

Tax Bulletin

October 2016

SGV TAX BULLETINS
(NOS. 52 - 1 TO 55 - 32)

1952 - 1955

SGV & Co
AN ARTHUR ANDERSEN MEMBER FIRM

TAX BULLETIN

08-99

October 1999

HIGHLIGHTS

BIR RULINGS

The NOLCO and excess MCIT credit balances of the corporations in a statutory merger of commonly owned companies transferred and carried over to the surviving corporation loan is subject to tax only on the final withholding tax on dividends paid in the final withholding tax return.



HIGHLIGHTS

IN THIS ISSUE	Page
Voluntary Assessment and Abatement Program	2
The Excise Tax System: A Review	4
The BOC Policy of Informed Compliance	11

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

SGV

Building a better working world

A member firm of Ernst & Young Global Limited

Highlights

BIR Rulings

- ▶ Revenue Regulation No. 2-2016 now requires an Authority to Release Imported Goods (ATRIG) for the removal of covered articles from customs custody intended for sale/delivery even to tax exempt entities or agencies. **(Page 4)**
- ▶ Gifts in favor of a religious corporation are exempt from the payments of donor's tax, subject to the condition that not more than 30% of the said gifts shall be used by the donee for administration purposes. **(Page 4)**
- ▶ Separation pay given to an employee due to termination by reason of redundancy of position is exempt from income tax and withholding tax. **(Page 5)**

BIR Issuance

- ▶ Revenue Memorandum Circular (RMC) No. 102- 2016 clarifies the requirement on the Taxpayer Identification Number (TIN) for members of cooperatives applying for a Certificate of Tax Exemption (CTE) under Revenue Memorandum Order (RMO) No. 76-2010 and RMC No. 81-2010. **(Page 5)**

BOC Issuances

- ▶ Customs Administrative Order (CAO) No. 2-2016 provides the new rules on Imported Goods with *De Minimis* Value not subject to duties and taxes. **(Page 6)**
- ▶ CAO No. 3-2016 provides the rules on the Advance Ruling System for Valuation and Rules of Origin. **(Page 8)**

BSP Issuances

- ▶ Circular No. 926 provides for the Guidelines in Processing Requests for Monetary Board Opinion on the Monetary and Balance of Payments Implications of Proposed Domestic Borrowings by Government Entities Pursuant to Section 123 of Republic Act (RA) No.7653. **(Page 11)**
- ▶ Circular No. 927 provides for the Amendment to BSP Circular No. 910, Series of 2016, Increasing the Allowable Amount to be Exchanged by Overseas Filipinos (OFs) Under the NDS Banknote Exchange Facility from PHP10,000.00 to PHP50,000.00. **(Page 11)**
- ▶ Circular No. 928 provides for the Amendments to the Regulations Governing Fees on Retail Bank Products/Services and Dormant Deposit Accounts. **(Page 12)**

SEC Opinions and Issuance

- ▶ Under the Corporation Code, a corporation with a revoked certificate of registration may continue as a body corporate for the purpose of liquidation and winding up of its affairs. **(Page 15)**
- ▶ If a corporation existing prior to the effectivity of the Corporation Code fails to amend its Articles of Incorporation (AOI) in order to comply with the applicable provisions of the Code on or before 1 May 1982 (the expiry date of the two-year period mentioned in Section 148), the respective provisions of the Corporation Code will be considered written into the AOI as of the date of the Code's effectivity (1 May 1980). **(Page 15)**

- ▶ The direct sale of laboratory, medical and healthcare equipment to hospitals, laboratories, schools, commercial and industrial users, government entities and distributors in the Philippines does not constitute retail trade. **(Page 16)**
- ▶ SEC MC No. 17 provides for the guidelines on the applications for payment of annual fees of capital market participants (institutions and professionals). **(Page 17)**

PEZA Issuances

- ▶ The Appointment Letter dated 28 September 2016 appoints Ms. Charito B. Plaza as Director General of the Philippine Economic Zone Authority. **(Page 17)**
- ▶ PEZA Memorandum Circular No. 2016-035 circularizes DOF-DTI Joint Memorandum Circular (JMC) No. 1-2016 clarifying certain provisions of DOF-DTI Joint Administrative Order (JAO) No. 1-2016 relating to the implementation of Republic Act No. 10708, otherwise known as the “Tax Incentives Management and Transparency Act” (TIMTA) and prescribing the deadlines for submission of the Annual Tax Incentives Reports. **(Page 18)**

BOI Updates

- ▶ DOF-DTI Joint Memorandum Circular (JMC) No. 1-2016 amends certain provisions of DOF-DTI Joint Administrative Order (JAO) No. 1-2016 on the TIMTA Rules and Regulations to clarify entities not required to file the annual tax incentives report and the filing deadlines for the transitory periods. **(Page 19)**
- ▶ BOI Memorandum Circular No. 2016-004 adopts the supplemental guidelines on BOI Registered Business Entities’ compliance to DOF-DTI Joint Administrative Order (JAO) No. 1-2016 on how to accomplish and submit the Annual Tax Incentives Reports. **(Page 20)**

BLGF Opinion

- ▶ A cooperative dealing exclusively with its members is not subject to taxes and fees imposed under the internal revenue laws and other tax laws. **(Page 23)**

Court Decisions

- ▶ A taxpayer must file its claim for refund of erroneously or illegally paid tax with the Court of Tax Appeals (CTA) within two years from the payment of the tax. As a precondition, however, the taxpayer is required to first file its claim with the Bureau of Internal Revenue (BIR).

A distribution in the nature of a recurring return on stock is an ordinary dividend. On the other hand, a distribution made when the corporation is winding up its business or recapitalizing and narrowing its activities may be treated as that in complete or partial liquidation and as payment for the stockholder’s stock. **(Page 24)**

- ▶ The CTA may rule on cases directly challenging the constitutionality or validity of a tax law, regulation or administrative issuance (such as a revenue order, revenue memorandum circular, and ruling).

In determining whether a debt instrument may be considered a deposit substitute, the interest of which shall be subject to the 20% final withholding tax (FWT), the borrowing must be made from 20 or more lenders at any one time.

The courts may grant legal interest in cases where patent arbitrariness on the part of the revenue authorities has been shown or where the collection of tax was illegal. (Page 25)

- ▶ A Letter of Authority should be properly served on the taxpayer within 30 days from the date of issue, otherwise it becomes null and void. (Page 28)

BIR Rulings

BIR Ruling No. 354-2016 dated 19 October 2016

RR No. 2-2016 now requires an ATRIG for the removal of covered articles from customs custody intended for sale/delivery even to tax exempt entities or agencies.

Facts:

The ADB, along with other diplomatic missions and international organizations enjoying a tax-exempt incentive on importations, was previously not required under RR No. 3-08 to secure an Authority to Release Imported Goods (ATRIG) for the removal of its shipments from customs custody. It sought clarification on whether it is now required to secure ATRIGs in view of RR No. 2-2016 or the new regulations governing the ATRIG process.

Issue:

Is ADB now required to secure ATRIGs?

Ruling:

Yes. Under RR No. 2-2016, the ATRIG shall be issued for all importations of articles subject to excise tax (whether exempt or taxable), including raw materials in the production thereof, as well as the machineries, equipment, apparatus or any mechanical contrivances especially used for its assembly/production; and on all importations of articles exempt from VAT, except on those articles (e.g., live animals, live marine food products, etc.) specifically identified and enumerated in BIR-BOC Joint Memorandum Circular No. 1-2002. Hence, RR No. 2-2016 now requires an ATRIG for the removal of covered articles from customs custody intended for sale/delivery even to tax-exempt entities or agencies.

BIR Ruling No. 358-2016 dated 19 October 2016

Gifts in favor of a religious corporation are exempt from the payment of donor's tax, subject to the condition that not more than 30% of the said gifts shall be used by the donee for administration purposes.

Facts:

Ms. A, a registered owner of two parcels of land, executed a Deed of Donation over said parcels in favor of the Roman Catholic Bishop of Palo.

Issues:

1. Is the donation subject to donor's tax?
2. Is the donation subject to DST?

Ruling:

1. No. Under Section 101 (A) (3) of the Tax Code, gifts in favor of a religious corporation are exempt from the payment of donor's tax, subject to the condition that not more than 30% of the said gifts shall be used by the donee for administration purposes.
2. No. Conveyances of real properties not in connection with a sale, to trustees of other persons without consideration, are not taxable. Hence, the deed of donation is not subject to DST under Section 196 of the Tax Code, but only to the DST of Php 15.00 under Section 188 of the same Code.

BIR Ruling No. 363-2016 dated 26 October 2016

Separation pay given to an employee due to termination by reason of redundancy of position is exempt from income tax and withholding tax.

Facts:

Mr. X, an employee of A Co., was terminated from employment after a determination that his position is no longer necessary in the operation of the business. Mr. X was given separation benefits as a result of the termination in accordance with the Labor Code.

Issues:

1. Are the separation fees exempt from income tax and withholding tax?
2. How should the salaries, 13th month pay and monetized unused vacation leave credits be treated for income tax purposes?

Ruling:

1. Yes. Under Section 32 (B) (6) (b) of the Tax Code, any amount received by an official or employee, or by his heirs, from the employer as a consequence of separation from service due to death, sickness or other physical disability or "for any cause beyond the control of the said official or employee" shall not be included in the gross income, and as such, shall be exempt from income tax and withholding tax.
2. The exemption does not cover payment of salaries and payment of 13th month pay and other benefits in excess of Php82,000 threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of RR No. 2-98, as amended.

Commutation and payment of monetized unused vacation leave credits not exceeding 10 days during the year are not subject to income tax and withholding tax. Conversely, the cash equivalent of vacation leave exceeding 10 days is subject to tax.

BIR Issuance

RMC No. 102- 2016 clarifies the requirement on the TIN for members of cooperatives applying for a CTE under RMO No. 76-2010 and RMC No. 81-2010.

Revenue Memorandum Circular No. 102- 2016 dated 24 October 2016

- ▶ The processing and issuance/ revalidation of CTEs for qualified cooperatives, which do not have yet the TIN of its members, shall be allowed by the concerned Revenue District Office (RDO), provided that the cooperatives submit an original copy of the certification under oath of the list of the cooperative members, with their full names and capital contributions.

- ▶ However, the cooperatives are still required to complete and submit to the concerned RDO, the required TINs of their members within 6 months from the issuance of the CTE.
- ▶ The failure by the cooperatives to submit their members' TINs shall be a ground for the revocation of the CTE.
- ▶ The concerned RDO cannot deny or defer the processing and issuance of the CTE solely on the basis of the non-submission of the TIN of the cooperative members.
- ▶ The cooperative may apply for the issuance of TIN on behalf of its members by collating the duly accomplished BIR Form No. 1904 of the members and valid identification in support of the application, and submitting the same to the concerned RDO.

BOC Issuances

CAO No. 2-2016 provides the new rules on Imported Goods with *De Minimis* Value not subject to duties and taxes.

Customs Administrative Order No. 2-2016 issued on 28 September 2016

- ▶ CAO No. 2-2016 covers all importations, which otherwise are dutiable, with an FCA or FOB *de minimis* value.
- ▶ The objective of the CAO is to minimize importation and customs administration costs in clearing importations with *de minimis* value, without compromising customs border and enforcement control, as well as to be responsive to the growing trade liberalization and facilitation thrust globally.
- ▶ The following terms are defined:
 1. Commercial quantity - refers to the quantity for a given kind or class of articles which are in excess of what is compatible or commensurate with a person's normal requirements for personal use.
 2. *De Minimis* Value - refers to the value of goods for which no duty is collected, being considered as negligible in amount and entitled to immediate release.
 3. FCA - means free carrier, or that the seller delivers goods to the carrier or another person nominated by the buyer at the seller's premises or another named place.
 4. FOB - means free on board, or that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already delivered.
- ▶ The following are considered prohibited importations:
 1. Written or printed goods in any form, containing any matter advocating or inciting treason, rebellion, insurrection, sedition against the government, or forcible resistance to any law, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines;
 2. Goods, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or gives information on abortion;
 3. Written or printed goods, negatives, or cinematographic films, photographs, engravings, lithographs, objects, painting, drawings, or other representation of an obscene or immoral character;

4. Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloys;
 5. Any adulterated or misbranded food or goods for human consumption or any adulterated or misbranded drug;
 6. Infringing goods as defined under the Intellectual Property Code and related laws; and,
 7. All other goods or parts thereof which are explicitly prohibited to be imported.
- ▶ Regulated Importation - Goods which are subject to regulation shall be imported only after securing the necessary goods declaration, clearances, licenses and any other requirements prior to importation.
 - ▶ Restricted Importation - Except when authorized by law or regulation, the importation and transit of the following restricted goods are prohibited:
 1. Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, or parts thereof;
 2. Roulette wheels, gambling outfits, loaded dices, marked cards, machines, apparatus or mechanical devices used in gambling or distribution of money, cigars, cigarettes or other goods when such distribution is dependent on chance, including jackpot and pinball machines, or similar contrivances, or parts thereof;
 3. Lottery and sweepstakes tickets, except advertisements thereof and lists of drawings therein;
 4. Marijuana, opium, poppies, coca leaves, heroin or other narcotics or synthetic drugs which are or may thereafter be declared habit forming by the President of the Philippines, or any compound, manufactured salt, derivative or preparation thereof, except when imported by the government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medicinal purposes;
 5. Opium pipes or parts thereof, of whatever material; and,
 6. Any other goods whose importation are restricted.
 - ▶ General Provisions
 1. The *De Minimis* value is PHP10,000 FCA or FOB or below. The Secretary of Finance shall adjust this value every three years using the Consumer Price Index, as published by the Philippines Statistics Authority.
 2. *De Minimis* importations shall be lodged and processed under a simplified system and with the use of information and communications technology ("ICT") enabled system to allow advance clearance, and ensure proper customs monitoring and control;
 3. *De Minimis* importations shall, as far as practicable, be subject to a non-intrusive examination (e.g. x-ray or any other equivalent device) on a random basis based.
 4. The customs examiner may physically inspect the imported goods.
 5. Treatment of *De Minimis* importations brought by passengers or sent through Balikbayan boxes or as postal parcels shall be without prejudice to the application of the CMTA provision on Conditionally-Free importations.
 6. Importations of tobacco goods, wines, spirits, within the *De Minimis* value shall be subject to the provisions of the Tax Code on excise tax.
 7. Goods forfeited for violation of this CAO shall be disposed of in accordance with the CMTA provisions.

- ▶ Exclusions from Immediate Release. The following shall not be entitled to immediate release as *De Minimis* importations:
 1. Importations declared as “without commercial value” or “of no commercial value” or with specific amount but qualified by the phrase “for customs purposes” or analogous phrases. The party concerned must declare the specific value of the goods, supported by available invoice, receipt or equivalent document.
 2. Tobacco and liquor products carried by passengers in excess of the allowable limits but within the *De Minimis* value.
 3. Goods subject to requirements or conditions imposed by the concerned regulatory agency, unless for personal use and within the limits allowed by regulations.
 4. Prohibited and restricted importations.
 5. Importations to be entered conditionally-free, for warehousing, for transit, and / or admission to a free zone.

- ▶ Unless otherwise provided, this CAO shall be reviewed every 3 years and be amended or revised, if necessary.

- ▶ This CAO specifically amends or repeals previously issued CAOs and CMOs which are inconsistent with the provisions herein. If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in force and effect.

- ▶ CAO No. 2-2016 shall take effect after 15 days from publication at the Official Gazette or a newspaper of general circulation.

(Editor’s Note: CAO No. 2-2016 has not been published. It was received by the UP Law Center on 5 October 2016).

CAO No. 3-2016 provides the rules on the Advance Ruling System for Valuation and Rules of Origin

Customs Administrative Order No. 3-2016 issued on 3 October 2016

- ▶ CAO No. 3-2016 covers the following:
 1. The establishment of an Advance Ruling System on customs valuation methodology and preferential and non-preferential rules of origin.
 2. Requests for Advance Ruling concerning tariff classification of goods shall be filed with the Tariff Commission for determination.
 3. Requests for ruling on other matters related to importation or exportation of goods shall be covered by existing regulations.

- ▶ The objective of the CAO is:
 1. To provide rulings on the origin and valuation methodology of goods prior to their importation and exportation, to add certainty and predictability to international trade and help commercial importers or foreign exporters make informed business decisions based on legally binding rules.
 2. To help ensure uniformity and consistency in the application of customs policies, rules and regulations on customs valuation and rules of origin.
 3. To establish the Advance Ruling System in line with the standards set out in the Revised Kyoto Convention, the WTO Agreement on Trade Facilitation, the ASEAN Trade in Goods Agreement, and other relevant international trade facilitation agreements, relevant Philippine laws and international best customs practices.
 4. To increase the level of stakeholders compliance through an informed customs compliance regime.

- ▶ The following terms are defined:
 1. Advance Ruling - refers to an official written and binding ruling issued by the Commissioner of the Bureau of Customs ("BOC"), providing an assessment of (a) origin; or (b) treatment to be applied on a certain element of customs value, prior to an import or export transaction for a specified period.
 2. Fee - refers to the non-refundable amount assessed by the BOC.
 3. Foreign Exporter - refers to a natural or juridical person intending to export goods or commodities from a foreign country into the Philippines.
 4. Importer - refers to a natural or juridical person intending to import any goods into the Philippines.
 5. Requesting Person - refers to a natural or juridical person who is an importer, foreign exporter, or an authorized agent, who/which is requesting for an Advance Ruling.

- ▶ A request for an Advance Ruling should be submitted to BOC at least 90 calendar days before the date of importation, which is the date of lodgement of goods declaration. The request must be made in writing, and must relate to only one good or product.

The BOC shall specify the information to be provided, the format to be used and the documentary requirements for the request. The request may be submitted electronically, subject to the proof of payment of the fee.

The BOC shall, within 15 working days, acknowledge the receipt of the application, through the fastest available means. At any time during the course of the evaluation, the BOC may require additional information, which shall be submitted within 30 calendar days from the date of the receipt of the notice, which period may be extended upon request.

- ▶ Any request that does not comply with the provisions of this CAO will be rejected and returned to the Requesting Person, together with a written order stating the reasons why the ruling cannot be issued.

- ▶ The request for Advance Ruling may be withdrawn expressly at any time before the Advance Ruling is issued. It is considered withdrawn implicitly when:
 1. The Requesting Person imports the subject matter less than 90 days after the request is filed, or less than 30 days from the submission of the complete documents, as the case may be.
 2. The Requesting Person fails to submit the additional information and / or documents within the prescribed or extended period notice from the BOC.

- ▶ The issuance of the Advance Ruling may be declined in the following cases:
 1. The issue involves a matter that is before the courts or is the subject matter of an administrative review, or under post clearance audit;
 2. A request for Advance Ruling on the same goods has already been filed the same Requesting Party; however, an earlier request filed an agent shall be declined if a latter request is filed by the principal;
 3. An Advance Ruling on the same goods has been issued to same Requesting Person; and,
 4. The request is based on a hypothetical situation.

In all cases, the BOC shall promptly notify the Requesting Person in writing, through electronic means, clearly stating the reasons why the request has been declined.

- ▶ An Advance Ruling takes effect on the date it is issued, unless another date is specified in the ruling, provided that the facts or circumstances remain unchanged at the time of importation.

The Advance Ruling shall be valid for a period of 3 calendar years from the date of its issuance, unless a shorter period is provided for in the ruling due to the nature of the application, which shall be clearly stated.

A request for revalidation of an Advance Ruling shall be submitted to the BOC at least 90 days before the expiration of the validity of the Advance Ruling. The BOC may require additional requirements in support of the request for revalidation.

An Advance Ruling benefits only the Requesting Person. Although an applicant may refer to a specific Advance Ruling issued to another party, the BOC is not bound to recognize and apply that ruling to a similar importation.

- ▶ Advance Rulings may be modified for clerical errors, change of material facts and circumstances after issuance, misleading information based on excusable neglect or honest mistake, and change in applicable law. Modification of Advance Rulings is, as a general rule, of prospective application.
- ▶ An Advance Ruling may be revoked or invalidated upon discovery that the applicant submitted incomplete, incorrect, false or misleading information. Revocation of Advance Rulings shall be retroactive. The BOC shall give written notice to the Requesting Person, setting out the relevant facts and the basis of its decision to revoke or invalidate the Advance Ruling.
- ▶ The Requesting Person aggrieved by the BOC Ruling may, within 15 calendar days from receipt of the ruling or decision, file a motion for reconsideration. In case of a denial of this motion, the Requesting Person may, within 30 calendar days from receipt of the denial, appeal the adverse ruling with the Court of Tax Appeals ("CTA").
- ▶ The BOC shall publish summaries of the Advance Rulings on its website, taking into account the need to protect commercially confidential information.
- ▶ The Commissioner of Customs may issue supplementary rules and regulations to effectively implement the provisions of this CAO.
- ▶ Unless otherwise provided, this CAO shall be reviewed every 3 years and be amended or revised, if necessary.
- ▶ All previously issued CAOs, CMOs, and other customs rules and regulations which are inconsistent with this CAO are hereby repealed and / or modified accordingly. If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in force and effect.
- ▶ CAO No. 2-2016 shall take effect after 15 days from publication at the Official Gazette or a newspaper of general circulation.

(Editor's Note: CAO No. 3-2016 has not been published. It was received by the UP Law Center on 19 October 2016).

BSP Issuances

Circular No. 926 provides for the Guidelines in Processing Requests for Monetary Board Opinion on the Monetary and Balance of Payments Implications of Proposed Domestic Borrowings by Government Entities Pursuant to Section 123 of RA No. 7653.

BSP Circular No. 926 dated 13 September 2016

- ▶ The Monetary Board, in its Resolution No. 1125 dated 22 June 2016, approved the amendments to Section X398 of the Manual of Regulations for Banks (MORB).
- ▶ Subsection X398.1 of the MORB shall be amended to read as follows:

“X398.1 Domestic borrowings by local government units (LGUs) pursuant to Section 123 of R.A. No. 7653. The domestic borrowings of LGUs within the Philippines, the procedures to be observed as well as the documentary requirements to be submitted, relative to the requests for Monetary Board (MB) opinion on the probable effects of the proposed credit operation on monetary aggregates, the price level and the balance of payments (BOP), pursuant to Section 123 of Republic Act No. 7653, as well as other pertinent laws and regulations shall be governed by the guidelines as contained in Appendix 57.

- ▶ Subsection X398.3 of the MORB is hereby added as follows:

“X398.3 Domestic borrowings by Government-Owned and/or -Controlled Corporations (GOCCs), Local Water Districts (LWDs) and State Universities and Colleges (SUCs) pursuant to Section 123 of R.A. No. 7653. The domestic borrowings of GOCCs, LWDs, and SUCs within the Philippines, the procedures to be observed as well as the documentary requirements to be submitted, relative to the requests for Monetary Board (MB) opinion on the probable effects of the proposed credit operation on monetary aggregates, the price level and the balance of payments (BOP), pursuant to section 123 of Republic Act No. 7653, as well as other pertinent laws and regulations shall be governed by the guidelines as contained in Appendix 57A.

- ▶ Subsection X398.5 of the MORB is entirely amended to read as follows:

“X398.5 Enforcement actions. Any violation of Section X398 shall be subject to appropriate enforcement/supervisory action/s provided under Section X009 of the Manual of Regulations for Banks and Sections 36 and 37 of Republic Act No. 7653, as well as those contained in other applicable regulations of the BSP. Imposition of applicable enforcement action shall be on a per loan/borrowing account, regardless of the number of tranches or releases from the same loan/borrowing.”

- ▶ This Circular shall take after 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor’s Note: Circular No. 926 was published in the Manila Bulletin on 23 September 2016.]

Circular No. 927 provides for the Amendment to BSP Circular No. 910, Series of 2016, Increasing the Allowable Amount to be Exchanged by OFs Under the NDS Banknote Exchange Facility from PHP10,000.00 to PHP50,000.00

BSP Circular No. 927 dated 30 September 2016

- ▶ Further to the demonetization of the New Design Series (NDS) banknotes, the Monetary Board, in its Resolution No. 1604 dated 8 September 2016, increased the allowable amount to be exchanged by Overseas Filipinos (OFs) under the NDS Banknote Exchange Facility from PHP10,000.00 to PHP50,000.00. As such, Item Nos. 4 and 5 of BSP Circular No. 910, Series of 2016, are hereby amended, as follows:

“4. Overseas Filipinos (OFs) 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 (1) year from date of registration at any BSP Office. The said NDS banknotes submitted to the BSP beyond the period of one year from date of registration shall not be valid for exchange/replacement. The NDS banknote exchange facility provided by the BSP to OFs shall be limited to PHP50,000.00 for each OF.

5. In the case of OFs 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 OFs from 1 January 2017 until 31 December 2017, subject to the PHP50,000.00 limit for each OF as cited in item no. 4 of this Circular. The NDS banknote holdings of said OFs submitted to the BSP after 31 December 2017 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. 927 was published in the Manila Times on 11 October 2016.]

Circular No. 928 provides for the Amendments to the Regulations Governing Fees on Retail Bank Products/ Services and Dormant Deposit Accounts.

BSP Circular No. 928 dated 24 October 2016

- ▶ Pursuant to Monetary Board Resolution No. 1748 dated 29 September 2016, provisions of the Manual of Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) are hereby amended.
- ▶ The provisions under Section X263 of the MORB on the imposition of service and maintenance fees on deposit accounts are hereby amended as follows:

“**Sec. X263 Fees on retail bank products/services.** Pursuant to the consumer protection principle of fair treatment, a bank’s board of directors shall adopt a policy on the imposition of any fee on its retail products/services. The policy shall cite the basis for the imposition of fees and rationalize the fee structure/ amount.

Subsection X263.1 Fees on deposit accounts

- a. *Maintenance Fee.* Banks may impose maintenance fees on a deposit account, whether active or dormant, subject to the following conditions:
 - (1) The required minimum monthly average daily balance (ADB), as well as the imposition and the rate/amount of maintenance fee, are properly disclosed among the terms and conditions of the deposit;
 - (2) The deposit account balance has fallen below the required minimum monthly ADB for at least two (2) consecutive months; and,
 - (3) Banks must ensure that clients are notified of any change in the required minimum monthly ADB and amount of dormancy fee at least sixty (60) days prior to implementation.

b. *Dormancy Fee.* Banks may only impose dormancy fee on a dormant deposit account five (5) years after the last activity therein, provided that:

- (1) The balance falls below the minimum monthly ADB, if any;
- (2) The monthly dormancy fee shall not exceed thirty pesos (30.00); and,
- (3) The bank complied with the two (2) notice requirement under Item numbers "7.b.(2) and 7.b.(4)", Appendix 112, prior to the charging of dormancy fees.

- ▶ This Circular also amends the following Subsections of the MORB: X263.2, which provides for the fees on domestic remittance transactions; X263.3, which provides for the additional disclosure requirements; X263.4, which provides for the amendments to terms and conditions of retail bank products and services; X263.5, which provides for the individual notifications; and Subsection X263.6, which provides for the non-waiver by contractual provisions.
- ▶ This Circular amends Items 3 and 6 of Appendix 112 of the MORB on the internal control procedures for dormant accounts.
- ▶ Item 7, Appendix 112 of the MORB on the internal control procedures for dormant accounts is hereby amended to read as follows:

xxx 7. Internal control procedures for dormant accounts

a. *Definition of dormant accounts*

- (1) Current or checking accounts showing no deposit or withdrawal for a period of one (1) year.
- (2) Savings account showing no deposit or withdrawal for a period of two (2) years.

b. *Internal control measures*

- (1) As a matter of policy, banks shall exert all efforts to prevent deposit accounts from becoming dormant.
- (2) When an account is about to become dormant, the depositor shall be notified of its potential dormancy at least sixty (60) days prior to the commencement of the dormancy period.

The notification shall contain the following information:

- (a) The effect of dormancy to transfer the account from active to dormant status, and advice on how to reactivate the account, and;
- (b) Reminder that the dormant account will be included in the list of unclaimed balances to be submitted to the Treasurer of the Philippines (Treasurer) for escheat in accordance with the Unclaimed Balances Act, if said account has no activity for ten (10) years.

- (3) The bank shall adopt appropriate internal control measures to ensure that all transactions affecting dormant deposit accounts are legitimate.
- (4) When an account is about to be subject to dormancy fee, the depositor shall be notified at least sixty (60) days prior to such imposition.
- (5) For unclaimed dormant deposit accounts considered for escheat, the depositor of such account shall be notified at least sixty (60) days prior to the filing by the bank of the sworn statement to the Treasurer pursuant to the Unclaimed Balances Act.
- (6) Banks shall permanently retain records of escheated deposits, together with proof of all the relevant notices. For the purpose of this item, records of escheat shall refer to the sworn statement of the bank to the Treasurer regarding the unclaimed balances, and the court order declaring that said unclaimed balances have been escheated to the Government of the Republic of the Philippines and commanding the bank to forthwith deposit the same with the Treasurer. Relevant notices to be retained shall include copies of the notices referred to in items (2), (4) and (5) of Item "7.b."
- (7) Individual notifications shall be sent to the client's last known postal address/email address/contact number either through postal or registered mail, courier delivery, electronic mail, text messages, telephone calls or other alternative modes of communication, as may be elected by the client.
- (8) The provisions of Items "2, 4, 5 and 6 of Item "7.b" shall apply, notwithstanding any contrary provisions in the terms and conditions."

- ▶ This Circular also amends section 4209S of the MORNBF1 which provides for the dormant savings deposits held by non-stock savings and loans associations (NSSLAs).
- ▶ Effectivity - The following provisions shall be included as footnote to Section X263 of the MORB, Item 7, Appendix 112 of the MORB and section 4209s of the MORNBF1, as follows:

"Sec. X263 Fees on retail bank products/service^{FN1} xxx

**Appendix 112 xxx 7. Internal control procedures for dormant accounts^{FN2}
xxx**

Sec. 42095 Dormant Savings Deposits. ^{FN1} xxx

^{FN1} Effective 180 days from publication date of the Circular in a newspaper of general circulation

^{FN2} The requirement for additional notification prior to escheat under Item "7.b.(5)" and permanent record retention of escheated accounts under Item "7.b.(6)" shall be effective fifteen (15) days from publication in a newspaper of general circulation.

All other provisions shall be effective 180 days from publication of the Circular in a newspaper of general circulation.

SEC Opinions and Issuance

SEC-OGC Opinion No. 16-23 dated 5 October 2016

Under the Corporation Code, a corporation with a revoked certificate of registration may continue as a body corporate for the purpose of liquidation and winding up of its affairs.

Facts:

S Co. was a domestic corporation duly registered with the SEC until its license was revoked on March 2014. At the time the license was revoked, S Co. owned and operated a four-story dormitory in Makati City. S Co. continues to own and operate said dormitory and there appears no intention on the part of the officers of S Co. to wind up corporate business and liquidate its assets despite the revocation of its license.

Mr. Z, an incorporator and stockholder in S Co., demanded to inspect the accounting and financial reports and records of S Co. However, Mr. Z was denied by S Corp.'s president insisting that since the license of S Co. was already revoked, Mr. Z is no longer a stockholder considering that there is no corporation to speak of.

Issues:

1. Does a stockholder lose his status and title when the corporation is dissolved although its assets remain unliquidated and it continues to conduct its usual business?
2. Under the same circumstances, does a stockholder retain all his rights, including, but not limited to, the right to inspect books?

Held:

1. No. Under the Corporation Code, a corporation remains a body corporate for a limited purpose despite the revocation of its certificate of registration, that is, it continues as a body corporate for three years for purposes of liquidation and winding up of its affairs. The body corporate, however, can no longer conduct the usual business provided in its primary purpose since its existence continues only for a limited purpose.
2. Yes. The termination of the life of a juridical entity does not by itself cause the extinction or diminution of the rights and liabilities of such entity nor those of its owners and creditors. One such specific right is the right of a stockholder to inspect corporate books and records. This right can only be exercised for a legitimate purpose and should be germane to the interest of the stockholder.

SEC - OGC Opinion No. 16-24 dated 13 October 2016

Facts:

If a corporation existing prior to the effectivity of the Corporation Code fails to amend its AOI in order to comply with the applicable provisions of the Code on or before 1 May 1982 (the expiry date of the two-year period mentioned in Section 148), the respective provisions of the Corporation Code will be considered written into the AOI as of the date of the Code's effectivity (1 May 1980).

S Academy, a non-stock, non-profit educational institution, was registered and incorporated on February 3, 1967 under the provisions of the Corporation Law or Act No. 1459. Under the Corporation Law, no maximum corporate term of existence was prescribed for educational institutions. Thus, in cases where the Articles of Incorporation (AOI) did not specify a term, the corporate term of such institution was deemed perpetual. The AOI of S Academy has no provision or specification as to its term of existence.

Subsequently, on May 1, 1980, the Corporation Code or Batas Pambansa Blg. 68 took effect. Under the Corporation Code, a maximum period of 50 years was provided for corporate existence.

Issue:

When will the corporate term of SCA expire?

Held:

The corporate existence of SCA will expire on 1 May 2030.

Section 148 of the Corporation Code provides that where any existing corporation is affected by the new requirements of the Corporation Code (B.P. 68), said corporation shall be given a period of not more than two (2) years from the effectivity of the Code within which to comply with its provisions.

The SEC has declared that in case an affected educational corporation fails to amend its AOI in order to comply with the applicable provisions of the Corporation Code on or before 1 May 1982 (the expiry date of the two-year period mentioned in Section 148), the respective provisions will be considered written into the AOI as of the date of the effectivity of the Corporation Code or on 1 May 1980. Applying the said interpretation, since S Academy did not amend its AOI pursuant to Section 148, the maximum 50-year term prescribed by the Corporation Code was deemed written on the AOI of S Academy on 1 May 1980. Thus, its corporate existence expires on 1 May 2030 unless sooner dissolved or extended within the prescribed period under the Corporation Code.

SEC - OGC OPINION NO. 16-25 dated 14 October 2016

The direct sale of laboratory, medical and healthcare equipment to hospitals, laboratories, schools, commercial and industrial users, government entities and distributors in the Philippines does not constitute retail trade.

Facts:

E Co. is a duly registered foreign-owned domestic corporation engaged in "buying and selling at wholesale, exporting and importing, and providing services such as, but not limited to, installation, certification, and calibration of laboratory and cleanroom equipment". Its products generally involve three lines: laboratory, medical and healthcare equipment. E Co. also engages distributors to facilitate the distribution of its products to users which include hospitals, laboratories, schools and government entities. E Co. now plans to distribute and sell its products directly to these users.

Issue:

Is E Co. engaged in retail trade and thus covered by the limitations imposed in the Retail Trade Liberalization Act (RTLTA)?

Held:

No. For sales transaction to be considered as "retail" as defined under Section 3 of the RTLTA, the following elements should concur:

1. The seller should be habitually engaged in selling;
2. The sale must be direct to the general public;
3. The object of the sale is limited to merchandise, commodities or goods for consumption.

Thus, one of the elements of retail sale is that the products sold are consumer goods. Consumer goods, as defined by the Supreme Court, are "goods which are used or bought for use primarily for personal, family or household purposes. Such goods are not intended for resale or further use in the production of other products." Clearly, the products of E Co. (laboratory, medical and healthcare equipment) have specialized features and functions designed for hospital and laboratory use. Thus, these products are not intended for personal, family and household purposes for they are mainly for the production of goods or rendering of other services by commercial or industrial establishments.

SEC MC No. 17 provides for the guidelines on the applications for payment of annual fees of capital market participants (institutions and professionals).

SEC Memorandum Circular No. 17 Series of 2016

- ▶ The guidelines apply to the following SEC-registered/licensed Capital Market Participants: Brokers Dealers in Securities, Brokers in Securities, Dealers in Securities, Brokers in Proprietary Shares, Voice Brokers, Investment Houses, Investment Houses Engaged in Dealing Government Securities, Underwriters of Securities Engaged in Dealing Government Securities, Government Securities Eligible Dealers, Investment Company Advisers, Mutual Fund Distributors, and their respective Associated Persons, Compliance Officers, Salesmen, Fixed Income Market Salesmen and Certified Investment Solicitors.
- ▶ Payment of annual fees shall be in November of each year. Applications for Payment of Annual Fees filed in December of the same year shall be considered late and shall be charged a surcharge. Failure to pay the required annual fees shall, after notice and hearing, result in the suspension or revocation of the registration/license.
- ▶ Applications for Payment of Annual Fees shall be filed with the Company Registration and Monitoring Department - Licensing Unit.
- ▶ The general requirements for payment of annual fees are:
 1. Letter, with company letterhead, endorsing the applications of the Institution and the respective Professionals, and signed by the President of the applicant Institution and its Associated Persons and Compliance Officers; and,
 2. Amendment forms, if applicable.

[Editor's Note: Published in the Philippine Daily Inquirer (p.B2-3) and in the Manila Standard (p.B3) on 20 October 2016.]

PEZA Issuances

The Appointment Letter dated 28 September 2016 appoints Ms. Charito B. Plaza as Director General of the Philippine Economic Zone Authority

Appointment Letter dated 28 September 2016

Ms. Charito B. Plaza was appointed as Director General of PEZA. She shall qualify and enter upon the performance of the duties of the office, subject to compliance with CES requirements and furnishing the Office of the President and the Civil Service Commission with copies of her oath of office.

PEZA Memorandum Circular No. 2016-035 circularizes DOF-DTI JMC No. 1-2016 clarifying certain provisions of DOF-DTI JAO No. 1-2016 relating to the implementation of Republic Act No. 10708, otherwise known as the "Tax Incentives Management and Transparency Act" (TIMTA) and prescribing the deadlines for submission of the Annual Tax Incentives Reports.

PEZA Memorandum Circular No. 2016-035 dated 30 September 2016

- ▶ The Circular provides that only Registered Business Entities (RBEs) availing of incentives are mandated to submit the Annual Tax Incentives Report (Annex A.1 & A.2) to their respective Investment Promotion Agencies (IPAs). JMC No. 1-2016 further provides that the following are no longer required to submit the Annual Tax Incentives Reports:
 1. International organizations invoking tax treaties or international agreements to which the Philippines is signatory;
 2. Business entities registered with an IPA but are not qualified for incentives (For purposes of the IPA's report, however, the RBE will still be included in Annex C or the Master List);
 3. Business entities registered with an IPA that are qualified for incentives but have not availed or applied for any incentive during the taxable year;
 4. Business entities registered with an IPA but are no longer availing any incentives after their incentives entitlement period;
 5. Business entities registered with an IPA that utilize special or preferential treatment by virtue of Free Trade Agreements; and,
 6. Regional or Area Headquarters (RHQ) and Regional Operating Headquarters (ROHQ) under Book III of Executive Order No. 226, as amended by Republic Act No. 8756.

- ▶ RBEs employing the Fiscal Year accounting period shall state in the title of their Annual Tax Incentives Report - Income-based Tax Incentives (Annex A.1) the ending date of their fiscal year.

- ▶ The deadline of submission of Annual Tax Incentives Reports (Annexes A.1 and A.2) to IPAs (i.e. PEZA, BOI) for taxable year 2015 is amended to 15 November 2016.

- ▶ For taxable year 2016, RBEs using the calendar year method shall submit their Annual Tax Incentives Reports to their respective IPA on or before 15 May 2017. RBEs with fiscal year ending 31 January 2016 to 31 July 2016 shall submit their Annual Tax Incentives Reports on or before 15 December 2016.

- ▶ Submission of Annex A.2 (VAT, excise tax and duty-based incentives) for Calendar Year 2016 shall be on or before 15 March 2017, regardless of accounting period.

- ▶ For taxable year 2017 and subsequent years, the RBEs shall file with their respective IPAs their Annual Tax Incentives Reports within thirty (30) days from the statutory deadline for filing of the Final Adjustment Income Tax Return as provided in JMC No. 1-2016.

- ▶ RBEs which have already submitted their 2015 reports are advised to review their reports based on the Notes to the Annual Tax Incentives Reports, copied below. RBEs which intend to amend their report shall have until 15 November 2016 to submit their amended Annual Tax Incentives Reports. The report should indicate "Amended" in both the printed copy and soft copy.

BOI Updates

DOF-DTI JMC No. 1-2016 amends certain provisions of DOF-DTI JAO No. 1-2016 on the TIMTA Rules and Regulations to clarify entities not required to file the annual tax incentives report and the filing deadlines for the transitory periods.

DOF-DTI Joint Memorandum Circular No. 1-2016 dated 1 September 2016

Who are required to file:

Only Registered Business Entities (RBEs) availing of incentives are mandated to submit the Annual Tax Incentives Report (Annex A.1 and Annex A.2) to their respective Investment Promotion Agency (IPA). Thus, the following are no longer required to submit the Annual Tax Incentives Reports:

- ▶ International organizations invoking tax treaties or international agreements to which Philippines is a signatory;
- ▶ Business entities registered with an IPA, but are not qualified for incentives;
- ▶ Business entities registered with an IPA that are qualified for incentives, but have not availed or applied for any incentive during the taxable year;
- ▶ Business entities registered with an IPA, but are no longer availing any incentives after their incentives entitlement period;
- ▶ Business entities registered with an IPA that utilize special or preferential treatment by virtue of Free Trade Agreements; and,
- ▶ Regional or Area Headquarters and Regional Operating Headquarters under Book III of Executive Order No. 226, as amended by Republic Act No. 8756

RBEs falling under Item 2.1.2 shall still be included in the Master List (annex-C of JAO 1-2016) required under Rule III Section 1(a).

Filing deadlines:

For purposes of reporting incentives for taxable year 2017 and subsequent years, the RBEs shall file with their respective IPAs their Annual Tax Incentives Reports within 30 days from the statutory deadline for filing of the Final Adjustment Return for Income Tax, and payment of any tax due thereon.

RBEs employing the Fiscal Year accounting period shall state in the title of their Annual Tax Incentives Report - Income-based Tax Incentives (Annex A.1) the ending date of their fiscal year.

Extension of deadlines for taxable year 2015:

Deliverable	Owner	Submit to	Original deadline for 2015 Report under JAO 1-2016	Extended deadline under JMC 1-2016
Annual Tax Incentives Report of Registered Business Entity (Annex A.1 and A.2)	RBEs	IPAs	15 September 2016	15 November 2016
Consolidated Annual Tax Incentives Report (Annex B.1 and B.2)	IPAs	BIR	15 November 2016	30 December 2016
Aggregate Annual Tax Incentives Report	IPAs	NEDA	15 November 2016	30 December 2016
Other relevant data	IPAs	NEDA	15 March 2017	14 April 2018
Tax incentives of RBEs from their annual ITRs (for BIR) or filed import entries (for BOC)	BIR / BOC	DOF	15 January 2017	28 February 2017

Transitory deadlines for taxable year 2016:

RBE's using the calendar year method shall submit their Annual Tax Incentives Reports for taxable year 2016 to their respective IPAs on or before 15 May 2017.

For RBE's with Fiscal Year ending 31 January 2016 to 31 July 2016, the period for submission of the Annual Tax Incentives Reports shall be 15 December 2016.

BOI Memorandum Circular No. 2016-004 adopts the supplemental guidelines on BOI Registered Business Entities' compliance to DOF-DTI JAO No. 1-2016 on how to accomplish and submit the Annual Tax Incentives Reports.

BOI Memorandum Circular No. 2016-004 dated 13 September 2016

The Circular provides that only Registered Business Entities (RBEs) availing of tax incentives are mandated to submit the Annual Tax Incentives Reports (Annex A.1 and Annex A.2) to their respective Investment Promotion Agencies (IPAs). Thus, the following are not required to submit the Annual Tax Incentives Report:

- ▶ International organizations invoking tax treaties or international agreements to which Philippines is a signatory;
- ▶ Business entities registered with an IPA, but are not qualified for incentives (For purposes of the IPA's report, however, the RBE will still be included in Annex C or the Master List);
- ▶ Business entities registered with an IPA that are qualified for incentives, but have not availed or applied for any incentive during the taxable year;
- ▶ Business entities registered with an IPA, but are no longer availing any incentives after their incentives entitlement period;
- ▶ Business entities registered with an IPA that utilize special or preferential treatment by virtue of Free Trade Agreements; and,
- ▶ Regional or Area Headquarters and Regional Operating Headquarters under Book III of Executive Order No. 226, as amended by Republic Act No. 8756.

The Annual Tax Incentives Report shall be submitted in both hard and electronic copy. The electronic copy must be in Excel format and stored in a Compact Disc (CD), with the following label: (i) Company Name, (ii) Registered Project, (iii) Certificate of Registration (CR) Number. The RBEs shall print the said electronic copy and have it notarized.

The Annual Tax Incentives Report shall be certified by any officer of the corporation, accompanied by a Secretary's Certificate confirming that the signing officer is authorized to represent the corporation.

All RBEs shall file their Notarized Annual Tax Incentives Report with the (i) Incentives Service (IS) of the BOI Central Office, or (ii) the BOI Extension Office.

Guidelines for accomplishing the Annual Tax Incentives Reports

- ▶ Annex A.1 (Income-based incentives)

Column	Description	Notes
A	Registration No.	Refers to the registration number as indicated in the CR issued by the BOI
B	Date of Registration	Refers to the date of the CR
C	Registered Activities / Actual Activities	Refers to the registered activity/ies as indicated in the CR
D	ITH Extension (Y or N) If Y whether Expansion or Bonus Year	Indicate yes if ITH is an extension of the 4-year or 6-year initial period, and also state whether such extension is an expansion or bonus year per registered activity
E	Entitlement Period of Tax Incentives - Start	Refers to the date of start of commercial operations when the RBE started the 1st year ITH entitlement per registered activity
F	Entitlement Period of Tax Incentives - End	Refers to the last date of the ITH entitlement (i.e. last day of the 4th or 6th year ITH, as applicable) per registered activity
G	Net Sales	Refers to Net Sales per registered activity
H	Cost of Sales	Refers to Cost of Sales per registered activity
I	Gross Income	Refers to Net Sales (G) minus Cost of Sales (H) per registered activity
J	Net Taxable Income	Refers to Gross Income minus administrative / marketing expense per registered activity
K	Tax Rate	Refers to the preferential tax rate of 0% for ITH
L	Income Tax Otherwise Due - Special Rate	N/A for BOI RBEs
M	Income Tax Otherwise Due - ITH	Computed as the tax due under the regular corporate income tax (CIT) rate of 30%
N	Income Tax Paid	N/A for BOI RBEs
O	Net Tax Relief	Same amount as Column (M)
P	Other Income Tax Incentives	Indicate other income tax incentives claimed, if any, under Executive Order (EO) No. 226
Q	Total Tax Incentives Claimed	Net Tax Relief (M) plus other Income Tax Incentives (P)

► Annex A.2 (VAT incentives and duty exemptions)

Column	Description	Notes
A	Registered Activity / Actual Activities	Refers to the registered activity/ies as indicated in the CR
B	Date of Registration	Refers to the date of the CR or current CR if subject to renewal
C	Description of Raw Materials/Inputs, CE, Motor Vehicle, Consumer Goods	Refers to the description of duty exempt imported capital equipment (a general description of the set of imported capital equipment may be provided)
D	District Ports & Number of Import Entries / Admission Entry	Refers to the Port of Entry of the exempt importation with the corresponding total number of Import Entries (for 2015 and 2016 reports)
E, F	Volume of Imports - Quantity / Unit of Measure	Refers to the volume of cargo in kilograms
G, H, I	Value of Import in US\$	Refers to the FOB value in dollars, commonly used in shipping documents or arrived at by deducting other factors such as freight and/or insurance (G) Direct Import - Refers to dutiable value of exempt imported capital equipment directly sourced from foreign suppliers (H) Custom Bonded Warehouse - N/A to BOI RBEs (I) Interzone Transfer - N/A to BOI RBEs
J, K, L	Value of Import in PHP	Refers to the total dutiable value in peso which is the basis for the computation of duties and taxes (J) Direct Import - Same as Column (G) (K) Custom Bonded Warehouse - N/A to BOI RBEs (L) Interzone Transfer - N/A to BOI RBEs
M	Tax and Duty Waived from Direct Import - Duties	Refers to the amount of duties that should have been collected on imported capital equipment
N, O	Tax and Duty Waived from Direct Import - VAT, Excise	N/A to BOI RBEs
P	Value of Sales to Domestic Market	N/A to BOI RBEs
Q, R, S, T	Duty and Tax Payments	N/A to BOI RBEs
U	Net Tax and Duty Waived - Duties	Same amount as Column (M)
V, W	Net Tax and Duty Waived - VAT and Excise	N/A to BOI RBEs

Column	Description	Notes
X, Y	VAT and Duty Credit Claimed	Refers to the amount of VAT and duty claims for tax credit on raw materials used for export product by an export RBE
Z, AA	VAT and Duty Credit Granted	Refers to the amount of VAT and duty computed based on the amount stated in the invoice for the purchase of the equipment
BB	Value of VAT zero rated purchases (in PHP)	N/A to BOI RBEs
CC	Value of VAT zero-rated export sales (in PHP)	Refers to the Total Value of Export Sales

BLGF Opinion

BLGF Opinion No. 26-2016 dated 16 September 2016

A cooperative dealing exclusively with its members is not subject to taxes and fees imposed under the internal revenue laws and other tax laws.

Facts:

X Cooperative is seeking exemption from real property tax ("RPT") pursuant to its tax exemption under Republic Act ("RA") No. 9520 entitled "An Act Amending the Cooperative Code of the Philippines to be known as the 'Philippine Cooperative Code of 2008'". It claims that it is not required to comply with the mandated accumulated reserves and undivided net savings requirement under RA 9520 to avail of the tax exemption since it transacts its business exclusively with its members.

Issue:

Is X Cooperative required to comply with the mandated accumulated reserves and undivided net savings requirement under RA 9520 to be exempt from payment of RPT?

Ruling:

No. Under Article 60 of RA 9520, duly registered cooperatives which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. On the other hand, cooperatives not falling under said Article 60 shall be governed by Article 61, i.e., it shall enjoy exemption from payment of taxes and fees, including RPT, provided that its accumulated reserves and undivided net savings shall not exceed the amount of Ten Million Pesos (PHP10,000,000.00).

Since X Cooperative is doing business exclusively with its members, it shall enjoy the tax exemption privileges afforded to it by RA 9520 irrespective of the amount of its accumulated reserves and undivided net savings. Thus, it is altogether exempt from payment of RPT.

Nevertheless, it is still required to secure Mayor's permit and Community Tax Certificate, and pay the corresponding minimal fees not exceeding One Thousand Pesos (PHP1,000.00) and Five Hundred Pesos (PHP500.00), respectively.

Court Decisions

Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.

Supreme Court (First Division), G.R. No. 216130 promulgated 03 August 2016

A taxpayer must file its claim for refund of erroneously or illegally paid tax with the CTA within two years from the payment of the tax. As a precondition, however, the taxpayer is required to first file its claim with the BIR.

A distribution in the nature of a recurring return on stock is an ordinary dividend. On the other hand, a distribution made when the corporation is winding up its business or recapitalizing and narrowing its activities may be treated as that in complete or partial liquidation and as payment for the stockholder's stock.

Facts:

Respondent Goodyear Philippines, Inc. (Goodyear PH) is a domestic corporation whose preferred shares were exclusively subscribed by Goodyear Tire and Rubber Company (Goodyear US), a non-resident foreign corporation organized in the United States. Goodyear PH redeemed a portion of Goodyear US's preferred shares at the redemption price equivalent to the aggregate par value of the shares plus the accrued and unpaid dividends at the date of redemption. The redeemed shares were reclassified as treasury shares.

Before the payment of the redemption price, Goodyear PH filed an Application for Relief on Double Taxation with the BIR, claiming exemption from taxation on the redemption, pursuant to the Philippines-United States (PH-US) Tax Treaty.

Nonetheless, on November 3, 2008, Goodyear PH withheld and remitted to the BIR a 15% final withholding tax (FWT) on dividends, computed on the difference between the redemption price and the aggregate par value of the shares redeemed (which is also Goodyear US's acquisition cost).

In the absence of a ruling from the BIR on its treaty relief application and believing that it erroneously paid tax on the redemption, Goodyear PH filed with the BIR a claim for refund of the 15% FWT.

Without waiting for the BIR's final resolution of the administrative claim, Goodyear PH, on 3 November 2010, filed a judicial claim for refund, which was granted by the Court of Tax Appeals (CTA).

The BIR appealed to the Supreme Court and claimed that Goodyear PH failed to exhaust administrative remedies. The BIR added that while the payment of the original subscription price to Goodyear US could not be taxed as it represented a return of capital, the additional component of the redemption price representing the accrued and unpaid dividends are subject to 15% FWT on dividends under Section 28(B)(5)(b) of the Tax Code.

Issues:

1. Should the judicial claim be dismissed for non-exhaustion of administrative remedies?
2. Is Goodyear PH entitled to the refund of the erroneously paid 15% FWT?

Rulings:

1. No, the claim with the CTA should not be dismissed.

Section 229 of the Tax Code states that claims for refund of erroneously or illegally paid tax must be filed within two (2) years from the date of payment of the tax. However, the Tax Code requires that a claim must first be filed with the Commissioner of Internal Revenue (CIR) before filing the claim with the CTA.

The primary purpose of filing an administrative claim is to serve as notice to the CIR that court action will follow unless the tax alleged to have been erroneously or illegally collected is refunded. Section 229 does not require the taxpayer to wait for the final resolution of its administrative claim since doing so would result in the taxpayer's forfeiture of its right to seek judicial recourse.

2. Yes, Goodyear PH is entitled to the refund.

The PH-US Tax Treaty provides that the term "dividends" should be understood according to the tax law of the State in which the corporation making the distribution is a resident, in this case, the Philippines.

The Philippine Tax Code defines "dividends" as "any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property."

The redemption price received by Goodyear US could not be treated as accumulated dividends in arrears which may be subject to 15% FWT. Respondent's Audited Financial Statements (AFS) for 2003 to 2009 show that Goodyear PH did not have unrestricted retained earnings, and in fact, operated from a position of deficit. Without unrestricted retained earnings, the board of directors of Goodyear PH had no power to issue dividends.

One of the primary features of an ordinary dividend is that the distribution should be in the nature of a recurring return on stock. The amount received by Goodyear US did not represent a periodic distribution of dividend but rather a payment by Goodyear PH for the redemption of Goodyear US's preferred shares.

A distribution in the nature of a recurring return on stock is an ordinary dividend. On the other hand, a distribution made when the corporation is winding up its business or recapitalizing and narrowing its activities may be treated as that in complete or partial liquidation and as payment for the stockholder's stock.

Banco De Oro, et al. vs. Republic of the Philippines, et al.

Supreme Court *En Banc*, G.R. No. 198756 promulgated 16 August 2016

The CTA may rule on cases directly challenging the constitutionality or validity of a tax law, regulation or administrative issuance (such as a revenue order, revenue memorandum circular, and ruling).

In determining whether a debt instrument may be considered a deposit substitute, the interest of which shall be subject to the 20% FWT, the borrowing must be made from 20 or more lenders at any one time.

The courts may grant legal interest in cases where patent arbitrariness on the part of the revenue authorities has been shown or where the collection of tax was illegal.

Facts:

In 2001, the Bureau of Treasury (BTr) announced the auction of 10-year Zero-Coupon Bonds, which the BTr stated shall not be subject to the 20% FWT since the issue is limited to 19 lenders.

At auction date, Rizal Commercial Banking Corporation (RCBC), on behalf of Caucus of Development NGO Networks (CODE-NGO), participated and won the bid, and the BTr issued the bonds to RCBC. Meanwhile, RCBC Capital entered into an underwriting agreement with CODE-NGO whereby RCBC Capital was appointed as the Issue Manager and Lead Underwriter for the offering of the bonds which will be called Poverty Eradication and Alleviation Certificates or PEACE Bonds.

RCBC Capital sold and distributed the government bonds, and petitioner-banks purchased the PEACE Bonds on different dates.

On 7 October 2011, or barely 11 days before maturity of the PEACe Bonds, the BIR issued BIR Ruling No. 370-2011 declaring that the PEACe Bonds, being deposit substitutes, were subject to 20% FWT, and directing the BTr to withhold the tax from the face value of the PEACe Bonds upon their payment at maturity on 18 October 2011.

On 17 October 2011, replying to an urgent query from the BTr, the BIR issued Ruling No. DA 378-2011 clarifying that the FWT due on the discount or interest earned on the PEACe Bonds should be imposed and withheld not only on RCBC/ CODE-NGO but also on all subsequent holders of the bonds. On the same day, the petitioner-banks filed before the Supreme Court a Petition for Certiorari, Prohibition, and/or Mandamus (with urgent application for a temporary restraining order (TRO) and/or writ of preliminary injunction).

The following day, the Supreme Court issued a TRO enjoining the implementation of BIR Ruling No. 370-2011 subject to the condition that the 20% FWT on interest income shall be withheld by the petitioner-banks and placed in escrow pending resolution of the petition.

On 13 January 2015, the Supreme Court granted the petition and ruled that the number of lenders/investors at every transaction determines whether a debt instrument is a deposit substitute subject to the 20% FWT. When at any transaction, funds are simultaneously obtained from 20 or more lenders/investors, there is deemed to be a public borrowing and the bonds at that point are deemed deposit substitutes. Hence, the seller is required to withhold the 20% FWT on the imputed interest income from the bonds.

The Supreme Court also declared BIR Ruling Nos. 370-2011 and DA 378-2011 as void for having disregarded the 20-lender rule provided in Section 22(Y) of the Tax Code.

Moreover, the Court reprimanded the BTr for its continued retention of the amount corresponding to the 20% FWT despite its directive in the TRO to deliver the amounts to the banks, which shall be placed in escrow pending resolution of the case, and the Court's November 2011 Order (in response to petitioner-banks motion to direct the BTr to comply with the TRO).

Separate motions for reconsideration and clarification were filed by both Petitioners and Respondents.

Issues:

1. Does the CTA have jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the Commissioner of Internal Revenue (CIR)?
2. May the 20-lender rule apply to the PEACe Bonds?
3. May RCBC, RCBC Capital, and CODE-NGO be held liable to pay the 20% FWT?
4. May the BTr be held liable to pay legal interest for refusal to release the withheld tax to the banks, as ordered by the Supreme Court?

Rulings:

1. Yes, the CTA has jurisdiction and may take cognizance of cases directly challenging the constitutionality or validity of a tax law, regulation or administrative issuance (such as a revenue order, revenue memorandum circular, and ruling).

Section 7 of Republic Act (RA) No. 1125 (Act Creating the CTA), as amended by RA 9282, is explicit that except for local taxes, appeals from the decisions of quasi-judicial agencies (CIR, Commissioner of Customs, Secretary of Finance, Central Board of Assessment appeals, Secretary of Trade and Industry) on tax-related problems must be brought exclusively to the CTA.

Within the judicial system, the law intends the CTA to have exclusive jurisdiction to resolve all tax problems. Petitions for writs of certiorari against the acts and omissions of said quasi-judicial agencies should, thus, be filed before the CTA.

The determination of the validity of administrative issuances (such as revenue orders, revenue memorandum circulars, or rulings issued by the CIR) falls within the exclusive appellate jurisdiction of the CTA, subject to prior review by the Secretary of Finance.

2. Yes, the 20-lender rule may apply to the PEACe Bonds, depending on the number of lenders "at any one time."

The definition of deposit substitutes in Section 22(Y) specifically defined "public" to mean "twenty (20) or more individual or corporate lenders at any one time." Hence, if there are 20 or more lenders, the debt instrument is considered a deposit substitute which is subject to the 20% FWT.

The existence of 20 or more lenders should be reckoned at the time when the successful Government Securities Eligible Dealer (GSED)-bidder distributes (by itself or through an underwriter) the government securities to final holders. When the GSED sells the government securities to 20 or more investors, the government securities are deemed to be in the nature of a deposit substitute.

In this case, the PEACe Bonds were awarded to RCBC/CODE-NGO as the winning bidder in the primary auction. At the same time, CODE-NGO got RCBC Capital as underwriter, to distribute and sell the bonds to the public.

The Underwriting Agreement and RCBC Term Sheet for the sale of the PEACe Bonds show that the settlement dates for the issuance by the BTr of the bonds to RCBC/CODE-NGO and the distribution by RCBC Capital of the PEACe bonds to various investors fall on the same day, 18 October 2001.

Hence, the reckoning of the phrase "20 or more lenders" should be at the time when RCBC Capital sold the PEACe Bonds to investors.

Should the number of investors to whom RCBC Capital distributed the PEACe Bonds be found to be 20 or more, the PEACe Bonds are considered deposit substitutes subject to 20% FWT.

3. Assuming the PEACe Bonds are considered deposit substitutes, RCBC, RCBC Capital, and CODE-NGO may still not be held liable to pay the 20% FWT.

The Supreme Court's interpretation in its January 2015 decision of the phrase "at any one time" cannot be applied to the PEACe Bonds and should instead be given prospective application.

RCBC and the rest of the investors relied on the opinions of the BIR in its Ruling Nos. 020-2011, 035-2001 dated 16 August 2001 and DA-175-01 dated 29 September 2001 which provide that the "20 or more lenders" is to be determined at the time of the original issuance. Under the said rulings, the PEACe bonds were not to be treated as deposit substitutes.

4. Yes. The BTr is held liable for legal interest of 6% per annum on the 20% FWT.

The BTr made no effort to release the amount corresponding to the 20% FWT which it had not shown to have already been remitted to the BIR. It remained obstinate in its refusal to release the monies and exhibited utter disregard and defiance of the Supreme Court's order in the TRO, November 2011 Resolution and 13 January 2015 Decision.

The BTr is ordered to immediately release and pay the bondholders the 20% FWT on the PEACe Bonds, with legal interest of 6% per annum from 19 October 2011, the day the BTr received the TRO, until full payment.

Dakay Construction and Development Corporation vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case 1294, promulgated 20 September 2016

A Letter of Authority should be properly served on the taxpayer within 30 days from the date of issue, otherwise it becomes null and void.

Facts:

Respondent CIR assessed Petitioner Dakay Construction and Development Corporation (DCDC) for deficiency VAT and DST for taxable year 2007. DCDC assailed the validity of the assessment, arguing that the Letter of Authority (LOA) is void and without force and effect as it was received beyond 30 days from the date of issuance. The LOA was dated 22 October 2008 but was received only on 24 November 2008. Thus, DCDC argued that the revenue officers had no valid authority to conduct the examination and the subsequently issue the deficiency assessments.

Upon receipt of the Final Decision on Disputed Assessment denying its protest, DCDC filed a Petition for Review at the CTA.

At the CTA, the CIR took the position that neither the LOA nor other internal revenue issuances or audit programs and policies provide that failure of revenue examiners to serve the LOA to the taxpayers within 30 days from the date of issuance will give rise to taxpayer immunity from audit for that particular period. The requirement is merely directory and is intended to enhance efficiency and ensure quality of audit. Moreover, the CIR argued that DCDC can no longer assail the validity of the LOA as it has voluntarily submitted its books of accounts and accounting records for audit. Neither did it raise the invalidity of the LOA in its protest letter.

Issue:

Is the LOA valid and binding?

Ruling:

No. All audits or investigations must be conducted under a valid LOA, which should be properly served on the taxpayer within 30 days from the date of issue or it becomes null and void pursuant to Revenue Memorandum Order 43-90 and Revenue Audit Memorandum Order 1-2000. Revenue Memorandum Order 23-83 even states that a simple erasure on an LOA already renders it void; more so if it is improperly or belated served.

The LOA no longer has any force or effect having been served beyond the prescribed 30-day period. The assessment conducted by the revenue officers was already unauthorized, because there was no valid covering LOA.

About SGV & Co.

SGV is the largest professional services firm in the Philippines that provides assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities. SGV & Co. is a member firm of Ernst & Young Global Limited.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

For more information about our organization, please visit www.ey.com/PH.

© 2016 SyCip Gorres Velayo & Co.
All Rights Reserved.
APAC No. 10000180
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Victor C. De Dios via e-mail at victor.c.de.dios@ph.ey.com or at telephone number 8910307 loc. 7929 and Reynante M. Marcelo via e-mail at reynante.m.marcelo@ph.ey.com or at telephone number 894-8335 loc. 8335.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.