

Tax bulletin

May 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.

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Highlights

BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 15- 2016 amends RMO No. 30-2001 on the composition of the Bank Accreditation Committee and its Secretariat. **(Page 3)**
- ▶ RMO No. 16-2016 prescribes the guidelines and procedures on the submission of reports by media outfits on commercials and advertisements of candidates in the 9 May 2016 national and local elections. **(Page 3)**
- ▶ RMO No. 17-2016 supplements the guidelines for the non-recognition of gain or loss on the transfer of property in exchange for shares of stock, pursuant to Section 40(C)(2) in relation to Section 40(C)(6) of the Tax Code, as implemented by Revenue Regulations (RR) No. 18-2001. **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 54-2016 circularizes the guidelines for the issuance of the Certificate of Compliance, in lieu of the Certificate of Good Standing, pursuant to Cooperative Development Authority (CDA) Memorandum Circular (MC) No. 2015-08. **(Page 6)**
- ▶ RMC No. 55-2016 clarifies the five-year validity period of the Certificate of Accreditation issued to developers/dealers/supplier-vendors/pseudo-suppliers of cash register machines and other sales machines/receipting software. **(Page 7)**

BOC Issuance

- ▶ CMO No. 10-2016 creates the BOC Customer Assistance and Response Services ("CARES") Unit. **(Page 8)**

PEZA Issuance

- ▶ PEZA Memorandum Circular No. 2016-017 reiterates the registration and permit requirements of the DENR Environmental Management Bureau (EMB) for importers of recyclable materials. **(Page 8)**

BSP Issuances

- ▶ Circular No. 910 prescribes the guidelines and procedures for the replacement and exchange of the New Design Series (NDS) Banknotes from the general public and those in the custody of (i) Authorized Agent Banks (AABs), (ii) Office of Provincial/City/ Municipal Treasurers, (iii) Clerks of Court/ All Law Enforcement Agencies and (iv) Overseas Filipinos, until 31 December 2016. **(Page 9)**
- ▶ Circular No. 911 amends the Manual of Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Intermediaries (MORNBFI) on the submission of annual audit reports and annual reports of Government Financial Institutions (GFIs). **(Page 10)**

SEC Opinion

- ▶ A non-stock non-profit organization not engaged in nationalized or partly nationalized activities may have alien trustees on its board, and a foreigner as its President/Chairman. **(Page 13)**

Court Decisions

- ▶ The obligation to withhold the final tax on cash dividends declared to a non-resident stockholder arises at the time it is paid, payable, or accrued, whichever comes first.

To justify the imposition of the 50% surcharge, there must be clear and convincing proof to establish willful neglect to withhold tax. (Page 14)

- ▶ The excess of the fair market value (FMV) over the consideration received for shares of stock sold is deemed a gift subject to donor's tax.

Even if a taxpayer fails to file a donor's tax return on the share transfer, the prescriptive period to assess deficiency donor's tax is three years from the filing of the capital gains tax (CGT) return. (Page 15)

BIR Issuances

RMO No. 15- 2016 amends RMO No. 30-2001 on the composition of the Bank Accreditation Committee and its Secretariat.

Revenue Memorandum Order No. 15- 2016 dated 20 April 2016

- ▶ The Bank Accreditation Committee (BAC) will now include the Head Revenue Executive Assistants of the Information Systems Development and Operations Service (ISDOS) and the Information Systems Project Management Service (ISPMS) as members.
- ▶ The BAC shall evaluate applications for accreditation, renewal of accreditation, disaccreditation, request for waiver of penalties of banks and make recommendations on these matters to the Commissioner of Internal Revenue (CIR), the Deputy Commissioner of Internal Revenue (DCIR) - Operations Group/ Management Committee (MANCOM).
- ▶ The BAC Secretariat will now include representatives from the ISPMS as members.
- ▶ Its functions include scheduling of BAC meetings, taking and preparing minutes of meetings, coordinating and liaising with the Authorized Agent Banks (AABs) for meetings, ensuring the proper conduct of meetings, taking care of physical arrangements and providing technical and logistics support to the BAC.

RMO No. 16-2016 prescribes the guidelines and procedures on the submission of reports by media outfits on commercials and advertisements of candidates in the 9 May 2016 national and local elections.

Revenue Memorandum Order No. 16-2016 dated 3 May 2016

- ▶ All media outfits shall submit to the Bureau of Internal Revenue (BIR) information on their services to promote individual and party-list group candidates in the 9 May 2016 national and local elections.
- ▶ The report shall cover all paid promotions for the period covering three months prior to the start of the campaign period until the end, as set by the COMELEC for the candidates, as follows:

Candidates Covered	Campaign Period	Period Covered by the Report
President, Vice-President, Senator and Party-List Groups	9 February 2016 to 7 May 2016	9 November 2015 to 7 May 2016
Members of House of Representatives, elective regional, provincial, city, municipal officials	25 March 2016 to 7 May 2016	25 December 2015 to 7 May 2016

- ▶ The following procedures shall be strictly observed in the submission of the report:
 1. The report shall follow the prescribed format and shall contain a declaration under oath duly signed by the authorized representative, certifying the completeness and veracity of the information.
 2. The report shall be submitted simultaneously with a soft copy saved in a Digital Versatile Disk-Recordable (DVD-R) which shall be labeled in accordance with the prescribed format.
 3. The authorized signatory to the report and the DVD-R label shall be as follows:
 - ▶ Sole proprietor, in case of sole proprietorship, or his attorney-in-fact as evidenced by a notarized Special Power of Attorney (SPA) issued for the purpose;
 - ▶ Any of the corporation's principal officers duly authorized through a Board Resolution issued for the purpose.
 4. The report and the DVD-R shall be submitted to the appropriate Revenue District Office (RDO) where the media outfit is registered, or to the Large Taxpayers Division (LTD-National Office/ Makati/ Cebu), for those registered with the Large Taxpayers Service (LTS), within 15 days from the end of the campaign period, or until 22 May 2016.
- ▶ The concerned RDO and LTD National Office/ Makati/ Cebu shall immediately verify tax compliance and determine any donations that may be assessed, if any, based on the reports.
- ▶ Each failure to submit the report within the prescribed period is subject to a penalty of P1,000.00 and will result in the inclusion of the media outfit in the priority audit program of the concerned investigating Revenue Office.
 1. "Willful failure" to submit the report, which implies fraud, cannot be the subject of a compromise penalty.
 2. The media outfit shall still submit the report despite the payment of the appropriate penalty.

RMO No. 17-2016 supplements the guidelines for the non-recognition of gain or loss on the transfer of property in exchange for shares of stock, pursuant to Section 40(C)(2) in relation to Section 40(C)(6) of the Tax Code, as implemented by RR No. 18-2001.

Revenue Memorandum Order No. 17-2016 dated 5 May 2016

- ▶ For purposes of a tax-free exchange under Section 40(C) of the Tax Code, the value of the shares to be issued by reason of the exchange should be equal to the fair market value (FMV) of the property transferred. Hence, the number of shares to be issued will be computed based on the FMV of the property transferred.

- ▶ The transfer shall result in the following:
 - ▶ To the transferee of the property (i.e., the corporation issuing shares of stock for assets, or the “Transferee Corporation”):
 - ▶ The property transferred shall be recorded at FMV.
 - ▶ The substituted basis as defined in RR No. 18-2001 shall be used to compute the gain or loss for subsequent transfers of the property.
 - ▶ In addition to the requirement of annotating the tax-free exchange in the certificate of title of ownership of the property, the Transferee Corporation shall place a note in the audited financial statements submitted to the BIR indicating:
 - a. That the property was acquired pursuant to Section 40(C) of the Tax Code;
 - b. The date of the transaction;
 - c. The substituted basis of the property;
 - d. The number of shares exchanged for the property; and
 - e. The name of the shareholder(s) and the breakdown of shares of each.
 - ▶ To the transferor of the property (i.e., the recipient of the shares of stock of the Transferee Corporation):
 - ▶ The shares of the Transferee Corporation received in exchange for the property transferred shall be recorded at its substituted value for tax accounting purposes.
 - ▶ In addition to the requirement of annotating the tax-free exchange in the certificate of title of ownership of the property, the transferor shall place a note in the audited financial statements submitted to the BIR indicating:
 - a. That the shares were acquired pursuant to Section 40(C) of the Tax Code;
 - b. The date of the transaction;
 - c. The property transferred;
 - d. The substituted basis of the property;
 - e. The number of shares exchanged for the property; and
 - f. The name of the Transferee Corporation.
- ▶ In all instances, the Transferee Corporation and the transferor of the property shall present a copy of the BIR ruling relating to the tax-free exchange in the event that the property and/or shares of stock are to be subsequently sold.

- ▶ If the property being exchanged involves shares of stock, the value of the shares of stock shall be determined as follows:

Nature of Shares	Value to be used
Listed Shares	<ul style="list-style-type: none"> ▶ Closing price on the day when the shares are transferred or exchanged ▶ Closing price on the day nearest to the date of transfer or exchange if no sale is made in the local stock exchange on the day when the listed shares are transferred or exchanged
Shares of stock not listed and traded in the local stock exchange	<ul style="list-style-type: none"> ▶ Book value of the shares as shown in the audited financial statements submitted to the BIR nearest to the date of the sale, duly certified by an independent CPA, with the assets adjusted to its FMV as of a date not earlier than 90 days from the date of the transaction. ▶ If the company assets include shares in another corporation, the shares shall be adjusted to its FMV as of a date not earlier than 90 days from the date of the transaction.

RMC No. 54-2016 circularizes the guidelines for the issuance of the Certificate of Compliance, in lieu of the Certificate of Good Standing, pursuant to Cooperative Development Authority (CDA) MC No. 2015-08.

Revenue Memorandum Circular No. 54-2016 dated 17 May 2016

- ▶ Under CDA MC No. 2011-16 issued on 7 September 2010, a Certificate of Good Standing is required from cooperatives registered with the CDA for the issuance of their Certificate of Exemption from taxes and other incentives.
- ▶ CDA MC No. 2015-08 replaced the Certificate of Good Standing with the Certificate of Compliance (COC).
- ▶ The COC shall be issued once a year not later than 31 December of every year. It shall cover the operations of the cooperative for the year preceding the reporting period and it shall be valid and effective up to 30 April of the succeeding year.
- ▶ Except for newly-registered cooperatives, the following are the documentary requirements for the issuance of the COC:
 1. Letter-request duly signed by the Chairperson or any representative duly authorized by a Board Resolution of the requesting cooperative, stating the reasons and purpose for such request;
 2. Proof of compliance that all the required reports for the preceding fiscal year were submitted, or complete copies of such reports (2 copies);
 3. Copy of the Minutes of the Meeting of the General Assembly, subject to the following rules:
 - ▶ If the General Assembly is held within 90 days after the close of the fiscal year, the minutes of the current year's General Assembly shall be submitted;

- ▶ If the date fixed in the By-Laws for the conduct of the General Assembly is beyond 90 days from the close of the fiscal year, then the latest minutes shall be submitted.
- ▶ The minutes of the General Assembly must contain the following information:
 - a. Results of the election of the Board of Directors and Committee Members;
 - b. Approval of the Development Plan and/or Annual Plan and Budget;
 - c. Presentation and acceptance of an Cooperative Annual Progress Report, including the audited financial statements, Performance Audit Report, Social Audit Report and list of officers and trainings undertaken/completed by the General Assembly;
 - d. Appointment of the CDA-Accredited External Auditor;
 - e. Acceptance of the management and committee report by the General Assembly;
 - f. Payment of Certification Fee.
- ▶ The following are the documentary requirements if the COC will be used for requesting financial assistance from financial institutions, for accreditation as CDA training provider, or for other legitimate purpose:
- ▶ Letter-request duly signed by the Chairperson or any authorized representative of the requesting cooperative stating the purpose of such request;
- ▶ Payment of Certified True Copies of the requested documents.
- ▶ Any of the following shall be a ground for the non-issuance of the COC:
 1. Non-submission of required reports;
 2. Failure to encode the CAPR through the web-based Cooperative Annual Progress Report Information System (CAPRIS) and failure to submit the printed form generated by the system;
 3. Willful failure to comply with the mandatory training for officers;
 4. Non-settlement of fines and/or penalties for late or non-submission of mandatory reports;
 5. The cooperative has been declared dissolved.
- ▶ Any complaint filed with the CDA about an existing dispute on the legitimacy of leadership shall be a ground for suspension or non-release of the COC.

RMC No. 55-2016 clarifies the five-year validity period of the Certificate of Accreditation issued to developers/dealers/supplier-vendors/pseudo-suppliers of cash register machines and other sales machines/receipting software.

Revenue Memorandum Circular No. 55-2016 dated 17 May 2016

- ▶ All Certificates of Accreditation that were issued prior to the issuance of RMC No. 68-2015 and RR No. 10-2015 shall still be valid and in effect based on its "Date of Issuance" with staggered implementation, as follows:

Date of Issuance on the Certificate of Accreditation	Valid Until
Prior to 31 July 2013	31 July 2018
1 August 2013 to 31 July 2014	31 July 2019
1 August 2014 to 31 July 2015	31 July 2020
1 August 2015 onwards	Five-year validity period shall commence

- ▶ Both primary and supplementary invoices/receipts must reflect the corresponding Date of Issuance and Validity Period as provided above.
- ▶ All Certificates of Accreditation shall be renewed within 60 days prior to the expiration of the validity period above.

BOC Issuance

CMO No. 10-2016 creates the BOC Customer Assistance and Response Services (“CARES”) Unit.

Customs Memorandum Order No. 10-2016 dated 23 May 2016

- ▶ The CARES Unit is created to provide an efficient and effective central unit that will serve to address BOC-related inquires and concerns of the transacting public, as well as to enhance the positive reputation of the BOC through ensured and continuous facilitation of customer service management.
- ▶ The Unit shall be under the direct supervision of the Internal Administration Group and shall be managed by the Public Information & Assistance Division (PIAD). It shall be composed of the Unit Head, Client Service Representatives, Client Service Officers and Resolutions Team.
- ▶ All internal offices of the BOC are mandated to provide and extend support and cooperation to the Unit, which shall address specific concerns including, but not limited to, information on port operations, valuation, imports and exports, for purposes of providing customer information and resolution of legitimate concerns. Various offices of the BOC shall designate focal persons who shall address concerns within three days upon receipt.
- ▶ The Unit is designed to operate 24/7 and shall operate as such upon the recommendation of the Deputy Commissioner for IAG, with the approval of the BOC Commissioner. Otherwise, it shall operate from 7a.m. to 7p.m., Mondays to Fridays. It is expected to secure a toll-free number for nationwide use.
- ▶ CMO 10-2016 takes effect immediately. Accordingly, all orders/issuances inconsistent with this CMO are deemed revoked or superseded.

PEZA Issuance

PEZA Memorandum Circular No. 2016-017 reiterates the registration and permit requirements of the DENR-EMB for importers of recyclable materials.

Memorandum Circular No. 2016-017 dated 25 April 2016

- ▶ The DENR-EMB registration and permit requirements cover the importation of the following regulated scrap materials:
 1. Scrap metals (e.g., used lead-acid batteries, metal sludge, cast iron, stainless steel, metal chips/turnings/shavings, steel nails, metal slags/dross/skimmings);
 2. Scrap solid plastic materials;
 3. Scrap electronic and electrical assemblies;
 4. Used oil;
 5. Fly ash.
- ▶ Prior to lodging a PEZA electronic import permit application with the value-added service provider (VASP), the importing PEZA enterprise should have completed the following:
 1. One-time registration with the DENR-EMB Central Office as importer of recyclable materials;

2. Inspection by the appropriate DENR-EMB Regional Office to determine the applicant's capability to recycle the scrap materials in an environmentally sound manner;
 3. Pre-shipment importation clearance secured from the DENR-EMB Central Office at least 30 working days prior to arrival of the shipment.
- ▶ Non-compliance may result in: (i) imposition of penalties by DENR-EMB and/or (ii) implementation of forfeiture proceedings by the BOC.

BSP Issuances

Circular No. 910 prescribes the guidelines and procedures for the replacement and exchange of the NDS Banknotes from the general public and those in the custody of (i) AABs, (ii) Office of Provincial/City/ Municipal Treasurers, (iii) Clerks of Court/ All Law Enforcement Agencies and (iv) Overseas Filipinos, until 31 December 2016.

BSP Circular No. 910 dated 22 April 2016

To facilitate the replacement/exchange with New Generation Currency (NGC) Banknotes of the New Design Series (NDS) Banknotes from the general public, and those in the custody of Authorized Agent Banks (AABs), Provincial/City/Municipal Treasurers, Clerks of Court, law enforcement agencies and Overseas Filipinos (OFs), the following guidelines and procedures shall be observed:

- ▶ All banks (head offices and their branches) are required to accept/exchange/replace NDS banknotes until 31 December 2016. Bank officers/employees who refuse to accept NDS banknotes from the general public, clients or non-clients, during the prescribed NDS banknote exchange period shall be subject to administrative sanctions, pursuant to section 37 of RA No. 7653, otherwise known as "The New Central Bank Act".
- ▶ AABs and Provincial/City/Municipal Treasurers may submit the NDS banknotes in their custody for replacement/exchange with NGC banknotes at the BSP-Cash Department and any of the BSP regional offices/branches starting 2 January 2017 but not later than the close of business hours on 31 March 2017, with a 2-day prior notice to allow the BSP to prepare the required volume and denominations of NGC banknotes. The submission of AABs shall be accompanied by a duly accomplished BSP form for exchange/deposit of banks. The submission of Provincial/City/Municipal Treasurers should be accompanied by a duly filled-up Inventory/Exchange Form for the NDS Banknotes.

The NDS banknote holdings submitted by AABs and Provincial/City/Municipal Treasurers to the BSP after 31 March 2017 shall not be valid for exchange/replacement.

- ▶ In the case of NDS banknotes which are subject to pending court cases, clerks of court and law enforcement agencies shall submit for exchange the said NDS banknote holdings to the BSP within six months after the corresponding legal case(s) have been terminated.

To ensure replacement of these notes, clerks of court and law enforcement agencies shall submit to the BSP-Cash Department a duly filled-up and certified Inventory/Exchange Form for the NDS banknotes not later than the close of business hours on 31 January 2017, copy furnished the BSP Office where the NDS banknotes are to be exchanged, through any of the following modes of submission: electronic mail, facsimile message, courier or hand-carried. The replacement of NDS banknotes subject to court cases shall be strictly in accordance with the certified inventory submitted on or before 31 January 2017.

- ▶ Overseas Filipinos working/living abroad who have in their possession NDS banknotes which could not be exchanged within the prescribed period from 1 January 2016 to 31 December 2016 shall register their NDS banknote holdings through the BSP website starting 1 October 2016 to 31 December 2016. The registered NDS banknotes shall be submitted for exchange with NGC banknotes within one year from date of registration at any of the BSP Offices indicated in Annex 2 of Circular 910. The NDS banknotes submitted to the BSP beyond the one-year period from date of registration shall not be valid for exchange/replacement. The NDS banknote exchange facility provided by the BSP to OFWs shall be limited to Php10,000.00 for each OFW.
- ▶ In the case of OFWs who are located in countries experiencing geopolitical crisis during the registration period (i.e., 1 October 2016 to 31 December 2016), they can avail of the BSP exchange facility for OFWs from 1 January 2017 until 31 December 2017, subject to the Php10,000.00 limit for each OFW. The NDS banknote holdings of said OFWs submitted to the BSP after 31 December shall not be valid for exchange/replacement.
- ▶ All NDS banknote holdings submitted for exchange/replacement shall be subject to the usual piece by piece verification by the BSP.

[Editor's Note: Circular No. 910 was published in the Philippine Star on 30 April 2016.]

Circular No. 911 amends the MORB and the MORNBF1 on the submission of annual audit reports and annual reports of GFIs.

BSP Circular No. 911 dated 2 May 2016

- ▶ Subsections X190.1 and X190.6 of the MORB shall be amended to read as follows:

“Subsection X190.1 (2008 - X166.1) Financial Audit. Banks shall cause an annual financial audit by an external auditor acceptable to the Bangko Sentral not later than thirty (30) calendar days after the close of the calendar year or the fiscal year adopted by the bank. Report of such audit shall be submitted to the board of directors or country head, in the case of foreign bank branches, and the appropriate department of the SES not later than 120 calendar days after the close of the calendar year or the fiscal year adopted by the bank. xxx

Government-owned or-controlled banks, including their subsidiaries and affiliates under Bangko Sentral supervision, which are under the concurrent jurisdiction of the Commission on Audit (COA), shall be exempt from the aforementioned annual financial audit by an acceptable external auditor: xxx

Banks under the concurrent jurisdiction of the Bangko Sentral and COA shall, however, submit a copy of the annual audit report (AAR) of the COA to the appropriate department of the SES within forty (40) calendar days after receipt of the AAR by the board of directors. Xxx

xxx”

“Subsection X190.6 (2008 - X166.6) Posting and submission of annual report. A copy of the latest annual report shall be posted by the bank in a conspicuous place in its head office, all its branches and other offices. xxx

The deadline for the submission of the annual report and ARAC to the appropriate department of the SES is 180 calendar days after the close of the calendar or fiscal year adopted by the bank.

Banks under the concurrent jurisdiction of the Bangko Sentral and COA, however, shall submit the annual report and ARAC to the appropriate department of the SES within 100 calendar days after receipt of the AAR by the board of directors.”

- ▶ Section 4190Q and Subsection 4190Q.6 of the MORNBF1 shall be amended to read as follows:

“Sec. 4190Q (2008 - 4172Q) Audited Financial Statements of Quasi-Banks; Financial Audit. The following rules shall govern the utilization and submission of audited financial statements (AFS) of QBs. xxx

Government-owned or-controlled QBs, including their subsidiaries and affiliates under Bangko Sentral supervision, which are under the concurrent jurisdiction of the Commission on Audit (COA), shall be exempt from the aforementioned annual financial audit by an acceptable external auditor: xxx

QBs under the concurrent jurisdiction of the Bangko Sentral and COA shall, however, submit a copy of the annual audit report (AAR) of the COA to the appropriate department of the SES of the BSP within forty (40) calendar days after receipt of the AAR by the board of directors. xxx
xxx”

“Subsection 4190Q.6 (2008 - 4172Q.5) Posting and submission of on annual report. A copy of the latest annual report shall be posted by the QB in a conspicuous place in its head office, all its branches and other offices.

The deadline for the submission of the annual report to the appropriate department of the SES is 180 calendar days after the close of the calendar or fiscal year adopted by the QB.

QBs under the concurrent jurisdiction of the Bangko Sentral and COA, however, shall submit the annual report to the appropriate department of the SES within 100 calendar days after receipt of the AAR by the board of directors.”

- ▶ Section 4172N of the MORNBF1 shall be amended to read as follows:

“Sec.4172N Financial Audit. FIs shall cause an annual financial audit by an external auditor acceptable to the Bangko Sentral not later than thirty (30) calendar days after the close of the calendar year or the fiscal year adopted by the FI. Xxx

Government-owned or -controlled FIs, including their subsidiaries and affiliates under Bangko Sentral supervision, which are under the concurrent jurisdiction of the COA shall be exempt from the aforementioned annual financial audit by an acceptable external auditor: xxx

FIs under the concurrent jurisdiction of the Bangko Sentral and COA shall, however, submit a copy of the AAR of the COA to the appropriate department of the SES within forty (40) calendar days after receipt of the MR by the board of directors.

xxx”

- ▶ Section 4172S of the MORNBFBI shall be amended to read as follows:

“Sec. 4172S Financial Audit. NSSLAs shall cause an annual financial audit by an external auditor acceptable to the Bangko Sentral not later than thirty (30) calendar days after the close of the calendar year or the fiscal year adopted by the NSSLAs. xxx

NSSLAs under the concurrent jurisdiction of the Bangko Sentral and COA shall, however, submit a copy of the AAR of the COA to the appropriate department of the SES within forty (40) calendar days after receipt of the AAR by the board of directors. Xxx”

- ▶ Appendix 61 of the MORB and Appendix Q-33 of the MORNBFBI shall be amended to read as follows:

“App.61

CHECKLIST OF BANGKO SENTRAL REQUIREMENTS IN THE SUBMISSION OF FINANCIAL AUDIT REPORT, ANNUAL AUDIT REPORT AND REPORTS REQUIRED UNDER APPENDIX 43

[Appendix to Subsec. X190.1 (2008 - X166.1)]

The external auditor (Included in the List of BSP Selected External Auditors) shall start the audit not later than thirty (30) calendar days after the close of the calendar fiscal year adopted by the bank. AFS of banks with subsidiaries shall be presented side by side on a solo basis and on a consolidated basis (banks and subsidiaries).

The FAR shall be submitted by the bank to the appropriate department of the SES not later than 120 calendar days after the close of the calendar year or fiscal year adopted by the bank, together with the following:

Information/Data Required	Deadline for Submission
A. Financial Audit Report Xxx	Xxx
B. AAR - For banks under the concurrent jurisdiction of the Bangko Sentral and COA: 1. Copy of the AAR accompanied by the: Xxx	Within forty (40) calendar days after receipt of the AAR by the Board of Directors xxx

“App.Q-33

CHECKLIST OF BANGKO SENTRAL REQUIREMENTS IN THE SUBMISSION OF FINANCIAL AUDIT REPORT, ANNUAL AUDIT REPORT AND REPORTS REQUIRED UNDER APPENDIX Q-30

[Appendix to Secs. 4190Q (2008 - 4172Q), 4172S and 4172N]

The external auditor (Included in the List of BSP Selected External Auditors) shall start the audit not later than thirty (30) calendar days after the close of the calendar fiscal year adopted by the FI. AFS of FIs with subsidiaries shall be presented side by side on a solo basis and on a consolidated basis (FIs and subsidiaries). The FAR shall be submitted by the

FI to the appropriate department of the SES not later than 120 calendar days after the close of the calendar year or fiscal year adopted by the FI, together with the following:

Information/Data Required	Deadline for Submission
A. FAR Xxx	Xxx
B. AAR - For FIs under the concurrent jurisdiction of the Bangko Sentral and COA: 1. Copy of the AAR accompanied by the: Xxx	Within forty (40) calendar days after receipt of the AAR by the Board of Directors 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. 911 was published in The Manila Times on 11 May 2016.]

SEC Opinion

SEC Opinion No. 16-12 dated 24 May 2016

A non-stock non-profit organization not engaged in nationalized or partly nationalized activities may have alien trustees on its board, and a foreigner as its President/Chairman.

Facts:

A non-stock non-profit organization was incorporated to operate a foundation. Under its articles of incorporation, the purpose of the foundation is to engage in charitable and knowledge-sharing activities in the Philippines. It specifically challenges a new generation of young people to participate actively in improving the lives of underprivileged children and their families, through programs in the area of financial inclusion and self-sufficient living/livelihood, knowledge-based powers, health and sanitation. The corporation is not engaged in nationalized or partly nationalized activities in the Philippines; it is requesting confirmation that it is entitled to have alien trustees in its board and a foreigner as its President/Chairman.

Issue:

Can a non-stock non-profit organization not engaged in nationalized or partly nationalized activities have alien trustees in its board and a foreigner as its President/Chairman?

Ruling:

Yes. Considering that the corporation is not engaged in any nationalized or partly nationalized business or industry, it may have an alien trustee in its board, and a foreigner as its President/Chairman under Section 2-A of Commonwealth Act No. 108, otherwise known as "The Anti-Dummy Law." However, in the event that the corporation owns land, it shall already be considered to have engaged in nationalized or partly nationalized activity. As such, foreigners should not comprise more than 40% or its membership and not more than 40% of the trustees should be foreigners and it cannot have a foreigner as President/Chairman of the board.

Court Decisions

Hoya Glass Disk Philippines, Inc. vs. Commissioner of Internal Revenue

CTA (First Division) Case No. 8703 promulgated 25 April 2016

The obligation to withhold the final tax on cash dividends declared to a non-resident stockholder arises at the time it is paid, payable, or accrued, whichever comes first.

To justify the imposition of the 50% surcharge, there must be clear and convincing proof to establish willful neglect to withhold tax.

Facts:

Respondent CIR assessed Petitioner Hoya Glass Disk Philippines, Inc. (Hoya) for penalties arising from the alleged late payment of the final withholding tax (FWT) on cash dividends paid to stockholders. Aside from the 20% interest, Hoya was also assessed 50% surcharge for alleged willful neglect to file an FWT return.

Hoya protested the assessment, arguing that it was not late in filing the FWT return and payment of the corresponding final tax due. It asserted that the cash dividends were declared by the Board of Directors on 22 December 2006 to stockholders of record as of 31 March 2006, and payable on or before 31 January 2007. The actual payment of dividends was on 2 February 2007; hence, Hoya argued that it had until 10 March 2007 to pay the FWT due.

The CIR denied the protest, issued a Final Assessment Notice and, later, a Collection Letter demanding the payment of penalties. Aggrieved, Hoya filed a Petition for Review with the Court of Tax Appeals (CTA).

Issues:

1. Is Hoya liable for penalties for the late payment of FWT?
2. Is the BIR correct in imposing the 50% surcharge?

Ruling:

1. Yes. Section 2.57.4 of RR No. 2-98, as amended by RR No. 12-01, provides that the obligation of the payor to deduct and withhold the tax arises at the time an income is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first. The term "payable" refers to the date the obligation becomes due, demandable or legally enforceable.

Hoya should have withheld the final tax on the cash dividends on 31 January 2007, the date when the cash dividends became payable, and not on 2 February 2007 when the cash dividends were paid to its stockholders. The FWT return should have been filed and the tax on dividends paid on 10 February 2007, not 10 March 2007.

2. No. While Hoya failed to file the FWT return and pay the tax due thereon on 10 February 2007, the BIR did not substantiate its claim by clear and convincing proof that there was willful neglect to file the said return within the prescribed period. The 25% surcharge, in lieu of the 50% surcharge, was applied.

Urbano L. Velasco vs. Bureau of Internal Revenue

CTA (First Division) Case No. 8497 promulgated 17 May 2016

The excess of the FMV over the consideration received for shares of stock sold is deemed a gift subject to donor's tax.

Even if a taxpayer fails to file a donor's tax return on the share transfer, the prescriptive period to assess deficiency donor's tax is three years from the filing of the CGT return.

Facts:

Respondent BIR assessed Petitioner Urbano Velasco (Velasco) for deficiency donor's tax on the sale of his shares of stock in Gervel, Inc. (Gervel) and Metropolitan Management Corporation (MMC) in 2008. During the processing of the application for the issuance of the Certificate Authorizing Registration (CAR), the BIR demanded payment of the donor's tax on the difference between the book value and the selling price of the shares.

On 6 October 2009, Velasco received a Preliminary Assessment Notice assessing donor's tax. Velasco protested the assessment arguing that it was an arm's length transaction and there was no donative intent on his part. Moreover, he averred that the CAR has already been issued so there was no need for the BIR to assess.

On 14 October 2011, Velasco received the Final Assessment Notice (FAN). Velasco raised prescription and posited that since he filed the corresponding CGT return on 24 September 2008, the BIR only had until 24 September 2011 to assess.

The BIR dismissed his protest and ruled that since Velasco failed to file a donor's tax return, it has 10 years to assess the deficiency donor's tax. It subsequently issued a collection letter and a warrant of distraint and/or levy against Velasco's property. Velasco filed a Petition for Review at the CTA.

Issue:

Is Velasco subject to deficiency donor's tax?

Ruling:

No. The right of the BIR to assess Velasco for the deficiency donor's tax has prescribed.

Donor's tax is imposed upon the transfer by any person of the property by gift as provided under Section 98 of the Tax Code. The excess of the FMV over the consideration received for the stocks sold is deemed gift subject to donor's tax.

However, the CTA ruled that the donor's tax assessment against Velasco should be cancelled due to prescription. Although the assessment was for donor's tax, Velasco's filing of the CGT return constitutes sufficient compliance with the requirement of filing a tax return under Section 103 of the Tax Code, as amended, for the purpose of computing prescription covering the transaction. The FAN was dated 13 October 2011 or more than three years after the filing of the CGT return on 24 September 2008.

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