

Tax Bulletin

March 2018



Highlights

BIR Rulings

- ▶ The tax exemption privilege of cooperatives transacting business with members only does not extend to indirect taxes such as VAT. **(Page 4)**
- ▶ Interest on loans, which are not securitized, assigned or participated out to life insurance companies, paid by top 20,000 private corporations-borrowers remains subject to 2% creditable withholding tax (CWT). **(Page 4)**
- ▶ The importation of car accessories is not subject to excise tax, but is subject to VAT. **(Page 5)**
- ▶ Income received by a local government unit in the exercise of its proprietary powers is subject to income tax in the same manner as other private corporations similarly situated. **(Page 5)**

BIR Issuances

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- ▶ RMC No. 17-2018 amends RMC No. 89-2017 and certain provisions of RMC No. 54-2014 in relation to the processing of claims for issuance of tax refund/ TCC pursuant to the amendments introduced under the TRAIN Law. **(Page 21)**
- ▶ RMC No. 18-2018 circularizes Department Order (DO) No. 011-2018 relative to the accreditation of importers and customs Brokers, thereby repealing DO Nos. 12-2014 and 18-2014. **(Page 24)**
- ▶ RMC No. 19-2018 clarifies the basis of capital gains tax (CGT) and documentary stamp tax (DST) in sales transactions of real property previously mortgaged at a value higher than its zonal or fair market value. **(Page 24)**

BOC Update

- ▶ CMO 04-2018 provides for the Manual of Procedure for Forfeiture Cases. **(Page 25)**

PEZA Update

- ▶ PEZA Memorandum Circular No. 2017-041 confirms that the VAT zero-rating incentive on purchases enjoyed by PEZA locators remains. **(Page 27)**

BSP Issuances

- ▶ Circular No. 998 provides for the Amendments to the Basic Security Deposit Requirements. **(Page 27)**
- ▶ Circular No. 999 provides for the Amendment on the Allowable Investments of Unit Investment Trust (UIT) Funds. **(Page 29)**

SEC Opinions and Issuances

- ▶ Online election for members of the Board of Directors can only be resorted to if it is expressly allowed in the by-laws of the corporation. **(Page 29)**
- ▶ The conversion of stockholder's advances into additional paid-in capital (APIC) without issuance of new shares need not be approved by the SEC if the same is not yet reflected on the audited financial statements. **(Page 30)**
- ▶ The business of travel and tours agency is not within the Foreign Negative List, thus, can be 100% foreign-owned. **(Page 30)**
- ▶ Ownership of a condominium unit is a condition *sine qua non* to being a shareholder or member in a condominium corporation. **(Page 31)**
- ▶ The sale of air-conditioning products directly to department stores and appliance centers for resale to customers or end users, and the sale of these products directly to establishments engaged in rendering service to the general public are not covered by the Retail Trade Liberalization Law. **(Page 31)**
- ▶ SEC MC No. 4 provides the policy guidelines for the transitory implementation of SEC Certification Requirement for salesmen of broker/issuers of proprietary and non-proprietary shares. **(Page 32)**
- ▶ SEC MC No. 5 adopts the Philippine Financial Reporting Standards for Small Entities (PFRS for Small Entities) as part of its rules and regulations on financial reporting. **(Page 32)**

Court Decisions

- ▶ Royalty fees received by a taxpayer, whose primary purpose includes owning and licensing trademarks, as stated in its Articles of Incorporation, are considered active income subject to the 30% regular corporate income tax. **(Page 33)**
- ▶ Software maintenance fees paid for the grant of (a) a non-exclusive, non-transferable free authority to access or use the software, and (b) the right to make and distribute to employees copies of materials, but only to the extent that such distribution shall be necessary for access or use of the software, are considered as business profits and not royalties.

The software maintenance fees received by a US resident are taxable only if the said US resident is deemed to have a permanent establishment (PE) in the Philippines, pursuant to Article 8 of the Philippines-US Tax Treaty. **(Page 34)**

- ▶ Makati City cannot impose local business tax on dividend and interest income if there is no showing that the company is classified as a bank or other financial institution or a non-bank financial intermediary authorized by the BSP to perform quasi-banking activities. **(Page 35)**
- ▶ The gain derived by a Singapore resident from the redemption of preferred shares is not considered as dividend but as capital gain, which can be exempt from capital gains tax subject to the conditions prescribed under Article 13 of the Philippines-Singapore Tax Treaty. **(Page 36)**
- ▶ The tax-free exchange treatment under Sections 40(C)(2) and 40(C)(6)(c) of the Tax Code includes instances of 'further control', when, as a result of a tax-free exchange, the transferors collectively increase their control of the transferee corporation.

The BIR certification ruling prescribed under RR 18-2001 is not a precondition for availing a tax exemption. **(Page 37)**

BIR Rulings

BIR Ruling No. 300-2018 dated 2 March 2018

The tax exemption privilege of cooperatives transacting business with members only does not extend to indirect taxes such as VAT.

Facts:

ABC Co. is a cooperative duly registered with the Cooperative Development Authority and transacts business with its members only. Since ABC Co. enjoys a tax exemption under RA No. 9520, it maintains that such tax exemption extends to VAT passed on by its suppliers.

Issue:

Is ABC Co. exempt from VAT passed on by its suppliers?

Ruling:

No. ABC Co. is exempt only from all national internal revenue taxes for which it is directly liable as enumerated in Section 7 of the Joint Rules and Regulation Implementing Articles 60, 61 and 144 of RA No. 9520. The exemption does not include indirect taxes which may be passed on to it by its suppliers.

BIR Ruling No. 453-2018 dated 12 March 2018

Interest on loans, which are not securitized, assigned or participated out to life insurance companies, paid by top 20,000 private corporations-borrowers remains subject to 2% CWT.

Facts:

XYZ Co., the umbrella organization of life insurance companies in the Philippines, requested for a confirmation that interest payments on loans that are not securitized, assigned or participated out to life insurance companies by borrowers who are among the top 20,000 private corporations remain subject to 2% CWT under Section 2.57.2(M) of the RR No. 2-98, as amended.

Issue:

Are such interest payments subject to 2% CWT?

Ruling:

Yes. RMC No. 84-2012 provides that interest income received by banks from payors belonging to the top 20,000 private corporations, strictly arising from individual loans obtained from banks that are not securitized, assigned or participated out, remains to be subject to 2% CWT.

Since life insurance companies and banks are similarly situated in that both provide loans to investors and infuse the needed funds into the capital markets, interest income of life insurance companies should be taxed similarly to income received by banks from loans that are not securitized, assigned or participated out.

BIR Ruling No. 463-2018 dated 13 March 2018

The importation of car accessories is not subject to excise tax, but is subject to VAT.

Facts:

ABC Co. is a domestic corporation engaged in the business of importing and distributing motor vehicles, motorcycles, parts and accessories.

Issues:

1. Is the importation of car accessories subject to excise tax?
2. Is the importation of car accessories subject to VAT?

Ruling:

1. No. Section 149 of the Tax Code imposes excise tax on automobiles defined as "any four (4) or more wheeled motor vehicle regardless of seating capacity, which is propelled by gasoline, diesel, electricity or any other motive power." Car accessories imported, which are non-mandatory, optional items that are separate and distinct from the base vehicle, do not fall within the purview of said definition of automobiles, and hence, not subject to excise tax under the Tax Code.
2. Yes. The importation of car accessories is considered importation of goods subject to VAT under Section 107 of the Tax Code.

BIR Ruling No. 471-2018 dated 13 March 2018

Income received by a local government unit in the exercise of its proprietary powers is subject to income tax in the same manner as other private corporations similarly situated.

Facts:

The BIR issued a Letter of Authority against the Municipality of Oslob for all internal revenue tax liabilities for taxable year 2012. Actual investigation revealed that Oslob generates income from the Butanding Watching Activity fees collected from tourists.

Issues:

1. Is the income tax assessment proper?
2. Is Oslob liable to pay income tax, VAT and EWT?

Ruling:

1. Yes. Section 27 (C) of the Tax Code provides that all corporations, agencies, or instrumentalities owned by the government, except the Government Service Insurance System, the Social Security System, the Philippine Health Insurance Corporation, the local water districts and the Philippine Charity Sweepstakes Office, shall pay such rate of tax upon their taxable income as are imposed upon corporations or associations engaged in a similar business, industry or activity. Thus, the assessment of income tax liability is proper because Oslob is not among the government agencies or instrumentalities expressly exempted from income tax; and that the income derived by Oslob from its Butanding Watching Activity was not in the exercise of its essential governmental function but pursuant to its proprietary function.
2. Yes. When Oslob provided the tourists with guides to assist them during Butanding Watching and charged a fee, the municipality performed a corporate or private function which is proprietary in nature, and thus, income derived therefrom is subject to income tax and VAT.

Oslob is also liable to withhold 1% on income payments given to local suppliers of goods and 2% on income payments given to resident suppliers of services pursuant to Section 2.57.2 (N) of RR No. 2-98, as amended.

Section 5.116 of RR No. 2-98, as amended, also requires Oslob to withhold VAT due at the rate of 5% of the gross payment thereof before making payment on account of each purchase of goods and services, which are subject to VAT imposed in Sections 106 and 108 of the Tax Code; or percentage tax due at the rate of 3% on gross money payments, as the case may be.

BIR Issuances

RR No. 9-2018 dated 26 February 2018

RR No. 9-2018 implements the increase in the Stock Transfer Tax under RA No. 10963, otherwise known as the "TRAIN Law."

- ▶ The percentage tax on the sale, barter or exchange of shares of stock listed and traded through the local stock exchange has been increased from $\frac{1}{2}$ of 1% to $\frac{6}{10}$ of 1%.
- ▶ While BIR Form No. 2552, the percentage tax return for transactions involving shares of stocks listed and traded through the local stock exchange through initial and/or secondary public offering, is being updated, the following filing and payment procedures shall be followed:
 1. **eFPS Filers:**
 - ▶ File and pay $\frac{1}{2}$ of 1% online, using existing BIR Form No. 2552.
 - ▶ File and pay the deficiency tax of $\frac{1}{10}$ of 1% using BIR Form No. 0605.
 2. **eBIRForms Filers:**
 - ▶ File the relevant BIR form in the eBIRForms Package and pay $\frac{1}{2}$ of 1%, online or manually.
 - ▶ File BIR Form No. 0605 and pay the deficiency tax of $\frac{1}{10}$ of 1% via the same options above.

3. Manual Filers:

- ▶ Fill in applicable BIR Form No. 2552 (pre-printed or downloaded from BIR website) using the new tax rate of 6/10 of 1%.
- ▶ File and pay manually over the counter at authorized agent banks under the jurisdiction of the RDO where taxpayer is registered.
- ▶ The regulations shall take effect immediately.

(Editor's Note: RR No. 9-2018 was published in the Manila Bulletin on 28 February 2018)

RR No. 10-2018 amends Section 10 of RR No. 10-2010, otherwise known as Exchange of Information Regulations.

RR No. 10-2018 dated 8 March 2018

- ▶ The 60-day period within which a taxpayer shall be notified in writing by the Commissioner that a foreign tax authority is requesting for exchange of information held by financial institutions pursuant to an international convention or agreement on tax matters will now be reckoned from the Commissioner's transmittal to the requesting treaty partner, of all the information requested from, and provided for by, the concerned financial institution.
- ▶ The regulations shall take effect after 15 days following complete publication in a newspaper of general circulation.

(Editor's Note: RR No. 10-2018 was published in the Manila Bulletin on 9 March 2018)

RR No. 11-2018 further amends certain provisions of RR No. 2-98 to implement amendments introduced by the TRAIN Law relative to withholding of income tax.

RR No. 11-2018 issued on 15 March 2018

- ▶ The following are the amendments to the final withholding tax (FWT) on income payments to:
 1. *Citizen or Resident Alien Individual:*
 - ▶ Philippine Charity Sweepstakes and lotto winnings amounting to P10,000.00 or less - Exempt.
 - ▶ Interest income from a depository bank under the Expanded Foreign Currency Deposit System - 15%.
 - ▶ Cash and/or property dividends actually or constructively received from a domestic corporation, joint stock company, insurance or mutual fund companies and regional operating headquarters of multinational companies, or on the share of an individual in the distributable net income after tax of a partnership (except general professional partnership) of which he is a partner, or on the share of an individual in the net income after tax of an association, a joint account or a joint venture or consortium taxable as a corporation of which he is a member or co-venturer - 10%.
 - ▶ Net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation not traded in the stock exchange - 15%.

2. *Non-Resident Aliens Engaged in Trade or Business (NRAETB):*

- ▶ Net capital gains realized during a taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation not traded in the stock exchange - 15%.

3. *Domestic Corporations:*

- ▶ Interest income derived from a depository bank under the Expanded Foreign Currency Deposit System - 15%
- ▶ Net capital gains realized during a taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation not traded in the stock exchange - 15%

- ▶ The grossed-up monetary value of fringe benefits granted to the following employees, except rank and file employees, shall be subject to the fringe benefits tax rates indicated below:

1. Citizen/resident alien/NRAETB - 35%
2. Non-resident alien not engaged in trade or business - 25%

- ▶ To get the grossed-up value of the fringe benefit, the actual monetary value of the fringe benefit shall be divided by 65% or 75%, as the case may be.

- ▶ The following are the amendments to the rules on creditable withholding tax (CWT):

1. Professional fees, talent fees, and so on for services:

Payee	Gross Income for the Current Year	CWT Rate
Individual	<= P3,000,000.00	5% (a)
	> P3,000,000.00	10% (b)
Non-Individuals	<= P720,000.00	10 % (a)
	> P720,000.00	15% (b)

- ▶ *Individual payees or the authorized officer of non-individual payees are required to submit a sworn declaration of the gross receipts/ sales to all the income payor/ withholding agents, together with a copy of Certificate of Registration (COR), to all the income payor/withholding agents not later than 15 January of each year or at least prior to the initial payment of the above fees*
- ▶ *The higher rate shall apply in the following cases: i) the payee failed to provide the income payor/withholding agent of such declaration; or (ii) the income payment exceeds P 3M/ P720,000.00, despite receiving the sworn declaration from the income payee.*

2. Income payments made by any of the top withholding agents, as determined by the Commissioner, to their local/resident supplier of goods/ services, including NRAETB, shall be subject to the following withholding tax rates:

- ▶ Supplier of goods - 1%

- ▶ Supplier of services - 2%

Top withholding agents shall include the following:

- ▶ Classified and duly notified by the Commissioner as either any of the following unless previously de-classified as such or had already ceased business operations:
 - a. A large taxpayer under Revenue Regulations No. 1-98, as amended
 - b. Top 20,000 private corporations under RR No. 6-2009; or
 - c. Top 5,000 individuals under RR No. 6-2009
 - ▶ Taxpayers identified and included as Medium Taxpayers, and those under the Taxpayer Account Management Program (TAMP).
 - a. The top withholding agents of concerned LTS/RRs/RDOs shall be published in a newspaper of general circulation or may also be posted in the BIR website, and these shall serve as the "notice" to the top withholding agents.
 - b. The obligation to withhold shall commence on the 1st day of the month following the month of publication.
 - c. Existing withholding agents classified as large taxpayers, top 20,000 private corporations or top 5,000 individuals, which have not been delisted prior to these regulations, shall remain as top withholding agents.
 - d. The initial and succeeding publications shall include the additional top withholding agents and those that are delisted.
3. An individual seller-income earner/payee may not be subjected to withholding tax if the source of the income comes from a lone income payor and the total income payment is less than P250,000.00 in a taxable year.
4. In this case, the concerned individual shall execute an Income Payee's Sworn Declaration of gross receipts/sales that shall be submitted to the lone payor before the initial payment of income or before 15 January of each year, whichever is applicable.
- ▶ If the individual payee's cumulative gross receipts in a year exceed P250,000.00, the income payor/withholding agent shall withhold the prescribed withholding tax based on the amount in excess of P250,000.00, despite the prior submission of the individual income payee's sworn declaration.
 - ▶ On the other hand, if the individual income payee failed to submit an income payee's sworn declaration to the lone income payor/withholding agent, the income payment shall be subject to the applicable withholding tax even though in a taxable year the income payment is P250,000.00 and below.

5. The following transactions or persons are exempt from CWT:
- ▶ Sales of real property by a corporation, which is registered and certified by the Housing and Land Use Regulatory Board (HLURB) or the Housing and Urban Development Coordinating Council (HUDCC) as engaged in socialized housing project where the selling price of the house and lot or only lot does not exceed the socialized housing price applicable to the area as prescribed and certified by the HLURB/ HUDCC as provided pursuant to RA No. 7279 and its implementing regulations.
 - ▶ Corporations, which are exempt from the income tax under Sec. 30 of the Tax Code and government owned and controlled corporations (GOCCs) exempt from income tax under Section 27(A)(C) , such as the GSIS, SSS, the Philippine Health Insurance Corporation and the Local Water Districts.
 - ▶ Joint ventures (JV) or consortium formed to undertake construction projects upon compliance with the following 3 conditions:
 - a. Should involve joining or pooling of resources by licensed local contractors, that is, licensed as general contractor by the Philippine Contractors Accreditation Board (PCAB) of the Department of Trade and Industry (DTI);
 - b. These local contractors are engaged in the construction business; and
 - c. The JV itself must be duly licensed as such by the PCAB.
 - ▶ JVs involving foreign contractors may also be treated as a non-taxable corporations, subject to the following conditions:
 - a. The member foreign contractor is covered by a special license as contractor by the PCAB;
 - b. The appropriate Tendering Agency (government office) has certified that the construction project is a foreign financed/internationally-funded project; and
 - c. International bidding is allowed under the Bilateral Agreement entered into by and between the Philippine Government and the foreign/international financing institution pursuant to the implementing rules and regulations of RA No. 4566, otherwise known as Contractor's License Law.
 - ▶ Individuals who earn P250,000.00 and below from a lone income payor upon compliance with the following requirements:
 - a. The individual has executed a payee's sworn declaration of gross receipts; and
 - b. The sworn declaration has been submitted to the lone income payor/withholding agent on or before 15 January of each year or before the initial income payment, whichever is applicable.

- ▶ The following are the new filing and payment deadlines:

BIR Form	Nature of Tax/ Return	Filing & Payment Deadlines
1601EQ	CWT	Last day of the month following the close of the quarter* when the withholding was made <i>*shall follow the calendar quarter</i>
1602	FWT on Interest on Bank Deposits	
1603	FWT on Fringe Benefits	
0619E and/or 0619F	CWT and FWT (Monthly Remittance)	Every 10 th day of the following month when the withholding was made and 15 th day for withholding agents using the eFPS facility
1706 and 1707	FWT on Sale of Shares of Stock Not Traded through a Local Stock Exchange and Sale of Real Property considered as Capital Asset	30 days after the sale
1606	CWT on Sale of Real Property classified as Capital Asset	10 th day following the month of transaction
1604 E	Annual Information Return of CWT (Expanded)/Income Payments Exempt from Withholding Tax	On or before 1 March of the following year in which payments were made
1604F	Annual Information Return on Final Income Taxes Withheld	On or before 31 January of the following year in which payments were made

Every payor required to deduct and withhold taxes shall furnish each payee, a withholding tax statement within 20 days from the close of the quarter, using BIR Form 2307 for CWT and BIR Form 2306 for FWT.

- ▶ The following are the amendments to the rules on withholding tax on compensation (WTC):
 1. The following *de minimis* benefits are not subject to income tax, as well as withholding tax on compensation income of both managerial, and rank and file employees:
 - ▶ Medical cash allowance to dependents of employees, not exceeding P1,500.00 per employee per semester of P250.00 per month.
 - ▶ Rice subsidy of P2,000.00 or one sack of 50 kilogram of rice per month amounting to not more than P2,000.00
 - ▶ Uniform and clothing allowance not exceeding P6,000.00 per annum.

2. The following are the changes in the rules on compensation exempt from WTC:
- ▶ Thirteenth month pay and other benefits not exceeding P90,000.00 shall be exempt.
 - ▶ Compensation income of Minimum Wage Earners (MWE) who work in the private sector and being paid the Statutory Minimum Wage (SMW), as fixed by the Regional Tripartite Wage and Productivity Board (RTWPB)/National Wages and Productivity Commission (NWPC), applicable to the place where he/ she is assigned, as well as compensation of employees in the public sector who are paid not more than the SMW applicable to non-agricultural sector, as fixed by the RTPWB/ NWPC, applicable to the place where he/she is assigned, is also exempt from WTC.
 - a. Aside from the SMW, the holiday pay, overtime pay, night shift differential pay, and hazard pay, earned by the MWE shall also be covered by the above exemption.
 - b. Additional compensation, such as commissions, honoraria, fringe benefits, benefits in excess of P 90,000.00, taxable allowances, and other taxable income given to an MWE by the same employer, other than those which are expressly exempt from income tax, shall be subject to withholding tax.
 - c. MWEs receiving other income, such as income from other concurrent employers, from the conduct of trade, business, or practice of profession, except income subject to final tax, are subject to income tax only to the extent of income other than SMW, holiday pay, overtime pay, night shift differential pay, and hazard pay earned during the taxable year.
 - ▶ Compensation during the year not exceeding P250,000.00 shall be exempt.
 - ▶ These regulations are effective beginning 1 January 2018.

(Editor's Note: RR No. 11-2018 was published in the Manila Bulletin on 19 March 2018.)

RR No. 12-2018 prescribes the consolidated rules governing the imposition and payment of the estate and donor's tax in view of the amendments introduced under the TRAIN Law.

RR No. 12-2018 dated 15 March 2018

- ▶ The net estate of a decedent, whether Philippine resident or non-resident, is subject to an estate tax of 6%.
- ▶ The tax rates and procedures prescribed under these Regulations shall govern the estate of decedent who died on or after the effectivity date of the TRAIN Law.
- ▶ The amounts withdrawn from the deposit accounts of a decedent subjected to the 6% final withholding tax imposed under Section 97 of the Tax Code, as amended, shall be excluded from the gross estate for purposes of computing the estate tax.

- ▶ In determining the book value of common shares, appraisal surplus shall not be considered, as well as the value assigned to preferred shares. Thus, the valuation of unlisted shares shall be exempt from the provisions of RR No. 6-2013, as amended, prescribing the use of the Net Asset Method in determining the value of the shares.
- ▶ The fair market value of units of participation in any association, recreation or amusement club (such as golf, polo or similar clubs), shall be the bid price nearest the date of death published in any newspaper or publication of general circulation.
- ▶ The following are the changes in the items of deduction from the gross estate of a decedent, who is either a citizen of the Philippines or resident alien:
 1. Funeral and judicial expenses of the testamentary or intestate proceedings are no longer deductible from the gross estate
 2. The following items, among others, are deductible from the gross estate:
 - ▶ Standard deduction of P 5,000,000.00, without need of substantiation.
 - ▶ Claims of the deceased against insolvent persons as defined under the Financial Rehabilitation and Insolvency Act of 2010 (RA No. 10142) and other existing laws, if the value of the decedent's interest therein is included in the value of the gross estate.
 - ▶ The family home with an amount equivalent to the current fair market value of the decedent's family home; provided, however, that if the said current fair market value exceeds P10,000,000.00, the excess shall be subject to estate tax.
- ▶ The following items, among others, are deductible from the gross estate of a decedent, who is a non-resident alien in the Philippines:
 1. Standard deduction of P500,000.00, without need of substantiation.
 2. The proportion of the following losses and indebtedness, which the value of such part bears to the value of this entire gross estate wherever situated:
 - ▶ Claims against the estate.
 - ▶ Claims of the deceased against insolvent persons where the value of the interest is included in the value of the gross estate.
 - ▶ Unpaid mortgages, taxes and casualty losses.
- ▶ In all cases of transfers subject to the estate tax, or regardless of the gross value of the estate, where the said estate consists of registered or registerable property, such as real property, motor vehicle, shares of stock or other similar property for which a CAR from the BIR is required, an estate tax return shall be filed under oath.

1. Estate tax returns showing a gross value exceeding P5,000,000.00 shall be supported by a statement duly certified by a Certified Public Accountant containing the following:

- ▶ Itemized assets of the decedent, with their corresponding gross value at the time of his death, or in case of a non-resident, not a citizen of the Philippines, of that part of his gross estate situated in the Philippines;
 - ▶ Itemized deductions from the gross estate; and
 - ▶ The amount of tax due whether paid or still due and outstanding.
- ▶ The estate tax return shall be filed within one year from the decedent's death.
- ▶ In case of insufficiency of cash for the immediate payment of the total estate tax due, the estate may be allowed to pay the estate tax due through the following options:

1. Cash installment

- ▶ Made within two years from the date of filing of the tax return.
- ▶ The frequency, deadline and the amount of each installment shall be indicated in the estate tax return, subject to prior approval of the BIR.
- ▶ If the entire tax due is not paid within two years, the remaining balance shall be due and demandable, subject to applicable penalties and interest reckoned from the prescribed deadline.
- ▶ No civil penalties or interest may be imposed on estates permitted to pay the estate tax due by installment.
- ▶ Nothing prevents the Commissioner from executing enforcement action against the estate after the due date of the estate tax.

2. Partial disposition of estate and application of its proceeds to the estate tax due

- ▶ The disposition shall refer to the conveyance of real, personal or intangible property, with equivalent cash consideration.
- ▶ The written request for the partial disposition shall be approved by the BIR.
- ▶ The request shall be filed together with a notarized undertaking that the proceeds shall be exclusively used for the payment of the total estate tax due.
- ▶ The computed estate tax due shall be allocated in proportion to the value of each property.
- ▶ The estate shall pay to the BIR the proportionate estate tax due of the property intended to be disposed of.
- ▶ An electronic Certificate Authorizing Registration (eCAR) shall be issued upon proof of payment of the proportionate estate tax due of the property intended to be disposed.

- ▶ Thus, eCARs shall be issued for as many properties intended to be disposed of to cover the total estate tax due, net of the proportionate estate tax previously paid under this option.
 - ▶ In case of failure to pay the total estate tax due from the proceeds of said disposition, the estate tax due shall be immediately due and demandable, subject to penalties and interest reckoned from the prescribed deadline for filing the return and payment of the estate tax.
 - ▶ This will not prevent the issuance of eCAR on the remaining properties until the payment of the remaining balance of the estate tax due, including penalties and interest.
- ▶ An eCAR issued by the Commissioner or his duly authorized representative is required before the transfer of ownership of any share, obligation, bond or right by gift *inter vivos* or *mortis causa*, legacy or inheritance, in the books of any corporation, *sociedad anonima*, partnership, business or industry organized or established in the Philippines.
 - ▶ If a bank has knowledge of the death of a person, who maintained a bank deposit account alone or jointly with another, it shall allow the withdrawal from the said deposit account, subject to a 6% FWT of the amount to be withdrawn, provided that the withdrawal shall be made within one year from the date of the decedent's death.
 1. The bank is required to file the prescribed quarterly return on the final tax withheld on or before the last day of the month following the close of the quarter during which the withholding was made.
 2. The bank shall issue BIR Form No. 2306 certifying the withholding of such amount.
 3. In all cases, the final tax withheld shall not be refunded or credited on the tax due on the net taxable estate of the decedent.
 4. The executor, administrator or legal heir withdrawing from the deposit account shall provide the bank where the withdrawal shall be made, with the TIN of the estate of the decedent.
 5. The bank shall require the presentation of BIR Form No. 1904 of the estate, duly stamped received by the BIR, prior to such withdrawal.
 6. All withdrawal slips shall contain the following:
 - ▶ A sworn statement by any one of the joint depositors to the effect that all of the joint depositors are still living at the time of the withdrawal; and.
 - ▶ A statement that the withdrawal is subject to 6% FWT.
 - ▶ If the bank accounts have been duly included in the gross estate of the decedent and the corresponding estate tax has been paid, the executor, administrator or heir shall present the eCAR issued for the said estate prior to withdrawal, in which case, the withdrawal shall not be subject to the 6% FWT.
 - ▶ The donor's tax rate for each calendar year is 6% based on the total gifts in excess of P250,000.00 exempt gift made during the calendar year.

- ▶ The 6% rate applies to all donations made on or after the effectivity date of the TRAIN Law.
- ▶ The valuation of gifts made in property shall follow the rules set forth under the rules in determining the net estate of a decedent, who is either a citizen or resident of the Philippines.
- ▶ In such a case, the reckoning point for the valuation shall be the date when the donation is made.
- ▶ The donor, unless exempt, is required, for every donation, to accomplish under oath a tax return in duplicate, which return need not indicate the relationship of the donor to the donee.
- ▶ Unless the Commissioner otherwise permits, the donor's tax return shall be filed and the tax paid to an authorized agent back (AAB), the Revenue District Officer and Revenue Collection Officer having jurisdiction over the place where the donor is domiciled at the time of the transfer, or with the Office of Commissioner if there be no legal residence in the Philippines.
- ▶ To be exempt from donor's tax and to claim full deduction of the donation given to a qualified-donee institution, the donee must be duly accredited.
- ▶ The regulation are effective beginning 1 January 2018.

(Editor's Note: RR No. 12-2018 was published in the Manila Bulletin on 19 March 2018.)

RR No. 13-2018 prescribes the rules implementing the VAT provisions under the TRAIN Law, further amending RR No. 16-2005, as amended.

RR No. 13-2018 dated 15 March 2018

- ▶ The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations shall be subject to 0% VAT, provided that the goods, supplies, equipment, and fuel shall be used exclusively for international shipping or air transport operations.
- ▶ The following transactions involving the sale of goods or properties shall no longer be subject to 0% VAT, and, instead, shall be subject to 12% upon satisfaction of the conditions for the establishment and implementation of an enhanced VAT refund system:
 1. The sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods, paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP).
 2. The sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed 70% of total annual production.
 3. Transactions considered export sales under Executive Order (EO) No. 226 (or the Omnibus Investments Code of 1987) and other special laws.

- ▶ The conditions for establishing and implementing an enhanced VAT refund system are as follows:
 1. It shall grant and pay refunds of creditable input tax within 90 days from the filing of the VAT refund application with the Bureau, provided that all applications filed from 1 January 2018 shall be processed and decided within 90 days from the filing of the VAT refund application.
 2. All pending VAT refund claims as of 31 December 2017 shall be fully paid in cash by 31 December 2019.
- ▶ Pending the establishment of an enhanced VAT refund system, the 90-day period to process and decide the VAT refund application shall only be reckoned up to the date of approval of the Recommendation Report on such application by the Commissioner or his duly authorized representative.
- ▶ All claims for refund/tax credit certificate filed prior to 1 January 2018 shall still be governed by the 120-day processing period.
- ▶ The Department of Finance shall establish a VAT refund center in the BIR and in the BOC that will handle the processing and granting of cash refunds of creditable input tax.
- ▶ The sale of electricity by generation companies, transmission by any entity including the National Grid Corporation of the Philippines (NGCP), and distribution companies including electric cooperatives shall be subject to 12% VAT on their gross receipts.
- ▶ The following services shall no longer be subject to 0% VAT, and, instead, shall be subject to 12% VAT upon satisfaction of the conditions for the establishment and implementation of an enhanced VAT refund system:
 1. Processing, manufacturing or repacking goods for other persons doing business outside the Philippines, which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.
 2. Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent 70% of the total annual production.
- ▶ Services to persons engaged in international shipping or air transport operations, including leases of property for use thereof, must be exclusively rendered in connection with international shipping or air transport operations in order to qualify to 0% VAT.
- ▶ The transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country is subject to 0% VAT.
- ▶ The following are the VAT-exempt transactions, which were amended or added under the TRAIN Law:
 1. The importation of professional instruments, tools of trade, occupation or employment, wearing apparel, domestic animals, personal and household effects belonging to persons coming to settle in the Philippines, or Filipino, or their families and descendants who are now residents or citizens of

other countries, such as overseas Filipinos, in quantities and of the class suitable to the profession, rank or position of the persons importing said items, for their own use and not for barter or sale, accompanying such persons, or arriving within a reasonable time.

- ▶ Upon the production of satisfactory evidence that such persons are actually coming to settle in the Philippines and that the goods are brought from their former place of abode, the Bureau of Customs (BOC) may exempt such goods from payment of duties and taxes.
 - ▶ However, vehicles, vessels, aircrafts, machineries and other similar goods for use in manufacture, shall not fall within this classification and shall therefore be subject to duties, taxes, and other charges.
2. Sale or lease of goods or properties or the performance of services of non-VAT-registered persons, other than the transactions mentioned in paragraphs (A) to (AA) of Sec. 109(1) of the Tax Code, the gross annual sales and/or receipts of which does not exceed the amount of P3,000,000.00.
 3. Sale of real properties utilized for low-cost housing as defined by RA No. 7279, otherwise known as the "Urban Development and Housing Act of 1992" and other related laws, wherein the unit selling price of the low-cost housing is within the selling price per unit set by the HUDCC pursuant to RA No. 7279, otherwise known as the "Urban Development and Housing Act of 1992" and other laws.
 4. Sale of residential lot valued at P1,500,000.00 and below, or house and lot and other residential dwellings valued at P2,500,000.00 and below, as adjusted in 2011 using the 2010 Consumer Price Index values.
 - ▶ Beginning 1 January 2021, the VAT exemption shall only apply to the following:
 - a. Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business.
 - b. Sale of real property utilized for socialized housing as defined by RA No. 7279.
 - c. Sale of house and lot, and other residential dwellings with selling price of not more than P2,000,000.00.
 5. Lease of residential units with a monthly rental per unit not exceeding P15,000.00
 - ▶ Lease of residential units where the monthly rental per unit exceeds P15,000.00, but the aggregate amount of such rentals during the year does not exceed P3,000,000.00 shall also be exempt from VAT, but subject to 3% percentage tax under Section 116 of the Tax Code.
 - ▶ A lessor, who has several residential units for lease, some of which are leased out for a monthly rental per unit of not exceeding P15,000.00 while others are leased out for more than P15,000.00 per unit shall be liable to tax as follows:

- a. The gross receipts from rentals not exceeding P15,000.00 per month per unit shall be exempt from VAT and 3% percentage tax, regardless of the aggregate annual gross receipts.
 - b. The gross receipts from rentals exceeding P15,000.00 per month per unit shall be subject to VAT if the aggregate annual gross receipts from said units only exceeds P3,000,000.00; otherwise, the gross receipts will be subject to the 3% tax imposed under Section 116 of the Tax Code.
 6. Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations, provided, that the fuel, goods and supplies shall be used for international shipping or air transport operations.
 7. Sale or lease of goods and services to senior citizens and persons with disabilities, as provided under RA Nos. 9994 (Expanded Senior Citizens Act of 2010) and 10754 (An Act Expanding the Benefits and Privileges of Persons with Disability), respectively.
 8. Transfer of property pursuant to Section 40(C)(2) of the Tax Code, as amended.
 9. Association dues, membership fees, and other assessments and charges collected on a purely reimbursement basis by homeowners' associations and condominium corporations established under RA Nos. 9904 (*Magna Carta* for Homeowners and Homeowners' Association) and 4726 (The Condominium Act), respectively.
 10. Sale of gold to the BSP.
 11. Sale of drugs and medicines prescribed for diabetes, high cholesterol, and hypertension beginning 1 January 2019 as determined by the Department of Health.
 12. Self-employed individuals and professionals availing of the 8% tax on gross sales and/or receipts and other non-operating income, under Sections 24(A)(2)(b) and 24(A)(2)(c)(2)(a) of the Tax Code.
- ▶ The amortization of the input VAT on capital goods shall only be allowed until 31 December 2021, after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized.
 - ▶ A VAT-registered person, whose registration has been cancelled due to retirement from or cessation of business or due to changes or cessation of status, may apply for the issuance of a tax credit certificate (TCC) for any unused input tax which he may use in payment of internal revenue tax liabilities, subject to the following rules:
 1. He shall be entitled to a refund if he has no internal revenue tax liabilities against which the TCC may be utilized.
 2. The date of cancellation of VAT registration is the date of issuance of tax clearance by the BIR, after full settlement of all tax liabilities relative to cessation of business or change of status of the concerned taxpayer.

3. The filing of the claim for refund shall be made only after completion of the mandatory audit of all internal revenue tax liabilities, covering the immediately preceding year and the short period return and the issuance of the applicable tax clearance/s by the appropriate BIR office, which has jurisdiction over the taxpayer.
- ▶ Claims for input tax refund of direct exporters shall be exclusively filed with the VAT Credit Audit Division (VCAD).
 - ▶ The Commissioner shall grant refund for creditable input taxes within 90 days from the date of submission of the official receipts or invoices and other documents in support of the application.
 - ▶ Should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
 - ▶ Failure on the part of any official, agent, or employee of the BIR to act on the application within the 90-day period shall be punishable under Section 269 of the Tax Code, as amended.
 - ▶ Beginning 1 January 2023, the filing and payment required under the Tax Code shall be done within 25 days following the close of each taxable quarter.
 - ▶ Beginning 1 January 2021, the VAT withholding system applicable to purchases of goods or services by the government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, shall shift from final to a creditable system.
 - ▶ The payment for lease or use of properties or property rights to non-resident owners shall be subject to 12% withholding tax at the time of payment.
 - ▶ Payments for purchase of goods and services arising from projects funded by Official Development Assistance (ODA) as defined under RA No. 8182 (Official Development Assistance Act of 1996) as amended, shall not be subject to the FWT/CWT.
 - ▶ Cooperatives and self-employed individuals and professionals availing of the 8% tax on gross sales and/or receipts and other non-operating income are exempt from the payment of the 3% percentage tax.
 - ▶ Transitory provisions:
 1. An existing VAT-registered taxpayer whose gross sales/receipts in the preceding taxable year did not exceed the VAT threshold of P 3,000,000.00 may continue to be a VAT-registered taxpayer and avail of the "Optional Registration for Value-Added Tax of Exempt Person".
 2. Once availed, the taxpayer shall not be entitled to cancel the VAT registration for the next 3 years.
 3. A VAT-registered taxpayer, who opted to register as a non-VAT taxpayer as a result of the implementation of the TRAIN Law, shall immediately:
 - ▶ Submit an inventory list of unused invoices and/or receipts as of the date of filing of application for update of registration from VAT to Non-VAT, indicating the number of booklets and its corresponding serial numbers; and

- Surrender the said invoices and/or receipts for cancellation.
- 4. A number of unused invoices/receipts, as determined by the taxpayer with the approval of the appropriate BIR Office, may be allowed for use, provided the phrase "Non-VAT registered as of (*date of filing an application for update of registration*). Not valid for claim of input tax." shall be stamped on the face of each and every copy, until new registered non-VAT invoices or receipts have been received by the taxpayer.
- 5. Upon such receipt, the taxpayer shall submit a new inventory list of, and surrender for cancellation, all unused previously-stamped invoices/ receipts.
- The regulations are effective beginning 1 January 2018.

(*Editor's Note: RR No. 11-2018 was published in the Manila Bulletin on 19 March 2018.*)

RMC No. 17-2018 amends RMC No. 89-2017 and certain provisions of RMC No. 54-2014 in relation to the processing of claims for issuance of tax refund/ TCC pursuant to the amendments introduced under the TRAIN Law.

RMC No. 17-2018 dated 27 February 2018

- *General Policies:*
 1. Tax Verification Notices (TVNs) shall be issued manually by the head of the processing office until the Tax Verification Notice Monitoring System (TVNMS) is fully operational.
 2. VAT refunds shall be granted within 90 days from date of submission of the official receipts or invoices and other documents in support of the application.
 3. The claim shall be verified by the assigned Revenue Officer (RO)/ Group Supervisor (GS), and this process shall not be construed as an audit/ investigation.
 4. Thus, the taxpayer may be issued subsequently a Letter of Authority (LA) by the VAT Audit Section (VATAS) in the Regional Assessment Division or the investigating office having jurisdiction over the claimant.
 5. Any non-VAT finding, in the course of the verification of VAT claims, shall be communicated to the concerned investigating office having jurisdiction over the claimant.
 6. If the findings involve VAT, the VAT claim may be disallowed or denied, or VAT liability may be assessed.
 7. The denial of the claim should be communicated in writing through a letter signed by the Commissioner (CIR)/ Deputy Commissioner - Operations Group (DCIR - OG)/ Assistant Commissioner (ACIR) / Regional Director (RD), as the case may be, to the claimant within 90-day period.
 8. Cases where the results would be an assessment of VAT, instead of a refund/ TCC, should be referred to the VATAS (for Regional Offices where the VATAS is already in place), RDO, Large Taxpayers Audit Division (LTAD) or Large Taxpayers VAT Audit Unit (LTVAU), as the case may be.

9. If there is an existing LA covering the same period, the concerned officer shall consolidate the findings and recommend the issuance of a Notice for Informal Conference/ Preliminary Assessment Notice (PAN)/ Final Assessment Notice (FAN) for the collection of deficiency tax.

▶ *VAT Refunds filed by Direct Exporters:*

1. All VAT refund claims shall be filed with and processed by the VCAD.
2. Prior the approval of the claims, the Tax Audit Review Division (TARD) shall review the docket, with report on claims processed by VCAD.
3. The following are the authorized approving revenue officials based on the amount of claims:

Amount of Claim	Approving Revenue Official
Not more than P50,000,000.00	ACIR - Assessment Service (AS)
More than P50,000,000.00 up to P150,000,000.00	DCIR - OG
More than P150,000,000.00	CIR

▶ *VAT Refunds filed by other Zero-Rated Taxpayers, Indirect Exporters and those arising from cancellation of VAT registration due to cessation or retirement of business or due to changes or cessation of status:*

1. The claims shall be filed with and processed by the concerned RDO and LTAD having jurisdiction over the claimant.
2. The docket with report shall be reviewed by the Assessment Division of the Head Revenue Executive Assistant (HREA), subject to the approval by the Regional Director/ ACIR-LTS, irrespective of the amount.

▶ *Claims for Tax Refund/ Tax Credit Claims on Income tax, Erroneous Payment of Taxes and Recovery of Tax Erroneously or Illegally Collected, except VAT:*

1. An eLA shall be issued, through the Electronic Letter of Authority Monitoring System (eLAMS) or Case Management System (CMS) of the electronic Tax Information System (eTIS), to cover the audit/ verification of claims for issuance of tax refund/ TCC, other than VAT.
2. The RDO shall process all claims for tax refund/ TCC filed by the claimant, which shall be reviewed by the Assessment Division prior to transmittal to RD.
3. For claims amounting to P10,000,000 and below, the Regional Director shall be the authorized approving official.
4. If the claim exceeds P10,000,000, the report on the claim shall be signed by the RD, who shall recommend the approval/ issuance of a tax refund/ TCC.
5. The docket shall be transmitted to the TARD for further review prior to approval of the revenue officials.
6. All memorandum reports recommending claims within the applicable thresholds shall be signed by the ACIR-AS prior to final approval by the DCIR-OG/CIR.

7. All claims of taxpayers registered with the LTS shall be reviewed by the HREA prior to the approval by the ACIR- LTS.

► *Time Frame to Process VAT Refunds:*

1. The 90-day period shall be applied prospectively (i.e. for claims filed upon the effectivity of RA No. 10963) and shall start from the actual date of filing of the application with complete documents duly received by the processing office.
2. The following time frame shall be strictly adhered to:

VCAD Cases	No. of Days from Receipt of Application		
	Not more than P50,000,000.00	More than P50,000,000.00 up to P150,000,000.00	More than P150,000,000.00
Verification/ Processing	65	60	55
Review (TARD)	20	20	20
Recommending/ Final Approval			
ACIR-AS	5	5	5
DCIR-OG		5	5
CIR			5
Total No. of Days	90	90	90

LTS Cases	No. of Days from Receipt of Application
Verification/ processing	60
Review (Office of the HREA)	20
Approval by ACIR-LTS	10
Total No. of Days	90

Regional Cases	No. of Days from Receipt of Application
Verification/ processing of RDOs	60
Review (Assessment Division)	20
Approval by Regional Director	10
Total No. of Days	90

► *Documentary Requirements for the Filing of the VAT Refund Application:*

1. The application must be accompanied by complete supporting documents enumerated in the Revised Checklist of Mandatory Requirements for claims filed pursuant to Section 112 (A) of the Tax Code, or Checklist of Documentary Requirements for claims filed under Section 112 (B) of the Tax Code.
2. The claimant shall attach a notarized sworn certification in the format prescribed in this Circular, attesting to the completeness and veracity of the documents submitted.

3. Failure to submit the relevant vital document/s in support of the claim shall result to non-acceptance of the application.
 4. Failure to present books of accounts and accounting records relevant to the claim is a ground for the denial of the application.
- ▶ *Pending VAT Refund/Credit claims prior to the effectivity of the TRAIN Law:*
 1. *VAT claims filed prior to the effectivity of RMC No. 54-2014:*
 - ▶ All pending VAT claims shall continue to be processed in accordance with RR No. 1-2017 and shall be acted upon by the concerned offices not later than 30 June 2018.
 - ▶ Claims in the possession of the Revenue District and Regional Offices as of the effectivity of this Circular, including those claims which require further review and approval by the National Office, shall no longer be transmitted to the TARD.
 - ▶ The concerned Regional Assessment Division shall review these claims prior to transmittal to the Regional Director for approval/disapproval of the claim.
 - ▶ Claims in the possession of the AS shall be acted upon based on the thresholds, while claims in the possession of offices under the LTS shall be subject to the approval/disapproval of the ACIR-LTS after review of the respective HREA.
 2. *VAT claims filed after the effectivity of RMC No. 54-2014:*
 - ▶ All current claims filed prior to the effectivity of RA No. 10963 shall be processed within the 120-day period and shall be acted upon by the offices mentioned above.
 - ▶ Any revenue officer who fails to act on the application within the 90-day period shall be punishable under Section 269 of the Tax Code.

RMC No. 18-2018 circularizes DO No. 011-2018 relative to the accreditation of importers and customs Brokers, thereby repealing DO Nos. 12-2014 and 18-2014.

RMC No. 18-2018 dated 9 March 2018

- ▶ Pursuant to RA No. 10863 (Customs Modernization and Tariff Act), the authority to accredit and register customs brokers and importers is now vested in the Bureau of Customs (BOC).
- ▶ The BOC is mandated to transmit to the BIR on a quarterly basis, the list of approved/accredited customs brokers and importers for post-accreditation validation of tax compliance.
- ▶ The BIR must notify the BOC of any finding of tax deficiency or non-compliance.

RMC No. 19-2018 clarifies the basis of CGT and DST in sales transactions of real property previously mortgaged at a value higher than its zonal or fair market value.

RMC No. 19-2018 dated 19 March 2018

- ▶ The bases for the computation of the CGT and the DST are as follows:
 1. The gross selling price or the consideration contracted to be paid for such realty; and

2. The fair market value determined in accordance with Section (E) of the Tax Code, which provides that for purposes of computing any internal revenue tax, the value of the property shall be whichever is higher of:
 - ▶ The fair market value as determined by the Commissioner; or
 - ▶ The fair market value as shown in the schedule of values of the Provincial and City Assessors
- ▶ “Fair market value” refers to the:
 1. Zonal value set by the Commissioner and published in department orders
 2. Fair market value as shown in the schedule of the Provincial or City Assessors

BOC Update

CMO 04-2018 provides for the Manual of Procedure for Forfeiture Cases.

Customs Memorandum Order (CMO) No. 04-2018 dated 22 March 2018

General Provisions

- ▶ The BOC shall exercise exclusive original jurisdiction over all forfeiture cases under Section 202(j) of the Customs Modernization and Tariff Act (CMTA). In case subject shipment involves prohibited or restricted goods, it shall be ipso facto forfeited in favor of the government.
- ▶ The venue for forfeiture cases is at the Law Division of the Collection District which issued the Warrant of Seizure and Detention (WSD). If none, the venue shall be at the Office of the District Collector which upon motion may be held at the Legal Service, Revenue Collection Monitoring Group (RCMG).

Pleadings, Notices and Appearances

- ▶ All pleadings for forfeiture cases shall be filed personally, by private courier service, or electronically, with the appropriate Law Division or Office of the District Collector. In case of private courier service, the date of sending shall be considered as the date of filing. Soft copies of pleadings shall also be submitted simultaneously either by electronic mail or in an external drive.
- ▶ Notice of Hearing shall be served by personal service or, if not practicable by reason of distance and lack of personnel to effect personal service, by private courier service or electronic mail. Proof of such service shall be attached to the record of the case.

Designation of Hearing Officer and Prosecutor

- ▶ Assignment of a Hearing Officer or to a lawyer assigned to the Collection Division or the Prosecution and Litigation Division (PLD) as the case may be, shall be within 24 hours from issuance of the WSD.

Preliminary Conference

- ▶ The Hearing Officer shall, within 15 days or 5 days in case of perishable goods from the issuance of the WSD, conduct a Preliminary Conference. All parties including the claimant or its duly authorized representative, apprehending

or alerting unit, customs examiners, or customs officer concerned and the Government Prosecutor shall be duly notified of the scheduled date.

- ▶ The Preliminary Conference shall be completed in one day and shall discuss the following: (1) defining and simplifying the issues of the case; (2) entering into admission or stipulation of facts; (3) marking of exhibits; (4) possibility of disposition of goods pending forfeiture proceedings involving perishable goods; and (5) possibility of settlement by fine.

Hearing Proper

- ▶ The claimant shall submit its verified Position Paper, within 5 days after the Preliminary Conference, copy furnished the Government Prosecutor who shall file its Comment within five days from receipt of the Position Paper. The claimant may file its verified Reply within 3 days from receipt thereof. After submission of the last pleading or clarificatory hearing, the case will be submitted for resolution.
- ▶ The District Collector shall render a decision within 30 days or 10 days in case of perishable goods, upon issuance of an Order submitting the case for resolution.

Appeal to the Commissioner

- ▶ The aggrieved importer or exporter or any stakeholder directly affected by the adverse decision of the District Collector may appeal the decision by filing a Notice of Appeal with a corresponding Memorandum on Appeal within fifteen days or five days in case of perishable goods, from receipt thereof.
- ▶ The appeal proceedings to the BOC Commissioner shall consist of 30 days or 15 days for perishable goods based on the following periods:

Office	Period within which to act		Action
	Non-perishable goods	Perishable goods	
Chief of the Appellate Division	10 days	5 days	submit his recommendation to the Director, Legal Service
Director, Legal Service	10 days	5 days	submit his recommendation to the Deputy Commissioner, RCMG
Deputy Commissioner of RCMG	5 days	3 days	transmit his recommendation to the BOC Commissioner
BOC Commissioner	5 days	2 days	decide the appeal

Automatic Review

- ▶ The BOC Commissioner shall automatically review any decision of the District Collector which is adverse to the government.

- ▶ If no decision is rendered by the Commissioner within the prescribed period or when the adverse decision of the BOC Commissioner involves goods with a Free on Board (FOB) or Free Carrier (FCA) value of P10,000,000 or more, the decision of the BOC Commissioner or the District Collector shall be elevated to the Secretary of Finance within 5 days from lapse of the period or date of issuance of the decision.
- ▶ Decision of the Secretary of Finance shall be final on the BOC and subject to appeal to the Court of Tax Appeals (CTA). If no decision is rendered by the Secretary of Finance within 30 days or 10 days in case of perishable goods, the decision of the BOC Commissioner or the District Collector shall be deemed approved.

Effectivity

- ▶ This CMO shall take effect immediately and shall last until revoked.

(Editor's Note: CMO 04-2018 was received by the UP Law Center on 26 March 2017.)

PEZA Update

PEZA Memorandum Circular No. 2017-041 confirms that the VAT zero-rating incentive on purchases enjoyed by PEZA locators remains.

PEZA Memorandum Circular No. 2018-003 dated 12 March 2018

- ▶ President Duterte's veto on the zero-rating of sales of goods/services to PEZA locators under TRAIN Package 1 has caused some confusion on whether sales of goods/services to PEZA locators are still zero-rated or already VATable starting 1 January 2018.
- ▶ Following the Department of Finance (DOF)'s clarification that the zero-rating of sales of goods/services to PEZA locators is not affected, amended or repealed by the TRAIN Law, PEZA confirms that the VAT-zero rating incentive enjoyed by PEZA locators shall remain in full force and effect, unless a contrary or incompatible law/regulation is passed/issued.

BSP Issuances

Circular No. 998 provides for the Amendments to the Basic Security Deposit Requirements.

BSP Circular No. 998 dated 1 March 2018

- ▶ The following amendments to the guidelines governing the basic security deposit requirement for the faithful performance of trust and other fiduciary duties, investment management activities, securities custodianship operations, and duties of Personal Equity Retirement Account (PERA) Administrators were approved by the Monetary Board.
- ▶ All BSP-supervised financial institutions (BSFIs), authorized to engage in trust and other fiduciary business, investment management activities or securities custodianship operations, or accredited by the Bangko Sentral as PERA Administrator are covered by this Circular.
- ▶ Subsections X405.1 and 4405Q.1 of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on the basic security deposit for the faithful performance of trust and other fiduciary business, Subsections X415.1 and 4415Q.1 of the MORB/MORNBFI on the basic security deposit for the faithful performance of investment

management activities, and Subsection 4112T.1 of the MORNBF on the basic security for the faithful performance of trust and other fiduciary business and investment management activities of trust corporations, are amended to clarify, among others, that the basic security deposit for the faithful performance of trust and other fiduciary business shall apply to BSFIs authorized to engage in trust and other fiduciary business.

- ▶ Subsections X405.2 and 4405Q.2 of the MORB/MORNBF on the basic security deposit for the faithful performance of trust and other fiduciary business, Subsections X415.2 and 4415Q.2 of the MORB/MORNBF on the basic security deposit for the faithful performance of investment management activities, Subsections X4441.13, 4441Q.13/4144N.13 of the MORB/MORNBF on the basic security deposit for the faithful performance of securities custodianship operations, and Subsection 4112T.2 of the MORNBF on the basic security deposit for the faithful performance of trust and other fiduciary business and investment management activities of trust corporations are amended to: 1) delete unavailable securities, effective immediately, from the enumeration of assets eligible as compliance with the basic security deposit requirement and allow government securities, regardless of tenor, as mode of compliance with the basic security deposit requirement; and 2) allow government securities, regardless of tenor, as mode of compliance with the basic security deposit requirement, effective 31 March 2018.
- ▶ Subsections X405.3 and 4405Q.3 of the MORB/MORNBF on the valuation of securities and basis of computation of basic security deposit requirement for trust and other fiduciary business, and Subsections X415.3/4415Q.3 of the MORB/MORNBF on the valuation of securities and basis of computation of basic security deposit requirement for investment management activities, are amended to prescribe the methodology in determining compliance with the basic security deposit for the faithful performance of trust and other fiduciary business and investment management activities, effective 31 March 2018:
 1. Government securities used as compliance with the basic security deposit shall be valued using fair value methodology, subject to applicable haircuts, instead of amortized cost; and
 2. The base amount upon which the basic security deposit rate shall be applied shall be the quarter-end balance of total trust, investment management and other fiduciary assets, instead of the average of the month-end balances of total trust, investment management, and other fiduciary assets of the preceding calendar quarter.
- ▶ Subsections X405.4 and 4405Q.4 of the MORB/MORNBF on compliance period for the trustee or fiduciary, Subsections X415.4 and 4415Q.4 of the MORB/MORNBF on compliance period for the investment manager, and Subsection 4112T.4 of the MORNBF on compliance period for trust corporation are amended to require banks/quasi-banks/trust corporations that are authorized to engage in trust and other fiduciary business and investment management activities, to comply with the basic security deposit requirement on a quarterly basis as well as at the time of withdrawal, replacement, or redemption of the government securities deposited with the Banko Sentral within the quarter period.
- ▶ Subsection 4112T.5 of the MORNBF is amended to align regulations on the imposition of sanction on trust corporations with that of other BSFIs.

- ▶ 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. 998, s. 2018 was published in the Philippine Star on 9 March 2018.)

Circular No. 999 provides for the Amendment on the Allowable Investments of UIT Funds.

BSP Circular No. 999 dated 14 March 2018

- ▶ The following amendment to Subsection X410.9/4410Q.0 of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) on the allowable Investments of UIT Funds were approved by the Monetary Board.
- ▶ Subsections X410.9/4410Q.9 of MORB/MORNBF1, which provide allowable investments and valuation, are amended to add, among others, that in the case of Feeder Fund or Fund-of-Funds, offshore/ global funds which use financial derivatives for efficient portfolio management (EPM) may be allowed as target fund: *Provided*, That financial derivatives shall not be extensively or primarily used as an investment strategy of the target fund and that the risk level of the target fund remain consistent with the objective and risk profile of the investor fund. Same subsection enumerates the characteristics of the use of financial derivatives for it to be deemed EPM.
- ▶ 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. 999, s. 2018 was published in the Philippine Star on 20 March 2018.)

SEC Opinions and Issuances

SEC-OGC Opinion No. 18-02 dated 28 February 2018

Online election for members of the Board of Directors can only be resorted to if it is expressly allowed in the by-laws of the corporation.

Facts:

M Co. intends to conduct the election of the members of the Board of Directors through online voting. However, its Constitution and By-laws do not include a provision on on-line election but the officers would like to implement it through a board resolution.

Issue:

Can the officers of M Co. validly implement the online election?

Held:

No. Section 89 of the Corporation Code is explicit that voting by mail or other similar means must be clearly set forth in the SEC-approved by-laws of the corporation. In the absence of a provision allowing mail voting or other similar means in the by-laws, all votes cast in such manner are illegal. Any change in the manner of voting must be done through amendment of the by-laws and the same must be approved by the SEC.

SEC-OGC Opinion No. 18-03 dated 19 March 2018

The conversion of stockholder's advances into APIC without issuance of new shares need not be approved by the SEC if the same is not yet reflected on the audited financial statements.

Facts:

B Co. is planning to convert its stockholder's advances into additional paid-in capital (APIC) without issuance of new shares. The APIC will be used to wipe out its capital deficit.

Issue:

Should B Co. seek the approval of the SEC before it can create APIC without issuance of new shares?

Held:

No. In *SEC OGC Opinion no. 34-10 dated 22 December 2010*, the SEC had already addressed a similar issue where it held that the application for the approval of the creation of the APIC is at the option of the corporation. Thus, it is not mandatory for the corporation to seek prior approval from the SEC for the creation of the APIC. However, if the APIC is already reflected as such on the audited financial statements, the corporation must seek the approval of the SEC by filing a request for equity restructuring.

SEC-OGC Opinion No. 18-04 dated 19 March 2018

The business of travel and tours agency is not within the Foreign Negative List, thus, can be 100% foreign-owned.

Facts:

A Co. is engaged in the business of tours and travel agency servicing both local and foreign markets. Its stockholdings are divided between Filipino and Singaporean investors at a share of 60% and 40%, respectively. The Filipino stockholders would like to transfer all their shares to their Singaporean counterparts.

Issues:

1. Can A Co. be 100% owned by foreign investors?
2. Are the foreign owners required to be residents of the Philippines or can they stay as non-resident aliens not doing business in the Philippines?
3. Can another foreign corporation alone hold almost 100% ownership of A Co.?

Held:

1. Yes. The business of travel and tours is not among the activities listed under the Foreign Investment Negative List. Thus, it can be fully-owned by foreigners.
2. The Corporation Code does not provide residency requirement for stockholders of a domestic corporation except if the stockholder becomes a member of the board of directors. Sec. 23 of the Code requires that at least a majority of the members of the board must be Philippine residents. This is for the protection of the stockholders of the corporation against inactivity of the board where no quorum can be had due to repeated absence of a director who resides abroad.
3. Yes. There is no prohibition in the Corporation Code for a foreign corporation to be the lone entity that owns almost 100% ownership of a domestic corporation if the latter is permitted by law to be fully foreign-owned.

SEC-OGC Opinion No. 18-05 dated 19 March 2018

Ownership of a condominium unit is a condition *sine qua non* to being a shareholder or member in a condominium corporation.

Facts:

G Co., a condominium corporation, assesses and collects condominium dues from its members including purchasers of private units as soon as the same are turned over even if the title remains with the developers.

Issue:

Can mere purchasers of condominium units be treated as members of a condominium corporation?

Held:

No. In *Sunset View Condominium Corporation v. Aguilar Bernas Realty*, the Supreme Court held that only the owners of a unit can become stockholders of a condominium corporation as inferred from Section 10 of the Condominium Act which provides: "Membership in a condominium unit regardless of whether it is a stock or non-stock corporation shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or stockholder cease to own a unit in the project in which the condominium corporation owns or holds common areas, he shall automatically cease to be a member or stockholder of the condominium corporation." Thus, purchasers of units whose title remains with the developers pending full payment of the purchase price are not yet deemed owners, and consequently, not members of a condominium corporation.

SEC-OGC Opinion No. 18-06 dated 23 March 2018

The sale of air-conditioning products directly to department stores and appliance centers for resale to customers or end users, and the sale of these products directly to establishments engaged in rendering service to the general public are not covered by the Retail Trade Liberalization Law.

Facts:

J Co. is engaged in the manufacture and sale on wholesale of home appliances and air conditioners. Among its customers are big appliances stores which, in turn, sell the products to commercial or industrial clients and end-users. It also sells its products directly to contractors, hospitals, schools, supermarkets and hotels which use the air-conditioning products in their establishments.

Issue:

Is J Co. engaged in retail trade business?

Held:

No. Sec. 3 of the Retail Trade Liberalization Act (RTLA) defines retail trade as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption. Furthermore, the implementing rules of the RTLA provides that sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods, which are in turn sold by them are not considered as retail. Thus, the sale of J Co. of its air-conditioners to appliance stores and establishments engaged in rendering service to the public does not constitute retail trade under the RTLA.

SEC MC No. 4 provides the policy guidelines for the transitory implementation of SEC Certification Requirement for salesmen of broker/ issuers of proprietary and non-proprietary shares.

SEC Memorandum Circular No. 4 series of 2018 dated 2 March 2018

In line with SEC Resolution No. 733 series of 2016, which now includes modules for proprietary/non-proprietary securities, the SEC requires the following to take and pass the certificate examination not later than 28 February 2019:

- ▶ Existing licensed salesmen;
- ▶ New salesmen allowed to register under provisional license; and
- ▶ Salesmen of new applicants for registration as brokers/issuer of proprietary/non-proprietary shares.

Failure to pass the examination within the given period shall result in the revocation of the license.

(Editor's Note: This MC has been published in The Manila Standard and The Philippine Star on 15 March 2018.)

SEC MC No. 5 adopts the PFRS for Small Entities as part of its rules and regulations on financial reporting.

SEC Memorandum Circular No. 5 series of 2018 dated 26 March 2018

In view of the adoption of the PFRS for Small Entities, Section 2 of Rule 68 of the Securities Regulation Code is amended with the following key changes:

- ▶ Medium-sized and Small Entities are classified separately (formerly under one classification called small and medium-sized entities or SMEs).
- ▶ Medium-sized entities are those with total assets of more than P100M to P350M or total liabilities of more than P100M to P250M. On the other hand, Small Entities are those with total assets of between P3M to P100M or total liabilities of between P3M to P100M.
- ▶ Medium-sized entities shall continue to adopt the PFRS for SMEs except for exempt entities under Sec. 2 (A) (II) (b) of Rule 68 of the SRC which may instead apply, at their option, the full PFRS.
- ▶ Small Entities shall use the PFRS for Small Entities as their financial reporting framework except entities who have operations or investments that are based or conducted in a different country with different functional currency and should instead apply the full PFRS or PFRS for SMEs. Small entities under Sec. 2 (A) (III) (b) of Rule 68 of the SRC are exempt from the mandatory adoption of the PFRS for Small Entities and may apply, at their option and as appropriate, the full PFRS, PFRS for SMEs or the PFRS for Small Entities.
- ▶ Micro Entities have the option to use the income tax basis or the PFRS for Small Entities as their financial reporting framework.

(Editor's Note: This MC has been published in the Manila Bulletin on 29 March 2018.)

Court Decisions

Commissioner of Internal Revenue vs. Iconic Beverages, Inc.

CTA (*En Banc*) Case Nos. 1412 and 1417 promulgated 30 January 2018

Royalty fees received by a taxpayer, whose primary purpose includes owning and licensing trademarks as stated in its Articles of Incorporation, are considered active income subject to the 30% regular corporate income tax.

Facts:

Petitioner CIR assessed Respondent Iconic Beverages, Inc. (IBI) for, among others, deficiency income tax on royalty fees received for taxable year 2009. The CIR argued that IBI incorrectly treated the royalty fees as passive income subject to 20% final tax. The CIR asserted that the royalty was earned in the active pursuit of business hence, subject to the 30% regular corporate income tax (RCIT).

Upon the CIR's denial of its protest against the assessment, IBI filed a Petition for Review filed with the Court of Tax Appeals.

The CTA First Division denied the petition and held that IBI failed to prove that the royalty received in 2009 were not earned in the active pursuit or performance of its primary purpose. The Court held that the royalty is not considered passive income and thus subject to 30% RCIT.

Upon denial of its Motion for Reconsideration, IBI appealed to the CTA *En Banc*.

Issue:

Are the royalty fees received by IBI considered passive income subject to the 20% final withholding tax?

Ruling:

No. The CTA *En Banc* ruled that the royalty fees received by IBI are not passive but active income subject to the 30% RCIT.

The business transactions of IBI resulting in the payment of royalty income were in line, if not in accord, with IBI's primary purpose as stated in its Articles of Incorporation that includes owning, purchasing, licensing and/or acquiring such trademarks and other intellectual property rights in furtherance of its business.

The Court noted IBI's Audited Financial Statements (AFS) for 2009 which belied its contention that the act of licensing out of its trademarks and intellectual property rights were incidental and one-time transactions. The 2009 AFS showed that licensing was the only business activity of IBI and its lone source of income in 2009. IBI did not engage in any business activity beyond licensing, precisely because such was its primary purpose.

Commissioner of Internal Revenue vs. Fluor Daniel, Inc. - Philippines

CTA (*En Banc*) Case Nos. 1555 promulgated 12 February 2018

Software maintenance fees paid for the grant of (a) a non-exclusive, non-transferable free authority to access or use the software, and (b) the right to make and distribute to employees copies of materials, but only to the extent that such distribution shall be necessary for access or use of the software, are considered as business profits and not royalties.

The software maintenance fees received by a US resident are taxable only if the said US resident is deemed to have a PE in the Philippines, pursuant to Article 8 of the Philippines-US Tax Treaty.

Facts:

On 26 October 2011, Respondent Fluor Daniel, Inc. - Philippines (FDIP) received a Formal Letter of Demand from Petitioner CIR assessing FDIP for, among others, deficiency final withholding tax (FWT) allegedly due on software maintenance fees paid to Fluor Intercontinental, Inc. (FII), a US corporation. The CIR asserted that the said fees constitute royalties, within the definition of Revenue Memorandum Circular (RMC) 77-2003, as amended by RMC 44-2005, that are subject to FWT.

On 15 November 2011, FDIP protested the assessment. FDIP later on paid the deficiency tax assessed based on a Taxpayers Agreement Form.

On 22 February 2012, FDIP received a Final Decision on Disputed Assessment denying its protest. On 23 March 2012, FDIP filed a Petition for Review with the CTA. On 5 February 2014, FDIP filed a claim for refund representing the FWT assessed and paid on the software maintenance fees.

At the CTA, the FDIP argued that it is not liable for FWT as the software maintenance fees paid to FII are not royalties but constitute business profits, which are not subject to tax in the Philippines.

The CTA Third Division ruled in favor of FDIP by cancelling the FWT assessment and ordering the refund of FWT paid. Upon denial of its Motion for Reconsideration, the CIR appealed to the CTA *En Banc*.

Issue:

Are the software maintenance fees paid by FDIP to FII deemed royalties subject to FWT?

Ruling:

No. The software maintenance fees paid by FDIP to FII are not royalties but properly classified as business profits.

In classifying the income, the CTA *En Banc* cited the OECD Commentaries which provide that the character of the payment involving the transfer of computer software depends on the nature of the rights the transferee acquires under the contract for the use and exploitation of the program.

Under the contract, FDIP is granted (a) a non-exclusive, non-transferable free authority to access or use the software, and (b) the right to make and distribute to its employees copies of the documentation and related materials, but only to the extent that such reproduction and distribution shall be necessary for FDI's access or use of the software. These rights fall under paragraph 14 and 14.2 of the OECD Commentaries which are treated as business profits and not royalties.

There are likewise restrictions that support the conclusion that the payments are not royalties, such as the prohibition on FDIP to allow its use by third parties; making any copies of the software for distribution to third parties; or modifying the software or create derivative works therefrom.

As business profits, the software maintenance fees are taxable in the Philippines only if FII has a permanent establishment (PE) in the Philippines, pursuant to Article 8 of the Philippines-US Tax Treaty. As found by the Court, FII does not have a PE in the Philippines. Thus, FII having no PE in the Philippines, the software maintenance fees received from FDIP are not taxable in the Philippines.

The City of Makati and the City Treasurer of Makati City vs. Metro Pacific Investments Corporation

CTA (*En Banc*) Case Nos. 1530 promulgated 9 February 2018

Makati City cannot impose local business tax on dividend and interest income if there is no showing that the company is classified as a bank or other financial institution or a non-bank financial intermediary authorized by the BSP to perform quasi-banking activities.

Facts:

Petitioner City of Makati assessed Respondent Metro Pacific Investments Corporation (MPIC) for deficiency local business tax based on its income for 2010. MPIC paid the assessed LBT but later on filed a claim for refund, arguing that the aggregate interest and dividend income do not constitute gross receipts as defined under Section 131 (h) of the Revised Makati Revenue Code (RMRC), as amended.

MPIC also filed a complaint for refund of erroneously paid LBT at the Makati Regional Trial Court on 29 January 2013. After trial, the RTC ordered Makati City to refund the erroneously collected LBT. Aggrieved, Makati City filed a Petition for Review with the CTA. The CTA Third Division sustained the RTC's ruling and ordered the return of the LBT paid. The adverse decision prompted the City Treasurer to elevate the case to the CTA *En Banc*.

At the CTA *En Banc*, the City Treasurer contended that MPIC is a holding company that is engaged in investment and financial activities, similar to banks and financial institutions and should be taxed under Section 3A.02 (h), in relation to Section 3A.02 (p) of the RMRC.

MPIC countered that it is a holding company engaged in business management services included in the enumeration under Section 3A.02 (G) of the RMRC.

Issue:

Is MPIC liable to LBT for its interest and dividend income?

Ruling:

No. Makati City cannot impose business taxes on MPIC's dividends and interest income as there is no showing that the holding company can be classified as a "bank or other financial institution," which is subject to LBT under Section 3.A.02(h) of the RMRC.

By process of elimination, the CTA *En Banc* ruled that MPIC is likewise not a lending investor, a finance and investment company, a pawnshop, a money shop, an insurance company, a stock market, or a foreign exchange that would have classified it as a "bank or other financial institution."

Neither can MPIC be considered as a non-bank financial intermediary, as it has not been authorized by the Bangko Sentral ng Pilipinas to perform quasi-banking activities.

Commissioner of Internal Revenue vs. Keppel Philippines Properties, Inc.

CTA (*En Banc*) Case Nos. 1540 promulgated 20 February 2018

The gain derived by a Singapore resident from the redemption of preferred shares is not considered as dividend but as capital gain, which can be exempt from capital gains tax subject to the conditions prescribed under Article 13 of the Philippines-Singapore Tax Treaty.

Facts:

Respondent Keppel Philippines Properties, Inc. (KPPI) filed with the BIR a claim for refund of final withholding tax erroneously paid on net capital gains arising from its redemption of preferred shares held by Keppel Land Limited (KLL), pursuant to the relevant provisions of the Philippines-Singapore Tax Treaty.

Due to BIR's inaction and in order to toll the 2-year prescriptive period, KPPI filed a Petition for Review at the CTA.

The BIR argued that KPPI failed to prove that FWT paid was erroneously or illegally collected. KPPI countered that the redemption of preferred shares resulted in capital gain, which is exempt under Article 13 of the Philippines-Singapore Tax Treaty. KPPI also pointed out that KLL filed a tax treaty relief application (TTRA) with the International Tax Affairs Division (ITAD) of the BIR, which was not acted upon.

The CTA Third Division granted the petition and ordered the refund of erroneously paid FWT. Upon denial of its Motion for Reconsideration, the CIR appealed to the CTA *En Banc*.

Issue:

Is KPPI entitled to the refund of erroneously paid FWT on capital gains arising from its redemption of preferred shares?

Ruling:

Yes. The gains derived by KLL from the redemption of the KPPI preferred shares is exempt under Article 13 of the Philippines-Singapore Tax Treaty.

Any gain derived by a resident of Singapore from the alienation of its properties in the Philippines may be taxed in the Philippines only if the company's assets are principally immovable property located within the Philippines. Under RR No. 4-86, the term 'principally' means more than 50% of the entire assets in terms of value. A scrutiny of the line items of KPPI's 2011 and 2012 audited financial statements shows its current and non-current assets do not consist principally of immovable property.

The Court also ruled that a net capital gain cannot be treated as dividend subject to 15% FWT, since an ordinary dividend is a distribution in the nature of a recurring return of stock, made in the ordinary course of business and with intent to maintain the corporation as a going concern. KLL's gain does not represent a recurring return on the shares redeemed but as payment by KPPI to KLL for the redemption of the preferred shares.

Quoting the CTA *En Banc*'s decision in *CIR vs. Goodyear Philippines, Inc.* promulgated on 5 January 2015, the only instance where the gain derived from redemption may be treated as dividend is the case of redemption of stock dividends, whether pursuant to partial or complete liquidation. If a corporation cancels or redeems stock issued as dividend at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of stock shall be considered as taxable income to the extent of earnings or profits.

Commissioner of Internal Revenue vs. Lucio L. Co, Susan P. Co, Ferdinand Vincent P. Co and Pamela Justine P. Co

CTA (*En Banc*) Case Nos. 1522 promulgated 28 February 2018

The tax-free exchange treatment under Sections 40(C)(2) and 40(C)(6)(c) of the Tax Code includes instances of 'further control', when, as a result of a tax-free exchange, the transferors collectively increase their control of the transferee corporation.

The BIR certification ruling prescribed under RR 18-2001 is not a precondition for availing a tax exemption.

Facts:

Respondent Cos filed a claim with the BIR for the refund of erroneously paid capital gains tax covering the transfer all their shares of stock held in Kareila Management Corporation to Puregold Price Club, Inc. (Puregold) in exchange for Puregold shares. As a result, Puregold acquired majority ownership of Kareila. The Cos who, prior to the share swap, already collectively owned 66.57% of the outstanding capital stock of Puregold consequently increased their stockholdings to 75.83%.

The Cos argued that their CGT payment plus interest and penalties in the total amount of P1.6 Billion were erroneous as their transfer of shares through the Deed of Exchange is a tax-free transaction under Section 40(C)(2) of the Tax Code. Due to the BIR's inaction, the Cos filed a judicial claim for refund within the 2-year prescriptive period. The CTA Third Division granted the refund.

Upon denial of its Motion for Reconsideration, the CIR appealed to the CTA *En Banc*. The CIR argued, among others, that Revenue Regulations 18-2001, Revenue Memorandum Order Nos. 32-2001 and 17-2002 prescribe the requirements to avail of the non-recognition of gain under Section 40(C)(2) of the Tax Code, specifically a *prior* application for a BIR certification or ruling. Since refund claims are strictly construed against taxpayers, the refund must be denied.

Issues:

1. Are the Cos entitled to a refund of erroneously paid CGT?
2. Is a BIR confirmatory ruling a condition for availing a tax exemption under Section 40(C)(2) of the Tax Code?

Rulings:

1. Yes. The Cos filed a valid and timely administrative claim for refund. The share swap transaction between the Cos and Puregold qualifies as a tax-free exchange under Sections 40(C)(2) and 40(C)(6)(c) of the Tax Code, as amended.

The CTA *En Banc* cited the ruling of the Supreme Court in *CIR vs. Filinvest Development Corporation, GR Nos. 163653 and 167689 promulgated on 19 July 2011*, where it was held that Sections 40(C)(2) and 40(C)(6)(c) cover instances of further control, when, as a result of a tax-free exchange, the transferors collectively increase their control of the transferee corporation.

2. No. A BIR confirmatory ruling is not a precondition to avail of the tax exemption under Section 40(C)(2) of the Tax Code.

Contrary to the position taken by the CIR, and citing the CTA *En Banc's* decision in *CIR vs. Dakudao & Son, Incorporated, CTA EB Case 1150, promulgated on 12 May 2015*, RR 18-2001 merely provides for guidelines in monitoring tax-free exchange of property. The BIR ruling required thereon serves to monitor the tax-free properties in order that in cases of subsequent sales of said properties, they shall be taxed accordingly. The BIR certification ruling prescribed under RR 18-2001 is for determining the gain or loss on a subsequent sale or disposition or property subject of a tax-free exchange, and not as a precondition for availing a tax exemption.

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