

# Tax Bulletin

July 2018



# Highlights

## BIR Issuances

- ▶ Revenue Regulation No. 17-2018 amends Section 13 of RR No. 12-2018 on the valuation of gifts in the form of property. **(Page 3)**
- ▶ Revenue Memorandum Order No. 30-2018 identifies the Revenue District Office (RDO) which shall process the claim for refund of erroneously-paid capital gains tax (CGT) or creditable withholding tax (CWT), where the taxpayer's registration and the location of the property fall under the jurisdiction of different RDOs. **(Page 4)**
- ▶ RMO No. 32-2018 prescribes the rules on the audit or investigation of individual and non-individual taxpayers, belonging to the small category, by the Regional Assessment Divisions. **(Page 4)**
- ▶ RMO No. 33-2018 consolidates, clarifies, and reiterates the existing policies and procedures in the issuance of an authority to cancel assessment (ATCA). **(Page 5)**
- ▶ Revenue Memorandum Circular No. 62-2018 clarifies the requirements for withdrawals from bank deposit accounts of a deceased depositor/joint depositor without the required electronic Certificate Authorizing Registration (eCAR). **(Page 6)**

## BOC Update

- ▶ Customs Memorandum Order No. 10-2018 provides for the Implementation of the Enhanced Goods Declaration Verification System (EGDVS). **(Page 7)**

## PEZA Updates

- ▶ PEZA Memorandum Circular No. 2018-013 circularizes the list of Sanitary Landfills in CALABARZON and reminds enterprises to exercise due diligence in selecting a disposal facility for residual wastes. **(Page 8)**
- ▶ PEZA Memorandum Circular No. 2018-015 circularizes Laguna Lake Development Authority (LLDA) Memorandum Circular 2017-05 and advises PEZA Enterprises/Operators in the Laguna de Bay Region on compliance. **(Page 9)**

## BOI updates

- ▶ Executive Order (EO) No. 57 extends for another year the duty-free incentive for importations of capital equipment, spare parts, and accessories of BOI-registered entities. **(Page 9)**
- ▶ DTI-BOI Administrative Order No. 01 promulgates the implementing rules of EO No. 57, and provides, among others, the conditions and process of availing the 0% duty on importation of capital equipment, spare parts, and accessories for BOI-registered enterprises. **(Page 10)**

## SEC Issuance

- ▶ SEC MC No. 9 provides the amendment to the Guidelines and Procedures on the Use of Corporate and Partnership Names. **(Page 13)**

## BSP Issuance

- ▶ Circular No. 1009 provides for the Amendments to the Rules and Regulations on the Mandatory Credit Allocation for Agriculture and Agrarian Reform Credit. (Page 13)

## Court Decisions

- ▶ When a case is pending before it on appeal, the Court of Tax Appeals has exclusive jurisdiction to enjoin the levy of taxes and the auction of the taxpayer's real properties. (Page 13)
- ▶ A taxpayer cannot invoke the argument of invalidity of the waivers against the BIR to benefit from its own wrongdoing. (Page 15)
- ▶ The absence of a Letter of Authority (LOA) violates a taxpayer's right to due process. Any examination conducted or assessment issued, without a valid LOA, is void. (Page 16)
- ▶ A Warrant of Distraint and/or Levy (WDL) constitutes an act of the CIR on "other matters" arising under the National Internal Revenue Code or other laws administered by the BIR, which may be the subject of an appeal with the CTA. A taxpayer must file an appeal with the CTA within 30 days from receipt of a WDL. (Page 16)
- ▶ Hard Rock Café's primary business activities are those of a restaurant and its live band performances are merely incidental to its main restaurant business.

An administrative issuance like a Revenue Memorandum Circular cannot override the law it merely seeks to interpret. (Page 17)

- ▶ Failure to file a tax treaty relief application (TTRA) does not operate to divest a taxpayer's entitlement to relief under a tax treaty. The BIR must not impose additional requirements that would negate availing the reliefs provided for under international agreements. (Page 18)
- ▶ An assessment is void if the BIR fails to indicate a definite period for payment in the Assessment Notices. The lack of a definite period for payment of the taxes assessed negates the BIR's demand for payment. (Page 19)

## BIR Issuances

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RR No. 17-2018 amends Section 13 of RR No. 12-2018 on the valuation of gifts in the form of property.

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### RR No. 17-2018 dated 30 July 2018

- ▶ The valuation of gifts in the form of property shall follow the rules found in Section 5 of RR No. 12-2018, provided that the reckoning point for valuation shall be the date when the donation is made.
- ▶ Section 5 of RR No. 12-2018 prescribes the following rules on the valuation of properties for estate tax purposes:
  1. The properties comprising the gross estate shall be valued according to their fair market value as of the time of decedent's death.

2. For real properties, the appraised value as of the time of death shall be the fair market value as determined by the Commissioner or as shown in the schedule of values fixed by the provincial and city assessors, whichever is higher.
3. For shares of stocks, the fair market value shall depend on whether the shares are listed or unlisted in the stock exchanges.
  - ▶ Unlisted common shares are valued based on their book value.
  - ▶ In determining the book value of common shares, appraisal surplus shall not be considered, including the value assigned to preferred shares.
  - ▶ Unlisted preferred shares are valued at par value.
  - ▶ For shares listed in the stock exchanges, the fair market value shall be the arithmetic mean between the highest and lowest quotation at a date nearest the date of death and if none is available, on the date of death itself.
4. In the case of participation in any association, recreation or amusement club (such as golf, polo, or similar clubs), the fair market value shall be the bid price nearest the date of death published in any newspaper or publication of general circulation.
5. To determine the value of the right to usufruct, use or habitation, as well as that of annuity, the probable life of the beneficiary under the latest basic standard mortality table shall be taken into account, upon recommendation of the Insurance Commissioner and approval by the Secretary of Finance.
  - ▶ The regulations shall take effect immediately.

*(Editor's Note: RR No. 17-2018 was published in the Manila Bulletin on 1 August 2018)*

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RMO No. 30-2018 identifies the RDO which shall process the claim for refund of erroneously-paid CGT or CWT, where the taxpayer's registration and the location of property fall under the jurisdiction of different RDOs.

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**RMO No. 30-2018 dated 27 June 2018**

In case of erroneous payment of CGT or CWT, the electronic Letter of Authority (eLA) shall be issued and the claim for refund shall be processed by the RDO having jurisdiction over the place where the subject property is located, and not the RDO where the taxpayer is registered.

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RMO No. 32-2018 prescribes the rules on the audit or investigation of individual and non-individual taxpayers, belonging to the small category, by the Regional Assessment Divisions.

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**RMO No. 32-2018 dated 6 July 2018**

- ▶ The audit of the 2017 tax returns of taxpayers, with the following gross sales and receipts, shall be under the jurisdiction of the Regional Offices identified below:

Revenue Region Nos.	Gross Sales/Receipts
5, 6, 7 and 8	P10,000,000.00 and below
1, 4, 9A, 9B, 11, 12, 13, 16 and 19	P5,000,000.00 and below
2, 3, 10, 14, 15, 17 and 18	P2,000,000.00 and below

- ▶ One eLA shall be issued for each taxable year covering all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined or a claim for refund/ tax credit has been filed.
- ▶ The Revenue Officers (ROs) of the Office Audit Section (OAS) of the Assessment Division of the Regional Offices shall conduct the audit of cases without field investigation.
- ▶ The tax returns for office audit shall be selected by the Chief of the Assessment Division from the tax returns manually and electronically submitted through eFPS or eBIR Forms for taxable year 2017.
- ▶ The report of investigation shall be submitted to the Review and Evaluation Division of the Assessment Division within 90 days from issuance of the eLA.
- ▶ The taxpayer has 10 days from receipt of the Notice for the Presentation/ Submission of Documents/ Records to present or submit the required documents and records.
- ▶ If the taxpayer fails to comply, a reminder letter shall be sent immediately after the lapse of the 10-day period.
- ▶ If the taxpayer fails to present or submit the requested documents and records within 5 days from receipt of the reminder letter, a memorandum report recommending the issuance of a *Subpoena Duces Tecum* (SDT) shall be prepared.
- ▶ No further extension for the presentation or submission of documents and records shall be allowed.

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RMO No. 33-2018 consolidates, clarifies, and reiterates the existing policies and procedures in the issuance of an ATCA.

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**RMO No. 33-2018 dated 16 April 2018**

- ▶ The ATCA shall be issued as proof of cancellation of assessments covered by Final Assessment Notice (FAN)/ Formal Letter of Demand (FLD), which were recorded in Form 40.00 - Protested/ Accounts Receivables (AR)/ Delinquent Account (DA) cases, for any of the following instances:
  1. The difference between the original and the reduced tax assessments after the originally issued FAN/FLD has been modified, amended, or declared "null and void" by virtue of a final administrative decision by the Commissioner or his duly authorized revenue official as shown in the Final Decision on Disputed Assessment (FDDA).
  2. Final approval of the corresponding application for compromise settlement and abatement or cancellation of penalties pursuant to Section 204(a) of the Tax Code and its implementing regulations.
  3. Decision by the competent court where the assessment was either modified, amended or declared "null and void" with finality as shown in the entry of judgment.
  4. The AR/DA case is declared uncollectible by a competent court with finality due to insolvency.
  5. Availment of tax amnesty by a taxpayer, which is included in the List of the Tax Amnesty Availers provided by the Office of the Commissioner or Deputy Commissioner, Operations Group.

6. Condonation of the assessment by virtue of law, provided that the required documentations have been submitted, evaluated and approved by the Commissioner or his authorized Revenue Official.
7. When the right of the government to assess/collect the corresponding deficiency/delinquent taxes has prescribed, and the cancellation has been approved by the Commissioner based on the recommendation of the National Committee on Prescribed Cases.
8. AR/DA case/s that are recommended for write-off and approved by the Commissioner or his duly authorized representative on the grounds such as, but not limited to, the following:
  - ▶ Individual taxpayer is deceased, and no distrainable or leviable assets could be found;
  - ▶ Permanent cessation of business;
  - ▶ Dissolution;
  - ▶ Taxpayer is a general partnership and the individual partners are already deceased; and
  - ▶ AR/DA cases with a total amount due of P20,000.00 and below, provided that all collection enforcement summary remedies have been fully exhausted.
9. Such other meritorious cases, which the Commissioner may deem necessary to be covered by ATCA.
  - ▶ Within 7 working days from receipt of the case docket, the concerned approving revenue official shall approve/ act upon the tax case recommended for partial/ full cancellation.
  - ▶ Tax assessments with issued FAN / FLD or AR/DA cases referred to the Regional Division/ Appellate Division/ Law and Legislative Division/ Litigation Division on issues involving questions of law, due process and/or alleged prescription of the BIR's right to assess/collect the tax liabilities, shall be resolved within 30 days from receipt of the protested docket or AR/DA cases.

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RMC No. 62-2018 clarifies the requirements for withdrawals from bank deposit accounts of a deceased depositor/joint depositor without the required eCAR.

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**RMC No. 62-2018 dated 28 June 2018**

- ▶ The executor, administrator, or any legal heir of a decedent who, prior to death, maintained bank deposits, may be allowed to withdraw from the said deposit/s within 1 year from the death of the depositor/ joint depositor, but the amount withdrawn shall be subject to the 6% final withholding tax (FWT).
- ▶ For joint accounts, only the share of the decedent shall be subject to the 6% FWT.
- ▶ Prior to the withdrawal, the executor, administrator, or any of the legal heirs of the decedent shall present to the bank, a copy of the Tax Identification Number (TIN) and BIR Form No. 1904 of the estate of the decedent, duly stamped received by the concerned RDO.

- ▶ The bank shall issue the corresponding BIR Form No. 2306, which confirms the withholding of the 6% final tax.
- ▶ The bank shall file the quarterly return on the final tax withheld and remit the same on or before the last day of the month following the close of the quarter during which the withholding was made.
- ▶ The bank must ensure that the withdrawal slips that will be used shall contain the following:
  1. A sworn statement by any one of the surviving joint depositor/s that at the time of withdrawal, all other joint depositor/s to the account are still alive; and
  2. A statement indicating that the withdrawal is subject to 6% FWT.
- ▶ Bank deposits that are already declared for estate tax purposes and indicated in the eCAR, which are presented to the bank upon withdrawal by the executor, administrator, or heirs of the decedent, shall no longer be subject to 6% FWT.
- ▶ This Circular shall not be construed as preventing the bank from requiring pertinent documents pursuant to its existing policy or a requirement under applicable laws, rules and regulations for the purpose of, among others, ascertaining the identity and right to claim of the heirs or authorized representatives before allowing any withdrawal from the bank account.

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## **BOC Update**

CMO No. 10-2018 provides for the Implementation of the EGDVS.

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### **CMO No. 10-2018 dated 12 July 2018**

- ▶ This CMO shall initially cover the implementation of enhanced goods declaration verification system (EGDVS) at the Ports of Clark, Subic and Batangas involving goods declarations processed at Formal Entry Division (FED) or its equivalent unit.
- ▶ The objectives of the CMO is to randomly assign appraisers and examiners to a given customs declaration; to provide brokers and importers actual updates on the status of their goods declaration and minimize the chance of corruption by zero-contact policy.
- ▶ Operational Process
  1. The Value-Added Service Providers (VASPs) or Accredited Information Processors (AIPs) shall send the Electronic to Mobile system (E2M) filed goods declaration/entry thru web-service to the EGDVS.
  2. The broker shall log-in to the EGDVS and shall retrieve the filed goods declaration then attach the required supporting documents. The broker must submit hard copy of the filed goods declaration to the Entry Processing Unit (EPU) or any equivalent unit assigned to receive the documents.
  3. The Customs Officer of the EPU or equivalent unit shall conduct a preliminary verification/comparison of the hard copy and attached documents against the filed goods declaration in EGDVS. Once verified, the Customs Officer shall click the "Start Assign" button, then submit the documents to the Office of the Chief, FED or its equivalent unit.

4. The examiner shall verify and meticulously compare the submitted hard copy of the goods declaration and the attached documents submitted to EGDVS. After verification, the examiner will process the goods declaration in the E2M and update the status of the declaration through EGDVS.
  5. The appraiser shall check and acknowledge the assigned goods declaration in EGDVS, process the goods declaration in the E2M and update the status of the declaration in the EGDVS.
  6. In case additional documents are needed, the assigned examiner or appraiser will notify the BOC stakeholders thru EGDVS system by filling up the "remarks" section of EGDVS.
- ▶ This Order shall take effect immediately after completion of the 15 day publication.

*(Editor's Note: CMO No. 10-2018 was received by the UP Law Center on 17 July 2018)*

## **PEZA Updates**

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PEZA Memorandum Circular No. 2018-013 circularizes the list of Sanitary Landfills in CALABARZON and reminds enterprises to exercise due diligence in selecting a disposal facility for residual wastes.

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### **PEZA Memorandum Circular No. 2018-013 dated 8 June 2018**

- ▶ The Department of Environment and Natural Resources - Environmental Management Bureau (DENR-EMB) has provided PEZA with a list enumerating 34 operational Sanitary Landfills (SLFs) with Environmental Compliance Certificates (ECC) within CALABARZON
  1. However, based on inspection, some of the listed SLFs resemble an open dumpsite and/or Controlled Dump Facilities.
- ▶ PEZA reminds economic zone locators and residual waste haulers/collectors of the following:
  1. The ECC is not a guarantee that the disposal facilities are compliant with environmental requirements.
  2. Residual wastes should only be disposed at DENR-approved SLFs.
  3. Enterprises should conduct due diligence to check compliance of the disposal facilities to Republic Act (RA) No. 9003 or the Solid Waste Management Act.
  4. Enterprises should coordinate with another DENR-approved SLF if the DENR has adverse inspection findings on the current SLF.
  5. Residual waste haulers with existing contracts with SLFs that are not approved by DENR should coordinate with another disposal facility and apply for an amendment of their Certificate of Registration.



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PEZA Memorandum Circular No. 2018-015 circularizes LLDA Memorandum Circular 2017-05 and advises PEZA Enterprises/Operators in the Laguna de Bay Region on compliance.

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#### **PEZA Memorandum Circular No. 2018-015 dated 11 July 2018**

- ▶ LLDA Memorandum Circular (MC) No. 2017-05 dated 22 November 2017 provides the rules and regulations in implementing the new general effluent standards (GES) in areas within the Laguna de Bay Region.
  1. Following DENR Administrative Order No. 2016-08, wastewater discharge in the region should meet the effluent standards for Class C, except those with discharge points at Manila Bay which shall follow Class SB standards.
- ▶ Information Technology (IT) enterprises or operators of IT Parks / Buildings located in the region should coordinate with their building owners to get updates on the status of compliance and/or concerns in implementation.
- ▶ Enterprises in the manufacturing economic zones in the region should coordinate with the economic zone developer or the operator of the centralized wastewater treatment facility (CWTF) to get updates on the status of compliance and/or concerns in implementation.

#### **BOI Updates**

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EO No. 57 extends for another year the duty-free incentive for importations of capital equipment, spare parts, and accessories of BOI-registered entities.

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#### **Executive Order No. 57 dated 22 June 2018**

- ▶ **Background**
  1. Executive Order (E.O.) No. 70 (2012) provided for 0% duty on certain articles imported by BOI-registered new and expanding enterprises for a period of 5 years from the date of its effectivity or until the enactment of a law amending E.O. No. 226 (Omnibus Investments Code of 1987), whichever comes earlier.
    - ▶ E.O. No. 70 is effective until 9 May 2017 only.
  2. Pending amendment of E.O. No 226, E.O. No. 22 (2017) extended for another year the duty-free incentive for importations of capital equipment, spare parts, and accessories.
    - ▶ E.O. No. 22 is effective until 18 May 2018 only.
- ▶ **Coverage and Conditions**
  1. Incentive: 0% duty on importations by BOI-registered new and expanding enterprises of capital equipment, spare parts, and accessories classified under Chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 86, 87, 89, 90, 91, and 96 of the Customs Modernization and Tariff Act (CMTA).
  2. Conditions for availment of 0% duty
    - ▶ The importation should be covered by a BOI Certificate of Authority

- ▶ The imported capital equipment, spare parts, and accessories are:
  - a. Not manufactured domestically in sufficient quantity, of comparable quality, and at reasonable prices, and
  - b. Reasonably needed and will be used exclusively by the enterprise in its registered activity.
- 3. Other terms:
  - ▶ The BOI-registered enterprise cannot sell, transfer, or dispose of the imported capital equipment, spare parts and accessories within 5 years from date of importation without prior BOI approval.
    1. Otherwise, the BOI-registered enterprise shall be solidarily liable to pay twice the amount of the foregone duty or PHP 500,000, whichever is higher.
  - ▶ **Others**
    1. E.O. No. 57 shall take effect immediately upon complete publication and shall be valid for 1 year or until a new law is passed amending E.O. 226, whichever comes earlier.
    2. The BOI, in coordination with the Tariff Commission, shall promulgate an IRR to implement E.O. No. 57.

*(Editor's Note: Published in The Manila Bulletin on 7 July 2018; p. 2)*

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DTI-BOI Administrative Order No. 01 promulgates the implementing rules of Executive Order No. 57, and provides, among others, the conditions and process of availing the 0% duty on importation of capital equipment, spare parts, and accessories for BOI-registered enterprises.

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### **DTI-BOI Administrative Order No. 01 series of 2018 dated 11 July 2018**

- ▶ **Background**
  1. E.O. No. 57 (2018) extended for another year the duty-free incentive for importations of BOI-registered entities of capital equipment, spare parts, and accessories classified under Chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 86, 87, 89, 90, 91, and 96 of the Customs Modernization and Tariff Act (CMTA).
- ▶ **Conditions for availing 0% duty**
  1. The imported capital equipment, spare parts, and accessories are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices.
    - a. In determining availability - It shall not be considered available in sufficient quantity if it cannot be made available to the enterprise at the time needed or within a reasonable period.
    - b. In determining comparability of quality - Test is whether the registered operation will be adversely affected or the resulting product will be of lower quality or the cost of operation will be increased.
    - c. In determining reasonableness of prices quoted by domestic manufacturers - BOI may be guided by the import cost, plus all applicable taxes and duties to be paid thereon, and a 15% mark-up.

2. The imported capital equipment, spare parts, and accessories are reasonably needed and will be used exclusively by the enterprise in its registered activity.
3. BOI approval is obtained before the shipment is released by the Bureau of Customs (BOC).
4. The rated capacity (if applicable) of the capital equipment, spare parts and accessories to be imported is within the registered capacity of the qualified enterprise.

▶ **Processes**

1. Securing BOI approval

- ▶ BOI may require the posting of a performance bond from the Government Service Insurance System (GSIS) equivalent to the duties waived.
  - a. In lieu of the bond, BOI may require a guarantee from the principal stockholder/s or other form of guarantee to ensure performance.
  - b. BOI may lift the performance bond posted in the following cases:
    - ▶ For domestic enterprises: Upon installation and utilization of the imported capital equipment for the registered activity.
    - ▶ For export enterprises: After a period of 1 year from exportation.
  - c. BOI may also waive the performance bond posted for qualified enterprises with good track records.
- ▶ To ensure proper tariff classification, applicant may submit or the BOI may require the submission of an advance ruling issued by the Tariff Commission (TC).
- ▶ BOI shall act on the application within 10 working days from its official acceptance.
  - a. If BOI approves, it shall issue a Certificate of Authority (CA)
    - ▶ The CA is valid for a period of 1 year from date of issuance, unless sooner invalidated or revoked (subject to effectivity of E.O. 57);
    - ▶ The CA is not transferrable.

2. Import procedures with Department of Finance (DOF) and BOC

- ▶ To release the shipment, the applicant shall submit to DOF the official import documents together with the CA.
- ▶ Upon issuance of the DOF endorsement, the applicant shall file an import entry declaration with the BOC together with the required supporting documents.
- ▶ The Customs Collector shall verify if the importation falls under the chapters provided under the E.O.

- ▶ In case of disparity on the tariff classification by the applicant and determination by the BOC, the dispute shall be submitted to TC for appropriate ruling:
  - a. If the classification still falls under the chapters covered in the E.O., the 0% duty rate shall apply, subject to amendment of the CA.
  - b. If the classification falls outside the chapters of the E.O., the shipment shall be released upon payment under protest of the appropriate duty rates or the posting of a cash bond or surety bond equivalent to the duties.
  - c. Rulings of the TC on tariff classification shall be binding upon BOC, unless the Secretary of Finance rules otherwise.

### 3. Post-importation monitoring

- ▶ The enterprise shall notify the BOI within 15 days from release of shipment, and submit copies of the Import Entry and Internal Revenue Declaration (IEIRD) issued by the BOC and other pertinent documents.
- ▶ The enterprise shall inform the BOI on the installation within 10 days thereafter.
- ▶ BOI may conduct an inspection at any reasonable time to verify whether (1) it has actually been installed, and (2) it is being used in its registered activity.
- ▶ Any sale, transfer, assignment, donation or other form of disposition within 5 years from the date of acquisition shall require prior approval of the BOI. Such approval shall be granted only if the disposition is made: (1) to another qualified enterprise, (2) for reason of technical obsolescence, (3) for purpose of replacement to improve and/or expand the operations of the qualified enterprise.
  - a. In case of violation, the enterprise and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of the duties foregone or PHP 500,000, whichever is higher.

#### ▶ Others

1. Violations - Any violation shall be meted with the applicable penalty under E.O. No. 226 - which may include (1) suspension of the available incentives within the taxable year, (2) confiscation of the imported equipment, (3) administrative sanctions, e.g. cancellation of the CA, automatic disapproval of pending/subsequent application for CA, or blacklisting.
2. Effectivity - The IRR shall take effect immediately upon complete publication and shall be valid for 1 year or until a new law is passed amending E.O. 226, whichever comes earlier.

*(Editor's Note: Published in The Philippine Star on 22 July 2018; B-8)*

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## SEC Issuance

SEC MC No. 9 provides the amendment to the Guidelines and Procedures on the Use of Corporate and Partnership Names.

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### **SEC Memorandum Circular No. 9 series of 2018 dated 18 July 2018**

In order to prevent the formation of bogus organizations, the use of the names of international organizations, such as “International Monetary Fund” (IMF) or “International Labour Organization” (ILO), as part of a corporate or partnership name is now expressly prohibited unless duly authorized or allowed by the SEC.

## BSP Issuance

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Circular No. 1009 provides for the Amendments to the Rules and Regulations on the Mandatory Credit Allocation for Agriculture and Agrarian Reform Credit.

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### **BSP Circular No. 1009 dated 18 July 2018**

- ▶ Subsection X341.5 of the Manual of Regulations for Banks (MORB) on allowable alternative modes of compliance to the mandatory agriculture and agrarian reform credit was amended to remove paid subscription of shares of stock in Quedan and Rural Credit Guarantee Corporation (Quedancor) as one of the eligible securities for 25% mandatory agriculture and agrarian reform credit under Item “a(1)”.
- ▶ Moreover, the following condition was added for eligibility of securities under Item “a(1)” : such securities can be purchased from the primary or secondary market provided that these are traded in a manner that allows for price discovery and are maintained in the books of a designated securities registry that is independent from the issuer.
- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

## Court Decisions

### **Philippine Ports Authority vs. The City of Davao, et. al.**

Supreme Court (Third Division) G.R. No. 190324, promulgated 6 June 2018

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When a case is pending before it on appeal, the Court of Tax Appeals has exclusive jurisdiction to enjoin the levy of taxes and the auction of the taxpayer’s real properties.

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#### **Facts:**

The Davao City Assessor issued a letter to the Philippine Ports Authority (PPA) for the assessment and collection of real property taxes for properties which the PPA administered at the Sasa Port. The PPA appealed the assessment to the Local Board of Assessment Appeals (LBAA).

While the case was pending, the City of Davao posted a notice of sale of delinquent real properties, including the properties subject of the case.

The LBAA dismissed the appeal for having been filed out of time and for lack of jurisdiction. The PPA elevated the case to the Central Board of Assessment Appeals (CBAA), which also denied the appeal. The PPA appealed to the Court of Tax Appeals (CTA).

The PPA also filed a petition for *certiorari* with the Court of Appeals (CA), claiming that the City of Davao's taxation of its properties and their subsequent auction and sale to satisfy the alleged tax liabilities were without or in excess of its jurisdiction. The PPA claimed that it did not receive the warrant of levy for the 3 properties which were sold to the City of Davao, or any notice that the properties were going to be auctioned. The PPA claimed it had no other speedy and adequate remedy except to file a petition for *certiorari* with the CA.

While the petition was pending with the CA, the CTA promulgated a decision in favor of the PPA, holding that the Sasa Port and its buildings are exempt from real estate taxes imposed by Davao City. The CTA decision became final and executory.

The CA dismissed PPA's petition stating that the CTA had exclusive jurisdiction to determine the matter and that the PPA should have applied for injunctive relief before the CTA. The CA also ruled that the petition was dismissible on the ground of forum shopping as it raised the same facts and issues as the PPA's appeal before the CTA.

**Issues:**

1. Did the CA have jurisdiction to issue the injunctive relief prayed for by the PPA?
2. Was the petition before the CA properly dismissed for forum shopping?

**Rulings:**

1. No, the CA did not have jurisdiction.

Section 7, paragraph (a)(5) of Republic Act (RA) No. 1125, as amended by RA 9282 gives exclusive appellate jurisdiction to the CTA to review, by appeal, decisions of the CBAA in the exercise of the CTA's appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.

The argument of PPA that the CA could have issued the relief prayed for due to the urgency of the need for injunctive relief does not remove the CBAA decision from the exclusive appellate jurisdiction of the CTA, especially since the PPA could have applied for injunctive relief with the CTA, which has the power to issue the preliminary injunction applied for.

Once a court acquires jurisdiction over a case, it has the power to issue all auxiliary writs necessary to maintain and exercise its jurisdiction to the exclusion of all other courts.

2. Yes, the CA petition was properly dismissed on the ground of forum shopping.

The rule on forum shopping is violated when a party institutes more than one action based on the same cause to increase its chances of obtaining a favorable decision.

Where a party institutes a case while another is pending, and where there is an identity of parties and an identity of rights asserted and relief prayed for such that judgment in one case amounts to *res judicata* in the other, the party is guilty of forum shopping.

PPA asserts that the right it asserted before the CA is its right to peacefully possess its ports free from the threat of losing its properties due to tax liabilities whereas the right asserted before the CTA is its right to be exempt from real property tax, as a government instrumentality.

PPA further argues that the reliefs sought for were not the same. Thus, it sought a temporary and immediate relief from the acts of the City of Davao from the CA and sought a final relief from payment of real property taxes on its ports from the CTA.

Whether or not the rights and reliefs asserted were different would be best determined by examining the appeal and petitions. The PPA only submitted its arguments without attaching its petition before the CA nor the appeal before the CTA. Hence, the Supreme Court cannot determine that the elements of forum shopping are absent.

### **Commissioner of Internal Revenue vs. Hoya Glass Disk Philippines, Inc.**

CTA (*En Banc*) Case No. 1473 and 1474 promulgated 4 June 2018

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A taxpayer cannot invoke the argument of invalidity of the waivers against the BIR to benefit from its own wrongdoing.

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#### **Facts:**

Petitioner CIR assessed Respondent Hoya Glass Disk Philippines, Inc. for alleged deficiency taxes for fiscal year 2005. In the course of the tax audit, Hoya Glass executed 5 waivers, effectively extending the BIR's right to assess until 30 June 2010. Upon denial of its protest and the issuance of a Final Decision on Disputed Assessment by the BIR, Hoya Glass filed a Petition for Review at the CTA.

At the CTA, Hoya Glass argued that the right of the BIR to assess has prescribed, claiming the waivers that extended the prescriptive period were defective as the signatory was not duly authorized.

The CIR invoked the presumption of the correctness of the assessments.

#### **Issue:**

Should Hoya Glass be allowed to benefit from the 5 defective waivers that it issued?

#### **Ruling:**

No. Hoya Glass cannot claim that the waivers were invalid in order to benefit from its own wrongdoing.

Similar to the recent ruling of the Supreme Court in the case of *CIR vs. Next Mobile, Inc.*, G.R. No. 212825 promulgated 7 December 2015, Hoya Glass allowed the CIR to rely on the waivers and did not raise any objection against their validity until the CIR assessed taxes and penalties. That constitutes estoppel on the part of Hoya Glass.

The BIR is similarly at fault. In relation to the 5 waivers it received from Hoya Glass, the BIR has failed five times to perform its duties in relation thereto. The BIR allowed Hoya Glass to submit, and it duly received, 5 defective waivers when it was its duty to exact compliance with RMO 20-90 and RDAO 05-01 and to follow the procedure dictated therein.

Nonetheless, as held by the Supreme Court in the *Next Mobile* case, since both parties are at fault or *in pari delicto*, the validity of the waivers must be upheld.

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### **Nikken Philippines, Inc. vs. Commissioner of Internal Revenue**

CTA (*En Banc*) Case No. 1569 promulgated 7 June 2018

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The absence of a LOA violates a taxpayer's right to due process. Any examination conducted or assessment issued, without a valid LOA, is void.

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#### **Facts:**

Respondent CIR assessed Petitioner Nikken Philippines, Inc. (NPI) for deficiency tax for taxable year 2006. NPI protested the assessment, which the BIR denied, prompting it to file a Petition for Review at the CTA.

The CTA Second Division ruled in BIR's favor and ordered NPI to pay deficiency income and withholding taxes, with penalties.

Aggrieved, NPI elevated the case to the CTA *En Banc*.

#### **Issue:**

Is the deficiency tax assessment issued by the BIR valid?

#### **Ruling:**

No. The assessment is void due to the absence of a Letter of Authority. While it was never raised at any stage of the proceedings, the CTA *En Banc* said it is not precluded to rule on the issue on the want of authority of revenue officers.

As provided under Revenue Memorandum Order 43-90, the revenue officer conducting the assessment must be duly authorized pursuant to an LOA issued by the Revenue Regional Director. In case of reassignment or transfer of cases to another revenue officer, a new LOA with a corresponding notation must be issued.

Citing the cases of *CIR vs. Sony Philippines, Inc.*, GR No. 178697 promulgated on 17 November 2010 and *Medicard Philippines, Inc. vs. CIR*, GR No. 222743 promulgated on 5 April 2017, the CTA held that the absence of an LOA violates a taxpayer's right to due process and any examination conducted or assessment issued is void.

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### **Commissioner of Internal Revenue vs. Mannasoft Technology Corporation**

CTA (*En Banc*) Case No. 1637 promulgated 19 June 2018

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A WDL constitutes an act of the CIR on "other matters" arising under the National Internal Revenue Code or other laws administered by the BIR, which may be the subject of an appeal with the CTA. A taxpayer must file an appeal with the CTA within 30 days from receipt of a WDL.

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#### **Facts:**

On 22 November 2011, Respondent Mannasoft Technology Corporation (MTC) received a Formal Assessment Notice (FAN) from Petitioner CIR for alleged deficiency taxes for taxable year 2008. On 22 December 2011, MTC filed a protest against the FAN. On 23 October 2012, the CIR issued a Warrant of Distraint and/or Levy (WDL), which was again protested by MTC on 29 October 2012.

On 25 November 2013, MTC received a letter from the CIR denying its request for reinvestigation. On 20 December 2013, MTC filed a Petition for Review with the CTA.

At the CTA, MTC alleged, among others, that it did not receive the FAN and that the security guard which received the same is not authorized. The CIR argued that the reckoning period to file an appeal at the CTA must be from the receipt of the WDL on 29 October 2012. Thus, Mannasoft had only until 28 November 2012 to file the Petition for Review.



The CTA Third Division ruled in favor of Mannasoft, voiding the FAN issued by the BIR for failure to comply with due process. It noted the person who received the assessment notices was not authorized and as such the Notice of Informal Conference, Preliminary Assessment Notice and Final Assessment Notice can never attain finality.

Aggrieved, the CIR appealed with the CTA *En Banc*.

**Issue:**

Does the CTA have jurisdiction to decide the case?

**Ruling:**

No, the CTA does not have jurisdiction over the case. The CTA *En Banc*, in reversing the ruling of the CTA Third Division, held that the WDL attained finality on 28 November 2012. Thus, the CTA has no jurisdiction to act upon the Petition for Review filed on 20 December 2013 which is beyond the reglementary period.

The WDL constitutes an act of the CIR on “other matters” arising under the National Internal Revenue Code or other laws administered by the BIR which may be the subject of an appeal with the CTA. However, MTC only had 30 days from its receipt of the WDL on 29 October 2012 or until 28 November 2012 within which to file its appeal with the CTA.

Citing the Supreme Court in the case of *Philippine Journalists Inc. vs. CIR, GR 162852 promulgated on 16 December 2004*, the 30-day period to file an appeal with the CTA is reckoned from the receipt of the WDL. As the right to appeal is not a natural right but merely a statutory privilege, it may be exercised only in accordance with law. Failure to do so leads to the loss of the right to appeal.

**Hard Rock Café (Makati City), Inc. vs. Commissioner of Internal Revenue**  
CTA (Third Division) Case No. 9279 promulgated 12 June 2018

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Hard Rock Café’s primary business activities are those of a restaurant and its live band performances are merely incidental to its main restaurant business.

An administrative issuance like a Revenue Memorandum Circular cannot override the law it merely seeks to interpret.

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**Facts:**

Respondent CIR assessed Petitioner Hard Rock Café (Makati City), Inc. for alleged deficiency percentage tax pursuant to Section 125(b) of the Tax Code, as implemented by Revenue Memorandum Circular 18-2010, which imposes amusement tax on cabarets, and night or day clubs.

The BIR took the position that Hard Rock Café is an “amusement place” within the definition of night and day club and cabaret, mainly because it serves liquor and food to its customers, with stage performances by musicians and dancers. It is also allegedly a venue for dancing which encourages prolonged stay resulting in more revenues from sales of food and drinks to its customers.

Hard Rock countered that it operates a themed restaurant and it does not fall under category of cabarets, and night or day clubs. While a live band may perform at certain times, no tickets are sold and the performance is for the entertainment of the diners. It also presented its Amended Articles of Incorporation, Audited Financial Statements, webpage, license to operate from the Makati City government, its menu and the services offerings and certification from the Department of Tourism to prove that it is a themed restaurant.

**Issues:**

1. Is Hard Rock Café subject to amusement tax under Section 125 (b) of the Tax Code?
2. Did RMC 18-2010 validly expand the definition of cabarets, and night and day clubs?

**Rulings:**

1. No. Hard Rock Café operates as a restaurant, chiefly serving food and drinks to customers, which is consistent with its Articles of Incorporation. The Makati City government also issued a license for Hard Rock Café to operate as a restaurant.

The evidence show that the actual business activities are those of a restaurant, with the entertainment usually by the performance of live bands, which is merely incidental to its main business to encourage or attract customers with the end in view of promoting sales of food and drinks served in the restaurant. No tickets were sold for these performances.

2. No. The RMC unilaterally changed and expanded the scope of the terms cabarets and night and day clubs as defined in the Tax Code and existing jurisprudence to include videoke and karaoke bars, music lounges, and the like for purposes of imposing amusement tax. While RMCs are considered administrative rulings, they are actually opinions of the CIR. The CTA ruled that an administrative issuance cannot override the law it merely seeks to interpret.

**DGA Ilijan B.V. vs. Commissioner of Internal Revenue**

CTA (First Division) Case No. 8911 promulgated 28 June 2018

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Failure to file a TTRA does not operate to divest a taxpayer's entitlement to relief under a tax treaty. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements.

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**Facts:**

Petitioner DGA Ilijan B.V. filed a claim for refund of erroneously paid final withholding tax on dividends declared and paid in 2012.

Prior to the lodging of the refund claim, DGA Ilijan filed a Tax Treaty Relief Application (TTRA) with the BIR to confirm that the dividend income payable by TeaM Diamond Holding Corporation is subject to the 10% preferential rate under the Philippines-Netherlands Tax Treaty. DGA Ilijan reported and paid the 10% withholding tax on 8 February 2012. The BIR's International Tax Affairs Division subsequently denied the TTRA on the ground that the application was not filed before the dividend payment, in violation of Revenue Memorandum Order 72-2010. Pursuant to the ruling, DGA Ilijan paid the additional 5% final withholding tax plus interest and penalties.

The Supreme Court, on 19 August 2013, issued its landmark decision in *Deutsche Bank AG Manila Branch vs. CIR, GR No. 188550*, where it was held that the period for the application for the availment of tax treaty relief should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty.

On this basis, DGA Ilijan sought for the refund of the excess FWT paid. Due to the BIR's inaction, it filed a Petition for Review with the CTA.

**Issue:**

Does the failure to file a TTRA before the date of transaction deprive the entitlement to treaty relief?

**Ruling:**

No. Reiterating the ruling in the *Deutsche Bank* case, the CTA held that failure to file a TTRA does not operate to divest a taxpayer from entitlement to relief under a tax treaty. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements.

Prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatments under Philippine tax treaties. As such, DGA Ilijan is entitled to a refund of the 5% FWT since the dividends were subjected to 15% FWT instead of the 10% preferential tax rate.

**Lorenzo Shipping Corporation vs. Commissioner of Internal Revenue**

CTA (Third Division) Case No. 8694 promulgated 28 June 2018

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An assessment is void if the BIR fails to indicate a definite period for payment in the Assessment Notices. The lack of a definite period for payment of the taxes assessed negates the BIR's demand for payment.

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**Facts:**

Respondent CIR assessed Petitioner Lorenzo Shipping Corporation (LSC) for alleged deficiency taxes covering taxable year 2008. On 18 April 2013, LSC received from the CIR an undated Final Assessment Notice (FAN) assessing deficiency income tax, VAT, withholding tax on compensation, expanded withholding tax, fringe benefits tax and documentary stamp tax.

On 17 May 2013, LSC filed a protest against the FAN. On 15 July 2013, LSC received from the CIR a letter denying its protest. LSC filed the instant Petition for Review with the CTA on 13 August 2013.

At the CTA, the CIR argued that the assessments have become final, executory and demandable. LSC, on the other hand, insisted that it timely filed its protest.

**Issue:**

Was there a valid demand for payment of the deficiency taxes from the BIR?

**Ruling:**

No, there was no valid demand for payment of deficiency taxes from the BIR. Quoting the Supreme Court's ruling in *CIR vs. Pascor Realty and Development Corporation, GR No. 128315 promulgated on 29 June 1999*, the CTA held that an assessment should contain not only a computation of tax liabilities but also a demand for payment within a prescribed period.

An assessment is a notice to the effect that the amount therein stated is due as a tax and a demand for the payment thereof. It fixes and determines the tax liability of a taxpayer. The payment date is indispensable as it determines the accrual of penalties, surcharges and interest.

In this case, the BIR requested LSC to pay the deficiency taxes "within the time shown in the enclosed assessment notice." The audit result/assessment notices referred to in the FAN does not indicate any definite period or a date certain within which LSC must pay the alleged deficiency assessment. The due dates on the audit result/assessment notices for all the assessment items were left blank. The lack of a definite period for payment negates the BIR's demand for payment.

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