

Tax bulletin

March 2016



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.

SGV Tax Bulletin

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Highlights

BIR Ruling

- ▶ The interest income of a Japanese corporation that has a permanent establishment (PE) in the Philippines is subject to the 10% preferential tax rate under the RP-Japan Tax Treaty, if the interest income is not effectively connected with the PE. **(Page 4)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 2-2016 further clarifies the rules on the issuance of Authority to Release Imported Goods (ATRIGs), and prescribes a deadline for securing an ATRIG for imported automobiles that have been released from customs custody without an ATRIG. **(Page 4)**
- ▶ RR No. 3-2016 prescribes the policies and guidelines on the use of credit/debit/prepaid cards as an additional mode of payment of internal revenue taxes. **(Page 5)**
- ▶ Revenue Memorandum Circular (RMC) No. 26-2016 circularizes the acceptance of tax returns/payments of internal revenue taxes by Authorized Agent Banks (AABs) on two Saturdays prior to 15 April 2016. **(Page 6)**
- ▶ RMC No. 30-2016 reminds candidates in the 9 May 2016 national and local elections of their tax obligations. **(Page 6)**
- ▶ RMC No. 31-2016 announces the entry into force, effectivity and applicability of the RP-Turkey Tax Treaty. **(Page 8)**
- ▶ RMC No. 32-2016 announces the entry into force, effectivity and applicability of the Protocol amending the RP-New Zealand Tax Treaty. **(Page 9)**
- ▶ RMC No. 35-2016 announces the availability and use of the Electronic BIR Forms (eBIRForms) Package Version 6.0. **(Page 9)**
- ▶ RMC No. 36-2016 clarifies the effectivity of the requirement for the submission of the "Certificate by the Responsible Certified Public Accountants on the Compilation Services for the preparation of Financial Statements (FS) and Notes thereto." **(Page 10)**

BOC Issuance

- ▶ Customs Administrative Order (CAO) No. 1-2016 prescribes the rules on advance cargo declarations, inward foreign manifests and consolidated cargo manifests. **(Page 10)**

BOI Issuance

- ▶ BOI Memorandum Circular (MC) No. 2016-001 circularizes Republic Act (RA) No. 10708, or the Tax Incentives Management and Transparency Act (TIMTA), and requires compliance by all BOI -registered entities. **(Page 11)**

PEZA Issuance

- ▶ PEZA Memorandum Circular (MC) No. 2016-010 circularizes COMELEC Resolution No. 10051, which regulates the transport and delivery of PNP-regulated chemicals for the duration of the election period. **(Page 12)**

BSP Issuances

- ▶ Circular No. 903 amends the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) as of end of October 2015. **(Page 14)**
- ▶ Circular No. 904 prescribes the guidelines on the recovery plan of a Domestic Systematically Important Bank (DSIB). **(Page 16)**
- ▶ Circular No. 905 provides for the implementation of the Basel III Framework on Liquidity Standards - Liquidity Coverage Ratio and Disclosure Standards. **(Page 17)**
- ▶ Circular No. 906 amends the regulations on Reserves against Trust and Other Fiduciary Accounts - Others (TOFA - Others). **(Page 17)**
- ▶ Circular No. 907 amends Subsections X410.8/4410Q.8 and X410.9/4410Q.9 of the MORB and MORNBFI on feeder fund and fund-of-funds. **(Page 18)**
- ▶ Circular No. 908 provides for the Agricultural Value Chain Financing Framework. **(Page 19)**

BLGF Opinion

- ▶ Electric poles and steel towers of electric cooperatives fall within the definition of machinery under the Local Government Code (LGC) and are thus subject to real property tax (RPT). **(Page 20)**

Court Decisions

- ▶ Even if no income was generated from the business, a taxpayer is still required to file an income tax return (ITR). **(Page 21)**
- ▶ The Court of Tax Appeals (CTA) has jurisdiction over cases arising from the BIR's Oplan Kandado program as these fall within the meaning of "other matters arising under the NIRC."

The basis and method of computation of the VAT assessment as a result of the surveillance must be disclosed; otherwise, the sales estimates of the BIR cannot be considered valid. Surveillance results in one period cannot be used as basis for deficiency tax assessment for other quarters of different taxable years. **(Page 22)**

- ▶ Assessments that fail to comply with due process requirements cannot become final, executory and demandable.

The Commissioner of Internal Revenue (CIR) cannot be held liable for actual damages in tax cases as he is immune from suit under the doctrine of sovereign immunity. **(Page 23)**

BIR Ruling

BIR Ruling No. ITAD 004-16 dated 2 February 2016

The interest income of a Japanese corporation that has a PE in the Philippines is subject to the 10% preferential tax rate under the RP-Japan Tax Treaty, if the interest income is not effectively connected with the PE.

Facts:

A Co., a Japanese company, is licensed to do business in the Philippines through a Philippine Branch (A Co.-Manila Branch).

A Co. entered into a finance facility agreement with B Co., a domestic corporation, whereby A Co. agreed to extend and make available to B Co. a credit facility in connection with B Co.'s purchases of A Co.'s products. In consideration, B Co. agreed to pay the principal amount plus interest. It is represented that A Co.-Manila Branch had no participation, directly or indirectly, in the granting of the loan by A Co. The interest income derived by A Co. from the transaction is neither attributable to A Co.-Manila Branch, nor paid or coursed through it. Any interest income derived from the loan is directly recorded in the books of A Co.

Issue:

1. Is the interest paid to A Co. effectively connected with A Co.-Manila Branch?
2. Is the interest paid by B Co. to A Co. subject to the 10% preferential tax rate under the RP-Japan Tax Treaty?

Ruling:

1. No. The interest paid by B Co. to A Co. cannot be considered effectively connected with A Co.-Manila Branch, since A Co.-Manila Branch did not have any participation with regard to the loan between B Co. and A Co. Moreover, A Co. does not use, or hold for use, in the conduct of its trade or business any shares of stock in B Co. The interest income derived by A Co. inures to A Co.'s sole benefit and is not received by A Co.-Manila Branch. Furthermore, A Co. - Manila Branch is not a material factor in the realization of such interest income received by A Co.
2. Yes. Under the RP-Japan Tax Treaty, interest paid by a Philippine corporation to a resident of Japan is subject to the 10% preferential tax rate if the recipient Japanese corporation is also the beneficial owner thereof and the subject interest income is not effectively connected with a PE which the Japanese corporation may have in the Philippines.

BIR Issuances

Revenue Regulations No. 2-2016, dated 4 March 2016

RR No. 2-2016 further clarifies the rules on the issuance of ATRIGs, and prescribes a deadline for securing an ATRIG for imported automobiles that have been released from customs custody without an ATRIG.

- ▶ An ATRIG is an authority issued by the BIR addressed to the Commissioner of Customs, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable.
- ▶ Securing the ATRIG is required for the following importations:
 1. All articles subject to excise tax (whether exempt or taxable), including the raw materials needed for their production;

2. Machineries, equipment, apparatus or any mechanical contrivances used for the assembly/production of the above articles; and
 3. Articles which are exempt from value-added tax (VAT), except those identified and enumerated under RMC No. 48-2002, such as live animals, unprocessed meat, vegetables, and fruits.
- ▶ The ATRIG shall be issued prior to release of the excisable product from the customhouse.
 - ▶ If an excisable item is released without the ATRIG, a presumption arises that the taxes due were not paid.
 - ▶ Any revenue officer may detain and forfeit an excisable product if it has been withdrawn from customs custody or imported into the country without payment of the required taxes.
 - ▶ The persons responsible shall be held liable for unlawful possession or removal without payment of tax pursuant to Section 263 of the Tax Code.
 - ▶ Imported automobiles that were released from customs custody without an ATRIG may still be issued ATRIGs until 31 March 2016*, subject to compliance with the following conditions within the same period:
 1. An application for ATRIG is filed with the Excise LT Regulatory Division (ELTRD); and
 2. The excise tax and VAT, including a 50% surcharge and 20% interest reckoned from the date of the Final Import Entry and Internal Revenue Declaration, due are duly paid.
 3. All imported automobiles found to have been released from customs custody after 31 March 2016* without the required ATRIG shall be subject to seizure.
 - ▶ RR 2-2016 takes effect immediately.

(*Editor's Note: The 31 March 2016 deadline was extended until 30 April 2016 by RR No 4-2016 dated 5 April 2016. RR No. 2-2016 was published in the Manila Bulletin on 7 March 2016, while RR No. 4-2016 was published also in the Manila Bulletin on 7 April 2016.)

RR No. 3-2016 prescribes the policies and guidelines on the use of credit/debit/prepaid cards as an additional mode of payment of internal revenue taxes.

Revenue Regulations No. 3-2016 dated March 23, 2016

- ▶ Payment of taxes by credit/debit/prepaid card shall be voluntary or optional for the taxpayer.
- ▶ Only AABs may accept tax payments made through credit/debit/prepaid cards, provided that:
 1. The AAB should have a Card Payment Information System (CPIS), duly tested and approved by the BIR, that can implement the mechanics of electronic transactions.
 2. A Service Level Agreement (SLA) shall be entered into between the BIR and the AAB;

3. A list of credit card issuers enabled by the AAB shall be submitted to the BIR before the execution of the SLA.
- ▶ The taxpayer shall bear the convenience fees, including the “Merchant Discount Rate”, charged for the use of this payment facility, with no such fees being deducted from the tax due to the BIR.
 - ▶ Only Philippine-issued credit/debit/prepaid cards under the name of the taxpayer-cardholder shall be used in payment of tax liabilities.
 - ▶ The payment of taxes shall be deemed made on the date and time appearing in the system-generated payment confirmation receipt issued to the taxpayer-cardholder by the AAB, provided that payment is actually received by the BIR.
 - ▶ Until the payment is actually received by the BIR, the taxpayer has a continuing liability for the taxes. This is in addition to any liability of the AAB, pursuant to the SLA entered into with the BIR.
 - ▶ The taxpayer shall electronically file the corresponding tax returns relating to the credit/debit/prepaid card payments, until the filing of tax returns through other channels or facilities is allowed under a separate BIR revenue issuance.
 - ▶ RR No. 2-2016 shall take effect 15 days immediately after publication in a leading newspaper of general circulation.

(Editor's Note: RR No. 3-2016 was published in the Manila Bulletin on 28 March 2016.)

RMC No. 26-2016 circularizes the acceptance of tax returns/payments of internal revenue taxes by AABs on two Saturdays prior to 15 April 2016.

Revenue Memorandum Circular No. 26-2016 dated 3 March 2016

- ▶ During the income tax filing season, all AABs shall receive the tax returns and accept tax payments on 19 March 2016 and 2 April 2016 (both dates are Saturdays).
- ▶ All banking hours are extended up to 5:00 p.m. from 1 to 15 April 2016.

RMC No. 30-2016 reminds candidates in the 9 May 2016 national and local elections of their tax obligations.

Revenue Memorandum Circular No. 30- 2016 dated 14 March 2016

- ▶ All candidates, political parties, including party list groups, are required to register with the BIR and keep adequate books of accounts and accounting records (i.e., Cash Receipts Journal, Cash Disbursements Book or their equivalent).
- ▶ Political parties or party list groups shall register with the Revenue District Office (RDO) having jurisdiction over their head office or principal office.
- ▶ Individual candidates shall register (or provide an update of information if previously registered) with the RDO having jurisdiction over the place where the candidate is seeking election, and, if this is not applicable, at the RDO having jurisdiction over the candidate's principal residence or registered address.
- ▶ The registration of individual candidates shall automatically end after 30 days from the date of the election. However, the registration of political parties including party list groups shall subsist.

- ▶ Every candidate and political party shall register with the RDO concerned official receipts (ORs) in duplicate, to be issued for every contribution received, whether in cash or in kind. The original OR shall be issued to the contributor while the duplicate shall be retained by the candidate.
- ▶ Contributions in kind shall be valued at their cash equivalent or fair market value.
- ▶ For this purpose, RDOs are authorized to issue BIR-Printed Non-VAT ORs without requiring the Authority to Print (ATP). Within 10 days after the election, candidates and political parties shall account for the actual number of ORs used, and surrender the unused ones with the RDOs.
- ▶ Records of election contributions and expenditures and all pertinent documents shall be preserved for at least 5 years after the elections.
- ▶ Only those contributions that have been spent during the campaign period are exempt from donor's tax. As such, donations utilized before or after the campaign period, as well as campaign contributions made by corporations, are subject to donor's tax and are not deductible as political contributions on the part of the donor.
- ▶ Candidates who receive taxable contributions shall file the proper ITR and pay as follows:
 1. For candidates registered as self-employed individuals, the unutilized funds coming from contributions shall be subject to income tax and declared for the quarter ending 30 June 2016 not later than 15 August 2016. No further deductions should be made against this taxable income.
 2. For a candidate who is a compensation income earner, such taxable income shall be declared for taxable year 2016 not later than 15 April 2017.
 3. A candidate, who is neither a self-employed individual nor a compensation income earner as of 9 May 2016, shall declare the taxable income by filing a short-period return for the period 1 January 2016 to 9 May 2016 not later than 15 August 2016.
 4. For political parties or party list groups, the taxable income shall be declared for the second quarter ending 30 June 2016 not later than 29 August 2016.
- ▶ The returns shall be filed and the income tax paid in any of the AABs or through the Revenue Collection Officers within the jurisdiction of the RDO where the candidate or political party is registered.
- ▶ The following shall be subject to the 5% creditable withholding tax (CWT):
 1. Purchase of goods and services by political parties and candidates as campaign expenditures;
 2. Purchase of goods and services intended to be given as campaign contributions to political parties and candidates; and
 3. Payments for various media services, printing jobs, talent/entertainment fees, lease of real and personal property, pre-election surveys, consultancy fees and fees for other similar services.

- ▶ The 5% CWT shall apply regardless of whether the source is through donations or contributions or from the personal funds of the payor.
- ▶ Payors/withholding agents who are engaged in trade or business or in the practice of their profession are required to attach to BIR Form 1601-E the Monthly Alphabetical List of Payees (MAP).
- ▶ Candidates and political parties who are covered by the Electronic Filing and Payment System (eFPS) shall follow the deadline for electronically filing the applicable withholding tax returns and pay the taxes due via the eFPS.
- ▶ On or before 1 March 2017, payors/withholding agents are required to file with the BIR office where they are registered an Annual Information Return of Creditable Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604E), as well as the Statement of Contributions and Expenditures duly stamped "Received" by the COMELEC.
- ▶ Expenses that were not subjected to the 5% CWT are considered unutilized campaign funds and may not be claimed as a deduction from campaign contributions. As such, the full amount corresponding to the expense shall be subject to income tax.

RMC No. 31-2016 announces the entry into force, effectivity and applicability of the RP-Turkey Tax Treaty.

Revenue Memorandum Circular No. 31-2016 dated 16 March 2016

- ▶ *The Agreement between the Republic of the Philippines and the Republic of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* entered into force on 11 January 2016.
- ▶ The treaty will take effect with respect to the taxes covered, including taxes withheld at source, on 1 January 2017.
- ▶ The highlights of the RP-Turkey Tax Treaty are summarized below:
 1. *Article 10, Dividends*
 - ▶ Dividends are subject to a 10% withholding tax (WHT) rate, if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividend.
 - ▶ In all other cases, a 15% WHT rate will apply.
 2. *Article 11, Interest*
 - ▶ Interest is subject to a 10% WHT rate.
 3. *Article 12, Royalties*
 - ▶ Royalties are subject to a 15% WHT rate if arising from the use of, or the right to use, any cinematographic films or tapes for television or radio broadcasting.
 - ▶ A 10% WHT rate will apply on royalties for the use of, or the right to use, any copyright, patent, trademark, design, or scientific equipment.

RMC No. 32-2016 announces the entry into force, effectivity and applicability of the Protocol amending the RP-New Zealand Tax Treaty.

Revenue Memorandum Circular No. 32-2016 dated 24 February 2016

- ▶ The *Protocol Amending the Convention between the Government of New Zealand and the Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* entered into force on 2 October 2008.
- ▶ The Protocol took effect with respect to the taxes covered, including taxes withheld at source, on 1 January 2009.
- ▶ The highlights of the amendments introduced by the Protocol are summarized below:
 1. *Article 10, Dividends*
 - ▶ A standard 15% WHT rate is now imposed on dividends paid to a resident of either the Philippines or New Zealand.
 2. *Article 11, Interest*
 - ▶ Interest is now subject to a 10% WHT rate.
 3. *Article 12, Royalties*
 - ▶ A standard 15% WHT rate is imposed on royalties paid to a resident of either the Philippines or New Zealand.
 - ▶ Payments for services as a means of enabling the enjoyment of any property or right are considered as royalties.

RMC No. 35-2016 announces the availability and use of the Electronic BIR Forms (eBIRForms) Package Version 6.0.

Revenue Memorandum Circular No. 35-2016 issued on 21 March 2016

- ▶ The eBIRForms Package Version 6.0 is now available and downloadable from these sites:
 1. www.knowyourtaxes.ph;
 2. www.dof.gov.ph;
 3. Dropbox using the link: <http://goo.gl/UCr8XS>;
 4. Direct link: http://ftp.pregi.net/bir/ebirforms_package_v6.0.zip; or
 5. www.bir.gov.ph
- ▶ The new eBIRForms package has the following modifications:
 1. One-click submission of Tax Returns; and
 2. Reduced package size for easier downloading.
- ▶ eFPS taxpayers filing Annual ITRs and Excise Tax Returns shall prepare the tax returns using the offline package and submit to eFPS. Taxpayers filing other returns shall use the online eFPS. Payment shall be made online through the eFPS facility.
- ▶ Non-eFPS taxpayers using eBIRForms shall print the tax return and pay the tax due through AABs, Revenue Collection Officers or GCash.

- ▶ The accompanying schedules and attachments shall be manually filed within 15 days from the electronic filing of the return, with the concerned LT Office/RDO where they are registered. Taxpayers shall also submit the duly signed printed e-filed return and printed system-generated confirmation receipt.
- ▶ The penalties provided in RR No. 5-2015 shall be imposed on taxpayers who fail to file and pay taxes using the prescribed mode/venue under existing revenue issuances.

RMC No. 36-2016 clarifies the effectivity of the requirement for the submission of the "Certificate by the Responsible Certified Public Accountants on the Compilation Services for the preparation of the FS and Notes thereto."

Revenue Memorandum Circular No. 36-2016 issued on 21 March 2016

- ▶ The requirement for the submission of the Certificate on the Compilation Services will become effective only for financial statements to be submitted for fiscal year ending 30 June 2016 and subsequent periods.
- ▶ The requirement will not apply to the ITR filing covering calendar year 2015, which is due on 15 April 2016.

BOC Issuance

CAO No. 1-2016 prescribes the rules on advance cargo declarations, inward foreign manifests and consolidated cargo manifests.

Customs Administrative Order No. 1-2016 dated 25 January 2016

- ▶ This CAO applies to both containerized and non-containerized cargoes, as well as to shipping lines, ship agents, non-vessel operation common carriers (NVOCCs), freight forwarders, cargo consolidators and co-loaders, whose cargoes are ultimately entering the Philippines. They are all required to make an advance submission of their cargo declaration, inward foreign manifest (IFM), and consolidated cargo manifest (CCM).
- ▶ Where containerized cargoes are first loaded to the mother vessel, for later transport by a feeder vessel to any importing port in the Philippines, both the concerned shipping line/ship agent and NVOCC/freight forwarder/consolidator shall electronically submit their cargo declaration, IFM and CCM to the BOC, within 24 hours from the time of departure of the mother vessel from the actual exporting port of origin.
- ▶ Where containerized cargoes are transported by any vessel with any port in the Philippines as the port of discharge, the concerned shipping line/ship agent shall electronically submit the IFM within 24 hours, while the NVOCC/freight forwarder/consolidator shall submit the CCM within 36 hours from the time of departure of the said vessel from the last port of call.
- ▶ Where non-containerized cargoes are shipped, the shipping line/ship agent shall electronically submit the IFM within 24 hours, while the NVOCC shall submit the CCM within 36 hours from the time of departure from the exporting port of origin.
- ▶ Transmission of this electronic data shall be done either through the gateway of the BOC directly or through any of Value Added Service Providers (VASPs) accredited by the BOC. Immediately upon arrival of the carrying vessel, the responsible party shall provide 2 hard copies of the manifest to the BOC.

- ▶ The party failing to submit the required information within the period required shall be subject to imposable fines in accordance with Section 2521 of the Tariff and Customs Code of the Philippines (TCCP), as amended, which provides for a fine not less than P10,000 but not exceeding P30,000. This is without prejudice to whatever recourse the BOC may pursue against the delinquent party.
- ▶ The description of the cargo shall be precise enough to enable the BOC to identify the goods intended to be discharged in the port and take preemptive action if warranted. Hence, vague descriptions such as “chemicals,” “foodstuffs,” “electronics” and the like should be avoided. General descriptions such as “freight of all kinds,” “general cargo” and the like shall be treated as incomplete information and penalized under Section 2521 of the TCCP.
- ▶ A supplemental cargo manifest shall be submitted within 48 hours from the date of discharge of the last package of the vessel where the cargo is not listed in the IFM but recorded in the stowage plan; but if the cargo is not listed in both the IFM and the stowage plan, the supplemental cargo manifest shall be submitted with 24 hours from the date of discharge of the last package. The supplemental cargo manifest must be submitted in hard copies and electronic format within the period prescribed, otherwise these shall be considered unmanifested and subject to seizure proceedings.
- ▶ All Customs Memorandum Orders and other issuances in conflict or inconsistent with this CAO are considered revised, amended, or repealed accordingly.
- ▶ This Order takes effect immediately.

(Editor’s Note: CAO No. 1-2016 was published in the Philippine Star on 24 March 2016.)

BOI Issuance

BOI MC No. 2016-001 circularizes RA No. 10708, or the TIMTA, and requires compliance by all BOI -registered entities.

Memorandum Circular No. 2016-001 dated 9 March 2016

- ▶ **Filing of Tax Returns and Submission of Tax Incentives Reports**
 - ▶ All BOI-registered entities are required to file their tax returns and pay their tax liabilities on or before the deadline provided, using the BIR’s electronic system for filing and payment of taxes.
 - ▶ Registered business entities shall also file with the BOI within 30 days from the statutory deadline for filing tax returns and payment thereof a complete annual tax incentives report for their:
 - ▶ Income-based tax incentives,
 - ▶ VAT exemptions,
 - ▶ Duty exemptions,
 - ▶ Deductions,
 - ▶ Credits, and
 - ▶ Exclusions.

▶ **Penalties**

The following penalties shall be imposed for (i) failure to comply with the filing and reportorial requirements of the BOI, and/or (ii) failure to show proof of filing of tax returns using the electronic system for filing and payment of taxes with the BIR:

- ▶ 1st violation - Fine amounting to PHP 100,000.00
- ▶ 2nd violation - Fine amounting to PHP 500,000.00
- ▶ 3rd violation - Cancellation of registration of the registered business entity

PEZA Issuance

PEZA MC No. 2016-010 circularizes COMELEC Resolution No. 10051, which regulates the transport and delivery of PNP-regulated chemicals for the duration of the election period.

Memorandum Circular No. 2016-010 dated 4 March 2016

- ▶ All imported and locally purchased PNP-regulated chemicals shall require a Certificate of Authority to Transport (CA-TT) from the COMELEC. These regulated chemicals include:
 - ▶ Nitrates,
 - ▶ Chlorates,
 - ▶ Nitric acid,
 - ▶ Explosives, and
 - ▶ Explosive accessories.
- ▶ Covered period: 10 January to 8 June 2016
- ▶ **Requirements and conditions for the issuance of a CA-TT**
 - ▶ Requirements for the application:
 - ▶ Duly accomplished COMELEC Committee on the Ban of Firearms and Security Personnel (CBFSP) Form No. 2016-04, which:
 1. Must be accomplished in 3 copies.
 2. Must completely state (i) the full name of the applicant, (ii) its principal office address, (iii) the name of its duly authorized representative, (iv) description and quantity of the chemicals, and (v) origin and destination of thereof.
 3. Must be signed by the authorized signatory of the company.
 - ▶ Philippine National Police (PNP) Permit to Transport, which:
 1. Must be the original PNP-signed Permit to Unload for imported chemicals, or Special Permit to Purchase and Move for locally purchased chemicals.
 2. Must provide the date of validity and the control number as issued by the PNP.
 3. Must be stamped "Not valid without COMELEC exemption."

- ▶ PNP Firearms and Explosives Office (FEO) endorsement, which:
 1. Must be the original document signed by the appropriate FEO officer.
 2. Must be issued in the name of the company.
- ▶ Supporting documents to prove that the signatory of the CBFSP Form is a legitimate employee of the company and is authorized to undertake the application. These documents should include:
 1. Proof of authority - Original copy of Board of Directors' or Secretary's Certificate or Special Power of Attorney for the first application, and certified copies thereof for succeeding applications;
 2. Original certificate of employment; and
 3. Copy of valid company ID and government issued ID.
- ▶ Copy of official receipt to prove payment of filing fees.
- ▶ All importers and local purchasers are requested to accomplish the online form at: <http://www.comelec.gov.ph/?r=Archives/RegularElections/2016NLE/GunBan/OnlineApplicationForms>
- ▶ Conditions for the issuance of a CA-TT:
 1. The CA-TT shall be valid only within a prescribed period and shall provide the terms and conditions for its grant.
 2. In case of explosives and/or their components, the same shall be immediately transported with a police escort by the applicant/grantee or its representative, directly to the explosives magazine/storage facility of the licensed requesting party.
 3. Explosives and/or their components meant for exportation to other countries shall be transported or delivered directly to airports and seaports.
 4. Explosives and/or their components shall be delivered directly to the manufacturing facility/magazine of the licensed manufacturer with CA-TT.
 5. In no case shall the explosives and/or their components be transported or delivered by any person other than the authorized manufacturer, importer, exporter, purchaser, dealer, seller with CA-TT, or its duly authorized representative/s.
 6. Any violation of the foregoing conditions shall immediately invalidate the CA-TT and be deemed a commission of an election office.
- ▶ **Status of application & release of certificates**
 1. Applicants may check the COMELEC website, or call/email CBFSP at 559-9759 or gunban2016@comelec.gov.ph for the status of the application.
 2. Upon availability for release, the authorized representative should bring a copy of the supporting documents to claim the CA-TT.

BSP Issuances

Circular No. 903 amends the MORB and MORNBF1 as of end of October 2015.

BSP Circular No. 903 dated 29 February 2016

- ▶ Appendix A of Circular No. 871 dated March 5, 2015 (Internal Control and Internal Audit) is retitled *Examples of Minimum Internal Control Measures* and is appended to the MORB/MORNBF1 as App. 112/App. Q-66. Reference to these appendices are added to Subsection X185.3/4185Q.3 of the MORB/MORNBF1.
- ▶ The provisions of Circular No. 875 dated April 15, 2015 (BSP Supervisory Enforcement policy) are numbered as X009/4009Q/4009T of the MORB/MORNBF1, respectively.
- ▶ The provisions of Circular-Letter No. CL-2015-050 dated August 18, 2015 [(Consolidation Program for Rural Banks (CPRB))] are codified in the MORB as follows:

Portion of the Circular Letter	Title	New Section/ Appendix
2 nd par. (last sentence) and 3 rd paragraph	Consolidation Program for Rural Banks	X109
Annex A	Framework on the Consolidation Program for Rural Banks	App. 113

- ▶ The power of the Bangko Sentral to Examine Trust Corporation (TC) under Circular No. 884 dated 22 July 2015 is codified in Subsection 4001T *Examination by the Bangko Sentral* of the MORNBF1.
- ▶ Subsections 4103T.1, 4126T.1, 4402T of the MORNBF1 are amended to read as follows:

“Subsection 4103.1 Basic Guidelines in Establishing TCs. No person or entity shall be allowed to operate as a TC without prior authority from the Bangko Sentral.

a. Organizational requirements. Xxx

c. Requirements for the issuance of the certificates of authority to register and operate.

(1) xxx

(4) Within six (6) months from receipt of advice of approval by the Monetary Board of their application for authority to establish a TC, the incorporators shall secure the certificate of authority to operate the trust, other fiduciary business and investment management activities and submit to the appropriate supervising and examining department of the Bangko Sentral the following:

xxx”

Subsection 4126T.1 Limits of stockholdings in a single TC. The stockholdings in any TC shall be subject to the limits prescribed below:

- a. Domestic stockholders xxx
- b. Foreign stockholders may own stockholdings in a TC, subject to the limits as stated below:

(1) xxx

X x x

(1) Others, such as individuals and other entities not identified above xxx

The limits as stated above are further subject to the limits imposed by the respective laws/ regulations in the home country of investing companies or country of origin.

xxx”

Section 4402T Applicable Regulations on Trust and Other Fiduciary Activities. xxx

a. xxx
xxx

j. Section 4499Q Sanctions (For this purpose the guidelines for the imposition of monetary penalty as shown under Appendix T-2 shall be used by TCs)”

- ▶ The references to Subsection X301.6a and 6b in Item “v” of Appendix 48 of the MORB are changed to Subsection X178.9
- ▶ The references to the guidelines on risk management for derivatives under Appendix 25 (Risk Management Guidelines for Derivatives) in Sections X175 and X176 of the MORB are deleted.
- ▶ Introduction in Appendix 25 of the MORB is amended to read as follows:

“I. Introduction

This appendix, together with the Guidelines on Supervision by Risk (Appendix 72), Market Risk Management under X175, Liquidity Risk Management under X176, and other BSP issuances on management of the different risks attendant to banking activities, provides a framework on which a bank can establish its risk management activities. Accordingly, this set of risk management guidelines for derivatives should be read and used in conjunction with all related BSP issuances on risk management.

xxx”

- ▶ Items C and D of the topic titles in Part Nine (IX) of the MORB are changed to items D and E.

- ▶ The reference to Subsection 4441N.62 in Appendix 68/Q-38 of the MORB/MORNBF, Section 8 in Circular 873 dated 25 March 2015 is changed to 4144N.6.
- ▶ The Transitory Provisions of Circular Nos. 873 and 886 issued in 2015 are footnoted in Section X441 and Sections/Subsections X321 and 4337S of the MORB/MORNBF, respectively.
- ▶ The following memoranda are codified in the MORB.

Memorandum	Title	Section/Subsection/Appendix
No. 5 01.20.15	Regulatory Relief for Banks/Non-Bank Financial Institutions with Quasi-Banking Functions (NBQBs) Affected by Typhoon "Ruby"	X257, X302, X306, X338, X192.2, X269.6, X269.8 and App. 18
No. 9 01.28.15	Regulatory Relief for Banks/Non-Bank Financial Institutions with Quasi-Banking Functions (NBQBs) Affected by Tropical Storm "Seniang"	
No. 35 10.07.15	Regulatory Relief for Banks Affected by Typhoon "Ineng"	
No. 8 01.28.15	Strengthening Program for Rural Banks (SPRB) Plus	App. 94a

- ▶ The following sections/subsections/appendices are updated to reflect the changes in the reportorial requirements and annual supervisory fees as contained in the following Memoranda to All Banks:

Memorandum Nos.	Sections/Subsections/Appendices
001, 004, 014, 015, 021, 026, 028, 029,030, 031,032, 033, 036	Appendix 6
022	X901.1, Appendix 88, 4901Q.1 and App. Q-51
034	X907.6 , Appendix 6

[Editor's Note: Circular No. 903 was published in The Manila Times on 3 March 2016.]

Circular No. 904 prescribes the guidelines on the recovery plan of a Domestic Systematically Important Bank (DSIB).

BSP Circular No. 904 dated 10 March 2016

- ▶ The Monetary Board in its Resolution No. 254 dated 12 February 2016, approved the issuance of guidelines on the recovery plan (Appendix 107a) which is required to be submitted by DSIBs, pursuant to Section X115.5 of the MORB.
- ▶ The recovery plan shall form an integral part of the Internal Capital Adequacy Assessment Process (ICAAP) document to be submitted every 31 March of each year. However, the first recovery plan shall be submitted on 30 June 2016 as a supplement to the 2016 ICAAP document, which is required to be submitted on or before 31 March 2016.

[Editor's Note: Circular No. 904 was published in The Standard on 15 March 2016.]

Circular No. 905 provides for the implementation of the Basel III Framework on Liquidity Standards - Liquidity Coverage Ratio and Disclosure Standards.

BSP Circular No. 905 dated 10 March 2016

- ▶ The regulatory liquidity standards that are consistent with the Basel III Framework are incorporated as Subsections 1176.1, 1176.2, 1176.3, and Appendix 74a of the MORB.
- ▶ Subsection 1176.1 of the MORB provides for the liquidity coverage ratio (LCR). A bank shall maintain, over a 30-calendar day horizon, an adequate level of unencumbered high-quality liquid assets (HQLAs) that consist of cash or assets that can be converted into cash at little or no loss of value in private markets, to offset the net cash outflows it could encounter under a liquidity stress scenario. At a minimum, the stock of liquid assets should enable the bank to withstand significant liquidity shocks that last 3 calendar days, which would give time for corrective actions to be taken by the bank management and/or the BSP.
- ▶ Subsection 1176.2 provides for the LCR disclosure requirements. Banks are required to publicly disclose information related to the LCR. The mandatory disclosure requirements should be published in the quarterly published balance sheet, and either on the bank's website or in its other published financial reports or publicly available regulatory reports (e.g., the audited financial statements) as prescribed under Part II of Appendix 74a.
- ▶ The specific guidelines on the mode and manner of submission of the disclosure requirements shall be covered by a separate memorandum issuance.
- ▶ Subsection 1176.3 provides for the guidelines on the sanctions to be imposed on the bank and on the other concerned directors /officers of the bank in case of willful violation of the provisions above.
- ▶ Transitional Arrangements. - The LCR shall be implemented in a phased-in arrangement to help ensure that the banking sector can meet the standard through reasonable measures without disrupting credit extension and financial market activities. The gradual transition timeframe will likewise afford the BSP with enough time to: (i) ensure that the LCR functions as intended during both normal times and periods of stress; (ii) reduce perverse impacts on asset and funding markets; (iii) mitigate potential impediments to the smooth functioning of central bank operations; and (iv) limit unintended consequences for economic activity. As may be necessary, the BSP may issue amendments on refinements of the definition and qualification of HQLAs, and or recalibration of the parameters related to cash flow items.
- ▶ This Circular also provides for rules to be observed during the phased introduction of the LCR standard.
- ▶ 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. 905 was published in the Malaya on March 16, 2016.]

Circular No. 906 amends the regulations on Reserves against Trust and Other Fiduciary Accounts - Others (TOFA - Others).

BSP Circular No. 906 dated 10 March 2016

- ▶ Subsections X405.5b/4405Q.5b of the MORB and MORNBF1, respectively, are amended to read as follows:

"Subsection X405.5b/4405Q.5b. Reserves against peso-denominated Common Trust Funds and Trust and Other Fiduciary Accounts - Others

- a. xxx
- b. *Reserves against TOFA - Others.* In addition to the basic security deposit, banks/institutions authorized to engage in trust and other fiduciary business shall maintain reserves on TOFA - Others, except accounts held under (1) Administratorship; (2) Trust Under Indenture; (3) Custodianship and Safekeeping; (4) Depository and Reorganization; (5) Employee Benefit Plans Under Trust; (6) Escrow; (7) Personal Trust (testamentary or living trust); (8) Executorship; (9) Guardianship; (10) Life Insurance Trust; (11) Pre-need Plans (institutional/individual); (12) Personal Equity and Retirement Account (PERA); and (13) Legislated and Quasi-Judicial Trust.

xxx "

- ▶ This Circular shall take effect immediately.

[Editor's Note: Circular No. 906 was published in the Business Mirror on 17 March 2016.]

Circular No. 907 amends Subsections X410.8/4410Q.8 and X410.9/4410Q.9 of the MORB and MORNBF1 on feeder fund and fund-of-funds.

BSP Circular No. 907 dated 10 March 2016

- ▶ Subsection X310.8/4410Q.8 are hereby amended to read as follows:

"Subsection X410.8/4410Q.8 Exposure Limits. xxx

xxx

In the case of feeder fund/fund-of-funds, the exposure limit shall be applied on the target fund's underlying investments. Notwithstanding said limit, if the target fund is allowed by its respective regulatory authority to invest in units/shares of other open-ended CIS, the exposure limit prescribed by said regulatory authority shall instead apply. Furthermore, the investments in any one target fund shall not exceed ten percent (10%) of the total net asset value of the target fund.

Xxx"

- ▶ Item g(3) in Subsection X410.9/4410Q.9 is hereby amended to read as follows:

"Subsection X410.9/4410Q.9 Allowable investments and valuation. UIT Fund investments shall be limited to bank deposits and the following financial instruments:

xxx

- (g) Units/shares in collective investment schemes (CIS), i.e., target fund, shall include exchange traded fund (ETF) and other CIS, subject to the following:

- (1) xxx
- (2) xxx
- (3) The target fund is neither structured nor similarly structured as a feeder fund or fund-of-funds; and
- (4) xxx"

- ▶ This Circular shall take effect immediately.

[Editor's Note: Circular No. 907 was published in Business World on 17 March 2016.]

Circular No. 908 provides for the Agricultural Value Chain Financing Framework.

BSP Circular No. 908 dated 14 March 2016

- ▶ Circular No. 908 adopts the agricultural value chain financing framework which defines the lending program features and regulatory incentives for the guidance of BSP-supervised financial institutions (BSFIs) that plan to engage in this type of financing.
- ▶ Section X350/4350Q/4350N of the MORB/MORNBFIs is hereby added as follows:

“Section X350/4350Q/4350N. Statement of policy. The Bangko Sentral supports the promotion of agricultural value chain financing as an effective and organized approach to channel financing to the agriculture and fisheries sectors and promote financial inclusion. By encouraging the linking of various actors/players in an agricultural value chain, credit risk of participating smallholder farmers/fisher folks can be reduced. As a result, this type of financing would facilitate and allow small farmers/fisher folks to have, if not more, access to credit. This is expected to further improve productivity in the agriculture and fisheries sectors and at the same time uplift the lives of these marginalized farmers/fisher folks.

The following provisions covering the agricultural value chain financing frameworks shall be implemented in consonance with Sections X178/4178Q/4197N.”

- ▶ Subsection X350.1/4350Q.1/4350N.1 provides for the definitions of (a) value chain; (b) value chain finance; (c) agricultural value chain analysis; (d) value chain aggregator
- ▶ Subsection X350.2/4350Q.2/4350N.2 provides for the features of agricultural value chain financing program.
- ▶ Subsection X350.3/4350Q.3/4350N.3 provides for the regulatory incentives to encourage BSFIs to engage in agricultural value chain financing programs.
- ▶ The following Section and Subsection of MORB are amended as follows:

“Section X303 Credit Exposure Limits to a Single Borrower

- a. Consistent with national interest xxx
- b. The total amount of loans xxx
 - 1. By an additional ten percent xxx
 - 4. By an additional (25%) twenty-five percent of the net worth of such bank; Provided, That the additional loans, credit accommodation and guarantees are granted to entities, which act as value chain aggregators of the lending banks' clients, and/or economically linked entities that are also actors/players in the value chain; Provided further, That the additional 25 percent will apply only to non-DOSRI/RPT loans; Provided, finally, That such additional 25% shall only be for a period of three years, subject to review after said period.

xxx”

“Subsection X341.1 Definition of terms. For purposes of this Section, the following definitions shall apply:

a. Accredited rural financial institutions (FIs) xxx

xxx

f. Agriculture and agrarian reform credit shall refer to loans granted for the following activities and purposes:

(i) Agricultural production;

xxx

(vii) Efficient and effective merchandising of agricultural and fishery commodities stored and/or processed by the facilities aforesaid in domestic and foreign commerce;

(viii) Agricultural value chain financing availed of by actor(s)/player(s) who are considered as qualified borrowers under Subsection X341.2, MORB; and

(ix) Other activities identified in Section 23 of R.A. No. 9435, otherwise known as the “Agriculture and Fisheries Modernization Act of 1997”, as follows:

“xxx”

- ▶ 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. 908 was published in The Philippine Star on 18 March 2016.]

BLGF Opinion

BLGF Opinion No. 004-2016 dated 24 February 2016

Electric poles and steel towers of electric cooperatives fall within the definition of machinery under the LGC and are thus subject to RPT.

Facts:

R Coop sought reconsideration of the opinion on the taxability of electric poles and steel towers of electric cooperatives. R Coop maintained that these are personal properties because (1) these are not within the definitions of immovable property under Article 415 of the Civil Code; and (2) these are attached to square metal frames by means of bolts and could be moved from place to place when unscrewed and dismantled.

Issue:

Are electric poles and steel towers subject to RPT?

Ruling:

Yes. Although the LGC does not provide for the specific definition of “real property”, electric poles and steel towers fall with the definition of “machinery” under the LGC which are subject to RPT.

Section 199 (o) of the LGC defines machinery as “may or may not be attached, permanently or temporarily, to the real property . . . which are actually, directly and exclusively used to meet the needs of the particular industry, business or activity and which by their very nature and purpose are designed for, or necessary to its manufacturing, mining, logging, commercial, industrial or agricultural purposes.”

Moreover, while Article 415 of the Civil Code requires that the machinery should be annexed to the land for it to be considered as a real property, the definition under the LGC, which is a special law, should prevail. Basic is the rule in statutory construction that a special law prevails over a general law.

Hence, as ruled by the Supreme Court in *Manila Electric Company v. the City Assessor and City Treasurer of Lucena City*, transformers, electric post, transmission lines, insulators and electric meters of electric companies are not exempted from RPT under the LGC.

Court Decisions

People of the Philippines vs. Joel C. Mendez

CTA (Special First Division) Criminal Case No. 0-014 promulgated 10 February 2016

Even if no income was generated from the business, a taxpayer is still required to file an ITR.

Facts:

Accused Joel C. Mendez was criminally charged with violation of Section 255 of the Tax Code for failure to file his ITR for 2001. The allegations in the criminal information were: (a) Mendez was required to file a return; (b) He failed to file such return; and (c) The failure to file a return was willful. Upon arraignment, Mendez pleaded “not guilty.”

The BIR initiated an investigation on Mendez based on an anonymous complaint for non-issuance of official receipts. The BIR obtained third party information from various sources including the Land Transportation Office to prove that he purchased a vehicle in 2001; the Bureau of Immigration to prove that he travelled overseas twice in 2001; and print media to show that Mendez advertised his clinics, which were operational in 2001.

The BIR used the Expenditure Method to determine the income tax liability of Mendez. The method is based on the theory that if the taxpayer’s expenditure during the given year exceeds his reported income or when there was no income reported at all, and the source of such expenditure is unexplained, it may be inferred that such expenditures represent unreported income.

Mendez countered that some of his clinics were established beginning 2003. He also claimed that the newspaper advertisements made in 2001 were only for promotions purposes, although his clinics were not yet in operation. While he admitted rendering services to some celebrity-clients, he insisted these services were rendered in exchange for free commercial plugs. As there was no income, Mendez argued that there was no need to register and file a return with the BIR in 2001.

Issues:

1. Is Mendez required to file his ITR for 2001?
2. Is Mendez civilly liable for unpaid taxes and penalties?

Ruling:

1. Yes. Mendez is expressly mandated to file an ITR for 2001 under Sections 51(A) (1)(a) of the Tax Code.

All income from whatever source derived, such as compensation for services in whatever form paid, forms part of Mendez' gross income subject to income tax. His services to celebrity-clients were not for free but paid on exchange-deal basis pegged on the station's commercial rate per exposure. Since the commercial minutes allotted to celebrities are part of their compensation package, Mendez's allegation that no income was generated from services rendered to his celebrity-clients has no basis.

Evidence shows that he had been practicing his profession as a doctor offering medical services in various clinics as early as 1996. He even placed several advertisements in the newspapers in 2000 and 2001 promoting his services. The advertising campaign negates the contention that he was not yet in operation in 2001.

Even assuming no income was generated from his business in 2001, there is still an obligation to file an ITR.

2. No. While as a rule, the civil action is deemed simultaneously instituted with the criminal case, the evidence presented against the accused focused only on the non-filing of the ITR for income earned in 2001.

While a tax assessment is not necessary before there can be a criminal prosecution, a civil action for collection of the tax requires that an assessment procedure be complied with. There was no formal assessment but only a computation of alleged tax deficiency prepared by the Revenue Officer, which cannot be a basis for the imposition of civil liability against Mendez.

Commissioner of Internal Revenue vs. Elric Auxiliary Services Corporation/Sacred Heart Services Gas Station

CTA (*En Banc*) Case No. 1174 promulgated March 3, 2016

The CTA has jurisdiction over cases arising from the BIR's *Oplan Kandado* program as these fall within the meaning of "other matters arising under the NIRC."

The basis and method of computation of the VAT assessment as a result of the surveillance must be disclosed; otherwise, the sales estimates of the BIR cannot be considered valid. Surveillance results in one period cannot be used as basis for deficiency tax assessment for other quarters of different taxable years.

Facts:

The BIR assessed Respondent Elric Auxiliary Services Corporation (EASC) for deficiency VAT after a surveillance was conducted on EASC's gasoline station for 10 days under the BIR's *Oplan Kandado* Program. The BIR issued a 48-hour notice for EASC to explain why the business establishment should not be closed. After submission of its explanation, EASC received VAT Compliance Notice requiring the payment of alleged deficiency VAT within 5 days. EASC filed a letter-explanation under oath disputing the assessment. Upon receipt of the BIR's denial of its explanation, EASC filed a Petition for Review with the Court of Tax Appeals (CTA) within 30 days.

EASC questioned the basis and the method of computation of its sales during the period of surveillance for being arbitrary, and sought the cancellation of the VAT assessment. The CIR argued, among others, that the CTA has no jurisdiction to review its administrative enforcement of the provisions of the Tax Code, such as *Oplan Kandado*, which imposes administrative sanctions on taxpayers for non-compliance with essential VAT requirements.

The CTA Second Division ruled in favor of EASC, prompting the CIR to elevate to case to the CTA *En Banc*.

Issues:

1. Does the CTA have jurisdiction over cases arising from BIR's *Oplan Kandado* Program?
2. Are the 48-hour Notice and 5-day VAT Compliance Notice valid?

Ruling:

1. Yes. The CTA's jurisdiction is not limited to a decision, ruling or inaction of the CIR on disputed assessments.

The CTA can determine the validity of the 48-hour Notice and 5-day VAT Compliance Notice issued by the BIR under its *Oplan Kandado* Program. *Oplan Kandado* is based on Section 115 of the Tax Code, which empowers the CIR to suspend the business operations of a taxpayer. As such it falls within the meaning of "other matters arising under the NIRC" under Section 7 RA No. 1125, which is covered by the jurisdiction of the CTA.

2. No. In the absence of any explanation on the factual basis of the results of the surveillance, the taxpayer cannot be deemed to be sufficiently informed on the basis of the assessment of the VAT liability. Without such basis, the taxpayer cannot adequately respond or specifically refute the deficiency VAT assessment.

Other than a statement that the result of the surveillance resulted in a VAT liability, the basis and the method of computation of the liability must likewise be disclosed. The BIR neither described how the surveillance was conducted nor explained the methods used in arriving at the sales estimates. There was no way for the Court to determine whether the factual basis gives rise to a reasonable estimate. Without such information, the sales amounts used by the BIR cannot be considered *prima facie* valid as they appear to have been arrived at without any basis.

While Section 6(C) of the Tax Code, as amended, provides that the "findings may be used as the basis for assessing the taxes for the other months or quarters or the same or different taxable years," such assessment must still comply with the test of reasonableness, and must not be arbitrary and capricious.

Esper R. Vargas, Jr. vs. Commissioner of Internal Revenue

CTA (Third Division) Case No. 8750 promulgated 8 March 2016

Assessments that fail to comply with due process requirements cannot become final, executory and demandable.

The CIR cannot be held liable for actual damages in tax cases as he is immune from suit under the doctrine of sovereign immunity.

Facts:

The BIR assessed Petitioner Vargas for alleged deficiency income tax and VAT for 2007 based on a computerized matching of information from third party sources as against the taxpayer's declarations per VAT returns. The BIR alleged that Vargas underdeclared his purchases in 2007, resulting in undeclared income, which should be subject to income tax and VAT.

The BIR issued a Final Assessment Notice (FAN) but prior to Vargas' receipt of the FAN, it enforced at least one of the several Warrants of Garnishment issued against Vargas' bank accounts. Vargas learned of the garnishment on the same day it secured a copy of the FAN. Vargas filed a Petition for Review at the CTA with an application for a Temporary Restraining Order and Writ of Preliminary Injunction.

At the CTA, Vargas argued that the BIR failed to comply with the due process requirements, as he was not notified in writing of his liability for deficiency taxes. As such, the assessments were null and void and could not become final, executory and demandable. He also prayed for actual damages against the BIR in the form of filing fees and attorney's fees for its oppressive assessment and the illegal garnishment of his bank account, where he incurred costs to protect his interest.

The BIR countered that Vargas should have filed a protest to the FAN instead of a Petition for Review and having failed to do so, the CTA did not acquire jurisdiction over the case.

Issues:

1. Are the deficiency tax assessments valid?
2. Can the BIR be held liable for actual damages resulting from the assessment?

Ruling:

1. No. The assessments were void for failure to comply with due process and cannot become final, executory and demandable.

To be valid, an assessment must actually be received by the taxpayer. The assessments and the subsequent collection violated the right to due process of Vargas, who had no opportunity to assail the assessment as he was not even aware that assessments were issued against him. There was no valid notice of assessment sent to the taxpayer.

2. No. The CTA has consistently disallowed the award of actual damages in tax cases. In the case of *Farolan, Jr. v. CTA, GR 42204 dated 21 January 1993*, the Supreme Court ruled that the CIR cannot be held liable for actual damages as he is immune from suit following the doctrine of sovereign immunity.

It is the BIR's prime duty to perform tax assessments and tax collections. In issuing the subject assessment and enforcing its collection, the CIR was merely exercising the authority accorded to her under the Tax Code.

Attorney's fees and expenses of litigation cannot be recovered unless the claimant is compelled to litigate or incur expenses to protest his interest. However, Vargas did not offer a compelling reason for the award of filing fees and attorney's fees.

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