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Tax bulletin



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Highlights

BIR Ruling

- ▶ Retirement benefits given in accordance with Republic Act (RA) No. 7641 shall be exempt from income tax, provided the retiring employee has been in the service of the same employer for at least 10 years and is not less than 50 years old at the time of his retirement. **(Page 4)**
- ▶ An individual who, at the invitation of a Philippine school, visits the Philippines for a period not exceeding two years solely for the purpose of teaching at such educational institution, and who is, or was, immediately before that visit a resident of the UK, shall be exempt from Philippine income tax on the remuneration from teaching at such school. **(Page 4)**

BIR Issuances

- ▶ Revenue Memorandum Circular (RMC) No. 1-2015 circularizes the revised version of BIR Form No. 0217, or the Application for Contractor's Final Payment Release Certificate. **(Page 5)**
- ▶ RMC No. 2-2015 informs all taxpayers of the availability of Offline eBIRForms Package Version 4.7 on the BIR website. **(Page 5)**
- ▶ RMC No. 3-2015 enumerates the BIR priority programs for calendar year 2015, which are intended to help the BIR attain its revenue target. **(Page 6)**
- ▶ RMC No. 4-2015 publishes the full text of Department of Finance (DOF) Department Order (DO) No. 107-2014 dated November 28, 2014 on the Rules of Accreditation with the Bureau of Customs (BOC) for PEZA Locators. **(Page 10)**
- ▶ RMC No. 5-2015 publishes the full text of Presidential Administrative Order (AO) No. 45 dated November 28, 2014, titled "Revoking Letter of Instruction No. 1479, Series of 1985." **(Page 10)**
- ▶ RMC No. 6-2015 publishes the full text of Executive Order (EO) No. 173 dated October 31, 2014, titled "Reduction and Condonation of Real Property Taxes and Interest/Penalties Assessed on the Power Generation Facilities of Independent Power Producers (IPPs) under Build-Operate-Transfer Contracts with Government-Owned and/or -Controlled Corporations (GOCCs)". **(Page 10)**

BOC Issuances

- ▶ Customs Administrative Order (CAO) No. 1-2015 shortens the period for re-export of empty containers from 150 to 90 days. **(Page 10)**
- ▶ Customs Memorandum Order (CMO) No. 29-2014 prescribes the revised computation of duties, taxes and other charges for automobiles. **(Page 11)**
- ▶ CMO No. 3-2015 prescribes the new rules for accreditation of PEZA locators, in accordance with DOF Department Order No. 107-2014. **(Page 13)**
- ▶ CMO No. 4-2015 revises the portion of the Port Operations Manual as referred to in CMO No. 22-2010, on requiring the presence of BOC personnel during container stuffing and requiring exporters to submit a Notice of Stuffing. **(Page 16)**

BOI Issuances

- ▶ The 2014 Investment Priorities Plan (IPP) was approved by the President in Memorandum Order No. 74 dated October 28, 2014, and was published on December 25, 2014. **(Page 17)**

PEZA Issuance

- ▶ PEZA Memorandum Circular (MC) No. 2015-002 informs PEZA-registered enterprises of the applicability of certain permit requirements of the Department of Environment and Natural Resources (DENR) for the importation and use of materials considered as articles. **(Page 22)**

SEC Issuances

- ▶ SEC MC No. 1-2015 extends the deadline for the amendment of the Principal Office Address to June 30, 2015. **(Page 23)**
- ▶ SEC MC No. 2-2015 prescribes additional guidelines for all listed companies and accredited institutional training providers on corporate governance. **(Page 23)**
- ▶ SEC MC No. 3-2015 prescribes the schedule for the filing of the Annual Corporate Governance Report (ACGR) of all newly-listed companies. **(Page 24)**
- ▶ When the Articles of Incorporation of a domestic corporation provide that the number of directors shall "include" a certain number of independent directors, the same shall be construed to mean the minimum number of independent directors for the corporation. **(Page 24)**

BSP Issuances

- ▶ Circular No. 864 amends Section 611.2 of the Manual of Regulations for Banks (MORB) on derivative activities of thrift banks (TBs). **(Page 25)**
- ▶ Circular No. 865 amends Section X101 of the MORB on the power and scope of authorities of TBs, rural banks (RBs) and cooperative banks. **(Page 26)**
- ▶ Circular No. 866 amends/modifies Section X192, Subsection X192.3 and Appendix 6 of the MORB to prescribe guidelines for the submission of reports by banks acting as underwriters, brokers, dealers and transfer agents of securities. **(Page 27)**
- ▶ Circular No. 867 approves the implementation of the re-opening of the Libyan Dinar Currency Exchange Facility (LYD-CEF). **(Page 29)**
- ▶ Circular No. 868 amends Section X151 of the MORB on the activities and services allowable for Micro-Banking Offices (MBOs) and Subsection X151.5 on Branch Processing Fees. **(Page 29)**

Court Decisions

- ▶ A Final Assessment Notice (FAN) sent by the BIR to a wrong address of the taxpayer cannot attain finality because the taxpayer cannot be deemed to have received it, either actually or constructively. **(Page 30)**
- ▶ A finding by the BIR that a taxpayer who under-declared his/her purchases does not by itself result in the imposition of income tax and VAT. **(Page 32)**

BIR Rulings

BIR Ruling No. 495-14 dated December 11, 2014

Retirement benefits given in accordance with RA No. 7641 shall be exempt from income tax, provided the retiring employee has been in the service of the same employer for at least 10 years and is not less than 50 years old at the time of his retirement.

Facts:

Mr. A, a delivery driver of B Co., retired upon reaching the age of 60 after rendering more than 20 years of service. B Co. had no retirement benefit plan but it granted its employees, through a Collective Bargaining Agreement (CBA) covering its rank-and-file employees, retirement pay "in accordance with law".

Issues:

1. Can Mr. A avail himself of the retirement benefits under Article 287 of the Labor Code, as amended by RA No. 7641?
2. Are the retirement benefits of Mr. A under the CBA exempt from income tax?

Ruling:

1. Yes. Article 287 of the Labor Code, as amended by RA No. 7641, provides that in the absence of a retirement plan or an agreement providing for retirement benefits of employees, an employee who has reached the age of 60 years or more, but not more than 65 years, who has served at least 5 years in the establishment, may retire and shall be entitled to retirement pay equivalent to at least ½ month salary for every year of service, a fraction of at least 6 months being considered one whole year.
2. Yes. Under Section 32(B)(6)(a) of the Tax Code, retirement benefits received under RA No. 7641 are excluded from gross income.

BIR Ruling No. ITAD 340-14 dated December 29, 2014

An individual who, at the invitation of a Philippine school, visits the Philippines for a period not exceeding two years solely for the purpose of teaching at such educational institution, and who is, or was, immediately before that visit a resident of the UK, shall be exempt from Philippine income tax on the remuneration from teaching at such school.

Facts:

Mr. A and Ms. B, both tax residents of the United Kingdom, were invited to teach for 2 years in the Philippines by X School.

Issue:

Is the remuneration received by Mr. A and Ms. B from X School exempt from Philippine income tax?

Ruling:

Yes. Under Article 20 of the Philippines-United Kingdom Tax Treaty, an individual who, at the invitation of a Philippine school, visits the Philippines for a period not exceeding 2 years solely for the purpose of teaching at such educational institution, and who is, or was, immediately before that visit a resident of the United Kingdom, shall be exempt from income tax in the Philippines on any remuneration from teaching at such school.

BIR Issuances

RMC No. 1-2015 circularizes the revised version of BIR Form No. 0217, or the Application for Contractor's Final Payment Release Certificate

Revenue Memorandum Circular No. 01-2015 dated January 6, 2015

- ▶ In relation to contracts with the Department of Public Works and Highways (DPWH), all contractors are required to file BIR Form No. 0217, or the Application for Contractor's Final Payment Release Certificate, before the release of final payment by the DPWH.
- ▶ Among the documents required to be attached to BIR Form No. 0217 is the Certificate of Acceptance issued by the DPWH.
- ▶ Pursuant to the implementing rules and regulations of RA No. 9184, the Certificate of Acceptance can only be issued after the defects liability period, or one year after the completion of the project; thus, requiring such a document together with BIR Form No. 0217 is no longer feasible.
- ▶ BIR Form No. 0217 is hereby modified to exclude the Certificate of Acceptance issued by the DPWH from the list of required documents appearing on the back of such form.

RMC No. 2-2015 informs all taxpayers about the availability of Offline eBIRForms Package Version 4.7 on the BIR website.

RMC No. 2-2015 dated January 5, 2015

- ▶ The following Offline eBIRForms Package Version 4.7 are now available and can be submitted online through the Electronic Filing and Payment System (eFPS):

Form No.	Form Description	Version Date
1702-RT	Annual Income Tax Return for Corporation, Partnership and Other Non-Individual Taxpayer Subject Only to the Regular Income Tax Rate	June 2013
1702-MX	Annual Income Tax Return for Corporation, Partnership and Other Non-Individual Taxpayer with Mixed Income Subject to Multiple Income Tax Rates	June 2013
1702-EX	Annual Income Tax Return for Use Only by Corporation, Partnership and Other Non-Individual Taxpayer Exempt Under the Tax Code, as Amended, (Sec. 30 and those Exempted in Sec. 27 (c) and Other Special Laws, With No Other Taxable Income	June 2013
1701	Annual Income Tax Return for Self-Employed Individuals, Estates, and Trust (Including those with both Business and Compensation Income)	June 2013
1700	Annual Income Tax Rate for Individuals Earning Compensation Income (Including Non-Business/ Non-Profession Related Income)	June 2013
2200A	Excise Tax Return for Tobacco Products	April 2014
2200T	Excise Tax Return for Alcohol Products	April 2014

- ▶ However, the online submission of the above tax forms is not yet available for taxpayers using the eBIRForms System.

RMC No. 3-2015 enumerates the BIR priority programs for calendar year 2015, which are intended to help the BIR attain its revenue target.

RMC No. 3-2015 dated January 13, 2015

Name of Program	Description/Objectives	Lead Office/ Office Concerned
1. Online System for Transfer Tax Transactions (OST)	<ul style="list-style-type: none"> ▶ This program aims to provide a facility for BIR officers to review and approve online one-time transactions filed by taxpayers. ▶ Aside from the transfer of real properties and stocks not traded in the stock exchange, one-time transactions also include transfer of other properties in connection with estate and donor's tax. 	Operations Group / Information Systems Group
2. Electronic Certificate Authorizing Registration (eCAR)	eCAR is a web-based system that generates the CAR with barcode and electronically transmits data to the Land Registration Authority	Operations Group / Information Systems Group
3. Electronic Tax Information System (eTIS)	This is intended to enhance/improve the BIR core Tax Administration System, providing a single, web-based automated solution.	Operations Group / Information Systems Group
4. RATE Program	This program identifies and prosecutes high profile tax evaders through investigation of large-scale violators of tax laws.	Legal Group / Revenue Regions
5. Oplan Kandado Program	This initiative is intended to strengthen the BIR's imposition of prescribed administrative sanctions of suspending the business operations and temporarily closing business establishments for non-compliance with essential requirements of the VAT system.	Operations Group
6. Taxpayer Registration Information Update (TRIU) Program	<ul style="list-style-type: none"> ▶ TRIU is an enhancement and expansion of the eRegistration System, allowing taxpayers (primary and secondary) to register and update their registration information online. ▶ The Online System Accreditation of Printers implements and monitors compliance of printers in securing the Authority to Print (ATP) for its clients and the printing of official receipts, sales invoices and other commercial receipts and/or invoices. 	Operations Group / Information Systems Group
7. Online System for Accreditation of Importers and Customs Brokers	This automates the processes of accrediting importers and customs brokers from the filing of application to the issuance of Importers/Brokers Clearance Certificates.	Operations Group / Information Systems Group

8. Online Application and Processing of Tax Clearance for Building Purposes	This will cover the development of an online system (web-based) that will facilitate the filing of the application for issuance of a Tax Clearance, as well as the automated processing of the same.	Operations Group / Information Systems Group
9. Electronic Official Registry Book (eORB)	eORB is an automated facility on excise products that allows manufacturers of excisable products to electronically submit the ORBs of businesses involved in tobacco, alcohol and petroleum products.	Large Taxpayers Service / Information Systems Group
10. Internal Revenue Stamps Integrated System (IRSIS) for Alcohol Products - Distilled Spirits	IRSIS is a web-based application that will manage the ordering, production, distribution, affixing and tracking, and providing security features on the revenue stamps for alcohol products.	Large Taxpayers Service / Information Systems Group
11. Automated Internal Revenue Allotment Computation (AIRAC) System	AIRAC is a system that will automatically compute the earmarked shares of the Local Government Units (LGUs) and other government agencies-beneficiaries of the internal revenue tax collections.	Operations Group / Information Systems Group
12. Compliance Improvement Strategy	A system that will develop a comprehensive end-to-end compliance improvement strategy for taxpayers for the effective management of risks and to improve overall levels of compliance in the areas of registration, filing and payment, under-reporting, and arrears management.	Project Management and Implementing Service / Operations Group / Information Systems Group
13. Geographical Information System (GIS)	This is a system designed to allow users to collect, manage and analyze large volumes of spatially referenced and associated attribute data using a web-based geographic data visualization an information system.	Operations Group / Information Systems Group
14. Asset Information Management Program (AIM-P)	The program aims to establish a systematic, strategic and integrated revenue management system for asset-related and other relevant transactions, utilizing IT, infrastructure, applications and solutions, for enhanced fiscal policy formulation and improved revenue collection.	Operations Group / Information Systems Group
15. Enhanced Mobile Revenue Collection Officers System (MRCOS)	This project is for the Application Enhancement and Maintenance of the MRCOS, and the need to acquire more efficient and effective equipment that will likewise maximize the features of the MRCOS.	Operations Group / Information Systems Group
16. E-Linkage with the Bureau of Treasury (BTr)	A new process for the electronic exchange of information/data between the BIR and the BTr with respect to collection and the remittances of internal revenue taxes across all collection channels.	Operations Group / Information Systems Group

17. Forfeited Asset Management	A web-based facility that will enable the BIR to automatically create and update its database of absolutely forfeited properties, monitor the handling of forfeited properties from the time of absolute forfeiture up to final disposition, ensure that all civil and natural fruits of forfeited properties are duly accounted for and remitted to the government, and automatically publish the relevant information on acquired assets to the BIR website for dissemination to all interested internal and external parties.	Operations Group / Information Systems Group
18. Integrity Management Program	This program aims to install a standard but flexible approach at the agency and program level in ensuring that standard norms of conduct for public officials are consistently applied.	Legal Group
19. Capacity Development and Public Awareness (eLearning)	eLearning is the use of electronic media and information and communication technologies (ICT) in education to enable BIR employees to learn anytime and anywhere.	Resource Management Group / Information Systems Group
20. Workflow Management System (WMS)	<ul style="list-style-type: none"> ▶ WMS is a web-based system that will manage the documents received by BIR. ▶ It will provide a system to process, handle and digitally store internal and external reports and provide an avenue for central monitoring of documents. 	Resource Management Group / Information Systems Group
21. Expansion of ISO Certification to Other District Offices	The objective is to promote and enhance public sector performance through the adoption of International Organization for Standardization (ISO) 9001:2008 Quality Management System (QMS) in all government agencies.	Resource Management Group / Information Systems Group
22. Exchange of Information (EOI) Program and the implementation of the Foreign Account Tax Compliance Act Intergovernmental Agreement Model 1 (FACTA-IGA 1)	<ul style="list-style-type: none"> ▶ This program seeks to make the BIR more aware of the benefits of EOI in collecting taxes, particularly, on cross-border transactions. ▶ The BIR can obtain information from another tax authority regarding foreign-sourced income derived by taxable residents. 	Legal Group / Information Systems Group

23. Human Resources Information System (HRIS)	The HRIS will support the requirements of the Civil Service Commission (CSC) Program to Institutionalize Meritocracy and Excellence in Human Resource Management (PRIME-HRM) and to provide the BIR employees with fast and easy access to comprehensive and integrated human resource data.	Resource Management Group / Information Systems Group
24. Procurement, Payment, Inventory, Distribution and Monitoring System	This project will automate and integrate the processes pertaining to receipt of purchase requests, allocation of funds, procurement of goods/services, maintenance of inventory and distribution of goods purchased, monitoring of rendition of services contracted, payment of purchases made, while adhering to existing procurement, budgeting, accounting and auditing laws, rules and regulations.	Resource Management Group / Information Systems Group
25. Strategic Performance Management System (SPMS)	The SPMS seeks to link individual performance with the agency's organizational vision, mission, and strategic goals.	Resource Management Group / Planning and Management Service
26. Transfer Pricing (TP) Program	<ul style="list-style-type: none"> ▶ This program seeks to complement the Transfer Pricing Guidelines and Revenue Regulations (RR) No. 2-2013. ▶ The proposed TP program includes the Commercial Database Subscription for TP Studies (Cdbc-TPS) and the crafting/finalization of related issuances on TP such as: <ul style="list-style-type: none"> 1. Revenue Regulations on Advance Pricing Agreements (APAs) 2. Revenue Memorandum Order (RMO) on TP Documentation 3. RMO on TP Risk Assessment 	Large Taxpayers Service / Legal Group
27. Industry Issues Resolutions - Legal	<ul style="list-style-type: none"> ▶ The LTS Core Group was created to address and tackle any industry tax issues and concerns of large taxpayers, specifically on matters declared as "No Ruling Areas". 	Legal Group / Large Taxpayers Service

RMC No. 4-2015 publishes the full text of DOF DO No. 107-2014 dated November 28, 2014 on the Rules of Accreditation with the BOC for PEZA Locators.

RMC No. 4-2015 dated January 5, 2015

- ▶ All locators of PEZA Special Economic Zones throughout the Philippines are exempt from the requirements of DO No. 12-2014, as amended by DO No. 18-2014, prescribing the BIR and BOC rules on importer and customs broker accreditation, and shall be eligible for accreditation with the BOC Account Management Office.
- ▶ PEZA locators that will import goods into the Philippines will have to comply with the documentary requirements prescribed in the relevant rules of procedure issued by the BOC.

RMC No. 5-2015 publishes the full text of Presidential AO No. 45 dated November 28, 2014, titled "Revoking Letter of Instruction No. 1479, Series of 1985".

RMC No. 5-2015 dated January 5, 2015

- ▶ AO No. 45 revokes Letter of Instruction No. 1479, issued on September 11, 1985, insofar as it prohibits the use and importation of airline tickets issued outside the Philippines for international air transportation of passengers originating in the Philippines.
- ▶ This AO takes effect immediately upon its publication in a newspaper of general circulation.

RMC No. 6-2015 publishes the full text of EO No. 173 dated October 31, 2014, titled "Reduction and Condonation of Real Property Taxes and Interest/ Penalties Assessed on the Power Generation Facilities of Independent Power Producers (IPPs) under Build-Operate-Transfer Contracts with Government-Owned and/or -Controlled Corporations (GOCCs)".

RMC No. 6-2015 dated January 5, 2015

- ▶ All liabilities for real property tax (RPT) on property, machinery and equipment, including any special levies accruing to the Special Education Fund (SEF), actually and directly used by IPPs for the production of electricity under Build-Operate-Transfer contracts with GOCCs, for all years up to 2014, are reduced to an amount equivalent to the tax due if computed based on an assessment level of 15% of the fair market value (FMV) of said property, machinery and equipment depreciated at the rate of 2% per annum, less any amounts already paid by the IPPs.
- ▶ All fines, penalties and interest on such deficiency RPT liabilities are also condoned.
- ▶ The EO shall take effect immediately upon its publication in a newspaper of general circulation.

BOC Issuances

CAO No. 1-2015 shortens the period for re-export of empty containers from 150 to 90 days.

Customs Administrative Order No. 1-2015 dated January 1, 2015

- ▶ Any empty container which is re-exported on or before April 30, 2015, regardless of when it arrived in the Philippines, will not be subject to any duties or taxes previously mandated by CAO No. 2-97.
- ▶ From January 30, 2015 until April 30, 2015:
 1. Containers arriving as empty during this period shall be re-exported by July 29, 2015.

2. Containers stuffed with imported cargoes, which were returned to the shipping line at any time during this period, as evidenced by the Equipment Interchange Receipt (EIR) issued by the shipping line and signed by the party receiving and/or delivering the containers, shall be re-exported by July 29, 2015.
- ▶ From May 1, 2015 onwards:
 1. Containers arriving empty shall be re-exported within 90 days from date of last discharge.
 2. Containers stuffed with imported cargoes shall be re-exported within 90 days after their return to the shipping line, as evidenced by EIR issued by the shipping line and signed by the party receiving and/or delivering the containers.
 - ▶ Containers which have not been re-exported by the deadlines provided shall be treated as imports subject to import entries, duties and taxes. Their owners have the obligation to file import entries and pay duties and taxes for them.
 1. For containers re-exported on or before April 30, 2015, import entries must be filed no later than August 28, 2015, and final payment of duties and taxes made within 15 days of date of filing of import entry.
 2. For containers arriving from January 30, 2015 until April 30, 2015, import entries must be filed no later than 30 days after the lapse of the 90-day period specified, and final payment of duties and taxes made by 15 days from the date of filing.
 - ▶ Containers which have not been re-exported by the deadlines provided, for which entries have not been filed or for which final payments have not been made within the prescribed periods, shall be liable for the issuance of Warrant of Seizure and Detention.
 - ▶ From May 1, 2015 onwards, any container which has not been re-exported within 90 days from its date of last discharge (for containers which arrived empty), or from the date of its return to the shipping line (for containers which arrived stuffed with cargo), will be subject to duties and taxes as provided.
 - ▶ CAO No. 1-2015 repeals CAO No. 2-97 in its entirety.

(Editor's Note: CAO 1-2015 was published in The Manila Times on January 14, 2015.)

CMO No. 29-2014 prescribes the revised computation of duties, taxes and other charges for automobiles.

Customs Memorandum Order No. 29-2014 dated December 22, 2014

- ▶ **Coverage**

The importation of the following automobiles are covered by this CMO:

1. Brand new automobiles consigned to car manufacturers, dealers and natural persons;

2. Used automobiles consigned to the following:
 - ▶ Returning Filipino residents and/or Department of Foreign Affairs (DFA) officials;
 - ▶ Returning Filipino residents who have resided abroad for at least one (1) year [accumulated within 3 years of his/her stay abroad]
 - ▶ Returning Filipino residents who have resided abroad for at least 1 year [accumulated within 3 years of his/her stay abroad immediately preceding the date of filing of the Certificate of Authority to Import (CAI) at the Bureau of Import Services (BIS)];
 - ▶ Immigrants holding 13A or 13G visas or those with dual citizenships provided a prior CAI had been issued by the DTI-BIS prior to exportation.
3. Used automobiles under the local purchase scheme, sold by privilege (duty/tax exempt) persons to non-privilege (non-duty/tax exempt) individuals or those sold by privilege to privilege individuals.

▶ **Definition of Terms**

1. Automobile - As defined under Section 2(b) of RR No. 25-2003, the term "automobile" refers to any four (4) or more wheeled motor vehicle regardless of seating capacity, which is propelled by gasoline, diesel, electricity or any other motive power, excluding buses, trucks, cargo vans, jeeps/jeepneys/jeepney substitutes, single cab chassis, and special purpose vehicles. Only those classified as automobiles are subject to excise tax.
2. Excise Tax - For automobiles, refer to the Ad Valorem Tax (AVT) subject to the rates and bases imposed under Section 4 of RR No. 25-2003.
3. Brand new automobiles - As contemplated under DOF Joint Order No. 1-2010 refers to the following criteria:
 - ▶ Of current or advanced year model in the country of origin and / or manufacture; or
 - ▶ With year model of the immediately preceding year in the country of origin and / or manufacture provided that:
 - a. The motor vehicle has a mileage of not more than 200 kilometers or 125 miles; and
 - b. The motor vehicle has been acquired by the importer from the car dealer as first owner.

A brand new automobile with year model of the immediately preceding year shall not be accorded any depreciation allowance.

4. Importer's sworn statement (ISS) - As defined under Section 13 of RR No. 25-2003, refers to the duly notarized document showing the net importer's selling price of the imported brand new automobile duly filed by car manufacturers or car dealers with the BIR on or before the end of months of June and December of every calendar year, or for every proposed importation of a new brand/make of automobiles.

▶ **Computation of AVT**

For purposes of computing the AVT for imported brand new automobiles consigned to car manufacturers or dealers, the net importer's selling price (ISP) shall be the higher value computed using the following formulas:

1. Net ISP1 = Gross Selling Price - Excise Tax - VAT
2. Net ISP2 = 80% x (Suggested Retail Price - Excise Tax - VAT)

The depreciated value of the automobile at the time of sale, transfer, or exchange shall be based on the provisions of CAO No. 07-2014.

To facilitate assessment, the computation of the AVT for each variant/model covered by the ISS should be inscribed in the "Free Disposal" portion of the IEIRD.

- ▶ All other issuances which are inconsistent with CMO No. 29-2014 are repealed, including CMO No. 13-2014.
- ▶ CMO No. 29-2014 takes effect 15 days from publication in the Official Gazette or newspaper of general circulation and 3 certified copies deposited to the UP Law Center.

(Editor's Note: CMO No. 29-2014 was published in The Manila Times on December 30, 2014.)

CMO No. 3-2015 prescribes the new rules for accreditation of PEZA locators, in accordance with DOF Department Order No. 107-2014.

Customs Memorandum Order No. 03-2015, dated January 13, 2015

▶ **General Principles**

1. This CMO implements DOF-DO No. 107-2014.
2. PEZA locators who have obtained BOC importer accreditation in accordance with CMO No. 4-2014, as amended by CMO No. 11-2014, are not covered by this CMO.
3. PEZA locators who have not yet obtained BOC importer accreditation in accordance with CMO No. 4-2014, as amended by CMO No. 11-2014, but have submitted to the BOC complete requirements as per those CMOs, are not covered by this CMO. Their applications will continue to be processed in accordance with those two CMOs.
4. PEZA locators who have not yet submitted complete requirements as per CMO No. 4-2014, as amended by CMO No. 11-2014, or who have not applied for BOC importer accreditation as of January 12, 2015, are covered by this CMO.
5. Company or companies as referred to in this CMO refer to corporations, partnerships, cooperatives, or sole proprietorships which are PEZA locators.

6. A corporation, partnership, or cooperative applying for accreditation must designate:
 - ▶ The applicant, who will sign the Application for Accreditation and Registration and who will be the main point of contact between the company and the BOC throughout the validity of the company's accreditation. For corporations or cooperatives, the applicant must be a responsible officer. For partnerships, the applicant must be a partner.
 - ▶ The two most senior officers of the company, who will be responsible for notifying the BOC of any changes in responsible officers, including the applicant, throughout the validity of the company's accreditation.
 - ▶ Responsible officers, who will be responsible and liable for the actions of the company.
 - ▶ At least one authorized signatory for import entries to be filed with the BOC. Each authorized signatory must be a responsible officer.
7. For sole proprietorships, the proprietor will automatically fulfill the role of the two most senior officers, responsible officer, authorized signatory, and applicant. A sole proprietorship may, but need not, designate additional authorized signatories.

▶ **Procedure**

1. All importers and customs brokers are required to apply for registration under the BOC Client Profile Registration System (CPRS) through one of the BOC's Value-Added Service Providers (VASPs). After the application is STORED in the system, the applicant shall then print the CPRS profile which shall form part of the application.
2. All applicants shall pay a processing fee of P1,000 upon submission of its application. Thereafter, a BOC Official Receipt (BCOR) shall be issued upon payment of said processing fee.
3. Documents to be submitted must be original copies, except when it is indicated that certified true copies are acceptable. The original copies may be required for purposes of comparison in case of doubt as to the authenticity of the certified true copies.

▶ **Documents to be Submitted by a Corporation, Partnership, or Cooperative**

1. A completely filled Application for Accreditation and Registration
2. An executed and notarized Sworn Certification and Undertaking
3. For Corporations and Cooperatives: An executed and notarized Secretary's Certificate; For Partnerships: An executed and notarized Certificate of Partnership Resolution
4. BCOR evidencing payment of Application Fee (certified true copy acceptable)
5. Certified true copy of one of the following: for corporations, Certificate of Incorporation issued by the SEC; for partnerships, Certificate of Partnership issued by the SEC; for cooperatives, Certificate of Incorporation issued by the CDA
6. General Information Sheet, stamped "Received" by the SEC or CDA and dated not more than 12 months before the date of application with the BOC (certified true copy acceptable)

7. Company Profile, with pictures of the company's office with signage and storage facilities.
8. Print-out of CPRS profile (certified true copy acceptable)
9. Updated e-mail notification of "Stored CPRS" (certified true copy acceptable)
10. Valid PEZA Certificate of Registration (certified true copy acceptable)
11. Previous Certificate of BOC Accreditation, if previously accredited by the BOC (certified true copy acceptable)
12. Documents for each responsible officer: NBI Clearance issued not earlier than three months before the date of application with BOC, 2 valid government-issued I.D.s with at least one primary ID (may be passport, driver's license, GSIS ID, SSS ID, Unified Multi-purpose ID, or PRC ID) (certified true copy acceptable), and personal profile
13. A Compact Disc containing scanned copies of the 12 above-listed documents.

► **Documents to be submitted by a Sole Proprietorship**

1. A completely filled Application for Accreditation and Registration
2. An executed and notarized Affidavit of Sworn Undertaking
3. An executed and notarized Special Power of Attorney, if the Sole Proprietorship designates any Authorized Signatories in addition to the Sole Proprietor
4. BCOR evidencing payment of Application Fee (certified true copy acceptable)
5. Certificate of Business Name Registration issued by the DTI (certified true copy acceptable)
6. Company Profile, with pictures of company's office and storage facilities
7. Print-out CPRS profile (certified true copy acceptable)
8. Updated e-mail notification of "Stored CPRS" (certified true copy acceptable)
9. Valid PEZA Certificate of Registration (certified true copy acceptable)
10. Previous Certificate of BOC Accreditation, if previously accredited by the BOC (certified true copy acceptable)
11. NBI Clearance of the Sole Proprietor issued no earlier than three months before application with the BOC
12. Two valid government-issued I.D.s with at least one primary ID (may be passport, driver's license, GSIS ID, SSS ID, Unified Multi-purpose ID, or PRC ID) (certified true copy acceptable)
13. Personal Profile of the Applicant
14. Documents for each authorized signatory: NBI Clearance issued not earlier than three months before the date of application with BOC, 2 valid government-issued I.D.s with at least one primary ID (certified true copy acceptable), personal profile of the applicant, and executed and notarized Sworn Undertaking of Responsible Officer
15. A Compact Disc containing scanned copies of the 14 above-listed documents.

► **Action on the Application for Accreditation**

1. Upon submission of the complete list of documents, the BOC Account Management Office (AMO) shall notify the company of the decision on its application, as far as practicable, within 15 working days from receipt of the application.
2. Once approved, the accreditation of the company with the BOC will be valid for as long as its PEZA registration is valid, provided the reporting requirements below are followed.

▶ **Reporting Requirements**

1. If any of the following changes take place, it is the individual responsibility of each of the two most senior officers of the company to report such changes to the BOC-AMO, within 15 days from occurrence of change with the corresponding supporting documents:
 - ▶ Change in business name
 - ▶ Change in two most senior officials
 - ▶ Change in responsible officers
 - ▶ Change in signatory for entries
2. Any delay or failure to update BOC-AMO may be grounds for the cancellation or suspension of the company's accreditation. Furthermore, senior officers, responsible officers, and authorized signatories will continue to be considered as such by the BOC, empowered to transact on behalf of the company and bind the company in transactions with the BOC, and liable for their actions to the BOC.
3. All corporations, partnerships, cooperatives and sole proprietorships should also submit the following documents no later than 31 of March of every year after accreditation:
 - ▶ Updated GIS and Company Profile in case of corporations; the company or trade profile in case of cooperatives, partnerships and sole proprietors;
 - ▶ Updated PEZA registration; and
 - ▶ Mayors Permit and Proof of lawful occupancy of office.

▶ **Repealing Clause**

Effective January 12, 2015, this CMO repeals CMO No. 4-2011 and CMO No. 11-2014 as they relate to PEZA locators who have not submitted complete requirements for importer accreditation in accordance with CMO No. 4-2014 and CMO No. 11-2014, or who have not applied for importer accreditation with the BOC.

All other orders and issuances the provisions of which are inconsistent with this CMO are revoked/modified accordingly.

▶ **Effectivity**

CMO No. 3-2015 took effect on January 12, 2015.

(Editor's Note: a copy of CMO No. 3-2015 was received by the UP Law Center only on January 21, 2015)

CMO No. 4-2015 revises the portion of the Port Operations Manual as referred to in CMO No. 22-2010, on requiring the presence of BOC personnel during container stuffing and requiring exporters to submit a Notice of Stuffing.

Customs Memorandum Order No. 4-2015, dated January 22, 2015

- ▶ Section 16.B.1.1 of the Port Operations Manual is repealed in its entirety.
- ▶ For withdrawal of shut-out containerized export cargo, a copy of an export declaration/permit/inquiry is no longer required. Instead, either of the following is required:
 1. A copy of the pre-advance notice issued by the shipping line to the port operator showing the date of booking and container number(s) for the relevant container(s); or

2. A certification from the port operator showing the date the container arrived and certifying to the fact that the container arrived from within the Philippine customs territory and not from abroad or as a transshipment from another port.
- ▶ There is no longer any requirement for exporters or their brokers to submit a Notice of Stuffing, nor any requirement for a Stuffing Inspector to be present during the stuffing of a container. The Authority to Load issued by the Export Division shall be sufficient basis for an export container to be loaded.
 - ▶ The Export Division shall provide the Customs Container Control Division (CCCD) with a running list all containers for which it has issued an Authority to Load which must be kept current at all times. It shall be the responsibility of the Loading Inspector to ensure that no loaded containers for which an Authority to Load has not been issued are allowed to be loaded into any vessel.
 - ▶ The Export Division shall ensure that an Authority to Load is issued for the containers forming part of an export declaration only after compliance with all requirements for the issuance of such an Authority to Load, including the requirement to subject any containers or entries which are tagged "red" by the Risk management Office, and any containers or entries which are the subject of an alert order, to either x-ray or physical inspection, and even then, only if there are no derogatory findings after such inspection.
 - ▶ The BOC shall not require that export entries be filed prior to the entry of containers into any port. However, no cargo – whether in containers or not - can be loaded into a vessel without an Authority to Load.
 - ▶ CMO No. 4-2015 took effect on January 22, 2015.

(Editor's Note: a copy of CMO No. 4-2015 was received by the UP Law Center on January 23, 2015.)

BOI Issuance

The 2014 IPP was approved by the President in Memorandum Order No. 74 dated October 28, 2014, and was published on December 25, 2014.

The 2014 Investments Priorities Plan

General Framework

- ▶ The 2014 IPP was formulated based on the updated Philippine Development Plan (PDP) 2011-2016 and the new Philippine industrial policy.
- ▶ The new Philippine industrial policy aims to upgrade and transform the manufacturing industry. With the advent of the ASEAN Economic Community in 2015, it is imperative to revive and transform our manufacturing industry into a catalyst to address the challenges and seize the opportunities of an integrated regional economy.
- ▶ Formulated within the context of the PDP and the new industrial policy, the investment strategy focuses on improving productivity, human resource development, and technology upgrading.
- ▶ The IPP prioritizes 6 broad areas of economic activity: agro-industrial, manufacturing, IT-BPM, logistics, tourism and construction.

Preferred Areas of Investments

I. Preferred List of Activities:

▶ Manufacturing

1. Motor vehicles based on Logistics Efficiency Index, (excluding motorcycles, e-bikes and golf carts) and motor vehicle parts and components:
 - ▶ Body panel stamping
 - ▶ Engines, transmissions, and transaxle
 - ▶ Large injection molded parts
 - ▶ Bumpers; instrument panel; door trims; center console; grill; wheel house finisher; lamps; shock absorber; wiper motor/blade; engine mounts; electric power steering; combination meter; instrument cluster; chassis & sub-frame; interior finishing; switches; seat mechanism; retractable seat belts; window regulator; constant velocity joints/transmission; aluminum radiators; plastic fuel tanks; fuel pumps; brake system and components; evaporators and condensers; relays; flame laminated automotive fabric; door & rear view mirrors; automotive glass; engine parts & assembly; and transmission parts & assembly
 - ▶ Controller assembly, motor, and battery (other than lead acid) for electric vehicle
2. Shipbuilding including parts and components
3. Aerospace parts and components
4. Chemicals:
 - ▶ Oleo-chemicals
 - ▶ Petrochemicals and derivatives
 - ▶ Chlor-Alkali Plant
5. Virgin paper pulp
6. Copper wires and copper wire rods
7. Basic iron and steel products, steel grinding balls, long steel products (billets and reinforcing steel bars), and flat hot/cold-rolled products
8. Tool and Die:
 - ▶ Simple, Compound and Progressive Dies for metal stamping or metal forging
 - ▶ Molds for die casting, for plastic injection or blow molding, glass blow molding, forging, encapsulation molds
 - ▶ Jigs and fixtures for metal cutting and metal forging

▶ Agribusiness and Fishery

1. Commercial production subject to geographical supply considerations:
 - ▶ Coconut, corn, cassava, coffee, cocoa, fisheries, poultry and livestock (poultry and livestock production limited to areas in ARMM, Mindoro and Palawan);
 - ▶ High value crops - rubber, spices, vegetables and fruits;
 - ▶ Emerging commodities - sampaloc, jackfruit, peking duck, native pigs, siling labuyo, peanuts, monggo, and achuete

2. Commercial processing subject to geographical supply considerations:
 - ▶ Extraction of higher value substances from agricultural and forest-based raw materials through bioprocessing;
 - ▶ Conversion of agricultural and fishery products, their by-products and wastes, to a form ready for further processing or final consumption.
 3. Production of animal and aqua feeds excluding those for game animals, fowls and other species for pet/leisure purposes subject to geographical supply considerations
 4. Production of fertilizers and pesticides subject to geographical supply considerations
 5. Modernization of sugar mills subject to geographical supply considerations
 6. Mechanized agriculture support services such as harvesting, plowing, spraying/dusting subject to geographical supply considerations
 7. Agriculture support infrastructures subject to geographical supply considerations such as facilities for drying, cold chain storage, blast freezing, bulk handling and storage; packing houses, trading centers, ice plants in Less Developed Areas, AAA slaughterhouse, AAA dressing plant
- ▶ **Services**
 1. Integrated Circuit Design
 2. Creative Industries/Knowledge-Based Services - covers start-ups of small newly incorporated domestic players/enterprises only:
 - ▶ Animation
 - ▶ Software development - covers only those with own Intellectual Property developed for commercial sale
 - ▶ Game development
 - ▶ Health Information Management Systems
 3. Ship repair
 4. Charging stations for e-vehicles
 5. Maintenance, Repair and Overhaul (MRO) of aircraft
 6. Industrial waste treatment
 - ▶ **Economic and Low-cost Housing (horizontal and vertical)** - based on a price ceiling of PHP 3 million and subject to geographical considerations
 - ▶ **Hospitals** - subject to geographical considerations
 - ▶ **Energy**
 1. Exploration and development of energy sources (including energy crops or upstream biofuels)
 2. Power generation plants - subject to capacity installation gap based on DOE's 5-year supply-demand forecast or up to 2019 (i.e., if forecast is 6000MW, then the first 6000MW capacity receives the incentives and said installation gap will be divided among areas in Luzon, Visayas and Mindanao)
 3. Ancillary services
 - ▶ **Public Infrastructure and Logistics**
 1. Airports and seaports (includes RORO ports) for cargo and passenger

2. Air, land and water transport limited to brand new ships, aircrafts, seaplanes, RORO; buses, boats, mass rail - limited to capital equipment incentive only
3. LNG Storage and Regasification Facility
4. Bulk water treatment and supply

▶ **PPP Projects**

II. Export Activities:

- ▶ Production and manufacture of export products
- ▶ Services Exports
- ▶ Activities in support of export

III. Special Laws

- ▶ Industrial Tree Plantation (PD No. 705)
- ▶ Mining (RA No. 7942) - limited to capital equipment incentive
- ▶ Publication or Printing of Books/Textbooks (RA No. 8047)
- ▶ Refining, Storage, Marketing and Distribution of Petroleum Products (RA No. 8479)
- ▶ Rehabilitation, Self-Development and Self-Reliance of Persons with Disability (RA No. 7277)
- ▶ Renewable Energy (RA No. 9513)
- ▶ Tourism (RA No. 9593)

IV. ARMM List

This covers priority activities that have been identified by the Regional Board of Investments of the ARMM (RBOI-ARMM) in accordance with EO No. 458. The RBOI-ARMM may also register and administer incentives to activities in this IPP for projects locating in the ARMM.

▶ **Export Activities**

1. Export Trader and Service Exporters
2. Support Activities for Exporters

▶ **Agriculture, Agribusiness/Aquaculture & Fishery**

Production of processed foods (production of "Halal" meat and foods), vegetable oils, food crops, integrated coconut processing and plantation, activated carbon, production of beverage crops and plantation, seaweeds production and processing, fruit processing, aquaculture (fish production and processing), young/sweet corn production, potato and sweet potato plantation/processing, cutflower production/processing, abaca plantation/processing, oil palm plantation/processing/refining and germinated oil palm seeds, feeds production, sugarcane plantation/processing and refineries, quality seed and seedlings of fruit trees and other planting materials propagated asexually or by tissue culture, pearl culture/processing, production of livestock and poultry that includes processing, crocodile farming and processing, sericulture, feeds production and production of plantation crops and other pharmaceuticals, medical herbs/essential oil plants, biomass, rubber, carrageenan, mangosteen and moringa.

▶ **Basic Industries**

Production of pharmaceuticals such as antibiotics and medical devices, textile and textile products, inorganic and organic fertilizers using solid wastes materials, exploration and development of natural gas and mineral resources which includes small scale as defined under P.D. 1899 but to exclude river beds in operations and processing of minerals such as beneficiation and other metallurgical methods and cement production of at least 1.0 million MTYP capacity (clinker based).

▶ **Consumer Manufacturers**

Processing of rubber products to be integrated with plantation and leather products.

▶ **Infrastructure and Services**

Public utilities with developmental route of the five provinces and one city of ARMM and other adjacent cities and provinces such as common carriers, electric transmission/distribution, electric motor vehicle and its parts and components, water supply facilities/waterways and sewerage systems, buses/cargo trucks, other specialized mass transport systems, power generation like hydro power, geothermal and natural gas, and telecommunications with international gateways.

▶ **Industrial Service Facilities**

Common centers to include testing and quality control laboratories, training and demonstration centers, tool shops and similar facilities, metal casting, metal working, furniture, ceramics and food processing, petrochemical complex and industrial gases.

▶ **Engineering Industries**

Engineering products, electronics and telecommunication products, fabrication of construction materials and hydro power plant

▶ **Logistics**

Shipping of cargoes (air, sea and land) and forwarders.

▶ **BIMP -EAGA Trade and Investment Enterprises**

Enterprises located or have their base of operation in the BIMP-EAGA, namely: Brunei; Sabah and Sarawak in Malaysia; Maluku; Sulawesi, Kalimantan and Iriangaya in Indonesia; and Mindanao and Palawan in the Philippines, who shall invest and engage in economic activity in the ARMM including SMEs.

▶ **Tourism**

Establishment of tourism estates subject to guidelines developed jointly by RBOI-ARMM and the Department of Tourism - ARMM, tourist accommodation facilities, tourist transport facilities and development of retirement villages, which shall include health and medical facilities, including amenities required by the Philippine Retirement Authority (PRA)

and subject to the guidelines to be approved by RBOI-ARMM in consultation with the PRA, the Department of Health (DOH), the Regional Planning and Development Office (RPDO) and other concerned agencies.

▶ **Health and Education Services and Facilities**

Investors in the health and education sectors such as putting-up of private hospitals, medical clinics, wellness centers, primary education, secondary education, tertiary education (colleges, universities and vocational-technical schools) and ancillary services including any and all health and education-related investments.

▶ **HALAL Industry**

[Editor's Note: The 2014 IPP was published in the Manila Bulletin on December 25, 2014.]

PEZA Issuance

PEZA MC No. 2015-002 informs PEZA-registered enterprises of the applicability of certain permit requirements of the DENR for the importation and use of materials considered as articles.

PEZA Memorandum Circular No. 2015-002 dated January 5, 2015

- ▶ This MC answers queries from PEZA-registered enterprises on the applicability of certain DENR permit requirements – i.e., Small Quantity Importation (SQI) / Pre-Manufacturing Pre-Importation Notification (PMPIN), Priority Chemicals List (PCL) compliance certificate or Chemical Control Order (CCO) registration – for the importation and use of materials considered articles.

- ▶ The DENR Environmental Management Bureau (EMB) has clarified that:
 1. Articles do not require the abovementioned DENR permits or clearances prior to importation or usage.

 2. An “article” is a material that is manufactured in a specific shape or design for a specific application and the design is maintained as an essential feature in the finished product. This would also include finished goods and consumer products which contain regulated chemicals, readily sold to the public and not used as a raw material to produce another product where chemical emissions, discharges or releases are possible during the production process.

- ▶ Thus, if a PEZA-registered enterprise will import:
 1. An *article* such as lead acid batteries, nickel cadmium batteries, commercial lubricants and grease for vehicles, commercial paints, bathroom deodorizers and cleaners, filters, boards, commercial adhesives, lamps, consumer electronics and the like, DENR permit requirements such as SQI, PMPIN, PCL registration or CCO registration are NOT applicable. However, the importation of an article may be covered by permit requirements of other regulatory agencies.

 2. For *raw chemicals* which are not registered in the Philippine Inventory of Chemicals and Chemical Substances (PICCS) or included in the PCL or covered by a CCO, the applicable permit requirements will need to be secured from the EMB and presented to the PEZA Zone Office prior to lodging an electronic importation request through the various Value-Added Service Providers (VASPs).

- ▶ An assessment of the applicability of regulatory requirements [i.e., permits from the Food and Drug Administration (FDA), DENR, Philippine Drug Enforcement Agency/Dangerous Drugs Board (PDEA/DDB) and Philippine National Police (PNP)] can only be done if the Material Safety Data Sheet (MSDS) of the article or raw chemicals contains the complete composition and Chemical Abstract Service (CAS) number of the components.

SEC Issuances

SEC MC No. 1-2015 extends to June 30, 2015 the deadline for the amendment of the Principal Office Address.

SEC Memorandum Circular No. 1-2015 dated January 7, 2015

Due to numerous requests by registrant corporations and partnerships and to give more time or acquire the necessary endorsements from other regulatory agencies, SEC MC No. 1 extends to June 30, 2015 the period for filing the applications for amendment of the articles of incorporation or articles of partnership in order to specify their complete address.

[Editor's Note: SEC MC No. 1-2015 was published in The Manila Times on January 10, 2015.]

SEC MC No. 2-2015 prescribes additional guidelines for all listed companies and accredited institutional training providers on corporate governance.

SEC Memorandum Circular No. 2-2015 dated January 8, 2015

Guidelines for the Accreditation of Corporate Governance Speakers/ Resource Persons

1. All speakers/resource persons shall have relevant experience or training in the subject matters to be discussed.
2. All speakers/ resource persons shall attend at least once a year a roundtable discussion conducted by the SEC.
3. Only speakers/resource persons who obtain an average mark of at least four (4), or above average in the SEC authorized evaluation form shall be accredited.

Additional Guidelines for Accredited Institutional Training Providers

1. The training program, including the course outline and training materials and list of SEC- accredited trainers, shall be submitted to the SEC for approval at least one month before the scheduled training program;
2. The accredited training provider shall not change any of the speakers/ resource persons included in the list approved by the SEC;
3. In case of cancellation or postponement of a scheduled training/seminar, the accredited training provider shall notify the SEC at least 10 days prior to date of seminar/training and provide reason for cancellation of the same;
4. In case of changes in the course outline and materials, the accredited training provider shall furnish the SEC with the revised outline and materials at least 7 days prior to date of seminar/ training;
5. The Certificates of Attendance of participants in training/ seminar shall be released by the accredited training providers within 3 days from conclusion of the training/ seminar.

Guidelines for In-House Corporate Governance Training Seminars

In-House Corporate Training Seminars may either be:

- ▶ Those conducted by a company of its own; or
- ▶ Those conducted in partnership with accredited training providers.

[Editor's Note: SEC MC No. 2-2015 was published in The Manila Times on January 10, 2015.]

SEC MC No. 3-2015 prescribes the schedule for the filing of the ACGR of all newly-listed companies.

SEC Memorandum Circular No. 3-2015 dated January 14, 2015

- ▶ SEC MC No. 3-2015 requires newly-listed companies to submit their Annual Corporate Governance Report (ACGR) on May 30 following the one year anniversary of their listing in the Philippine Stock Exchange (PSE).
 1. For companies listed from January 1 to May 30, 2014, the ACGR will be submitted on May 30 of the following year:
 - ▶ First filing- May 30, 2015
 - ▶ Subsequent filings- In accordance with SEC MC 1 and 12, Series of 2014
 - ▶ Fifth Year Filing- May 30, 2020
 2. For companies listed from May 31 to December 31, 2014, the ACGR will be submitted May 30 two years thereafter:
 - ▶ First filing- May 30, 2016
 - ▶ Subsequent filings- In accordance with SEC MC 1 and 12, Series of 2014
 - ▶ Fifth Year Filing- May 30, 2021.

[Editor's Note: SEC MC No. 3-2015 was published in The Manila Bulletin and the Business Mirror on January 22, 2015.]

SEC-OGC Opinion No. 14-36 dated December 4, 2014

When the AOI of a domestic corporation provide that the number of directors shall "include" a certain number of independent directors, the same shall be construed to mean the minimum number of independent directors for the corporation.

Facts:

The Articles of Incorporation (AOI) of F Co. provide that the number of directors of F Co. shall be 11, including 2 independent directors. On the other hand, the amended by-laws of F Co. provide that at least 2 independent directors shall be elected in accordance with the rules and regulations of the SEC.

Issue:

Should the AOI of F Co. be interpreted to limit the number of its independent directors to two?

Ruling:

Words have to be taken in their natural, plain and obvious meaning. "Including", in ordinary parlance, means "with," or "inclusive of". It does not necessary impose or designate a limit. When the AOI state "including 2 independent directors", it does not say that the corporation can only have 2 independent directors. Instead, it sets a minimum. The corporation, in this case, must have at least 2 independent directors but may have more at its option.

Moreover, a check with available records would show the intention to have “at least 2 independent directors,” and not merely two (2), was made explicit in the amended by-laws. Thus, (1) construing the word “including” and taking in its natural and plain meaning and (2) considering the contemporaneous circumstances under which the subject provision was adopted, the SEC opines that the clear intention of F Co., when it amended its AOI, stating therein that “the number of directors of said corporation shall be 9 including 2 independent directors” is to provide a minimum number of independent directors.

This is consistent with SEC MC No. 16, series of 2002, and SEC MC No. 6, series of 2009, which may be summarized as follows:

- ▶ The number of independent directors in the Board of Directors of a concerned entity must be at least 2, or such number of directors equivalent to 20% of the entire board, whichever is lesser. In short, the number of independent directors can never be less than 2 even if 2 is more than 20% of the entire board.
- ▶ The number of independent directors of a corporation may go over the minimum requirement provided by law.

BSP Issuances

Circular No. 864 amends Section 611.2 of the MORB on derivative activities of TBs.

BSP Circular No. 864 dated December 22, 2014

- ▶ The amendment is made as follows:

“§X611.2 (2008-X602.2) Activities requiring additional derivatives authority.

(1) Classification of additional derivatives authority

xxx

Type 2 - Limited dealer authority

A UB or KB may apply for Type 2 authority. A bank with Type 2 authority may operate as dealer in specific types of derivative [sic] products with specific underlying reference, as applied under Subsec. X611.1(a)(1): Provided, That a bank with Type 2 authority shall comply with the sales and marketing guidelines prescribed in Appendix 26. The Type 2 authority also carries the authority to transact as broker and end-user of the said specific derivative [sic] instruments.

A TB with an existing authority to issue foreign letters of credit and pay/accept/ negotiate import/export drafts/bills of exchange under Subsec.2101.1 may apply for Type 2 authority to operate as a dealer of deliverable FX forwards in order to service the trade-related hedging requirements of its clients: Provided, That the tenor of the FX forwards dealt shall match the term of the underlying trade transaction: Provided, further, That the applicant bank shall be covered by all regulations prescribing capital for market risk, notwithstanding any provision to the contrary; Provided, furthermore, That the TB shall comply with the sales and marketing guidelines prescribed in Appendix 26. The Type 2 authority also carries the authority to transact as a broker and an end-user deliverable FX forwards.”

- ▶ This Circular shall take effect fifteen (15) calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 864 was published in The Manila Times on January 8, 2015.]

Circular No. 865 amends Section X101 of the MORB on the power and scope of authorities of TBs, RBs and cooperative banks.

BSP Circular No. 865 dated December 22, 2014

- ▶ The amendments are made as follows:

“a. Classification of banks - xxx

b. Powers and scope of authorities. The following are the powers and scope of authorities of banks.

xxx

- (3) TBs. In addition to the powers provided in other laws, a TB may perform any or all of the following services:

xxx

- (j) purchase, hold and convey real estate as specified under Sections 51 and 52 of RA No. 8791;
- (k) offer other banking services as provided in Section 53 of RA No. 8791; and
- (l) buy and sell foreign exchange.

With prior approval of the Monetary Board, and subject to such guidelines as may be established by it, TBs may also perform the following services:

- (m) open current or checking accounts;
- (n) engage in trust, quasi-banking functions and money market operations;
- (o) act as collection agent for government entities, including but not limited to, the Bureau of Internal Revenue (BIR), Social Security System (SSS) and the Bureau of Customs (BOC);
- (p) act as official depository of national agencies and of municipal, city or provincial funds in the municipality, city or province where the TB is located;
- (q) issue mortgage and chattel mortgage certificates, buy and sell them for its own account or for the account of others, or accept receive them in payment or as amortization of its loan;
- (r) invest in the equity of allied undertakings;
- (s) issue foreign letters of credit; and
- (t) pay/accept/negotiate import/export draft/bills of exchange.

- (4) RBs. In addition to the powers provided in other laws, an RB may perform or all of the following services:

xxx

- (f) offer other banking services as provided in Section 53 of RA No. 8791; and
- (g) buy and sell foreign exchange.

With prior approval of the Monetary Board, an RB may perform any or all of the following services;

- (h) accept current or checking accounts: Provided, That such RB has net assets of at least P5.0 million;
- (i) accept negotiable order of withdrawal (NOW) accounts;
- (j) act as trustee over estates or properties of farmers and merchants;
- (k) act as official depository of municipal, city or provincial funds in the municipality, city or province where it is located;
- (l) sell domestic drafts; and
- (m) invest in allied undertakings.

- (5) Coop Banks. A coop bank shall primarily provide financial, banking and credit services to cooperatives and their members, although it may provide the same services to non-members or the general public.

In addition to the powers granted to Coop Banks under existing laws, any Coop Bank may perform any or all of the banking services offered by rural banks under item 4.a to 4.g above. A Coop Bank may likewise perform any or all of the banking services offered by rural banks under item 4.h to 4.m, as well as any or all of the banking services offered by other types of banks, subject to prior approval of the BSP."

- ▶ 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: Circular No. 865 was published in The Manila Bulletin on January 8, 2015.]

Circular No. 866 amends/modifies the provisions of Section X192, Subsection X192.3 and Appendix 6 of the MORB to prescribe guidelines for the submission of reports by banks acting as underwriters, brokers, dealers and transfer agents of securities.

BSP Circular No. 866 dated January 7, 2015

- ▶ Subsection X192.3 of the MORB is hereby amended to read as follows:

"a. Banks shall submit to the appropriate department of the Supervision and Examination Sector (SES) the following:

- (1) Information on bank's profile required in Appendix 7. Any change in any of the required information submitted, after the initial submission, shall be reported to the said department immediately.
- (2) Any or all documents/information on the bank's organizational structure and operational policies enumerated in Appendix 8. Any subsequent change/issuance.

- b. Banks registered with SEC to act as broker, dealer or transfer agent pursuant to Section 28 and 39 of R.A. No. 8799 and SRC Rules 28.1 and 36.4 and those accredited by the DOF-BTr as GSEDs pursuant to DOF Department Order No. 20-10, shall submit to the appropriate SES department not later than December 15 every year, the following reports:

- (1) List of bank personnel acting as salesmen or associated persons;
- (2) List of licenses granted by the SEC and/or the DOF-BTr (as broker, dealer, broker-dealer, GSED and/or transfer agent); and
- (3) Notarized Certification stating that the lists submitted pursuant to item "b" (1) and (2) of this Subsection are complete and accurate lists and that the personnel acting as salesmen or associated persons are duly licensed/authorized by the SEC to act as such.

The notarized certification shall be signed by the President or officer of equivalent rank."

- ▶ Subsection 1192.3 of the MORB on submission of certain required information by UBs is hereby added as follows:

“a. Universal Banks (UBs) registered with the SEC as underwriters pursuant to PD No. 129, RA 8791, RA 8799 and the Omnibus Rules and Regulations for Investment Houses and Universal Banks Registered as Underwriters of Securities shall submit to the appropriate SES department not later than December 15 every year, the following reports:

- (1) List of bank personnel performing underwriting functions; and
- (2) Notarized Certification stating that the list submitted pursuant to item “a” (1) of this Subsection is a complete and accurate list and that the personnel performing underwriting functions are duly licensed/ authorized by the SEC to perform such functions.

The notarized Certification shall be signed by the President or officer of equivalent rank.”

- ▶ The sanctions imposed under the abovementioned Sections are identical and are stated as follows:

1. On the Bank

- ▶ For willful delay to submit the documents. A bank failing to submit the required reports, which shall be classified as a Category A-2 report, within the prescribed deadline, shall be subject to monetary penalties applicable for delayed reporting under existing regulations
- ▶ For the willful making of false/misleading statements in the documents. Shall be subject to the monetary penalties applicable to less serious offenses under Appendix 67 of the MORB, reckoned on a daily basis from the day following the due date of the said certification until such time that an amended or corrected document has been submitted to the BSP.

2. On the concerned officer.

- ▶ For willful non-compliance. Shall be subject to the monetary penalties applicable to less serious offenses under Appendix 67 of the MORB.
- ▶ For false/misleading statements. Shall be subject to monetary penalties applicable to less serious offenses under Appendix 67 of the MORB, which shall be reckoned on a daily basis from the day that an amended or corrected certification and/or list of bank personnel have been submitted to the BSP.

3. The imposition of the above sanctions is without prejudice to the filing of appropriate criminal charges against the culpable persons as provided under Section 35 of RA No. 7635 for the willful making of false/misleading statements.

- ▶ 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: Circular No. 866 was published in the Manila Standard Today on January 10, 2015.]

Circular No. 867 approves the implementation of the re-opening of the LYD-CEF.

BSP Circular No. 867 dated January 14, 2015

- ▶ The Circular approves and prescribes the guidelines for the re-opening of the Libyan Dinar Currency Exchange Facility (LYD-CEF) for Overseas Filipino Workers (OFWs) returning from Libya.
- ▶ The following guidelines shall govern the implementation of the facility:
 1. The LYD-CEF shall be available for another 6 months starting from the date of effectivity of this Circular.
 2. The implementation of the LYD-CEF during the 6-month period shall be governed by the guidelines provided under Circular No. 843, series of 2014 (LYD-CEF) except for item no. 4 thereof (period of availability) which shall now read as follows:

“4. The facility shall be open to those who have returned from Libya from 29 May 2014 and shall be available for a period of six (6) months reckoned from the effectivity of date of the Circular.”
- ▶ This Circular shall take effect five banking days after its publication in two newspaper of general circulation.

[Editor’s Note: Circular No. 867 was published in The Philippine Star and The Philippine Daily Inquirer on January 23, 2015.]

Circular No. 868 amends Section X151 of the MORB on the activities and services allowable for MBOs and Subsection X151.5 on Branch Processing Fees.

BSP Circular No. 868 dated January 26, 2014

- ▶ Section X151 of the MORB shall be amended to read as follows:

“Section X151. Established/Relocation/Voluntary Closure/Sale of Branches. The Bangko Sentral shall promote and maximize the delivery of efficient and competitive banking services especially to underserved markets and customers through innovative policies.

xxx

In addition to the non-transactional banking related activities and services allowable for regular OBOs, MF-OBO/MBOs may also engage in any or all of the following limited transactional banking activities and services:

- (1) Accept micro-deposits including initial deposit and service withdrawals thereof. As contemplated under Appendix 45 of the MORB, the monthly average daily savings account balance for a micro-deposit account shall not exceed Forty Thousand Pesos (P40,000.00) unless a higher amount has been approved by the BSP;

xxx

- (3) Disburse/release proceeds of micro-loans and collect loan amortization payments and related charges. Micro-loans include all types of microfinance loans as defined under Appendix 45 of the MORB, as well as other loans to microfinance clients.

xxx”

- ▶ Subsection X151.5 of the MORB shall be amended to read as follows:

“§X151.5 Branch processing and special license fee

A. Branch processing fee

The bank shall be immediately charged with the total processing fee computed for all branches approved, in accordance with the following:

xxx

Provided, that branches to be established in unbanked cities and municipalities shall be exempted from the processing fee.

Provided, further, that branches of TBs, RBs and Coop banks to be established within the Region where the head office is located shall be exempted from the processing fee.”

- ▶ The BSP will post on its website the list of unbanked cities and municipalities to be updated quarterly.
- ▶ 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: Circular No. 868 was published in The Philippine Star on January 29, 2015.]

Court Decisions

Commissioner of Internal Revenue v Basf Coating + Inks Phils., Inc.

Supreme Court (Third Division), G.R. No. 198677 promulgated November 26, 2014

Facts:

Respondent Basf Coating + Inks Phils., Inc. (BCIPI) was a domestic corporation with address in Barrio Talon, Las Piñas City as registered with the BIR. BCIPI's Board of Directors resolved to dissolve the corporation by shortening its corporate term to March 31, 2001. Subsequently, BCIPI transferred its offices from Las Piñas City to Carmelray Industrial Park, Canlubang, Calamba, Laguna.

On June 26, 2001, BCIPI submitted 2 letters to BIR Revenue District Office (RDO) No. 53, Region 8 in Alabang, namely: a notice of dissolution and a letter to submit BIR Form No. 1905 (Registration Information Update) in connection with the corporation's dissolution.

In January 2003, the BIR sent by registered mail a FAN to BCIPI for deficiency tax liabilities for the taxable year 1999. The FAN was sent to BCIPI's former Las Piñas City address. The BIR also sent a "First Notice Before Issuance of Warrant of Dstraint and Levy" to the residence of one of BCIPI's directors in March 2004.

BCIPI protested the FAN on the grounds of lack of due process and prescription. As the CIR failed to act on the protest, BCIPI filed a Petition for Review with the Court of Tax Appeals (CTA).

A FAN sent by the BIR to a wrong address of the taxpayer cannot attain finality because the taxpayer cannot be deemed to have received it, either actually or constructively.

The CTA ruled in favor of BCIPI and cancelled the assessments. The CTA found that the BIR was actually aware of BCIPI's new address and that the CIR's failure to send the FAN to BCIPI's new address must not be taken against BCIPI. Since there were no valid notices sent to BCIPI, the assessments made against it were void.

The Commissioner of Internal Revenue (CIR) appealed to the Supreme Court and argued that the prescriptive period to assess under Sections 203 and 222 of the Tax Code was suspended when BCIPI failed to notify the CIR, in writing, of its change of address, pursuant to Section 223 of the Tax Code, as implemented by Section 11 of Revenue Regulations (RR) No. 12-85.

Issue:

Is BCIPI liable for deficiency taxes for taxable year 1999?

Ruling:

No, BCIPI is not liable for deficiency taxes because there was no valid issuance of the FAN by the CIR.

Section 223 in relation to Section 203 of the Tax Code prescribes that if the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected, the three-year prescriptive period for assessment will be suspended. If the taxpayer informs the CIR of any change in address, the running of the prescriptive period will not be suspended.

Section 11 of RR No. 12-85, on the other hand, provides that in case of change of address, the taxpayer must give a written notice to the RDO having jurisdiction over his former legal residence and/or place of business. In case of failure to provide notice, any communication previously sent to his former legal residence or business address as appearing in its tax returns for the period involved shall be considered valid and binding, for purposes of the period within which to reply.

However, the foregoing provisions apply only if the CIR is not aware of the whereabouts of the taxpayer.

The CIR is well aware that BCIPI had moved to its new address in Calamba, Laguna, as shown by the following documents which form part of the BIR's records:

- 1) Checklist on Income Tax/Withholding Tax/Documentary Stamp Tax/Value-Added Tax and Other Percentage Taxes;
- 2) General Information (BIR Form No. 23-02);
- 3) Report on Taxpayer's Delinquent Account, dated June 27, 2002;
- 4) Activity Report, dated October 17, 2002;
- 5) Memorandum Report of Examiner, dated June 27, 2002;
- 6) Revenue Officer's Audit Report on Income Tax;
- 7) Revenue Officer's Audit Report on Value-Added Tax;
- 8) Revenue Officer's Audit Report on Compensation Withholding Taxes;
- 9) Revenue Officer's Audit Report on Expanded Withholding Taxes;
- 10) Revenue Officer's Audit Report on Documentary Stamp Taxes.

These documents, all of which were accomplished and signed by officers of the BIR, clearly show that BICPI's address is at Carmelray Industrial Park, Canlubang, Calamba, Laguna.

Moreover, the CTA found that BIR officers, at various times prior to the issuance of the FAN, conducted its investigation of BICPI's 1999 tax liabilities at BICPI's new address in Laguna, as evidenced by a September 27, 2001 letter signed by Revenue Officer (RO) Eugene R. Garcia and the Final Request for Presentation of Records before *Subpoena Duces Tecum* dated March 20, 2002.

The CTA found various documents (i.e. Notice for Informal Conference and a letter acknowledging BICPI's letter on the informal conference) sent by the BIR to BICIPI, addressed to BICPI's new address in Laguna.

Despite the fact that the Preliminary Assessment Notice (PAN) was sent to BICPI's old address and was "returned to sender," the BIR still sent the FAN to the old address.

Hence, despite the absence of a formal written notice of BICIPI's change of address, the CIR was aware of BICPI's new address and therefore, the running of the three-year prescriptive period for assessment was not suspended.

The CIR's issuance of the "First Notice Before Issuance of Warrant of Distrainment and Levy" violated BICIPI's right to due process because no valid notice of assessment was sent to it. The law imposes a substantive, not merely a formal, requirement. To proceed with collection without first establishing a valid assessment violates the cardinal principle in administrative investigations, which is that the taxpayer should be able to present its case and adduce supporting evidence.

Commissioner of Internal Revenue vs. Agrinurture, Inc.
CTA (*En Banc*) Case 8345 promulgated January 13, 2015

A finding by the BIR that a taxpayer who under-declared his/her purchases does not by itself result in the imposition of income tax and VAT.

Facts:

Petitioner CIR assessed Respondent Agrinurture, Inc. (Agrinurture) for deficiency income tax and VAT for taxable year 2007. The CIR claims that, based on third party information derived from the Tax Reconciliation System (TRS), Reconciliation of Listing for Enforcement System (RELIEF), and Third Party Matching - Bureau of Customs (TPM-BOC) Data Program, Agrinurture failed to declare purchases from its supplier. The CIR further alleged that since the purchases were not declared in Agrinurture's tax returns nor reflected in its inventory or capital expenditures, the said undeclared purchases were eventually sold.

Agrinurture protested the assessments and argued that the assessments lack factual and legal bases. As the CIR failed to act on the protest, Agrinurture filed a Petition for Review with the CTA. The CTA Second Division granted the Petition for Review and ordered the cancellation of the assessments on the ground that these were based on presumptions.

Upon denial of its Motion for Reconsideration, the CIR appealed the decision to the CTA *En Banc*. The CIR argued, among others, that the deficiency income tax and VAT assessments were issued in accordance with RMC No. 17-09 which covers the income tax and VAT liabilities of taxpayers who were issued Letter Notices based on TRS, RELIEF, and TPM-BOC Data Programs.

Issues:

1. Is Agrinurture liable for deficiency income tax from its undeclared purchases?
2. Is Agrinurture liable for deficiency VAT from its undeclared purchases?

Ruling:

1. No, a finding of under-declaration of purchases does not by itself result in the imposition of income tax.

For income tax to be due, 3 elements must concur, namely: (a) there must be a gain or profit, (b) the gain is realized or received, actually or constructively, and (3) the gain is not exempted by law or treaty from income tax. In this case, these elements are not present. Income tax is assessed on income received from any property, activity or service. Income tax may be imposed not when there is undeclared purchase, but only when there is income, and such income was received or realized by the taxpayer.

Moreover, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount or not claim any deduction at all. What is prohibited by income tax law is to claim a deduction beyond the authorized amount. Thus, even assuming that there is an undeclared purchase, the same is not prohibited by law.

2. No, deficiency VAT should likewise not arise from an under-declared purchase.

Under Section 105 of the Tax Code, VAT is imposed on any person who, in the course of trade or business, sells or leases goods or properties, renders services, and imports goods. It is critical to show that the taxpayer is paid or ought to be paid in an amount of money or its equivalent in consideration of such sale, and not when said taxpayer purchases goods or properties. Simply put, VAT is imposed when one sells, not when one purchases.

