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July 15, 2014

MEMORANDUM CIRCULAR 2014-09

TO : ALL MACEA MEMBERS
RE : COURT OF TAX APPEALS RULING ON CONDOMINIUM DUES

Please be informed that in the case entitled ***"Officemetro Philippines, Inc. vs. Commissioner of Internal Revenue"*** docketed as CTA Case No. 8382, the Court of Tax Appeals Third Division issued a Decision dated June 3, 2014 and ruled that **association/condominium dues are not subject to income tax or withholding tax**, the pertinent portion of which states:

> "The BIR in its various rulings, held that association/condominium dues, membership fees and other assessment/charges collected from the members, which are merely held in trust and which are to be used solely for administrative expenses in implementing their purpose(s), viz., to protect and safeguard the welfare of their members, and from which the corporation could not realize any gain or profit as a result of their receipt thereof, must not be included in said corporation's gross income. **This means that the same are not subject to income tax and to withholding tax.**" (Emphasis supplied)

The relevant facts of the said case are as follows:

1. The petitioner was assessed deficiency expanded withholding tax (EWT) in the amount of ₱1,210,746.16. This deficiency was computed based on the amount of rentals and purchase of services.
2. The petitioner asserted that out of the reported rental of ₱63,106,033.53, the property service charges in the amount of ₱8,850,170.00 represent payments for condominium dues which are not taxable income of a condominium corporation, and consequently not subject to withholding tax.
3. The CTA Third Division agreed with the petitioner to the extent that condominium dues billed to the company are not subject to EWT.
4. However, based on invoices and official receipts, only ₱4,882,800.00 representing payments for condominium dues was substantiated and therefore excluded by the CTA from total rental subject to EWT.

Please note that the CTA made a general pronouncement as regards the taxability of the condominium dues only.

In addition, the BIR issued a statement on June 25, 2014 entitled "BIR Clarification On The Effect Of The CTA Decision On Liabilities With Regard To Condominiums." In the said clarification, the BIR took note of the fact that the CTA's ruling was in relation to income tax and withholding tax only. It did not discuss VAT.

Finally, the CTA decision is presently the subject of a pending motion for reconsideration filed by the BIR before the CTA En Banc.

A copy of the aforesaid Decision may be obtained from the CTA Third Division or from the CTA's official website, while a copy of the BIR's statement may be acquired from the Department of Finance's official website.

Please be guided accordingly.

Thank you.

DMBalangue

DAVID L. BALANGUE
President