Highlights

BIR Rulings

- Under the RP-Japan Tax Treaty, dividends paid by a domestic corporation to a Japanese corporation are subject to the 10% preferential tax rate if the Japanese corporation directly holds at least 10% of either the voting shares of, or the total shares issued by, the domestic corporation, during the period of six months immediately preceding the date of payment of the dividends. (Page 4)

- Under the RP-Japan Tax Treaty, interest on foreign loans extended by a resident of Japan to a resident of the Philippines may qualify for the 10% preferential tax rate on the gross amount of interest if the recipient of such interest is also the beneficial owner thereof.

  The loan agreement is subject to documentary stamp tax (DST) imposed under Section 179 of the Tax Code at the rate of Php1.00 on each Php200.00 of the issue price of such loan agreement. (Page 5)

- Dividends paid by a domestic corporation to a resident of the Cayman Islands are subject to the 15% final withholding tax (FWT) under Section 28(B)(5)(b) of the Tax Code. (Page 5)

- Reconveyance of land titles by virtue of the rescission of a contract of sale is not subject to capital gains tax (CGT) and DST. The DST previously paid upon execution of a Deed of Absolute Sale cannot be refunded by reason of the rescission of the contract of sale. (Page 6)

- For an organization to be issued a certificate of tax exemption, it has to prove by actual operation for at least three years that it is an organization exempt from income tax under Section 30(G) of the Tax Code, subject to other requirements. (Page 6)

BIR Issuances

- Revenue Regulations (RR) No. 9-2013 amends certain provisions of RR No. 30-2002 on the payment of the amount offered as compromise settlement pursuant to Section 204 of the Tax Code. (Page 8)

- RR No. 10-2003 amends RR No. 2-98 to include Real Estate Service Practitioners (i.e., real estate consultants, appraisers and brokers): (1) who passed the licensure examination given by the Real Estate Service, pursuant to RA No. 9646 “The Real Estate Service Act of the Philippines,” as among those professionals falling under Section 2.57.2(A)(1) of RR No. 2-98 subject to the 10% or 15% creditable (expanded) withholding tax on professionals; and (2) those who did not pass or did not take the licensure examination given by the Real Estate Service among the brokers and agents under Section 2.57.2(G) of RR No. 2-98. (Page 9)

- RR No. 11-2013 requires the filing/submission of a hard copy of the Certificate of Compensation Payment/Tax Withheld (BIR Form 2316) covering employees who are qualified for substituted filing. (Page 9)

- Revenue Memorandum Circular (RMC) No. 34-2013 clarifies the proper accomplishment and filing of estate tax returns. (Page 11)
• RMC No. 35-2013 circularizes the full text of Department Order (DO) No. 18-2013, dated April 16, 2013, of the Department of Finance (DOF) on the amendment of Section 12 of DO No. 03-08 entitled “Rules and Regulations to Implement Republic Act 9400, An Act Amending Republic Act 7277, otherwise known as the Bases Conversion and Development Act of 1992”. (Page 12)

• RMC No. 37-2013 circularizes the full text of DOF DO No. 17-2013 dated April 11, 2013. (Page 13)

• RMC No. 38-2013 clarifies the implication of legal petition notices/declarations and similar documents on the audit/assessment process. (Page 14)

• RMC No. 39-2013 prescribes the guidelines for receipt of protest letters on Final Assessment Notices and other similar correspondences. (Page 14)

• RMC No. 41-2013 publishes the full text of the implementing rules and regulations (IRR) of Republic Act (RA) No. 10165, otherwise known as the Foster Care Act of 2012. (Page 15)

• Revenue Memorandum Order (RMO) No. 12-2013 prescribes additional policies and uniform guidelines and procedures in the processing of Authority to Print (ATP) Official Receipts (ORs), Sales Invoices (SIs) and other Commercial Invoices (CIs) in the interim period until the On-line ATP system is available for implementation. (Page 17)

• RMO No. 13-2013 prescribes work-around procedures pending the availability of the Online System for Accreditation of Printers (OCAP) pursuant to RR No. 15-2012 dated December 3, 2012. (Page 20)

**BOC Issuance**

• Customs Administrative Order (CAO) No. 2-2013 amends CAO No. 1-2007, which requires the submission of Inward Foreign Manifest and Consolidated Cargo Manifest. (Page 21)

**PEZA Issuance**

• PEZA Memorandum Circular (MC) No. 2013-013 announces the second extension of the 50% reduction in all PEZA processing fees for Ecozone Import/Export Full-Container Load Shipments via the Batangas International Port (BIP). (Page 21)

**SEC Issuances**

• SEC Memorandum Circular (MC) No. 7 prescribes the Single Borrower Limit (SBL) and Credit Limit on Directors, Officers, Stockholders and Related Interests (DOSRI) of a lending company. (Page 21)

• SEC MC No. 8 prescribes the guidelines for complying with the Filipino-foreign ownership requirements as prescribed in the Constitution and existing laws by corporations engaged in nationalized and partly nationalized activities. (Page 22)

• SEC MC No. 9 extends the deadline to submit the Annual Corporate Governance Report (ACGR) for listed companies from May 30, 2103 to June 30, 2013. (Page 23)
BSP Issuance

- Circular No. 796 amends Appendix 45 (Notes on Microfinance) of Section X361 of the Manual of Regulations for Banks (MORB). (Page 23)

Court Decisions

- A stipulation between the BIR and the taxpayer at the Court of Tax Appeals (CTA) proceedings, that taxes have been correctly remitted to the government cannot bind the court. The taxpayer is still required to present proof that it correctly remitted the taxes.

  A 20% delinquency interest is due on unpaid deficiency taxes assessed by the BIR, computed from the date prescribed for their payment until full payment is made. (Page 23)

- While the Local Government Code (LGC) prohibits all local government units (LGUs), including provinces, from levying percentage taxes, the LGC allows provinces to levy and collect an amusement tax, which is a percentage tax, from proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement.

  Swimming pools, bath houses, and hot springs cannot be considered as “other places of amusement” subject to amusement taxes under the LGC. (Page 25)

- Interest income from loans and advances to affiliates is considered as revenue realized from services rendered in the normal course of trade or business that is subject to value-added tax (VAT). (Page 26)

BIR Rulings

BIR Ruling No. ITAD 133-13 dated May 9, 2013

Facts:

J Co., a non-resident Japanese corporation, has owned 60% of the total outstanding shares of P Co., a domestic corporation, since 2009. In 2012, P Co. declared cash dividends in favor of J Co., and paid the said dividends on May 23, 2012. A Tax Treaty Relief Application (TTRA) for availing the 10% preferential tax on dividends under the RP-Japan Tax Treaty was filed with the International Tax Affairs Division (ITAD) of the BIR on April 2, 2012.

Issue:

Are the dividends paid by P Co. to J Co. entitled to the 10% preferential tax rate?

Ruling:

Yes. Under Article 10(2)(a) of the RP-Japan Tax Treaty, dividends paid by a domestic corporation to a resident of Japan are subject to the 10% preferential tax rate on the gross amount of dividends, if the beneficial owner is a company which directly holds at least 10% of either the voting shares of the company paying the dividends, or the total shares issued by that company, during the period of six months immediately preceding the date of payment of the dividends.

Under the RP-Japan Tax Treaty, dividends paid by a domestic corporation to a Japanese corporation are subject to the 10% preferential tax rate if the Japanese corporation directly holds at least 10% of either the voting shares of, or the total shares issued by, the domestic corporation, during the period of six months immediately preceding the date of payment of the dividends.
Under the RP-Japan Tax Treaty, interest on foreign loans extended by a resident of Japan to a resident of the Philippines may qualify for the 10% preferential tax rate on the gross amount of interest if the recipient of such interest is also the beneficial owner thereof.

The loan agreement is subject to DST imposed under Section 179 of the Tax Code at the rate of Php1.00 on each Php200.00 of the issue price of such loan agreement.

Dividends paid by a domestic corporation to a resident of the Cayman Islands are subject to the 15% FWT under Section 28(B)(5)(b) of the Tax Code.
Reconveyance of land titles by virtue of the rescission of a contract of sale is not subject to CGT and DST. The DST previously paid upon execution of a Deed of Absolute Sale cannot be refunded by reason of the rescission of the contract of sale.

BIR Ruling No. 178-13 dated May 17, 2013

Facts:
A Co., a domestic corporation, sold two parcels of land to B Co., another domestic corporation. The DST on the Deed of Absolute Sale was paid. The Transfer Certificates of Title (TCTs) in the name of seller A Co. were subsequently cancelled and new TCTs were issued in the name of buyer B Co. However, for failure of B Co. to comply with certain obligations, the contract between A Co. and B Co. was rescinded by virtue of a court order. Pursuant to the court order, B Co. was ordered to reconvey the TCTs to A Co.

Issues:
1. Is the reconveyance of TCTs subject to capital gains tax (CGT) and DST?
2. Is the DST paid upon the execution of Deed of Absolute Sale refundable?

Ruling:
1. No. The rescission of a contract would not give rise to a taxable event for two reasons: (1) The result of rescission is as if there was no sale, transfer or exchange. Hence, no income is realized. (2) The return of the object of the rescinded contract is not for monetary consideration and is merely an acknowledgement or confirmation of the title and ownership of the original owner of the property. Hence, the reconveyance of TCTs by virtue of a rescission of the contract of sale is not subject to CGT and DST.
2. No. In the Supreme Court case of Philippine Home Assurance Corporation, et al. vs Court of Appeals, et al., (G.R. No. 119446 dated January 21, 1999), the Court ruled that the DST must be paid upon the issuance of instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. Hence, the subsequent cancellation of the transaction to which the DST liability attaches does not have the effect of cancelling the DST liability.

BIR Ruling No. 184-2013 dated May 20, 2013

Facts:
A Co. is a domestic organization engaged in the administration of activities for the welfare of the physical, mental, educational and spiritual faculties of man through preaching, health seminars and services, and the training of members for missionary activities. A Co. requested for the issuance of a certificate of tax exemption as a civic league or organization not organized for profit but operated exclusively for the promotion of social welfare, pursuant to Section 30(G) of the Tax Code.

Issues:
1. Can a certificate of tax exemption be issued to A Co.?
2. Is A Co. subject to internal revenue taxes?
3. Is A Co. subject to any tax reporting obligations?
Rulings:

1. No. An organization has to prove by actual operation for at least three years that it is really an organization exempt from income tax under Section 30(G) of the Tax Code. For this purpose, an organization can file the necessary annual information return, instead of an income tax return, on or before the 15th day of the 4th month following the end of its taxable year, as required under Section 24 of RR No. 2-40. Based on the information return, the BIR will conduct an investigation on the activities undertaken by the organization during that period, and a certificate of tax exemption may be issued depending on the results of the investigation.

For purposes of securing a permanent exemption after the three-year period, A Co. is required to submit the following pursuant to RMC No. 14-2001:

a. Certified true copy of the Certificate of Registration with the SEC;

b. Certified true copy of the Articles of Incorporation, which includes the following provisions:
   i. That A Co. is non-stock and non-profit;
   ii. That the primary purpose for which it was created is one of those enumerated under Sec. 30 of the Tax Code;
   iii. That no part of the net income shall inure to the benefit of any of its members;
   iv. That the trustees do not receive any compensation; and
   v. That in case of dissolution, assets of the corporation shall be transferred to similar institutions or to the government;

c. Certified true copy of the By-Laws;

d. Certified true copy of the Annual Information Returns and Financial Statements for the last three years of operation;

e. Certification under oath that there has not been any change in the By-Laws, Articles of Incorporation, manner of activities as well as the sources and disposition of income; and

f. BIR Certificate of Registration.

2. Yes. A Co. is subject to the following internal revenue taxes:

a. Tax on income derived from its properties, real or personal, or any activity conducted for profit regardless of the disposition thereof;

b. 20% FWT on interest income from currency bank deposits and yield or any monetary benefits derived from deposit substitutes and from trust funds and similar arrangements, and royalties derived from sources within the Philippines; and

c. 7.5% FWT on interest income derived from a depository bank under the expanded foreign currency deposit system.
3. Yes. A Co. is subject to the following reporting obligations:

a. Filing on or before the 15th day of the 4th month following the end of the accounting period a Profit and Loss Statement and Balance Sheet with the Annual Information Return under oath, stating its gross income and expenses incurred during the preceding period and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as sources of disposition of income;

b. Acting as a withholding agent of the government if it acts as an employer and its employees receive compensation income subject to withholding tax, or if it makes income payments to individuals or corporations subject to expanded withholding tax (EWT);

c. Maintenance of books of account and other pertinent records of tax-exempt organizations or grantees of tax incentives, which shall be subject to BIR examination;

d. Payment of annual registration fee of Php500.00; and

e. Issuance of duly registered receipts or sales or commercial invoices for each sale or transfer of merchandise or for services rendered, which are not directly related to the activities for which the association is registered.

**BIR Issuances**

**Revenue Regulations No. 9-2013 dated May 10, 2013**

- Section 6 of RR No. 30-2002 is amended to read as follows:

  “SECTION 6. APPROVAL OF OFFER OF COMPROMISE - Except for offers of compromise where the approval is delegated to the REB pursuant to the succeeding paragraph, all compromise settlements within the jurisdiction of the National Office (NO) shall be approved by a majority of all the members of the NEB composed of the Commissioner and the four Deputy Commissioners. All decisions of the NEB, granting the request of the taxpayer or favorable to the taxpayer, shall have the concurrence of the Commissioner.

  x x x

  The compromise offer shall be paid by the taxpayer upon filing of the application for compromise settlement. No application for compromise settlement shall be processed without the full settlement of the offered amount. In case of disapproval of the application for compromise settlement, the amount paid upon filing of the aforesaid application shall be deducted from the total outstanding tax liabilities.”

  x x x

- These Regulations shall take effect 15 days after publication in any newspaper of general circulation.

[Editor’s Note: RR No. 9-2013 was published in the Manila Bulletin on May 11, 2013.]
Revenue Regulations No. 10-2003 dated May 2, 2013

- Section 2.57.2(A)(1) of RR No. 2-98, as last amended by RR No. 30-2003, is further amended to read as follows:

  “Section 2.57.2. Income payments subject to creditable withholding tax and rates prescribed thereon. - xxx xxx

(A) Professional fees, talent fees, etc., for services rendered by individuals. - On the gross professional, promotional and talent fees or any other form of remuneration for the services of the following individuals -15% if the gross income for the current year exceeds Php720,000.00, and 10% if otherwise:

  (1) Those individually engaged in the practice of profession or callings: xxx designers, real estate service practitioners (RESPs), (i.e., real estate consultants, real estate appraisers and real estate brokers) requiring a government licensure examination given by the Real Estate Service, pursuant to Republic Act No. 9646, and all other professions requiring government licensure examinations regulated by the Professional Regulations Commission, Supreme Court, etc.

  xxx”

- Section 2.57.2(G) of RR 2-98, as last amended by RR 14-2002, is further amended to read as follows:

  “(G) Income payments to certain brokers and agents. - On gross commissions of customs, insurance, stock, immigration and commercial brokers, fees of agents of professional entertainers and real estate service practitioners (RESPs), (i.e., real estate consultants, real estate appraisers and real estate brokers) who failed or did not take up the licensure examination given by and not registered with the Real Estate Service under the Professional Regulations Commission - 10%.”

- These regulations shall take effect on June 1, 2013 and shall cover income payments to be paid or payable starting June 1, 2013, which are required to be remitted within the month of July, 2013.

[Editor’s Note: RR No. 10-2013 was published in the Manila Bulletin on June 8, 2013.]

Revenue Regulations No. 11-2013 dated May 20, 2013

- Section 2.83 of RR No. 2-98 is further amended to read as follows:

  “Sec. 2.83. Statements and Returns. –

  Section 2.83.1. Employees Withholding Statements (BIR Form No. 2316). – In general, every employer or other person who is required to deduct and withhold the tax on compensation, including fringe benefits given to rank and file employees, shall furnish every employee from whose compensation taxes have been withheld the Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) on or before January 31 of the succeeding calendar year, or if employment is terminated before the close of such calendar year, on the day on which the last payment of compensation is made. Failure to furnish the same shall be a ground for the mandatory audit of payor’s income tax liabilities (including withholding tax) upon verified complaint of the payee.
Employers of Minimum Wage Earners (MWEs) are still required to issue BIR Form No. 2316 (June 2008 Encs version) to the MWEs on or before January 31 of the following year.

As a rule, the employer shall furnish each employee with the original and duplicate copies of BIR Form No. 2316 showing the name and address of the employer; employer’s TIN; name and address of the employee; employee’s TIN; amount of exemptions claimed, amount of premium payments on health and/or hospitalization insurance not exceeding Php2,400.00, if any; the sum of compensation paid including the non-taxable benefits; the amount of statutory minimum wage received by MWEs; Overtime pay, holiday pay, night shift differential pay and hazard pay received by MWEs; the amount of tax due; the amount of tax withheld during the calendar year and such other information as may be required. The statement must be signed by both the employer or other authorized officer and the employee, and shall contain a written declaration that it is made under the penalties of perjury. If the employer is the Government of the Philippines, its political subdivision, agency or instrumentality or government-owned or controlled corporation, the statement shall be signed by the duly designated officer or employee.

However, in cases covered by substituted filing, the employer shall furnish each employee with the original copy of BIR Form No. 2316 and file/submit to the BIR the duplicate copy not later than February 28 following the close of the calendar year.

x x x

• Any employer/withholding agent, including the government or any of its political subdivisions and government owned and controlled corporations, who/which fails to comply with the above filing/submission of BIR Form No. 2316 within the time required by RR No. 11-2013, may be held liable under Section 250 of the Tax Code which provides:

“In the case of each failure to file an information return, statement or list, or keep any record, or supply any information required by this Code or by the Commissioner on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the Commissioner, be paid by the person failing to file, keep or supply the same, Php1,000.00 for each such failure: Provided, however, That the aggregate amount to be imposed for all such failures during a calendar year shall not exceed Php25,000.00.”

• However, any employer/withholding agent, including the government or any of its political subdivisions and government owned and controlled corporations, who/which fails to comply with the above filing/submission of BIR Form 2316 within the time required by RR No. 11-2013 for two consecutive years may be dealt with in accordance with Section 255 which provides in part:

“Any person required under this Code, or by rules and regulations promulgated thereunder, to pay any tax, make any return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Php10,000.00 and suffer imprisonment of not less than one year but not more than 10 years.”
In settlement under this situation, the compromise fee shall be Php1,000.00 for each BIR Form No. 2316 not filed without any maximum threshold.

RR No. 11-2013 shall take effect beginning with the calendar year 2013.

[Editor's Note: RR No. 10-2013 was published in the Manila Bulletin on June 8, 2013.]

Revenue Memorandum Circular No. 34-2013 dated April 22, 2013

Responsibilities of the Heir/Executor/Administrator

1. Estate tax return shall be filed under any of the following situations:
   a. In all cases of transfers subject to estate tax; or
   b. Where, though exempt from estate tax, the gross value of the estate exceeds Php200,000.00; or
   c. Where, regardless of the gross value, the estate consists of registered or registrable property such as real property, motor vehicles, shares of stock or other similar property, for which a clearance from the BIR is required as a prerequisite for the transfer of its ownership in the name of the transferee.

2. The heirs/authorized representative/administrator/executor shall file the estate tax return with, and pay the corresponding estate tax to, the Authorized Agent Bank (AAB), Revenue Collection Officer (RCO) or duly authorized treasurer of the city or municipality in the Revenue District Office (RDO) having jurisdiction over the place of domicile of the decedent at the time of his death.

3. In case of a non-resident decedent with an executor or administrator in the Philippines, the estate tax return shall be filed with the AAB of the RDO where such executor/administrator is registered or is domiciled, if not yet registered with the BIR.

4. For non-resident decedent with no executor or administrator in the Philippines, the estate tax return shall be filed with the AAB under the jurisdiction of RDO No. 39 - South Quezon City.

5. In filling out the return, the executor, administrator or any of the legal heirs shall exercise due diligence in accomplishing the same properly, filling out completely items with values and entering “0” in the box to indicate none or nil, if there is no applicable value.

6. The heir/authorized representative/administrator/executor shall submit all the applicable documentary requirements as prescribed in Annexes A-6 and A-6.1 of Revenue Memorandum Order (RMO) No. 15-2003 and proof of payment to the RDO which has jurisdiction over the place of residence of the decedent, or to the RDO where the executor or administrator is registered, or to RDO No. 39 - South Quezon City, whichever is applicable.

RMC No. 34-2013 clarifies the proper accomplishment and filing of estate tax returns.
Responsibilities of the RDO and Document Processing Division (DPD)

1. The RDO shall process the estate tax return in accordance with the procedure indicated in RMO No. 15-2003.

2. Exempt estate tax returns which have to be filed directly with the RDO, and estate tax returns with payment, which shall be received by the RCO, shall not be received by the RDO/RCO if they are not properly accomplished.

3. The RDO or DPD (for Regional Offices with DPD) shall scrutinize the entries in the returns and determine any missing/incomplete information for the tax returns with payment filed directly with the AABs.

4. Within five days from discovery, the DPD head shall transmit a list of estate tax returns with missing/incomplete information.

5. Within five days from receipt of the list, the RDO shall view and print the returns and shall notify in writing the heir/authorized representative/administrator/executor of the estate of such fact and require the amendment of the return within five days from receipt of the written notice.

6. The RDO shall also impose the compromise penalty for violation of Section 255 of the Tax Code, as prescribed under RMO No. 19-2007. In case of late filing, the applicable penalties under the Tax Code shall be imposed.

Revenue Memorandum Circular No. 35-2013 dated April 25, 2013

“DEPARTMENT ORDER NO. 18-2013

AMENDMENT OF SECTION 12 OF DEPARTMENT ORDER NO. 03-08 ENTITLED ‘RULES AND REGULATIONS TO IMPLEMENT REPUBLIC ACT 9400, AN ACT AMENDING REPUBLIC ACT 7277, OTHERWISE KNOWN AS THE BASES CONVERSION AND DEVELOPMENT ACT OF 1992, AND FOR OTHER PURPOSES.’

SECTION 1. Section 12 of DOF Department Order No. 03-08 is hereby amended to read as follows:

Section 12. Availment of Incentives - It is understood that henceforth, registered Ecozone and Freeport Enterprises already availing of the incentives and benefits under RA 9400 in accordance with these rules, shall be expressly disqualified from availing of the incentives and benefits defined and/or granted under other laws, rules and regulations. Qualified enterprises already enjoying incentives under other preferential regimes should have their registrations thereunder cancelled before they may subsequently avail of the benefits provided under RA 9400.

SECTION 2. Repealing Clause - All orders, circulars, memoranda, and other issuances, or parts thereof, which are inconsistent with this Department Order, are hereby repealed or modified accordingly.

SECTION 3. Effectivity - This Department Order shall take effect 15 days after its publication in the Official Gazette or in two newspapers of general circulation.”

[Editor’s Note: DO No. 18-2013 was published in the Philippine Daily Inquirer on April 29, 2013.]
Revenue Memorandum Circular No. 37-2013 dated April 25, 2013

- Salient Features of DOF DO No. 17-2013:

1. **Port Accreditation** - Only particular ports will be accredited for sensitive commodities such as oil, steel, grains, tiles, gold and vehicles, subject to standards, technical requirements and applicable laws, rules and regulations. Accredited ports are to submit to the DOF monthly trade statistical reports that will be cross-checked with data from the Department of Energy (DOE), Philippine Ports Authority (PPA), and other relevant agencies, on a per-volume and per-vessel basis to eliminate discrepancies in import and consumption data.

2. **Submission of a Rolling Import Plan** - In order to better anticipate imports, the BOC shall require all importers of sensitive commodities to submit their annual rolling import plan indicating quantity, type, source and location of intended port arrival. The Commissioner of Customs shall pre-authorize importation of sensitive commodities in accordance with the annual import plan.

3. **Trade Statistics Reconciliation** - Ports shall submit to the BOC and the DOF a monthly list of importations arriving per port, whether sea or airport, international or domestic, and shall include details, such as date of arrival, name of country/port of origin, capacity of vessel/aircraft, type of commodities, and consignee details.

   Collected data from the ports shall be cross-checked with data from the DOE, PPA, and other relevant agencies, on a per-volume and per-vessel basis.

   Monthly list of importations from January 2013 should be submitted within 10 days from the date of this Order.

4. **Other measures**
   
a. Strict implementation of RR No. 2-2012, which requires importers to pay value-added tax (VAT) and excise tax on all oil imports upon arrival in the Philippines.

   b. Submission of Income Tax Return as received by the BIR as one of the requirements for accreditation of importers with the BOC.

   c. Conduct of post-audit examinations on importation of sensitive commodities.

   d. BOC shall work closely with the BIR and the respective local government units, subject to existing laws on exchange of information with regard to importers of sensitive commodities.

   e. Improve reporting forms and administrative support to the BOC Statistics Office and the Management Information System and Technology Group to capture data required.

5. **Regular monitoring of cases filed against oil smugglers**
   
a. Cases involving oil smuggling shall be established and pursued.

   b. Aside from the monthly Run After The Smugglers (RATS) report, BOC shall submit to the DOF a bimonthly status report of oil smuggling cases.
Revenue Memorandum Circular No. 38-2013 dated May 2, 2013

• On the audit/investigation pursuant to issued Letters of Authority (LOAs)

1. The normal process and/or procedures related to audit/investigation arising from electronic Letters of Authority (eLAs) issued will not be suspended notwithstanding the receipt of Legal Petition Notices (LPNs) questioning the validity and enforceability of the eLAs.

2. The National Office shall no longer entertain any LPN questioning the validity and enforceability of the eLA duly issued by the concerned Regional Director for the audit of a taxpayer within the region, inasmuch as the issue has already been clarified under RMC No. 6-2013.

3. There shall be no impediment to the investigation of the taxpayer’s internal revenue tax liabilities and the eventual recommendation for the issuance of a Subpoena Duces Tecum (SDT), if warranted, in accordance with RMO Nos. 45-2010 and 88-2010.

• On the issuance of Preliminary Assessment Notice (PAN), Formal Letter of Demand (FLD) and Final Assessment Notice (FAN)

1. Upon receipt of the PAN or FLD and FAN, the taxpayer is given 15 or 30 days, as the case may be, to rebut the assessment upon compliance with the requirements of filing a protest pursuant to RR No. 12-99.

2. Any LPN, declaration or any similar document protesting the assessment addressed to the Commissioner or any official in the National Office, without the issuance of a Final Decision on Disputed Assessment (FDDA) from the regional office, shall be considered premature and invalid.

• Responsibility of Taxpayers on their LPN

1. The BIR can refuse to transact official business with tax agents/practitioners who are not accredited before it, as stated in Section 9 of RR No. 11-2006, as amended and clarified in RMC No. 6-2013;

2. The responsibility is on the taxpayers to ensure that the tax agents/practitioners whom they choose to engage are accredited with the BIR.

Revenue Memorandum Circular No. 39-2013 dated April 4, 2013

• All protest letters, requests for reinvestigation/reconsideration and similar correspondences shall only be filed by the taxpayers or their duly authorized representatives, in person or through registered mail with return card, with the Office of the concerned Regional Director (RD), Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) and Assistant Commissioner-Enforcement Service (ACIR-ES), who signed the PANs, FANs and FLDs, for proper recording of the protests and evaluation of the same in accordance with Section 228 of the Tax Code.

• If the aforesaid procedures are not followed, then the letters of protest, requests for reinvestigation/reconsideration and similar correspondences shall be considered void and without force and effect.

RMC No. 39-2013 prescribes the guidelines for receipt of protest letters on FANs and other similar correspondences.
The above revenue officials shall be primarily responsible in ensuring the preparation of a complete/accurate report on all protests that were filed in their respective offices and its prompt submission to the Commissioner of Internal Revenue (CIR) every Monday of each week in hard and soft copies.

Based on the weekly report, the Office of the CIR shall create a database of all letters of protest, requests for reinvestigation/reconsideration and similar correspondences received by the different offices of the BIR.

Any protest letter, request for reinvestigation/reconsideration, or other similar communication allegedly filed by any taxpayer, but not included in the database, shall be deemed as not officially filed with the BIR and shall not be used as basis for the grant of any request for reinvestigation/reconsideration of any FAN or FDDA issued against the taxpayer.

All protest letters, requests for reinvestigation/reconsideration or similar correspondences that will be accepted from taxpayers beginning April 29, 2013 shall be guided by this Circular.

Revenue Memorandum Circular No. 41-2013 dated April 17, 2013

Definition of Terms

1. Child refers to a person below 18 years of age, or one who is over 18 but is unable to fully take care of, or protect, himself or herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

2. Foster Child refers to a child placed under Foster Care.

3. Foster Parent refers to a person duly licensed by the DSWD to provide Foster Care.

4. Agency refers to any child-caring or child-placing institution licensed and accredited by the DSWD to implement the Foster Care Program.

Who may be placed under Foster Care

1. A child who is abandoned, surrendered, neglected, dependent or orphaned;

2. A child who is a victim of sexual, physical, or any other form of abuse or exploitation*;

3. A child with special needs*;

4. A child whose family members are temporarily or permanently unable or unwilling to provide the child with adequate care;

5. A child awaiting adoptive placement and who would have to be prepared for family life, including a child who has already been matched for adoption but continues to receive institutional care;

6. A child who needs long-term care and close family ties but who cannot be placed for domestic adoption*;

7. A child whose adoption has been disrupted;

RMC No. 41-2013 publishes the full text of the implementing rules and regulations (IRR) of Republic Act (RA) No. 10165, otherwise known as the Foster Care Act of 2012.
8. A child who is under socially difficult circumstances such as, but not limited to, a street child, a child in armed conflict or a victim of child labor or trafficking*;

9. A child who committed a minor offense but has been released on recognizance, or who is in custody supervision, or whose case has been dismissed*; and

10. A child who is in need of special protection as assessed by a social worker, an agency, or the DSWD*.

* In these cases, the child must have no family willing and capable of caring and providing for him/her.

• Qualifications of a Foster Parent

1. Must be of legal age;

2. Must be at least 16 years older than the Foster Child, unless the applicant is a relative of the Foster Child;

3. Must have a genuine interest, capacity and commitment in parenting the Foster Child and able to provide the Foster Child with a familial atmosphere;

4. Must have a healthy and harmonious relationship with each family member living with him/her;

5. Must be of good moral character;

6. Must be physically and mentally capable and emotionally mature;

7. Must have sufficient resources to be able to provide for the family’s needs; and

8. Must be willing to be trained or receive advice for the purpose of increasing or improving his or her knowledge, attitudes and skills in caring for a child.

9. For an alien to qualify as a Foster Parent, he/she must: (a) be legally documented; (b) possess all the qualifications above-stated; (c) have resided in the Philippines for at least 12 continuous months at the time of the application; and (d) undertake to maintain such residence until the termination of placement by the DSWD or expiration of the Foster Family Care License.

10. For purposes of determining continuous residence, the alien must not have spent more than 60 days of the last 12-month period prior to the filing of the application outside of the Philippines, and then only for meritorious reasons.

• Additional Exemption for Dependents

1. The definition of the term “dependent” under Section 35(B) of the Tax Code shall be amended to include a “Foster Child”;

2. A Foster Parent shall be allowed an additional exemption of Php25,000.00 for each qualified dependent provided, however, that the total number of dependents, including a Foster Child qualified to be claimed as a dependent
for which additional exemptions may be claimed, shall not exceed four, as provided under RA No. 9504;

3. The Php25,000.00 additional exemption for a Foster Child shall be allowed only if the period of foster care is at least a continuous period of one taxable year;

4. Only one Foster Parent can treat the Foster Child as a dependent for a particular taxable year. As such, no other parent or Foster Parent can claim said child as a dependent for that period.

**Incentives to Agencies**

1. Exemption from Income Tax - Agencies shall be exempt from income tax on income derived by them as such organizations pursuant to Section 30 of the Tax Code, as implemented by RR No. 13-98.

2. Qualification as a Donee Institution - Agencies can also apply for qualification as donee institutions.

**Incentives to Donors**

1. Allowable Deductions - Donors shall be granted allowable deductions from their gross income to the extent of the amount donated to Agencies in accordance with Section 34(H) of the Tax Code.

2. Exemption from Donor’s Tax - Donors shall be exempted from Donor’s Tax under Section 101 of the Tax Code, provided that not more than 30% of the amount of donations shall be spent for administrative expenses.

**Revenue Memorandum Order No. 12-2013 dated May 2, 2013**

- Only BIR Accredited Printers shall be authorized to print Principal and Supplementary Receipts and Invoices pursuant to RR No. 15-2012.

- Printers that were issued a provisional accreditation number shall also be allowed to print principal and supplementary receipts/invoices. Sub-contracting to non-accredited printer/s is strictly prohibited.

- Taxpayers engaged in business, whether government or private, that use manually-issued receipts/invoices shall abide by the guidelines and procedures prescribed in this RMO.

- Taxpayers engaged in business, whether government or private, that use receipts/invoices issued through Cash Register Machine/Point-Of-Sale Machines (CRM/POS) and/or Computerized Accounting System (CAS) are not covered by this RMO, but shall be covered by a separate revenue issuance.

- All the information required under this RMO in the printing of ORs/SIs/CIs shall be preprinted on the face of the loose-leaf receipts/invoices using computer-aided machines (e.g., MS Excel).

- National government agencies, government owned and controlled corporations and local government units referred to here as Government Instrumentalities (GIs), shall be guided by the following policies:

RMO No. 12-2013 prescribes additional policies and uniform guidelines and procedures in the processing of ATP ORs, SIs and other CIs in the interim period until the On-line ATP system is available for implementation.
1. For GIs engaged in governmental functions:
   a. Apply for registration with the BIR for unregistered governmental functions.
   b. Not required to secure ATP in printing of Government Accountable Form No. 51, Revenue Official Receipts (RORs), Tax Receipts and other receipts in whatever name or form being issued for governmental functions.

2. For GIs engaged in proprietary functions:
   a. For unregistered proprietary functions
      If the registered address of the business activity is similar or co-located with the GI whose governmental function is already registered, the GI shall file a registration information update by filing BIR Form No. 1905 for the following:
      i. Business Activity/ies
      ii. Additional Tax Type/s Details
      iii. Trade Name (if applicable)
      iv. Books of Accounts
      v. If the registered address of the business activity is other than the registered address of the GI, the GI shall file an Application for Registration as Branch using BIR form No. 1903.
   b. For registered proprietary functions, the GI is required to secure ATP prior to the printing of its principal and supplementary receipts/invoices indicating all information required under this RMO.

• The application for ATP (BIR Form No. 1906, as revised), together with the necessary documentary requirements, shall be submitted to the Revenue District Office (RDO)/Large Taxpayer Office (LT Office) having jurisdiction over the Head Office (HO) of the taxpayer-applicant.

• The old BIR Form No. 1906 shall still be used until the revised form becomes available.

• In the interim, all applications for ATP shall be processed using the Registration System of the Integrated Tax System (ITS), which shall generate the prescribed ATP under RMO No. 83-99, as amended by RMO No. 28-2002.

• The following information shall be typed or printed on the ATP that will serve as guide/reference for accredited printers in printing principal and supplementary receipts and invoices:
  1. Date of ATP
  2. Validity period of the ATP
  3. Printer’s Accreditation Number
  4. Date of Accreditation
The principal and supplementary receipts and invoices of the HO and each of the branches shall have its own independent series of serial numbers.

A taxpayer with expiring principal and supplementary receipts/invoices shall apply for a new ATP not later than 60 days prior to the actual expiry date.

Procedure for taxpayer applicant:

1. Submit inventory listing/s and surrender the hard copies of the unused/ expired receipts/invoices, together with photocopies of the old and new ATPs and corresponding Printer’s Certificate of Delivery to the RDO where it is registered. Branch office/s shall submit and surrender the same to the RDO/LT Office where the branch is registered;

2. Choose the BIR Accredited Printer from the updated list of duly accredited printers available in the BIR website;

3. File the application for ATP with the supporting documents listed below (at the RDO/LT Office concerned where the HO is registered using the prescribed BIR Form):
   a. Original copy of sample layout/template of OR/SI/CI
   b. Original Printer’s Job Order
   c. Photocopy of previous ATP. If not available, the last series of the printed OR/SI/CI. The new set of receipts/invoices shall continue with the last serial number indicated in the previous ATP issued. However, for printing machines with limited capacity as to the maximum range of serial numbers, the serial number may start from one and prefixed with a special/alpha code to avoid duplication (e.g., A0001)
   d. Photocopy of Loose-leaf Permit, if applicable;

4. An authorized representative is a duly-designated responsible officer/ employee of the company with a written authorization duly signed by the taxpayer-applicant or a responsible officer/employee of the accredited printer as indicated in the ATP Application Form;

5. Sign in the office logbook as proof of actual receipt of the approved ATP;

6. BIR Accredited Printers shall submit the following to the RDO/LT Office concerned:
   a. Quarterly Report of Printer (BIR Form No. 1932, as revised), on or before the 20th day of the month following the end of each calendar quarter

All unused/unissued principal and supplementary receipts/invoices printed prior to January 19, 2013 (effectivity of RR No. 18-2012) and those printed by printers, which are not compliant with this RMO, shall be valid until June 30, 2013.
The taxpayer shall submit an inventory list of principal and supplementary receipts/invoices, and surrender the hardcopies of the receipts/invoices to the RDO/LT Office where the taxpayer is registered on or before July 10, 2013.

Branch Office/s shall submit and surrender the same to the RDO/LT Office where the branch is registered.

All new set/s of principal and supplementary receipts/invoices to be printed, which are compliant with the requirements prescribed under this RMO, shall have a validity period of five years.

All unused/expired/expiring ORs/SIs/CIs shall be surrendered together with an inventory listing to the BIR Office having jurisdiction over the taxpayer for destruction on or before the 10th day after the validity period of the expired receipts/invoices.

Pending the availability of the On-line ATP System, the scanned copy of the issued ATP shall be printed at the inside back portion of the cardboard cover of each booklet/pad of principal and supplementary receipts/invoices printed.

ATPs generated through the ITS pursuant to this RMO shall be migrated to the On-line ATP System upon its availability, the necessary guidelines and procedures of which shall be prescribed in a separate revenue issuance.

Revenue Memorandum Order No. 13-2013 dated May 2, 2013

All registered printers in the ITS who applied for accreditation, and were initially evaluated by the RDOs/offices under Large Taxpayers Service (LTS) as to the completeness of the documentary requirements per Operations Memorandum dated January 24, 2013 shall be published or posted in the BIR website as ‘deemed Accredited Printers’.

A Provisional Accreditation Number shall be issued to all ‘deemed Accredited Printers’.

The Provisional Accreditation shall be given a validity period of six months from posting in the BIR website.

A Certificate of Accreditation with Permanent Accreditation Number shall be issued to the printer only after evaluation and approval by the National/Regional Accreditation Board (N/RAB) with the exclusion of those under the Information Systems Group (ISG).

The Accredited Printers with Certificate of Accreditation shall cease using the assigned Provisional Accreditation Number.

The Permanent Accreditation Number shall be used in printing ORs, SIs and/or invoices.

The ‘deemed Accredited Printers’, which were issued Revocation Notices shall not be allowed to apply for Authority to Print (ATP) Receipt and Invoices. However, all receipts and invoices printed by these printers shall remain valid until expiration or until full utilization, whichever comes first.

All printers issued the Letter of Denial/Revocation Notice who intend to be accredited will observe the same procedure as a new applicant for accreditation, and shall undergo the same accreditation process.

RMO No. 13-2013 prescribes work-around procedures pending the availability of the Online System for Accreditation of Printers (OCAP) pursuant to RR No. 15-2012 dated December 3, 2012.
- A list of registered printers in the ITS and tagged as TP ENGAGED IN PRTG for at least three years as of December 31, 2012 shall be the initial candidates for accreditation.

**BOC Issuance**

**Customs Administrative Order No. 2-2013 dated May 2, 2013**

- Immediately upon arrival of the carrying vessel, the master or agent thereof must submit to the Piers and Inspection Division (PID) or its equivalent unit four sets of the Inward Foreign Manifest, to be distributed as follows:
  1. PID or equivalent office;
  2. Intelligence Enforcement Group;
  3. Assessment and Operations Coordinating Group;
  4. COA Resident Auditor.

- The Commissioner of Customs, upon consultation with private stakeholders, shall issue the rules and regulations to implement CAO No. 2-2013.

- All orders, memoranda, circulars or parts thereof, which are inconsistent with CAO No. 2-2013 are deemed revoked, amended, or modified accordingly.

- CAO No. 2-2013 shall take effect 15 days after publication in a newspaper of general circulation.

*Editor’s Note: CAO No. 2-2013 was published in the Manila Times and Manila Standard Today on May 9, 2013.*

**PEZA Issuance**

**Memorandum Circular No. 2013-013 dated April 30, 2013**

- The 50% reduction in all PEZA processing fees for ecozone import/export full container load shipments at the Batangas International Port (BIP) is extended for another year (January-December 2013).

- The Philippine Ports Authority has also reduced its port charges (port dues and dockage for vessels) by 50% for a period of one year (January-December 2013).

**SEC Issuances**

**SEC Memorandum Circular No. 7 dated April 8, 2013**

- During its meeting on April 8, 2013, the SEC En Banc approved the amendment of Rule 3 of the Implementing Rules and Regulations of the Lending Company Act of 2007 (RA No. 9474) by requiring lending companies to comply with the Single Borrower’s Limit (SBL) and credit limit on Directors, Officers, Stockholders and Related Interests (DOSRI).

- The total credit that a lending company may extend to its directors, officers and stockholders shall not exceed 15% of its net worth.
For this purpose, loans and other credit extended by a lending company to the following related interests shall be deemed “extended to its directors, officers and stockholders”:

1. Spouse or relatives within the first degree of consanguinity or affinity, or relatives by legal adoption, of the officer, director or stockholder of the lending company;

2. Partnership in which a director or officer or stockholder of the lending company, or their spouse or relatives referred to in the preceding item 1 is a general partner;

3. Corporations where a director or officer or stockholder of the lending company or their spouse or relatives referred to in item 1 above is also a director or officer of the corporation;

4. Corporations where more than 20% of its subscribed capital stock is owned by a director or officer or stockholder of the lending company or their spouse or relatives referred to in item 1 above;

5. Corporations wholly or majority-owned or controlled by entities mentioned in items 2, 3 and 4 above.

The total credit that a lending company may extend to any person, company, corporation or firm shall not exceed 30% of its net worth.

[Editor’s Note: SEC MC No. 7 was published in Manila Standard Today on May 9, 2013.]

SEC Memorandum Circular No. 8 dated May 20, 2013.

All covered corporations shall, at all times, observe the Constitutional or statutory ownership requirement.

The required percentage of Filipino ownership shall be applied to BOTH:

1. The total number of outstanding shares of stock entitled to vote in the election of directors; AND

2. The total number of outstanding shares of stock, whether or not entitled to vote in the election of directors.

All Corporate Secretaries of covered corporations are directed to monitor and observe compliance with the ownership requirements. The Corporate Secretary cannot delegate this responsibility without the express authority from the Board of Directors or Trustees.

All covered corporations which are non-compliant shall be given a period of one year from the date of effectivity of this MC within which to comply with said ownership requirement.

[Editor’s Note: SEC MC No. 8 was published in the Business Mirror on May 22, 2013.]
SEC Memorandum Circular No. 9 dated May 20, 2013

- On March 20, 2013, the SEC issued MC No. 5, requiring all listed companies to submit on May 30, 2013 their Annual Corporate Governance Report (ACGR) in accordance with the guidelines set forth therein.

- However, due to the number of requests received and considering further that this is the first time said companies shall be filing the said report, the SEC in its meeting on May 20, 2013 approved the granting of a 30-day extension (i.e., until June 30, 2013) to give ample time to all listed companies including their respective signatories to comply with MC No. 5.

[Editor’s Note: SEC MC No. 9 was published in the Philippine Star on May 23, 2013.]

BSP Issuance

BSP Circular No. 796 dated May 3, 2013

- The provisions of the Manual of Regulations for Banks (MORB) on the general features of a microfinance savings deposit account are amended as follows:

  “G. General Features of a Microfinance Savings Deposit Account

  1. Minimum maintaining balance not exceeding Php100.00

  2. Not subject to dormancy charges

  3. Only for individual microfinance clients whose average daily savings account balance does not exceed Php40,000.00

  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. 796 was published in the Manila Times on May 10, 2013.]

Court Decisions

First Lepanto Taisho Insurance Corporation vs. Commissioner of Internal Revenue
Supreme Court (Third Division) G.R. No. 197117 promulgated April 10, 2013

Facts:

The BIR assessed Petitioner First Lepanto Taisho Insurance Corporation (First Lepanto), a non-life insurance corporation and a large taxpayer, various deficiency taxes for the year 2007.

Because of inaction by the BIR on its protest, First Lepanto appealed to the Court of Tax Appeals (CTA) which upheld the deficiency tax assessments for withholding tax on compensation (WTC), expanded withholding tax (EWT) and final withholding tax (FWT). The CTA also ordered the payment of a 20% delinquency interest from the date First Lepanto received the Formal Letter of Demand (FLD) until actual payment is made.
First Lepanto appealed to the Supreme Court. First Lepanto contended that: (i) payments to directors, not being employees, should not be subject to WTC; and (ii) it no longer needs to present evidence on the EWT on its payments for contractors and purchases, since it had already stipulated with the BIR at the CTA proceedings that the Company withheld the correct EWT on its payments for contractors and purchases.

**Issue:**

Is First Lepanto liable for the deficiency taxes and for delinquency interest?

**Ruling:**

Yes. First Lepanto is liable for deficiency WTC, EWT and FWT and for delinquency interest.

On the WTC assessment, a director was considered an employee under the Withholding Tax Regulations then in force. The Company failed to prove with documents that the directors were not its employees. Hence, the payments are properly subject to WTC.

The Company also failed to prove with relevant source documents (such as reimbursement forms/vouchers with attached SIs/ORs, with appropriate tracing to specific general ledger entries) that the payments of fixed transportation, subsistence and lodging allowances, and fixed representation expenses to employees were mere reimbursements of actual expenses. Because of this, the allowances are treated as employees' compensation subject to WTC.

On the EWT assessment, First Lepanto failed to present documents (like reinsurance agreements/contracts) to show that the commissions were paid to insurance companies, which are not agents or brokers, and therefore, should not be subject to EWT.

There was also under-withholding of EWT on the Company's occupancy costs.

On the argument that the BIR and the Company have jointly stipulated at the CTA proceedings that the Company had correctly withheld the EWT due on payments for contractors and purchases, and, therefore, is no longer required to present evidence on the related EWT remittance, stipulations cannot defeat the right of the State to collect the correct taxes due because taxes are the lifeblood of our nation and its collection should be actively pursued.

On the FWT assessment, First Lepanto failed to present proof of FWT remittance on payments of dividends and computerization expenses to non-resident foreign corporations.

Finally, the Company failed to pay the deficiency tax assessed within the time prescribed for its payment. Hence, the 20% delinquency interest is correctly imposed on the unpaid deficiency taxes assessed, reckoned from the date prescribed for its payment until full payment is made.
While the LGC prohibits all LGUs, including provinces, from levying percentage taxes, the LGC allows provinces to levy and collect an amusement tax, which is a percentage tax, from proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement.

Swimming pools, bath houses, and hot springs cannot be considered as “other places of amusement” subject to amusement taxes under the LGC.

Pelizloy Realty Corporation vs. The Province of Benguet  
Supreme Court (Third Division) G.R. No. 183137 promulgated April 10, 2013

Facts:

Petitioner Pelizloy Realty Corporation (Pelizloy) owns Palm Grove Resort, which has facilities like swimming pools, spa, and function halls located in Tuba, Benguet.

The Province of Benguet enacted the Benguet Revenue Code of 2005, which levied a 10% amusement tax on gross receipts from admissions to “resorts, swimming pools, bath houses, hot springs, and tourist spots.”

Pelizloy questioned the validity of the provision before the Secretary of Justice. Upon failure of the Secretary to decide within the 60 day-period provided under the LGC, Pelizloy filed a Petition for Declaratory Relief with the Regional Trial Court (RTC) in La Trinidad, Benguet.

Pelizloy argued that the Benguet Revenue Code imposed a percentage tax, which provinces are not allowed to levy under the common limitations on the taxing powers of LGUs. Section 133(i) of the LGC prohibits LGUs from imposing percentage tax or VAT on sales, barter, exchanges or similar transactions on goods or services, except when otherwise provided by the LGC.

The RTC dismissed the petition. Pelizloy appealed to the Supreme Court.

Issues:

1. Is the amusement tax a percentage tax which the Province of Benguet is not allowed to levy?

2. Can provinces impose amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs, and tourist spots?

Ruling:

1. Yes. The amusement tax levied under the Benguet Revenue Code is a percentage tax. However, a province is allowed to levy amusement taxes under the LGC.

A percentage tax is a tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. The Tax Code lists amusement taxes as among the percentage taxes, which are levied regardless of whether or not a taxpayer is already liable to pay VAT.

Amusement taxes are fixed at a certain percentage of the gross receipts incurred by specified establishments. Hence, the amusement tax levied under the Benguet Revenue Code is a percentage tax.
However, provinces are not barred from levying amusement taxes because Section 133(i) of the LGC specifically provides that the prohibition is subject to exceptions which may be provided under the LGC. Section 140 of the LGC expressly allows the imposition by provinces of amusement taxes “to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement.”

2. No. Provinces may not impose an amusement tax on admission fees to swimming pools, resorts, bath houses, hot springs, and tourist spots, as these facilities do not qualify as “other places of amusement” under the LGC.

Section 131(c) of the LGC defines “amusement places” as “theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performances.” Accordingly, “other places of amusement” must be interpreted as venues where one seeks admission to entertain oneself by seeing or viewing the show or performances or as venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience.

Interest income from loans and advances to affiliates is considered as revenue realized from services rendered in the normal course of trade or business that is subject to VAT.

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Waterfront Philippines, Inc. vs. Commissioner of Internal Revenue
Court of Tax Appeals (Special First Division) Case No. 8024 promulgated April 24, 2013

Facts:

Respondent Commissioner of Internal Revenue (CIR) assessed Petitioner Waterfront Philippines, Inc. (Waterfront) for alleged deficiency taxes for taxable year 2006, including VAT on interest income derived from loans granted to affiliates Metro Alliance Holdings and Equities Corporation and Wellex Group, Inc.

The CIR claims that in the ordinary course of business, Waterfront extends and obtains cash advances and loans to and from related parties to meet working capital requirements and to finance the construction and operation of its hotel projects, in furtherance of the primary purpose stated in the Articles of Incorporation. The CIR alleges that said interest income is subject to VAT. Waterfront protested the assessment.

Upon denial of its protest by the CIR, Waterfront filed a Petition for Review with the CTA. The CTA First Division ruled that the interest income from loans or advances granted to affiliates by Waterfront, which is not engaged in the business of lending money, is not subject to VAT.

The CIR filed a Motion for Reconsideration and argued that Waterfront was assessed for deficiency VAT not as a lending investor but for interest income realized from loans and advances granted to related parties in the ordinary course of trade or business.
**Issue:**

Is the interest income derived by Waterfront from loans and advances granted to affiliates subject to VAT?

**Ruling:**

Yes. The interest income from loans and advances extended by Waterfront to its affiliates is subject to VAT.

The CIR assessed Waterfront for deficiency VAT not as a lending investor but because the interest income received is revenue realized from services rendered in its normal course of trade or business.

Section 105 of the Tax Code defines ‘in the course of trade or business’ as the regular conduct or pursuit by any person of a commercial or an economic activity, including transactions incidental thereto. Section 108 of the Tax Code also provides that VAT is due on the ‘sale or exchange of services’ or the performance of all kinds of services in the Philippines for others for a fee or consideration regardless of whether the performance of such services calls for the exercise or use of physical or mental faculties.

The CTA cited Diaz, et al. vs. Secretary of Finance, et al. promulgated on July 19, 2011, where the Supreme Court held that VAT is imposed on all kinds of services in the Philippines for a fee. The enumeration of services subject to VAT in Section 108 of the Tax Code is not exclusive. The listing of specific services illustrates how broad the VAT coverage is. Every activity that can be imagined as a form of service rendered for a fee should be deemed included unless a specific provision of law excludes it. Thus, whether Waterfront is a lending investor would not be material as it is only one of the activities subject to VAT enumerated in Section 108 of the Tax Code.

Waterfront extended cash advances to its affiliates, which is clearly a performance of service for a fee (with interest as the fee or consideration) that is covered by the VAT provisions of the Tax Code. While the act of extending cash advances with interest to affiliates may be an isolated transaction, it does not follow that the same cannot be treated as an incidental transaction subject to VAT.

(Editor’s Note: This is an ‘Amended Decision’ of the CTA Special First Division reversing the ruling of the CTA First Division in its ‘Decision’ promulgated on November 13, 2012, which was published in the November 2012 Tax Bulletin.)
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