Tax Bulletin
September 2016
Highlights

BIR Ruling

- The transfer of agricultural land from a registered owner to a tenant by way of disturbance compensation is a land transaction exempt from Capital Gains Tax (CGT) and Documentary Stamp Tax (DST). (Page 4)

BIR Issuances

- Revenue Regulations (RR) No. 6-2016 amends RR No. 10-2015, extending the deadline for the use of non-thermal paper and for the procurement and reconfiguration of information on all Cash Register Machines (CRM), Point-of-Sales (POS) machines, and other invoice or receipt generating machines or software. (Page 4)

- Revenue Memorandum Order (RMO) No. 54-2016 creates a Special Disciplinary Committee to investigate erring BIR officers for questionable tax audits and other matters. (Page 5)

- RMO No. 55-2016 amends certain provisions of RMO No. 15-2003, as amended by RMO No. 22-2016, in relation to the processing of Electronic Certificate Authorizing Registration (eCAR) and its signatories. (Page 5)

- RMO No. 56-2016 amends the policies, guidelines and procedures in the application and processing of BIR Importer’s Clearance Certificate (ICC) and Broker’s Clearance Certificate (BCC). (Page 6)

- RMO No. 57-2016 directs the special revalidation of outstanding Letters of Authority (LA) issued under the Run After Tax Evaders (RATE) Program. (Page 9)

- RMO No. 59-2016 prescribes the policies for the conduct of issue-based audits under the VAT Audit Program (VAP). (Page 9)

- Revenue Memorandum Circular (RMC) No. 91-2016 lifts the suspension of BIR tax audits. (Page 11)

- RMC No. 93-2016 streamlines the business registration process by prescribing a revised list of documentary requirements. (Page 11)

BOC Issuance

- Customs Memorandum Order (CMO) No. 21-2016 amends CMO No. 35-2015 regarding the Authority to Issue Alert Orders. (Page 11)

BSP Issuances

- Circular No. 924 provides for the Clearing of Checks via Electronic Presentment. (Page 12)

- Circular No. 925 provides for the Amendments to Foreign Exchange Regulations. (Page 13)

SEC Opinions and Issuance

- A Representative Office may only engage in activities that support the business activities of the parent company, i.e. those activities aligned with information dissemination, promotion and quality control of the company’s products. (Page 16)
Companies engaged in mass media and/or advertising are subject to nationality restrictions pursuant to Article XVI of the 1987 Constitution. (Page 17)

SEC MC No. 15 requires Foundations to submit a Sworn Statement of its President and Treasurer of the Sources, Amount and Application of Funds and Program/Activity Planned, Ongoing and Accomplished and Certificate of Existence of Program/Activity (COEP). (Page 17)

**PEZA Issuances**

PEZA Memorandum Order No. 2016-026 harmonizes the billing procedures observed by the finance group/units across all zones. (Page 18)

PEZA Memorandum Order No. 2016-032 prescribes the guidelines on the filing of requests for refund of PEZA fees. (Page 19)

**BOI Issuance**

Memorandum Circular No. 2016-003 includes 134 new cities and municipalities to the list of Less Developed Areas (LDAs) entitled to pioneer incentives under the 2014 Investment Priorities Plan (IPP). (Page 19)

**BLGF Opinions**

The situs of the local business tax is where the transactions are made and recorded. (Page 21)

Local government units are prohibited from imposing taxes on any business engaged in the production, manufacture, refining, distribution or sale of petroleum products. (Page 21)

The exemption provided under Section 7 of Administrative Order No. 44, s. 2014 refers to the exemption from all fees and charges for the National Housing Authority, but not to private sectors participating in the socialized housing projects of the government. (Page 22)

**Court Decisions**

The Court of Tax Appeals En Banc cannot annul a final and executory judgment of a division of the court.

When there is no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law, the proper remedy would be an original action for Certiorari directly before the Supreme Court. (Page 23)

The passive income of a holding company, particularly interest, rental, and dividend income, as well as the gain on the sale of fixed assets, do not constitute ‘gross receipts’ that are subject to local business tax. (Page 25)

The preferential tax treatment of PAGCOR under its Charter inures to the benefit of and extends to its contractees and licensees.

Hence, PAGCOR’s contractees and licensees are liable to a 5% franchise tax on their revenues from casino operations, and to income tax on their revenues from other related services. (Page 26)
• The issuance by the BIR of an LOA covering “unverified prior years” is prohibited and does not confer any authority to audit the taxpayer’s books of accounts.

The benefits and privileges granted to a corporation that has availed of the tax amnesty cannot be extended to its stockholders. (Page 27)

BIR Ruling

BIR Ruling No. 348-2016 dated 25 August 2016

Facts:

Ms. X, the registered owner of an agricultural land, transferred by way of disturbance compensation a portion of her land to Mr. Y, the certified tenant/tiller therein. The concerned Provincial Agrarian Reform Program Office certified that the transfer of land, by way of disturbance compensation due to extinguishment of tenancy relationship, is a land transaction within the purview of RA No. 6657 or the Comprehensive Agrarian Reform Law of 1988.

Issue:

Is the transfer exempt from CGT and DST?

Ruling:

Yes. Under Section 66 of RA No. 6657, the transfer of agricultural land from a registered owner to a tenant, by way of disturbance compensation due to extinguishment of tenancy relationship, is a land transaction exempt from taxes on capital gains, as well as taxes and fees on the transfer.

BIR Issuances

Revenue Regulations No. 6-2016 dated 23 September 2016

• All existing taxpayers with CRM, POS machines, and other invoice or receipt generating machines or software, which use thermal paper for daily transactions, are subject to the following staggered implementation dates for the use of non-thermal paper:

<table>
<thead>
<tr>
<th>For those subject machines registered starting:</th>
<th>Staggered Implementation Dates:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 July 2014 onwards</td>
<td>On or before 1 July 2018</td>
</tr>
<tr>
<td>1 July 2013 - 30 June 2014</td>
<td>On or before 1 July 2017</td>
</tr>
<tr>
<td>Prior to 1 July 2012 - 30 June 2013</td>
<td>On or before 31 December 2016</td>
</tr>
</tbody>
</table>

• Further, to provide ample time in procuring or reconfiguring machines and systems that comply with the required information laid down in Section 5 of RR No. 10-2015, the adjustments must be undertaken on or before 31 December 2016.

• These regulations shall take effect 15 days after their publication in a newspaper of general circulation.

(Editor’s Note: RR No. 6-2016 was published in the Manila Bulletin on 26 September 2016)
Revenue Memorandum Order No. 54-2016 dated 1 September 2016

- A Special Disciplinary Committee (“Committee”) is hereby created to hear or investigate cases involving BIR officials and employees in relation to violations or substantial lapses committed in the conduct of tax audits or investigations referred to under RMC No. 70-2016.

- The BIR officer/employee shall submit, within 3 days from the issuance of a Notice/Memorandum to Explain, a written explanation on why no administrative case should be filed against him.

- The BIR officer/employee may be summoned to a conference where the Committee may ask clarificatory and other relevant questions.

- Within 5 days from the termination of a preliminary investigation, the Committee shall submit a report on whether there is a *prima facie* case to warrant the issuance of a formal charge.

- After finding a *prima facie* case, the Commissioner shall issue a formal charge to which the concerned BIR employee shall submit an answer within 5 days from the service of such charge.

- The answer shall clearly state the complete facts and issues involved in the case, as well as the reasons relied upon for a favorable appreciation and review of the case.

- A formal investigation or hearing shall be called by the Committee to discuss the facts and issues raised or taken up, and such hearing shall be held not earlier than 5 days nor later than 10 days from receipt of the answer or upon expiration of the period to submit an answer.

- The Committee shall submit its report of investigation and recommendation to the Commissioner, who shall approve and sign the Committee’s recommendation within 15 days from its receipt, unless the Commissioner decides otherwise.

- The aggrieved BIR officer/employee may file a motion for reconsideration of the Commissioner’s decision within 5 days from receipt of the decision.

- Upon receipt of the denial, the BIR officer/employee may appeal to the appropriate administrative or judicial body or tribunal as may be allowed under existing rules and regulations.

- Failure to appeal the Commissioner’s decision shall render the decision final and executory.

Revenue Memorandum Order No. 55-2016 dated 2 September 2016

- The One Time Transaction (ONETT) Team shall now be under the direct supervision of the Revenue District Officer (RDO) and Assistant Revenue District Officer (ARDO), who shall be Co-Heads of the ONETT Team.

- For purposes of filing with the Registry of Deeds, the eCARs shall now have a validity of 3 years from the date of issuance.

RMO No. 54-2016 creates a Special Disciplinary Committee to investigate erring BIR officers for questionable tax audits and other matters.

RMO No. 55-2016 amends certain provisions of RMO No. 15-2003, as amended by RMO No. 22-2016, in relation to the processing of eCAR and its signatories.
The ARDOs are now allowed to issue a new eCAR to the taxpayer if the latter fails to present the eCAR to the Registry of Deeds within the three-year validity period.

The eCAR shall be signed by the RDO or ARDO according to the following threshold amounts:

<table>
<thead>
<tr>
<th>Revenue Region No.</th>
<th>ARDO</th>
<th>RDO</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 – San Fernando, Pampanga</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5 – Caloocan City</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 – Manila (except RDO No. 36 – Puerto Princesa)</td>
<td></td>
<td></td>
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<tr>
<td>7 – Quezon City</td>
<td></td>
<td></td>
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<tr>
<td>8 – Makati City</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9A – CaBaMiRo (except RDO Nos. 35 – Romblon, 37 – Occidental Mindoro &amp; 63 – Oriental Mindoro)</td>
<td>Taxable base of P3 million and below</td>
<td>Taxable base of more than P3 million</td>
</tr>
<tr>
<td>9B – LaQueMar (except RDO No. 62 – Marinduque)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11 – Iloilo City</td>
<td></td>
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<tr>
<td>13 – Cebu City</td>
<td></td>
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<tr>
<td>16 – Cagayan de Oro City</td>
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<td></td>
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<tr>
<td>19 – Davao City</td>
<td></td>
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<tr>
<td>Other Regions:</td>
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</tr>
<tr>
<td>1 – Calasiao, Pangasinan</td>
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<td></td>
</tr>
<tr>
<td>2 – CAR</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 – Tuguegarao, Cagayan</td>
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<td></td>
</tr>
<tr>
<td>6 – Manila (Island District)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RDO No. 36 – Puerto Princesa</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9A – CaBaMiRo (Island Districts)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RDO Nos. 35 – Romblon</td>
<td></td>
<td></td>
</tr>
<tr>
<td>37 – Occidental Mindoro</td>
<td>Taxable base of P1 million and below</td>
<td>Taxable base of more than P1 million</td>
</tr>
<tr>
<td>63 – Oriental Mindoro</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9B – LaQueMar (Island District)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RDO No. 62 – Marinduque</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 – Legazpi City</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 – Negros Island Region</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 – Tacloban City</td>
<td></td>
<td></td>
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<tr>
<td>15 – Zamboanga City</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 – Butuan City</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18 – Cotabato City</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

RMO No. 56-2016 amends the policies, guidelines and procedures in the application and processing of BIR Importer’s ICC and BCC.

RMO No. 56-2016 dated 2 September 2016

The ICC/BCC shall be filed with the Accounts Receivable Monitoring Division (ARM) at the BIR National Office and shall be processed and released within 5 working days from the submission of complete documents.
The following revised documentary requirements shall be submitted by importers and customs brokers applying for the issuance of BIR ICC/BCC:

**Importers:**

- **Individuals:**
  1. Duly-accomplished and notarized application form;
  2. Valid NBI clearance;
  3. Certified true copy of the latest Mayor’s Business Permit;
  4. Proof of ownership/lawful occupancy of principal place or head office of business;
  5. Delinquency verification issued by the concerned Large Taxpayers Service (LTS) or National/Regional Offices, with a validity period of 1 month from the date of issue; and
  6. Notarized Certificate of Authority authorizing the designated representative to file the application, together with his specimen signature, and photocopies of a valid government-issued identification card of the representative and the individual taxpayer-applicant.

- **Non-individuals/Corporations:**
  1. Duly-accomplished and notarized application form;
  2. Certified true copy of the latest Mayor’s Business Permit;
  3. Proof of ownership/lawful occupancy of principal place or head office of business;
  4. Certificate of Good Standing issued by the SEC/Cooperative Development Authority/National Electrification Administration; and
  5. Original copy of Secretary’s Certificate certifying that a Board Resolution was passed, authorizing a responsible officer to sign the application form, together with his specimen signature, picture, and a photocopy of a valid government-issued identification card.

**Customs Brokers:**

- For individual customs brokers, all of the documents required for individual importers as enumerated above and in addition, a photocopy of the identification card as customs broker, together with the Certification of Good Standing issued by the Professional Regulations Commissions (PRC).

- **Non-individuals/Corporations:**
  1. Duly-accomplished and notarized application form;
  2. List of broker-employees/broker-representatives with photocopies of the identification cards as customs brokers, together with the Certificate of Good Standing issued by the PRC;
3. Certified true copy of latest Mayor’s Business Permit;

4. Proof of ownership/lawful occupancy of principal place or head office of business;

5. Delinquency verification issued by the concerned LTS or National/Regional Offices with a validity period of 1 month from the date of issue; and

6. Certificate of Good Standing issued by the SEC;

7. Original copy of Secretary’s Certificate certifying that a Board Resolution was passed authorizing a responsible officer to sign the application form together with his specimen signature, picture, and photocopy of a valid government-issued identification card.

- The application form and its attachments, addressed to the ARMD Tax Clearance Section, may be submitted either personally or via courier, with a prepaid envelope for the reply.

- Any misrepresentation on the submitted documents shall cause the outright denial or the immediate revocation of any issued BIR-ICC/BIR-BCC.

- The following are allowed to accomplish the application for BIR ICC/BCC:

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Authorized Person/s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>Individual applicant himself/herself</td>
</tr>
<tr>
<td>Partnership</td>
<td>Any of the partners</td>
</tr>
<tr>
<td>Cooperation/Cooperative</td>
<td>Any of the key officers/Board members (e.g. President, Chief Executive Officer, Chief Operating Officer, Executive Vice President, Treasurer, Vice President, General Manager, as indicated in the latest General Information Sheet filed with the SEC authorized by the Board, as evidenced by a Board of Resolution duly certified by the Corporate Secretary)</td>
</tr>
<tr>
<td>Branch of a Foreign Corporation</td>
<td>Country Manager/ Country Director Country Representative</td>
</tr>
</tbody>
</table>

- The BIR shall only issue the BIR-ICC/BIR-BCC upon satisfaction of the following criteria:

- The applicant has paid the annual registration fee, complies with the bookkeeping and invoicing requirements and has submitted the annual information returns;

- No valid open “stop-filer” cases;

- The applicant is a regular user of the BIR’s Electronic Filing and Payment System (eFPS) and if a newly registered taxpayer, he should be enrolled with the BIR’s eFPS facility;

- The applicant does not have delinquent accounts; and

- The applicant should not be tagged as a “Cannot be Located” taxpayer.
Importers/brokers whose BIR-ICC/BIR-BCC have been revoked may re-apply, provided that the circumstances, which led to the revocation, no longer exist.

**RMO No. 57-2016 dated 5 September 2016**

- All outstanding Letters of Authority issued under the Run After Tax Evaders program, for which no preliminary or final assessment notices have been issued, or no cases have been filed with the Department of Justice, or the Courts as of 30 June 2016, should be revalidated first by the Commissioner before any investigation is commenced.
- A new LA covering the special revalidation shall be issued under the name of the investigating officer to whom the same is assigned or re-assigned.
- All requests for special revalidation shall be supported with progress reports and a justification for revalidation.

**RMO No. 59-2016 dated 21 September 2016**

- Cases for issue-based audits shall be selected following these criteria:
  1. **Mandatory Case**
     - Taxpayers with VAT returns reflecting erroneous input tax carry-over
  2. **Priority Cases**
     - Taxpayers whose VAT compliance is below the established industry benchmarks;
     - Taxpayers with zero-rated and/or exempt sales due to availment of tax incentives or exemptions;
     - Taxpayers engaged in business where 80% of their transactions are on cash basis and whose purchases of goods and services do not generate substantial amount of input tax, such as restaurants, remittance or payment centers and so on;
     - Taxpayers with VATable transactions, which were subjected to expanded withholding tax but with no VAT remittance;
     - Taxpayers who failed to remit or declare VAT due from purchase of services from non-resident aliens;
     - Taxpayers who fail to declare gross sales or receipts subjected to withholding VAT on purchases of goods or services, with waiver of privilege to claim input tax credit (creditable);
     - Taxpayers whose gross sales or receipts per income tax returns are greater than gross sales or receipts declared per VAT returns;
     - Taxpayers filing percentage tax returns whose gross sales or receipts exceed the VAT threshold

RMO No. 57-2016 directs the special revalidation of outstanding LA issued under the RATE Program.

RMO No. 59-2016 prescribes the policies for the conduct of issue-based audits under the VAT Audit Program.
- The following VAT returns shall be excluded from the coverage of this Order:

1. Claims for issuance of tax credit certificates or refunds; and
2. VAT returns selected for audit by the National Investigation Division under the Enforcement and Advocacy Service and by the Regional Investigation Division of the Revenue Regional Offices.

- The following are the salient policies and procedures to be followed in conducting audits under the VAP:

1. Only Revenue Officers in the VAT Audit Section of the Assessment Division shall be authorized to conduct audit/investigation of VAT returns, whether in principal or assisting capacity;
2. The VAT Audit Section Chief shall identify VAT taxpayers for issue-based audits in accordance with the selection criteria prescribed above;
3. The Assistant Commissioner – Assessment Service (ACIR-AS) may evaluate the approved list of VAT taxpayers to determine compliance with the guidelines in the selection of VAT taxpayers for audit and in the assignment of cases;
4. If, upon evaluation, it is found that a violation has been committed, the ACIR-AS may recommend to the Commissioner, the cancellation of the eLA and the filing of administrative proceedings against the erring official or employee;
5. The Regional Director (RD) shall issue one electronic Letter of Authority (eLA) for each taxable quarter or 1 eLA for 2 quarters;
6. If subsequently the taxpayer becomes a candidate for regular tax audit, the eLA for the regular audit should not include the VAT liability of the taxpayer;
7. The taxpayer has 10 days to present or submit the documents and records enumerated in the Notice for the Presentation/Submission of Documents/Records attached to the eLA;
8. If the concerned taxpayer fails to comply, a reminder letter will immediately be sent before a Subpoena Duces Tecum (SDT) can be recommended for issuance, and no further extensions shall be allowed;
9. Revenue officers shall finish their cases and submit reports of investigation within 60 days for eLAs covering one quarter, and 90 days for eLAs covering 2 quarters;
10. If there are deficiency VAT liabilities, a Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) will be issued in accordance with the existing revenue issuances;
11. All cases, even those with deficiency taxes agreed to be paid by the taxpayer, must at least be issued a PAN.
Revenue Memorandum Circular No. 91-2016 dated 1 September 2016

- Effective 1 September 2016, the RMC lifts the suspension of all field audits and other field operations of the BIR concerning examinations and verifications of taxpayer’s books of accounts, records and other transactions.
- Thus, the concerned BIR officials and employees may now resume all field audits, field operations, or any form of business visitation in execution of Letters of Authority, eLAs, Audit Notices, Letter Notices, or Mission Orders.

Revenue Memorandum Circular No. 93-2016 dated 2 September 2016

- The RMC prescribes a revised checklist of requirements for the following types of application:
  1. Application for registration filed by/ for:
     - Self-employed individuals, estates and trusts;
     - Corporations and partnerships (taxable or non-taxable);
     - Cooperatives and associations (taxable or non-taxable);
     - Registration of branch and facility types;
     - Employees;
     - Purely TIN issuance;
     - Purely TIN issuance (non-business);
     - Books of accounts;
  2. Application for authority to print receipts/ invoices;
  3. Application for permit to use manual loose leaf books of accounts/ receipts and invoices;
  4. Application for registration information updates;
  5. Application for transfer of registration;
  6. Application for cancellation of TIN.
- The revised checklist of documentary requirements includes an acknowledgement to be signed by the applicant that if there are identified lacking documents in the application for registration, the applicant will submit such documents within 5 working days.

BOC Issuance

Customs Memorandum Order No. 23-2016 dated 7 September 2016

- CMO No. 23-2016 is issued to prevent unnecessary issuance of alert orders and to protect the integrity of the Alert Order System.
- The authority to issue Alert Orders, as set forth in CMO No. 35-2015, and previously granted to the Deputy Commissioners (for Intelligence Group, Enforcement Group, Assessment and Operations Coordinating Group) and to all District Collectors, is hereby revoked.
- Moving forward, only the Office of the Commissioner is authorized to issue Alert Orders.
All other provisions of CMO No. 35–2015 which do not conflict with this Order shall remain effective.

This Order shall take effect immediately.

(Editor's Note: Alert Orders are written orders issued by customs officers on the basis of derogatory information regarding possible noncompliance with customs rules. An alert order will result in suspension of the processing of the goods declaration and the conduct of physical or nonintrusive inspection of the goods).

BSP Issuances

BSP Circular No. 924 dated 7 September 2016

The Monetary Board, in its Resolution No. 1451 dated 12 August 2016, approved the amendments to the pertinent sections of the Manual of Regulation for Banks to align and update the existing provisions in view of the Clearing of Checks via Electronic Presentment that shall be implemented by the Philippine Clearing House Corporation (PCHC).

Section X206 of the Manual of Regulations for Banks (MORB) is hereby amended, to explicitly indicate the role of the PCHC in check clearing operations as well as the implementation of check clearing through electronic presentment of checks, specifically as the processing agency and exclusive provider of nationwide Magnetic Ink Character Recognition (MICR)/Automated Clearing Facility. It shall implement Clearing of Checks via Electronic Presentment through its Check Image and Clearing System (CICS) upon receipt by the Bangko Sentral of a written notice from the PCHC that CICS is operational.

Section X202 of the MORB is hereby amended as follows:

“Sec. X202 Temporary Overdrawings; Drawings Against Uncollected Deposits. The following regulations shall govern temporary overdrawings and drawings against uncollected deposits (DAUDs).

a. Temporary overdrawings.

xxx

“Technical overdrawings arising from x x x. Items to be lodged under this account shall consist only of in-clearing checks which may result in “technical overdrawn” accounts.

(1) Clearing under MICR

The ROCI shall be immediately reversed the following day, value dated on date of original presentation of Checks and Other Cash Items (COCI) to the PCHC for Integrated Greater Manila local exchanges (Integrated GM LX) or to the Regional Clearing Center (RCC) for regional local exchanges (RLX).

The checks lodged under “RCOCI” which were dishonored due to insufficiency of funds shall be returned not later than 7:30 a.m. on the clearing day immediately following the original date of presentation of the COCI to PCHC or RCC.
(2) Clearing through CICS

In case a check clearing item is dishonored under the CICS, the Drawee bank shall generate the pertinent electronic documents on the dishonored clearing item due to insufficiency of funds and electronically submit the same to the Presenting Bank through the CICS within the prescribed period or not later than 7:30 a.m. on the clearing day immediately following the original date of presentation for clearing of the check clearing item through the CICS.

xxx xxx xxx

- Section X203 of the MORB is also amended which provides for the rules on returned checks, specifically checks cleared through the MICR/Automated Check Clearing Facility and checks cleared through the CICS.

- Appendix 11 (Annex A) of the MORB is hereby amended to delete the standard size requirements on the order of withdrawal form for Negotiable Order of Withdrawal (NOW).

- Repealing Clause. The Guidelines on the Handling of Returned Checks under the Magnetic Ink Character Recognition (MICR)/Automated Check Clearing Facility (Appendix 117)(Annex B) shall be repealed and deleted once the Check Image Clearing System (CICS) becomes the sole system for the clearing of checks.

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

[Editor’s Note: Circular No. 924 was published in Philippine Star on 15 September 2016.]

BSP Circular No. 925 dated 13 September 2016

- Pursuant to Monetary Board Resolution No. 1644 dated 8 September 2016, the following provisions of the Manual of Regulations on Foreign Exchange Transactions (or the Foreign Exchange Regulations issued under Circular No. 645 dated 13 February 2009, as amended) are further revised.

- The chapters on the general provisions and resident to resident transactions of the Foreign Exchange Regulations are amended by this Circular.

- Some provisions on the chapter on current account transactions of the Foreign Exchange Regulations are also amended, which include the provisions on the sale of foreign exchange to residents by authorized agent banks (AABs) and AAB-subsidiary/affiliate forex corporations (AAB-forex corps) for non-trade current account transactions with non-residents, peso accounts of, and sale of foreign exchange to, non-residents and import trade transactions.

Circular No. 925 provides for the Amendments to Foreign Exchange Regulations.

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1 Such as but not limited to the Return Image Cash Letter (Return ICL) containing the dishonored Regular Clearing Item (i.e. electronically generated document showing a Check Image with Electronic Payment Information transmitted via Check Image Clearing System(CICS) to the Drawee bank for collection of the amount), Image Cash Letter (ICL) is an ANSI standard interface file specifications (X9.100-187) for electronic exchange of check and image data. It is generated by the front-end system of a Presenting Bank or Drawee Bank containing CICS Items transmitted to the Drawee bank or presenting bank, respectively.
Applications for registration of foreign direct investments, which have not yet been filed with the BSP IOD after the expiration of the prescriptive period for filing of such applications, may be filed with the BSP IOD from 1 September 2016 up to 1 September 2017, subject to compliance with the registration requirements under this Manual and payment of a fixed processing fee of PHP10,000.00 per Bangko Sentral Registration Document to be issued.

Some provisions on loans and guarantees under the chapter of capital account transactions of the Foreign Exchange Regulations are also amended.

The chapter on foreign investments of the Foreign Exchange Regulations is also amended as follows:

“Chapter II
FOREIGN INVESTMENTS

Section 36. Registration with the BSP

All applications² for registration of foreign direct investments (Annex W) under Section 34 shall be filed with the BSP, through the International Operations Department, within one (1) year to be reckoned from the following dates:

xxx”

“Section 40. Repatriation and Remittance Privileges

1. xxx

2. Foreign exchange may be purchased from AABs/AAB-forex corps in an amount equivalent to the peso sales/divestments proceeds (including dividends, profits or earnings thereon) of BSP-registered foreign investments in accordance with the procedures outlined in Appendix 11 and supported by the documents listed under Appendix 1 hereof.

3. Registering banks for foreign investments may sell the equivalent foreign exchange of: (a) excess pesos funded with inward remittance of foreign exchange computed as follows: peso proceeds of foreign exchange inwardly remitted less the peso amount actually used for BSP-registered investment/s; plus (b) interest earned on the excess pesos, if any, subject to the following conditions:

a. the investor shall comply with the documents listed under Appendix 1 hereof;

xxx

4. xxx

5. The foreign exchange purchases may be made by the resident agent/authorized representative on behalf of the non-resident investor for direct remittance to the non-resident beneficiary on the date of purchase.”

² Applications for registration of foreign direct investments, which have not yet been filed with the BSP IOD after the expiration of the prescriptive period for filing of such applications, may be filed with the BSP IOD from 1 September 2016 up to 1 September 2017, subject to compliance with the registration requirements under this Manual and payment of a fixed processing fee of PHP10,000.00 per Bangko Sentral Registration Document to be issued.
“Section 44. Investments by Philippine Residents

1. General policy

   a. Residents may invest in instruments enumerated in items 2 hereof, without prior BSP approval funded by:

      (i) their foreign currency deposit account/s (whether offshore or onshore); and/or

      (ii) FX purchased from AABs/AAB-forex corps of up to USD60 million or its equivalent in other foreign currency per investor per year, or per fund per year for qualified investors (QIs).

   f. All foreign exchange purchases for investments by residents shall be:

      i. remitted directly to the account of the intended beneficiary (e.g., non-resident investee firm, fund manager, broker/dealer, and/or non-resident parent company/subsidiary); or

      ii. credited to the resident investor’s FCDU account (with the same or another AAB) for eventual remittance by the depository AAB to the intended beneficiary for funding of investment: Provided, that if the depository bank is different from the foreign exchange selling institution: (i) the foreign exchange selling institution shall directly transfer the foreign exchange purchases to the depository bank of the purchaser; and (ii) the depository bank shall also be the foreign exchange remitting AAB.

   g. AABs and AAB-forex corps shall submit a monthly report (Annex V) to the BSP-IOD on the sale of foreign exchange for investments enumerated in this Section as well as investments by residents falling under resident to resident transactions under Part I, Chapter II hereof, within the required deadline.

   h. All foreign exchange purchases by residents for investments enumerated under this Section shall require the submission of a duly accomplished Application to Purchase Foreign Exchange (Annex A) and documents listed under Appendix 1. Foreign exchange purchases shall be consolidated for purposes of determining compliance with the allowable limit prescribed in Item 1.a.ii.

   i. Other investments by residents which will require settlement in foreign currency in favor of another resident shall be governed by the rules on resident to resident transactions under Part I, Chapter II hereof.

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3 Such as (a) bonds/notes by the Republic of the Philippines or other Philippine and/or residents; (b) Instruments held for sale/trading by banks operating in the Philippines: (i) bond/notes issued offshore by the Republic of the Philippines or other Philippine resident entities; and (ii) debt securities issued by non-residents that are payable in foreign currency, provided the required license/approval/clearance/other requirements of the Securities and Exchange Commission and other government agencies have been obtained/complied with; and (c) equity securities issued by residents and listed abroad.
2. Outward investments by residents –

xxx

e. Foreign currency-denominated investment instruments issued onshore by non-residents”

• This Circular amends Section 73 of the Foreign Exchange Regulations which provides for the foreign currency cover requirements.

• This Circular also amends Section 91 of the Foreign Exchange Regulations which provides for the tenor/maturity and settlement.

• This Circular also amends Section 101 Reportorial Requirements under Chapter I of Part Six of the Foreign Exchange Regulations.

• This Circular shall take effect on 15 September 2016.

[Editor’s Note: Circular No. 925 was published in Malaya Business Insight on 14 September 2016.]

SEC Opinions and Issuance

SEC-OGC Opinion No. 16-20 dated 25 August 2016

Facts:

C Co., a U.S. Company, is engaged in providing design, engineering and consulting services for the total building envelope system (“curtain wall design”). C Co. has 22 offices located in the USA, Canada, Mexico, China, Taiwan, South Korea, Australia and the Philippines. C Co. is planning to establish a Representative Office in the Philippines.

Issue:

May C Co.’s Representative Office engage in the following activities?

• To engage in information dissemination about the technical and consulting services related to state-of-the-art building envelope systems (curtain wall designs) offered by the parent company;
• To liaise with potential clients;
• To render technical service demonstrations for potential clients;
• To undertake the promotion and quality control of technical services offered by the parent company;
• To conduct research on curtain wall designs.

Held:

Yes, C Co.’s Representative Office may engage in the above enumerated activities. According to the SEC, the allowed activities of a Representative Office are those aligned with information dissemination, promotion and quality control of the company’s products. In other words, a Representative Office may only engage in activities that support the business activities of the parent company.

A Representative Office may only engage in activities that support the business activities of the parent company, i.e. those activities aligned with information dissemination, promotion and quality control of the company’s products.
Under the Implementing Rules and Regulations of the Foreign Investments Act of 1991, a representative or liaison office deals directly with the clients of the parent company but does not derive income from the host country because it is fully-subsidized by its head office. In this regard, it undertakes activities such as, but not limited to, information and dissemination and promotion of the company’s products as well as quality control of products.

**SEC-OGC Opinion No. 16-21 dated 31 August 2016**

**Facts:**

A Co. is a privately-owned entrepreneurial company focused on international media, marketing and sponsorship consultancy. A Co. intends to establish another corporation (B Co.), which will have a primary purpose of leasing and sub-leasing indoor, outdoor and digital advertising materials, sites and spaces, and engaging in sponsorship consultancy. It is also represented that B Co. will not own any media, hence, will only be engaged as media representation or brokerage company.

**Issue:**

Is B Co. classified as a company engaged in “mass media” or advertising, hence, subject to nationality restrictions?

**Held:**

Yes, the proposed activities to be undertaken by B Co. qualify as mass media and/or advertising activities. Thus, B Co. shall be covered by the nationality restrictions.

First, leasing/sub-leasing out of advertising spaces or structure to others is well within the activity of a mass media entity for this provides a medium to disseminate or convey advertising messages to the public. Second, leasing of digital space also falls within the purview of mass media since the platforms for mass media are not limited to the physical structures and printed materials. It also covers other forms of communication such as the internet. Third, engaging in sponsorship consultancy can be classified as advertising. One function of advertising agencies is to serve as agents or counselors of the advertiser by selection and recommending medium or media to be used as the vehicle for disseminating such messages to the public. The services of measuring the effectivity of sponsorship activity of any event and of selling opportunity to interested parties qualify as activities of an advertising agency.

The foregoing proposed activities of B Co. qualify as activities being undertaken by entities engaged in mass media and/or advertising. Hence, the nationality restrictions imposed by the Constitution with respect to mass media (i.e. 100% Filipino-owned) and advertising (i.e. at least 70% Filipino-owned) apply to B Co.

**SEC Memorandum Circular No. 15 Series of 2016**

- Who are required to submit the Sworn Statement (SS) and the Certificate of Existence of Program/Activity (COEP)?

Only Foundations receiving funds from the following entities shall be required to submit the SS and COEP:

1. Any Philippine government agency or department, bureau, or office of the national government, including any of its branches and instrumentalities;

SEC MC No. 15 requires Foundations to submit a Sworn Statement of its President and Treasurer of the Sources, Amount and Application of Funds and Program/Activity Planned, Ongoing and Accomplished and COEP.
2. Any political subdivision or its instrumentalities;  
3. Any government-owned or controlled corporation, including its subsidiaries;  
4. Any other self-governing Board or Commission of the government;  
5. Foundations which receive donations/grants/contributions in the amount of at least Php 500,000 in one or aggregate transaction per donor/grantor/contributor.  

Who are not required to submit the SS and COEP?  

1. Foundations not receiving government funds;  
2. Foundation not receiving donations within the aforesaid threshold.  

However, they must submit a Certification stating that they have not received government funds nor received donations/grants/contributions within the said threshold for their operations. Said Certification shall also include a statement that there is no action or proceeding which has been filed or is pending before any Court involving an intra-corporate dispute and/or claim by any person or group against the Foundation, its duly elected Trustees and/or corporate officers.  

[Editor’s Note: Published in the Manila Bulletin (p.2) and in The Manila Times (p.B2) on 28 September 2016.]

**PEZA Issuances**

**PEZA Memorandum Order No. 2016-026 dated 17 August 2016**

The following procedures shall be observed by the Finance Groups/units across all Zones effective 1 October 2016:  

Billing procedures  

* Monthly billings from public zones shall be distributed within 3 working days of the following month. Payment due date for these billings shall be on the 15th day of the subsequent month.  
* Monthly billings for security services, power, and water shall be forwarded by the Head Office, through the zone office, to developers/enterprises not later than the 3rd working day after the receipt of billings from the respective service providers. Payment due date for this billings shall be within 15 days after the company’s receipt of the billing.  
* Monthly billing for administrative fees shall be sent by Head Office, through the zone office, to developers and IT Parks not later than the 3rd working day of the month. Payment due date for this billings shall be on the 15th day of the month.  
* Annual billings shall be due for payment on the 15th day of January of the year.  

Penalty for late payment  

* A 1% monthly penalty for late payment shall be automatically applied to the next bill of water, sewerage, garbage collection fees and other monthly fees.  

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**PEZA Memorandum Order No. 2016-026** harmonizes the billing procedures observed by the finance group/units across all zones.
Reporting

- Collection of foreign currency shall be reported in the Report of Collections using the BSP-prescribed exchange rate on the date it was received.

Garbage Collection Fee

- The garbage collection fee for banks and non-PEZA enterprises in the Public Zones shall be billed at PHP200 per month.

**PEZA Memorandum Order No. 2016-032 dated 7 September 2016**

Guidelines on the Filing of Request for the Refund of PEZA fees:

- **Letter of application for refund**
  1. The Letter-Application shall state the reason for the request and shall be addressed to the Deputy Director General for Finance and Administration (“DDG-FA”).
  2. The Letter-Application shall be accompanied by the following supporting documents:
     - Endorsement from the zone/unit that processed the requested document or service paid;
     - Certified copy of the unprocessed/disapproved document or request, if applicable; and
     - Original copy of the Official Receipt (OR).

- **Process on the Filing of the Request**
  1. The Applicant shall submit the letter-application with the supporting documents to the DDG-FA within 60 days from the date of payment.
  2. Upon approval of the request, the endorsing zone/unit shall prepare a Disbursement Voucher (DV) and the Budget Utilization Request (BUR).
  3. The DV, BUR, and supporting documents shall be forwarded to the Finance Group for processing of check/s.

- **Processing fee**
  1. The grant of refund shall be net of a processing fee, which shall be equivalent to whichever is higher between (a) PHP180 or (b) 20% of amount of the refund requested, but shall in no case exceed PHP1,200.00.

**BOI Issuance**

**BOI Memorandum Circular No. 2016-003 dated 15 July 2016**

- The 2014 IPP encourages the regional dispersal of economic activities to the countryside.
- Under the Omnibus Investments Code of 1987, projects in identified LDAs are entitled to: (i) pioneer incentives; and (ii) additional deduction from taxable income equivalent to 100% of expenses incurred in the development of necessary and major infrastructure facilities unless otherwise specified in the

Memorandum Circular No. 2016-003 includes 134 new cities and municipalities to the list of LDAs entitled to pioneer incentives under the 2014 IPP.
In line with the government’s rehabilitation strategy for calamity-stricken areas, one hundred thirty four (134) new cities/municipalities were included in the list of LDAs under Annex “A” of the 2014 IPP.

The following are the new cities/municipalities in the LDA list:

<table>
<thead>
<tr>
<th>Province</th>
<th>New Municipalities/Cities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leyte</td>
<td>Tacloban City, Ormoc City, Baybay City, Abuyog, Alang-Alang, Albuera, Batbangon, Barugo, Buraen, Calubian, Capoocan, Carigara, Dagami, Dulag, Isabel, Jaro, Javier (Bugho), Kananga, Leyte (town), Mahaplag, Matag-ob, Palo, Palompon, San Isidro, San Miguel, Tabango, Tanauan, Villabá</td>
</tr>
<tr>
<td>Eastern Samar</td>
<td>Balangiga, Guiuan, Llorente, Maydolong</td>
</tr>
<tr>
<td>Western Samar</td>
<td>Basey, Daram, Santa Rita, Villareal</td>
</tr>
<tr>
<td>Biliran</td>
<td>Naval</td>
</tr>
<tr>
<td>Southern Leyte</td>
<td>Silago</td>
</tr>
<tr>
<td>Iloilo</td>
<td>Passi City, Ajuy, Alimodian, Anilao, Badiangan, Balasan, Banate, Barotac Nuevo, Barotac Viejo, Cabatuán, Calinog, Carles, Concepcion, Dingle, Dueñas, Dumangas, Estancia, Januay, Lambunao, Lemory, Maasin, New Lucena, Pototan, San Dionisio, San Enrique, Sara, Zarray, President, Roxas</td>
</tr>
<tr>
<td>Capiz</td>
<td>Roxas City, Cuartero, Ivisan, Jamindan, Panay, Panit-an, Sapi-an, Sigma</td>
</tr>
<tr>
<td>Dao</td>
<td>Dumalag, Dumarao, Ma-ayon, Mambusao, Pilar, Pontevreda, Tapaz, Sebasté</td>
</tr>
<tr>
<td>Antique</td>
<td>Barbaza, Bugasong, Caluya, Culas, Lau-an, Pandan, Patnongan, San Remigio, Tibiao, Valderrama</td>
</tr>
<tr>
<td>Aklan</td>
<td>Altavas, Balete, Banga, Batan, Ibajay, Kalibo, Libacao, Matalag, Makato, Malay, Malinao, Nabas, New, Washington, Numancia</td>
</tr>
<tr>
<td>Cebu</td>
<td>Bantayan, Bogo City, Borbon, Danbanyantan, Madrid ejos, Medlin, Poro, San Francisco, San Remigio, Soogod, Santa Fe, Tabogon, Tabuelan, Tuburan</td>
</tr>
<tr>
<td>Negros Occidental</td>
<td>Cadiz City, Escalante City, Sagay City, Silay City, Victorias City, Enrique B. Magalona, Manapla</td>
</tr>
<tr>
<td>Palawan</td>
<td>Busuanga, Coron, Culion, Cuyo</td>
</tr>
<tr>
<td>Masbate</td>
<td>Balud</td>
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<tr>
<td>Dinagat Islands</td>
<td>Loreto</td>
</tr>
</tbody>
</table>
BLGF Opinions

BLGF Opinion No. 019-2016 dated 3 August 2016

Facts:

S Corp. is a domestic corporation engaged in the business of manufacturing and selling electronic products. Its principal office and manufacturing plant is located in Muntinlupa City. S Corp. also sells products nationwide through its authorized dealers who purchased products from S Corp.’s head office in Muntinlupa City. These purchases made by the dealers are dispatched from, invoiced, and recorded in Muntinlupa City.

Issue:

Whether S Corp. is liable for local business tax (“LBT”) only in Muntinlupa City for its sale of products to its dealers nationwide and not in the city or municipality where its products may have been delivered.

Ruling:

Under Section 150 of the Local Government Code (“LGC”), in order for an entity to be liable for LBT in the city or municipality other than where its principal office is located, certain conditions must be met:

a. It must conduct the operations of the business as an extension of the principal office; and
b. The branch or sales office should likewise record the sale or transaction.

Considering that the sales made by S Corp. to its dealers nationwide are duly invoiced and recorded in Muntinlupa City where its principal office is located, S Corp. is not liable for LBT in the city or municipality where its dealers operate. The second paragraph of Section 150 of the LGC provides that “[i]n cases where there is no such branch or sales outlet in the city or municipality where the sale or transaction is made, the sale shall be duly recorded in the principal office and the taxes shall accrue and shall be paid to such city or municipality.”

BLGF Opinion No. 021-2016 dated 3 August 2016

Facts:

ABCD Fuel Station, a gasoline retailing station located in Caloocan City, is claiming exemption from payment of local business tax (“LBT”) citing Local Finance Circular No. 1-05 dated December 8, 2005 (“LFC No. 1-05”) prescribing the guidelines governing the powers of local government units (“LGU”) to impose taxes, fees and charges on petroleum products pursuant to Sections 133 (e), (h) and (j) of the Local Government Code (“LGC”), and its implementing rules.

Issue:

Whether Caloocan City may collect business tax from ABCD Fuel Station.
Ruling:

No. Section 3 of LFC No. 1-05 provides:

Section 3. Exemption from Local Taxation. - (a) Pursuant to Section 133 (h) of the Local Government Code and Article 221 (h) of the IRR, local government units are prohibited from imposing taxes, fees, and charges on petroleum products, which include the sale of petroleum products by gasoline stations, dealers, resellers, or retailers. Xxx

(c) Taxes, fees, charges and other impositions shall not be levied on petroleum products carried into or out of or passing through the territorial jurisdictions of local government units pursuant to Section 133 (e) of the Code.

Further, Sections 133 (e), (h) and (j) of the LGC, as implemented by Article 221 (e), (h) and (j) of the Implementing Rules and Regulations (“IRR”) provide as common limitation on the taxing powers of local government units to levy taxes, fees or charges on petroleum products.

Moreover, Section 133 (h) of the LGC should be read in relation to Section 143 (h) thereof as implemented under Article 232 (h) of the IRR that “xxx in line with the existing national policy, any business engaged in the production, manufacture, refining, distribution or sale of oil, gasoline and other petroleum products shall not be subject to any local tax imposed under this provision.”

Clearly, based on the foregoing provisions, LGUs are prohibited from imposing taxes on any business engaged in the production, manufacture, refining, distribution or sale of petroleum products.

BLGF Opinion No. 024-2016 (2nd indorsement) dated 3 August 2016

Facts:

X Corp., a private contractor participating in the housing project of the government for the victims of Typhoon Yolanda, is claiming exemption from payment of local business taxes and regulatory fees and charges under Sections 19 and 20 of Republic Act (“RA”) No. 7279 (Urban Development and Housing Act of 1992) and Administrative Order No. 44 dated October 28, 2014 (“AO No. 44”), respectively.

Issue:

Whether private contractors participating in the socialized housing projects of the government for the victims of Typhoon Yolanda can claim the same privilege or exemption granted under RA 7279 to the National Housing Authority (“NHA”).

Ruling:

No. Section 7 of AO No. 44 provides that “[p]ursuant to Section 19 and 20 of Republic Act No. 7279, all socialized housing and resettlement projects shall be exempt from the required fees and charges for the issuance of clearances, certifications, permits or licenses with the exception of documentary stamp tax (DST) when one party is exempt, xxx”.

On the other hand, Section 19 of RA 7279 provides that the NHA, being the primary government agency in charge of providing housing for the underprivileged and homeless individuals, shall be exempt from the payment of all fees and charges of any kinds, whether local or national, including real estate taxes.
Further, Section 20 of the same law provides clear exemption from the payment of transfer tax for the private sector participating in socialized housing project of the government. It does not speak of incentive granting exemption from the payment of business tax.

**Court Decisions**

**Commissioner of Internal Revenue vs. Kepco Ilijan Corporation**

Supreme Court *En Banc*, G.R. No. 199422 promulgated 21 June 2016

**Facts:**

Kepco Ilijan Corporation (“KIC”) filed a claim for refund with the Bureau of Internal Revenue (BIR) of input tax incurred in 2000 from its importation and domestic purchases of capital goods and services preparatory to its production and sales of electricity to the National Power Corporation.

Due to the inaction of the Commissioner of Internal Revenue (CIR) on its claim, KIC filed a Petition for Review with the Court of Tax Appeals (CTA).

While the CIR filed her Answer, she failed to file the requisite Memorandum despite notice. The CTA First Division rendered its decision finding KIC entitled to the refund.

As the CIR did not contest the decision, it became final and executory. The CTA issued an Entry of Judgment on 10 October 2009 and a corresponding Writ of Execution on 16 February 2010.

On 11 April 2011, the CIR filed a Petition for Annulment of Judgment with the CTA *En Banc* and claimed that she only found out about the decision and the issuance of the writ when the Office of the Deputy Commissioner for Legal and Inspection Group received a Memorandum from the BIR Appellate Division recommending the issuance of a Tax Credit Certificate in favor of KIC.

The CIR, in her petition, prayed that the decision of the CTA First Division be annulled and set aside, that the Entry of Judgment and the Writ of Execution be nullified, and that the CTA First Division be directed to re-open the case to allow the CIR to submit her Memorandum setting forth her substantial legal defenses.

After the CTA *En Banc* dismissed the petition, the CIR filed with the Supreme Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, where she asked for the reversal of the resolutions of the CTA *En Banc*.

**Issue:**

Does the CTA *En Banc* have jurisdiction over the CIR’s Petition for Annulment of Judgment of the CTA First Division?

**Ruling:**

No, the CTA *En Banc* does not have jurisdiction over the CIR’s petition.

Annulment of Judgment is provided for in Rule 47 of the Rules of Court and is based solely on the grounds of extrinsic fraud and lack of jurisdiction.
It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annullment is a remedy in law independent of the case where the judgment sought to be annulled is rendered. It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case as, in fact, the case it seeks to annul is already final and executory. It is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.

Annullment of judgement involves the exercise of original jurisdiction, as expressly conferred on the Court of Appeals (CA) by Batas Pambansa Bilang 129. It implies power by a superior court over a subordinate one, wherein the CA may annul a decision of the Regional Trial Court (RTC), or where the RTC may annul a decision of the municipal or metropolitan trial court.

The laws creating the CTA and expanding its jurisdiction and the CTA’s own rules of procedure do not provide for a scenario where the CTA sitting en banc is asked to annul a decision of one of its divisions.

Similarly, the Supreme Court (SC) or the CA may sit and adjudicate cases in divisions and such adjudication is regarded as the decision of the Court itself. The divisions are not considered separate and distinct courts but are divisions of one and the same court. There is no hierarchy of courts within the SC and the CA. The SC sitting en banc is not an appellate court vis-à-vis its divisions and it exercises no appellate jurisdiction over the latter.

It appears contrary to the features of a collegial court, sitting En Banc, that it may be called upon to annul a decision of one of its Divisions which has become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court. It also betrays the principles that judgments must attain finality as a court that can revisit its own final judgments leaves the door open to endless reversals or modifications which is anathema to a stable legal system.

A direct petition for annulment of a judgment of the CTA to the SC is also unavailing since there is no identical remedy with the SC to annul a final and executory judgment of the CA. Republic Act No. 9282 puts the CTA on the same level as the CA so that if the latter’s judgments may not be annulled before the SC, then the CTA’s own decisions similarly may not be so annulled.

A proper remedy would have been an original action for Certiorari directly before the SC and not before the CTA En Banc. Certiorari is availed of when there is no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law, such as in the present case.

The petition invoked the gross and palpable negligence of CIR’s counsel which is allegedly tantamount to its being deprived of due process and its day in court as party-litigant. As it also invokes lack of jurisdiction of the CTA First Division to entertain the petition filed by KIC, the proper remedy should have been a petition for certiorari under Rule 65, an original or independent action premised on the CTA’s having acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.
The petition could have been filed directly with the SC without any need to file a motion for reconsideration with the CTA Division or En Banc as the case appears to fall under some of the recognized exceptions to the rule requiring such a motion as a prerequisite, namely, where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government, where petitioner was deprived of due process and there is extreme urgency for relief, and where the proceedings in the lower court are a nullity for lack of due process.

Failure of the CIR to avail of this remedy and mistaken filing of the wrong petition are fatal to its case and leaves the CTA First Division's decision as final and executory.

City of Makati vs. Metro Pacific Investments Corporation
CTA AC No. 143 promulgated 20 July 2016

Facts:

Petitioner City of Makati (Makati) assessed respondent Metro Pacific Investments Corporation (MPIC) for local business tax (LBT) covering the year 2010. On 30 January 2011, MPIC paid the LBT assessment.

On 25 January 2013, MPIC filed an administrative claim for refund with Makati arguing that, as a holding company, its passive income covering interest, rental, dividend, and gain on sale of fixed assets in 2010 do not constitute gross receipts that are subject to LBT under Section 131(h) of the Local Government Code (LGC) or Section 1B.01 (g) of the Makati Revenue Code (MRC), as amended.

On 29 January 2013, MPIC filed with the Makati Regional Trial Court (RTC) a claim for refund of erroneously paid LBT for the year 2010. The RTC granted the refund claim in the form of cash. Makati filed a Petition for Review with the CTA.

Issues:

1. Is MPIC's interest, rental, and dividend income, as well as gain on sale of fixed assets subject to LBT?
2. Can the refund claim be granted in cash?

Ruling:

1. No. The passive income of a holding company does not form part of the gross receipts subject to LBT.

The CTA ruled that MPIC is a holding company. By definition of the MRC, a holding company confines its activities primarily to the management of its subsidiaries.

Section 1B.01 of the MRC defines gross sales or gross receipts to “include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged for materials supplied with the services and deposits or advance payments actually and constructively received during the taxable year for the services performed or to be performed for another person.”

Makati misconstrued the provisions of the MRC in imposing LBT on the interest, rental, and dividend income, as well as the gain on sale of fixed assets, as these do not constitute gross receipts of a holding company.
2. Yes. MPIC’s refund claim can be granted in cash.

The CTA agrees with the RTC that Section 7B.14 of the MRC clearly provides that the prohibition on the recovery in the form of cash of any tax erroneously or illegally collected only applies to tax credits and not to tax refunds.

**Bloombery Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares**

Supreme Court (Third Division), G.R. No. 212530 promulgated 10 August 2016

**Facts:**

Bloombery Resorts and Hotels, Inc. (Bloombery) was granted by the Philippine Amusement and Gaming Corporation (PAGCOR) a provisional license to establish and operate an integrated resort and casino complex at the Entertainment City project site of PAGCOR.

Republic Act (R.A.) No. 9337 amended Section 27(C) of the National Internal Revenue Code of 1997 (or Tax Code) and excluded PAGCOR from the enumeration of government-owned or controlled corporations (GOCCs) exempt from paying corporate income tax.

In implementing R.A. No. 9337, respondent Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 33-2013 dated 17 April 2013 which declared that PAGCOR, in addition to the five percent (5%) franchise tax on its gross revenue, is now subject to corporate income tax under the Tax Code.

Moreover, RMC No. 33-2013 provides that PAGCOR's contractees and licensees are likewise subject to income tax under the Tax Code.

Aggrieved, as it is now being considered liable to pay corporate income tax in addition to the 5% franchise tax, Bloombery filed a Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court to annul RMC No. 33-2013 and to enjoin the BIR from implementing the same.

**Issue:**

Are contractees and licensees of PAGCOR liable for income tax, in addition to the 5% franchise tax on its gross revenues?

**Ruling:**

No, contractees and licensees of PAGCOR are not liable for income tax, in addition to the 5% franchise tax, on their gross revenues from casino operations.

The PAGCOR Charter provides that “(N)o tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this franchise from the Corporation (PAGCOR), nor shall any form of tax or charge attach in any way to the earnings of the Corporation except a franchise tax of 5% of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.”

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The preferential tax treatment of PAGCOR under its Charter inures to the benefit of and extends to its contractees and licensees.

Hence, PAGCOR’s contractees and licensees are liable to a 5% franchise tax on their revenues from casino operations, and to income tax on their revenues from other related services.
In PAGCOR vs. The Bureau of Internal Revenue, et.al. promulgated on 24 November 2014, the Supreme Court ruled that Section 1 of R.A. No. 9337, which excluded PAGCOR from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. However, the Court clarified that PAGCOR's privilege of paying five percent (5%) franchise tax in lieu of all other taxes with respect to its income from gaming operations is not repealed or amended by Section 1(c) of R.A. No. 9337. Hence, PAGCOR's income from gaming operations is subject to the 5% franchise tax only, while PAGCOR's income from other related services is subject to corporate income tax only.

The PAGCOR Charter additionally provides that “(T)he exemption herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation (PAGCOR) or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.”

Hence, all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from revenues derived from the operation of casinos.

The contractees and licensees shall pay corporate income tax only on their income derived from other related services.

Respondent BIR is ordered to cease and desist from implementing the provisions of RMC No. 33-2013 which imposes corporate income tax on Bloomberry's income derived from its gaming operations.

Priscila J. Cruz and Jocelyn Cruz Delos Reyes (in substitution of the deceased Julio S. Cruz) vs. Commissioner of Internal Revenue
CTA (First Division) Case No. 8103 promulgated 2 September 2016

Facts:

Respondent CIR assessed Petitioners Priscila J. Cruz and Jocelyn Cruz Delos Reyes (Cruz Family) for deficiency income taxes for taxable years 1992 to 2004. The assessment was pursuant to the Letter of Authority (LOA) issued by the BIR National Investigation Division to audit the taxpayers for taxable years 2004 and Unverified Prior Years (UPY). The Cruz Family filed a protest against the assessments, which was denied by the CIR. The Cruz Family filed a Petition for Review with the CTA.

At the CTA, the Cruz Family questioned, among others, the validity of the LOA authorizing the review of their books of accounts for “unverified prior years.” They also argued that they can no longer be assessed for 1992 to 2004 after they have availed of tax amnesty in 2005 under Republic Act 9480. The CIR, on the other hand, argued that the Cruz Family were not deprived of their right to due process even as the deficiency income tax assessment notices covered 13 years, as they were properly informed of the findings of the BIR. It also noted that there was no tax amnesty return filed, thus, the Petitioners cannot claim immunity from deficiency tax assessments for 1992 to 2004.
Issues:

1. Is a Letter of Authority covering “Unverified Prior Years” valid?

2. Can the benefits of a tax amnesty granted to a corporation extend to its stockholders?

Rulings:

1. No. The assessment notices for taxable years 1992 to 2003 are null and void for lack of a valid LOA.

   There must be a grant of authority before a revenue officer can conduct an examination of the taxpayer's books of accounts and other accounting records for the purpose of determining the correct tax rule. In this case, the revenue officers conducted the examination on the strength of an LOA covering 2004 to Unverified Prior Years, without any specification as to the years. The issuance of an LOA covering “unverified prior years” is a prohibited practice under Section C of Revenue Memorandum Order No. 43-90 and does not confer any authority to audit the taxpayer's books outside the specific taxable year mentioned therein. However, the assessment notice for 2004 is valid.

2. No. Records show that the Cruz Family were major stockholders of J.S. Cruz Construction Development Corporation (“Cruzcon”), which supposedly availed of tax amnesty in 2005. The CTA held that even assuming that a tax amnesty was availed by Cruzcon, the benefits and privileges granted to it cannot inure to the benefit of the Cruz Family.

   Section 6 of RA 9480 provides that only those who availed of the tax amnesty and have fully complied with all its conditions shall be entitled to immunities and privileges. In the instant case, the rights and privileges granted to a corporation will not extend to its stockholders in their personal capacity considering that a corporation has a personality separate and distinct from its shareholders.