BIR Rulings

- An upstream merger, where the parent company will not be issuing shares to the subsidiaries in exchange for the assets to be transferred, is not considered a tax-free merger under Section 40(C)(2) of the Tax Code. (Page 3)

- Under the RP-Netherlands Tax Treaty, the 10% preferential tax rate on dividends applies when the recipient of the dividends is a company whose capital is wholly or partly divided into shares, and which holds at least 10% of the capital of the company paying the dividends. (Page 4)

- Income derived by a Japanese enterprise from services rendered in the Philippines, for an aggregate period of not more than 6 months within any taxable year, is not subject to Philippine income tax. Services rendered in the Philippines by a non-resident in favor of a Philippine Economic Zone Authority (PEZA)-registered entity are exempt from VAT under Section 109(K) of the Tax Code. (Page 4)

BIR Issuances

- Revenue Regulations (RR) No. 17-2012 prescribes the implementing guidelines on the revised tax rates on alcohol and tobacco products, pursuant to Republic Act (RA) No. 10351, otherwise known as “An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for other purposes.” (Page 5)

- RR No. 1-2013 expands the coverage of taxpayers required to file tax returns and pay taxes through the Electronic Filing and Payment System (eFPS), to include national government agencies (NGAs) mandatorily required to use the Electronic Tax Remittance Advice (eTRA). (Page 12)

- Revenue Memorandum Circular (RMC) No. 84-2012 clarifies the proper tax treatment of interest income earnings on loans that are not securitized, assigned or participated out. (Page 15)

- RMC No. 90-2012 prescribes the initial classifications and tax rates for alcohol and tobacco products existing in the market pursuant to RA No. 10351. (Page 15)

- RMC No. 91-2012 supplements RMC No. 63-2012 dated October 29, 2012 on invoicing and recording of income payments for media advertising placements under a split payment scheme or arrangement. (Page 16)

- RMC No. 2-2013 clarifies certain provisions of RR No. 12-2012 on the deductibility of depreciation expense as it relates to the purchase of vehicles, and other related expenses, and the input taxes allowed. (Page 17)

- RMC No. 4-2013 requires tax-exempt hospitals to secure revalidated tax exemption rulings/certificates. (Page 17)

- RMC No. 6-2013 clarifies taxpayers’ concerns on the audit program, and their responsibility for engaging tax agents/practitioners. (Page 18)
BOC Issuances

• Customs Memorandum Order (CMO) No. 16-2012 prescribes a 10-year validity period for duty drawback tax credit certificates (TCCs). (Page 19)

• Customs Administrative Order (CAO) No. 1-2013 prescribes the rules and regulations implementing the Super Green Lane (SGL) Plus Facility. (Page 19)

SEC Issuances

• SEC Memorandum Circular (MC) No. 11 prescribes the guidelines for accreditation of institutional training providers on corporate governance. (Page 22)

• SEC MC No. 12 prescribes the guidelines on the disclosure of transactions with retirement benefit funds. (Page 24)

• SEC MC No. 1 requires the inclusion of the Taxpayer’s Identification Number (TIN) or passport number of foreign investors in all forms, papers and documents filed with the SEC. (Page 25)

• SEC MC No. 3 amends the rules on the date of submission of the interim semi-annual financial statements required for financing and lending companies. (Page 25)

BSP Issuances

• Circular No. 779 amends the regulations on Single Borrower’s Limit. (Page 26)

• Circular No. 780 prescribes guidelines governing the implementation of the Syrian Pound Currency Exchange Facility (CEF). (Page 27)

• Circular No. 781 amends the Basel III implementing guidelines on Minimum Capital Requirements. (Page 28)

• Circular No. 782 amends Appendix 45 (Notes on Microfinance) of Section X361 of the MORB. (Page 29)

• Circular No. 783 amends the regulations on relocation and voluntary closure/sale of branches/other banking offices (OBOs). (Page 30)

Court Decision

• Negligence, whether slight or gross, is not equivalent to fraud with intent to evade tax that is criminally punishable under the Tax Code. Fraud must amount to intentional wrongdoing with the sole object of avoiding tax. (Page 31)

BIR Rulings

BIR Ruling No. 614-12 dated November 9, 2012

Facts:

A Co., a domestic corporation, entered into a merger with its wholly-owned domestic subsidiaries, B Co. and C Co. A Co. is the surviving corporation. Pursuant to the merger, B Co. and C Co. will transfer their all assets and liabilities to A Co. However, since B Co. and C Co. are wholly-owned by A Co. prior to the merger, A Co. will no longer issue any shares of stock in consideration of the assets and liabilities transferred.
Issue:
Is the merger between A Co., B Co. and C Co. considered a tax-free merger under Section 40(C)(2) of the Tax Code?

Ruling:
No. The intended re-organization is an upstream merger between a parent company and its subsidiaries where the parent company will not be issuing any shares to the subsidiaries in exchange for the assets to be transferred as a result of the merger. In effect, the transfer takes the nature of a donation made by the subsidiaries to their parent company, contrary to what is contemplated in Section 40(C)(2) of the Tax Code. In the same manner, the intended merger also has the effect of dissolving and liquidating the subsidiaries without payment of corresponding taxes.

BIR Ruling No. ITAD 381-2012 dated November 22, 2012

Facts:
A Co., a Dutch company with capital wholly divided into shares, is the beneficial owner of 99.99% of the shares in B Co., a domestic corporation. B Co. declared and remitted cash dividends in favor of A Co.

Issue:
Are the dividends subject to the 10% preferential tax rate under the RP-Netherlands Tax Treaty?

Ruling:
Yes. Under the RP-Netherlands Tax Treaty, the 10% preferential tax rate on dividends applies when the recipient of the dividends is a company whose capital is wholly or partly divided into shares, and which holds at least 10% of the capital of the company paying the dividends.

BIR Ruling No. ITAD 393-12 dated December 11, 2012

Facts:
A Co., a resident of Japan, rendered consultancy services for a fee to B Co., a PEZA-registered domestic corporation. A Co. sent its personnel to the Philippines to provide the services for an aggregate period of 17 days for the entire duration of the agreement.

Issues:
1. Is the income derived by A Co. subject to Philippine income tax?
2. Are the services rendered by A Co. in the Philippines subject to value-added tax (VAT)?

Ruling:
1. No. Under the RP-Japan Tax Treaty, a Japanese enterprise shall be subject to tax in the Philippines on business profits to the extent attributable to a permanent
establishment (PE) situated in the Philippines. Under the RP-Japan Tax Treaty, a Japanese enterprise may be deemed to have a PE in the Philippines if it furnishes in the Philippines consultancy services or supervisory services in connection with a contract for a building construction or installation project, through employees or other personnel – other than an agent of independent status – provided that such activities continue (for the same project or 2 or more connected projects) for a period or periods aggregating more than 6 months within any taxable year.

Since the services performed by A Co. in the Philippines totaled an aggregate period of only 17 days, A Co. is not deemed to have a PE in the Philippines. Hence, the income derived by A Co. from the consultancy services shall not be subject to Philippine income tax.

2. No. As a general rule, the sale of goods and services to entities exempt from VAT, such as PEZA-registered entities, is zero-rated. However, instead of zero-rating which is not available to non-resident suppliers, the transaction will be treated as VAT exempt pursuant to Section 109 (K) of the Tax Code, which provides VAT exemption for transactions that are exempt under special laws.

BIR Issuances

Revenue Regulations No. 17-2012 dated December 21, 2012

Definition of Terms

- **Act** refers to RA No. 10351, otherwise known as “An Act Restructuring the Excise Tax on Alcohol and Tobacco Products by Amending Sections 141, 142, 143, 144, 145, 8, 131 and 288 of Republic Act No. 8424, otherwise known as the National Internal Revenue Code of 1997, as amended by Republic Act No. 9334, and for other purposes.”

- **Carbonated Wine** refers to an effervescent wine artificially charged with carbon dioxide and containing more than 0.392 of carbon dioxide per 100 milliliters of wine.

- **Cigarettes Packed by Hand** refers to the manner of packaging cigarette sticks using an individual person’s hands and not through any other means, such as a mechanical device, machine or equipment.

- **Compounded Liquors** refers to intoxicating beverages concocted by or resulting from mixture of, or addition to, distilled spirits, either before or after rectification, of any coloring matter, flavoring extract or essence or other kind of wine, liquor or other ingredient.

- **Net Retail Price** refers to the price at which the alcohol and tobacco products are sold in retail in at least five major supermarkets in Metro Manila, excluding the amount intended to cover the applicable excise tax and VAT. For alcohol and tobacco products which are marketed outside Metro Manila, the net retail price shall mean the price at which the alcohol and tobacco products are sold in at least five major supermarkets in the region, excluding the amount intended to cover the applicable excise tax and VAT.

- **Sparkling Wine or Champagne** refers to an effervescent wine containing more than 0.392 grams of carbon dioxide per 100 milliliters of wine resulting solely from the secondary fermentation of the wine within a closed container.

- **Still wine** refers to wine containing not more than 0.392 of carbon dioxide per 100 milliliters of wine.
- *Suggested Net Retail Price* refers to the net retail price at which locally manufactured or imported alcohol or tobacco product is intended to be sold by the manufacturer or importer at retail in major supermarkets or retail outlets in the prescribed minimum number of Revenue Regions for brands with national or regional markets.

### Revised Tax Rates and Base

The following schedule shows the revised rates and bases of the specific tax to be levied, assessed and collected on alcohol or tobacco products:

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>DATE OF EFFECTIVITY OF TAX RATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. ALCOHOL PRODUCTS</td>
<td></td>
</tr>
<tr>
<td>(1) Distilled Spirits</td>
<td></td>
</tr>
<tr>
<td>(a) Ad Valorem Tax Rates</td>
<td></td>
</tr>
<tr>
<td>Based on the net retail price per proof (excluding excise tax and VAT)</td>
<td>15%</td>
</tr>
<tr>
<td>(b) Specific Tax</td>
<td></td>
</tr>
<tr>
<td>Per proof liter</td>
<td>P20.00</td>
</tr>
<tr>
<td>Effective 1 January 2016, the specific tax rate shall be increased by 4% every year thereafter.</td>
<td></td>
</tr>
</tbody>
</table>

<p>| (2) Wines                  |      |      |      |      |      |            |
| (a) Sparkling wines/champagnes where the net retail price (excluding excise tax and VAT) per bottle of 750 ml., regardless of proof is: |      |      |      |      |      |            |
| (1) P500.00 or less       | P250.00 | P260.00 | P270.40 | P281.22 | P292.47 |        |
| (2) More than P500.00     | P700.00 | P728.00 | P757.12 | P787.40 | P818.90 |        |
| (b) Still wines and carbonated wines containing 14% of alcohol by volume or less | P30.00 | P31.20 | P32.45 | P33.75 | P35.10 |        |
| Effective 1 January 2014, the specific tax rate shall be increased by 4% every year thereafter. |</p>
<table>
<thead>
<tr>
<th>(c) Still wines and carbonated wines containing more than 14% of alcohol by volume but not more 25% of alcohol by volume</th>
<th>P60.00</th>
<th>P62.40</th>
<th>P64.90</th>
<th>P67.50</th>
<th>P70.20</th>
</tr>
</thead>
<tbody>
<tr>
<td>(d) Fortified wines containing more than 25% of alcohol by volume shall be taxed as distilled spirits.</td>
<td>Taxed as distilled spirits</td>
<td>Taxed as distilled spirits</td>
<td>Taxed as distilled spirits</td>
<td>Taxed as distilled spirits</td>
<td>Taxed as distilled spirits</td>
</tr>
<tr>
<td>(3) Fermented liquors, where the net retail price (excluding excise tax and VAT) per liter of volume capacity is:</td>
<td>Per liter</td>
<td>Per liter</td>
<td>Per liter</td>
<td>Per liter</td>
<td>Per liter</td>
</tr>
<tr>
<td>(a) P50.60 or less</td>
<td>P15.00</td>
<td>P17.00</td>
<td>P19.00</td>
<td>P21.00</td>
<td>P23.50</td>
</tr>
<tr>
<td>(b) More than P50.60</td>
<td>P20.00</td>
<td>P21.00</td>
<td>P22.00</td>
<td>P23.00</td>
<td>P23.50</td>
</tr>
<tr>
<td>Fermented liquors brewed and sold at microbreweries or small establishments such as pubs and restaurants, regardless of the net retail price.</td>
<td>P28.00</td>
<td>P29.12</td>
<td>P30.28</td>
<td>P31.50</td>
<td>P32.76</td>
</tr>
</tbody>
</table>

**B. TOBACCO PRODUCTS**

<table>
<thead>
<tr>
<th>(1) Tobacco Products</th>
<th>Per kg.</th>
<th>Per kg.</th>
<th>Per kg.</th>
<th>Per kg.</th>
<th>Per kg.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing</td>
<td>P1.75</td>
<td>P1.82</td>
<td>P1.89</td>
<td>P1.97</td>
<td>P2.05</td>
</tr>
<tr>
<td>(b) Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened</td>
<td>P1.75</td>
<td>P1.82</td>
<td>P1.89</td>
<td>P1.97</td>
<td>P2.05</td>
</tr>
</tbody>
</table>

Effective 1 January 2014, the specific tax rate shall be increased by 4% every year thereafter
(c) Fine-cut shorts and refuse, scraps, clippings, cuttings, stems, midribs, and sweepings of tobacco

<table>
<thead>
<tr>
<th></th>
<th>P1.75</th>
<th>P1.82</th>
<th>P1.89</th>
<th>P1.97</th>
<th>P2.05</th>
</tr>
</thead>
</table>

(2) Chewing tobacco, unsuitable in any other manner

<table>
<thead>
<tr>
<th></th>
<th>P1.50</th>
<th>P1.56</th>
<th>P1.62</th>
<th>P1.68</th>
<th>P1.75</th>
</tr>
</thead>
</table>

(3) Cigars

(a) Based on the net retail price per cigar (excluding excise and VAT)

<table>
<thead>
<tr>
<th></th>
<th>Per Piece</th>
<th>Per Piece</th>
<th>Per Piece</th>
<th>Per Piece</th>
<th>Per Piece</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>20%</td>
<td>20%</td>
<td>20%</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td></td>
<td>P5.00</td>
<td>P5.20</td>
<td>P5.41</td>
<td>P5.62</td>
<td>P5.85</td>
</tr>
</tbody>
</table>

(b) Per cigar

<table>
<thead>
<tr>
<th></th>
<th>Per</th>
<th>Per</th>
<th>Per</th>
<th>Per</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Piece</td>
<td>Piece</td>
<td>Piece</td>
<td>Piece</td>
</tr>
<tr>
<td></td>
<td>P5</td>
<td>P5.20</td>
<td>P5.41</td>
<td>P5.62</td>
</tr>
<tr>
<td></td>
<td>P5.85</td>
<td>P5.85</td>
<td>P5.85</td>
<td>P5.85</td>
</tr>
</tbody>
</table>

Effective 1 January 2014, the specific tax rate shall be increased by 4% every year thereafter.

(4) Cigarettes packed by hand

<table>
<thead>
<tr>
<th></th>
<th>Per Pack</th>
<th>Per Pack</th>
<th>Per Pack</th>
<th>Per Pack</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>P12.00</td>
<td>P15.00</td>
<td>P18.00</td>
<td>P21.00</td>
</tr>
<tr>
<td></td>
<td>P30.00</td>
<td>P30.00</td>
<td>P30.00</td>
<td>P30.00</td>
</tr>
</tbody>
</table>

Effective 1 January 2018, the specific tax rate shall be increased by 4% every year thereafter.

(5) Cigarettes packed by machine, where the net retail price (excluding excise tax and VAT) per pack is:

(a) P11.50 and below

<table>
<thead>
<tr>
<th></th>
<th>Per Pack</th>
<th>Per Pack</th>
<th>Per Pack</th>
<th>Per Pack</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>P12.00</td>
<td>P17.00</td>
<td>P21.00</td>
<td>P25.00</td>
</tr>
<tr>
<td></td>
<td>P30.00</td>
<td>P30.00</td>
<td>P30.00</td>
<td>P30.00</td>
</tr>
</tbody>
</table>

(b) More than P11.50

<table>
<thead>
<tr>
<th></th>
<th>Per Pack</th>
<th>Per Pack</th>
<th>Per Pack</th>
<th>Per Pack</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>P25.00</td>
<td>P27.00</td>
<td>P28.00</td>
<td>P29.00</td>
</tr>
<tr>
<td></td>
<td>P30.00</td>
<td>P30.00</td>
<td>P30.00</td>
<td>P30.00</td>
</tr>
</tbody>
</table>

**Tax Classification of Alcohol and Tobacco products**

- Any alcohol or tobacco product that is introduced in the domestic market on or after the effectivity of the Act shall be initially tax-classified according to their suggested net retail prices as declared in the prescribed manufacturer’s or importer’s sworn statement, subject to the initial validation and revalidation requirements prescribed under RR No. 3-2006, as amended by Section 6 of these Regulations.

- In case of an alcohol and/or tobacco product that was duly registered with the BIR before the effectivity of the Act but was not tax-classified by the BIR according to the new tax rates provided under the Act, such product shall be
treated as newly introduced product upon its re-introduction in the domestic market after the effectivity of the Act. Accordingly, the tax classification of such product shall be based on the suggested net retail price declared in the sworn statement, subject to the initial validation and revalidation requirements.

- The proper tax classification of all fermented liquors and tobacco products, whether registered before or after the effectivity of the Act, shall be determined every 2 years from the date of effectivity of the Act.

- For purposes of tax classification, alcohol or tobacco products, whether imported or domestically manufactured, shall be taxed according to their individual brand name (whether or not with prefix or suffix), color and/or design of label (such as logo, font, picturegram and the like), manner and/or form of packaging or size of container of the product. Accordingly, situations like (but not limited to) the following instances shall be taxed differently:

1. Two products bearing exactly the same root name but with different suffixes or prefixes;

2. Two products bearing exactly the same brand name but with different colors and/or design of labels;

3. Two products bearing exactly the same brand name and label but with different forms of packaging (e.g., soft packs and hard packs for cigarettes, or in bottles, cans or kegs for alcohol products);

4. Two products bearing exactly the same brand name and label but with different sizes of container (e.g., one liter, 500 ml., 330 ml. and so on for alcohol products);

5. One product is sold on a regular basis, while the other product is introduced on a limited basis such as a special edition, for specific occasion and other similar instances.

- Any downward reclassification of any fermented liquor product that is duly registered with the BIR at the time of effectivity of the Act, which will reduce the tax imposed in these Regulations, or the payment of such tax, shall be prohibited. Starting 1 January 2014, the applicable tax rate shall be increased by 4% annually, but it shall not be lower than the rates prescribed under these Regulations.

- The revalidation of the suggested net retail price of a newly introduced alcohol or tobacco product shall be conducted after the end of 9 months from the initial validation. The initial validation and revalidation of the suggested net retail price of all newly introduced alcohol and tobacco products shall be conducted exclusively by the authorized representatives of the BIR.

- Every local manufacturer or importer of alcohol and tobacco products shall submit a duly notarized manufacturer’s or importer’s sworn statement for alcohol or tobacco products showing, among others, the following information:

1. Name, address, TIN and assessment number of the manufacturer or importer;

2. Complete root name of the brand as well as the complete brand name with modifiers, if any;
3. Complete specifications of the brand detailing the specific measurements, weights, manner of packaging and so on;

4. Name(s) of the region(s) where the brand/s is/are to be marketed;

5. Wholesale price per case, gross and net of VAT and excise tax;

6. Suggested retail price, gross and net of VAT and excise tax, per pack or per bottle, as the case may be;

7. Detailed production/importation costs and all other expenses incurred or to be incurred until the product is finally sold (e.g., materials, labor, overhead, selling and administrative expenses) per case;

8. Applicable rate of excise tax per unit of measure or value, as the case may be;

9. Corresponding excise and VAT per case.

• The manufacturer’s or importer’s sworn statement shall be submitted as a supporting document to the prescribed application for the initial registration of an alcohol or tobacco product. Thereafter, an updated sworn statement is submitted on or before the end of June and December of the year.

• Whenever there is a change in the cost to manufacture, produce and sell the brand, or change in the actual selling price of the brand, the updated sworn statement shall be submitted at least 5 days before the actual removal of the product from the place of production or release from the customs custody, as the case may be.

• If the manufacturer or importer sells or allows such goods to be sold at wholesale in another establishment of which he is the owner, or whenever he has an interest in the profits of such establishment, the selling price in such establishment shall constitute the wholesale price. Should such price be less than the said costs and expenses, a proportionate margin of profit of not less than 10% shall be added to constitute the wholesale price.

• With respect to imported alcohol or tobacco products, the cost of importation shall in no case be less than the value indicated in the reference books or any other reference materials used by the Bureau of Customs (BOC) in determining the proper valuation of the imported products, or the dutiable value as defined under the Tariff and Customs Code of the Philippines, whichever is higher.

• In case the newly introduced alcohol or tobacco product shall be subsequently marketed in another region/other regions before the proper tax classification is finally determined by the BIR, an updated sworn statement shall be submitted to the appropriate BIR Office before the same shall be removed from the place of production.

• The sworn statement prescribed in these Regulations shall be subject to verification by the BIR to validate its contents with respect to its accuracy and completeness. In the event the contents of the sworn statement are found to be inaccurate and/or incomplete, the taxpayer shall be required to submit a revised sworn statement, without prejudice to the imposition of corresponding sanctions and penalties.
• The understatement of the suggested net retail price by as much as 15% of the actual net retail price shall render the manufacturer or importer liable for additional excise tax equivalent to the tax due and difference between the understated suggested net retail price and the actual net retail price.

• The importation of alcohol or tobacco products, even if destined for tax and duty-free shops, Duty Free Philippines, or into chartered or legislated economic and/or freeport zones shall be subject to excise tax pursuant to the provisions of the Act, notwithstanding the provision of any special or general law to the contrary.

• Upon the effectivity of the Act, the importation of any alcohol or tobacco product bearing suffixes or prefixes to the root name, color and/or design of the label (such as logo, font, picturegram, and the like), manner and/or form of packaging or size of container of the product that is different from that already registered and locally being sold in the domestic market shall be treated as a newly introduced product. Accordingly, the same shall be initially classified according to its suggested net retail price, subject to the validation and revalidation requirements prescribed by these Regulations.

• No tobacco products manufactured in the Philippines and produced for export shall be removed from their place of manufacture or exported, without posting an export bond equivalent to the amount of the excise tax due on said products if sold domestically.

• However, tobacco products for export may be transferred from the place of manufacture to a bonded facility upon posting of a transfer bond prior to export.

• Tobacco products imported into the Philippines and destined for foreign countries shall not be allowed entry without posting a bond equivalent to the amount of customs duty, excise tax and VAT due on said products if sold domestically.

• All cigarettes whether packed by hand or packed by machine shall only be packed in 20s, and through other packaging combinations which shall result to not more than 20 sticks of cigarettes.

• In case of cigarettes packed in not more than 20 sticks, whether in 5 sticks, 10 sticks and other packaging combinations below 20 sticks, the net retail price of each individual package of 5s, 10s, etc. shall be the basis of imposing the tax rate prescribed under the Act.

• Upon the effectivity of the Act, the following transitory provisions shall be strictly observed:

1. All alcohol and tobacco products existing in the market at the time of the effectivity of the Act shall be initially classified according to the tax rates prescribed by the Act, based on the 2010 price survey of these products conducted by the BIR, subject to the prohibition against downward reclassification on fermented liquors.*

* [Editor’s Note: See page 15 below for RMC No. 90-2012, dated December 27, 2012.]
2. In case of alcohol and or tobacco products that were introduced after the 2010 price survey but before the effectivity of the Act, their respective tax classification or rate shall be based on the suggested net retail price declared in the latest sworn statement filed by the local manufacturer or importer, as the case may be.

3. For purposes of determining the actual volume of locally manufactured alcohol and tobacco products that shall be imposed with the new tax rates upon the removal of said products from the place of production, an actual stocktaking shall be conducted by the BIR on all stocks of locally manufactured alcohol and tobacco products held in possession by the manufacturer as of the effectivity of the Act.

4. The specific tax that was paid on the physical inventory of ethyl alcohol held in possession by manufacturers of compounded liquors as of the effectivity of the Act and subsequently used as raw materials in the production of compounded liquors shall not be entitled to tax credit/ refund or shall not be deducted from the total excise tax due on compounded liquors.

Violarions of these Regulations shall be subject to the corresponding penalties under Title X of the Tax Code. The following are the penalty provisions prescribed pursuant to the provisions of the Act:

1. Any manufacturer or importer who misdeclares or misrepresents in his or its sworn statement any pertinent data or information shall, upon discovery, be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as a manufacturer or importer of alcohol or tobacco products.

2. Any corporation, association or partnership liable for any of the acts or omissions in violation of the Act and implemented by these Regulations shall be fined treble the aggregate amount of deficiency taxes, surcharges and interest which may be assessed pursuant to the provisions of the Act.

3. Any person liable for any of the acts or omission prohibited under the Act and implemented by these Regulations shall be criminally liable and penalized under Section 254 of the Tax Code.

4. If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation.

These Regulations shall take effect upon publication in a leading newspaper of general circulation.

(Producer’s Note: RR No. 17-2012 was published in the Philippine Star on December 28, 2012.)

Revenue Regulations No. 1-2013 dated January 23, 2013

Definition of Terms:

Electronic Tax Remittance Advice (eTRA) System refers to the process of remitting taxes withheld by national government agencies (NGAs) through the
internet using the eFPS facility of the BIR, in lieu of the manual filing of Tax Remittance Advice.

- **Electronic Filing and Payment System (eFPS)** refers to the system developed and maintained by the BIR for electronically filing tax returns, including attachments, if any, and paying taxes due thereon, specifically through the internet.

- **e-filing** refers to the process of electronically filing tax returns, including attachments, if any, specifically through the internet.

- **e-payment** refers to the process of electronically paying a tax liability through the internet banking facilities of AABs.

- **Authorized Agent Bank (AAB)** refers to any bank certified by the Bangko Sentral ng Pilipinas (BSP) which has satisfied the criteria on accreditation and is actually accredited to collect internal revenue taxes.

- **Tax Remittance Advice (TRA)** refers to a serially-numbered document prescribed by the Department of Budget and Management (DBM) that should be used by NGAs in the remittance of withheld taxes on funds coming from DBM. This form is distributed by the BIR to be accomplished by the NGAs. The same shall be duly certified by the Chief Accountant and approved by the Head of the concerned NGA or his duly authorized representative, and attached to every withholding tax return filed as payment for taxes withheld. This shall be the basis for the BIR and the Bureau of Treasury (BTr) to record the tax collection in their respective books of accounts.

- **Electronic Tax Remittance Advice (eTRA)** refers to a TRA which is accomplished online via the BIR’s eFPS facility.

- **National Government Agencies (NGAs)** refers to government agencies whose main fund/budget comes from the DBM based on the yearly budget allotment as provided under the General Appropriations Act.

- **Return** refers to the tax returns required to be filed by NGAs which include, but are not limited to, the following:

<table>
<thead>
<tr>
<th>Tax Return</th>
<th>Description</th>
<th>Due Date for Filing</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIR Form 1601-C</td>
<td>Monthly Remittance Return of Income Taxes Withheld on Compensation</td>
<td>On or before the 10th 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.</td>
</tr>
<tr>
<td>BIR Form 1601-E</td>
<td>Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) [Except for transactions involving onerous transfer of real property classified as ordinary asset]</td>
<td>On or before the 10th 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.</td>
</tr>
</tbody>
</table>
The BIR shall issue a notification letter to all NGAs, including their branches and extension offices located nationwide which have their own disbursement functions, to inform them that they are mandated to use the eFPS in filing the required returns and in paying the taxes due thereon.

It shall be the responsibility of the Head Office of the concerned NGA to provide the BIR with the list of all its branches/field or extension offices located nationwide which have their own disbursement functions, with information as to their respective business addresses, agency codes and TINs.

All NGAs notified thru the notification letter shall enroll in the eTRA system by enrolling first with the BIR’s eFPS facility.

As part of the enrollment procedures, NGAs shall be required to submit to the Revenue District Office where they are registered the names of two authorized officers designated to file the required tax returns pursuant to Section 52(A) of the Tax Code. Likewise, NGAs shall enroll with any AAB where they intend to pay through the bank debit system, in cases of remittance of withheld taxes on funds not coming from the DBM or the payment of internal revenue taxes thru cash and not through TRA.
• NGAs mandated to file electronically thru the issuance of the notification letter shall file their tax returns via the eFPS, whether or not they make use of the eTRA in the payment.

• Staggered filing of returns allowed for withholding agents/taxpayers enrolled in the eFPS shall not apply in the case of NGAs. All tax returns must be electronically filed (e-filed) following the prescribed due dates. Payment of the tax due must also be made on the same day the return is e-filed by accomplishing on-line the TRA.

• The use of eTRA as payment is limited only to the NGAs’ tax liabilities arising from the use of funds coming from the DBM. A separate tax return must be accomplished for these tax liabilities since a particular fund is required to have a separate branch code.

• These regulations shall take effect after 15 days following the publication in the Official Gazette or in a newspaper of general circulation.

(Editor’s Note: RR No. 1-2013 was published in Manila Bulletin on January 25, 2013.)

Revenue Memorandum Circular No. 84-2012 dated December 21, 2012

• Interest income received by banks from payors belonging to the Top 20,000 Corporations and strictly arising from individual loans obtained from banks that are not securitized, assigned or participated out remains subject to 2% creditable withholding tax (CWT).

• Interest income paid by banks designated as Top 20,000 Corporations and strictly arising from loans made to such banks that are not securitized or participated out remains subject to 2% CWT.

• The 20% final WT and CWT imposed under the Tax Code and existing regulations cover interest arising from or paid out of debt securities.

Revenue Memorandum Circular No. 90-2012 dated December 27, 2012

• The initial classifications of all alcohol and tobacco products existing in the market at the time of effectivity of RA No. 10351 as provided in this Circular are based on the 2010 price survey of the alcohol and tobacco products conducted by the BIR.

• In case of alcohol and/or tobacco products that were introduced after the 2010 price survey but before the effectivity of RA No. 10351, their tax classification or rate is based on the suggested net retail price declared in the latest sworn statement filed by local manufacturer or importer, as the case may be.

• The initial classifications and tax rates of alcohol and tobacco products are listed in the annexes attached to RMC 90-2012, as follows:

Annex A-1 Locally Manufactured Fermented Liquors
Annex A-2 Imported Fermented Liquors
Annex B-1 Locally Manufactured Distilled Spirits

RMC No. 84-2012 clarifies the proper tax treatment of interest income earnings on loans that are not securitized, assigned or participated out.

RMC No. 90-2012 prescribes the initial classifications and tax rates for alcohol and tobacco products existing in the market pursuant to RA No. 10351.
Revenue Memorandum Circular No. 91-2012 dated December 28, 2012

- Under a split payment arrangement, the advertiser may engage or contract directly with a media entity/supplier and an advertising agency for media advertising placements. The income payments directly made by the advertiser to the media supplier and to the advertising agency are limited to the cost of the service provided by each entity (i.e., billing of the media supplier for the total cost of production and media placement and billing of advertising agency for commission/service fee).

- The following are the accounting entries:

Assume that the total cost of the advertiser for the total media advertisement is P100,000 comprised of P85,000 media entity/supplier billing and P15,000 advertising agency commission/service fee, inclusive of VAT:

Accounting Entries in the Books of Accounts of the Advertiser:

<table>
<thead>
<tr>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Receipt of billing from media entity/supplier:</td>
<td></td>
</tr>
<tr>
<td>Advertising Expense</td>
<td>P85,000</td>
</tr>
<tr>
<td>Deferred Input VAT</td>
<td>10,200</td>
</tr>
<tr>
<td>Accounts Payable - Media Entity/Supplier</td>
<td>P95,200</td>
</tr>
<tr>
<td>• Payment to Media Entity/Supplier:</td>
<td></td>
</tr>
<tr>
<td>Accounts Payable - Media Entity/Supplier</td>
<td>P95,200</td>
</tr>
<tr>
<td>Creditable IT Withheld</td>
<td>P1,700</td>
</tr>
<tr>
<td>Cash</td>
<td>93,500</td>
</tr>
<tr>
<td>• Receipt of Billing from Advertising Agency:</td>
<td></td>
</tr>
<tr>
<td>Service Expense</td>
<td>P15,000</td>
</tr>
<tr>
<td>Deferred Input VAT</td>
<td>1,800</td>
</tr>
<tr>
<td>Accounts Payable - Advertising Agency</td>
<td>P16,800</td>
</tr>
<tr>
<td>• Payment of Advertising Agency:</td>
<td></td>
</tr>
<tr>
<td>Accounts Payable - Advertising Agency</td>
<td>P16,800</td>
</tr>
<tr>
<td>Creditable IT Withheld</td>
<td>P300</td>
</tr>
<tr>
<td>Cash</td>
<td>16,500</td>
</tr>
</tbody>
</table>

Accounting Entries in the Books of Accounts of the Media Entity/Supplier:

<table>
<thead>
<tr>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Billing to Client/Advertiser for the Media Placement:</td>
<td></td>
</tr>
<tr>
<td>Accounts Receivable – Advertiser</td>
<td>P95,200</td>
</tr>
<tr>
<td>Income/Fees – Media Placement</td>
<td>P85,000</td>
</tr>
<tr>
<td>Deferred VAT Payable</td>
<td>10,200</td>
</tr>
</tbody>
</table>
Payment to Media Entity/Supplier:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Payable - Media Entity/Supplier</td>
<td>P95,200</td>
</tr>
<tr>
<td>Creditable IT Withheld</td>
<td>P1,700</td>
</tr>
<tr>
<td>Cash</td>
<td>93,500</td>
</tr>
</tbody>
</table>

Creditable IT Withheld

Cash

Debit Credit

Receipt of Income Payment from Advertiser:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>P93,500</td>
</tr>
<tr>
<td>Creditable Withholding Tax</td>
<td>1,700</td>
</tr>
<tr>
<td>Accounts Receivable - Advertiser</td>
<td>P95,200</td>
</tr>
</tbody>
</table>

Accounting Entries in the Books of Accounts of the Advertising Agency:

Billing to Client/Advertiser for the Commission/Service Fee:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts Receivable - Advertiser</td>
<td>P16,800</td>
</tr>
<tr>
<td>Commission Income/Service Fees</td>
<td>P15,000</td>
</tr>
<tr>
<td>Deferred VAT Payable</td>
<td>1,800</td>
</tr>
</tbody>
</table>

Receipt of Income Payment from Advertiser:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>P16,500</td>
</tr>
<tr>
<td>Creditable IT Withheld</td>
<td>300</td>
</tr>
<tr>
<td>Accounts Receivable - Advertiser</td>
<td>P16,800</td>
</tr>
</tbody>
</table>

Revenue Memorandum Circular No. 2-2013 dated December 28, 2012

- RR No. 12-2012 applies prospectively to land vehicles purchased upon the effectivity of RR No. 12-2012 where the purchase price exceeded the amount of P2,400,000.00.
- RR No. 12-2012 was published last October 17, 2012 and, based on its provisions, it shall take effect immediately. Hence, the RR took effect on October 17, 2012.
- In case the vehicles (defined in the RR as passenger vehicles of all type, whether by land, water, or air) which are not allowed depreciation expense, or the non-depreciable vehicles will be sold at a loss, the loss to be incurred from such sale shall not be deductible from gross income.
- For income tax purposes, all expenses related to the non-depreciable vehicles such as but not limited to repairs and maintenance, oil and lubricants, gasoline, spare parts, tires and accessories, premium paid for insurance covering said vehicles and registration fees shall not be allowed as a deduction in their entirety. For VAT purposes, all input taxes corresponding to the disallowed expenses for income tax purposes are likewise not allowed.

Revenue Memorandum Circular No. 4-2013 dated January 11, 2013

- All hospitals and non-stock, non-profit organizations operating hospitals which were issued tax-exempt rulings by the BIR shall submit a request.
for revalidation of their tax-exempt status by submitting the following documents to the Revenue District Office where the organization is registered:

1. Letter application which must state the specific paragraph of Section 30 of the Tax Code under which it seeks exemption;
2. Copies of the corporation’s latest Articles of Incorporation and By-Laws duly certified by the SEC;
3. BIR Certificate of Registration;
4. Tax Clearance issued by the Revenue District Office where the corporation is registered;
5. Copies of Income Tax Returns or Annual Information Returns and Financial Statements for the last three years; and
6. A statement of its modus operandi stating therein its sources of revenues.

In the course of review of the application for tax exemption, the BIR may require the submission of other documents as the circumstances may warrant.

Procedures

1. Upon receipt of the application together with the supporting documents, the Revenue District Office shall evaluate the same and shall determine whether it qualifies as an exempt corporation under Section 30 of the Tax Code.

2. If the application is found to be insufficient, the corporation shall be notified of such findings and the application with the supporting documents should be returned.

3. If the application is found to be valid, a report shall be prepared by the Revenue District Office stating therein why, in its opinion, the organization is qualified to be tax exempt under Section 30.

4. The docket of the case shall be forwarded to the Office of the Regional Director for review. If the Regional Director agrees with the recommendation of the Revenue District Office, the same shall be forwarded to the Office of the Assistant Commissioner, Legal Service. The Law Division shall review and evaluate the documents submitted, and if in order, prepare the appropriate Certificate of Tax Exemption for signature of the Commissioner or her duly authorized representative.

All rulings issued prior to November 1, 2012 which grant tax exemption to proprietary non-profit hospitals or to non-stock, non-profit entities operating hospitals under Section 30 of the Tax Code shall no longer be valid.

Revenue Memorandum Circular No. 6-2013 dated December 19, 2012

The following are deemed to be engaged in tax practice and are required to apply for accreditation pursuant to Section 2(e) of RR No. 11-2006, as amended:

1. Tax agents/practitioners who are engaged in the regular preparation, certification, audit and filing of tax returns, information returns or other statements or reports required by the Tax Code or Regulations;
2. Those who are engaged in the regular preparation of requests for ruling, petitions for reinvestigation, protests, requests for refund or tax credit certificates, compromise settlement and/or abatement of tax liabilities and other official papers and correspondence with the BIR, and other similar or related activities;

3. Those who regularly appear in meetings, conferences, and hearings before any office of the BIR officially on behalf of a taxpayer or client in all matters relating to a client’s rights, privileges, or liabilities under laws or regulations administered by the BIR.

- In accordance with RR No. 11-2006, the BIR can refuse to transact official business with tax agents/practitioners who are not accredited by the BIR.

- All taxpayers are enjoined to ensure that the tax agents/practitioners whom they will engage are accredited with the BIR. Taxpayers should be aware of their following responsibilities:

1. Before engaging the tax service of a tax agent/practitioner, they should secure a copy of his/its BIR certificate of accreditation and take note of the following:
   - TIN
   - Accreditation number
   - Date of issuance
   - Date of expiry

2. Constantly visit the BIR website for the publication of the updated master list of accredited tax agents/practitioner.

BOC Issuances

**Customs Memorandum Order No. 16-2012 dated November 27, 2012**

- Duty drawback tax credit certificates (TCCs) jointly issued by the One-Stop Shop (OSS) Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (DOF) and the BOC pursuant to Section 106 of the Tariff and Customs Code of the Philippines (TCCP) do not provide a definite validity period.

- TCCs issued pursuant to Executive Order (EO) No. 226 are valid for ten (10) years, while TCCs issued under the Tax Code are valid for 5 years from date of issue, subject to revalidation for another 5 years.

- To align and harmonize the validity period of TCCs, duty drawback TCCs issued pursuant to the TCCP shall be valid for ten (10) years from date of issue, pursuant to Resolution No. 308-48-2011 dated February 14, 2011 of the OSS-Center Executive Committee.

**Customs Administrative Order No. 1-2013 dated January 22, 2013**

- CAO No. 1-2013 covers the accreditation of qualified importers as Super Green Lane (SGL) Plus users, and the processing of shipments of SGL Plus users at the Port of Manila (POM), Manila International Container Port (MICP), NAIA Customs House, and other ports as may be deemed necessary.

CMO No. 16-2012 prescribes a 10-year validity period for duty drawback TCC.

CAO No. 1-2013 prescribes the rules and regulations implementing the SGL Plus Facility.
In addition to the benefits enjoyed by regular SGL members, an accredited SGL Plus user shall be entitled to the following benefits:

1. Three (3) year suspension on the conduct of audit
2. Five (5) year validity period of the importer’s accreditation
3. Importation of articles not included in the List of Importables, provided that amendments to the said list are submitted at least ten (10) days before arrival of the importation
4. 24-hour Client Coordinator Service for queries
5. Other benefits granted by the SGL Plus Task Group endorsed by the Commissioner and approved by the Secretary of Finance

The SGL Plus Task Group shall be composed of the following:

1. Deputy Commissioner for Intelligence Group - Chairman
2. Chief, Risk Management Office (RMO)
3. Assistant Chief, RMO
4. Director, Import Assessment System (IAS)
5. Chief, Planning and Policy Research Division (PPRD)
6. Chief of Staff, Assessment Operations Coordinating Group (AOCG)
7. Executive Assistant, Office of the Commissioner
8. Assistant OIC, Production Section, Customs Intelligence and Investigation Service (CIIS)

The SGL Plus Secretariat shall be appointed by the SGL Plus Task Group Commander.

The SGL Plus Accreditation Sub-group shall be composed of the CIIS Director, the Head of the SGL Plus Secretariat, the Heads of the Internal Control Systems (ICS) in the three major points of entry, a representative from the Post-Entry Audit Group - Trade Information and Risk and Analysis Office (PEAG-TIRAO), a CIIS representative, and others assigned by the Task Group to serve as members.

The SGL Plus Import Compliance Sub-group shall be composed of the ICS Director or his duly-designated representative, the heads of ICSGs in the POM, MICP and NAIA Customs House, the Chief of Valuation and Classification Division, and others designated by the Task Group Chairman.

The SGL Plus Client Coordinating Center (SPCCC) shall be organized by the SGL Plus Task Group Chairman.

The following are the qualifications for accreditation under the SGL Plus facility:

1. The importer is accredited as an SGL member transacting with the BOC for at least one year prior to the application.
2. The applicant has a clear and specific nature of business.
3. The SGL Plus Association has been consulted on the membership of the applicant.
4. The importer must have a good reputation based on its track record.
5. The importer must not have misused customs facilities for at least one year prior to its application, or has not been the subject of derogatory information.
6. The importer is willing to undergo a compliance audit.
The following are the conditions of the accreditation:

1. The importer is a registered SGL user.
2. The shipments may be subject to random or spot-check inspection at the importer’s premises while the goods are being unloaded.
3. The importer shall be responsible for any misuse or abuse of the privilege.
4. The importer shall comply with the rules and regulations implementing the SGL Plus program.
5. Any willful violation of the Certificate of Accreditation (CA) shall be a ground for its suspension, revocation or cancellation.
6. The use of the CA shall be subject to review and shall be valid until suspended, revoked, or cancelled.

Accreditation may be via the following modes:

1. **By Invitation.** The SGL Plus Association shall select and invite top SGL users to become SGL Plus users based on duties and taxes paid for the previous year.

2. **By Application.** Any SGL user who meets the requirements of CAO No. 1-2013 may apply for SGL Plus accreditation by submitting the SGL Plus application form together with the required supporting documents to the SGL Plus Secretariat.

Suspension, Cancellation, or Revocation of Accreditation

A CA shall remain valid unless suspended, cancelled, or revoked by the Commissioner upon recommendation of the SGL Plus Task Group, after due notice and hearing, on any of the following grounds:

1. Failure or refusal, without justifiable cause, to submit within the prescribed period hard copies of import entries or supporting documents.
2. Fraudulent or willful misrepresentation of SGL Plus application or importation.
3. Submission of fake documents in the accreditation or importation process.
4. Failure or refusal, without justifiable cause, to pay additional duties and taxes lawfully demanded after post entry (release) verification by the SGL Plus ICS within the prescribed period.
5. Violation of the terms of accreditation, e.g. failure to promptly update or inform the SGL Plus Task Group of any changes in the commodities being imported, as well as in their description, unit values, etc.
6. Failure or refusal, without justifiable cause, to comply with lawful orders or directives issued by the SGL Plus Task Group or any of its sub-groups, or by higher authorities.

Conditions on Shipment

1. Only SGL Plus-accredited importers shall be allowed to clear shipments through the SGL Plus facility.

2. SGL Plus entries shall be filed under existing procedures for SGL shipments.

3. SGL Plus entries shall be subject to Post-Release Verification and Post-Release Inspection, provided that an SGL Plus shipment shall not be examined except when it is the subject of a derogatory intelligence information or when directed by the SGL Plus Task Group Head.
4. Shipments shall qualify for SGL Plus treatment only when:

   • They are in the list of importables in the SGL Plus user’s accreditation or in the amended list of importables submitted at least 10 days before arrival of the importation.
   • They are freely importable commodities or if regulated, covered by continuing Import Authority issued by the appropriate government agency.
   • They are declared under consumption entries, thus subject to duties and taxes.
   • They do not contain prohibited articles under existing laws, rules, and regulations.

   - The accredited SGL Plus importer shall pay a service fee for every entry filed through the SGL Plus facility based on the FOB value of the subject imports in accordance with the following schedule:

<table>
<thead>
<tr>
<th>FOB Value</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below US$5,000</td>
<td>P500.00</td>
</tr>
<tr>
<td>US$5,001 to US$100,000</td>
<td>P1,000.00</td>
</tr>
<tr>
<td>US$100,001 to US$200,000</td>
<td>P1,500.00</td>
</tr>
<tr>
<td>US$200,001 to US$500,000</td>
<td>P2,000.00</td>
</tr>
<tr>
<td>Above US$500,000</td>
<td>P2,500.00</td>
</tr>
</tbody>
</table>

   - CAO No. 1-2013 shall take effect immediately.

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**SEC Issuances**

**SEC Memorandum Circular No. 11 dated December 20, 2012**

In line with the thrust of the Commission to continuously promote a higher level of corporate governance through quality training on good corporate governance principles and standards for the directors of covered companies, the Commission En Banc adopted the following guidelines:

**Accreditation**

- The Commission, through the Corporate Governance Division of the Corporation Finance Department, shall accredit all private or government institutional training providers (ITPs).

- An ITP may be accredited provided it follows the procedural requirements of these Guidelines and the following minimum standards of the Commission:

  1. That it is formally organized to conduct training activities and that it has an adequate track record of successfully conducting corporate training programs including preferably training in corporate governance;

  2. That it has a sound business plan including reasonable training fees for conducting corporate governance training and adequate financial and organizational resources to execute the same;

  3. That it can guarantee a qualified line-up of trainers who can effectively deliver, as a minimum, the required training in accordance with the Code with special emphasis on the following mandated topics:
• Illegal activities of corporations/directors/officers
• Insider trading
• Protection of minority stockholders
• Short swing transactions
• Liabilities of directors
• Confidentiality
• Conflict of interest
• Related party transactions
• Case studies

4. That the trainers line-up per course offering should at least have one experienced corporate director/CEO;

5. That it can provide for review its intended course materials and conduct a dry run for the Commission.

• The authorized officer of the applicant ITP must submit to the Commission the following:

1. Written application for accreditation as an ITP;
2. Certification that it meets the requirements of the Commission as set forth in paragraph 2 above;
3. Supporting documents, i.e., summary of business experience and plan, credentials of resource persons, course program and training materials; and
4. Processing fee amounting to P5,000.00 shall be paid to the Commission by the applicant.

• The Commission, upon recommendation of the Corporate Governance Division, shall approve the application for accreditation of the ITP, subject to the criteria and requirements enumerated herein.

• The accreditation of an ITP shall expire or be automatically delisted after 3 years from the date of approval of the accreditation, unless an application for its renewal is filed not later than 30 business days before its expiration. The application for the renewal of the accreditation of the ITP shall be accompanied by an application fee of P5,000.00.

Training Program

• An accredited ITP shall submit to the Commission details of any proposed training program on corporate governance for clearance. It shall include the proposed line-up of trainers meeting the minimum requirements of this Circular.

• The Commission may observe the conduct of any training program and undertake an independent evaluation of any aspect of the training program.

• The training providers shall submit to the Commission a Completion Report of Training not later than 15 days after the training.

• The Commission reserves the right to withdraw its accreditation from any ITP which is not complying with its training guidelines.

• All existing accredited ITPs are directed to submit an application for the renewal of their accreditation within 30 business days from posting of this
Memorandum Circular. Otherwise, their accreditation shall be deemed expired. The application for renewal of accreditation shall be evaluated by the Commission on the basis of the criteria and requirements enumerated herein.

- SEC Memorandum Circular No. 15, Series of 2002 and all other issuances relative thereto are superseded by this Circular.

**SEC Memorandum Circular No. 12 dated December 20, 2012**

- These guidelines shall apply to companies that are mandated under Securities Regulation Code (SRC) Rule 68, as amended, to adopt the Philippine Financial Reporting Standards (PFRS) as their financial reporting framework, and that have a funded retirement fund for its employees.

- The entity is required under PAS 24 “to disclose information about any transaction with a related party (the retirement fund, in this case) and outstanding balances necessary for an understanding of the potential effect of the relationship on the financial statements. At a minimum, disclosures shall include:

  1. The amount of the transactions;
  2. The amount of outstanding balances, their terms and conditions including whether they are secured, and the nature of the consideration to be provided in settlement, and details of any guarantees given or received;
  3. Provisions for doubtful debts related to the amount of outstanding balances; and
  4. The expense recognized during the period in respect of bad or doubtful debts due from related parties.

- Given that the disclosures under PAS 24 do not provide an understanding of the potential effects of the transactions of the reporting entity with its employees’ retirement fund, these guidelines shall be observed by disclosing the specific and more detailed information on transactions of a reporting entity with a retirement fund for its employees.

- The following disclosures must be provided in the annual financial statements of a reporting entity that has transactions either directly or indirectly through its subsidiaries, with its employees’ retirement benefit fund (the “fund”):

  1. Information whether the reporting entity’s fund is in the form of a trust being maintained by a trustee bank or trust company, or in the form of a corporation which has been created for the purpose of managing the fund;
  2. The carrying amount and fair value of the fund;
  3. Description of the assets and investments of the fund. The disclosure shall include a brief description of each category such as the market for equity or debt securities, information on the land or building;
  4. Volume and outstanding balances of transactions of the fund with the reporting entity or its subsidiaries including the terms and conditions thereof. These transactions may include among others, loans, investment, lease, guarantee or surety.
5. If the transaction is material, a discussion of the nature of relationship of the persons who approved it with the reporting entity, its subsidiaries, or any of its directors and officers.

6. If the fund has investments in the securities (debt or equity) of the related entity, a disclosure of the following information:
   a. The amount of investment in each type of securities of reporting entity and/or its subsidiaries, including limitations or restrictions provided in the plan (if any);
   b. In case of equity investment, nature of the relationship of the person/s who exercises voting right over the shares, with the reporting entity, its subsidiaries, or any of its directors or officers;
   c. The amount of gains or losses of the fund arising from its investment in the securities of the reporting entity and/or its subsidiaries. The gains and losses shall be presented per type of security.

- These Disclosure Guidelines shall be applicable to annual financial statements for the period ended December 31, 2012 and onwards. Except for the 2012 financial statements, the presentation of the required information shall be in a two-year comparative period. Failure to comply with the disclosure requirements shall constitute a material deficiency and shall subject the entity to penalties under the existing scale of fines.

SEC Memorandum Circular No. 1 dated January 7, 2013

- The following guidelines are issued with respect to applications/documents filed by corporations/partnerships with foreign investors:

1. No application for incorporation of a corporation, or registration of a partnership shall be accepted unless the TIN or passport number of all its foreign investors are indicated in its registration documents (i.e., Articles of Incorporation).

2. For applications for amendments, the same shall not be accepted unless the TIN of all the foreign investors, natural or juridical, resident or non-resident, are indicated therein.

3. All documents to be filed with the SEC by corporations and partnerships after their incorporation (i.e., General Information Sheets) shall not be accepted unless the TIN of all its foreign investors, natural or juridical, resident or non-resident, are indicated therein.

SEC Memorandum Circular No. 3 dated January 15, 2013

- Financing and lending companies are required to submit interim semi-annual financial statements (ISAFS), otherwise known as FCIF (Financing Companies Interim Financial Statements) and LCIF (Lending Companies Financial Statements), for financing and lending companies, respectively.

- Rule 8(a) of the implementing rules and regulations (IRR) of RA No. 9474, otherwise known as the Lending Company Regulation Act of 2007, which requires lending companies to submit ISAFS or LCIF every July 15 and January 15, failed to consider lending companies with fiscal years ending on December 31.
> Section 6 of SEC MC No. 3, Series of 2007 requires financing companies to submit ISAFS or FCIF within 15 calendar days from the end of the semester.

> Financing and lending companies shall submit ISAFS within 45 calendar days from the end of the interim semi-annual period covered by the report.

> Rule 8(a) of the IRR of RA No. 9474 and Section 6 of SEC MC No. 3, series of 2007, pertaining to the due date of submission of ISAFS are hereby amended accordingly.

**BSP Issuances**

**BSP Circular No. 779 dated January 9, 2013**

- Item “b.2” of Section X303 of the Manual of Regulations for Banks (MORB) on credit exposure limits to a single borrower is amended to read as follows:

  “Sec. X303 Credit Exposure Limits to a Single Borrower

  \( x x x \)

  b. The total amount of loans, credit accommodations and guarantees prescribed in the first paragraph may be increased for each of the following circumstances:

  1. \( x x x \);

  2. By an additional twenty-five percent (25%) of the net worth of such bank: Provided, that the additional loans, credit accommodations and guarantees are for the purpose of undertaking infrastructure and/or development projects under the Public-Private Partnership (PPP) Program of the government duly certified by the Secretary of Socio-Economic Planning: Provided, further, that the total exposures of the bank to any borrower pertaining to such infrastructure and/or development projects under the PPP Program shall not exceed twenty-five percent (25%) of the net worth of such bank: Provided, furthermore, that the additional twenty-five percent (25%) shall only be allowed for a period of six (6) years from 28 December 2010: Provided, finally, that the credit risk concentration arising from total exposures to all borrowers pertaining to such infrastructure and/or development projects under the PPP Program shall be considered by the bank in its internal assessment of capital adequacy relative to its overall risk profile and operating environment. Said loans, credit accommodations and guarantees based on the contracted amount as of the end of the six (6)-year period shall not be increased thereafter; and

  3. \( x x x \).”

- The third paragraph of Section 4303Q of the Manual of Regulations for Non-bank Financial Institutions (MORNBFi) on the loan limit to a single borrower is amended to read as follows:
“Sec. 4303Q Loan Limit to a Single Borrower

The total amount of loans, credit accommodations and guarantees prescribed in the first paragraph may be increased by an additional 25% of the net worth of such quasi-bank: Provided, that the additional loans, credit accommodations and guarantees are for the purpose of undertaking infrastructure and/or development projects under the Public-Private Partnership (PPP) Program of the government duly certified by the Secretary of Socio-Economic Planning: Provided, further, that the total exposures of the quasi-bank to any borrower pertaining to such infrastructure and/or development projects under the PPP Program shall not exceed 25% of the net worth of such quasi-bank: Provided, furthermore, that the additional 25% shall only be allowed for a period of 6 years from 28 December 2010: Provided, finally, that the credit risk concentration arising from total exposures to all borrowers pertaining to such infrastructure and/or development projects under the PPP Program shall be considered by the quasi-bank in its internal assessment of capital adequacy relative to its overall risk profile and operating environment. Said loans, credit accommodations and guarantees based on the contracted amount as of the end of the 6-year period shall not be increased but may be reduced and, once reduced, said exposures shall not be increased thereafter.

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

[Editor’s Note: Circular No. 779 was published in the Philippine Star on January 14, 2013.]

BSP Circular No. 780 dated January 10, 2013

• OFWs and family members who returned from Syria are eligible to avail of the Currency Exchange Facility (CEF) at the maximum amount of P10,000.00 equivalent of Syrian currency per person.

• Syrian currency which is considered legal tender (i.e., has not been demonetized) in Syria may be converted to Philippine pesos even if not freely convertible with the BSP at the time of exchange. On whether the Syrian currency has been demonetized, BSP offices and branches and AABs shall be guided by the latest official information from the Department of Foreign Affairs at the time of exchange.

• In converting, the BSP Offices and Branches and AABs shall use the latest BSP Reference Exchange Rate Bulletin. The BSP’s purchase of the SYP acquired by AABs under the CEF shall be at the same rate at which the AABs purchased them.

• The facility is open to those who returned from Syria from 1 January 2012 and shall be available for 4 months from effectivity of this Circular.

• AABs, particularly those with branch offices at Philippine international airports (including the Ninoy Aquino International Airport Terminals 1, 2, and 3, Clark, Subic, Laoag, Cebu, Davao and Zamboanga) and seaports, shall extend their banking hours as needed, to accommodate those who wish to avail of the facility.
AABs shall advise their branches on the activation of the CEF not later than one (1) banking day following the BSP’s issuance of the guidelines for public information.

All bank branches located at airports/seaports shall post public advisories in English and Filipino about the CEF in conspicuous places, preferably before the baggage carousel and customs desk.

AABs are reminded to comply with the Anti-Money Laundering Act of 2001.

Bearing in mind the objective of the CEF program to provide assistance to returning OFWs, AABs are enjoined not to collect any kind of service fee from those availing of the program.

AABs shall submit to BSP-Cash Department (BSP-CD, Head Office) the Consolidated Summary of Purchases under the CEF, together with copies of the filled-up Conversion Slips for each transaction within 1 banking day from the end of reference week.

Currency purchased by AABs under the CEF shall be surrendered to the BSP-CD within 10 banking days from purchase.

The currency purchased by AABs under the CEF shall not be included in the computation of the foreign exchange position of said banks.

AABs found violating this Circular shall be subject to the sanctions provided by Section 37 of RA No. 7653.

This Circular shall take effect 15 days after publication.

[Editor’s Note: Circular No. 780 was published in The Philippine Daily Inquirer on January 15, 2013.]

Circular No. 781 amends the Basel III implementing guidelines on Minimum Capital Requirements.

**BSP Circular No. 781 dated January 15, 2013**

The following section and subsection of the MORB are amended to read as follows:

“Sec. X115 Basel III Risk-Based Capital

The guidelines implementing the revised risk-based capital adequacy framework for the Philippine banking system to conform to Basel III recommendations is provided in Appendix 63b.

The risk-based capital ratio of a bank, expressed as a percentage of qualifying capital to risk weighted assets, shall not be less than 10% for both solo basis (head office plus branches) and consolidated basis (parent bank plus subsidiary financial allied undertakings, but excluding insurance companies). Other minimum capital ratios include Common Equity Tier 1 ratio and Tier 1 capital ratios of 6.0% and 7.5%, respectively. A capital conservation buffer of 2.5%, comprised of CET1 capital, shall likewise be imposed.

(The BSP’s implementation plans for the new international capital standards or Basel 2 contained in the Basel Committee on Banking Supervision document “International Convergence of Capital Measurement and Capital Standards: A Revised Framework”, are shown in Appendix 63)
Subsection X115.1 Scope. The Basel III guidelines apply to all UBs and KBs, as well as their subsidiary banks and QBs.”

- Section 4115Q of the MORNBI is amended to read as follows:

“Sec. 4115Q (2008 – 4116Q) Basel III Risk-Based Capital. The guidelines implementing the revised risk-based capital adequacy framework for the Philippine banking system to conform to Basel III recommendations is provided in Appendix Q-46b.

These templates apply to all Universal Banks (UBs) and Commercial Banks (KBs), as well as their subsidiary banks and QBs. The risk-based capital ratio of a QB, expressed as a percentage of qualifying capital to risk-weighted assets, shall not be less than 10% for both solo basis (head office plus branches) and consolidated basis (parent QB plus subsidiary financial allied undertakings, but excluding insurance companies). Other minimum capital ratios include Common Equity Tier 1 ratio and Tier 1 capital ratios of 6.0% and 7.5%, respectively. A capital conservation buffer of 2.5% comprised of CET1 capital, shall likewise be imposed.

The ratios shall be maintained at all times.

Subsection 4115Q.1 (2008 – 4116Q) Scope. The Basel III guidelines apply to all UBs and KBs as well as their subsidiary banks and QBs.”

- Existing capital instruments as of December 31, 2012 which do not meet the eligibility criteria for capital instruments under the revised capital framework shall no longer be recognized as capital upon the effectivity of this Circular. Capital instruments issued under Circular Nos. 709 and 716 and before the effectivity of Circular No. 768 dated 21 September 2012 shall be recognized as qualifying capital until 31 December 2015.

- The guidelines shall be applicable to all universal and commercial banks including their subsidiary banks/quasi-banks.

Stand-alone thrift banks, rural banks, cooperative banks and quasi-banks, as well as their subsidiary banks/quasi-banks shall continue to be subject to the existing applicable regulations on risk-based capital adequacy framework. However, capital instruments issued by said banks shall be subject to the criteria for inclusion as qualifying capital provided in Annexes A to C and E to F of Appendix 63b/Q-46 of the MORB/MORNBFI.

- Appendix 63d of the MORB and Appendix 46c of the MORNBI are deleted.

- Existing regulations deemed inconsistent with the new provisions are superseded.

- This Circular takes effect on January 1, 2014.

[Editor’s Note: Circular No. 781 was published in BusinessWorld on January 21, 2013.]

BSP Circular No. 782 dated January 21, 2013

- Item C on the “Characteristics of a typical microfinance client” is amended to include among the types of clients those poor and low income clients with annual family income below the national average based on the latest National Statistics Office (NSO) Family Income and Expenditure Survey (FIES), as follows:
Characteristics of a typical microfinance client

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Distinguishing Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of client</td>
<td>Low income with regular cash flow</td>
</tr>
<tr>
<td></td>
<td>Employment in informal sector, low wage bracket</td>
</tr>
<tr>
<td></td>
<td>Lack of physical collateral</td>
</tr>
<tr>
<td></td>
<td>Closely interlinked household and business activities</td>
</tr>
<tr>
<td></td>
<td>Poor and low income*</td>
</tr>
</tbody>
</table>

*For purposes of microinsurance products only. Poor and low income clients refer to those with annual family income below the national average based on the latest available National Statistics Office (NSO) Family Income and Expenditure Survey (FIES). The 2009 national average annual family income is PhP206,000.

x x x

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

[Editor’s Note: Circular No. 782 was published in The Philippine Daily Inquirer on January 24, 2013.]

Circular No. 783 amends the regulations on relocation and voluntary closure/sale of branches/OBOs.

BSP Circular No. 783 dated January 21, 2013

- Procedures for the relocation of existing branches/other banking offices (OBOs), whether to be opened at the new site on the next banking day or within 1 year from the date of closure of the branch/OBO under Subsection X151.9 are amended.

- Procedures for the temporary closure, permanent closure and surrender of branch/OBO license, and sale/acquisition of branches/OBOs under Subsection X151.10 are amended.

- Subsection X151.11 on relocation/transfer of branch licenses of closed banks is amended to read as follows:

  “Subsec. X151.11 Relocation/Transfer of branch licenses of closed bank. Buyers of closed banks shall be allowed to relocate/transfer acquired branches subject to the conditions stated under Items “d”, “e”, and “f” of the first paragraph of Subsec. X151.9 on relocation of branches/OBOs.”

- Subsection X153.3 on date of opening of additional foreign bank branches is amended to read as follows:

  “Subsec. X153.3 Date of opening. The opening of approved branches shall be subject to the provisions of Subsec. X151.7”

- Subsection X154.4 on date of opening an approved office abroad is amended to read as follows:
Negligence, whether slight or gross, is not equivalent to fraud with intent to evade a tax, which is criminally punishable under the Tax Code. Fraud must amount to intentional wrong-doing with the sole object of avoiding tax.

“Subsec. X154.4  Date of opening. The opening of any office abroad shall be subject to the provisions of Subsection X151.7”

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

[Editor’s Note: Circular 783 was published in The Manila Times on January 24, 2013.]

Courtd Decision

People of the Philippines vs. Judy Anne Santos y Lumagui
CTA (Third Division) Crim. Case No. 0-012 promulgated January 16, 2013

Facts:
In 2005, the accused Judy Anne Santos (Santos) was charged before the Court of Tax Appeals (CTA) with violation of Section 255 of the Tax Code for willfully, unlawfully and feloniously filing a false and fraudulent income tax return (ITR) for taxable year 2002. Santos reported a gross income of P8,033,332.70 on her 2002 ITR. The prosecution alleged that Santos’ correct income for 2002 totals P16,396,234.70, or an under-declaration of P8,362,902.00 resulting in an income tax deficiency of P1,395,116.24, excluding interest and penalties.

The prosecution presented both testimonial and documentary evidence, including Certificates of Creditable Tax Withheld issued by ABS-CBN Broadcasting Corporation, Viva Productions, Inc., Star Cinema Productions, Inc., Regal Entertainment, Inc. and Century Canning Corporation showing the total talent fees paid to Santos for 2002 and the taxes withheld.

The defense presented Santos who denied the allegations of willful filing of a false and fraudulent ITR. Santos testified that:

a. The signature affixed on top of her name in the ITR for 2002 is not her signature;

b. Since she was 12 years old, she had engaged the services of Mr. Alfonso Lorenzo as Manager to whom she entrusted all transactions, i.e., contract negotiations, contract signing, handling of fees, filing of tax returns, paying corresponding taxes, etc.;

c. Most of the time, her fees (checks) were issued in the name of her Manager, who collects the same, and she has no knowledge of how much she was earning per project;

d. While she admits the signatures appearing on the Counter-Affidavit with Counter-Charge and her Rejoinder-Affidavit submitted in 2005, she was never given a chance by her Manager to read their contents; and

e. She really intended to settle the case were it not for the opposition by her Manager and then legal counsel.
Santos’ testimony was corroborated by her external auditor, who testified that all documents used in her report for the Financial Statements were all provided by the Manager.

**Issue:**

Is Santos liable for willful filing of a false and fraudulent ITR in violation of Section 255 of the Tax Code?

**Ruling:**

No. The prosecution failed to establish the guilt of Santos beyond reasonable doubt.

There is no evidence in the records to establish the key element of willfulness on the part of Santos to supply the correct and accurate information on her ITR. Santos denied the signature appearing on the top of the name “Judy Anne Santos” in the ITR for 2002. The Certified Public Accountant, whose participation is limited to the preparation of the Financial Statements attached to the return, also denied signing the return on behalf of the accused. The intention of Santos to settle the case were it not for the opposition of her Manager and previous counsel negates any motive to commit fraud.

The prosecution has the burden to prove beyond reasonable doubt that accused willfully failed to supply correct and accurate information in the return. Santos, however, is found negligent but such is not enough to convict her in the case at bench. Negligence, whether slight or gross, is not equivalent to the fraud with intent to evade the tax contemplated by the law. Fraud must amount to intentional wrong-doing with the sole object of avoiding the tax.

In all criminal cases, mere speculation cannot substitute for proof of establishing the guilt of the accused. Suspicion, no matter how strong, must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. When guilt is not proven with moral certainty, it has been a long standing court policy that the presumption of innocence must be favored, and exoneration granted as a matter of right.

However, acquittal for the failure of the prosecution to prove all elements of the criminal offense beyond reasonable doubt does not include the extinguishment of the civil liability. Santos is liable to pay the deficiency income taxes for the year 2002 in the amount of P3,418,034.78 including penalties and interest. In addition, Santos is ordered to pay 20% delinquency interest computed from January 15, 2008 until full payment.
We welcome your comments, ideas and questions. Please contact Ma. Fides A. Balili via e-mail at Ma.Fides.A.Balili@ph.ey.com or at telephone number 894-8113 and Mark Anthony P. Tamayo via e-mail at Mark.Anthony.P.Tamayo@ph.ey.com or at telephone number 894-8391.