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Tax bulletin

SGV

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Highlights

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- While educational institutions are subject to the 40% foreign ownership limitation under the Constitution, a holding company which owns an educational institution is not subject to such foreign ownership restriction, as it has a separate corporate existence from the educational institution. **(Page 10)**

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BLGF Issuance

- The Bureau of Local Government Finance (BLGF) has no authority to issue a "Certificate of Exemption" from securing a Mayor's Permit as the authority to issue such certificates is within the jurisdiction of the Business Permit and Licensing Office of the local government unit (LGU) concerned.

  PCSO lotto outlets are not required to secure a Mayor's Permit. **(Page 17)**

Court Decision

- A BIR Certificate of Tax Exemption is not required for a non-stock, non-profit educational institution to enjoy the income tax exemption provided under Section 4, Article XIV of the Constitution and Section 30(H) of the Tax Code. The BIR cannot prescribe a condition for tax exemption that is not provided for by law.

  However, to be entitled to exemption, a non-stock, non-profit educational institution must prove that its income is actually, directly, and exclusively used for educational purposes. **(Page 18)**

BIR Rulings

BIR Ruling No. 424-2014 dated October 24, 2014

The transfer of assets in exchange for shares is subject to VAT.

Facts:

A Co., a domestic corporation, transferred its assets and liabilities to B Co., another domestic corporation, in exchange for B Co. shares.

Issues:

Is the transfer exempt from VAT?

Ruling:

No. Section 109 of the Tax Code enumerates transactions exempt from VAT. Nowhere in Section 109 does it state that the transfer of assets to a corporation in exchange for shares is exempt from VAT. Thus, there is no legal basis to exempt the transfer from VAT.

(Editor's Note: Pending submission of the necessary documents relative to the transaction, the BIR deferred the resolution of other issues, i.e., the recognition of gain or loss on the transfer, the possibility of transfer of unused input VAT, the applicability of donor's tax and the applicability of DST to the surrender of shares in complete redemption and cancellation of the capital stock.)

BIR Ruling No. 432-2014 dated October 28, 2014

A foundation represented to be a non-stock non-profit corporation, but which is found to be engaged principally in microfinancing activities, is not considered a civic league or organization that would be exempt from income tax under Section 30(G) of the Tax Code.

Facts:

A Co., a domestic foundation, represents itself to be a non-stock, non-profit corporation organized for purposes of fostering human development, alleviation of poverty, promotion of justice for marginalized groups, extending assistance to Christian churches, and promotion of savings as an integral part of the system in order to further self-reliance of community groups, among others. However, upon review, A Co. was found to be engaged in microfinancing activities, where the primary source or bulk of its revenue comes from interest income and service fees from loans.

Issue:

Is A Co. considered a tax-exempt civic league or organization under Section 30(G) of the Tax Code?

Ruling:

No. Section 30(G) of the Tax Code provides for income tax exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. Organizations that promote social welfare should primarily promote the common good and general welfare of the people of the community as a whole. An organization is not operated exclusively for the promotion of social welfare if its primary activity is carrying on a business with the general public. An organization that is engaged in microfinance, such as A Co., cannot be presumed to be a social welfare organization under Section 30(G) of the Tax Code because microfinance is a business activity conducted by organizations operated for profit such as banks.

BIR Issuances

RR No. 9-2014 amends the transitory deadlines for affixing internal revenue stamps on imported and locally manufactured cigarettes as prescribed under Section 13 of RR No. 7-2014.

Revenue Regulations No. 9-2014 dated October 31, 2014

The deadlines prescribed under the transitory provisions of Section 13 of RR No. 7-2014 are amended as follows:

- No later than December 1, 2014, all locally manufactured packs of cigarettes shall be affixed with internal revenue stamps prescribed by the regulations.
- Effective March 1, 2015, all locally manufactured cigarettes found in the market shall be affixed with the said stamps.

- No imported cigarettes shall be found in the market without the new stamps effective April 1, 2015, provided, however, that even prior to such date, imported cigarettes should bear the old stamps or the new stamps.

- These regulations shall take effect immediately.

(Editor's Note: RR No. 9-2014 was published in the Manila Bulletin *on November 6, 2014)*

RMC No. 79-2014 clarifies the tax treatment of stock option plans and other option plans.

Revenue Memorandum Circular No. 79-2014 dated October 31, 2014

- *Background*

1. An equity-settlement option is one granted by a person, natural or juridical, to a person or entity entitling said person or entity to purchase shares of stock of a corporation, which may or may not be the shares of stock of the grantor itself, at a specific price to be exercised at a specific date or period.

2. A cash-settlement option is one in which no actual shares of stock are transferred in a situation wherein a person or entity is given the right to obtain the difference between the actual fair market value (FMV) of shares and the fixed nominal value of the shares of stock set in the grant of the option, at a specific date or period.

3. Stock options are shares of stock as defined by Section 22(L) of the Tax Code and are taxable as such.

- *Tax Treatment*

1. *On Grant of Option*

   - Where the option is granted due to an employer-employee relationship, where the grantor is the employer and the grantee is the employee, and no payment is received by the employer for the grant of the option, the grantor cannot claim deductions for the grant of the stock option in the year the option is granted. However, if the option is granted for a price, the full price of the option shall be considered capital gains and shall be taxed as such.

   - The issuance of the option is subject to documentary stamp tax (DST) of P0.75 on each P200.00 (or 0.375%) of the par value of the shares subject of the option, or in the case of no par-value shares, at 25% of the DST paid on the original issue of the stock subject of the option.

2. *On Sale or Transfer of Option*

   - The sale, barter or exchange of a stock option is treated as a sale, barter or exchange of shares of stock not listed in the stock exchange.

   - Any grant of option for consideration, or transfer of the option, is subject to capital gains tax.

   - If the option is granted without any consideration, the cost basis of the option for purposes of computing capital gains is zero.

   - Any option transferred by the grantee or subsequent owner without any consideration shall be treated as a donation subject to donor's tax based on the FMV of the option at the time of the donation.

3. *On Exercise of Option*

   - For both equity-settlement and cash settlement options, the difference between (i) the book value/FMV of the shares, whichever is higher, at the time the stock option is exercised, and (ii) the price fixed on the grant date, shall, upon exercise of the option:

     a. Be treated as additional compensation subject to income tax and to withholding tax on compensation, if the option is granted by an employer to a rank-and-file employee involving the employer's own shares of stock or shares it owns;

     b. Be treated as a fringe benefit subject to fringe benefits tax (FBT) if the employee receiving and exercising the option occupies a supervisory or managerial position;

     c. Be recognized as additional consideration for services rendered or goods supplied subject to the relevant withholding tax at source and other applicable taxes, if the option is granted to a supplier of goods or services; and

     d. Be considered a donation subject to donor's tax, among others, if the option is granted to a person, natural or juridical, who is not an employee or a supplier of goods or services to the grantor.

- *Reportorial Requirements*

  1. Within 30 days from the grant of the option, the issuing corporation shall submit to the Revenue District Office where it is registered a statement under oath indicating the following:

     - Terms and conditions of the stock option;
     - Names, TINs, positions of the grantees;
     - Book value, FMV, par value of the shares subject of the option at the grant date;
     - Exercise price, exercise date and/or period;
     - Taxes paid on the grant, if any;
     - Amount paid for the grant, if any.

  2. The issuing corporation shall file a report on or before the 10th day of the month following the month of exercise, stating the following:

     - Exercise Date;
     - Names, TINs, positions of those who exercised the option;
     - Book value, FMV, par value of the shares subject of the option at the exercise date/s;
     - Mode of settlement;
     - Taxes withheld on the exercise, if any;
     - FBT paid, if any.

- *General Applicability*

  1. The tax treatment and reportorial requirements in this circular shall also apply to options other than stock.

CAO No. 6-2014 repeals Sections 2 to 6 of CAO No. 01-2014 and prescribes revised guidelines on imposing surcharges under Section 2503 of the TCCP.

BOC Issuance

Customs Administrative Order No. 6-2014, dated October 23, 2014

- *Amount of Surcharge*

  The Collector of Customs shall impose surcharges in accordance with the following:

  1. *For Misclassification:*

     Where the percentage difference in misclassification is 10% or more, the amount of the surcharge shall be as follows:

     - When the percentage difference is 10% or more but not exceeding 20%, a one-time surcharge of the difference in customs duty shall be imposed.
     - When the percentage difference exceeds 20%, a surcharge two times the difference in customs duty shall be imposed.

  2. *For Undervaluation, Misdeclaration in Weight, Measurement or Quantity*

     - When the percentage difference in undervaluation, misdeclaration in weight, measurement or quantity is 10% or more but not exceeding 30%, a surcharge of two times the difference in customs duty shall be imposed.
     - An undervaluation, misdeclaration in weight, measurement or quantity of more than 30% between the value, weight, measurement or quantity declared in the entry, and the actual value, weight, measurement or quantity constitutes prima facie evidence of fraud penalized through seizure proceeding under Section 2530 of the TCCP.

- ***Determination of Percentage Difference in Undervaluation, Misclassification and Misdeclaration***

  For purposes of determining the amount of surcharge due to undervaluation, misclassification and misdeclaration, the percentage difference shall be determined in accordance with the following formulae:

  1. For Undervaluation:

     $$\frac{\text{Duty using valuation as found} - \text{Duty using valuation as declared}}{\text{Duty using valuation as found}}$$

  2. For Misclassification:

     $$\frac{\text{Duty using classification as found} - \text{Duty using classification as declared}}{\text{Duty using classification as found}}$$

  3. For Misdeclaration in Weight, Measurement or Quantity:

     $$\frac{\text{Duty using weight, measurement or quantity as found} - \text{Duty using weight, measurement or quantity as declared}}{\text{Duty using weight, measurement or quantity as found}}$$

- *Mandatory Imposition of Surcharge*

  1. The imposition of surcharge under Section 2503 of the TCCP is mandatory except in the following cases:

     - For misclassification – When the tariff classification is based on an advance tariff classification ruling issued by the Tariff Commission pursuant to its authority under Section 1313-a of the TCCP, which had not been reversed by the Secretary of Finance as of the time of the entry of such tariff classification, but which is subsequently reversed by the Secretary of Finance at any time between the time the tariff classification was entered but before final liquidation of the import.

     - For errors, under certain circumstances, when the undervaluation, misclassification, and misdeclaration in entry described under Section 2503 of the TCCP –

       a. Is discovered before any payments are made on the entry; and

       b. Is the result of any of the following:
          - Manifest clerical error made in an invoice or entry;
          - Error in return of weight, measure, or gauge, duly certified to under penalties of falsification or perjury by the surveyor or examining official (when there are such officials at the port); or
          - An error in the distribution of charges on invoices not involving any question of law, certified to under penalties of falsification or perjury by the surveyor or examining official.

  2. The imposition of surcharge under Section 2503 of the TCCP may not be the subject of compromise under Section 2316 of the TCCP. Surcharge properly imposed cannot be waived. Good faith on the part of the importer is not a valid defense.

  3. CAO No. 6-2014 shall take effect immediately upon publication in a newspaper of general circulation or the Official Gazette and 3 copies deposited in the UP Law Center.

(Editor's Note: CAO No. 6-2014 was published in The Manila Times *on October 29, 2014.)*

SEC Issuances

MC No. 20 extends the deadline for filing the Manual of Corporate Governance.

SEC Memorandum Circular No. 20 dated November 10, 2014

- Previously, SEC MC No. 9 mandated all corporate governance companies to file their respective Manual of Corporate Governance (MCG) reflecting the amendments to the Revised Code on Corporate Governance not later than July 31, 2014.

- SEC MC No. 20 extends the deadline for filing the MCG to December 31, 2014.

- A basic penalty of PHP 20,000 shall be imposed for non-compliance with SEC MC. No. 20.

- The continuous failure of the company to comply shall subject the company to a monthly penalty of PHP 2,000 until the manual is filed.

When the share or interest in a co-owned property is transferred to a corporation as consideration for shares of stock, the co-owners should first waive their right of redemption or pre-emption, or the period within which this right may be exercised should have lapsed.

SEC-OGC Opinion No. 14-28 dated October 13, 2014

Facts:

Mr. X transferred his interest in a co-ownership of property to a corporation as consideration for the transferee's shares of stock. The co-owners did not execute a waiver of right of redemption or pre-emption on the transfer; neither did Mr. X execute an affidavit that all the possible co-owners or redemptioners have been notified in writing of the transfer, and that the 30-day period of redemption has already expired.

Issue:

May a co-owner of property absolutely transfer his or her share or interest in the co-owned property to a corporation as a consideration for shares of stock?

Ruling:

An interest in a co-ownership can be alienated by way of subscription to shares of stock when the following conditions are met:

1. The property must be something which the corporation may acquire and hold in carrying out its purpose or reasonably necessary or convenient in the pursuit of its business;

2. Interest in the co-ownership must have a pecuniary value capable of ascertainment;

3. The right over the property must actually be transferred to the corporation and no creditors of the property held in common shall be prejudiced by the transfer; and

4. The transfer shall be subject to the rules of legal redemption under the New Civil Code.

Based on the above, it is important that the interest in the co-owned property be free from any right of legal redemption or pre-emption. In order to achieve this, all the possible co-owners must waive their right to exercise legal redemption, or the period within which this right may be exercised must have lapsed.

Accordingly, the following are required in applications for registration where the payment of subscription is an interest in a co-owned property so as to free the same from any right of legal redemption or pre-emption:

1. A Waiver of Rights signed by all possible co-owners/ redemptioners stating that they are waiving their right of redemption or pre-emption in relation to the said transfer; and

2. An Affidavit, executed by the co-owner who exchanged his interest for the shares of stock, stating the following:

    a. That he has given written notice thereof to all possible co-owners/ redemptioners;
    b. That the same was received by them; and
    c. That the 30-day period of redemption has already expired.

When a corporation whose term has expired applies for re-registration with the SEC, the title to real properties owned by the old corporation does not automatically vest in the newly re-registered corporation.

SEC-OGC Opinion No. 14-29 dated October 22, 2014

Facts:

X Co. owns various subdivision lots. The term of X Co. expired and it applied for re-registration with the SEC. The new corporation, Y Co., will be composed of a majority of the X Co. directors and officers. X Co. has not yet initiated the liquidation, distribution and re-assignment of the subdivision lots to Y Co.

Issue:

Does the title to real properties owned by a corporation, whose term has expired but which applied with for re-registration with the SEC, automatically vest in the newly re-registered corporation without need of liquidation, distribution and re-assignment of said real properties to the new corporation?

Ruling:

No. In the absence of corporate liquidation, the real properties of a corporation whose corporate term has expired cannot be automatically transferred to the new or re-registered corporation, as the new corporation is a different and distinct entity from the expired corporation.

It is mandatory for a dissolved corporation to commence proceedings for the liquidation of its assets and liabilities within 3 years after its corporate term has elapsed, which period may be extended depending on the successful distribution and disposal of the corporation's assets.

The new corporation can succeed to the ownership of the real properties owned by the dissolved corporation only in the event liquidation proceedings are carried out by the directors acting as trustees of the dissolved corporation, and the real properties distributed as liquidation dividends are assigned by the co-owners (i.e., stockholders of the old corporation) to the new corporation in exchange for new shares of stock to be issued by the new corporation.

While educational institutions are subject to the 40% foreign ownership limitation under the Constitution, a holding company which owns an educational institution is not subject to such foreign ownership restriction, as it has a separate corporate existence from the educational institution.

SEC-OGC Opinion No. 14-32 dated November 10, 2014

Facts:

S Co. is a holding company owned 99% by Filipinos. In turn, S Co. owns 98% of G Co. which is an educational institution offering vocational and tertiary courses throughout the Philippines. S Co. acquired the issued and outstanding capital stock of G Co. mainly through share-swap transactions with several stockholders of G Co.

Issue:

Is a holding company that owns an educational institution subject to the 40% foreign ownership restriction under the constitution?

Ruling:

No, the foreign ownership restriction on educational institutions is not applicable to the holding company. A holding company, having a separate corporate existence, is to be treated as a separate entity with peculiar requirements of its own, despite being the controlling shareholder thereof.

A holding company is a corporation organized to hold the stock of another or other corporations. Its essential feature is that it holds stock. The term "holding company" is equivalent to a parent corporation, having such an interest in another corporation, or power of control, that it may elect its directors and influence its management. As a general rule, a holding company has a separate corporate existence and is to be treated as a separate entity, unless such corporate existence is a mere sham, or has been used as an instrument for concealing the truth, or where the organization or control is shown to be such that it is but an instrumentality or adjunct of another corporation.

Nevertheless, the educational institution, which the holding company owns, should still comply with the 40% foreign ownership limitation. The Constitution specifically provides that educational institutions shall be owned by corporations at least 60% of the capital is owned by Filipino citizens. Also, the control and administration of educational institutions shall be vested in citizens of the Philippines.

SEC-OGC Opinion No. 14-33 dated November 18, 2014

An educational institution that is owned more than 40% by foreign stockholders is not allowed to forcibly acquire the shares of its existing foreign stockholders to comply with the nationality requirements under the Constitution.

Facts:

P Co. is an educational institution which is 51.11% owned and held by foreigners. P Co. seeks to comply with the 60%-40% equity requirement under the Constitution. P Co. requests for a legal opinion as to whether or not it can forcibly acquire the shares held by existing foreign stockholders in equal proportion so as to reduce the foreign ownership to 40%.

Issue:

Can an educational institution forcibly acquire the shares of its existing foreign stockholders in equal proportion to comply with the nationality requirements under the Constitution?

Ruling:

No. Section 63 of the Corporation Code expressly provides that shares of stock are personal properties of the stockholders. Thus, the corporation, not even the State, cannot forcibly acquire, confiscate or sequester such shares of stock without due process of law, as it partakes of a property right protected by the Constitution.

For a corporation to be able to acquire its own shares, the following conditions must be present:

1. It is for a legitimate and proper corporate purpose;
2. There shall be unrestricted retained earnings to purchase the same and its capital is not thereby impaired;
3. The corporation acts in good faith and without prejudice to the rights of creditors and stockholders; and
4. The conditions of corporate affairs warrant it.

A corporation which sells industrial cranes and water jet cutting tools to be used for industrial and commercial use; and not for the general public, is not engaged in retail business under the Retail Trade Liberalization Act of 2000.

SEC-OGC Opinion No. 14-34 dated November 18, 2014

Facts:

D Co. is engaged in the sale of industrial cranes and water jet cutting tools in the Philippines to construction firms, mining firms and other similar business for use in their service business. According to D Co., the cranes and water jet tools are producer goods and not consumer goods.

Issue:

Is the sale of industrial cranes to construction firms, mining firms and other similar business, considered retail trade under RA No. 8762 or the Retail Trade Liberalization Act of 2000?

Ruling:

No, the sale of cranes and water jet cutting tools to firms engaged in construction, mining, and similar activities does not constitute retail trade, as the sale involves producer goods, not consumer goods, to be used for industry or business by industrial and commercial users, not the general public.

For a sale to be considered as "retail," the following elements should concur:

1. The seller should be habitually engaged in selling;
2. The sale must be direct to the general public; and
3. The object of the sale is limited to merchandise, commodities or goods for consumption.

BSP Issuances

Circular No. 854 prescribes the new minimum capitalization requirement for banks.

BSP Circular No. 854 dated October 29, 2014

- Subsection X111.1 of the Manual of Regulations for Banks (MORB) on Minimum Capitalization is amended as follows:

Bank Category	Proposed Minimum Capitalization
Universal Banks	
Head Office only	P3.00 billion
Up to 10 branches*	6.00 billion
11 to 100 branches*	15.00 billion
More than 100 branches*	20.00 billion
Commercial Banks	
Head Office only	P2.00 billion
Up to 10 branches*	4.00 billion
11 to 100 branches*	10.00 billion
More than 100 branches*	15.00 billion
Thrift Banks	
Head Office in the National Capital Region	
Head Office only	P500 million
Up to 10 branches*	750 million
11 to 50 branches*	1 billion
More than 50 branches*	2 billion

Head Office in All Other Areas Outside the National Capital Region	
Head Office only Up to 10 branches* 11 to 50 branches* More than 50 branches*	P200 million 300 million 400 million 800 million
Rural and Cooperative Banks	
Head Office in the National Capital Region	
Head Office only Up to 10 branches* 11 to 50 branches* More than 50 branches*	P50 million 75 million 100 million 200 million
Head Office in All Other Areas Outside the National Capital Region	
(All Cities up to 3rd class municipalities)	
Head Office only Up to 10 branches* 11 to 50 branches* More than 50 branches*	P20 million 30 million 40 million 80 million
Head Office in All Other Areas Outside the National Capital Region	
(4th class to 6th class municipalities)	
Head Office only Up to 10 branches* 11 to 50 branches* More than 50 branches*	P10 million 15 million 20 million 40 million

**Branches – Inclusive of Head Office*

- The above shall also be the required minimum capitalization (a) upon establishment of a new bank, (b) upon conversion of an existing bank from a lower to a higher category bank and vice versa, (c) upon relocation of the head office of a TB/RB to an area of higher classification, and (d) when majority of an RB's total assets and/or majority of its total liabilities are accounted for by branches located in areas of higher classification as provided in Subsection X151.4 on the branching guidelines.

- For the grant of the following special banking authorities:

  1. Quasi-banking functions for TBs;
  2. Trust and other fiduciary business for U/KBs and TBs;
  3. Limited trust for TBs and RBs/Coop Banks;
  4. Foreign current deposit unit/expanded foreign currency deposit unit (FCDU/EFCDU);
  5. Issuance of foreign letters of credit (LCs) for TBs;
  6. Acceptance of demand deposit and NOW accounts for TBs and RBs/Coop Banks; and
  7. Acting as third-party custodian/registry,

  The higher of (a) the required minimum capital under this Subsection at the time of the application for the grant of special banking authority or (b) the amount specified in the applicable Sections/Subsections for the grant of special banking authorities, shall be the required minimum capital which shall be complied with on a continuing basis.

- This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 854 was published in the Philippine Daily Inquirer *on November 4, 2014.]*

Circular No. 855 prescribes the guidelines on sound credit risk management practices, and amends and deletes certain provisions in the MORB and MORNBFI.

BSP Circular No. 855 dated October 29, 2014

- Section 1. Section X178/4178Q/4197N on credit risk management statement of policy is hereby added to the MORB/MORNBFI to read as follows:

  "**Sec. X178/4178Q/4197N Credit Risk Management; Statement of Policy.** It is the policy of the BSP to ensure that financial institutions (FIs) under its supervision have adequate and effective credit risk management systems commensurate to their credit risk-taking activities. Towards this end, the following guidelines on credit risk management set forth the expectations of the BSP with respect to the comprehensive management of credit risk. The guidelines further articulate sound principles and practices that shall be embedded in the credit risk management framework of FIs and shall cover the following areas: a) establishing an appropriate credit risk environment; b) operating under a sound credit granting process; c) maintaining appropriate credit administration, measurement, monitoring and control processes over credit risk. While FIs may employ different approaches in the management of their credit risk, the BSP expects that all these areas are effectively addressed."

- In establishing an Appropriate Credit Risk Environment, the circular provides for the following guidelines on: a) Role of the Board and Senior Management; b) Credit risk management structure; c) Credit risk strategy; and d) Credit policies, processes and procedures.

- With regard to Operating under a Sound Credit Granting Process, the circular provides for the following guidelines on: a) Credit Approval Process; b) Credit granting and loan evaluation/analysis process and underwriting standards; c) Renewal or extension of maturity date of credits; d) Credit limits, large exposures and credit risk concentrations; e) Country and transfer risks; and f) Credits granted to related parties.

- In maintaining an appropriate credit administration, measurement and monitoring process, the circular provides for the guidelines on: a) Credit Administration; b) Credit Risk measurement, Validation and Stress Testing; c) Credit risk Management Information and Reporting Systems; and d) Credit Monitoring.

- In maintaining an appropriate credit control process, the circular establishes certain parameters on: a) Credit Review Process; b) Credit Classification and Provisioning; c) Credit Workout and remedial management of Problem Credits; d) Writing-off Problem Credits; and e) Enforcement Actions.

- This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 855 was published in The Philippine Star *on November 4, 2014.]*

Circular No. 856 prescribes the implementing guidelines on the Framework for Dealing with Domestic Systemically Important Banks under Basel III.

BSP Circular No. 856 dated October 29, 2014

- The guidelines shall apply to all universal and commercial banks including branches of foreign banks established under RA No. 7721 (An Act Liberalizing the Entry and Scope of Operations of Foreign Banks in the Philippines and for Other Purposes), as well as their subsidiary banks and quasi-banks.
- The Framework has three parts:

  Part I: Assessment Methodology
  Indicator-Based Measurement approach
  Bucketing approach
  Supervisory Judgment
  Periodic Review and Refinement

  Part II: Higher Loss Absorbency (HLA) and Interaction with other elements of the Basel III framework

  Part III: Intensive Supervisory Approach

- This Circular shall take effect on December 31, 2014.

[Editor's Note: Circular No. 856 was published in the Manila Bulletin *on November 4, 2014.]*

Circular No. 857 prescribes the Financial Consumer Protection Framework of the BSP.

BSP Circular No. 857 dated November 21, 2014

- The Framework is consistent with the BSP policy to provide for an enabling environment that protects the interest of financial consumers and institutionalizes the responsibilities of all stakeholders.
- It ensures that BSP-Supervised Financial Institutions (BSFIs) are responsive to the needs of their stakeholders while being held against a high standard of accountability.
- The Circular covers all BSFIs. It enumerates the basic principles and ethical business practices that govern the conduct of BSFIs in dealing with their consumers. It sets out the minimum standards of consumer protection in the areas of disclosure and transparency, protection of client information, fair treatment, effective recourse and financial education.
- The Circular underscores that financial consumer protection is a fundamental part of BSFI's corporate governance and culture.
- This Circular shall take effect 15 calendar days following its publication in a newspaper of general circulation.

[Editor's Note: Circular No. 857 was published in the Business World *on November 26, 2014.]*

Circular No. 858 amends relevant provisions of the MORB implementing RA No. 10641.

BSP Circular No. 858 dated November 21, 2014

- Section 1 amends the following topics under Section X105 and its subsections of the MORB on the liberalized entry and scope of operations of foreign banks:

1. Sec. X105. (2008 – X121) Liberalized Entry and Scope of Operations of Foreign Banks
2. X105.1 (2008 – X121.1) Modes of entry of Foreign Banks
3. X105.2 (2008 – X121.2) Qualification Requirements
4. X105.3 (2008 – X121.3) Guidelines for selection
5. X105.4 (2008 – X121.4) Capital Requirements of Foreign Banks
6. X105.6 (2008 – X121.6) Risk-based capital for foreign bank branch
7. X105.7 (2008 – X121.7) Head Office Guarantee
8. X105.8 (2008 – X121.8) Scope of Authority for locally incorporated subsidiaries of foreign banks as well as branches with full banking authority
9. X105.9 (2008 – X121.9) Control of the Resources of the banking system
10. X105.10 (2008 – X121.10) Change from one mode of entry to another
11. X105.12 (2008 – X121.12) Equal Treatment

- Section 2 amends Subsection X126.1 of the MORB on the limits of stockholdings in a single bank, as follows:

Particulars	Ceiling
a) Voting shares of stock of a foreign individual or a foreign non-bank corporation in:	
i. UB/KB and TB	40%
ii. RB	60%
b) Aggregate ownership of the voting shares of stock of foreign individuals and/or foreign non-bank corporation in:	
i. UB/KB	40%
ii. TB/RB	60%
c) Voting shares of stock of a qualified foreign bank in UB, KB, TB and RB	100%
d) Combined ownership of the voting shares of stock of qualified foreign banks in UB, KB, TB and RB	100%
e) Voting shares of stock of a Filipino individual or a Philippine non-bank corporation in:	
i. UB/KB and TB	40%
ii. RB	60%
Voting shares of stock of a qualified Philippine corporation in UB, KB, TB and RB prior to the effectivity of R.A. No. 10641	60%
f) Combined ownership of an individual and corporation/s which is/are wholly-owned or a majority of the voting shares of stock of which is owned by such individual in:	
i. UB/KB/TB	40%
ii. RB	60%

- Section 3 amends Subsection X126.2 of the MORB on transactions involving voting shares of stock.

- Section 4 amends Subsection 3127.5 of the MORB on the guidelines for selection.

- Section 5 amends the following topics under Section X153 and its subsections of the MORB on the establishment of sub-branches of foreign bank branches:

    1. Sec. X153. Establishment of sub-branches of foreign bank branches
    2. X153.1 Application for authority to establish sub-branches
    3. X153.2 Requirements for establishment of sub-branches
    4. X153.3 Date of opening
    5. X153.4 Requirements for opening a sub-branch
    6. X153.5 Limitations on establishment of sub-branches

- Section 6 amends Subsection X311.4 of the MORB on the Participation in Foreclosure Proceedings.

- This Circular shall take effect 15 calendar days following its publication in a newspaper of general circulation.

[Editor's Note: Circular No. 858 was published in the Philippine Daily Inquirer *on November 27, 2014.]*

Circular No. 859 prescribes the implementation guidelines on Europay, Mastercard and Visa.

BSP Circular No. 859 dated November 24, 2014

- This Circular is part of the BSP's continuing efforts to strengthen the electronic retail payment network and for the protection of the public against payment card fraud.

- The guidelines set forth the expectations of the BSP with respect to management of risks while the financial industry migrates the magnetic stripe payment environment to chip-enabled technology for Europay, Mastercard and Visa. The guidelines shall govern the implementation for debit cards in any card-accepting devices/terminals to safeguard customer information, reduce card fraud, and maintain interoperability of payment networks.

[Editor's Note: Circular No. 859 was published in The Manila Times *on November 27, 2014.]*

BLGF Issuance

The BLGF has no authority to issue a "Certificate of Exemption" from securing a Mayor's Permit as the authority to issue such certificate is within the jurisdiction of the Business Permit and Licensing Office of the LGU concerned.

PCSO lotto outlets are not required to secure a Mayor's Permit.

BLGF Opinion dated October 27, 2014

Facts:

X Marketing Co. requested the BLGF to issue "Certificate of Exemption" to exempt X Marketing Co. from securing a Mayor's Permit for the operation of its lotto outlet. The said request was supported by a certification issued by the Legal Department of the Philippine Charity Sweepstakes Office (PCSO) which confirms that PCSO on-line lottery and/or PCSO lotto outlets do not need to secure business permit/mayor's permit from, and/or pay license fees to, the LGUs concerned.

Issues:

1. Is the BLGF authorized to issue a "Certificate of Exemption" from securing a Mayor's Permit?

2. Are lotto outlets required to secure Mayor's Permit?

Ruling:

1. No. The BLGF has no authority to issue "Certificate of Exemption" from securing a Mayor's Permit as the authority to issue such certificate is within the jurisdiction of the Business Permit and Licensing Office of the LGU concerned.

2. No. PCSO lotto outlets are not required to secure a Mayor's Permit.

   In *Rivas v. Garcia*, the Supreme Court held that LGUs are no longer authorized to issue any permit, whether to any government unit or private individual or entities, or require said permit for the establishment, operation and maintenance of gambling, which includes lotto and that the sales of lotto tickets are exempt from all kinds of taxes, including local taxes.

Court Decision

The Abbas' Orchard School, Inc. vs. CIR
CTA (Third Division) Case No. 8377 promulgated November 4, 2014

A BIR Certificate of Tax Exemption is not required for a non-stock, non-profit educational institution to enjoy the income tax exemption provided under Section 4, Article XIV of the Constitution and Section 30(H) of the Tax Code. The BIR cannot prescribe a condition for tax exemption that is not provided for by law.

However, to be entitled to exemption, a non-stock, non-profit educational institution must prove that its income is actually, directly, and exclusively used for educational purposes.

Facts:

Respondent CIR assessed Petitioner The Abbas' Orchard School, Inc. ("the School"), a non-stock, non-profit, educational institution, for among others, deficiency income tax for taxable year 2008. The School protested the assessment, arguing that as a non-stock, non-profit educational institution, it is exempt from tax on income derived from its school-related activities pursuant to Section 30(H) of the Tax Code.

Upon denial of its protest, the School filed a Petition for Review with the Court of Tax Appeals (CTA). The CIR argued the School is not exempt from income tax but is subject to the 10% tax under Section 27(B) of the Tax Code as a proprietary educational institution. The CIR asserted that the School failed to (a) present a Certificate of Tax Exemption as provided in RMC No. 14-2001 and Revenue Memorandum Order (RMO) No. 20-2013, and (b) prove that its income was actually, directly, and exclusively used for educational purposes as required by Section 4(3), Article XIV of the Constitution.

Issues:

1. Is a Certificate of Tax Exemption required for a non-stock, non-profit educational institution to enjoy income tax exemption under Section 4, Article XIV of the Constitution and Section 30(H) of the Tax Code?

2. Is the School exempt from income tax?

Ruling:

1. No. A Certificate of Tax Exemption from the BIR is not a condition precedent for the enjoyment or entitlement of the income tax exemption guaranteed by Section 4, Article XIV of the Constitution and Section 30(H) of the Tax Code.

   Citing the ruling of the Supreme Court in *Republic of the Philippines vs. Sunlife Assurance Co. of Canada*, the CTA ruled that the BIR cannot prescribe a condition for tax exemption that is not required by the law.

   For the School to be exempt from income tax, it must only show that it is a non-stock, non-profit educational institution and that its income is used actually, directly, and exclusively used for educational purposes. The Certificate of Exemption prescribed in RMC No. 14-2001 and RMO No. 20-2013 is not a requirement under the Tax Code, hence not a condition to enjoy income tax exemption.

2. No. The School failed to prove that its income was actually, directly, and exclusively used for educational purposes. Thus, it is subject to 10% income tax imposed on proprietary educational institutions.

   The Court held that the documents submitted, including the Audited Financial Statements, Annual Income Tax Return, as well the affidavits of the School's chief accountant and independent CPA, cannot adequately verify that the school's income was utilized actually, directly and exclusively for educational purposes or that such income has been derived from non-profit activities.

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