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HIGHLIGHTS

BIR RULINGS

The NOLCO and excess MCIT credit balances of the corporations in a statutory merger of commonly owned companies transferred and carried over to the surviving corporation.

Coupon loan is subject to tax only on the interest.

Dividends paid in the final withholding period.

Current tax liability.

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Highlights
APRIL 2007

Tax Bulletin

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HIGHLIGHTS

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Voluntary Assessment and Abatement Program

The BIR, through computerization, now has the ability to generate firm and precise data on sales underdeclarations by matching information provided by third parties (e.g., summary lists, etc) with the declarations made by taxpayers. The BIR is now giving taxpayers with underdeclarations a chance to avoid criminal prosecution through Revenue Regulations (RR) No. 12-2002 or the Voluntary Assessment and Abatement Program (VAAP), as amended by RR No. 17-2002.

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Highlights

BIR Ruling

- ▶ A Board of Investments (BOI)-registered developer of a low-cost mass housing project is exempt from income tax/creditable withholding tax (CWT) on revenues derived from its registered activity. The exemption shall not extend to the sales of units with selling price exceeding Php 2,500,000.00. In the computation of Income Tax Holiday (ITH), interest income from in-house financing shall not be considered as revenue generated from the registered activity.

Entitlement to ITH is not automatic as it is necessary to comply with the Specific Terms and Conditions of the BOI registration.

A BOI-registered developer of a low-cost mass housing project is subject to VAT and Documentary Stamp Tax (DST) on its sales of housing units. However, specifically for VAT purposes, the sale of a residential lot valued at Php 1,919,500.00 and below, or a house and lot and other residential dwellings valued at Php 3,199,200.00 and below, is VAT exempt. **(Page 4)**

BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 46-2016 requires BIR officers and employees to secure the approval of the Commissioner of Internal Revenue before posting advisories, revenue actions, decisions or policy statements on the BIR Website or releasing them to media. **(Page 6)**
- ▶ Revenue Memorandum Circular (RMC) No. 84-2016 exempts all taxpayers applying for tax credits or refunds based on a Writ of Execution issued by the Court of Tax Appeals and the Supreme Court from the requirement of securing Certifications on Outstanding Tax Liabilities/Delinquency Verifications Slips. **(Page 6)**
- ▶ RMC No. 85-2016 clarifies the coverage of the suspension of audits as provided under RMC Nos. 70-2016 and 75-2016. **(Page 6)**
- ▶ RMC No. 86-2016 publishes the full text of the Joint Administrative Order (AO) No. 1-2016 signed by the Secretaries of the Departments of Finance and of Trade and Industry to implement Republic Act (RA) No. 10708, otherwise known as "The Tax Incentives Management and Transparency Act (TIMTA)". **(Page 6)**
- ▶ RMC No. 87-2016 excludes requests for Exchange of Information (EOI) from a Tax Treaty Partner from the coverage of the suspension of tax audits under RMC No. 70-2016. **(Page 7)**
- ▶ RMC No. 89-2016 lifts the suspension of BIR audits on Run After Tax Evader (RATE) cases. **(Page 7)**
- ▶ RMC No. 90-2016 provides an alternative mode in the electronic filing of all tax returns with the due date on 29 August 2016. **(Page 8)**

BOC Issuance

- ▶ Customs Special Order (CSO) No. 36-2016 dissolves the Tax Credit Secretariat and streamlines procedures for duty drawback, VAT and Excise Tax claims. **(Page 8)**

- ▶ During the public consultation held on 17 August 2016, the BOC announced that it will draft Customs Administrative Orders (“CAOs”) implementing the provisions of the Customs Modernization and Tariff Act (“CMTA”). **(Page 9)**

BSP Issuances

- ▶ Circular No. 918 provides for the Amendments to the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended. **(Page 9)**
- ▶ Circular No. 919 provides for the Implementing Guidelines for the Bangko Sentral ng Pilipinas (BSP) - Bank of Japan (BOJ) Cross-Border Liquidity Arrangement (CBLA). **(Page 11)**
- ▶ Circular No. 920 provides for the Guidelines on the Personal Management Trust. **(Page 13)**
- ▶ Circular No. 921 provides for the Amendments to Provisions of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) pertaining to the Interest Rate Corridor (IRC) System. **(Page 16)**
- ▶ Circular No. 922 provides the Amendment of the Rules on Cross-Border Transfer of Local Currency. **(Page 18)**

SEC Opinion and Issuances

- ▶ The Control Test is still the prevailing mode of determining whether or not a corporation is a Filipino corporation within the ambit of Section 2, Article II of the 1987 Constitution. **(Page 19)**
- ▶ SEC Memorandum Circular (MC) No. 10 provides the guidelines on the issuance of a certification on the nationality of non-stock corporations. **(Page 20)**
- ▶ Consistent with the objectives of the Anti Red-Tape Act (R.A. No. 9485), the SEC has resolved to dispense with certain requirements in the registration activities of corporations. **(Page 20)**
- ▶ SEC MC No. 13 provides for the Guidelines on the Issuance of a Certification of Paid-Up Capital. **(Page 21)**
- ▶ SEC MC No. 14 provides for the revisions in the General Information Sheet (GIS) and Notification Update Form (NUF). **(Page 21)**

PEZA Issuance

- ▶ PEZA Memorandum Order No. 2016-003 circularizes the implementing rules and regulations of Republic Act No. 10708 or the Tax Incentives Management and Transparency Act (TIMTA) promulgated under DOF-DTI Joint Administrative No. 1-2016, and provides guidelines for compliance from PEZA-registered entities. **(Page 22)**

BOI Update

- ▶ DOF-DTI Joint Administrative Order No. 1-2016 implements the provisions of Republic Act No. 10708 or the Tax Incentives Management and Transparency Act (TIMTA), and mandates compliance from registered business entities as well as the participating government agencies. **(Page 23)**

Court Decisions

- ▶ The two-year prescriptive period for claims for refund of DST erroneously paid through a documentary stamp metering machine is reckoned from the date of imprinting the documentary stamp on the taxable document. (Page 27)
- ▶ Under Section 6 (C) of the Tax Code, assessments issued based on data extrapolated from surveillance operations are presumed valid, if there is reason to believe that the taxpayer is not declaring the correct income.

A speculative and indefinite purpose of the expansion plan will not suffice to justify an exemption from IAET. Definiteness of plans coupled with actions taken towards its consummation are essential. (Page 28)

BIR Ruling

BIR Ruling No. 347-2016 dated 11 August 2016

A BOI-registered developer of a low-cost mass housing project is exempt from income tax/CWT on revenues derived from its registered activity. The exemption shall not extend to sales of units with selling price exceeding Php 2,500,000.00. In the computation of ITH, interest income from in-house financing shall not be considered as revenue generated from the registered activity.

Entitlement to ITH is not automatic as it is necessary to comply with the Specific Terms and Conditions of the BOI registration.

A BOI-registered developer of a low-cost mass housing project is subject to VAT and DST on its sales of housing units. However, specifically for VAT purposes, the sale of a residential lot valued at Php 1,919,500.00 and below, or a house and lot and other residential dwellings valued at Php 3,199,200.00 and below, is VAT exempt.

Facts:

A Co., a domestic corporation engaged in the real estate business, is a new developer of a low-cost mass housing project duly registered with the BOI. A Co. was accorded a non-pioneer status and an Income Tax Holiday (ITH) for a period of 4 years on the revenues generated from its project.

Issues:

1. Is A Co. exempt from CWT on revenues generated from the project?
2. Is A Co.'s entitlement to ITH automatic?
3. Is A Co. exempt from VAT and DST?
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 to persons enjoying exemption from income tax, such as BOI-registered enterprises. However, the exemption covers only the revenues generated from the registered activity, such as low-cost housing, and shall not extend to sales of units with selling price exceeding Php 2,500,000.00. In the computation of ITH, interest income from in-house financing shall not be considered as revenue generated from the registered activity.
2. No. Entitlement to ITH is not automatic as it is necessary for A Co. to comply with the Specific Terms and Conditions of its BOI registration:
 - a. In the grant of incentives, including the ITH, the Rate of Exemption shall depend on the registered enterprise's compliance with the representations/commitments under the registration. In the event the registered enterprise fails to implement the project as represented in its project application, the BOI may reduce the project's ITH entitlement proportionate to the actual performance of the enterprise;
 - b. Submission of a list of common cost items and cost allocation methodology for its other projects/activities, whether BOI-registered or non-registered;

- c. Securing an endorsement/certification from the HLURB that it has faithfully complied with the approved development plan and a "Certificate of Good Housekeeping";
 - d. Filing of an application with the BOI Incentives Department within 1 month from the filing of the final ITR with the BIR in order to validate the claim for income tax exemption. The application shall be accompanied by a certification by SSS that the firm is in good standing in the remittance of SSS contributions of its employees;
 - e. Securing a Certificate of ITH Entitlement (CoE) from the BOI Supervision and Monitoring Department (SMD) prior to the filing of ITR with the BIR. Otherwise, the ITH for that particular year without CoE shall be forfeited;
 - f. Showing proof that the construction of housing units has been completed and delivered to buyers prior to availment of ITH (in the event it fails to maintain the 75:25 debt-equity ratio requirement). Otherwise, the enterprise shall not be entitled to ITH and shall be required to refund any capital equipment incentives availed of;
 - g. Submission of a proof of compliance that at least 20% of the total subdivision area or total subdivision project cost has been developed and allocated for socialized housing within 1 year from date of registration or prior to availment of ITH, whichever is earlier. Otherwise, the ITH for that particular year shall be deemed forfeited; and
 - h. Abiding by the principles of Good Governance and accomplishment of the self-rating Governance Scorecard to be provided by the BOI every year as a requirement for ITH availment.
3. No. Since a BOI-registered enterprise enjoys no tax exemption/privileges other than those granted under EO No. 226 and the terms and conditions for BOI registration, A Co. will remain subject to VAT and DST on its sales of house and lot units pursuant to Sections 106 (A) (1) (a) and 196 of the Tax Code. However, specifically for VAT purposes, the sale of a residential lot valued at Php 1,919,500.00 and below, or a house and lot and other residential dwellings valued at Php 3,199,200.00 and below, is VAT exempt pursuant to Section 109 (1) (P) of the Tax Code.
4. Yes. A Co. shall comply with the following administrative requirements:
- a. It shall be constituted as a withholding agent by the government if it acts as employer and any of its employees received compensation income subject to compensation withholding tax, or if it makes payments to individuals or corporations subject to withholding taxes at source pursuant to RR No. 2-98, as amended;
 - b. It 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; and
 - c. Its 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.

BIR Issuances

RMO No. 46-2016 requires BIR officers and employees to secure the approval of the Commissioner of Internal Revenue before posting advisories, revenue actions, decisions or policy statements on the BIR Website or releasing them to media.

Revenue Memorandum Order No. 46-2016 dated 8 August 2016

- ▶ All BIR officials and employees are required to secure the approval of the Commissioner of Internal Revenue before posting on the BIR Website or releasing to print and broadcast media, all advisories, revenue actions, or decisions and policy statements, which substantially affect the basic rights and remedies of taxpayers or put in issue the government's exercise of its taxing power and tax administration responsibilities.
- ▶ BIR employees violating this directive shall be subject to disciplinary action.

RMC No. 84-2016 exempts all taxpayers applying for tax credits or refunds based on a Writ of Execution issued by the Court of Tax Appeals and the Supreme Court from the requirement of securing Certifications on Outstanding Tax Liabilities/Delinquency Verifications Slips.

Revenue Memorandum Circular No. 84-2016 dated 8 August 2016

- ▶ Taxpayers who are applying or have applied for the issuance of a tax credit or refund based on a Writ of Execution issued by the Court of Tax Appeals or the Supreme Court are no longer required to secure Certifications on Outstanding Tax Liabilities or Delinquency Verification Slips.

RMC No. 85-2016 clarifies the coverage of the suspension of audits as provided under RMC Nos. 70-2016 and 75-2016.

Revenue Memorandum Circular No. 85- 2016 dated 12 August 2016

- ▶ The suspension of tax audits under RMC Nos. 70 and 75-2016 does not cover the processing of all requests or applications for tax refund or tax credit certificate (TCC), regardless of tax type.
- ▶ If a Letter of Authority (LA) has been issued on the tax refund or TCC application, it shall cover only the specific tax type subject of the application;
- ▶ The verification or evaluation of Letter Notices (LNs) covering taxable year 2013 is suspended;
- ▶ However, LNs covering taxable year 2013 with corresponding LAs issued prior to July 1, 2016, are not covered by the suspension.

RMC No. 86- 2016 publishes the full text of the Joint AO No. 1- 2016 signed by the Secretaries of the Departments of Finance and of Trade and Industry to implement Republic Act (RA) No. 10708, otherwise known as "The Tax Incentives Management and Transparency Act (TIMTA)".

Revenue Memorandum Circular No. 86- 2016 dated 12 August 2016

- ▶ Below are the salient points of Joint Administrative Order No. 1-2016:
 1. All Registered Business Entities (RBEs) shall file their tax return and pay their tax liabilities on or before the deadline prescribed under the Tax Code, using the BIR electronic system for filing and payment of taxes.
 2. An RBE shall refer to any individual, partnership, corporation, Philippine branch of a foreign corporation or other entity incorporated and/or organized and existing under Philippine laws and registered with an Investment Promotion Agencies (IPA).
 3. An IPA shall refer to government entities overseeing the operations of the different economic zones and freeports.

4. For purposes of availing income-based tax incentives, the IPAs shall consider only electronically filed tax returns.
 - ▶ In case of unavailability of the BIR electronic system for filing and payment of taxes, as evidenced by a written advice issued by the BIR, the RBEs shall file and/or pay the taxes due manually, on or before the statutory deadline, in which case, the BIR duly-stamped tax returns shall be accepted by the IPAs.
 - ▶ Upon issuance by the BIR of a written advice regarding the availability of the electronic system for filing, the RBEs shall, within 15 days from the date of the written advice, electronically file their tax returns which was initially filed manually.
5. The RBEs availing the incentives shall file an Annual Tax Incentives Report with their respective IPAs within 30 days from the statutory deadline for filing of the Final Adjustment Return for income tax and payment of tax due, if any.
6. Nothing in the IRR shall be construed to limit or diminish, in whatever manner, the amount of incentives that IPAs may grant pursuant to their charters or existing laws, or to prevent, deter or delay the promotion and regulation of investments, processing of applications for registrations and evaluation of entitlement of incentives by IPAs.
7. RBEs, which fail to comply with the filing and reportorial requirements and/or to show proof of electronic filing of tax returns to IPAs and payment of taxes, shall be fined as follows:
 - ▶ First violation - One hundred thousand pesos (PHP 100,000.00);
 - ▶ Second violation - Five hundred thousand pesos (PHP 500,000.00);
 - ▶ Third violation - cancellation of business registration.

RMC No. 87-2016 excludes a request for EOI from a Tax Treaty Partner from the coverage of the suspension of tax audits under RMC No. 70-2016.

Revenue Memorandum Circular No. 87-2016 dated 15 August 2016

- ▶ Despite the suspension of field audit and field operations of the BIR, a response to an Exchange of Information (EOI) request must still be made within 90 days through the EOI Section of the International Tax Affairs Department.
- ▶ EOI processes, including access to information of taxpayers' records as provided under RMO No. 2-2013 and RMO No. 3-2013, are likewise exempted from the suspension of tax audit.

RMC No. 89-2016 lifts the suspension of BIR audits on RATE cases.

Revenue Memorandum Circular No. 89-2016 dated 23 August 2016

- ▶ The BIR has lifted the suspension of all field audits, field operations and any form of business visitations and activities directly connected with the implementation of Letters of Authority pertaining to Run After Tax Evader (RATE) cases.

RMC No. 90-2016 provides an alternative mode in the electronic filing of all tax returns with due date on 29 August 2016.

Revenue Memorandum Circular No. 90-2016 dated 26 August 2016

- ▶ Electronic filing of all tax returns due on 29 August 2016, which falls on a national holiday, is due on the following working day, 30 August 2016.
- ▶ Taxpayers who are mandated to use the Electronic Filing and Payment System (eFPS) and those who opt to file electronically through eFPS, are advised to use the eBIRForms facility in efile their tax returns and pay electronically, or over-the-counter, due to the scheduled system maintenance of all BIR eServices beginning 5:00 pm of 26 August 2016 until 6:00 am of 30 August 2016.

BOC Issuance

CSO No. 36-2016 dissolves the TCS and streamlines procedures for duty drawback, VAT and Excise Tax claims.

Customs Special Order No. 36-2016 dated 3 August 2016

- ▶ This CSO is issued to provide better service in processing duty drawback, VAT and excise tax claims.
- ▶ The Tax Credit Secretariat (“TCS”) is abolished. It is directed to conduct an inventory of its cases and turn these over to the Chief, Revenue Accounting Division (“RAD”) within five days from issuance of this order.
- ▶ Claims shall be processed as follows:
 1. The Office of the Commissioner receives and records claims indorsed by the One-Stop Shop, Department of Finance (“OSS-DOF”) or approved VAT or excise tax refund claims indorsed either by the OSS-DOF or the BIR.
 2. The RAD conducts payment verification and documents check, and certifies the payment of the duties and taxes on the shipments subject to duty drawback or VAT/ excise tax refund, and their remittance to the Bureau of Treasury.
 3. For VAT/ Excise tax refund, the RAD indorses the docket to the Accounting Division, Financial Management Office (“FMO”) for confirmation of the amount due as a refund.
 4. The Accounting Division prepares the Disposition Form and Tax Credit Certificate (“TCC”), in the final amount due for refund, and forwards the same to the Office of the Commissioner for signature by the Commissioner or by his authorized representatives;
 5. Once signed, the TCC is indorsed back to the Accounting Division for release to the proper claimant or his authorized representative.
- ▶ The Chief of the RAD is also given the authority to issue the Tax Debit Memo (“TDMs”) under the Bureau of Custom’s (BOC) E2M system, for TCC utilization.
- ▶ All offices/ units involved in the processing of the claims are strictly reminded to observe the timelines provided under existing laws, rules and regulations and any complaints received on unreasonable delays in the processing thereof shall be dealt with accordingly.
- ▶ CSO No. 36-2016 is effective immediately.

(Editor’s Note: The TCS was created through CSO Nos. 2-2013 and 56-2013, to review duty drawback claims and approve the issuance and utilization of BOC tax credits.)

BOC News

During the public consultation held on 17 August 2016, the BOC announced that it will draft Customs Administrative Orders (“CAOs”) implementing the provisions of the Customs Modernization and Tariff Act (“CMTA”).

Interested stakeholders may submit position papers and attend public consultations which will be held in accordance with the following schedule:

	CMTA Topics	Deadline to Submit Position Paper and Public Consultation
1	De Minimis	1 September 2016
2	Advance Ruling	8 September 2016
3	Alert orders and Risk management in Customs Control	15 September 2016
4	CBWs	22 September 2016
5	Post Clearance Audit	29 September 2016
6	Balikbayan Boxes	7 October 2016
7	Conditionally Tax and Duty Exempt Importation of Balikbayans, Returning Residents and Overseas Filipino Workers	13 October 2016
8	Duty Drawback, Refund and Abatement	29 October 2016
9	Clearance of Postal Items, Traveller and Baggage Processing	3 November 2016
10	Entry Lodgement and cargo Clearance Process	17 November 2016
11	Abandonment- kinds and Effects	24 November 2016
12	Authorized Economic Operators	1 December 2016
13	Dispute settlement	8 December 2016
14	Export Cargo Clearance and Issuance of Rules of Origin	15 December 2016

Public consultations will be held at the BOC Social Hall, Port of Manila at 9:30 to 11:30 in the morning.

(from *DOF News & Views-August 26, 2016*, microsite at http://www.dof.gov.ph/index.php/issuances/cmta_irr)

BSP Issuances

Circular No. 918 provides for the Amendments to the FX Manual, as amended.

BSP Circular No. 918 dated 2 August 2016

- ▶ Pursuant to Monetary Board Resolutions No. 237 and No. 1282 dated 12 February and 21 July 2016, respectively, the following provisions of the Manual of Regulations on Foreign Exchange Transactions (issued under Circular No. 645 dated 13 February 2009, as amended) are further revised as follows:

“Section 36. Registration with the BSP. The following inward foreign investments shall be registered with the BSP:

1. Inward foreign direct investments under Section 34; and
2. Inward foreign portfolio investments in other peso-denominated debt instruments under Item No. 4 of Section 35.

All applications¹ for registration of foreign direct investments (Annex W) under Section 34 shall be filed with the BSP, through the International Operations Department, within one year to be reckoned from the following dates:

Particulars	Reckoning Date
a. Cash Investment	Date of inward remittance of foreign exchange
b. Investment in Kind	Date of actual transfer of assets to the Philippines
c. Foreign direct investments whose funding are recorded under the "Deposits for Stock Subscription" (DDS) account	<p>If DSS is recorded as equity in the investee firm's books pursuant to SEC rules: Date of SEC approval of the increase in authorized capital stock (ACS) of the investee firm that will accommodate the number of shares covered by the investment for registration.</p> <p>If DSS is recorded as liability in the investee firm's books:</p> <ol style="list-style-type: none"> i. Date of SEC's action (approval of the increase in ACS; confirmation of valuation of liability; or confirmation of exempt transaction) if the investee firm is a corporation; ii. Date of Partnership Resolution approving the conversion if the investee firm is a partnership; and iii. Date of the covering agreement/ effectivity date of the conversion if the investee firm is a branch/ representative office/regional headquarter/regional operating headquarter.
d. Transfers between non-residents of previously registered FDIs where payment was made offshore in foreign exchange	Date of signing of the Deed of Sale/ Assignment covering the transfer.

A Bangko Sentral Registration Document (BSRD) shall be issued by the BSP evidencing registration of such investments."

- ▶ Appendix 10 (Procedures and Documentary Requirements for the Registration of Inward Foreign Investments and Other Investments) of the Manual has been revised to incorporate the documentary requirements for the registration of foreign direct investments whose funding is recorded under the DSS account and booked as equity.

¹ Applications for registration of foreign direct investments, which have not yet been filed with the BSP-IOD after the expiration of the prescriptive period for filing of such applications, may still be filed with the BSP-IOD up to 1 September 2017, subject to compliance with the registration requirements under this Manual and payment of a fixed processing fee of PHP10,000.00 per Bangko Sentral Registration Document to be issued.

- ▶ This Circular shall take effect on 1 September 2016.

[Editor's Note: Circular No. 918 was published in the Manila Bulletin on 5 August 2016.]

Circular No. 919 provides for the Implementing Guidelines for the BSP - BOJ CBLA.

BSP Circular No. 919 dated 2 August 2016

- ▶ The Monetary Board, in its Resolution No. 1281 dated 21 July 2016, approved the following guidelines governing the Japanese Yen/Philippine Peso (JPY/PHP) Swap Facility to operationalize the CBLA between the Bangko Sentral and the BOJ pursuant to Section 70 of Republic Act No. 7653, The New Central Bank Act. This JPY/PHP Swap Facility is an arrangement where the Bangko Sentral provides liquidity in Philippine Pesos to supervised banks against the JPY holdings of such banks.
- ▶ The following section and subsections in the Manual of Regulations for Banks shall be added:

“Section X624. The Japanese Yen/Philippine Peso (JPY/PHP) Swap Facility under the Cross-Border Liquidity Arrangement (CBLA) between the Bangko Sentral ng Pilipinas (Bangko Sentral) and the Bank of Japan (BOJ).

Subsec. X624.1. Policy Statement. Financial crises and other emergency situations may lead to severe shortage in PHP liquidity that may curtail financing activities in the Philippines and affect the Philippine economy. The establishment of the JPY/PHP Swap Facility in the Philippines allows banks operating in the Philippines to access PHP liquidity against said banks' JPY holdings.

Subsec. X624.2. Availment of the JPY/PHP Swap Facility. Banks may avail of the JPY/PHP Swap Facility from the Bangko Sentral during emergency situations.

For purposes of this facility, an “emergency situation” arises when a bank is under a state of severe shortage of PHP liquidity or under serious financial pressures brought about by unforeseen events or events which, though foreseeable, cannot be prevented by the bank concerned.

Subsec. X624.3. Eligibility Requirements. A bank can avail of the JPY/PHP Swap Facility provided it has met the following eligibility requirements:

- a. Has established the presence of an “emergency situation” as defined in Subsec. X624.2;
- b. Has JPY holdings which can be delivered and deposited to the Bangko Sentral's account at the BOJ;
- c. Has a CAMELS/ROCA composite rating of at least “3” and a Management/Risk Management component rating of at least “3” in the latest Report of Examination;
- d. Has no unsafe or unsound banking practice cited in the latest Report of Examination; and
- e. Has complied with the minimum capital requirement and risk-based capital ratio as provided under applicable and existing capital adequacy frameworks.

The bank shall submit an application letter to the appropriate department of the Supervision and Examination Sector, copy furnished the Treasury Department (TD), along with the following documents:

- a. A certification under oath that the applicant bank meets the eligibility requirements and a declaration that there is an emergency situation in the bank as defined under Subsection X624.2.
- b. A duly notarized secretary's certificate together with a resolution of the board of directors of the bank (or its equivalent in the case of foreign bank branches):
 - (1) Authorizing the application for the JPY/PHP Swap Facility of the Bangko Sentral;
 - (2) Indicating the bank's purpose for the availment and amount to be availed of under the JPY/PHP Swap Facility with supporting documents that indicate the existence of an emergency situation as defined under Subsection X624.2 and certifying that the PHP proceeds of the JPY/PHP Swap Facility shall be utilized by the bank to address PHP liquidity needs specified in its application as approved by the Bangko Sentral;
 - (3) Committing to deposit the JPY currencies to the account of the Bangko Sentral at the BOJ in exchange for the PHP liquidity that it will receive from the Bangko Sentral;
 - (4) Committing to comply with the guidelines set forth in section X624 and its Subsections and other terms and conditions that may be imposed by the Bangko Sentral; and
 - (5) Designating authorized officers to sign and execute an agreement and other relevant documents in connection with the availment of the JPY/PHP Swap Facility.

The bank shall execute with the TD a Master Swap Agreement (MSA) which the TD will provide containing the following provisions, among others:

- a. **Valuation of JPY.** A haircut on the JPY shall be determined by the TD. The TD may make margin calls, as necessary, to cover changes in the value of the JPY against the PHP.
- b. **Pricing and Terms.** The price of the JPY/PHP swap transaction shall be determined by the TD, taking into account prevailing liquidity/market conditions. A maximum tenor of 30 days shall apply. Trading time shall be set from 10:00 AM to 12:00 NN, then from 2:00 PM to 3:00 PM.
- c. **Pretermination.** The BSP shall have the right to terminate any transaction in any of the following events:
 - (1) Funds from the transaction are found to have been used by the bank for purposes other than those they were originally approved for and specified in its application; or
 - (2) Any misrepresentation by the bank.

In addition, any outstanding transaction may be terminated at any time before maturity, subject to mutual agreement of both parties.

Subsec. X624.4. Delivery of the JPY to the BOJ. In exchange for the PHP liquidity, banks shall deliver the required amount of JPY to the BOJ. The Bangko Sentral will hold the JPY in its JPY account at BOJ for the term of the JPY/PHP swap transaction.

Subsec. X624.5. Allowable Amounts. The amount of PHP that may be availed of by the bank will be determined by the Bangko Sentral taking into account, among others, the amount applied for and the bank's JPY holdings.

Subsec. X624.6. Execution. The TD will advise the bank of the approval of the swap transaction and execute it in accordance with the MSA referred in Subsec. X624.3.

Subsec. X624.7. Enforcement Actions. Consistent with Section X009 (Supervisory Enforcement Policy) of the Manual of Regulations for Banks, the Bangko Sentral may employ the appropriate enforcement tools to ensure compliance with the rules and regulations for the operation of the JPY/PHP Swap Facility, including the imposition of sanctions on the bank and/or its directors, officers and/ or employees.

The imposition of sanctions shall be without prejudice to the application of administrative sanctions under Section 37 of R.A. No. 7653 (The New Central Bank Act) and/or to the filing of appropriate criminal charges against culpable persons as provided under Sections 34, 35, and 36 of R.A. No. 7653 for refusing to make reports or permit examination, making a false/misleading statement or for willfully violating banking laws or any order, instruction, rule or regulation issued by the Monetary Board.

- ▶ This Circular shall take effect after 15 days from the date of its publication in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 919 was published in BusinessWorld on 11 August 2016.]

Circular No. 920 provides the Guidelines on the Personal Management Trust.

BSP Circular No. 920 dated 18 August 2016

- ▶ The Monetary Board, in its Resolution No. 1350 dated 28 July 2016, approved the amendments to Subsections X409.9/4409Q.9 of the MORB and the MORNBF, respectively, and the Financial Reporting Package for Trust Institutions to provide for the creation of the Personal Management Trust:

Section 1. Existing provisions under Subsections X409.9/4409Q.9 of the MORB/MORNBF are hereby deleted and shall now read as follows:

"Subsection X409.9/4409Q.9. Personal Management Trust. The guidelines on Personal Management Trust accounts are as follows:

- a. *Definition.* A Personal Management Trust (PMT) is a living trust² created by an agreement whereby the trustor conveys property or a sum of money to be managed by the trustee, as the agreement dictates, generally for the preservation of the assets or property for future use of the beneficiaries and/or to answer for their current needs. The trustor may or may not nominate third-party beneficiary/ies. The trust agreement must specify the name/s of the beneficiary/ies.

² Being a living trust, PMT becomes operational during the lifetime of the trustor as soon as the agreement is accomplished.

Upon effectivity of this Circular, no new Living Trust Account shall be established; consequently and for purposes of reporting, all valid and existing Living Trust Account shall now be considered as Personal Management Trust. If the Living Trust Account (LTA) does not conform with LTA guidelines, it shall be considered as Other Fiduciary Account.

- b. *Minimum criteria*³. A PMT account shall meet the following criteria:
1. Minimum entry amount and maintaining balance shall be equivalent to at least P100,000; Provided, that PMT with balances of up to P500,000 shall only be invested in deposits and government securities;
 2. The agreement shall clearly state the specific purpose(s) for which the account was established which shall be consistent with the general objectives of the PMT which is the preservation of the assets or property for the future use of the beneficiaries and/or to answer for their current needs;

The distribution clause shall clearly and specifically define the manner and conditions under which the assets (including income thereof) will be distributed. Any distribution/withdrawal of assets (including income thereof) shall be consistent with the purpose of the PMT, strictly in accordance with the distribution clause, and made only to the designated beneficiary/ies. Consequently, the trustee is expected to obtain adequate documentation to ensure the propriety of distribution/withdrawal of assets (including income thereof).

Pre-printed PMT agreements may be allowed for expediency. *Provided*, That the section for the trust purpose and the distribution clause shall not be pre-printed and shall be filled up only upon signing thereof by the trustor;

3. The length of PMT's existence should be consistent with the purpose of the trustor. Any termination for causes that are inconsistent with the purpose/distribution clause shall render the trustor ineligible from opening a new PMT within a period of one (1) year from termination date; and
4. Management of the trust assets shall be aligned with the investment objective/s and risk parameters set forth by the trustor.

PMT accounts that do not meet any of the above criteria shall be considered as other fiduciary accounts subject to applicable reserves.

- c. *Marketing*. Officers and personnel of the Bank proper, including Branch Managers, shall not be allowed to market personal management trust products and sign pre-printed PMT agreements. However, Branch Managers/Officers may refer clients to the Trust Department and give a short introduction on the PMT product to prospective clients.

³ This applies to the newly created PMT account upon the effectivity of the Circular.

- d. *Reserve Requirement.* The PMT shall be subject to zero-percent reserve requirement.
- ▶ The following are the amended sections of the Financial Reporting package for Trust Institutions (FRPTI):

- a. Manual of Accounts

“CONTRACTUAL RELATIONSHIPS OF TRUST INSTITUTIONS

I. **Trust - xxx**

XXX

(3) Individual Trust Accounts - xxx

(a) Personal Trust - xxx

- (i) **Personal Management Trust** - This refers to a living trust⁴ created by an agreement whereby the trustor conveys property or a sum of money to be managed by the trustee, as the agreement dictates, generally for the preservation of the assets or property for future use of the beneficiaries and/or to answer for their current needs. The trustor may or may not nominate third-party beneficiary/ies. The trust agreement must specify the name/s of the beneficiary/ies.

- (ii) **Testamentary Trust** - xxx

Xxx”

- a. Reporting Template

The following reporting templates of the FRPTI shall be revised to replace “Living Trust” with “Personal Management Trust”, particularly item “(7)(a)” under “Additional Information” (line item no. B106) (Annex A):

- 1) Schedule BS - Balance Sheet - Consolidated (Peso and FCDU)
- 2) Schedule A1 - Balance Sheet - Peso Accounts
- 3) Schedule A2 - Balance Sheet - FCDU/EFCDU Accounts

Transitory provision. Pending the release of the revised reporting template described above, the existing reporting template for Living Trust Account may be used for PMT accounts.

- ▶ This Circular shall take effect after 15 days from the date of its publication in the Official Gazette or in a newspaper of general circulation.

⁴ Being a living trust, PMT becomes operational during the lifetime of the trustor as soon as the agreement is accomplished.

Circular No. 921 provides the Amendments to Provisions of the MORB and MORNBF1 pertaining to the IRC System.

BSP Circular No. 921 dated 22 August 2016

- ▶ The Monetary Board, in its Resolution No. 1275 dated 21 July 2016, approved the amendments to certain provisions of the MORB and the MORNBF1 pertaining to the Bangko Sentral ng Pilipinas' monetary operations under the IRC system.
- ▶ Subsection X601.1 of the MORB/Section 4601Q.1 of the MORNBF1 on the "Repurchase agreements with Bangko Sentral" as amended by Circular No. 913 dated 3 June 2016 is further amended as follows:

§X601.1/4601Q.1 Repurchase agreements with Bangko Sentral.

- a. Repurchase agreements may be entered into with the Bangko Sentral subject to the following terms and conditions:
 - (1) Rate. Xxx
 - (2) Term. Xxx
 - (3) Security. Only direct obligations of the National Government and its instrumentalities and political subdivisions, which are fully guaranteed by the Government, with a remaining maturity of at least six (6) days and longer than the tenor of the Repurchase Agreement and which are freely negotiable, unencumbered, and regularly serviced, shall be eligible as underlying instruments for repurchase agreements subject to the collateral requirement prescribed by the Bangko Sentral.
 - (4) Delivery. Xxx
 - (5) Xxx
- Xxx

- ▶ Subsection X601.4a(4) on the "Borrowings from the Overnight Lending Facility (OLF) of the Bangko Sentral" as amended by Circular No. 913 dated 3 June 2016 is further amended as follows:

§X601.4 Borrowings from the Overnight Lending Facility (OLF) of the Bangko Sentral. Xxx

- a. Counterparties may avail of borrowings from the Bangko Sentral's OLF subject to the following terms and conditions:
 - (1) Rate. Xxx
 - (2) Term. Xxx
 - (3) Volume. Xxx
 - (4) Eligible Collateral. Only direct obligations of the National Government or of its instrumentalities and political subdivisions which are fully guaranteed by the Government, with a remaining maturity of not less than six (6) days and which are freely negotiable and are unencumbered, shall be eligible as collateral. The Bangko Sentral shall prescribe rules for the delivery of collateral.
 - (5) Operating Hours. Xxx

- ▶ Annex A of this Circular on the Guidelines for Days Declared as Public Sector Holidays shall replace Appendix 84 of the MORB/Q-49 of the MORNBF1.
- ▶ The definition of “Overnight Deposit” and “Overnight Borrowings” in the Manual of Accounts for the Financial Reporting Package (FRP) and Simplified FRP, as amended by Circular 913 dated 3 June 2016, is further amended as follows:

(a) Manual of Accounts

“BALANCE SHEET ACCOUNTS

Asset Accounts

XXX

3. Due from Bangko Sentral ng Pilipinas (BSP) - This refers to the balance of the deposit account maintained with the BSP.

Xxx

The Due from BSP accounts shall be broken down as to:

- (a) Demand Deposit - Xxx

- (b) Overnight Deposit - This refers to the amount of funds placed in the Bangko Sentral’s overnight deposit facility the interest rate of which is set in relation to the policy interest rate.

- (c) Term Deposit - Xxx

- (d) Others - Xxx

4. Xxx

Xxx

Liability Accounts

Xxx

5. Bills Payable

- (a) Bangko Sentral ng Pilipinas (BSP) - Xxx

- (a.1) Rediscounting - Xxx

- (a.2) Emergency Advances - Xxx

- (a.3) Overnight Borrowings - This refers to the amount availed from the Bangko Sentral’s overnight lending facility in order to cover short-term liquidity requirements.

- (a.4) Overdrafts - Xxx

(a.5) Others - Xxx

(b) Interbank Loans Payable

Xxx

XXX”

- ▶ The definition of the “Overnight Deposit Account” in the Manual of Accounts for the FRP for Trust Institutions (FRPTI), as amended by Circular 913 dated 3 June 2016, is further amended as follows:

(a) Manual of Accounts

“BALANCE SHEET ACCOUNTS

Asset Accounts

XXX

2. Due from Bangko Sentral ng Pilipinas (BSP) - This refers to the balance of the deposit account maintained with the BSP, which shall be comprised of the following:

(a) Demand Deposit Account - Xxx

(b) Overnight Deposit Account - This refers to the amount of funds placed in the Bangko Sentral's overnight deposit facility the interest rate of which is set in relation to the policy interest rate.

(c) Term Deposit Account - Xxx

3. Xxx

Xxx

Xxx”

- ▶ This Circular shall take effect immediately.

Circular No. 922 provides the Amendment of the Rules on Cross-Border Transfer of Local Currency.

BSP Circular No. 922 dated 23 August 2016

- ▶ Pursuant to Monetary Board Resolution Nos. 334 (dated 24 February 2016), 878 (dated 19 May 2016), 1324.B (dated 28 July 2016), and 1374 (dated 4 August 2016), Section 4 of the Manual of Regulations on Foreign Exchange Transactions (FX Manual, issued under Circular No. 645 dated 13 February 2009, as amended) is further revised as follows:

“Section 4. Cross-Border Transfer of Local and Foreign Currencies

Local Currency. A person may import or export, or bring with him into or take out of the country, or electronically transfer, legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount not exceeding PHP50,000 without prior authorization from the BSP. Amounts in excess of said limit shall require prior written authorization from the BSP.

The term “electronic transfer” as used herein shall mean a system where the authority to debit or credit an account (bank, business or individual) is provided by wire, with or without a source document being mailed to evidence the authority.

The peso amount of the International Passenger Service Charge (IPSC) refunded to outbound exempt passengers⁵ shall not be included in the aforecited limit during the implementation of said IPSC refund.

Xxx”

Repealing Clause. This Circular supersedes/amends/modifies the provisions of existing circulars, memoranda and/or other regulations that are inconsistent herewith.

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

SEC Opinion and Issuances

SEC OGC Opinion No. 16-19 dated 11 August 2016

The Control Test is still the prevailing mode of determining whether or not a corporation is a Filipino corporation within the ambit of Section 2, Article II of the 1987 Constitution.

Facts:

S Corporation, a manning company, was incorporated under Philippine laws in 1989 and is engaged in the business of recruiting Filipino seafarers for deployment on board the vessels of its foreign principals. It is claimed that S Corporation is required under the law to be 75% owned by Filipino citizens. Meanwhile, N Corporation, a 60% Filipino-40% Foreign owned domestic corporation, is an investor of S Corporation.

Issue:

Is the Control Test the prevailing rule in determining the nationality of corporations in the Philippines?

Held:

Yes, the Control Test is still the prevailing mode of determining whether or not a corporation is a Filipino corporation within the ambit of Section 2, Article II of the 1987 Constitution. Consequently, the Grandfather rule may only be applied when there is doubt as to the 60-40 equity ownership in the Corporation.

⁵ Those passengers exempted under Philippine laws from payment of travel tax, airport tax and other travel related taxes or fees, which include the following:

- a. Philippine Sports Commission and its delegations or representatives to any international sports convention, conference and meeting, and athletes, coaches and other officials to any international competition under Republic Act (R.A.) No. 6847 (The Philippine Sports Commission Act); and
- b. Overseas Filipino Workers (OFWs) under R.A. No. 10022 (Migrant Workers and Overseas Filipinos Act of 1995);

Provided that, refund is made prior to departure at airports or other ports of exit.

Thus, the Control Test shall be used in determining the nationality of a corporation especially in cases where foreign ownership restrictions apply. Here, since N Corporation is 60% owned by Filipinos, its existing and would-be shareholdings in S Corporation is considered as owned by Filipinos for purposes of computing the required Filipino equity for manning agencies, provided that 75% of S Corporation is owned by Filipinos.

SEC MC No. 10 provides the guidelines on the issuance of a certification on the nationality of non-stock corporations.

SEC Memorandum Circular No. 10 Series of 2016 dated 28 July 2016

- ▶ A certification on the nationality of a non-stock corporation shall be issued upon request to the Commission's Company Registration and Monitoring Department for a fee in the amount of PhP 5,000.
- ▶ The Corporate Secretary shall submit the following:
 1. Membership Book duly Registered with the SEC
 2. Sworn certified list of members indicating thereon their nationalities; and
 3. Sworn certification executed by the Corporate Secretary on voting power of the members.
- ▶ A Non-stock corporation registered with the SEC is a Philippine National:
 1. If all its members are citizens of the Philippines; or
 2. If at least 60% of its members entitled to vote are citizens of the Philippines; or
 3. If at least 60% of its members' total number of votes as broadened in the By-laws are held by citizens of the Philippines; or
 4. If all members of a foreign non-stock corporation licensed to do business by the Commission are citizens of the Philippines.

[Editor's Note: MC No. 10 was published in the Manila Bulletin p. 9 and the Manila Times on 5 August 2016.]

Consistent with the objectives of the Anti Red-Tape Act (R.A. No. 9485), the SEC has resolved to dispense with the certain requirements in the registration activities of corporations:

SEC Memorandum Circular No. 11 Series of 2016 dated 5 August 2016

The following are no longer required:

- ▶ Bank Certificate of Deposit - for registration of the Articles of Incorporation of new corporations where the subscription to the authorized capital stock is paid in cash
- ▶ Special Audit Report - for applications to increase the authorized capital stock of corporations where the subscription to the increase is paid in cash
- ▶ Primary Entry - for Deed of Assignment in the registration of new corporations or increase in the authorized capital stock

In lieu of the Special Audit Report, a notarized Subscription Contract among the stockholder/s, treasurer and president of the corporation stating the number of additional shares subscribed to and paid for shall be submitted by the corporation.

[Editor's Note: MC No. 11 was published in the Philippine Star p. B-9 and the Manila Standard p. C2 on 23 August 2016.]

SEC MC No. 13 provides the Guidelines on the Issuance of a Certification of Paid-Up Capital.

SEC Memorandum Circular No. 13 Series of 2016 dated 18 August 2016

- ▶ A certification of paid-up capital shall be issued upon the request to be filed at the Company Registration and Monitoring Department (CRMD) and Extension Offices (EOs) of the Commission;
- ▶ A certification of paid-up capital may be based on the following:
 1. Audited Financial Statement (AFS) of the last fiscal year stamped received by the Bureau of Internal Revenue (BIR) and Securities and Exchange Commission (SEC); or
 2. Audited Interim Financial Statements duly received by the Commission; or
 3. Articles of Incorporation, with reference to the paid-up capital in the Treasurer's Affidavit and as certified by the Treasurer in Trust; or
 4. Latest Approved Certificate of Filing of Increase of Capital Stock, supported by a report of Financial Analysis and Audit Division (FAAD) or Corporate and Partnership Registration Division (CRPD) or by SEC Extension Offices.
- ▶ The corporation shall submit the following:
 1. Duly accomplished request form stating the basis of certification in accordance with item no. 2;
 2. AFS as of the last fiscal year stamped received by BIR and SEC; or
 3. Audited Interim Financial Statements duly received by the SEC, in case there is/are unpaid subscription(s) after the issuance of the AFS as of the last fiscal year.
 4. Notarized Secretary's Certificate of No Pending Intra-Corporate Dispute; and
 5. Monitoring Clearance.
- ▶ The filing fee in the amount of PhP 1,000 shall be paid for the issuance of the certification.

[Editor's Note: MC No. 13 was published in the Manila Bulletin and the Business Mirror p. B5 on 25 August 2016.]

SEC MC No. 14 provides the revisions in the GIS and NUF.

SEC Memorandum Circular No. 14 Series of 2016 dated 18 August 2016

- ▶ In the GIS, the column for the TIN of the Board of Directors/Trustees, Officers, Stockholders/Members of domestic corporations and Resident Agent and officers in the Philippines of foreign corporations shall be accomplished in a separate sheet denoted as the TIN page;
- ▶ In the NUF for foreign corporations, the column for the TIN of Officers shall be accomplished in a separate sheet denoted as the TIN page; and
- ▶ The secretary's certification page of the GIS for stock and non-stock corporations shall now include the following:

"I ____ corporate secretary of the above mentioned declare under the penalty of perjury, that all matters set forth in this general information sheet which consists of () pages have been made in good faith, duly verified by me and to the best of knowledge and belief are true and correct.

I hereby certify that the persons indicated as members of the board of directors/trustees and officers of the corporation had consented to be nominated and elected

I understand that the failure of the corporation to file this GIS for five (5) consecutive years shall be construed as non-operation of the corporation and a ground for the revocation of the corporation's certificate of incorporation. In this eventuality, the corporation hereby waives its right to a hearing for the said revocation."

[Editor's Note: MC No. 14 has not yet been published].

PEZA Issuance

PEZA Memorandum Order No. 2016-003 circularizes the implementing rules and regulations of Republic Act No. 10708 or the TIMTA promulgated under DOF-DTI Joint Administrative No. 1-2016, and provides guidelines for compliance from PEZA-registered entities.

PEZA Memorandum Order No. 2016-003 dated 4 August 2016

▶ Compliance requirements for PEZA-registered enterprises

1. Covered enterprises: All (i) PEZA-registered enterprises (i.e., export, I.T., tourism, medical tourism, facilities, I.T. facilities, utilities, logistics service, agri-industrial, domestic market) and (ii) Ecozone Developers/Operators (including developers/operators of I.T. parks and centers, tourism ecozones, medical tourism ecozones, agri-industrial ecozones) that are entitled to tax incentives, including those entitled only to duty and tax exemption on importation and/or VAT zero-rating on local purchases
2. The Report shall consist of the following:
 - ▶ Annex A.1 - Annual Tax Incentives Report for Income-Based Incentives
 - ▶ Annex A.2 - Annual Tax Incentives Report for VAT, Excise Tax and Duty-Based Incentives
3. Deadline for compliance:
 - ▶ For 2015 reporting: On or before 15 September 2016
 - ▶ For 2016 and onwards: On or before June 14 of the following year

*(*SGV's Note: This should be May 15 of the following year if the enterprise's accounting period is a calendar year, given that under the IRR, registered business enterprises should file the annual tax incentives report to their respective investment promotion agencies within 30 days from the statutory deadline for filing the Final Adjustment Return for Income Tax.)*

4. Failure to comply with the filing and reportorial requirement with PEZA, and/or failure to show proof of filing and payment of tax returns to PEZA using the BIR's electronic system for filing and payment of taxes shall be imposed the following penalties:
 - ▶ 1st violation - Payment of a fine amounting to PHP 100,000
 - ▶ 2nd violation - Payment of a fine amounting to PHP 500,000
 - ▶ 3rd violation - Cancellation of registration of the registered business entity

▶ Guidelines for the first Annual Tax Incentives Report of Registered Business Entity

1. Annual Tax Incentives Report on Income-Based Incentives (Annex A.1) - All registered enterprises which availed of Income Tax Holiday (ITH) and/or 5% Gross Income Tax (GIT) incentive for 2015 are required to accomplish this report. For purposes of the 15 September 2016 deadline, the Report shall cover any and all taxable years ending in any month of 2015. The amount of income tax incentives claimed shall be based on the 30% Regular Corporate Income Tax.

- ▶ For projects which availed of the ITH incentive, the amount of ITH claimed must be presented on a per project basis.
 - ▶ For projects which availed of the 5% GIT incentive, the amount of income tax incentive claimed for all projects that availed of the 5% GIT may be consolidated.
 - ▶ Enterprises must ensure that the amounts of sales and income indicated in the Report are consistent with the corresponding amounts declared in the enterprises' 2015 Income Tax Returns and Audited Financial Statements.
2. Annual Tax Incentives Report on VAT, Excise Tax, and Duty-Based Incentives (Annex A.2) – All registered enterprises availing of VAT zero rating on local purchases and/or tax and duty free importation incentives are required to accomplish this report.
 - ▶ The amount of duties and taxes paid on local sales shall be the actual amount paid by the enterprise.
 - ▶ Value of importations and VAT zero-rated local purchases should be provided.
 - ▶ For the 2015 Report, enterprises are required (i) to disclose importations and local purchases made during the calendar year 2015, and (ii) to submit estimated amounts of duties and taxes waived on importations and VAT waived on local purchases.
 3. PEZA will email pre-populated forms in excel worksheets to the enterprises' (i) authorized representative in-charge of complying with/submitting the Ecozone Monthly Performance Reports (EZMPR), and to their (ii) President / Chief Executive Officer, or equivalent, as indicated in the EZMPR.
 - ▶ Enterprises/Developers-Operators not submitting any report to the PEZA are advised to immediately send to the PEZA-Incentives Management Division through timta@peza.gov.ph the name and email address of the official who will be in charge of submitting the annual report on tax incentives.
 - ▶ Enterprises who do not receive the worksheets within 8-15 August 2016 are also advised to immediately send to timta@peza.gov.ph the name, position, and email address of the official who will be put in charge of submitting the annual report on tax incentives.
 4. The accomplished forms must be submitted both in (i) excel format via email to PEZA through timta@peza.gov.ph on or before 15 September 2016, as well as in (ii) printed copy as certified and signed by two of the highest responsible officials of the Enterprise/Developer-Operators to the office of their respective PEZA Zone Administrator / Zone Manager / Officer-in-Charge.

BOI Update

DOF-DTI Joint Administrative Order No. 1-2016 implements the provisions of Republic Act No. 10708 or the TIMTA, and mandates compliance from registered business entities as well as the participating government agencies.

DOF-DTI Joint Administrative Order No. 1-2016 dated 23 June 2016

▶ Background

1. Purpose of Tax Incentives Management and Transparency Act (TIMTA):
 - ▶ To promote fiscal accountability and transparency in the grant and management of tax incentives
 - ▶ To allow the government to monitor, review, and analyze the economic impact of tax incentives for purposes of optimizing the social benefits thereof

2. Definition of terms:

- ▶ **Investment Promotion Agencies (IPAs)** refer to government entities in charge of promoting investments, administering tax and non-tax incentives, and/or the overseeing the operations of the different economic zones and freeports. These include:
 - a. Board of Investments (BOI)
 - b. Philippine Economic Zone Authority (PEZA)
 - c. Bases Conversion and Development Authority (BCDA)
 - d. Subic Bay Metropolitan Authority (SBMA)
 - e. Clark Development Corporation (CDC)
 - f. John Hay Management Corporation (JHMC)
 - g. Poro Point Management Corporation (PPMC)
 - h. Bataan Technology Park, Inc. (BTPI)
 - i. Cagayan Economic Zone Authority (CEZA)
 - j. Zamboanga City Special Economic Zone Authority (ZCSEZA)
 - k. Phividec Industrial Authority (PIA)
 - l. Aurora Pacific Economic Zone and Freeport Authority (APECO)
 - m. Authority of the Freeport Area of Bataan (AFAB)
 - n. Tourism Infrastructure and Enterprise Zone Authority (TIEZA)
- ▶ **Registered Business Entity (RBE)** refers to any individual, partnership, corporation, Philippine branch of a foreign corporation, or other entity incorporated and/or organized and existing under Philippine law and registered with an IPA.
- ▶ **Tax incentives** refer to fiscal incentives such as those which come from: (i) income tax holidays (ITH), (ii) exemptions, (iii) deductions, (iv) credits, or (v) exclusions from tax base.
- ▶ **Annual Tax Incentives Report of Registered Business Entity** refers to the report to be submitted by the RBE to its respective IPA containing complete information on income-based incentives, value-added tax (VAT) incentives, duty exemptions, deductions, credits, exclusions from tax base, and other information. The report shall be in matrix format:
 - a. Annex A.1 for ITH and other income-based incentives
 - b. Annex A.2 for VAT incentives and duty exemptions
- ▶ **Consolidated Annual Tax Incentives Report** refers to the report to be submitted by the IPAs to the Bureau of Internal Revenue (BIR) based on the Annual Tax Incentives Report of RBEs. The report shall be in matrix format:
 - a. Annex B.1 for ITH and other income-based incentives
 - b. Annex B.2 for VAT incentives and duty exemptions
- ▶ **Aggregate Annual Tax Incentives Report** refers to the report to be submitted by the IPAs to the National Economic Development Authority (NEDA) Secretariat containing the aggregate tax incentives and investment-related data, on a sectoral or per industry basis, including but not limited to: (i) investment projects, (ii) investment cost, (iii) actual employment, (iv) export earnings, (v) all other benefits derived from the registered projects.

- ▶ **Compliance requirements for Registered Business Entities (RBEs)**
- 3. Filing of tax returns and payment of tax liabilities
 - ▶ All RBEs shall file their returns and pay their tax liabilities on or before the deadlines provided under the National Internal Revenue Code (“Tax Code”) using the BIR’s electronic system for filing and payment of taxes.
 - ▶ IPAs shall only consider electronically filed returns for purposes of availing income-based tax incentives.
 - a. If the BIR’s electronic system is unavailable (as evidenced by a written advice issued by the BIR), the RBEs shall file and/or pay the taxes due on or before the statutory deadline manually, in which case, the BIR duly stamped tax returns shall be accepted by the IPAs.
 - b. Manually filed tax returns shall be filed electronically within 15 days from the date of a written advice from the BIR that the system is available.
- 4. Submission of Annual Tax Incentives Report
 - ▶ RBEs availing of incentives shall file with their respective IPAs an Annual Tax Incentives Report (the “Report”) within 30 days from the statutory deadline for filing of the Final Adjustment Return for Income Tax and payment of tax due thereon, if any.
- 5. Failure to comply with the filing and reportorial requirements with the IPAs, and/or failure to show proof of filing and payment of tax returns to the IPAs using the BIR’s electronic system for filing and payment of taxes shall be imposed the following penalties:
 - ▶ 1st violation - Payment of a fine amounting to PHP 100,000
 - ▶ 2nd violation - Payment of a fine amounting to PHP 500,000
 - ▶ 3rd violation - Cancellation of registration of the registered business entity
- ▶ **Incentives Monitoring Mechanism and Cost Benefit-Analysis on Investment Incentives**
- 6. Role of Investment Promotion Agencies - The head of the IPAs shall:
 - ▶ Submit to the BIR the Consolidated Annual Tax Incentives Report on Income-Based incentives (Annex B.1) and the Consolidated Annual Tax Incentives Report on VAT Incentives and Duty Exemptions (Annex B.2);
 - ▶ Submit to the BIR a master list (Annex C) of all RBEs;
 - ▶ Submit to the NEDA Secretariat an Aggregate Annual Tax Incentives Report and such other relevant data or information; and
 - ▶ Disseminate information for the RBEs to provide proper information in their reports.
- 7. Role of the Bureau of Internal Revenue - The BIR shall:
 - ▶ Submit to the Department of Finance (DOF) the tax incentives availed of RBEs as reflected in their filed annual tax returns; and
 - ▶ Submit to the DOF and NEDA an updated report with income-based tax incentives, deductions, credits, or exclusions from gross income as assessed under the Tax Code.
- 8. Role of Bureau of Customs - The BOC shall:
 - ▶ Submit to the DOF the VAT and duty incentives availed by RBEs as reflected in their filed import entries.

9. Role of Department of Finance - The DOF shall:
 - ▶ Maintain a single database for monitoring and analysis of tax incentives granted; and
 - ▶ Submit to the Department of Budget and Management (DBM) and the Joint Congressional Oversight Committee, and upon request, to the NEDA Secretariat, the aggregate data categorized by sector, by IPA, and by type of tax: (i) amount of tax incentives availed by RBEs, (ii) estimated claims of tax incentives immediately preceding the current year, (iii) programmed tax incentives for the current year, and (iv) projected tax incentives for the following year.
10. Role of Department of Budget and Management - The DBM shall:
 - ▶ Reflect the data in the annual Budget of Expenditures and Sources of Financing (BESF), which shall be known as Tax Incentives Information (TII)
11. Role of National Economic Development Authority - The NEDA Secretariat shall:
 - ▶ Conduct a Cost-Benefit Analysis (CBA) on the investment incentives to determine the impact of tax incentives on the Philippine economy;
 - ▶ Conduct a CBA of the Aggregate Annual Tax Incentives Report yearly; and
 - ▶ Provide to the DOF, DTI, IPAs, DBM and Joint Congressional Oversight Committee the results of the CBA.

▶ **Non-diminution of incentives**

12. The IRR shall not be construed to diminish or limit, in whatever manner, the amount of incentives that IPAs may grant pursuant to their charters and existing laws; or to prevent, deter, or delay the promotion and regulation of investments, processing of applications for registrations, and evaluation of entitlement of incentives by IPAs.
13. RBEs availing of incentives shall comply with the incentives validation requirements of their respective IPAs.

▶ **Deadlines of reports**

Deliverable	Owner	Submit to	Deadline (in general)	Transitory deadline (for 2015 report)
Annual Tax Incentives Report of Registered Business Entity (Annex A.1 and A.2)	RBEs	IPAs	30 days from statutory deadline for filing of the Final Adjustment Return for Income Tax	15 September 2016
Consolidated Annual Tax Incentives Report (Annex B.1 and B.2)	IPAs	BIR	60 days from the statutory deadline for filing of Final Adjustment Return (i.e. by June 14 of the following year)	15 November 2016
Aggregate Annual Tax Incentives Report	IPAs	NEDA	4 months from the statutory deadline of filing of Final Adjustment Return (i.e. by August 14 of the following year)	15 November 2016

Deliverable	Owner	Submit to	Deadline (in general)	Transitory deadline (for 2015 report)
Other relevant data or information	IPAs	NEDA	9 months from the statutory deadline of filing of Final Adjustment Return	15 March 2017
Tax incentives of RBEs from their annual ITRs	BIR	DOF	On or before September 15 of every year	15 January 2017
Updated report of tax incentives of RBEs as assessed under the Tax Code	BIR	DOF	90 days from lapse of period to assess	
Tax incentives of RBEs from filed import entries	BOC	DOF	On or before 15 September of every year	15 January 2017
Master list of all RBEs	IPAs	BIR	30 days after close of each calendar year	30 days from approval of IRR
Aggregate data categorized by sector, by IPA, and by tax type	DOF	DBM / JCOC	On or before 30 June of the following year	

Court Decisions

Philippine Bank of Communications vs. Commissioner of Internal Revenue
Supreme Court (First Division), G.R. No. 194065 promulgated June 20, 2016

The two-year prescriptive period for claims for refund of DST erroneously paid through a documentary stamp metering machine is reckoned from the date of imprinting the documentary stamp on the taxable document.

Facts:

Philippine Bank of Communication (PB Com) was authorized to operate and use the On-line Electronic Documentary Stamp Metering Machine (DS metering machine).

PB Com purchased documentary stamps from the Bureau of Internal Revenue (BIR) and loaded them to its DS metering machine. PB Com entered into several repurchase agreements with the *Bangko Sentral ng Pilipinas* (BSP) from March 23 to December 23, 2004 and the documentary stamps were imprinted on the corresponding Confirmation Letters.

Claiming that the repurchase agreements were not subject to documentary stamp tax (DST), PB Com filed with the BIR, on May 12, 2006, a claim for the issuance of tax credit certificates for alleged erroneous DST payment.

Alleging inaction of the BIR, PB Com filed a Petition for Review with the Court of Tax Appeals (CTA) on May 18, 2006.

The CTA Second Division ruled that the repurchase agreements were exempt from DST under Section 9 of Republic Act No. 9243, which amends the 1997 Tax Code, which provides that repurchase agreements shall be treated as derivatives, which are not subject to DST. Moreover, RA 9243 provides that all contracts, deeds, documents and transactions related to the conduct of business of the BSP shall not be subject to DST.

However, the CTA Second Division held that a portion of PB Com's claim was barred by prescription, when it reckoned the counting of the two-year period from the date of the Confirmation Letters of the repurchase agreements.

Since PB Com filed its administrative claim on May 12, 2006 and the judicial claim on May 18, 2006, the CTA Division disallowed the refund of the DST paid on the repurchase agreements earlier than May 18, 2004 due to prescription.

On the other hand, the CTA *En Banc* ruled that for taxpayers using the DS metering machine, the DST was deemed paid upon the purchase of documentary stamps for loading and reloading on the DS metering machine through the filing of the DST Declaration under BIR Form No. 2000. Hence, the two-year prescriptive period for the said taxpayers started to run from the date of filing of the DST Declaration under BIR Form No. 2000, and not from the date appearing on the documentary stamp imprinted through the DS metering machine. Consequently, the refundable amount was further reduced and the remainder was deemed barred by prescription.

Issue:

For taxpayers using the DS metering machine, what is the reckoning date for the purpose of counting the two-year prescriptive period for filing a claim for a refund of erroneously paid DST?

Ruling:

The date of imprinting the documentary stamp on the taxable document is considered as the date of payment from which the two-year prescriptive period to recover erroneously paid tax commences.

The payment of the DST upon loading/reloading is merely an advance payment for future application. The liability for the payment of the DST falls due only upon the occurrence of a taxable transaction. Therefore, it is only then that payment may be considered for the purpose of filing a claim for a refund or tax credit.

Since actual payment was already made upon loading/reloading of the DS metering machine and the filing of the DST Declaration Return, the date of imprinting the documentary stamp on the taxable document must be considered as the date of payment contemplated under Section 229 of the Tax Code on recovery of erroneously paid taxes.

This is consistent with Section 200 (D) of the Tax Code which provides that "the tax may be paid xxx by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner."

The DST fell due when PB Com entered into repurchase agreements with the BSP and the corresponding documentary stamps were imprinted on the Confirmation Letters.

Heavenly Urban Chef, Inc. vs. Commissioner of Internal Revenue

CTA (Third Division) Case 8556 promulgated August 9, 2016

Under Section 6 (C) of the Tax Code, assessments issued based on data extrapolated from surveillance operations are presumed valid, if there is reason to believe that the taxpayer is not declaring the correct income.

A speculative and indefinite purpose of the expansion plan will not suffice to justify an exemption from IAET. Definiteness of plans coupled with actions taken towards its consummation are essential.

Facts:

Based on confidential information, the BIR initially conducted surveillance and monitoring of Petitioner Heavenly Urban Chef, Inc.'s (HUCI) place of establishment on January 19 to February 5, 2010, for possible violation of bookkeeping and invoicing rules.

In June 2010, the BIR issued a Letter of Authority for the investigation of HUCI's books of accounts and accounting records for taxable year 2009. In March 2010, Respondent CIR issued a Formal Assessment Notice (FAN) against HUCI for alleged deficiency income tax, value-added tax and improperly accumulated earnings tax (IAET) for taxable year 2009.

HUCI protested the FAN and requested for reinvestigation. The CIR denied the protest and issued a Final Decision on Disputed Assessment. HUCI filed a Petition for Review at the CTA.

HUCI argued that assessments are speculative, hypothetical and fictional as these were based on mere "extrapolation" of data unsupported by written testimony or report of a duly authorized personnel, who is professionally competent to perform statistical computations. It also assailed the IAET assessment on the ground that it had appropriated retained earnings for expansion purposes.

Issues:

1. Are assessments issued based on 'extrapolation method' valid?
2. Is HUCI subject to IAET?

Ruling:

1. Yes. Assessments issued based on data extrapolated from surveillance operations are valid subject to compliance with Section 6 (C) of the Tax Code, as implemented by Revenue Memorandum Order 3-09, which prescribes the guidelines in the conduct of surveillance and stock-taking activities.

The BIR may use the results of its surveillance as basis for assessing the taxes for the other months or quarters of the same or different taxable years if there is reason to believe that a person is not declaring his correct income, sales or receipts for internal revenue tax purposes and such assessment shall be deemed *prima facie* correct.

Since there is sufficient reason to believe that HUCI had undeclared sales and no evidence was presented to controvert the BIR's findings, resorting to surveillance and extrapolation method in assessing HUCI for undeclared sales is justified. The sales amount used by the BIR can be considered as *prima facie* valid and correct for purposes of determining the internal revenue tax liabilities of HUCI.

2. Yes. The allegation that its retained earnings will be reserved for expansion is not sufficient as details of the planned expansion or transfer was not included in the Board Resolution. Section 7 of RR 02-01 explicitly provides that a speculative and indefinite purpose will not suffice. Definiteness of plans coupled with actions taken towards its consummation are essential.

Considering that no other evidentiary documents were presented, HUCI's contention against the IAET assessment has no leg to stand on.

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