

March 2014

# Tax bulletin



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PHILIPPINE TAX FIRM  
OF THE YEAR  
AND  
TRANSACTION TAX TEAM  
OF THE YEAR

# Highlights

## BIR Ruling

- ▶ For sales of real property on installment or deferred payment basis, the DST on the sale is payable only upon execution of the Deed of Absolute Sale. The basis for the DST shall be the gross selling price or fair market value (FMV) of the property, whichever is higher, at the time of the execution of the Contract to Sell. **(Page 3)**

## BIR Issuances

- ▶ Revenue Memorandum Circular (RMC) No. 15-2014 prohibits the acceptance of out-of-district income tax returns of certain government officials and employees. **(Page 3)**
- ▶ RMC No. 16-2014 circularizes the entry into force, effectivity and applicability of the Philippines-Nigeria Double Taxation Agreement (DTA). **(Page 3)**
- ▶ RMC No. 18-2014 extends the deadline for the filing of the sworn declaration of loss suffered by victims of super typhoon Yolanda. **(Page 4)**
- ▶ Revenue Memorandum Order (RMO) No. 14-2014 prescribes the guidelines and procedures for the processing and issuance of an Electronic Authority to Release Imported Goods (eATRIG) for excise tax purposes. **(Page 4)**

## SEC Issuance

- ▶ SEC Memorandum Circular (MC) No. 7 prescribes the guidelines on the accreditation, operation and reporting of Credit Rating Agencies (CRAs). **(Page 5)**

## BSP Issuances

- ▶ Circular No. 827 amends the risk-based Capital Adequacy Framework for stand-alone thrift banks, rural banks and cooperative banks. **(Page 7)**
- ▶ Circular No. 828 amends X401 of the Manual of Regulations for Banks (MORB). **(Page 8)**
- ▶ Circular No. 829 amends the Consolidated Rules and Regulations on Currency Notes and Coins (BSP Circular No. 61, Series of 1995). **(Page 8)**

## Court Decision

- ▶ A local petroleum manufacturer is entitled to a refund or credit of excise taxes it paid on petroleum products sold to international carriers, which are exempt from excise tax on petroleum for use or consumption outside the Philippines, as prescribed under Section 135 (a) of the Tax Code. **(Page 10)**

## **BIR Ruling**

### **BIR Ruling No. 079-14 dated March 4, 2014**

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For sales of real property on installment or deferred payment basis, the DST on the sale is payable only upon execution of the Deed of Absolute Sale. The basis for the DST shall be the gross selling price or fair market value (FMV) of the property, whichever is higher, at the time of the execution of the Contract to Sell.

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#### **Facts:**

A Co. and B Co., both domestic corporations, entered into an Agreement to Purchase and Sell certain parcels of land. Upon execution of the Agreement, B Co., the buyer, paid 50% of the agreed purchase price. Upon full payment of the purchase price, the parties executed a Deed of Absolute Sale. The DST on the sale was paid 5 days after the execution of the Deed of Absolute Sale.

#### **Issue:**

Was the DST paid on time?

#### **Ruling:**

Yes. Under Revenue Regulations (RR) No. 17-2003, in case of sale of real property paid on installment or deferred payment basis, the DST shall accrue upon the execution of the Deed of Absolute Sale, but the basis of the imposition thereof shall be the gross selling price or FMV of the property, whichever is higher, as of the time of the execution of the Contract to Sell.

## **BIR Issuances**

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RMC No. 15-2014 prohibits the acceptance of out-of-district income tax returns of certain government officials and employees.

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### **Revenue Memorandum Circular No. 15-2014 dated March 3, 2014**

- ▶ The filing of the Annual Income Tax Returns (BIR Forms Nos. 1700 and 1701) and payment of taxes due anywhere by the following government officials and employees shall no longer be allowed:
  1. Members of the Armed Forces of the Philippines (AFP);
  2. Members of the Philippine National Police (PNP); and
  3. Public School Teachers/ Professors/ Instructors
- ▶ Any revenue personnel found violating this RMC shall be subject to dismissal and/or criminal penalties as prescribed under Section 7 of RR No. 13-2010.

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RMC No. 16-2014 circularizes the entry into force, effectivity and applicability of the Philippines-Nigeria DTA.

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### **Revenue Memorandum Circular No. 16-2014 dated March 14, 2014**

- ▶ The DTA between the Government of the Philippines and the Government of the State of the Federal Republic of Nigeria has come into force on August 3, 2013.
- ▶ The DTA provisions on taxes on income shall apply to income derived or accrued beginning January 1, 2014.
- ▶ For this purpose, the concerned Nigerian resident income earner or an authorized representative of the latter should file a duly-accomplished Application for Relief from Double Taxation (BIR Form No. 0901) together with the required documents specified under Revenue Memorandum Order (RMO) No. 72-2010.

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RMC No. 18-2014 extends the deadline for the filing of the sworn declaration of loss suffered by victims of super typhoon Yolanda.

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#### **Revenue Memorandum Circular No. 18-2014 dated March 18, 2014**

- ▶ The filing of the Sworn Declaration of Loss Arising from Casualty, Theft, Robbery or Embezzlement (BIR Form No. 0806) by victims of super typhoon Yolanda was extended until March 31, 2014.
- ▶ This relief is limited to losses sustained by taxpayers engaged in business areas affected by Typhoon Yolanda, whose books of accounts and relevant books were completely damaged/destroyed, and where data reconstruction could not be achieved within the time frame provided for under RMO No. 31-09.
- ▶ The provisions of RMO No. 31-09, insofar as they are not inconsistent with this RMC, still apply.

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RMO No. 14-2014 prescribes the guidelines and procedures for the processing and issuance of an eATRIG for excise tax purposes.

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#### **Revenue Memorandum Order No. 14-2014 dated March 5, 2014**

- ▶ While every application for eATRIG shall be done online through the Philippine National Single Window (NSW) System, the hard copy of the duly notarized application form shall still be submitted by the importer or authorized broker-representative to the BIR, before the electronic transmission of the approved eATRIG to the Bureau of Customs (BOC).
- ▶ Each importation shall be covered by a separate application for eATRIG, except in cases where the importation involves articles of the same kind and is covered by two or more Bills of Lading (BLs) issued to the same importer under the same vessel, in which case, a consolidated application may be filed and processed.
- ▶ For the importation of automobiles defined under Republic Act (RA) No. 9224, one ATRIG shall be issued for each unit of automobile with a Suggested Retail Price (SRP) of over PhP2,100,000.00.
- ▶ For importations involving a single BL consisting of several automobiles with SRP of PhP2,100,000.00 or more, one ATRIG shall be issued for each vehicle listed in the BL regardless of its SRP, provided that pending the enhancement of the NSW on ATRIG, a separate notarized application for ATRIG shall be filed and signed by the importer or his/her duly authorized representative, with the prescribed DST affixed thereon, for each and every unit of automobile.
- ▶ All applications for eATRIG for excise tax purposes, filed thru the NSW System, shall be processed at the Excise LT Regulatory Division (ELTRD) of the BIR National Office, with the Chief of the ELTRD as the approving officer.
- ▶ An application for ATRIG for VAT purposes shall continue to be filed in duplicate with the RDO having jurisdiction over the port of entry, pending issuance of a separate implementing RMO on the matter.
- ▶ The eATRIG shall be issued for all importations of articles subject to excise tax, including raw materials in the production thereof, as well as machineries, equipment, apparatus or any mechanical contrivances especially used for its assembly/production.
- ▶ No application shall be processed if the importer or broker-representative is not a duly registered taxpayer with the BIR.

- ▶ In cases where the intended importation consists of excisable articles, raw materials, machineries, equipment, apparatus or any mechanical contrivances especially used for the production of excisable articles, the application for eATRIG shall likewise not be processed if the importer-applicant does not have a separate Permit to Operate as Importer of Excisable Articles.
- ▶ If the importer-applicant is an individual registered taxpayer, he must present a photocopy of his latest Annual Income Tax Return (BIR Form No. 1700/1701), together with the Audited Financial Statements duly stamped "Received" by the concerned BIR office and duly certified as a true copy by the Revenue District Officer where he is registered.
- ▶ The eATRIG shall be processed, approved and issued not later than the next working day following actual receipt of the application with complete documents and requirements, and provided there is no legal or factual issue on the taxability of the imported article.
- ▶ An application for eATRIG with legal issues on the taxability or exemption of the imported articles shall be referred to the BIR Law Division, National Office, for appropriate resolution.
- ▶ Any request for a ruling on an article involving factual issues (requiring laboratory comment/evaluation/recommendation for purposes of identification and/or classification) shall be referred to the BIR Laboratory Section, ELTRD, National Office prior to referral to the Law Division.
- ▶ Any application for eATRIG that has remained pending for at least one month due to the failure of the importer-applicant and/or broker-representative to submit the necessary supporting documentary requirements shall be tagged as "Rejected".

## **SEC Issuance**

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MC No. 7 prescribes the guidelines on the accreditation, operation and reporting of CRAs.

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### **SEC Memorandum Circular No. 7 dated March 6, 2014.**

- ▶ These guidelines apply to Credit Rating Agencies (CRAs) that are engaged by corporations which offer or issue commercial papers or debt securities to the public.
- ▶ They do not apply to issuances amounting to not more than 25% of the issuer's net worth, or where there is an irrevocable committed credit line with a bank covering 100% of the proposed issuance.
- ▶ The requirements for accreditation are as follows:
  1. The CRA must submit proof that the CRA –
    - ▶ Is a stock corporation;
    - ▶ Has a paid-up capital of at least PhP10,000,000;
    - ▶ Has at least 5 years of operating experience as a CRA;
    - ▶ Has qualified and independent officers and personnel to conduct the rating activities; and
    - ▶ Has no conflict of interest with prospective clients.

2. The CRA must submit, among others, the following supporting documents:
  - ▶ List of shareholders and their corporate affiliations;
  - ▶ List of other business activities, if any;
  - ▶ Copies of the company's articles of incorporation and by-laws;
  - ▶ A statement regarding ownership structure and possible conflict of interest;
  - ▶ Names, professional qualification and independence of staff involved in the rating decision ("rating specialists");
  - ▶ A written code of conduct which ensures the independence of the rating specialists and the rating agency from the issuers it is rating;
  - ▶ Disclosures of affiliations, training, assistance or support it receives from international rating agencies, if any;
  - ▶ Rating scales, criteria, measurements, symbols and the like, which it has in use;
  - ▶ Operating procedures, rating policies, rating criteria and other rationale used in arriving at a rating;
  - ▶ Copy of model written agreement with issuers; and
  - ▶ Manual on corporate governance.
3. All applications for accreditation shall be accompanied by an initial filing fee of PhP60,000.
4. An annual fee of PhP12,000 shall be paid least 45 days prior to the anniversary date of the CRA's accreditation.
5. All accredited CRAs shall ensure that the information set forth in their application form and all documents appended thereto are current, true and correct.
6. Any change in such information shall be filed with the SEC not later than 10 business days from the occurrence of such change.
- ▶ The following operating requirements should be observed by an SEC - accredited CRA:
  1. A CRA and the entity it proposes to rate must sign a written contract, covering the CRA's obligation to render credit rating services.
  2. A CRA shall not promise, assure or guarantee a particular rating outcome—either implicitly or explicitly—while soliciting business.
  3. Rating definitions, policy for use, and rating criteria shall be explained to the rated entity before rating services are engaged.
  4. The basic policies, practices, and methodologies used for assignment of rating shall be published and freely available in print and on the website.
  5. Adequate resources shall be made available.
  6. The organizational structure and design of the rating process shall ensure that rating decisions are not influenced by rating fees, any other revenues or business potential from the rated entity, or the consequences of a rating action.

- ▶ The CRA must also comply with the following reportorial requirements:
  1. A copy of the report shall be furnished to the SEC through the Office of the General Accountant, simultaneous to its submission to the issuer-ratee.
  2. In addition to the annual financial statements and general information sheet, an SEC - accredited CRA must submit the following documents within 90 days from the end of its fiscal year:
    - ▶ A report on the rating activities conducted during the most recently completed fiscal year. It shall include the name of the ratees, issue, ratings given and other relevant information;
    - ▶ A duly accomplished scorecard indicating its compliance with the operating requirements;
  3. A change in credit rating as a result of the CRA or a failure to access information from the issuer shall trigger the mandatory submission to the SEC by the CRA of a report disclosing the matter within 5 business days from the date of change or from the date of denial by the issuer to provide sufficient information.
- ▶ Failure to comply with any of the requirements above shall be sufficient grounds, after due notice and hearing, for the suspension or revocation of the CRA and/or for the imposition of a monetary fine under the Consolidated Scale of Fines and penalties of the SEC.
- ▶ All accredited CRAs shall submit within 30 days from effectivity a Manual of Operation containing the procedures prescribed hereof, with a covering Board of Director's resolution adopting said Manual.
- ▶ For its initial year of implementation, the reportorial requirements (e.g., report on the rating activities and scorecard) shall be complied with not later than April 30, 2014.

*[Editor's Note: SEC MC No. 7 was published in The Manila Times and The Philippine Star on March 28, 2014]*

## **BSP Issuances**

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Circular No. 827 amends the risk-based Capital Adequacy Framework for stand-alone thrift banks, rural banks and cooperative banks.

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### **BSP Circular No. 827 dated February 28, 2014**

- ▶ The risk weight of foreign currency denominated claims or portion of claims guaranteed by or collateralized by foreign currency denominated securities issued by the Philippine National Government and the BSP is reduced from 100% to 50%.
- ▶ The change in the corresponding specific risk weight of "foreign currency denominated debt securities/derivatives issued by the Philippine National Government or BSP" from 8% to a range of 0.25% to 1.60% depending on its residual maturity, as provided under Memorandum No. M-2013-028 dated 19 June 2013, shall also be applied to the capital adequacy ratio (CAR) report of stand-alone thrift banks, rural banks and cooperative banks, starting with the CAR reporting period ended 31 March 2014.

- ▶ Section X116 on Base I Risk-Based Capital, including Subsections X116.1 to X116.7 and Appendix 63a of the MORB is deleted. The required reports that refer to Section X116 of the MORB are likewise deleted.
- ▶ The amendments to the CAR shall take effect starting with the CAR reporting period ended 31 March 2014. The deletion of Section X116 and related Subsections and Appendix shall take effect 15 calendar days following the publication of the Circular either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 827 was published in The Philippine Star on March 6, 2014.]*

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Circular No. 828 amends X401 of the MORB.

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**BSP Circular No. 828 dated March 11, 2014**

- ▶ Government financial institutions are no longer covered by the general prohibition on banks from receiving or holding as trustee, agent, financial manager or similar capacity any fund or money from the government and government entities.
- ▶ The Circular takes effect 15 days after publication in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular No. 828 was published in Manila Standard Today on March 18, 2014.]*

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Circular No. 829 amends the Consolidated Rules and Regulations on Currency Notes and Coins (BSP Circular No. 61, Series of 1995).

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**BSP Circular No. 829 dated March 13, 2014**

- ▶ A government identification (ID) is added to the list of acceptable IDs to be indicated on the temporary receipt to be issued by any person or entity who receives a note or coin of any currency which is counterfeit or whose genuineness is questionable. Community tax certificate number and passport number are also acceptable.
- ▶ The temporary receipt should be submitted to:

THE CURRENCY ISSUE AND INTEGRITY OFFICE  
Security Plant Complex  
Bangko Sentral ng Pilipinas  
East Avenue, Diliman  
1101 Quezon City

The temporary receipt may also be submitted to the BSP regional offices/branches or to any banking institution supervised by the BSP.

- ▶ Banks are now required to incorporate measures on the implementation of BSP's Clean Note Policy in their compliance program.
- ▶ Chapter IV, which has been renamed "Clean Note and Coin Policy", now includes a provision on the procedure with regard to packing of coins submitted by banks to the BSP for deposit/determination of redemption value.
- ▶ A currency note shall be considered unfit for circulation when:
  1. It contains heavy creases which break the fiber of the paper and indicate that disintegration has begun; or



2. It is badly soiled/contaminated and/or with writings even if it has proper life or sizing; or
  3. It presents a limp or rag-like appearance and/or it cannot sustain its upright position when held at the mid-portion of one of the shorter borders.
- ▶ A currency note shall be considered mutilated when:
    1. Torn parts of the banknote are joined together with adhesive tape aimed at preserving as nearly as possible the original design and size of the note; or
    2. The original size of the note has been reduced/lost through wear and tear or has been otherwise torn, damaged, defaced or perforated through action of insects, chemicals or other causes; or
    3. It is scorched or burned to such an extent that although recognizable as such, it has become frail and brittle as to render further handling thereof impossible without disintegration or breaking; or
    4. It is split edge-wise; or
    5. It has lost all the signatures inscribed thereon; or
    6. The Embedded Security Thread or Windowed Security Thread placed on the banknote is lost.
  - ▶ A currency coin shall be considered unfit for circulation when:
    1. It is bent or twisted out of shape or defaced or show signs of corrosion, but its genuineness and/or denomination can still be readily and clearly determined/identified; or
    2. It has been considerably reduced in weight by natural abrasion/wear and tear.
  - ▶ A currency coin shall be considered mutilated when:
    1. It shows signs of filing, clipping or perforation; or
    2. It shows signs of having been burned, corroded or has been so defaced, that its genuineness and/or denomination cannot be readily and clearly identified.
  - ▶ Banks shall accept from the public mutilated notes and coins for referral/transmittal to the BSP for determination of redemption value, and may charge reasonable handling fees.
  - ▶ The BSP shall replace or redeem notes and coins considered unfit for circulation or mutilated except under the following conditions:
    1. Identification of notes and coins is impossible; or
    2. Coins that show signs of filing, clipping or perforation; or
    3. Notes which have lost more than 2/5 of their surface or all of the signatures inscribed thereon; or
    4. Notes which are split edgewise resulting in the loss of all or part of either the face or back portion of the banknote paper; or
    5. Noted where the Embedded Security Thread or Windowed Security Thread is completely lost, except when the damage is caused by wear and tear, accidental burning, action of water or chemical or bites of rodents/insects and the like.
  - ▶ The Circular takes effect immediately.

*[Editor's Note: Circular No. 829 was published in The Philippine Star on March 21, 2014.]*

## Court Decision

**Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation**  
Supreme Court (First Division), G.R. No. 188497 promulgated February 19, 2014

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A local petroleum manufacturer is entitled to a refund or credit of excise taxes it paid on petroleum products sold to international carriers, which are exempt from excise tax on petroleum for use or consumption outside the Philippines, as prescribed under Section 135 (a) of the Tax Code.

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### **Facts:**

Respondent Pilipinas Shell Petroleum Corporation (PSPC) is engaged in the business of processing, treating and refining petroleum for production and subsequent sale of marketable products. PSPC filed with the BIR claims for refund or tax credit of excise taxes paid on its sales and deliveries of gas and fuel oil to international carriers for the years 2001 and 2002.

As the Commissioner of Internal Revenue (CIR) failed to act on the claims, PSPC filed a Petition for Review with the Court of Tax Appeals (CTA). The CTA granted its claim on the basis of Section 135 (a) of the Tax Code, which exempts from excise tax petroleum products sold to international carriers for use or consumption outside the Philippines.

On appeal, the Supreme Court denied on April 25, 2012 PSPC's claim for refund or tax credit on the ground that the Tax Code imposes excise tax on locally manufactured petroleum products that is required to be paid before removal from the place of production. The Court ruled that while the Tax Code grants an exemption from excise tax on petroleum products sold to international carriers for consumption outside the Philippines, the exemption attaches to the buyer. On the other hand, the excise tax on locally manufactured products attaches to the goods. There is no express grant of exemption from payment of excise tax to local manufacturers on petroleum products sold to international carriers. The Court argued that the exemption under Section 135 (a) of the Tax Code prohibits the shifting of the burden of the payment of the excise tax to international carriers.

PSPC sought a reconsideration of the April 25, 2012 decision of the Supreme Court and argued that:

- ▶ Section 135(a) intended the tax exemption to apply to petroleum products at the point of production;
- ▶ The excise tax on petroleum products sold to international carriers for use or consumption outside the Philippines attaches to the article when sold to said international carriers, as it is the article which is exempt from the tax, not the international carrier;
- ▶ The decision of the Court will not only have adverse impact on the domestic oil industry but also violates the Chicago Convention on International Aviation ("the Chicago Convention") as well as other international agreements.

### **Issue:**

Is PSPC entitled to a refund or credit of excise taxes paid on petroleum products sold to international carriers?

**Ruling:**

Yes, PSPC is entitled to the refund or credit of the excise taxes paid on the petroleum products sold to international carriers.

Excise tax on aviation fuel used for international flights is practically nil as most countries are signatories to the Chicago Convention, Article 249 of which prohibits taxation of aircraft fuel consumed for international transport. Under the basic international law principle of *pacta sunt servanda*, the Philippines has the duty to fulfill its treaty obligations in good faith. This entails harmonization of national legislation with treaty provisions. Section 135(a) of the Tax Code embodies the Philippines' compliance with its undertakings under the convention not to impose excise tax on aviation fuel purchased by international carriers from domestic manufacturers or suppliers.

Section 135(a) of the Tax Code prohibits the passing on of the excise tax to international carriers who buy petroleum products from local manufacturers/sellers like PSPC. Denying the local manufacturers' claim for refund of excise taxes already paid on petroleum products sold to international carriers, has serious implications on the Philippine Government's commitment to the goals and objectives of the Chicago Convention.

The Chicago Convention provides that fuel and lubricating oils on board an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained on board on leaving the territory of that State, shall be exempt from customs duty, inspection fees or similar national or local duties and charges. Subsequently, the exemption of airlines from national taxes and customs duties on spare parts and fuel has become a standard element of bilateral air service agreements between individual countries.

Considering the prospect of declining sales of aviation jet fuel to international carriers due to domestic oil companies' unwillingness to shoulder the burden of excise tax, or of petroleum products being sold to said carriers by local manufacturers or sellers at still high prices, the practice of "tankering" would not be discouraged. Tankering refers to the practice of carriers of filling their aircraft as full as possible whenever they land in a low-tax jurisdiction. This results in aircrafts travelling further than necessary to fill up in low-tax jurisdictions and in aircrafts burning up more fuel when carrying the extra weight of a full fuel tank.

This scenario does not augur well for the Philippines' growing economy and the booming tourism industry. The Philippine Government would also be risking retaliatory action under several bilateral agreements with various countries. The construction of the tax exemption provision should give primary consideration to its broad implications on the Philippines' commitment under international agreements.

