

July 2014

# Tax bulletin



**SGV**  
Building a better  
working world

A member firm of Ernst & Young Global Limited

# Highlights

## BIR Rulings

- ▶ For a homeowners' association to claim tax exemption on association dues, membership fees and other charges it collects, the certification issued by the local government unit (LGU) concerned should specifically state that the LGU lacks the resources to provide basic services. **(Page 4)**
- ▶ A cooperative is not considered a company the capital of which is divided into shares, as contemplated under the RP-Netherlands Tax Treaty, for purposes of the 10% preferential tax rate on dividends. **(Page 4)**

## BIR Issuances

- ▶ Revenue Regulations (RR) No. 5-2014 amends RR No. 17-2013 and prescribes additional rules on the 10-year retention period for books of accounts and other accounting records. **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 57-2014 clarifies the provisions of RR No. 1-2013 on the use of Electronic Tax Remittance Advice (eTRA). **(Page 6)**
- ▶ RMC No. 58-2014 publishes the full text of the Supreme Court Resolution dated June 25, 2014 on withholding taxes on the Special Allowances for the Judiciary. **(Page 7)**
- ▶ RMC No. 59-2014 revokes the provisional accreditation issued to deemed-accredited printers pursuant to RR No. 15-2012 in relation to RMC No. 06-2014. **(Page 7)**
- ▶ RMC No. 60-2014 clarifies the applicability of RMC No. 8-2014 to General Professional Partnerships (GPPs) in relation to RMC No. 3-2012. **(Page 8)**
- ▶ Revenue Memorandum Order (RMO) No. 27-2014 amends certain provisions of RMO No. 10-2005 relative to the accreditation of Cash Register Machines (CRMs), Point of Sale (POS), and other sales machines. **(Page 8)**
- ▶ BIR Memorandum dated July 23, 2014 clarifies certain rules for the Issuance of the BIR Importer Clearance Certificate (ICC) and Broker Clearance Certificate (BCC). **(Page 9)**

## BOC Issuances

- ▶ This BOC Memorandum further clarifies the implementation of Department Order (DO) No. 12-2014 dated February 6, 2014, as amended by DO Nos. 18-2014 dated February 26, 2014 and 46-2014 dated June 26, 2014. **(Page 10)**
- ▶ The BOC AMO announces that all importers and customs brokers who have complied with the new accreditation rules but whose original accreditation expires beyond August 2014 will still be allowed to continue processing their shipments without further action against them by the BOC-AMO. **(Page 10)**

## BOI Issuance

- ▶ BOI Circular No. 2014-01 amends the grounds for cancellation of BOI registration. **(Page 10)**

## **PEZA Issuance**

- ▶ PEZA Memorandum Circular (MC) No. 2014-017 advises all PEZA-registered enterprises, including those who were issued Certificates of Non-Coverage (CNCs) by the Department of Natural Resources-Environmental Management Bureau (DENR-EMB), of the requirements of DENR Administrative Order 2013-22, also known as "Revised Procedures and Standards for the Management of Hazardous Wastes" for small quantity generators of hazardous wastes. **(Page 11)**

## **BSP Issuances**

- ▶ Circular No. 839 amends Sections 1397 and 2397 of the Manual of Regulations for Banks (MORB) to include the adoption of a prudential real estate stress test (REST) limit for universal banks (UBs), commercial banks (KBs) and thrift banks (TBs), on a solo and consolidated basis, on their aggregate real estate exposures (REEs). **(Page 12)**
- ▶ Circular No. 840 amends the guidelines on the qualifications of a director of banks and non-bank financial institutions. **(Page 12)**
- ▶ Circular No. 841 amends Appendix 45 (Notes on Microfinance) of Section X361 of the MORB. **(Page 13)**

## **SEC Issuances**

- ▶ SEC MC No. 14 amends the Revised Code of Corporate Governance to exempt close financing companies from electing independent directors to their board. **(Page 13)**
- ▶ SEC MC No. 15 requires foundations to file a Sworn Statement and Certificate of Existence of Project (CEP) separately from financial statements. **(Page 13)**
- ▶ A corporation engaged in digital media, which includes marketing of the same to the public, is considered engaged in mass media activities and may not be owned by a foreigner. **(Page 14)**
- ▶ A corporation acquiring ash vaults is not required to register the certificates of ownership of said vaults where no profits are expected or derived by the corporation from such acquisition. **(Page 14)**
- ▶ A religious corporation may exist perpetually or for an indefinite period of time when its Articles of Incorporation do not specify a corporate term. **(Page 15)**
- ▶ When a condominium corporation is engaged in the acquisition and ownership of land, the condominium corporation may not elect or appoint foreigners to management positions but it may allow foreigners to occupy up to 40% of the seats available in the board of directors. **(Page 15)**

## **Court Decisions**

- ▶ For VAT purposes, acting as a director of a corporation is not considered rendering a service "in the course of trade or business." **(Page 16)**
- ▶ A non-stock, non-profit organization or government entity is liable to pay VAT on its sale of goods or services, even if there is no profit. **(Page 17)**

## **BIR Rulings**

### **BIR Ruling No. 274-14 dated July 2, 2014**

---

For a homeowners' association to claim tax exemption on association dues, membership fees and other charges it collects, the certification issued by the LGU concerned should specifically state that the LGU lacks the resources to provide basic services.

---

#### **Facts:**

A Co., a registered homeowners' association in Quezon City, renders basic services to its members for which it collects association dues. A Co. requested for a confirmatory ruling for tax exemption under Republic Act (RA) No. 9904, otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations", as required in RMC No. 9-2013. To support its claim, A Co. secured a certification from the Office of the Mayor of Quezon City stating that basic community services are exclusively provided by A Co. to its members.

#### **Issue:**

Is A Co. exempt from taxes on the association dues it collects from the homeowners?

#### **Ruling:**

No, because the certification issued by the Office of the Mayor of Quezon City did not indicate that the Quezon City government lacks the resources to provide basic community services.

### **BIR Ruling No. ITAD 126-14 dated July 22, 2014**

---

A cooperative is not considered a company the capital of which is divided into shares, as contemplated under the RP-Netherlands Tax Treaty, for purposes of the 10% preferential tax rate on dividends.

---

#### **Facts:**

N Co. is a cooperative which is a resident of the Netherlands, owning 18% of the shares in P Co., a domestic corporation. N Co. filed a request for confirmation that the dividends received from P Co. are subject to the preferential tax rate of 10% under the RP-Netherlands tax treaty.

#### **Issue:**

Are the dividends subject to the 10% preferential tax rate?

#### **Ruling:**

No. Under the RP-Netherlands Tax Treaty, dividends paid by a domestic corporation to a resident of the Netherlands are subject to the preferential tax rate of 10% on dividends, if the recipient in the Netherlands is a company the capital of which is divided into shares and holds directly at least 10% of the capital of the domestic corporation. However, since N Co. is a cooperative the capital of which is not divided into shares, the dividends from P Co. are not subject to the 10% tax rate, and are instead subject to the 15% tax rate.

## **BIR Issuances**

---

RR No. 5-2014 amends RR No. 17-2013 and prescribes additional rules on the 10-year retention period for books of accounts and other accounting records.

---

### **Revenue Regulations No. 5-2014 dated July 30, 2014**

- ▶ Within the first five years of the 10-year retention period, the taxpayer shall retain the hard copies of the books of accounts, including subsidiary books and other accounting records.

- ▶ After the five-year period to retain hard copies, the taxpayer may retain only an electronic copy of the hard copy in an electronic storage system, which complies with the requirements of these regulations.
- ▶ The independent Certified Public Accountant (CPA) who audited the records and certified the financial statements of the taxpayer shall also maintain and preserve electronic copies of the audited and certified financial statements, including the audit working papers, for a period of 10 years from the due date of filing the annual income tax return or the actual date of filing thereof, whichever comes later.
- ▶ An electronic storage system to be used by the taxpayer or independent CPA for preserving books of accounts and other accounting records shall:
  1. Ensure an accurate and complete transfer of the images of the hard copy of the books of accounts, including subsidiary books and other accounting records to an electronic storage media; and
  2. Index, store, preserve, retrieve, and reproduce the electronically stored images of the hard copy of the books of accounts, subsidiary books and other accounting records.
- ▶ The electronic storage system must include:
  1. Reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system;
  2. Reasonable controls to prevent and detect any unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books of accounts, subsidiary books and other accounting records;
  3. An inspection and quality assurance program evidenced by regular evaluations of the electronic storage system, including periodic checks of electronically stored books of accounts, subsidiary books and other accounting records;
  4. A retrieval system that includes an indexing system; and
  5. The ability to reproduce legible and readable hard copies of electronically stored books of accounts, subsidiary books and other accounting records.
- ▶ All books of accounts, subsidiary books and other accounting records reproduced by the electronic storage system must exhibit a high degree of legibility and readability when displayed on a video display terminal and when reproduced in hard copy.
- ▶ For each electronic storage system used, the taxpayer must maintain and make available to the BIR, upon request, complete descriptions of the electronic storage system, including all procedures relating to its use, and the '*Indexing system.*'
- ▶ An '*indexing system*' is a system that permits the identification and retrieval for viewing or reproducing of relevant books of accounts, subsidiary books and other accounting records maintained in an electronic storage system.
- ▶ The requirement to maintain an indexing system does not require that a separate electronically stored books and records description database be maintained, if comparable results can be achieved without a separate description database.

- ▶ The Revenue District Office which has jurisdiction over the taxpayer may periodically initiate tests of a taxpayer's electronic storage system.
  1. The Revenue Officer duly authorized to conduct the test must inform the taxpayer of the test results within three days from its conclusion.
  2. Any adverse finding may be appealed by the taxpayer to the Regional Director within 10 days from receipt of the results.
  3. The Regional Director shall then resolve the appeal within 30 days from the submission of the appeal.
- ▶ Because the test of a taxpayer's electronic storage system does not involve determining tax liability of a taxpayer for a particular taxable period, the same does not qualify as an "examination" or "inspection" of the books and records within the meaning of Section 235 of the Tax Code.
- ▶ A taxpayer's electronic storage system that fails to meet the requirements of these regulations shall maintain and preserve the original hard copy of their books of accounts, subsidiary books and other accounting records.
- ▶ These Regulations shall take effect 15 days after publication in at least two newspapers of general circulation.

*(Editor's Note: RR No. 5-2014 was published in the Manila Bulletin and The Philippine Star on August 1, 2014.)*

---

RMC No. 57-2014 clarifies the provisions of RR No. 1-2013 on the use of eTRA.

---

**Revenue Memorandum Circular No. 57-2014 dated July 15, 2014**

- ▶ All National Government Agencies (NGAs) are mandated to enroll and use the Electronic Filing and Payment System (eFPS) in filing their applicable tax returns within the prescribed periods as follows:

BIR Form No.	Description	Due Date for Filing and Payment of the Tax Due
1601-C	Monthly Remittance Return of Income Taxes Withheld on Compensation	On or before the 10 <sup>th</sup> day following the month in which withholding was made, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the succeeding year.
1601-E	Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (Except for transactions involving onerous transfer of real property classified as ordinary asset)	On or before the 10 <sup>th</sup> day following the month in which withholding was made, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the succeeding year.
1601-F	Monthly Remittance Return of Final Income Taxes Withheld	On or before the 10 <sup>th</sup> day following the month in which withholding was made, except for taxes withheld for the month of December of each year, which shall be filed on or before January 15 of the succeeding year.
1603	Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other than Rank and File	On or before the 10 <sup>th</sup> day of the month following the quarter in which the withholding was made.
1600	Monthly Remittance Return of VAT and Other Percentage Taxes Withheld	On or before the 10 <sup>th</sup> day of the month in which withholding was made.

- ▶ For all NGAs exercising proprietary functions, the tax returns enumerated below shall also be filed within the periods indicated, using the eFPS facility:

BIR Form No.	Description	Due Date for Filing and Payment of the Tax Due Thereon
1702	Annual Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayers	On or before the 15 <sup>th</sup> day of the fourth month following the close of the taxable year (calendar or fiscal)
1702Q	Annual Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayers	Within 60 calendar days following the close of each of the first three quarters of the taxable year (calendar or fiscal)
2550M	Monthly VAT Declaration	On or before the 20 <sup>th</sup> day after the close of the month
2550Q	Quarterly VAT Return	On or before the 25 <sup>th</sup> day after the close of the taxable quarter
2551M	Monthly Percentage Tax Return	On or before the 20 <sup>th</sup> day after the close of the month
2000	Documentary Stamp Tax Return	On or before the 5 <sup>th</sup> day after the close of the month when the transaction subject to DST occurs

- ▶ The taxes due shall be paid through the bank debit system of the eFPS' Authorized Agent Banks where the NGA is enrolled, and not through the eTRA system.
- ▶ Because the eTRA system is used as a platform only for withholding taxes, manual TRA forms are no longer needed and NGAs are prohibited from using them, unless expressly allowed by the Commissioner of Internal Revenue under exceptional circumstances.

#### **RMC No. 58-2014 dated July 22, 2014**

---

RMC No. 58-2014 publishes the full text of the Supreme Court Resolution dated June 25, 2014 on withholding taxes on the Special Allowances for the Judiciary.

---

The Supreme Court resolved to approve the withholding and remittance of the correct amount of tax on the Special Allowance for the Judiciary (SAJ), as follows:

- ▶ On the monthly SAJ of incumbent justices, judges and judiciary officials with the equivalent rank of a Court of Appeals justice or Regional Trial Court judge;
- ▶ On the monthly special allowance in an amount equivalent to the SAJ being received by judiciary officials not included under the above item; and
- ▶ On the additional allowance from the surplus of the SAJ Fund that may be authorized to be given to judiciary officials and employees who are not direct beneficiaries under RA No. 9227.

---

RMC No. 59-2014 revokes the provisional accreditation issued to deemed-accredited printers pursuant to RR No. 15-2012 in relation to RMC No. 06-2014.

---

#### **RMC No. 59-2014 dated July 22, 2014**

The provisional accreditation of deemed-accredited printers is considered revoked effective June 30, 2014. However, printers may still apply for accreditation following the same accreditation process prescribed in RMO No. 13-2013.

---

RMC No. 60-2014 clarifies the applicability of RMC No. 8-2014 to GPPs in relation to RMC No. 3-2012.

---

#### **Revenue Memorandum Circular No. 60-2014 dated July 24, 2014**

The requirement to present a tax exemption certificate or ruling as prescribed in RMC No. 8-2014 does not apply to General Professional Partnerships (GPPs). As provided in RMC No. 3-2012, income payments made to a GPP in consideration for its professional services are not subject to income tax and, consequently, to withholding tax.

---

RMO No. 27-2014 amends certain provisions of RMO No. 10-2005 relative to the accreditation of CRMs, POS, and other sales machines.

---

#### **Revenue Memorandum Order No. 27-2014 dated July 21, 2014**

- ▶ Pertinent portions of Paragraph V, sub-paragraph C, of RMO No. 10-2005 are amended to read, as follows:

#### **“V. REGISTRATION ON THE USE OF SALES MACHINE MODEL/SYSTEM**

x x x

#### **C. *POLICY and PROCEDURES of REVOCATION of Registration/ POSTAUDIT of PROVISIONAL PERMIT to USE***

1. The Bureau reserves the right to inspect any machine/system registered at any time during store hours, to verify compliance with specifications of a valid machine/system, the data requirements of the machine generated invoice, the conditions for use of the machines as well as other regulations that may be subsequently issued governing use of machines. The taxpayer-users and store personnel are thus required, under the authority granted for the use of machine/system, to present the machine for inspection and reading by the concerned revenue personnel.

If during the conduct of any Tax Compliance Verification Drive (TCVD), post evaluation, Cash Register Machines/Point of Sale (CRM/POS) machines reading operations, surveillance, stocktaking, or audit, the taxpayer-user or store personnel shall refuse to permit an inspection or reading of the CRM/POS or other sales machine to be made by the concerned revenue officer(s) and/or to provide backend report from servers, the refusal shall be a ground for the concerned revenue officer(s) to immediately seal the CRM/POS or other sales machine either by placing the necessary seal or lock.

The seal or lock shall not be removed until such time that concerned revenue officer(s) is allowed to inspect or read the CRM/POS or other sales machine and/or is provided with the backend report. The taxpayer-user or store personnel shall be given forty-eight (48) hours from demand within which to allow the concerned revenue officer(s) to provide the backend report. After the lapse of this 48 hour period, the continued refusal shall be a ground for the revocation of the permit to use the CRM/POS and other sales machine.

x x x

5. If during conduct of TVCD, post evaluation, CRM/POS machines reading operations, surveillance, stocktaking, or audit, the following findings have been observed, the permit to use CRM/POS and other sales machines shall be subject for revocation:
  - a) Tampering of sales data/integrity of the data and/or software specification/features to alter/avoid the recording of a sale transaction;



- b) Any major repairs, upgrading, integration and modification/alteration without prior notification and approval by the BIR office concerned;
  - c) Refusal of the taxpayer-user or store personnel to allow the concerned revenue officer(s) to inspect or read the CRM/POS or other sales machine and/or to provide backend report from servers after 48 hours from demand;
  - d) Any violation(s) on the policies and procedures for registration under RR 11-2004 and this order.
6. The Revenue Officer(s) who conducted the TCVD, post evaluation, CRM/POS machines reading operations, surveillance, stocktaking, or audit shall:
- a) Immediately seal the CRM/POS or other sales machine, either by placing the necessary seal or lock, based on the grounds set forth in Paragraph V, Sub-paragraph C(1) and C(5)(a),(b), and (d) above;
  - b) Immediately submit a report and recommendation to the RDO for the issuance of a Letter of Warning (Annex "F") for the violations set forth in Paragraph V, Sub-paragraph C(5)(a),(b), and (d) above. Provided that after five (5) working days of non-compliance to the written warning, the recommendation shall be made for the issuance of a Letter of Revocation of the permit to use the CRM/POS and other sales machines. Provided further that for violation based on Paragraph V, Sub-paragraph C(5)(c) above, the recommendation shall outright be for the issuance of a Letter of Revocation (Annex "F") already containing a notice of the revocation of the permit to use the CRM/POS and other sales machines.

The concerned RDO shall:

- i. Upon recommendation, issue the corresponding letter of Warning/Revocation (Annex "F");
- ii. In case of revocation of the permit to use the CRM/POS and other sales machines based on violations set forth in Paragraph V, Sub-paragraph C(5)(a) and (c) above, order the confiscation of the CRM/POS or other sales machine within ten (10) working days from service of the Letter of Revocation."

---

BIR Memorandum dated July 23, 2014 clarifies certain rules for the Issuance of the BIR ICC and BCC.

---

**BIR Memorandum dated July 23, 2014**

- ▶ All taxpayers who applied for the issuance of BIR ICC/BCC that were classified as falling under Level 3 category (i.e., those who fail to satisfy the criteria for accreditation, including those whose applications were not received by the ARMD due to incomplete documents) shall be immediately issued Notices of Denial. The Notice of Denial will preclude them from enjoying the benefits of uninterrupted processing and release of importations by the BOC until they comply and satisfy the BIR's criteria for accreditation as soon as possible.

- ▶ For newly registered taxpayers whose names are not included in the BOC's list of accredited importers/brokers as of February 2014, their applications must be immediately denied. They may file a new application after the lapse of (3) months from date of denial of the BIR-ICC application, subject to the following conditions:
  1. Completion of a single importation with the BOC; and
  2. Regular use of the BIR's eFPS
- ▶ New applicants or importers who were previously not covered by the accreditation requirements of the BOC (e.g., taxpayers registered with PEZA, SBMA), may only be issued BIR ICCs if they regularly use the eFPS as mandated under BIR RR No. 1-2010. Otherwise, their applications shall be denied and they cannot be issued a provisional or temporary BIR ICC.
- ▶ BIR ICCs or BCCs that were issued contrary to the above guidelines shall be revoked immediately, subject to the filing of a new application.

---

## **BOC Issuances**

This BOC Memorandum further clarifies the implementation of Department Order (DO) No. 12-2014 dated February 6, 2014, as amended by DO Nos. 18-2014 dated February 26, 2014 and 46-2014 dated June 26, 2014.

---

### **BOC Memorandum dated July 31, 2014**

- ▶ The BOC Commissioner directed the Acting Chief of the Accounts Management Office (AMO) to immediately cancel the accreditation of importers and customs brokers who fail to comply with the new accreditation rules on July 31, 2014.
- ▶ All non-compliant importers and customs brokers shall be delisted from the BOC-CPRS-E2M system and shall not be allowed to process their shipments starting August 1, 2014.
- ▶ All delisted importers who re-apply for accreditation shall be treated as new applicants and are required to submit the actual BIR-issued ICC or BCC.

### **BOC AMO Announcement posted on August 1, 2014**

- ▶ All importers and customs brokers who have complied with the new accreditation rules but whose original accreditation expires beyond August 2014 will still be allowed to continue processing their shipments without further action against them by the BOC-AMO.

## **BOI Issuance**

BOI Circular No. 2014-01 amends the grounds for cancellation of BOI registration.

---

### **BOI Circular No. 2014 - 01 dated July 5, 2014**

- ▶ The following are the grounds for cancellation of registration:
  1. Delay of the project timetable by 1 year unless otherwise reinstated as a registered enterprise by the Board;
  2. Withdrawal from business/cessation of operations;

3. Suspension of business operations for more than 1 year or beyond the period allowed by the Board;
4. Voluntary surrender of certificate of registration only after a period of 5 years from the last year of ITH availment;
5. Failure to maintain qualifications for registration as required by the Code;
6. Violation of any provision of the Code;
7. Violation of the Implementing Rules and Regulations or any of the general and specific terms and conditions of registration;
8. Violation of any law for the protection of labor or of the consuming public;
9. Misrepresentation or false statements made by the registered enterprise in any documents submitted in connection with its registration with the Board; or
10. Acts or omissions by the registered enterprise or its officers in violation of any law, decree, executive order, letter of instructions, or rules and regulations the implementation of which is entrusted to the Board or under which any of the aforementioned issuances the Board is called upon to perform certain acts or is a party in interest.

---

## **PEZA Issuance**

PEZA MC No. 2014-017 advises all PEZA-registered enterprises, including those who were issued CNCs by the DENR-EMB, of the requirements of DENR Administrative Order 2013-22, also known as "Revised Procedures and Standards for the Management of Hazardous Wastes" for small quantity generators of hazardous wastes.

---

### **PEZA Memorandum Circular No. 2014 - 017 dated July 14, 2014**

- ▶ Commercial or industrial establishments who only produce small quantities of busted fluorescent lamps, used oil, grease waste, used lead-acid batteries, contaminated chemical containers are required to register with the DENR as hazardous waste generators.
- ▶ "Small quantity generator" is defined in Section 3.1 of the DENR Administrative Order (DENR AO) No. 2013-22. The classification into large, medium or small quantity generator depends on the volume and type of waste generated.
- ▶ A Pollution Control Officer (PCO) should be designated by the commercial or industrial establishment generating small quantities of hazardous wastes. The duties and responsibilities of accredited PCOs are enumerated in Sec. 10 of DENR AO No. 2014-02, also known as "Revised Guidelines for PCO Accreditation."
- ▶ Requirements for small quantity generators (i.e., submission of the Self-Monitoring Report to the EMB, storage and labelling requirements for hazardous wastes, need to secure hazardous waste permit to transport and accomplish the manifest form, contingency planning and training of employees working directly with hazardous wastes) are included in Sections 3.3 to 3.8 of DENR AO No. 2013-22.

---

## BSP Issuances

Circular No. 839 amends Sections 1397 and 2397 of the MORB to include the adoption of a prudential REST limit for UBs, KBs and TBs, on a solo and consolidated basis, on their aggregate real estate exposures (REEs).

---

### BSP Circular No. 839 dated June 27, 2014

- ▶ A prudential limit is set for REEs and other real estate property of universal banks (UBs) and commercial banks (KBs) under an assumed write-off rate of 25%.
- ▶ The prudential real estate stress test (REST) limits which shall be complied with at all times by thrift banks (TBs) are:
  1. 6% of Common Equity Tier 1 (CET1) capital ratio for TBs that are subsidiaries of UBs or KBs; or
  2. 6% of Tier 1 capital for stand-alone TBs; and
  3. 10% of risk-based capital adequacy ratio (CAR)
- ▶ A UB/KB/TB which does not meet either or both REST limits shall explain why its exposures do not warrant remedial action. If the explanation is not sufficient, the UB/KB/TB shall be directed to prepare an action plan within 30 calendar days from the date of notification, to meet the REST within a reasonable time.
- ▶ Failure to submit an action plan or non-compliance with the commitments under the action plan may be considered as unsafe and unsound practice, and the UB/KB/TB shall be subject to appropriate sanctions.
- ▶ The Circular takes effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 839 was published in the Business World on July 4 and 5, 2014.]*

---

Circular No. 840 amends the guidelines on the qualifications of a director of banks and non-bank financial institutions.

---

### BSP Circular No. 840 dated July 2, 2014

- ▶ The following persons are exempted from attending a special seminar on corporate governance for board of directors:
  1. Foreign nationals who have attended corporate governance training covering core topics in the BSP-recommended syllabus and certified by the Corporate Secretary as having been made aware of the general and specific duties and responsibilities of the board of directors and of a director;
  2. Filipino citizens with recognized stature, influence and reputation in the banking community and whose business practices stand as testimonials to good corporate governance;
  3. Distinguished Filipino and foreign nationals who served as senior officials in central banks and/or financial regulatory agencies; and
  4. Former Chief Justices of the Philippine Supreme Court.
  5. The Circular shall take effect 15 days after its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 840 was published in The Manila Times on July 8, 2014.]*

---

Circular No. 841 amends Appendix 45 (Notes on Microfinance) of Section X361 of the MORB.

---

#### **BSP Circular No. 841 dated July 4, 2014**

- ▶ The amount of contributions, premiums, fees or charges, computed on a daily basis, does not exceed 7.5% of the current daily minimum wage rate for non-agricultural workers in Metro Manila.
- ▶ The maximum sum of guaranteed benefits is not more than 1,000 times the current daily minimum wage rate for non-agricultural workers in Metro Manila.
- ▶ The Circular shall take effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 841 was published in the Philippine Daily Inquirer on July 9, 2014.]*

#### **SEC Issuances**

---

SEC MC No. 14 amends the Revised Code of Corporate Governance to exempt close financing companies from electing independent directors to their board.

---

#### **SEC Memorandum Circular No. 14 dated June 27, 2014**

- ▶ SEC MC No. 14 exempts financing companies that are registered as close corporations from the requirement of electing at least 2 independent directors to their board, subject to the following conditions:
  1. They amend their Articles of Incorporation to state the provisions of the Corporation Code of the Philippines for close corporations.
  2. All commercial papers shall be issued only to Directors, Officers, Stockholders and Related Interests (DOSRI) not exceeding 19 persons and to institutional lenders as provided under Rule 9.2 of the Securities Regulation Code (SRC), as amended.
  3. Restrictions on the right to transfer shares shall be provided in the Articles of Incorporation, By-laws and Stock Certificates.

*[Editor's Note: SEC MC No. 14 was published in The Philippine Star on July 4, 2014 and in The Manila Times on July 4, 2014.]*

---

SEC MC No. 15 requires foundations to file a Sworn Statement and CEP separately from financial statements.

---

#### **SEC Memorandum Circular No. 15 dated May 29, 2014**

- ▶ The following guidelines shall be followed by foundations in filing (i) the Sworn Statement on the Sources, Amount and Application of Funds and Program/ Activity Planned, Ongoing and Accomplished (SS), and (ii) the Certificate of Existence of Program/ Activity (CEP), by the President and the Treasurer:
  1. The due date for the submission of the SS and CEP is the same as the due date for the submission of the Annual Financial Statements (AFS).
  2. The SS and CEP shall have a coversheet separate and distinct from the coversheet of the AFS.
  3. The letters "SSCEP" shall be indicated in the 5 boxes provided for "FORM TYPE" in the coversheet for SS and/or CEP.

*[Editor's Note: SEC MC No. 15 was published in The Philippine Star on July 4, 2014 and in The Manila Times on July 4, 2014.]*

---

**SEC-OGC Opinion No. 14-15 dated July 7, 2014.**

A corporation engaged in digital media, which includes marketing of the same to the public, is considered engaged in mass media activities and may not be owned by a foreigner.

---

**Facts:**

I Co. is a domestic corporation registered with the SEC. The SEC approved the amendment of I Co.'s primary purpose which includes, among others, production, marketing and operation of "digital media and other media except mass media."

**Issue:**

Given its primary purpose, is the ownership of I Co. subject to any foreign equity limit?

**Ruling:**

Yes, the prohibition on foreign equity in corporations engaged in mass media applies to I Co.

The term "mass media" in the Constitution refers to any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses. The distinctive feature of any mass media is the dissemination of information and ideas to the public, or a portion thereof.

In this case, the activities to be undertaken by I Co. include, among others, production, marketing and operation of digital media, which covers audio, video, images, text and other kinds of media in other formats. The marketing of said media may constitute dissemination of information to the public or a portion thereof, which may come under the purview of mass media. Furthermore, despite the phrase "except mass media" in I Co.'s primary purpose, it is the nature of the activities undertaken by I Co. that will ultimately determine whether or not the same is engaged in mass media.

---

**SEC-OGC Opinion No. 14-17 dated July 7, 2014.**

A corporation acquiring ash vaults is not required to register the certificates of ownership of said vaults where no profits are expected or derived by the corporation from such acquisition.

---

**Facts:**

S Co. acquired ash vaults from a columbarium and memorial service provider. Under the contract, upon complete payment and within a reasonable time, each ash vault shall be covered with a Certificate of Full Payment and a Certificate of Ownership to be issued by the columbarium/ memorial service provider to S Co. One of the stipulations under the contract with the columbarium/memorial service provider is that S Co. grants authority to the service provider to devise and implement a scheme on behalf S Co., including the authority to execute contracts on behalf of S Co.

**Issue:**

Are the certificates or instruments evidencing S Co.'s ownership and right to use the ash vaults considered securities which need to be registered with the SEC?

**Ruling:**

No, the Certificate of Ownership of ash vaults are not securities; neither do they fall under the definition and/ or enumeration of securities in the SRC.

The essential attribute of a security is that it is a share in a corporation, a participation in a commercial enterprise, or an interest in a profit-making venture.

Included within the scope of a security are “investment contracts” which have the following requisites—(i) an investment of money, (ii) in a common enterprise, (iii) with expectation of profits, and (iv) primarily from efforts of others. In the case of the Certificate of Ownership of the ash vaults, said certificates represent only ownership over the vaults and no profits are expected or derived by the purchaser.

However, based on the contracts with the service provider, S Co. grants the service provider to implement a scheme on behalf of S Co., which may be in the form of a share in the revenue earned from common areas which may be used to produce income or profits primarily through the efforts of the issuer or someone else. If this is the case, due to the possibility of deriving profits through the efforts of others, the Certificate of Ownership may come under the purview of investment contracts, thus be considered a security.

---

#### **SEC-OGC Opinion No. 14-18 dated July 10, 2014**

---

A religious corporation may exist perpetually or for an indefinite period of time when its Articles of Incorporation do not specify a corporate term.

---

##### ***Facts:***

ICo. religious corporation duly registered on July 27, 1914. The purpose of ICo. is for the religious worship and the dissemination and propagation of the Christian faith and teachings as they are written in the Holy Scriptures. The Articles of Incorporation of ICo. do not provide for any corporate term.

##### ***Issue:***

Is the corporate term of ICo. is perpetual?

##### ***Ruling:***

Yes, the corporate term of the ICo. is perpetual since there is no corporate term in its articles of incorporation.

Religious corporations may limit their corporate term by providing a specific term in their articles of incorporation. However, absent such specification, it shall be understood that the corporation intended to exist for an indefinite period (i.e., perpetually).

---

#### **SEC-OGC Opinion No. 14-19 dated July 15, 2014**

---

When a condominium corporation is engaged in the acquisition and ownership of land, the condominium corporation may not elect or appoint foreigners to management positions but it may allow foreigners to occupy up to 40% of the seats available in the board of directors.

---

##### ***Facts:***

M Co. is a condominium corporation registered with the SEC, which has for its primary purpose, “to own or hold title to the common areas in the condominium project.” Foreign nationals in M Co. own units comprising around 11.5% of total area of the condominium.

##### ***Issue:***

Does the Anti-Dummy Law apply to the election of directors and officers of M Co.?

##### ***Ruling:***

Yes. Since M corporation has for its primary purpose, “to own or hold title to the common areas in the condominium project”, ownership of land and its improvements within the condominium project is implied. If this is the case, the Anti-Dummy Law applies.

Since the acquisition and ownership of land is a partly nationalized activity, foreigners may have at most 40% of the seats available in the board of directors of M Co.

However, since foreign nationals are not allowed to intervene in the management, operation, administrative and control of said corporation, M Co. may not elect or appoint foreigners to management positions such as president, vice-president, secretary and treasurer.

## Court Decisions

### Commissioner of Internal Revenue vs. Thomas C. Ongtenco

CTA (*En Banc*) Case EB No. 995 promulgated June 30, 2014

---

For VAT purposes, acting as a director of a corporation is not considered rendering a service "in the course of trade or business."

---

#### **Facts:**

Petitioner CIR assessed Respondent Thomas C. Ongtenco (Ongtenco) for deficiency VAT for taxable year 2006 arising from the loan he extended to a company where he is a stockholder and a director. The BIR argued, among others, that the act of extending the loan is a transaction incidental to his principal businesses of motorcycle trading and active management. Ongtenco, on the other hand, argued that the loan assistance was an isolated transaction and not incidental to his trade or business.

The CTA Second Division ruled in favor of Ongtenco and cancelled the deficiency VAT assessment. Upon denial of its Motion for Reconsideration, the CIR appealed to the CTA *En Banc*.

#### **Issue:**

Is the act of extending a loan considered incidental to Ongtenco's trade or business that is subject to VAT?

#### **Ruling:**

No, the act of extending a loan cannot be considered as an incidental transaction to Ongtenco's business that is subject to VAT.

Under Sections 105 and 108 of the Tax Code, as amended, in order for a person to be liable to VAT, he must sell, barter, exchange or lease goods or properties, render service, or import goods, in the ordinary course of business or trade. The term "in the course of trade or business" connotes "regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto." The phrase, however, is not limited to the regular conduct of a commercial or an economic activity but also includes transactions incidental thereto. For a transaction to be considered as "incidental", it must be dependent upon or appertain to a primary transaction or activity.

The act of lending cannot be considered as incidental to the business of selling motorcycles. Ongtenco extended the loan in 2004 but his business of selling motorcycles was registered with the Department of Trade and Industry and the BIR only on November 7, 2006 and December 19, 2006, respectively.



Moreover, the performance of the functions of a director of a corporation is not considered as done in the ordinary course of trade or business. Ongtenco's active involvement in the management of the borrower-company cannot be treated as a principal business. Thus, there exists no principal business to which the act of extending a loan can be made incidental thereto.

**Kabalikat Para sa Maunlad na Buhay vs. Commissioner of Internal Revenue**  
CTA (2<sup>nd</sup> Division) Case 8336 promulgated June 20, 2014

---

A non-stock, non-profit organization or government entity is liable to pay VAT on its sale of goods or services, even if there is no profit.

---

**Facts:**

The CIR assessed Petitioner Kabalikat Para sa Maunlad na Buhay (Kabalikat), a non-stock, non-profit corporation, for, among others, deficiency VAT on income derived from its microfinance activities for taxable year 2006.

Kabalikat protested the assessment and argued that it is not subject to VAT considering that it engages in microfinance activities in furtherance of its social welfare purposes, and not in the pursuit of business or profit.

Upon denial of its protest, Kabalikat filed a Petition for Review with the CTA.

**Issue:**

Is the income derived by Kabalikat from microfinance lending subject to VAT?

**Ruling:**

Yes. While Section 30 (G) of the Tax Code exempts, among others, the income received by civic league or organization not organized for profit but operated exclusively for the promotion of social welfare, the same exemption does not extend to VAT. Section 4 of RR No. 14-2007 likewise only exempts non-government organizations from payment of income tax but not VAT.

VAT is a tax on consumption levied on the sale, barter, exchange or lease of goods or properties and services in the Philippines and on importation of goods into the Philippines. It is an indirect tax which may be shifted or passed on to the buyer, transferee or lessee of goods, properties or services.

Under Section 105 of the Tax Code, even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services, even in the absence of profit attributable thereto. Consequently, the fact that Kabalikat earns interest at a "minimal rate" is enough for it to be subjected to VAT.

*[Editor's Note: The CTA, however, cancelled the deficiency VAT assessment on the ground that the waiver of the prescriptive period issued by Kabalikat is not valid; hence, the right of the BIR to assess has prescribed.]*

