

# Tax Bulletin

April 2019



# Highlights

## BIR Issuances

- ▶ Revenue Regulation (RR) No. 3-2019 prescribes the use of the Electronic Certificate Authorizing Registration (eCAR) System for transactions involving the registration and transfer of real and personal properties pursuant to Section 5(B) in relation to Sections 58 (E), 95, and 97 of the Tax Code, as amended. **(Page 4)**
- ▶ RR No. 4-2019 implements the provisions of Republic Act No. 11213, otherwise known as the "Tax Amnesty Act", relating to the processing of tax amnesty applications on tax delinquencies. **(Page 5)**
- ▶ RR No. 5-2019 implements the tax incentive provisions of RA No. 10771, otherwise known as the "Philippine Green Jobs Act of 2016". **(Page 8)**
- ▶ Revenue Memorandum Circular (RMC) No. 41-2019 circularizes the availability of the newly revised BIR Form No. 1702-MX January 2018 or the Annual Income Tax Return for Corporations, Partnerships and other Non-Individuals with Mixed Income subject to Multiple Income Tax Rates or with Income subject to Special/ Preferential Rate. **(Page 9)**
- ▶ RMC No. 42-2019 prescribes the mandatory re-application for registration of cash register machines (CRM), point-of-sale (POS) machines, special purpose machines (SPM) and other sales machines or software with permits to use (PTUs) issued for the month of January 2019. **(Page 9)**
- ▶ RMC No. 47-2019 prescribes the revised guidelines and mandatory requirements for the processing of VAT refund claims within the 90-day period set by Section 112 of the Tax Code, as amended. **(Page 10)**
- ▶ RMC No. 48-2019 amends RMC No. 42-2019, extending the deadline for mandatory submission of applications via the Electronic Accreditation and Registration (eAccReg) system. **(Page 13)**

## BOC Updates

- ▶ Customs Administrative Order (CAO) No. 03-2019 provides for the Bureau of Customs' (BOC) Exercise of Customs Jurisdiction and Police Authority. **(Page 13)**
- ▶ Customs Memorandum Order (CMO) No. 17-2019 provides for the Guidelines on the Recall/Lifting/Reconsideration/Setting Aside of Any Order/Decree/Decision of Abandonment. **(Page 18)**
- ▶ CMO No. 18-2019 provides for the Adjustment of the Period of Lodgement of Goods Declaration and Payment of Duties and Taxes. **(Page 19)**
- ▶ CMO No. 19-2019 provides for the Decentralization of the Client Profile Registration System (CPRS) Activation of Entities Accredited by Other Government Agencies and the Renewal of Accreditation of Customs Brokers to the District Collectors. **(Page 19)**

- ▶ CAO No. 04-2019 provides for the Duty Drawback, Refund for Overpayment and Abatement of Duties and Taxes and Other Refunds. **(Page 20)**

### **SEC Opinions and Issuances**

- ▶ SEC MC. No. 6 defers the application of revenue recognition guidelines for the implementation of PFRS No. 15 issued by the Philippine Interpretations Committee (PIC) for sugar millers. **(Page 23)**
- ▶ SEC MC. No. 7 implements the chapter on “One Person Corporation” introduced under the Revised Corporation Code. **(Page 23)**
- ▶ SEC MC. No. 8 provides for the guidelines on the issuance of sustainability bonds under the ASEAN Sustainability Bonds Standards in the Philippines. **(Page 24)**
- ▶ SEC MC. No. 9 provides for the guidelines on the issuance of social bonds under the ASEAN Social Bonds Standards in the Philippines. **(Page 24)**
- ▶ SEC MC. No. 10 provides for the Rules on Material Related Party Transactions for Publicly-listed Companies. **(Page 25)**

### **BSP Issuances**

- ▶ Circular No. 1036 provides for the Regulations on the Establishment, Relocation or Voluntary Closure of Service Units of Non-Stock Savings and Loan Association (NSSLA) and Relocation of NSSLA Head Office. **(Page 25)**
- ▶ Circular No. 1037 provides for the Extension of the Transitory Period of the Amended Reporting Templates on Bank Loans and Deposit Interest Rates. **(Page 27)**
- ▶ Circular No. 1038 provides for the Amendment to the Regulations on the Election and Employment of Foreign Nationals as Directors and Officers. **(Page 28)**

### **Court Decisions**

- ▶ To be exempt from improperly accumulated earnings tax (IAET), there must be clear proof of a definite planned expansion as embodied in the minutes of the board meeting, the board resolution itself or a memorandum recommending the accumulation of profits.

The computation of the 10% IAET includes undistributed profits from prior years. **(Page 29)**

- ▶ The Commissioner of Internal Revenue (CIR) need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption that it filed a false return.

Failure to register with the BIR Revenue District Offices having jurisdiction over the branches will result in the disallowance of input taxes claimed based on official receipts or invoices in the name of the branches. **(Page 30)**

- ▶ The CIR, not PEZA, has the authority to determine whether a PEZA-registered entity paid the proper tax due.

Income from an unregistered activity is subject to 30% corporate income tax and the accumulation of earnings in excess of 100% of paid-up capital is subject to IAET. **(Page 31)**

- ▶ The absence of a BIR confirmatory ruling on a tax-free exchange will not automatically result in a deficiency income tax assessment.

It is the transferee corporation in a transfer pursuant to Section 40(C)(2) which is liable to pay the Documentary Stamp Tax (DST) on the disposal of properties and on the original issuance of shares, not the transferor. **(Page 32)**

## **BIR Issuances**

---

RR No. 3-2019 prescribes the use of the eCAR System for transactions involving the registration and transfer of real and personal properties pursuant to Section 5(B) in relation to Sections 58 (E), 95, and 97 of the Tax Code, as amended.

---

### **RR No. 3-2019 issued on 28 March 2019**

- ▶ The electronic Certificate Authorizing Registration System (“eCAR System”) is a system, which generates an eCAR with barcode, and does away with the manually prepared CAR.
- ▶ One eCAR shall be issued per title in the case of registered land and/or improvements.
- ▶ One eCAR shall be issued for each tax declaration in the case of unregistered land and/or improvements.
- ▶ A separate eCAR shall also be issued for all personal properties.
- ▶ The eCAR must be presented to the Register of Deeds (RD) within 5 years from date of issuance; otherwise, the eCAR shall be deemed permanently expired and, therefore, of no force and effect. A new eCAR will have to be generated and issued upon request of the taxpayer to replace the expired eCAR.
- ▶ All manually-issued CARs that are either due for revalidation or have not been presented to the RD within the 5-year validity period and those with partial transfer of properties as prescribed under existing BIR issuances are considered expired and, thus, shall no longer be valid for presentation to the RD. These CARs shall be replaced with an eCAR by the concerned Revenue District Office (RDO) or LT Division who originally issued the manual CAR.
- ▶ No registration of any deed or instrument transferring ownership of real property shall be allowed by the RD unless the CIR or his duly authorized representative has issued the corresponding eCAR, which has been properly verified under the LRA-BIR eCAR Verification System.
- ▶ An eCAR duly issued by the BIR and retrieved by the RD from the LRA-BIR eCAR database, whether for taxable or tax-exempt transactions, shall be the basis for the RD to effect the transfer.
- ▶ Any eCAR not in the database is considered spurious and not issued by the BIR. Hence, the transfer of this property should not be effected.

- ▶ For transactions involving estate or donor's tax on which the eCARs are issued by the RDO having jurisdiction over the place where the donor is domiciled at the time of donation or where the decedent is domiciled at the time of his death, the RDs, who have jurisdiction over the property, shall no longer require the eCAR to be authenticated or countersigned by the issuing district office. This also applies to non-resident decedents/donors whose eCARs are issued by RDO No. 39.
- ▶ All rules and regulations and parts thereof inconsistent with these provisions, including RR No. 24-2002, are hereby amended, modified, or revoked accordingly.
- ▶ These Regulations shall take effect 15 days immediately after publication thereof in a leading newspaper of general circulation.

*(Editor's Note: RR No. 3-2019 was published in the Manila Bulletin on 1 April 2019)*

---

RR No. 4-2019 implements the provisions of Republic Act No. 11213, otherwise known as the "Tax Amnesty Act", relating to the processing of tax amnesty applications on tax delinquencies.

---

#### **RR No. 4-2019 issued on 8 April 2019**

- ▶ For purposes of these Regulations, the following words and phrases are defined as follows:
  1. **Delinquent Account** pertains to a tax due from a taxpayer arising from the audit of the Bureau of Internal Revenue (BIR), which had been issued Assessment Notices that have become final and executory due to the following instances:
    - ▶ Failure to pay the tax due on the prescribed due date provided in the Final Assessment Notice (FAN) / Formal Letter of Demand (FLD) that has not been duly protested within 30 days from its receipt;
    - ▶ Failure to appeal to the Court of Tax Appeals (CTA) or to the Commissioner of Internal Revenue (CIR) within 30 days from receipt of the decision denying the request for reinvestigation or reconsideration; and
    - ▶ Failure to appeal to the CTA within 30 days from receipt of the decision of the CIR, denying the taxpayer's administrative appeal to the Final Decision on Disputed Assessment (FDDA).
  2. **Assessment Notice** refers to a notice issued to a taxpayer stating the amount and basis of the deficiency tax assessed. This term includes FAN / FLD and FDDA.
  3. **Basic Tax Assessed** refers to any of the following:
    - ▶ Tax due shown on the Assessment Notice, net of any basic tax paid prior to the effectivity of these Regulations, exclusive of civil penalties;
    - ▶ The computed basic tax liabilities as shown in the criminal complaint filed by the BIR with the Department of Justice (DOJ) / Prosecutor's Office or in the information filed in the Courts for violations of tax laws and regulations; and
    - ▶ The basic tax liabilities as per Court's final and executory decision.

4. **Criminal Cases** are cases involving crimes and other offenses defined and enumerated under Chapter II of Title X and Section 275 of the 1997 Tax Code, as amended.
  5. **Withholding Agent** is a person required to withhold, account for, and remit within the prescribed period, any tax imposed by the Tax Code, as amended.
- ▶ All persons, whether natural or juridical, that have revenue tax liabilities for taxable year 2017 and prior years, may avail of tax amnesty on delinquencies within one year from the effectivity of these Regulations.
  - ▶ Below are the instances when tax amnesty on delinquencies may be availed of and the corresponding tax amnesty rates:

<ul style="list-style-type: none"> <li>▶ Delinquent Accounts as of the effectivity of these Regulations, including the following:               <ol style="list-style-type: none"> <li>1. Delinquent accounts with application for compromise settlement either on the basis of doubtful validity of the assessment or financial incapacity of the taxpayer, whether it has been denied or still pending with the Regional Evaluation Board (REB) of the National Evaluation Board (NEB), on or before the effectivity of these Regulations;</li> <li>2. Delinquent withholding tax liabilities arising from non-withholding of tax; and</li> <li>3. Delinquent estate tax liabilities.</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>▶ 40% of the basic tax assessed</li> </ul>
<ul style="list-style-type: none"> <li>▶ Tax cases with final and executory judgment by the courts on or before the effectivity of these Regulations</li> </ul>	<ul style="list-style-type: none"> <li>▶ 50% of the basic tax assessed</li> </ul>
<ul style="list-style-type: none"> <li>▶ With pending criminal cases with the DOJ / Prosecutor's Office or the courts for tax evasion and other criminal offenses under Chapter II of Title X and Section 275 the Tax Code, as amended</li> </ul>	<ul style="list-style-type: none"> <li>▶ 60% of the basic tax assessed</li> </ul>
<ul style="list-style-type: none"> <li>▶ Withholding tax liabilities of withholding agents arising from their failure to remit the withheld taxes.</li> </ul>	<ul style="list-style-type: none"> <li>▶ 100% of the basic tax assessed</li> </ul>

- ▶ The tax amnesty rate of 100% shall apply in all cases of non-remittance of withholding taxes, even if it shall fall under the other cases mentioned above.
- ▶ The following are the documentary requirements for the availment of Tax Amnesty on Delinquencies:
  1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA);
  2. Acceptance Payment Form (APF) (BIR Form No. 0621 - DA), which must be either duly validated by the Authorized Agent Banks (AABs) or duly stamped "received", with the accompanying bank deposit slip duly validated by the concerned AABs or accompanied with Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs);

3. Certificate of Tax Delinquencies / Tax Liabilities issued by the concerned BIR office; and
  4. In case of withholding tax liabilities arising from failure of the withholding agent to remit the tax withheld, a copy of the assessment found in either the FAN/FDDA, Preliminary Assessment Notice (PAN), Notice of Informal Conference or equivalent document.
- ▶ The TAR and other documentary requirements shall be filed with the following BIR offices:

Classification	Place of Filing
Non-Large Taxpayers	RDO where applicant-taxpayer is registered
Large Taxpayers - Cebu or Davao	Large Taxpayers Division (LTD) where applicant-taxpayer is registered
Large Taxpayers - Excise and Regular	Large Taxpayers Collection Enforcement Division (LTCED)

- ▶ Within one year from the effectivity of these Regulations, taxpayers who will avail of the tax amnesty on delinquencies shall file an application in accordance with the following procedures:
  1. Secure the Certificate of Delinquencies / Tax Liabilities from the concerned BIR office;
  2. Present the duly accomplished TAR and APF, together with the other required documents, to the concerned BIR office, which will, then, indorse the APF for payment of the tax amnesty amount with the AABs or the RCO;
  3. File in triplicate copies of the above documents with the RDO / LTD / LTCED where the taxpayer is registered.
- ▶ The availment of the tax amnesty on delinquencies shall be considered fully complied with upon completion of the above steps within the one-year availment period.
- ▶ A Notice of Issuance of Authority to Cancel Assessment (NIATCA) will be issued by the BIR to the taxpayer availing of the tax amnesty on delinquencies within 15 calendar days from submission of the TAR and APF; otherwise, the stamped "received" duplicate copies of the TAR and APF shall be deemed as sufficient proof of availment.
- ▶ The tax delinquency of those who successfully avail of the tax amnesty on delinquencies shall be considered settled while the criminal case and its corresponding civil or administrative case, if applicable, shall be terminated.
- ▶ The taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal and administrative cases, and penalties under the Tax Code, as amended, that are related to the internal revenue taxes for the taxable years covered by the tax amnesty availed of.
- ▶ The availment of the tax amnesty on delinquencies and the issuance of the corresponding APF do not imply any admission of criminal, civil or administrative liability on the part of the availing taxpayer.

- ▶ These Regulations shall take effect 15 days from date of its publication in the newspaper of general circulation or Official Gazette.

*(Editor's Note: RR No. 4-2019 was published in Malaya Business Insight on 9 April 2019)*

---

RR No. 5-2019 implements the tax incentive provisions of RA No. 10771, otherwise known as the "Philippine Green Jobs Act of 2016."

---

#### **RR No. 5-2019 issued on 12 April 2019**

- ▶ Qualified "business enterprises," which are duly certified by the Secretary of the Climate Change Commission or his duly authorized representative, shall be entitled to the tax incentives provided by these Regulations.
- ▶ The term "business enterprises" refers to establishments engaged in the production, manufacturing, processing, repacking, assembly, or sale of goods and/or services, including service-oriented enterprises. They shall include (1) self-employed or own-account workers; (2) micro, small and medium enterprises (MSMEs); and (3) community-based enterprises.
- ▶ A qualified business enterprise shall be entitled to a special deduction from the taxable income equivalent to 50% of the total expense for skills training and research development expenses, subject to the following conditions:
  1. The deduction shall be availed of in the taxable year in which the expenses have been paid or incurred.
  2. The taxpayer can substantiate the deduction with sufficient evidence of:
    - ▶ The amount of expenses being claimed as deduction; and
    - ▶ The direct connection or relation of the expenses incurred to the skills training and research development of the business enterprise.
  3. Such special deductions shall be over and above the allowable and ordinary and necessary business deductions for said expenses under the Tax Code, as amended.
- ▶ The procedures to avail of the said tax incentives shall be as follows:
  1. Register or update its registration by submitting to the RDO where the qualified business enterprise is registered, the certification issued by the Climate Change Commission that the enterprise is qualified to avail the incentives; and
  2. Upon filing the income tax returns/annual information returns, furnish the RDO of the place where the said qualified business enterprise is registered, the following:
    - ▶ A sworn list of the total expenses paid or incurred for skills training and research development during the year;
    - ▶ A sworn list of the activities and/or projects by the institution and the cost of each undertaking, indicating in particular where and how the expenses were paid or incurred; and



- ▶ A sworn declaration that the expenses paid or incurred for skills training and research development have a direct connection or relation to the activities and/or projects of the business enterprise that generate and sustain green jobs.
- ▶ Claims for special deduction of 50% of the total expense for skills training and research development expenses by the qualified business enterprise shall be filed at the time of filing of the income tax returns.
- ▶ The income tax return and/or the annual information return of the qualified business enterprise shall be filed with the RDO where the qualified business enterprise is registered.
- ▶ These Regulations shall take effect 15 days after the publication in the Official Gazette or in a newspaper of general circulation, whichever comes first.

*(Editor's Note: RR No. 5-2019 was published in the Malaya Business Insight on 16 April 2019)*

---

RMC No. 41-2019 circularizes the availability of the newly revised BIR Form No. 1702-MX January 2018 or the Annual Income Tax Return for Corporations, Partnerships and other Non-Individuals with Mixed Income subject to Multiple Income Tax Rates or with Income subject to Special/ Preferential Rate.

---

**RMC No. 41-2019 issued on April 2, 2019**

- ▶ The new return shall be used by non-individuals with mixed income subject to multiple income tax rates or with income subject to special or preferential rates in filing the annual income tax return and paying the income tax due starting 2018, which are due on or before 15 April 2019.
- ▶ The forms are not yet available in the Electronic Bureau of Internal Revenue Forms (eBIRForms) and Electronic Filing and Payment Systems (eFPS). Thus, eBIRForms and eFPS filers shall use the old version.
- ▶ General Professional Partnerships, which elected the optional standard deduction (OSD), shall use the manual returns.
- ▶ Manual filers must download, print and completely fill out the applicable fields in the PDF version of the form, and failure to do so will be subject to penalties under Sec. 250 of the Tax Code, as amended.
- ▶ Payment of the tax due may be made manually or online.

---

RMC No. 42-2019 prescribes the mandatory re-application for registration of CRM, POS machines, SPM and other sales machines or software with PTUs issued for the month of January 2019.

---

**RMC No. 42-2019 issued on April 10, 2019**

- ▶ This Circular shall cover all applications for registration of CRMs, POS machines, SPMs, and other sales machines or software filed from 3 to 31 January 2019, including those with permit to use PTUs Sales Machines and other Special Purpose Machines issued within the same period.
- ▶ All taxpayers with PTUs issued prior to the implementation of this Circular that reflected an effective date between 3 to 31 January 2019 must also comply with the provisions of this Circular.
- ▶ There shall be a re-application for registration of all CRMs, POS machines, SPMs, and other sales machines falling under the above cases due to technical problems encountered in the Enhanced and Integrated Electronic Accreditation and Registration (eAccReg) Systems.

- ▶ The re-submission of applications via eAccReg System shall be done not later than 12 April 2019, and failure to comply shall be tantamount to non-registration of the CRMs, POS machines, SPMs and other sales machines, which shall be subject to the imposition of penalties under existing revenue issuances.
- ▶ Once the new PTU is obtained successfully, necessary modifications and/or reconfigurations shall be done on the machine/software to reflect the new PTU No. and Machine Identification Number (MIN), including its validity date on the receipts/invoices generated from the machines.
- ▶ Previously issued permit shall be surrendered within 15 days from receipt/printing of the new PTU.
- ▶ The mandatory submission of the sales reports through the eSales System every 8<sup>th</sup> or 10<sup>th</sup> of the month, whichever is applicable, shall be complied with, using the new MIN.

---

RMC No. 47-2019 prescribes the revised guidelines and mandatory requirements for the processing of VAT refund claims within the 90-day period set by Section 112 of the Tax Code, as amended.

---

**RMC No. 47-2019 issued on 16 April 2019**

- ▶ This Circular will not apply to claims processed under the jurisdiction of the Legal Service and amends certain provisions of RMC Nos. 5-2011 and 17-2018.
- ▶ Depending on the taxpayer, the venue for filing of the “Application for VAT Credit/Refund Claims” (BIR Form No. 1914) shall be as follows:
  1. For direct exporters, regardless of the percentage of export sales to total sales, the claim shall be filed at the VAT Credit Audit Division (VCAD);
  2. For taxpayers engaged in other VAT zero-rated sales (e.g. Renewable Energy Developers and those with indirect exports classified as effectively VAT zero-rated sales), the claim should be filed at the RDO or LT Audit Division having jurisdiction over the taxpayer-claimant; and
  3. For taxpayers whose VAT registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status, the claim shall be filed at the RDO or LT Audit Division having jurisdiction over the taxpayer-claimant.
- ▶ Upon filing of the claim, any outstanding VAT liability of the taxpayer-claimant shall be subject to the following guidelines:
  1. Outstanding VAT liability due to the BIR may be deducted from the approved refund on the BIR portion; and
  2. If there is a VAT liability due to the BIR and the claim includes refund of input VAT on importations, which necessitates endorsement to BOC for processing of the payment, the VAT liability with the BIR must first be settled before filing the application for VAT refund with the BIR.
- ▶ The taxpayer-claimant must submit the complete documents in support of the claim; otherwise, the application will not be accepted.
- ▶ No additional documents shall be requested/required from the taxpayer-claimant, and any unsupported claim will be disallowed outright, resulting in full/partial denial of the claim.

- ▶ The following are the documentary requirements for VAT refund applications:
  1. Complete supporting documents enumerated in the Revised Checklist of Mandatory Requirements under Annex "A.1" for claims filed pursuant to Sec. 112(A), or Checklist of Documentary Requirements under Annex "A.2" for claims filed under Sec. 112(B) of the Tax Code, as amended;
  2. Original copies of invoices/receipts for sales and purchases, together with photocopies, for validation by the assigned Revenue Officer (ROs), which shall be returned to the taxpayer-claimant after stamping "VAT Refund Claimed;"
  3. Claims for refund of unutilized input VAT on importation shall be supported with a "VAT Payment Certification" issued by the Revenue Accounting Division (RAD) of the Bureau of Customs (BOC), including the supporting Import Entry and Internal Revenue Declarations (IERD) and/or Single Administrative Document (SAD), Statement of Settlement of Duties and Taxes (SSDT);
  4. For the amortized portion of the deferred input VAT on aggregate purchases of capital goods exceeding P1 million in a month, the following rules shall apply:
    - ▶ For current claims, the corresponding sales invoices and/or official receipts, including proofs of payment, if qualified as "big ticket" purchase, shall be submitted; and
    - ▶ For the amortized deferred input VAT, which originated from purchases prior to the period of claim, there will be additional supporting documents to be submitted, depending on whether the source documents of the capital goods were verified during the time they were claimed, or there were previous certifications issued by the BOC on the amortized portion of the deferred input VAT on importation of capital goods.
  5. Quarterly and/or Annual income Tax Returns and Quarterly VAT Returns of the taxpayer-claimant, showing the deduction of input VAT sought to be refunded, on or before the date of the VAT refund application;
  6. Notarized sworn certification (Annex "B") attesting to the completeness of the documents submitted;
  7. Any of the following shall be acceptable as proof of inward remittances:
    - ▶ Copies of bank credit memorandum duly certified by the issuing bank;
    - ▶ Duly signed bank certifications clearly showing the amount remitted, date of remittance, and the name of the remitter;
    - ▶ Copies of bank statements clearly indicating the amount remitted, date of remittance, and the name of the remitter, duly certified by the issuing bank;
    - ▶ Certified copies of passbook, together with the proof that the same belongs to the taxpayer-claimant and any of the documents identified under the first two bullets; and

- ▶ Duly certified copies of cash remittances through non-bank financial intermediaries (NBFIs) performing quasi-banking functions and other NBFIs (such as but not limited to remittance centers) duly authorized by the *Bangko Sentral ng Pilipinas* (BSP), where the names of the remitter and recipient are duly indicated.
8. For export sale of services, the following documents are valid proof to establish that the non-resident foreign corporation (NRFC) buyer is not engaged in business in the Philippines:
- ▶ Original copy of the certification from the SEC that the NRFC buyer is not a registered corporation in the Philippines; and
  - ▶ Consularized copy of the certificate of foreign registration, incorporation, association of the NRFC.
9. For zero-rated sales to companies engaged in international shipping or air transport, the taxpayer-claimant is required to submit original copies of the following:
- ▶ Certification from the appropriate government agencies that the clients domiciled in the Philippines is engaged in international shipping or air transport;
  - ▶ Consularized copy of the certificate of foreign registration / incorporation / association of the NRFC; and
  - ▶ Service contracts or such other acceptable documents to prove that the shipping agency/manning agency is dealing with foreign principals and clients that are engaged in international shipping or air transport.
10. Taxpayer-claimants are required to submit the original copies of the consularized documents, with English translation.
11. Taxpayer-claimant shall submit the following documents within 30 days from date of filing, and non-submission of which within the prescribed period may result in partial or full denial of the application, as the case may be:
- ▶ Certification of VAT Payment from BOC RAD;
  - ▶ Consularized copy of the certificate of foreign registration / incorporation / association of the NRFC for purposes of the claims whose zero-rated sales are based on Section 108 (B)(2) of the Tax Code, as amended; and
  - ▶ Certifications required for claims whose zero-rated sales are anchored under Section 108(B)(4) of the Tax Code of 1997, as amended.
- ▶ For VAT refund claims to be filed on 1 June 2019 and thereafter, all documents as required shall be submitted upon filing.

---

RMC No. 48-2019 amends RMC No. 42-2019, extending the deadline for mandatory submission of applications via eAccReg system.

---

#### **RMC No. 48-2019 issued on 17 April 2019**

- ▶ This Circular extends the deadline for the mandatory submission of applications via Electronic Accreditation and Registration (eAccReg) system from 12 April 2019 to 31 May 2019.
- ▶ This covers all re-applications for registration of CRMs, POS Machines, SPMs, and Other Sales Machines or Software with PTUs filed from 3 to 31 January 2019.
- ▶ This also covers PTUs issued prior to the implementation of RMC 42-2019 that reflect an effective date between 3 to 31 January 2019.

#### **BOC Updates**

---

CAO No. 03-2019 provides for the BOC's Exercise of Customs Jurisdiction and Police Authority.

---

#### **Customs Administrative Order (CAO) No. 03-2019 dated April 8, 2019**

- ▶ This Order covers the exercise of customs jurisdiction and control by the BOC over the following:
  1. All importations, whether for consumption, warehousing, transit, or for admission to Free Zones as defined in Section 102 (w) of the Customs Modernization and Tariff Act (CMTA), and all export shipments, which are suspected to violate the CMTA and related laws;
  2. Suspected smuggled goods and prohibited importation and goods intended for exportation, found anywhere in the Philippines; and
  3. Carriers and persons suspected to be in possession of smuggled goods and prohibited importation and exportation.
- ▶ General Provisions
  1. ***Persons Authorized to Exercise Police Authority:***
    - ▶ BOC Officials, District Collectors, Deputy District Collectors, Police Officers, Agents, Inspectors and its Guards;
    - ▶ Upon authorization of the Commissioner, specifically named organic officers and members of the Armed Forces of the Philippines (AFP) and National Law Enforcement Agencies (NLEAs); and
    - ▶ Officials of the Bureau of Internal Revenue (BIR) on all cases falling within the regular performance of their duties, when payment of internal revenue taxes is involved.
  2. ***Extent of Police Authority: Any person exercising Police Authority may exercise any of the following:***
    - ▶ **Power of Seizure** - to seize any vessel, aircraft, cargo, goods, animal or any other movable property when the same is subject to forfeiture or when they are subject of a fine imposed under the CMTA.

- ▶ **Authority to Require Assistance and Information** - to demand the assistance of and request information from the Philippine National Police (PNP), the AFP and other NLEAs, when necessary, to effect any search, seizure or arrest.
- ▶ **Authority to Enter Properties/to Search Dwelling House** - to enter, pass through, and search, at any time any land, enclosure, warehouse, store, building or other structures.

A Dwelling House may be entered and searched only upon warrant issued by the Judge of a competent court, the sworn application thereon showing probable cause and particularly describing the place to be searched and the goods to be seized.

- ▶ **Authority to Search Vessels or Aircrafts and Persons or Goods Conveyed Therein** - To board, inspect, search and examine a vessel or aircraft and any container, trunk, package, box or envelope found on board, and physically search and examine any person thereon. In case of any probable violation of the CMTA, may seize the goods, vessel, aircraft, or any part thereof.

**Non-Liability for Damages.** The duly authorized search of vessels or aircrafts and persons or goods conveyed therein shall not give rise to any claim for damage caused to the goods, vessel or aircraft, unless there is gross negligence or abuse of authority in the exercise thereof.

- ▶ **Authority to Search Vehicles, Other Carriers, Persons and Animals.** Upon reasonable cause based on profiling or derogatory information received, to open and examine any box, trunk, envelope, or other container for purposes of determining the presence of dutiable or prohibited goods. This authority includes the search of receptacles used for the transport of human remains and dead animals, and the power to stop, search, and examine any vehicle or carrier, person or animal suspected of holding or conveying dutiable or prohibited goods.
- ▶ **Authority to Search Persons Arriving from Foreign Countries** - To search, upon reasonable cause based on profiling or derogatory information received, travelers arriving from foreign countries. The dignity of the person under search and detention shall be respected at all times. Female Inspectors may be employed for the examination and search of persons of their own sex.

3. **Customs Control Over Goods.** All goods, including means of transport, entering or leaving the Customs Territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs Control to ensure compliance with the CMTA.
4. **Control Over Premises Used for Customs Purposes.** The BOC shall, for customs purposes, have exclusive control, direction and management of customs offices, facilities, warehouses and customs facilities and warehouses, including ports, airports, wharves, infrastructure and other premises in the Customs Districts, in all cases without prejudice to the general police powers of the local government units (LGUs), the Philippine Coast Guard (PCG) and of law enforcement agencies in the exercise of their respective functions.

5. ***Special Surveillance for Protection of Customs Revenue and Prevention of Smuggling.*** The BOC shall conduct surveillance on vessels or aircrafts entering Philippine territory and on imported goods entering the customs office: Provided, That the function of the PCG to prevent and suppress the illegal entry of these goods, smuggling and other forms of customs fraud and violations of maritime law and its proper surveillance of vessels entering and/or leaving Philippine territory as provided in Republic Act No. 9993, otherwise known as the "PCG Law of 2009," shall continue to be in force.
6. ***Trespass or Obstruction of Customs Premises.*** No person shall enter or obstruct a customs office, warehouse, port, airport, wharf, or other premises under the control of the BOC without prior authority, including the streets or alleys where these facilities are located.
7. ***Deputization Order (DO)***
  - ▶ A DO may be issued only by the Commissioner of Customs to authorize specific officers or members of NLEAs to assist Customs Officers operating outside of the Customs Premises in the exercise of Police Authority, as follows:
    - a. AFP;
    - b. Bureau of Fisheries and Aquatic Resources (BFAR);
    - c. National Bureau of Investigation (NBI);
    - d. PCG;
    - e. Philippine Drug Enforcement Agency (PDEA);
    - f. PNP; and
    - g. Any other law enforcement agency which the Commissioner may hereafter deputize.
  - ▶ Grounds for the Issuance of a DO
    - a. When there is lack of sufficient manpower, expertise and logistical resources on the part of the BOC; and
    - b. When the risk of security and safety is high in the area of operation.
  - ▶ The DO shall specify the period for its validity, which shall not exceed one year from issuance, unless earlier revoked. When the purpose for which it was issued has ceased to exist or when the deputized officers are recalled by the head of his agency, the deputization is deemed automatically revoked.
  - ▶ The renewal of the DO shall take effect only on the date of issuance, and shall not retroact to the date of expiration of the original or earlier DO.

## 8. *Mission Order (MO)*

- ▶ An MO is issued to ensure that the operation is duly authorized by the BOC and that the Customs Officers or deputized officers tasked to assist in carrying it out are properly identified.
- ▶ Basis and Conditions for the Issuance of a MO
  - a. When there is a need to operate outside the Customs Premises;
  - b. When there is need for a coordinated effort to avoid duplication and ensure the success of an anti-smuggling operation outside Customs Premises; and
  - c. Every request for issuance of MO must be accompanied by a corresponding Execution Plan emanating from the requesting agency other than the BOC, on the basis of a verified intelligence report.
- ▶ MO shall be valid for not more than 30 calendar days from the date of its issuance. The date of expiration shall be, likewise, specified in the MO. Moreover, the accomplishment or completion of the operation automatically terminates the MO.
- ▶ Grounds for Revocation (by the issuing authority)
  - a. When the mission becomes legally or physically impossible to achieve, as determined by the issuing authority;
  - b. Inaction, ineffective execution, or abuse of authority in the implementation of the MO;
  - c. Where the MO is issued to deputized officers and the BOC, being the lead agency in anti-smuggling operations, takes over the operation from the deputized officers; or
  - d. Other instance where the Commissioner or issuing authority deems it necessary to revoke the MO.

## 9. *Letter of Authority (LOA)*

- ▶ The Commissioner shall issue an LOA pursuant to the exercise of the power to visit and inspect under Section 224, Chapter 3, Title II of the CMTA to authorize Customs Officers to inspect, visit, and when necessary, demand evidence of payment of duties and taxes on imported goods openly offered for sale or kept in storage.
- ▶ Only Customs Officers authorized in writing by the Commissioner may implement the LOA, without prejudice to the authority of the Commissioner to require the assistance of deputized officers in the implementation of the LOA.
- ▶ The validity of an LOA shall commence upon issuance and shall be deemed terminated upon completion of the mission.



- ▶ An LOA shall be implemented by strictly observing the rules enumerated in the Order to safeguard the integrity of the power to visit and inspect, and to prevent the possible abuse thereof.

#### 10. *Special Customs Area*

- ▶ For reasons of security, safety and economy, the Commissioner may constitute the premises upon which foreign goods are openly offered for sale, or kept in storage, as a special customs area for the duration of the exercise of the power to visit and inspect or other proceedings related thereto.
- ▶ In all instances, a Customs Operations Officer III shall be designated in the Special Customs Area for purposes of valuation and computation of duties and taxes.

#### 11. *Search Warrant*

- ▶ For purposes of this Order, only Customs Officers authorized in writing by the Commissioner may apply for a judicial warrant. In an application for Search Warrant, the BOC shall inform the Court through a manifestation that such is for the purpose of taking physical possession of the goods preparatory to the institution of seizure proceedings for violation of the CMTA, and other related customs laws.
- ▶ A duly issued warrant to search a Dwelling House may be implemented by Customs Officers and deputized officers.
- ▶ Service of the duly issued warrant shall be made in the daytime, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night.
- ▶ The Customs Officers and deputized officers tasked to prepare and submit to the court the return of the service of warrant shall always furnish the BOC a copy thereof within 24 hours from submission of return of service to the court.
- ▶ As provided under Section 1151 of the CMTA, expenses for customs intelligence and enforcement and other related activities shall be sourced from the Forfeiture Fund, including those incurred for the provision of legal assistance to Customs Officers subject of criminal actions arising from the proper exercise of their Police Authority.
- ▶ The Department of Finance (DOF) and the Department of Budget and Management (DBM) shall, upon the recommendation of the BOC, issue a joint regulation to implement the provisions of this section pursuant to Section 1151 of the CMTA.
- ▶ This Order repeals and/or modifies Customs Memorandum Order (CMO) No. 10-2006, CMO No. 13-1994, CMO No. 52-1993, CMO No. 79-1991 and all other rules and regulations or parts thereof which are inconsistent herewith.

*(Editor's Note: CAO No. 3-2019 was published in The Manila Times on 16 April 2019)*

---

CMO No. 17-2019 provides for the Guidelines on the Recall/Lifting/Reconsideration/ Setting Aside of Any Order/Decree/Decision of Abandonment.

---

**CMO No. 17-2019 dated 15 April 2019**

- ▶ The District Collector shall strictly observe/comply with the implementation of Section 1129 of the CMTA (Abandonment, Kinds and Effects of) in relation to Section 407 (Goods Declaration and Period of Filing) thereof.
- ▶ The District Collector may initiate and decide abandonment proceedings that may result in the issuance of an Order/Decree/Decision of abandonment upon strict compliance with the notices required under Sections 1129 and 407 of the CMTA and CMO No. 16-2019 [Guidelines on The Sending of Notice under Section 1129 (Abandonment, Kinds and Effects)] dated 18 March 2019.
- ▶ In case the District Collector issues an Order/Decree/Decision of Abandonment, the aggrieved party may file a written Motion to Recall/Lift/Reconsider/Set Aside with the District Office that issued the same within a period of 15 days from receipt thereof. The motion shall specifically state the grounds relied upon and the timeliness of the filing thereof.
- ▶ The District Collector shall have the authority to resolve any Motion to Recall/Lift/Reconsider/Set Aside any Order/Decree/Decision of Abandonment within a period five working days from its filing. Thereafter, the District Collector shall transmit to the Office of the Commissioner for confirmation his/her Decision within two days from promulgation/issuance thereof.
- ▶ The Decision of the District Collector duly confirmed by the Office of the Commissioner shall become final and executory within 15 days from receipt by the owner/importer/consignee of the questioned Order/Decree/Decision unless appealed to the Commissioner in the manner and time specified in Section 114 of the CMTA, which allows appeal from any decision/omission of the Bureau pertaining to an importation, exportation, or any legal claim.
- ▶ The appeal shall set forth new/specific arguments/grounds not raised in the Motion to Recall/Lift/Reconsider/Set Aside any Order/Decree/Decision of Abandonment and with arguments which were simply glossed over, overlooked and/or not treated at all in the appealed Decision.
- ▶ Once the Order/Decree/Decision shall become final and executory, the subject shipments shall be immediately disposed by the concerned District Collector pursuant to Section 1141 of the CMTA, on Modes of Disposition.
- ▶ In case of public auction, the District Collector shall comply with the mandatory requirement of publication prescribed in Section 1141 of the CMTA, and shall furthermore strictly comply with CMO No. 02-2019 (Guidelines in the Conduct of Public Auction and in Setting the Floor Price of Goods Subject thereto).
- ▶ Customs Memorandum No. 18-2014 is hereby repealed, and all other issuances that are inconsistent with this Order are hereby amended or modified accordingly.

*(Editor's Note: CMO No. 17-2019 was received by the UP Law Center on 16 April 2019)*

CMO No. 18-2019 provides for the Adjustment of the Period of Lodgement of Goods Declaration and Payment of Duties and Taxes.

**CMO No. 18-2019 dated 26 April 2019**

- ▶ This Order was issued to shorten the period of lodgement of goods and payment of duties and taxes in keeping with the BOC’s mandate to facilitate trade in goods, optimize revenue generation, further ease port congestion, streamline processes and protect the interest of its stakeholders.
- ▶ Accordingly, the 15-day period to lodge goods declaration, as provided in Section 407 (last paragraph) of the CMTA, is hereby shortened to 7 days from the date of discharge of the last package from the vessel or aircraft.
- ▶ The District Collectors are hereby directed to immediately examine the goods, when necessary, after the goods declaration has been lodged pursuant to Section 419 of the CMTA, assess the goods, after which, payment of duties and taxes may be made immediately upon receipt of the assessment.

*(Editor’s Note: CMO No. 18-2019 was signed by the Commissioner on 29 April 2019. Please note, however, that a Memorandum dated 3 May 2019 was issued by the Commissioner of Customs suspending the implementation of this CMO until further notice)*

CMO No. 19-2019 provides for the Decentralization of the CPRS Activation of Entities Accredited by Other Government Agencies and the Renewal of Accreditation of Customs Brokers to the District Collectors.

**CMO No. 19-2019 dated 16 April 2019**

- ▶ Activation of Client Profile Registration System (CPRS) of entities, natural or juridical, that are accredited by other government agencies shall be done by the District Collector only upon receipt of the endorsement with attached requirements from the concerned government agency below, sent either thru its official email, official messenger or a secured courier:

STAKEHOLDERS	ACCREDITING AGENCIES	REQUIREMENTS
Airlines	Civil Aeronautics Board	Email Notification from concerned agency
Shipping Lines	Maritime Industry Authority (MARINA)	Letter indorsement from Shipping Agent; MARINA Accreditation; and Valid Permit to Operate
Exporters Registered with Investment Promotions Agencies	Board of Investment	Email Notification and Good Standing from concerned agency
	Philippine Economic Zone Authority	BOC Official Receipt (BCOR); CPRS; Notification from concerned agency
	Clark Development Corporation	Email Notification from concerned agency
	Subic Bay Metropolitan Authority	Email Notification from concerned agency
	Cagayan Special Economic Zone Authority	Email Notification from concerned agency
	Zamboanga City Special Economic Zone Authority	Email Notification from concerned agency
	Tourism Infrastructure Enterprises Zone Authority	Email Notification from concerned agency
	Export Marketing Bureau	Email Notification from concerned agency
	Authority of the Freeport Area of Bataan	Email Notification from concerned agency
Other Exporters	Philippine Exporters Confederation, Inc.	Email Notification from concerned agency
	Custom Bonded Warehouse Operators	License to Operate issued by the BOC and indorsement from the Deputy Commissioner AOCG for activation of the CPRS profile

- ▶ BOC Personnel delaying the processing of applications for accreditation or renewal of registration or accreditation without justifiable reasons shall be dealt with accordingly pursuant to existing Civil Service Law, rules and regulations and other related laws.

*(Editor's Note: CMO No. 19-2019 was signed by the Commissioner on 30 April 2019 and was received by the UP Law Center on 3 May 2019)*

---

CAO No. 04-2019 provides for the Duty Drawback, Refund for Overpayment and Abatement of Duties and Taxes and Other Refunds.

---

**CAO No. 04-2019 dated 8 April 2019**

- ▶ An importer may apply for Duty Drawback under the following situations:
  1. Up to a maximum of 99% of the duty imposed by law, for all fuel imported into the Philippines used for propulsion of:
    - ▶ Sea vessel engaged in international trade;
    - ▶ Sea vessel engaged in coastwise trade, provided that the MARINA or any appropriate government agency has authorized the temporary conversion of that vessel to engage in international trade; and
    - ▶ Scheduled international airlines.
  2. Up to a maximum of 50% of the duty imposed by law for petroleum oils and oils obtained from bituminous materials, crude oil imported by non-electric utilities, sold directly or indirectly, in the same form or after processing, to electric utilities for the generation of electric power and for the manufacture of city gas.
  3. For imported materials, including those used in the packing, packaging, covering, putting up, marking or labeling, in whole or in part, for which duties have been paid, upon exportation of the goods manufactured or produced, subject to certain conditions provided in the CAO.
- ▶ *Prohibition Against Double Claim.* A registered enterprise under RA No. 5186, otherwise known as the "Investment Incentives Act", or RA No. 6135, otherwise known as the "Export Incentives Act of 1970", which has previously applied for tax credits based on customs duties paid on imported raw materials and supplies, shall not be entitled to Duty Drawback under this section with respect to the same importation subsequently processed and re-exported.
- ▶ For items (1) and (2) above, claim and application for a duty drawback shall be filed within one year from the date of importation.
- ▶ For item (3), the claim shall be filed within six months from the date of exportation. Where the duty drawback involves multiple importations or exportations, the prescriptive period shall be counted from the date of the first importation or exportation, as the case may be. The claimant may request an extension to file the claim for another six months; provided, that the request is made before the lapse of the six-month period and the actual filing of the claim shall not exceed one year from the date of exportation.

▶ General Provisions on Refund

1. An importer may apply for refund of any duties and taxes charged in excess of the amount due, under the following circumstances:
  - ▶ When there is error in the assessment or goods declaration;
  - ▶ When the BOC permits a change in customs procedure, in the instances of consumption to warehousing, from one where duties and taxes are paid to another where no or less duties and taxes are required to be paid;
  - ▶ Manifest clerical errors made on an invoice or entry, errors in return of weight, measure and gauge; and
  - ▶ Errors in the distribution of charges on invoices not involving any question of law, which means only question of facts.
2. Refunds for the first 2 items above shall not be granted if the amount of duties and taxes involved is less than P5,000.
3. All claims and applications for refund of duties and taxes shall be made in writing and filed with the BOC within 12 months from the date of payment of duties and taxes.
4. In claims for refund, the applicant shall indicate whether the claim includes the refund of internal revenue taxes. If so, the BOC shall cause the issuance of a refund only after the issuance by the BIR of a certification that the same has not been claimed as creditable input tax nor has it been the subject of a similar claim for refund. The Commissioner of the BIR shall be informed of any refund of internal revenue taxes granted as a consequence of a claim for duty drawback or refund.

▶ General Provisions on Abatement

1. An importer may apply for abatement or refund of duties and taxes for the following cases (subject to certain conditions):
  - ▶ Missing packages;
  - ▶ Deficiency in contents of packages;
  - ▶ Goods lost or destroyed after arrival;
  - ▶ Defective goods; and
  - ▶ Dead or injured animals.
2. In all cases of Abatement or Refund of duties and taxes, the Customs Officer concerned shall submit an examination report, as to any fact discovered which indicates any discrepancy and cause the corresponding adjustment on the goods declaration.

▶ Common Provisions

1. **Verification of Payment.** Prior to the approval, the BOC shall verify that all duties and taxes subject of the claim were duly paid and remitted to the Bureau of Treasury.
2. **No Outstanding Obligation.** The BOC shall, likewise, ensure that claimant has no outstanding obligation, which means that the claimant must settle the outstanding obligation before approval of the claim. The BOC shall strictly implement the regular submission of Statement of Accounts from the Collection Districts of importer or claimants who regularly file a claim for Duty Drawback or tax credit and Refund.
3. **Form of Payment.** Approved claims for tax credit or refund may be paid through the issuance of TCC or in cash, subject to budgetary requirements, laws, rules, and regulations.
4. **Validity of TCCs.** TCCs issued pursuant to this CAO shall be valid for 5 years from the date of issue and may be revalidated for another 5 years, for a total validity period of 10 years, subject to the following conditions:
  - ▶ The TCC holder must apply for revalidation before the lapse of the fifth year;
  - ▶ The application for revalidation must be approved by the BOC; and
  - ▶ The issuance of new TCC indicating the revalidated period of effectivity.
5. **Utilization of TCCs.** Every utilization of the TCC with the BOC shall be covered by a duly issued Tax Debit Memo (TDM), which shall be valid for 60 days. The TDM shall bear the original amount, the creditable balance, and the amount to be charged or deducted from the particular TCC sought to be utilized for the payment of duties and taxes. However, no TDM shall be issued if the applicant has outstanding obligation.
6. **Non-transferability of TCCs.** All TCCs shall not be assigned or transferred to any person or entity. This shall include TCCs issued under prior negotiations.
7. **Period to Process Claims.** Eligible claims for tax credit or refund and duty drawback, shall be processed, paid or granted, within 60 days after receipt of properly accomplished claims.

▶ Appeals

1. In case of full or partial denial by the District Collector of a claim for refund or abatement, the importer may file an appeal with the Commissioner within 30 days from the date of the receipt of the denial.
2. The Commissioner shall render a decision within 30 days from the receipt of all the necessary documents supporting the application. Within 30 days from receipt of the decision of the Commissioner, the importer may appeal to the Court of Tax Appeals (CTA) in case of a denial of his claim by the Commissioner.

- ▶ Pending a centralized and updated BOC system governing tax credit and refund transactions, the existing TCC and TDM modules in the BOC's current system shall be utilized to implement this CAO. The Management Information Systems Technology Group (MISTG) shall devise a system by which each of the concerned units can easily monitor said transactions.

*(Editor's Note: CAO No. 04-2019 was published in The Manila Times on 4 May 2019)*

## **SEC Opinions and Issuances**

---

SEC MC No. 6 defers the application of revenue recognition guidelines for the implementation of PFRS No. 15 issued by the PIC for sugar millers.

---

### **SEC Memorandum Circular No. 6 dated 4 April 2019**

In order to address the issues raised by the Philippine Sugar Industry, the SEC resolved to defer the application of Philippine Interpretations Committee (PIC) Q&A Nos. 2019-03 as follows:

- ▶ The deferment shall pertain to milling/output sharing arrangements of sugar millers and planters;
- ▶ Sugar millers, which opted to defer the application of the above guidelines, shall disclose in the Notes to the Financial Statements the accounting policies applied and a qualitative discussion of the impact in the financial statements, had the said guidelines been adopted.
- ▶ A change in the accounting period resulting from the deferment has to be accounted for under Philippine Accounting Standard (PAS) 8, together with the corresponding required quantitative disclosures:
- ▶ Effective 1 January 2019, the Philippine sugar millers shall adopt the above guidelines and any subsequent amendments thereto retrospectively or as the SEC will later prescribe.

*(Editor's Note: SEC MC No. 6 was published in The Manila Times & Philippine Star on 6 April 2019)*

---

SEC MC No. 7 implements the chapter on OPC introduced under the Revised Corporation Code.

---

### **SEC Memorandum Circular No. 7 dated 1 May 2019**

The SEC has issued the guidelines, rules and regulations in the establishment of a One Person Corporation (OPC) with the following key features:

- ▶ The term of existence of the OPC shall be perpetual, except in the case of a trust or estate, which shall be co-terminous with the existence of such trust or estate. In this regard, the OPC under the name of the trust or estate may be dissolved upon proof of partition and termination, respectively;
- ▶ The OPC need not submit and file its by-laws nor should have a minimum capital stock. However, a foreign natural person establishing an OPC shall be subject to applicable capital requirement and constitutional and statutory restrictions on foreign investments;
- ▶ The single stockholder shall be the sole director and president of the OPC. The OPC shall appoint a Treasurer, Corporate Secretary and other officers within 15 days from incorporation. The single stockholder shall not be appointed as Corporate Secretary, but may assume the role of a Treasurer;

- ▶ The single stockholder is required to designate a nominee and an alternate nominee who shall replace him in the event of the latter's death and/or incapacity;
- ▶ In case of death, the nominee shall take over the management of the OPC until the legal heirs of the single stockholder have been lawfully determined;
- ▶ Banks, non-bank financial institutions, quasi-banks, pre-need, trust, insurance, public and publicly listed companies, non-chartered government-owned and controlled corporations cannot incorporate as OPC.

*(Editor's Note: SEC MC No. 7 was published in the Manila Bulletin on 1 May 2019)*

---

SEC MC No. 8 provides for the guidelines on the issuance of sustainability bonds under the ASEAN Sustainability Bonds Standards in the Philippines.

---

#### **SEC Memorandum Circular No. 8 dated 25 April 2019**

The SEC issued the following guidelines to assist issuers of ASEAN Sustainability Bonds to ensure compliance with the ASEAN Social Bond Standards:

- ▶ Issuers of ASEAN Sustainability Bonds must comply with both the ASEAN Green Bond Standards and ASEAN Social Bond Standards;
- ▶ Proceeds of the bonds shall be exclusively applied to finance or refinance a combination of both green and social projects that respectively offer environmental and social benefits;
- ▶ The proceeds must not be used for ineligible projects, such as fossil fuel power generation projects, as well as projects, which involve activities that pose negative social impact related to alcohol, gambling, tobacco and weaponry.

*(Editor's Note: SEC MC No. 8 was published in the Manila Bulletin & Manila Standard on 27 April 2019)*

---

SEC MC No. 9 provides for the guidelines on the issuance of social bonds under the ASEAN Social Bonds Standards in the Philippines.

---

#### **SEC Memorandum Circular No. 9 dated 25 April 2019**

The SEC issued the following guidelines to assist issuers of ASEAN Social Bonds to ensure compliance with the ASEAN Social Bond Standards:

- ▶ An issuer of ASEAN Social Bonds must either be incorporated in any ASEAN country or the social project must, at least, be located in any of the ASEAN countries, and the issuance thereof, must be originated from any of the ASEAN member countries;
- ▶ Eligible social projects must provide clear social benefits, such as but not limited to: affordable basic infrastructure, access to essential services, affordable housing, employment generation, food security and socio-economic advancement and empowerment;
- ▶ Projects, which involve activities that pose a negative social impact related to alcohol, gambling, tobacco and weaponry, are excluded from the ASEAN Social Bonds Standards, and thus, classified as ineligible social projects;
- ▶ Among the target populations of the ASEAN Social Bonds includes, but not limited to, those that are living below poverty line, marginalized, vulnerable groups, unemployed, people with disabilities, migrants and/or displaced persons, under-educated and the under-served.

*(Editor's Note: SEC MC No. 9 was published in the Manila Bulletin & Manila Standard on 27 April 2019)*



---

SEC MC No. 10 provides for the Rules on Material Related Party Transactions (RPTs) for Publicly-listed Companies.

---

### **SEC Memorandum Circular No. 10 dated 25 April 2019**

To promote good corporate governance and the protection of minority investors, the SEC mandates all publicly-listed companies to comply with the following material RPTs disclosure and reportorial requirements:

- ▶ All existing publicly-listed companies are required to submit to the SEC a policy on material RPTs within 6 months from the effectivity of the above rules. Companies listed after the effectivity of rules shall be required to submit their Material RPT Policy within 6 months from listing date;
- ▶ The Material RPT Policy shall be posted on the company's website with accessible link within 5 days from submission to the SEC;
- ▶ The Advisement Report on Material RPTs shall be filed within 3 calendar days after the execution date of the transaction. The report shall be signed by the company's corporate secretary or authorized representative;
- ▶ A summary of material RPT entered into during the reporting year shall be disclosed in the company's Integrated Corporate Governance Report submitted annually every May 30;
- ▶ Non/late filing of the Material RPT Policy shall be subject to a basic penalty of Php10,000 and a monthly penalty of Php1,000. The same penalties apply to incomplete or incorrect signature in the Material RPT Policy;
- ▶ Non/late filing of or incomplete/incorrect Advisement Report shall be subject to reprimand on first offense, and increasing basic and daily penalty for second and third offenses. Continued non-payment of the fine and/or failure to comply with the requirement within 15 days after notice and hearing shall be ground for administrative sanctions pursuant to Sec. 158 of the Revised Corporation Code.

*(Editor's Note: SEC MC No. 10 was published in the Manila Bulletin & Manila Standard on 27 April 2019)*

### **BSP Issuances**

---

Circular No. 1036 provides for the Regulations on the Establishment, Relocation or Voluntary Closure of Service Units of NSSLAs and Relocation of NSSLAs Head Office.

---

### **BSP Circular No. 1036 dated 21 March 2019**

- ▶ The following are the regulations on the establishment, relocation or voluntary closure of service units of Non-Stock Savings and Loan Association (NSSLAs) and relocation of NSSLAs Head Office, amending and introducing relevant provisions of Sections 4151S and 4152S of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFIs).
- ▶ Section 4151S of the MORNBFIs was amended to provide for the Establishment, Relocation or Voluntary Closure of NSSLAs Service Units. As to the policy statement, the Bangko Sentral aims to promote greater access to financial services and adopt regulations that support sound, stable and prudent operation of NSSLAs in line with their business model. On the other hand, NSSLAs are expected to adhere to the standards of fair and efficient delivery of authorized financial products and services to their members.
- ▶ Subsection 4151S.1 of the MORNBFIs was amended to provide for the definitions of service unit, branch, satellite office, mobile desk, and kiosk.

- ▶ Subsection 4151S.2 of the MORNBF1 was amended to require prior approval of the Bangko Sentral before an NSSLA operating in the Philippines could establish a service unit.
- ▶ Subsection 4151S.3 of the MORNBF1 was amended to prescribe the following documentary requirements in the application of NSSLAs for authority to establish a service unit:
  1. Application letter signed by the NSSLA president or officer of equivalent rank;
  2. Corporate Secretary's Certificate stating that the NSSLA's board of trustees approved the establishment of the service unit; and
  3. Certification/Undertaking signed by the NSSLA president or officer of equivalent rank stating that the NSSLA is compliant with the pre-requisite for the grant of authority to establish a service unit provided under Subsec. 4151S.2 and that said service unit shall only service the members of the NSSLA.

Any request for conversion of a branch to satellite office or vice-versa shall be considered as an application for establishment of a new service unit, subject to the above requirements.

- ▶ Subsection 4151S.4 of the MORNBF1 was amended to provide for the location of service units, which shall be established within the compound of the mother company as a general rule. In case where the establishment is outside the said compound, the NSSLA shall submit sufficient justification along with proof to support its representations.
- ▶ Subsection 4151S.5 of the MORNBF1 was amended to provide for the opening of service units within one year from the date of Bangko Sentral approval, subject to the extension on a case-to-case basis, provided that the entire period of extension shall not exceed three years reckoned from the date of said approval.
- ▶ Subsection 4151S.6 of the MORNBF1 was amended to prescribe the requirements after the opening of a service unit.
- ▶ Subsection 4151S.7 of the MORNBF1 was amended to provide for the procedures for the relocation of service units, subject to the provisions under Subsec. 4151S.4.
- ▶ Subsection 4151S.8 of the MORNBF1 was amended to allow the temporary voluntary closure of service units for the purpose of allowing undertaking renovations/major repairs of office premises/facilities and for other valid reasons, provided that the service unit shall be reopened within one year from the date of temporary closure and in accordance with certain procedures.

- ▶ Subsection 4151S.9 of the MORNBF1 was amended to provide that the permanent voluntary closure of service units shall be subject to prior approval of the Bangko Sentral and compliance with the prescribed procedures.
- ▶ Subsection 4151S.10 of the MORNBF1 was amended to provide for the guidelines in operating mobile desks and kiosks.
- ▶ Subsection 4151S.11 of the MORNBF1 was amended to provide for the supervisory enforcement action of the Bangko Sentral to promote adherence to the requirements set forth in the foregoing rules and bring about timely corrective actions and compliance with the Bangko Sentral directives.
- ▶ Section 4152S of the MORNBF1 was amended to provide that the relocation of NSSLAs' head office would require prior approval of the Bangko Sentral and compliance with procedures enumerated under this Subsection.
- ▶ Transitory provision: Within two months from the date of the effectivity of this Circular, NSSLAs shall (i) perform a review of the activities of all their existing service units; and (ii) submit to the appropriate department of the Bangko Sentral a certified list of said existing service units, categorized as branch or satellite office as defined under Subsection 4151S.1. NSSLAs' management should take appropriate action to ensure that the activities performed in their existing service units are in accordance with the provisions of this Circular.
- ▶ This Circular shall take effect 15 days from publication in a newspaper of general circulation.

*(Editor's Note: BSP Circular No. 1036, s. 2019 was published in Malaya on 2 April 2019)*

---

Circular No. 1037 provides for the Extension of the Transitory Period of the Amended Reporting Templates on Bank Loans and Deposit Interest Rates.

---

**BSP Circular No. 1037 dated 11 April 2019**

- ▶ The following are the amendments to Section 173 on Reports of the Manual of Regulations for Banks (MORB), as amended by Circular No. 1029 dated 25 January 2019.
- ▶ Item "a" under Additional reports from Universal Banks (UBs)/Commercial Banks (KBs) of Section 173 of the MORB is hereby amended as follows:

"xxx

Additional reports from UBs/KBs.

a. Volume and weighted average interest rates of deposits and loans. All head offices of UBs/KBs shall report to the Supervisory Data Center of the Bangko Sentral the following: (1) weekly data on volume of transactions and weighted average interest rates on deposits received and loans granted with relevant details as to maturity, size and product category/type, and (2) monthly report on the weighted average interest rate on outstanding loans and deposits by product category/type. This report shall be considered a Category B report and shall be submitted in accordance with Appendix 7<sup>1</sup>.

Erroneous/delayed/erroneous and delayed/unsubmitted reports shall be subject to penalties in accordance with the provisions of Section 171 for Category B reports.

xxx"

- ▶ 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: No publication yet as of 30 April 2019)*

<sup>1</sup> UBs and KBs shall submit both the existing and amended reports beginning 01 February 2019 until 31 December 2019 without penalty. Starting 01 January 2020, UBs and KBs shall be required to submit the amended reports, and erroneous/delayed/erroneous and delayed/unsubmitted reports shall be subject to penalties in accordance with Section 171 for Category B reports. The timelines are set out in the table below:

	Timelines
Transitory Period	01 February 2019 to 31 December 2019
Actual implementation	01 January 2020

---

Circular No. 1038 amends the Regulations on the Election and Employment of Foreign Nationals as Directors and Officers.

---

**BSP Circular No. 1038 dated 22 April 2019**

- ▶ This Circular amends the MORNBF1 on the election of foreign nationals as directors of quasi-banks and/or other Bangko Sentral ng Pilipinas-supervised financial institutions and the employment of foreign nationals as officers or employees of financing companies.
- ▶ Subsection 4142Q.2(d) of the MORNBF1 on the election of foreign nationals as directors is amended to read, as follows:

**“Subsection 4142Q.2 Composition of the board of directors.**

xxx

- a. Subject to existing laws, non-Filipino citizens may become members of the board of directors of a BSFI.”
- ▶ The provisions of Subsection 4150Q.6 of the MORNBF1 are deleted.
- ▶ 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: No publication yet as of 30 April 2019)*

## Court Decisions

### **1Maple Sales, Inc. vs. Commissioner of Internal Revenue**

CTA (*En Banc*) Case No. 1662 promulgated 21 February 2019

---

To be exempt from IAET, there must be clear proof of a definite planned expansion as embodied in the minutes of the board meeting, the board resolution itself or a memorandum recommending the accumulation of profits.

The computation of the 10% IAET includes undistributed profits from prior years.

---

#### **Facts:**

Respondent CIR assessed Petitioner 1Maple Sales, Inc. (1Maple) for Improperly Accumulated Earnings Tax (IAET) for taxable year 2009 after it was found, upon audit, that the company had earnings in excess of 100% of its paid-up capital stock. 1Maple protested, insisting that there was no improper accumulation of profits and that the accumulation of earnings was necessitated by the reasonable needs of the business, particularly to fund its planned expansion. Pursuant to an Exclusive Marketing Agreement with Fortune Tobacco Corporation (FTC), 1Maple became the exclusive distributor of cigarettes manufactured by FTC in the whole Visayas Region and was required to expand business by investing in additional goods and inventories to generate sales and maintain presence in the region.

In support of its argument, 1Maple submitted a notarized Corporate Secretary's Certificate stating that 100% of the retained earnings as of 31 December 2009 has been appropriated. This appropriation was also reflected in the 2009 Audited Financial Statements.

Due to the CIR's inaction on the Protest, 1Maple filed a Petition for Review at the CTA.

At the CTA, the CIR argued that 1Maple must clearly prove that the accumulation of the earnings or profits is not for the purpose of avoiding the tax, which it allegedly failed to do. The CIR maintained that 1Maple failed to establish that the retained earnings would be used for the immediate and reasonable needs of the business.

The CTA 2<sup>nd</sup> Division ruled in favor of the BIR, prompting 1Maple to elevate the case to the CTA *En Banc*.

At the *En Banc*, 1Maple Sales averred, among others, that decisions to determine the reasonable needs of the business in order to justify the appropriation of retained earnings are best left to the board of directors, consistent with the business judgment rule. It also took the position that prior to the end of the one-year period counting from the close of taxable year 2009, the corporate taxpayer cannot be held liable to IAET in relation to its retained earnings for 2009. Retained earnings as of end of 2009, which was appropriated in 2010, should not allegedly be included in the 2009 IAET assessment as the tax is not yet due until 15 January 2011.

#### **Issues:**

1. Is 1Maple liable to IAET?
2. Should the retained earnings from prior years be included in the computation of the deficiency IAET assessment?

#### **Rulings:**

1. Yes. Although there are no strict rules on how to prove the reasonable needs of a business for retained earnings to be exempted from IAET, the CTA *En Banc* ruled that 1Maple could have presented clear proof to substantiate its argument, such as a copy of minutes of meetings of its Board, the Board Resolution itself, or a memorandum recommending the appropriation of such

retained earnings for its definite planned expansion. A mere Secretary's Certificate without mentioning a definite planned expansion, as well as self-serving testimonies without supporting evidence of the definite planned expansion linked to the accumulation of retained earnings will not suffice. The CTA also held that the fact that the retained earnings were not immediately utilized as there was, in fact, increase of retained earnings in the succeeding years runs counter to the "immediacy test."

Quoting the Supreme Court's ruling in *Cyanamid Philippines, Inc. vs. CTA*, GR No. 108067, promulgated on 20 January 2000, the "immediacy test" requires that the "reasonable needs of the business" should be for immediate needs of the business. If the corporation does not prove an immediate need for the accumulation of earnings and profits, the accumulation is not for the reasonable needs of the business and the IAET applies.

2. Yes. Section 3 of Revenue Regulations 2-2001 provides that the computation of the 10% IAET includes undistributed profits from prior years. Quoting the decision of the Supreme Court in *Basilan Estates, Inc. vs. CIR*, GR No. L-22492 promulgated on 5 September 1967 and *Manila Wine Merchants Inc. vs. CIR*, GR No. L-26145 promulgated on 20 February 1984, the CTA held the rule is settled that undistributed earnings or profits of prior years are taken into consideration in determining unreasonable accumulation for purposes of IAET.

### **Ithiel Corp. vs. Commissioner of Internal Revenue**

CTA (*En Banc*) Case Nos. 1672 and 1675, promulgated on 13 March 2019

---

The CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption that it filed a false return.

Failure to register with the BIR Revenue District Offices having jurisdiction over the branches will result in the disallowance of input taxes claimed based on official receipts or invoices in the name of the branches.

---

#### **Facts:**

Respondent CIR assessed Petitioner Ithiel Corp. for various deficiency taxes for taxable year 2009. Ithiel protested and argued that a portion of the deficiency VAT and Expanded Withholding Tax (EWT) was issued beyond the 3-year prescriptive period. The BIR insisted that the 10-year prescriptive period should apply to the deficiency EWT assessment since there was falsity in the filing of the returns.

The former CTA Second Division applied the 10-year prescriptive period to the EWT assessment, ruling that Ithiel failed to withhold and remit the corresponding tax due on rental expense and professional fees, which constituted falsity in the EWT returns. However, the Court ruled in favor of Ithiel on the VAT assessment and declared that the first 3 quarters had prescribed.

Aggrieved, both Ithiel and the CIR filed Petitions for Review at the CTA *En Banc*.

At the CTA *En Banc*, Ithiel averred that the EWT assessment was void as it was denied its right to be informed of the facts and law on which it was made. On the remaining VAT deficiency, it posited that the official receipts and invoices named after "Suki Market," should be sufficient for purposes of substantiation. Ithiel argued that it was authorized by the SEC to operate under the name and style Suki Market, Suki Market - San Pedro Branch, Suki Market - Alaminos Branch and Suki Market - Cuenca Batangas Branch.

#### **Issues:**

1. Are Ithiel's returns false to justify the application of the 10-year prescriptive period?
2. Should input taxes claimed be allowed even if the official receipts and invoices are not in the name of Ithiel?

**Rulings:**

1. Yes. Citing the Supreme Court's decision in *CIR vs. Asalus Corporation*, GR No. 221590 promulgated on 22 February 2017, the CTA held that when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return. As such, the CIR need not immediately present evidence to support the falsity of the return, unless the taxpayer fails to overcome the presumption that it filed a false return. Applied in this case, the CIR revealed that there was a substantial discrepancy between the figures in Ithiel's returns/alphabetical. Ithiel failed to report more than 30% of its receipts; thus, the *prima facie* presumption of filing a false return, which the taxpayer failed to overcome. The CTA ruled that Ithiel's failure to satisfactorily prove that there was no substantial underdeclaration points to the falsity of the return and the application of the 10-year prescriptive period.

The imposition of the 50% surcharge for fraudulent return in the Final Assessment Notice (FAN) also negates Ithiel's claim that the allegation of fraud was a mere afterthought of the CIR as the 50% surcharge was already indicated in the Preliminary Assessment Notice (PAN).

2. No. The CTA *En Banc* denied Ithiel's request to deviate from the strict compliance of the substantiation requirements on the disallowed input taxes since it is not applying for a tax credit certificate or a tax refund. Sustaining the CTA Second Division, the CTA *En Banc* held that as a VAT-registered person, Ithiel must comply with the registration requirements under Section 236 (A) of the NIRC. Without proof of compliance, i.e., the registration of the branches with the BIR Revenue District Office having jurisdiction over these branches, the input taxes claimed in the official receipts and invoices in the name of these branches should be disallowed.

**AGM Packaging System Ltd. Corp. vs. Commissioner of Internal Revenue**

CTA (*En Banc*) Case No. 1734, promulgated on 29 March 2019

---

The CIR, not PEZA, has the authority to determine whether a PEZA-registered entity paid the proper tax due.

Income from an unregistered activity is subject to 30% corporate income tax, and the accumulation of earnings in excess of 100% of paid-up capital is subject to IAET.

---

**Facts:**

Respondent CIR assessed Petitioner AGM Packaging System Ltd. Corp. (APSLC) for, among others, deficiency income tax on income derived from its activities not duly registered with PEZA in 2009. APSLC is a PEZA-registered manufacturer of specialized wooden pallets. In 2009, it began subcontracting assembly of its products to AGM Ventures Enterprise, Inc., which was allegedly approved by PEZA through several letters of authority.

The BIR averred that APSLC was engaged in trading, contrary to its PEZA registration; hence, it is subject to deficiency income taxes and IAET for 2009. APSLC insisted that the PEZA's determination of the eligibility to fiscal incentives of registered entities should prevail over the BIR's.

The CTA Second Division ruled that subcontracting for the manufacture of wooden pallets is outside the registered activity of APSLC and as such, not subject to Income Tax Holiday (ITH). PEZA approved the subcontracting of services of AGM Ventures for the manufacture of wooden pallets only in 2010 towards the end of APSLC's ITH period.

APSLC filed a Petition for Review with the CTA *En Banc* upon receipt of the adverse decision.

**Issues:**

1. Can the CIR determine whether a PEZA-registered entity is entitled to ITH or the preferential tax rate of 5%?
2. Is the subcontracting for the manufacture of wooden pallets for 2009 outside the registered activity of APSLC?
3. Is APSLC liable to IAET?

**Rulings:**

1. Yes. The power and duty to assess national internal revenue taxes are lodged with the CIR under Sections 2 and 6 of the NIRC. It logically follows that the CIR has the authority to determine whether a PEZA-registered entity paid the proper tax due, as confirmed under Revenue Regulations 01-00, as amended by RR 27-02.
2. Yes. Subcontracting was only approved as part of APSLC's registered activities in July 2010, which was valid for a period of six months, subject to the renewal for another six months. There was no approval for the subcontracting in 2009, and PEZA issued only the letters of authority for 2011 to 2015.
3. Yes. Considering that the subcontracting agreement between APSLC and AGM Ventures is outside the former's registered activity inside the ecozone, APSLC is not entitled to the 5% Gross Income Tax (GIT) regime, but is subject to the 30% regular corporate income tax. APSLC's accumulation of earnings in excess of 100% of paid-up capital shall be determinative of the purpose to avoid the tax upon its shareholders.

**Commissioner of Internal Revenue vs. Parity Packaging Corporation**

CTA (*En Banc*) Case No. 1783 promulgated 5 March 2019

**Facts:**

Petitioner CIR assessed Respondent Parity Packaging Corporation (PPC) for various deficiency taxes for 2010, including deficiency income tax on the gain on disposal or transfer of real property in exchange for PMFTC, Inc. (PMFTC) stocks. PPC disposed of land and land improvements in favor of Fortune Landequities Resources, Inc. (FLRI) in exchange for shares of stocks of FLRI. Simultaneous to the said transfer, PPC again swapped or exchanged the FLRI shares for shares of stocks in PMFTC. Considering that PPC was unable to secure a favorable ruling that confirms both transfers as tax-free exchanges under Section 40(C)(2) of the NIRC, the BIR alleged that it is liable for income tax on the gain realized from the property-for-share transfer. The BIR also assessed PPC for deficiency DST on the transaction.

---

The absence of a BIR confirmatory ruling on a tax-free exchange will not automatically result in a deficiency income tax assessment.

It is the transferee corporation in a transfer pursuant to Section 40(C)(2), which is liable to pay the DST on the disposal of properties and on the original issuance of shares, not the transferor.

---



Aggrieved, PPC filed a Petition for Review with the CTA.

The CTA First Division ruled in favor of PPC and held that the transfer of real properties in exchange for FLRI shares and the subsequent transfer of such shares of stocks to PMFTC as payment for the subscribed shares constitute tax free-exchange under Sec. 40(C)(2) for which no gain or loss shall be recognized. It added that the absence of a confirmatory ruling would not result in a deficiency income tax assessment. PPC is not liable for the DST on the original issuance of the shares.

The CIR filed a Petition for Review at the CTA *En Banc* to contest the ruling of the First Division.

**Issues:**

1. Is a prior BIR ruling required to confirm that the transfers are tax-free exchanges?
2. Is PPC liable to DST?

**Rulings:**

1. No. There is nothing in the law, which provides that the absence of a BIR confirmatory ruling would result in a deficiency income tax assessment. The requisites for the non-recognition of gain or loss, which PPC met, are:
  - (a) The transferee is a corporation;
  - (b) The transferee exchanges its shares of stock for property/ies on the transferor;
  - (c) The transfer is made by a person, acting alone or together with others, not exceeding four persons; and
  - (d) As a result of the exchange, the transferor, alone or together with others, not exceeding four, gains control of the transferee.
2. No. Revenue Memorandum Ruling 01-01 provides that it is the transferee corporation in a transfer pursuant to Section 40(C)(2), which is liable to pay the DST, not the transferor. As such, PPC is not liable to pay DST on the disposal of properties and on the original issuance of shares. However, PPC is still liable on the DST on the assignment of shares as it did not controvert the assessment. The BIR's assessment is presumed correct unless the taxpayer rebuts such presumption.

**About SGV & Co.**

SGV is the largest professional services firm in the Philippines.

We provide assurance, tax, transaction and advisory services. In everything we do, we nurture leaders and enable businesses for a better Philippines.

This Purpose is our aspirational reason for being that ignites positive change and inclusive growth. Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. All this leads to building a better Philippines, and a better working world. SGV & Co. is a member firm of Ernst & Young Global Limited.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation is available via [ey.com/privacy](http://ey.com/privacy).

For more information about our organization, please visit [ey.com/ph](http://ey.com/ph).

© 2019 SyCip Gorres Velayo & Co.  
All Rights Reserved.  
APAC No. 10000425  
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website [www.ey.com/ph](http://www.ey.com/ph)

We welcome your comments, ideas and questions. Please contact Victor C. De Dios via e-mail at [victor.c.de.dios@ph.ey.com](mailto:victor.c.de.dios@ph.ey.com) or at telephone number 891-0307 loc. 7929 and Reynante M. Marcelo via e-mail at [reynante.m.marcelo@ph.ey.com](mailto:reynante.m.marcelo@ph.ey.com) or at telephone number 894-8335 loc. 8335.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.