

Tax bulletin

November 2015



BIR Ruling

- ▶ Dividends paid by a domestic corporation to a Barbadian corporation are subject to the 15% final withholding tax (FWT) under Sec. 28(B)(5)(b) of the Tax Code. **(Page 3)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 14-2015 extends the deadline for the procurement and reconfiguration of machines and systems in order to reflect the information required under Section 5 of RR No. 10-2015 on official receipts, sales invoices/ other commercial invoices generated by Cash Register Machines (CRMs)/Point-of-Sales (POS) Machines and other invoice/receipt-generating machine/software. **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 72-2015 announces the entry into force, effectivity and applicability of the Philippines-Qatar Double Taxation Agreement. **(Page 4)**

BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 38-2015 authorizes the Intelligence Group to witness the conduct of spot-check and non-intrusive examination of consolidated shipments and shipments tagged as RED in the Selectivity System. **(Page 4)**
- ▶ CMO No. 39-2015 prescribes the guidelines on the pilot implementation of the electronic application and issuance of preferential and non-preferential Certificates of Origin (e-CO). **(Page 5)**
- ▶ CMO No. 40-2015 prescribes the implementing rules and regulations of BOC-PEZA JMO 2-2015 on the transfer of goods from the Ecozone Logistics Service Enterprise (ELSE) to its partner Ecozone Locator. **(Page 7)**

PEZA Issuances

- ▶ Memorandum Circular (MC) No. 2015-027 introduces the availability of the DENR - Environmental Management Bureau (DENR-EMB) online system for proponents who would like to secure online Certificates of Non-Coverage (CNCs) for Category D projects, and online Environmental Compliance Certificates (ECCs) for new Category B projects. **(Page 7)**
- ▶ MC No. 2015-030 circularizes the PNP Memorandum dated 28 October 2015, which extends until 30 April 2016 the validity period of the authority to grant Temporary Licenses/Permits for PNP-Regulated Chemicals, subject to certain conditions. **(Page 9)**

BSP Issuances

- ▶ Circular No. 891 prescribes sales and marketing guidelines for financial products. **(Page 11)**
- ▶ Circular No. 892 provides for the Submission of Quarterly Report on Residential Real Estate Loans (RRELs) by Universal/Commercial Banks (UBs/KBs) and Thrift Banks (TBs) for the Generation of the Residential Real Estate Price Index (RREPI). **(Page 11)**

- ▶ Circular No. 893 provides for the Revised Compliance Framework for Quasi-Banks (QBs). (Page 12)

SEC Opinions

- ▶ A company may not amend its by-laws to designate three presidents. (Page 13)
- ▶ A 100% foreign-owned domestic corporation may not undertake the business of providing ground handling services. (Page 14)

Court Decisions

- ▶ Deficiency interest under Section 249(B) of the Tax Code should only be imposed whenever there is deficiency income tax, deficiency estate tax, and deficiency donor's tax. Deficiency interest cannot be applied to assessments covering other taxes.

Deficiency interest extends only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof. Delinquency interest under Section 249(C) shall commence from the time the taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand. (Page 15)

- ▶ A non-stock non-profit corporation engaged in micro-finance lending is not exempt from VAT on its interest income or from DST on the loan agreements. (Page 16)
- ▶ The BIR cannot simply rely on the findings of another agency or tribunal for its tax assessment. It should conduct an independent investigation to determine the tax deficiency of a taxpayer. (Page 17)

BIR Ruling

BIR Ruling No. 387-2015 dated 29 October 2015

Facts:

A Co., a non-resident foreign corporation which is a resident of Barbados, owns 15% of the shares in B Co., a domestic corporation. B Co. declared cash dividends in favor of its shareholders. The Barbadian Department of Inland Revenue has certified that A Co. will not be subject to tax on dividends received from its non-resident affiliate.

Issue:

Are the dividends received by A Co. from B Co. subject to the 15% FWT under Section 28(B)(5)(b) of the Tax Code?

Ruling:

Yes. Under Section 28(B)(5)(b) of the Tax Code, cash and/or property dividends received by a non-resident foreign corporation from a domestic corporation shall be subject to an FWT of 15% of the dividends received, subject to the condition that the country in which the non-resident foreign corporation is domiciled, shall allow a credit against the tax due from the non-resident foreign corporation taxes deemed to have been paid in the Philippines equivalent to 15% of the dividend.

Dividends paid by a domestic corporation to a Barbadian corporation are subject to the 15% FWT under Sec. 28(B)(5)(b) of the Tax Code.

The condition under Section 28(B)(5)(b) of the Tax Code is deemed complied with since Barbados does not impose any tax on dividends received by its residents under certain conditions. Under the Income Tax Act of Barbados, dividends received by a resident of Barbados from a non-resident company are not subject to tax under Barbadian tax laws when such Barbadian resident owns at least 10% of the capital of the non-resident company and the shareholding is not held solely for the purpose of portfolio investments.

BIR Issuances

RR No. 14-2015 extends the deadline for the procurement and reconfiguration of machines and systems in order to reflect the information required under Section 5 of RR No. 10-2015 on official receipts, sales invoices/ other commercial invoices generated by CRMs)/POS Machines and other invoice/ receipt-generating machine/software.

Revenue Regulations No. 14-2015 dated 9 November 2015

- ▶ Section 8 of RR No. 12-2015 is further amended to read as follows:

"x x x

SECTION 8. TRANSITORY PROVISIONS. - In order to provide ample time in procuring, reconfiguring machines and systems, to comply with Section 5, adjustments shall be undertaken on or before December 31, 2015. Any extension due to enhancements of systems required to be undertaken abroad shall seek the approval from the concerned Regional Director or ACIR, Large Taxpayer Service which shall not be longer than six (6) months from the effectivity of these Regulations.

x x x"

- ▶ These Regulations shall take effect immediately.

[Editor's Note: RR No. 14-2015 was published in the Manila Bulletin on 10 November 2015.]

RMC No. 72-2015 announces the entry into force, effectivity and applicability of the Philippines-Qatar Double Taxation Agreement.

Revenue Memorandum Circular No. 72-2015 dated 28 October 2015

- ▶ The Philippines-Qatar Double Taxation Agreement, which entered into force on 19 May 2015, shall take effect on 1 January 2016.
- ▶ Tax Treaty Relief Applications (TTRAs) invoking the Agreement should be filed with the International Tax Affairs Division (ITAD) at the BIR National Office.
- ▶ The concerned Qatari resident income earner or his authorized representative should file a duly-accomplished BIR Form No. 0901 (Application for Relief from Double Taxation) together with the required documents, pursuant to Revenue Memorandum Order (RMO) No. 72-2010.

BOC Issuances

CMO No. 38-2015 authorizes the Intelligence Group to witness the conduct of spot-check and non-intrusive examination of consolidated shipments and shipments tagged as RED in the Selectivity System.

Customs Memorandum Order No. 38-2015 dated 27 October 2015

- ▶ All OICs - Customs Intelligence and Investigation Service (CIIS) must coordinate with the x-ray field offices in their respective areas for the conduct of the examination and for copies of the printed images of all containers scanned. CIIS personnel will witness the spot check or x-ray examination of the tagged shipments.
- ▶ CMO No. 38-2015 takes effect immediately.

CMO No. 39-2015 prescribes the guidelines on the pilot implementation of the electronic application and issuance of preferential and non-preferential e-CO.

Customs Memorandum Order No. 39-2015 dated 3 November 2015

▶ **Objectives**

1. To provide guidelines and procedures on the electronic application and issuance of preferential and non-preferential Certificates of Origin (e-COs);
2. To conduct the pilot implementation of the electronic application and issuance of the ASEAN Trade in Goods Agreement (ATIGA) Form D as part of the ASEAN Single Window program for export shipments using the BOC - approved e-CO system;
3. To conduct a review of the procedures adopted during the three months pilot implementation in the electronic application and issuance of the ATIGA Form D for the purpose of rolling out the e-CO system to include other Free Trade Agreements (FTAs);
4. To provide inputs in the formulation policies and procedures, preparatory to the electronic exchange of the e-CO in compliance with the ATIGA and other FTAs, and the granting of preferential tariff treatment on the basis of the e-CO issued and received by the BOC.

▶ **Scope**

This CMO covers the registration of pilot exporters using the e-CO system, the pilot implementation of the electronic application procedure for submission of the BOC ruling on the compliance with the ATIGA Rules of Origin, the online review and approval of the e-CO Form D, and other implementation matters in this connection.

▶ **Administrative Provisions**

1. ASEAN member states which accept Form D for the purpose of preferential treatment under ATIGA are: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.
2. The BOC shall advise the respective Customs authorities on the pilot implementation of the e-CO procedures, and submit the specimen signatures of the authorized customs officers of the Export Coordination Division (ECD).
3. The BOC MISTG, in coordination with ECD, shall conduct a User Acceptance test (UAT) on the e-CO System, as may be provided to the BOC by the accredited VASPs, and upon compliance to technical and functional requirements, shall endorse to the Deputy Commissioner for AOCG the use of the e-CO System, as an additional service of the VASP.

▶ **Operational Provisions**

1. Manual Pre-Export Verification - A written request for pre-export verification of the origin of the goods must be submitted by the exporter to the BOC issuing authority at least five working days prior to the exportation of the products, together with certain documents regarding the products to be exported and the destination of such products.

The BOC may conduct an inspection of the export products, evaluate whether the said export products will qualify for ATIGA treatment, and review the submitted documents.

The approved ruling shall be the basis for the approval and issuance of the e-CO Form D.

2. Online Application for e-CO - E2M registered exporters may register to the e-CO System for purposes of the application and issuance of the ATIGA Form D by uploading its list of goods and scanned copy of BOC Ruling the into the e-CO system, together with scanned copies of other documents, in support of its application.
3. Review and Approval of e-CO Application - The ECD or Export Division (ED) of the port concerned, shall review and verify whether the export products have been pre-qualified for ATIGA.

If any of the goods specified in the application for the ATIGA Form D are not in the pre-qualified goods of the exporter, or the corresponding ruling has already expired, or the submitted documents do not pertain to the application for the ATIGA Form D, the e-CO shall be rejected.

If the e-CO application is rejected, the reason for the rejection shall be indicated and an email alert notification to the exporter shall be sent. The exporter may resubmit another application.

However, where the details in the application conform to the goods and are qualified under a ruling, and the submitted supporting documents are complete pertaining to the application, the e-CO applications shall be approved. The exporter shall be informed of the approval through e-mail.

4. Payment of Documentary Stamp Tax (DST) - The exporter shall ensure the payment of DST for the processing of the e-CO application. Approval of the application for e-CO Form D automatically triggers the electronic payment of DST of P 115. However, exporters duly registered with Philippine Economic Zone Authority (PEZA) and Board of Investments (BOI) are exempt from payment of DST.
5. Printing of the e-CO Form D - Upon receipt of the payment confirmation, the e-CO system shall send an alert notification to the exporter. The exporter subsequently prints the approved e-CO Form D for signature of the authorized customs officer.
6. Issuance of e-CO Form D - The e-CO Form D, duly signed by both the exporter and the authorized customs officer, shall be scanned and uploaded into the e-CO system, and indicate the e-CO serial number. The scanned Form D shall be tagged as "Issued" in the e-CO system.
7. Requests for retro verification - if reasonable doubt exists about the authenticity of the Certificate of Origin and the accuracy of the information regarding the origin criterion used, requests for retro verification can be made by the BOC.

- ▶ CMO No. 39-2015 takes effect immediately and shall be implemented at the Port of Manila, the Manila International Container Port, the Ninoy Aquino International Airport, and the Mactan International Airport.

[Editor's Note: CMO No. 39-2015 was suspended until further notice by CMO No. 39-2015A, dated November 23, 2015.]

CMO No. 40-2015 prescribes the implementing rules and regulations of BOC-PEZA JMO 2-2015 on the transfer of goods from the ELSE to its partner Ecozone Locator.

Customs Memorandum Order No. 40-2015 dated 28 October 2015

▶ **Scope**

The role of the customs officials in the Ecozone for the transfer of goods from an Ecozone Logistics Service Enterprise (ELSE) facility to a partner Ecozone Locator shall be to approve of the General Transportation & Surety Bond (GTSB) to ensure that there is adequate security for the goods being transferred; selective examination of the goods covered by the electronic zone transfer document (e-ZTD), both prior to exit from the ELSE and upon arrival of the transferred goods to the destination; and support in the transfer of the goods.

▶ **Operational Provisions**

1. All ELSE operators are required to post a GTSB prior to the transfer of goods to their partner PEZA Locators, which shall be obtained from any customs accredited surety companies. The GTSB shall be subject to prior approval by the concerned customs official in the Ecozone.
 2. All ELSE operators must file an application for transfer of goods from an ELSE Facility to its partner locator using the eZTD. The goods for transfer must be physically segregated and available for inspection by the BOC. BOC officers shall monitor the electronic zone transfer system (eZTS) video display unit for submitted eZTD and determine, based on Risk Assessment, whether or not to physically examine the goods. BOC Officers have 30 minutes within which to register in the eZTS whether or not they wish to examine the goods. Failure to indicate intent to examine will free the goods for transfer.
 3. BOC Officers shall check that the goods transferred arrive safely at the partner-locator premises and are duly received thereat. They shall also ensure that "view only" access is provided in the eZTS by PEZA-accredited VASPs.
- ▶ CMO No. 40-2015 takes effect immediately.

PEZA Issuances

MC No. 2015-027 introduces the availability of the DENR-EMB online system for proponents who would like to secure online Certificates of Non-Coverage (CNCs) for Category D projects, and online Environmental Compliance Certificates (ECCs) for new Category B projects.

Memorandum Circular No. 2015-027 dated 23 October 2015

▶ **Guide for PEZA-Registered Enterprises**

1. If a new or expansion project will be registered with PEZA, EMB MC 2014-005, also known as the Guidelines for Coverage Screening may be used as a guide in determining the category of the proposed project. The coverage is as follows:
 - ▶ Proponents of Category A and Category B are required to secure ECC.
 - ▶ Proponents of Category C and Category D are encouraged to secure CNC.
2. Categorization of projects under EMB MC No. 2014-005 is as follows:
 - ▶ Category A - Projects or undertakings which are classified as environmentally-critical projects (ECPs).

- ▶ Category B - Projects or undertakings which are not classified as ECP, but which are likewise deemed to significantly affect the quality of the environment by virtue of being located in an Environmentally Critical Area (ECA).
 - ▶ Category C - Projects or undertakings which are intended to directly enhance the quality of the environment or directly address existing environmental problems.
 - ▶ Category D - Projects or undertakings that are deemed unlikely to cause significant adverse impact on the quality of the environment.
3. The online facility is available at the EMB website through <http://www.emb.gov.ph> for proponents of Category B and Category D projects. The links are as follows:
- ▶ CNC Online - <http://www.emb.gov.ph/portal/E-LIBRARY/CNCads.aspx>
 - ▶ ECC Online - <https://119.92.161.21/live/>
4. Online procedure for Category D CNC Applications (involving not more than one hectare land development and which has not been issued an ECC) under EMB MC No. 2015-003:
- ▶ Log on to the EMB-EIA Website to determine if the proposed project falls under Category D;
 - ▶ Accomplish and submit online the pro-forma Project Description (PD);
 - ▶ An Order of Payment shall be generated with the instructions on payment with any Landbank branch;
 - ▶ After payment of fees, enter the tracking and bank transaction sequence numbers and the Landbank Branch where payment was made, then submit online a scanned copy of any government ID issued to the project proponent/applicant and scanned copy of the bank transaction slip; and
 - ▶ After validation of the payment and project information by the EMB, the CNC can be printed online.
5. Online procedure for Category B ECC Applications for new projects under EMB MC No. 2015-008:
- ▶ Visit the EMB-EIA Website and register to have an ECC Online account;
 - ▶ Encode the project information in the ECC Online system to verify if the proposed project will qualify in the online application process;
 - ▶ Fill out the online Initial Environmental Examination (IEE) checklist form;
 - ▶ An Order of Payment will be generated with instructions on payment with any Landbank branch;
 - ▶ After payment of fees, submit the following online:
 - a. Scanned copy of deposit transaction slip,
 - b. IEE checklist with duly notarized accountability statement of proponent,
 - c. Geo-tagged photographs of proposed project site,
 - d. Maps of impact/affected areas (showing at least 1km from the project boundaries),
 - e. Certification from Local Government Unit (LGU) proving the compatibility of proposed project with existing land use plan,
 - f. Site development plan / Vicinity map signed by registered professionals,
 - g. Project/Plan layout signed by registered professionals,

- h. Schematic diagram of air pollution control facility (if applicable),
 - i. Organizational Chart in charge of environmental concerns,
 - j. Proof of authority over the project site (e.g. land title, lease contract, deed of absolute sale), and
 - k. Duly accomplished project environmental monitoring and audit prioritization scheme (PEMAPS) questionnaire;
- ▶ The EMB Regional Office will evaluate, and may deny or approve the ECC application. The result of evaluation, which is either an approval or a need to submit additional information (AI), will be forwarded to proponent through its online account.
 - ▶ Under EMB MC No. 2015-009, all ECC applications for new and single component Category B projects must be processed, issued, and posted online; otherwise, the same shall be considered null and void.
- ▶ **Reminders from PEZA**
1. Endorsement of manual CNC and IEE Checklist applications by PEZA to DENR-EMB Regional Office is no longer mandatory, and is subject to the request of the appropriate EMB Office.
 2. PEZA-registered enterprises may coordinate with the appropriate PEZA Environment Office for assistance in determining whether CNC or ECC shall be secured.

MC No. 2015-030 circularizes the PNP Memorandum dated 28 October 2015, which extends until 30 April 2016 the validity period of the authority to grant Temporary Licenses/Permits for PNP-Regulated Chemicals, subject to certain conditions.

Memorandum Circular No. 2015-030 dated 2 November 2015

- ▶ **Extension of Issuance of Temporary Permits until 30 April 2016**
1. The PNP Chief approved the extension of the validity period for the authority to issue Temporary Permits for PNP-regulated chemicals up to 30 April 2016.
 2. Under the PNP Guidelines for the Temporary Permit, the extension is subject to the following conditions:
 - ▶ All applicants will be required to submit the following documentary requirements before their applications will be accepted, processed, and approved:
 - a. Notarized letter request signed by the authorized representative indicating, among others, the following:
 - ▶ The controlled chemical/s to be procured;
 - ▶ Mode of procurement (local purchase or importation);
 - ▶ Delivery date/s;
 - ▶ Quantity (based on average monthly consumption and subject for partial/staggered delivery depending on the capacity of their storage facility);
 - ▶ Purity/grade; and
 - ▶ Declaration of the actual inventory of controlled chemicals as of the date of filing.
 - b. Authorized representative's proof of authority to transact, i.e. certified true copy of valid ID and of Board Resolution (for corporations) or Special Power of Attorney (for partnerships and sole proprietorships).

- c. Proof of payment of applicable permit fee (special bank receipt from Land Bank).
 - d. Location, address, and description of capacity of storage facility in terms of dimensions and safety specifications measured against quantity/volume of chemicals sought to be stored/warehoused.
 - e. Notarized monthly consumption reports for the covered months of temporary permit.
- ▶ Qualified/eligible applicants will be granted the following license/permits, as applicable:
 - a. Temporary License to Possess Explosives/Explosive Ingredients and/or Controlled Chemicals
 - ▶ Validity: Until 30 April 2016
 - ▶ License Fee: Waived (free)
 - ▶ Processing time: 5 working days
 - b. Temporary Permit to Purchase and Move Explosives
 - ▶ Validity: 60 days (non-extendible)
 - ▶ Processing time: 3 working days
 - c. Temporary Permit to Unload
 - ▶ Validity: 60 days (non-extendible)
 - ▶ Processing time: 3 working days
 - ▶ Permit fee: PHP 0.10/kg or PHP 0.10/liter
 - d. Temporary Permit to Import:
 - ▶ Validity: 180 days (non-extendible)
 - ▶ Processing time: 3 working days
 - ▶ Permit fee: PHP 6,000.00
 - e. Radio Message (for temporary permit)
 - ▶ Validity: 60 days (non-extendible), one time use only
 - ▶ Processing time: 3 working days
 - ▶ Licensees must submit notarized monthly consumption/utilization reports to EMD, FEO within 10 calendar days of the succeeding month. Late or non-submission is a ground for cancellation of license and confiscation of available inventory of controlled chemicals.
 - ▶ Temporary license holders must subsequently apply for a Regular License.
 - a. Upon the grant of the Temporary License, the applicant must apply for the appropriate regular License to Possess Explosives/Explosive Ingredients and/or Controlled Chemicals within 60 days; otherwise, his temporary license shall be cancelled and his inventory shall be subject to confiscation.
 - b. A temporary license already issued will be automatically cancelled when the application for regular license is approved.
 - c. Failure to secure a Regular License on or before 30 April 2016 shall subject the licensee to the penalties provided under Section 4F of RA No. 9516.
 - ▶ **Survey of PEZA Enterprises Using PNP-Regulated Chemicals**
 1. Locator enterprises using PNP-regulated chemicals are requested to accomplish the PEZA survey. The information generated therefrom will be used by PEZA in its discussions with the PNP.

BSP Issuances

Circular No. 891 prescribes sales and marketing guidelines for financial products.

BSP Circular No. 891 dated 9 November 2015

- ▶ The Monetary Board, in its Resolution No. 1811 dated 29 October 2015, approved the following guidelines governing the sales and marketing of financial products, which replaces the sales and marketing guidelines for derivatives under Appendix 26 of the Manual of Regulations for Banks (MORB) and Appendix Q-16 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).
- ▶ The contents of Appendix 26 of the MORB and Appendix Q-16 of the MORNBFI are hereby transferred to Section X661 of the MORB and Section 4661Q of the MORNBFI are also amended.
- ▶ Appendices 26 and 26a of the MORB and Appendices Q-16 and Q-16a of the MORNBFI are hereby deleted. References made to Appendix 26 of the MORB and Appendix Q-16 of the MORNBFI shall be amended to Section X661 of the MORB and Section 4661Q of the MORNBFI, respectively.
- ▶ BSP-Supervised Financial Institutions (BSFIs) shall be given three months from the effectivity of this circular to make appropriate changes in their sales and marketing policies, processes and materials in order to comply with the above requirements.
- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 891 was published in The Manila Times on 13 November 2015.]

Circular No. 892 provides for the Submission of Quarterly Report on RREs by UBs/KBs and TBs for the Generation of the RREPI.

BSP Circular No. 892 dated 16 November 2015

- ▶ Section X192 and Appendix 6 of the MORB are hereby amended.
- ▶ The Bank Quarterly Report on RREs for RREPI is designed to provide information for the generation of the RREPI which would provide a valuable tool in assessing the real estate and credit market conditions in the country.
- ▶ All UBs/KBs and TBs shall submit the Bank Quarterly Report on RREs for RREPI on a solo basis.

This report covers residential real estate loans granted to individual households for the purpose of financing the acquisition of housing units and any associated land that is or will be occupied by the borrower. Residential real estate loans granted to individual households to finance the purchase of vacant lots, construction and improvement of housing units, and ancillary real estate activities are not included.

- ▶ The Bank Quarterly Report on RREs for RREPI shall be classified as a Category A-3 Report under Subsection X192.1 of the MORB.

- ▶ A new Subsection X192.17 is hereby added to Section X192 under Part One-Organization, Management and Administration, Item N. Risk Management of the MORB.
- ▶ Appendix 6 of the MORB is hereby amended by adding the Bank Quarterly Report for the Residential Real Estate Price Index.
- ▶ Banks failing to submit the reports required within the prescribed deadline shall be subject to monetary policies applicable for delayed reporting under existing regulations for Category A-3 reports. Moreover, submission of erroneous reports shall be considered non-reporting, subject to said penalties for delayed reporting.
- ▶ This circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 892 was published in Business Mirror on 26 November 2015.]

Circular No. 893 provides for the Revised Compliance Framework for QBs.

BSP Circular No. 893 dated 16 November 2015

- ▶ The Monetary Board, in its Resolution No. 1758 dated 22 October 2015, approved the revisions to the compliance framework for Quasi-Banks (QB), amending: (i) the entirety of Section 4180Q (2008 - 4191Q) Compliance System; Compliance Officer of the MORNBF; and (iii) Subsection X180.4 (2011-X180.2) Chief Compliance Officer of the MORB.

- ▶ Section 4180Q is amended to include a statement of policy that shall be read as follows:

“Section 4180Q. **Compliance System; Compliance Officer.** The Bangko Sentral ng Pilipinas (BSP) actively promotes the safety and soundness of the Philippine banking system through an enabling policy and oversight environment. Such an environment is governed by the high standards and accepted practices of good corporate governance as collectively defined by the BSP and its supervised institutions. Towards this end, a robust, dynamically-responsive and distinctly appropriate compliance system shall be put in place as an integral component of an institution's internal controls.

Subject to the provisions of Subsection 4180Q.4, a Chief Compliance Officer (CCO) shall be appointed to oversee the design of its compliance system and promote its effective implementation.”

- ▶ Subsection 4180Q.1 (2008 - 4191Q.1) Compliance System shall focus on the mitigation of business risk and is hereby amended to read as follows:

“Subsection 4180Q.1 **Definition of Business Risk.** A compliance system shall be designed to specifically identify and mitigate business risks which may erode the franchise value of the QB. Business risk refers to conditions which may be detrimental to a QB's business model and its ability to generate returns from operations, which in turn erodes its franchise value. Combining business risk with the financial risks arising from the use of borrowed funds generates total corporate risk of the QB. Business risks shall include, but shall not be limited to, the following:

- a. Risks to reputation that arise from internal decisions that may damage a QB's market standing;

- b. Risks to reputation that arise from internal decisions and practices that ultimately impinge on the public's trust of the QB;
 - c. Risks from the actions of a QB that are contrary to existing regulations and identified best practices and reflect weaknesses in the implementation of codes of conduct and standards of good practice;
 - d. Legal risks to the extent that changes in the interpretation or provisions of regulations directly affect a QB's business model."
- ▶ Subsection 4180Q.5 (2008 - 4191Q.5); Subsection 4180Q.1 (2008 - 4191Q.1); Subsection 4180Q.2 (2008 - 4191Q.2); Subsection 4180Q.4 (2008 - 4191Q.4); Subsection 4180Q.8 (2008 - 4191Q.8 and Subsection 4180Q.9 are hereby amended and renumbered as new Subsection 4180Q.2; 4190Q.3;4180Q.4;4180Q.5;4180Q.6 and 4180Q.7 respectively.
 - ▶ Subsection 41803.3 (2008 - 4191Q.3); Subsection 4180Q6 (2008 - 4191Q.6 and Subsection 4180Q.7 (2008 - 4191Q.7) are deleted.
 - ▶ Subsection X180.4 (2011 - X180.2) of the MORB is hereby amended to read as follows:

"Subsection X180.4 (2011 - X180.2) **Chief Compliance Officer**

- a. The CCO is the lead senior officer for purposes of administering the compliance program and interacting with the BSP on compliance-related issues.

x x x

- d, Banks with subsidiary banks and quasi-banks may appoint a CCO for the banking group; Provided, that the parent bank can show to the BSP that the compliance function is conducted on a group-wide basis.

x x x"

- ▶ This circular shall take effect one calendar day following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 893 was published in Manila Bulletin on 26 November 2015.]

SEC Opinions

SEC Opinion No. 15-13 dated 3 November 2015

A company may not amend its by-laws to designate three presidents.

Facts:

A domestic corporation is headed by the Chief Executive Officer (CEO) and who at the same, is the President of the company. There is a plan to reorganize the company that entails amending the company's By-laws. The company will still have the CEO who shall remain the highest ranking officer and the public face of the company. However, instead of having only one President, there would be 3 presidents who shall be separately responsible for the 3 major areas of business. The three presidents would all be reporting directly to the CEO.

Issue:

May the company amend its by-laws to designate 3 corporate officers as “President/s”?

Ruling:

No, the company may not amend its by-laws to designate 3 presidents.

Because of the importance of the position of the President, the law prescribes some qualifications/disqualifications of a President, among which are that he must be a director of the corporation, and that he must not concurrently hold the positions of Secretary or Treasurer. The position of the President is reposed with duties and responsibilities provided by law and jurisprudence, which can be further expanded by its by-laws. The President serves not merely as a title of prestige or status, but also serves as a basis for stockholders and the other entities transacting with the corporation to determine whether such person is clothed with authority to perform the duties conferred by the law and the functions given by the by-laws, within the general objectives of the corporation’s business.

To allow 3 or more corporate officers, who would each be called as “President” could mislead and create confusion as to who would perform the duties enumerated by law to be performed by the President, and as to whom such aforementioned qualifications/disqualifications must apply.

SEC Opinion No. 15-14 dated 3 November 2015

A 100% foreign-owned domestic corporation may not undertake the business of providing ground handling services.

Facts:

A 100% foreign-owned domestic corporation intends to engage in the business of providing ground handling services in the Philippines, which include the moving of aircraft (i.e., towing in and/or pushing back aircraft using tow-in and/or push back tractors) and baggage handling (i.e. preparation and delivery of baggage to and from aircraft).

Issue:

May a 100% foreign-owned domestic corporation engage in the business of ground handling services, considering that the said activity is not expressly stated in the Foreign Investment Negative List (FINL)?

Ruling:

No, the domestic corporation which is 100% foreign-owned may not engage in the business of ground handling services.

It must be emphasized that it is the nature, not the name, of the activity which determines whether or not the business activity is covered by the Negative List. Under the FINL, foreign equity participation in corporations engaging in the operation and management of public utilities is limited to a maximum of 40%. A “public utility” under the Constitution and the Public Service Law is one organized for hire or compensation to serve the public, which is given the right to demand its service. Further, a public utility is defined as “business or service which is engaged in regularly supplying the public with some commodity or service for public consequence.”

There is no question that services to facilitate passenger handling and other services related to the movement of passengers, baggage and goods, as well as the care, convenience and security of passengers, visitors and other airport users are necessarily part and parcel of airport operations. The ground handling services, which include both aircraft movement and baggage handling, are activities essential to airport operations. Thus, such activities are the business of public utilities.

Court Decisions

Liquigaz Philippines Corporation vs. CIR

CTA (*En Banc*) Case 1117 promulgated 21 September 2015

Deficiency interest under Section 249(B) of the Tax Code should only be imposed whenever there is deficiency income tax, deficiency estate tax, and deficiency donor's tax. Deficiency interest cannot be applied to assessments covering other taxes.

Deficiency interest extends only up to the time when the taxpayer is required to pay the assessed tax after being informed thereof. Delinquency interest under Section 249(C) shall commence from the time the taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand.

Facts:

On 16 October 2009, the CIR assessed Petitioner Liquigaz Philippines Corporation for alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), and withholding tax on compensation (WTC) for taxable year 2006, with a demand to pay the deficiency taxes on or before October 31, 2009.

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

Pending appeal, Liquigaz made a partial payment covering a portion of the CTA Third Division's judgment. In case its Motion for Reconsideration is wholly or partially granted, Liquigaz sought the refund of the paid amount or a portion thereof.

The CTA Third Division ruled that the partial payment should be considered in the computation of the deficiency taxes still due and declared that Liquigaz is still liable for the balance still due after deducting the amount paid.

Both Liquigaz and the CIR elevated the case to the CTA *En Banc*. Liquigaz averred, among others, that the partial payment made should be applied to the basic tax deficiency and not to the entire tax in order to reduce interest and penalties.

Issues:

1. Is Liquigaz liable for the taxes assessed plus deficiency and delinquency interest?
2. Does the partial payment have the effect of reducing the interest to be imposed on Liquigaz?

Ruling:

1. Yes, Liquigaz is liable for the taxes assessed but deficiency interest can only be imposed on the deficiency income tax and not to the other deficiency taxes assessed by the BIR.

Section 249 (B) of the Tax Code prescribes that the deficiency interest shall be imposed on "any deficiency in the tax due, as defined under the Tax Code." There are only 3 instances where the Tax Code defines the term "deficiency,"

and this relates only and respectively to 3 types of internal revenue taxes, namely: income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93, and 104 of the Tax Code. Thus, the deficiency interest under Section 249(B) should be applied only whenever there is a deficiency income tax, a deficiency estate tax or a deficiency donor's tax. In this case, no deficiency interest under Section 249(B) should be imposed on Liquigaz for the deficiency VAT, EWT and WTC.

Deficiency interest extends only up until the time when the taxpayer is required to pay the assessed tax after being informed thereof. On the other hand, delinquency interest shall commence from the time the taxpayer failed to pay the assessed tax within the time allowed as stated in the formal letter of demand.

Delinquency interest applies to the total amount of income tax deficiency plus the deficiency interest computed from November 1, 2009 until full payment, as well as to the assessed deficiency amounts for VAT, EWT and WTC from November 1, 2009 until full payment. Deficiency interest on the income tax accrued from the time the tax should have been paid as prescribed by the Tax Code until the date stated in the Final Assessment Notice (FAN) demanding payment.

2. Yes. Any partial payment of the tax liability shall have an impact on what is due at the time of such partial payment, and said tax liability shall accordingly be reduced. The partial payment of Liquigaz should have the effect of reducing the interest imposed on the total assessment.

The CTA *En Banc* rejected the application of Article 1252 of the Civil Code which allows a debtor to choose to which debt the payment must be applied. In disallowing the application of the partial payment to the basic tax deficiency only, the CTA ruled that the Government and Liquigaz are not creditors and debtors of each other.

Tulay sa Pag-Unlad Inc. vs. CIR

CTA (First Division) Case 8480 promulgated 29 October 2015

A non-stock non-profit corporation engaged in micro-finance lending is not exempt from VAT on its interest income or from DST on the loan agreements.

Facts:

Respondent CIR assessed Petitioner Tulay sa Pag-Unlad, Inc. (TSPI), a non-stock, non-profit corporation, for alleged deficiency VAT on interest income earned on loans extended to beneficiaries and deficiency documentary stamp tax (DST) on the loan agreements.

TSPI protested the deficiency VAT and DST assessments. Upon denial of its protest, TSPI filed a Petition for Review with the CTA.

At the CTA, TSPI admitted that it lends between P5,000 and P10,000 for a nominal interest but argued that it is not a commercial lending institution engaged in business profit. TSPI argued that since it is not engaged in commercial lending activities but only provide loans for social welfare to beneficiaries, it should be exempt from VAT and DST.

The CIR countered that TSPI's exemption covers only income tax on income derived in the pursuit of its purpose as a welfare institution and does not cover exemption from other taxes such as VAT and DST.

Issues:

1. Is TSPI considered a lending investor subject to VAT?
2. Are the loan agreements executed by TSPI and its borrowers subject to DST?

Ruling:

1. Yes. While a civic league or organization not organized for profit but operated exclusively for the promotion of social welfare is exempt from income tax under Section 30 (G) of the Tax Code, it is not exempt from VAT.

The CTA noted that one of TSPI's primary purposes based on its Amended Articles of Incorporation is to lend for a fee. RR No. 16-2006 provides that any person who lends money with interest is considered a lending investor. The act of lending money at interest is subject to VAT.

2. Yes. TSPI's loan agreements with its borrowers are subject to DST pursuant to Section 179 of the Tax Code.

TSPI failed to prove that the loan agreements extended to its borrowers were used to purchase on installment for the borrower's personal use or for their family, and not for business or resale, barter, hire of a house, lot, motor vehicle, appliance or furniture, which would have exempted the documents from DST under Section 199 of the Tax Code.

Spouses Joseph Ejercito Estrada and Luisa P. Ejercito vs. CIR

CTA (Second Division) Case 7847 promulgated 23 November 2015

The BIR cannot simply rely on the findings of another agency or tribunal for its tax assessment. It should conduct an independent investigation to determine the tax deficiency of a taxpayer.

Facts:

Respondent CIR assessed the spouses Joseph Estrada and Luisa Ejercito ("the Estradas") for alleged deficiency income tax for taxable year 1999. The assessed amount was based on the findings of the Sandiganbayan that Estrada owned the Jose Velarde account and its judgment that he was guilty of plunder. The Estradas protested the assessment and upon denial of its protest by the CIR, filed a Petition for Review at the CTA.

At the CTA, the Estradas argued, among others, that the BIR did not accord them due process when it merely adopted the decision of the Sandiganbayan and applied it to resolve a tax issue. The CIR insisted that she did not rely on the Sandiganbayan's decision which is a mere contingency that paved the way for the FAN. The CIR also argued that they initiated an investigation, which was suspended pending the resolution of the Sandiganbayan case.

Issue:

Can the BIR merely rely on the findings of the Sandiganbayan to determine the tax liability of the Estradas?

Ruling:

No. Section 228 of the Tax Code requires that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment is void.

The CTA found that the basis of the Estradas' alleged deficiency tax arose from the investigation and findings of another tribunal. The BIR's Legal and Enforcement Group admitted basing their recommendation on the Sandiganbayan's decision on the plunder case and concluded that the Estradas have willfully and intentionally failed to report taxable receipts and acquisition of assets in violation of the Tax Code.

The BIR has the burden to determine the amount of deficiency taxes due from a taxpayer. Such mandate is vested upon the BIR as the primary agency tasked to assess and collect all internal revenue taxes, fees, and charges and the enforcement of all forfeitures, penalties, and fines connected therewith.

The BIR should have conducted an independent investigation in the determination of the amount of deficiency taxes due the taxpayers and not merely rely on the findings of another agency or tribunal. In the absence of vital documents from which the CTA can verify the correctness of the assessment, the deficiency income tax assessment cannot be sustained.

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Expiry date: no expiry

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We welcome your comments, ideas and questions. Please contact Ma. Fides A. Balili via e-mail at Ma.Fides.A.Balili@ph.ey.com or at telephone number 894-8113 and Mark Anthony P. Tamayo via e-mail at Mark.Anthony.P.Tamayo@ph.ey.com or at telephone number 894-8391.

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