations, and related transactions in the Philippines.

SyCipLaw TIP 1:

The Supreme Court decision in *Aces* is relevant because a non-resident foreign corporation without operations or personnel in the Philippines and which does not own any property in the Philippines but providing services delivered to Philippine residents may be held to be subject to Philippine income tax. In holding that income from satellite services provided to Philippine subscribers is income from Philippine sources, the Supreme Court considered the place of "completion or delivery" of the service as the place of performance of the service.

Non-resident foreign corporations with no physical presence in the Philippines but providing services to Philippine residents, as well as the latter's Philippine customers, under circumstances similar to the facts in the *Aces* case, should consider whether their arrangements would give rise to a risk of deficiency income tax and FWT. The parties would be well advised to secure a tax ruling from the Bureau of Internal Revenue (*"BIR"*) confirming the tax consequences of their arrangements and clarifying whether there is an obligation to withhold taxes on payments to the non-resident foreign corporation under the provisions of the Tax Code or an applicable tax treaty.

Moreover, although it was not included in the Supreme Court decision, parties should study whether, consequently, services performed under similar circumstances are subject to value-added tax.

2. In a claim for refund of excess input Value-Added Tax ("*VAT*") attributable to zero-rated sales, is a taxpayer required to first deduct the input tax against output tax first, and ask for a refund of only the excess?

No. In *Chevron Holdings, Inc. v. CIR* (G.R. No. 215159, July 5, 2022), the SC ruled that a taxpayer is not required to first deduct its input VAT attributable to its zero-rated sales from its output VAT before asking for a refund of the "excess" input tax and can opt to ask for a refund of the entire input VAT attributable to its zero-rated sales.

Chevron Holdings, Inc., a regional operating headquarters in the Philippines, filed an administrative claim for refund or issuance of a tax credit certificate on the unutilized input VAT attributable to the sale of services to its foreign affiliates. The claim was partially denied by the CTA, which, among others, compared the reported output taxes from the substantiated input taxes and observed that there was no excess input VAT that may be the subject of a claim for refund or tax credit for the second, third, and fourth quarters of 2006. Chevron Holdings claims that the CTA was incorrect in ruling that only the excess input taxes may be subject of a refund.

The SC agreed with Chevron. The SC reiterated that to be refunded or issued a tax credit certificate, the following must be complied with: (1) the input tax is a creditable input tax due or paid; (2) the input tax is attributable to the zero-rated sales; (3) the input tax is not transitional; (4) the input tax was not applied against the output tax; and (5) in case the taxpayer is engaged in mixed transactions, *i.e.,* VAT-able, exempt, and zero-rated sales and the input taxes cannot be directly and entirely attributable to any of these transactions, only the input taxes proportionately allocated to zero-rated sales based on sales volume may be refunded or issued a tax credit certificate.

With regard to the fourth requirement, that the input tax should not have been applied against the output tax, the SC held that, under Section 112 of the National Internal Revenue Code ("*NIRC*"), as amended, the input tax attributable to zero-rated sales may, *at the option of the VAT-registered taxpayer*, be: (1) charged against output tax from regular 12% VAT-able sales, and any unutilized or "excess" input tax may be claimed for refund or the issuance of tax credit certificate; or (2) claimed for refund or tax credit in its entirety. The SC stressed that these two remedies are alternative and cumulative and the option is vested in the taxpayer-claimant. The SC held that the law and rules are clear and need no interpretation. The taxpayer only needs to prove non-application or non-charging of the input VAT subject of the claim. There is nothing in the law and rules that mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax from regular twelve percent (12%) VAT-able sales first and ask for a refund of only the "excess" input VAT.

SyCipLaw TIP 2:

A VAT-registered taxpayer with zero-rated sales has two options with regard to the input tax attributable to such sales. It may (1) apply such input tax against output tax due on its VATable sales and ask for a refund of, or tax credit certificate for, any unutilized or excess input tax; or (2) ask for a refund of, or tax credit for, such input tax in its entirety.

3. Is an issuer of Philippine Depositary Receipts ("PDRs") automatically considered a dealer in securities?

No. The CTA, in People of the *Philippines v. Rappler Holdings Corporation and Maria A. Ressa (*CTA Crim. Case Nos. O-679 to O-682, January 18, 2023), held that Rappler Holdings Corporation ("*RHC*"), a holding company which issued PDRs to Omidyar Network ("*ON*") and NBM Rappler L.P. ("*NBM*") in several tranches is not considered a dealer in securities.

In *People v. Rappler*, the BIR investigated RHC and Maria A. Ressa under the Run After Tax Evaders ("*RATE*") Program and filed criminal cases against them for failing to supply correct and accurate information in RHC's quarterly VAT return for the third and fourth quarters of 2015, attempting to evade and defeat tax by not declaring trading income in RHC's 2015 income tax return, and failing to supply correct and accurate information in RHC's income tax return for 2015, in connection with its PDR transactions with ON and NBM. The CIR argued that the PDR transactions with ON and NBM made RHC a dealer in securities and therefore it should have paid additional income taxes and VAT on the difference between the acquisition cost of the underlying shares and the proceeds from the issuance of the PDRs. RHC, on the other hand, argued that the issuances of PDRs were investment-raising activities to enable its subsidiary, Rappler, Inc. ("*RI*") to expand its operations.

The NRIC, as amended, defines a dealer in securities as a person with an established place of business, who is regularly engaged in the purchase of securities and the resale thereof to a customer with a view to the gains and profits that may be derived from the sale. Section 3.4 of the Securities Regulation Code ("*SRC*") further defines a dealer in securities as a person who buys and sells securities for his or her own account in the ordinary course of business. In an earlier case of *CIR v. Magsaysay Lines, Inc.*, (G.R. No. 146984, July 28, 2006), the SC has clarified that "carrying on business" or "doing business" does not mean the performance of a singular or disconnected act, but the connotes regularity of activity.

Evidence provided in the *Rappler* case shows that RHC was not habitually or regularly engaged in the purchase and resale of securities. The issuance of the PDRs was done pursuant to a legitimate business purpose, which was to raise capital for its subsidiary, RI. This act is consistent with the one of the purposes of RHC as a holding company, which is "to own and use for investment xxx real and personal properties of every kind and description xxx including but not limited to shares of stock, bonds, debentures, promissory notes, or other securities or obligations, created, negotiated or issued by any corporation, association or other entity, foreign or domestic, xxx."

The issuance of PDRs to ON and NBM for investment purposes is consistent with the activities of a holding company. The Securities and Exchange Commission ("*SEC*"), in several opinions, defined a holding company as a corporation organized to hold stock for another. It is equivalent to a parent corporation, having interest in another corporation or the power of control, that it may elect its directors and influence its management. Citing Prof. Erlinda S. Echanis's article, "Holding Companies: A Structure for Managing Diversification" (Philippine Management Review. 2009, Volume 16, pp. 1-12), the CTA noted that one of the four uses of holding companies is to raise large capital for subsidiaries that have limited access to financing or are restricted to do so by regulatory agencies or for various reasons.

RI, the operating company, which is restricted by constitutional and statutory foreign equity limitations, has limited access to financing. Thus, RHC entered into PDR investment agreements with ON and NBM, foreign entities, in order to raise capital to fund RI. Under these agreements, ON and NBM invested money in RHC, which RHC used to purchase stocks in RI, infusing capital into the latter. RHC then issued the PDRs in favor of ON and NBM.

A PDR is not specifically defined in the NIRC, as amended, and the SRC. The SEC provides that the PDR issued by RHC to ON is an equity derivative, since its value is dependent on the underlying equity. According to the Philippine Stock Exchange ("PSE"), a PDR is a security which grants the holder the right to the delivery of the proceeds of the sale of the underlying share. PSE Circular for Brokers No. 2375-99 provides that, as long as the PDR remains unexercised by its holder, the PDR holder has no right of ownership over the underlying shares and all such ownership rights pertain to and belong to the issuer.

The CTA noted that RHC's expert witness testified that a PDR is a receipt issued by the depositary, or the one who is the registered shareholder (here, RHC) of the shares of the underlying subsidiary (here, RI), whereby the investors (OM and NBM) are given the option to acquire shares of the subsidiary but the ability to exercise that option is dependent upon certain conditions. Since RI is a mass media company which is not allowed to have foreign owners under the Constitution, one of the conditions to exercise the option is that the Constitution allows foreign ownership of shares of stock of the mass media company. In the meantime, while the condition has not been fulfilled (i.e., the Constitution has not been amended to allow foreign ownership of a mass media company), the PDR holder is not allowed to exercise the option to acquire RI shares, however, the depositary will share with the investors the dividends to be paid by the underlying subsidiary to the registered shareholder/depositary in proportion to the investors' ownership of the PDRs.

The CTA held that a PDR is not equivalent to an RI stock and RHC's PDR transactions, being capital transactions, did not make RHC a dealer in securities. Thus, there is no legal basis to treat the difference between the acquisition cost of RI's share of stock and the proceeds from the sale or issuance PDRs to ON and NBM as trading income subject to income tax, because these transactions are capital transactions. In short, there is no legal basis to treat the difference between acquisition cost of one security and the proceeds from the sale or issuance of another security as trading income subject to income tax.

The CTA concluded that there being no income, there is likewise no violation of Sections 254 and 255 of the NIRC, as amended, because of the non-taxability of the issuance of PDRs to OM and NBM. Neither is there any civil liability, because of the CTA's finding that the act or omission from which the civil liability may arise, did not exist.

SyCipLaw TIP 3:

PDRs are useful vehicles for investment that may be issued to foreign entities by a holding company which owns shares in a corporation with foreign equity restrictions. Even if a PDR is considered as an equity derivative, the value of which depends on the share of stock in another corporation, the difference between the acquisition cost of the underlying share of stock in the corporation and the proceeds from the issuance of the PDR is not considered income subject to income tax.

4. Is an entity which entered into a Junket Agreement with Philippine Amusement and Gaming Corporation ("PAGCOR") under Presidential Decree ("PD") No. 1869 or the PAGCOR charter liable to pay income tax on its income from junket operations, in addition to the 5% franchise tax?

No. In *Prime Investment Korea, Inc. v. CIR*, (CTA EB No. 2483, January 9, 2023), the CTA held that the income of Prime Investment Korea, Inc. ("*Prime*") from casino gaming operations pursuant to the Junket Agreements with PAGCOR is not subject to corporate income tax.

Prime entered into a Junket Agreement with the PAGCOR. It was designated as PAGCOR's agent and was given authority under the PAGCOR Charter to conduct junket gaming operations at the designated junked Gaming Rooms at PAGCOR's Casino Filipino-Midas. In exchange, Prime paid PAGCOR a monthly Minimum Guaranteed Fee ("*MGF*") of $10,000 per gaming table or 10% of monthly gross winnings generated from Prime's Junket Gaming Operations, whichever is higher. The Junket Agreement and later, the Supplementary Junket Agreement likewise entered into by the parties, stipulate that Prime, as PAGCOR's agent, shall shoulder the 5% franchise tax due on gross winnings on the Junket Gaming Rooms and shall remit the said franchise tax to PAGCOR for the latter's remittance to the BIR. Upon expiration of the first agreements, the parties entered into another three-year Junket Agreement and Supplementary Junket Agreement. In addition to bearing the franchise tax, Prime also paid income tax on its junket operations.

Prime subsequently filed an administrative claim for refund or issuance of tax credit certificate for wrongfully-paid corporate income tax on e-junket gaming revenues for taxable year 2015.

Claiming inaction on its administrative claim, Prime filed a Petition for Review. This was denied by the CTA but subsequently granted by the CTA En Banc which remanded the case to the CTA First Division to determine the refundable amount.

In granting the petition, the CTA En Banc looked at the nature of the income derived by Prime from its Junket Agreements. If the income is derived from gaming operations pursuant to Section 13(2) of the PAGCOR Charter, it is not subject to income tax and is subject only to a franchise tax of 5% of the gross revenue derived from the operations under its franchise. If the income is derived from other related services under Section 14(5) of the PAGCOR Charter, it is subject to corporate income tax in addition to the franchise tax.

Pursuant to Revenue Memorandum Circular ("*RMC*") No. 32-2022, only regulatory or license fees from junket operations are classified as income from "other related operations/services." This clarified RMC No. 33-2013, which provides that income from junket operations is considered "other related operations," as well as 2021 decision of the SC in *Philippine Amusement and Gaming Corporation (PAGCOR) v. CIR*, (G.R. No. 215427, December 10, 2014), where the SC held that income from junket gaming operations is classified as income from "other related services" and thus subject to income tax.

The Junket Agreements provide that Prime is allowed to engage in gaming operations as PAGCOR's agent – an activity which is exempt from income tax. It also shows that Prime is actually and directly engaged in the conduct of casino gaming operations as PAGCOR's Casino Filipino-Midas. In exchange for PAGCOR's grant of authority, Prime pays PAGCOR an MGF. PAGCOR's role is limited to the regulation of the conduct of junket operations, and to collect its fees and franchise tax due from Prime.

Thus, the CTA ruled that Prime's income generated from the operation of the casino pursuant to the Junket Agreements is not subject to corporate income tax, as it is classified as "income derived from gaming operations" pursuant to Section 13(2) of the PAGCOR Charter.

SyCipLaw TIP 4:

The income derived from operation of a casino pursuant to a Junket Agreement with PAGCOR is subject only to a 5% franchise tax. With the issuance of RMC 32-2022, it is now clear that only regulatory license fees from junket operations is classified as income from other related operations, subject to income tax and the 5% franchise tax. On the other hand, income from the operation of casinos is considered as income derived from gaming operations and is subject only to the 5% franchise tax.

5. Beginning January 1, 2023, are VAT-registered taxpayers still required to file both monthly (2550M) and quarterly (2550Q) VAT returns?

No. Beginning January 1, 2023, VAT-registered taxpayers need to file only quarterly VAT returns in accordance with the amendments under the "Tax Reform for Acceleration and Inclusion (*"TRAIN"*) Law as implemented by RR No. 13-2018. Section 114 (A) of the NIRC, as amended by the TRAIN Law, provides that "beginning January 1, 2023, the filing and payment [of VAT returns] shall be done within twenty-five (25) days following the close of each taxable quarter."

RMC No. 5-2023 provides the transitory provisions for the implementation of the quarterly filing of VAT returns starting January 1, 2023 to avoid confusion during the initial implementation of the amendment, especially for taxpayers under the fiscal period of accounting.

Similar to taxpayers on calendar year accounting periods, those with fiscal years ending on January 31, 2023 or February 28, 2023 are required to file monthly VAT returns (2550M) until December 31, 2022 only.

SyCipLaw TIP 5:

VAT-registered taxpayers should be mindful of the change in VAT reporting beginning January 1, 2023. Monthly VAT returns have been eliminated and only quarterly VAT returns are required to be filed within 25 days from the close of each quarter.

6. Is an Ecozone Logistics Service Enterprise covered under the 2022 Strategic Investment Priority Plan?

Board of Investments ("*BOI*") Memorandum Circular No. 2023-001 clarified the scope of Logistics Services considered "activities in Support to Exporters" under the 2022 Strategic Investment Priority Plan ("*SIPP*") and qualified for investments under the Corporate Recovery and Tax Incentives for Enterprises" (*"CREATE"*) Act.

Based on the definition of export enterprises under Sec. 293 (E) of the CREATE Act, the listing in the SIPP for logistics services as one of the activities in support of exporters shall cover an Ecozone Logistics Service Enterprise ("*ELSE*") that conducts **BOTH** of the following:

i. establishment of a warehouse storage facility; **and**

ii. importation or procurement from local sources and/or from other PEZA registered enterprises of goods for resale, or for packing/covering (including marking, labelling), cutting, or altering to customers' specification, mounting and/or packaging into kits or marketable lots thereof for subsequent sale, transfer or disposition for export.

Such integrated ELSEs will be considered export enterprises as long as they render at least 70% of their output/services to another registered export enterprise.

SyCipLaw TIP 6:

The activities of an ELSE are considered activities in support of exporters that are considered priority activities under the SIPP that may be registered and qualify for all applicable incentives under the CREATE Act. RMC No. 24-2023 dated February 7, 2023 (to be discussed in more detail in the March 2023 International Edition of TIPS) clarified that, in order to be entitled to the incentives of VAT zero-rating on local purchases of goods and/or services directly and exclusively used in registered activities, an ELSE must render at least 70% of its output/services to another registered export enterprise. Further, the documentary requirements and procedures to avail of VAT zero-rating under RMC No. 24-2022 (discussed in our March 2022 International Edition of TIPS) must be complied with.

7. What are the salient points of FIRB Administrative Order No. 1-2023?

FIRB Administrative Order ("*AO*") No. 1-2023 sets out Supplemental Guidelines to Operationalize FIRB Resolution 026-22 re: transfer of Registered Business Enterprises ("*RBEs*") from other Investment Promotion Agencies to the BOI.

Below are some salient points under FIRB AO No. 1-2023:

a. **After transferring its registration to the BOI, will the RBE still have to comply with the terms and conditions of the original Certificate of Registration ("COR") with the former Investment Promotion Agency ("Concerned IPA") where the RBE was originally registered?**

The covered RBE must comply with the terms and conditions of both CORs (i.e., the Concerned IPA and BOI) to avail itself of both its fiscal and non-fiscal incentives.

The IPAs, BIR, and BOC shall use and refer to the (a) BOI-COR as the basis for the entitlement to the remaining fiscal incentives of the covered RBE as indicated therein and (b) original COR issued by the Concerned IPA as the basis for the entitlement to non-fiscal incentives as stated therein and its corresponding Terms and Conditions or Registration Agreement and/or Supplemental Agreement.

b. **Who between the Concerned IPA and the BOI will process the relevant certificates and reports (identified below) for the transferring RBE?**

Application	Where filed?
Certificate of entitlement to tax incentives (CETI)	Concerned IPA
Certificate of authority to import (CAI)	Concerned IPA (once fully implemented)
VAT zero-rating certification	Concerned IPA
Submission of reports and compliance monitoring	Concerned IPA

c. **What is the procedure for movement of capital equipment and other assets within and outside the economic zones?**

As proof of entitlement to import VAT and/or customs duties exemption and to facilitate the free movement of capital equipment and other assets within and outside the economic zones and freeport zones, the covered RBE must secure a Tax Exemption Indorsement (*"TEI"*) from the Department of Finance Revenue Office.

Existing goods will be covered by a blanket TEI per project, covering existing goods that were imported as of 31 January 2023. Importations starting 1 February 2023 will be processed per project per shipment.

Once a TEI has been secured, no bond will be imposed for the movement of equipment, as long as the number of equipment of the covered RBE outside the economic zone or freeport zone does not exceed the number of its employees under a WFH arrangement. Upon approval of the Concerned IPA, additional laptops/other equipment may be allowed if reasonably needed to perform the registered project or activity.

New capital equipment and other assets that will be imported per project starting 1 February 2023, must be covered by a TEI, as issued by the Department of Finance Revenue Office.

SyCipLaw TIP 7:

RBEs in the IT-BPM sector who transfered their registration to the BOI must be mindful of the regulatory role of both the IPA where the RBE was originally registered (*e.g.*, PEZA) and the BOI so that they remain compliant with the terms and conditions of their registrations and continue availing their fiscal and non-fiscal incentives. Further, the transferring RBE must ensure proper compliance with the guidelines on movement of capital equipment and assets to ensure entitlement to the relevant VAT and customs duties exemptions.

8. Can the BIR collect personal information of individuals from third-party sources for tax compliance purposes?

It depends. In RMC No. 6-2023, the BIR circularized National Privacy Commission (*"NPC"*) Advisory Opinions upholding the authority of the BIR, in the performance of its tax enforcement, assessment and collection functions, to obtain personal and sensitive personal information from any person pursuant to Section 4(e) of the Data Privacy Act (*"DPA"*) in relation to Section 5(B) of the NRIC.

Section 4(e) of the DPA provides that the DPA does not apply to "[i]nformation necessary in order to carry out the functions of public authority which includes the processing of personal data for the performance by the independent central monetary authority and law enforcement and regulatory agencies of their constitutionally and statutorily mandated functions."

Meanwhile, Section 5(B) of the NIRC provides:

> Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.— In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations…

Pursuant to the above-cited provisions, the DPA recognizes the authority of the CIR to obtain information on taxpayers for purposes of determining tax liabilities or evaluating tax compliance, which may be exercised by sending letter-requests for "access to records" to taxpayers or third parties. However, the BIR must still uphold the rights of data subjects and adhere to the relevant data privacy principles, such as the principle of proportionality. Moreover, the BIR must strictly adhere to existing rules and regulations, which include the issuance of letter notices, letters of authority, subpoena duces tecum, etc.

SyCipLaw TIP 8:

The BIR may send "access to records" letters to obtain information from any person for the purpose of determining a taxpayer's compliance with tax laws. While such "access to records" letters are not *per se* violative of data privacy laws, especially if the BIR has a lawful basis for requesting the information and complied with the appropriate process for such request, the BIR must nevertheless uphold, at all times, the rights of data subjects and adhere to the data privacy principles of transparency, legitimate purpose, and proportionality. Note, however, that in *Philippine Stock Exchange, et. al., v. Secretary of Finance, et. al.* (GR No. 213860, July 5, 2022), the SC En Banc invalidated BIR issuances – RR No. 1-2014, RMC No. 5-2014, and SEC MC No. 10-2014 – for being violative of the right to privacy of investors. This SC decision will be discussed in more detail in the March 2023 International Edition of TIPS.

For feedback, please e-mail info@syciplaw.com.