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Transfer pricing

THE Philippines is still in the process of developing its transfer pricing regulations. A draft of the transfer pricing regulations was initiated as early as 2003 and the last version of the enhanced draft was revealed to the public last June 21, 2006. As of date however, the Bureau of Internal Revenue (BIR) has not officially issued the final regulation.

Pending finalization of the aforesaid draft, Revenue Memorandum Circular (RMC) 26-08 was issued by the BIR, which formally adopted the Organization for Economic Cooperation and Development Transfer Pricing Guidelines as the interim transfer pricing guidelines in the Philippines.

Other relevant regulations and rulings were subsequently issued. In July 2009 the BIR issued an order which mandated the audit of interrelated companies and conglomerates, including their officers and related individual taxpayers, to ensure that such taxpayers are clearly reflecting their income. The order further states that various schemes being employed by conglomerates and group of companies to reduce the amount of taxes shall be identified, such as but not limited to the use of tax-exempt entities or those with special tax privileges, inter-related company loans and advances, cost sharing, and the supply of goods and services. In the conduct of audit, particular attention shall be given to transfer pricing issues which should be considered in the audit findings of the taxpayers.

This was followed by RMO 36-2010 issued in March 2010, which prescribed the rules and procedures governing the conduct of special investigation and enforcement activities of inter-related companies, conglomerates, their affiliates and subsidiaries for taxable year 2009.

While our government has not come up with a definite and final regulation on transfer pricing, the recent developments, albeit slow, are now focusing on transfer pricing issues.

The most recent of which is the Joint Administrative Order 001, signed on June 26, 2012, by the Department of Science and Technology (DOST), Department of Trade and Industry (DTI) and Intellectual Property Office of the Philippines (IPOPHL), which is intended to provide general guidance to government funding agencies, research and development institutions, as well as other stakeholders in order to implement Republic Act 10055 otherwise known as the Philippine Technology Transfer Act of 2009.

The Philippine Technology Transfer Act basically aims to promote and facilitate the transfer, dissemination, use, management and commercialization of intellectual property (IP), technology and knowledge resulting from government-funded research and development for the benefit of the national economy and taxpayers.

In response to the clamor for a need to provide an enabling environment to move the fruits of government-funded research from the laboratory to the market and to harness the economic potential that may be derived from such activities, the DOST collaborated with the DTI and IPOPHL and came up with the guiding principles on technology-based intellectual property valuation. Valuation pertains to the process of calculating the intrinsic worth of the technology or IP using the approaches and methods which tend to produce a range of numbers without taking into account whether the same would be acceptable to another party.

This joint administrative order presents three broad approaches that may be used to value intellectual property. The Cost Approach assumes that the cost to develop the IP or to acquire the same is commensurate with the economic value of the service that the IP can provide during its lifetime. Next is the Market Approach, where the value of IP or associated technology is estimated by examining comparable transactions involving similar IP or technology between independent parties. Finally, under the Income Approach, the value of IP can be measured by the future income to be received over the life of the property.

However, before valuators make use of quantitative methods in order to calculate the monetary value of the IP or technology, they have to identify the following:

What rights over the technology are to be valued;

The context for the valuation;

The approaches and methods to be used for the valuation; and

The data required for said methods.

While the issuance of guidelines on intellectual property valuation is indeed a step forward, we implore our tax authorities to finalize and officially issue the long-overdue Philippine transfer pricing regulations.

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