

## What's Inside...

**INSIGHTS** is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies).

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# HIGHLIGHTS for February 2024

# HIGHLIGHTS

## COURT DECISIONS

- The endorsement of the CIR to the DOJ “for preliminary investigation and filing of information if evidence so warrants” acknowledged that the DOJ, as the government’s prosecution arm, has direct control and supervision of all criminal actions. (*People of the Philippines v. Ziegfried Loo Tian*, CTA Crim Case No. O-943, February 5, 2024)
- Being an independent central monetary authority, BSP is not under the supervision and control of the President and Executive Branch despite the fact that the government owns the BSP. It follows, then, that the dispute between the parties, which involves a claim for refund, is not governed by PD 242 but by Section 7 (a)(1) of RA 1125, as amended by RA 9282 and RA 9503. (*Bangko Sentral ng Pilipinas v. Commissioner of Internal Revenue*, CTA EB No. 2687, February 21, 2024)
- Application of the net worth method requires the: (1) establishment, with reasonable certainty, of an opening net worth to serve as a starting point, from which to calculate future increases in the taxpayer’s assets; and (2) the net worth increases must be attributable to taxable income. (*Commissioner of Internal Revenue v. Armadillo Holdings Incorporated*, CTA EB No. 2655, February 12, 2024)

## BIR ISSUANCES

- **RMC No. 19-2024, February 5, 2024** – This clarifies the Tax Treatment of Interest Expense Paid or Incurred on Indebtedness in connection with the taxpayer’s profession, trade or business and other related matters.
- **RMC No. 21-2024, February 7, 2024** – This clarifies the answer to Question No. 31 of RMC No. 49-2022 in relation to RR No. 4-2022, implementing Section 295(F) of the Tax Code.
- **RMC No. 30-2024, February 23, 2024** – This announces that the PH-Brunei Tax Treaty is currently in force and effective since January 25, 2024.

## SEC ISSUANCES

- **SEC MC No. 02 series of 2024** – This prescribes guidelines on the 2024 Filing of Annual Financial Statements and General Information Sheet.
- **SEC MC No. 05 series of 2024** – This prescribes guidelines on the Philippine Sustainable Finance Taxonomy.

## IC ISSUANCES

- **IMC No. 2024-01, February 7, 2024** – This announces the increase in the Benefits for Compulsory Motor Vehicle Insurance Coverage.

## BOC ISSUANCES

- **Customs Memorandum Order No. 02-2024, February 2, 2024** – This provides for the establishment of the customs industry consultative and advisory council (CICAC)

## COURT OF TAX APPEALS DECISION HIGHLIGHTS

***If the offense charged involves a taxpayer's refusal to pay the taxes due, the date of the commission of which is known, the five (5)-year prescriptive period begins to run from the date the assessment notices became final and executory and continues to run until the filing of the Information in Court.***

Due to the accused remaining at large, the Court ordered the case to be archived. After some time, the Court was prompted to review the case to determine whether the information filed was within the prescribed period.

The Court ruled that there are two modes for commencement of the period of prescription: (1) from the day of the commission of the violation of the law, or (2) when the day of the commission is unknown, from the discovery of the commission and the institution of judicial proceedings for its investigation and punishment.

When the offense charged involves a taxpayer's refusal to pay the taxes due, the date of the commission of which is known, the five (5)-year prescriptive period begins to run from the date that the assessment notices became final and executory and continues to run until the filing of the Information in Court.

The Court ruled that the Formal Letter of Demand ("FLD") was served to the taxpayer on January 25, 2016. On February 25, 2016, the FLD became final and executory due to the failure of the taxpayer to file a protest. Based on the foregoing, the prescriptive period to indict the accused for failure to pay tax lapsed on February 25, 2021. Thus, the period to institute the case had already prescribed when the Information was filed before the Court on May 5, 2022. (*People of the Philippines v. Mavima Group, Inc. and Romeo B. Vinco*, CTA Crim Case No. O-906, February 2, 2024)

***The endorsement of the CIR to the DOJ "for preliminary investigation and filing of information if evidence so warrants" acknowledged that the DOJ, as the government's prosecution arm, has direct control and supervision of all criminal actions.***

The Court previously dismissed the case on the ground of prescription. There being no Motion for Reconsideration filed, the Court declared the case final and executory and that an Entry of Judgment be issued.

Thereafter, the BIR-Prosecution filed a Verified Petition for Relief from Judgment and noted that the Notice of Resolution was addressed only to the DOJ. Hence, they argued that the service to the DOJ was not a valid service.

The Court ruled that records show that the Commissioner of Internal Revenue ("CIR") endorsed the Joint Complaint Affidavit of the BIR revenue officers to the DOJ "for preliminary investigation and (for) filing of an information if evidence so warrants." This acknowledged that the DOJ, which serves as the government's prosecution arm, has direct control and supervision of all criminal actions. Thus, service to the DOJ tantamounts to service to the BIR-Prosecution. (*People of the Philippines v. Ziegfried Loo Tian*, CTA Crim Case No. O-943, February 5, 2024)

## COURT OF TAX APPEALS RESOLUTION HIGHLIGHTS

***The right to be heard includes the right to receive an explanation for a denial of the prayed recourse.***

The taxpayer avers that the CIR's assessments for deficiency income tax and VAT are not in accordance with law and regulation which violates the taxpayer's due process.

Here, the CIR issued identical assessments for income tax and VAT against the taxpayer in both the PAN and the FLD/FAN. Notably, the contents of the PAN and the FLD/FAN are the same except for interest. This only proves that the CIR failed to consider the arguments and evidence adduced and presented by the taxpayer against such assessments for income tax and VAT in the Reply to PAN.

Further proof of this matter is the fact that when the Reply to PAN was filed on January 22, 2015, and subsequently forwarded to the BIR Revenue Region No. 7's Assessment Division on January 23, 2015, the issuance and service of the FLD/FAN immediately followed on January 23, 2015, hinting that the issuance of the FLD/FAN was merely perfunctory.

This is a clear violation of the taxpayer's right to due process in tax assessment proceedings as its arguments and evidence were not even considered by the CIR before the issuance of the final assessment. Indeed, while the CIR is not duty-bound to accept the taxpayer's explanations and evidence, he should still endeavor to explain to the taxpayer why such explanations and evidence have not been accepted as sufficient basis to cancel an assessment. The right to be heard includes the right to receive an explanation for a denial of the prayed recourse. As the taxpayer's right to due process was violated, the assessments are undoubtedly null and void. Thus, no collection can proceed from such income tax and VAT assessments. (*Altimax Broadcasting Co., Inc. v. Commissioner of Internal Revenue, CTA Case No. 10285, February 27, 2024*)

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## COURT OF TAX APPEALS DECISION HIGHLIGHTS

***Being an independent central monetary authority, BSP is not under the supervision and control of the President and Executive Branch despite the fact that the government owns the BSP. It follows, then, that the dispute between the parties, which involves a claim for refund, is not governed by PD 242 but by Section 7 (a)(1) of RA 1125, as amended by RA 9282 and RA 9503.***

The CIR issued an assessment requiring BSP to pay capital gains tax, surcharge, interest, and compromise penalty. Thereafter, BSP paid the assessed amount and formally filed an administrative claim for refund with the CIR through a letter.

Considering the inaction of the CIR on the request for refund within the two (2) year prescriptive period, BSP sought recourse before the Court of Tax Appeals.

The Court held that while BSP is a government-owned corporation, it was envisioned and established to be an independent central monetary authority that enjoys fiscal and administrative autonomy. Being an independent central monetary authority, BSP is not under the supervision and control of the President and Executive Branch despite the fact that the government owns the BSP. It follows, then, that the dispute between the parties, which involves a claim for refund, is not governed by Presidential Decree 242.

Since neither the DOJ nor the OSG can take cognizance of the instant tax refund claim, it was correct for BSP to avail of the CTA's exclusive appellate jurisdiction on tax refund cases. Direct recourse to the CTA's jurisdiction is necessary considering the absence of an administrative settlement procedure within the Executive Branch in relation to tax issues involving the BIR and the BSP. In addition, it is only logical that the CTA should assume jurisdiction over a tax dispute involving BSP and BIR to the exclusion of other courts considering that the CTA has the undoubted expertise and exclusive jurisdiction to rule on tax disputes. Such jurisdiction is conferred under Section 7 (a)(1) of RA 1125, as amended by RA 9282 and RA 9503. (*Bangko Sentral ng Pilipinas v. Commissioner of Internal Revenue, CTA EB No. 2687, February 21, 2024*)

## COURT OF TAX APPEALS RESOLUTION HIGHLIGHTS

***Application of the net worth method requires the: (1) establishment, with reasonable certainty, of an opening net worth to serve as a starting point, from which to calculate future increases in the taxpayer's assets; and (2) the net worth increases must be attributable to taxable income.***

The CIR alleges that the Court erred in ordering the cancellation and withdrawal of the assessment notice and formal assessment notice and setting aside the Final Decision on Disputed Assessment ("FDDA") and amended assessment notice. The CIR insists that any increase in a taxpayer's net worth, after making reasonable adjustments, constitutes taxable income. The CIR further submits for the application of the net worth method (or inventory method) as a basis for imputing possible unreported taxable income.

The Court held that the application of the net worth method requires the: (1) establishment, with reasonable certainty, of an opening net worth to serve as a starting point, from which to calculate future increases in the taxpayer's assets; and (2) the net worth increases must be attributable to taxable income. In the case at bar, it is observed that the CIR merely relied on presumptions. Hence, the Court finds that the application of the net worth method is not valid and unwarranted and that the assessment for deficiency income tax was cancelled correctly. (*Commissioner of Internal Revenue v. Armadillo Holdings Incorporated, CTA EB No. 2655, February 12, 2024*)

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## BIR ISSUANCE

**RMC 19 – 2024,  
February 5, 2024 –**  
*This clarifies the tax treatment of interest expense paid or incurred on indebtedness in connection with the taxpayer’s profession, trade or business and other related matters*

Below is a tabular list of accounting and tax differences of interest expense paid or incurred.

Particulars	Accounting Treatment	Current Tax Treatment
Interest expense on borrowing arrangements	Interest is recognized as an expense using the effective interest method. Interests incurred directly attributable to the acquisition of a qualifying asset are capitalized as part of the cost of the asset.	Interest can be claimed as a deduction, subject to certain limitations, provided all the criteria are met.  Interest incurred to acquire property used in trade, business, or exercise of profession may be recognized as an expense in the year incurred or capitalized as part of the cost of the property.
Interest paid in advance by the taxpayer reporting income on a cash basis	Interest is recognized as an expense when incurred	Interest can be claimed as a deduction in the year the indebtedness is paid.  If the indebtedness is payable in periodic amortizations, the amount of the principal amortized or paid during the year shall be allowed as a deduction in such taxable year.
Interest expense on indebtedness between related parties.	Interest expense is recorded when incurred.	Interest expense is not deductible pursuant to Section 34(B)(2)(b) of the NIRC of 1997, as amended.

## BIR ISSUANCE

***RMC No. 21-2024,  
February 7, 2024–***

*This requires Registered Export Enterprises (REE) to change their registration status from value-added tax (VAT)-registered entity to non-VAT.*

Registered Export Enterprises (REE) needs to change their registration status from value-added tax (VAT)-registered entity to non-VAT.

The said RMC likewise provides that if the taxpayer has other activities other than those registered with the IPA change their registration status from VAT-registered entity to non-VAT in order to avail of either the 5% GIT or SCIT regime.

Lastly, the said RMC provides that REE petroleum importers, including those located inside the freeport zones or special economic zones, were required to pay the applicable duties and taxes on their import transactions including VAT. Correspondingly, they may be refunded the duties and taxes for the direct or indirect export of petroleum products, and/or tax-exempt sales pursuant to RR No. 4-2022. In relation thereto, under Section 112(A) of the Tax Code of 1997, as amended, provides that only VAT-registered persons or entities may file for a VAT refund. Hence, this clarification.

***RMC No. 25-2024,  
February 13, 2024–***

*This extends the deadline for submission of Alphabetical List of Employees/Payees from whom taxes were withheld.*

The deadline for the submission of the Alphabetical List of Employees/Payees from Whom Taxes Were Withheld (alphalist for brevity) for the taxable year 2023 is extended.

In this connection, those taxpayers with their extract program shall strictly observe the revised file structures and standard naming convention. Moreover, in order to provide all concerned taxpayers sufficient time to submit the alphalist for the taxable year 2023, the deadline for submission thereof shall be thirty (30) days from the date of posting of a tax advisory on the BIR website announcing the availability of the updated version of the Alphalist Data Entry and Validation Module.

In cases where alphalists were submitted using the old version of the said data entry module, the concerned taxpayers shall re-submit the same using the updated version of the module upon its availability thereof.



***RMC No. 26-2024,  
February 19, 2024 –***

*This notifies the availability of BIR Form Nos. 2200-AN, 2200-A, and 2200-T in the Electronic Filing and Payment System (eFPS).*

The following BIR Forms are now available in the Electronic Filing and Payment System (eFPS):

<b><u>BIR Form No.</u></b>	<b><u>Description</u></b>	<b><u>Deadline for Filing/Payment</u></b>
2200-AN January 2018 (ENCS)	Excise Tax Returns for Automobiles and Non-Essential Goods	Before the removal of the aforementioned products from the place of production.
2200-A January 2020 (ENCS)	Excise Tax Return for Alcohol Products	Before the removal of the alcohol products from the place of production.
2200-T August 2022 (ENCS)	Excise Tax Return for Tobacco, Heated Tobacco, Vapor and Novel Tobacco Products	Before the removal of the tobacco products from the place of production.

All mandated eFPS taxpayers who are required to file the said return and pay the corresponding tax due thereon, if any, shall use the eFPS facility effective immediately.

***RMC No. 27-2024,  
February 20, 2024–***

*This circularizes the updated Checklist of Documentary Requirements for BIR Registration-Related Frontline Services.*

The checklist of documentary requirements for registration-related frontline services is updated.

The BIR shall only process applications or requests with complete documentary requirements and shall not process deficient or incomplete applications or requests, pursuant to paragraph 2 of Rule VII, Section 2(b) of the IRR of RA No. 11032, otherwise known as the “Ease of Doing Business and Efficient Government Delivery Act of 2018”.

## BIR ISSUANCE

***RMC No. 29-2024,  
February 26, 2024 –***

*This extends the  
deadline for the  
Submission of BIR  
Form No. 2316.*

The deadline for the submission of BIR Form 2316 is extended until February 28, 2024.

In addition, this RMC clarified that only the following documents are required in relation to the submission of BIR Form No. 2316:

1. Sworn Declaration; and
2. Certification of the List of Employees Qualified for Substituted Filing of their Income Tax Return.

For those who submitted the form under the 2018 format, they no longer need to submit the new format provided they computed their withholding tax under the 2023 rates.

***RMC No. 30-2024,  
February 23, 2024 -***

*This announces that  
the PH-Brunei Tax  
Treaty is currently in  
force and effective.*

The provisions of the PH-Brunei shall have effect on income derived from Philippine Sources beginning January 1, 2025.

Tax Treaty Relief Applications or Requests for Confirmation invoking the provisions of the PH-Brunei Tax Treaty should be filed with the ITAD by filing an Application for Treaty Purposes with the required documents.

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## BIR ISSUANCE

***RMC No. 31-2024,  
February 27, 2024 –  
This clarifies that the  
BIR does not require  
newly-hired  
employees to verify  
their TINs and get new  
verification slips from  
their RDOs.***

Following this circular, the only times where the RDOs shall accept TIN requests for employment purposes are the following:

1. The online TIN Verification facility is unavailable or it prescribes that the user needs to visit the RDO; or
2. There is a need for BIR personnel to further verify the correctness of taxpayer registration information; or
3. The taxpayer has an existing TIN or record; or
4. Possession of multiple or identical TINs.

Otherwise, employers are advised to use the BIR's Online TIN Verification facility of the ORUS accessible at <https://orus.bir.gov.ph/search/tinverification> or BIR Chatbot Review to verify the validity of the TIN of their new employees.

***RMO No. 4-2024,  
February 05, 2024 –  
This creates new  
Alphanumeric Tax  
Codes for Creditable  
Withholding Tax on  
Gross Remittances  
made by Electronic  
Marketplace  
Operators and Digital  
Financial Services  
Providers to  
Sellers/Merchants***

E-marketplace operators and digital financial service providers now fall under the Alphanumeric Tax Code of WI760 (individual) and WC760 (Corporate).

# SEC ISSUANCES HIGHLIGHTS

# UPDATES

**SEC MC No. 02, series of 2024** – This prescribes guidelines on the 2024 Filing of Annual Financial Statements and General Information Sheet

Audited Financial Statements (AFS) of companies whose called year ends of 31 December 2023 shall be filed through the SEC Electronic Filing and Submission Tool (eFAST), as follows:

Revised Filing Schedules	Last Digits of SEC Registration/ License Number
April 29, 30 May 2, 3, 6, 7, 8, 9, 10	1 and 2
May 13, 14, 15, 16, 17, 20, 21, 22, 23, 24	3 and 4
May 27, 28, 29, 30, 31/ June 3, 4, 5, 6, 7	5 and 6
June 10, 11, 13, 14, 17, 18, 19, 20, 21	7 and 8
June 24, 25, 26, 27, 28/ July 1, 2, 3, 4, 5	9 and 0

The above filing schedule shall not apply to the following corporations:

- Those whose fiscal year ends on a date other than December 31, 2022.
- Those whose securities are listed in the Philippine Stock Exchange (PSE), those whose securities are not listed but are registered with the PSE, those considered as public corporations, and other entities covered under Sec.17.2 of the SCR.
- Those AFS are being audited by the Commission on Audit.

All corporations shall file with the Commission, through eFAST, their GIS within 30 calendar days from:

- For Stock Corporations, the date of the actual annual stockholders' meeting.
- For Nonstock Corporations, the date of the actual annual members' meeting.
- For Foreign Corporations, the anniversary date of the issuance of their respective SEC licenses.

# SEC ISSUANCES HIGHLIGHTS

# UPDATES

## **SEC MC No. 05, series of 2024 – This prescribes guidelines on the Philippine Sustainable Finance Taxonomy**

The following steps outline the process for determining if an economic activity qualifies as environmentally or socially sustainable, and whether its financing can be categorized as aligned with the Sustainable Finance Taxonomy Guidelines (SFTG):

1. Determine that the activity to be financed is not included in the enumeration of “Excluded Activity” under the SFTG and is compliant with Philippine laws.
2. Select the relevant Environmental Objective (EO) of the activity. In assessing the primary objective of the activity, the following factors may be considered:
  - activity relevance and strategic alignment;
  - investors/financial institutions’ priority; and
  - government and industry guidance.
3. Assess whether the activity significantly harms the other EO.
4. If there is harm, verify that the same has been remediated or will be remediated within the required defined period.

## **SEC MC No. 03-2024 February 19, 2024 - This provides the guidelines on the use of eAmend Portal**

This shall cover applications within the competent jurisdiction of the Corporate and Partnership Registration Division (CPRD) of the Company and Registration and Monitoring Department and the respective extension offices of the Commission.

eAmend Portal is a user-friendly online filing and submission amendment portal that facilitates the acceptance, processing, approval for payment, and issuance of the digital copy of the Certificate of Amendment of Domestic Stock and Non-stock Corporation.

Only registered and active partnerships and corporations may apply.

This also provides the documentary requirements for applications subject to the issuance of a digital certificate.

## IC ISSUANCES

***IMC No. 2024-01,  
February 7, 2024 –  
This announces the  
increase in the  
Benefits for  
Compulsory Motor  
Vehicle Insurance  
Coverage***

The benefits for Compulsory Motor Vehicle Insurance Coverage were increased.

This also provides for a Schedule of Indemnities for bodily injury and/or death that shall be observed in the settlement of claims for death, bodily injuries, professional fees, and hospital charges for services rendered to traffic incident victims under the CMVLI policy.

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# BOC ISSUANCES HIGHLIGHTS

# UPDATES

**Customs  
Memorandum Order  
No. 02-2024,  
February 2, 2024 -  
This provides for the  
establishment of the  
customs industry  
consultative and  
advisory council  
(CICAC)**

In accordance with the national policy of facilitating regular consultations between the government and its stakeholders, the Customs Industry Consultative and Advisory Council (CICAC) is hereby created to act as a consultative body between the Bureau of Customs (BOC) and the business-industrial sector to address existing and potential issues related to Customs and industry matters, promote mutual understanding, and strengthen the harmonious relationship between the BOC and its industry partners.

This order will include the most Trusted, Honest, and Compliant Companies and Trade Organization/Associations operating in the Country. The Industry Groups who shall be participating in this undertaking and partnership must have the approval of the Commissioner of Customs.

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## CAN RMC 5-2024 OVERTURN A TAX TREATY?

By  
**Irwin C. Nidea, Jr.**

In November 2023, the Philippines joined the OECD/G20 Inclusive Framework on BEPS, an international collaboration with over 140 member countries and jurisdictions. The Philippines has promised to help redefine tax treatments of the digital economy by participating in the Two Pillar Solution.

Pillar Two refers to the global minimum tax of 15%. It is designed to ensure that multinational companies will not be able to avoid paying tax by dumping all its income to a low-tax jurisdiction. The OECD has agreed that Pillar Two will be adapted. As a result, many countries have already passed the necessary legislation to enforce Pillar Two. Unfortunately, the Philippines has not even reached the first base in formulating the law.

Pillar One on the other hand, is centered on the world's digital revolution where the current international income tax rules are being challenged - are the current tax rules that envisioned a "brick and mortar" economy still applicable to the digital economy?



## Can RMC 5-2024 Overturn a Tax Treaty?

By

Irwin C. Nidea Jr.

The fundamental rules as we know it, that are enshrined in decades old tax treaties and jurisprudence, which defined where taxes should be paid ("nexus" rules based on physical presence) are on shaky grounds.

New business models are created where physical presence in a country is not necessary for a non-resident entity to earn income. This results in friction between countries on how to distribute taxing rights on income generated from cross-border activities. These new business models have also facilitated tax avoidance through the shifting of profits by multinational enterprises (MNEs) to low or no tax jurisdictions.

Pillar One is still a work in progress. It must be emphasized that member countries have not agreed to change the rules on nexus. The definition of permanent establishment in tax treaties, as we know it, remains.

But there is growing discontent among countries because they find that unfair allocation of taxing rights in the digital economy continues. This leads to dangerous unilateral actions by some countries, which would be harmful to their economy and to their international standing as a treaty partner.

Although not squarely related to digital transactions, a perfect example of a unilateral action that is harmful to a country's economy is RMC 5-2024. The circular seems to forget that the Philippines has signed treaties with other countries which clearly state that profits of an enterprise of another country shall be taxable only in that country unless the enterprise carries on business in the Philippines through a permanent establishment. Permanent establishment is defined as a fixed place of business through which the business of an enterprise is wholly or partly carried on. Thus, in general, for a foreign enterprise to be taxed in the Philippines, it must have a physical presence in the Philippines where it generates income.

Unfortunately, RMC 5-2024 has singlehandedly changed the fundamental principles of international tax. Almost all services to a Philippine entity that are performed by a foreign entity in their country is now taxable here in the Philippines. The Philippine entity is now required to withhold the 25% income tax and the 12% VAT that the foreign entity must pay to the Philippine

## Can RMC 5-2024 Overturn a Tax Treaty?

By

Irwin C. Nidea Jr.

government. In other words, if I have a lawyer in England and our contract states that his professional fee is P100,000, I must only remit P75,000 to him and I must withhold the remaining P25,000 in favor of the government. Do you think my lawyer will agree that he will only be paid P75,000? In reality, what will happen is that I will be forced to shoulder the P25,000 tax to ensure that my consultant still receive P100,000. In effect, I will be paying P125,000 instead of just paying P100,000. I will shoulder the tax since my lawyer will insist that our countries have signed a tax treaty and for him it is clear that the services he performed outside the Philippines are exempt from tax.

In the end, I and every other Philippine entity will suffer. This additional expense will trickle down to the ultimate Filipino consumer and to the economy as a whole. Since the cost of doing business is more expensive, inflation will be triggered and prices of goods and services will increase.

If Philippine companies will enforce RMC 5-2024 and tax non-resident foreign corporations that have no permanent establishment in the Philippines, we must also be ready when these foreign companies leave and offer their services elsewhere, where tax treaties are respected.

Generating more income for the government through administrative or judicial legislation may backfire. We cannot be too excited to change the situs or nexus rules on our own.

As regards digital transactions, our country still respects tax treaties and has agreed to adapt what the OECD will conclude as the binding rule that every member country must follow. Whether the current nexus rule on digital transactions will change, is still up in the air. As of now, there is no consensus. But as a country, we have agreed to participate in the formulation of these new rules while we acknowledge that the prevailing nexus rule should still be followed, in the meantime.

If we are waiting for Pillar One to introduce change in the nexus rule before we abandon the current rule on digital transactions, why is there an attempt to overstretch a Supreme Court decision on a case involving satellite services and apply the peculiar facts of the said case in redefining the nexus rule of cross-border services?

## Can RMC 5-2024 Overturn a Tax Treaty?

By

Irwin C. Nidea Jr.

Every policy that imposes tax on non-resident foreign corporations cannot be taken lightly. If we are careful not to be tagged as a lone wolf in imposing income tax on digital transactions by joining the OECD/G20 Inclusive Framework on BEPS, we must be equally cautious not to tax income of services that are performed outside the Philippines. We are a third-world country and we cannot afford to act as if we are indispensable.

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For inquiries on the article, you may call or email

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