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DST on intercompany advances between affiliates

When a company is faced with problems on financing its working capital requirements, a speedy, convenient and less cumbersome way of acquiring funds is through intercompany advances. Because the companies are affiliated with each other, less requirements and technicalities are considered in the approval and grant of the funds, which are usually referred to as intercompany advances. These intercompany advances are most frequently evidenced by instructional letters, cash and journal vouchers.

In 2011 the Supreme Court (SC), in GR Nos. 163653 & 167689, had the opportunity to apply the provision imposing documentary-stamp taxes (DST) on debt instruments, as it relates to instructional letters, as well as journal and cash vouchers evidencing advances to affiliates. In said case, it was held that instructional letters, as well as journal and cash vouchers qualified, as loan agreement upon which DST may be imposed.

In a recent case before the Court of Tax Appeals, a taxpayer was assessed for deficiency DST based on the net increase in the amount of advances to/from affiliates. In protesting the assessment, the taxpayer claimed that in order for these documents to be considered as debt instrument, they must not only represent a borrowing and lending transaction but must also be originally issued by the debtor in favor of the creditor as proof of the creditor's right to claim against the debtor.

The taxpayer claimed that since the cash and disbursement and journal vouchers are not signed or issued by the affiliates, they cannot be considered as debt instrument, subject to DST. Finally, the taxpayer insists that it cannot issue a debt instrument to its head office because being a branch office, it does not have a separate legal entity from its head office.

In resolving the case, the Court ruled that the earlier cited SC case, where it was ruled that instructional letters and cash vouchers are loan agreements subject to DST, applies. It was further stressed that cash- disbursement vouchers and journal vouchers are, in fact, instruments representing borrowing and lending transactions. Last, it was held that for purposes of imposing the DST, the general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply. The cash advances and intercompany trade payables and receivables between them, which were booked under "due to/from accounts," are well within the purview of "debt instruments" subject to DST.

While providing advances to and from related companies is a convenient way of obtaining funds to finance business requirements, taxpayers should be aware that these are subject to DST. The imposition of DST arises whether loan documents are executed to cover the transactions.

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