



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 014.2022

ATTY. ROMMEL T. GEOCANIGA

Principal

Reyes Tacandong & Co.

BDO Towers Valero

8741 Paseo De Roxas

Makati City, 1226

SUBJECT : Request for Review of Bureau of Internal Revenue (BIR) Ruling No. VAT-0331-2020 dated 16 June 2020

Dear **Atty. Geocaniga**:

This refers to your letter dated 15 June 2022 (“Request for Review”), which you filed with this Department on behalf of your client, Total Philippines Corporation (“TPC” or the “Corporation”), to request for the review of Bureau of Internal Revenue (BIR) Ruling No. VAT-0331-2020 dated 16 June 2020 imposing value-added tax (“VAT”) on the aggregate sales price on trade related properties transferred by Filoil Energy Company, Inc. (“FECI”) pursuant to the Deed of Absolute Sale dated 8 July 2016 and Amendment to the Deed of Absolute Sale dated 18 January 2017 to the Corporation.

TPC and FECI executed a Deed of Absolute Sale on 8 July 2016, amended on 18 January 2017, regarding the sale of FECI of its service gas stations with corresponding goodwill to TPC in the following amounts:

Description	Amount Paid
Purchase Price	PhP 579,428,843.12
Goodwill	1,293,735,014.88
TOTAL	PhP 1,873,163,858.00

The Request for Review prays for the reversal of the BIR’s findings that imposes VAT on the amount representing the transfer of goodwill in the aggregate sale

price on the transfer of trade related properties between FECl and TPC. The particular provision of the ruling reads:

“The service gas stations, although not primarily held for sale or lease to customers, are ordinary assets used by Filoil Energy Company in its ordinary course of business.

Applying Section 105 of the Tax Code of 1997, as amended, in relation to Section 14 (B)(p)(1) of RR 4-2007, the sale of service gas stations of Filoil Energy Company to Total Philippines Corporation is subject to VAT, it being a transaction incidental to the pursuit of Filoil Energy Company’s commercial and economic activity.

Based on the foregoing, this Office is of the opinion that the total amount paid, including the amount pertaining to the assigned goodwill, by Total Philippines Corporation to the Filoil Energy Company is subject to VAT pursuant to Section 105 of the 1997 Tax Code, as amended.”

On the other hand, in the Request for Review, TPC agrees that the service gas stations are subject to VAT but argues that the transfer of FECl of its goodwill to TPC is a sale of capital asset pursuant to Section 39 of the NIRC, hence not subject to VAT.

The issue that needs resolution in the present case is whether the amount representing the transfer of goodwill in the aggregate sales price on the transfer of trade related properties is subject to VAT.

Ruling

This Office believes that the BIR correctly ruled that the VAT is imposable on the aggregate sales price of the trade related properties comprised of the service gas stations and goodwill.

Goodwill has been referred to as "the advantage or benefit which is acquired by an establishment beyond the mere value of the capital stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers on account of its local position, or common celebrity, or reputation for skill, or

affluence, or punctuality, or from other accidental circumstances or necessities, or even from ancient partialities or prejudices.”¹

In accounting, goodwill is described as the "future economic benefits arising from assets that are not capable of being individually identified and separately recognized.”² A transferrable goodwill is an “intangible asset that arises as a result of property-specific name and reputation, customer patronage, location, products, and similar factors, which generate economic benefits.”³ It is inherent to the trade related property and will transfer to a new owner on sale.”⁴ Relative to this, trade related properties are defined as “individual properties such as hotels, fuel stations, and restaurants that usually change hands in the marketplace while remaining operational.”⁵ “These assets include not only land and buildings, but also fixtures and fittings and a business component made up of intangible assets, including transferrable goodwill.”⁶

TPC claimed that its transfer of goodwill is a transfer of a capital asset not subject to VAT citing the case of *Commissioner of Internal Revenue v. The Hongkong Shanghai Banking Corp. Limited-Philippine Branch, CTA EB Case No. 1257 dated 17 May 2016* as basis.

In *Hongkong and Shanghai Banking Corp. Limited v. Commissioner of Internal Revenue, C.T.A. (3rd Division) Case No. 8428 dated 13 October 2014*, goodwill is considered a capital asset, viz:

“Applying the foregoing, and based on the records of the case — the creation of GPAP-Phils to transfer the Merchant Acquiring Business of HSBC by way of additional paid-in capital; the subscription of 139,640 shares of stocks of GPAP-Phils in exchange for HSBC's POS terminals; the subscription of 1 common share of GPAP-Phils in exchange for HSBC's Merchant Agreements; and the

¹ *Bachrach Motor Co. v. Esteva*, G.R. No. 44510 dated 24 December 1938, 67 Phil. 16, 29, as cited in *Commissioner of Internal Revenue v. The Hongkong Shanghai Banking Corp. Limited-Philippine Branch*, G.R. No. 227121 dated 9 December 2020.

² *Prescribing the Philippine Valuation Standards (2nd Edition) – Incorporating the International Valuation Standards (IVS) 2017 and Providing Guidance Notes Under Philippine Setting*, Department Of Finance, Department Order No. 037-2018 dated 2 July 2018.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

subsequent assignment of the total number of shares of 139,641, subscribed by HSBC to GPAP-Singapore, clearly shows that it is a sale of capital asset, as earlier quoted under Section 39 (A) (1) of the 1997 NIRC, as amended, to which petitioner paid the total amount of P89,929,292.10.”

In the CTA *En Banc* Case 1257⁷, the CTA *En Banc* affirmed the ruling of its Third Division. The CTA *En Banc* Ruling provides that:

“Concomitantly, the sale of the Merchant Acquiring Business of HSBC-Philippines at a premium to GPAP-Singapore whereby goodwill was recognized and valued in the Share Sale and Purchase Agreement for P885,378,821.00 is a sale of capital asset xxx (Emphasis Supplied)

This is further affirmed by the Supreme Court⁸ ruling that:

“Notably, in several rulings issued by the Bureau of Internal Revenue, it was recognized that the gain realized from the sale of shares acquired through a tax-free exchange transaction is subject to CGT. Therefore, the subsequent disposition of HSBC's GPAP-Phils., Inc. shares in favor of GPAP-Singapore is subject to CGT and not to regular corporate income tax under Section 27 (A), upon which the CIR's assessment is based.”

Thus, in this cited case, goodwill was properly classified as a capital asset subject to capital gains tax and not to the regular corporate income tax. Based on the foregoing discussion, the afore-cited case treats the assignment of the goodwill of a company the same way it treated the main transaction which, in this case, is a sale of the main business. Since the sale of the main business was considered a sale of capital asset subject to capital gains tax, the same was applied to the attached transfer of goodwill.

TPC also implied in its Request for Review that the transfer of FECl's goodwill to the Company is a separate transaction from the sale of FECl's service gas stations to which it agreed that such sale is subject to VAT.

⁷ Commissioner of Internal Revenue v. The Hongkong Shanghai Banking Corp. Limited-Philippine Branch, CTA EB Case No. 1257 dated 17 May 2016

⁸ G.R. No. 227121 dated 9 December 2020.

TPC's argument is misplaced.

In CTA (Third Division) Case No. 8428, the sale of the Merchant Acquiring Business with the consequent transfer of shares is subjected to capital gains tax (CGT) and which necessarily includes the goodwill in the total consideration. Thus, whatever tax was imposed on the sale of the business, as the main transaction, is also imposed on the transfer of the attached goodwill valued by the seller to be paid by the buyer, to wit:

“As the main objective of HSBC, through petitioner, GPAP-Phils was created to transfer its Merchant Acquiring Business in the Philippines, and not merely the sale of its "Goodwill" thereof; the "Goodwill" necessarily attaches to the transfer of the Merchant Acquiring Business.

XXX

Therefore, "Goodwill" is connected to the business itself, and cannot be allocated without regard to the business. With this, the alleged sale of "Goodwill," as additional paid-in capital in the amount of P885,378,821.00, cannot be treated separately. Stated differently, the total consideration indicated in the Share Sale and Purchase Agreement, in the amount of P899,342,921.00, cannot be conveniently allocated and reclassified to accommodate respondent's allegations.” (Emphasis supplied)

The CTA *En Banc* Case No. 1257⁹ and the Supreme Court¹⁰ both affirmed this ruling by the Third Division and added that while goodwill was recognized and valued, the same cannot be sold or purchased independently, viz:

“In this case, as pointed by the petitioner, HSBC-Philippines and GPAP-Singapore agreed to recognize and value the goodwill of the Merchant Acquiring Business in the Share Sale and Purchase Agreement at P885,378,821.00. However, while goodwill was recognized and valued, the same cannot be sold or purchased independently of the Merchant Acquiring Business.”

⁹ CTA EB Case No. 1257 dated 17 May 2016.

¹⁰ G.R. No. 227121 dated 9 December 2020.

Therefore, goodwill necessarily attaches to the trade related property which, in this case, is the sale of service gas stations.

In the instant case of TPC, the BIR ruled that the main transaction between FECI, a VAT-registered company, and TPC, the herein sale of service gas stations, is a transaction deemed sale subject to VAT pursuant to Section 105 of the NIRC. Consequently, the transfer of the attaching goodwill from FECI to TPC is necessarily also subjected to VAT.

It is for the foregoing reasons that this Office agrees with the decision of the Commissioner of Internal Revenue in BIR Ruling No. VAT-0331-2020 that the assignment of goodwill which was included in the aggregate sales price amounting to PhP1,873,163,858.00 is also subject to VAT as the main transaction of sale of service gas stations is subjected to VAT.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Thank you.

Sincerely yours,


BENJAMIN E. DIOKNO
Secretary of Finance



AUG 12 2022

CC: Commissioner Lilia Catris Guillermo
Bureau of Internal Revenue