

# Tax Bulletin

June 2019



# Highlights

## BIR Issuances

- ▶ Revenue Regulations (RR) No. 7-2019 amends the definition of Top Withholding Agents under Section 2.57.2 of RR No. 2-98, as amended. **(Page 3)**
- ▶ Revenue Memorandum Order (RMO) No. 28-2019 prescribes the policies and guidelines on the registration requirements of foreign nationals. **(Page 3)**
- ▶ RMO No. 31-2019 revises the policies, guidelines and procedures for the establishment/revision of the Schedule of Zonal Values of Real Properties within the jurisdiction of the Revenue District Offices and for other purposes pursuant to Sec. 6(E) of the TRAIN Law. **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 56-2019 clarifies the reckoning period for paying documentary stamp tax on original issue of shares of stocks. **(Page 4)**
- ▶ RMC No. 60-2019 clarifies the tax treatment of transfers of real property by an Ecozone Developer/ Operator to another PEZA entity and the documentary requirements for processing the electronic Certificate Authorizing Registration (eCAR). **(Page 5)**
- ▶ RMC No. 61-2019 circularizes Republic Act (RA) No. 11256, titled "An Act to Strengthen the Country's Gross International Reserves (GIR), Amending for the Purpose Sections 32 and 151 of the National Internal Revenue Code, as Amended, and for Other Purposes." **(Page 5)**
- ▶ RMC No. 64-2019 clarifies the issuance of a Delinquency Verification Certificate for claims for VAT credit/ refund pursuant to Section 112 of the Tax Code, as amended. **(Page 5)**

## BOC Updates

- ▶ Customs Administrative Order (CAO) No. 05 - 2019 prescribes the rules and regulations governing the registration of Customs Brokers and their representatives transacting with the Bureau of Customs (BOC). **(Page 7)**
- ▶ Customs Memorandum Order (CMO) No. 29-2019 amends the Super Green Lane (SGL) Accreditation and Clearance Procedures. **(Page 9)**
- ▶ CMO No. 30 - 2019 prescribes the allowed fees and charges to be imposed and collected by the BOC. **(Page 9)**

## SEC Issuances

- ▶ SEC Memorandum Circular (MC) No. 11 amends Rule 7.9 of the Implementing Rules and Regulations of the Investment Company Act. **(Page 10)**
- ▶ SEC MC No. 12 announces the adoption of the Revised Conceptual Framework as part of the SEC's rules and regulations on financial reporting. **(Page 10)**
- ▶ SEC MC No. 13 circularizes the amended guidelines on the registration and use of corporate, one-person corporate, and partnership names. **(Page 10)**

## Court Decisions

- ▶ Continuous heavy losses are not grounds for abatement under RR 13-2001. There are only two instances when the BIR can abate or cancel a tax liability: (1) the tax appears to be unjustly or excessively assessed; and (2) the administration and collection of costs involved do not justify the collection of the amount due. **(Page 13)**
- ▶ Input VAT evidenced by a VAT invoice or official receipt is creditable against output VAT, not only on the purchase or importation of goods for conversion into finished products for sale, but also those for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed. Input VAT shall also be credited against output VAT on the purchase of services on which VAT has been paid. **(Page 14)**
- ▶ Failure to protest the Final Assessment Notice (FAN) means the assessment becomes final and unappealable and the taxpayer is barred from disputing its correctness.

The validity of legal rulings may be set aside if the taxpayer's representations are not consistent with the facts. **(Page 15)**

## BIR Issuances

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RR No. 7-2019 amends the definition of Top Withholding Agents (TWAs) under Section 2.57.2 of RR No. 2-98, as amended.

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### **RR No. 7-2019 issued on 13 June 2019**

- ▶ Top Withholding Agents (TWAs) now refer to taxpayers whose gross sales/receipts or gross purchases or claimed deductible itemized expenses, as the case may be, amount to P12,000,000 during the preceding taxable year.
- ▶ Moreover, taxpayers who are classified as TWAs prior to the effectivity of this RR remain as such until failure to satisfy the aforesaid criteria and their delisting, upon due publication, from the existing list of TWAs.
- ▶ All revenue issuances inconsistent with the provisions of these Regulations are hereby amended, modified or repealed accordingly.
- ▶ The provisions of these Regulations take effect 15 days immediately following the date of publication in any newspaper of general circulation.

*(Editor's Note: RR No. 7-2019 was published in Malaya Business Insight on 14 June 2019)*

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RMO No. 28-2019 prescribes the policies and guidelines on the registration requirements of foreign nationals.

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### **RMO No. 28-2019 issued on 30 May 2019**

- ▶ Foreign nationals, who are planning to work, engage in trade or business in the Philippines, are required to secure a TIN.
- ▶ Non-resident aliens not engaged in trade or business (NRANETB) shall be issued a TIN for withholding taxes on their income from sources within the Philippines. The withholding agent shall apply for the TIN on behalf of the NRANETB

- ▶ Employers of foreign nationals with Provisional Work Permits (PWP), who have been registered under Executive Order (EO) No. 98 and have been issued Alien Employment Permits (AEP) or working visas (9g), with proper authorization, shall update their registration from E.O. 98 to Employee with the RDO where they have been registered. In case of termination of employment, foreign nationals registered as employees shall update their registration with the BIR.
- ▶ Foreign nationals with SWP registered under E.O. 98 who later on were issued a working visa (9g) shall apply for transfer of their registration information from Revenue District Office (RDO) No. 39 to the new RDO having jurisdiction over the place of business or local residence (in case of practice of regulated profession.) They shall update their registration and apply for business registration, if applicable.
- ▶ Registered foreign nationals can avail of the preferential tax rates under effective Philippine tax treaties. They may opt to file a Tax Treaty Relief Application with the ITAD under RMO No. 72-2010 to avail of the benefits under the tax treaty.

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RMO No. 31-2019 revises the policies, guidelines and procedures for the establishment/revision of the Schedule of Zonal Values of Real Properties within the jurisdiction of the Revenue District Offices and for other purposes pursuant to Sec. 6(E) of the TRAIN Law.

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**RMO No. 31-2019 issued on 18 June 2019**

- ▶ The RMO enumerate the procedures for the establishment/revision of the Schedule of Zonal Values of Real Properties, as well as the duties of each committee involved in establishing the same.
- ▶ The following shall be the bases of the recommended market values:
  1. Rules and Regulations issued by the Secretary of the Department of Finance, based on current Philippine Valuation Standards;
  2. Acceptable methods of appraisal of real properties;
  3. Records of most recent actual sales/transfers/exchanges of properties appearing in documents filed in public offices, (e.g., BIR, Land Registration Authority);
  4. Private records of banks, realtors and appraisers in the locality;
  5. Records of provincial/city/municipal assessors; and
  6. Other procedures and methods of appraisal.
- ▶ The schedule of recommended zonal values shall contain the following:
  1. Three recommended values from the BIR, private appraisers and the provincial/city/municipal assessor; and
  2. The final recommended value (average of the 2 highest recommended values).

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RMC No. 56-2019 clarifies the reckoning period for paying documentary stamp tax on original issue of shares of stocks.

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**RMC No. 56-2019 issued 29 May 2019**

- ▶ New corporations shall file the Documentary Stamp Tax (DST) declaration/return (BIR Form No. 2000) on original issue of shares of stocks and pay the tax due within 5 days after the close of the month following their registration with the Securities and Exchange Commission as shown in the Certificate of Incorporation/Certificate of Recording/License to Do Business in the Philippines.

- ▶ Hence, the penalty for late payment of the DST on original issue of shares of stocks shall accrue if paid beyond said date.

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RMC No. 60-2019 clarifies the tax treatment of transfers of real property by an Ecozone Developer/ Operator to another PEZA entity and the documentary requirements for processing the eCAR.

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#### **RMC No. 60-2019 issued on 7 June 2019**

- ▶ Where real property located within an Ecozone is sold by an Ecozone Developer/ Operator enjoying the 5% preferential tax on gross income earned (GIE) to another PEZA-registered enterprise, likewise enjoying the 5% tax, both the buyer and seller are exempt from DST imposed under the Tax Code, provided that such sale or disposition is directly pursuant to their registered activities.
- ▶ Certified true copies of the following documents are required from all parties to support the tax exemption of the transaction and secure the eCAR:
  1. Latest PEZA Certificate of Registration of the PEZA Ecozone Developer/ Operator and the parties to the transaction;
  2. PEZA Registration Agreement; and
  3. The following PEZA certificate of available tax incentives as of the time of the transaction:
    - ▶ PEZA Form No. 00-00-01 – Certification on Entitlement of 5% Gross Income Tax; and
    - ▶ PEZA Form No. 00-03-01– Certification on Available Incentives.

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RMC No. 61-2019 circularizes RA No. 11256, titled "An Act to Strengthen the Country's GIR, Amending for the Purpose Sections 32 and 151 of the National Internal Revenue Code, as Amended, and for Other Purposes."

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#### **RMC No. 61-2019 issued on 11 June 2019**

- ▶ As amended by RA No. 11256, Section 32 (B) of the Tax Code excludes from gross income and exempts from income tax, income derived from the sale of gold pursuant to RA No. 7076, otherwise known as the "People's Small-Scale Mining Act of 1991";
- ▶ As amended, Section 151 of the Tax Code exempts from excise tax, gold which is sold or eventually sold to the Bangko Sentral ng Pilipinas in accordance with Section 32(B)(i) of the Tax Code.

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RMC No. 64-2019 clarifies the issuance of Delinquency Verification Certificates for claims for VAT credit/ refund pursuant to Section 112 of the Tax Code, as amended.

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#### **RMC No. 64-2019 issued on 31 May 2019**

- ▶ Taxpayers should have no outstanding tax liabilities upon filing the claim for VAT credit/ refund.
- ▶ These liabilities are Accounts Receivable/Delinquent Accounts (AR/DA), which refer to the amount of tax due from a taxpayer who failed to pay the same within the time prescribed for its payment arising from either a self-assessed tax liability or a deficiency tax assessment issued by the BIR, which has become final and executory.
- ▶ Self-assessed tax liability refers to:
  1. Dishonored check (check used to pay the tax liability but was later dishonored by the concerned depository bank of the delinquent taxpayer);

2. Tax due per return filed by taxpayer who failed to pay same within the time prescribed for its payment; and
  3. Non-payment of the 2<sup>nd</sup> installment due from individual taxpayers who availed of the installment payments of income tax under Sec. 56(A)(2) of the Tax Code, as amended.
- ▶ Deficiency assessments, which became final and executory, refer to those issued by the BIR under any of the following applicable instances:
    1. Failure to file a request for reinvestigation/reconsideration within 30 days from receipt of the Final Assessment Notice (FAN);
    2. Failure to submit documents in support of the request for reinvestigation within 60 days from filing of the request;
    3. Failure to appeal to the Court of Tax Appeals (CTA) within 30 days from receipt of the decision denying the request for reinvestigation/reconsideration or in case of inaction of the BIR, from the lapse of the 180 days from the submission of the required documents;
    4. Failure to appeal CTA's decision on the case to a higher court as a result of which, the decision became final and executory; and
    5. Decision/Resolution by the CTA/Supreme Court (SC) in favor of the BIR which became final and executory.
  - ▶ The "open stop-filer cases" and deficiency tax assessments, which are timely protested, subject of reconsideration/re-investigation, or pending appeal with the Appellate Division or CTA/SC, shall not be considered as AR/DA and, therefore, shall not prevent the processing of the VAT credit/refund.
  - ▶ Only the following offices shall issue the Delinquency Verification Certificate to the claimants of VAT credit/refund:
    1. For Non-Large Taxpayers:
      - ▶ Collection Division of the respective Regional Office; and
      - ▶ Accounts Receivable Monitoring Division (ARMD).
    2. For Large Taxpayers:
      - ▶ Large Taxpayers Collection Enforcement Division (LTCED) and ARMD (for large taxpayers under the jurisdiction of the Large Taxpayers Service in the National Office).
      - ▶ Large Taxpayers Division-Cebu/LT Division-Davao and ARMD (for large taxpayers under the jurisdiction of Large Taxpayers Division - Cebu or Davao, wherever is applicable).

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CAO No. 05 - 2019 prescribes the rules and regulations governing the registration of Customs Brokers and their representatives transacting with the BOC.

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## **BOC Updates**

### **CAO No. 05 - 2019**

- ▶ To act as declarant, Customs Brokers shall register and obtain a Certificate of Registration (COR) from the BOC.
- ▶ Employees of the Customs Broker, acting solely for their employer, need not apply for a separate COR, so long as his or her name appears on the submitted Notarized List of Customs Broker's Representatives submitted by the registered Customs Brokers.
- ▶ Application for registration of Customs Brokers shall be processed by the Account Management Office (AMO).
- ▶ Resident - applicants outside Metro Manila may file the application with the District Collector where they regularly transact business.
- ▶ The following are the grounds for denying the application:
  1. Absence or misrepresentation of material information;
  2. Submission of falsified or spurious documents; or
  3. Conviction of an offense pursuant to Section 1401 of the Customs Modernization and Tariff Act ("CMTA") on Unlawful Importation or Exportation.
- ▶ Applications shall be acted upon within 5 working days from receipt of complete documents.
- ▶ If the application is disapproved on the ground other than lack of documentary requirements, the applicant or customs broker may file a Motion for Reconsideration (MR) within 10 calendar days from receipt of notice of disapproval from the Commissioner of Customs (COC), upon recommendation of AMO. The MR must be resolved within 10 working days. Only one MR shall be entertained.
- ▶ If the authority to approve or disapprove has been delegated to a BOC official, the appeal may be filed before the COC within 15 calendar days from receipt of the notice of disapproval.
- ▶ The action of the COC on the MR and appeal shall be final.
- ▶ If the application is approved, a COR shall be issued and be valid for 3 years, unless suspended or revoked for a cause, provided that every year during the 3-year period, the Customs Broker must submit the annual reportorial requirements to update his/her profile and an affidavit of change of circumstance or affidavit of no charge, whichever is applicable.
- ▶ The COR may be renewed within one month prior to its expiration. However, no renewal application shall be accepted if filed within 5 working days prior to its expiration. Any application filed after the registration has expired shall be considered as a new application.

- ▶ Applications for renewal, which are timely filed in accordance with the Order, but not acted upon by the AMO within 5 working days, shall be deemed approved, and their registration shall be considered valid and active as if renewed, provided all the required documents have been submitted and the required fees have been paid.
- ▶ No application for renewal shall be accepted if the COR has been revoked for cause during the time it was subsisting, unless subsequently lifted by the COC.
- ▶ The absence or misrepresentation of material information and misuse of registration privilege shall be a ground for disapproval and/or blacklisting of the Customs Broker.
- ▶ The practice of Customs Broker profession is imbued with public service and thus, should be guided by a set of standards for the effective and consistent discharge of his duties and responsibilities.
- ▶ A registered Customs Broker who fails to fulfill his duties and responsibilities shall be meted out with the following penalties:
  1. 1<sup>st</sup> Offense - severe warning for light offense; If grave offense, suspension of 6 months or P100,000 fine.
  2. 2<sup>nd</sup> Offense - suspension of 1 year for light offense; or a P200,000 fine for grave offense.
  3. 3<sup>rd</sup> Offense - P300,000 fine for a light offense; or revocation of registration for grave offense.
- ▶ The COR of the Customs Brokers may be cancelled, delisted or revoked on the following grounds provided that no COR shall be delisted without prior notice and hearing and final decision:
  1. Deliberate failure/refusal without justifiable reasons to comply, with the duties and responsibilities of brokers in this Order; and
  2. Violation of existing customs law, rules and regulations.
- ▶ Customs Brokers, who have formed a General Professional Partnership (GPP) may, at any time, file an application for registration with the BOC, which GPP shall be separate and distinct from the personality of each of the partners, who must be Customs Brokers.
- ▶ Resignation, retirement, separation or death of one of the partners in the GPP shall not result in the cancellation of the GPP's COR, but only the cancellation of the COR of the partner concerned.
- ▶ The Order shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of general circulation.

*(Editor's Note: CAO No. 05 - 2019 was published in the Manila Times on 19 June 2019)*



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CMO No. 29-2019 amends the Super Green Lane Accreditation and Clearance Procedures.

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**CMO No. 29 - 2019 signed on 17 June 2019**

- ▶ For shipments requiring clearance from Bureau of Animal Industry (BAI) / Bureau of Plant Industry (BPI), the importer is required to submit advance copies of the Bill of Lading to the concerned government regulatory offices before the issuance of clearances. The importer shall, then, be issued a clearance and be subjected to an online checking and verification by the BAI/ BPI Officer before the shipments' release.
- ▶ Shipments containing frozen meat, meat products, meat by-products, feed ingredients, feed additives, feed supplements, etc. shall be documented, tagged, and cleared from the Veterinary Quarantine Service (VQS) Office for verification and traceability from threat of African Swine Fever and other foreign dangerous animal diseases;
- ▶ The BPI/BAI shall submit a monthly list of updated accredited importers with list of importable commodities to the BOC;
- ▶ This CMO takes effect immediately.

*(Editor's Note: CMO No. 29-2019 was received by the UP Law Center on 19 June 2019)*

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CMO No. 30 - 2019 prescribes the allowed fees and charges to be imposed and collected by the BOC.

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**CMO No. 30 - 2019 dated 18 June 2019**

- ▶ Any unauthorized collection or illegal imposition of fees and charges **not** covered by the official list of allowed BOC fees and charges shall be criminally and administratively charged and punished to the full extent of the law.
- ▶ Specifically, the following acts or omissions are considered in violation of Article 213 of the Revised Penal Code on *Frauds against the Public Treasury and Other Offenses*:
  1. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law;
  2. Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially; and
  3. Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or object of a nature different from that provided by law.
- ▶ The provisions of the Administrative Code shall also apply if the culprit/ violator is an officer or employee of the BOC.
- ▶ Annex A provides for the List of BOC Fees and Charges.

*(Editor's Note: CMO No. 30-2019 was received by the UP Law Center on 19 June 2019)*

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## SEC Issuances

SEC MC No. 11 amends Rule 7.9 of the Implementing Rules and Regulations of the ICA.

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### SEC MC No. 11 dated 29 May 2019

- ▶ Under Rule 7.9 of the Implementing Rules and Regulations of the Investment Company Act (ICA), the Fund Manager can invest the funds of the feeder fund, fund-of-funds, or co-managed funds to a target fund that is administered by the Fund Manager or its related party/company, subject to the condition, among others, that the management fees shall be charged only once, either at the level of the feeder fund, fund-of-funds, co-managed funds or at the level of the target fund, whichever is lesser.
- ▶ The proviso "whichever is lesser" under the above rule has been deleted.
- ▶ The MC is effective upon publication in 2 newspapers of general circulation.

*(Editor's Note: SEC MC No. 11 was published in the Philippine Star and the Manila Times on 4 June 2019)*

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SEC MC No. 12 announces the adoption of the Revised Conceptual Framework as part of the SEC's rules and regulations on financial reporting.

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### SEC MC No. 12 dated 28 May 2019

- ▶ The SEC has approved the adoption of the Revised Conceptual Framework on 7 May 2019.
- ▶ The Revised Conceptual Framework contains the following:
  1. A new chapter on measurement;
  2. Guidance on reporting financial performance;
  3. Improved definitions and guidance (in particular, the definition of a liability); and
  4. Clarifications on important areas, such as roles of stewardship, prudence, and measurement uncertainty in financial reporting.
- ▶ The amendments to references to the Conceptual Framework in the Philippine Financial Reporting Standards are effective for annual periods beginning on or after 1 January 2020, but earlier application is permitted.
- ▶ The amendments should be applied retrospectively, unless retrospective application would be impracticable or would involve undue cost or effort.

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SEC MC No. 13 circularizes the amended guidelines on the registration and use of corporate, one-person corporate, and partnership names.

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### SEC MC No. 13 dated 21 June 2019

- ▶ Entity names shall bear the following:
  1. For corporations - "Corporation," "Incorporated," "Corp.," or "Inc."
  2. For One-Person Corporations (OPCs) - "OPC"
  3. For partnerships - "Company" or "Co."
  4. For limited partnerships - "Limited" or "Ltd."

5. For professional partnerships - "Company," "Associates," "Partners," or other similar descriptions
  6. For foundations - "Foundation"
  7. For non-stock, non-profit corporations, including non-governmental organizations and foundations engaged in microfinance activities - "Microfinance" or "Microfinancing"
- ▶ A term that describes the business of a corporation in its name should refer to its primary purpose, and if there are 2 such terms, the first should refer to the primary purpose and the second to the secondary purpose.
  - ▶ The name shall be distinguishable from other corporate or partnership names registered with the SEC, or the Department of Trade and Industry in the case of sole proprietorships.
  - ▶ To differentiate a proposed name from a registered name, the following rules shall apply:
    1. The applicant shall add one or more distinctive words to the proposed name.
    2. The addition of distinctive words shall not be allowed if the registered name is coined or unique.
    3. Punctuation marks, spaces, signs, symbols, and other similar characters shall not be acceptable as distinguishing words.
    4. A name that consists solely of special symbols, punctuation marks, or specially designed characters shall not be registered.
  - ▶ Business or trade name, which is different from the corporate or partnership name, shall be indicated in the Articles of Incorporation or Partnership.
  - ▶ A trade name or trademark, which is registered with the Intellectual Property Office, may be used as part of the corporate or partnership name of a party, other than its owner, if the latter gives its consent to such use.
  - ▶ The full name or surname of a person may be used in a corporate or partnership name if:
    1. If he/she is a stockholder, member, or partner of the said entity, and has consented to such use.
    2. If the person is already deceased, the consent shall be given by his/her estate.
  - ▶ A single stockholder of an OPC may use his/her name provided that the name should be accompanied with descriptive words aside from the suffix OPC. A single stockholder of an OPC may also use the name of another person, provided consent was given by said person, or if deceased, by his/her estate and the name shall be accompanied by the descriptive words other than the suffix OPC.

- ▶ The meaning of initials used in a name shall be stated by the registrant in the Articles of Incorporation/Partnership, or in a separate document signed by an incorporator, director, or partner, as the case may be.
- ▶ The name of an internationally known foreign corporation cannot be used by a domestic corporation, unless it is its subsidiary and the parent corporation has consented to such use.
- ▶ A name written in a foreign language shall not be registered if the name violates good morals, public order, or public policy, or has an offensive or indecorous meaning in any of the country's official languages or major dialects.
- ▶ The name of a geographical unit, site, or location cannot be used as a corporate or partnership name unless it is accompanied by a descriptive word or phrase.
- ▶ The following words and phrases, among others, can be used in the corporate or partnership name:
  1. "Finance Company," "Financing Company," "Finance and Leasing Company" and "Leasing Company," "Investment Company" and "Investment House" by companies engaged in the investment or finance house business.
  2. "Lending Company" and "Lending Investor" by lending companies or "Pawnshop" by those authorized to operate pawnshops;
  3. "Bank," "Banking," "Banker," "Savings and Loan Association," "Trust Corporation," "Trust Company" or words of similar meaning by entities engaged in the banking or trust business;
  4. "United Nations," "UN" exclusively by the United Nations and its attached agencies;
  5. "Bonded" by entities with licensed warehouses;
  6. "SPV-AMC" by corporations authorized to act as a special purpose vehicle.
- ▶ Unless otherwise authorized by the Commission, the following words and phrases, among others, can be used only by the entities mentioned below:
  1. "Investment" or "Capital" by entities organized as investment house or investment company.
  2. "Capital" may also be used by holding companies.
  3. "Asset/Investment/ Fund/Financial Management" or similar words or phrases by entities organized as investment company adviser or holders of investment management activities license from the BSP.
  4. "Association" and "Organization" or similar words, which pertain to non-stock corporations, by entities engaged in non-profit activities.
  5. "Stock Exchange/ Futures Exchange/ Derivatives Exchange," "Stock Broker/ Securities Broker/ Derivatives Broker," "Commodity/ Financial Futures Merchant/ Broker," "Securities Clearing Agency/ Stock Clearing Agency," "Plans," or similar words or phrases by entities organized as an exchange, dealer, broker, commodity futures broker, clearing agency or pre-need company.

- ▶ The name of a corporation or partnership that has been dissolved or whose registration has been revoked shall not be used by another corporation or partnership within 5 years from the approval of the dissolution or from the date of revocation, as the case may be, unless its use has been allowed by the stockholders, partners or members representing a majority of the outstanding capital stock or membership of the dissolved corporation or partnership.
- ▶ A corporate or partnership name, which was previously used but became the subject of amendment shall not be re-registered or used by another corporation or partnership for a period of 3 years from the date of approval of the adoption of the new corporate or partnership name.
- ▶ The names of the absorbed/constituent corporation may not be used unless it is the surviving corporation intending to use it provided that another corporation may use the name of the absorbed/ constituent corporation if the consent of the surviving corporation is obtained.
- ▶ The MC shall take effect immediately.

## Court Decisions

### **Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue** CTA (*En Banc*) Case No. 1720 promulgated 3 May 2019

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Continuous heavy losses are not grounds for abatement under RR 13-2001. There are only two instances when the BIR can abate or cancel a tax liability: (1) the tax appears to be unjustly or excessively assessed; and (2) the administration and collection of costs involved do not justify the collection of the amount due.

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#### **Facts:**

Petitioner Lepanto Consolidated Mining Company (Lepanto) filed an application for abatement of surcharge and compromise penalties under RR No. 13-2001 for various quarters in 2008, 2009 and 2010 on the ground of "continuous heavy losses for the last 3 years." Lepanto belatedly filed its excise tax returns for the third and fourth quarters of 2008, third and fourth quarters of 2009, and first quarter of 2010.

Respondent CIR denied the abatement application for lack of legal basis and demanded the payment of the total increments. Lepanto, while not admitting any liability, paid the assessed interest and surcharge to obtain a tax clearance required for the issuance of its import permit.

Lepanto filed a Petition for Review at the CTA questioning the denial of the abatement application and requesting for a refund of the interest and surcharge paid.

The CIR averred that the refund claim should be dismissed as Lepanto failed to file an administrative claim for refund, which is a condition precedent to the filing of a judicial claim at the CTA.

The CTA Third Division ruled in favor of the CIR, holding that continuous heavy losses incurred by a taxpayer for the last 2 years as provided for in Section 2.3.6 of RR 13-2001 is a ground for compromise, not abatement of penalties.

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

#### **Issue:**

Is Lepanto entitled to abatement of surcharge and compromise penalties?

**Ruling:**

No. The CTA *En Banc* sustained the decision of the CTA Division that the power to abate a tax liability is discretionary on the part of the CIR. Under Section 204 of the NIRC, the Commissioner “may” abate or cancel a tax liability. Considering that it is discretionary on the part of the BIR to decide on the abatement application, the CTA said it will not interfere with the exercise of such prerogative unless there is grave abuse of discretion.

The CTA also ruled that there are only two instances when the CIR can abate or cancel a tax liability, namely: (1) the tax or any portion thereof appears to be unjustly or excessively assessed; and (2) the administration and collection of costs involved do not justify the collection of the amount due.

The CTA held that continuous heavy losses cannot be treated as falling under the category of a tax being “unjustly” assessed. There is no rational connection between unjust assessment of tax and sustaining heavy losses, regardless of the duration.

Moreover, continuous heavy losses incurred by the taxpayer for the last 2 years as provided for in Section 2.3.6 of RR No. 13-2001 may be used as a ground for *compromise* and not for abatement or cancellation of tax or penalties. The reason is that continuous heavy losses incurred by the taxpayer for the last 2 years may indicate its financial situation demonstrating a clear inability to pay the assessed tax as provided for in Section 204(A)(2) of the NIRC, as amended.

**Commissioner of Internal Revenue vs. CBK Power Company Limited**

CTA (*En Banc*) Case No. 1791 promulgated 14 May 2019

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Input VAT evidenced by a VAT invoice or official receipt is creditable against output VAT, not only on the purchase or importation of goods for conversion into finished products for sale, but also those for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed. Input VAT shall also be credited against output VAT on the purchase of services on which VAT has been paid.

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**Facts:**

Respondent CBK Power Company Limited (CBK) filed a claim for refund with Petitioner CIR for unutilized input VAT on local purchases and importation of goods and services, capital goods, and payments for services by non-residents attributable to zero-rated sales for taxable year 2007.

Due to the CIR’s inaction, CBK filed a Petition for Review with the CTA Third Division, which granted the refund and thereafter, denied the Motion for Partial Reconsideration of the CIR.

The CIR elevated the case to the CTA *En Banc*, arguing that CBK failed to prove that the input taxes claimed are (1) attributable to zero-rated sales and (2) remained unutilized and were not carried over to the succeeding periods. The CIR posited that Sec. 110(A)(1)(a) of the NIRC requires that input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production. It argued that payment to hotels and resorts, for instance, do not factor in the production of electricity.

CBK asserted that since its reported sales were all zero-rated, the claimed input VAT is entirely attributable thereto and that the same was not applied against any output tax. It also presented as evidence its 2008 quarterly VAT returns to show that it did not use the input tax that is subject of the claim.

**Issue:**

Is CBK entitled to the VAT refund?

**Ruling:**

Yes. Pursuant to Section 110 of the NIRC, any input VAT evidenced by a VAT invoice or official receipt is creditable against output VAT, not only on the purchase or importation of goods “for conversion into or intended to form part of the finished product for sale including packaging materials,” but also those for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC.” It is also clear in Section 110 that input VAT shall be credited against output VAT on the “purchase of services on which VAT has been paid.”

Applied to the instance case, the CTA *En Banc* ruled that so long as the input VAT being claimed is evidenced by the pertinent documents, i.e., VAT sales invoices or official receipts, as the case may be, the same input VAT is creditable against the output VAT.

When Section 112(A) of the NIRC, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. The CTA also noted that the CIR failed to make any specific discussion to support his position that the input VAT claim was not directly attributable to zero-rated sales.

**Lifebank Foundation, Inc. vs. Commissioner of Internal Revenue**

CTA (*En Banc*) Case No. 1727 promulgated 14 May 2019

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Failure to protest the FAN means the assessment becomes final and unappealable and the taxpayer is barred from disputing its correctness.

The validity of legal rulings may be set aside if the taxpayer’s representations are not consistent with the facts.

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**Facts:**

Respondent CIR assessed Petitioner Lifebank Foundation, Inc. (LFI) for various deficiency taxes for taxable year 2009. LFI paid the deficiency Documentary Stamp Tax and Expanded Withholding Tax, but maintained that it is not liable to deficiency Income Tax and Value-Added Tax (VAT). It argued, among others, that it has secured a ruling from the BIR Revenue Region 11 confirming LFI’s exemption from income tax on amounts received by it as such association and therefore, LFI need not file any income tax return on the same.

LFI also sought the cancellation of the deficiency tax assessment, insisting that it was not accorded procedural due process as the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) was prepared and issued months before LFI received the PAN on 2 July 2012.

The CIR issued the FLD/FAN, which LFI received on 2 August 2013. However, LFI filed its protest on 20 February 2014, well beyond the 30-day period required under the law and only upon receipt of the Final Notice Before Seizure. LFI posited that the FLD/FAN cannot be considered as the final notice required under the BIR regulations, which would warrant the collection of taxes, given the subsequent “letter” issued by the BIR referring the case for reinvestigation. The “letter” was, in fact, an internal Memorandum of Assignment issued by the Revenue District Officer and addressed to the newly assigned examiners directing them to, among others, continue the audit or investigation of the revenue officers who either resigned, retired or reassigned to another district office.

The CTA Third Division ruled in favor of the BIR, holding that the assessment on LFI became final, executory and demandable upon its failure to timely protest.

Upon receipt of the adverse decision, LFI filed a Petition for Review with the CTA *En Banc*.

### **Issues:**

1. Is LFI liable to income tax and VAT?
2. Does the confirmatory ruling exempting LFI from income tax apply?

### **Rulings:**

1. Yes. Reliance on a Memorandum of Assignment cannot justify LFI's failure to file a proper protest within 30 days from the receipt of the FLD/FAN. The Memorandum of Assignment is an internal document issued by the Revenue District Officer to the examiners. It is not a letter to LFI to inform it of the official action taken by the BIR on the assessment. It did not revoke the previously issued final assessment. Quoting the Supreme Court's ruling in *CIR vs. Bank of Philippine Islands, GR No. 134062 promulgated on 17 April 2007*, the failure to protest means the assessment becomes final and unappealable, and the taxpayer is barred from disputing its correctness.
2. No. LFI may have obtained a ruling in its favor in 2005, but a subsequent investigation by the examiners in 2010 has uncovered that it was engaged in taxable activities of micro-finance and/or lending money at interest.

The CTA noted that LFI should be aware of the limitation or condition placed on the validity of the legal rulings obtained from the BIR. Estoppel does not apply to the government, especially in matters of taxation. There are no vested rights to speak of with regard to the incorrect construction of the law by administrative officials, and such wrong interpretation cannot place the government in estoppel to correct or overrule the same.

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