

Tax Bulletin

February 2017



Highlights

BIR Rulings

- ▶ A Board of Investments (BOI)-registered entity undertaking a low-cost housing project is exempt from income tax and creditable withholding tax (CWT) on income directly attributable to its registered project. The exemption does not cover interest income from in-house financing.

Sales of residential lots valued at P1,919,500.00 and below, or house and lot and other residential dwellings valued at P3,199,200.00 and below, are exempt from VAT. **(Page 4)**

- ▶ Private project contractors participating in socialized housing projects are exempt from the payment of project-related income taxes, capital gains tax (CGT) and VAT. **(Page 4)**
- ▶ The term “consideration contracted,” for purposes of computing the Documentary Stamp Tax (DST) on deeds of sale and conveyances of real property, should be exclusive of VAT. **(Page 5)**

BIR Issuances

- ▶ Revenue Regulations No. (RR) 2-2017 amends RR No. 3-2016, specifically on when the payment of taxes through a credit/debit/prepaid card is deemed made and the liability of the Authorized Agent Bank-Acquirer (AAB-Acquirer) in case of non-payment of taxes. **(Page 5)**
- ▶ RR No. 3-2017 implements the tax provisions of Republic Act (RA) No. 10693, otherwise known as the “Microfinance NGOs Act”. **(Page 5)**
- ▶ Revenue Memorandum Order (RMO) No. 3-2017 further amends the prescribed format for approved and denied compromise applications. **(Page 7)**
- ▶ Revenue Memorandum Circular (RMC) No. 12-2017 announces the schedule of bank operations of all Authorized Agent Banks (AABs) in line with the upcoming tax deadlines. **(Page 7)**
- ▶ RMC No. 14-2017 provides for the temporary suspension of the Electronic Filing and Payment System (eFPS). **(Page 8)**
- ▶ RMC No. 16-2017 amends RMC No. 36-2016 and clarifies the requirement of the Professional Regulatory Board of Accountancy (BOA) under BOA Resolution No. 03, Series of 2016. **(Page 8)**

BOC Issuances

- ▶ CMO No. 4-2017 provides for implementation guidelines on the Consolidated Shipment of Duty and Tax-Free Balikbayan Boxes. **(Page 8)**
- ▶ Strengthening the Legal Service to Intensify Its Role in Anti-Smuggling Efforts. **(Page 9)**

BSP Issuances

- ▶ Circular No. 943 provides for the Extension of the Basel III Leverage Ratio Monitoring Period. **(Page 10)**

- ▶ Circular No. 944 provides for the Guidelines for Virtual Currency (VC) Exchanges. **(Page 12)**
- ▶ Circular No. 945 provides for the Amendments to the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBF) as of 30 June 2016. **(Page 13)**
- ▶ Circular No. 946 provides for the Amendments to the Liquidity Floor and Foreign Currency Deposit Unit (FCDU) Regulations. **(Page 13)**

BOI Updates

- ▶ Memorandum Circular No. 2017-002 sets the revised terms and conditions for BOI-accredited NGOs engaged in socialized housing requirements and community development projects in compliance with the 20% socialized housing requirement. **(Page 14)**
- ▶ Memorandum Circular No. 2017-003 streamlines the reporting requirements of BOI-registered enterprises, providing the guidelines for submission thereof, and circularizes the Revised BOI Form S-1 or Annual Report on Actual Operations. **(Page 16)**

BLGF Opinion

- ▶ The 60-day period within which BOI-registered entities are required to submit their BOI Certificate of Registration to the LGU is not mandatory for purposes of availing local business tax (LBT) exemptions; and the pendency of the issuance of a Certificate of Exemption by the LGU does not bar BOI-registered entities from availing the exemption from payment of LBT granted under Section 133 (g) of the Local Government Code (LGC). **(Page 16)**

Court Decisions

- ▶ The personal and additional exemptions under RA 9504 should be applied to the entire taxable year 2008, and not just from 6 July 2008, when the law became effective.

Similarly, a Minimum Wage Earner is exempt from income tax for the entire taxable year 2008, and not only from 6 July 2008. **(Page 17)**

- ▶ Where a receivable arising from a sale on credit in a previous year is offset against a payable from the same company in a subsequent year, no new income is recognized in the year the offsetting was made. Instead, the supposed income was already recognized in the year the sale on credit was made, and the related income tax therefrom was already paid. **(Page 19)**
- ▶ The CTA, not the RTC, has jurisdiction to rule on the validity of BIR revenue regulations or revenue memorandum circulars.

Income tax may be imposed on the taxable income derived from all sources of a resident-citizen, except in a situation where the citizen is exempt under the provisions of a treaty, which is binding upon the Philippine government.

The Philippine government made a specific declaration when it ratified and confirmed the ADB Charter that it is retaining its right to tax the salaries and emoluments paid by ADB to its citizens and nationals. **(Page 20)**

BIR Rulings

BIR Ruling No. 029-2017 dated 2 February 2017

A BOI-registered entity undertaking a low-cost housing project is exempt from income tax and CWT on income directly attributable to its registered project. The exemption does not cover interest income from in-house financing.

Sales of residential lots valued at P1,919,500.00 and below, or house and lot and other residential dwellings valued at P3,199,200.00 and below, are exempt from VAT.

Facts:

A Co., a BOI-registered entity undertaking a low-cost housing project, requested for the issuance of a Certificate of Tax Exemption on its revenues derived from the project.

Issues:

1. Is A Co. exempt from income tax and CWT?
2. Does the exemption cover interest income from in-house financing?
3. Are A Co.'s sales of residential units exempt from VAT?

Ruling:

1. Yes. A Co. is exempt from income tax and CWT on income directly attributable to its registered project.
2. No. In the computation of the project's ITH, A Co.'s interest income from in-house financing shall not be considered as part of the revenues generated from the project.
3. Yes. A Co.'s sales of residential lots valued at P1,919,500.00 and below, or house and lot and other residential dwellings valued at P3,199,200.00 and below, are exempt from VAT pursuant to Section 109 (1) (P) of the Tax Code, as amended.

BIR Ruling No. 040-2017 dated 2 February 2017

Private project contractors participating in socialized housing projects are exempt from the payment of project-related income taxes, CGT and VAT.

Facts:

JV Co., a private project contractor, was engaged by the National Housing Authority (NHA) to undertake the construction of housing units under an NHA-certified socialized housing program for families affected by Typhoon Pepeng.

Issue:

Is JV Co. entitled to tax incentives?

Ruling:

Yes. Under Section 20 of RA No. 7279 or the Urban Development and Housing Act of 1992, private sector enterprises who participate in socialized housing are exempt from the payment of project-related income taxes, CGT (on raw lands used for the project) and VAT.

BIR Ruling No. 042-2017 dated 2 February 2017

The term “consideration contracted”, for purposes of computing the DST on deeds of sale and conveyances of real property, should be exclusive of VAT.

Facts:

The BIR assessed and collected from Ms. X a DST for the sale of a condominium unit based on the unit’s gross selling price, inclusive of VAT.

Issue:

Is the BIR correct in computing the DST based on the gross selling price, inclusive of VAT?

Ruling:

No. The term “consideration contracted” or the “gross selling price” as defined in Section 106 (A) of the Tax Code, as amended, means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, exclusive of VAT.

BIR Issuances

RR No. 2-2017 amends RR No. 3-2016, specifically on when the payment of taxes through a credit/debit/prepaid card is deemed made and the liability of the Authorized Agent Bank-Acquirer (AAB-Acquirer) in case of non-payment of taxes.

RR No. 2-2017 dated 8 February 2017

- ▶ The payment of taxes through a debit/credit/prepaid card is deemed made on the date and time appearing in the system-generated payment confirmation receipt issued to the taxpayer-cardholder by the AAB-Acquirer.
- ▶ In case of late remittance or non-remittance of taxes to the BIR despite the timely issuance of a valid confirmation receipt by the AAB-Acquirer to the taxpayer-cardholder, the AAB-Acquirer shall be liable to pay the tax considering that it becomes the trustee of the government, with the obligation to remit the tax payment on time to the BIR, from the issuance of a valid confirmation receipt to the taxpayer-cardholder.
- ▶ These regulations shall take effect immediately.

(Editor’s Note: RR No. 2-2017 was published in the Manila Bulletin on 9 February 2017)

RR No. 3-2017 implements the tax provisions of RA No. 10693, otherwise known as the “Microfinance NGOs Act”

RR No. 3-2017 dated 24 February 2017

- ▶ The following terms are defined under the regulations:
 1. Microfinance - the viable and sustainable provision of a broad range of financial services to poor and low-income individuals engaged in livelihood and microenterprise activities.
 2. Microfinance loans - small loans granted to the basic sectors, as defined in RA No. 8425, otherwise known as the “Social Reform and Poverty Alleviation Act”, and other loans; these loans are granted to the poor and low-income individuals for their microenterprises and small businesses so as to enable them to raise their income levels and improve their living standards.

3. Microfinance NGO - a nonstock, nonprofit organization duly registered with the SEC, with the primary purpose of implementing a microenterprise development strategy and providing microfinance programs, products, and services, such as microcredit and microsavings, for the poor and low-income clients.
 4. Microcredit - the extension of microfinance loans by a Microfinance NGO to its poor and low-income clients.
 5. Microfinance - the viable and sustainable provision of a broad range of financial services to poor and low-income individuals engaged in livelihood and microenterprise activities. It uses non-traditional and innovative methodologies and approaches, namely: the extension of small loans, simplified loan application procedures, group character loans, collateral-free arrangements, cash flow-based lending, alternative loan repayments, minimum requirements for capital build-up (CBU)/minimum balance retention, and small denominated savers' instruments aimed to improve their asset base and expand their access to capital and savings.
 6. Microenterprise development strategy - the social reform program aims to promote and pursue inclusive growth that includes the poor, and whose implementation shall involve both the public and private sectors among which Microfinance NGOs are key players.
 7. Gross receipts from microfinance operations - the interest income, penalties, surcharges, commissions and discounts, service and general fees, and other charges related to microfinance operations actually or constructively received without any deduction of any kind or nature.
 8. Accreditation - the process of giving official recognition to a duly registered Microfinance NGO, after meeting the minimum standards set by the Microfinance NGO Regulatory Council (Council). A Microfinance NGO is deemed accredited when it is duly issued an accreditation certificate by the Council.
- ▶ To avail of the 2% gross receipts tax on income from microfinance operations in lieu of all national taxes, a Microfinance NGO must secure a Certificate of Accreditation from the Council or a Certificate of No Derogatory Information from the SEC if it has been granted transitional accreditation for 1 year from the effectivity of RA No. 10693.
 - ▶ To secure a Certificate of Accreditation, the Microfinance NGO must be a non-stock, non-profit corporation with a capital contribution of at least P1,000,000.00 and must comply with the following requirements:
 1. The word "Microfinance" must be included in its corporate trade name
 2. Its Articles of Incorporation and By-laws shall specifically state that:
 - ▶ It is "non-stock and non-profit";
 - ▶ Its primary purpose is to implement a microenterprise development strategy and provide microfinance programs, products, and services for the poor;
 - ▶ It shall specifically provide that upon dissolution, its net assets shall be distributed to another NGO organized for similar purposes, or to the State for public purposes or as may be determined by a competent court of justice;

- ▶ No part of its property or income shall inure to the benefit of any member, officer, organizer or any individual person;
- ▶ The trustees shall not receive any compensation or remuneration, except reasonable per diem;
- ▶ The level of administrative expenses shall not exceed 30% of the total expenses for the taxable year; and
- ▶ Other requirements which the Council may deem necessary.

All other income, which are not generated from lending activities and insurance commissions, shall be subject to applicable taxes.

- ▶ Microfinance NGOs shall withhold taxes on any payments made to its employees, or to individuals or corporations subject to withholding taxes at source.
- ▶ The books of accounts and other pertinent records of a Microfinance NGO shall be subject to a periodic review by the revenue enforcement officers to ensure its compliance with conditions necessary for its grant of the tax incentives.
- ▶ A duly registered and accredited Microfinance NGO must update its registration with the concerned Revenue District Office to reflect its accreditation as Microfinance NGO.
- ▶ These regulations shall take effect 15 days after its publication in the Official Gazette or newspaper of general circulation.

(Editor's Note: RR No. 3-2017 was published in the Manila Bulletin on 27 February 2017)

RMO No. 3-2017 further amends the prescribed format for approved and denied compromise applications.

RMO No. 3-2017 dated 2 February 2017

- ▶ RMO No. 3-2017 further amends the prescribed format for the Certificate of Availment or Approval, and Notice of Denial, of an application for compromise settlement and/or abatement of penalties under Section 204 of the Tax Code.
- ▶ This RMO prescribes the accountable forms of the BIR relative to the applications for compromise settlement and/or abatement of penalties, by providing templates for approved applications (Certificate of Availment"), as well as for denied applications ("Notice of Denial").

RMC No. 12-2017 announces the schedule of bank operations of all AABs in line with the upcoming tax deadlines.

RMC No. 12-2017 dated 7 February 2017

- ▶ AABs shall operate and accept tax returns or tax payments on 1 April and 8 April 2017.
- ▶ Considering that 15 April 2017 falls on Black Saturday, all AABs shall accept tax payments until 17 April 2017.
- ▶ AABs are also required to extend banking hours from 3:00 p.m. to 5:00 p.m. for the period 1 April to 17 April 2017.

RMC No. 14-2017 provides for the temporary suspension of the eFPS.

RMC No. 14-2017 dated 17 February 2017

- ▶ The eFPS enrollment will be temporarily suspended beginning 1 March to 30 April of every year.
- ▶ All taxpayers required to secure the BIR Importer's Clearance Certificate (ICC), Broker's Clearance Certificate (BCC), and Government Bidders Tax Clearance can still proceed with eFPS enrollment during the suspension by presenting their duly accomplished and notarized application form to the Revenue District Office (RDO).
- ▶ The eFPS enrollment shall resume on 1 May.

RMC No. 16-2017 amends RMC No. 36-2016 and clarifies the requirement of the Board of Accountancy under BOA Resolution No. 03, Series of 2016

RMC No. 16-2017 dated 22 February 2017

- ▶ As a background, RMC No. 21-2016 provided that all Certified Public Accountants (CPAs) are required to comply with BOA Resolution No. 03, series of 2016, which requires the submission of a certificate by the CPA on the compilation services for the preparation of financial statements and notes. The implementation of said BOA requirement shall be on 31 December 2016 as per BOA Resolution No. 115, Series of 2016.
- ▶ However, RMC No. 16-2017 now clarifies that only the existing documentary requirements in the filing of Income Tax Returns shall be submitted to the BIR.

BOC Issuances

CMO No. 4-2017 provides for implementation guidelines on the Consolidated Shipment of Duty and Tax-Free Balikbayan Boxes.

Customs Memorandum Order No. 4-2017 dated 20 January 2017

- ▶ The objective of this CMO is to simplify procedures for the consolidated shipment of Balikbayan boxes sent by qualified Filipinos while abroad, especially OFWs, in recognition of their significant contribution to the Philippine economy.
- ▶ Deconsolidators shall apply for registration every two years with the Account Management Office (AMO) by submitting required documents, in addition to registration requirements imposed by other agencies.
- ▶ The submission of the Electronic-Inward Foreign Manifest (e-IFM), House Bill of Lading (HBL), and House Airway Bill (HAWB) shall be governed by existing rules. To distinguish consolidated Balikbayan shipments from other commercial importations, the words "Consolidated Balikbayan Shipment" shall be indicated in the description of goods in the Master Bill of Lading.
- ▶ The Deconsolidator shall submit an electronic copy of the consolidated manifest containing the individual HBLs through the Advanced Manifest System (AMS) within the period prescribed.
- ▶ The sender of the Balikbayan box may request copies of the Information Sheet from the Consolidator or may download copies directly from the BOC website or from selected Value Added Service Providers (VASPs). He shall then accomplish the Information Sheet either manually on hard copy or online. Certain documents are required to be attached to the Information Sheet, depending on whether the sender is a Filipino citizen, or a dual Filipino citizen without a Philippine passport.

- ▶ The Information Sheet and required attachments shall be submitted to the Consolidator. The Consolidator shall forward pdf copies of the complete set of the Information Sheet to the Deconsolidator and the AMS through the VASP.
- ▶ To expedite the cargo clearance process, the Deconsolidator must submit the soft copy of the Information Sheet with the required documents upon filing of the goods declaration with the Informal Entry Division (IED). Based on this, a determination will be made on whether the sender is qualified to avail of the tax and duty exemption under the *De Minimis* scheme or of the privilege of expedited clearance.
- ▶ Until an electronic processing system has been implemented, the Deconsolidator shall lodge separate informal entries for boxes falling under each type of availment. The individual HBLs or HAWBs, together with the Information Sheet, shall serve as the packing lists and invoices, and the required documents shall be attached to the goods declaration. The BOC shall then verify the completeness of the documents submitted, and match the declaration filed by the Deconsolidator against the Information Sheet. Matching of the declaration shall be made for boxes subject to alert orders, derogatory information, and other relevant information received.
- ▶ All consolidated Balikbayan shipments shall be subject to mandatory non-intrusive inspection under the supervision of the BOC. Processes vary on whether the image is tagged as "suspect" or "not suspect." Shipments declared as consolidated Balikbayan boxes, but are found to be otherwise, shall be considered as misdeclared and subjected to seizure and forfeiture proceedings.
- ▶ The BOC shall also review the entry documents, tariff classification, computation of duties, taxes and other charges, for preparation of the Order of Payment. Upon payment, the gate pass shall be forwarded to the wharfinger or warehouseman to effect the physical release of the shipments of Balikbayan boxes.
- ▶ This CMO expressly supersedes in its entirety CMO No. 33-2016. This CMO shall take effect immediately.

Strengthening the Legal Service to Intensify Its Role in Anti-Smuggling Efforts.

Customs Memorandum Order No. 9-2017 dated 30 January 2017

- ▶ The objective of this CMO is to centralize, absorb, integrate and harmonize the prosecution functions of the various offices and *ad hoc* bodies of the BOC to the Legal Service.
- ▶ The Run After the Smugglers (RATS) group is abolished and dissolved. All personnel assigned to RATS will return to their mother units. Cases and files shall be turned over to the Legal Service for handling. All criminal, civil and administrative pleadings shall not be filed without the review and approval of the Director, Legal Service.
- ▶ The Bureau's Action Team Against Smugglers (BATAS) is created, to be under the direct control and supervision of the Director, Legal Service, which shall be composed of the following units:
 1. The Prosecution / Litigation Team (PLT), will evaluate and build cases, initiate file and prosecute cases before the Department of Justice (DOJ) and the regular courts;

2. The Case Evaluation Team (CET), will collect data and / or information on smuggling, and monitor smuggling activities in all ports; and
 3. The Profiling Team (PT), will conduct investigations / profiling of importers, brokers and other persons suspected to be involved in smuggling activities.
- ▶ The Legal Service is directed to establish a system of communications, record-keeping and evidence-keeping through the creation of an Information System Management Office (ISMO), which shall be under the control and supervision of the Director, Legal Service. This shall serve as the central receiving unit of all notices, letters, case records, and official correspondence.
 - ▶ Requests for opinions, rulings, and memoranda relating to customs laws, rules and regulations, as well as adjudication claims for abatement and refunds shall be reviewed by the Director, Legal Service, and shall thereafter be forwarded to the Deputy Commissioner, RMCG, and then the Customs Commissioner for his approval.
 - ▶ For cases involving brokers and importers, complaints shall be filed with the Director, Legal Service, and shall be prosecuted by the BATAS. If a *prima facie* case exists, the Legal Service shall prepare a Notice of Charge and / or Preventive Suspension, to be approved by the Commissioner.
 - ▶ Where warranted, criminal, civil and administrative cases shall be filed with the proper courts under the authority of the Commissioner of Customs and prosecuted by the BATAS in collaboration with the proper government agencies. BATAS may also file and prosecute separate administrative complaints with the Professional Regulation Commission (PRC), if necessary.
 - ▶ Civil cases already filed and pending with various courts, in collaboration with the Office of the Solicitor General (OSG), shall continue to be prosecuted by lawyers under the Legal Service. A Civil Cases Monitoring Team (CCMT) shall be created.
 - ▶ The Director, Legal Service, is deputized and vested with authority to issue *subpoena duces tecum / ad testificandum* in connection with any case being investigated or pending cases.
 - ▶ If any provision of this Order is declared invalid or unconstitutional, the provisions not affected shall continue to be in full force and effect.
 - ▶ Customs Special Order Nos. 24-2005, 25-2005 and all other orders, rules, regulations and other issuances which are inconsistent herewith are revoked and / or modified accordingly.
 - ▶ This order shall take effect immediately from the date of signing / approval.

(Editor's Note: CMO NO. 9-2017 was signed on 10 February 2017.)

BSP Issuances

Circular No. 943 provides for the Extension of the Basel III Leverage Ratio Monitoring Period.

BSP Circular No. 943 dated 26 January 2017

- ▶ The Monetary Board, in its Resolution No. 2307 dated 23 December 2016, approved the one-year extension of the Basel III Leverage Ratio monitoring period from 31 December 2016 to 31 December 2017.

- ▶ Subsection X115.6 Basel III Leverage Ratio Framework of the Manual of Regulations for Banks (MORB) is amended to extend the submission of the Basel III Leverage Ratio reporting template, including required disclosure templates, on both solo and consolidated bases for monitoring purposes by the concerned banks until 31 December 2017. The report submission is summarized below:

Report Date	Reference Date	Deadline of Submission
31 December 2014 31 March 2015 30 June 2015	30 June 2015	30 banking days on both solo and consolidated bases from end of reference date
30 September 2015 31 December 2015	31 December 2015	15 banking days on solo basis from end of reference date and 30 banking days on consolidated basis from end of reference date
31 March 2016 30 June 2016	30 June 2016	
30 September 2016 31 December 2016	31 December 2016	
31 March 2017 30 June 2017	30 June 2017	
30 September 2017 31 December 2017	31 December 2017	

- ▶ Same section provides that during the monitoring period (31 December 2014 to 31 December 2017), the Bangko Sentral shall continue to assess the calibration as well as the treatment of the components of the leverage ratio. Final guidelines shall be issued in view of the changes. Public disclosure of information relative to leverage ratio shall not be required during the monitoring period.
- ▶ Same section provides for the sanctions in case of violation of this requirement.
- ▶ Section B of Appendix 111 of the MORB which provides for reporting and disclosure requirements is amended by this Circular.
- ▶ Subsection 4115Q.6 Basel III Leverage Ratio Framework of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) is also amended which now states that starting 31 December 2014 and every quarter thereafter until 31 December 2017, concerned Quasi-Banks (QBs) shall submit the Basel III Leverage Ratio reporting template, including required disclosure templates, on both solo and consolidated bases for monitoring purposes. The report submission as summarized above applies.
- ▶ The same section provides that during the monitoring period, the Bangko Sentral shall continue to assess the calibration as well as the treatment of the components of the leverage ratio. Final guidelines shall be issued. Public disclosure of information relative to leverage ratio shall not be required during the monitoring period.
- ▶ Same section provides for the sanctions in case of violation of this requirement.
- ▶ Section B of Appendix Q-65 of the MORNBF1 which provides for reporting and disclosure requirements is amended by this Circular.
- ▶ This Circular shall take effect immediately after its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular 943 was published in Business World on 1 February 2017.]

Circular No. 944 provides for the Guidelines for VC Exchanges.

BSP Circular No. 944 dated 6 February 2017

- ▶ The Monetary Board, in its Resolution No. 121 dated 19 January 2017, approved the following rules and regulations governing operations of Virtual Currency (VC) exchanges in the Philippines, which shall be incorporated as Section 4512N of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).
- ▶ Section 4512N shall provide for the statement of policy on VC exchanges. The same Section shall also govern the operations and reporting obligations of VC exchanges in the Philippines.
- ▶ The Bangko Sentral does not intend to endorse any VC, such as bitcoin, as a currency since it is neither issued or guaranteed by a central bank nor backed by any commodity. Rather, the BSP aims to regulate VCs when used for delivery of financial services, particularly, for payments and remittances, which have material impact on anti-money laundering (AML) and combating the financing of terrorism (CFT), consumer protection and financial stability.
- ▶ Subsec.4512N.1 shall provide for the scope of the guidelines. It shall cover VC exchanges in the Philippines offering services or engaging in activities that provide facility for the conversion or exchange of fiat currency to VC or vice versa. The Bangko Sentral recognizes that once fiat currency is exchanged or converted into VC, it becomes easily transferrable, facilitating expedient movement or transfer of funds and payment services, among others. In this manner, they are considered similar to remittance and transfer companies, as provided for under Section 3 in relation to Section 11 of Republic Act No. 9160 or the Anti-Money Laundering Act of 2001, as amended, and its Revised Implementing Rules and Regulations (RIRR), as well as implementing regulations issued by the Bangko Sentral.
- ▶ Subsec. 4512N.2 shall provide for the definition of terms used under Section 4512N.
- ▶ Subsection 4512N.3 of the MORNBFI is amended to provide for requirements for the issuance of a certificate of registration of a VC exchange.
- ▶ Subsection 4512N.4 of the MORNBFI is amended to provide for registration and annual service fees of a VC exchange.
- ▶ Subsection 4515N.5 of the MORNBFI is hereby amended to read as follows:

“Large value pay-outs of more than P500,000 or its foreign currency equivalent, in any single transaction with customers or counterparties, shall only be made via check payment or direct credit to deposit accounts.”
- ▶ This Circular amends the following Subsections of the MORNBFI: 4512N.6, which provides for technology risk management; 4512N.7, which provides for internal control; 4512N.8, which provides for notification and reporting requirements; and 4512N.15, which provides for sanctions.
- ▶ Subsections 4512N.9-4512N.14 of the MORNBFI are reserved.
- ▶ Appendix N-1 shall be amended to include the required reports for VC exchanges as provided under Subsection 4512N.8.
- ▶ This Circular shall take effect 15 calendar days following its publication in the Official Gazette or any newspaper of general circulation.

[Editor's Note: Circular 944 was published in Malaya on 9 February 2017.]

Circular No. 945 provides for the Amendments to the MORB and MORNBFI as of 30 June 2016.

BSP Circular No. 945 dated 6 February 2017

- ▶ The Monetary Board, in its Resolution No. 120 dated 19 January 2017, approved the following amendments to the MORB and MORNBFI as of 30 June 2016.
- ▶ Annex A of Appendix 89 (*List of Areas Covered by the Regulatory Relief; Inclusive Dates of Coverage; and Implementing Guidelines on the Restructuring Scheme*) of the MORB and Appendix Q-67 [*Regulatory Relief for Non-Bank Financial Institutions with Quasi-Banking Functions (NBQBs) Affected by Calamities*] of the MORNBFI are amended to add the grant of regulatory relief to covered areas affected by the “El Nino” phenomenon pursuant to Memorandum No. M-2016-006 dated 17 May 2016 (Annexes A and A-1).
- ▶ Item “m” of Subsection X326.1 of the MORB which provides for the definition of terms is amended to correct the cross-reference of the definition of “Secured loan, borrowing or other credit accommodation” from Item “k” to Item “l”.
- ▶ Item “c” of Subsection X361.4 of the MORB which provides for the exemptions from rules on unsecured loans is amended to correct the cross-reference of “Credit Review Process” from “Sec. X302” to “Subsection X178.16”.
- ▶ Item “b” of Subsection 4328Q.5 of the MORNBFI which provides for the loans, other credit accommodations and guarantees granted to subsidiaries and/or affiliates is amended to correct the cross reference of prescribed ceilings from Item “b” to Item “a”.

[Editor’s Note: Circular 945 was published in The Manila Times on 9 February 2017.]

Circular No. 946 provides for the Amendments to the Liquidity Floor and FCDO Regulations

BSP Circular No. 946 dated 17 February 2017

- ▶ The Monetary Board, in its Resolution No. 202 dated 2 February 2017, approved the following amendments to the MORB and the Manual of Regulations on Foreign Exchange Transactions (FX Manual). The amendments cover the relaxation of certain liquidity metrics in view of the improvements in banks’ risk management systems, including the adoption of the Liquidity Coverage Ratio for universal and commercial banks, which provides for a more calibrated approach in ensuring adequacy of a bank’s liquidity position.
- ▶ Under Subsection X240.6 of MORB, the liquidity floor reserve requirement for government funds held by authorized government depository banks under the MORB is amended. It provides that effective 01 January 2018, liquidity floor reserve requirement shall be as follows:

	Required liquidity floor
UBs/KBs	0%. Government deposits and government deposit substitutes shall continue to be subject to the reserve requirements provided under Section X253.
TBs/RBs and Coop Banks	50%. Inclusive of the required reserves against deposits and/or deposit substitutes.

- ▶ Same section provides what funds are also eligible for the liquidity floor.

- ▶ The foreign currency cover requirement for foreign currency liabilities in the FCDU/EFCDU and other regulations under Section 73 of the FX Manual is amended to include under subsection 1 thereof the net carrying amount of the following:

“l. Due From Head Office/Branches/Agencies Abroad - FCDU up to the extent of the Due To Head Office/Branches/Agencies Abroad - FCDU. Any resulting balance of *Net Due From Head Office/ Branches/Agencies Abroad - FCDU* shall not be eligible for 100% asset cover”

- ▶ Section 73.3 is also amended which provides that effective 01 January 2018, the liquid asset cover requirement for FCDU/EFCDU liabilities shall be as follows:

	Liquid asset cover
UBs/KBs	0%
TBs and RBs/Coop Banks	30%

- ▶ Section 73.3 is also amended to include the following as liquid assets:

“i. Due From Head Office/Branches/Agencies Abroad - FCDU up to the extent of the Due To Head Office/Branches/Agencies Abroad - FCDU. Any resulting balance of *Net Due From Head Office/ Branches/Agencies Abroad - FCDU* shall not be eligible for thirty percent (30%) liquid asset cover.

- ▶ Section 73.3 is also amended to provide that the report on compliance with FCDU/EFCDU cover requirements shall no longer be submitted separately by banks.
- ▶ The report on compliance with FCDU/EFCDU cover requirements (Appendix 15 of the FX Manual) shall no longer be submitted separately by banks. The Sworn Certification of Compliance with The FCDU/EFCDU Cover Requirements (currently Appendix 15.1 of the FX Manual, Annex A) shall be replaced by Appendix 15a (for UBs/KBs, Annex B) and Appendix 15b (for TBs, RBs and Coop Banks, Annex C) effective 01 January 2018 to align template of certification with the removal of the liquid asset cover requirement for UBs/KBs as of same date.
- ▶ Section 75 of the FX Manual is also amended which provides that starting 01 January 2018, UBs/KBs may maintain the foreign currency cover in any foreign currency acceptable with the BSP.
- ▶ The Circular shall take effect 15 calendar days after publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular 946 was published in Business Mirror on 23 February 2017.]

BOI Updates

Memorandum Circular No. 2017-002

- ▶ **Background**
 1. Pursuant to the Investments Priorities Plan (IPP), all economic/low-cost housing projects must comply with the 20% socialized housing requirement (SHR).

Memorandum Circular No. 2017-002 sets the revised terms and conditions for BOI-accredited NGOs engaged in socialized housing requirements and community development projects in compliance with the 20% socialized housing requirement.

2. For vertical housing projects, the 20% SHR may be complied with by donating to a BOI-accredited NGO an amount equivalent to: (i) 30% of 20% of the building construction cost based on the actual number of equivalent floor area of qualified saleable low cost housing units, or (ii) 40% of the estimated Income Tax Holiday (ITH).

▶ **Revised Terms and Conditions**

1. The accredited entity shall enter into a Memorandum of Agreement (MOA) with a BOI-registered enterprise. The MOA shall incorporate the prescribed mandatory provisions, which shall include, among others: (i) contribution approach and amount, (ii) timetable for completion of the project, (iii) year of ITH application, and (iv) obligations of the parties.
2. The construction cost per socialized housing unit shall not be less than PHP 200,000.
3. The project must be completed within 1 year from signing of the agreement or prior to ITH availment, whichever comes later.
4. The accredited entity shall:

- ▶ Submit the following to the BOI:
 - a. Signed and notarized MOA - within 15 days from signing of the MOA
 - b. Project Completion Report - 30 days from completion of the project
 - c. Annual Community Report - January 30 of the following year
 - d. Annual Summary of Contribution - January 30 of the following year
 - e. Other reports, information, or documents as may be required

Fines and penalties, including suspension from accepting donations from BOI-registered enterprise or cancellation of accreditation, will be imposed for failure to submit the reports within the prescribed period.

- ▶ Provide for basic facilities such as electricity, water, and sewerage system
- ▶ Complete the socialized housing units
 - a. Before entering into a new agreement / transferring to another location, prior construction must be completed and/or be done in accordance with the timetable set.
- ▶ Account for the BOI-registered enterprise's contribution
 - a. Issue an official receipt and Certificate of Donation to the BOI-registered enterprise and BOI.
 - b. Keep a separate book of accounts for contributions made by BOI-registered enterprises.
- ▶ Notify the BOI of any changes in:
 - a. Organizational structure (including Board members and officers)
 - b. SEC Registration and By-laws
 - c. Accreditation from the Board of Accountancy (BOA) or any other government agency
 - d. Affiliation (if member of NGO network)

5. The Certificate of Accreditation shall be valid for 3 years from approval date, unless revoked
 - ▶ Application for renewal must be filed 1 month before the expiry of the accreditation.
 - ▶ Failure to maintain compliance with the accreditation criteria and terms and conditions is a ground for revocation of the accreditation.

[Editor's Note: Published in The Philippine Star on 15 February 2017; p. V12]

Memorandum Circular No. 2017-003 streamlines the reporting requirements of BOI-registered enterprises, providing the guidelines for submission thereof, and circularizes the Revised BOI Form S-1 or Annual Report on Actual Operations.

Memorandum Circular No. 2017-003

- ▶ Effective year 2016 reporting and onwards, all BOI-registered enterprises are advised to use the revised BOI Form S-1 (Annual Report on Actual Operations), which is accessible and downloadable from the BOI website (www.boi.gov.ph). The enterprise shall submit one report for each registered project even if operation of the project has not yet commenced. The revised BOI Form S-1 shall be notarized and signed by the enterprise's authorized signatory and submitted in hard and soft copies (in excel format).
- ▶ Deadline for submission of the revised BOI Form S-1 shall be as follows:
 1. Calendar year: April 30 of the following year
 2. Fiscal year: Within 4 months after the end of the fiscal year
- ▶ Key disclosures in the report shall include:
 1. Company details;
 2. Company's financial performance for the year (i.e. balance sheet, debt-to-equity ratio, equity profile, income statement, taxes and duties paid for the year);
 3. BOI-registered project profile;
 4. Labor generation for the year;
 5. Foreign exchange inflows and outflows for the year;
 6. Production and performance data of the registered project for the year; and
 7. Compliance for mass housing projects, if applicable.
- ▶ The annual audited financial statements and income tax return (stamped received by the BIR) shall be scanned and submitted in a Compact Disc (CD).
- ▶ BOI-registered enterprises are no longer required to submit BOI Form S1-2 (Semestral Reports).

[Editor's Note: Published in The Philippine Star on 15 February 2017; p. V12]

The 60-day period within which BOI-registered entities are required to submit their BOI Certificate of Registration to the LGU is not mandatory for purposes of availing LBT exemptions; and the pendency of the issuance of a Certificate of Exemption by the LGU does not bar BOI-registered entities from availing the exemption from payment of LBT granted under Section 133 (g) of the LGC.

BLGF Opinion

BLGF Opinion No. 001-20117 (1st indorsement) dated 16 January 2017

Facts:

ABC Co. is duly registered with the Board of Investments ("BOI") as "New Operator of 500 Megawatts Coal-fired Power Plant using High-efficiency Supercritical Boiler Technology" and was granted a pioneer status.

For the year 2016, the Municipality of Mauban assessed ABC Co. for LBT and fees, which the latter paid. However, ABC Co. claimed that it is exempt from LBT pursuant to Section 133 (g) of the Local Government Code ("LGC").

Issue:

1. Whether the 60-day period for submission of the BOI Certificate of Registration to the LGU under Section 4 of Department of Finance Local Finance Circular (“DOF-LFC”) No. 05-93 dated October 22, 1993 is mandatory in order to avail of LBT exemption;
2. Whether the pendency of the issuance of the Certificate of Exemption by the LGU is a bar from availing of the LBT exemption granted under Section 133 (g) of the LGC.

Ruling:

1. The 60-day period within which the BOI-registered enterprise is required to submit its Certificate of Registration is not mandatory for purposes of availing the tax exemption. Thus, even after the lapse of the 60-day period, the tax exemption can still be availed, provided the entity is able to present its BOI-certified true copy of said Certificate of Registration.
2. No. As long as the business enterprise is able to present its BOI-certified true copy of its Certificate of Registration, it is allowed to enjoy its tax-exempt status under Section 133 (g) of the LGC. This is the only documentary proof required under Section 4 of DOF-LFC No. 05-93.

Court Decisions

Jaime N. Soriano, et. al. vs. Secretary of Finance and Commissioner of Internal Revenue

Supreme Court (*En Banc*), G.R. No. 184450, 184508, 184538, 185234 promulgated on 24 January 2017

The personal and additional exemptions under RA 9504 should be applied to the entire taxable year 2008 and not only from 6 July 2008, when the law became effective.

Similarly, a Minimum Wage Earner is exempt from income tax for the entire taxable year 2008, and not only from 6 July 2008.

Facts:

On 17 June 2008, Republic Act (RA) 9504 was signed into law amending certain provisions of the Tax Code and granted income tax exemption for minimum wage earners (MWEs) and an increase in personal and additional exemptions of individual taxpayers.

On 24 September 2008, the Secretary of Finance issued Revenue Regulations (RR) No. 10-2008 implementing the provisions of RA 9504 which provided, among others, that -

- ▶ The amount of ‘*de minimis*’ benefits not exceeding P30,000 shall not be considered in determining the P30,000 ceiling of non-taxable ‘*other benefits*,’ but MWEs receiving ‘*other benefits*’ exceeding the P30,000 ceiling shall be taxable on the excess benefits as well as on their salaries, wages and allowances, just like an employee receiving compensation income beyond the Statutory Minimum Wage (SMW).
- ▶ Minimum Wage Earners (MWE) receiving ‘*other benefits*’ exceeding the P30,000 ceiling shall be taxed on such ‘*other benefits*’ as well as on their entire salaries, wages, and allowances, as if they are not Statutory Minimum Wage (SMW) earners.

- ▶ Employees receiving additional compensation (such as commissions, honoraria, fringe benefits) in excess of the P30,000 ceiling, taxable allowances and other taxable income other than the SMW, holiday pay, overtime pay, night shift differential, and hazard pay, shall not enjoy the privilege of being an MWE and therefore, their entire earnings are not exempt from income tax, and consequently, from withholding tax.
- ▶ MWEs receiving other income (such as income from the conduct of trade or business) in addition to compensation income are not exempted from income tax on their entire income earned during the taxable year. However, the SMW, holiday pay, overtime pay, night shift differential and hazard pay shall still be exempt from withholding tax.
- ▶ For year 2008, being the initial year of RA 9504's implementation, there shall be a transitory withholding tax table from 6 July to 31 December 2008 determined by prorating the annual personal and additional exemptions over the 6 month period.

Petitioners sought the nullification RR No. 10-2008 insofar as they provided for the following:

- ▶ Adoption of a pro-rated application of the new set of personal and additional exemptions;
- ▶ Applicability of MWEs' income tax exemption for taxable year 2008 to begin only on 6 July 2008; and
- ▶ Disqualification of MWEs who earn purely compensation from the privilege of availing the MWE exemption in case they receive compensation-related benefits in excess of the P30,000 ceiling.

Issues:

- (1) Should the increased personal and additional exemptions provided by RA No. 9504 be applied for the entire taxable year 2008 or only from effectivity of the law on 6 July 2008?
- (2) Is an MWE exempt from income tax for the entire taxable year 2008 or only from effectivity of the law on 6 July 2008?
- (3) Are Sections 1 and 3 of RR No. 10-2008, declaring that an MWE who receives other benefits in excess of the Php30,000 limit is no longer entitled to the exemption provided by RA 9504, consistent with RA 9504?

Ruling:

- (1) The personal and additional exemptions under RA 9504 should be applied to the entire taxable year 2008.

RA 9504 was a piece of social legislation and its intent was to make the proposed law immediately applicable - i.e. taxable year 2008 - in order to provide immediate relief to the people as a result of the rising costs of commodities.

Moreover, the policy of full taxable year treatment for personal and additional exemptions is clear under Section 35 of RA 8424 (1997 Tax Code) even in case a status-changing event occurs during the taxable year. There is likewise nothing in RA 9504 which expressly provides or suggests a pro-rated application of the exemptions for taxable year 2008.

- (2) An MWE is exempt from income tax for the entire taxable year 2008.

As in the case of the adjusted personal and additional exemptions, the MWE exemption should apply to the entire taxable year 2008, and not only from 6 July 2008 onwards.

The calendar year 2008 remained as one taxable year for an individual taxpayer. As such, RR No. 10-2008 cannot declare the income earned by an MWE from 1 January 2008 to 5 July 2008 to be taxable and those earned by him for the rest of the year to be tax-exempt. To do so would be to contradict the Tax Code and jurisprudence, as taxable income then ceases to be determined on a yearly basis.

However, the full year MWE exemption is premised on the fact that the employee was an MWE as defined under RA 9504 during the entire year of 2008. As such, wages become taxable as the employee ceases to be an MWE. However, the exemption of the employee from tax on the income previously earned as an MWE remains.

- (3) Sections 1 and 3 of RR No. 10-2008 are inconsistent with RA 9504.

RA 9504 has given definite criteria for what constitutes an MWE and RR No. 10-2008 cannot change these.

The treatment of bonuses and other benefits that an employee receives from the employer in excess of the P30,000 ceiling remains the same - anything in excess of P30,000 is taxable. The treatment of this excess cannot serve to disenfranchise the MWE from enjoying the exemption explicitly granted by RA 9504.

The Secretary of Finance and Commissioner of Internal Revenue are directed to grant a refund or allow the application of the refund by way of withholding tax adjustments, or allow a claim of tax credits by -

- (i) all individual taxpayers whose incomes for taxable year 2008 were the subject of the pro-rated increase in personal and additional tax exemption; and
- (ii) all MWEs whose minimum wage incomes were subjected to tax for their receipt of the 13th Month Pay and other bonuses and benefits exceeding the threshold amount under Section 32(B)(7)(e) of the 1997 Tax Code.

Commissioner of Internal Revenue vs. Ansi Agricultural Products, Inc.

CTA (*En Banc*) Case 1340, promulgated 30 January 2017

Where a receivable arising from a sale on credit in a previous year is offset against a payable from the same company in a subsequent year, no new income is recognized in the year the offsetting was made. Instead, the supposed income was already recognized in the year the sale on credit was made, and the related income tax therefrom was already paid.

Facts:

In 2004, Respondent Ansi Agricultural Products, Inc. (AAPI), a domestic corporation engaged in trading of agricultural raw materials, animal feeds and animal feed ingredients, sold on credit animal feed ingredients to Swift Foods, Inc. (Swift) amounting to P6,768,357.50.

Swift made partial payments of P700,000. Due to financial difficulties, however, Swift entered into a swap agreement in 2005 with AAPI, which received old-stock chickens worth P2,310,495.50.

In 2009, Swift additionally paid AAPI P891,000, which left, in AAPI's books, a balance of Accounts Receivable (AR) from Swift of P5,177,357.50. AAPI then offset its AP to Swift of P2,310,495.50 arising from the swap agreement against its AR from Swift.

After several demands, follow-ups and visits, AAPI subsequently wrote off the remaining AR from Swift of P2,866,862.

Petitioner Bureau of Internal Revenue (BIR) issued a deficiency income tax assessment to AAPI for taxable year 2009, in relation to the amount of AR from Swift which AAPI offset against its AP to Swift. The BIR explains that this amount is undeclared other income which AAPI unilaterally declared to be condoned and offset against its AR from Swift. The BIR alleges that this should have been reported as part of AAPI's 2009 taxable income.

AAPI filed its protest and upon denial by the BIR, AAPI filed a Petition for Review at the Court of Tax Appeals (CTA), which ruled in its favor. The CIR appealed to the CTA *En Banc*.

Issue:

Can AAPI offset its AR from Swift with its AP to SWIFT without recognizing any taxable income in 2009?

Ruling:

Yes. The revenue of AAPI from its sale of animal feed ingredients to Swift was already recognized in 2004, when the related income tax was presumably paid.

No new income is recognized in 2009 upon the partial settlement of Swift's debt, by way of offsetting, as there was no gain realized therefrom. To recognize income and to demand payment of income tax in taxable year 2009 from AAPI on the same revenue already recognized in 2004, upon offsetting in 2009, will effectively re-impose income tax which was already paid.

The CTA, not the RTC, has jurisdiction to rule on the validity of BIR revenue regulations or revenue memorandum circulars.

Income tax may be imposed on the taxable income derived from all sources of a resident-citizen, except in a situation where the citizen is exempt under the provisions of a treaty, which is binding upon the Philippine government.

The Philippine government made a specific declaration when it ratified and confirmed the ADB Charter that it is retaining its right to tax the salaries and emoluments paid by ADB to its citizens and nationals.

Edzen Jogie B. Garcia vs. Commissioner of Internal Revenue

CTA (First) Division Case 9075, promulgated 9 February 2017

Facts:

Petitioner Garcia filed a claim for refund of his income tax for 2012 alleged to have been erroneously assessed and collected from his tax-exempt income from the Asian Development Bank (ADB). Due to inaction on the part of the Respondent Commissioner of Internal Revenue (CIR), Garcia filed a Petition for Review with the CTA.

In her answer, the CIR argued that Garcia, as a Filipino citizen and resident, is subject to income tax. In signing the ADB Headquarters Agreement in 1956, the Philippine government accorded tax exemption privileges to ADB and its staff but held on to the State's inherent power to tax its nationals.

Prior to Garcia's application for a tax refund, other ADB employees filed at the Mandaluyong City Regional Trial Court (RTC) a petition to nullify Section 2(d)(1) of Revenue Memorandum Circular (RMC) 31-2013, which clarifies that only ADB officers and staff who are not Philippine nationals are exempt from Philippine income tax. The RTC ruled that RMC 31-2013 is void for being issued without legal basis, in excess of authority and without due process of law. The case was elevated to the Court of Appeals but both the petition and motion for reconsideration were denied.

Issues:

1. Should Garcia's refund be granted on the basis of the RTC's nullification of RMC 31-2013?
2. Can the BIR subject to income tax the salaries and other emoluments of resident citizens employed by ADB without violating the ADB Charter?

Ruling:

1. No. The RTC decision is insignificant in the resolution of the present case. Garcia was not a party to the case on which the doctrine of *res judicata* may possibly apply. The decision is not a binding precedent that forms part of the Philippine legal system.

The RTC decision even appears to be jurisdictionally infirm insofar as it declared that Section 2(d)(1) of RMC 31-2013 is a nullity. The CTA is vested with the jurisdiction to rule on the validity of revenue regulations or revenue memorandum circulars. The CTA may not be deprived of its power to review the validity of a claim for a tax refund, which falls within its exclusive appellate jurisdiction, simply on the basis of the existence of the RTC decision.

2. Yes. Resident citizens are taxed on income derived from all sources within and without the Philippines as provided under Section 23(A) and 24(A)(1)(a) on the Tax Code. The Tax Code is clear and categorical in its imposition of income tax on taxable income derived from all sources of a resident citizen, such as compensation received for services performed in the Philippines, except in a situation where the citizen is exempt under the provisions of a treaty, which is binding upon the Philippine government.

The ADB Charter provides a tax exemption provision with respect to the salaries and emoluments paid by ADB to its officers and employees, but the same also contains a proviso wherein a member-country may opt to retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such member-country. The Philippine government made a specific declaration when it ratified and confirmed the ADB Charter that it is retaining its right to tax the salaries and emoluments paid by ADB to its citizens and nationals.

There is nothing in the ratification document which would suggest that the Philippine government has granted tax exemption to its citizens or nationals with respect to the salaries and emoluments paid by ADB. In the absence of a specific grant of income tax exemption, the BIR legally collected the income tax on resident citizen-employees and the tax paid cannot be the proper subject of refund under Section 229 of the Tax Code.

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