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HIGHLIGHTS

BIR RULINGS

The NOLCO and excess MCIT credit balances of the corporations in a statutory merger of commonly owned companies transferred and carried over to the surviving corporation.

Coupon loan is subject to tax only on the interest portion.

Dividends paid in the final withholding period.

Current tax on the interest portion.

HIGHLIGHTS

BIR RULINGS

Residential property is not subject to stamp tax (DST) if the value is not increased.

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HIGHLIGHTS

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Voluntary Assessment and Abatement Program

The BIR, through computerization, now has the ability to generate firm and precise data on sales underdeclarations by matching information provided by third parties (e.g., summary lists, etc) with the declarations made by taxpayers. The BIR is now giving taxpayers with underdeclarations a chance to avoid criminal prosecution through Revenue Regulations (RR) No. 12-2002 or the Voluntary Assessment and Abatement Program (VAAP), as amended by RR No. 17-2002.

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Highlights

BIR Rulings

- ▶ A domestic construction company engaged by the NHA to construct a housing project under RA No. 7279 or the Urban Development and Housing Act shall be exempt from (i) tax on income directly realized from the construction project and (ii) VAT on the construction activity. **(Page 4)**
- ▶ Early retirement benefits/separation benefits to be received by teaching and non-teaching personnel of Higher Educational Institutions (HEIs), who are displaced due to the implementation of the K to 12 Program, shall be exempt from income tax. **(Page 5)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 5-2016 amends Section 3 of RR No. 15-2012 by prescribing additional criteria in the accreditation of printers engaged in the printing of official receipts, sales invoices and other commercial receipts and/or invoices. **(Page 6)**
- ▶ Revenue Memorandum Order (RMO) No. 22-2016 prescribes the policies and guidelines for the issuance of the electronic Certificate Authorizing Registration (eCAR). **(Page 7)**
- ▶ RMO No. 26-2016 prescribes additional policies and guidelines in handling disputed assessments. **(Page 8)**
- ▶ RMO No. 27- 2016 prescribes the procedure for claiming tax treaty benefits for dividends, interest and royalty income of non-resident income earners. **(Page 9)**
- ▶ Revenue Memorandum Circular (RMC) No. 61-2016 prescribes the policies and guidelines for the accounting and recording of transactions Involving “netting” or “offsetting.” **(Page 11)**
- ▶ RMC No. 62-2016 clarifies the proper tax treatment of passed-on Gross Receipts Tax (GRT). **(Page 12)**
- ▶ RMC No. 64-2016 further clarifies the nature, characteristics and purpose of tax-exempt organizations and associations enumerated under Section 30 of the Tax Code, as amended. **(Page 13)**
- ▶ RMC No. 65-2016 clarifies the rules for determining the appropriate due date for the filing of returns and payment of taxes when the exact due dates fall on a Saturday, Sunday, or a holiday, both for electronic and manual filers and payers of taxes, as well as for the imposition of penalties for late filing and/or late payment. **(Page 19)**

BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 13-2016 lays down the rules on the use of E2M for transfers of containerized sea freight and airfreight. **(Page 20)**
- ▶ CMO No. 10-2016 provides the procedures for the electronic filing of informal entries for non-commercial air shipments nationwide. **(Page 20)**

- ▶ CMO No. 16-2016 provides the operational guidelines in the implementation of Republic Act No. 10668, otherwise known as "An Act Allowing Foreign Vessels to Transport and Co-Load Foreign Cargoes for Domestic Trans-shipment and for Other Purposes". (Page 21)

BSP Issuances

- ▶ Circular No. 912 provides for the Mandatory Implementation Date and Closure of Early Adoption Window of Philippine Financial Reporting Standards 9 Financial Instruments. (Page 22)
- ▶ Circular No. 913 provides for the Revised Features of Monetary Operations under the Interest Rate Corridor (IRC) System. (Page 25)

SEC Opinion and Issuances

- ▶ The nationality of a non-stock corporation is computed according to the extent of voting powers of its members. A foreign corporation cannot acquire land in the Philippines. (Page 28)
- ▶ SEC Memorandum Circular (MC) No. 7 calls for compliance with RA No. 9510, otherwise known as the Credit Information System Act (CISA), which requires entities that provide credit facilities to submit basic credit data and updates thereon to the Credit Information Corporation (CIC). (Page 29)
- ▶ SEC MC No. 6 provides the guidelines on the principal office address of a corporation and address of each incorporator, director, trustee or partner. (Page 29)
- ▶ SEC MC No. 5 provides the removal of the period within which to file a petition to lift the Order of Revocation as well as the repealing and consolidating of all other issuances of the Commission regarding the same petition. (Page 30)

PEZA Issuance

- ▶ PEZA Memorandum Circular No. 2016-021 transfers the issuance of National Building Code Permits and environmental licenses for locators in the covered ecozones effective 1 June 2016. (Page 30)

BOI Issuance

- ▶ BOI Memorandum Circular No. 2016-002 circularizes the rules on filing a Motion for Reconsideration with the Board of Investments, providing the grounds, contents, and manner of filing thereof. (Page 31)

Court Decisions

- ▶ An appeal to the Court of Tax Appeals (CTA) shall not suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability. However, when in its opinion, the collection by the CIR may jeopardize the interest of the Government and/or the taxpayer, the CTA may suspend the collection at any stage of the proceeding and require the taxpayer either to deposit with the Court the amount or to file a surety bond for not more than double the amount of the assessment.

The CTA may dispense with the requirement for a cash deposit or filing of a surety bond if the method employed by the Commissioner of Internal Revenue in the collection of tax is not sanctioned by law. (Page 32)

- ▶ The Final Decision on Disputed Assessment (FDDA) issued by the Bureau of Internal Revenue (BIR) shall inform the taxpayer of the facts and the laws on which the assessment is made. Otherwise, the decision shall be void.

A void FDDA, however, does not necessarily mean a void assessment. It is as if there was no decision by the Commissioner of Internal Revenue (CIR) on the protest, which is tantamount to a denial by inaction of the CIR. **(Page 35)**

- ▶ Foreign exchange gains derived by a contact center from currency hedging contracts, which are not part of its registered activity, are not covered by the income tax holiday (ITH) incentive. **(Page 37)**
- ▶ When a taxpayer refuses to present its books of accounts and other accounting records, the BIR is justified to disallow 50% of the claimed deductions under the Best Evidence Obtainable Rule, pursuant to Section 6 (B) of the Tax Code and Revenue Memorandum Circular 23-2000. **(Page 37)**
- ▶ A BIR ruling is not required to avail of the CGT exemption under Section 40 (C) (2) of the Tax Code, or in a claim for a refund of the erroneously paid CGT. **(Page 38)**
- ▶ PEZA-registered enterprises may be allowed to deduct expenses, such as royalty payments, which are in the nature of direct costs even though the same are not included in the list of allowable deductions under RR 11-2005. **(Page 39)**
- ▶ Deficiency interest may be imposed on all types of deficiency taxes, and not just on income tax, donor's tax, and estate tax. **(Page 41)**

BIR Rulings

BIR Ruling No. 243-2016 dated 7 June 2016

A domestic construction company engaged by the NHA to construct a housing project under RA No. 7279 or the Urban Development and Housing Act shall be exempt from (i) tax on income directly realized from the construction project and (ii) VAT on the construction activity.

Facts:

A Co., a domestic construction company, was awarded a contract for the construction of a residential project under the Yolanda Housing Program of the National Housing Authority (NHA). The project was identified and certified by the NHA as a socialized housing project under RA No. 7279 or the Urban Development and Housing Act of 1992.

Issues:

1. Is A Co. exempt from tax on income directly realized from the construction project?
2. Is A Co. exempt from VAT on its construction activity?

Ruling:

1. Yes. Under Section 20 (D) (1) of RA No. 7279, A Co. shall be exempt from project-related income taxes on income directly realized from the construction project considering that it is a project contractor engaged to undertake a socialized housing project.

2. Yes. Under Section 23 (D) (3) of RA No. 7279, A Co. shall specifically be exempt from VAT on its housing construction activity. For this purpose, A Co. must issue non-VAT official receipts on its gross receipts from the construction project. However, A Co.'s purchases of goods and services shall be subject to VAT, even if said purchases are to be used for the construction project, since VAT is an indirect tax which can be passed on by the seller of the goods and services.

BIR Ruling No. 231-2016 dated 1 June 2016

Early retirement benefits/separation benefits to be received by teaching and non-teaching personnel of HEIs, who are displaced due to the implementation of the K to 12 Program, shall be exempt from income tax.

Facts:

A group of teaching and non-teaching personnel of Higher Educational Institutions (HEIs) was displaced due to the implementation of the K to 12 Program. They will receive early retirement benefits/separation benefits as a result of the displacement.

Issues:

1. Are the early retirement benefits/separation fees exempt from income tax?
2. Are the 13th month pay and other benefits in excess of the Php 82,000 threshold covered by the income tax exemption?

Ruling:

1. Yes. Under Section 32 (B) (6) (b) of the Tax Code, any amount received by an official or employee as a consequence of separation from service due to death, sickness or other physical disability or "for any cause beyond the control of the said official or employee" shall not be included in the computation of gross income, and as such, shall be exempt from income tax. Considering that the implementation of the K to 12 Program was neither asked for nor initiated by the employees, their separation from employment falls within the meaning of the phrase "for any cause beyond the control of the said official or employee". Hence, their early retirement benefits/separation benefits shall not be subject to income tax, and consequently, to withholding tax.

If the HEIs maintain a reasonable private retirement plan, the benefits to be received by the employees shall be exempt from income tax, provided that (i) the employee had been in the service of the same private firm for at least 10 years and (ii) the employee is at least 50 years old at the time of retirement, pursuant to Section 32 (B) (6) (a) of the Tax Code. On the other hand, if the HEIs do not maintain a reasonable private retirement plan, the retirement benefits under the Labor Code of the Philippines shall apply, i.e., ½ month salary for every year of service of an employee who has reached 60 years old or more, but not beyond 65 years, and rendered at least 5 years of service in the company, which shall be exempt from income tax by express provision of Section 32 (B) (6) (a) of the Tax Code.

2. No. The exemption does not cover the separated employees' 13th month pay and other benefits in excess of the Php 82,000 threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of RR No. 2-98, as amended.

BIR Issuances

[Editor's Note: BIR Commissioner Cesar R. Dulay issued on 1 July 2016, Revenue Memorandum Order (RMO) No. 69-2016, which suspends until further notice, the effectivity of revenue issuances signed by former Commissioner Kim J. Henares during the period covering 1 June to 30 June 2016. Said issuances are summarized below.]

Commissioner Dulay also issued RMO No. 38- 2016, which revokes RMO Nos. 24 and 25-2016, prescribing rules on the investigation of the financial capacity of parties in transactions involving the transfer or sale of properties]

RR No. 5- 2016 amends Section 3 of RR No. 15-2012 by prescribing additional criteria in the accreditation of printers engaged in the printing of official receipts, sales invoices and other commercial receipts and/or invoices.

Revenue Regulations No. 5-2016 dated 1 June 2016

- ▶ In addition to the criteria provided under Section 3 of RR No. 15-2012, the applicant-printer must comply with the following requirements for BIR accreditation:
 1. The printer has no record of any pending criminal complaint filed by the BIR for tax evasion and other criminal offenses under the Tax Code, whether filed in court or in the Department of Justice or subject of final and executory judgment by a court.
 2. The printer has not been tagged in any BIR tax system as "Cannot Be Located Taxpayer", which refers to a status of a registered taxpayer whose whereabouts cannot be located in the address given in the return filed or at the BIR-registered address.
 3. The printer has not been tagged in any BIR tax system as "inactive", which refers to a status of a registered taxpayer under any of the following instances:
 - ▶ A non-individual taxpayer that has notified the BIR district office of the temporary cessation of its business operations;
 - ▶ A taxpayer that has stopped filing all its tax returns for the last two years, which requires the issuance of a notice of investigation;
 - ▶ A newly registered taxpayer who fails to file the required tax returns/ declarations due for the applicable initial quarter;
 - ▶ A taxpayer that may be identified as such by the CIR in a separate revenue issuance.
- ▶ Additional policies and guidelines on the accreditation of printers include:
 1. Accreditation shall be valid for five years from the date of issuance of the Certificate of Accreditation.
 2. The printer shall apply for the renewal of accreditation within 30 days prior to the expiration of the validity period.

3. Only principal and supplementary receipts/ invoices printed by a BIR-accredited printer shall generate input tax for the buyer of goods and/or services.
- ▶ Any act or omission violating the provisions of these regulations shall cause the revocation of the printer's Certificate of Accreditation and the imposition of the corresponding penalties provided by law.
 - ▶ The RR shall take effect 15 days after its publication in a newspaper of general circulation.

(Editor's Note: RR No. 5-2016 was published in the Manila Bulletin on 2 June 2016)

RMO No. 22- 2016 prescribes the policies and guidelines for the issuance of the eCAR.

Revenue Memorandum Order No. 22-2016 issued on 12 May 2016

- ▶ The issuance of manually prepared Certificates Authorizing Registration (CARs), as well as the generation and issuance of a Tax Clearance (TCL2) in the Integrated Tax System (ITS), shall be discontinued starting June 1, 2016.
- ▶ The use of BIR Form No. 2313 (CAR) will be discontinued, and all unused CARs, which are still in the possession of the respective BIR offices, shall be surrendered to the Chief, Accountable Forms Division (AFD).
- ▶ The facilities of the eCAR System, which are accessible through the BIR website, shall be used in the processing, review, and approval of requests for the issuance of eCARs.
- ▶ The eCAR shall be printed on a security paper, which is an accountable form with security features and a bar code.
- ▶ All manually-issued CARs that have not been presented to the Registry of Deeds shall be cancelled, and the concerned Revenue District Officer (RDO)/Large Taxpayer (LT) Division Chief shall replace this with an eCAR.
- ▶ Other manually-issued CARs that are due for revalidation shall be canceled by the concerned RDO/LT Division Chiefs and replaced with eCARs.
- ▶ eCARs shall be presented to the Registry of Deeds within one year from the date of issuance; otherwise, it shall be considered to have expired and have no more force and effect.
- ▶ For transfers involving real properties with certificates of title, the RDO shall issue one eCAR for every real property covered by a certificate of title.
- ▶ For transfers of real properties supported by Tax Declarations, the RDO shall issue one eCAR for each Tax Declaration.
- ▶ For transfers of personal properties, such as cash in banks, where the taxpayer requests for the issuance of a separate eCAR for each bank account, the RDO shall issue certified true copies of the eCAR for presentation to the concerned bank.

RMO No. 26-2016 prescribes additional policies and guidelines in handling disputed assessments.

Revenue Memorandum Order No. 26-2016 issued on 13 June 2016

- ▶ A taxpayer must be given an opportunity to explain his objection to an assessment and to present the necessary supporting documents before an FDDA is issued.
- ▶ A protest against a Preliminary Assessment Notice (PAN) is optional.
- ▶ A Formal Letter of Demand and a Final Assessment Notice (FLD)/(FAN) shall be issued within 15 days from date of receipt by the taxpayer of the PAN, whether the same was protested or not.
- ▶ If the taxpayer, upon receipt of the PAN, accepts and pays the assessment, a FLD/FAN shall be issued to formalize the assessment, and the corresponding Payment Form No. 0605 shall be prepared and filed to acknowledge the settlement of the deficiency tax assessment.
- ▶ Within 30 days from the receipt of the FLD/FAN, the taxpayer shall either:
 1. Accept the assessment, fully or partially, and pay the amount due on the assessment; or
 2. Protest the assessment fully or partially by filing either of the following remedies (the filing of one precludes the filing of the other):
 - ▶ Request for Reconsideration if the taxpayer is no longer submitting any other additional evidence;
 - ▶ Request for a Reinvestigation on the basis of newly discovered evidence, or if there is submission of additional evidence.
- ▶ For that portion of the assessment resolved in favor of the taxpayer, an Authority to Cancel Assessment (ATCA) shall be prepared to acknowledge the cancellation of the assessment.
- ▶ If a request for reinvestigation is made, the taxpayer shall submit all the relevant supporting documents in support of his protest within 60 days from the date of the filing of the protest. Failure to do so will render the assessment final and executory.
- ▶ An evaluation of the protest shall be based exclusively on the documents submitted within this period, and no further document shall be accepted after its expiration.
- ▶ All decisions on protests to the FAN shall be communicated to the taxpayer through the issuance of an FDDA.
- ▶ All protests shall be considered a request for reconsideration unless the protest clearly indicates that it is a request for reinvestigation.
- ▶ A request for reinvestigation shall only be available in a protest to a FAN/FLD and will no longer be available as a remedy after the issuance of an FDDA.

- ▶ An FDDA shall be issued automatically if the protest is not acted upon by the Commissioner's duly authorized representative within 180 days from the date of the filing of the protest in the case of a request for reconsideration, or from the lapse of the 60 day period to submit relevant documents in the case of a request for reinvestigation, and the taxpayer appeals to the Court of Tax Appeals (CTA) within 30 days after the expiration of the 180 days period.
- ▶ All periods provided under RR No. 18-2013 are mandatory and non-extendible.
- ▶ If the FDDA is issued by the Commissioner's duly authorized representative, the taxpayer may file a motion for reconsideration with the Commissioner of Internal Revenue or file an appeal with the CTA within 30 days from receipt of the FDDA.
- ▶ An assessment shall become final, executory and demandable based on the following grounds:
 1. Failure of the taxpayer to file a valid protest within 30 days from receipt of the FLD/FAN;
 2. Failure of the taxpayer to submit within 60 days from the date of filing of the request for reinvestigation, all the relevant supporting documents;
 3. Failure of the taxpayer to appeal to the Commissioner of Internal Revenue or the CTA within 30 days from the date of receipt of the FDDA issued by the Commissioner's duly authorized representative;
 4. Failure of the taxpayer to appeal to the CTA within 30 days from date of receipt of the FDDA issued by the Commissioner;
 5. Failure of the taxpayer to timely file a motion for reconsideration or new trial before the CTA Division, or failure to appeal to the CTA *En Banc* and Supreme Court based on existing Rules of Procedure, or
 6. Failure of the taxpayer to receive any assessment notices because it was served in the address indicated in the BIR's registration database and the taxpayer transferred to a new address, or closed/ceased operations without updating, transferring, or cancelling its BIR registration, as the case may be.

RMO No. 27- 2016 prescribes the procedure for claiming tax treaty benefits for dividends, interest and royalty income of non-resident income earners.

Revenue Memorandum Order No. 27- 2016 issued on 23 June 2016

- ▶ In lieu of the mandatory tax treaty relief application (TTRA), preferential tax treaty rates for dividends, interests and royalties are granted outright by withholding final taxes at applicable treaty rates.
- ▶ Duly-accomplished BIR Form Nos. 1601-F and 1604-CF shall be timely filed before the appropriate RDO where the withholding agents of non-residents are registered.
- ▶ Failure to supply accurate and complete information shall be grounds for the denial of availing of preferential treaty rates and the disallowance of the pertinent expenses of the withholding agent.

- ▶ In the event of an audit investigation, withholding agents shall keep the following supporting documents for substantiation of the claim for availing preferential treaty rates:

Dividends	Interests	Royalties
Consularized Proof of Residency		
<p>Original copy of a duly notarized certificate executed by the Corporate Secretary of the domestic corporation showing the following information:</p> <ul style="list-style-type: none"> ▶ Details of the dividend declaration (with the related Board Resolution); ▶ Number, value and type of shares of the non-resident income earner as of the date of record/transaction, and as of the date of payment of the subject dividends; ▶ Percentage of ownership of the non-resident income earner as of the date of record/ transaction, and as of the date of the payment of dividends; ▶ Acquisition date(s) of the subject shares; and ▶ Mode of acquisition of the subject shares. 	<p>Original or certified copy of the notarized contract of loan or loan agreement.</p>	<p>Original or certified copy of the duly notarized Royalty Agreement, Technology Transfer Agreement, or Licensing Agreement;</p>
<p>Certified copy of the BOI registration of the payor, if applicable, of the dividends/ interests/ royalties, including a sworn statement that such registration has not been cancelled at the time of the transaction.</p>		
		<p>A certified copy of the PEZA registration of the payor of the royalty, or the royalty income recipient (if applicable), including a Sworn Statement that such registration has not been cancelled at the time of the transaction.</p>
		<p>Certified copy of the Intellectual Property Office (IPO) registration.</p>

- ▶ The BIR reserves the right to request other additional documents in the course of audit.
- ▶ Applications for a tax ruling under Section 28 B (5) (b) of the Tax Code, as amended, for a preferential tax rate of 15% on inter-corporate dividends paid to a non-resident foreign corporation (NRFC), shall apply to the NRFC if its country of residence:
 1. Has no effective tax treaty with the Philippines;
 2. Has a worldwide system of taxation; and
 3. Allows a credit against the tax due from the NRFC dividend taxes deemed to have been paid in the Philippines equivalent to 15%.
- ▶ To avail of the reduced rate of 15% on inter-corporate dividends received by NRFC, the NRFC shall file a separate application with the ITAD of the BIR with the following supporting documents:
 1. Application letter;
 2. Authenticated proof of residency;
 3. A consularized copy of the law of the country of the NRFC expressly stating that the country in which the NRFC is domiciled allows a credit against the tax due from the NRFC, taxes deemed to have been paid in a foreign country (Philippines) equivalent to 15%;
 4. Certification from the Corporate Secretary of the domestic corporation stating the important details of the dividend declaration; and
 5. Special Power of Attorney, if applicable.
- ▶ For tax treaty relief on income other than dividends, interest and royalties, the procedure in RMO No. 72-2010 shall continue to apply, and as such, obtaining a ruling shall continue to be required.
- ▶ All TTRAs on dividends, interest and royalties already filed with the ITAD prior to the effectivity of the RMO on June 23, 2016, shall still be processed, and a corresponding ruling shall be issued.

RMC No. 61-2016 prescribes the policies and guidelines for the accounting and recording of transactions Involving "netting" or "offsetting."

Revenue Memorandum Circular No. 61- 2016 dated 13 June 2016

- ▶ Offsetting will not be considered appropriate in recording transactions that are subject to "netting" arrangements agreed upon by parties to a transaction involving trade receivables and payables.
- ▶ The practice of offsetting will usually have the effect of reporting the net amount of the transaction rather than reporting the gross amount for tax and accounting purposes.

- ▶ The practice of “netting” or “offsetting,” and consequently, the accounting and recording of the same and its related transactions in the books of accounts of taxpayers, is strictly prohibited for taxation purposes.
- ▶ The accrued receivables or payables arising from the sale or lease of goods, or the performance of services, shall be recognized at its gross amount for income tax, value-added tax (VAT), and for percentage tax purposes.
- ▶ Income payments subject to creditable or final withholding taxes shall be recorded at its gross amount, regardless of whether the transactions are actually offset, or if the parties have an agreement providing for the net settlement of cash flows.
- ▶ Any amount offset against the income payments, which are not subject to the proper withholding taxes, shall not be allowed as a deductible expense to the payor.
- ▶ In instances where taxpayers will simulate a transaction to resemble, in form, a discount when the transaction is actually a sale of service, the principle of “substance over form” will prevail to ensure that the parties are taxed according to the legal consequences of a sale transaction.
- ▶ The service fees disguised as a discount will be disregarded and considered instead as income subject to the proper withholding taxes.
- ▶ In addition, the service fee disguised as a discount shall not be allowed as a deduction from the gross selling price for VAT purposes.

RMC No. 62- 2016 clarifies the proper tax treatment of passed-on GRT.

Revenue Memorandum Circular No. 62- 2016 dated 13 June 2016

- ▶ The Gross Receipts Tax (GRT) that is “passed-on” to clients and borrowers should form part of the tax base for GRT purposes for the reason that “gross receipts” is based on “actual or constructive receipt of income.” As these entities are directly liable for GRT on gross receipts derived from business operations, the “passed-on” GRT is considered as receipt of gross income.
- ▶ If the GRT is “passed-on” to the bank’s clients, the tax base for GRT purposes shall be the interest received by the client and the “passed-on” GRT.
- ▶ Further, the “passed-on” GRT can be claimed as a deductible expense by the clients, subject to the requirements of deductibility under Revenue Regulations (RR) No. 2-98, as amended by RR No. 12-2013.
- ▶ Banks and non-bank financial intermediaries can claim the GRT paid as a deductible expense for income tax purposes, subject to the actual remittance of the GRT as provided under Section 128 of the Tax Code.

RMC No. 64-2016 further clarifies the nature, characteristics and purpose of tax-exempt organizations and associations enumerated under Section 30 of the Tax Code, as amended.

Revenue Memorandum Circular No. 64-2016 dated 20 June 2016

- ▶ To be entitled to income tax exemption, the following organizations and associations must possess the characteristics, pursue the purposes and engage in activities mentioned below:

Nature	Characteristics	Corporate Purpose	Actual Operation
Labor or Agricultural Organization	<ul style="list-style-type: none"> ▶ Non-stock corporation ▶ Operated either as a labor, agricultural or horticultural organization ▶ Not for profit ▶ Registered with DOLE in the case of a labor organization 	<p><i>Labor Organization:</i></p> <ul style="list-style-type: none"> ▶ Protects and promotes the interest of members by bargaining collectively for better working conditions ▶ Formed to improve the quality of workers' products and efficiency <p><i>Agricultural or horticultural organizations:</i></p> <ul style="list-style-type: none"> ▶ Engaged in raising livestock, harvesting crops or aquatic resources, cultivating useful or ornamental plants, or similar pursuits ▶ Engaged in cultivating the ground, including the preparation of the soil, the planting of seed, the raising and harvesting of crops, and the rearing, feeding, and management of livestock 	<ul style="list-style-type: none"> ▶ Primarily engaged in activities to improve the working conditions of its members, the quality of their products and their efficiency in their respective occupations or the improvement of production techniques
Mutual Savings Bank and Cooperative Banks	<p><i>Mutual Savings Bank:</i></p> <ul style="list-style-type: none"> ▶ Does not have capital stock represented by shares ▶ All earnings, except those used to defray expenses for operations, are distributed to depositors who do not receive any of its profit <p><i>Cooperative Banks:</i></p> <ul style="list-style-type: none"> ▶ Now governed by Republic Act Nos. 8367 ("Revised Non-Stock Savings and Loan Association Act of 1997") and 9520 ("Philippine Cooperative Code of 2008") and not by Section 30 		

Nature	Characteristics	Corporate Purpose	Actual Operation
Beneficiary Society, Order or Association	<ul style="list-style-type: none"> ▶ Organized as a beneficiary society, order or association operating for the exclusive benefit of the members, such as a fraternal organization operating under the lodge system ▶ Organized as a mutual aid association ▶ Non-stock organization of employees that is formed to provide payment for the life, sickness, accident or other benefits exclusively to its members or dependents 	<ul style="list-style-type: none"> ▶ To assist members by providing them benefits through an established system of benefit payments 	<ul style="list-style-type: none"> ▶ Operated either as a fraternal organization under the lodge system or as a mutual aid association or as a non-stock corporation for the above-mentioned purposes ▶ Should have an established system of payment of life, sickness, accident or other benefits to members or their dependents
Cemetery Company	<ul style="list-style-type: none"> ▶ Non-stock corporation ▶ Owned and operated exclusively for the benefit of the lot owners ▶ Chartered solely for burial purposes and any incidental business ▶ Not operated for profit ▶ No part of earnings inures to the benefit of any shareholder or individual 	<ul style="list-style-type: none"> ▶ Cemetery to be used only for disposal of bodies by burial ▶ Will not engage in any business that is not incidental to burial activities ▶ No part of income inures to the benefit of any individual 	<ul style="list-style-type: none"> ▶ Operated solely for burial and other incidental activities ▶ Earnings are used for the operation, maintenance and improvement of cemetery ▶ No part of earnings inures to the benefit of any individual

Nature	Characteristics	Corporate Purpose	Actual Operation
<p>Non-Stock Corporation or Association organized and operated for religious, charitable, scientific, athletic or cultural purposes or for rehabilitation of veterans</p>	<ul style="list-style-type: none"> ▶ Non-stock corporation ▶ Organized and operated exclusively for religious, charitable, scientific, athletic or cultural purposes or for rehabilitation of veterans ▶ No part of net income or asset belongs to or benefits any of the members, organizers, officers or any specific person 	<ul style="list-style-type: none"> ▶ Religious - refers to the promotion, spread and accomplishment of any form of religion, creed or religious belief recognized by the Government of the Republic of the Philippines ▶ Charitable - refers to activities for the relief to the poor, distressed and underprivileged; includes fighting against juvenile delinquency and community deterioration, and providing for free goods and services to the public. ▶ Scientific - refers to undertaking basic, applied and scientific research in the field of agriculture, forestry, fisheries, industry, engineering, energy development, food and nutrition, medicine, environment and biological, physical and natural sciences for the interest of the public. ▶ Athletic - refers to conducting programs on physical fitness and amateur sports development for the country; developing and maintaining recreational facilities, playgrounds and sports centers; and conducting training programs for the development of youth and athletes for national and international competition. ▶ Cultural - refers to undertaking research activities on all aspects of history, social system, customs and traditions; developing, enriching and preserving Filipino arts and culture; developing and promoting the visual and performing arts; and participating in vigorous implementation of bilingual policy through translation and wider use of technical, scientific and creative publications, development of an adaptive technical dictionary and use of Filipino as the medium of instruction. ▶ Rehabilitation of veterans - refers to services extended to Philippine veterans and members of their families because of financial difficulties and attendant problems; and services extended to disabled veterans towards productive life 	<ul style="list-style-type: none"> ▶ Organized and operated for one or more of the specified purposes ▶ No part of its net income inures to the benefit of private stockholders or individuals.

Nature	Characteristics	Corporate Purpose	Actual Operation
Business League, Chamber of Commerce and Board of Trade	<ul style="list-style-type: none"> ▶ Organized as a business league, chamber of commerce and board of trade ▶ Operated as an association of persons who have common business interests, and who limit its activities to work for the common interest ▶ Not for profit ▶ No part of its income or assets shall belong or inure to the benefit of any member, organizer, officer or any specific person 	<ul style="list-style-type: none"> ▶ To promote the common interest of the association 	<ul style="list-style-type: none"> ▶ Activities should be for the improvement of the business conditions of one or more lines of its business, but not for any activity carried on for profit.
Civic League or Organization not organized for profit but operated exclusively for the promotion of social welfare	<ul style="list-style-type: none"> ▶ Non-stock corporation ▶ Exclusively operated for the promotion of social welfare ▶ Not for profit ▶ Net earnings or assets do not inure to any member, or any specific person 	<ul style="list-style-type: none"> ▶ To promote the common good and general welfare of the people of the community 	<ul style="list-style-type: none"> ▶ Regular activities must be exclusively for the promotion of social welfare
Non-Stock and Non-Profit Educational Institution	<ul style="list-style-type: none"> ▶ Non-stock, non-profit corporation ▶ Organized as an educational institution ▶ Registered with the Department of Education (DepEd), Commission on Higher Education (CHED), or Technical Education and Skills Development Authority (TESDA) ▶ Net earnings or assets do not inure to the benefit of any member or any specific person 	<ul style="list-style-type: none"> ▶ To offer educational courses or programs 	<ul style="list-style-type: none"> ▶ Operates as a primary or secondary school, a college, or a professional or trade school that has a regular curriculum, faculty, and enrolled student body ▶ The operation of cafeterias, canteens and bookstores is considered an ancillary activity; these facilities must be owned and operated by the school and located within the school's premises ▶ No part of its net income or assets shall belong or inure to the benefit of any member, or any specific person

Nature	Characteristics	Corporate Purpose	Actual Operation
Government Educational Institution	<ul style="list-style-type: none"> ▶ Established by law or by the LGU ▶ Administered and subsidized by the government or the LGU ▶ Governed by a Board of Trustees or by a Board of Regents ▶ Supervised by the DepEd or CHED 	<ul style="list-style-type: none"> ▶ To operate an educational institution, which does not charge tuition fees to its students and is financed and operated by any agency of the government 	<ul style="list-style-type: none"> ▶ Operates as a primary or secondary school, a college, or a professional or trade school that has a regular curriculum, faculty, and enrolled student body
Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character	<ul style="list-style-type: none"> ▶ Non-stock, non-profit organization ▶ Organized as a farmers', mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company ▶ Income consists solely of assessments, dues, and fees collected from members ▶ Income is for the sole purpose of meeting its expenses 	<ul style="list-style-type: none"> ▶ To operate a mutual typhoon or fire insurance company, ditch or irrigation company, or cooperative telephone company, or like organization 	<ul style="list-style-type: none"> ▶ Operated on a mutual basis and must use their income solely to cover losses and expenses. Any excess can either be returned to its members or retained to cover future losses and expenses ▶ A mutual life insurance organization cannot have policy holders other than its members ▶ Registered cooperative are governed by the "Philippine Cooperative Act of 2008"
Farmers', fruit growers', or like associations organized and operated as a sales agent	<ul style="list-style-type: none"> ▶ Non-stock, non-profit organization ▶ Members are engaged in farming or fruit growing ▶ Income is for the sole purpose of meeting its expenses 	<ul style="list-style-type: none"> ▶ To act as sales agent to its members; remits to the members the proceeds less the selling expenses 	<ul style="list-style-type: none"> ▶ Must establish that they do not have income for their own account ▶ Should remit to the members the proceeds of the sales less selling expenses ▶ Proceeds should be distributed in proportion to the quantity of member's products

- ▶ Tests to determine entitlement to the income tax exemption:
 1. The Organizational Test requires that the corporation's articles of incorporation (AOI) limit its primary purpose to those described under Section 30.
 2. The Operational Test requires that the regular activities of the corporation be exclusively devoted to the purposes specified under Section 30, with no activity being conducted for profit.
- ▶ The following activities are prohibited as they inure to the benefit of trustees, organizers, officers, members, or any specific person:
 1. Payment of compensation, salaries, or honorarium to trustees or organizers;

2. Payment of excessive or unrealistic compensation to its employees;
 3. Provision of welfare aid and financial assistance to its members, if the principal activity is to receive and manage funds for pension or retirement programs;
 4. If donations are made to any person or entity, except those made to other entities formed for the same purpose;
 5. Purchase of goods or services for more than its fair market value from entities where one or more of its officers have an interest; and
 6. Distribution of assets to its trustees, organizers, officers or members after the dissolution and payment of its debts.
- ▶ Except for non-stock, non-profit educational institutions and government educational institutions, the interest from bank deposits, trust funds, and royalties in the Philippines received by other entities are subject to 20% final withholding tax (FWT) or 7.5% FWT.
 - ▶ The exemption under Section 30 of the NIRC does not cover withholding taxes on compensation, or FWT under the Tax Code, as amended.
 - ▶ The purchase of goods, properties, services or importation by the exempt entities is subject to VAT.
 - ▶ The interest and yield from deposits of tax-exempt educational institutions shall be exempt from the 7.5% or 20% FWT if they submit to the RDO concerned, an annual information return and duly audited financial statements together with the following:
 1. Certification from the depository banks stating the amount of the interest income it received from its deposits or passive investments;
 2. Certification of actual utilization of said income for educational purposes; and
 3. Board resolution by the school administration about the proposed projects to be funded by the deposits in the bank.
 - ▶ The gross receipts of tax-exempt educational institutions are exempt from VAT.
 - ▶ Donations made to the following qualified donee institutions are exempt from donor's tax:
 1. Non-profit educational institutions;
 2. Charitable religious, cultural, or social welfare corporation; and
 3. Accredited non-government organization (NGO), trust or philanthropic organization, or research organization.
 - ▶ The following are the requirements for the above entities to qualify as tax-exempt donee institutions:
 1. Incorporated as a non-stock entity;

2. Does not pay dividends;
 3. Governed by trustees who do not receive any compensation;
 4. Devotes all their income to the accomplishment of its purposes in their AOI;
 5. The amount of the donation used for administration purposes must not exceed 30% of the donation; and
 6. For NGOs, they should be accredited by the Philippine Council for NGO Certification (PCNC).
- ▶ Corporations or associations registered under Section 30 must comply with the following primary and secondary registration process and prescriptive periods:
 1. Payment of Annual Registration Fee (ARF) if applicable;
 2. Secure its Certificate of Registration (COR);
 3. Apply for the issuance of an Authority to Print (ATP) receipts/invoices, and register their Book of Accounts.
 - ▶ The issuance of receipts and invoices by entities registered under Section 30 shall be subject to the following rules:
 1. Income derived from its registered business activities shall be issued non-VAT receipts/invoices that indicate the word "exempt" prominently on the face of the receipt/invoice. Otherwise, a VAT receipt/invoice shall be issued.
 2. Official receipts and Certificates of Donation (BIR Form No. 2322) shall also be issued.

RMC No. 65-2016 clarifies the rules on determining the appropriate due date for the filing of returns and payment of taxes when the exact due dates fall on a Saturday, Sunday, or a holiday, both for electronic and manual filers and payers of taxes, as well as for the imposition of penalties for late filing and/or late payment.

Revenue Memorandum Circular No. 65- 2016 dated 23 June 2016

- ▶ For Taxpayers under the Electronic Filing and Payment System (EFPS) and the Online eBIR Form System:
 1. If the due date for the filing of the return and payment of taxes falls on a Saturday, Sunday or a holiday, the deadline is moved to the next business day.
 2. The transmission of electronic returns and electronic payment must be made not later than 12 midnight of the due date.
 3. Failure to do so will subject the taxpayer to the appropriate penalty for late filing or late payment.
 4. The taxpayer must present written advice from the BIR stating that the electronic system for filing and payment of taxes is down or unavailable.
 5. The advice includes the appropriate deadline for manual filing and the electronic filing of tax returns initially filed manually.
 6. Failure to file the returns and pay the taxes on or before the deadline provided in the advice will warrant the imposition of penalties.

- ▶ Manual Filers or those using the Offline eBIR Forms Package:
 1. Manual Filers refer to taxpayers not mandatorily covered or enrolled under either the EFPS or the Online eBIR Form System or are users of the Offline eBIR Form Package.
 2. If the due date for the filing of the return and payment of taxes falls on a Saturday, Sunday, or a holiday, the filing and payment must be done on the next business day.
 3. Returns filed and taxes paid beyond the due date will subject the taxpayer to the appropriate penalty for late filing or late payment.

BOC Issuances

CMO No. 13-2016 lays down the rules on the use of E2M for transfers of containerized sea freight and airfreight.

Customs Memorandum Order No. 13-2016 dated 1 June 2016

- ▶ This CMO is issued to institute appropriate security measures to ensure security of transfer of sea freight to off-dock container yards ("CY") or container freight stations ("CFS"), and of transfer of air freight to airport customs bonded warehouses ("CBW").
- ▶ CY/CFS/Airport CBW must apply for a Transmit Permit through the Value Added Service Provider ("VASP"), who will route the same to the BOC-VASP Gateway. The Deputy Collector for Operations shall approve this in the system after review and evaluation, and shall then approve and sign on the printed copy of the Transmit Permit.
- ▶ Pending the development of an appropriate e-payment system and to ensure Transit Permit Fees are paid, CY/CFS/Airport CBW operators availing of cargo transfers shall put up a deposit with the Collection Division of the Port with a minimum balance equivalent to its one month transfer fees.
- ▶ CY/CFS/Airport CBW operators shall secure a General Transportation Surety Bond ("GTSB"), the face value of which is determined by the BOC, with supporting documents, from any of the BOC accredited insurance agency in the port of discharge and register it with the Bonds Division of the airport.
- ▶ Manual processing of the Transmit Permit application shall only be allowed in case of BOC computer systems breakdown or power failure resulting in non-operational computer systems. In this case, the manual processing of the Transit Permit Documents shall be authorized by the Deputy Commissioner, MISTG, or his authorized representative as he deems necessary.
- ▶ This order took effect on 16 June 2016. All orders inconsistent with this CMO are repealed, superseded or modified accordingly.

CMO No. 10-2016 provides the procedures for electronic filing of informal entry for non-commercial air shipments nationwide.

Customs Memorandum Order No. 14-2016 dated 1 June 2016

- ▶ This CMO is issued to implement the electronic filing of informal entries using the Single Administrative Document ("SAD") as well as to effect a smooth transition from the current manual procedures to the intended procedures through the BOC Value Added Service Providers ("VASPs").

- ▶ This CMO covers informal entries for non-commercial shipments discharged at all airports nationwide, and also covers consignments carried either as freight or as baggage by Air Express Operators (“AEO”) and Airfreight Forwarders / Consolidators, except for the following:
 1. Prohibited / regulated imports under Philippine Laws;
 2. Dangerous goods;
 3. Animal, fish and fowl whether live or frozen;
 4. Foodstuff and highly perishable articles;
 5. Human remains or cadavers;
 6. Coins, cash, paper money and other forms of negotiable instruments equivalent to cash; and
 7. Personal effects of Balikbayans, OFWs and other travelers.
- ▶ Declarants/customs brokers shall lodge using the Informal Entry-Single Administrative Document (“IE-SAD”) through the VASP, subject to existing regulations on value, weight and commodity limitations for informal entries. An IE-SAD shall cover only one house airway bill (“HAWB”). The Informal Entry Division shall manually process the IE-SAD. Payment of fees shall be settled through the BOC Cashier.
- ▶ Shipments that do not qualify for informal entry shall be lodged under formal entry. Shipments that are lodged under IE-SAD and later on tagged as not qualified under informal entry system must be reported as cancelled to the VASP.
- ▶ The IE-SAD shall be initially implemented at the Collection Districts of NAIA, Clark and Cebu. For other airports, the Commissioner of Customs shall issue a Memorandum Order to announce the implementation of the IE-SAD.
- ▶ This order took effect on 16 June 2016. All BOC rules and regulations inconsistent with this Order are repealed, superseded or modified accordingly.

CMO No. 16-2016 provides for the operational guidelines in the implementation of Republic Act No. 10668, otherwise known as “An Act Allowing Foreign Vessels to Transport and Co-Load Foreign Cargoes for Domestic Transshipment and for Other Purposes”.

Customs Memorandum Order No. 16-2016 dated 10 June 2016

- ▶ This CMO is issued to lower the cost of shipping export cargoes from Philippine ports of entry to international ports, as well as import cargoes from international ports.
- ▶ The following terms are defined for purposes of this CMO:
 1. **Co-loading** refers to the agreements between two or more international sea carriers bound for a specified destination to load, transport, and unload the container van or cargo of another carrier bound for the same destination.
 2. **Recipient vessel** refers to the foreign vessel that agrees to receive and carry foreign cargoes from the transferor vessel to its port of final destination.
 3. **Transferor vessel** refers to the foreign vessel that transfers its foreign cargoes to a recipient vessel for co-loading.

- ▶ *Permit for Co-Loading* - The foreign ship operator or agent of the foreign recipient vessel shall request for a permit for co-loading, to be filed with the Office of the Deputy Collector for Operations (“ODCO”), using the prescribed form 12 hours before arrival of the vessel, and it shall pay the administrative fee. The approved permit for co-loading shall be sent via electronic mail and / or fax to the Office of the Deputy Collector for Operations or equivalent office at the port of final destination immediately upon approval.
- ▶ *Manual Discharge* - The ODCO or equivalent office at the port of discharge shall follow the procedure for “manual discharge” under the E2M system for cargoes subject to co-loading.
- ▶ *Arrival, Discharge and Loading of Co-Loaded Cargoes* - The transferor vessel shall submit the hard copies of the Inward Foreign Manifest (“IFM”) of the goods intended to be co-loaded as well as the approved permit for co-loading to the Customs Senior Boarding Officer upon arrival.
- ▶ Export of cargo shall be covered by an export declaration, at the port of loading, whether or not passing through another Philippine port of entry, before the same is loaded for export in another foreign vessel for delivery to the foreign port of destination.
- ▶ The BOC shall issue a Special Permit to Load for domestic movement (SPL-DM) with reference to the domestic leg in case the empty container is transferred from one Philippine port to another, and a Special Permit to Load for Immediate Exportation (SPL-IE) in case the foreign empty container is loaded by a foreign vessel for exportation.
- ▶ The requirement for boat notes is dispensed with for purposes of co-loading under this CMO. Non-compliance by masters or agents of vessels with the requirements prescribed under this Order shall warrant a penalty of P 10,000.
- ▶ This Order takes effect immediately. All orders, rules and regulations, and other issuances, or parts thereof, inconsistent with the provisions of this Order are repealed or modified accordingly. If any provision of this Order is declared invalid or unconstitutional, other provisions hereof which are not affected thereby shall remain in full force and effect.

BSP Issuances

Circular No. 912 provides for the Mandatory Implementation Date and Closure of Early Adoption Window of Philippine Financial Reporting Standards 9 Financial Instruments.

BSP Circular No. 912 dated 27 May 2016

- ▶ The Monetary Board, in its Resolution No. 814 dated 5 May 2016, approved the following amendments to the guidelines on the mandatory implementation date and closure of the early adoption window of Philippine Financial Reporting Standards (PFRS) 9 Financial Instruments.
- ▶ Subsection X191.3 of the Manual of Regulations for Banks (MORB) and Subsection 4191Q.3 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF) are hereby amended to set the mandatory implementation date and close the early adoption window of PFRS 9 Financial Instruments for banks/quasi-banks, including their trust entities.

“Subsection X191.3/4191Q.3 (2008 - X161.2/2008 - 4161Q.2) Philippine Financial Reporting Standards/Philippine Accounting Standards

“xx

Notwithstanding the exceptions in items “a”, “b” and “c”, the audited financial statements required to be submitted to the Bangko Sentral in accordance with the provisions of Subsection X190.1/4190Q shall in all respects be PFRS/PAS compliant:

Provided, That FIs shall submit to the Bangko Sentral adjusting entries reconciling the balances in the financial statements for prudential reporting with that in the audited financial statements.

Guidelines on the adoption of PFRS 9 Financial Instruments

Banks/Quasi-banks, including their trust entities, shall adopt the full provisions of PFRS 9 Financial Instruments only upon its mandatory effectivity date of 01 January 2018. Prior to said mandatory effectivity date, financial instruments of banks/quasi-banks, including their trust entities, shall continue to be accounted for in accordance with the provisions of PAS 39 under Appendix 33 of the MORB/Appendix Q-20 of the MORNBFi.

As an exception, banks/quasi-banks, including their trust entities, which have early adopted PFRS 9 (2009 and 2010) as of 31 December 2015, shall continue to account for their financial instruments in accordance with the provisions of Appendix 97 of the MORB/Appendix Q-56 of the MORNBFi until 31 December 2017.

Penalties and sanctions. xxx”

- ▶ Subsections/Section 4161S.2/4161P.2/4761N of the MORNBFi are hereby amended to set the mandatory implementation date and close the early adoption window of full PFRS 9 Financial Instruments for BSP-supervised financial institutions, including trust entities.

“Subsections/ Section 4161S.2/4161P.2/4161N Philippine Financial Reporting Standards/Philippine Accounting Standards

“xx

Notwithstanding the exceptions in items “a”, “b” and “c”, the audited financial statements required to be submitted to the Bangko Sentral in accordance with the provisions of Appendix S-2/Appendix P-2/Section 4172N shall in all respect be PFRS/PAS compliant: *Provided*, That FIs shall submit to the Bangko Sentral adjusting entries reconciling the balances in the financial statements for prudential reporting with that in the audited financial statements.

Non-stock savings and loan associations/Pawnshops/NBFIs shall adopt the full provisions of PFRS 9 Financial Instruments only upon its mandatory effectivity date of 01 January 2018. Prior to said mandatory effectivity date, financial instruments of non-stock savings and loan associations/pawnshops/NBFIs shall continue to be accounted for in accordance with the provisions of PAS 39.”

- ▶ Appendix 97/Q-SA of the MORB/MORNBF1 are hereby re-named to Guidelines Governing the Implementation/Early Adoption of Philippine Financial Reporting Standards (PFRS 9) Financial Instruments as of 31 December 2015 and further amended as follows:

“Guidelines Governing the Implementation/Early Adoption of Philippine Financial Reporting Standards (PFRS 9) Financial Instruments as of 31 December 2015 (Appendix to Subsec. X191.3/Subsec. 4191Q.3)

xx

Section 3. Early Adoption of PFRS 9

The guidance provided in this Section shall apply to FIs that have early-adopted PFRS 9 as of 31 December 2015. The date of initial application of PFRS 9 is the date when the FI first applies the requirements of PFRS 9. If the date of initial application is prior to 01 January 2011, the date of initial application can be any date between 01 January 2010 up to 31 December 2010. If the date of early application is on or after 01 January 2011 up to 31 December 2015, the date of initial application must be the first day of the calendar year or fiscal year adopted by the FI (e.g., 01 January).

An FI that has early-adopted PFRS 9 (2009 and 2010) as of 31 December 2015 shall observe the requirements of PFRS 9 as provided in this Appendix.

FIs shall, likewise, observe the following guidelines:

1. xx
 7. Report on initial application of PFRS 9. A bank/QB and each of its subsidiary banks/QBs that opt to early adopt PFRS 9 shall submit a one-time solo Report on Initial Application of PFRS 9 to the Bangko Sentral through the SDC. The report which shall be considered a Category A-1 report shall be submitted to the Bangko Sentral in accordance with the following timelines:
 - a. xx
- xx
- c. For FIs which initially apply PFRS 9 on 01 January 2012 up to 31 December 2015 - not later than 15 banking/business days from the end of the calendar or fiscal year of initial application of PFRS 9.

xx

Section 4. Transition Rules

FIs shall observe the transition rules provided under PFRS 9 as well as the following:

1. xx
4. An FI may choose to adopt the provisions of PFRS 9 issued in 2009 or the provisions of PFRS 9 issued in 2010 on or before 31 December 2015.

5. An FI that has adopted PFRS 9 on financial assets in 2010 need not submit revised FRCP/CSOC reports that conform with Section 2 of this Appendix for periods prior to 31 December 2010. It may adopt the provisions of PFRS 9 on financial liabilities on or before 31 December 2015: *Provided*, That it does not re-apply the transitional provisions of the said standard on its financial assets: *Provided, further*, That the FI complies with the submission guidelines set forth under Item Nos. "6", "7", and "8" below, as applicable: *Provided, finally*, That the FI limits the information that it shall report in the one-time solo Report on Initial Application of PFRS 9 to that arising from its adoption of the provisions of PFRS 9 on financial liabilities.
6. xx
7. An FI that has early-adopted PFRS 9 on 01 January 2012 up to 31 December 2015 shall reflect the requirements of the said standard in its FRP/CSOC report as of the end of the calendar or fiscal year of initial application of PFRS 9.
8. An FI is expected to comply with the reportorial and disclosure requirements of the Securities and Exchange Commission on the adoption of PFRS 9.

Section 5. Sanction

xx"

- ▶ 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: Circular No. 912 was published in The Standard on 3 June 2016.]

Circular No. 913 provides for the Revised Features of Monetary Operations under the IRC System.

BSP Circular No. 913 dated 2 June 2016

- ▶ The Monetary Board, in its Resolution No. 961 dated 2 June 2016, approved the following amendments to the Manual of Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) to operationalize the revised features of the Bangko Sentral ng Pilipinas' monetary operations under the IRC system:
- ▶ Subsection X234.6 of the MORB and Subsection 4101Q.6 of the MORNBFI shall be amended by not allowing the Term Deposit Facility (TDF), the Oversight Deposit Facility (ODF), and Reverse Repurchase agreements with the Bangko Sentral, as subject of sale, discounting, assignment or negotiation on a with or without recourse basis.
- ▶ Subsection X240.6 (e) of the MORB shall be amended to refer to the new deposit facility of the BSP as follows:

"§ X240.6 Liquidity floor.

Xxx

- e. Placement of banks in the Term Deposit Facility (TDF) and the Overnight Deposit Facility (ODF) of the Bangko Sentral.

Xxx”

- ▶ Subsections X409.2 (e) of the MORB and 4409Q.2 (e) of the MORNBF1 shall be amended to refer to the new deposit facilities of the BSP.

“§ X409.2 Lending and investment disposition.

Xxx

- e. Placements in the Bangko Sentral Term Deposit Facility (TDF) and the Overnight Deposit Facility (ODF) subject to the applicable provisions of Section X601 and *Appendix 78a*.

Xxx”

“§ X409.2 Lending and investment disposition.

Xxx

- e. Placements in the Bangko Sentral Term Deposit Facility (TDF) and the Overnight Deposit Facility (ODF) subject to the applicable provisions of Section 4601Q and *Appendix Q-47a*.

Xxx”

- ▶ Part A of Part Six of the MORB/MORNBF1 are also amended by this Circular
- ▶ Annexes A, A-1, A-2, and A-3 of this Circular shall replace the corresponding Appendices of the MORB/MORNBF1, as follows:
 1. Annex A of this Circular on Settlement of Interbank Transactions *vis-a-vis* Covering Reserve Requirement/Deficiency of Bank’s Demand Deposit Account with the Bangko Sentral shall replace Appendix 39 of the MORB.
 2. Annex A-1 of this Circular on the Guidelines on the Prohibition against the Use of Funds from Non-Resident Sources for Placements in the Bangko Sentral’s Term Deposit Facility (TDF) and the Overnight Deposit Facility (ODF) shall replace Appendix 78 of the MORB/Q-47 of the MORNBF1.
 3. Annex A-2 on the Access of Trust Departments/Entities which are Counterparties in the Term Deposit Facility (TDF) and the Overnight Deposit Facility (ODF) of the Bangko Sentral shall replace Appendix 78a of the MORB/Q-47a of the MORNBF1.
 4. Annex A-3 on the Guidelines for Days Declared as Public Sector Holidays shall replace Appendix 84 of the MORB/Q-49 of the MORNBF1.

- ▶ Appendix T-1 of the MORNBF1 is amended to refer to the revised appendices as follows:

	Appendix	Reference in T Regulations
Xxx	Xxx	Xxx
Q-47	Guidelines on the Prohibition Against the Use of Funds from Non-Resident Sources for Placements in the Bangko Sentral's Term Deposit Facility (TDF) and Overnight Deposit Facility (ODF) of Bangko Sentral	Sec. 4402T Applicable Regulations on Trust and Other Fiduciary Activities
Q-47a	Access of Trust Departments/Entities which are Counterparties in the Term Deposit Facility (TDF) and the Overnight Deposit Facility (ODF) of the Bangko Sentral	Sec. 4409Q Trust and Other Fiduciary Business (except Subsections 4409Q.4 Ceiling on Loans; 4409Q.8 Tax-exempt Individual Trust Accounts)
Xxx	Xxx	Xxx

- ▶ The Financial Reporting Package (FRP), issued under Circular No. 512 dated 3 February 2006, as amended, and Simplified FRP issued under Circular No. 644 dated 10 February 2009, as amended, are further amended by this Circular to (a) revise the Manual of Accounts to incorporate the definition of the new facilities under the IRC and (b) revise the reporting templates of the FRP and Simplified FRP.
- ▶ The FRP for Trust Institutions (FRPTI) issued under Circular No. 609 dated 26 May 2008, as amended, is further amended by this Circular to (a) revise the Manual of Accounts to incorporate the definition of the new facilities under the IRC, and (b) revise the reporting templates of the FRPTI.
- ▶ The guidelines governing the mode and submission of the revised electronic reportorial templates of the (1) Financial Reporting Package under Circular No. 512 dated 3 February 2006, as amended and (2) the FRPTI under Circular No. 609 dated 26 May 2008, as amended, shall be covered by a separate issuance.
 1. QBs shall report transactions in the BSP's facilities using the existing Consolidated Statement of Condition (CSOC) template as follows:
 - ▶ Placements in the ODF and TDF shall be recorded under the "Due from Bangko Sentral ng Pilipinas - Reserves" account of the CSOC.
 - ▶ Borrowings from the OLF shall be recorded under the "Bills Payable - Others" sub-account of the CSOC and under Item A.1.d. of Schedule S.

Reverse repurchase agreements with the Bangko Sentral shall continue to be recorded under the "Trading Account Securities-Loans - Government Securities Purchased under Reverse Repurchase Agreements with the BSP" sub-account of the CSOC. Repurchase agreements with the Bangko Sentral shall continue to be recorded under the "Bills Payable - Deposit Substitutes" sub-account of the CSOC and Item A.3.a of Schedule S.

2. The following provisions are hereby deleted: Subsections 1390 and 2390 of the MORB; Appendices 78b and 78c of the MORB; and Appendices c-47b and Q-47c of the MORBNBFI.
3. This Circular shall take effect on 3 June 2016.

[Editor's Note: Circular No. 913 was published in the Manila Bulletin and The Philippine Star on 3 June 2016.]

SEC Opinion and Issuances

SEC-OGC Opinion No. 16-15 dated 1 June 2016

The nationality of a non-stock corporation is computed according to the extent of voting powers of its members. A foreign corporation cannot acquire land in the Philippines.

Facts:

"Foundation" is a non-stock, non-profit foreign corporation established here in the Philippines since 1991. It is organized solely to conduct charitable services. Foreign nationals contributed Php 37,000 or about 90% of the total initial capital. Filipinos, however, only make up 2 out of 5 incorporators and contributed Php 3,000 or less than 10% of the total initial capital. The Foundation has 7 board members with 4 foreigners and 3 Filipinos. It seeks to expand and consequently acquire land in the Philippines.

Issues:

1. How is a nationality of a foreign corporation determined in relation to the constitutional provision on land acquisition?
2. Can a foreign corporation acquire land in the Philippines?
3. If the Foundation is disqualified from acquiring land, how can it change its nationality?

Held:

1. The nationality of a non-stock corporation, in relation to the constitutional provision on land acquisition, is computed on the basis of the nationality of its members. In computing such ratio, the extent of voting power of the members should be taken into consideration since it is the power to vote that determines control in a corporation. Accordingly, a corporation is considered foreign if foreigners constitute at least 60% of the voting powers of the said corporation.
2. A foreign corporation cannot acquire land in the Philippines. Under Article XII of the 1987 Constitution and Commonwealth Act No. 141, only corporations or associations with at least 60% capital stock owned by Filipinos and which are organized and constituted under the laws of the Philippines may acquire or own public land in the Philippines.
3. The Corporation Code grants a non-stock corporation the capacity to admit members. The Foundation may resort to increasing its Filipino membership in order to meet the sixty percent requirement, subject also to the sixty percent voting rights to Filipinos. Consequently, the Foundation cannot hold on to Philippine land until it has complied with the statutory conditions.

SEC MC No. 5 provides for the removal of the period within which to file a petition to lift the Order of Revocation as well as the repeal and consolidation of all other issuances of the Commission regarding the same petition.

SEC Memorandum Circular No. 5 dated 9 June 2016

- ▶ This Circular covers (a) corporations registered from 1936 - 2009, including those corporations covered by suspension orders and revocation orders whose certificates were revoked for failure to comply with the reportorial requirements and (b) corporations which shall subsequently be issued Orders of Suspension for non-compliance.
- ▶ This will not apply to corporations whose terms have already expired and to corporations whose certificates were suspended and revoked due to fraud/misrepresentation in the procurement of the certificate of registration.
- ▶ The Commission has resolved to remove the deadline for the filing of Petitions to set aside the Order of revocation or suspension.
- ▶ Petitions shall only be accepted upon showing by substantial evidence that the corporation is an ongoing concern or that it has not ceased operations even during the period of revocation or suspension up to the present.
- ▶ Petitions of corporations with pending intra-corporate dispute between two or more groups claiming ownership over the same will only be accepted upon the finality of a court decision resolving the dispute.

[Editor's Note: Memorandum No. 5 was published in The Philippine Star & The Manila Times on 18 June 2016]

SEC MC No. 6 provides the guidelines on the principal office address of a corporation and address of each incorporator, director, trustee or partner.

SEC Memorandum Circular No. 6 dated 9 June 2016

The SEC directs all affected corporations and partnerships to comply with the following:

- ▶ The specific address of their principal office and specific address of each incorporator, stockholder, director, trustee or partner should be stated in the AOI or AOP.
- ▶ All foreign corporations applying for license to do business in the country should indicate in their application the following:
 1. Specific address of the principal office of the corporation in the country of incorporation, of the resident agent, of the principal office and place of operation in the country, of the present directors and officers.
- ▶ State in the GIS the specific address of the principal office and specific addresses of each stockholder, officer, director or trustee.
- ▶ Pursuant to MC No. 9, series of 2015, all corporations and partnerships whose AOI or AOP indicate a vague general address were given until 31 December 2015 to file an Amended AOI or Amended AOP. Failure to effect a change before the deadline will lead to a "one-time" penalty.
- ▶ In relation to SEC MC No. 22, series of 2014, foreign corporations must submit a "Notification Update Form" signed under oath by the president or resident agent of the foreign corporation within 30 days from the occurrence of change in its principal office address.

[Editor's Note: Memorandum No.6 was published in The Philippine Star & The Manila Times on 18 June 2016]

SEC MC No. 7 calls for the compliance with RA No. 9510, otherwise known as the CISA, which requires entities that provide credit facilities to submit basic credit data and updates thereon to the CIC.

SEC Memorandum Circular No. 7 dated 21 June 2016

- ▶ Financing Companies (FCs) are required to submit their basic credit data to the CIC on or before 31 August 2016 pursuant to CIC Circular No. 2, Series of 2015.
- ▶ Lending Companies (LCs) and Microfinance Nongovernment Organizations (MF-NGO) will be subsequently required to comply with the requirements under the CISA.
- ▶ Thus, the FCs, LCs and MF-NGOs are required to submit to the SEC a certification proving that the corporation has fully complied with the requirements of the CIC within 15 days from the date of its compliance.

[Editor's Note: Memorandum No. 7 was published in the Business Mirror on 24 June 2016.]

PEZA Issuance

PEZA Memorandum Circular No. 2016-021 transfers the issuance of National Building Code Permits and environmental licenses for locators in the covered ecozones effective 1 June 2016.

PEZA Memorandum Circular No. 2016-021 dated 31 May 2016

- ▶ Locators in the following ecozones shall secure their National Building Code (NBC) Permits and environmental licenses from the Office of the PEZA Building Official and Environment, Health, and Safety Division of the Cavite Economic Zone (CEZ):
 1. Laguna International Industrial Park (LIIP-SEZ)
 2. Laguna Technopark (LT-SEZ)
 3. Laguna Technopark (LT Annex-SEZ)
 4. Greenfield Automotive Park (GAP-SEZ)
 5. Toyota Sta. Rosa (Laguna) (Toyota SEZ)
 6. All SEZs in Cavite Province
- ▶ Locators in the following ecozones shall secure their NBC Permits and environmental licenses from the Office of the PEZA Building Official and Environment, Health, and Safety Division of the Baguio City Economic Zone (BCEZ):
 1. Fort Ilocandia Tourism Economic Zone
 2. Pangasinan Industrial Park II
 3. Sanctuary IT Building
 4. Venvi IT Hub
 5. Ecofuel Agro Industrial Zone
 6. Angeles Industrial Park
 7. Central Technopark
 8. Clark Special Economic Zone
 9. Clark TI Special Economic Zone
 10. eNTEC Building
 11. Luisita Industrial Park
 12. Pampanga Economic Zone
 13. Robinsons Luisita
 14. SM City Clark IT Park
 15. SM City Pampanga
 16. Subic Shipyard Special Economic Zone
 17. Tarlac Provincial Information Technology Park II
 18. TECO Industrial Park

BOI Memorandum Circular No. 2016-002 circularizes the rules on filing a Motion for Reconsideration with the Board of Investments, providing for the grounds, contents, and manner of filing thereof.

BOI Issuance

BOI Memorandum Circular No. 2016-002 dated 22 June 2016

- ▶ **Grounds for Filing a Motion for Reconsideration (MR)**
 1. Grounds for filing (any of the following):
 - ▶ Fraud, accident, or mistake which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;
 - ▶ New evidence has been discovered which materially affects the decision rendered;
 - ▶ The decision is not supported by the evidence on record;
 - ▶ Errors of law or irregularities have been committed and prejudicial to the interest of the party; or
 - ▶ The decision is contrary to law.
 2. An MR filed outside the above grounds will be immediately dismissed.

- ▶ **Timing and Manner of Filing**
 1. Timing: The MR must be filed within 30 days from receipt of the Board's decision.
 - ▶ Timely filing of the MR shall stay the execution of the decision sought to be reconsidered
 - ▶ The MR is deemed perfected only upon payment of the necessary filing fee
 2. Manner of filing:
 - ▶ Petitioner/Movant shall prepare and file three copies
 - ▶ Filing may be done either by registered mail or by personal delivery
 - ▶ The MR must be filed with the Records Division of the BOI Central Office or BOI Extension Office (Cagayan de Oro, Cebu, Davao)
 3. Procedure if filed with BOI Central Office:
 - ▶ Upon filing, the Records Division shall docket the MR and assign to it a case number.
 - ▶ The docket will then be forwarded to the Arbitration, Mediation, and Litigation Division for preparation of the Order of Payment, which petitioner/movant shall present to the Cashier for payment.
 4. Procedure if filed with BOI Extension Office:
 - ▶ Upon filing, the BOI Extension Office shall issue the Order of Payment and collect payment thereon.
 - ▶ Upon presentation of proof of payment, the MR will be transmitted to the BOI Central Office - Records Division for docketing and assignment of case number.

- ▶ **Form, Contents, Format**
 1. Form:
 - ▶ The MR must be verified (i.e., accompanied by an affidavit stating that (i) the affiant has read the motion, and (ii) the allegations therein are true and correct of his personal knowledge or based on authentic records)
 - ▶ The MR shall include the following:
 - a. Caption setting forth the name and address of the Board of Investments
 - b. Name of the parties: (i) BOI Registered Enterprise, indicating its Registered Activity and Certificate of Registration No., as the Petitioner/Movant, and (ii) the Concerned Service - Board of Investments as the Respondent

- c. Docket number
 - d. Title of the pleading, which shall be "Motion for Reconsideration"
2. Contents:
 - ▶ Specific material dates showing that the MR is filed within the prescribed period
 - ▶ Concise statement of the facts and issues, and the grounds relied upon for the MR
 - ▶ Clear and concise presentation of the arguments in support of each issue
 - ▶ Duly certified true copies of documentary evidence
 - ▶ Relief sought
 3. Format: The MR shall be printed or typewritten on legal size bond paper, using font size 13 with 1.5 spacing.
 4. Only one MR shall be allowed.
- ▶ **Appeal**
 1. An appeal on any decision, order or resolution of the Board may be filed directly with the Office of the President or the Court of Appeals, as the case may be, within the prescribed periods provided by law and the Rules of Court, respectively.

Court Decisions

Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao vs. The Court of Tax Appeals and the Commissioner of Internal Revenue

Supreme Court (Second Division) G.R. No. 213394 promulgated 06 April 2016

An appeal to the CTA shall not suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability. However, when in its opinion, the collection by the CIR may jeopardize the interest of the Government and/or the taxpayer, the CTA may suspend the collection at any stage of the proceeding and require the taxpayer either to deposit with the Court the amount or to file a surety bond for not more than double the amount of the assessment.

The CTA may dispense with the requirement for a cash deposit or filing of a surety bond if the method employed by the Commissioner of Internal Revenue in the collection of tax is not sanctioned by law.

Facts:

Emmanuel D. Pacquiao (or Pacquiao) was able to amass income from both the Philippines and the United States (US) as a world-class professional boxer. His income from the US came primarily from boxing matches while his income from the Philippines consisted of talent fees from product endorsements, advertising commercials and television appearances.

Pacquiao filed his 2008 income tax return (ITR) and shortly thereafter, the BIR Revenue District Office No. 43 issued a Letter of Authority (LA) for the audit of his books for 2008.

Pacquiao filed his 2009 ITR, which failed to reflect his income sourced from the US. He also failed to file his Value Added Tax (VAT) returns for 2008 and 2009.

Respondent Commissioner of Internal Revenue (CIR) issued another LA authorizing the BIR's National Investigation Division to examine the books of both Pacquiao and his wife, Jinkee Pacquiao (or Jinkee), from 1995 to 2009.

The Spouses Pacquiao questioned the propriety of the investigation and argued that the BIR already investigated them for the years prior to 2007 and have not found any fraud, and that they are already being investigated for 2008.

The BIR countered that fraud had been established and that the Spouses will be given the opportunity to present documents with regard to the civil aspect of the case. The CIR also justified the reinvestigation of the years prior to 2007 pursuant to a fraud investigation under the Run After Tax Evaders (RATE) program of the BIR.

The BIR issued its Notice of Initial Assessment - Informal Conference (NIC) to the Spouses, informing them of their deficiency income taxes for 2008 and 2009, based on the best evidence obtainable, totaling Php2.26 billion inclusive of interests and charges.

The CIR then issued the Preliminary Assessment Notice (PAN), finding the Spouses also liable for deficiency VAT for 2008 and 2009, based on third-party information.

The Spouses filed their protest against the PAN, which the CIR denied. The BIR then issued its Formal Letter of Demand (FLD) for deficiency income tax and VAT for 2008 and 2009.

After the Spouses questioned the findings, the BIR issued its Final Decision on Disputed Assessment (FDDA) addressed to Pacquiao only, for deficiency income tax and VAT for 2008 and 2009 totaling Php2.26 billion inclusive of interests and surcharges.

The BIR then sent the Spouses a Final Notice Before Seizure (FNBS) as their last opportunity to settle their liabilities before the BIR proceeds against their property.

The Spouses Pacquiao requested that they be allowed to pay their deficiency VAT liabilities in installments, which they eventually did. They appealed the deficiency income tax assessments to the CTA.

Pending resolution of their appeal, they sought the suspension of the issuance of warrants of distraint and/or levy and warrants of garnishment. The BIR denied the request to defer the collection enforcement for lack of legal basis and proceeded to issue the warrants.

The Spouses asked the CTA to lift the warrants and to dispense with the requirement for a cash deposit or the filing of a bond arguing that the CIR's assessment of their liabilities was highly questionable. They manifested that they were willing to file a bond for such reasonable amount to be fixed by the Court.

The CTA ordered the CIR to desist from collecting the deficiency tax assessments and noted that the amount sought to be collected was way beyond the Spouses' net worth of P1.18 billion, based on Pacquiao's Statement of Assets, Liabilities and Net Worth. However, the CTA ruled that there was no justification for the Spouses to deposit less than the amount of P3.3 billion or post a bond of less than the amount of P4.9 billion.

This is pursuant to Section 11 of Republic Act (RA) No. 1125, as amended, which provides that no appeal taken to the CTA from the decision of the CIR shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability. However, "when in the opinion of the Court the collection by the aforesaid government agencies may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."

The Spouses Pacquiao appealed to the Supreme Court.

Issue:

Is there an exception to the cash deposit or bond requirement under Section 11 of RA 1125? If so, does the exception apply in this case?

Ruling:

Yes, there is an exception to the requirement for a cash deposit or bond.

Pursuant to the case of ***Collector of Internal Revenue vs. Jose Avelino***, the courts may dispense with the requirement “if the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law.” In the Avelino case, the demand of then CIR was made without authority of law because it was made five years and 35 days after the last two returns of Jose Avelino were filed, which is clearly beyond the three-year prescriptive period to assess.

In ***Collector of Internal Revenue vs. Aurelio Reyes***, the Supreme Court ruled that the cash deposit or bond requirement applies only where the collection is carried out in consonance with law. It should not be required “when the said processes are obviously in violation of the law to the extreme that they have to be SUSPENDED for jeopardizing the interests of the taxpayer.”

The authority of the courts to dispense with the deposit of the amount claimed or filing of the required bond is not confined to cases where prescription has set in. Instead, whenever it is determined that the method employed by the CIR in the collection of tax is not sanctioned by law, the bond requirement should be dispensed with.

It would be absurd for the CTA to declare that the collection was made in violation of law and, in the same breath, require the taxpayer to make the deposit or to file the bond as a prerequisite to stop the said illegal collection.

It cannot be determined, however, if the exception applies in this case as there is no sufficient factual basis in the records to determine whether the cash deposit or bond requirement should be dispensed with.

Hence, the case is remanded to the CTA for a preliminary determination of whether the dispensation or the reduction of the required cash deposit or bond is proper.

The Court directed the CTA to take the following issues into account:

1. Whether the investigation covering a 15 year period is arbitrary and excessive, considering the prescriptive period to assess taxes, and considering further that the fraud contemplated by law must be actual, intentional and deliberately done.
2. Whether the CIR complied with the requirement of a preliminary investigation to establish prima facie evidence of fraud or tax evasion before issuing the LA.
3. Whether the BIR complied with the mandatory NIC under then Revenue Regulations (RR) No. 12-99, which provides that its absence renders the assessment null and void.
4. The CIR failed to address the allegation that her assessment was not based on actual transactions but on “estimates based on best possible sources.” The CTA should determine if there was irregularity in the issuance of the FLD considering that the taxpayer must be informed in writing of the law and the facts upon which the assessment is based, otherwise, the assessment is void.

5. The Spouses claim that the warrants were made prior to the expiration of the period allowed for them to pay the assessed taxes and that the warrants of garnishment were served on their banks before they even received the FDDA and the Preliminary Collection Letter (PCL).
6. The CTA should investigate the Spouses' allegation that they have already settled their VAT liability.
7. The CTA should determine the validity of the FDDA, the PCL, the FNBS and the Warrants of Dstraint and/or Levy.
8. The CTA should note the Supreme Court-approved CTA *En Banc* Resolution No. 02-2015 in A.M. No. 15-92-01-CTA, whereby the phrase "amount claimed" stated in Section 11 of RA No. 1125 was construed to refer to the principal amount of the deficiency taxes, excluding penalties, interests and surcharges.

Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation

Supreme Court (Second Division) G.R. No. 215534 and G.R. No. 215557 promulgated 18 April 2016

The FDDA issued by the BIR shall inform the taxpayer of the facts and the laws on which the assessment is made. Otherwise, the decision shall be void.

A void FDDA, however, does not necessarily mean a void assessment. It is as if there was no decision by the Commissioner of Internal Revenue on the protest, which is tantamount to a denial by inaction of the CIR.

Facts:

The BIR assessed Liquigaz Philippines Corporation (Liquigaz) for alleged deficiency Expanded Withholding Tax (EWT), Fringe Benefit Tax (FBT) and Withholding Tax on Compensation (WTC) for taxable year 2005. Liquigaz filed its protest, which the Commissioner of Internal Revenue (CIR) denied in a Final Decision on Disputed Assessment (FDDA).

As the FDDA only contained a table showing the deficiency withholding tax liabilities, Liquigaz questioned its validity in a petition for review with the Court of Tax Appeals (CTA), and sought the cancellation of the assessments.

Liquigaz argued that a void FDDA means a void assessment because the FDDA ultimately determines the final tax liability of a taxpayer which is appealable to the CTA.

The CIR countered that the assessments should be upheld and the FDDA should be taken together with the Preliminary Assessment Notice and the Formal Letter of Demand/Final Assessment Notice (FLD/FAN), where details of the assessments were attached. The CIR added that a void FDDA does not necessarily result in the nullification of the assessment.

While the CTA upheld the deficiency WTC, the Court ruled that the FDDA was void with respect to the EWT and FBT liabilities since the FDDA failed to provide the factual bases of the assessments, as required by law. The CTA added that the taxpayer had no way of knowing what items were considered by the CIR in computing the deficiency tax liabilities as the amounts in the FLD/FAN were different from those in the FDDA.

Issues:

1. Is the FDDA void with respect to the EWT and FBT liabilities?
2. What is the effect of a void FDDA on the assessment?

Rulings:

1. The FDDA is void for failing to state the facts on which the EWT and FBT assessments were made, which is a requirement under Section 228 of the Tax Code and Revenue Regulations (RR) No. 12-99.

RR No. 12-99 specifically requires that the facts, the applicable law, rules and regulations, or jurisprudence on which the decision is based shall be stated in both the FLD/FAN and the FDDA, otherwise, the decision shall be void. This requirement is intended to afford the taxpayer adequate opportunity to file a protest on the assessment and, thereafter, file an appeal, in case of an adverse decision.

It is imperative that Liquigaz be informed of the facts because of the discrepancy in the amounts of the EWT and FBT liabilities in the FLD/FAN and the FDDA. Failure to do so would deprive Liquigaz adequate opportunity to prepare an intelligent appeal as it would have no way of determining what were considered by the CIR in the defenses it had raised in the protest to the FLD/FAN.

2. The assessment remains valid notwithstanding the nullity of the FDDA because the assessment itself differs from a decision on a disputed assessment.

The FDDA is not the only means whereby the final tax liability of a taxpayer is fixed, which may then be appealed by the taxpayer. Under the law, inaction on the part of the CIR may likewise result in the finality of a taxpayer's tax liability as it is deemed a denial of the taxpayer's protest, which may then be appealed to the CTA.

As the decision on the disputed assessment is void, it is as if there was no decision by the CIR. It is tantamount to a denial by inaction of the CIR. However, it does not follow that the assessments are likewise void.

Since the decision of the CIR on a disputed assessment differs from the assessment itself, the invalidity of one does not necessarily result in the invalidity of the other unless provided by law or regulations.

Section 228 of the Tax Code provides that the assessment is void if the taxpayer is not informed in writing of the law and the facts on which it is based, but it is silent with regard to a decision on a disputed assessment. Moreover, while RR No. 12-99 states that the failure of the FDDA to state the facts and the law on which it is based voids the decision, it does not extend to the nullification of the entire assessment.

The portions relating to EWT and FBT in the FDDA are void and the case is remanded to the CTA for a discussion on the merits of the EWT and FBT assessments.

Aegis PeopleSupport, Inc. vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case No. 1231 promulgated 17 May 2016

Foreign exchange gains derived by a contact center from currency hedging contracts, which are not part of its registered activity, are not covered by the ITH incentive.

Facts:

Petitioner Aegis PeopleSupport, Inc. (Aegis) was registered with the PEZA and granted income tax holiday (ITH) as a contact center providing customer care and business process outsourcing services. Aegis filed with Respondent Commissioner (CIR) a claim for refund or tax credit for its alleged erroneously paid income tax on foreign exchange gain realized from its hedging contract with Citibank in 2008.

As the CIR failed to act on the claim, Aegis filed a Petition for Review with the CTA. Aegis argued that foreign exchange gain is covered by its ITH incentive considering that the income was realized from the sale of US dollars earned from its registered activity and the purchase of Philippine pesos needed to pay operational expenses.

The CTA First Division denied the claim on the ground that Aegis' foreign exchange gain derived from its hedging contract is not effectively connected with its registered activity. Aegis filed an appeal with the CTA *En Banc*.

Issue:

Is the foreign exchange gain derived by Aegis from its currency hedging contract covered by the ITH incentive?

Ruling:

No. The ITH incentive does not necessarily include all kinds of income which Aegis may receive during the period of entitlement.

To enjoy the incentive granted, the income must be effectively related with the conduct of its registered trade or business. While Aegis may have shown that it derived US dollar service fees from its clients, and these were used to purchase pesos to pay for the ordinary and necessary expenses of its customer-support business, the foreign exchange gain derived from the hedging contracts is not related to its registered activity as a contact center.

Aegis' hedging activity involves the sale of specified amounts of dollars to the bank on pre-determined dates and at pre-determined exchange rates. The hedging activity is outside of its business registered with the PEZA. Accordingly, the ITH cannot be extended to the foreign exchange gains derived from said hedging activity.

Village Green Hog Farm, Inc. vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case No. 1252 promulgated 17 May 2016

Where a taxpayer refuses to present its books of accounts and other accounting records, the BIR is justified to disallow 50% of the claimed deductions under the Best Evidence Obtainable Rule, pursuant to Section 6 (B) of the Tax Code and Revenue Memorandum Circular 23-2000.

Facts:

Respondent CIR assessed Petitioner Village Green Hog Farm, Inc. (VGHFI) for alleged deficiency income tax and expanded withholding tax for taxable year 2007. VGHFI protested the assessments.

In its Final Decision on Disputed Assessment, the BIR sustained the finding to disallow 50% of VGHFI's business expenses due to its alleged "unjustified refusal" to produce the books of accounts and other accounting records. The BIR based its application of the 50% rule of approximation on disallowed expenses on the Best Evidence Obtainable Rule under Revenue Memorandum Circular (RMC) 23-2000.

VGHFI filed a Petition for Review with the CTA. It challenged the use of the Best Evidence Obtainable Rule in determining its deficiency tax liabilities, insisting that it submitted and made available to the BIR the documentary requirements. The CTA Second Division denied VGHFI's petition. Aggrieved, VGHFI filed an appeal with the CTA *En Banc*.

Issue:

Did the BIR correctly disallow 50% of VGHFI's claimed deductions from gross income?

Ruling:

Yes, under the Best Evidence Obtainable Rule pursuant to Section 6(B) of the Tax Code, as implemented by Sections 2.3 and 2.4(c) of RMC 23-2000.

Deductions for income tax purposes partake of the nature of tax exemptions. Hence, if tax exemptions are strictly construed, then deductions must also be strictly construed. For an expense to be deductible, it must be substantiated by official receipts or adequate records.

The Best Evidence Obtainable Rule applies when a tax report required by law for the purpose of assessment is not available or when the tax report is incomplete or fraudulent. The BIR sent, and VGHFI received, three requests for submission of certain documents/schedules, and the presentation of books of accounts for examination. There was clear refusal to present accounting records, especially in relation to its expenses and purchases. Thus, the BIR was justified in disallowing 50% of VGHFI's expense based on the Best Evidence Obtainable Rule prescribed under RMC 23-2000.

Lucio L. Co, Susan P. Co, Ferdinand Vincent P. Co and Pamela Justice P. Co vs. Commissioner of Internal Revenue

CTA (Third Division) Case No. 8831 promulgated 2 June 2016

A BIR ruling is not required to avail of the CGT exemption under Section 40(C)(2) of the Tax Code, or in a claim for refund of erroneously paid CGT.

Facts:

On May 11, 2012, Petitioners Lucio L. Co, Susan P. Co, Ferdinand Vincent P. Co and Pamela Justice P. Co (Co Family) entered into a Deed of Exchange with Puregold Price Club (Puregold) wherein they agreed to transfer 1,703,125 shares in Kareila Management Corporation (KMC) in exchange for 766,406,250 shares in Puregold. On June 26 and 28, 2012, the Co Family collectively paid capital gains tax (CGT) on the share transfer including interest and penalties.

On May 21, 2014, the Co Family separately filed with the BIR claims for refund of alleged erroneously paid CGT on the ground that the share transfer was exempt from CGT under Section 40(C)(2) of the Tax Code.

As the BIR failed to act on the claims, the Co Family filed a Petition for Review with the CTA. The CIR sought the denial of the refund claims alleging that to qualify as a tax-free exchange, a prior application for certification or ruling from the BIR must be secured pursuant to Revenue Regulations (RR) No. 18-2001 and Revenue Memorandum Order (RMO) Nos. 32-2001 and 17-2002.

Issue:

Is a BIR ruling required to qualify for CGT exemption under Section 40 (C) (2) of the Tax Code?

Ruling:

No. A BIR ruling is not a precondition to qualify for CGT exemption under Section 40 (C) (2) of the Tax Code.

Section 40 (C) (2) of the Tax Code prescribes the following requisites for the non-recognition of gain or loss in the transfer of property in exchange for shares of stock:

1. The transferee is a corporation;
2. The transferee exchanges shares of stock for property of the transferor;
3. The transfer is made by a person, acting alone or together with others, not exceeding 4 persons; and,
4. As a result of the exchange, the transferor, alone or together with others, not exceeding 4, gains control of the transferee corporation.

The Co Family filed the refund applications as they erroneously paid CGT on the exchange of shares which the CTA found to be tax-free. They could not be expected to obtain a BIR ruling to be exempt as they previously believed that they were liable to pay CGT on the transaction.

RR 18-2001, RMO 32-2001 and RMO 17-2002 merely serve as guidelines for the proper monitoring of the basis of the properties transferred pursuant to a tax-free exchange in order that in cases of subsequent sales of said properties, they shall be taxed accordingly.

Commissioner of Internal Revenue vs. Lear Automotive Services (Netherlands) B.V. - Philippine Branch

CTA (*En Banc*) Case No. 1346 promulgated 2 June 2015

PEZA-registered enterprises may be allowed to deduct expenses, such as royalty payments, which are in the nature of direct costs even though the same are not included in the list of allowable deductions under RR 11-2005.

Facts:

Respondent CIR assessed Petitioner Lear Automotive Services (Netherlands) B.V. - Philippine Branch (Lear PH) for, among others, deficiency income tax for taxable years 2007 and 2008 arising from the disallowance of royalty expense from Lear PH's gross income subject to the 5% tax.

Lear PH, a PEZA-registered entity, protested the assessments and argued that the royalty fees paid to Lear Automotive Services (Netherlands) B.V. (Lear BV) for the use of intangible property required for its manufacturing activity, form part of its direct costs hence deductible from gross income. Lear PH also argued that it had secured BIR Ruling No. DA 147-2005 which confirmed that the said royalty payments are part of the cost of finished goods, which are deductible for purposes of computing the 5% gross income tax.

As the CIR denied the protest, Lear PH filed a Petition for Review with the CTA.

The CIR argued that royalty fees are not deductible from gross income subject to the 5% preferential tax rate as they do not fall within the definition of “cost” under the PEZA Law and the Tax Code. Moreover, royalty is not included in the enumeration of allowable deductions from gross income provided under Section 2, Rule XX of the PEZA Law implementing rules and regulations, and RR No. 11- 2005. The CIR claimed that *BIR Ruling No. DA 147-2005* issued in Lear-PH’s favor cannot be enforced as it misapplied the PEZA Law and RR No. 11-2005.

The CTA Second Division held that Lear PH’s royalty payments are deductible expenses for purposes of the 5% gross income tax. The CIR filed a Petition for Review with the CTA *En Banc*.

Issue:

Are the royalty fees paid by Lear PH to Lear BV deductible for purposes of computing the 5% gross income tax?

Ruling:

Yes. Lear PH’s royalty payments form part of its direct cost that are deductible for purposes of computing the 5% gross income tax.

Section 2 of Rule XX of the PEZA Law IRR enumerates the allowable deductions for purposes of computing the 5% tax on gross income of PEZA-registered enterprises. The Rules did not limit, but merely enumerated, the allowable deductions from gross income. Citing its decision in *East Asia Utilities Corporation vs. CIR, CTA Case 8179, May 21, 2014*, the CTA *En Banc* reiterated that RR No. 11-05 is not meant to be an all-inclusive list but merely enumerates the expenses that can be considered as direct costs.

PEZA-registered enterprises may be allowed to deduct expenses which are in the nature of direct costs even though the same are not included in the list. The criterion is the direct relation of such item of cost or expense in the rendition of the PEZA-registered services.

Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue
CTA (*En Banc*) Case No. 1117 promulgated June 3, 2016

Deficiency interest may be imposed on all types of deficiency taxes, and not just on income tax, donor's tax, and estate tax.

Facts:

Respondent CIR assessed Petitioner Liquigaz Philippines Corporation (Liquigaz) for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) for taxable year 2006. Liquigaz protested the assessments.

Due to the CIR's inaction on its protest, Liquigaz filed a Petition for Review with the Court of Tax Appeals (CTA). The CTA Third Division modified the assessments and ordered Liquigaz to pay a reduced amount of deficiency taxes plus 25% surcharge, 20% deficiency interest, and 20% delinquency interest. Both Liquigaz and the CIR elevated the case to the CTA *En Banc*.

The CTA *En Banc* ruled that Liquigaz is liable for the taxes assessed but deficiency interest can only be imposed on the deficiency income tax and not to deficiency VAT, EWT, and WTC. The CTA *En Banc* held that under Section 249 (B) of the Tax Code, deficiency interest shall be imposed whenever there is deficiency income tax, deficiency estate tax, and deficiency donor's tax.

The CIR filed a Motion for Reconsideration of the CTA *En Banc*'s decision.

Issue:

Is deficiency interest applicable only whenever there is a deficiency income tax, a deficiency estate tax or a deficiency donor's tax?

Ruling:

No. The CTA *En Banc* reversed its original decision and ruled that deficiency interest applies to all types of deficiency taxes, including VAT, EWT and WTC.

Quoting the CTA's decision in *Takenaka Corporation Philippine Branch vs. CIR, CTA EB Case No. 745 promulgated on September 4, 2012* and the Supreme Court's ruling in *Paper Industries Corporation of the Philippines vs. Court of Appeals, GR No. 106949-50 promulgated on December 1, 1995*, the CTA *En Banc* held that the imposition of deficiency interest applies to failure to pay all taxes imposed in the Tax Code, without regard to the Title of the Code where provisions imposing particular taxes are textually located.

[Editor's Note: Presiding Justice Roman G. Del Rosario dissented from the majority and opined against the imposition of the deficiency interest on all types of deficiency taxes.]

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