



*BDB Law's "Tax Law for Business" appears in the opinion section of **Business Mirror** every Thursday.*

Updates on condominium dues and nonstock associations

THE issuance of Revenue Memorandum Circular (RMC) 65-2012 by the Bureau of Internal Revenue (BIR) about two years ago led to the escalation of condominium living in the country, as association dues and fees paid by members and tenants of condominium corporations were made part of the gross income of the latter. Since the circular came into being, condominium corporations began collecting the 12-percent value-added tax (VAT) on association dues paid by owners and tenants of such condominium units, hence, effectively increasing the cost of condominium living in the country.

Here comes the tax court's version. Only recently, the Court of Tax Appeals (CTA) has ruled that condominium and subdivision dues paid by unit owners are not subject to income tax and to withholding tax. In CTA Case 8382, the tax court declared that association/condominium dues, membership fees and other assessment/charges collected from the members that are merely held in trust and to be used solely for administrative expenses must not be included in said corporation's gross income and are not subject to income tax and to withholding tax. The tax court, though, did not tackle on the issue on the imposition of VAT on such association dues.

In retrospect, RMC 65-2012 has been declared invalid by a Makati Trial Court late last year. In this case, petitioner, a nonstock, non-profit condominium corporation, essentially raised the validity and constitutionality of RMC 65-2012, which the court found as ripe for judicial determination. In assailing the circular, petitioner averred that RMC 65-2012 was issued without due process of law. It is petitioner's contention that the operative mandate of the circular is unjust, oppressive and confiscatory. Respondent countered that the circular was issued merely to clarify and to restate the prevailing position and ruling of the BIR.

According to the BIR, the circular was a mere interpretation of an existing law that has already been in effect.

In finding that RMC 65-2012 is invalid, the court declared that the circular not merely interpreted or clarified the existing BIR ruling but, in fact, introduced a new legislation under the mantle of the commissioner's quasilegislatory authority. The court found that the circular did not only clarify an existing law but changes its import and created a new tax burden.

Since the BIR, in passing the subject circular failed to accord petitioner and similarly situated taxpayer due notice and opportunity to be heard before issuing said circular, the court found that the issuance of the circular was arbitrary and in violation of the due process clause of the Constitution.

In another development, the BIR recently issued RMC 51-2014, which clarifies the inurement prohibition under Section 30 of the Tax Code on the tax exemption of the income received by nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans.

In order for an entity to qualify as nonstock and/or nonprofit corporation, association, organization exempt from income tax under Section 30 of the Tax Code, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person. The RMC laid down what can be considered as "inurement," which would prevent such corporation/association/organization from claiming tax-exempt status, as follows:

1. The payment of compensation, salaries, or honorarium to its trustees or organizers;
2. The payment of exorbitant or unreasonable compensation to its employees;
3. The provision of welfare aid and financial assistance to its members;
4. Donation to any person or entity, except if the donation is made to another organization whose purpose is similar to its own;
5. The purchase of goods or services for amounts in excess of the fair-market value of such goods or the value of such services from an entity in which one or more of its trustees, officers, fiduciaries has an interest; and
6. When upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers, or members, as its assets must be dedicated to its exempt purpose. The documents of the corporation/association/organization must expressly provide that in the event of dissolution, its assets will be distributed to entities whose purpose/s are similar to its own or the Philippine government to be used for public purposes.

Thus, to avail yourself of the tax exemption privilege under Section 30 of the Tax Code, the provisions of RMC 51-2014 must be taken into consideration.

The author is a senior associate of Du-Baladad and Associates Law Offices (BDB Law), a member-firm of World Tax Services (WTS) Alliance.

The article is for general information only and is not intended, nor should be construed as a substitute for tax, legal or financial advice on any specific matter. Applicability of this article to any actual or particular tax or legal issue should be supported therefore by a professional study or advice. If you have any comments or questions concerning the article, you may e-mail the author at rodel.unciano@bdblaw.com.ph or call 403-2001, local 140.