

Tax Bulletin

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- ▶ SEC MC. No. 5 provides for the guidelines on the implementation of ASEAN Capital Markets Forum (ACMF) Pass under the ASEAN Capital Market Professional Mobility Framework. **(Page 12)**

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Court Decisions

- ▶ The issuance of the Final Assessment Notice (FAN) via electronic mail is not sanctioned by any law, rules or regulations. (Page 19)
- ▶ Income derived by foreign governments from investments in Philippine bonds is exempt from income and final withholding tax.

Proof of actual remittance of a final withholding tax to the BIR is not a condition before a taxpayer can refund erroneously or illegally collected Final Withholding Tax (FWT). (Page 20)

- ▶ Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, justify the non-imposition of surcharges and interest.

The conduct by the revenue officers of a tax examination on years which were not covered by the Letter of Agreement (LOA) justifies the cancellation of the assessment. (Page 20)

- ▶ A change in the corporate name does not make a new corporation and has no effect on the identity of the corporation, or on its property, including entitlement to a tax refund, rights or liabilities. (Page 21)
- ▶ Gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding four persons. (Page 22)

BIR Ruling

BIR Ruling No. 0150-2019, dated 11 February 2019

To avail of the exemption from internal revenue taxes, a Homeowners' Association must be issued a certification by the LGU concerned specifically stating that the latter lacks resources to provide for the basic services of its constituents.

Facts:

X Co. is a Homeowners Association that generated income from association dues, rentals of their facilities, trade, business and other activities. It sought confirmation of entitlement to exemption from internal revenue taxes pursuant to the last paragraph of Section 18 of RA No. 9904, otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations." In support of its request, X Co. presented a Letter-Confirmation issued by the concerned City Mayor, which merely states that X Co.'s rendition of basic services to constituents is without assistance of any form from the LGU.

Issue:

Is X Co. entitled to tax exemption?

Ruling:

No. Section 18 of RA 9904 requires that the concerned LGU lacks resources to provide for the basic services rendered by the Homeowners Association to its constituents. The LGU's Letter-Confirmation issued to X Co. does not reflect the fact of lack of resources. Hence, X Co. shall be subject to the applicable internal revenue taxes, such as income tax, VAT or percentage tax, and withholding tax, on its income from association dues, rentals of their facilities, trade, business and other activities.

RR No. 2-2019 implements the imposition of excise tax on non-essential services, as introduced by the TRAIN Law.

BIR Issuances

RR No. 2-2019 issued on 19 March 2019

- ▶ Invasive cosmetic procedures, surgeries and body enhancements directed solely to improve, alter, or enhance the patient's appearance and do not meaningfully promote the proper functions of the body or prevent or treat illness or disease, shall be subject to the 5% excise tax on gross receipts and value-added tax (VAT).
- ▶ Invasive Cosmetic Procedure refers to a cosmetic surgery that is carried out by entering the body through the skin or through a body cavity or anatomical opening, but with the smallest damage possible.
- ▶ "Gross Receipts" shall mean the total amount of money or its equivalent representing the contract price or service fee, including deposits applied as payments for services rendered and advance payments actually or constructively received for services performed for another person, but excluding the 5% excise tax and VAT.
- ▶ For purposes of determining the VAT base, the gross receipts shall be inclusive of the 5% excise tax.
- ▶ "Constructive Receipt" occurs when the money consideration or its equivalent is placed under the control of the person who rendered the service without restrictions by the payor/ customer. This shall cover exchange deal arrangements.
- ▶ Non-Invasive Cosmetic Procedures are excluded from the coverage of the excise tax.
- ▶ Non-Invasive Cosmetic Procedure refers to a conservative treatment that does not require incision into the body or the removal of tissue, or when no break in the skin is created and there is no contact with mucosa, or skin break, or internal body cavity beyond a natural or artificial body orifice. This procedure includes Acupuncture Rejuvenation Therapy, Air Dissector, and similar services.
- ▶ All persons, whether natural or juridical, performing invasive cosmetic procedures, surgeries, and body enhancements and liable to pay excise tax imposed under Section 150-A of the NIRC, as amended, shall file a return of its monthly gross receipts using BIR Form No. 2200-C (Excise Tax Return on Invasive Cosmetic Procedures), together with the Monthly Summary of Cosmetic Procedures Performed, as an attachment to the form.
- ▶ Every person subject to excise tax shall issue an Official Receipt (OR) for services performed, whether invasive/non-invasive. The OR will show the following information:
 1. The total amount the client pays or is obligated to pay to the service provider, including the excise tax and VAT, if applicable, subject to the following conditions:
 - ▶ The amount of VAT shall be shown as a separate item in the OR;
 - ▶ Discounts given shall be indicated in the OR; otherwise the same shall not be allowed as deduction from gross receipts;

- ▶ If the procedure performed is non-invasive and/or invasive, but considered exempt from excise tax, the term "Exempt from Excise Tax" shall be shown on the OR; and
- ▶ If the services performed involve both invasive and non-invasive procedures, a separate OR may be used for the excisable and non-excisable services rendered.
- ▶ All persons subject to excise tax under Section 150-A shall, in addition to the regular accounting records required, maintain a subsidiary ledger on which every service rendered/performed on any given day is recorded.
- ▶ Every person subject to excise tax under this regulation shall register as Excise Taxpayer engaged in the performance of Invasive Cosmetic Procedures with the Excise LT Regulatory Division (ELTRD) for Large Taxpayers or with the Revenue District Office (RDO) for Non-Large Taxpayers where the taxpayer is required to be registered for the updating of its Certificate of Registration. The application for registration shall be filed not later than 31 March 2019.
- ▶ The BIR may still enforce the collection of the corresponding excise taxes due on invasive cosmetic procedures, surgeries, and body enhancements performed starting 1 January 2018.
- ▶ Any violation of the provisions of the Regulations shall be subject to the corresponding penalties under Sections 250, 251 and 255 of the NIRC, as amended, and Revenue Memorandum Order No. 7-2015.
- ▶ Any person, who willfully attempts in any manner to evade or defeat any tax imposed under this Regulations or the payment thereof, shall, in addition to the other penalties provided by law, upon conviction thereof, be punished with a fine of not less than P500,000.00 but not more than P10,000,000.00, and imprisonment of not less than 6 years but not more than 10 years.
- ▶ Alien offenders shall be deported in accordance with immigration laws, rules and regulations.
- ▶ All individual practitioners and juridical entities, including medical clinics and hospitals, performing invasive cosmetic procedures, whether in a clinic or hospital or any place other than clinic or hospital, shall update their current Certificate of Registration (COR) to include the tax type - Excise Tax on Invasive Cosmetic Procedure, using BIR Form 1905.
- ▶ These regulations are effective beginning 1 January 2018, the date of effectivity of the TRAIN Law.

(Editor's Note: RR No. 2-2019 was published in the Manila Bulletin on 21 March 2019)

RMC No. 34-2019 clarifies the treatment and reporting requirements of input VAT as of 31 December 2018 on VAT-exempt medicines pursuant to the TRAIN Law.

RMC No. 34-2019 issued on 13 March 2019

- ▶ Inventory list as of 31 December 2018 of drugs and medicines, which became VAT-exempt beginning 1 January 2019, shall be required from all manufacturers, wholesalers, distributors and retailers regardless of whether there is an existing excess input VAT.
- ▶ The inventory list shall include all drugs and medicines on hand, imported and locally manufactured, using a prescribed format.

- ▶ The inventory list shall be filed not later than 25 April 2019 with the Large Taxpayer Service/Revenue District Office where the taxpayer is registered, as an attachment to the Quarterly VAT Declaration Form (BIR Form 2550Q) for the first quarter of 2019.
- ▶ As the sale of VAT-exempt drugs and medicines is made, the input VAT corresponding to the sale shall be closed to cost or expense.
- ▶ When filing the BIR Form 2550M/2550Q, the input VAT corresponding to the sale shall be deducted from the taxpayer's allowable input tax and reported under "Input Tax allocable to Exempt Sales" found on Line 20C of such BIR Form.

BOC Updates

CMO No. 13-2019 provides for the Interim Guidelines on the Return of Empty Containers at the POM and MICP.

Customs Memorandum Order (CMO) No. 13-2019 dated 28 February 2019

- ▶ This CAO was issued to address the problem of port congestion or high yard utilization in the Port of Manila (POM) and Manila International Container Port (MICP) due to the unreturned empty containers, overstaying imports stored in the premises of the Asian Terminals Inc. (ATI) at the POM, and the International Container Terminal Services, Inc. (ICTSI) at the MICP, and the truck ban in the City of Manila.
- ▶ Operational Provisions
 1. Temporary Prohibition on the Return of Empty Containers at the Port Premises of POM and MICP
 - ▶ Starting February 2019, the return of empty containers by importers, truckers, brokers and other concerned port stakeholders at the port premises of POM and MICP is temporarily disallowed until further notice from the Bureau of Customs (BOC).
 - ▶ Only empty containers covered by Special Permit to Load (SPTL) issued by the Container Control Division (CCD) and/or the Pier Inspection Division (PID) of the BOC will be allowed entry to the designated areas of ATI for POM or ICTSI for MICP.
 - ▶ Shipping lines (owning empty containers) and/or their agents are ordered to coordinate with the importers, truckers and brokers as to the return of their emptied containers to container yards, storage areas or depots.
 2. Disposition of Empty Containers Currently Stored at ATI and ICTSI
 - ▶ All shipping lines and/or their agents shall see to it that all their empty containers currently stored at ATI for POM and ICTSI for MICP, be re-exported or shipped out within a period of 30 calendar days from date of the effectivity of this Order at their own expense.
 - ▶ Empty containers that remain at ATI for POM and ICTSI for MICP after the expiration of the 30-day period above, shall be pulled out from their designated areas to be transferred to container yards/depots outside of the POM and MICP premises. The cost of transferring empty containers, as well as payment of the attendant storage charges and all other relevant charges, shall be the sole responsibility of the shipping lines and/or their agents.

- ▶ In case the empty containers are not re-exported within a period of 90 days from the date of their return, the BOC shall notify the shipping lines and/or their agents to fill out Informal Entry for Declaration to be processed in Section 5, Formal Entry Division (FED) for the computation of the duties and taxes and the subsequent payment thereof. Failure to file the said entry and to pay the duties and taxes within the period as provided under the CMTA, shall be the basis for the BOC to declare the said empty containers as abandoned, and shall be forfeited in favor of the government.
- ▶ This CMO shall take effect immediately upon posting of copies in the bulletin boards of the BOC with copy furnished to ATI, ICTSI, Philippine Ports Authority (PPA) and all shipping lines and/or their agents in the Philippines.

(Editor's Note: CMO No. 13-2019 was received by the UP Law Center on 5 March 2019)

CMO No. 14-2019 provides for the Applicable Exchange Rate for Assessment Purposes.

CMO No. 14-2019 dated 8 March 2019

- ▶ This Order aims to establish a uniform application of conversion rates in harmony with the computerization program of the BOC.
- ▶ General Provisions
 1. The Exchange Rate officially disseminated to the public by the Bangko Sentral ng Pilipinas (BSP) each Friday shall be the exchange rate to be adopted the following day, Saturday and up to Friday of the following week.
 2. In the event that there is no officially published exchange rate on a Friday, the latest rate published by BSP prior to that Friday shall apply.
 3. In the computation of duties and taxes, the prevailing exchange rate for the week on the date of entry lodgment shall be the basis in the computation of duties and taxes of a particular shipment for Consumption and Warehousing entries.
 4. Foreign currencies shall be converted directly to Philippine Peso.
- ▶ This Order hereby repeals CMO Nos. 24-95, 24-95A and 24-95B dated 4 September 1995, 2 January 1998 and 23 June 1998, and CMO Nos. 14-2002 dated 9 March 2002.
- ▶ This CMO shall take effect immediately and shall last until revoked.

(Editor's Note: CMO No. 14-2019 was received by the UP Law Center on 12 March 2019)

CMO No. 15-2019 provides for the Operational Procedures for the Implementation of the ASEAN e-CO.

CMO No. 15-2019 dated 18 March 2019

- ▶ This Order shall govern the application, submission and processing of all Electronic Certificate of Origin (e-CO) pursuant to the Operational Certification Procedure (OCP) of the ATIGA (or e-ATIGA Form D) using the TradeNet.gov.ph platform.
- ▶ This Order aims to facilitate the transmission of e-CO for export products and the receipt of e-CO for imported products using available technologies and international best practices, in compliance with the CMTA.

- ▶ Operational Provisions
 1. **Creation of User Account and Client Profile.** The TradeNet.gov.ph website shall be used for the application, processing and issuance of e-COs for export, and utilization of e-COs for imports. To access this, Exporters and Importers must first create a TradeNet Account and company profile with their respective Usernames and Passwords. The Exporter or Importer shall fill in all data fields required in all relevant pages.
 2. **Guidelines for the application and issuance of e-ATIGA Form D for export goods**
 - ▶ *Pre-Evaluation of Export Product*
 - a. For export products where the origin cannot be easily ascertained by its nature, the exporter must submit an application for pre-evaluation of every goods for export.
 - b. In case of approved application, the Export Coordination Division (ECD)/Export Division (ED) shall generate and issue a Product Evaluation Report (PER) containing the list of qualified products and the bases for such findings. The exporter shall be furnished a copy of the PER.
 - c. In case the application does not qualify with the Rules of Origin (ROO) and OCP of the ATIGA, the ECD/ED shall send a formal notice to the applicant, stating therein the reason for not qualifying, without prejudice to the exporter filing a new application for PER.
 - ▶ *Upload of Product Evaluation Reports (PER) into TradeNet.gov.ph*
 - a. After the duly authorized personnel from ECD/ED completes the Pre-Evaluation of Export Product, they shall upload the PER and the List of Pre-Evaluated Goods of each newly approved application to the TradeNet.gov.ph platform.
 - ▶ *Application and Issuance of Outbound e-CO*
 - a. An exporter or its duly authorized representative may apply for an e-CO by accessing his/her TradeNet account and filling up all relevant data fields.
 - b. For Wholly Obtained or Produced Goods for which no PER is needed, the Exporter shall encode all information for each and every item or goods into the relevant data field.
 - c. For goods which are not Wholly Obtained or Produced Goods, the Exporter shall input the information only for the goods indicated in the PER.
 - d. In cases where the application is disapproved, the Exporter may file another application for e-CO.
 - e. In exceptional cases, such as, but not limited to, technical failures, the Exporter may apply for and be issued a Paper ATIGA Form D in accordance with the existing laws, rules and regulations.

▶ *Printing of e-ATIGA Form D*

- a. Until such time all ASEAN Member States (AMS) start the full electronic sharing of e-ATIGA Form D via the ASEAN Single Window (ASW) Gateway, and all technical failures have been addressed, the Exporter shall download then print the e-ATIGA Form D, place his or her signature in the appropriate space, and submit the system-generated ATIGA Form D to the BOC for manual execution of signature and seal.
- b. The BOC shall no longer accept the system-generated ATIGA Form D once the electronic transmission of e-ATIGA Form D is fully implemented.

3. Guidelines in the Appreciation and Acceptance of e-ATIGA Form D for imported goods pending full implementation of e-CO

- ▶ A Preferential Rate Unit (PRU) shall be created under the FED or its equivalent units in all ports with the following functions:
- a. Receive e-COs transmitted by the sending AMS to the Philippines through the ASW Gateway;
 - b. Evaluate the authenticity of e-COs and Origin Declarations submitted by importers for availment of preferential tariff rate on products exported by AMS to Philippines; and
 - c. Recommend for the acceptance of preferential tariff rate in accordance with the ROO.
- ▶ Pilot Testing on the issuance, acceptance, processing, and utilization of e-ATIGA Form D using TradeNet.gov.ph shall be conducted in ports and sub-ports after compliance with technical and functional requirements as provided for in this CMO.
- ▶ Once the Deputy Commissioner, Management Information System and Technology Group (MISTG) declare the start of full implementation of the ASEAN e-CO, no outbound and inbound Paper ATIGA Form D shall be processed or accepted, except for the following exceptions:
1. System downtime exceeding 2 hours.
 2. Loss of network connectivity exceeding 2 hours.
 3. Other service disruptions duly endorsed for manual processing and approved by the Deputy Commissioner, MISTG.
- ▶ All export products that have been evaluated and with corresponding PERs issued as of 1 January 2017 shall be uploaded to the TradeNet.gov.ph platform. Exporters with PERs issued prior to 1 January 2017 must file a new application for PER.
- ▶ PERs shall have a validity period of 5 years. Notwithstanding its validity, the exporter must apply for a new PER for the same product in cases where the tariff rate of an export product is affected by the issuance of a new ASEAN Harmonized Tariff Nomenclature (AHTN).

- ▶ Any Customs personnel found who, without justifiable reasons, delays the processing and uploading of the PER and the issuance of e-CO under this Order shall be held liable under existing laws, rules, regulations.
- ▶ Any importer or exporter who presents any false or spurious printout of e-CO shall be subject to administrative or criminal liability pursuant to existing laws, rules and regulations.
- ▶ This Order shall take effect 15 days after its publication in a newspaper of general circulation.

(Editor's Note: CMO No. 15-2019 was published in The Manila Times on 21 March 2019)

CMO No. 16-2019 provides for the Guidelines on the Sending of Notice under Section 1129 (Abandonment, Kinds and Effects) of the CMTA.

CMO No. 16-2019 dated March 18, 2019

- ▶ This Order was issued in compliance with the requirements of sending due notice under Section 1129 of the Customs Modernization and Tariff Act (CMTA). The following rules shall be followed:
 1. Service of notice is the act of providing the owner, importer, consignee, or interested party with a copy of the notice concerned within the specific period provided for by the law.
 2. Manner of Service:
 - ▶ Electronic notice is through the use of information and communication technologies.
 - a. Service is complete upon successful sending of a notice via internet to the designated e-mail address of the owner, importer, consignee, or interested party.
 - ▶ Personal service is made by delivering personally a copy to the owner, importer, consignee, or interested party, or by leaving it in his/her office with his/her clerk or with a person having charge thereof.
 - a. Service is complete upon actual delivery.
 - ▶ Service by registered mail is made by depositing the copy in the post office in a sealed envelope, plainly addressed to the owner, importer, consignee, or interested party at his/her known address with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after 10 days if undelivered.
 - a. Service is complete upon actual receipt by the owner, importer, consignee, or interested party, or after 5 days from the date he/she received the first notice of the postmaster, whichever date is earlier.
- ▶ Failure to comply with the giving of notice under Section 1129 of the CMTA shall constitute administrative liability against any employee or official of the BOC and shall consider any action in relation thereto as null and void.

(Editor's Note: CMO No. 16-2019 was received by the UP Law Center on 27 March 2019)

This Memorandum provides for the Interim Guidelines in the Implementation of RA No. 11203.

Memorandum dated 5 March 2019

- ▶ Pending the issuance of the Implementing Rules and Regulations (IRR) of RA No. 11203 titled, "An Act Liberalizing the Importation, Exportation and Trading of Rice, Lifting for the Purpose the Quantitative Import Restriction on Rice, And for Other Purposes", which took effect on 5 March 2019, the following interim guidelines shall be implemented:
 1. Under RA No. 11203, the National Food Authority (NFA) ceased to exercise regulatory functions over international and domestic trading of rice. Thus, all rice importations shall now be processed under the regular customs cargo clearance procedure.
 2. Payment of Advance Customs Duty/Tariff for rice importations is no longer required.
 3. All importers of rice shall secure a Sanitary and Phytosanitary Import Clearance (SPSIC) from the Bureau of Plant Industry (BPI) prior to importation. Rice importations should arrive prior to the expiration of the SPSIC from the BPI.
 4. For rice importations originating from the Association of Southeast Asian Nations (ASEAN) member states, the import duty rate of 35% under the ASEAN Trade in Goods Agreement (ATIGA) shall apply.
 5. For rice importations originating from Non-ASEAN World Trade Organization (WTO) member states, the out-quota tariff rate of 180% shall apply.
 6. Due to the perishable nature of rice importations and in order to protect the interest of the government, District Collectors may allow release of goods pursuant to Sections 403 on Provisional Goods Declaration and 426 on Tentative Assessment of Provisional Goods Declaration of the Customs Modernization and Tariff Act (CMTA).

(Editor's Note: This Memorandum was signed by the BOC Commissioner on 5 March 2019)

SEC Opinions and Issuances

SEC-OGC Opinion No. 19-04 dated 4 March 2019

A holding company is not allowed to subsequently engage in financing activities by simply amending the primary purpose in its articles of incorporation.

Facts:

A Co., a holding company, would like to expand its corporate purpose by just simply adding "financing activities" to its primary purpose as stated in its Articles of Incorporation.

Issue:

Can A Co. be allowed to engage in financing activities?

Held:

No. Before a corporation can engage in financing activities, it must secure a Certificate of Authority to Operate as a Financing Company which shall be issued by the SEC only if the corporation complies with the requirements of the Finance Company Act and its implementing rules and regulations (IRR). In this regard, one of the conditions under the IRR is that a finance company must be "primarily organized for the purpose of extending credit facilities." Thus, merely adding the said activities to the primary purpose of A Co. would effectively make them as secondary purposes only.

SEC MC. No. 5 provides for the guidelines on the implementation of the ACMF Pass under the ASEAN Capital Market Professional Mobility Framework.

SEC Memorandum Circular No. 5 dated 26 February 2019

In order to promote the development of the capital market and at the same time protect the interest of the investors, the Philippines has signed the Memorandum of Understanding on the ASEAN Capital Markets Forum (ACMF) Pass to be implemented as follows:

- ▶ Registered capital market professionals in the Philippines may apply for an ACMF Pass from a Host Regulator and become a recognized representative in other signatory countries;
- ▶ A capital market professional from other signatory countries may apply for an ACMF Pass and become a recognized representative in the Philippines if he or she is:
 1. Licensed in his or her home country;
 2. Has no pending disciplinary action or has not been censured, fined or reprimanded by a professional regulatory body; and
 3. Has not been convicted by a competent judicial or administrative body for violation of securities, commodities, banking, real estate or insurance laws or any offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, misappropriation, forgery, bribery, false oath or perjury;
- ▶ The recognized representative may give advice only on shares, bonds, and units of collective investments scheme including units of real estate investment trust and units of infrastructure fund;
- ▶ The recognized representative shall not be permitted to give advice to investors by considering investor's investment objective, financial situation and particular needs. He or she is likewise prohibited from soliciting for sales of capital market products;
- ▶ The recognized representative must be attached to a licensed firm in the host jurisdiction/country;
- ▶ The ACMF Pass shall be valid only for two years unless earlier revoked or cancelled by the SEC.

(Editor's Note: Published in The Manila Bulletin & in The Manila Standard on 19 March 2019)

BSP Issuances

BSP Circular No. 1033 provides for the amendments to the Regulations on Electronic Banking Services and Other Electronic Operations.

BSP Circular No. 1033 22 February 2019

- ▶ Certain provisions of the Manual of Regulations for Banks (MORB)/ Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on electronic banking services and other electronic operations were amended. The amendments mainly took into account the developments in electronic payment and financial services (EPFS).
- ▶ The following parts, sections and subsections of the MORB/MORNBFI were amended by this Circular:

Existing	Amendment
PART SEVEN. Electronic Operations and Other Services	PART SEVEN. Electronic Payment and Financial Services
Sec. 4701Q Electronic Services	Sec. X701/4701Q. Policy Statement
Sec. 4701Q.1 Application	Subsec. X701.1/4701Q.1 Definition of Terms
Sec. 4701Q.2 Pre-screening of applicants	Subsec. X701.2/4701Q.2 Classification of EPFS
Sec. 4701Q.3 Approval in principle	Subsec. X701.3/4701Q.3 Requirement for the Grant of Authority to Offer EPFS
Sec. 4701Q.4 Documentary Requirements	Subsec. X701.4/4701Q.4 Compliance with Relevant Regulations
Sec. 4701Q.5 Conditions for Monetary Board approval	Subsec. X701.5/4701Q.5 Enhancements and other Changes in EPFS
Sec. 4701Q.6 Requirements for quasi-banks with pending applications	Subsec. X701.6/4701Q.6 Reportorial Requirements
Sec. 4701Q.12 Sanctions	Subsec. X701.12/4701Q.12 Enforcement Action

- ▶ The abovementioned amendments provide for the following:
 1. The definitions of Electronic Payment and Financial Services (EPFS) and Transaction Account
 2. The classification of EPFS for the purpose of authorizing Bangko Sentral supervised Financial Institutions (BSFIs) to render EPFS
 - ▶ Basic EPFS
 - ▶ Advanced EPFS
 3. The appropriate license/authority to be obtained by BSFIs that intend to offer EPFS

Classification	Category of License/Authority
Advanced EPFS	Type A/B
Basic EPFS	Type C

4. The relevant regulations that must be complied with by a BSFI that has been granted an advanced EPFS authority
 5. The enhancements and other changes in EPFS that require prior Bangko Sentral approval
 6. The reports required to be submitted by BSFIs on their EPFS and the applicable sanctions for failure to comply with the reportorial requirements
 7. The enforcement action for failure to comply with the said provisions.
- ▶ This Circular created the following sections:
 1. Subsec. 4641S.1/4641P.1/4904T.1/4641N.1. Requirements for the Grant of Authority to Offer EPFS.
 2. Subsec. 4641S.2/4641P.2/4904T.2/4641N.2. Reportorial Requirements.
 3. Subsec. 4641S.3/4641P.3/4641N.3/4904T.3. Enforcement Action
 4. Section X1207/41207Q/4707S/4707P/4807N. Participation in Automated Clearing Houses (ACHs). This section requires BSFIs that have been licensed to offer funds transfer services to make these services interoperable by participating in an Automated Clearing House (ACH). It also provides for the guidelines to be observed prior to its participation.
 - ▶ The following portions of the MORB/MORNBFI were amended by this Circular to reflect the revised licensing requirements for EPFS. In particular, the rules applicable to transactions performed under the National Retail Payment System (NRPS) were revised and all references to the previous title of Part Seven of the MORB/MORNBFIQ-regulations were changed to Electronic Payment and Financial Services.

Section/Subsection/Appendix	Existing Phrase	New Phrase
Subsection X1205.5/41205Q.5/4705S.5/4705P.5/4805N.5	<p>Specific rules applicable to transactions performed under the NRPS Framework. The following rules shall xxx xxx.</p> <p>a. Minimum requirements to offer Electronic Financial and Payment Services (EFPS). EFPS, which shall require Bangko Sentral approval in accordance with Section X701/4701.Q/4641s/4641P/4641N of the MORB/MORNBFI, refer to BSFI products and/or services xxx xxx through a point of interaction. To offer EPFS, BSFIs shall conform to the following requirements:</p> <p style="padding-left: 40px;">(1) Xxx xxx Xxx xxx (4) Xxxxxx</p> <p>b. Xxx xxx Xxx xxx</p>	<p>Specific rules applicable to transactions performed under the NRPS Framework. The following rules shall xxx xxx.</p> <p>a. Minimum requirements to offer Electronic Payment and Financial Services (EPFS). EPFS shall require notification to or approval by the Bangko Sentral in accordance with Section X701/4701.Q/4641s/4641P/4641N of the MORB/MORNBFI. To offer EPFS, BSFIs shall conform to the following requirements:</p> <p style="padding-left: 40px;">(1) Xxx xxx Xxx xxx (4) Xxx xxx</p> <p>b. Xxx xxx Xxx xxx</p>

Section/Subsection/Appendix	Existing Phrase	New Phrase
Subsection X266.2.a. of the MORB	The bank shall have an electronic banking solution to implement its cash agent operations and comply with the requirements of Part Seven, on the Guidelines on Electronic Banking Services and Operations.	The bank shall have an electronic banking solution to implement its cash agent operations and comply with the requirements of Part Seven, on the Guidelines on Electronic Payment and Financial Services.
Subsection X780.3 of the MORB	Prior Bangko Sentral approval. Banks planning to be an EMI-Bank shall apply in accordance with Sec. X701 relating to the guidelines on electronic banking services and with Sec. X162 on outsourcing of banking functions, when applicable.	Prior Bangko Sentral approval. Banks planning to be an EMI-Bank shall apply in accordance with Sec. X701 relating to the guidelines on electronic payment and financial services and with Sec. X162 on outsourcing of banking functions, when applicable.
Subsection X780.4/4780Q.4/4642S.4/4642N.4	Common provisions. The following provisions are applicable to all EMLs:	Common provisions. In addition to the provisions under Subsections X701.4/4701Q.4 of the MORB/ MORNBF1, EMLs shall comply with the following requirements:
Subsection X183.4 of the MORB; Subsection 4183Q.4/4198S.4/4195P.4/4183N.4/41177T.4 of the MORNBF1	Compliance with relevant regulations. Xxx In the event that BSFIs opt to use social media for processing financial transactions, the applicable Bangko Sentral rules and regulations on electronic banking/electronic services and technology risk management should likewise be observed to ensure security, reliability and authenticity of such transactions.	Compliance with relevant regulations. Xxx In the event that BSFIs opt to use social media for processing financial transactions, the applicable Bangko Sentral rules and regulations on electronic payment and financial services and technology risk management should likewise be observed to ensure security, reliability and authenticity of such transactions.
Section 4641S/4641N	Electronic Services. The guidelines concerning electronic activities, as may be applicable, are found in Sec. 4701Q and its Subsections.	Electronic Payment and Financial Services. The guidelines concerning electronic payment and financial services, as may be applicable, are found in Sec. 4701Q and its Subsections.
Section 4641P	Sec. 4641P (2016 - 4196P) Electronic Services. The guidelines concerning electronic activities as may be applicable, as found in Sec. 4701Q and its Subsections, shall be adopted by pawnshops.	Sec. 4641P (2016 - 4196P) Electronic Payment and Financial Services. The guidelines concerning electronic payment and financial services as may be applicable, as found in Sec. 4701Q and its Subsections, shall be adopted by pawnshops.
Section 4904T of the MORNBF1	Sec. 4904T Applicable Regulations on Trust Corporations. Trust operations and investment management activities of trust corporations shall be subject to the applicable regulations in Parts Five (Foreign Exchange Operations), Six (Treasury and Money Market Operations), Seven (Electronic Operations and Other Services) and Eight (Anti-Money Laundering Operations) of the MORNBF1, unless otherwise provided in this Manual.	Sec. 4904T Applicable Regulations on Trust Corporations. Trust operations and investment management activities of trust corporations shall be subject to the applicable regulations in Parts Five (Foreign Exchange Operations), Six (Treasury and Money Market Operations), Seven (Electronic Payment and Financial Services), Eight (Anti-Money Laundering Operations), and Twelve (Regulations on Payment Systems) of the MORNBF1 Q-regulations, unless otherwise provided in this Manual.

- ▶ Subsections X701.7 and X701.8/4701Q.7 and 4701Q.8 were deleted by this Circular.
- ▶ BSFIs shall re-register their EPFS by accomplishing the re-registration form with covering certification (Attachment 2 of this Circular). The re-registration form shall be electronically submitted with the subject "EPFSRe-registration - <name of BSFI> - <date-YYYYMMDD>" to epfs-licensing@bsp.gov.ph not later than 31 March 2019 while the covering certification shall be sent to the Financial Technology Sub-sector of the Bangko Sentral. Failure to submit the re-registration form by 31 March 2019 shall result in the revocation of the issued license/s.
- ▶ Appendix 6 of the MORB and Appendix Q-3/S-2/N-1/P-13/T-13 of the MORNBFIs were amended by this Circular. The specific guidelines on the mode and manner of submission of the abovementioned reports (including corresponding reporting templates) shall be covered by a separate memorandum issuance.
- ▶ The specific guidelines on the mode and manner of submission of the abovementioned reports (including corresponding reporting templates) shall be covered by a separate memorandum issuance.
- ▶ 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. 1033, s. 2019 was published in The Manila Bulletin on 1 March 2019)

Circular No. 1034 provides for the Amendments to the Basel III Framework on Liquidity Standards - Net Stable Funding Ratio.

BSP Circular No. 1034 dated 15 March 2019

- ▶ The following amendments provide for the extension of the observation period for the Basel III Framework on Liquidity Standards - Net Stable Funding Ratio (NSFR) for subsidiary banks /quasi-banks (QBs) of universal and commercial banks (UBs/KBs).
- ▶ Subsection X176.5/4176Q.5 of the Manual of Regulations for Banks (MORB)/ Manual of Regulations for Non-bank Financial Institutions (MORNBFIs) is hereby amended by this Circular to provide for the reporting and monitoring requirements that the NSFR reports shall be accompanied by a certification under oath to the effect that a covered bank/QB has fully complied with the NSFR requirement on all calendar days of the reference period in the form provided under Appendix 74f/Q-44f.
- ▶ The implementation of the minimum NSFR shall be phased in to help ensure that the covered banks/QBs concerned can meet the standard through reasonable measures without disrupting credit extension and financial market activities. In order to facilitate compliance, covered banks/QBs shall undergo an observation period before the NSFR becomes a minimum requirement. The timelines are set out in the table below:

	Observation Period	Minimum LCR
UBs/KBs	01 July 2018 - 31 December 2018	Starting 01 January 2019 - 100%
Subsidiary banks/ QBs of UBs/KBs	01 July 2018 - 31 December 2019 Floor of 70% - to be applied in 2019	Starting 01 January 2020 - 100%

- ▶ During the observation period, the Bangko Sentral is not precluded from assessing the compliance of the banks/QBs concerned with the NSFR requirement. The covered banks/QBs with NSFRs that are already at or near the prescribed minimum should not view the transition period as an opportunity to reduce their stable funding profile.
- ▶ Subsidiary banks/QBs concerned that have submitted a stable funding plan in 2018 may revise the same, if they deem necessary. The revised stable funding build-up plan shall be adopted by the concerned bank's/QB's Board not later than 30 calendar days from effectivity of this Circular
- ▶ In case of non-submission of, or non-compliance with, the said build-up plan, the Bangko Sentral may require the covered bank/QB to undertake a set of actions. The Bangko Sentral may likewise impose enforcement actions as provided under Subsection X176.20/4176Q.20 of the MORB/MORNBF1."
- ▶ 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. 1034, s. 2019 was published in Business World on 22 March 2019)

Circular No. 1035 provides for the Amendments to the Basel III Liquidity Coverage Ratio Framework and Minimum Liquidity Ratio Framework.

BSP Circular No. 1035 dated 15 March 2019

- ▶ The following amendments provide for the: (1) extension of the observation period of the minimum Basel III Liquidity Coverage Ratio (LCR) requirement to 31 December 2019 for subsidiary banks and quasi-banks (QBs) of universal and commercial banks (U/KBs), (2) adoption of a seventy percent (70%) LCR floor for subsidiary banks and QBs during the observation period; (3) amendments to the LCR framework under Subsections X176.1/4176Q1 to X176.2/4176Q.2 and Appendix 74a/Q-44b of the Manual of Regulations for Banks (MORB)/ Manual of Regulations for Non-bank Financial Institutions (MORNBF1); and (4) amendments in the formula of the Minimum Liquidity Ratio (MIR) under Subsection X176.3/4176Q.3 of the MORB/MORNBF1.
- ▶ Subsection X176.1/4176Q.1 of the MORB/MORNBF1 is hereby amended by this Circular to provide for the implementation of the minimum LCR to help ensure that the banks/QBs concerned can meet the standard through reasonable measures without disrupting credit extension and financial market activities. In order to facilitate compliance, banks/QBs shall undergo an observation period before the LCR becomes a minimum requirement. The timelines are set out in the table below:

	Observation Period	Minimum LCR	
UBs/KBs	01 July 2016 - 31 December 2017	01 January 2018 and thereafter - 90%	Starting 01 January 2019 - 100%
Subsidiary Banks and QBs of UBs/KBs	23 February 2018 - 31 December 2019 Floor of 70% - to be applied in 2019		Starting 01 January 2020 - 100%

- ▶ During the observation period, the Bangko Sentral is not precluded from assessing the compliance of the banks/QBs concerned with the LCR requirement. Banks/QBs with LCRs that are already at or near the prescribed minimum should not view the transition period as an opportunity to reduce their liquidity coverage.
- ▶ Subsidiary banks/QBs concerned that have submitted a liquidity build-up plan in 2018 may revise the same, if they deem necessary. The revised liquidity plan shall be adopted by the concerned bank's/QB's Board not later than 30 calendar days from effectivity of this Circular.
- ▶ In case of non-compliance, the Bangko Sentral may require the bank/QB concerned to undertake a set of actions. The Bangko Sentral may likewise impose enforcement actions as provided under Section X176.20/4176Q20 of the MORB/MORNBF1.
- ▶ Subsection X176.2/4176Q.2 of the MORB/MORNBF1 is amended to provide for the LCR disclosure requirements. Covered banks/QBs shall publicly disclose information related to the LCR in single currency and on solo and consolidated bases as prescribed under Part II of Appendix 74a/Appendix Q-44b starting year 2019 for UBs/KBs and year 2020 for subsidiary banks/QBs of UBs/KBs. The mandatory disclosure requirements in single currency should be included in the quarterly published balance sheet, as well as in the annual reports or published financial reports (e.g., the audited financial statements).
- ▶ Part I of Appendix 74a of the MORB on the detailed LCR framework, particularly on the LCR calculation, was amended by this Circular. The total net cash outflows, which should include interests and installments that are expected to be received and paid during the LCR period, are calculated as follows:

Total net cash outflows over the next 30 calendar days = Total expected cash outflows - Min {total expected cash inflows; 75% of the total expected cash outflows}

- ▶ Items 53 to 75 of Appendix 74a of the MORB were renumbered to items 52 to 74.
- ▶ The revised regulations under Appendix 74a of the MORB was adopted in Appendix Q-44b of the MORNBF1 and shall apply to QBs concerned.
- ▶ Subsection X176.3/4176Q.3 of the MORB/MORNBF1 on the Minimum Liquidity Ratio (MLR) for stand-alone thrift banks, rural banks, cooperative banks and quasi-banks is also amended by this Circular.
- ▶ The amended MLR reporting template for Stand-Alone Thrift Banks, Rural Banks, Cooperative Banks and QBs was provided in this Circular. The guidelines governing the mode and manner of submission of the electronic reporting template shall be covered by a separate issuance.
- ▶ 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. 1035, s. 2019 was published in Business World on 22 March 2019)

Court Decisions

CIR vs. Freeliflife Philippines Distribution, Inc. - Philippine Branch

CTA (*En Banc*) Case No. 1714 promulgated 4 January 2019

The issuance of the FAN via electronic mail is not sanctioned by any law, rules or regulations.

Facts:

Petitioner CIR assessed Respondent Freeliflife Philippines Distribution, Inc. - Phil. Branch (FPDI) for deficiency income and VAT for taxable year 2009. FPDI protested and upon issuance of a Final Decision on Disputed Assessment (FDDA), filed a Petition for Review with the CTA.

At the CTA, FPDI argued that the assessment is void for failure of the BIR to strictly comply with the procedural due process as the Final Assessment Notice (FAN) was issued even before the lapse of the 15-day period to protest the Preliminary Assessment Notice (PAN). The CIR took the position that the assessment was valid as FPDI was fully apprised of the facts and the law on which it was issued. Due to FPDI's failure to timely file a Petition for Review at the CTA, the BIR posited that the assessment has already become final, executory, and demandable.

The CTA Second Division ruled in favor of FPDI. Aside from the premature issuance of the FAN, it voided the assessment as the mode of delivery of the FAN was neither through personal service nor registered mail, as provided under Section 3.1.4 of RR 12-99, but through electronic mail.

Issue:

Can the FAN be served to taxpayers through electronic mail?

Ruling:

No. The issuance of the FAN via electronic mail is not sanctioned by any law, rules or regulations.

Section 3.1.4 of RR 12-99 provides that the Final Letter of Demand (FLD) and assessment notice shall be sent to the taxpayer only by registered mail and by personal delivery. The use of the word "shall" indicates the mandatory nature of the requirement. It is essential for the BIR to prove that the FLD and assessment notices were duly served to FPDI either by registered mail or by personal service.

As found by the CTA 2nd Division and as admitted by the parties, the FLD and assessment notices were issued through electronic mail. The BIR did not present any evidence to prove that the FLD and assessment notices were served either through registered mail or by personal delivery, which are the only valid modes of service.

As the BIR failed to comply with the due process requirement in the issuance of the FAN, the deficiency tax assessments are null and void.

CIR vs. GIC Private Limited (Formerly, Government of Singapore Investment Corporation Private Limited)

CTA (*En Banc*) Case No. 1753 promulgated 18 January 2019

Income derived by foreign governments from investments in Philippine bonds is exempt from income and final withholding tax.

Proof of actual remittance of a final withholding tax to the BIR is not a condition before a taxpayer can refund erroneously or illegally collected FWT.

Facts:

Respondent GIC Private Limited (formerly, Government of Singapore Investment Corporation Private Limited) filed a claim for refund with Petitioner CIR for erroneously collected final withholding tax (FWT) by the Bureau of Treasury on interest income earned on its investments in Philippine T-Bonds for January 2013 to July 2014.

Due to the inaction of the CIR on the administrative claim, GIC filed a Petition for Review with the CTA. The CTA Third Division granted the FWT refund, holding that GCI is a non-resident foreign corporation wholly owned by the Government of Singapore and exempt from payment of income tax and consequently, from FWT.

The CIR elevated the case to the CTA *En Banc*.

Issues:

1. Is GIC entitled to the FWT refund?
2. Is proof of actual remittance of FWT required?

Ruling:

1. Yes. Section 32(B)(7)(a) of the NIRC provides that income derived from investments in the Philippines in loans, stocks, bonds, or other domestic securities in the Philippines by foreign governments or financing institutions owned, controlled, or enjoying refinancing from foreign governments are not to be included in gross income and shall be exempt from taxation.
2. No. Proof of actual remittance of a final withholding tax to the BIR is not a condition before a taxpayer can claim erroneously or illegally collected FWT.

FWT is the full and final payment of income tax due from the recipient of the income and the obligation to withhold the tax is imposed by law on the withholding agent. However, it is incumbent upon GIC to prove that it earned income from investments in the Philippines and that taxes were collected thereon. In the instant case, GCI was able to present the Statements of Taxes Withheld and BIR Forms 2306 issued by the Bureau of Treasury showing the FWT on the interest due on the government securities.

Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, justify the non-imposition of surcharges and interest.

The conduct by the revenue officers of a tax examination on years which were not covered by the LOA justifies the cancellation of the assessment.

CIR vs. Trustmark Holdings Corporation

CTA (*En Banc*) Case No. 1697 promulgated 31 January 2019

Facts:

Petitioner CIR assessed Respondent Trustmark Holdings Corporation (THC) for, among others, deficiency Documentary Stamp Tax (DST) on intercompany loans. THC paid the basic DST not only for 2009 (the year covered by the Letter of Authority), but also for 2000, 2006, 2007 and 2008. However, it requested the BIR to waive the surcharge and interest as the late payment of DST was due to difficulty in the interpretation of the law. THC subsequently filed an application for abatement to cancel the interest and penalties. Upon receipt of a Final Decision on Disputed Assessment upholding the assessment, THC filed a Petition for Review at the CTA.

The CTA Second Division ordered the cancellation of the interest and surcharge, ruling that intercompany advances were not subject to DST prior to 19 July 2011 when the Supreme Court promulgated its decision in *CIR vs. Filinvest Development Corporation*, GR Nos. 163653 and 167689.

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

Issue:

Is THC liable to interest and penalties on the unpaid DST?

Ruling:

No. Citing *Michel J. Lhuillier Pawnshop, Inc.*, GR No. 166786 promulgated on 11 September 2006, the CTA *En Banc* held that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, justify the non-imposition of surcharges and interest.

The CTA *En Banc* also noted that the BIR acted beyond the scope of its authority in the issuance of the deficiency DST assessment. The coverage of the BIR tax audit is for 2009 only. The breakdown of deficiency DST assessment shows that taxable years 2000 and 2006 - 2008 were included. No DST was even assessed for 2009.

The CTA ruled that even assuming THC could not rely on good faith on the rulings issued by the BIR and the courts as these were not specifically issued to THC, the DST assessment should nonetheless be cancelled as the revenue officers who conducted the tax examination assessed alleged deficiency for years which were not even covered by the LOA.

CIR vs. OCE Holding B.V.

CTA (*En Banc*) Case No. 1644 promulgated 23 January 2019

A change in the corporate name does not make a new corporation and has no effect on the identity of the corporation, or on its property, including entitlement to a tax refund, rights or liabilities.

Facts:

Respondent Oce Holding B.V. filed a claim for refund of capital gains tax (CGT) erroneously paid in connection with the transfer of shares in Oce Business Services Philippines, Inc. (now Canon Business Process Services Philippines, Inc.) in favor of Oce Business Services, Inc. in November 2012. Notwithstanding the filing of a tax treaty relief application on capital gains pursuant to Article 14 of the Philippines-Netherlands Tax Treaty, Oce Holding still paid the CGT on the transaction.

Due to the inaction of the BIR, Oce Holding filed a Petition for Review at the CTA. The BIR argued that the BIR Certification attesting that the transaction is exempt from CGT does not state the CGT amount. It also averred that the seller of shares and the exempt entity is Oce N.V., not Oce Holding. Oce Holding argued that Oce N.V. is its former corporate name.

The CTA Second Division ruled in favor of Oce Holding and ordered the BIR to refund the amount representing CGT of the transaction.

Upon denial of its Motion for Reconsideration, the BIR filed a Petition for Review with the CTA *En Banc*.

Issue:

Is Oce Holding entitled to the CGT refund?

Ruling:

Yes. The CTA *En Banc* sustained the ruling of the CTA Second Division that since the sale or transfer of shares of stock is not subject to CGT, it is not important whether the BIR Certification states the exact CGT amount to which Oce Holding is exempted from paying. The exemption certification specifically pertains to the subject transaction.

The CTA also held that it was sufficiently proven that Oce Holding and Oce N.V. are one and the same entity. Quoting the Supreme Court ruling in *Javier Sons vs. CA, GR No. 129552 promulgated on 29 June 2005*, a change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed.

Moreover, the CTA *En Banc* noted that the CIR has a judicial admission in its Petition for Review that Oce Holding B.V. and Oce N.V. are one and the same.

CIR vs. Northern Tobacco Redrying Co., Inc.

CTA (*En Banc*) Case No. 1664 promulgated 31 January 2019

Facts:

Petitioner CIR assessed Respondent Northern Tobacco Redrying Co. (NTRC), Inc. for, among others, deficiency income tax, VAT and EWT on the transfer of assets between NTRC with 4 other related entities and Fortune Landequities and Resources, Inc. (FLRI) in 2010. NTRC executed a Deed of Transfer dated 25 February 2010 in favor of FLRI, transferring land parcels in Vigan, Ilocos Norte in exchange for FLRI shares. As a result of the transaction, NTRC - together with Fortune Tobacco Corporation, Dominion Realty and Construction Co. (DRCC), Parity Packaging Corporation and Orecla Realty, Inc., increased their combined ownership up to 99% resulting in their gaining control over FLRI.

NTRC protested the deficiency assessment and argued that the transaction is a tax-free exchange under Section 40(C)(2) of the NIRC. The CIR posited that securing a tax-free exchange ruling is a requirement under Revenue Regulations 18-01.

Due to the inaction of the BIR, NTRC elevated the case to the CTA. The CTA Third Division ruled that the transfer of land is a tax-free transaction, and a portion of the assessment against NTRC for VAT, EWT and Withholding Tax on Compensation has prescribed, thereby reducing its tax liability. It ruled that a prior BIR ruling to exempt the transaction from income tax is not required.

Aggrieved, the BIR filed a Petition for Review at the CTA *En Banc*.

Gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding 4 persons.

Issue:

Is the transaction considered a tax-free exchange under Section 40 (C)(2) of the Tax Code?

Ruling:

Yes. The transaction is not subject to income tax. Citing the Supreme Court ruling in *CIR vs. Filinvest Development Corp.*, GR 163653 and 167689 promulgated on 19 July 2011, the CTA *En Banc* ruled that the property-for-shares transfer qualifies as a tax-free exchange. Gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceed four persons.

Pursuant to Section 40 (C)(2) of the Tax Code, the requisites of non-recognition of gain or loss are:

1. The transferee is a corporation;
2. The transferee exchanges its shares of stock for properties of the transferor;
3. The transfer is made by a person, acting alone or together with others, not exceeding 4 persons; and,
4. As a result of the exchange the transferor, alone or together with others, not exceeding 4, gains control of the transferee.

The CTA *En Banc* held that the transaction complies with all the requisites. After the transfers, the transferor continued to collectively control FLRI.

A tax-free exchange ruling is not necessary to claim exemption under the NIRC.

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