

May 2014

# Tax bulletin



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PHILIPPINE TAX FIRM  
OF THE YEAR  
AND  
TRANSACTION TAX TEAM  
OF THE YEAR

# Highlights

## BIR Rulings

- ▶ An organization engaged in microfinance cannot be presumed to be a social welfare organization under Section 30(G) of the Tax Code. **(Page 3)**
- ▶ A Bureau of Investments (BOI)-registered enterprise is exempt from creditable withholding tax (CWT) on income directly attributable to revenue generated from its registered activity. It is not automatically entitled to the income tax holiday (ITH) as it must comply with the terms and conditions of its BOI registration. **(Page 4)**
- ▶ Sale of services may be subject to the zero percent (0%) Value-Added Tax (VAT) rate under Section 108(B)(2) of the Tax Code upon compliance with all the requisites thereof. **(Page 4)**
- ▶ Any amount received by an employee from the employer as a consequence of separation from service, for any cause beyond the control of the said official or employee, shall be exempt from income tax and, consequently, from withholding tax under Section 32(B)(6)(b) of the Tax Code. **(Page 5)**

## BIR Issuances

- ▶ Revenue Memorandum Circular (RMC) No. 32-2014 extends the period for submitting the required affidavit and official appointment books under Section 3 of Revenue Regulations (RR) No. 4-2014, prescribing the guidelines and policies for the monitoring of service fees of professionals. **(Page 6)**
- ▶ RMC No. 34-2014 clarifies the rule on whether or not an assessment resulting from jeopardy/arbitrary assessment, or which was based on the “best evidence obtainable” method, can be considered as of “doubtful validity” for purposes of applying for compromise under Section 204 of the Tax Code. **(Page 6)**
- ▶ RMC No. 37-2014 circularizes the entry into force, effectivity, and applicability of the Philippines-Kuwait Double Taxation Agreement (DTA). **(Page 6)**
- ▶ RMC No. 38-2014 prescribes the payment of internal revenue taxes through the BIR Interactive Filing System-Authorized Agent Banks (IAFS-AAB). **(Page 6)**
- ▶ RMC No. 39-2014 clarifies the tax treatment of payouts by Employee Pension Plans. **(Page 7)**
- ▶ RMC No. 40-2014 prescribes the use of the Electronic Certificate Authorizing Registration (eCAR) for transactions involving transfers of real and personal properties. **(Page 7)**

## DOF Orders

- ▶ Department Order (DO) No. 32-2014 prescribes the requirement of presenting proof of payment of duties and taxes on importation of automobiles. **(Page 8)**
- ▶ DO No. 33-2014 extends the application period for importers and customs brokers with valid and existing accreditation. **(Page 8)**

## BOC Issuance

- ▶ Customs Memorandum Order (CMO) No. 11-2014 prescribes the revised guidelines for registration of importers and customs brokers with the BOC pursuant to DOF DO No. 33-2014. **(Page 9)**

## BSP Issuances

- ▶ Circular No. 831 amends Section X904 of the Manual of Regulations of Banks (MORB). **(Page 13)**
- ▶ Circular No. 832 increases the reserve requirements of universal/commercial banks (UBs/KBs), thrift banks (TBs), rural banks (RBs), cooperative banks (Coop Banks), and non-bank financial institutions with quasi-banking functions (NBQBs). **(Page 13)**

## Court Decisions

- ▶ The absence of a Letter of Authority (LOA) does not invalidate an assessment, particularly if the tax return clearly shows erroneous payment of tax.

A prior application for tax treaty relief (TTRA) is not mandatory before a taxpayer may enjoy a tax exemption or preferential tax rate under applicable Philippine tax treaties. **(Page 14)**

- ▶ Cash journals and vouchers evidencing intercompany advances between a branch and its head office qualify as debt instruments or loan agreements subject to documentary stamp tax (DST). **(Page 16)**
- ▶ A BIR issuance cannot be applied retroactively if it will prejudice the interest of taxpayers. **(Page 17)**

## BIR Rulings

### **BIR Ruling No. 111-14 dated April 21, 2014**

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An organization engaged in microfinance cannot be presumed to be a social welfare organization under Section 30(G) of the Tax Code.

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#### **Facts:**

A Co., a non-stock, non-profit association, is engaged in microfinance operations pursuant to Republic Act (RA) No. 8425, or the Social Reform and Poverty Alleviation Act. A Co. earns income from service fees and interest on loans and bank deposits.

#### **Issue:**

Is A Co. considered a tax-exempt organization under Section 30(G) of the Tax Code?

#### **Ruling:**

No. Section 30(G) provides for exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. There is no evidence to show that A Co. offers its services only to the disadvantaged, and that the fees and interest it charges are nominal.

Organizations that promote social welfare should primarily promote the common good and general welfare of the people of the community as a whole. An organization is not operated exclusively for the promotion of social welfare if its primary activity is

carrying on a business with the general public. An organization that is engaged in microfinance cannot be presumed to be a social welfare organization under Section 30(G) because microfinance is a business activity conducted by organizations for profit such as banks.

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#### **BIR Ruling No. 118-14 dated May 2, 2014**

A BOI-registered enterprise is exempt from CWT on income directly attributable to revenue generated from its registered activity. It is not automatically entitled to the ITH as it must comply with the terms and conditions of its BOI registration.

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##### **Facts:**

A Co. is a BOI-registered manufacturer, fabricator and supplier of locally-produced machinery, equipment and components for geothermal technologies. It was granted the ITH incentive for a period of 7 years.

##### **Issues:**

1. Is A Co. exempt from CWT on revenues generated its BOI-registered project?
2. Is A Co.'s entitlement to ITH automatic?
3. Is A Co. constituted as withholding agent on its income payments?
4. Is A Co. subject to any other administrative requirement?

##### **Ruling:**

1. Yes. Under Section 2.57.5(B)(2) of RR No. 2-98, as amended by RR No. 6-01, CWT shall not apply to income payments made to persons enjoying exemption from income tax, such as BOI-registered enterprises. However, the exemption from CWT covers only the income directly attributable to revenues generated from A Co.'s BOI-registered activity. Furthermore, as a limitation on its ITH entitlement, such exemption shall not cover revenues other than those specifically mentioned in the Specific Terms and Conditions attached to A Co.'s BOI registration.
2. No. Entitlement to ITH is not automatic as A Co. has to comply with the Specific Terms and Conditions of its BOI registration.
3. Yes. A Co. shall be constituted as a withholding agent by the government if it acts as employer and its employees receive compensation income subject to withholding tax under Section 79(A) of the Tax Code, or if it makes payments to individuals or corporations subject to withholding tax pursuant to RR No. 2-98, as amended.
4. Yes. A Co. is required to file on or before the 15th day of the 4th month following the close of its accounting period a Profit and Loss Statement and Balance Sheet with Annual Information Return under oath, stating its gross income and expenses incurred during the taxable year. Furthermore, A Co.'s books of accounts and other pertinent records shall be subject to periodic examination by the BIR for the purpose of ascertaining whether it has been complying with the conditions for tax exemption or incentives.

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#### **BIR Ruling No. 119-14 dated May 6, 2014**

Sale of services may be subject to the zero percent (0%) VAT rate under Section 108(B)(2) of the Tax Code upon compliance with all the requisites thereof.

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##### **Facts:**

A Co., a VAT-registered domestic corporation, provided painting services in the Philippines to B Co., a non-resident client. The services rendered were paid for in acceptable foreign currency.

**Issues:**

1. Are the services rendered by A Co. subject to 0% VAT?
2. Is the application of the 0% VAT rate on A Co.'s sale of services automatic?

**Ruling:**

1. Yes. Under Section 4.108-5(b)(2) of RR No. 16-2005, as amended, services other than processing, manufacturing or repacking, rendered to a person engaged in business conducted outside the Philippines, or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, are subject to 0% VAT, provided the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).
2. No. The application of the 0% VAT rate on the sale of services of A Co. is not automatic and does not cover all its transactions. For its sale of services to be subject to VAT zero-rating, A Co. must show that its transactions comply with the following requirements of Section 4.108-5(b)(2) of RR No. 16-2005:
  - a. The services must be performed in the Philippines;
  - b. The services must be rendered to persons engaged in business conducted outside the Philippines, or to non-resident persons not engaged in business who are outside the Philippines when the services are performed; and
  - c. The fees to be paid are in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

**BIR Ruling No. 123-14 dated May 15, 2014**

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Any amount received by an employee from the employer as a consequence of separation from service, for any cause beyond the control of the said official or employee, shall be exempt from income tax and, consequently, from withholding tax under Section 32(B)(6)(b) of the Tax Code.

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**Facts:**

A Co., a domestic company, partially ceased commercial operations. This resulted in the separation of 32 regular employees.

**Issues:**

1. Are the separation payments made by A Co. to the employees exempt from income tax?
2. Are salaries, 13th month pay and monetized unused vacation leave credits covered by the income tax exemption?

**Ruling:**

1. Yes. Under Section 32(B)(6)(b) of the Tax Code, any amount received by an official or employee, or by his heirs, from the employer as a consequence of separation from service, due to death, sickness or other physical disability, or for any cause beyond the control of the said official or employee, shall not be included in the employee's gross income, and as such, shall be exempt from income tax, regardless of age or length of service.
2. No. The exemption does not cover payment of the separated employees' salaries, 13th month pay and other benefits in excess of the P30,000 threshold under Section 2.78.1(A)(3)(a) and (A)(7) of RR No. 2-98, as amended. Commutation and payment of monetized unused vacation leave credits not exceeding 10 days during the year are not subject to income tax, and consequently, to withholding tax. Conversely, the cash equivalent of vacation leave credits exceeding 10 days is subject to tax.

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## BIR Issuances

RMC No. 32-2014 extends the period for submitting the required affidavit and official appointment books under Section 3 of RR No. 4-2014, prescribing the guidelines and policies for the monitoring of service fees of professionals.

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### Revenue Memorandum Circular No. 32-2014 dated May 2, 2014

- ▶ Section 3 of RR No. 4-2014 gives all existing and registered self-employed professionals as of April 6, 2014 until May 6, 2014 to submit an affidavit indicating the rates, manner of billings and the factors considered in determining their service fees, and to register their official appointment books.
- ▶ The deadline to submit the said affidavit and to register the official appointment books is extended from May 6, 2014 to May 31, 2014.

*[Editor's Note: On various dates, the Supreme Court issued restraining orders on the operation and implementation of RR No. 4-2014 insofar as lawyers, doctors, accountants and dentists are concerned.]*

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RMC No. 34-2014 clarifies the rule on whether or not an assessment resulting from jeopardy/arbitrary assessment, or which was based on the "best evidence obtainable" method, can be considered as of "doubtful validity" for purposes of applying for compromise under Section 204 of the Tax Code.

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### Revenue Memorandum Circular No. 34-2014 dated April 1, 2014

- ▶ An assessment based on the "best evidence obtainable rule" should not be automatically considered as a doubtful assessment, and requires scrutiny of the surrounding circumstances that led to the issuance of such an assessment.
- ▶ The taxpayer's failure to present or submit the required documents necessary for the assessment of its tax liability makes it incumbent upon the BIR to resort to the application of the "best evidence obtainable" method to recover unpaid taxes due the government.
- ▶ Any assessment based on the "best evidence obtainable rule" is presumed *prima facie* correct and sufficient for all legal purposes.

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RMC No. 37-2014 circularizes the entry into force, effectivity, and applicability of the Philippines-Kuwait DTA.

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### Revenue Memorandum Circular No. 37-2014 dated May 8, 2014

- ▶ The Double Taxation Agreement (DTA) between the Government of the Republic of the Philippines and the Government of the State of Kuwait came into force on April 22, 2013.
- ▶ The DTA's provisions on taxes on income will apply to income derived or which accrued beginning January 1, 2014.
- ▶ Tax Treaty Relief Applications (TTRAs) invoking the DTA should be filed and addressed to the International Tax Affairs Division (ITAD) at Room 811, BIR National Office Building, Diliman, Quezon City, Philippines.
- ▶ For this purpose, the concerned Kuwaiti resident income earner or an authorized representative of the latter should file a duly-accomplished Application for Relief from Double Taxation (BIR form 0901), together with the required documents specified under Revenue Memorandum Order (RMO) No. 72-2010.

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RMC No. 38-2014 prescribes the payment of internal revenue taxes through the BIR IAFS-AAB.

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### Revenue Memorandum Circular No. 38-2014 dated May 5, 2014

- ▶ All taxpayers and Accredited Tax Agents (ATAs) who are enrolled in the BIR's Interactive Filing System (IAFS) and others concerned, are notified of the additional channels of payment of the following Interactive Filing System-Authorized Agent Banks (IAFS-AAB):

1. Retail Internet Banking System-iAccess of the Land Bank of the Philippines; and
  2. Internet Banking System of the Philippine National Bank.
- ▶ Taxpayers enrolled under the eBIRForms On-line System can now pay their taxes through the on-line tax payment facilities of the above mentioned IAFS-AABs effective May 12, 2014.
  - ▶ However, taxes due on the annual income tax returns filed (BIR Form Nos. 1700, 1701, 1702-RT, 1702-EX, 1702-MX) cannot be paid through the on-line tax payment facilities of the above-mentioned IAFS-AABs.

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RMC No. 39-2014 clarifies the tax treatment of payouts by Employee Pension Plans.

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**Revenue Memorandum Circular No. 39-2014 dated May 12, 2014**

- ▶ As a general rule, Section 60(A) of the Tax Code subjects to income tax the income of any kind of property held in trust. By way of exception, Section 60(B) exempts from income tax an employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees, subject to the following conditions:
  1. Contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan; and
  2. Under the trust instrument, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees.
- ▶ As an exception to the above exception, Section 60(B) subjects to income tax, in the year in which so distributed, any amount actually distributed to any employee or distributee, to the extent that it exceeds the amount contributed by such employee or distributee.
- ▶ Based on the foregoing, the entire amounts of benefits paid by a pension, stock bonus or profit-sharing plan of an employer for the benefit of employees are taxable on the part of the employees in the year so distributed. However, this tax treatment does not apply to payouts representing a return of an employee's personal contributions to the fund and to retirement benefits exempt under Section 32 (B)(6)(a) of the Tax Code.

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RMC No. 40-2014 prescribes the use of eCAR for transactions involving transfers of real and personal properties.

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**Revenue Memorandum Circular No. 40-2014 dated May 12, 2014**

- ▶ The manual issuance of the Certificate Authorizing Registration (CAR) shall be discontinued upon the rollout of the Electronic Certificate Authorizing Registration (eCAR) System in the Revenue District Offices (RDOs)/Large Taxpayers (LT) Audit Divisions.
- ▶ Under the eCAR System, one eCAR covering one real property shall be issued. Thus, there will be as many eCARS as there are real properties to be transferred.
- ▶ For transactions involving transfers of personal properties, one eCAR may be issued covering the transfer of more than one personal property.

- ▶ For transfers of real properties, manually-issued CARs issued within one year before the roll-out date are still valid for presentation by taxpayers to the Register of Deeds.
- ▶ Initially, the eCAR System will be rolled out on May 19, 2014 in the RDOs under the jurisdiction of Revenue Region No. 1 - Calasiao, Pangasinan.

## DOF Orders

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DO No. 32-2014 prescribes the requirement of presenting proof of payment of duties and taxes on importation of automobiles.

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### Department Order No. 32-2014 dated May 14, 2014

- ▶ Owners, lessors, operators of car exchanges, car garages, car expos, auto trades and public showrooms, and other individuals/entities which import, or have caused the importation of, automobiles in the Philippines must be able to show:
  1. Proof that the applicable duties and taxes on the imported automobiles have been duly paid; and
  2. Present copies of the Certificate of Registration (CR) and Official Receipt (OR) issued by the Land Transportation Office (LTO).
- ▶ Proof of payment shall include copies of any of the following:
  1. Certificate of Payment
  2. Authority to Release Imported Goods (ATRIG)
  3. Import Entry and Internal Revenue Declaration (IEIRD)
  4. Official Receipts issued by the Bureau of Customs (BOC)
  5. Certificate of Tax Exemption, if applicable.
- ▶ If proof of payment is not submitted upon demand by the Commissioner of Customs or his duly authorized representative, the imported automobiles may be seized and be subject to forfeiture proceedings, pursuant to Section 2536 of the Tariff and Customs Code of the Philippines (TCCP).
- ▶ Deficiency VAT and excise taxes due shall constitute a lien on the articles subject to these taxes, and such lien shall be superior to all other charges or liens, regardless of the possessor thereof, pursuant to Sections 107(B) and 131(A) of the Tax Code. Thus, subsequent owners/possessors of untaxed imported automobiles are liable for VAT and excise tax due which have not been paid by the previous owner/possessor or importer, and the corresponding assessment shall be issued against the person/s in possession of said automobiles.
- ▶ DO No. 32-2014 shall take effect 15 days after publication.

*(Editor's Note: DO No. 32-2014 was published in the Manila Standard Today on May 17, 2014.)*

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DO 33-2014 extends the application period for importers and customs brokers with valid and existing accreditation.

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### Department Order No. 33-2014, dated May 21, 2014

- ▶ In order to give all importers and customs brokers concerned ample time to prepare and comply with the requirements prescribed by DO No. 12-2014, the period for filing their application with the BIR and the BOC was deemed extended until 30 June 2014\*, or the original expiration of the BOC accreditation, whichever comes earlier.



- ▶ Failure to file the proper application by June 30, 2014\* shall result in the automatic cancellation of the importer accreditation effective July 1, 2014\* or the date of expiration as indicated on the accreditation, whichever is earlier.
- ▶ The accreditation of all importers and customs brokers who have already filed their applications with the BIR and the BOC shall be deemed extended until further notice from the BOC. In case an application is denied by the BIR, the accreditation shall be deemed cancelled from the date of such denial.
- ▶ For the applications of importers and customs brokers with valid and existing accreditation from the BOC, the BIR may:
  1. Issue the Importer Clearance Certificate (ICC) or the Broker Clearance Certificate (BCC), as the case may be, which shall be valid for three years;
  2. Deny the application; or
  3. Issue a provisional ICC/BCC valid for three months, in which case, the BIR shall rule upon the application before the expiration of the three-month period.
- ▶ DO No. 33-2014 shall take effect immediately upon publication.

*(\*Editor's Notes: DO No. 33-2014 was published in the Manila Standard Today on May 23, 2014. In DO No. 46-2014, the deadline was further extended to July 31, 2014, and failure to file the proper application by July 31, 2014 shall result in the automatic cancellation of the importer accreditation effective August 1, 2014 or the date of expiration as indicated on the accreditation, whichever is earlier.)*

## **BOC Issuances**

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CMO No. 11-2014 prescribes the revised guidelines for registration of importers and customs brokers with the BOC pursuant to DOF DO No. 33-2014.

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### **Customs Memorandum Order No. 11-2014 dated May 22, 2014**

#### **Coverage**

- ▶ This CMO shall apply to all importers and customs brokers intending to or transacting with the BOC, except:
  1. Once-a-year importation;
  2. Importation by parcel post or by informal entry;
  3. Importation of the Philippine Government, its agencies and instrumentalities;
  4. Importation of personal effects, vehicles, motorcycles and household goods of a balikbayan and his/her family, overseas contract workers and other returning residents;
  5. Importation of foreign embassies, consulates, legations, agencies of other foreign governments and international organizations with diplomatic status and recognized by the Philippine government (i.e., Asian Development Bank, World Health Organization). This shall include importation of personal effects and household goods of foreign workers and consultants, and officials and employees of foreign embassies, legations, consular officers and other representatives of foreign governments.
- ▶ The term "importer" refers to any person who brings goods into the Philippines, whether or not made in the course of his trade or business, and includes non-exempt persons or entities who acquire tax-free imported goods from exempt persons, entities or agencies.

**Application for BIR-ICC or BIR- BCC**

- ▶ All importers and customs brokers shall first apply for accreditation with the BIR for the issuance of their respective BIR-ICC or BIR-BCC, as the case may be.
- ▶ Upon securing the BIR-ICC or BIR-BCC, importers and customs brokers shall file an application for accreditation with the BOC-Account Management Office (BOC-AMO).
- ▶ CMO No. 11-2014 does not cover importers and customs brokers who have already complied with CMO No. 4-2014.

**Deadlines for Compliance**

- ▶ For all importers - must submit required documents

Nature of Application	Deadline
New Applicants	None
I-CARE accreditation expired before March 1, 2014 and not renewed	None
I-CARE accreditation scheduled to expire sometime between March 1, 2014 and May 31, 2014 but automatically extended to May 31, 2014 pursuant to OCOM Memo dated February 26, 2014	May 31, 2014*
Importers with I-CARE accreditation expiring between June 1 - 30, 2014	On or before date of expiration of existing I-CARE accreditation (June 1 - 30, 2014)*
I-CARE accreditation will expire from July 1, 2014 onwards (all other importers not covered by above items 1 - 4)	June 30, 2014*

\* See Editor's Notes on extended deadlines under DOF DO No. 33-2014 on page 9.

- ▶ For all customs brokers - must submit required documents

Nature of Application	Deadline
New Applicants	As submitted
I-CARE accreditation expired and not renewed	As submitted
I-CARE accreditation expired or will expire on or before May 31, 2014 but automatically renewed pursuant to OCOM Memo dated February 26, 2014	May 31, 2014*
I-CARE accreditation expiring between June 1 - 30, 2014	On or before date of expiration of I-CARE existing accreditation (June 1 - 30, 2014)*
I-CARE accreditation will expire from July 1, 2014 onwards (all customs brokers not covered by above items 1 - 4)	June 30, 2014*

\* See Editor's Notes on extended deadlines under DOF DO Nos. 33-2014 on page 9.

- ▶ Failure to comply before the deadlines shall result in the cancellation of existing accreditation of importers and customs brokers, without prejudice to refiling of the same upon compliance with the requirements.

#### ***Procedure for Accreditation***

- ▶ Apply for BOC-Client Profile Registration System (CPRS) - All importers and customs brokers are required to apply for registration under the BOC CPRS. After the application is "STORED" in the system, the applicant shall then print the CPRS profile which shall form part of the application.
- ▶ Payment of Processing Fee of P 1,000.00.
- ▶ Submission of Documentary Requirements - All importers and customs brokers shall submit original copies of certified true copies of the documentary requirements provided under the CMO. The original copies may be required for presentation by the BOC-AMO for purposes of comparison in case of doubt as to the authenticity of the certified true copies.
- ▶ Where to submit documents:
  1. Within Metro Manila - to BOC-AMO
  2. Outside Metro Manila - Office of the District Collector concerned who shall then endorse the application to the BOC-AMO
- ▶ Approval/Denial of Application - All applications for accreditation shall be acted upon not later than 15 working days upon receipt of said application, together with the complete documentary requirements. All notices shall be sent through email.

#### ***Validity of Accreditation***

- ▶ If an importer submits a BIR-ICC, or if a customs broker submits a BIR-BCC, then the importer's or customs broker's accreditation shall be valid for the duration as that of its BIR-ICC or BIR-BCC.
- ▶ If only proof of application for BIR-ICC or BIR-BCC is submitted, then the BOC accreditation shall be temporary, which shall expire on the following dates:
  - ▶ If the BIR formally denies the application - 30 days after the date either the BIR or the BOC notifies the importer or customs broker that its application for BIR-ICC or BIR-BCC has been denied, whichever comes earlier;
  - ▶ If the BIR issues the BIR-ICC or BIR-BCC - the BOC accreditation shall remain valid for the same duration as that of its BIR-ICC or BIR-BCC
  - ▶ If the BIR issues a provisional BIR-ICC or BIR-BCC - the temporary BOC accreditation shall expire 30 days after the expiration of the provisional BIR-ICC or BIR-BCC.

If the BIR subsequently issues a BIR-ICC or BIR-BCC before the expiry of the provisional BIR-ICC or BIR-BCC, the accreditation shall be valid for the same duration as that of its BIR-ICC or BIR-BCC.

If the importer or customs broker submits proof of application for BIR-ICC or BIR-BCC, either the BIR or BOC will inform the importer or customs broker of the outcome of that application, which will be done thru e-mail.

### ***Reportorial Requirements after Approval of Accreditation***

- ▶ Any change in the information provided to the BOC-AMO in any of the documents must be reported to the BOC-AMO within 30 days from the occurrence of said change. These include but are not limited to the following:
  1. Change of telephone number, e-mail address, and physical address (i.e., office address and / or warehouse address);
  2. Change of business name;
  3. Change of ownership, corporate directors and officers / partners / cooperative directors and officers;
  4. Amendments to Articles of Incorporation/Partnership/Cooperation and By-Laws, as approved by the appropriate government agencies;
  5. Dissolution or closure ; stoppage of business;
  6. Change in the signatories;
  7. Mergers / insolvencies; and
  8. Change in the list of importables.
  
- ▶ In case of change in any circumstance of the importer or customs broker, the same should be communicated to the BOC-AMO, through submission of an Affidavit of Change in Circumstance with supporting documents (i.e., mayor's permit, DTI registration, general information sheet, amended articles of incorporation); and letter-request for amendment/cancellation of CPRS
  
- ▶ All importers and customs brokers shall submit yearly the following documents within 15 days counted from the date of approval of BOC accreditation:
  1. For all importers
    - ▶ Updated General Information Sheet and company profile; Mayor's Permit and proof of lawful occupancy of office; Updated List of Expected Imports including clear description in both technical and tariff terms including estimated volume and values for the incoming 12 months and Original or certified true copy of renewed BIR-ICC (to be submitted every three years)
  
  2. For all Customs Brokers
    - ▶ Updated Professional Profile; Valid PRC ID; Updated list of clients with complete address and contact details; List of authorized representatives with personal details, photos and specimen signature; and Original or certified true copy of renewed BIR-BCC (to be submitted every three years)

### ***Suspension of Cancellation of Accreditation***

- ▶ At any time during the validity of a BOC accreditation, the BOC may suspend or cancel the accreditation of the importer or customs broker, without prejudice to the right to appeal such suspension or cancellation, or to re-apply for accreditation, if any of the following occurs:
  1. The BOC-AMO discovers any inaccuracy in any of the documents submitted in the application process with the BOC;
  2. The accredited importer or customs broker does not comply with any requirement after approval of accreditation;
  3. The BOC discovers any violation of law or regulation by the accredited importer or customs broker.

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## BSP Issuances

Circular No. 831 amends Section X904 of the MORB.

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### BSP Circular No. 831 dated May 2, 2014

- ▶ In relation to the period prescribed by the Social Security System (SSS) within which payments to collecting banks should be remitted to the SSS, the following phrase was removed by the amendment:

“...i.e., collections by the bank from the first (1<sup>st</sup>) day to the fifteenth (15<sup>th</sup>) day of the month shall be remitted to the SSS not later than the last day of the month while collections from the sixteenth (16<sup>th</sup>) day to the last day of the month shall be remitted to the SSS not later than the fifteenth (15<sup>th</sup>) day of the following month. During the period that such funds are in the custody of the banks these funds shall not earn interest.”

- ▶ Under the old rule, banks serving as collecting agents of the SSS are not allowed to collect any service charge from the SSS. Pursuant to the amendment, business/compensation arrangement to the collection agents is allowed in accordance with the terms and conditions agreed upon by the parties.
- ▶ The Circular shall take effect 15 days after publication in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 831 was published in The Manila Times on May 10, 2014.]

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Circular No. 832 increases the reserve requirements of universal/commercial banks (UBs/KBs), thrift banks (TBs), rural banks (RBs), cooperative banks (Coop Banks), and non-bank financial institutions with quasi-banking functions (NBQBs).

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### BSP Circular No. 832 dated May 27, 2014

- ▶ The required reserves against deposit and deposit substitute liabilities in local currency of banks are as follows:

<i>Account</i>	<i>UBs/KBs</i>	<i>TBs</i>	<i>RBs/Coop Banks</i>
Demand Deposits	20	8	5
"NOW" Accounts	20	8	5
Savings Deposit	20	8	3
Time Deposits, Negotiable CTDs, Long-Term Non-Negotiable Tax Exempt CTDs	20	8	3
Long-Term Negotiable Certificate of Time Deposits (LTNCTDs):			
▶ LTNCTDs under Circular No. 304	4	4	4
▶ LTNCTDs under Circular No. 824	7	7	7
Deposit Substitutes (DS)	20	8	n.a.
DS evidenced by repo agreements	4	4	n.a.
Interbank Call Loan (IBCL)	0	0	0
Bonds	6	6	n.a.
Mortgage/CHM Certificates	n.a.	6	n.a.
Peso deposits lodged under Due to Foreign Banks	20	n.a.	n.a.
Peso deposits lodged under Due to Head Office/Branches/Agencies Abroad (Philippine branch of a foreign bank)	20	n.a.	n.a.

- ▶ The required reserves against peso-denominated common trust funds (CTFs) and trust and other fiduciary accounts - others (TOFA - others) are as follows:

<i>Account</i>	<i>UBs/KBs</i>	<i>TBs</i>	<i>RBs</i>
CTFs	20	9	4
TOFA - others	17	9	4

- ▶ NBQBs shall maintain reserves equivalent to 20% of deposit substitute liabilities, except:
  1. Borrowings from the BSP through the sale of government securities under repo agreements;
  2. Deposit substitutes arising from special financing programs of the government and/or international FIs;
  3. IBCL transactions; and
  4. Bonds, for which the reserve requirement is 6%.
- ▶ The reserve requirement for deposit substitutes evidenced by repo agreements covering government securities up to the amount equivalent to the adjusted Tier 1 capital of the NBQB shall be 4%.
- ▶ The required reserves against peso-denominated CTFs and TOFA - others of NBQBs are as follows:

<i>Account</i>	<i>NBQBs</i>
CTFs	20
TOFA - others	17

- ▶ The Circular shall take effect on the reserve week starting 30 May 2014.

[Editor's Note: Circular No. 832 was published in Malaya Business Insight on May 30, 2014.]

## Court Decisions

### **Masin-AES Pte Ltd - Philippine Branch vs. Commissioner of Internal Revenue** CTA (2<sup>nd</sup> Division) Case No. 8543 promulgated April 10, 2014

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The absence of an LOA does not invalidate an assessment, particularly if the tax return clearly shows erroneous payment of tax.

A prior application for TTRA is not mandatory before a taxpayer may enjoy a tax exemption or preferential tax rate under applicable Philippine tax treaties.

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#### **Facts:**

On September 21, 2011, Petitioner Masin-AES Pte. Ltd. - Philippine Branch (Masin-AES) filed a TTRA with the BIR to confirm that its interest payments to AES-Phil. Investment Pte. Ltd. (AES Phil-Sing), a Singapore resident, are subject to 15% final withholding tax (FWT) under the Philippines-Singapore Tax Treaty. Respondent CIR issued BIR Ruling ITAD No. 019-12 dated January 20, 2012, denying the 15% FWT rate on interest paid by Masin-AES on or before September 21, 2011, while granting the 15% FWT rate on interest payments after the date of filing of the TTRA. The CIR said that to avail of the preferential tax treaty rate, a TTRA must be filed before the first taxable event.

Respondent CIR assessed Masin-AES deficiency FWT using the 20% FWT rate under Section 28(B)(1) of the Tax Code. Masin-AES protested the CIR's assessment arguing that:

1. The assessment is null and void as the CIR did not issue a LOA;
2. It correctly applied 15% FWT pursuant to the Philippines-Singapore Tax Treaty.

The CIR denied the protest. Masin-AES filed a Petition for Review with the Court of Tax Appeals (CTA).

**Issues:**

1. Does the absence of an LOA render the tax assessment null and void?
2. Is a TTRA mandatory before a taxpayer can avail of the preferential tax rate under the tax treaty?

**Ruling:**

1. No. The absence of an LOA does not invalidate a BIR assessment.

An LOA is an authority given to assigned revenue officers to perform assessment functions. In ascertaining the correctness of any return, or in making a return when none has been made, or in determining a tax liability, or in evaluating tax compliance, the CIR is authorized to examine any book, paper, record, or other data which may be relevant or material to such inquiry. Impliedly, the CIR also has the power not to examine the returns of taxpayers not selected for tax audit.

When the TTRA was denied, the Revenue Officer subjected Masin-AES's interest payments to the 20% FWT rate under the Tax Code. There is no need for the CIR to issue an LOA considering that the alleged erroneous payment of tax is already manifested on the face of the tax return. It is not necessary for the BIR to examine and scrutinize the books of account and other accounting records to determine Masin-AES' correct tax liabilities.

2. No. A prior TTRA is not mandatory before a taxpayer can avail of the preferential tax treatment under the tax treaty.

Reiterating the principle laid down by the Supreme Court in *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue* (G.R. No. 188550, August 19, 2013), the Court ruled that failure to comply with the requirement of filing of a TTRA within the period prescribed under RMO 1-2000, which was amended by RMO 72-2010, should not operate to divest entitlement to the relief under the tax treaty, as it would constitute a violation of the duty required by good faith in complying with a tax treaty.

The Philippines is bound by the international principle of *pacta sunt servanda* which mandates contracting states to comply with their treaty obligations in good faith. Thus, the BIR must not impose additional requirements that would negate the availment of relief provided for under international agreements, more so when the specific tax treaty does not provide for any prerequisite.

The TTRA merely operates to confirm the entitlement of the taxpayer to the relief, in this case, the preferential 15% FWT rate on its interest payments to AES Phil.-Sing under the Philippines-Singapore Tax Treaty.

**E.E. Black Ltd. - Philippine Branch vs. Commissioner of Internal Revenue**  
CTA (2nd Division) Case No. 8526 promulgated April 10, 2014

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Cash journals and vouchers evidencing intercompany advances between a branch and its head office qualify as debt instruments or loan agreements subject to DST.

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**Facts:**

Respondent CIR assessed E.E. Black Ltd.-Philippine Branch (E.E. Black) for deficiency DST on, among others, intercompany loans and advances made in 2007. The CIR relied on the Supreme Court's decision in *CIR vs. Filinvest Development Corp.* (G.R. No. 16353, 167687, on July 19, 2011) as the legal basis for the deficiency DST assessment.

E.E. Black protested the assessment and argued that the cash journals and vouchers evidencing the intercompany advances are not debt instruments subject to DST, as contemplated under Section 179 Tax Code, as amended by RA No. 9243 and implemented by RR No. 13-2004. Moreover, it claimed that it cannot issue debt instruments to its head office considering that a branch office does not have a legal personality separate from its head office.

Due to the CIR's inaction on the protest, E.E. Black filed a Petition for Review with the CTA.

**Issue:**

Are intercompany advances and borrowings between a branch and its head office evidenced by cash journals and vouchers subject to DST as debt instruments?

**Ruling:**

Yes, intercompany advances and borrowings are subject to DST. The *Filinvest* case is applicable, contrary to E.E. Black's assertion.

Although what was interpreted in the *Filinvest* case is Section 180 of the 1993 Tax Code, which then governed the imposition of DST on, among others, loan agreements, by and between affiliates and/or related interests, the provision is well carried on and further reinforced under the present Section 179 of the 1997 Tax Code, as amended.

In the *Filinvest* case, the Supreme Court ruled that instructional letters, as well as journal and cash vouchers, evidencing the advances qualified as loan agreements upon which DST may be imposed. The Court's interpretation of Section 180 of the 1993 Tax Code in the *Filinvest* case could also be applied to the interpretation of Section 179 of the 1997 Tax Code, as amended, as Section 179 now covers all instruments representing borrowing and lending transaction under a single heading "All Debt Instruments" and applying a unitary tax rate thereon.

The Supreme Court rejected E.E. Black's argument that it cannot issue a debt instrument to its head office as it does not have a separate legal personality from its head office. Applying the ruling in *Marubeni Corporation vs. CIR* and CTA (G.R. No. 76573, September 14, 1989), the Court held that the general rule that a foreign corporation is the same juridical entity as its branch office cannot apply here for purposes of imposing DST.



**COL Financial Group, Inc. vs. Commissioner of Internal Revenue**  
CTA (3<sup>rd</sup> Division) Case No. 8454 promulgated April 15, 2014

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A BIR issuance cannot be applied retroactively if it will prejudice the interest of taxpayers.

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**Facts:**

Petitioner COL Financial Group, Inc. (COL) used the itemized method of deduction in determining its income tax liability for the first three quarters of 2009, in accordance with Section 7 of RR No. 16-2008, which allows taxpayers to use either itemized deduction or Optional Standard Deduction (OSD) in its quarterly tax returns but must make a choice in the final adjustment income tax return (ITR).

In February 2010, Respondent CIR issued RR No. 2-2010 and RMC No. 16-2010, amending RR No. 16-2008, which require taxpayers to choose a method of deduction in the first quarter, which will be applied during the next three quarters of the taxable year. The issuances were made applicable starting taxable year 2009.

COL filed its 2009 annual ITR using the OSD and paid the corresponding income tax due. The BIR, however, required COL to use the itemized method of deduction in its annual ITR. To avoid penalties, COL paid under protest additional income tax using the itemized method of deduction.

COL filed within the 2-year prescriptive period an application for the refund of the excess income tax paid. Due to the CIR's inaction, COL filed a Petition for Review with the CTA.

**Issue:**

Can the amendments to RR No. 16-2008 introduced by RR No. 2-2010 and RMC No. 16-2010 be applied retroactively?

**Ruling:**

No. The amendments to RR No. 16-2008 can only operate prospectively.

While the non-retroactivity of rulings admits of exceptions, Section 246 of the Tax Code provides that any revocation, modification or reversal of any of the rules and regulations promulgated by the CIR cannot be given retroactive effect if the amendment will be prejudicial to taxpayers. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and, hence, is unconstitutional. To rule otherwise would be contrary to the tenets of good faith, equity, and fair play.

To apply RR No. 2-2010 and RMC No. 16-2010 to taxable year 2009 would effectively move the deadline given to the taxpayer to elect a deduction method to May 30, 2009 instead of having until April 15, 2010 to decide. Moreover, when COL filed its first quarterly return, no such policy to commit to a deduction method at the first quarter filing existed. Applying the new rules for the filings done almost a year prior to its effectivity would result in an undue prejudice against the taxpayer. A taxpayer should not be penalized for merely complying with the effective regulation at that time, simply because a new regulation was issued after.

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