

Tax bulletin

December 2015



Highlights

BIR Ruling

- ▶ The COMELEC is exempt from taxes, particularly VAT, on its local purchases of goods and services as well as importations of goods that will be used in, or directly related to, the conduct of automated elections. **(Page 3)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 15-2015 amends Sections 4.109-1 (B)(1)(s), (t) and (u) of RR No. 16-2005, as amended, relative to the sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations. **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 75-2015 suspends all BIR audit and other field operations from 16 December 2015 to 5 January 2016. **(Page 5)**

BOC Issuance

- ▶ Customs Memorandum Order (CMO) No. 41-2015 prescribes revised and uniform rates to be charged by off-dock container yard / container freight stations (OCCs). **(Page 6)**

Republic Act

- ▶ Republic Act No. 10708, otherwise known as the Tax Incentives Management and Transparency Act (TIMTA), provides a mechanism to gather and share investment and incentives data among various government agencies, in an effort to promote transparency and accountability in the grant of fiscal incentives to business entities. **(Page 7)**

BOI Issuance

- ▶ The BOI issues implementing rules and regulations (IRR) to supplement the provisions of Executive Order (EO) No. 182 on the Comprehensive Automotive Resurgence Strategy ("CARS") Program, and prescribes the guidelines for the application process, computation of available fiscal support, reportorial requirements, and prohibited acts, violations and their corresponding penalties. **(Page 9)**

PEZA Updates

- ▶ Memorandum Circular (MC) No. 2015-031 circularizes the Philippine National Police (PNP) Memorandum on the moratorium on regulation of commonly used controlled chemicals from 9 December 2015 until 9 February 2016. **(Page 14)**
- ▶ Memorandum Order No. 2015-010 implements the new requirement of filing requests for VAT Zero-Rating Certifications via email effective 16 November 2015. **(Page 14)**

BSP Issuances

- ▶ Circular No. 894 amends the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBF) on the Power of the BSP. **(Page 16)**

- ▶ Circular No. 895 prescribes guidelines on Related Party Transactions (RPTs). (Page 16)
- ▶ Circular No. 896 amends the MORB and MORNBFI on Non-Financial Allied Undertakings. (Page 20)

Court Decisions

- ▶ PAGCOR, its agents, contractees and licensees, are exempt from local franchise tax on income derived from gaming operations. (Page 21)
- ▶ An advertising agency is deemed the income recipient of all payments of its client-advertisers, including the amount intended for media suppliers, when the corresponding CWT Certificates are issued in the name of the agency and the taxes withheld are claimed as credit against the agency's income tax liability. (Page 22)

BIR Ruling

BIR Ruling No. 390-15 dated 3 November 2015

The COMELEC is exempt from taxes, particularly VAT, on its local purchases of goods and services as well as importations of goods that will be used in, or directly related to, the conduct of automated elections.

Facts:

The COMELEC, an independent constitutional commission, will administer the automated National and Local Elections on 9 May 2016. In relation to these elections, the COMELEC has been procuring goods and services from foreign and local sources since October 2014. It will continue to procure such goods and services until October 2016 for post-election activities.

Issues:

1. Is the COMELEC exempt from taxes, particularly VAT, on its local purchases of goods and services, as well as importation of goods?
2. Are there limitations on the COMELEC's tax exemption?

Ruling:

1. Yes. Under Section 12 of RA No. 8436, as amended by RA No. 9369, the COMELEC is authorized to procure, by purchase, lease, rent or other forms of acquisition, supplies, equipment, materials, software, facilities and other services, from local or foreign sources free from taxes and import duties.
2. Yes. The tax exemption of the COMELEC is limited only to its local purchases of goods and services, as well as importation of goods, from October 2014 until October 2016. Moreover, the tax exemption shall cover only goods and services that will be used in, or directly related to, the conduct of the 9 May 2016 automated elections, excluding therefrom goods and services that are intended for manual elections. Likewise, the grant of tax exemption is subject to post audit verification of whether the purchased/imported goods/services were directly related to the 9 May 2016 automated elections.

BIR Issuances

RR No. 15-2015 amends Sections 4.109-1 (B)(1)(s), (t) and (u) of RR No. 16-2005, as amended, relative to the sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations

Revenue Regulations No. 15-2015 dated 28 December 2015

- ▶ Section 4.109-1 (B)(1) of RR No. 16-2005, as amended, is hereby further amended by revising Section 4.109-1 (B)(1)(s) and deleting Sections 4.109-1 (B)(1)(t) and (u). Thus, Sections 4.109-1 (B)(1)(s), (t) and (u) of RR 16-2005, as amended, shall now read as follows:

“SECTION 4.109-1. VAT-Exempt Transactions. -

xxx

(B) Exempt transactions. -

- (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from VAT:

xxx

- (s) The transport of passengers by international carriers doing business in the Philippines shall be exempt from value-added tax (VAT) pursuant to Sections 109 (1)(S) of the NIRC, as amended by RA No. 10378. The transport of cargo by international carriers doing business in the Philippines shall be exempt from VAT pursuant to Sections 109 (1)(E) of the NIRC, as amended by RA No. 10378, as the same is subject to Common Carrier's Tax (Percentage Tax on International Carriers) under Section 118 of the NIRC, as amended. International carriers exempt under Sections 109 (1)(S) and 109 (1) (E) of the NIRC, as amended, shall not be allowed to register for VAT purposes.
- (t) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations; Provided, however, that the exemption from VAT on the importation and local purchase of passenger and/or cargo vessels shall be subject to the requirements on restriction on vessel importation and mandatory vessel retirement program of the MARINA.
- (u) Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations; Provided, that the said fuel, goods and supplies shall be used exclusively or shall pertain to the transport of goods and/or passengers from a port in the Philippines directly to a foreign port, or vice versa, without docking or stopping at any other port in the Philippines unless the docking or stopping at any other Philippine port is for the purpose of unloading passengers and/or cargoes that originated from abroad, or to load passengers and/or cargoes bound for abroad; Provided, further, that if any portion of such fuel, goods or supplies is used for purposes other than that mentioned in this paragraph, such portion of fuel, goods and supplies shall be subject to twelve percent (12%) VAT starting 1 February 2006;
- (v) Services of banks, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries, such as money changers and pawnshops, subject to percentage tax under Secs. 121 and 122, respectively, of the Tax Code; and

- (w) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1 ,919,500.00); Provided, every three (3) years thereafter, the amount shall be adjusted to its present value using the Consumer Price Index, as published by the NSO; Provided, further, that such adjustment shall be published through revenue regulations to be issued not later than March 31 of each year;

For purposes of the threshold of P1,919,500.00, the husband and the wife shall be considered separate taxpayers. However, the aggregation rule for each taxpayer shall apply. For instance, if a professional, aside from the practice of his profession, also derives revenue from other lines of business which are otherwise subject to VAT, the same shall be combined for purposes of determining whether the threshold has been exceeded. Thus, the VAT-exempt sales shall not be included in determining the threshold."

- ▶ These Regulations shall take effect after 15 days following the publication in any newspaper of general circulation.

(Editor's Note: RR No. 15-2015 was published in the Manila Bulletin on December 29, 2015.)

RMC No. 75-2015 suspends all BIR audit and other field operations from 16 December 2015 to 5 January 2016

Revenue Memorandum Circular No. 75-2015 dated 14 December 2015

- ▶ All internal revenue officers, employees and others concerned are precluded from conducting field audits, field operations or any form of business visitation in the execution of Letters of Authority/Audit Notices, Letter Notices or Mission Orders.
- ▶ No written orders to audit and/or investigate a taxpayer's internal revenue tax liabilities shall be served, except in the following cases:
 1. Investigation of cases prescribing by 15 April 2016;
 2. Tax evasion cases;
 3. Processing and verification of estate tax returns, donor's tax returns, capital gains tax returns and withholding tax returns on the sale of real properties or shares of stocks together with the necessary documentary stamp returns;
 4. Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business;
 5. Audit of National Government Agencies (NGAs), Local Government Units (LGUs) and Government Owned and Controlled Corporations (GOCCs) including subsidiaries and affiliates of GOCCs;
 6. Monitoring of privilege stores (tiangges);
 7. Stock taking; and
 8. Other matters/concerns where deadlines have been imposed or under orders of the Commissioner of Internal Revenue.
- ▶ Assessment notices, warrants and seizure notices may however be served.
- ▶ Taxpayers may also voluntarily pay their known deficiency taxes without the need to secure authority from concerned Revenue Officials.

BOC Issuance

CMO No. 14-2015 prescribes revised and uniform rates to be charged by OCCs.

Customs Memorandum Order No. 41-2015 dated 1 December 2015

- ▶ This CMO promulgates a revised and uniform rate system to be charged by off-dock container yard / container freight stations (OCC) operators for consolidated import cargo, to avoid overcharging.
- ▶ Revised Charges

A. Regular Rates				
Charges per Bill of Lading (BL)				
1. Documentation	P 1,000 per BL			
2. OLRs	P 100 per BL			
Charges per Revenue Ton (RT)				
	1 RT or less	5 RT or less	15 RT or less	More than 15 RT
1. Storage (from date of stripping and storage in the warehouse)	P60/RT	P50/RT	P50/RT	P40/RT
2. Arrastre and wharfage	P375/RT	same	same	same
3. Stripping and cargo out handling	P1,500/RT	P1,250/RT	P1,000/RT	P800/RT
4. Transfer fee / Trucking Fee	P500/RT	same	same	same
B. Special rates (as applicable on a case to case basis)				
1. Insurance charge (if there is general insurance or no waiver of cargo claims against OCC)	1/8 of 1% of FOB value, whichever is higher			
2. Heavy lift (over 3 revenue ton oversize single unit cargo)	Php2,640 per RT			
3. Dangerous Cargo	100% surcharge on storage stripping and handling charges			

- ▶ All charges shall be subject to VAT as provided under applicable BIR rules and regulations.
- ▶ All OCC rates shall automatically be adjusted proportionately using as basis the rate of increase of the Arrastre and Wharfage promulgated by the Philippine Ports Authority.
- ▶ Dangerous cargo refers to articles that pose risks to health, safety and property like explosives, flammable gas, flammable solids and liquids, liable to spontaneous combustions, substances which, when in contact with water, emit flammable gases, oxidizers, organic peroxides, toxic and infectious substances, radioactive material, corrosives, and similar substances.
- ▶ Insurance charge will apply only if the cargo owner / consignee presents a general and continuing waiver of cargo claims against the warehouse operator making the warehouse operator a co-insured party in marine insurance.

- ▶ Measurement and Weight
 1. Rates based on RT shall be based on measurements / weights declared in the manifest / bill of lading, unless a discrepancy in weight or measurement of more than 12% is officially reported to the BOC, in which case the actual measurement or weight shall be the basis for applying the approved rates.
 2. RT is a shipping term describing the measurement on which the shipment is freighted. One RT is equal to 1 ton or 1 cubic meter, whichever is higher. Cargo is rated as weight or measure and whichever produces the highest revenue will be considered the RT. Weights are based on metric tons and measures are based on cubic meters.

- ▶ Penalties and Sanctions for Violations
 1. Complaints for violations may be filed with the Deputy Collector for Operation of the concerned Collection District supported by official receipt of payment which indicates a violation of this CMO.
 2. The District Collector may recommend a penalty of fine, suspension, or revocation of permit, depending on the frequency of violation, to the Deputy Commissioner, AOCG.

- ▶ Repealing Clause

All customs memorandum orders, circulars, rules and regulations inconsistent with this CMO are deemed superseded and / or amended accordingly.

- ▶ Effective Date

CMO 41 - 2015 takes effect on January 1, 2016.

Republic Act

RA No. 10708, otherwise known as the TIMTA, provides a mechanism to gather and share investment and incentives data among various government agencies, in an effort to promote transparency and accountability in the grant of fiscal incentives to business entities.

Republic Act No. 10708 - The Tax Incentives Management and Transparency Act (TIMTA)

- ▶ Definition of Terms
 1. **Investment Promotion Agencies (IPAs)** refer to government entities created by law, executive order, decree or other issuance, in charge of promoting investments, administering tax and non-tax incentives, and/or overseeing the operations of the different economic zones and freeports in accordance with their respective charters. These include the:
 - ▶ Board of Investments (BOI)
 - ▶ Philippine Economic Zone Authority (PEZA)
 - ▶ Bases Conversion and Development Authority (BCDA)
 - ▶ Subic Bay Metropolitan Authority (SBMA)
 - ▶ Clark Development Corporation (CDC)
 - ▶ John Hay Management Corporation (JHMC)
 - ▶ Poro Point Management Corporation (PPMC)
 - ▶ Bataan Technology Park, Inc. (BTPI)
 - ▶ Cagayan Economic Zone Authority (CEZA)

- ▶ Zamboanga City Special Economic Zone and Freeport Authority (ZCSEZA)
 - ▶ Phividec Industrial Authority (PIA)
 - ▶ Aurora Pacific Economic Zone and Freeport Authority (APECO)
 - ▶ Authority of the Freeport Area of Bataan (AFAB)
 - ▶ Tourism Infrastructure and Enterprise Zone Authority (TIEZA)
2. **Tax incentives** refer to fiscal incentives such as those which come from income tax holidays, exemptions, deductions, credits, or exclusions from the tax base.
 3. **Registered business entity** refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity incorporated and/or organized and existing under Philippine law and registered with an IPA.
- ▶ **Filing of Tax Returns and Submission of Tax Incentives Reports**
1. All registered business entities are required to file their tax returns and pay their tax liabilities on or before the deadline provided, using the electronic system for filing and payment of taxes of the BIR.
 2. Registered business entities shall file with their respective IPAs, within 30 days from the statutory deadline for filing of tax returns and payment of taxes, a complete annual tax incentives report for their:
 - ▶ Income-based tax incentives,
 - ▶ VAT exemptions,
 - ▶ Duty exemptions,
 - ▶ Deductions,
 - ▶ Credits, and
 - ▶ Exclusions.
 3. Failure to comply with filing and reportorial requirements of the appropriate IPAs and/or to show proof of filing of tax returns using the electronic system for filing and payment of taxes with the BIR shall be imposed the following penalties:
 - ▶ 1st violation - Fine amounting to PHP 100,000.00
 - ▶ 2nd violation - Fine amounting to PHP 500,000.00
 - ▶ 3rd violation - Cancellation of registration of the registered business entity.
- ▶ **Monitoring of Tax Incentives**
1. Based on the reports submitted by the registered business entities, the IPAs shall:
 - ▶ Submit to the BIR an annual tax incentives report within 60 days from the end of the statutory deadline for filing of the relevant tax returns.
 - ▶ Submit to the NEDA the aggregate tax incentives and aggregate investment-related data, both on a sectoral and per industry basis, which may include but is not limited to investment projects, investment cost, actual employment, and export earnings.
 2. The BIR and BOC shall submit to the Department of Finance (DOF):
 - ▶ The tax and duty incentives of registered business entities as reflected in their filed tax returns and import entries, and
 - ▶ Actual tax and duty incentives as evaluated and determined by the BIR and the BOC.

3. The DOF shall:
 - ▶ Maintain a single database for monitoring and analysis of tax incentives granted.
 - ▶ Submit to the Department of Budget and Management (DBM) the aggregate data on a sectoral and per industry basis of the following, which shall in turn be given the Congressional Oversight Committee:
 - a. Amount of tax incentives availed of by registered business entities,
 - b. Estimated claims of tax incentives immediately preceding the current year,
 - c. Programmed tax incentives for the current year, and
 - d. Projected tax incentives for the following year.
4. The DBM shall reflect said data in the annual Budget of Expenditures and Sources of Financing (BESF) under the section Tax Incentives Information.
5. The NEDA shall conduct a cost-benefit analysis on the investment incentives to determine the impact of tax incentives on the Philippine economy.
6. The Joint Congressional Oversight Committee shall monitor and ensure the proper implementation of this Act.

BOI Issuance

The BOI issues IRR to supplement the provisions of EO No. 182, on the CARS Program, and prescribes the guidelines for the application process, computation of available fiscal support, reportorial requirements, and prohibited acts, violations and their corresponding penalties.

Rules and Regulations Implementing Executive Order No. 182

▶ Additional Terms defined under the IRR

1. *High-technology* parts refer to parts that are technology or investment-intensive requiring manufacturing capabilities that the Philippines has not yet developed.
2. *Manufacturing* refers to the process of converting raw materials, components, or parts into sub-components or sub-assemblies of car parts subject to net value addition as may be determined by the Board.
3. *Model Life Budget (MLB)* refers to the fiscal support allocation for the entire Model Life per enrolled model.
4. *Net Manufacturer's Price (NMP)* refers to the invoice price from the manufacturer to the dealer.
5. *Shared Testing Services Facilities* refer to facilities for common use of any two or all of the enrolled models for testing of vehicles, parts and materials, such as but not limited to the testing of materials of parts makers and durability tests.
6. *Suppliers* refer to Parts Makers (PM) of Common Parts and Strategic Parts and Shared Testing Facility Operators (STFO) covered by supply agreements with Participating Car Makers (PCMs).

▶ Application process

1. Filing of Application
 - ▶ The Applicant shall comply with the following:
 - a. Pay a non-refundable application fee of PHP 100,000.00;
 - b. Submit two copies of the notarized application form duly signed by an authorized officer of the corporation, accompanied by the required supporting documents;

- c. Submit an annual market and production volume forecast; and
- d. Submit other registration documents as may be required by the Board;

- ▶ Notice of filing of application shall be published once in a newspaper of general circulation in a format indicating the name of the applicant, the area of investment, the capacity applied for and the plant site if any.

2. Evaluation of Application

- ▶ The Inter-Agency Committee ("IAC") will evaluate all applications within 30 days and submit a recommendation to the Board.
- ▶ The Board will render its decision within 30 working days from receipt of the IAC's recommendation.
- ▶ The decision of the Board as well as the terms and conditions of registration shall be communicated in writing to the applicant.
- ▶ The applicant shall have 30 working days from receipt of said notice within which to submit its acceptance and comply with pre-registration requirements, if any.

3. Registration

- ▶ Prior to the issuance of the Certificate of Registration, the following requirements shall be submitted and/or complied with:
 - a. Payment of registration fee of PHP 50,000.00;
 - b. Posting of performance bond from the Government Service Insurance System, in the amount determined by the Board;
 - c. Letter or, if a corporation, resolution of the applicant's board of directors formally accepting the proposed terms and conditions of registration;
 - d. Sworn statement authorized by the board of directors/partners or by the individual adopting and/or affirming all representations and commitments made by the applicant to the Board and all information and data heretofore submitted by it to the Board are true and correct; and
 - e. All pre-registration requirements, if any.

Failure to accept or comply with the requirements within the acceptance period may be construed as a rejection of the proposed registration or abandonment of the project, and the Board approval will be withdrawn.

- ▶ Upon fulfillment of the foregoing, the Certificate of Registration shall be issued. Eligibility for incentives under the Program attaches only upon issuance of the Certificate of Registration.
- ▶ The registered PCM shall be deemed a member of the Motor Vehicle Development Program (MVDP) and the same shall be annotated in the Certificate of Registration under the Program.

▶ **Fiscal support and allocation**

1. Registered participants may be entitled up to a maximum of 6 years of 2 kinds of fiscal support during the enrolled Model Life, namely:
 - ▶ Fixed Investment Support (FIS); and
 - ▶ Production Volume Incentives (PVI).

2. Total fiscal support for CARS Program shall not exceed PHP 27 Billion.

- ▶ Fiscal support shall be based on Segment Weighted Average Price (SWAP), Standard Production Support (SPS), and Logistics Efficiency Index (LEI) during the manufacture of the enrolled Models.
- ▶ The MLB or maximum fiscal support for each enrolled model is PHP 9 Billion. The MLB shall be allocated as follows: (a) 40% for FIS and (b) 60% for PVI.
- ▶ The total fiscal budget support per unit shall be 8% SWAP but not to exceed PHP 45,000.00. The SWAP shall be determined and fixed by the Board at the time of approval using current NMPs adjusted for inflation averaged over the model life.

▶ **Fixed Investment Support**

1. Coverage and Allocation

- ▶ The FIS shall cover capital expenditures (Capex) for tooling and equipment and training costs for the initial start-up operation. The Capex to be given the FIS shall be used primarily to support the production of the enrolled models.
- ▶ The FIS entitlement shall in no case exceed 40% of the total Capex in the investment project. FIS allocation shall be as follows:
 - a. For manufacturing Body Shell Assembly and Large Plastics Parts, a minimum of 12.5% and a maximum of 30% of the MLB.
 - b. For Common Parts and Shared Testing Facility, a maximum 5% of the MLB.
 - c. For manufacturing Strategic Parts, a minimum of 5% and a maximum of 22.5% of the MLB.

2. FIS General Eligibility Requirements:

- ▶ New investments in the manufacture of parts and/or establishment of a Shared Testing Facility;
- ▶ Delivery of parts to the PCM within the prescribed period as stipulated by the BOI;
- ▶ Introduction of the enrolled Model to the market using the parts manufactured under this Program;
- ▶ Consistently meeting the criteria for enrollment of PCMs; and
- ▶ Attainment of other conditions that the BOI has imposed at the time of registration.

3. FIS Eligibility for Body Shell Assembly and Large Plastics Assemblies - Within 36 months from the issuance of the Certificate of Registration for the enrolled model, the PCM or its registered parts makers shall manufacture major components of the large plastic parts assemblies and at least 50% by weight of the body shell assembly.

4. FIS Eligibility for Common Parts and Shared Testing Facility (CPSTF) - The PMs and STFOs shall deliver the committed Common Parts and/or service to the PCM within 36 months from signing of the arrangement for CPSTF.

5. FIS Eligibility for Strategic Parts - The PM shall deliver the committed Strategic Parts to the PCM within 36 months from signing of the agreement.

► **Production Volume Incentive**

1. PVI shall be granted based on volume production and logistics efficiency computed as follows:

$$\text{PVI} = \text{SPS} \times \text{Actual Annual Production Volume} \times \text{LEI}$$

- LEI is a value between zero and one that represents the logistics efficiency of the participating model's parts sourcing computed as follows:

$$\text{LEI} = \frac{N_f - N_a}{N_f - N_t}$$

where:

N_f Full CKD pack (m ³)	=	total m ³ of parts for one complete vehicle
N_a Imported Parts (m ³)	=	$\frac{\text{annual volume of imported parts (m}^3\text{)}}{\text{total annual production (units)}}$
N_t High-technology parts allowance (m ³)	=	total m ³ of parts per unit that are classified as high technology parts. The N_t shall be approved by the Board based on enrolled model data submitted by the PCM and an actual physical audit of one lot of full CKD kit, subject to review mid-model life. In no case shall N_t be more than 23% of N_f .

- The SPS is computed as follows:

$$\text{SPS} = \frac{60\% \times \text{MLB}}{\text{Vol}_{\text{ML}} - 100,000}$$

Taking the above SPS formula into account, the SPS to be used for the corresponding cumulative production volumes shall be as follows:

Cumulative Production Volume	SPS
0 - 100,000	PHP 0
100,001 - 200,000	Lower of PHP 54,000 or 9.6% x SWAP

In excess of actual production volume of 200,000 units within the Model Life, the SPS shall be PHP 27,000 or 4.8% x SWAP, whichever is lower, until the PVI allocation is fully exhausted.

2. PVI Eligibility:

- ▶ Manufactures at least fifty percent (50%) of the assembly by weight in the case of Body Shell Assemblies;
- ▶ Manufactures major components of the assemblies in the case of Large Plastic Assemblies;
- ▶ Exceeds 100,000 units in production volume; and
- ▶ Meets other conditions that the Board may impose at the time of registration.

The LEI to be used to compute the first PVI availment shall be based on the weighted average LEI after the first 40,000 units.

▶ Reportorial requirements

The registered Participant shall submit the following reports in the prescribed format and in accordance with the following schedules:

- ▶ Monthly production and Sales Report (itemized by model/variants);
- ▶ Audited Financial Statements and Income Tax Return (ITR) submitted on or before May 15 of each year or 1 month from the last day of filing of ITR to the BIR;
- ▶ Liquidation report on issued Certificate of Authority to import submitted 1 month from and of each quarter; and
- ▶ Other documents or statistical data that may be required by the Board.

▶ Violations, prohibited activities, penalties

1. Registered participants are prohibited from doing the following:

- ▶ Engage in trading of the parts enrolled under the Program and avail of FIS for the traded parts; and
- ▶ Other analogous activities, as may be determined by the Board.

2. The following are grounds for cancellation of the Certificate of Registration and/or forfeiture of support, and/or expulsion from the Program.

- ▶ Investment in the manufacture of parts and/or establishment of Shared Testing Facility within two years from the issuance of the Certificate of Registration; and
- ▶ Delivery of parts to the PCM within 36 months from signing of the agreement.

3. Penalties for any violations of EO No. 182, these IRR, or terms and conditions:

- ▶ Cancellation, suspension or forfeiture of support;
- ▶ Fines of not less than PHP 10,000.00 but not more than PHP 100,000.00 for late or non-filing of reports within the prescribed period. For other violations relating to its registration, a reasonable fine shall be imposed by the Board; and
- ▶ Other appropriate penalties.

4. These IRR shall take effect 15 days following their publication in a newspaper of general circulation and filing of three copies with the Office of the National Administrative Register (ONAR) University of the Philippines (UP) Law Center, Diliman, Quezon City.

[Editor's Note: These IRR were published in the Philippine Star on December 19, 2015].

PEZA Updates

MC No. 2015-031 circularizes the PNP Memorandum on the moratorium on regulation of commonly used controlled chemicals from 9 December 2015 until 9 February 2016

Memorandum Circular No. 2015-031 dated 14 December 2015

- ▶ Moratorium / Temporary Suspension on Regulation of Commonly Used Controlled Chemicals for a period of 60 calendar days
 1. Period of moratorium: From 9 December 2015 until 9 February 2016 or finalization of circular on Categorization of Controlled Chemicals, whichever comes first
 2. Coverage of the moratorium / temporary suspension:
 - ▶ No license or permit requirement from the PNP,
 - ▶ No escorting requirements from the PNP,
 - ▶ No reportorial requirement from the PNP,
 - ▶ No confiscation of stock by the PNP,
 - ▶ No collection of any amount arising from, in association with, or in relation to escorting services.
 3. The moratorium does not cover:
 - ▶ Nitrates,
 - ▶ Chlorates,
 - ▶ Nitric acid,
 - ▶ Explosives, and
 - ▶ Explosive accessories.

Memorandum Order No. 2015-010 implements the new requirement of filing requests for VAT Zero-Rating Certifications via email effective 16 November 2015.

Memorandum Order No. 2015-010 dated 3 November 2015

- ▶ Filing requests for issuance of VAT Zero Rating Certifications shall be by email
 1. Coverage: The new procedure applies to all PEZA enterprises entitled to VAT Zero-Rating incentive on local purchases, i.e. –
 - ▶ All PEZA-registered enterprises (export, I.T., tourism, medical tourism, agri-export, facilities, ELSE's, utilities); and
 - ▶ Ecozone or IT Park/Center Developers-Operators.

2. New procedure:

- ▶ The PEZA enterprise shall use PEZA Form No. ERD.2.F.006 (“Request Form”).
 - a. The Request Form should be signed by the responsible official of the PEZA enterprise (CEO, President, Vice President, General Manager, or equivalent).
 - b. The email of the CEO/President should be indicated in the Request Form.
 - ▶ The accomplished Request Form shall be scanned and emailed to the Office of the PEZA Director General (ODG) at odg@peza.gov.ph.
 - ▶ The ODG will forward the Request Form to the Enterprise Services Division (ESD) for:
 - a. Checking of compliance with PEZA's reportorial requirements; and
 - b. Validation that the name of the PEZA enterprise's official appearing in the Request Form appears in the enterprise's Ecozone Monthly Performance Report (EZMPR).
 - ▶ If ESD finds the PEZA enterprise compliant with the reportorial requirements, ESD shall endorse the Request Form to the Incentives Management Division (IMD) for processing and evaluation.
 - ▶ Once approved for issuance, IMD shall email a system-generated signed Certification (in pdf copy) to the Zone Administrator / Zone Manager / Officer in Charge (ZA/ZM/OIC), who shall in turn inform the PEZA enterprise that the certification is available for release.
 - ▶ Upon payment of a filing fee of PHP 120.00 to the PEZA Zone Office, the ZA / ZM / OIC shall email the VAT Certification to the PEZA enterprise official who signed the Request Form.
- ▶ Other guidelines
1. Each VAT Zero Rating Certification shall bear a Quick Response (QR) Code which contains the name of the enterprise, certificate control number, and date of issuance. The QR Code can be scanned through www.peza.gov.ph/vatscan.
 2. The PEZA enterprise may print multiple copies of the VAT Certification.
 - ▶ Copies should only be given to the PEZA enterprise's suppliers of goods and services delivered to/rendered in the registered Ecozone, and only for the purpose of the enterprise's PEZA-registered activities.
 - ▶ The PEZA enterprise shall be solely accountable and liable for the dissemination of the VAT Zero Rating Certification issued in its name, and any misuse, abuse, and illegal use thereof.
 3. PEZA shall forward to the BIR the list of PEZA enterprises issued a Certificate of VAT Zero Rating, which the BIR shall use to validate the authenticity of VAT Certificates submitted by the enterprise for VAT refunds.

BSP Issuances

Circular No. 894 amends the MORB and MORNBFI on the Power of the BSP.

BSP Circular No. 894 dated 7 December 2015

- ▶ The unnumbered section under *Examination* by the BSP that forms part of Power of the BSP to Examine Banks in the MORB shall be numbered as Section X001.
- ▶ The unnumbered section under *Examination* by the BSP that forms part of the Power of BSP to Examine Quasi-Banks in the MORNBFI shall be numbered as Section 4001Q.
- ▶ The unnumbered section under *Definitions* that forms part of the Power of the BSP to Examine Quasi-Banks in the MORNBFI shall be numbered as Section 4002Q.
- ▶ 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. 894 was published in the Philippine Daily Inquirer on December 15, 2015.]

Circular No. 895 prescribes guidelines on RPTs.

BSP Circular No. 895 dated 14 December 2015

- ▶ The Monetary Board, in its Resolution No. 1903 dated 13 November 2015, approved the following guidelines on Related Party Transactions (RPTs) of banks and their non-bank financial subsidiaries and affiliates.
- ▶ Section X146 of the MORB shall now read as follows:

“Section X146. Policy statement. The Bangko Sentral ng Pilipinas (BSP) recognizes that transactions between and among related parties create financial, commercial and economic benefits to individual institutions and to the entire group where said institutions belong. In this regard, related party transactions are generally allowed provided, that these are done on an arm’s length basis. The BSP expects banks, including their non-bank financial subsidiaries and affiliates, to exercise appropriate oversight and implement effective control systems for managing said exposures as these may potentially lead to abuses that are disadvantageous to the bank and its depositors, creditors, fiduciary clients, and other stakeholders.”
- ▶ Section X146.1 Definition of terms: For purposes of this Circular, the following definitions shall apply:
 1. **Related parties** shall cover the bank’s subsidiaries as well as affiliates and any party that the bank exerts direct/indirect control over or that exerts direct/indirect control over the bank; bank’s directors; officers; stockholders and related interests (DOSRI) and their close family members, as well as corresponding persons in affiliated companies. This shall also include such other persons/juridical entities whose interests may pose potential conflicts with the interest of the financial institution (FI), hence, is identified as a related party.

2. **Close family members** are persons related to the bank's directors, officers and stockholders (DOS) within the second degree of consanguinity or affinity, legitimate or common-law.
3. **Corresponding persons in affiliated companies** are the DOS of the affiliated companies and their close family members.
4. **Control** is presumed to exist if there is ownership or holding, whether direct or indirect, of 20% or more of a class of voting shares of a company. Should FI choose to disclaim or rebut the presumption, it should provide facts sufficient to show that there is indeed no control.
5. **Related party transactions** are transactions or dealings with related parties of the FI, including its trust department, regardless of whether or not a price is charged.
 - ▶ On- and off-balance sheet credit exposures and claims and write-offs;
 - ▶ Investments and/or subscriptions for debt/equity issuances;
 - ▶ Consulting, professional, agency and other service arrangements/contracts;
 - a. Purchases and sales of assets, including transfer of technology and intangible items (e.g., research and development, trademarks and license agreements);
 - b. Construction arrangements/contracts;
 - c. Lease arrangements/contracts;
 - d. Trading and derivative transactions;
 - e. Borrowings, commitments, fund transfers and guarantees;
 - f. Sale, purchase or supply of any goods or materials; and
 - g. Establishment of joint venture entities.

RPT shall be interpreted broadly to include not only transactions that are entered into with related parties but also outstanding transactions that were entered into with an unrelated party that subsequently becomes a related party.

▶ Section X146.2 Duties and Responsibilities/Roles and Functions

1. **Board Duties and Responsibilities** - The board of directors shall have the overall responsibility in ensuring that transactions with related parties are handled in a sound and prudent manner, with integrity, and in compliance with applicable laws and regulations to protect the interest of depositors, creditors and other stakeholders.
 - ▶ To observe good governance and approve an overarching policy on the handling of RPTs to ensure that there is effective compliance with existing laws, rules and regulations at all times, that these are conducted on an arm's length basis, and that no stakeholder is unduly disadvantaged. A group-wide RPT policy shall be adopted, encompassing all entities within the banking group, taking into account their size, structure, risk profile and complexity of operations.

The RPT policies shall include, but not be limited to the following:

- a. Definition of related parties. The policy shall clearly define "related parties." It shall identify persons and companies that are considered the bank's related parties. The policy shall require

Management to periodically review and update the inventory of related parties to capture organizational and structural changes in the FI and its related parties.

- b. Coverage of RPT policy. The coverage of the RPT policy shall capture a broader spectrum of transactions, covering not only those that give rise to credit and/or counterparty risks but also those that could pose material/special risk or potential abuse to the FI and its stakeholders.

Transactions that were entered into with an unrelated party that subsequently becomes a related party may be excluded from the limits and approval process required in the policy. However, any alteration to the terms and conditions, or increase in exposure level, related to these transactions after the non-related party becomes a related party shall subject the RPT to the requirements of the policy. The prospective treatment should, however, be without prejudice to supervisory actions that may be enforced for transactions noted to have not been conducted on an arm's length basis.

- c. Guidelines in ensuring arm's length terms. The policy shall have clear guidelines in ensuring that RPTs are conducted in the regular course of business and not undertaken on more favorable economic terms (e.g., price, commissions, interest rates, fees, tenor, collateral requirement) to such related parties than similar transactions with non-related parties under similar circumstances. This shall include guidance for an effective price discovery mechanism to ensure that transactions are engaged in at terms that promote the best interest of the FI and its stakeholders. The price discovery mechanism may include, but is not limited to, acquiring the services of an external expert, opening the transaction to a bidding process, or publication of available property for sale.

xxx

- ▶ To constitute an RPT committee in addition to the committees prescribed under Section X141.3c(7) of the MORB on the creation of board committees, and to provide adequate resources to said committee, including the authority to procure the assistance of independent experts, if necessary, to assess the fairness of RPTs. For this purpose, the constitution of an RPT committee shall apply to banks that are part of a conglomerate and to banks directed by the BSP to constitute said Committee.

The RPT committee shall be composed of at least three (3) members of the board of directors, two (2) of whom shall be independent directors, including the chairperson. The committee shall at all times be entirely composed of independent directors and non-executive directors, with independent directors comprising a majority of the members. In case a member has a conflict of interest in a particular RPT, he should refrain from evaluating that particular transaction. The Compliance Officer or Internal Auditor may sit as resource persons in said Committee.

2. **Responsibilities of RPT Committee** – The RPT Committee shall:

- ▶ Evaluate on an ongoing basis existing relations between and among businesses and counterparties to ensure that all related parties are continuously identified, RPTs are monitored and subsequent relationships with counterparties are captured.
- ▶ Evaluate all material RPTs to ensure that these are not undertaken on more favorable economic terms xxx to such related parties than similar transactions with non-related parties under similar circumstances, that no corporate or business resources of the bank are misappropriated or misapplied, and to determine any potential reputational risk issues that may arise as a result of or in connection with the transactions.

xxx

- ▶ Ensure that appropriate disclosure is made, and/or information is provided to regulating and supervising authorities relating to the bank's RPT exposures, and policies on conflicts of interest or potential conflicts of interest.
- ▶ Report to the board of directors on a regular basis the status and aggregate exposures to each related party as well as the total amount of exposures to all related parties.
- ▶ Ensure that transactions with related parties, including write-off of exposures, are subject to a periodic independent review or audit process.
- ▶ Oversee the implementation of the system for identifying, monitoring, measuring, controlling, and reporting RPTs, including the periodic review of RPT policies and procedures.

3. **Role of Senior Management and Self-Assessment Functions** – Senior management shall implement appropriate controls to effectively manage and monitor RPTs on a per transaction and aggregate basis. Exposures to related parties shall also be monitored on an ongoing basis to ensure compliance with the FI's policy and BSP's regulations.

xxx

The compliance function shall ensure that the FI complies with relevant rules and regulations and is informed of regulatory developments in areas affecting related parties.

- ▶ **Section X146.3 Disclosure and Regulatory Reporting.** – Banks shall adequately disclose in their Annual Report, if applicable, the overarching policies and procedures for managing RPTs, including managing conflicts of interest or potential conflicts of interest; responsibilities of the RPT Committee; nature, terms and conditions, as well as original and outstanding individual and aggregate balances including off balance sheet commitments, of material RPTs.

- ▶ Section X146.4. Applicability to Branches of Foreign Banks. – The governance principles and requirements embodied in this Circular shall be complied with by branches of foreign banks, to the extent possible, given their distinct organizational set-up. The General Manager or Country Manager is the principal officer that will oversee the implementation of the governance principles embodied in this Circular. Branches of foreign banks are not covered by the reportorial requirements on conglomerate structure.
- ▶ Section X146.5. Supervisory Enforcement Actions. – The BSP reserves the right to deploy its range of supervisory tools to promote adherence to the requirements set forth in these guidelines and bring about timely corrective actions and compliance with BSP directives. In this regard, the BSP may, among others, issue directives or sanctions on the Bank and responsible persons which may include restrictions or prohibitions from certain authorities/activities; and warning, reprimand, suspension, removal and disqualification of concerned bank directors, officers and employees.
- ▶ Renumbering of MORB Provisions. – Section XL47 of the MORB shall now be captioned as ‘Profit Sharing/Compensation and Other Benefits.’ The provisions on “Profit Sharing Programs” shall be transferred from Section X146 of the MORB to Subsection X14T.L. Moreover, the provisions on “Compensation and Other Benefits of Directors and Officers” shall be transferred from Section XL47 of the MORB to Subsection XL4T.2.
- ▶ This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor’s Note: BSP Circular No. 895 was published in the Philippine Star on December 22, 2015.]

Circular No. 896 amends the MORB and MORNBF1 on Non-Financial Allied Undertakings.

BSP Circular No. 896 dated 17 December 2015

- ▶ The Monetary Board (MB), in its Resolution No. 1856 dated 5 November 2015, amended the parts of the MORB and MORNBF1 on the power of the BSP, as follows:
- ▶ Sec. X380 Non-Financial Allied Undertakings:

“xxx

a. UBs/KBs/TBs

UBs/KBs and TBs may invest in equities of the following non-financial allied Undertakings:

(1) Warehousing companies;

xxx

(12) Companies engaged in merchant acquiring businesses;

(13) Such other similar activities as the MB may declare as non-financial allied undertakings of the banks.

xxx”

- ▶ Section 4002Q

“xxx

d. Non-financial allied undertakings may include, but are not limited to, warehousing companies, storage companies, safe deposit box companies, companies engaged in the management of mutual funds but not in the mutual funds themselves, management corporations engaged or to be engaged in activities similar to the management of mutual funds, insurance agencies, companies engaged in home building and home development and companies providing drying and/or including facilities for agricultural crops such as rice and corn, companies engaged in a merchant acquiring business and such other similar activities as the MB may declare as appropriate from time to time.

xxx”

- ▶ 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: BSP Circular No. 896 was published in The Standard on January 5, 2016.]

Court Decisions

Hon. Herbert M. Bautista and Mr. Edgar Villanueva, as Mayor and Treasurer of Quezon City vs. Philippine Amusement and Gaming Corporation

CTA (*En Banc*) Case 1159 promulgated 5 November 2015

PAGCOR, its agents, contractees and licensees, are exempt from local franchise tax on income derived from gaming operations.

Facts:

Petitioner Quezon City assessed franchise tax against the private operators of PAGCOR e-Games Stations (PEGS) for 2010 based on prior year’s gross casino winnings. In past years, Quezon City assessed the PEGS operators within its jurisdiction based only on commission received equivalent to 28% of casino winnings, which they are entitled to under the contract with PAGCOR. PAGCOR is entitled to 35.8% of the casino winnings, with the balance shared among the technology provider, game software provider, and marketing expenses.

Despite the opinion issued by the Office of the Government Corporate Counsel holding that local government units (LGUs) have no power to impose taxes on PAGCOR and its licensees for the operation of gaming activities, Quezon City proceeded to assess and collect franchise tax, inclusive of PAGCOR’s share, from one of the PEGS operators.

Before the other PEGS operators were assessed, PAGCOR filed a Petition for Prohibition before the Quezon City Regional Trial Court (RTC), arguing that its share should not be included in the franchise tax computation in 2010 and prior years. PAGCOR argued that it is exempt from local tax and other local impositions under its charter, Presidential Decree No. 1869, as amended by RA No. 9487. Quezon City argued that the franchise tax was not imposed on PAGCOR but on the PEGS operators as independent proprietors or corporations, which were issued Special Permits to Operate by the City Council.

The RTC granted PAGCOR's petition and ruled that taxing the PEGS operators on their gross income would effectively reduce PAGCOR's share in the casino winnings. Quezon City filed a Petition for Review with the Court of Tax Appeals (CTA.)

The CTA First Division affirmed the RTC decision. Upon denial of its Motion for Reconsideration, Quezon City elevated the case to the CTA *En Banc*.

Issue:

Can Quezon City impose franchise tax on PAGCOR's PEGS operators?

Ruling:

No. By imposing a local franchise tax on the gross revenues of the PEGS operators, PAGCOR's tax exemption is compromised as it stands to collect a specified percentage from the operations of its agents. This indirectly violates PAGCOR's tax exemption provided by law.

PAGCOR's income from gaming operations is subject only to 5% franchise tax under PD No. 1869, as amended by RA No. 9487, while its income from *other related services* is subject to corporate income tax under RA No. 9337.

When PAGCOR's franchise was extended in 2007 without revoking or withdrawing its tax exemption, Congress effectively reinstated and reiterated all of its rights and privileges and authority granted under its charter. The extension of PAGCOR's franchise under the same terms and conditions means a continuation of its tax exempt status on income from *gaming operations*. PAGCOR's charter is not deemed repealed or amended by RA No. 9337; thus its income from *gaming operations* is only subject to 5% franchise tax.

PAGCOR has the power to enter into special agreements with third parties to share the privileges under its franchise for the operation of gambling casinos under RA No. 9487. It can designate agents to operate gambling activities. Therefore, the tax exemption of PAGCOR on its income from gaming operations extends to its agents, contractees and licensees.

Ace/Saatchi & Saatchi Advertising, Inc. vs. Commissioner of Internal Revenue
CTA (First Division) Case 8439 promulgated 9 December 2015

An advertising agency is deemed the income recipient of all payments of its client-advertisers, including the amount intended for media suppliers, when the corresponding CWT Certificates are issued in the name of the agency and the taxes withheld are claimed as credit against the agency's income tax liability.

Facts:

Respondent Commissioner of Internal Revenue (CIR) assessed Petitioner Ace/Saatchi & Saatchi Advertising (Ace Saatchi) for, among others, deficiency income tax and VAT for alleged undeclared revenues for taxable year 2006, arising from discrepancies noted based on a comparison of the advertising agency's sales as declared in its VAT returns and the withholding tax certificates issued by client-advertisers.

Ace Saatchi protested the assessment, arguing that its billing to client-advertisers is broken down into 15% agency commission and 85% media and production cost, in accordance with industry practice. The amount received from customers for media and production cost was merely held in trust for payment to media suppliers. Thus, its gross sales pertain only to the 15% agency commission. It also argued that fees paid to the media suppliers were not claimed as part of its cost. Ace Saatchi cited a 2007 ruling where the BIR held that gross receipts of an advertising agency exclude money received from advertisers, since such amounts are earmarked for payment for media and production suppliers.

The CIR denied its protest. Ace Saatchi filed a Petition for Review with the CTA.

The CTA sustained the deficiency income and VAT assessments. It noted that Ace Saatchi presented CWT Certificates *issued in its name* representing the 2% tax withheld from the fully billed amount (85% as pass-through cost intended for media suppliers and 15% as agency fee). According to the court, the CWT Certificates issued to Ace Saatchi prove that it is the income recipient of the whole amount. The CTA further ruled that it cannot verify the allocation of the payments for commission and pass-through cost as there was only one Official Receipt issued by Ace Saatchi.

Ace Saatchi filed a Motion for Partial Reconsideration insisting that CWTs cannot be used as basis for deficiency income tax assessments as the amounts reflected therein include pass-through costs. It also argued that there is no requirement to issue separate official receipts for commission and pass-through cost.

Issue:

Is Ace Saatchi liable for deficiency income tax and VAT?

Ruling:

Yes. Since the paying client-advertiser remitted 100% of the bill to Ace Saatchi together with the corresponding CWT Certificates issued in the name of agency, it is considered the income recipient of the whole amount collected. Ace Saatchi also claimed as credit against its income tax liability the tax withheld by client-advertisers, including the amount corresponding to the pass-through cost. Accordingly, the said pass-through cost should be considered as part of the agency's income.

On the VAT, the CTA reiterated that under RMC No. 4-96, the basis for computing VAT in the case of media placements is the gross receipts. Ace Saatchi should have issued two types of receipt upon collection from the client-advertisers, i.e., a VAT Official Receipt for the commission and a Provisional Receipt for the pass-through cost. Since it failed to issue separate receipts, the whole amount collected is considered subject to 12% VAT.

The CTA also amended its decision to recompute the deficiency interest and delinquency interest imposed on Ace Saatchi. The CTA held that deficiency interest extends only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof. On the other hand, delinquency interest shall commence from the time when the taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand.

[Editor's Note: RMC No. 63-2012 issued on 29 October 2012, as supplemented by RMC No. 91-2012 dated 28 December 2012, clarifies the invoicing and recording of income payments for media advertising placements.]

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