

Tax Bulletin

February 2018



Highlights

BIR Rulings

- ▶ Compensatory damages, actual damages, moral damages, exemplary damages, attorney's fees, and the cost of the suit are excluded from gross income. However, consequential damages representing loss of the victim's earning capacity are not excluded from gross income. **(Page 4)**
- ▶ The sale of an empty cigarette tube, without any tobacco or substitute smoking material in it, is not subject to excise tax. Loose tobacco, when sold directly to end users or consumers, is subject to excise tax. **(Page 5)**
- ▶ The value of the gross estate of a decedent shall be determined by including the value, at the time of his death, of all property, real or personal, tangible or intangible, wherever situated. **(Page 5)**
- ▶ Association dues and income derived from rentals of a homeowners' association shall be exempt from tax, provided that such income and dues shall be used for the provision of basic community services and the local government lacks resources to provide for such basic community services. **(Page 6)**
- ▶ Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines, including sale of investments by foreign governments and financing institutions wholly-owned, controlled, or enjoying refinancing from foreign governments, shall be exempt from income tax, and consequently, from withholding tax. **(Page 6)**
- ▶ A merger undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40 (C) (2) of the Tax Code. **(Page 7)**
- ▶ For the publication and sale of any newspaper, magazines, reviews or bulletins to be exempt from the coverage of VAT, they must appear at regular intervals with fixed prices for subscription and sale, and which are not devoted principally to the publication of paid advertisements. **(Page 7)**
- ▶ The phrase "other disposition" includes within its purview all kinds of dispositions of real property, including exchange of properties. **(Page 8)**
- ▶ Payments for documentation and liaison services shall be subject to 2% Creditable Withholding Tax (CWT). Payments for consulting services shall also be subject to CWT at the rate of 10% or 15%, as the case may be. **(Page 8)**
- ▶ Consultancy services, which are paid for in acceptable foreign currency, will qualify for VAT zero-rating, provided that the payment is remitted inwardly and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). **(Page 9)**
- ▶ A joint venture formed for the purpose of undertaking construction projects is not considered a taxable corporation under the Tax Code, provided it complies with the conditions laid down in Revenue Regulation (RR) No. 10-2012. **(Page 9)**

- ▶ The value of a gift certificate does not constitute income on the part of the issuer but a fund held in trust for reimbursing accredited participating stores. **(Page 10)**
- ▶ Sale of agricultural products by agricultural cooperatives to non-members may be exempt from VAT, provided that the cooperative meets the requirements set forth under Revenue Memorandum Circular (RMC) No. 40-2015. **(Page 11)**

BIR Issuances

- ▶ RR No. 7-2018 further amends RR No. 12-99 by adding a new section, requiring the conduct of an Informal Conference as part of the procedure for the issuance of a deficiency tax assessment. **(Page 11)**
- ▶ RR No. 8-2018 implements the income tax provisions of Republic Act (RA) No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law". **(Page 12)**
- ▶ Revenue Memorandum Circular (RMC) No. 10-2018 clarifies the time of withholding and remittance of taxes withheld by Withholding Agents, including the National Government Agencies and Instrumentalities, Local Government Units and Government-Owned and Controlled Corporations. **(Page 22)**
- ▶ RMC No. 12-2018 clarifies the nature and extent of the power of the Commissioner of Internal Revenue to obtain information under Section 5 of the NIRC of 1997, as amended, in relation to Attorney-Client and Accountant-Client privilege. **(Page 23)**

BOC Update

- ▶ The authority to accredit and register customs brokers and importers is reverted solely to the Bureau of Customs (BOC) for simplification. **(Page 23)**

PEZA Update

- ▶ The Memorandum of Agreement (MOA) between Philippine Economic Zone Authority (PEZA) and Bureau of Fire Protection (BFP) provides for the collaborative implementation of the Fire Code of the Philippines of 2008, and the respective responsibilities of the two agencies. **(Page 24)**

BOI Update

- ▶ Circular No. 2018-01 provides for the liberalization of certain Board policies applicable to Board of Investments (BOI)-registered projects. **(Page 26)**

BSP Issuances

- ▶ Circular No. 992 provides for the Framework for Bank Deposit Accounts. **(Page 27)**
- ▶ Circular No. 993 provides for the Adoption of the Know-Your-Member Guidelines for Non-Stock Savings and Loan Associations. **(Page 28)**
- ▶ Circular No. 994 provides for the Amendments to the Manual of Regulations for Non-Bank Financial Institutions applicable to Non-Stock Savings and Loan Associations (MORNBFIS) - Fund Investments. **(Page 28)**

- ▶ Circular No. 995 provides for the Amendments to the Guidelines on the Prohibition Against Funds from Non-Residents From being Accepted in the Liquidity Facilities of the Bangko Sentral. **(Page 29)**
- ▶ Circular No. 996 provides for the Amendments to the Liquidity Coverage Ratio Framework and Minimum Prudential Liquidity Requirements for Stand-alone Thrift Banks, Rural Banks, Cooperative Banks and Quasi-Banks. **(Page 30)**
- ▶ Circular No. 997 provides for the Reduction in Reserve Requirements. **(Page 32)**

Court Decisions

- ▶ A protest is void if it fails to indicate whether it is in the nature of a reconsideration or a reinvestigation, and for failure to specify the pieces of evidence it intends to present, in case of a reinvestigation. **(Page 32)**

BIR Rulings

BIR Ruling No. 026-2018 dated 18 January 2018

Compensatory damages, actual damages, moral damages, exemplary damages, attorney's fees, and the cost of the suit are excluded from gross income. However, consequential damages representing loss of the victim's earning capacity are not excluded from gross income.

Facts:

Ms. A and her minor children instituted an action for damages arising from a crime. The Court awarded them with actual, consequential, moral and exemplary damages.

Separately, Ms. A also instituted a civil case for the annulment of a sale of real property. The Court granted the annulment of the sale with damages and ordered the transfer of the subject property to A.

Issues:

1. Are the damages awarded by the Court classified as taxable income?
2. Is the transfer of the real property in satisfaction of the Court's award for damages taxable?

Ruling:

1. It depends. Pursuant to Section 32 (B) (4) of the Tax Code, compensatory damages, actual damages, moral damages, exemplary damages, attorney's fees, and the cost of the suit are excluded from gross income. However, consequential damages representing loss of the victim's earning capacity are not excluded from gross income. Such consequential damages are mere replacements of income which would have been subjected to tax, if earned. Thus, only the consequential damages is subject to income tax.
2. It depends. The phrase "other disposition" includes within its purview all kinds of dispositions of real property under Section 24 (D) (1) of the Tax Code, unless specifically excluded therefrom or subjected to another tax treatment. Considering, however, that the transfer of the subject property is for the satisfaction of the Court's award for damages in favor of Ms. A, the taxability of said transfer must be qualified. The current fair market value of the property, determined in accordance with Section 6 (E) of the Tax Code, which corresponds to the award of compensatory, actual, moral, exemplary damages, attorney's fees, and the cost of the suit is exempt from CGT and DST. On the other hand, the current fair market value of the property corresponding to the amount of consequential damages representing loss of the victim's earning capacity including legal interest is subject to CGT and DST.

BIR Ruling No. 032-2018 dated 23 January 2018

The sale of an empty cigarette tube, without any tobacco or substitute smoking material in it, is not subject to excise tax. Loose tobacco, when sold directly to end users or consumers, is subject to excise tax.

Facts:

ABC Co. is engaged in the business of manufacturing, processing, packing and repacking tobacco cut rags for use in pipe tobacco, roll your own and make your own, wholesale, retail and export tobacco, and sale of related tobacco products. It sells cigarette tubes and loose tobacco directly to end users/consumers.

Issues:

1. Is the sale of cigarette tubes subject to excise tax?
2. Is the sale of loose tobacco directly to end users or consumers subject to excise tax?

Ruling:

1. No. An empty cigarette tube, without any tobacco or substitute smoking material in it, is not covered by Section 144 of the Tax Code. Likewise, an empty cigarette tube does not qualify as cigarette or cigar that is subject to excise tax under Section 145 of the Tax Code. Thus, the sale of empty cigarette tube, without any tobacco or substitute smoking material in it, is not subject to excise tax.
2. Yes. Generally, the sale of loose tobacco is subject to excise tax under Section 144 of the Tax Code. However, when the same is exported or used in the manufacture of cigars, cigarettes, or other tobacco products on which the excise tax will eventually be paid on the finished product, no excise tax shall be due. In the instant case, since the loose tobacco shall be sold directly to end users or consumers, the sale shall be subject to excise tax.

BIR Ruling No. 061-2018 dated 24 January 2018

The value of the gross estate of a decedent shall be determined by including the value, at the time of his death, of all property, real or personal, tangible or intangible, wherever situated.

Facts:

A, B, and C are Japanese nationals who are long term residents of the Philippines by virtue of Special Retiree Resident visa issued by the Philippine Retirement Authority. C died intestate in 2015. During the lifetime of C, A and B opened various accounts together with C, where each of them owns one third of the bank accounts under an "OR" joint account. A and B urgently need to withdraw from the accounts but the Bank refuses to allow them to withdraw or close the deposits unless there is a certification from the BIR stating that the estate tax has been paid or that the estate is exempt from the payment of tax.

Issue:

Are the deposits subject to estate tax?

Ruling:

Yes. Pursuant to Section 85 of the Tax Code, the value of the gross estate of a decedent shall be determined by including the value, at the time of his death, of all property, real or personal, tangible or intangible, wherever situated. Thus, only 1/3 of the balance of the deposit should be reported for estate tax purposes pertaining to C, the decedent, and the 2/3 portion of the balance of the said accounts shall not be included in the computation of the gross estate of the decedent.

BIR Ruling No. 063-2018 dated 24 January 2018

Association dues and income derived from rentals of a homeowners' association shall be exempt from tax, provided that such income and dues shall be used for the provision of basic community services and the local government lacks resources to provide for such basic community services.

Facts:

ABC Homeowners' Association requested for a Certificate of Tax Exemption enjoyed by Homeowners' Associations under RA No. 9904, as enunciated in RMC No. 9-2013. The Office of the Municipal Mayor of Nasugbu, Batangas certified that ABC Homeowners' Association funds the basic services for its homeowners or members and that the local government cannot cater to such services for lack of resources.

Issue:

Is ABC Homeowners Association entitled to tax exemption?

Ruling:

Yes. Considering that ABC Homeowners' Association is a duly registered Homeowners Association with the Housing and Land Use Regulatory Board (HLURB); that its financial statements show the delivery of basic community services defined under Section 3 (d) of RA No. 9904; and that the local government unit covering the jurisdiction of the Homeowners Association has issued a Certificate that it lacks the resources to provide these services to the Association, the income of ABC Homeowners' Association derived from association dues and rental facilities is exempt from income tax and VAT or percentage tax, whichever is applicable, provided that such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages.

BIR Ruling No. 070-2018 dated 25 January 2018

Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines, including sale of investments by foreign governments and financing institutions wholly-owned, controlled, or enjoying refinancing from foreign governments, shall be exempt from income tax, and consequently, from withholding tax.

Facts:

ABC is a central bank and statutory board established under the laws of Singapore. The BIR previously issued a ruling in favor of ABC stating that the income derived by ABC from the sale of its investments in the Philippines is not subject to Philippine income tax, and consequently, to withholding tax.

ABC requested for confirmation of the validity of said BIR ruling for taxable year 2016 and subsequent years, without need for subsequent revalidation, as long as it remains qualified for tax exemption under Section 32 (B) (7) (a) of the Tax Code.

Issue:

Does ABC remain qualified for tax exemption?

Ruling:

Yes. ABC is a financial institution owned, controlled, and financed by the State of Singapore as contemplated under Section 32 (B) (7) (a) (ii) of the Tax Code. Any income derived by it in the Philippines in loans, stocks, bonds or other domestic securities, sale of its investments in the Philippines, or from interest on its deposits in bank in the Philippines, is exempt from Philippine income tax, and consequently, from withholding tax.

Any income to be derived by ABC from its future investments in the Philippines in loans, stocks, bonds or other domestic securities, sale of its investments in the Philippines, or from interest on its deposits in bank in the Philippines shall likewise be exempt from Philippine income tax.

BIR Ruling No. 075-2018 dated 29 January 2018

A merger undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40 (C) (2) of the Tax Code.

Facts:

AAA Co., BBB Co., and CCC Co. agreed to merge, with AAA Co. as the surviving corporation. Pursuant to the Plan of Merger, BBB Co. and CCC Co. shall transfer all their assets and liabilities to AAA Co. as a consequence of the merger, for which AAA Co., by way of original issue, shall issue common shares of stocks to BBB Co. and CCC Co.

Issues:

1. Is the statutory merger among AAA Co., BBB Co., and CCC Co. a merger within the contemplation of Section 40 (C) (2) (a) and (b) in relation to Section 40 (C) (6) (b) of the Tax Code?
2. Is the transfer of properties subject to VAT and DST?

Ruling:

1. Yes. The merger of AAA Co., BBB Co., and CCC Co. is a merger within the contemplation of Section 40 (C) (2) (a) and (b) in relation to Section 40 (C) (6) (b) of the Tax Code, because AAA Co. shall acquire and assume all the assets and liabilities of BBB Co. and CCC Co. and the same is advisable, expedient and in the best interest of the merging corporations and their respective stockholders. The merger, being undertaken for a bona fide business purpose and not for the purpose of escaping the burden of taxation, qualifies for non-recognition of gain or loss for income tax purposes in accordance with Section 40 (C) (2) of the Tax Code, where no gain or loss shall be recognized by BBB Co. and CCC Co. as the transferors of all assets and liabilities to AAA Co. pursuant to the Plan of Merger.
2. No. Pursuant to Section 4.106-8 (b) (3) of RR No. 16-2005, as amended, no VAT shall be due on the transfer made pursuant to the Plan of Merger. Likewise, no DST is due on the transfer in accordance with Section 199 (m) in relation to Section 40 (C) (2) of the Tax Code. However, DST shall be imposed on the original issuance of shares by AAA Co. to the stockholders of BBB Co. and CCC Co. as a consequence of the merger as provided under Section 174 of the Tax Code.

BIR Ruling No. 109-2018 dated 31 January 2018

For the publication and sale of any newspaper, magazines, reviews or bulletins to be exempt from the coverage of VAT, they must appear at regular intervals with fixed prices for subscription and sale and which are not devoted principally to the publication of paid advertisements.

Facts:

ABC Co. is a domestic corporation engaged in the business of publishing newspapers, journals, magazines, books and other literary works and undertakings and also to carry on the business as printers, booksellers, bookbinders, paper makers, stationers, engraver photographs, photographic printers, stereotypes, electro-typers, lithographers, machinists, silkscreeners or any business that may seem expedient. ABC Co. requested for a VAT exemption certificate pursuant to Section 109 (I) (R) of the Tax Code.

Issue:

Is ABC Co. exempt from VAT and the 3% percentage tax under Section 116 in relation to Section 109 of the Tax Code?

Ruling:

Yes. ABC Co. is exempt from VAT and the 3% percentage tax under Section 116 in relation to Section 109 (1) (R) of the Tax Code, provided that, in case of publication and sale of any newspaper, magazines, reviews or bulletins, they appear at regular intervals with fixed prices for subscription and sale and which are not devoted principally to the publication of paid advertisements.

However, if ABC Co. is engaged in other non-exempt activities such as printing of brochures, bookbinding, engraving, stereotyping, electrotyping, lithographing of various reference books, trade books, journals and other literary works, said transactions are subject to VAT, and the taxpayer is required to register its business as VAT business entity and must issue a separate VAT invoice/receipt thereof to record the same. Also, the sale of books, newspapers, magazines, reviews and bulletin in digital and electronic format or computerized versions, including but not limited to e-books, e-journals, electronic copies, online library services, CDs and software shall be subject to VAT.

BIR Ruling No. 122-2018 dated 2 February 2018

The phrase "other disposition" includes within its purview all kinds of dispositions of real property, including exchange of properties.

Facts:

Mr. X, owner of a parcel of land described as Lot 9-A, and Ms. Z, owner of a parcel of land described as Lot 9-B, executed a Deed of Exchange for the purpose of exchanging property ownership of the said two parcels of land. The Deed of Exchange provides that Mr. X will transfer and convey ownership over his lot with an additional cash consideration of Php100,000.00.

Issue:

Is the exchange of properties subject to CGT and DST?

Ruling:

Yes. The phrase "other disposition" under Section (D) (1) of the Tax Code includes within its purview all kinds of dispositions of real property unless specifically excluded therefrom or subject to another tax treatment pursuant to other provisions of the Tax Code or other special tax laws. In the absence of an express statutory provision exempting from tax the said exchange of properties, the same is subject to CGT. Moreover, the conveyance, being a disposition of real property, is likewise subject to DST.

BIR Ruling No. 123-2018 dated 2 February 2018

Payments for documentation and liaison services shall be subject to 2% CWT. Payments for consulting services shall also be subject to CWT at the rate of 10% or 15%, as the case may be.

Facts:

ABC Co. is engaged in the business of providing documentation and liaison services as well as consulting services to its customers. ABC Co. requested for a ruling to provide clarity on the applicable withholding tax rate for the services it renders to its clients.

Issue:

What is the applicable withholding tax rate for the income payments received by ABC Co.?

Ruling:

Income payments to certain contractors residing in the Philippines, such as messengerial, janitorial, private detective and/or security agencies, credit and/or collection agencies, and other business agencies shall be subject to 2% CWT based on gross payments, pursuant to Section 1.57.2 (E) (4) (g) of RR No. 2-98, as amended. Accordingly, income payments to ABC Co. on the documentation and liaison services to its clients are subject to 2% CWT.

Payments to ABC Co. for consulting services shall be subject to CWT at the rate of 10% or 15%, as the case may be.

BIR Ruling No. 134-2018 dated 8 February 2018

Consultancy services, which are paid for in acceptable foreign currency, will qualify for VAT zero-rating, provided that the payment is remitted inwardly and accounted for in accordance with the rules and regulations of the BSP.

Facts:

XYZ Co., a foreign corporation, engaged the services of ABC Co., a domestic corporation, to perform consultancy services in the areas of planning, organization, management, logistics, training, sustainment support, technical expertise, advisory on host nation law and regulations, standards evaluation, studies and reports, among others. In consideration of the various consultancy services to be rendered by ABC Co., XYZ Co. agreed to pay ABC Co. in US dollars.

Issues:

1. Are the consultancy services rendered in the Philippines by ABC Co. subject to VAT zero-rating?
2. Is ABC Co. entitled to a refund of any excess or unutilized input VAT due or paid attributable to its zero-rated sale of services to XYZ Co.?

Ruling:

1. Yes. The consultancy services rendered by ABC Co. to XYZ Co., which are paid for in acceptable foreign currency, will qualify for VAT zero-rating pursuant to Section 108 (B) (2) of the Tax Code, as implemented by Section 4.108-5 (b) (2) of RR No. 16-2005, as amended, provided that the payment is remitted inwardly and accounted for in accordance with the rules and regulations of the BSP.
2. Yes. Considering that the consultancy services rendered by ABC Co. to XYZ Co. qualify for VAT zero-rating, ABC Co. is likewise entitled to apply for the refund of any excess or unutilized input VAT due or paid attributable to its zero-rated sale of services to XYZ Co., subject to the conditions provided in Section 1-12 (A) of the Tax Code.

BIR Ruling No. 148-2018 dated 13 February 2018

A joint venture formed for the purpose of undertaking construction projects is not considered a taxable corporation under the Tax Code, provided it complies with the conditions laid down in RR No. 10-2012.

Facts:

AB Construction and CD Construction formed an unincorporated joint venture ("JV") to undertake the construction of school classrooms pursuant to a contract with the government through the DPWH.

Issue:

Is the JV taxable as a corporation?

Ruling:

No. The JV is not taxable as a corporation under Section 27 (A) of the Tax Code as it complies with the conditions provided for in RR No. 10-2012, i.e., (1) the JV is for the undertaking of a construction project; (2) the JV involves joining or pooling of resources by licensed local contractors (licensed as general contractor by the Philippine Contractors Accreditation Board); (3) the local contractors are engaged in construction business; and (4) the JV itself is duly licensed by PCAB. It is therefore not subject to the corporate income tax under Section 27 (A) of the Tax Code. Furthermore, the gross payments to the JV on the Project are likewise not subject to the 2% CWT prescribed under Section 57 (B) of the Tax Code.

However, the co-venturers are separately subject to the regular corporate income tax on the taxable income derived by them from the aforesaid construction project. The respective net income of the co-venturers derived from the joint venture project is also subject to CWT under Section 57 of the Tax Code.

BIR Ruling No. 242-2018 dated 21 February 2018

The value of a gift certificate does not constitute income on the part of the issuer but a fund held in trust for reimbursing accredited participating stores.

Facts:

XYZ Co., a domestic corporation, is a service provider that operates a platform for paperless gift cards, also known as electronic gift cards (eGC), and runs digital card eGC storefronts for various merchants in the Philippines. In the operation of such eGC platform, XYZ Co. earns revenue by charging service fees to the merchants and not from the issuance of eGCs to individual clients.

Issues:

1. Are the proceeds from the issuance of eGCs by XYZ Co. to individual clients taxable?
2. Is the issuance of eGCs by XYZ Co. to individual clients subject to VAT?
3. Is the amount received by XYZ Co. from merchant stores for facilitation or marketing efforts subject to 12% VAT?

Ruling:

1. No. Since the value of the eGCs does not constitute income on the part of XYZ Co., but a fund held in trust for reimbursing accredited merchants, and therefore, does not redound to the benefit of the Company, said amounts shall not form part of its gross receipts subject to income tax imposed under Section 27(A) of the Tax Code, as amended. Accordingly, the same is also not subject to EWT.
2. No. Since the amount received by XYZ Co. from its individual clients for the face value of the eGCs does not fall within the purview of the term "gross income" and the money received by XYZ Co. from its clients is not compensation for services rendered by the Company but a liability or deposit for reimbursement at the participating establishments, such amount is not subject to VAT. Thus, XYZ Co. shall have to issue separate Non-VAT official receipts.
3. Yes. The service fees paid to XYZ Co. by the merchants constitute gross income subject to income tax, and consequently, to EWT, pursuant to Section 27 (A) of the Tax Code. XYZ Co. shall also be subject to 12% VAT and shall be required to issue VAT official receipts on the amount it received from the merchant stores for the service fees, where eGCs were utilized for facilitation or administration fee and/or marketing efforts or commission.

BIR Ruling No. 245-2018 dated 21 February 2018

Sale of agricultural products by agricultural cooperatives to non-members may be exempt from VAT, provided that the cooperative meets the requirements set forth under RMC No. 40-2015.

Facts:

ABC Co., an agricultural cooperative, was formed after several sugarcane farmers agreed to pool their resources to form a cooperative for the purpose of undertaking an economic enterprise to meet common needs of its members. ABC Co. sells sugar produce to members and non-members.

Issue:

Is the sale of agricultural products to members and non-members exempt from VAT?

Ruling:

Yes. Pursuant to RA No. 9337 and RR No. 8-2015, as clarified under RMC No. 40-2015, the sale by agricultural cooperatives of their agricultural products to their members is exempt from VAT. As to the sale of products to non-members, such sale will be exempt from VAT if the following requisites are present: (1) the agricultural cooperative is of good standing and duly accredited and registered with the Cooperative Development Authority; (2) the agricultural cooperative must be a holder of a valid, current and subsisting Certificate of Tax Exemption; and (3) the seller-agricultural cooperative is the producer of sugar, i.e., it is the tiller, thru its members, of the land it owns, or leases and it incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

Considering that ABC Co. meets all the requisites to qualify for VAT exemption, its sale of sugar produce to its members as well as non-members is exempt from VAT.

BIR Issuances

RR No. 7-2018 further amends RR No. 12-99 by adding a new section, requiring the conduct of an Informal Conference as part of the procedure for the issuance of a deficiency tax assessment.

RR No. 7-2018 dated 31 January 2018

- ▶ The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether the taxpayer agrees with his findings for deficiency taxes.
- ▶ If the taxpayer disagrees, the taxpayer shall be informed in writing by the Revenue District Office (RDO) or the Special Investigation Division (SID), as the case may be (in the case of Revenue Regional Offices), or by the Chief of the Division concerned (in the case of the BIR National Office), of the basis of such deficiency taxes for the purpose of holding an "Informal Conference" in order to afford the taxpayer with an opportunity to present his side of the case.
- ▶ The Informal Conference shall, in no case, extend beyond 30 days from receipt of the Notice of Informal Conference (NIC).
- ▶ If, after the Informal Conference, the taxpayer is still found liable for deficiency taxes and is not amenable to such finding, the RDO or the Chief of the SID of the Revenue Regional Office or the Chief of the Division in the National Office, as the case may be, shall endorse the case within 7 days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for the issuance of a deficiency tax assessment.

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

(Editor's Note: RR No. 7-2018 was published in the Manila Bulletin on 1 February 2018.)

RR No. 8-2018 implements the income tax provisions of RA No. 10963, otherwise known as the "TRAIN Law."

RR No. 8-2018 dated 20 February 2018

- ▶ The following terms shall be defined as follows:
 1. Compensation Income - all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the Tax Code. The name by which the remuneration of services is designated is immaterial.
 2. Compensation Income Earners - individuals whose source of income is purely derived from an employer-employee relationship.
 3. Employee - an individual performing services under an employer-employee relationship, which term covers all employees, including officers and employees, whether elected or appointed, of the Government of the Philippines or any political subdivision thereof or any agency or instrumentality.
 4. Employer - any person whom an individual performs or performed services, of whatever nature, under an employer-employee relationship. It is not necessary that the services be continuing at the time the wages are paid in order that the status of employer may exist. For purposes of withholding, a person for whom an individual has performed past services and from whom he is still receiving compensation is an employer.
 5. Employer and Employee Relationship - exists when a person for whom services were performed (employer) has the right to control and direct an individual who performs the services (employee), not only as to the result of the work to be accomplished, but also as to the details, methods and means by which it is accomplished. An employee is subject to the control of the employer not only as to what shall be done, but how it shall be done. It is not necessary that the employer actually exercises the right to direct or control the manner in which the services are performed. It is sufficient that there exists a right to control the manner of doing the work.
 6. Fringe benefits - any good, service or other benefit furnished or granted in cash or in kind other than the basic compensation, by an employer to an individual employee (except rank and file employees) such as, but not limited to the following: a) housing; b) expense account; c) vehicle of any kind; d) household personnel, such as maid, driver and others; e) interest on loan at less than market rate to the extent of the difference between the market rate and the actual rate granted; f) membership fees, dues and other expenses borne by the employer for the employees in social and athletic clubs or other similar organization; g) expenses for foreign travel; h) holiday and vacation expenses; i) education assistance to the employee or his dependents; and j) life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

7. Gross receipts - total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services, and deposits and advance payments actually or constructively received during the taxable period for the services performed or to be performed for another person, except returnable security deposits for purposes of these regulations. In the case of a VAT taxpayer, this shall exclude the VAT component.
8. Gross sales - total sales transactions, net of VAT, if applicable, reported during the period, without any other deduction. However, gross sales subject to the 8% income tax rate option shall be net of the following deductions:
 - ▶ Sales returns and allowances for which a proper credit or refund was made during the month or quarter to the buyer for sales previously recorded as taxable sales;
 - ▶ Discounts determined and granted at the time of sale, which are expressly indicated in the invoice, the amount thereof forming part of the gross sales duly recorded in the books of accounts. Sales discount indicated in the invoice at the time of sale, the grant of which is not dependent upon the happening of a future event, may be excluded from the gross sales within the same month/quarter it was given.
9. Minimum Wage Earner (MWE) - a worker in a private sector who is paid with statutory minimum wage (SMW) rates, or to an employee in a public sector with compensation income of not more than the SMW rates in non-agricultural sector where the worker/employee is assigned. Such SMW rates are exempted from income tax. The exemption covers the holiday pay, overtime pay, night shift differential pay, and hazard pay earned by the MWE.
10. Mixed income earner - an individual earning compensation income from employment, and income from business, practice of profession and/or other sources aside from employment.
11. Non-resident alien engaged in trade and business (NRAETB) - a non-resident alien who shall come to the Philippines and stay for an aggregate period of more than 180 days during any calendar year.
12. Non-resident alien not engaged in trade and business (NRANETB) - a non-resident alien who shall come to the Philippines and stay for an aggregate period of 180 days or less during any calendar year.
13. Rank and file employee - an employee holding neither managerial nor supervisory position as defined under existing provisions of the Labor Code of the Philippines, as amended.
14. Self-employed - a sole proprietor or an independent contractor who reports income earned from self-employment. S/He controls who s/he works for, how the work is done and when it is done. It includes those hired under a contract of service or job order, and professionals whose income is derived purely from the practice of profession and not under an employer-employee relationship.

15. Professional - a person formally certified by a professional body belonging to a specific profession by virtue of having completed a required examination or course of studies and/or practice, whose competence can usually be measured against an established set of standards. It also refers to a person who engages in some art or sport for money, as a means of livelihood, rather than as a hobby. It includes but is not limited to doctors, lawyers, engineers, architects, CPAs, professional entertainers, artists, professional athletes, directors, producers, insurance agents, insurance adjusters, management and technical consultants, bookkeeping agents, and other recipients of professional, promotional and talent fees.
16. Taxable income - pertinent items of gross income specified in the Tax Code less deductions, if any, authorized for such types of income by the Tax Code or other special laws.
17. VAT Threshold - the ceiling fixed by law to determine VAT registrable taxpayers, which is currently set at P3,000,000.00 and shall be used to determine the income tax liability of self-employed individuals and/or professionals under Sections 24 (A) (2) (b) and 24 (A) (2) (c) (2) of the Tax Code, as amended.

- ▶ The income tax on individual's taxable income shall be computed based on the following schedules as provided under Section 24 (A) (2) (a) of the Tax Code, as amended:

1. Effective 1 January 2018 until 31 December 2022:

Range of Taxable Income		Tax Due = a + (b x c)		
Over	Not Over	Basic Amount (a)	Additional Rate (b)	Of Excess Over (c)
-	250,000.00	-		-
250,000.00	400,000.00	-	20%	250,000.00
400,000.00	800,000.00	30,000.00	25%	400,000.00
800,000.00	2,000,000.00	130,000.00	30%	800,000.00
2,000,000.00	8,000,000.00	490,000.00	32%	2,000,000.00
8,000,000.00	-	2,410,000.00	35%	8,000,000.00

2. Effective January 1, 2023 and onwards:

Range of Taxable Income		Tax Due = a + (b x c)		
Over	Not Over	Basic Amount (a)	Additional Rate (b)	Of Excess Over (c)
-	250,000.00	-		-
250,000.00	400,000.00	-	15%	250,000.00
400,000.00	800,000.00	22,500.00	20%	400,000.00
800,000.00	2,000,000.00	102,500.00	25%	800,000.00
2,000,000.00	8,000,000.00	402,500.00	30%	2,000,000.00
8,000,000.00	-	2,202,500.00	35%	8,000,000.00

- ▶ Individuals earning purely compensation income shall be taxed at the graduated income tax rates prescribed above.
- ▶ Taxable income for compensation earners is the gross compensation income less non-taxable income/benefits, such as but not limited to the 13th month pay and other benefits (subject to limitations), *de minimis* benefits, and employee's share in the SSS, GSIS, PHIC, Pag-ibig contributions and union dues.
- ▶ Husband and wife shall compute their individual income tax separately based on their respective taxable income.
- ▶ If any income cannot be definitely identified as income exclusively earned or realized by either of the spouses, the same shall be divided equally between the spouses.
- ▶ MWEs shall be exempt from income tax based on their statutory minimum wage rates.
- ▶ The holiday pay, overtime pay, night shift differential pay and hazard pay received by MWEs are likewise exempt.
- ▶ Individuals earning purely from self-employment and/or practice of profession whose gross sales/receipts and other non-operating income does not exceed the VAT threshold shall have the option to avail of:
 1. The graduated income tax rates under Section 24 (A) (2) (a) of the Tax Code, or
 2. 8% tax on gross sales or receipts and other non-operating income in excess of P250,000.00 in lieu of the graduated income tax rates under Section 24 (A) and the percentage tax under Section 116 of the Tax Code.
- ▶ Unless the taxpayer signifies the intention to elect the 8% income tax rate in the first Quarter Percentage and/or Income Tax Return, or on the initial quarter return of the taxable year after the commencement of a new business/ practice of profession, the taxpayer shall be considered as having availed of the graduated rates under Section 24 (A) (2) (a) of the Tax Code.
 1. Such election shall be irrevocable and no amendment of the option shall be made for the said taxable year.
 2. The option to be taxed at 8% is not available to the following:
 - ▶ A VAT-registered taxpayer, regardless of the amount of gross sales/ receipts; and
 - ▶ A taxpayer who is subject to other percentage taxes under Title V of the Tax Code, as amended, except those subject under Section 116.
- ▶ Because their distributive share from the general professional partnership (GPP), is already net of cost and expenses, partners of a GPP cannot avail of the 8% income tax rate option.

- ▶ A taxpayer, who signifies his intention to avail of the 8% income tax rate option and whose annual gross sales/receipts and other non-operating income does not exceed the VAT threshold of P3,000,000.00, shall compute the final annual income tax due based on the actual annual gross sales/receipts and other non-operating income.
 1. The income tax due shall be in lieu of the graduated rates of income tax and the percentage tax under Section 116.
 2. The Financial Statements (FS) is not required to be attached to the final income tax return.
 3. Existing rules on bookkeeping and invoicing/receipting shall still apply.
- ▶ A taxpayer shall automatically be subject to the graduated income tax rates, even if the 8% income tax rate option is initially selected, when a taxpayer's gross sales/receipts and other non-operating income exceed the VAT threshold during the taxable year.
- ▶ In such a case, the taxpayer shall be allowed a tax credit for the previous quarter/s income tax payment/s under the 8% income tax rate option.
- ▶ A taxpayer subject to the graduated income tax rates (because she or he selected this as the income tax regime, or failed to signify chosen intention or to qualify for the 8% income tax rate), is also subject to the applicable business tax, if any.
 1. Subject to the provisions of these regulations, an FS shall be required as an attachment to the annual income tax return even if the gross sales/receipts and other non-operating income are less than the VAT threshold.
 2. The annual income tax return of a taxpayer, with gross sales/receipts and other non-operating income of more than the said VAT threshold, shall be accompanied by an audited FS.
- ▶ Taxable income for individuals earning income from self-employment/practice of profession shall be the net income, if taxpayer opted to be taxed at graduated rates or has failed to signify the chosen option.
- ▶ For mixed income earners, the applicable income tax rates are as follows:
 1. The compensation income shall be subject to the graduated tax rates; and
 2. The income from business or practice of profession shall be subject to the following:
 - ▶ If the gross sales/receipts and other non-operating income do not exceed the VAT threshold, the individual has the option to be taxed at the following rates:
 - a. Graduated income tax rates prescribed under Section 24 (A) (2) (a); or
 - b. 8% income tax rate, in lieu of the graduated income tax rates and percentage tax under Section 116

- ▶ If the gross sales/receipts and other non-operating income exceed the VAT threshold, the individual shall be subject to the graduated income tax rates prescribed under Section 24 (A) (2) (a).
- ▶ The 8% income tax rate option on gross sales/receipts and other non-operating income in excess of P250,000.00 is available only to purely self-employed individuals and/or professionals.
 1. The non-taxable amount of P250,000.00 under the 8% income tax rate option is not applicable to mixed income earners since it is already incorporated in the first tier of the graduated income tax rates applicable to compensation income.
 2. Under the said graduated rates, the excess of the P250,000.00 over the actual taxable compensation income is not deductible against the taxable income from business/practice of profession under the 8% income tax rate option.
 3. The total tax due shall be the sum of the following: (1) tax due from compensation, computed using the graduated income tax rates; and (2) tax due from self-employment/practice of professional, resulting from the multiplication of the 8% income tax rate with the total of the gross sales/receipts and other non-operating income.
 4. A mixed income earner who opted to be taxed under the graduated income tax rates for income from business/practice of profession, shall combine the taxable income from both compensation and business/practice of profession in computing for the total taxable income and, consequently, the income tax due.
- ▶ The following passive income shall be subject to the following final income tax rates:
 1. Interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements - 20%
 2. Interest income received by an individual taxpayer (except a non-resident individual) from a depository bank under the expanded foreign currency deposit system - 15%
 3. Proceeds of pre-terminated long-term deposit or investment in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form as prescribed by the Bangko Sentral ng Pilipinas (BSP) - the final tax shall be based on the remaining maturity of the investment:
 - ▶ Four years but less than five years - 5%
 - ▶ Three years but less than four years - 12%
 - ▶ Less than three years - 20%
 4. Royalties (except royalties on books and other literary works and musical compositions) - 20%

5. Royalties on books and other literary works and musical compositions - 10%
 6. Prizes (except prizes amounting to P 10,000.00 or less) - 20%
 7. Winnings (except Philippine Charity Sweepstakes and Lotto winnings amounting to P 10,000.00 or less) - 20%
 8. Cash and property dividends - 10%
 9. Capital gains from sale of shares of stock not traded in the stock exchange - 15%
 10. Capital gains from sale of real property located in the Philippines - 6%
- ▶ The following income tax rates shall be imposed on non-resident alien individuals:
1. NRAETB within the Philippines - the income tax rates imposed on individual citizen and a resident alien individual with respect to taxable income derived within the Philippines.
 2. NРАНETB within the Philippines - a 25% tax on the entire income received from all sources within the Philippines by this taxpayer such as interest, cash and/or property dividends, rents, salaries, wages, premiums, annuities, compensation, remuneration, emoluments, or other fixed or determinable annual or periodic or casual gains, profits, and income and capital gains.
 3. The 15% preferential income tax rate under subsections C, D and E of Section 25 can no longer be availed of by the employees of the following entities, without prejudice to the application of the preferential tax rates under existing international tax treaties, if warranted:
 - ▶ Regional or area headquarters and regional operating headquarters of multinational companies;
 - ▶ Offshore banking units; and
 - ▶ Petroleum service contractors and subcontractors.
 4. In such a case, the above employees shall be subject to the graduated income tax rates in accordance with the veto message of the President.
- ▶ Government-owned and controlled corporations (GOCCs), government agencies or instrumentalities shall pay such rate of tax upon their taxable income as imposed upon corporations or associations engaged in a similar business, industry or activity, except for the following:
1. Government Service Insurance System (GSIS)
 2. Social Security System (SSS)
 3. Philippine Health Insurance Corporation (PHIC)
 4. Local Water Districts (LWD)

- ▶ The following items shall be excluded from gross income and shall be exempt from income tax:
 1. The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income;
 2. Amount received by the insured as return of premium;
 3. Gifts, bequests, and devises;
 4. Compensation for injuries or sickness;
 5. Income exempt from treaty;
 6. Retirement benefits, pensions, gratuities, and so on; and
 7. Miscellaneous items, such as the following:
 - ▶ Income derived by foreign governments
 - ▶ Income derived by the government or its political subdivisions
 - ▶ Prizes and awards
 - ▶ Prizes and awards in sports competition
 - ▶ 13th month pay and other benefits - Gross benefits received by officials and employees of public and private entities, provided, that the total exclusion under this item shall not exceed P90,000.00, which shall cover:
 - a. Benefits received by officials and employees of the national and local government pursuant to RA No. 6686
 - b. Benefits received by employees pursuant to Presidential Decree (PD) No. 851, as amended by Memorandum Order (MO) No. 28 dated August 13, 1986
 - c. Benefits received by officials and employees not covered by PD No. 851, as amended by MO No. 28
 - d. Other benefits, such as productivity incentives and Christmas bonus
 - ▶ GSIS, SSS, Medicare and other contributions
 - ▶ Gains from the sale of bonds, debentures or other certificates of indebtedness with a maturity of more than 5 years
 - ▶ Gains from redemption of shares in mutual fund

- ▶ A taxpayer may opt to avail of itemized deductions or an optional standard deduction (OSD) at the rate of 40%.
 1. For individual taxpayers, the OSD shall be computed at 40% of gross sales/receipts, as the case may be.
 2. Corporations may elect OSD in an amount not exceeding 40% of its gross income.
 3. No deductions shall be allowed to individual taxpayers earning compensation income and those who opted to be taxed at 8% income tax rate on their income from business/practice of profession.
 4. A GPP may avail of the OSD only once, either through the GPP or the partners comprising the partnership.
 5. The GPP is not a taxable entity for income tax purposes since it is only acting as a “pass through” entity where its income is ultimately taxed to the partners comprising it.
 6. The distributable net income of the partnership may be determined by claiming either itemized deductions or OSD.
 7. The share in the net income of the partnership, actually or constructively received, shall be reported as taxable income of each partner.
 8. The partners of the GPP can no longer claim further deduction from their distributive share in the net income of the GPP and cannot avail of the 8% income tax rate option since their distributive share from the GPP is already net of costs and expenses.
 9. If the partner also derives other income from trade, business or practice of profession aside from the share in the net income of the GPP, the deduction that can be claimed from the other income would either be the itemized deductions or the OSD.

- ▶ The following individuals are not required to file an income tax return:
 1. An individual earning purely compensation income whose taxable income does not exceed P250,000.00;
 2. An individual whose income tax has been correctly withheld by his employer where such individual has only one employer for the taxable year;
 3. An individual whose sole income has been subjected to final withholding tax; and
 4. An MWE.

- ▶ In all these cases, the Certificate of Withholding filed by the respective employers of the above employees, duly stamped “Received” by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees.

- ▶ All individuals deriving compensation income, regardless of the amount, from two or more concurrent or successive employers at any time during the taxable year, are not qualified for substituted filing.

- ▶ Individuals engaged in business/practice of profession, regardless of amount of sales/receipts, are required to file the following income tax returns within the deadlines indicated below:
 1. Quarterly income tax return - May 15, August 15, and November 15 for the first, second and third quarters of the current year, respectively; and
 2. Annual income tax return - 15th day of the fourth month following the close of the calendar year or April 15.

- ▶ When the tax due exceeds P2,000.00, the individual may elect to pay the tax in 2 equal installments, in which case, the first installment shall be paid at the time the annual income tax return is filed while the second installment shall be paid on or before October 15 following the close of the calendar year.

- ▶ If any installment is not paid on or before the date fixed for its payment, the whole amount of the unpaid tax shall become due and payable, together with the delinquency penalties to be reckoned on the original date when the tax required is to be paid.

- ▶ A non-VAT taxpayer, who intends to avail of the 8% income tax rate at the beginning of the taxable year or before the due date for the filing and/ or payment of the percentage tax, shall file an Application for Registration Information Update (BIR Form No. 1905) to end-date the registered tax type of percentage tax.
 1. If the taxpayer fails to do so, s/he shall continue to file the percentage tax return reflecting a zero-amount of tax with a notation that s/he is availing of the 8% income tax rate option for the taxable year.
 2. S/He is still required to signify the intention to avail the option on the initial quarterly income tax return for income tax purposes.

- ▶ If the non-VAT taxpayer opted to be taxed under the graduated income tax rate, s/he shall continue to pay the required percentage tax.

- ▶ A taxpayer who initially presumed that the gross sales/receipts and other non-operating income for the taxable year will not exceed the P3,000,000.00 VAT threshold, but eventually exceeded the same during the taxable year, shall immediately update his/her registration to reflect the change in tax profile.
 1. S/He shall be required to update the registration immediately within the month following the month s/he exceeded the VAT threshold.
 2. S/He shall be liable to VAT prospectively, starting on the first day of the month following the month when the threshold is breached.
 3. The taxpayer shall pay the required percentage tax covering the sales/ receipts and other non-operating income, from the beginning of the taxable year or commencement of business/practice of profession until the time the taxpayer becomes liable for VAT, without imposition of penalty if timely paid on the immediately succeeding month/quarter.
 4. There may be an instance when a taxpayer filed 2 business tax returns in a month/quarter, i.e. percentage and VAT returns.

- ▶ A VAT taxpayer who did not exceed the VAT threshold within the immediately preceding 3-year period, may opt to be a non-VAT taxpayer and avail of the 8% income tax rate option.
 1. S/He shall update the registration records on or before the first quarter of a taxable year, but shall remain liable for VAT as long as there is no update of registration, and VAT-registered invoices/receipts are continuously issued.
 2. Registration updates shall be subject to existing rules on updates, verification, inventory and surrender/cancellation of unused VAT invoices/receipts.
- ▶ A non-VAT taxpayer, who volunteers to be a VAT taxpayer, knowing that sales/receipts and other non-operating income will exceed the VAT threshold within the taxable year, shall update her or his registration records.
 1. Such taxpayer becomes liable to VAT on the day when such updating is made.
 2. In such a case, the taxpayer shall automatically be subject to the graduated income tax rates if the 8% income tax rate option is initially selected.
 3. Any income tax paid under the said flat 8% income tax rate shall be deducted from the income tax due under the graduated income tax rates.
 4. The percentage tax due from the beginning of the taxable year or commencement of business/practice of profession shall be paid on the month/quarter immediately following such registration update.
 5. However, if the graduated income tax rates is chosen from the beginning, then, the taxpayer will cease to be liable to percentage tax upon the update of registration and instead, will be liable to VAT.
- ▶ All VAT-registered taxpayers whose gross sales/receipts and other non-operating income in the preceding year do not exceed the VAT threshold of P3,000,000.00 shall have the option to update their registration to non-VAT until March 31, 2018, following the existing procedures on registration updates and the inventory and surrender/cancellation of unused VAT invoices/receipts.
 1. After March 31, 2018, VAT-registered taxpayers, who have not exceeded the threshold for the immediately preceding 3 years, may opt to update their registration to non-VAT following rules on registration updates, verification, and the inventory and cancellation of VAT invoices/receipts.
- ▶ The regulations are effective beginning 1 January 2018.

(Editor's Note: RR No. 8-2018 was published in the Manila Bulletin on 22 February 2018.)

RMC No. 10-2018 clarifies the time of withholding and remittance of taxes withheld by Withholding Agents, including the National Government Agencies and Instrumentalities, Local Government Units and Government-Owned and Controlled Corporations.

RMC No. 10-2018 issued on 31 January 2018

- ▶ For government projects, the obligation to withhold arises at the time that the government agency books the construction costs of the Property, Plant & Equipment (PPE) under the asset classification "Construction in Progress".

- ▶ The above rule is consistent with Section 4 of RR No. 12-2001, which provides that the obligation to withhold arises at the time an income payment is paid or payable, or the income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.
- ▶ This rule also prevails over the Government Audit Manual, which recognizes the withholding tax liability only at the time of payment of the accounts payable to the supplier.

RMC No. 12-2018 clarifies the nature and extent of the power of the Commissioner of Internal Revenue to obtain information under Section 5 of the NIRC of 1997, as amended, in relation to Attorney-Client and Accountant-Client privilege.

RMC No. 12-2018 dated 22 February 2018

- ▶ The Commissioner of Internal Revenue has the power under Section 5 of the Tax Code to obtain, on a regular basis, from any person other than the person whose internal revenue tax liability is subject to audit or investigation, any information to ascertain the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax or in collecting any such liability, or in evaluating tax compliance.
- ▶ The power of the Commissioner of Internal Revenue to obtain information under Section 5 of the Tax Code, as amended, serves as an exception to both the attorney-client and the accountant-client privileges for the following reasons:
 1. *Rule 21.01 of the Lawyer's Code of Professional Responsibility* provides that a lawyer shall not reveal the confidence or secrets of his client except, among others, when required by law.
 2. In *Genato v. Silapan (A.C. No. 4078 dated July 14, 2003)*, the Supreme Court stressed that the privilege against disclosure of confidential communication or information does not extend to those made in contemplation of a crime or perpetration of a fraud. (Attempt to evade or defeat tax is a criminal offense defined and punishable under Section 254 of the Tax Code, as amended.)
 3. Section 29 of RA No. 9298 states that the accountant-client privilege does not apply if the production of documents is through a subpoena issued by any court, tribunal, or government regulatory or administrative body.
 4. *Section 1401.1 of the Code of Ethics of Professional Accountants* provides that professional accountants shall refrain from disclosing outside the firm or employing organization, confidential information acquired as a result of professional and business relationships, unless there is a legal right or duty to disclose.

BOC Update

The authority to accredit and register customs brokers and importers is reverted solely to the BOC for simplification.

Department Order (DO) No. 11-2018 dated 9 February 2018

- ▶ The Bureau of Customs (BOC), however, is mandated to transmit to the Bureau of Internal Revenue (BIR) on a quarterly basis a list of approved/accredited customs brokers and importers for post-accreditation validation of tax-compliance. The BIR must notify BOC of any findings of tax deficiency or non-compliance.
- ▶ BOC and BIR shall issue the relevant orders and administrative issuances necessary for the enforcement of the DO.

- ▶ DO Nos. 12-2014 and 18-2014, which are the governing rules on accreditation of importers and customs brokers and which required securing a BIR Importer Clearance Certificate (“ICC”) or a Brokers Clearance Certificate (“BCC”) as a prerequisite to BOC accreditation, are repealed.
- ▶ This Order shall take effect immediately.

PEZA Update

The MOA between PEZA and BFP provides for the collaborative implementation of the Fire Code of the Philippines of 2008, and the respective responsibilities of the two agencies.

Memorandum of Agreement between PEZA and Bureau of Fire Protection dated 18 January 2018

▶ Background

1. Pursuant to its Implementing Rules and Regulations (IRR), PEZA has been enforcing and administering the National Building Code of the Philippines (NBCP), including the Fire Code of the Philippines, inside PEZA economic zones.
2. Upon the passage of Republic Act (RA) No. 9514 or the “Fire Code of the Philippines of 2008” (FCP), the enforcement and administration become solely vested on the BFP.
3. PEZA and BFP agree to be dynamic partners in providing adequate, effective, and efficient fire safety, protection, and response program inside PEZA economic zones.

▶ General provisions

1. The MOA shall govern the administration and implementation of the FCP in all PEZA-administered economic zones in the country, including IT Parks and Buildings.
2. The Fire Safety Evaluation Clearance (FSEC) shall be a pre-requisite in the issuance of Building Permits by PEZA.
3. The Fire Safety Inspection Certificate (FSIC) shall be a pre-requisite in the issuance of Occupancy Permits and Certificates of Annual Inspection by PEZA.
4. Responsibilities of PEZA:
 - ▶ PEZA shall endorse to BFP within the prescribed period all applications for building permit, occupancy permit, and certificate of annual inspection for purposes of the issuance of the FSEC and FSIC;
 - ▶ PEZA shall not issue any permits unless the BFP has issued the required FSEC, FSIC and FCP-related clearances; and
 - ▶ PEZA shall allow BFP personnel to co-locate with PEZA personnel in the one-stop-shop.
5. Responsibilities of BFP:
 - ▶ BFP shall be responsible for the implementation of the FCP among PEZA-registered enterprises;

- ▶ BFP shall issue the FSEC, FSIC, and other FCP-related clearances within the prescribed period;
 - ▶ BFP shall continue to respond immediately to fire incidents which may occur inside PEZA Economic Zones;
 - ▶ BFP shall conduct fire drills and lectures in all PEZA Economic Zones and all PEZA-registered enterprises at least twice a year; and
 - ▶ BFP shall give priority to applications for new facilities of PEZA-registered enterprises to ensure they are able to operate on time.
- ▶ **Processing of Permit Applications in One-Stop Shop**
- 1. Building Permit**
- ▶ Step 1: Submission of Application Form and Documentary Requirements
 - a. PEZA shall receive the application and check for completeness.
 - b. PEZA shall endorse three sets of the application docket to BFP.
 - c. PEZA and BFP shall simultaneously evaluate the docket. Once evaluated or approved, BFP shall return two sets to PEZA.
 - d. Processing time shall be a maximum of five working days from receipt of complete requirements, inclusive of BFP's processing time for FSEC of three working days from receipt of PEZA endorsement.
 - ▶ Step 2: Receipt of Order of Payment
 - a. After the evaluation, PEZA and BFP shall simultaneously prepare an Order of Payment which will be issued to the applicant at the same time.
 - ▶ Step 3: Payment of Fees and Charges
 - ▶ Step 4: Claiming of the Building Permit with FSEC
 - a. The Building Official shall sign and issue the Building Permit.
- 2. Occupancy Permit**
- ▶ Step 1: Submission of Application Form and Documentary Requirements
 - a. PEZA shall receive the application and check for completeness.
 - b. PEZA shall endorse three sets of the application docket to BFP.
 - c. PEZA and BFP shall form a joint inspection team for the conduct of the required inspection of the structure following NBCP and FCP requirements.
 - d. Processing time shall be a maximum of five working days from receipt of complete requirements, inclusive of BFP's processing time for FSIC of three working days from receipt of PEZA endorsement.

- ▶ Step 2: Receipt of Order of Payment
 - a. After the evaluation, PEZA and BFP shall simultaneously prepare an Order of Payment which will be issued to the applicant at the same time.
 - ▶ Step 3: Payment of Fees and Charges
 - ▶ Step 4: Claiming of the Building Permit with FSIC
 - a. The Building Official shall sign and issue the Occupancy Permit.
3. **Certificate of Annual Inspection**
- a. No Certificate of Annual Inspection shall be issued by PEZA without a valid FSIC.
 - b. PEZA and BFP shall form a joint inspection team for the conduct of the required inspection of the structure following NBCP and FCP requirements.
 - c. For compliant PEZA-registered entities, BFP shall issue and transmit the FSIC to PEZA within 2 days from inspection.
- ▶ The MOA takes effect 30 days from signing of the parties (i.e., 17 February 2018).

BOI Updates

Circular No. 2018-01 provides for the liberalization of certain Board policies applicable to BOI-registered projects.

Circular No. 2018-01 dated 15 December 2017

Pursuant to Board Resolution No. 33-44, Series of 2017, the following policies shall no longer apply to all BOI-registered projects, regardless of date of registration:

- ▶ Stockholders' equity requirement equivalent to 25% of the total project cost (75:25 debt-to-equity ratio) and submission of proof of compliance before availment of Income Tax Holiday (ITH).
- ▶ Submission of proof of financial close for the project within one year (or within two years for power generation projects) from date of registration.
- ▶ Net income qualified for ITH availment shall not be a result of gross revenues exceeding 10% of the projected gross revenue represented by the firm in its application.
- ▶ For power generation projects, only revenue from power generated and sold to other entities and/or communities based on bilateral contracts approved by the ERC may be entitled to ITH.
- ▶ At the time of actual availment of the ITH bonus year, the derived ratio should not exceed USD 10,000 to one worker [*Author's note: Refers to Capital Equipment to Labor Ratio Criterion, which is now USD 28,000 to one worker under the 2017 Investment Priorities Plan*].

This Policy shall take effect immediately upon publication in a newspaper of general circulation

(Editor's note: Circular No. 2018-01 was published in The Philippine Star on 2 February 2018; p. B-15.)

BSP Issuances

Circular No. 992 provides for the Framework for Bank Deposit Accounts.

BSP Circular No. 992 dated 1 February 2018

- ▶ The following provisions and appendices of the Manual of Regulations for Banks (MORB) were amended to introduce the framework for basic deposit accounts that can promote financial inclusion, consistent with the *Bangko Sentral's* thrust to advance universal access to formal financial products and services:
- ▶ Section X222 of the MORB was added to establish a basic deposit account. A basic deposit account refers to interest- or non-interest-bearing account designed to promote financial inclusion. It will enable Filipinos, especially the unserved and underserved to receive, make payments and have a facility for store of value. The banks shall adopt the following minimum key features of a basic deposit account: liberalized customer onboarding; opening amount of not more than 100.00; no minimum maintaining balance; no dormancy charges; a maximum balance of 50,000.00; and a reserve requirement of 0%;
- ▶ Subsection X253.1 of the MORB on the required reserves against deposit and deposit substitute liabilities was amended to add item "m. Basic deposit accounts, as defined in Sec. X222 of the MORB¹" providing 0% rate of required reserves against deposit and deposit substitute liabilities in local currency of banks;
- ▶ Portions of the Financial Reporting Package (FRP) required under Subsection X191.2 of the MORB were amended;
- ▶ Items F to I of *Appendix 45* on Notes on Microfinance were amended by deleting the general features of microfinance or micro deposits, and by providing that micro-deposits shall now be referred to as basic deposit accounts;
- ▶ *Appendix 105* on guidelines on reportorial requirement for bank interest rates was amended to denote reference to the definitions used for deposits products in Section X222;
- ▶ A separate issuance shall cover the guidelines to implement the relevant reporting structures and dissemination of the accompanying data entry templates and procedures for electronic submission.
- ▶ 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. 992, s. 2018 was published in the Philippine Star on 8 February 2018.)

¹ The required reserves for banks shall take effect starting reserve week 23 February 2018.

Circular No. 993 provides for the Adoption of the Know-Your-Member Guidelines for Non-Stock Savings and Loan Associations.

BSP Circular No. 993 dated 29 January 2018

- ▶ The following guidelines were approved by the Monetary Board for NSSLAs (Non-Stock Savings and Loan Associations) to appropriately establish the true identity and eligibility of persons to become members and adopt effective systems that will provide assurance that membership is confined to their respective well-defined groups.
- ▶ Section 4102S of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF) applicable to Non-Stock Savings and Loan Associations (NSSLAs) is added to provide for Know-Your-Member. It stated the policy that the NSSLAs shall not be used as a vehicle by unscrupulous persons, its trustees and officers to profit or take advantage of their nature and operations. Thus, the board of trustees (BOT) and managements of NSSLAs shall be responsible in putting in place and implementing an effective risk management system, policies, processes, and practices towards the effective determination and monitoring of the identity and eligibility of prospective and existing members on a continuing basis.
- ▶ The following subsections are also added by this Circular: 4102S.1 which provides for membership selection and screening; 4102S.2 which provides for approval of membership of an individual eligible for membership by the BOT; 4102S.3 which provides for maintenance by the NSSLA of a registry of all its members; 4102S.4 on membership administration, record keeping and retention; 4102S.5 which provides for orientation of members; 4102S.6 which provides for sanctions; and Subsection 4102S.7 which provides for transitory provisions;
- ▶ Section 4101S of the MORNBF is amended to provide for the statement of policy and scope of authority of non-stock savings and loan associations. It provided that the Bangko Sentral adopts the policy of the State to lay down the minimum requirements and the standard under which NSSLAs may operate in a sound and efficient manner. Moreover, NSSLAs shall provide assurance to their members and to supervisory authorities that they confined their membership to a well-defined group of persons and not to transact business with the general public.
- ▶ Subsection 4101S.1 of the MORNBF is amended to delete the requirement that NSSLAs shall issue a certificate of membership to every qualified member and shall maintain a registry of their members.
- ▶ This Circular shall take effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation.

(Editor's Note: BSP Circular No. 993, s. 2018 was published in the Philippine Star on 9 February 2018.)

Circular No. 994 provides for the Amendments to the Manual of Regulations for Non-Bank Financial Institutions applicable to Non-Stock Savings and Loan Associations - Fund Investments.

BSP Circular No. 994 dated 29 January 2018

- ▶ Section 4391S of the MORNBF-S which provide for Fund Investments is amended to state the policy that NSSLAs shall primarily utilize the accumulated savings of its members for loans to service household needs of such members. However, temporary excess funds may be placed in safe and liquid investment outlets pending their deployment to support core operations. Excess funds

generated from deposits and withdrawable capital contributions which the NSSLAs are unable to utilize for prudent lending activities may be returned to their contributing members at the discretion of the Board of Trustees, provided that, the Association, thereafter, remains compliant with the required capital-to-risk assets ratio and two percent (2%) withdrawable share reserve on total capital contributions.

It also provided that an NSSLA may invest its funds in any or all of the following:

1. In sound, non-speculative enterprises, as well as in and bonds, securities, and other obligations issued by the Government of the Philippines or any of its political subdivisions, instrumentalities, or corporations including government-owned or controlled corporation (hereinafter referred to as the "Government"), subject to the following conditions:
 - ▶ The credit need of the members shall be served/satisfied first;
 - ▶ Investment other than those bonds, securities, and other obligations issued by the Government should meet the following criteria : (a) safe; (b) readily marketable, (c) high grade, and (d) locally issued; and
 - ▶ The total aggregate amount of investment shall not exceed ten percent (10%) of the NSSLA's total assets. Investments in excess of ten percent (10%) shall require prior approval of the Bangko Sentral.
- ▶ A transitory provision is added which provides that NSSLAs shall be given ninety (90) days from the effectivity of this Circular to propose an action plan approved by the Board of Trustees to achieve full compliance when:
 - ▶ Its outstanding investments exceed the aggregate allowable limit; and/or
 - ▶ It is not compliant with any of the conditions/provisions set forth in this Circular.
- ▶ This Circular shall take effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

(Editor's Note: BSP Circular No. 988, s. 2017 was published in the Philippine Star on 12 January 2018.)

Circular No. 995 provides for the Amendments to the Guidelines on the Prohibition Against Funds from Non-Residents From being Accepted in the Liquidity Facilities of the Bangko Sentral.

BSP Circular No. 995 dated 5 February 2018

- ▶ Subsection X601.8 of the Manual of Regulations for Banks (MORB) on prohibition against funds from non-residents from being accepted in the Term Deposit Facility (TDF) and Overnight Deposit Facility (ODF) is amended to provide, that in the case of funds inwardly remitted by a foreign bank intended as capital of its branch or subsidiary in the Philippines, the same funds shall be eligible to be accepted in the TDF and ODF of the Bangko Sentral.
- ▶ Appendix 78 of the MORB on the guidelines on the prohibition against use of funds from non-resident sources for placements in the Bangko Sentral's TDF and ODF is amended to provide, among others, that funds inwardly remitted by a foreign bank intended as capital of its branch or subsidiary in the Philippines shall be eligible for placement in the TDF and the ODF of the Bangko Sentral.

- ▶ Appendix Q-47 of the MORNBF1 on the guidelines on the prohibition against use of funds from non-resident sources for placements in the Bangko Sentral's TDF and ODF is also amended by this Circular.
- ▶ This Circular shall take effect after fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation.

(Editor's Note: BSP Circular No. 995, s. 2018 was published in the Philippine Star on 13 February 2018.)

Circular No. 996 provides for the Amendments to the Liquidity Coverage Ratio Framework and Minimum Prudential Liquidity Requirements for Stand-alone Thrift Banks, Rural Banks, Cooperative Banks and Quasi-Banks.

BSP Circular No. 996 dated 8 February 2018

Part I. Amendments to the Basel III Framework on Liquidity Standards - Liquidity Coverage Ratio and Disclosure Standards

- ▶ Subsection 1176.1/4176Q.1 of the Manual of Regulations for Banks (MORB)/ Manual of Regulations for Non-bank Financial Institutions (MORNBF1) covering guidelines on LCR and disclosure standards is amended to provide, among others, a minimum requirement that while the LCR is expected to be met in a single currency (i.e., in peso equivalent terms of all currencies), banks/QBs are expected to be able to meet their liquidity needs in each currency and maintain high quality liquid assets (HQLA) consistent with the distribution of their liquidity needs by currency.
- ▶ Subsection X176.2/4176Q.2 of MORB/MORNBF1 which provide for the LCR disclosure requirements is amended by this Circular.
- ▶ Footnote 3 of Appendix 74a of the MORB is amended to read as follows: "The 100% threshold is the minimum requirement absent a period of financial stress, and after the phase-in arrangements are complete."
- ▶ Part I Appendix 74a of the MORB is amended to incorporate the liquidity metrics for Level 2 assets.
- ▶ The contents of Appendix 74a are either deleted or renumbered by this Circular.
- ▶ All references to "banks" in Appendix 74a of the MORB shall be replaced with "covered banks." The revised regulations under Appendix 74a of the MORB shall be adopted as Appendix Q-44b of the MORNBF1 and shall apply to QBs concerned.
- ▶ The reports mentioned in item b. of Subsection X176.1 of the MORB/ Subsection 4176Q.1 of the MORNBF1 shall be listed in *Appendix 6/Q-3* to account for the reportorial requirements relative to the LCR requirement for subsidiary banks and QBs of UB/KBs.

Part II. Introduction of the Minimum Liquidity Ratio (MLR) for Stand-Alone Thrift Banks, Rural Banks, Cooperative Banks, and Quasi-Banks.

- ▶ Subsection X176.3/4176Q.3 is added to the MORB and MORNBF1 which provide that the Minimum Liquidity Ratio (MLR) requirement applies to all for stand-alone thrift-banks (TBs), rural/cooperative banks (RBs and Coop Banks), and quasi-banks (QB) that are not subsidiaries of universal or commercial banks (UBs/KBs).

The amendment also provides for a minimum requirement that a prudential MLR of twenty percent (20%) shall apply to banks/QBs on an ongoing basis absent a period of financial stress. The liquidity ratio is expressed as a percentage of a banks/QBs eligible stock of liquid assets to its total qualifying liabilities.

- ▶ Subsection X176.4/4176Q.4 of the MORB/MORNBF1 on MLR Disclosure requirements is also added by this Circular.
- ▶ The reports mentioned in item b of Subsection 176.3 of the MORB/Subsection 4176Q.3 of the MORNBF1 shall be listed in *Appendix 6/Q-3* to account for the reportorial requirements relative to the MLR.
- ▶ The reporting template for the MLR is in Attachment 5. The guidelines for the mode and manner of submission of the electronic reportorial templates shall be covered by a separate issuance.

Part III. Supervisory Framework for the Minimum Prudential Liquidity Requirements.

- ▶ Subsection X176.7/4176Q.7 which provide for supervisory framework for the minimum prudential liquidity requirements is added to the MORB and MORNBF1.
- ▶ Subsection 1176.3 of the MORB on sanctions is deleted.
- ▶ Subsection X176.20/4176Q.20 of the MORB and MORNBF1 which provide for supervisory enforcement actions is amended.

Part IV. Relaxation of Liquidity Metrics for Thrift Banks, Rural Banks, Cooperative Banks and Quasi-Banks

- ▶ The relaxation of the following liquidity metrics under the FX Manual shall take effect on 1 January 2019 for TBs, RBs and Coop Banks:
 1. The thirty percent (30%) cover for foreign currency liabilities in their respective foreign currency deposit units (FCDUs) in the form of liquid assets; and
 2. The foreign currency cover in the same currency as that of the corresponding foreign currency deposit liabilities.
- ▶ Sections 73.3 of the FX Manual which provide for foreign currency cover requirements; and 75 of FX Manual which provide for currency composition of the cover are also amended by this Circular.
- ▶ Appendix 15a of the FX Manual shall be replaced with Attachment 6 from 1 January 2019 onwards.
- ▶ Subsection X240.6 of the MORB which provide for liquidity floor is amended to effect the relaxation of the liquidity floor reserve requirement for government funds which shall take effect on 1 January 2019 for TBs, RBs and Coop Banks.
- ▶ 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. 996, s. 2018 was published in the Philippine Star on 14 February 2018.)

Circular No. 997 provides for the Reduction in Reserve Requirements.

BSP Circular No. 997 dated 15 February 2018

- ▶ Subsection X253.1 of the Manual of Regulations from Banks (MORB) which provide for required reserves against deposit and deposit substitute liabilities in local currency of banks is amended to reflect the reduction in reserve requirements starting reserve week 2 March 2018.
- ▶ Subsection X405.5 of the MORB which provide for reserves against peso-denominated common trust funds and trust and other fiduciary accounts - others is amended to reduce the required reserve against peso-denominated CTFs and such other managed peso funds partaking of the nature of a collective investment of peso-denominated CTF's for universal or commercial banks (UBs/ KBs) to 19% starting the reserve week 2 March 2018.
- ▶ Section 4253Q (2008-4246Q) of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF) which provide for reserves against deposit substitutes is amended to provide that non-banks with quasi banking functions NBQB's shall maintain a required reserves equivalent to 19% of deposit substitute liabilities as defined in Section 95 of R.A. No, 7653 starting reserve week 2 March 2018.
- ▶ Subsection 4405Q.5 of MORNBF on reserves against peso-denominated common trust funds and trust and other fiduciary accounts (TOFA) - others is amended to provide that the reserves to be maintained shall be 19% starting reserve week 2 March 2018.
- ▶ This Circular shall take effect on 2 March 2018.

(Editor's Note: BSP Circular No. 996, s. 2018 was published in the Philippine Star on 16 February 2018.)

Court Decisions

Asia Renal Care Philippines, Inc. vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case No. 1502 promulgated 4 January 2018

A protest is void if it fails to indicate whether it is in the nature of a reconsideration or a reinvestigation, and for failure to specify the pieces of evidence it intends to present, in case of a reinvestigation.

Facts:

Respondent CIR assessed Petitioner Asia Renal Care (Philippines), Inc. (ARCPI) for deficiency income tax, VAT, and withholding EWT for taxable year 2010. On 14 January 2014, the Formal Letter of Demand and the Final Assessment Notices were issued. ARCPI filed a letter with the BIR expressing intent to contest the assessments and requested for a period of 60 days to prepare the supporting documents.

The BIR Regional Director issued a Final Letter stating that ARCPI's letter is not in compliance with the provisions of Revenue Regulations (RR) 12-99, as amended by RR 18-13. Hence, the tax liabilities covering the assessments are final, demandable and executory.

Upon the issuance of the Final Letter, ARCPI filed a Petition for Review at the CTA. The CTA First Division dismissed the Petition for failure to comply with the requirements of RR 12-99, as amended by RR 18-13. Aggrieved, ARCPI filed a Petition for Review at the CTA *En Banc* upon denial of its Motion for Reconsideration.

Issue:

Did the assessments attain finality for failure of ARCPI to file a valid protest?

Ruling:

Yes. The Court *En Banc* ruled that the letter filed by ARCPI cannot be considered a valid request for reconsideration.

While ARCPI stated in its letter the date of the issuance of the final assessment notices, it failed to indicate whether the protest is in the nature of a reconsideration or a reinvestigation and if it is the latter, it also did not specify the pieces of evidence it intends to present. Moreover, no legal basis was provided to support the alleged protest.

Due to non-compliance with the requirements of the law, ARCPI's purported protest is void. Instead of filing the letter expressing its interest to contest the assessment, ARCPI should have filed with the BIR an actual protest letter in accordance with Section 228 of the Tax Code, as implemented by Section 3.1.4 of Revenue Regulations 12-99.

ARCPI only had 30 days from receipt of the FAN to file a valid protest. After the lapse of the prescribed period without a proper protest being filed with the BIR, ARCPI's right to question the assessment has prescribed. Once an assessment has become final for failure to protest, its correctness may no longer be questioned on appeal.

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