

# Tax Bulletin

January 2018



# Highlights

## BIR Issuances

- ▶ Revenue Regulations (RR) No. 1-2018 implements the revised excise tax rates on mineral products under Republic Act (RA) No. 10963, otherwise known as the “Tax Reform for Acceleration and Inclusion (TRAIN) Law”, amending RR No. 13-94 for this purpose. **(Page 4)**
- ▶ RR No. 2-2018 implements the revised excise tax rates on petroleum products pursuant to the TRAIN Law. **(Page 5)**
- ▶ RR No. 3-2018 implements the revised excise tax rates on tobacco products pursuant to the TRAIN Law, amending for this purpose of RR No. 17-2012. **(Page 8)**
- ▶ RR No. 4-2018 implements the documentary stamp tax (DST) rate adjustments under the TRAIN Law. **(Page 8)**
- ▶ RR No. 5-2018 implements the adjustment of excise tax rates on automobiles pursuant to the TRAIN Law, amending RR No. 25-2003 for this purpose. **(Page 13)**
- ▶ RR No. 6-2018 revokes RR No. 12-2013, thereby reinstating the provisions of Section 2.58.5 of RR No. 14-2002, as amended by RR No. 17-2003, allowing the deductibility of costs/ expenses subject to withholding tax (WT) where the WT and other applicable taxes were paid at the time of audit or investigation. **(Page 14)**
- ▶ The revised Revenue Memorandum Circular (RMC) No. 1-2018 prescribes the procedures on the use of the withholding tax table on compensation income and the change of creditable withholding tax rate on certain income payments to individuals. **(Page 14)**
- ▶ RMC No. 6-2018 identifies the BIR Priority Programs for calendar year (CY) 2018. **(Page 16)**
- ▶ RMC No. 9-2018 prescribes the additional mandatory requirements for all economic zone (ecozone) developers/operators duly registered under the Philippine Economic Zone Authority (PEZA) for the processing of an Electronic Certificate Authorizing Registration (eCAR). **(Page 18)**

## BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 02-2018 provides for the amendment to CMO No. 04-2014 entitled “Policies, Guidelines and Procedures for the Accreditation of Importers and Customs Brokers” with the Bureau of Customs (BOC) pursuant to Department of Finance (DOF) Department Order No. 12-2014. **(Page 18)**

- ▶ CMO No. 03-2018 provides for the revocation of CMO No. 29-2017 and amendment to CMO No. 14-2017 on the Authorization to Issue Alert Orders. **(Page 19)**

### **BSP Issuances**

- ▶ Circular No. 989 provides for Guidelines on the Conduct of Stress Testing Exercises. **(Page 19)**
- ▶ Circular No. 990 provides for the Amendments to the Basel III Leverage Ratio Framework. **(Page 20)**
- ▶ Circular No. 991 provides for the Extension of the Transitory Provisions of Circular No. 938, dated 23 December 2016 and Subsection 4511N.16 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI). **(Page 21)**

### **SEC Opinion and Issuances**

- ▶ A corporation that was incorporated under the old Corporation Law (Commonwealth Act No. 1459) is deemed to incorporate the 50-year term limit under the new Corporation Code (Batas Pambansa Blg. 68). **(Page 21)**
- ▶ SEC MC No. 1 adopts the revised accounting standards and amendments to existing accounting standards and interpretations. **(Page 22)**
- ▶ SEC MC No. 2 requires compliance with the SEC-prescribed website template under SEC MC No. 11 series of 2014. **(Page 22)**
- ▶ SEC MC. No. 3 provides the schedule for the filing of 2017 annual reports of corporations registered with the SEC. **(Page 23)**

### **BLGF Opinion**

- ▶ The tax base in computing the local business tax of a distributor is the gross sales or receipts, excluding discounts, sales returns, excise tax, and value-added tax (VAT). **(Page 24)**

### **Court Decisions**

- ▶ Rubber-stamping the word “zero-rated” on invoices and official receipts substantially complies with the invoicing requirements prescribed by the regulations for VAT zero-rating purposes. **(Page 25)**
- ▶ Dividend and interest earned are not subject to local business tax under Section 143(f) of the Local Government Code (LGC), unless the corporation is a bank or non-bank financial intermediary. **(Page 25)**

## BIR Issuances

RR No. 1-2018 implements the revised excise tax rates on mineral products under RA No. 10963, otherwise known as the "TRAIN Law", amending RR No. 13-94 for this purpose.

### RR No. 1-2018 dated 15 January 2018

- ▶ Section 3 of RR No. 13-94, which defines *Gross Output*, is amended as follows:
  1. *Gross Output* shall be interpreted as the actual market value of minerals or mineral products or of bullion from each mine or mineral land operated as a separate entity, without any deduction from mining, milling, refining (including all expenses incurred to prepare the said minerals or mineral products in a marketable state), as well as transporting, handling, marketing or any other expenses: *Provided*, That if the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted: *Provided, however*, that in the case of mineral concentrates not traded in commodity exchanges in the Philippines or abroad, such as copper concentrate, the actual market value shall be the world price quotations of the refined mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining and other charges incurred in the process of converting the mineral concentrates into refined metal traded in those commodity exchanges.
- ▶ The following are the new excise taxes on minerals and minerals products:

MINERAL PRODUCTS	NEW RATES
On domestic and imported coal and coke*	<ul style="list-style-type: none"> <li>▶ 1 January 2018 - P 50.00</li> <li>▶ 1 January 2019 - P100.00</li> <li>▶ 1 January 2020 - P150.00</li> </ul>
All non-metallic and quarry resources	<ul style="list-style-type: none"> <li>▶ Locally extracted or produced - 4% based on the actual market value of the gross output at the time of removal</li> <li>▶ Imported - 4% based on the value used by the Bureau of Customs (BOC) in determining tariff and customs duties, net of excise tax and VAT</li> <li>▶ Locally extracted natural gas and liquefied natural gas - Exempt</li> </ul>
All metallic minerals- copper, gold, chromite	<ul style="list-style-type: none"> <li>▶ Locally extracted/produced - 4% based on actual market value of the gross output at the time of removal</li> <li>▶ Imported - 4% based on the value used by the BOC in determining tariff and customs duties, net of excise tax and VAT</li> </ul>
Indigenous petroleum**	<ul style="list-style-type: none"> <li>▶ 6% based on the fair international market price thereof, on the first taxable sale, barter, exchange or such similar transaction, such tax to be paid by the buyer or purchaser before removal from the place of production</li> </ul>

\*Includes coal produced under Coal Operating Contracts entered into by the government pursuant to Presidential Decree (PD) No. 972, as well as those exempt from excise tax on mineral products under other laws, which shall now be subject to the applicable excise tax rates beginning 1 January 2018.

\*\*Shall include locally-extracted mineral oil, hydrocarbon gas, bitumen, crude asphalt, mineral gas and all other similar or naturally associated substances, except coal, peat, bituminous shale and/or stratified mineral deposits.

- ▶ The regulations shall take effect immediately following their publication.

(Editor's Note: RR No. 1-2018 was published in the Manila Bulletin on 18 January 2018.)

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RR No. 2-2018 implements the revised excise tax rates on petroleum products pursuant to the TRAIN Law.

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**RR No. 2-2018 dated 24 January 2018**

- ▶ The following are the revised excise tax rates on refined and manufactured mineral oils and motor fuels:

PRODUCTS	EFFECTIVITY		
	1 January 2018	1 January 2019	1 January 2020
<ul style="list-style-type: none"> <li>▶ Lubricating oils and greases, including but not limited to, base stock for lube oils and greases, high vacuum distillates, aromatic extracts and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum-based or not, per liter and kilogram respectively, of volume capacity or weight</li> <li>▶ Locally produced or imported oils</li> <li>▶ Previously taxed but subsequently reprocessed, recycled, per liter and kilogram of volume capacity or weight</li> <li>▶ Processed gas, per liter of volume capacity</li> <li>▶ Waxes and petrolatum per kilogram</li> <li>▶ Denatured alcohol to be used for motive power, per liter of volume capacity</li> <li>▶ Asphalts, per kilogram</li> </ul>	P8.00	P9.00	P10.00
<ul style="list-style-type: none"> <li>▶ Naphta, regular gasoline, pyrolysis gasoline and other similar products of distillation, per liter of volume capacity</li> <li>▶ Unleaded premium gasoline, per liter of volume capacity</li> </ul>	P7.00	P9.00	P10.00
<ul style="list-style-type: none"> <li>▶ Kerosene, per liter of volume capacity</li> </ul>	P3.00	P4.00	P5.00
<ul style="list-style-type: none"> <li>▶ Aviation turbo jet fuel, aviation gas, per liter of volume capacity</li> <li>▶ Kerosene, when used as aviation fuel, per liter of volume capacity</li> </ul>	P4.00	P4.00	P4.00

PRODUCTS	EFFECTIVITY		
	1 January 2018	1 January 2019	1 January 2020
<ul style="list-style-type: none"> <li>▶ Diesel fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity</li> <li>▶ Liquefied petroleum gas used for motive power per kilogram</li> <li>▶ Bunker fuel oil, and on similar oils having more or less the same generating power, per liter of volume capacity</li> <li>▶ Petroleum coke, per metric ton</li> </ul>	P2.50	P4.50	P6.00
<ul style="list-style-type: none"> <li>▶ Liquefied petroleum gas, per kilogram</li> </ul>	P1.00	P2.00	P3.00
<ul style="list-style-type: none"> <li>▶ Naptha and pyrolysis gasoline, when used as a raw material in the production of petrochemical products or in the refining of petroleum products, or as replacement fuel for natural-gas-fire-combined cycle power plants, in lieu of locally-extracted natural gas during the non-availability thereof, per liter of volume capacity</li> <li>▶ Liquefied petroleum gas, when used as raw material in the production of petrochemical products, per kilogram</li> <li>▶ Petroleum coke, when used as feedstock to any power generating facility, per metric ton</li> </ul>	P0.00	P0.00	P0.00

- ▶ The revised excise tax rates shall not apply under the following instances:
  1. Lubricating oils and greases produced from basestocks and additives on which the excise tax has already been paid, shall no longer be subject to excise tax.
  2. Unless otherwise provided by special laws, if denaturated alcohol is mixed with gasoline, the excise tax on which has already been paid, only the alcohol content shall be subject to the above taxes.
  3. The removal of denaturated alcohol of not less than 180 degrees proof (90% absolute alcohol) shall be deemed to have been removed for motive power, unless otherwise shown.
- ▶ The excise tax paid on the purchased basestock (bunker) used in the manufacture of excisable articles and forming part thereof shall be credited against the excise tax thereon.

- ▶ Any excess of excise taxes paid on raw materials resulting from manufacturing, blending, processing, storage and handling losses shall not give rise to a tax refund or credit.
- ▶ From 2018 to 2020, the scheduled increase in the excise tax on fuel shall be suspended when the average Dubai crude oil based on Mean of Platts Singapore (MOPS) for three months prior to the scheduled increase of the month reaches or exceeds \$8.00 per barrel.
- ▶ The use of an official fuel marking or similar technology on petroleum products that are refined, manufactured or imported into the Philippines and are subject to the payment of taxes and duties, such as but not limited to, unleaded premium gasoline, kerosene and diesel fuel oil, shall be required.
- ▶ The following guidelines shall be followed during the transitory period:
  1. Concerned oil companies, owners, operators or lessees of storage depots shall submit duly notarized inventories in a prescribed format of all petroleum products as of midnight of 31 December 2017 to the Excise LT Field Operations Division (ELTFOD) for taxpayers registered within Revenue Region Nos. 4 (San Fernando, Pampanga), 5 (Caloocan), 6 (Manila), 7 (Quezon City), 8 (Makati City) and 9 (San Pablo City) or to the concerned Excise Tax Area (EXTA) for taxpayers registered outside of RR 4 to 9, on or before 15 January 2018, in a prescribed format.
  2. Similar inventories shall be submitted as of midnight of 31 December 2018, 31 December 2019 and 31 December 2020.
  3. In case of failure to submit the required inventories, petroleum products found in their possession as of 1 January 2018, 1 January 2019, and 1 January 2020 shall be subject to the new excise tax rates.
  4. All Withdrawal Certificates issued covering the removals of petroleum products subject to the old or previous tax rates shall be prominently stamped with the phrase "STOCKS ON HAND PRIOR TO APPLICABLE DATE OF EFFECTIVITY".
  5. The removals of finished goods where the accompanying Withdrawal Certificate/s do not bear such information shall be subject to the new excise tax rates imposed under these regulations at the time of its actual removal, even if the same were taken from the old or previous inventory.
- ▶ Violations of the provisions of these regulations shall be subject to the corresponding penalties provided under Title X of the NIRC, as amended, and other applicable regulations.
- ▶ The regulations shall take effect immediately following their publication.

*(Editor's Note: RR No. 2-2018 was published in the Manila Bulletin on 26 January 2018)*

RR No. 3-2018 implements the revised excise tax rates on tobacco products pursuant to the TRAIN Law, amending for this purpose of RR No. 17-2012.

**RR No. 3-2018 dated 15 January 2018**

- ▶ The following are the revised excise tax rates on tobacco products per pack:

Product	Date of Effectivity				
	1 January 2018 until 30 June 2018	1 July 2018 until 31 December 2019	1 January 2020 until 31 December 2021	1 January 2022 until 31 December 2023	1 January 2024 onwards
▶ Cigarettes packed by hand	P32.50	P35.00	P37.50	P40.00	4% increase every year thereafter
▶ Cigarettes packed by machine	P32.50	P35.00	P37.50	P40.00	

- ▶ The regulations shall take effect immediately following their publication.

*(Editor's Note: RR No. 2-2018 was published in the Manila Bulletin on 18 January 2018)*

RR No. 4-2018 implements the DST rate adjustments under the TRAIN Law.

**RR No. 4-2018 dated 15 January 2018**

- ▶ Below are the adjusted DST rates under the TRAIN Law:

	Old Rates	New Rates
Original issue of shares of stock (Sec. 174)	P1.00 on each P200.00, or fractional part thereof, on the par value	P2.00 on each P200.00, or fractional part thereof, on the par value
Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock (Sec. 175)	<ul style="list-style-type: none"> <li>▶ P0.75 on each P200.00, or fractional part thereof, of the par value</li> <li>▶ 25% of DST paid on original issue in case of stock without par value</li> </ul>	<ul style="list-style-type: none"> <li>▶ P1.50 on each P200.00, or fractional part thereof, of the par value</li> <li>▶ 50% of DST paid on original issue in case of stock without par value</li> </ul>
Certificates of Profits or Interest in Property or Accumulations (Sec. 177)	P0.50 on each P200.00, or fractional part thereof, of the face value	P1.00 on each P200.00, or fractional part thereof, of the face value
Bank Checks, Drafts, Certificates of Deposit not Bearing Interest, and Other Instruments (Sec. 178)	P1.50	P3.00



	Old Rates	New Rates
Original issue of all debt instruments (Sec. 179)	P1.00 on each P200.00, or fractional part thereof, of the issue price	P1.50 on each P200.00, or fractional part thereof, of the issue price
All bills of exchange between points within the Philippines or drafts (Sec. 180)	P0.30 on each P200.00, or fractional part thereof, of the face value	P0.60 on each P200.00, or fractional part thereof, of the face value
Acceptance or payment of bills of exchange or order for the payment of money drawn in a foreign country, but payable in the Philippines (Sec. 181)	P0.30 on each P200.00, or fractional part thereof, of the face value or the Philippine equivalent of such value, if expressed in foreign currency	P0.60 on each P200.00, or fractional part thereof, of the face value or the Philippine equivalent of such value, if expressed in foreign currency
Foreign bills of exchange and letters of credit (Sec. 182)	P0.30 on each P200.00, or fractional part thereof, of the face value or the Philippine equivalent of such face value, if expressed in foreign currency	P0.60 on each P200.00, or fractional part thereof, of the face value or the Philippine equivalent of such face value, if expressed in foreign currency
Life Insurance Policies (Sec. 183)	<ul style="list-style-type: none"> <li>▶ If the amount of insurance exceeds P100,000.00 but does not exceed P300,000.00 - P10.00</li> <li>▶ If the amount of insurance exceeds P300,000.00 but does not exceed P500,000.00 - P25.00</li> <li>▶ If the amount of insurance exceeds P500,000.00 but does not exceed P750,000.00 - P50.00</li> <li>▶ If the amount of insurance exceeds P750,000.00 but does not exceed P1,000,000.00 - P75.00</li> <li>▶ If the amount of insurance exceeds P1,000,000.00 - P100.00</li> </ul>	<ul style="list-style-type: none"> <li>▶ If the amount of insurance exceeds P100,000.00 but does not exceed P300,000.00 - P20.00</li> <li>▶ If the amount of insurance exceeds P300,000.00 but does not exceed P500,000.00 - P50.00</li> <li>▶ If the amount of insurance exceeds P500,000.00 but does not exceed P750,000.00 - P100.00</li> <li>▶ If the amount of insurance exceeds P750,000.00 but does not exceed P1,000,000.00 - P150.00</li> <li>▶ If the amount of insurance exceeds P1,000,000.00 - P200.00</li> </ul>

	Old Rates	New Rates
Policies of Annuities Pre-need Plans (Sec. 186)	<ul style="list-style-type: none"> <li>▶ P0.50 on each P200.00 or fractional part thereof, of the premium or installment payment on contract price collected</li> <li>▶ Pre-need plans are taxed at P0.20 on each P200.00 or fractional part thereof of the premium or contribution collected</li> </ul>	<ul style="list-style-type: none"> <li>▶ P1.00 on each P200.00 or fractional part thereof, of the premium or installment payment on contract price collected</li> <li>▶ Pre-need plans are now taxed at P0.40 on each P200.00 or fractional part thereof of the premium or contribution collected</li> </ul>
Certificates (Sec. 188)	P15.00	P30.00
Warehouse Receipts (Sec. 189)	P15.00	P30.00
Jai-alai, Horse Race, Tickets, Lotto or Other Authorized Number Games (Sec. 190)	P0.10 and an additional tax of P0.10 on every P1.00 or fractional part thereof, if the cost of the ticket exceeds P1.00	P0.20 and an additional tax P0.20 on every P1.00 or fractional part thereof, if the cost of the ticket exceeds P1.00
Bills of lading or receipts (Sec. 191)	<ul style="list-style-type: none"> <li>▶ P1.00 if the value of goods exceeds P100.00 and does not exceed P1,000.00.</li> <li>▶ P10.00, if the value of goods exceeds P1,000.00</li> </ul>	<ul style="list-style-type: none"> <li>▶ P2.00 if the value of goods exceeds P100.00 and does not exceed P1,000.00</li> <li>▶ P20.00, if the value of goods exceeds P1,000.00</li> </ul>
Proxies (Sec. 192)	P15.00	P30.00
Powers of Attorney (Sec. 193)	P5.00	P10.00
Leases and other Hiring Agreements (Sec. 194)	<ul style="list-style-type: none"> <li>▶ P3.00 for the first P2,000.00 or fractional part thereof</li> <li>▶ Additional P1.00 for every P1,000.00 or fractional part thereof in excess of the first P2,000.00 for each year</li> </ul>	<ul style="list-style-type: none"> <li>▶ P6.00 for the first P2,000.00 or fractional part thereof</li> <li>▶ Additional P2.00 for every P1,000.00 or fractional part thereof In excess of the first P2,000.00 for each year</li> </ul>

	Old Rates	New Rates
Mortgages, Pledges and Deeds of Trust (Sec. 195)	<ul style="list-style-type: none"> <li>▶ P20.00, when amount secured does not exceed P5,000.00</li> <li>▶ Additional P10.00 on each P5,000.00 or fractional part thereof in excess of P5,000.00</li> </ul>	<ul style="list-style-type: none"> <li>▶ P40.00, when amount secured does not exceed P5,000.00</li> <li>▶ Additional P20.00 on each P5,000.00 or fractional part thereof in excess of P5,000.00</li> </ul>
Deeds of Sale, Conveyances and Donations of Real Property (Sec. 196)	<ul style="list-style-type: none"> <li>▶ P15.00, if the consideration or value received or contracted to be paid for such realty does not exceed P1,000.00.</li> <li>▶ Additional P15.00, for each additional P1,000.00 or fractional part thereof in excess of P1,000.00 of such consideration or value</li> </ul>	<ul style="list-style-type: none"> <li>▶ No change in DST rates, but donations of real property are now subject to DST.</li> <li>▶ Exempt donations made by a Resident or a Non-resident, not a Citizen of the Philippines: <ul style="list-style-type: none"> <li>▶ Made to or for the use of the National Government or any entity created by any of its agencies, which is not conducted for profit, or to any political subdivision of the said Government; and</li> <li>▶ In favor of an educational and/ or charitable, religious, cultural or social welfare corporation, institution, accredited non-government organization, etc.; provided that not more than 30% of said gifts shall be used by such for administration purposes</li> </ul> </li> </ul>

	Old Rates	New Rates
Charter Parties and similar instruments (Sec. 197)	<ul style="list-style-type: none"> <li>▶ P500.00 if the registered gross tonnage of the ship, vessel or steamer does not exceed 1,000 tons, and the duration of the charter or contract does not exceed 6 months plus P50.00 for each month or fraction of a month in excess of 6 months</li> <li>▶ P1,000.00, if the registered gross tonnage exceeds 1,000 tons and does not exceed 10,000 tons, and the duration of the charter or contract does not exceed 6 months plus P100.00 for each month or fraction of a month in excess of 6 months</li> <li>▶ P1,500.00 if the registered gross tonnage exceeds 10,000 tons and the duration of the charter or contract does not exceed 6 months plus P150.00 for each month or fraction of a month in excess of 6 months</li> </ul>	<ul style="list-style-type: none"> <li>▶ P1,000.00 if the registered gross tonnage of the ship, vessel or steamer does not exceed 1,000 tons, and the duration of the charter or contract does not exceed 6 months plus P100.00 for each month or fraction of a month in excess of 6 months</li> <li>▶ P2,000.00, if the registered gross tonnage exceeds 1,000 tons and does not exceed 10,000 tons, and the duration of the charter or contract does not exceed 6 months plus P200.00 for each month or fraction of a month in excess of 6 months</li> <li>▶ P3,000.00 if the registered gross tonnage exceeds 10,000 tons and the duration of the charter or contract does not exceed 6 months plus P300.00 for each month or fraction of a month in excess of 6 months</li> </ul>

- ▶ The regulations shall take effect 15 days following their publication.

*(Editor's Note: RR No. 4-2018 was published in the Manila Bulletin on 18 January 2018)*

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RR No. 5-2018 implements the adjustment of excise tax rates on automobiles pursuant to the TRAIN Law, amending RR No. 25-2003 for this purpose.

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#### **RR No. 5-2018 dated 15 January 2018**

- ▶ A **hybrid electric vehicle** shall refer to a motor vehicle powered by electric energy, with or without provision for off-vehicle charging, in combination with gasoline, diesel or any other motive power; provided that, a hybrid electric vehicle must be able to propel itself from a stationary condition using solely electric motor.
- ▶ The rates and bases of the ad valorem tax on automobiles effective 1 January 2018 are as follows:

<b>Net Manufacturer's Price/ Importer's Selling Price</b>	<b>Tax Rate</b>
Up to P600,000.00	4%
Over P600,000.00 up to P1,000,000.00	10%
Over P1,000,000.00 up to P4,000,000.00	20%
Over P4,000,000.00	50%

- ▶ Hybrid vehicles shall be taxed at 50% of the applicable excise tax rates on automobiles, subject to the determination by the Department of Energy (DOE) that the automobiles are hybrid vehicles prior to the removal from the manufacturing plant or customs custody
- ▶ For imported automobiles not for sale, the tax shall be based on the total landed value, including transaction value, customs duty and all other charges.
- ▶ Purely electric vehicles and pick-ups shall be exempt from the excise tax on automobiles.
- ▶ By the end of three months from the imposition of the new rates, the BIR shall validate the Manufacturer's or Importer's Selling Price of the newly introduced models and initially determine the correct bracket under which a newly introduced model shall be classified.

After the end of one year from such validation and every year thereafter, the BIR shall revalidate the initially validated Net Manufacturer's or Importer's Selling Price in order to finally determine the correct tax bracket.

- ▶ Within seven working days from the effectivity of these regulations, all manufacturers/assemblers/importers are required to submit the following to the Commissioner of Internal Revenue:
  1. Updated sworn statement for each brand/model or automobile as of 31 December 2017.
  2. Duly notarized list of inventory on-hand of CBU, CKD, and SKD units within the manufacturing/assembly plant, storage facility or warehouse or the customs' premises for which import entries have been filed as of 31 December 2017.
- ▶ The regulations shall take effect on 1 January 2018 following their publication.

*(Editor's Note: RR No. 4-2018 was published in the Manila Bulletin on 18 January 2018)*

RR No. 6-2018 revokes RR No. 12-2013, thereby reinstating the provisions of Section 2.58.5 of RR No. 14-2002, as amended by RR No. 17-2003, allowing the deductibility of costs/ expenses subject to WT where the WT and other applicable taxes were paid at the time of audit or investigation.

**RR No. 6-2018 dated 19 January 2018**

- ▶ Any income payment, which is otherwise deductible under the Tax Code, shall be allowed as a deduction from the payor's gross income only if it is shown that the income tax required to be withheld has been paid to the BIR in accordance with Sections 57 and 58 of the NIRC, as amended.
- ▶ Where no withholding of tax is made, the deduction may also be allowed subject to the following requirements:
  1. The payee reported the income and paid the tax due while the withholding agent paid the tax including the interest incident to the failure to withhold the tax and surcharges, if applicable, at the time of the audit/ investigation or reinvestigation/ reconsideration;
  2. The recipient/ payee failed to report the income on the due date while the withholding agent/ taxpayer paid the tax, including the interest incident to the failure to withhold the tax and surcharges, if applicable, at the time of audit/ investigation or reinvestigation/ reconsideration;
  3. The withholding agent erroneously under-withheld the tax, but paid the difference between the correct amount and the amount of tax withheld including the interest, incident to such error, and surcharges, if applicable, at the time of the audit/ investigation or reinvestigation/ reconsideration.
- ▶ Items of deduction representing return of capital, such as those pertaining to purchases of raw materials forming part of finished products or purchases of goods for resale, shall be allowed as deductions upon withholding agent's payment of the basic withholding tax and penalties incident to non-withholding or underwithholding.
- ▶ The regulations shall take effect after 15 days following their publication.

*(Editor's Note: RR No. 6-2018 was published in the Manila Bulletin on 23 January 2018)*

The revised RMC No. 1-2018 prescribes the procedures on the use of the withholding tax table on compensation income and the change of creditable withholding tax rate on certain income payments to individuals.

**RMC No. 1-2018 dated 4 January 2018**

- ▶ The following steps must be observed in the use of the Revised Withholding Tax Table:
  1. Determine the total amount of monetary and non-monetary compensation income paid to an employee for the payroll period, segregating non-taxable benefits and mandatory contributions;
  2. Use the appropriate Revised Withholding Tax Table for the applicable period as shown below:

Annex A: REVISED WITHHOLDING TAX TABLE (version 2) Effective 1 January 2018 to 31 December 2022						
DAILY	1	2	3	4	5	6
Compensation Range (CR)	P 685 and below	P685 - P1,095	P1,096 - P2,191	P2,192 - P5,478	P5,479 - P21,917	P21,898 and above
Prescribed Withholding Tax (PWT)	0.00	0.00 + 20% over P685	P82.19 + 25% over P1,096	P356.16 + 30% over P2,192	P1,342.47 + 32% over P5,479	P6,602.74 + 35% over P21,918

<b>Annex A: REVISED WITHHOLDING TAX TABLE (version 2) Effective 1 January 2018 to 31 December 2022</b>						
<b>WEEKLY</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
CR	P4,808 and below	P4,808 - P7,691	P7,692 - P15,384	P15,385 - P38,461	P38,462 - P153,845	P153,846 and above
PWT	0.00	0.00 + 20% over P4,808	P576.92 + 25% over P7,692	P2,500.00 + 30% over P15,385	P9,423.08 + 32% over P38,462	P 46,346.15 + 35% over P153,846
<b>SEMI-MONTHLY</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
CR	P10,417 and below	P10,417 - P16,666	P16,667 - P33,332	P33,333 - P83,332	P83,333 - P333,332	P333,333 and above
PWT	0.00	0.00 + 20% over P10,417	P1,250.0 + 25% over P16,667	P5,416.67 + 30% over P33,333	P20,416.67 + 32% over P83,333	P100,416.67 + 35% over P333,333
<b>MONTHLY</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
CR	P20,833 and below	P20,833 - P33,332	P33,333 - P66,666	P66,667 - P166,666	P166,667 - P666,666	P666,667 and above
PWT	0.00	0.00 + 20% over P20,833	P2,500.00 + 25% over P33,333	P10,833.33 + 30% over P66,667	P40,833.33 + 32% over P166,667	P200,833.33 + 35% over P666,667

3. Determine the compensation range of the employee and apply the applicable tax rates; and
  4. Compute the WT due by adding the tax predetermined in the compensation range indicated on the column used and the tax on the excess of the total compensation over the minimum of the compensation range.
- The following income payments to self-employed individuals or professionals shall be subject to 8%:
1. Professional fees, talent fees, commissions, and so on for services rendered by individuals;
  2. Income distribution to beneficiaries of Estates and Trusts;
  3. Income payment to certain brokers and agents;
  4. Income payments to partners of general professional partnership;
  5. Professional fees paid to medical practitioners; and
  6. Commission of independent and/or exclusive sales representatives, and marketing agents of companies

RMC No. 6-2018 identifies the BIR Priority Programs for CY 2018.

**RMC No. 6-2018 dated 16 January 2018**

PRIORITY PROGRAM	OBJECTIVES
1. Expedite updating of the Schedule of Zonal Values	<ul style="list-style-type: none"> <li>▶ Update the existing Schedule of Zonal Valuations to reflect current real property valuation</li> </ul>
2. Intensified Audit Investigations	<ul style="list-style-type: none"> <li>▶ Intensify the investigation of taxpayer compliance, and collect the right taxes through:               <ol style="list-style-type: none"> <li>1. Maximize utilization of Computer Assisted Audit Tools and Techniques (CAATTs)</li> <li>2. Joint and coordinated examination of:                   <ul style="list-style-type: none"> <li>▶ Franchisors including franchisees (SMEs, including distributors);</li> <li>▶ BEPS / Transfer Pricing;</li> <li>▶ National Government Agencies (DPWH);</li> <li>▶ Small Taxpayers;</li> <li>▶ GOCCs; and</li> <li>▶ Other industry issues</li> </ul> </li> </ol> </li> <li>▶ Collect an amount equal to 3% of the Bureau's total collection goal (net of voluntary compliance collection)</li> </ul>
3. Enhanced implementation of the Arrears Management Program in the Regional Offices	<ul style="list-style-type: none"> <li>▶ Increase collection by 6% of potentially recoverable arrears</li> </ul>
4. Broaden the Taxpayer Base	<ul style="list-style-type: none"> <li>▶ Expand the tax base through a 10% increase of active registered taxpayers' registration, without increasing tax rates, by the registration of non-registered taxpayers, as a result of the Tax Compliance Verification Drive (TCVD) and third-party registration</li> <li>▶ The program shall focus on the following:               <ol style="list-style-type: none"> <li>1. Focused Mapping (Taxpayers who did not renew Authority to Print) [ATP]</li> <li>2. Stop Filers (Medium Taxpayers/TAMP)</li> <li>3. Cash Register Machine (CRM) / Point of Sale (POS) Post Evaluation- Training</li> <li>4. Cannot Be Located (CBL) Taxpayers</li> <li>5. Stocktaking Activities</li> <li>6. Summary List of Sales (SLS) / Summary List of Purchases (SLP) / Inventory List</li> </ol> </li> </ul>
5. Run After Tax Evaders (RATE)	<ul style="list-style-type: none"> <li>▶ Review all pending cases with the CTA and the DOJ, and strengthen the program by filing a minimum of 1 significant case per semester, per RDO, to improve voluntary compliance (the "fear factor" approach)</li> <li>▶ Improve the quality of cases being filed</li> </ul>
6. <i>Oplan Kandado</i>	<ul style="list-style-type: none"> <li>▶ Strengthen the BIR's imposition of prescribed administrative sanction through enforcement of at least 1 closure per semester per RDO</li> </ul>
7. Taxpayer Account Management Program (TAMP) Clean-up	<ul style="list-style-type: none"> <li>▶ Clean up the existing TAMP by 100%</li> </ul>



PRIORITY PROGRAM	OBJECTIVES
8. Large Taxpayers Service (LTS) - Excise Tax Program	<ul style="list-style-type: none"> <li>▶ Implement the Tax Reform Package in CY 2018 covering the following program:               <ol style="list-style-type: none"> <li>1. Sugar-Sweetened Beverages (SSB) Program;</li> <li>2. Internal Revenue Stamps Integrated System (IRSIS) on Alcohol Program;</li> <li>3. Electronic Official Registry Book (eORB) Alcohol Program;</li> <li>4. Fuel Marking Program</li> </ol> </li> </ul>
9. Electronic Sales Reporting, Invoicing, and Receipting	<ul style="list-style-type: none"> <li>▶ Develop and implement the elnvoicing/eReceipting System</li> </ul>
10. Massive Tax Education Campaign / Public Awareness and Education	<ul style="list-style-type: none"> <li>▶ Increase levels of tax compliance through information dissemination, making use of a tri-media / social media / comprehensive communication strategy</li> <li>▶ Effectively disseminate information on the Tax Reform Package</li> </ul>
11. Information and Communications Technology (ICT) Solutions for Improved Taxpayer Services	<ul style="list-style-type: none"> <li>▶ Implement ICT Solutions to improve TP Satisfaction through:               <ol style="list-style-type: none"> <li>1. Increase in the BIR's Internet access bandwidth;</li> <li>2. Adequate server and hardware capacity;</li> <li>3. Licenses and software</li> </ol> </li> </ul>
12. Expedite recruitment of new personnel and promotion of qualified employees	<ul style="list-style-type: none"> <li>▶ Fill up entry level positions</li> <li>▶ Submit the List of Promotable Employees</li> <li>▶ Attain Civil Service Commission (CSC) Accreditation for the Regional Offices, with Maturity Level 2 rating for all core systems</li> </ul>
13. Capacity Building for BIR officials and employees	<ul style="list-style-type: none"> <li>▶ Conduct 100% of all trainings scheduled in the Training Calendar</li> <li>▶ Train 100% of all employees targeted for attendance at the Taxpayers Service Excellence (TSE) Workshop</li> <li>▶ Conduct 100% of all trainings assigned at the Regional Offices</li> <li>▶ Train 100% of all employees targeted for training.               <ol style="list-style-type: none"> <li>1. Continuous Information Security Awareness and Monitoring</li> <li>2. Manpower / Technical Training</li> </ol> </li> <li>▶ Conduct trainings on Mandatory Continuing Legal Education (MCLE) Updates</li> </ul>
14. Attendance and Leave Management Program	<ul style="list-style-type: none"> <li>▶ Reconcile 100% of all Regional Office records against the National Office records</li> <li>▶ Monitor use of the Biometric Time Recorder, Leave of Absences, and allowed working breaks</li> </ul>
15. Budget Utilization Program	<ul style="list-style-type: none"> <li>▶ Attain 100% Obligation Budget and Disbursement Budget Utilization Rates</li> </ul>
16. Building Program	<ul style="list-style-type: none"> <li>▶ At least 1 Revenue District Office to submit the appropriate budget proposal for the acquisition of a building</li> </ul>
17. Action on administrative cases against erring revenue officials and employees	<ul style="list-style-type: none"> <li>▶ Act upon administrative cases filed against erring revenue officials and employees</li> </ul>

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RMC No. 9-2018 prescribes the additional mandatory requirements for all ecozone developers/operators duly registered under the PEZA for the processing of an eCAR.

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### **RMC No. 9-2018 issued on 16 January 2018**

- ▶ Below are the following additional documentary requirements to be submitted by all PEZA ecozone developers/operators aside from those enumerated under Revenue Memorandum Order No. 15-2003:
  1. Certified true copy of the latest PEZA Certificate of Registration of the PEZA ecozone;
  2. Certified true copy of the PEZA Registration Agreement;
  3. Certified true copy of PEZA Certificate of Available Tax Incentives as of the time of the transaction.
- ▶ No further document shall be required to determine the tax treatment for the following transactions:
  1. Transfers of property within the Special Economic Zone (SEZ) by an ecozone developer/operator to a PEZA Economic Zone Facilities Enterprise (EZFE);
  2. Transfers of property within the SEZ by an ecozone developer/operator to a PEZA-registered buyer (other than EZFEs);
  3. Transfers of property within the SEZ by a PEZA ecozone developer/operator to a non-PEZA registered entity;
  4. Transfers of property outside the SEZ by a PEZA ecozone developer/operator, regardless of whether or not the buyer is PEZA-registered.

### **BOC Issuances**

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CMO No. 02-2018 provides for the amendment to CMO No. 04-2014 entitled "Policies, Guidelines and Procedures for the Accreditation of Importers and Customs Brokers" with the BOC pursuant to DOF Department Order No. 12-2014.

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### **CMO No. 02-2018 dated 11 January 2018**

- ▶ The approval or disapproval of accreditation of importers and customs brokers shall be made by the BOC Commissioner upon recommendation of the Chief of the Accounts Management Office (AMO).
  1. The amendment removes the direct authority of the AMO Chief to approve the accreditation.
  2. Importers and customs brokers with disapproved application may file a request for reconsideration to the Chief, AMO who shall make the necessary disposition for consideration by the Commissioner, whose decision shall be final and executory.
- ▶ Instead of the Legal Service under the Revenue Collection Monitoring Group (RCMG), the filing of any complaint or recommendation for suspension, revocation or cancellation and reactivation of the accreditation of the importer or customs broker shall now be made to the Chief, AMO who shall prepare a disposition for consideration of the Commissioner.
  1. The Commissioner, instead of the Deputy Commissioner, RCMG, has the authority to approve any recommendation for suspension, revocation or cancellation, including a recommendation for activation of previous registration after a previous decision to suspend, revoke or cancel.

- ▶ The CMO revoked the delegated authority to suspend and/or cancel the customs accreditation of importers and customs brokers provided under Customs Special Order No. 16-2017 dated 20 February 2017.

*(Editor's Note: CMO No. 02-2018 was received by the UP Law Center on 16 January 2017)*

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CMO No. 03-2018 provides for the Revocation of CMO No. 29-2017 and Amendment to CMO No. 14-2017 on the Authorization to Issue Alert Orders.

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#### **CMO No. 03-2018 dated 23 January 2018**

- ▶ The following Customs Officials are authorized to issue Alert Orders:
  1. Customs Commissioner and his authorized representative; and
  2. All District Collector, for shipments arriving within their districts
- ▶ The amendment removed the authority of the Deputy Commissioner, Intelligence Group (IG) to issue Alert Orders.

*(Editor's Note: CMO No. 03-2018 was received by the UP Law Center on 24 January 2018)*

### **BSP Issuances**

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Circular No. 989 provides for Guidelines on the Conduct of Stress Testing Exercises

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#### **BSP Circular No. 989 dated 4 January 2018**

- ▶ The approved guidelines governing the conduct of stress testing exercises in banks shall be added as Section X187 to the Manual of Regulations for Banks (MORB).
- ▶ The following subsections of Section X187 are hereby added to the MORB:
  1. Policy statement
  2. Stress testing
  3. Duties and responsibilities/roles and functions
  4. Stress testing framework
  5. Supervisory expectations and independent review
  6. Application of the guidelines
  7. Reporting
- ▶ Stress testing shall refer to the tool to evaluate the potential effects of a set of specified changes in risk factors on a bank's financial position under a severe but plausible scenario to assist the board and management in decision making. Stress testing refers not only to the mechanics of applying specific individual tests, but also considers the wider environment within which the tests are developed, evaluated and used.

- ▶ The board of directors shall have the overall responsibility in ensuring that the stress testing framework is fully integrated into the bank's risk management framework and capital planning process, and adequately supports decision-making. The senior management shall be responsible for the effective and consistent implementation of the stress testing framework as approved by the board of directors.

- ▶ As a transitory provision, the following shall be incorporated as a footnote to Section X187 of the MORB:

"Banks shall comply with the foregoing standards within a period of two years from the effectivity date of this issuance. In this regard, a bank should be able to show its plan of actions with specific timelines, as well as the status of initiatives being undertaken to fully comply with the provisions of this circular, upon request of the Bangko Sentral starting June 2018."

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

*(Editor's Note: BSP Circular No. 989, s. 2018 was published in the Philippine Star on 12 January 2018)*

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Circular No. 990 provides for the Amendments to the Basel III Leverage Ratio Framework.

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#### **BSP Circular No. 990 dated 22 January 2018**

- ▶ Pursuant to Monetary Board Resolution No. 22 dated 5 January 2018 approving an extension of the monitoring period of the Basel III Leverage Ratio Framework amending Subsections X115.6/4115Q.6 and Appendices 111/Q-65 of the Manual of Regulations for Banks/ Manual of Regulations for Non-Bank Financial Institutions (MORB/MORNBFI), the following sections/subsections are amended:

1. Section 1 - Subsections X115.6/4115Q.6 on Basel III Leverage Ratio Framework of the MORB/MORNBFI are amended.

The report submission is summarized below:

Report Date	Reference Date	Deadline of Submission
30 September 2017	31 December 2017	fifteen (15) banking/business days from end of reference date on solo basis, and thirty (30) banking/business days from end of reference date on consolidated basis
31 December 2017		
31 March 2018	31 March 2018	
30 June 2018	30 June 2018	

2. Section 2 - Section B of Appendices 111/Q-65 on the Guidelines on the Implementation of the Basel III Leverage Ratio Framework of the MORB/MORNBFI are amended.

The report submission is summarized below:

Report Date	Reference Date	Deadline of Submission
30 September 2017	31 December 2017	fifteen (15) banking/business days from end of reference date on solo basis, and thirty (30) banking/business days from end of reference date on consolidated basis
31 December 2017		
31 March 2018	31 March 2018	
30 June 2018	30 June 2018	

- ▶ 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: BSP Circular No. 990, s. 2018 was published in the Philippine Star on 25 January 2018)*

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Circular No. 991 provides for the Extension of the Transitory Provisions of Circular No. 938 dated 23 December 2016 and Subsection 4511N.16 of the MORNBF. I.

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### **BSP Circular No. 991 dated 26 January 2018**

- ▶ The Monetary Board, in its Resolution No. 135 dated 25 January 2018, approved the extension of the transitory period for existing pawnshop operators to secure their BSP Authority to Operate a pawnshop business, and the effectivity of previously issued Certificates of Registration to remittance and transfer companies (RTCs)/money changers (MCs)/foreign exchange dealers (FXDs), to provide them ample time to file their application for re-registration.

- ▶ The first paragraph of Section 81 of Circular No. 938 dated 23 December 2016 shall be revised and incorporated as footnote to Section 4103P of the MORNBF. I, as follows:

"All existing pawnshop operators as of 28 January 2017, shall secure their Authority to Operate a pawnshop business from the Bangko Sentral on or before 30 April 2018. Upon the expiration of the transitory period, all Acknowledgment of Registrations (AORs) previously issued by the Bangko Sentral shall be considered automatically revoked."

- ▶ Subsection 4511N.16 (Transitory Provision) of the MORNBF. I shall be amended to read as follows:

"§ 4511N.16 Transitory provisions. All Bangko Sentral Certificate of Registration (CORs) issued prior to 10 February 2017, to Remittance and Transfer Companies (RTCs)/Money Changers (MCs)/Foreign Exchange Dealers (FXDs) shall remain effective until 30 April 2018. Thereafter, they shall be considered automatically cancelled."

- ▶ This Circular shall take effect 26 January 2018.

## **SEC Opinion and Issuances**

### **SEC-OGC Opinion No. 18-01 dated 24 January 2018**

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A corporation that was incorporated under the old Corporation Law (Commonwealth Act No. 1459) is deemed to incorporate the 50-year term limit under the new Corporation Code (Batas Pambansa Blg. 68).

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

P Co. was incorporated with the SEC in the year 1962 pursuant to Commonwealth Act No. 1459 or the old Corporation Law without a term limit. When the Corporation Code took effect on 1 May 1980, a maximum period of 50 years was provided for corporate existence and required all existing corporations to comply with the applicable provisions within 2 years from its effectivity. P Co. failed to comply with the said directive.

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

What is the status of P Co. as a corporate entity?

**Held:**

Since P Co. failed to comply with the directive to amend, the maximum 50-year term prescribed by the Corporation Code is deemed written on its Articles of Incorporation (AOI). Thus, while originally registered with the SEC with a perpetual term, P Co. is now deemed to exist for a period of 50 years reckoned from May 1, 1980, the effectivity of the Corporation Code, unless sooner dissolved or extended within the prescribed period.

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SEC MC No. 1 adopts the revised accounting standards and amendments to existing accounting standards and interpretations.

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**SEC Memorandum Circular No. 1 series of 2018 dated 9 January 2018**

The SEC approved the adoption of the following as part of its rules and regulations on financial reporting:

- ▶ Revised Auditing Standards (effective for audits of financial statements for periods ending on or after 15 December 2016):
  1. Philippine Standards on Auditing (PSA) 800 (Revised), Special Considerations-Audit of Financial Statements prepared in accordance with Special Purpose Framework and conforming amendments to PSA 700 (Revised) forming an Opinion and Reporting on Financial Statements;
  2. PSA 805 (Revised), Special Considerations-Audits of Single Financial Statements and Specific Elements, Accounts or items of a Financial Statement (2016);
  3. PSA 810 (Revised), Engagements to Report on Summary Financial Statements (2016)
- ▶ Amendments to Existing Accounting Standards and Interpretations (effective for annual periods beginning on or after 1 January 2018):
  1. PAS 4 - Transfers of Investment Property (earlier adoption of the amendment is permitted);
  2. Philippine Interpretation IFRIC-22 - Foreign Currency Transactions and Advance Consideration (earlier application is permitted);
  3. Annual Improvements to Philippine PFRSs 2014-2016 Cycle: The amendments to PFRS 12 are effective for annual periods beginning on or after 1 January 2017; on the other hand, the amendments to PFRS 1 and PAS 28 are effective for annual periods beginning on or after 1 January 2018.

*(Editor's Note: This MC has not yet been published)*

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SEC MC No. 2 requires compliance with the SEC-prescribed website template under SEC MC No. 11 series of 2014.

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**SEC Memorandum Circular No. 2 series of 2018 dated 22 January 2018**

To promote a better corporate governance environment for publicly listed companies, companies covered by SEC MC No. 11 series of 2014 must comply as follows:

- ▶ All companies applying for registration of securities for listing must comply before Registration Statement is rendered effective; and
- ▶ All existing listed companies must comply within 6 months from listing date.

*(Editor's Note: Published in The Manila Times and The Philippine Star on 26 January 2018)*

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SEC MC. No. 3 provides the schedule for the filing of 2017 annual reports of corporations registered with the SEC.

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### **SEC Memorandum Circular No. 3 series of 2018 dated 22 January 2018**

▶ Audited Financial Statements/Reports

1. For corporations (including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations) whose fiscal year ends on 31 December 2017, the filing of AFS shall be pursuant to a coding schedule depending on the last numerical digit of their SEC registration or license number. For those whose fiscal year ends on a date other than 31 December 2017, the filing of AFS shall be within 120 days from the end of their fiscal year.
2. For Broker Dealers, whose fiscal year ends on a date other than 31 December 2017, the filing of their Annual Audited Financial Report or SEC Form 52-AR shall be within 110 calendar days after the close of their fiscal year. For Broker Dealers whose fiscal year ends on 31 December 2017, the filing of SEC Form 52-AR depends on the last numerical digit of their registration number as prescribed by the Commission.
3. For listed companies, corporations whose securities are registered but not listed in PSE and other Public Companies covered under Sec. 17.2 of the SRC, the filing of AFS and SEC Form 17-A shall be within 105 calendar days after the end of their fiscal year.
4. Advance filing may be done by all corporations regardless of the last numerical digit of their registration or license number on or before 16 April 2018.
5. Late filings shall be accepted starting 21 May 2018 and shall be subject to applicable penalties computed from the last day of filing based on the coding schedule.

The above schedules shall not apply to corporations whose AFS are being audited by the Commission on Audit (COA) provided that they attach to their AFS: (1) an affidavit signed by the President and Treasurer/Chief Financial Officer attesting to the fact that the company timely provided COA with the financial statements and supporting documents and that the audit of COA has just been concluded; and (2) a letter from COA confirming the information provided in the affidavit.

▶ General Information Sheet

1. For stock and non-stock corporations, the filing of GIS shall be within 30 calendar days from the date of actual annual stockholders/members meeting;
2. For foreign corporations, the filing shall be within 30 calendar days from the anniversary date of the issuance of their respective SEC License.

Corporations covered by the foregoing schedule may file their annual reports through any of the following options: (1) direct filing in the SEC Head Office and Extension Offices; (2) SEC Express Nationwide; (3) via courier/regular mail for reports without a return copy (the reckoning date of submission shall be the date of actual delivery of the courier to the SEC); (4) SEC Express Online Submission.

*(Editor's Note: Published in The Manila Times and The Philippine Star on 26 January 2018)*

## **BLGF Opinion**

### **BLGF Opinion dated 21 December 2017**

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The tax base in computing the local business tax of a distributor is the gross sales or receipts, excluding discounts, sales return, excise tax, and VAT.

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

R Co. is a domestic corporation which entered into a Distribution Agreement (“Agreement”) with N Co. as a non-exclusive distributor of the latter’s branded products. Under the Agreement, N Co. shall sell the products to R Co. at FOB price less the corresponding distributor’s discount plus VAT while R Co. shall sell the products at prices suggested by N Co. plus VAT. Based on this Agreement, R Co. claims that its “real revenue” is reflected in the Gross Profit of the Financial Statement, which represents the “commission” after the discounts to trade.

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

Is the gross profit of R Co. the proper tax base in computing its local business tax (LBT)?

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

No. Section 131 (n) of the Local Government Code (“LGC”) of 1991 provides that Gross Sales or Receipts “include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sale, sales return, excise tax, and value-added tax (VAT).”

In this case, the total amount of sales generated from selling the products of N Co. shall constitute the gross sales or receipts of R Co. as contemplated under Sec. 131 (n) of the LGC, to the exclusion of: (1) discounts, if determinable at the time of sale, (2) sales return, (3) excise tax and (4) VAT.

Under the Agreement, R Co. assumed ownership of the products delivered by N Co. because there was no showing in the Agreement that it was made on a consignment or commission basis. Having assumed ownership of the products, it may be assumed also that sales reported by R Co. in its books of accounts shall form part of the gross sales or receipts referred to in Section 131 (n) and may only be lowered by the allowable deductions enumerated therein.

In this regard, and unless R Co. can prove that, indeed, its only source of income is the commission generated from the distributors “discount”, then the computation of the LBT shall be based on the gross sales or receipts accounted on the basis of official receipts and/or invoices issued by R Co., as the distributor, to its customers.



## Court Decisions

### **Commissioner of Internal Revenue vs. Phil. Gold Processing & Refining Corporation**

CTA (*En Banc*) Case No. 1460 promulgated 7 December 2017

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Rubber-stamping the word “zero-rated” in invoices and official receipts substantially complies with the invoicing requirements prescribed by the regulations for VAT zero-rating purposes.

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#### **Facts:**

Respondent Phil. Gold Processing & Refining Corp. (PGPRC) filed a claim for refund of unutilized input VAT arising from zero-rated sales for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2011. Due to inaction of Petitioner CIR, PGPRC filed a Petition for Review at the CTA.

The CTA First Division initially denied the refund claim due to PGPRC’s failure to prove that its foreign currency remittances actually pertain to its alleged export sales for the period of the claim. Upon a Motion for Reconsideration, the First Division amended its decision and partially granted the refund.

The CIR filed a Petition for Review at the CTA *En Banc*. The Petitioner argued, among others, that PGPRC’s claim must fail as it did not strictly comply with the VAT invoicing requirements when it merely rubber-stamped the word “zero-rated” on its official receipts, instead of writing or printing it prominently, as provided under Section 113 of the Tax Code, as amended, in relation to Section 4.113-1 of Revenue Regulations 16-05.

#### **Issue:**

Is rubber-stamping of the word “zero-rated” on receipts and invoices compliant with the VAT invoicing requirements under the regulations?

#### **Ruling:**

Yes. Rigidly construing that the said term should only be done by written or printed means isolates the requirement of the law rather than giving life to its meaning. The statute must be construed as a whole to determine the legislative intent.

The requirement of imprinting the word “zero-rated” was added to distinguish sales that are subject to the 12% VAT from those that are subject to 0% VAT and VAT exempt. By rubber-stamping “zero-rated,” PGPRC substantially complied with the requirement prescribed by the regulations. It serves the purpose of preventing buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. It also helps segregate sales that are subject to 12% VAT from those sales that are zero-rated.

### **City of Davao and Bella Linda N. Tanjili, in her official capacity as The Officer-in-Charge City Treasurer’s Office of Davao City vs. First Meridian Development, Inc.**

CTA (*En Banc*) Case No. 1590 promulgated 18 December 2017

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Dividend and interest earned are not subject to local business tax under Section 143(f) of the LGC, unless the corporation is a bank or non-bank financial intermediary.

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#### **Facts:**

Petitioner Davao City assessed Respondent First Meridian Development Inc. (FMDI) for deficiency local business tax (LBT) on dividends received from its shareholding in San Miguel Corporation, as well as interest from its money market placements earned in 2010. As Davao City did not entertain FMDI’s protest against the LBT assessment, the Company to file a Petition for Review with the Davao City Regional Trial Court (RTC).

The RTC ruled that FMDI is a financial intermediary under Section 143(f) of RA 7160 or the Local Government Code hence, subject to LBT of 50% of 1% on gross receipts. Upon denial of its Motion for Reconsideration, FMDI elevated the case to the Court of Tax Appeals. The CTA First Division overturned the RTC's decision and held that FMDI is not a non-bank financial intermediary subject to LBT under Section 143(f) of RA 7160 or the Local Government Code (LGC).

Aggrieved, Davao City filed a Petition for Review with the CTA *En Banc*. Davao City insisted that FMDI is a non-bank financial intermediary since its primary purpose in its amended Articles of Incorporation resembles the definition of a financial intermediary as defined by the Bangko Sentral ng Pilipinas (BSP) Manual of Regulations for Non-Bank Financial Institutions.

**Issue:**

Are the dividends and interest earned by FMDI subject to LBT?

**Ruling:**

No. The dividends and interest earned by FMDI are not subject to LBT under Section 143(f) of the LGC.

Unlike the power to tax by the state which is inherent, the power to tax of provinces, cities and municipalities is limited by the LGC. Davao City's taxing power does not extend to the levy of income tax, except when levied on banks and other financial institutions under Section 143(f) of the LGC. The dividends and interests in this case are not subject to the city's taxing power, unless FMDI is a bank or non-bank financial intermediary.

FMDI does not fulfill any of the requirements to be classified as a non-bank financial intermediary. It has neither been authorized by the BSP to perform quasi-banking activities nor has it been engaged in activities as a financial intermediary on a regular or recurring basis. The conclusion that FMDI is a financial intermediary based on the primary purpose stated in its amended Articles of Incorporation (AOI) is an assumption that is not supported by evidence. On the contrary, FMDI's amended AOI indicates that it is a holding company.

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We welcome your comments, ideas and questions. Please contact Victor C. De Dios via e-mail at [victor.c.de.dios@ph.ey.com](mailto:victor.c.de.dios@ph.ey.com) or at telephone number 8910307 loc. 7929 and Reynante M. Marcelo via e-mail at [reynante.m.marcelo@ph.ey.com](mailto:reynante.m.marcelo@ph.ey.com) or at telephone number 894-8335.

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