

Tax Bulletin

August 2018



Highlights

BIR Issuances

- ▶ Revenue Regulation (RR) No. 18-2018 amends certain provisions of RR No. 8-2016 in relation to the venue and requirements for the processing of applications for tax clearance for bidding purposes. **(Page 3)**
- ▶ RR No. 19-2018 amends the transitory provision of RR No. 13-2018 by prescribing a deadline for the use of invoices or receipts of previously registered VAT taxpayers who are now non-VAT taxpayers pursuant to Section 84 of the TRAIN Law. **(Page 4)**
- ▶ RR No. 20-2018 prescribes the implementing rules and guidelines on the imposition of excise tax on sweetened beverages pursuant to the TRAIN Law. **(Page 4)**
- ▶ Revenue Memorandum Order (RMO) No. 34-2018 amends the provisions of RMO No. 32-2018 in relation to the thresholds and prescribing additional policies and procedures for the issuance of Electronic Letters of Authority (eLAs) for office audit. **(Page 11)**

Customs Updates

- ▶ Customs Administrative Order (CAO) No. 1-2018 provides for the Amended Rules on Consolidated Shipment of "Balikbayan Boxes." **(Page 11)**
- ▶ Executive Order (EO) No. 61 provides for the Modification of the Rates of Duty on certain Imported Articles in order to implement the Philippine Tariff Commitments pursuant to the Free Trade Agreement (FTA) between the European Free Trade Association (EFTA) States and the Philippines (PH). **(Page 14)**

SEC Issuance and Opinions

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BSP Issuances

- ▶ Circular No. 1010 provides for Additional Requirements for the Issuance of Bonds and Commercial Papers. **(Page 17)**
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Court Decisions

- ▶ The tax exemption under Section 15 of the Rural Bank Act of 1992 is only for 5 years and may not be extended for another 5 years merely by the expedient recourse of having single rural banks undergo a process of consolidation. **(Page 19)**

- ▶ A mere finding of unaccounted source of cash, arising from the difference between the expense payments reported in the Alphabetical and the Financial Statements, does not lead to undeclared income. Even if this translates into income, the same will be offset by recording the expense as a deduction for income tax purposes.

Funds received by the branch from its Home Office should not be treated as loans subject to DST. The branch and its Home Office are one and the same entity and the same entity cannot be a creditor and debtor of itself. **(Page 20)**

- ▶ A disallowance of 50% of the taxpayer's claimed deduction is valid if the BIR shows that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence. **(Page 21)**

BIR Issuances

RR No. 18-2018 amends certain provisions of RR No. 8-2016 in relation to the venue and requirements for the processing of applications for tax clearance for bidding purposes.

RR No. 18-2018 dated 5 June 2018

Items 4.4.1 and 4.4.2 of RR No. 8-2016 are amended as follows:

- ▶ All applications for the issuance of a tax clearance for bidding purposes shall be manually filed with the following BIR offices:
 1. Collection Division of the Revenue Regional Office where the taxpayer is registered; or
 2. Concerned office of the Large Taxpayers Service for large taxpayers.
- ▶ For taxpayers with previously issued tax clearances for bidding purposes, the new tax clearance shall only be issued if they are found to be regular electronic Filing and Payment System (eFPS) users from enrollment up to the filing of the application.
- ▶ However, new applicants need not be regular users of eFPS and may submit their latest income tax and business tax returns not filed and paid through the BIR's eFPS.
- ▶ The regulations shall take effect 15 days after publication in a newspaper of general circulation.

(Editor's Note: RR No. 18-2018 was published in the Manila Bulletin on 6 August 2018)

RR No. 19-2018 amends the transitory provision of RR No. 13-2018 by prescribing a deadline for the use of invoices or receipts of previously registered VAT taxpayers who are now non-VAT taxpayers pursuant to Section 84 of the TRAIN Law.

RR No. 19-2018 dated 9 August 2018

Section 13 (2) of RR No. 13-2018 is amended as follows:

- ▶ A VAT-registered taxpayer who opted to register as a non-VAT taxpayer pursuant to the TRAIN Law may continue using a number of its unused VAT invoices or receipts, as he or she may determine and with the approval of the appropriate BIR Office, provided that 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 of the invoice or receipt.
- ▶ The use of these receipts or invoices shall be allowed only until a new set of registered non-VAT invoices or receipts is printed or received by the taxpayer or until 31 August 2018, whichever comes first.
- ▶ On the same day of receipt of the newly-printed registered non-VAT invoices or receipts, the taxpayer shall submit a new inventory list of all unused previously-stamped invoices or receipts and surrender such unused invoices or receipts for cancellation.

(Editor’s Note: RR No. 19-2018 was published in the Manila Bulletin on 13 August 2018)

RR No. 20-2018 prescribes the implementing rules and guidelines on the imposition of excise tax on sweetened beverages pursuant to the TRAIN Law.

RR No. 20-2018 dated 25 July 2018

- ▶ **Sweetened beverages** shall refer to non-alcoholic beverages of any constitution (liquid, powder, or concentrates) that are pre-packaged and sealed in accordance with the Food and Drug Administration (FDA) standards that contain caloric and/or non-caloric sweeteners added by the manufacturers, and shall include, but not limited to the following, as described in the Food Category System from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest), as adopted by the FDA:
 1. Sweetened juice drinks
 2. Sweetened tea
 3. All carbonated beverages
 4. Flavored water
 5. Energy and sports drinks
 6. Other powdered drinks not classified as milk, juice, tea, and coffee
 7. Cereal and grain beverages
 8. Other non-alcoholic beverages that contain added sugar
- ▶ **Caloric sweetener** shall refer to a substance that is sweet and includes sucrose, fructose, and glucose that produces a certain sweetness.

- ▶ **High fructose corn syrup (HFCS)** shall refer to a sweet saccharide mixture containing fructose and glucose which is derived from corn and added to provide sweetness to beverages, and which includes other similar fructose syrup preparations.
- ▶ **Non-caloric sweetener** shall refer to a substance that is artificially or chemically processed that produces a certain sweetness and can be directly added to beverages, such as aspartame, sucralose, saccharin, acesulfame potassium, neotame, cyclamates and other non-nutritive sweeteners approved by the Codex Alimentarius and adopted by the FDA.
- ▶ Effective 1 January 2018, a specific tax on sweetened beverages shall be levied, assessed and collected as follows:

Product Description	Tax Rate (per liter of volume capacity)
Using purely caloric sweeteners, and purely non-caloric sweeteners, or a mix of caloric and non-caloric sweeteners	P6.00
Using purely high fructose corn syrup or in combination with any caloric or non-caloric sweetener	P12.00
Using purely coconut sap sugar* and purely steviol glycosides**	Exempt

* based on specifications of the Philippine National Standards/ Bureau of Agricultural and Fisheries Products Standards

** based on Joint FAO/ WHO Expert Committee on Food Additives specifications

- ▶ The following are liable for the payment of excise tax on sweetened beverages imposed under Section 150-B, Chapter VI, Title VI of the Tax Code, as amended:

Locally Manufactured Sweetened Beverages	<ul style="list-style-type: none"> ▶ All manufacturers ▶ Persons having possession of domestically manufactured sweetened beverages removed from the place of production, without payment of the tax
Imported Sweetened Beverages	<ul style="list-style-type: none"> ▶ All owners or importers ▶ Persons having possession of imported sweetened beverages removed from customs custody, without payment of the tax

1. The purchaser/transferee/owner/possessor shall be considered as the importer and shall be liable for the excise tax due on the importation of sweetened beverages that are:
 - ▶ brought or imported tax-free into the country by persons, entities, or agencies exempt from tax and are subsequently sold, transferred, or exchanged in the Philippines to non-exempt persons or entities

- ▶ intended for exclusive use within the freeport zones, but introduced and re-introduced into Philippine customs territory
2. Toll manufacturers, bottlers and other sub-contractors of manufacturers or importers of sweetened beverages shall not be subject to excise tax.
- ▶ The time, place and manner of filing of tax returns and payment of excise tax on sweetened beverages shall be as follows:

Locally Manufactured Sweetened Beverages	<ul style="list-style-type: none"> ▶ A separate BIR Form No. 2200-S shall be filed for each place of production with the concerned Revenue District Office (RDO) where the Head Office is duly registered, and the excise tax shall be paid before the removal of domestically manufactured sweetened beverages from the place of production.
Imported Sweetened Beverages	<ul style="list-style-type: none"> ▶ All importers or traders of excisable sweetened beverages, whether raw materials of any constitution or finished goods, shall apply for an Authority to Release Imported Goods (ATRIG) with the Excise LT Regulatory Division (ELTRD), BIR National Office, and pay the excise tax based on equivalent yield in liters of volume capacity of the imported articles. ▶ The excise tax on imported finished goods shall be paid before release from customs custody. ▶ For imported raw materials that will be used in the production of excisable sweetened beverages, the excise tax due shall be paid before the removal of the finished goods from the place of production.

- ▶ The following products, as described in the food category system from Codex Alimentarius Food Category Descriptors (Codex Stan 192-1995, Rev 2017 or the latest) as adopted by the FDA, are not subject to the excise tax imposed under Section 150-B of the Tax Code:
 1. All milk products, including plain milk, infant formula milk, follow-on milk, growing up milk, powdered milk, ready-to-drink milk, flavored milk, and fermented milk.
 - ▶ Milk products shall refer to those obtained by processing of milk, which may contain food additives, and other ingredients functionally necessary for the processing.
 - ▶ Dairy products are not synonymous with milk products.
 - ▶ The following Codex Standards for various milk products are adopted:
 - a. Milk powder and cream powder (Codex Stan 207-1999)
 - b. Fermented milks (Codex Stan 243-2003)

- c. Blend of evaporated skimmed milk and vegetable fat (Codex Stan 250-2006)
 - d. Blend of skimmed milk and vegetable fat in powdered form (Codex Stan 251-2006)
 - e. Blend of sweetened condensed skimmed milk and vegetable fat (Codex Stan 252-2006)
 - f. Evaporated milks (Codex Stan 281-1971)
 - g. Sweetened condensed milks (Codex Stan 282-1971)
2. Soymilk and flavored soymilk, which shall refer to products, the main ingredients of which are the soybean and/or soy derivatives (e.g. soybean flour, soybean concentrates, soybean isolates or defatted soya) and water, which are produced without fermentation process.
 3. 100% natural fruit juices, which are original liquid resulting from the pressing of fruit, the liquid resulting from the reconstitution of natural fruit juice concentrate, or those resulting from the restoration of water to dehydrated natural fruit juice that do not have added sugar or caloric sweetener, provided that if there is sugar or sweetener added at any amount, the product shall be considered excisable, depending on the kind of sweetener added and its corresponding rate.
 4. 100% natural vegetable juices, which are original liquid resulting from the pressing of vegetables, the liquid resulting from the reconstitution of natural vegetable juice concentrate, or those resulting from the restoration of water to dehydrated natural vegetable juice that do not have added sugar or caloric sweetener, provided that if there is sugar or sweetener added at any amount, the product shall be considered excisable depending on the kind of sweetener added and its corresponding rate.
 5. Meal Replacement and Medically Indicated Beverages, which refer to any liquid or powder drink or product for oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or as a source of necessary nutrition used due to a medical condition and an oral electrolyte solution for infants and children formulated to prevent dehydration due to illness.
 6. Ground coffee, instant soluble coffee and pre-packaged powdered coffee products.
- ▶ Manufacturers of sweetened beverages subject to tax shall not be allowed to transfer or remove raw materials from the place of production, unless such materials are intended for further processing at other registered production or toll-manufacturing plants, and the transfer is accompanied by an Excise Taxpayer's Removal Declaration (ETRD).
 1. Raw materials shall refer to the chief substance or ingredient of any constitution for the production of sweetened beverages.
 2. Packaging materials and supplies are not considered as raw materials.

3. Raw materials that are intended for further processing to produce sweetened beverages are not subject to excise tax while those that do not need further processing, such as only for repacking, shall be subject to excise tax.
- ▶ Semi-processed goods, such as syrups, puree, concentrates sold to fast food chains, when mixed with carbonated water and dispensed through soda vending or juice dispensing machines, shall be considered as finished goods subject to excise tax.
 - ▶ The manufacturer shall pay the excise tax on sweetened beverages that are produced or manufactured and subsequently consumed within the place of production.
 - ▶ Sweetened beverages intended for exports may be removed from the place of production without the prepayment of excise tax, subject to the following conditions:
 1. A permit per shipment shall be secured from the BIR Office where the manufacturer is registered or required to be registered as an excise taxpayer before the product is removed from the place of production.
 2. A surety bond has been posted to guarantee payment of excise tax, which is otherwise due on such removal.
 3. The products removed from the place of production shall be directly transported and loaded aboard the international shipping vessel or carrier, and shipped directly to the foreign country of destination, without returning to the Philippines.
 4. Proof of exportation shall be submitted within 30 days (which is extendible one time, for a maximum of 30 days) from the date of actual date of exportation.
 5. The prescribed phrase "EXPORTED FROM THE PHILIPPINES" shall be printed on each label that is attached or affixed on the primary container in a recognizable and readable manner.
 - ▶ A manufacturer or importer of sweetened beverages shall apply for a permit to engage in business as a manufacturer or importer from the ELTRD, BIR National Office, where such manufacturer or importer is required to register as an excise taxpayer upon submission of the following documents:
 1. Letter-request addressed to the Chief of the ELTRD;
 2. Importer or Manufacturer's Surety Bond, with the amount of P100,000.00 as initial coverage, subject to adjustment under certain conditions;
 3. SEC Certificate of Registration, including the Articles of Incorporation or Partnership and By-Laws and Certificate of Registration from the Department of Trade and Industry, for individuals;

4. Mayor's Permit, as required by the Local Government Code;
 5. BIR Certificate of Registration (with latest Registration Fee BIR Form 0605);
 6. Copy of latest Income Tax Return duly filed and received by the BIR, if applicable;
 7. Location Map and Plat & Plan of the Warehouse, blueprint for manufacturer; and
 8. Latest approved Certificate of Product Registration issued by the FDA on every product, brand name manufactured or imported.
- ▶ In cases of tolling, bottling and other sub-contracting agreements by manufacturer, importer or owner of sweetened beverages with other persons or entities, the following rules shall be strictly observed:
1. A permit to operate as a sub-contractor must be secured from the ELTRD by any person who is engaged as a sub-contractor to manufacture sweetened beverage or undertake any part of the manufacturing process, such as bottling, packaging, etc.
 2. The newly registered sub-contractor or toller shall install and maintain Official Register Books (ORBs), as well as prepare and submit them, using a format prescribed by the BIR.
 3. For sub-contractors already registered, a separate ORB must be installed and maintained.
 4. Separate applications for permits shall be filed by the manufacturer, importer or owner for each brand of sweetened beverages prior to the initial production of the brand.
 5. In case the basic raw materials shall be supplied by the manufacturer, importer or owner of the brand, the same shall be directly transported to and unloaded in the premises of the sub-contractor from the production premises, warehouse of the manufacturer, importer or owner of the brand or from the custom's custody, in case of importation.
 6. The dedicated storage areas, storage tank and line of production used for this purpose shall be clearly identified as depicted in the supporting plant layout.
 7. In case the BIR cannot provide a revenue officer to monitor the operations of the sub-contractor, an advance production schedule, including the documents prescribed under the permit, shall be submitted to the Excise LT Field Operations Division (ELTFOD), prior to every scheduled production run.
 8. A separate set of ETRDs or any form prescribed by the BIR shall be issued exclusively for activity covered by the sub-contracting agreement.

- ▶ The following administrative requirements must be complied with:
 1. An application, together with prescribed documentary requirements, shall be filed with the ELTRD prior to the initial manufacture for public distribution or importation of existing and new brands and its variants.
 2. All applications for Electronic Authority to Release Imported Goods (eATRIG) for excise tax purposes shall be done online and processed in the ELTRD, BIR National Office.
 3. On removals of sweetened beverages, BIR Form 2200-S (Excise Tax Returns) and BIR Form 2299 (Excise Taxpayer's Removal Declaration) must be used.
 4. ORBs and other forms or records that may be required by the BIR must be kept within the place of production/ importer's warehouse and shall, at all times, be made available for inspection by duly authorized revenue officers.
 5. Manufacturers and importers of sweetened beverages shall post a surety bond.

- ▶ The following penalties shall be imposed on violations of these regulations as described below:
 1. Summary cancellation or withdrawal of the permit to engage in business as manufacturer of sweetened beverages shall be imposed on any manufacturer who knowingly misdeclares or misrepresents his sworn statement, or any pertinent data or information.
 2. Any corporation, association or partnership liable for any acts or omissions in violation of the provisions of Section 150-B of the Tax Code shall be fined treble the aggregate amount of deficiency taxes, surcharges and interest, which may be assessed pursuant to the same Section.
 3. Any person liable for any acts or omissions prohibited under Section 150-B of the Tax Code shall be criminally liable and penalized under Section 254 of the Tax Code.
 4. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.
 5. If the offender is not a Filipino citizen, he shall be deported immediately after serving the sentence without further proceedings for deportation.

- ▶ The following transitory provisions shall apply:
 1. Taxpayers engaged in manufacturing and importation of sweetened beverages shall update their Certificate of Registration, using BIR Form No. 1905, not later than 31 August 2018 to add the excise tax type "XB"
 2. The application to update the BIR registration shall be filed with the LT Assistance Division or ELTRD for large taxpayers or with the RDO where they are registered for non-large taxpayers.
 3. All manufacturers and importers of sweetened beverages are required to:
 - ▶ Secure a permit to operate as Manufacturer, Toll Manufacturer or Importer of Sweetened Beverages whether registered as large taxpayers or non-large taxpayers from the ELTRD not later than 31 August 2018.

- ▶ Secure an ATRIG from the ELTRD before release of shipment from customs custody.
 - ▶ Requisition from ELTFOD, in writing, the required forms to be used in supporting the removals of the excisable products.
4. The following documentary requirements shall be submitted to ELTRD, BIR National Office not later than 31 August 2018:
- ▶ Notarized summary list of existing and new brands of locally manufactured and imported brands of sweetened beverages for registration purposes.
 - ▶ Manufacturer's sworn statement on all existing and new locally manufactured brands.
 - ▶ Notarized sworn declarations and inventory list as of 31 December 2017.
- ▶ These regulations are effective beginning 1 January 2018.

(Editor's Note: RR No. 20-2018 was published in the Manila Bulletin on 24 August 2018)

RMO No. 34-2018 amends the provisions of RMO No. 32-2018 in relation to the thresholds and prescribing additional policies and procedures for the issuance of eLAs for office audit.

RMO No. 34-2018 dated 24 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:

Area	Gross Sales/Receipts
Revenue District Offices (RDOs) under Revenue Region (RR) Nos. 5, 6 (except RDO No. 36 - Puerto Princesa), 7 and 8	P10,000,000.00 and below
RDOs under RR Nos. 1, 4, 9A (except RDO Nos. 35 - Romblon, 37 - Occidental Mindoro and 63 - Oriental Mindoro), 9B (except RDO No. 62 - Marinduque), 11, 12, 13, 16 and 19	P5,000,000.00 and below
RDO No. 36	P3,000,000.00 and below
RDOs under RR Nos. 2, 3, 10, 14, 15, 17 and 18, including RDO Nos. 35, 37, 62 and 63	P2,000,000.00 and below

- ▶ Electronic Letters of Authority (eLAs) shall be issued only to taxpayers who have not been audited/ investigated for the last 3 years.

Customs Updates

CAO No. 1-2018 provides for the Amended Rules on Consolidated Shipment of "Balikbayan Boxes."

CAO No. 1-2018 dated 9 August 2018

- ▶ This CAO specifically supersedes CAO No. 5-2016 on "Consolidated Shipments of Duty and Tax-Free "Balikbayan Boxes".

- ▶ The CAO covers consolidated shipments of Balikbayan Boxes entered through any port of entry sent to families by “Qualified Filipinos While Abroad” (QFWA) which may be entitled to duty and tax exemption pursuant to Section 800 (g) of the Customs Modernization and Tariff Act (CMTA).

- ▶ Salient Provisions
 1. “Balikbayan Box” shall refer to a corrugated box or other container or receptacle up to a maximum volume of 200,000 gross cubic centimeters without regard to the shape of the container or receptacle.

 2. For purposes of duty and tax exemption, it should contain only personal and household effects that shall neither be in commercial quantities nor intended for barter, sale or for hire sent by a QFWA, often shipped by freight forwarders specializing in Balikbayan Boxes by sea or air.

 3. QFWA is a collective term used to refer to:
 - ▶ Non-Resident Filipinos who have established permanent residency abroad but have retained Filipino citizenship;

 - ▶ Overseas Filipino Workers (OFW) who are holders of valid passports issued by the Department of Foreign Affairs (DFA) and certified by the Department of Labor and Employment (DOLE) or the Philippine Overseas Employment Administration (POEA) for overseas employment purposes. It also includes Filipino working abroad under job contracts which do not require DOLE or POEA certification; and

 - ▶ Resident Filipinos citizens who temporarily stay abroad (holders of student, investor’s, tourist and similar visas).

 4. QFWA are allowed to send to their Families or Relatives in the Philippines (up to fourth civil degree of consanguinity or affinity) Balikbayan Boxes exempt from duties and taxes, up to 3 times in a calendar year, the total Free Carrier (FCA) value of which shall not exceed Php 150,000.00.

 5. The QFWA is required to submit documents to show his citizenship, full name, date and place of birth. In lieu of submitting a copy of his passport, he may also submit any of the following:
 - ▶ Permanent Resident ID or equivalent document;

 - ▶ Overseas Employment Certificate/ Overseas Workers Welfare Administration (OWWA) Card;

 - ▶ Work Permit;

 - ▶ DOLE Unified Government ID; or

 - ▶ Any equivalent document (except Birth Certificate) such as any Philippine government issued ID which states the Filipino citizenship and any foreign government issued ID that show full name, date and place of birth and Filipino citizenship.

6. Amendment of the sanctions for certain acts violating the provisions of the CAO:

Violation	CAO No. 5-2016	CAO No. 1-2018																										
The QFWA and the Deconsolidator and all other participants who use the Balikbayan Box duty and tax-exempt privilege as conduit for smuggling or other fraud against customs.	Payment of Php 300,000.00 as administrative fine	Based on the schedule of fines under Section 1401 of the CMTA depending on the appraised value of the goods unlawfully imported, as follows:																										
		<table border="1"> <thead> <tr> <th rowspan="2">Appraised Value*</th> <th colspan="2">Fine (in Php)</th> </tr> <tr> <th>Not less than</th> <th>Not exceeding</th> </tr> </thead> <tbody> <tr> <td>Php 250,000 and below</td> <td>25,000</td> <td>75,000</td> </tr> <tr> <td>More than Php 250,000 up to Php 500,000</td> <td>75,000</td> <td>150,000</td> </tr> <tr> <td>More than Php 500,000 up to Php 1 Million</td> <td>150,000</td> <td>300,000</td> </tr> <tr> <td>More than Php 1 Million up to Php 5 Million</td> <td>300,000</td> <td>1,500,000</td> </tr> <tr> <td>More than Php 5 Million to Php 50 Million</td> <td>1,500,000</td> <td>15,000,000</td> </tr> <tr> <td>More than Php 50 Million to Php 200 Million</td> <td>15,000,000</td> <td>50,000,000</td> </tr> <tr> <td>More than Php 200 Million</td> <td>50,000,000</td> <td></td> </tr> </tbody> </table>	Appraised Value*	Fine (in Php)		Not less than	Not exceeding	Php 250,000 and below	25,000	75,000	More than Php 250,000 up to Php 500,000	75,000	150,000	More than Php 500,000 up to Php 1 Million	150,000	300,000	More than Php 1 Million up to Php 5 Million	300,000	1,500,000	More than Php 5 Million to Php 50 Million	1,500,000	15,000,000	More than Php 50 Million to Php 200 Million	15,000,000	50,000,000	More than Php 200 Million	50,000,000	
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<i>*To be determined in the manner prescribed under the CMTA, including duties and taxes, of the goods unlawfully imported.</i>																												
Criminal prosecution under Title XIV of the CMTA																												
Cancellation of registration as importer or broker, as may be applicable	Cancellation of registration as Deconsolidator or Freight Forwarder acting as Deconsolidator, as may be applicable																											

- ▶ The imposition of the above penalties shall be on a per House Bill of Lading (HBL) or House Airway bill (HAWB) basis and without prejudice to the action of the Fair Trade Enforcement Bureau (FTEB-DTI) and Civil Aeronautics Board (CAB) to blacklist erring deconsolidator pursuant to its own rules.
- ▶ This CAO shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of general circulation.

(Editor's Note: CAO No. 1-2018 was published in Manila Times on 17 August 2018)

EO No. 61 provides for the Modification of the Rates of Duty on certain Imported Articles in order to implement the Philippine Tariff Commitments pursuant to the FTA between the EFTA States and the Philippines.

Executive Order (EO) No. 61 dated 2 August 2018

- ▶ The FTA between the EFTA and the PH (“PH-EFTA FTA”) was signed on 26 April 2016 in Bern, Switzerland. This was ratified by the President on 8 December 2017 and was concurred by the Senate through Senate Resolution No. 93 on 5 March 2018.
- ▶ The PH-EFTA FTA covers trade in goods, services, investment, government procurement, intellectual property rights, competition and sustainable development, and applies to the trade and economic relations between the Philippines and the individual EFTA states.
- ▶ The PH-EFTA FTA provides that the Philippines shall, upon the FTA’s entry into force, eliminate import duties and charges having equivalent effect on import duties on non-agricultural goods originating from an EFTA State, except as otherwise provided for in the Philippine Schedule of Tariff Commitments (PSTC) on Non-Agricultural products.
- ▶ The PH-EFTA FTA also provides that both Parties shall grant tariff concessions for agricultural goods originating from either Party as described in the PSTC on agricultural products subject to the submission of an Origin Declaration, in compliance with the Rules of Origin under the PH-EFTA-FTA.
- ▶ This Order provides for the PSTC prescribing the rates of import duties on all articles listed therein originating from EFTA states. The lower duty between the Most Favored Nation (MFN) rate and the applicable duty set out in the PSTC, at the time of importation, shall prevail.
- ▶ This Order shall take effect immediately after its complete publication.

(Editor’s Note: EO No. 61 was published in Manila Bulletin on 10 August 2018)

SEC Issuance and Opinions

SEC MC No. 10 provides for the rules and regulations on determining trust funds as qualified buyers under the SRC.

SEC Memorandum Circular No. 10 series of 2018 dated 6 August 2018

The following are the qualifications of a trust fund to be considered as qualified buyer under the SRC:

- ▶ A fund, under a discretionary or non-discretionary arrangement, must be managed by persons authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in trust functions or investment management activities.
- ▶ In addition, a fund under a non-discretionary arrangement shall be:
 1. managed by an entity that strictly adheres to the BSP standards in the administration of funds; and
 2. the beneficial owner/s or principal/s shall possess the qualifications on financial capacity and sophistication under 2015 SRC Rules 10.1.11.1 for natural persons, and 10.1.11.2 for juridical persons.

Unit investment trust funds that are established in accordance with the BSP rules and regulations are deemed qualified buyers.

(Editor’s Note: Published in the Manila Standard & the Philippine Daily Inquirer on 18 August 2018)

SEC-OGC Opinion No. 18-12 dated 6 August 2018

A religious corporation is allowed to have a perpetual life unless its articles of incorporation provides for a corporate term.

Facts:

N Co. is a religious corporation. It is registered with the SEC in 1964 with no corporate term stipulated in its Articles of Incorporation (AOI). It amended its AOI and included a provision limiting its corporate life to 50 years from incorporation.

Issue:

When will the term of N Co. expire?

Held:

The term of N Co. has already expired in 2014 or 50 years from its incorporation in 1964. The Corporation Code does not provide for a term of existence of religious corporations. However, while perpetual term is allowed, if the AOI of the religious corporation stipulates to limit its term of existence to a fixed period, such stipulation should be followed.

SEC-OGC Opinion No. 18-13 dated 9 August 2018

A chairman is not disqualified from becoming an independent director of the same corporation.

Facts:

S Co. has an independent director who concurrently serves as its chairman.

Issue:

Is a chairman disqualified from becoming an independent director of the same company?

Held:

No. SEC Memorandum Circular No. 16 s.2004 disqualifies a person who becomes an officer or employee of a corporation from becoming an independent director. A chairman is generally not considered an officer nor hold an executive position because he is not involved in day-to-day operations of a company. He is not considered an officer of the company. Thus, an independent director may become the chairman of the same corporation.

SEC-OGC Opinion No. 18-14 dated 24 August 2018

A company that has 40% foreign equity may invest in a restaurant business if it has a minimum paid-up capital of at least US\$2.5M.

Facts:

R Co. is a foreign corporation that intends to invest in a restaurant business in the Philippines by entering into a joint venture with Filipinos. The joint venture will be 60% Filipino-owned and 40% owned by R Co.

Issue:

May a corporation with 40% foreign equity invest in a restaurant business under the Retail Trade Liberalization Act (RTLTA)?

Held:

Yes. Sec. 5 of the RTLA allows foreign equity participation in a restaurant business of up to 100% if the enterprise has a minimum paid-up capital of at least US\$2.5M.

SEC-OGC Opinion No. 18-15 dated 24 August 2018

An ice refrigeration plant that indiscriminately offers its services to the public is considered a public utility.

Facts:

G Co. is engaged in the “business of operation of cold storage facilities, cold logistics and distribution services, value added cold processing and related services” as provided under its Articles of Incorporation (AOI). It owns lands and warehouses in the Philippines.

Issue:

Is G Co. a public utility?

Held:

Yes. Public utility has been used interchangeably with the term “public service.” Under the Public Service Act, public service includes the ownership or operation of an “ice plant, ice refrigeration plant.” An ice-refrigeration plant is considered a public utility if the enterprise is devoted to the public or its services are sold to the public for compensation and is not organized solely for particular persons.

The purpose clause of G Co. is couched in general terms. It may be inferred that it allows servicing the public indiscriminately since the purpose clause has no qualification. Thus, it is engaged in the operation of a public utility.

SEC-OGC Opinion No. 18-16 dated 24 August 2018

A foreign national is prohibited from being elected as an officer of a company engaged in the transmission and distribution of electricity to the general public.

Facts:

R Co. is engaged in the distribution, sale and supply of power and electricity for consumption by the general public. It is a 60% Filipino-owned and 40% foreign-owned corporation. Its incumbent president is a French national.

Issue:

Does the Anti-Dummy Law apply to R Co.?

Held:

Yes. Under the Electric Power Industry Reform Act, the transmission and distribution of electric power to the general public is considered a public utility. A corporation organized for the said purpose is considered engaged in partly nationalized activity to which the Anti-Dummy Law applies. Under the said law, aliens are prohibited from being elected as officers of a corporation engaged in wholly or partly nationalized activities.

R Co. operates a public utility. It cannot have a foreign national as president.

BSP Issuance

Circular No. 1010 provides for Additional Requirements for the Issuance of Bonds and Commercial Papers.

BSP Circular No. 1010 dated 9 August 2018

- ▶ The following are the amendments to pertinent provisions of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on the issuance of bonds and commercial papers by banks with quasi-banking authority and quasi-banks.
- ▶ Section X239/Section 4239Q (2008 - 4217Q) of the MORB/MORNBFI was amended to provide for the rules on issuance of bonds and commercial papers requiring all banks with quasi-banking authority/quasi-banks (QBs) issuing bonds or commercial papers to comply with Republic Act No. 8799 or the Securities Regulations Code (SRC) and applicable rules and regulations issued by the Securities and Exchange Commission (SEC). Moreover, a bank or quasi-bank (QB) may issue bonds and/or commercial papers without prior Bangko Sentral approval provided that it meets the prudential criteria described in Subsection X1101.2/41101Q.2 of the MORB/MORNBFI.
- ▶ Subsection X239.3/4239Q.3 (2008 - 4217Q.4) of the MORB/MORNBFI on notice to the Bangko Sentral ng Pilipinas was amended to provide that within five (5) banking days from approval by the bank's/quasi bank's (QB's) board of directors of the bond or commercial paper issuance, the bank/QB shall submit documents listed in this subsection to the supervising department of the Bangko Sentral.
- ▶ Subsection X239.4/4239Q.4 of the MORB/MORNBFI was amended to provide for the prohibition on issuing banks/QBs and their related entities from holding or acting as a market maker of the bank's/QB's listed/traded bonds or commercial papers. Likewise, the registry bank, including the underwriter/arranger of the issuance, shall be a third party with no subsidiary/affiliate relationship with the issuing bank/QB.
- ▶ Subsection X239.5/4239Q.5 of the MORB/MORNBFI was also amended to provide for enforcement action.
- ▶ The line item in Appendix 6/Appendix Q-3 of the MORB/MORNBFI pertaining to the report on "Notice to Bangko Sentral on BOD's approval of the bond issue" was deleted.
- ▶ This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

(Editor's Note: BSP Circular No. 1010, s. 2018 was published in the Manila Bulletin on 15 August 2018)

Circular No. 1011 provides for Guidelines on the Adoption of the PFRS 9 Financial Instruments.

BSP Circular No. 1011 dated 14 August 2018

- ▶ Subsection X191.3 of the Manual of Regulations for Banks (MORB), Subsection 4191Q.3 and Section 4161N Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) were amended to provide for the statement of policy on Philippine Financial Reporting Standards (PFRS) that it is the thrust of the BSP align its financial reporting requirements with standards and practices that are widely accepted internationally to promote fairness, transparency, and

accountability in the financial industry. The amendment included guidelines on the adoption of PFRS 9 Financial Instruments which provides, among others, that BSP Supervised Financial Institutions (BSFI) shall adopt, as part of the PFRS framework, PFRS 9: Financial Instruments, upon its mandatory effective date of 01 January 2018.

- ▶ The provisions of Appendix 33/Appendix Q-20 of the MORB/MORNBF, including the Annexes are hereby deleted and replaced by "Guidelines on the Adoption of Philippine Financial Reporting Standards 9 (PFRS 9) Classification and Measurement" as shown in Attachment 1 of this Circular.
- ▶ The provisions of Appendix 97/Appendix Q-56 MORB/MORNBF are hereby deleted and replaced by the "Guidelines on the Adoption of the Philippine Financial Reporting Standards 9 (PFRS 9) Impairment" as shown in Attachment 2 of this Circular. Appendix N-16 of the MORNBF is created by this Circular, which shall likewise contain the guidelines provided in Attachment 2 of this Circular.
- ▶ Appendix 18/Appendix Q10/N-11 of the MORB/MORNBF are amended as shown in Attachment 3 of this Circular.
- ▶ Subsection X191.5/4191Q.3 of the MORB/MORNBF on penalties and sanctions are hereby deleted.
- ▶ Section 1389 of the MORB on guidelines on the investment of universal banks and commercial banks in credit-linked notes (CLNs), structured products, and securities overlying securitization structures was amended to provide that the guidelines on the accounting for investments in CLNs and other SPs are provided in Appendix 33 of the MORB. Appendix 66a of the MORB shall be deleted and the guidelines on the reclassification of CLNs and other similar instruments that are linked to the ROP under Bangko Sentral Memorandum No. M-2009-012 dated 16 April 2009 shall no longer apply to financial assets that are accounted for in accordance with PFRS 9.
- ▶ Subsection 1636.3 of the MORB on other conditions was amended to provide additional conditions on booking, which are that investments in structured products shall be booked in accordance with Subsections X186.1, X388.5, and Appendix 33.
- ▶ Subsection X192.10 (2008-X162.10) of the MORB on consolidated financial statements of banks and their subsidiaries engaged in financial allied undertakings was amended to provide that for purposes of preparing consolidated financial statements, the provisions of Subsection X191.3 b(1) shall apply.
- ▶ Subsection X394.2/4394Q.2 of the MORB/MORNBF on booking was amended to provide that financial assets shall be reclassified and booked in accordance with Appendix 33 of the MORB/Appendix Q-20 of the MORNBF, except interests in subsidiaries, associates, and joint ventures, which shall be booked under Equity Investments in Subsidiaries, Associates, and Joint Ventures accounted for in accordance with subsection X191.3 b (1)/4191Q.3 b (1).
- ▶ Subsection X305.4 of the MORB and Subsections 4305Q.4, 4312N.6 of the MORNBF were amended to provide that accrual of interest earned on non-performing loans and other credit accommodations shall not be allowed.

- ▶ “PAS 39” referred to in Subsections X119.9, X394.3, and Appendices 25, 56a of the MORB and Subsections 4394Q.2, 4394Q.3 and Appendices Q-15, Q-28-a of the MORNBF, shall be replaced by “PFRS 9”.
- ▶ Pending the issuance of the revised Financial Reporting Package (FRP) template and other prudential reports, the BFSIs shall adopt the mapping matrix provided in Annex A of Appendix 33 and Q-20 of the MORB/MORNBF effective for the reporting period ending September 2018. The guidelines governing the issuance of the revised electronic FRP shall be deployed through a memorandum to all 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. 1011, s. 2018 was published in the Manila Bulletin on 23 August 2018)

Court Decisions

One Network Bank, Inc. (A Rural Bank) vs. Commissioner of Internal Revenue CTA (*En Banc*) Case No. 1526 promulgated 26 July 2018

The tax exemption under Section 15 of the Rural Bank Act of 1992 is only for 5 years and may not be extended for another 5 years merely by the expedient recourse of having single rural banks undergo a process of consolidation

Facts:

Petitioner One Network Bank, Inc. (A Rural Bank) (ONB) filed a claim for refund of allegedly erroneously paid Gross Receipts Tax (GRT) for taxable year 2012. ONB argued that Section 15 of Republic Act No. 7353 or the Rural Bank Act of 1992 exempts the bank, which was formed in 2009 as a result of the merger of One Network Rural Bank, Inc. and Rural Bank of New Corella (Davao del Norte), Inc., from payment of such taxes for a period of five (5) years from the date of commencement of operations.

The CIR denied the claim, noting that the GRT exemption applies only to newly-formed rural banks. Under Revenue Memorandum Circular (RMC) No. 66-2012, consolidated rural banks may no longer avail of the tax exemption granted under Section 15 of RA 7353. Should any or both of the constituent banks fail to enjoy the full 5-year exemption, then the consolidated rural bank shall be entitled to the exemption but only for the remaining period.

The CIR added that consolidation merely prolongs the exemption beyond the 5-year period prescribed by law, thereby depriving the government of much-needed revenues.

ONB filed a Petition for Review with the Court of Tax Appeals arguing that it is a new juridical entity separate from the two constituent corporations. As such, it should similarly enjoy the tax exemption provided under RA 7353. Assuming RMC No. 66-2012 is valid, it also took the position that issuance must be applied prospectively.

The CTA First Division ruled in favor of the BIR, prompting ONB to elevate the case to the CTA *En Banc*.

Issue:

Is ONB entitled to a refund of its allegedly erroneously paid GRT for taxable year 2012?

Ruling:

No. The CTA *En Banc*, sustaining the CTA First Division, held that the tax exemption provided under Section 15 of RA 7353 does not cover situations arising from a merger or consolidation of rural banks. Although the law encourages the consolidation and mergers of rural banks, it did not go as far as giving fresh tax exemptions to consolidated rural banks. As the government agency charged with the enforcement of tax laws, the BIR can formulate rules and regulations such as RMO No. 66-2012 in the exercise its rule-making power in order to achieve the declared policies laid down by Congress.

The CTA *En Banc* also ruled that the law did not intend the grant of an indefinite tax exemption. The exemption granted to rural banks is only for a period of 5 years. RA 7353 did not provide for an extension for another 5 years merely by the expedient recourse of having single rural banks undergo a process of consolidation.

The CTA *En Banc* likewise noted that ONB paid the GRT after the issuance of RMC 66-201 in October 2012 and as such, it cannot argue that the issuance was applied retrospectively.

Commissioner of Internal Revenue vs. Modern Imaging Solutions, Inc.

CTA (*En Banc*) Case No. 1676 promulgated 27 July 2018

A mere finding of unaccounted source of cash, arising from the difference between the expense payments reported in the Alphalist and the Financial Statements, does not lead to undeclared income. Even if this translates into income, the same will be offset by recording the expense as a deduction for income tax purposes.

Funds received by the branch from its Home Office should not be treated as loans subject to DST. The branch and its Home Office are one and the same entity and the same entity cannot be a creditor and debtor of itself.

Facts:

Petitioner CIR assessed Respondent Modern Imaging Solutions, Inc. (MISI), a Philippine branch of a US corporation, for alleged deficiency income tax, withholding tax, and documentary stamp tax (DST) for taxable year 2009. The BIR alleged that MISI has undeclared income from an unaccounted source of cash based on the finding that some of the rental payments declared in its Alphalist were not reflected in the Financial Statements. The BIR also alleged that MISI is liable for DST resulting from the increase of funds received from Home Office.

MISI protested the assessments. It denied that it has unaccounted sources of cash and argued that the "increase in fund received from Home Office" is not a debt instrument that is subject to DST. MISI further argued that a Philippine branch office of a foreign corporation has no separate personality from said foreign corporation.

As the BIR failed to act on its protest, MISI filed a Petition for Review at the CTA. The CTA Second Division ruled that MISI is not liable for deficiency income tax arising from alleged unaccounted source of cash and set aside the BIR's argument that funds received from the home office should be considered as loans.

The BIR filed a Motion for Reconsideration and upon denial, a Petition for Review at the CTA *En Banc*.

Issues:

1. Is MISI liable for deficiency income tax on the alleged undeclared income?
2. Is MISI liable to deficiency DST on the additional funding from the home office?

Rulings:

1. No, MISI is not liable for deficiency income tax arising from the alleged unaccounted source of cash. There are 3 elements for the imposition of income tax: (1) there must be gain or profit; (2) the gain or profit must be realized or

received, actually or constructively, and (3) it is not exempted by law or treaty from income tax. The BIR failed to prove the existence of the alleged income based on the elements.

The allegation of undeclared income is based on a mere presumption that since there were undeclared rent payments, there was a corresponding undeclared income. Even if these alleged undeclared rent payments are to be considered as unaccounted source of cash translating into income, the same will be offset by recording the alleged undeclared rent payments as expenses. Hence, no taxable income will result from said transaction.

2. No. The branch and its home office are one and the same entity and the same entity cannot be a creditor and debtor of itself. Funds received by MISI from its head office should not be treated as loans subject to DST. Unlike in the Supreme Court case of *Marubeni Corporation vs. CIR and CTA*, GR No. 76573 promulgated on 14 September 1989, the CTA *En Banc* also ruled that MISI's head office did not transact business in the Philippines independently from its branch that would set aside the principal-agent relationship, thus treating them as separate entities. The transaction in the case at bar was between the head office and the Philippine branch.

The CTA *En Banc* also noted that the "Due to Home Office" account appears in the "Equity" section, which is a separate item from the Liabilities section of the Balance Sheet.

Heavenly Urban Chef, Inc. vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case No. 1586 promulgated 27 July 2018

A disallowance of 50% of the taxpayer's claimed deduction is valid if the BIR shows that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence.

Facts:

Based on confidential information, the BIR initially conducted surveillance and monitoring of Petitioner Heavenly Urban Chef, Inc.'s (HUCI) place of establishment from 19 January to 5 February 2010, for possible violation of bookkeeping and invoicing rules.

In June 2010, the BIR issued a Letter of Authority for the investigation of HUCI's books of accounts and accounting records for taxable year 2009. In March 2010, Respondent CIR issued a Formal Assessment Notice (FAN) against HUCI for alleged deficiency income tax, value-added tax and improperly accumulated earnings tax (IAET) for taxable year 2009.

HUCI protested the FAN and requested for reinvestigation. The CIR denied the protest and issued a Final Decision on Disputed Assessment. HUCI filed a Petition for Review at the CTA.

HUCI argued that deficiency assessments, including the disallowance of the 50% of the claimed deductions, are speculative, hypothetical and fictional as these were based on mere "extrapolation" of data unsupported by written testimony or report of a duly authorized personnel, who is professionally competent to perform statistical computations.

The adverse decision of the CTA Third Division prompted HUCI to file a Petition for Review at the CTA *En Banc*.

Issue:

Is the disallowance of 50% of the claimed deduction justified?

Ruling:

Yes. Considering that HUCI failed to present sufficient evidence to support the expenses claimed, the CTA *En Banc* found that the BIR is justified in disallowing 50% of such claimed deduction. Quoting the Supreme Court's ruling in *Mariano Zamora vs. CIR and CTA, G.R. No. L-15290 promulgated on 31 May 1963*, the disallowance of 50% of the taxpayer's claimed deduction is valid if it is shown that expenses have been incurred but the exact amount thereof cannot be ascertained due to absence of documentary evidence. Deductions for income tax purposes partake of the nature of tax exemptions; hence, if tax exemptions are strictly construed, then deductions must also be strictly construed.

The CTA *En Banc* also held that assessments issued based on data extrapolated from surveillance operations are valid subject to compliance with Section 6 (C) of the Tax Code, as implemented by Revenue Memorandum Order 3-09, which prescribes the guidelines in the conduct of surveillance and stock-taking activities.

The BIR may use the results of its surveillance as basis for assessing the taxes for the other months or quarters of the same or different taxable years if there is reason to believe that such person is not declaring his correct income, sales or receipts for internal revenue tax purposes and such assessment shall be deemed *prima facie* correct.

Since there is sufficient reason to believe that HUCI had undeclared sales and no evidence was presented to controvert the BIR's findings, resorting to surveillance and extrapolation method in assessing HUCI for undeclared sales is justified. The sales amount used by the BIR can be considered as *prima facie* valid and correct for purposes of determining the internal revenue tax liabilities of HUCI.

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