Tax bulletin

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SGV

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Highlights

BIR Rulings

- A branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax-exempt corporation under Section 30 of the Tax Code. **(Page 4)**

- Dividends paid to a resident of the Netherlands are subject to the 10% preferential final withholding tax (FWT) if the recipient is a company the capital of which is wholly or partly divided into shares and which holds directly at least 10% of the capital of the Philippine company. **(Page 4)**

- Interest arising in the Philippines and paid to a resident of Finland is exempt from Philippine income tax if the interest is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured by the Finnish Export Credit Ltd. **(Page 5)**

- Interest arising in the Philippines and paid to a resident of Korea is exempt from Philippine income tax, if the interest is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured by, the Export-Import Bank of Korea.

  Loan agreements are subject to documentary stamp tax (DST) at the rate of P1.00 for every P200.00 (or 0.5%) of the issue price, or fractional part thereof. **(Page 5)**

- Capital gains derived by a US resident from the sale of shares in a domestic corporation shall be taxable only in the US, provided the assets of the Philippine company do not consist principally of real property interests located in the Philippines. The term "principally" means that the ratio of the immovable property over the total assets of the Philippine company in terms of value is more than 50%. **(Page 6)**

- A US resident who is invited to teach in the Philippines by a Philippine university or other educational institution shall be exempt from Philippine tax on his income from personal teaching services for a period not exceeding two years from the date of his arrival. **(Page 6)**

- A contract which does not call for the supply of existing information or reproduction of existing material, but for the provision of actual services in the areas of accounting, finance and information technology is characterized as a contract for the performance of services rather than a supply of know-how or other intangible property (royalty).

  Income derived by resident of Thailand from services rendered in the Philippines through its employees for a period aggregating less than 183 days is not subject to Philippine income tax.

  Services rendered in the Philippines by a non-resident in favor of a PEZA-registered entity are exempt from VAT under Section 109(K) of the Tax Code. **(Page 7)**

- An international air carrier organized in the US (with license to do business in the Philippines as a provider of international air services to and from the country) is subject to the Gross Philippine Billings (GPB) tax at the preferential rate of 1½%, as well as to 3% tax on carriage of cargo. **(Page 7)**

BIR Issuances

- Revenue Regulations (RR) No. 8-2015 amends the definition of "raw cane sugar" as provided in RR No. 6-2015 in relation to the imposition of advance business tax (VAT or percentage tax). **(Page 8)**

- Revenue Memorandum Circular (RMC) No. 23-2015 further clarifies the rules on the issuance of a withdrawal certificate (WC) for every removal of petroleum products from the refinery, depot, or any storage facility as prescribed under RMC No. 50-2014. **(Page 11)**

- RMC No. 24-2015 clarifies RR No. 2-2015, particularly on the submission by concerned taxpayers of scanned copies of the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) and Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316). **(Page 14)**

- RMC No. 25-2015 clarifies the imposition of advance business tax (VAT or percentage tax) on raw sugar and refined sugar under RR No. 6-2015 dated March 31, 2015. **(Page 15)**

- RMC No. 26-2015 provides alternative modes in the filing of BIR Form Nos. 1601-C, 1601-E, 1601-F, 1600, 1602, 1603, 2551M, 2551Q, 2550M, 2550Q, 1700, 1701, 1702EX, 1702MX, 1702RT, 1701Q, and 1702Q using the electronic platforms of the BIR. **(Page 15)**

BOC Issuance

- Customs Memorandum Order (CMO) No. 14-2015 revokes CMO No. 3-2015 and prescribes the revised rules for BOC accreditation of PEZA locators. **(Page 17)**

PEZA Issuance

- Memorandum Circular No. 2015-015 implements Phase 1 of the PEZA Electronic Application Registration System (e-ARS). **(Page 17)**

BSP Issuances

- Circular No. 877 amends the provisions of the Manual of Regulations for Banks (MORB) on the issuance of Long-Term Negotiable Certificates of Time Deposits (LTNCTD). **(Page 18)**

- Circular No. 878 amends the MORB and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on the implementation of the Personal Equity and Retirement Account (PERA) Act of 2008 and its implementing rules and regulations (IRR). **(Page 18)**

- Circular No. 879 introduces Appendix 34a of Subsection X405.1 of the MORB and Appendix Q-21-a to Subsection 4405Q.1of the MORNBFI, on the implementation of the PERA Act of 2008 and the PERA IRR. **(Page 19)**

- Circular No. 880 amends Section 4192Q/4162N of the MORNBFI; Subsection X191.2 of the MORB; and Subsection X425.2/4425Q.2 and Appendix 6/Q-3 and N-1 of the MORB and MORNBFI, respectively, on the implementation of the PERA Act of 2008 and the PERA IRR. **(Page 19)**

BLGF Opinion

- Professionals who have paid the corresponding professional tax are entitled to practice their profession in any part of the Philippines without being subjected to any other national or local tax, license or fee, including mayor's permits.

  Dental clinics, which are established as a direct consequence of the practice of the dental profession, are exempt from local business taxes. **(Page 24)**

Court Decision

- A BIR certification/ruling is not a precondition to avail of a tax exemption in an exchange of property for shares of stock under Section 40(C)(2) of the Tax Code.

  The transfer of land by a real estate company to another in exchange for shares of stock where the transferor gains control of the transferee is not subject to VAT.*

  The non-submission of documents to support its refund claim with the BIR is not fatal to a taxpayer's claim for refund filed with the CTA. **(Page 25)**

*[*Editor's Note: The property for share swap involved in this case occurred on April 30, 2011, before the effectivity of RR No. 10-2011, dated July 1, 2011. Under the amendment introduced by RR No. 10-2011, the exchange of goods or properties used in business or held for sale or for lease by the transferee is subject to VAT, whether resulting in corporate control or not.]*

BIR Rulings

A branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax-exempt corporation under Section 30 of the Tax Code.

BIR Ruling No. 159-15 dated May 6, 2015

Facts:

A Co., a US corporation, was duly licensed to establish a branch in the Philippines for the purpose of providing spiritual and physical aid to victims of war, national disasters, poverty and famine. The branch requested for a certificate of tax exemption under Section 30 of the Tax Code on non-stock, non-profit corporations.

Issue:

Can a branch of a foreign non-stock, non-profit corporation qualify as a tax-exempt corporation?

Ruling:

No. Section 5 of Revenue Memorandum Order (RMO) No. 20-2013 specifically states that "a branch office of a foreign non-stock, non-profit corporation cannot qualify as a tax-exempt corporation under Section 30 of the NIRC, as amended."

Dividends paid to a resident of the Netherlands are subject to the 10% preferential FWT if the recipient is a company the capital of which is wholly or partly divided into shares and which holds directly at least 10% of the capital of the Philippine company.

BIR Ruling No. ITAD 058-15 dated March 25, 2015

Facts:

A Co., a Dutch company, the capital of which is divided into shares, owns 40% of the total shares in B Co., a domestic corporation. B Co. declared cash dividends in favor of A Co. on March 2, 2012 and subsequently paid such dividends on May 9, 2012.

A Tax Treaty Relief Application (TTRA) for availing of the preferential 10% FWT on dividends under the RP-Netherlands Tax Treaty was filed with the BIR's International Tax Affairs Division (ITAD) on May 9, 2012, the same day as the dividend payment.

Issue:

Are the dividends qualified for the preferential 10% FWT rate?

Ruling:

Yes. Under the RP-Netherlands Tax Treaty, dividends arising in the Philippines and paid to a resident of the Netherlands are subject to the preferential 10% FWT on the gross amount of dividends, if the recipient of the dividends is a company the capital of which is wholly or partly divided into shares and which holds directly at least 10% of the capital of the Philippine company paying the dividends.

[Editor's Note: The ITAD initially denied the TTRA on the basis of RMO No. 72-2010, which requires filing the TTRA prior to the dividend payment. The matter was elevated to the Department of Finance (DOF) for review; the DOF subsequently endorsed the matter back to the ITAD for appropriate action, inviting attention to the Supreme Court's decision in Deutsche Bank AG Manila Branch vs. CIR (G.R. No. 188550 dated August 1, 2013). The ITAD then reversed its initial denial without citing the Deutsche Bank case as basis for the reversal.]

BIR Ruling No. ITAD 116-15 dated April 30, 2015

Interest arising in the Philippines and paid to a resident of Finland is exempt from Philippine income tax if the interest is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured by the Finnish Export Credit Ltd.

Facts:

The Finnish Export Credit Ltd., a state-owned financing company under Finland's Ministry of Employment and the Economy, entered into a loan facility agreement with B Co., a domestic corporation. Under the agreement, B Co. may request for advances during a 6-month availability period, with such advances being repayable in successive half-yearly installments, subject to the payment of interest.

Issue:

Are the interest payments exempt from Philippine income tax?

Ruling:

Yes. Under the RP-Finland Tax Treaty, interest arising in the Philippines and paid to a resident of Finland is exempt from Philippine income tax if the interest is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured by the Finnish Export Credit Ltd.

BIR Ruling No. ITAD 119-15 dated April 30, 2015

Interest arising in the Philippines and paid to a resident of Korea is exempt from Philippine income tax if the interest is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured by, the Export-Import Bank of Korea.

Loan agreements are subject to documentary stamp tax (DST) at the rate of P1.00 for every P200.00 (or 0.5%) of the issue price, or fractional part thereof.

Facts:

The Export-Import Bank of Korea, a statutory juridical financing institution in Korea, entered into a loan facility agreement with B Co., a domestic corporation. Under the agreement, B Co. may request for drawdowns repayable with interest.

Issues:

1. Are the interest payments exempt from Philippine income tax?
2. Is the loan facility agreement subject to DST?

Ruling:

1. Yes. Under the RP-Korea Tax Treaty, interest arising in the Philippines and paid to a resident of Korea is exempt from Philippine income tax if the interest is paid in respect of a loan made, guaranteed or insured, or credit extended, guaranteed or insured by the Export-Import Bank of Korea, among others.

2. Yes. The agreement is subject to DST at the rate of P1.00 for every P200.00 (or 0.5%) of the issue price, or fractional part thereof, under Section 179 of the Tax Code.

BIR Ruling No. ITAD 120-15 dated April 30, 2015

Capital gains derived by a US resident from the sale of shares in a domestic corporation shall be taxable only in the US, provided the assets of the Philippine company do not consist principally of real property interests located in the Philippines. The term "principally" means that the ratio of the immovable property over the total assets of the Philippine company in terms of value is more than 50%.

Facts:

A Co., a non-resident US corporation, entered into a Deed of Absolute Sale with B Co., a non-resident Swiss corporation, for the sale of shares held by A Co. in C Co., a domestic corporation. The audited financial statements of C Co. show that its real property interests represent 51.67% of its total assets.

Issues:

1. Is the sale of the C Co. shares subject to Philippine capital gains tax (CGT)?
2. Is the sale subject to DST?

Ruling:

1. Yes. Under Article 14(2) of the RP-US Tax Treaty, capital gains derived by a US resident from the sale of shares in a domestic corporation shall be taxable only in the US, provided the assets of the Philippine corporation do not consist principally of real property interests located in the Philippines. RR No. 4-86 provides that the term "principally" means that the ratio of the immovable property over the total assets of the Philippine company in terms of value is more than 50%. Considering that the audited financial statements of C Co. reveal that the real property interests represent of 51.67% of the total assets, the CGT exemption under the RP-US Tax Treaty will not apply. Hence, the sale of shares shall be subject to CGT at the rate of 5% on the first P100,000 of net gain, plus 10% on the net gain amount in excess of P100,000, pursuant to Section 28(b)(5)(c) of the Tax Code.

2. Yes. The sale of shares is subject to DST at the rate of P0.75 for every P200.00 (or 0.375%) of the par value of the shares, of a fraction thereof, under Section 175 of the Tax Code.

BIR Ruling No. ITAD 137-15 dated May 4, 2015

A US resident who is invited to teach in the Philippines by a Philippine university or other educational institution shall be exempt from Philippine tax on his income from personal teaching services for a period not exceeding two years from the date of his arrival.

Facts:

Mr. A, a US citizen and resident, was invited to render personal services as a professor in a Philippine university. He arrived in the Philippines on June 6, 2013 and subsequently performed personal teaching services for a fee.

Issue:

Is Mr. A exempt from Philippine tax on his income from teaching services?

Ruling:

Yes. Under Article 21 of the RP-US Tax Treaty, a US resident who is invited to teach in the Philippines by a Philippine university or other educational institution shall be exempt from Philippine tax on his income from personal teaching services for a period not exceeding two years from the date of his arrival, i.e., from June 6, 2013 to June 5, 2015.

BIR Ruling No. ITAD 144-15 dated May 4, 2015

A contract which does not call for the supply of existing information or reproduction of existing material, but for the provision of actual services in the areas of accounting, finance and information technology is characterized as a contract for the performance of services rather than a supply of know-how or other intangible property (royalty).

Income derived by resident of Thailand from services rendered in the Philippines through its employees for a period aggregating less than 183 days is not subject to Philippine income tax.

Services rendered in the Philippines by a non-resident in favor of a PEZA-registered entity are exempt from VAT under Section 109(K) of the Tax Code.

Facts:

A Co., a resident of Thailand, entered into a Comprehensive Service Agreement with B Co., a domestic corporation registered with the PEZA. Under the agreement, A Co. agreed to render services to B Co. in the areas of accounting, finance and information technology for a fee. For the rendition of services, A Co. sent its personnel to the Philippines for an aggregate period of 28 days.

Issues:

1. Is the income derived by A Co. characterized as business profits or as royalties?
2. Is A Co. subject to Philippine income tax?
3. Are the services rendered by A Co. in the Philippines subject to VAT?

Ruling:

1. Yes. Since the Agreement does not call for the supply of existing information or reproduction of existing material, but for the provision of actual services in the areas of accounting, finance and information technology, it is characterized as a contract for performing of services rather than a supply of know-how or other intangible property. Thus, the fees under the Agreement are in the nature of business profits rather than payments for know-how or royalties.

2. No. Under the RP-Thailand Tax Treaty, an enterprise of Thailand shall be taxable in the Philippines only on business profits to the extent attributable to a permanent establishment (PE) situated in the Philippines. A Thai enterprise may be deemed to have a PE in the Philippines if it furnishes services, including consultancy services, through employees or other personnel, if such activities continue (for the same project or a connected project) for a period or periods aggregating more than 183 days. Accordingly, since the services performed by A Co. in the Philippines were only for an aggregate period of 28 days, A Co. is not deemed to have a PE in the Philippines and its income shall not be subject to Philippine income tax.

3. No. As a general rule, the sale of goods and services to entities exempt from VAT, such as PEZA-registered entities, is zero-rated. However, instead of zero-rating which is not available to non-resident suppliers, the transaction will be treated as VAT exempt pursuant to Section 109 (K) of the Tax Code.

An international air carrier organized in the US (with license to do business in the Philippines as a provider of international air services to and from the country) is subject to the Gross Philippine Billings (GPB) tax at the preferential rate of 1½%, as well as to 3% tax on carriage of cargo.

BIR Ruling No. ITAD 145-15 dated May 4, 2015

Facts:

A Co., an international air carrier organized in the US, is licensed to do business in the Philippines as a provider of international air services to and from the country.

Issues:

1. Is A Co. subject to the preferential 1½% GPB tax?
2. Is A Co. subject to 3% percentage tax?
3. Is A Co. subject to VAT?

Ruling:

1. Yes. Under Article 9 of the RP-US Tax Treaty, the Philippines may tax the profits derived by a US resident from the operation of aircraft in international traffic in the Philippines, provided the rate of income tax that may be imposed on such profits shall not exceed the lesser of 1½% of the gross amount thereof, or the lowest rate of income tax imposed by the Philippines on such profits derived by a resident of a third state under similar circumstances (also known as the most-favored-nation [MFN] clause). Since the Philippines has not yet granted an MFN treatment on profits from the operation of aircraft in international traffic, the applicable tax shall be 1½% on GBP.

2. Yes. A Co. is subject to the 3% tax on gross receipts derived from the transport of cargo from the Philippines to another country under Section 118 of the Tax Code.

3. No. A Co. is exempt from VAT because (i) it is already subject to percentage tax pursuant to Section 109(1)(E), and (ii) it is an international carrier engaged in the transport of passengers pursuant to Section 109(1)(S), both of the Tax Code.

BIR Issuances

Revenue Regulations (RR) No. 8-2015 amends the definition of "raw cane sugar" as provided in RR No. 6-2015 in relation to the imposition of advance business tax (VAT or percentage tax).

Revenue Regulations No. 8-2015 dated May 22, 2015

- *Definition of Terms*

  1. **Raw Cane Sugar** shall mean the natural sugar extracted from sugarcane through the simple mechanical process of pressing for the juice; boiling to crystalize; filtering using a centrifuge to separate these crystals, and drying, resulting in crystallized brown sugar (brown color due to the natural molasses content present in sugar cane): provided that it shall refer to raw cane sugar produced from conducting only one (1) stage of filtering and centrifugal separation without any other process, such as but not limited to washing, bleaching, etc., and its color is greater than 800 ICU, and its content of sucrose by weight in a dry state corresponds to a polarimeter reading of less than 99.5°.

     The definition includes *muscovado* which has standard specifications as produced, namely: Powder Class A – polarization of 86 ° minimum; Powder Class B – polarization of 77 ° minimum; and Lump – polarization of 57 ° minimum.

     Only those falling under the above definition of raw cane sugar, including *muscovado*, are exempt from VAT or percentage tax pursuant to Section 109 (1) (A) of the Tax Code.

     The Sugar Regulatory Authority (SRA) represents that it collects on a bi-weekly basis composite samples from mills for routine quality tests. For further verification that the products produced by mills conform to the

definition contained herein, the SRA shall provide the BIR with a copy of the results of said test showing the polarimeter and color reading of the raw cane sugar produced, within 15 days from the end of the calendar month. The SRA shall also ensure that they have in place rules and regulations requiring that "RAW CANE SUGAR" be clearly placed on *quedans* issued for products falling under this definition.

2. **Sugar** refers to sugar other than Raw Cane Sugar as defined in the preceding paragraph. This includes sugar whose content of sucrose by weight, in the dry state corresponds to a polarimeter reading of 99.5º and above and/or whose color is 800 ICU or less.

   Cane Sugar produced from the following shall be presumed to be refined sugar:

   - Product of refining process;
   - Products of a sugar refinery; or
   - Product of a production line of a sugar mill accredited by the BIR to be producing and/or capable of producing sugar with polarimeter reading of 99.5 ˚and above, and for which the *quedan* issued as verified by the SRA identifies the sugar to be of a polarimeter reading of 99.5˚ and above.

   Nonetheless, sugar produced from sugar production lines accredited by the BIR to be capable of producing sugar with polarimeter reading of 99.5º or above shall be presumed to be refined sugar.

3. **Sugar Refinery/Mill** refers to an entity, natural or juridical, engaged in the business of milling sugar cane into raw or in the refining of raw sugar.

4. **Sugar Owners** may refer to persons who have legal title over the sugar and may include any of the following:

   - Sugar planters;
   - Traders;
   - Sugar Millers;
   - Cooperative/s;
   - Associations.

- *Requirement to Pay Advance Business Taxes*

  1. The business tax (VAT or percentage tax) on the sale of sugar shall be paid in advance by the owner/seller before any warehouse receipt or *quedans* are issued, or before the sugar is withdrawn from any sugar refinery mill.

  2. Any person who is not a VAT-registered person and whose sales or receipts are exempt from VAT, shall pay an advance percentage tax equivalent to 3% of the gross monthly sales or receipts of sugar.

- *Basis for Determining Advance Tax*

  1. *Base Price.* — The advance VAT shall be determined by applying the 12% VAT rate on the base price of P1,400.00 per 50 kg. bag of sugar.

  2. *Subsequent Base Price Adjustments.* — The base price upon which the advance VAT payment will be computed under the preceding paragraph shall be adjusted when deemed necessary by the Commissioner, depending on the prevailing market price of sugar.

3. *Advance Percentage Tax* – For taxpayers who are VAT-exempt and are not VAT-registered persons, the advance percentage tax shall be determined by applying the 3% percentage tax to the gross sales or receipts, provided that cooperatives shall be exempt from the 3% tax.

- ***Exemptions from the Payment of the Advance VAT***

  1. *Withdrawal of raw cane sugar* – Sale of raw cane sugar, including *muscovado*, is always exempt from VAT irrespective of the seller and buyer, pursuant to Section 109(1)(A) of the Tax Code.

  2. *Withdrawal of sugar by a duly accredited and registered agricultural cooperative in good standing:*

     - If the sugar is owned and withdrawn from the sugar refinery/mill by an agricultural cooperative in good standing duly accredited and registered with the Cooperative Development Authority (CDA), the withdrawal of sugar for sale to members is not subject to advance VAT or percentage tax.

     - The withdrawal of sugar for sale to non-members is subject to payment of advance VAT or percentage tax if the agricultural cooperative is not the producer of sugar.

     - Any *quedan* or evidence of ownership showing the name of the cooperative together with another entity, natural or juridical, shall not be considered sales by the agricultural cooperative but by the other entity named therein, and are not exempted from the payment of advance VAT or percentage tax.

     - To claim exemption, a cooperative must be the holder of a valid, current and subsisting Certificate of Tax Exemption issued in accordance with RMO No. 76-2010 dated September 27, 2010.

  3. *Withdrawal of sugar by a duly accredited and registered agricultural cooperative and sale to another agricultural cooperative:*

     - If the owner of the sugar as reflected in the *quedan* is an agricultural cooperative, the sale of the sugar to another agricultural cooperative is not subject to VAT and advance percentage tax.

     - If the seller is not an agricultural producer, but merely purchases the sugar from the planter, or transfers the sugar to a cooperative through assignment, its sale of the resulting sugar to another agricultural cooperative shall be subject to VAT, and its withdrawal from the sugar refinery/mill will only be allowed upon payment of the advance VAT or percentage tax to the Revenue District Office (RDO) having jurisdiction over the place of business of the cooperative.

     - Any *quedan* or evidence of ownership issued to a cooperative together with another entity, natural or juridical, shall not be considered a sale by the cooperative, but by the other entity named therein, and is not exempt from the advance business taxes.

- *Withdrawal or Transfer of Ownership of Sugar*

    1. The proprietor of a sugar refinery/mill shall not allow the issuance of *quedan*/warehouse receipts or other evidence of ownership, or allow any withdrawal of sugar from its premises without proof of payment of advance VAT/percentage taxes.

- *Credit for Advance Tax Payments*

    1. In addition to the input tax credits allowed under Section 110 of the Tax Code, the advance VAT paid by sellers of sugar shall be allowed as a credit against the output tax based on the actual gross selling price of sugar.

    2. The Certificate of Advance Payment of the VAT/percentage tax and a copy of the payment form shall be attached to the Monthly/Quarterly Return to support the claim for credit of advance VAT/percentage tax payment.

- *Unutilized Advance Tax Payment*

    1. The advance tax paid by the seller/owner of sugar which remains unutilized at the end of taxpayer's taxable year when the advance payment was made, may, at the option of the owner/seller, be available for the issuance of a Tax Credit Certificate (TCC) upon an application duly filed with the BIR by the owner/seller within 2 years from the date of filing of the 4th quarter VAT return of the year such advance payments were made, or if filed out of time, from the last day prescribed by law for filing the return.

    2. Unutilized advance tax payments which have been the subject of an application for the issuance of a TCC shall not be allowed as a carry-over, nor credited against the output tax/percentage tax of the succeeding month/quarter/year.

    3. The issuance of a TCC shall be limited to the unutilized advance tax payments and shall not include excess input tax, such as those attributable to zero-rated sales, which shall be covered by a separate application for TCC following applicable pertinent rules.

- *Penalty Clause*

    1. Any violation of the provisions of these regulations shall be subject to penalties prescribed under Sections 254 and 275, and other pertinent provisions of the Tax Code, as amended.

[Editor's Note: See also related RMC No. 25-2015 on page 25 below.]

RMC No. 23-2015 further clarifies the rules on the issuance of a WC for every removal of petroleum products from the refinery, depot, or any storage facility as prescribed under RMC No. 50-2014.

Revenue Memorandum Circular (RMC) No. 23-2015 issued dated May 5, 2015

- The following information or entries shall be completely indicated in the withdrawal certificate (WC):

    1. Name of manufacturer/importer;
    2. Full name and address of consignee;
    3. Place of final destination;
    4. Carrier/truck number;
    5. Date withdrawn;

6. Due date of payment;
7. Exact description of the product;
8. Volume and amount of excise tax paid;
9. Whether imported or locally manufactured;
10. Whether product is bonded, tax exempt or tax paid under the "Remarks" portion;
11. If imported, the Official Receipt No., amount and date of payment;
12. Product Replenishment Debit Memo (PRDM) No. with corresponding amount and date, if payment is made thru PRDM;
13. Tank number if removed from a storage facility.

- For storage depots/facilities where no Revenue Officer on Premise (ROOP) is assigned, the issuance of WCs without the attestation of ROOPs may be allowed, provided the depot/facility shall submit a monthly report, together with the duplicate copies of all WCs issued, on or before the 8th day of the following month.

- Oil depots/facilities within Revenue Regions Nos. 4 (Bataan) to 9 (San Pablo) shall submit their monthly report to the Excise Large Taxpayer Field Operations Division (ELTFOD) at the 8th Floor of BIR National Office Building.

- For oil depots/facilities located outside Revenue Region Nos. 4 to 9, their report shall be submitted to the Excise Tax Area (EXTA) Office having jurisdiction over the facility.

- For depots/facilities where the assigned ROOPs are not available, the ROOP's Zone-in-Charge (Supervisor) shall attest to WCs issued by depots/facilities located within Revenue Regions 4 to 9, while the ROOP's Area Supervisor or EXTA Head shall attest to the WCs issued by depots/facilities located outside of Revenue Regions 4 to 9.

- The phrase *"for every removal of petroleum products"* in Section 36 of RR No. 13-77 shall be interpreted to mean delivery by batch - that is, each removal may contain more than one kind of petroleum products. Therefore, a single WC may cover the removal of various petroleum products under a single consignee.

- Since the word "consignee" in Section 36 of RR No. 13-77 is in the singular form, separate WCs shall be issued for each and every consignee, regardless of whether the shipment consists of single or different petroleum products.

- The issuance of the WC shall be on a per removal basis; thus, each lorry or delivery tank shall be covered by a WC.

- In case of a storage facility/depot used by a single oil company, a WC is no longer necessary for tank to tank transfer of its petroleum products within the facility/depot.

- For a facility/depot used by different oil companies/lessees, a tank transfer of petroleum product from one oil company/lessee to another is considered a removal and, hence, will require a WC.

- In extreme cases of a taxpayer running out of WC Forms, the following documents may be temporarily used in lieu of the WC:

    1. Excise Tax Removal Declaration (ETRD) Forms issued to him by reason of his being a manufacturer of E-10 gasoline; and

2. Any internal document, such as Delivery Receipts, which shall be attested to by the assigned ROOP, provided said internal documents are registered with the BIR in compliance with RR No. 18-2012.

The foregoing documents shall be allowed for a contingency period of not more than 5 days and not more than once a year. Subsequently, the Delivery Receipts or any internal documents used in lieu of the WC shall be assigned a single WC when the Forms become available.

- An importer of lube additives is required to issue a WC to accompany the removal of such additives from his warehouse to the manufacturer of lubricating oil, since lube additives are classified as petroleum products subject to excise tax under Section 148 of the Tax Code.

- A WC covering the delivery of petroleum products for sale shall be supported by a Sales Invoice and Delivery Invoice. For a WC covering the delivery of petroleum products for transfer to another depot or storage facility or gas station owned by the oil company, a Delivery Receipt will be sufficient to support the WC, provided that in both instances, the Delivery Receipt and Sales Invoice should be registered with the BIR in compliance with RR No. 18-2012.

- All the information required in the very first WC issued to accompany the original removal of a petroleum product, from the refinery to a depot, shall also be indicated in the WCs of the succeeding removal of the products (either to another depot or delivery to a retail station/end user), except in the following cases:

  1. The name of the depot shall be added next to the name of the manufacturer/consignor in case of bulk transfer; and
  2. The due date of payment may be dispensed with.

  However, the storage tank number from where the product is to be removed shall be indicated in the WC.

- The foregoing rule also applies to the first removal of an imported petroleum product, subject to the following exceptions:

  1. The name of the depot shall be added next to the name of the importer/consignor;
  2. The due date of payment of excise tax may be dispensed with; and
  3. The official receipt (OR) no., amount and date of payment may also be dispensed with.

- In case a change in the prepared WC is necessary, RR No. 13-77 expressly requires the consignor to issue a new WC in lieu of the amended WC.

- Contaminated or below specifications ("off spec") petroleum products for delivery back to the consignor shall be accompanied by the same WC covering the original shipment together with the Delivery Receipt.

- In case contaminated or "off spec" petroleum products are to be delivered back to the place of production or refinery for reprocessing, a prior permit shall also be secured before delivery.

RMC No. 24-2015 clarifies RR No. 2-2015, particularly on the submission by concerned taxpayers of scanned copies of the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) and Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316).

Revenue Memorandum Circular No. 24-2015 dated May 6, 2015

- The effectivity date of the implementation of RR No. 2-2015 insofar as it requires the submission of scanned copies of BIR Form Nos. 2307 and 2316 is March 21, 2015 (15 days after the date of publication in the *Manila Bulletin* on March 6, 2015).
- For the initial implementation of RR No. 2-2015, taxpayers adopting a calendar or fiscal-year accounting period may opt to submit the required BIR Form No. 2307 either in hard or in scanned copies, together with the quarterly income tax returns due for filing not later than April 30, 2015. For quarterly filing beyond April 30, 2015, taxpayers are mandated to submit BIR Form No. 2307 in scanned copies.
- Section 4 of RR No. 2-2006 remains in full force and effect, particularly on the retention of hard copies of the Certificates of Taxes Withheld for audit purposes. As such, the presentation of these certificates may be requested to validate the tax credits being claimed by income recipients in their tax returns.
- It is not necessary to prepare separate copies of BIR No. 2307 in cases where there are two or more income payments made by an income payor-withholding agent to the same income recipient/payee that are subjected to different creditable withholding tax (CWT) rates.
- A taxpayer may file a written request for a certified true copy of the scanned BIR Form No. 2307 or 2316 from the concerned BIR office, provided the corresponding certification fee and DST are paid.
- In case of juridical persons or corporate entities, any of the principal officers, duly designated through a Board Resolution and sworn to by such officer and by the corporate treasurer or assistant treasurer, is authorized to sign the notarized Certification and the label of the DVD-R containing the soft copies of the scanned BIR Form Nos. 2307 and 2316.
- For individual taxpayers, the person duly authorized to sign the notarized Certification and DVD-R shall be his attorney-in-fact as evidenced by a notarized Special Power of Attorney (SPA) issued for the purpose.
- The printing of the BIR or taxpayer's logo on the label of the DVD-R is optional.
- Any non-Large Taxpayers Service (LTS) taxpayer duly registered with the RDO may, as an option, submit scanned copies of BIR Form Nos. 2307 and 2316; in such a case, such taxpayer shall no longer be allowed to submit hard copies of such forms.
- Failure to comply with the requirements of RR No. 2-2015 shall subject the concerned taxpayer to the penalties provided under the Tax Code, and the compromise penalties prescribed in RMO No. 7-2015, if applicable.
- The images of Certificates of Creditable Tax Withheld shall be separately stored or saved in the DVD-R using a sequential number annexed at the end of each filename, separated by an underscore, as prepared in accordance with the format prescribed under RR No. 2-2015.
- There is no prescribed specific size of paper for purposes of printing BIR Form Nos. 2307 and 2316, for as long as all the detailed information required are captured in the paper, and the same can be read easily.

- A taxpayer may use any device (flatbed scanner or digital camera) in capturing images of BIR Form Nos. 2307 and 2316, provided the images can be stored in soft copies, specifically in "PDF" format.
- For purposes of readability of scanned images of BIR Form Nos. 2307 and 2316, the minimum resolution of the images should be at least 200 dot-per-inch (dpi) set to black and white.
- The prescribed specification of the DVD-R to be used should be the single sided and single layered.

RMC No. 25-2015 clarifies the imposition of advance business tax (VAT or percentage tax) on raw sugar and refined sugar under RR No. 6-2015 dated March 31, 2015

Revenue Memorandum Circular No. 25-2015 dated May 6, 2015

- The physical inventories of raw sugar and refined sugar covered by *quedans* which are dated before May 1, 2015 are not subject to the imposition of the advance business tax.
- If the taxpayer is engaged in integrated operations of milling and refining of sugar, the advance business tax prescribed under RR No. 6-2015 shall be imposed on raw sugar produced in the milling operations if sold to another person or entity.
- If the raw sugar is just transferred to the refinery operation of the taxpayer for purposes of refining and converting the same into refined sugar, only the advance business tax on the refined sugar shall be imposed. There will be no separate imposition of business tax on raw sugar and refined sugar, considering that no sale transaction has transpired, since both products are owned by one and the same taxpayer.
- Under a tolling or service agreement wherein a sugar refinery (eg, A Co.) processes and converts into refined sugar, the raw sugar owned by a sugar miller (eg, B Co.), the advance VAT due on the refined sugar, net of the advance VAT paid on the raw sugar, shall be paid by B Co.
- If B Co. sold the raw sugar to A Co., the advance VAT on the refined sugar shall be paid by A Co. without the benefit of deducting the advance VAT paid by B Co., considering that ownership has been transferred to A Co. The advance VAT paid by B Co. shall be considered as ordinary input VAT by A Co. in the sales invoice issued by B Co.
- Advance payments of percentage taxes by non-VAT taxpayers are not allowed as input tax credits in the computation of the VAT liabilities of their clients-customers.

RMC No. 26-2015 provides alternative modes in the filing of BIR Form Nos. 1601-C, 1601-E, 1601-F, 1600, 1602, 1603, 2551M, 2551Q, 2550M, 2550Q, 1700, 1701, 1702EX, 1702MX, 1702RT, 1701Q, and 1702Q using the electronic platforms of the BIR.

Revenue Memorandum Circular No. 26-2015 dated May 6, 2015

- This circular does not cover taxpayers which are not mandated to use Electronic Filing and Payment System (eFPS)/Electronic BIR Forms (eBIRForms) and have not opted to file electronically; in such a case, the existing procedures on manual filing shall apply.
- Taxpayers filing with payment or no payment using the Offline eBIRForms shall follow the same procedures in Annex D of RMC No. 14-2015 and eFile by attaching the .xml file to the email.

- Taxpayers must click "FINAL COPY" and open the directory "C:\eBIRForms\IAF_RDO_Copy\" after validating the tax return. The taxpayers should, then, look for the .xml file of the encoded tax return form with the following naming convention:

  FILENAME = <999999999999-XXXXXX-99999999.xml>,

  Wherein:

999999999999	Represents the first 12 digits of the Taxpayer Identification Number (TIN) including the branch code
XXXXXX	Represents the next digits (maximum of 6) of the BIR Form Number
99999999	Represents the return period or the taxable year (maximum of 8 digits)
.xml	Represents the file type extension

- After locating the .xml file of the encoded tax return, taxpayers must attach the same to an email and send to the BIR using the following format:

Form Number	Email Subject	Email Address
1601-C	RDO_1601C_TIN_taxable_period	1601C@bir.gov.ph
1601-E	RDO_1601E_TIN_taxable_period	1601E@bir.gov.ph

- Taxpayers must print the email Notification from the BIR as evidence of the eFiled return as well as the tax return, and proceed to the AABs or collection agents for manual payment.

- For unsuccessful eFiling, taxpayers must follow the following guidelines to avoid penalties:

  1. Print evidence/proof (Print Screen on the Message given by the system) that EFPS was tried several times but unsuccessful;
  2. Report/call helpdesk and get trouble ticket log; or
  3. Report to BIR Contact Center and get reference number of the call

- Taxpayers mandated to use eFPS who were unsuccessful in the eFiling must print evidence/proof of attempts to eFile. However, they should manually file and manually pay on or before the due date following existing procedures.

- Taxpayers should file not later than the due dates of the respective returns and attach proof of unsuccessful eFPS attempts, then re-file electronically within 15 days after the statutory deadline set for the relevant returns starting with the return period April, 2015, which will be filed in May 2015.

- Penalties imposed on filing /using a mode/venue different from that prescribed shall be waived provided the subject returns have been re-filed electronically in the BIR's systems.

BOC Issuance

CMO No. 14-2015 revokes CMO No. 3-2015 and prescribes the revised rules for BOC accreditation of PEZA locators.

Customs Memorandum Order No. 14-2015 dated May 29, 2015

- The BOC shall no longer impose additional documentary requirements for the accreditation of PEZA locators.
- All PEZA locators (corporations, partnerships, cooperatives or sole proprietorships) that have already been registered and approved by PEZA through the Client Profile Registration System (CPRS)-E2M System shall be activated immediately by the BOC-Management Information System and Technology Group (MISTG), after payment of an activation fee of P 1,000.00 at the BOC-Cash Division, and presentation of the corresponding official receipt and copy of the CPRS Certificate of Registration to MISTG.
- CMO No. 14-2015 expressly revokes CMO No. 3-2015 on regulations for accreditation of PEZA Locators.

PEZA Issuance

Memorandum Circular No. 2015-015 implements Phase 1 of the PEZA Electronic Application Registration System (e-ARS).

Memorandum Circular No. 2015 – 015 dated May 8, 2015

- All PEZA applications for registration and related attachments can now be filled out and sent electronically starting May 1, 2015.
- The e-ARS can be accessed through the PEZA website http://www.peza.gov.ph or through the URL http://ears.peza.gov.ph
- The e-ARS may be used for the following PEZA applications for registration:

    1. New and existing registered ecozone developers – for all types of ecozones including applications of existing registered ecozone developers for inclusion of additional areas to an existing ecozone;
    2. New and existing registered ecozone enterprises – for Export, Information Technology, Agro-Industrial, Logistics Services, Tourism, Medical Tourism Enterprises, including applications of such existing registered ecozone enterprises for "New Project," "Expansion Project," and "Amendment of Registered Activity".

- The application fee can be paid in the PEZA Head Office or in the PEZA office in any PEZA economic zone. The PEZA-issued Official Receipt can be scanned and sent by e-mail to the e-mail addresses above.
- The applicant shall subsequently submit to PEZA the hard copy of the scanned documents and present the original Official Receipt for the application fee as follows:

    1. For Ecozone Developers – Within 30 days from date of approval of the application by the PEZA Board;
    2. For Ecozone Enterprises – Prior to signing of the company's Registration/ Supplemental Agreement with PEZA.

BSP Issuances

Circular No. 877 amends the provisions of the MORB on the issuance of the LTNCTD.

BSP Circular No. 877 dated May 22, 2015

- Item "b" of Subsection X233.9 of the MORB on application for authority of the issuing bank is amended by removing the forfeiture clause if any portion of an approved Long-Term Negotiable Certificates of Time Deposits (LTNCTD) is not issued within 6 months of the approval of the Monetary Board.
- Items "b," "c," "d," "f,' "g," "l," "k" and "o" removed the existence, relevance and necessity of disclosing "market makers."
- Item "d" of the same subsection removed the requirement to submit a certification by the president/country manager that the pre-qualification requirements under item "c(1)" have been complied with up to the time of offering.
- Item "e" of the same subsection removed the 30-day requirement for banks to list the LTNCTDs on the accredited exchange, and removed the penalty for being unable to issue the LTNCTDs if they remain unlisted after such period.
- Item "p" is added to the same subsection of the MORB, and will read as follows:

  "p. Supervisory Enforcement Actions. The BSP reserves the right to deploy its range of supervisory tools provided in Circular No. 875 dated 15 April 2015 to ensure compliance with the provisions of this Subsection."

- Circular No. 877 shall take effect 15 days after its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 877 was published in The Philippine Star *on May 29, 2015.]*

Circular No. 878 amends the MORB and the MORNBFI on the implementation of the PERA Act of 2008 and its IRR.

BSP Circular No. 878 dated May 22, 2015

- Subsection X901.1/X901Q.1 on annual fees on banks/quasi-banks shall now include Personal Equity and Retirement Account (PERA) accounts administered by the bank and quasi-bank, respectively.
- Subsection X405.1/4405Q.1 on the basic security deposit shall now include the following provisions as its third (3rd) paragraph:

  "The security for the faithful performance of the PERA Administrator shall be separately accounted for and calculated as prescribed under Section X960/4960Q and Appendix 34a/Q-21a of this Manual."

- Subsection X405.5/4405Q.5 on Reserves against Peso-denominated Common Trust Funds and Trust and Other Fiduciary Accounts - Others is amended by adding PERA as the 12th exception for the maintaining of reserves on TOFA-Others.
- Circular No. 878 shall take effect 15 days following its publication in the Official Gazette or in any newspaper of general circulation in the Philippines.

[Editor's Note: Circular No. 878 was published in The Philippine Daily Inquirer *on May 29, 2015.]*

Circular No. 879 introduces Appendix 34a of Subsection X405.1 of the MORB and Appendix Q-21-a to Subsection 4405Q.1of the MORNBFI, on the implementation of the PERA Act of 2008 and the PERA IRR.

BSP Circular No. 879 dated May 22, 2015

- The introduction of these subsections aims to provide coherent guidelines on the use of scripless securities as security for the faithful performance of the PERA Administrator; the crucial points of these subsections are as follows:

  1. Definition of Terms and Acronyms;
  2. Basic Requirements;
  3. Procedures for Assigning Initial/Additional RoSS Securities as Security for the Faithful Performance of the PERA Administrator;
  4. Procedures for Withdrawing RoSS Securities;
  5. Procedures for Replacing RoSS Securities; and
  6. Procedures for Crediting Interest and Maturity Proceeds of Securities.

- Circular No. 879 shall take effect 15 days following its publication in the Official Gazette or in any newspaper of general circulation.

[Editor's Note: Circular No. 879 was published in The Manila Bulletin *on May 29, 2015.]*

Circular No. 880 amends Section 4192Q/4162N of the MORNBFI; Subsection X191.2 of the MORB; and Subsection X425.2/4425Q.2 and Appendix 6/Q-3 and N-1 of the MORB and MORNBFI, respectively, on the implementation of PERA Act of 2008 and PERA IRR.

BSP Circular No. 880 dated May 22, 2015

- The Financial Reporting Package (FRP) prescribed under Subsection X191.2 of the MORB is hereby amended to revise (a) Contingent Accounts, (b) Line Item Instructions, and (c) specific reporting templates of FRP for Banks and Simplified FRP for Rural and Cooperative Banks, as follows:

  a. Contingent Accounts

  "xxx

  "9. Others

  (a) Late Deposit/Payment Received – xxx

  (e) Securities Held under Custodianship by Bank Proper – xxx

  (i) PERA Securities Held Under Custodianship by Bank Proper – This refers to securities held under PERA Custody agreement by the Bank Proper under the PERA Act of 2008.

  Xxx

  (i) Trust Department Accounts – This refers to the total accountabilities of the bank from its trust operations.

  (i) Securities Held Under Custodianship by Trust Department – xxx

  (i.a) PERA Securities Held Under Custodianship by Trust Department – This refers to the securities held under PERA Custody agreement by the Bank's Trust Department under the PERA Act of 2008.

(ii) PERA Assets Administered by Trust Department – This refers to all assets held by the Bank's Trust Department as PERA Administrator under the PERA Act.

(j) PERA Assets Administered by Bank Proper – This refers to all assets held by the Bank Proper as PERA Administrator under the PERA Act of 2008.

(k) Other Contingent Accounts – This refers to the items which cannot be appropriately classified under any of the foregoing contingent accounts.

b. Line Item Instructions

"xxx

Schedule 22 – Deposit Liabilities – Classified as to Type of Deposit

xxx

Additional Information

(1) Savings Deposit with Automatic Transfer – Report the amount of savings deposits with automatic transfer to demand deposit agreements.

(2) Non-Taxable – Report the amount of non-taxable deposits.

(a) Personal Equity and Retirement Account – Report the amount of deposits that *are eligible PERA Investment Products covered by the PERA Act of 2008*.

(b) *Other Non-taxable - Report the amount of non- taxable deposits which are not covered by the PERA Act of 2008*.

xxx

Schedule 25 - Bonds Payable, Unsecured Subordinated Debt and Redeemable Preferred Shares

xxx

Additional Information

(1) Taxable - Report the amortized cost of taxable bonds payable and unsecured subordinated debt.

(2) Personal Equity and Retirement Account - Report the amortized cost of non-taxable bonds payable and unsecured subordinated debt that are eligible PERA Investment Products covered by the PERA Act of 2008.

xxx

Schedule 38 – Off Balance Sheet

Report the amount of the indicated contingent accounts as defined in the Manual of Accounts.

Schedules 38a, 38a1, 38a3 and 38a4 - Report by the PERA Administrator on Personal Equity and Retirement Account

Report the total PERA assets and accountabilities of the PERA Administrator under the appropriate columns. For these particular schedules, the accounts as defined in the Manual of Accounts of the Financial Reporting Package for Trust Institutions shall be used.

Additional Information

(1) Total Number of Personal Equity and Retirement Accounts - Report the total number of PERA under the appropriate columns.

(2) Total Number of Contributors - Report the total number of Contributors.

(a) Total Number of Contributors who are Overseas Filipinos (OFs)

i. Number of Accounts - Report the total number of PERA owned by overseas Filipinos.
ii. Total Assets - Report the total carrying amount of PERA assets owned by overseas Filipinos.

Overseas Filipinos are defined under the PERA Act of 2008 and its implementing rules and regulations.

(b) Total Number of Contributors who are non-OFs

i. Number of Accounts Report the total number of PERA owned by non-overseas Filipinos.
ii. Total Assets - Report the total carrying amount of PERA assets owned by non-overseas Filipinos.

(3) Basic Security Deposit - Report the value of security/ies for the faithful performance of PERA Administrator as prescribed under Section X960/4960Q and Appendix 34a/Q-21a of the MORB and MORNBFI, respectively.

Xxx"

- Reporting templates

The reporting templates of the FRP (Annex A) for schedules 22, 25, 38, 38a, 38a1, 38a3 and 38a4; and the SFRP (Annex B) schedules 22, 25, 38, and 38a1 are revised to include the PERA-related activities of banks.

- The Financial Reporting Package for Trust Institutions (FRPTI) prescribed under Subsection X425.2/4425Q.2 of the MORB/MORNBFI is hereby amended to revise the (a) Contractual Relationships of Trust Institutions, (b) Line Item Instructions, and (c) specific reporting templates of the FRPTI as follows:

  a. Contractual Relationships of Trust Institutions

  "xxx

  II. Other Fiduciary Services — This refers to trust/agency agreements other than those classified under Item I wherein the trust institution may act as the depository of the assets and properties and shall manage the same in accordance with the provisions of the trust agreement.

  This shall be comprised of the following:

  xxx

  (7) Custodianship — x x x

  (a) PERA Custodianship - This refers to custody agreement between the trust institution and the PERA Contributor as prescribed under the Personal Equity and Retirement Account (PERA) Act of 2008.

  xxx

  (10)PERA Administratorship This refers to administration agreement between the trust institution and the PERA Contributor as prescribed under the Personal Equity and Retirement Account (PERA) Act of 2008.

  (11)Others — This refers to other fiduciary services, which cannot be appropriately classified under any of the foregoing accounts.

  xxx

  IV. Advisory/Consultancy - This refers to an engagement where trust institutions offer advisory/consultancy services primarily aimed to create wealth either through investments or other vehicles. Trust institutions offering advisory/consultancy services are presumed to possess the expertise on technical areas such as but not limited to tax, estate and retirement planning. Advisory/Consultancy services exclude execution, settlement and account administration of advised transaction unless covered by a separate engagement established for such purpose. This also covers the investment management (advisory) agreement between a PERA Contributor and his designated Investment Manager (Advisor).

  Xxx"

b. Line Item Instructions

"xxx

Schedules EI, Eta and Elb — Other Fiduciary Services - Unit Investment Trust Fund (UITF)

xxx

Schedules E2, E2a and E2b - Report by the PERA Administrator on Personal Equity and Retirement Account

Report the total PERA assets and accountabilities of the PERA Administrator under the appropriate columns.

Additional Information

(1) Total Number of Personal Equity and Retirement Accounts - Report the total number of PERA under the appropriate columns.

(2) Total Number of Contributors - Report the total number of Contributors.

(a) Total Number of Contributors who are Overseas Filipinos (OFs)

i. Number of Accounts - Report the total number of PERA owned by overseas Filipinos.
ii. Total Assets - Report the total carrying amount of PERA assets owned by overseas Filipinos.

Overseas Filipinos are defined under the PERA Act of 2008 and its implementing rules and regulations

(b) Total Number of Contributors who are non-OFs
i. Number of Accounts - Report the total number of PERA owned by non-overseas Filipinos.
ii. Total Assets - Report the total carrying amount of PERA assets owned by non-overseas Filipinos.

(3) Basic Security Deposit - Report the value of security/ies for the faithful performance of PERA Administrator as prescribed under Section X960/4960Q and Appendix 34a/Q-21a of the MORB and MORNBFI, respectively.

Xxx"

- Section 4192Q/4162N of the MORNBFI is also amended to revise the reporting template of the Consolidated Statement of Condition (CSOC) (Annex D) to reflect the PERA assets administered by the quasi-banks/non-bank financial institutions.

- Appendices 6/Q-3 and N-1 of the MORB and MORNBFI, respectively, on list of reports required from banks/quasi-banks and non-bank financial institutions, respectively, are amended to include the Report by the PERA Administrator, as follows:

Category	Schedule	Frequency	Submission Deadline
For Banks			
Schedules (Solo Report)			
A-1	Schedules 38a, 38a1, 38a3 and 38a4	Quarterly	15 banking days after end of reference quarter
Schedules (Consolidated Report)			
A-1	Schedules 38a	Quarterly	30 banking days after end of reference quarter
For Trust Institutions			
A-2	Schedules E2, E2a and E2b	Quarterly	20 banking days after end of reference quarter

- The dissemination of revised schedules of the FRP, SFRP, FRPTI and CSOC shall be covered by a separate memorandum issuance.

  BSP-supervised financial institutions shall adopt the revised reporting templates effective reporting period ending 30 July 2015.

- Circular No. 880 shall take effect 15 days following its publication in the Official Gazette or in any newspaper of general circulation in the Philippines.

[Editor's Note: Circular No. 880 was published in Malaya *on May 29, 2015.]*

BLGF Opinion

BLGF Opinion dated April 29, 2015

Professionals who have paid the corresponding professional tax, are entitled to practice their profession in any part of the Philippines without being subjected to any other national or local tax, license or fee, including mayor's permits.

Dental clinics, which are established as a direct consequence of the practice of the dental profession, are exempt from local business taxes.

Facts:

On December 6, 1999, then DOF Secretary Edgardo B. Espiritu issued an opinion stating that:

(1) Using as basis Sections 139(b) and 147 of the Local Government Code (LGC), professionals requiring government examination, like dentists, are liable to pay professional tax to the province where they practice their profession without being subjected to any other national or local tax, license or fee, including the Mayor's Permit or license fee, for the practice of such profession;

(2) Dental clinics are established as a direct consequence of the practice of the dental profession; they are necessarily for the exercise of such a profession;

(3) Therefore, to impose a graduated tax on a dental clinic on the premise that it is a "business establishment rendering or offering to render professional services" would be to impose a local tax on the practice of profession. This would be in contravention of the LGC.

On March 10, 2003, the BLGF issued an opinion that:

> "Again using basis Sections 139 (b) and 147 of the LGC, professionals like dentists and doctors, who maintain clinics, are subject to the payment of Mayor's Permits, business taxes as well as regulatory fees and service charges imposed by Cities and Municipalities.

BLGF OIC Regional Director, Region IV, sought clarification on these conflicting rulings.

Issues:

1. Are professionals subject to the payment of mayor's permit, local business tax (LBT) as well as other regulatory fees and service charges for the practice of their profession in any part of the Philippines after payment of the required professional tax?

2. Are dental clinics subject to the LBT based on graduated rate as business establishments rendering or offering to render professional services?

Ruling:

1. No. Applying Sections 139(b) and 147 of the Local Government Code, a professional shall be entitled to practice his profession in any part of the Philippines without being further subjected to any other national or local tax, license or fee, including mayor's permit or license fee as long as he has already paid the professional tax to the province where he practices his profession.

2. No. To impose a graduated tax on dental clinics which are established as a direct consequence of the practice of the dental profession would be tantamount to the imposition of local tax on the practice of the profession which is in contravention of the LGC.

Court Decision

Commissioner of Internal Revenue vs. Dakudao & Sons, Incorporated
CTA (*En Banc*) Case 1150 promulgated May 12, 2015

A BIR certification/ruling is not a precondition to avail of a tax exemption in an exchange of property for shares of stock under Section 40(C)(2) of the Tax Code.

The transfer of land by a real estate company to another in exchange for shares of stock where the transferor gains control of the transferee is not subject to VAT.*

The non-submission of documents to support its refund claim with the BIR is not fatal to a taxpayer's claim for refund filed with the CTA.

Facts:

Respondent Dakudao & Sons (D&S), a company engaged in the real estate business, subscribed to shares of stock of Metro South Davao Property Corporation (MSDPC), also a real estate company. On April 30, 2011, D&S transferred two parcels of land to MSDPC as payment for its subscription of shares and paid VAT to the BIR.

On May 2, 2012, D&S filed a claim for refund with the BIR for erroneously-paid VAT, arguing that the transfer of land by a real estate company to another in exchange for shares of stock where the transferor gains control of the transferee is not subject to VAT under Section 4.106-8 of RR No. 16-2005, as amended by RR No. 4-2007.

Upon the CIR's denial of its application, D&S filed a Petition for Review with the CTA. The CIR argued that D&S is not entitled to the refund claim because (a) D&S failed to apply for a BIR ruling to confirm that the exchange of property for shares of stock is exempt from VAT, as required under RR No. 18-2001; (b) the subject transfer is not one of the exempt transactions enumerated under Section 109 of the Tax Code; and (c) D&S failed submit with the BIR the complete documents to support its claim.

The CTA Second Division granted the refund claim, prompting the CIR to appeal to the CTA *En Banc*.

Issues:

1. Is the BIR certification/ruling mentioned in RR No. 18-01 required to avail of a tax exemption in an exchange of property for shares of stock under Section 40(C)(2) of the Tax Code?

2. Is the subject transfer of land for shares of stock exempt from VAT?

3. Is the alleged failure of D&S to submit complete supporting documents with the BIR fatal to the judicial claim?

Ruling:

1. No. The BIR ruling/certification mentioned in RR No. 18-2001 is not a precondition to avail oneself of the tax exemption under Section 40(C)(2) of the Tax Code.

   RR No. 18-2001 does not deal with VAT as it speaks of exchange of property for the purpose of determining gain or loss.

   RR No. 18-2001 merely prescribes the guidelines in monitoring tax-free exchange of property, in order that in subsequent transfers of said properties, they shall be taxed accordingly. The issuance does not state a requirement to apply for a ruling as a prerequisite for the entitlement of tax exemption. There is nothing in RR No. 18-2001 that explicitly requires a party, in exchanging property for shares of stock, to first secure a BIR confirmatory certification or tax ruling before it can avail of a tax exemption or refund.

   Thus, securing a BIR ruling under RR No. 18-2001 is not a condition *sine qua non* for availing a tax exemption.

2. Yes. Section 4.106-8 of RR No. 16-2005, as amended by RR No. 4-2007, provides that the transfer of land by a real estate dealer to another in exchange for shares of stock where the transferor gains control of the transferee is not subject to VAT.*

   The Articles of Incorporation of D&S and MSDPC show that both companies are engaged in the construction, development, improvement of all properties, including but not limited to real estate. D&S subscribed to 75% of the outstanding capital stock of MSDPC and transferred the 2 parcels of land as payment for its subscription.

3. No. Judicial claims should not be denied on the sole ground that the taxpayer allegedly failed to submit before the BIR the "complete documents" in support of its administrative claim for refund. The non-submission to the BIR of supporting documents is not fatal to a judicial claim for refund.

   In any case, the term "complete documents" should be understood to refer to those documents that are necessary to support the application, as determined by the taxpayer. The BIR can require the taxpayer to submit additional documents but it cannot demand what type of supporting documents should be submitted. Otherwise, the taxpayer will be at the mercy of the BIR, who may require the production of documents that the taxpayer cannot submit.

*[*Editor's Note: The property for share swap involved in this case occurred on April 30, 2011, before the effectivity of RR No. 10-2011, dated July 1, 2011. Under the amendment introduced by RR No. 10-2011, the exchange of goods or properties used in business or held for sale or for lease by the transferee is subject to VAT, whether resulting in corporate control or not.]*

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