

# Tax Bulletin

January 2017



# Highlights

## BIR Rulings

- ▶ The reconveyance of real property pursuant to a court-approved compromise agreement is subject to Capital Gains Tax (CGT) and Documentary Stamp Tax (DST). **(Page 3)**
- ▶ The transfer of real properties by a trustee to a trustor, as a result of the termination of the trust agreement, is not subject to CGT, value-added tax (VAT), donor's tax and DST. **(Page 4)**
- ▶ Proof of actual operation for at least three years is necessary for a non-stock, non-profit educational institution to claim income tax exemption under Section 30 (H) of the Tax Code. **(Page 5)**

## BIR Issuances

- ▶ Revenue Regulations (RR) No. 1-2017 clarifies the prospective application of the "deemed-denied" provision of Revenue Memorandum Circular (RMC) No. 54-2014 for VAT claims for refund and the reckoning of the 120-day period to administratively process such claims. **(Page 5)**
- ▶ Revenue Memorandum Circular (RMC) No. 137-2016 clarifies the timetable for the processing of a business registration with the BIR and amends the checklist of documentary requirements for such registration as prescribed under RMC No. 93-2016. **(Page 6)**
- ▶ RMC No. 1-2017 clarifies Section 2(c) of Revenue Regulations (RR) No. 7-2014 on the colors of cigarette tax stamps in relation to the effectivity of the unitary excise tax rate under RR No. 17-2012. **(Page 7)**
- ▶ RMC No. 5-2017 identifies the 2017 BIR Priority Programs. **(Page 7)**
- ▶ RMC No. 8-2017 clarifies the VAT treatment of government payments for Overseas Economic Cooperation Fund (OECF) - funded projects under the Exchange of Notes between the Philippines and Japan. **(Page 9)**

## BSP Issuances

- ▶ Circular No. 934 provides for the Amendments on the Treatment of Other Comprehensive Income in the Computation of Basel III Risk-based Capital. **(Page 10)**
- ▶ Circular No. 935 provides for the Amendment of Circular No. 863 dated 29 December 2014 - Extension of the Deadline for the Exchange or Replacement of New Design Series Banknotes with the Bangko Sentral ng Pilipinas (BSP) or its authorized agent banks and financial institutions at par with New Generation Currency Banknotes and without charge, from 31 December 2015 to 31 March 2017. **(Page 11)**
- ▶ Circular No. 936 provides for the Guidelines on the Implementation of the EMV Card Fraud Liability Shift Framework. **(Page 12)**

- ▶ Circular No. 937 provides for the Amendments to Foreign Exchange Regulations. **(Page 13)**
- ▶ Circular No. 938 provides for the Amendments to the Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) - Pawnshop (P) Regulations. **(Page 13)**
- ▶ Circular No. 939 provides for the Amendment of Circular No. 910 dated 22 April 2016 – Extension of the Period for the Exchange or Replacement of New Design Series (NDS) Banknotes in the Custody of (i) Authorized Agent Banks (AABs), (ii) Office of Provincial/City/Municipal Treasurers (OTs) and (iii) Overseas Filipinos (OFs), Filipino Immigrants and Non-Residents. **(Page 18)**
- ▶ Circular No. 940 provides for the Guidelines on Deposit and Cash Servicing Outside of Bank Premises. **(Page 18)**
- ▶ Circular No. 941 provides for Amendments to the Regulations on Past Due and Non-Performing Loans. **(Page 19)**
- ▶ Circular No. 942 provides for the Amendment to Section 4511N of the Manual of Regulations for Non-Bank Financial Institutions. **(Page 21)**

### **BOI Update**

- ▶ Memorandum Circular (MC) No. 2017-001 directs all foreign investors in export enterprises to submit an Annual Export Performance Report. **(Page 21)**

### **Court Decisions**

- ▶ The receipt of the notices by unauthorized personnel cannot be deemed receipt by the taxpayer.

The filing of a protest to the FAN does not cure the BIR's violation of its right to due process. **(Page 22)**

- ▶ An employee who earns additional compensation in excess of the allowable statutory amount of P30,000 (now P82,000) shall not enjoy the privilege of being a Minimum Wage Earner and his entire earnings are not exempt from income tax and consequently, from withholding tax. **(Page 23)**

### **BIR Rulings**

#### **BIR Ruling No. 423-2016 dated 7 December 2016**

##### ***Facts:***

Spouses A and B executed a Deed of Reconveyance of Property covering a parcel of land in favor of X. The said reconveyance was made pursuant to a Compromise Agreement duly approved by the Municipal Trial Court of Santa Cruz, Laguna.

##### ***Issue:***

Is the reconveyance of real property pursuant to a court-approved compromise agreement exempt from CGT and DST?

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The reconveyance of real property pursuant to a court-approved compromise agreement is subject to CGT and DST.

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***Ruling:***

No. While the reconveyance of the parcel of land was made in accordance with a court decision, the transfer of the said property is nevertheless covered by the clause "other disposition of real property" subject to CGT under Section 24 (D) (1) of the Tax Code. The phrase "other disposition" includes within its purview all kinds of dispositions of real property, unless specifically excluded or subject to a different tax treatment. Moreover, the reconveyance of real property is subject to DST under Section 196 of the Tax Code.

**BIR Ruling No. 445-2016 dated 19 December 2016**

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The transfer of real properties by a trustee to a trustor, as a result of the termination of the trust agreement, is not subject to CGT, VAT, donor's tax and DST.

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***Facts:***

A, the Trustor, entered into a Trust Agreement with XYZ Bank, the Trustee, where A conveyed cash funds to XYZ Bank to be held in trust, managed, invested and reinvested for the benefit of certain beneficiaries. Pursuant to the Trust Agreement, XYZ Bank purchased condominium units using the funds held in trust and caused them to be registered in its name.

Subsequently, A executed a Deed of Release and Quitclaim, where A informed XYZ Bank of its decision to terminate the Trust Account. As a consequence, the real properties covered by the trust would have to be transferred in the name of A as the beneficial owner.

***Issues:***

1. Is the transfer subject to CGT?
2. Is the transfer subject to VAT?
3. Is the transfer subject to donor's tax?
4. Is the execution of the Deed of Release and Quitclaim subject to DST?

***Ruling:***

1. No. The transfer of properties by a trustee in favor of a trustor, who is the beneficial owner of the property, is not subject to CGT imposed under Section 27 (D) (5) of the Tax Code, or to the creditable withholding tax prescribed in RR No. 2-98, as amended, considering that the conveyance is not motivated by a valuable consideration and merely acknowledges, confirms and consolidates the legal title and beneficial ownership over the properties in the name of the trustor.
2. No. The transfer of the subject properties is not subject to 12% VAT because the said properties are not held primarily for sale to customers or for lease in the ordinary course of trade or business.
3. No. The transfer of the properties without any monetary consideration is not subject to donor's tax imposed under Section 98 of the Tax Code since there is no donative intent on the part of the Trustee.
4. No. The Deed of Release and Quitclaim executed to terminate the trust relationship between the Trustee and the Trustor and the consolidation of the legal title and beneficial ownership over the subject properties is a conveyance without monetary consideration. Hence, it is not subject to DST imposed under Section 196 of the Tax Code. However, the notarial acknowledgment to such deed is subject to the DST of P15.00 under Section 188 of the Tax Code.

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### **BIR Ruling No. 001-2017 dated 5 January 2017**

Proof of actual operation for at least three years is necessary for a non-stock, non-profit educational institution to claim income tax exemption under Section 30 (H) of the Tax Code.

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#### **Facts:**

A Co. is a domestic non-stock, non-profit educational foundation duly registered with the SEC on 7 February 2014. On 8 August 2014, A Co. requested for the issuance of a BIR Certificate of Tax Exemption enjoyed by non-stock, non-profit educational institutions under Section 30 (H) of the Tax Code.

#### **Issue:**

Is A Co. entitled to a Certificate of Tax Exemption?

#### **Ruling:**

No. A certificate of tax exemption cannot be issued to A Co. because it failed to prove, by actual operation for at least three years, that it is really a corporation/ association exempt from income tax under Section 30 (H) of the Tax Code.

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### **BIR Issuances**

RR No. 1-2017 clarifies the prospective application of the "deemed-denied" provision of RMC No. 54-2014 for VAT claims for refund and the reckoning of the 120-day period to administratively process such claims.

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#### **RR No. 1-2017 dated 18 January 2017**

- ▶ The "deemed denied" provision under RMC No. 54-2014, which provides that the inaction of the Commissioner on a claim for a VAT refund for a period of 120 days from submission of complete documents shall be deemed a "denial" of the claim, will not apply to claims for VAT refund filed before 11 June 2014.
- ▶ Thus, claims for VAT refund, which were filed prior to such date, shall continue to be processed administratively by the BIR, provided that:
  1. Before the lapse of the 2-year prescriptive period for filing a claim for VAT refund under Sec. 112(A) of the Tax Code, the taxpayer must have submitted the complete documents in support of the claim as it is only upon the submission of complete documents that the claimant's application is deemed "officially received" by the BIR.
  2. The Commissioner, or his duly authorized representative, should have decided on the claim within 120 days from the date of submission of complete documents, or from the date of the filing of the application, if the claimant did not submit additional documents. Hence, pending administrative claims prior to the effectivity of RMC No. 54-2014 shall be processed by the concerned offices based on available documents submitted by the claimant-taxpayer within the 2-year period.
- ▶ The following claims filed and pending before the effectivity of RMC No. 54-2014 are not covered by these Regulations:
  1. Claims filed beyond the two-year statutory prescriptive period under Section 112 (A) of the Tax Code.
  2. Claims denied in writing by the approving authority.
  3. Claims approved or granted fully or partially by the approving authority.
  4. Claims already appealed to and pending with the Court of Tax Appeals (CTA) unless there is proof of withdrawal of the case filed with the CTA.

- ▶ These regulations shall take effect 15 days after its publication in a newspaper of general circulation.

*(Editor's Note: RR No. 1-2017 was published in the Manila Bulletin on 20 January 2017)*

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RMC No. 137-2016 clarifies the timetable for the processing of a business registration with the BIR and amends the checklist of documentary requirements for such registration as prescribed under RMC No. 93-2016.

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#### **RMC No. 137-2016 dated 29 December 2016**

- ▶ All checklists of documentary requirements for business registrations shall be accomplished by the applicant-taxpayer in duplicate copies.
- ▶ The application for business registration shall be processed within 5 working days from submission of complete documentary requirements.
- ▶ Applications with incomplete requirements shall still be accepted by the Revenue District Office (RDO) and shall be kept up to 30 calendar days from the date of receipt.
- ▶ After the 30-day period, the concerned RDO shall prepare a list of unprocessed applications with incomplete requirements, with a recommendation for disposal due to non-compliance.
- ▶ The following annexes of RMC No. 93-2016 are amended as follows:
  1. **A1** - addition of "Franchise Documents (e.g. Certificate of Public Convenience) if applicable, for Common Carrier" as a documentary requirement for the registration of self-employed individuals, estates and trusts.
  2. **A2.1** - addition of "Franchise Documents (e.g. Certificate of Public Convenience) if applicable, for Common Carrier" as a documentary requirement for the registration of corporations and partnerships (taxable or non-taxable).
  3. **A2.2** - deletion of "Proof of payment of Annual Registration Fee" as a documentary requirement for the registration of Homeowner's Association and Labor Organization, Association or Group of Union or Workers.
  4. **A4** - addition of "Photocopy of duly received Application for Alien Employment Permit (AEP) by the Department of Labor and Employment (DOLE)", in lieu of working permit, as a documentary requirement for the registration of employees.
  5. **A6** - deletion of "Job Order" as a documentary requirement for Application for Authority to Print.
  6. **A7** - deletion of "Official Appointment Book (for Professional only)" as a documentary requirement for the registration of books of accounts.
  7. **A10** - addition of "Amended Articles of Incorporation/Partnership and Certificate of Filing of Amended Articles of Incorporation/ Partnership" as a documentary requirement for transfers of business registration to another RDO.

RMC No. 1-2017 clarifies Section 2(c) of Revenue Regulations (RR) No. 7-2014 on the colors of cigarette tax stamps in relation to the effectivity of the unitary excise tax rate under RR No. 17-2012.

**RMC No. 1-2017 dated 4 January 2017**

- ▶ All removals/withdrawals/importations of cigarettes, whether packed by hand, or by machine, shall be subject to the unitary excise tax rate of Php30.00.
- ▶ The classification of the internal revenue stamps shall be reduced from 6 to 3 as follows:

Existing			Effective January 1, 2017				
Classification	Tax Bracket	Six (6) Colors	Classification	Tax Bracket	Three (3) Colors		
Domestic	Low	Yellow	Domestic	Unitary Rate (Php30.00)	Pink		
	High	Pink					
Imported	Low	Orange	Imported		Unitary Rate (Php30.00)	Orange	
	High	Violet					
Export	Low	Green	Export			Unitary Rate (Php30.00)	Green
	High	Blue					

- ▶ The Excise LT Field Operations Division (ELTFOD) shall conduct an inventory count of all unused/unissued/unaffixed internal revenue stamps in the possession of cigarette manufacturers or importers and exporters as of 31 December 2016.
- ▶ After the said date, all removals or importations using the old internal revenue stamps shall pay the differential excise tax due through the Electronic Filing Payment System (eFPS) using BIR Form No. 2200-T.

RMC No. 5- 2017 identifies the 2017 BIR Priority Programs.

**RMC No. 5-2017 dated 5 January 2017**

The BIR has identified the following priority programs for calendar year 2017 in order to attain collection targets, improve taxpayer satisfaction, protect revenues, and recapture public trust:

- ▶ **Comprehensive Taxpayer Profiling and Industry Benchmarking** - mandates comprehensive taxpayers' profiling and industry benchmarking activities to cover an expanded list of industries for all types of taxes.
- ▶ **Oplan Kandado Program** - involves the imposition of administrative sanctions, such as suspension of business operations and temporary closure of business establishments, for non-compliance with the essential requirements of the VAT system.
- ▶ **Updating of Schedules of Zonal Value** - mandates the updating or revision of the existing schedule of BIR Zonal Valuations to reflect current real property valuation, taking into account the most recent sales, transfers, or exchanges of properties.
- ▶ **Broadening of the Tax Base** - mandates the increase in the number of registered taxpayers or businesses through tax compliance verification drives (TCVD) and third party information (e.g., government-regulated agencies).
- ▶ **Implementation of Centralized Arrears Management in Regional Offices** - prescribes the implementation of re-engineered processes of arrears management in Revenue Region (RR) No. 13 - Cebu City, RR No. 16 - Cagayan de Oro, and RR No. 19 - Davao City.

- ▶ **Run After Tax Evaders (RATE) Program** - mandates a review of all pending cases with the Court of Tax Appeals (CTA) and the Department of Justice (DOJ), and the competent handling of such cases and their expeditious resolution.
- ▶ **Exchange of Information (EOI)** - Foreign Account Tax Compliance Act (FATCA) - mandates the creation of an increased awareness of the benefits of EOI in collecting taxes, particularly, on cross- border transactions.
- ▶ **Expansion of Compromise Settlement Program (LTS audit cases)** - involves the broadening of the compromise settlement program available to taxpayers even during the pendency of the tax assessment process.
- ▶ **Review of Revenue Issuances** - mandates the review and recall, if warranted, of revenue issuances, which impose unnecessary burden on taxpayers (improve TP satisfaction), to provide "Ease of Doing Business."
- ▶ **Review of Tax Rulings** - mandates the review and revocation of tax rulings, which hinder business transactions.
- ▶ **Taxpayer Segmentation (Large, Medium, Small)** - involves a review of the criteria for classification of taxpayers according to business size (large/medium/small/micro) to properly address their tax concerns in order to:
  1. Strengthen the Large Taxpayer Service by expanding its coverage;
  2. Create a special unit in each Regional Office, which will closely monitor the compliance of Medium Taxpayers; and
  3. Focus on catering to the needs of Small/Micro Taxpayers.
- ▶ **Simplification of Tax Forms** - mandates the simplification of tax forms, including filing frequency, according to taxpayer's business size (large/medium/small/micro).
- ▶ **Expansion of eFPS Facilities thru eBIR Forms** - expands the coverage of the eFPS facilities to include other non-large taxpayers.
- ▶ **Additional Options or Facilities for Payment of Taxes** - involves providing taxpayers with additional options or facilities to pay taxes using Credit/Debit/ Prepaid Cards and mobile payments.
- ▶ **Development of Tax Clearance Processing Team** - mandates the convenient and expeditious issuance, through online application and processing, of tax clearances.
- ▶ **Enhancement of Electronic Registration System** - involves strengthening the registration databases in order to allow taxpayers to register and update their data online.
- ▶ **Electronic Tax Information System (eTIS)** - optimization of the initial eTIS modules developed: Taxpayer Registration System (TRS), Returns Filing and Processing (RFP), Audit/Case Management System (CMS), Collection and Remittance Reconciliation (CRR).
- ▶ **In-house enhancement of Electronic Certificate Authorizing Registration (eCAR) System** - involves the automatic assignment and validation of Accountable Form Serial Numbers to each RDO, and offline encoding, as an alternative, in case of a downtime of the system due to poor or intermittent internet connection.



- ▶ **Geographical Information System (GIS)** - involves the adoption of a system, which allows users to collect, manage and analyze large volumes of spatially referenced and associated attribute data, using a web-based geographical data visualization and information system.
- ▶ **Enhancement of Electronic Official Registry Book (eORB)** - involves the enhancement of existing eORB System on tobacco products and the expansion of the system for alcohol products.
- ▶ **Internal Revenue Stamps Integrated System (IRSIS) for Alcohol Products-Distilled Spirits** - mandates the collection of correct excise taxes on distilled spirits and wines, as well as to curb illicit trade of alcohol products in the country.
- ▶ **Integrity Management Program (IMP)** - involves the adoption of a standard but flexible approach at the Agency and Program levels in ensuring that standard norms of conduct for public officials are consistently applied through:
  1. Removal of corrupt and erring revenue personnel and to relieve or transfer personnel with unsatisfactory records of collection performance.
  2. Strengthening the Internal Affairs Service to perform swift action of administrative cases filed against BIR personnel.
- ▶ **Revalidation or Audit of tax assessment**
- ▶ **Salary Standardization Law** - involves the submission of a legislative proposal to remove the BIR from the Salary Standardization Law (SSL).
- ▶ **Expedite recruitment of personnel** - mandates the immediate recruitment of 996 new staff for all offices or units.
- ▶ **Use of Case Monitoring System (CMS) or eLAMS** - involves the utilization of a Case Monitoring System/eLAMS to regularly monitor outstanding Letters of Authority in order to require mandatory observance of the period to audit and to track progress of audit cases.

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RMC No. 8-2017 clarifies the VAT treatment of government payments for OECF-funded projects under the Exchange of Notes between the Philippines and Japan.

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**RMC No. 8-2017 dated 11 January 2017**

- ▶ Under the Exchange of Notes between the Philippines and Japan, Japanese suppliers, contractors or nationals engaged in OECF-funded projects in the Philippines, shall not be required to shoulder any fiscal levies and/or taxes associated with the project.
- ▶ In order to effectively implement the Exchange of Notes, the following rules shall apply to the VAT treatment of government money payments for such projects:
  1. VAT-registered suppliers and sub-contractors of Japanese companies shall bill and pass on the 12% VAT to the Japanese companies or contractors.
  2. In turn, the Japanese contractors shall bill and pass on the 12% VAT to the concerned executing agencies.
  3. The Japanese contractors shall file the prescribed VAT returns on gross receipts derived from OECF-funded projects.

4. Such contractors shall claim the input taxes from their purchase of goods, properties and services from their suppliers or subcontractors and shall pay the output tax or VAT, after offsetting the creditable or allowable input taxes, considering that the amount intended for payment of the VAT has already been collected and received by the Japanese contractors or nationals as part of their total billing or invoice price.
5. Input taxes arising from transactions attributable to activities unrelated to the OECF-funded project shall not be credited against the output tax on gross receipts from the project.

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## **BSP Issuances**

Circular No. 934 provides for the Amendments on the Treatment of Other Comprehensive Income in the Computation of Basel III Risk-based Capital.

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### **BSP Circular No. 934 dated 23 December 2016**

- ▶ Part II Qualifying Capital of Appendix 63b/Appendix Q-46 to Section X115/ Subsection 4115Q.1 (2008-4116Q) of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on the Risk-Based Capital Adequacy Framework for the Philippine Banking System is hereby amended as follows:

#### **“Part II. Qualifying Capital**

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#### **Section A. Domestic Banks**

##### **CET1 Capital**

3. CET1 capital consists of:

- a. Paid up common stock issued by the bank that meet the eligibility criteria in *“App.63b/App. Q-46 Annex A”*

xxx

- g. **Other comprehensive income**

- (1) **Net unrealized gains or losses on available for sale (AFS) securities;**  
**and**

- (2) **Cumulative foreign currency translation;**

- (3) **Remeasurement of Net Defined Benefit Liability/ (Asset);**

- (4) **Gains/ (Losses) on Fair value Adjustments of Hedging Instruments; and**

- (a) **Cash Flow Hedge; and**

- (b) **Hedge of a Net Investment in Foreign operations**

- (5) **Others (indicate the nature and amount of the accounts lodged)**

- h. **Minority interest xxx**

xxx

#### **Section B. Branches of Foreign Banks**

**“CET1 capital**

10. CET1 capital shall be comprised of:

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e. Other comprehensive income

(1) Net unrealized gains or losses on available for sale (AFS) securities; and

(2) Cumulative foreign currency translation;

(3) Remeasurement of Net Defined Benefit Liability/ (Asset);

(4) Gains/ (Losses) on Fair Value Adjustments of Hedging Instruments; and

(a) Cash Flow Hedge; and

(b) Hedge of a Net Investment in Foreign operations

(5) Others (indicate the nature and amount of the accounts lodged)

“Regulatory adjustments to CET1 capital

xxx”

- ▶ The Manual of Accounts section under the Financial Reporting Package/ Simplified Financial Reporting Package for Banks is amended to include items (d) remeasurements of net defined benefit liability (asset) and (e) net unrealized gains/ (losses) on fair value attributable to changes in own credit risk of financial liabilities designated at fair value through profit or loss to the definition of other comprehensive income of equity accounts.
- ▶ The revised reporting templates for the Balance Sheet under the Financial Reporting Package for Banks (FRP) and Simplified Financial Reporting Package for Rural and Cooperative Banks (Simplified FRP), attached as Annexes A and B, respectively, shall take effect as of end-March 2017.

Pending the specific guidelines on the availability and submission of the revised FRP/Simplified FRP, items (d) and (e) of Other Comprehensive Income account shall continue to be reported as “Other Comprehensive Income - Others.”

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

*[Editor’s Note: Circular 934 was published in The Manila Standard on 29 December 2016.]*

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Circular No. 935 provides for the Amendment of Circular No. 863 dated 29 December 2014 - Extension of the Deadline for the Exchange or Replacement of New Design Series Banknotes with the BSP or its authorized agent banks and financial institutions at par with New Generation Currency Banknotes and without charge, from 31 December 2015 to 31 March 2017.

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**BSP Circular No. 935 dated 28 December 2016**

- ▶ The Monetary Board, in its Resolution No. 2331 dated 27 December 2016, approved the amendment of the second paragraph of Circular No. 853 dated 29 December 2014, thus:

“During the one-year period beginning 01 January 2015 and ending 31 December 2015, the NDS banknotes shall remain legal tender or acceptable as payment instrument in any transaction. Effective 01 January 2016, the NDS banknotes shall cease to be legal tender but may still be exchanged or replaced until 31 March 2017 with the BSP or its authorized agent banks and financial institutions at par with the NGC banknotes and without charge. After 31 March

2017, the NDS banknotes which have not been exchanged shall cease to be a liability of the BSP and shall be demonetized. The BSP shall also demonetize all the NDS banknotes which have been called in and surrendered for replacement.”

- ▶ This Circular shall be effective immediately.

[Editor's Note: Circular 935 was published in The Philippine Star on 30 December 2016.]

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Circular No. 936 provides for the Guidelines on the Implementation of EMV Card Fraud Liability Shift Framework.

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#### **BSP Circular No. 936 dated 28 December 2016**

- ▶ The Monetary Board, in its Resolution No. 2304 dated 23 December 2016, approved: (i) the amendments to Subsections X177.7, X177.9 and Appendix 108 of the Manual of Regulations for Banks (MORB); and (ii) the attached guidelines governing the implementation of EMV Card Fraud Liability Shift Framework (ECFLSF) which is attached to Subsection X177.7 of the MORB and related to Appendix 108 of the MORB.
- ▶ Addition of Appendix 108a to the MORB to provide the general principles and guidelines in the allocation of liability and resolution of disputes on fraudulent transactions arising from counterfeit cards.
- ▶ Amendment of Appendix 108 of the MORB by deleting item I and amending item J to read as follows:

##### *I. Updated EMV migration plan*

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“All Bangko Sentral Supervised Institutions (BSIs) shall support migration to EMV standards. Consequently, all cards issued and card-accepting devices should be EMV-compliant.

- ▶ Amendment of Subsection X177.7 of the MORB to read as follows:

xxx

3. IT controls implementation. xxx

e. Electronic products and services. xxx

iii. xxx. The entire payment card network should be migrated to EMV. This requirement shall cover both issuing and acquiring programs of concerned Bangko Sentral Supervised Financial Institutions (BSFIs). A written and Board-approved EMV migration plan should be submitted to the Bangko Sentral within six (6) months from 22 August 2013. The guidelines on Europay, Mastercard and Visa (EMV) implementation are shown in Appendix 108. The guidelines on the EMV Card Fraud Liability Shift Framework (ECFLSF) are in Appendix 108a.

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- ▶ Amendment of Subsection X177.9 of the MORB to add another paragraph containing the relevant supervisory enforcement action concerning the ECFLSF, as follows:

“BSFIs should endeavor to achieve full compliance within a period as may be allowed by the Bangko Sentral. Prior to full compliance, failure on the part of BSFIs to submit and implement their EMV migration plan shall be subject to additional enforcement actions pursuant to Section X009.”

- ▶ This Circular shall take effect on 1 January 2017.

*[Editor’s Note: Circular 936 was published in The Manila Times on 30 December 2016.]*

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Circular No. 937 provides for the Amendments to Foreign Exchange Regulations.

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#### **BSP Circular No. 937 dated 27 December 2016**

- ▶ Pursuant to Monetary Board Resolution No. 2190 dated 8 December 2016, the following provisions of the Manual of Regulations on Foreign Exchange Transactions (FX Manual) are hereby revised.

- ▶ Section 34 of the FX Manual shall be read as follows:

“**Section 34. Inward Foreign Direct Investments.** Inward foreign direct investments may be in cash or in kind. For registration purposes, foreign exchange funding for the cash investments must be inwardly remitted but need not be converted to pesos, except for investments in foreign bank branches’ permanently assigned capital where the foreign exchange funding must be inwardly remitted and converted to pesos at the exchange rate prevailing at the time of remittance, pursuant to the pertinent provisions of the MORB.”

- ▶ Section 45 on definition of terms, and Section 70, of the FX Manual adopts the following definition of a “Local branch of a foreign bank”, as follows: local branch of a foreign bank shall refer to a branch of a foreign bank doing business in the Philippines, pursuant to the provisions of Republic Act No. 7653, Republic Act No. 879L, and Republic Act No.7721, as amended.
- ▶ Section 71 which provides for qualification requirements, and Section 97 which provides for definition of terms of the FX Manual, are amended by this Circular.
- ▶ This Circular revised Appendix 10 : Procedures and Documentation Requirements for the Registration of Inward Foreign Investments, and Appendix 19: Implementing Guidelines on the Computation of Open Foreign Exchange (FX) Positions of AABs and Reporting Requirements under FX Form 1 of the FX Manual.
- ▶ 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.

*[Editor’s Note: Circular 937 was published in Malaya on 4 January 2017]*

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Circular No. 938 provides for the Amendments to the MORNBF1 - Pawnshop Regulations.

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#### **BSP Circular No. 938 dated 12 January 2017**

- ▶ The title of Part One shall be amended to read as follows: “PART ONE: PAWNSHOP BUSINESS ORGANIZATION, MANAGEMENT AND ADMINISTRATION”.
- ▶ Sec. 4102P shall be renumbered to 4101P.2 which covers the Definition of Terms as amended.
- ▶ “Establishment and Organization” under Part One shall be added and cover Sections 4102P to 4110P.

- ▶ Section 4101P.2 shall be renumbered to 4102P and shall be amended to as to the form of organization.
- ▶ Subsection 4101P.4 which provides for authority to operate from the BSP is amended and renumbered to 4103P by this Circular.
- ▶ Subsection 4103P.1 on Classification of Pawnshop Operator License shall be added.
- ▶ Subsection 4101P.5 which provides for pawnshop regulations briefing and Anti-Money Laundering Act (AMLA) seminar, and Subsection 4142P.3 which provides for corporate governance are amended and renumbered to Subsection 4103P.2 and Subsection 4103P.3, respectively, by this Circular.
- ▶ Sec. 4184P which provides for transfer of ownership is amended and renumbered to Sec. 4104P by this Circular.
- ▶ The title of Part Two shall be amended to read as: "PART TWO - PAWNSHOP BUSINESS: PAWNSHOP OPERATIONS."
- ▶ "Capitalization" under Part One shall be renumbered and transferred to Part Two and shall cover Sections 4111P to 4115P and be amended to read as: "A. CAPITALIZATION AND LEVERAGE."
- ▶ Sec. 4106P shall be renumbered to 4111P and shall be amended to enumerate the required minimum paid-in capital in cash of pawnshops.
- ▶ Sec. 4107P shall be renumbered to 4112P and shall be amended to provide for the maximum borrowings of pawnshop business.
- ▶ "G. Proprietor/Partners/Directors, Officers and Employees" under Part One shall be renumbered and transferred to Part Two and shall cover Secs. 4116P to 4120P and be amended to read as: "B. MANAGEMENT."
- ▶ Subsection 4142P.2 shall be renumbered to 4116P and shall be amended to provide for the general qualifications of a proprietor, partner, director or officer of pawnshops.
- ▶ "Commencement of Operations" shall be added under Part Two and shall cover Secs. 4121P to 4125P and read as: "C. COMMENCEMENT OF OPERATIONS."
- ▶ Sec. 4121P on Commencement of Pawnshop Operations shall be added to provide for the period for the commencement of pawnshop operations from the date of issuance of the Authority to Operate.
- ▶ "H. Branch Offices" under Part One shall be renumbered and transferred to Part Two and shall cover Secs. 4126P to 4130P and be amended to read as: "D. PAWNSHOP OFFICES."
- ▶ Sec. 4141P which provides for registration with the city/municipality is amended and renumbered to 4126P by this Circular.
- ▶ Subsection 4126P which provides for notification and metal plate is added by this Circular.
- ▶ "I. Business Days and Hours" under Part One shall be renumbered and transferred to Part Two as "E. Business Days and Hours" and shall cover Secs. 4131P to 4135P.

- ▶ Sec. 4156P which provides for business days and hours is amended and renumbered to 4131P by this Circular.
- ▶ "J. Records and Reports" under Part One shall be renumbered and transferred to Part Two as "F. Records and Reports" and shall cover Secs.4136P to 4140P.
- ▶ Sec. 4161P which provides for records and reports is amended and renumbered to 4136P by this Circular.
- ▶ "K. Internal Control" under Part One shall be renumbered and transferred to Part Two as "G. Internal Control" and shall cover Secs. 4141P to 4145P.
- ▶ Sec. 4171P which provides for internal control system is amended and renumbered to 4141P by this Circular. For purposes of Section 4141P, the BSP shall provide for the minimum internal control standards that pawnshops are expected to observe in their operations.
- ▶ Sec. 4172P shall be renumbered to 4142P and shall be amended to provide for the separation of pawnshop business from other businesses.
- ▶ "Risk Management" shall be added under Part Two and shall cover Secs. 4146P to 4150P.
- ▶ Sec. 4146P on Risk Management System is added by this Circular.
- ▶ Sec. 4193 which provides for Information Technology Risk Management (ITRM) is amended and renumbered to 4147P by this Circular.
- ▶ "Registered/Business Name" shall be added under Part Two and shall cover Secs. 4151P to 4155P.
- ▶ Sec. 4181P which provides for registered/business name is amended and renumbered to 4151P by this Circular.
- ▶ "Transfer/Relocation and Voluntary Closure of Business" shall be added under Part Two and shall cover Secs. 4156P to 4160P.
- ▶ Sec. 4182P which provides for transfer/relocation of business, and Subsection 4183P.1 which provides for voluntary closure of a pawnshop office are amended and renumbered to 4156P and 4157P respectively by this Circular.
- ▶ Sec. 4158P on the Surrender of Pawnshop Operator License Due to Closure of Business shall be added.
- ▶ "Outsourcing" shall be added under part Two and shall cover Secs. 4161P to 4165P.
- ▶ Sec. 4190P on Guidelines on Outsourcing shall be renumbered to 4161P.
- ▶ "L. Miscellaneous Provisions" under Part One and "K. Other Borrowings" under Part Two are hereby deleted.
- ▶ Sec. 4301P shall be renumbered to Sec. 4166P, Sec.4302P to Sec.4167P, Sec.4322P to Sec.4170P, and Sec.4325P to Sec.4181P.
- ▶ Part Three on Loans and Investments shall be amended to read as follows:  
"PART THREE – PAWNING OPERATIONS."

- ▶ "A. Loans in General" under Part Three shall be amended to read as: "A. LOANS AND LOAN COLLATERAL/SECURITY" and shall cover Secs. 4166P to 4175P.
- ▶ Subsection 4301P.1 shall be renumbered to 4166P.1 and shall be amended to provide for the general guidelines on the loan extended by pawnshops.
- ▶ Sec 4321P shall be renumbered to 4168P and shall be amended to provide for the acceptable security and safekeeping of pawns.
- ▶ Subsection 4301P.2 shall be renumbered to 4168P.1 and shall be amended to provide for the pawnshop prohibitions.
- ▶ Sec. 4323P which provides for pawn tickets, and Subsection 4323P.1 which provides for stipulations in pawn tickets, are amended and renumbered to 4169P and Subsection 4169P.1 by this Circular.
- ▶ Sec. 4305P which provides for past due accounts; renewal is amended and renumbered to 4171P by this Circular.
- ▶ Subsection 4305P.1 shall be renumbered to 4171P.1 and shall be amended to provide for the right of pawner to redeem pawn within ninety (90) days from maturity.
- ▶ "B. Loan Collateral/Security" shall be amended to read as: "B. INTEREST AND SURCHARGES" and shall cover Secs. 4176P to 4180P:
- ▶ Sec. 4303P shall be renumbered to 4176P and shall be amended to provide for the interest and surcharges on any loan or forbearance of money extended by pawnshops.
- ▶ Subsection 4303P.2 which provides for other charges, and Sec. 4401P which provides for BSP regulations on financial consumer protection are amended and renumbered to 4176P.1 and 4186P respectively by this Circular.
- ▶ Sec. 4187P on Disclosures and Subsections 4187P.1 on Interest Rates, 4187P.2 on Ninety-Day Grace Period, and 4187P.3 on Insurance, shall be added.
- ▶ Part Five on Anti-Money Laundering Regulations shall be added.
- ▶ Sec. 4691P which provides for Anti-money laundering regulations, and Subsections 4301P.3 which provides for know your customer and 4691P.1 which provides for required seminar/training, are amended and renumbered to 4191P, 4191P.1 and 4191P.2 respectively by this Circular.
- ▶ Subsection 4691P.2 shall be renumbered to Subsection 4191P.3.
- ▶ Part six on Miscellaneous shall be amended to read as: "PART SIX - ELECTRONIC OPERATIONS AND OTHER SERVICES."
- ▶ Sec. 4641P which provides for electronic services is amended and renumbered to 4196P by this Circular.
- ▶ "B. Sundry Provisions" under Part Six is hereby deleted.
- ▶ Section 63. Part Seven on Miscellaneous Pawnshop Regulations shall be added.
- ▶ "A. Supervisory Powers of the Bangko Sentral" shall be added under Part Seven and shall cover Secs. 4201P to 4205P.



- ▶ Sec. 4651P shall be renumbered to 4201P and shall be amended to provide for the supervisory powers of Bangko Sentral on pawnshops.
- ▶ Subsection 4651P.1 which provides for refusal to permit examination is amended and renumbered to 4201P.1 by this Circular.
- ▶ Sec. 4202P on Revocation of Authority to Operate shall be added to for the revocation of authority to operate.
- ▶ "Supervision Fees and Other Fees/Charges" shall be added under Part Seven and shall cover Secs. 4206P to 4210P.
- ▶ Sec. 4206P on Filing/Licensing Fees shall is added by this Circular.
- ▶ Subsection 4101P.6 which provides for annual supervision fees is amended and renumbered to Sec. 4207P by this Circular.
- ▶ "Other Miscellaneous Regulations" shall be added and shall cover Secs. 4211P to 4125P.
- ▶ Sec. 4650P shall be renumbered to 4211P.
- ▶ "General Provision on Sanctions" shall be added under Part Seven and shall cover Secs. 4211P to 4215P.
- ▶ Sec. 4216P on General Provision on Sanctions is added by this Circular.
- ▶ "Transitory Provision" shall be added.
- ▶ Subsection 4107P.1 which provides for capital build-up and de-leveraging program is amended and renumbered to Sec.4221P by this Circular.
- ▶ Appendix P-1 on Chart of Accounts and Description of Loan Register of Pawnshops shall be deleted and be replaced by Appendix P-1 on List of Documentary Requirements to Accompany an Application for an Authority to Operate a Pawnshop Business.
- ▶ Appendix P-2 on List of Reports Required from Pawnshops shall be deleted and be replaced by Appendix P-2 on Documentary Requirements for Transfer of Ownership of a Pawnshop Business with Type "A" License.
- ▶ Appendix P-3 on Guidelines on Prescribed Reports Signatories and Signatory Authorization shall be deleted and replaced by Appendix P-3 on Documentary Requirements for the Surrender of Pawnshop Operator License.
- ▶ Sections 4141P, 4142P, 4143P, 4162P, 4163P, 4164P, 4183P, 4185P, 4192P, 4199P, 4285P, 4286P, 4306P, 4324P, 4399P, 4402P, 4403P, 4642P, 4657P and 4658P, and Subsections 4101P.3, 4142P.1, 4143P.1, 4143P.2, 4143P.3, 4143P.4, 4143P.5, 4143P.6, 4143P.7, 4151P.1, 4151P.2, 4151P.3, 4151P.4, 4151 4151P.6, 4151P.7, 4161P.1, 4161P.2, 4161P.3, 4161P.4, 4162P.1 4162P.2, 4162P.3, 4164P.4, 4171P.1, 4171P.2, 4171P.3, 4171P.4, 4181P.1 4181P.2, 4182P.1, 4182P.2, 4184P.1, 4184P.2, 4193P.1, 4193P.2, 4193P.3, 4193P.4, 4193P.5, 4193P.6, 4193P.7 4193P.8, 4193P.9, 4303P.1, 4303P.3, 4303P.4, 4303P.5, 4324P.1, 4325P.1, 4401P.1, 4401P.2, 4402P.1, 4402P.2, 4402P.3, 4402P.4, 402P.5, 4642P.1, 4642P.2, 4642P.3, 4642P.4, 4642P.5, 4642P.6, 4642P.7, 4642P.8, 4642P.9, 4642P.10, and 4642P.11, and Appendices P-4, P-4-a, P-4-b, P-4-c, P-7, P-8, P-9, and P-10, and Annexes P-2-a, P-3-a, P-3-b, and P-3-c, are hereby deleted.

- ▶ All existing pawnshop operators shall secure their Authority to Operate a pawnshop business from the BSP within one year from the date of effectivity of these regulations. Upon the expiration of the transitory period, all Acknowledgment of Registrations (AORs) previously issued by the BSP shall be considered automatically revoked.

Existing pawnshop operators, organized as sole proprietorship and partnership with more than 10 offices, shall be allowed to register for Type "A" license to retain their business form, provided they shall not be allowed to open additional offices or additional corollary business activities. Should they decide to close existing office or corollary business, subsequent re-opening shall not be allowed unless it complies with these new regulations.

*[Editor's Note: Circular 938 was published in The Philippine Star on 13 January 2017.]*

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Circular No. 939 provides for the Amendment of Circular No. 910 dated 22 April 2016 - Extension of the Period for the Exchange or Replacement of NDS Banknotes in the Custody of (i) AABs, (ii) OTs and (iii) OFs, Filipino Immigrants and Non-Residents.

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#### **BSP Circular No. 939 dated 12 January 2017**

- ▶ The Monetary Board, in its Resolution No. 15 dated 5 January 2017, approved the following amendments to BSP Circular No. 910, dated 22 April 2016:
  1. All banks (head offices and their branches) are required to accept /exchange/ replace New Design Series (NDS) banknotes from the general public, clients or non-clients, until **31 March 2017**.
  2. Authorized Agent Banks (AABs) and Office of Office of Provincial/City/Municipal Treasurers (OTs) may submit the NDS banknotes in their custody as of **31 March 2017** for replacement/exchange with New Generation Currency (NGC) banknotes at the BSP-Cash Department and any of the BSP regional offices/ branches starting **3 April 2017** but not later than the close of business hours on **30 June 2017**, with two days prior notice to allow the BSP to prepare the required volume and denominations of NGC banknotes. The submission of AABs shall be accompanied by a duly accomplished BSP form for exchange/deposit of banks. In the case of submission of OTs, it should be accompanied by a duly filled-up Inventory/Exchange Form for the New Design Series Banknotes.
  3. Overseas Filipinos (OFs) working/living abroad, Filipino immigrants and non-residents who have in their possession NDS banknotes may register their NDS banknote holdings at <https://orbs.bsp.gov.ph> until **31 March 2017**. NDS banknotes registered from 1 October 2016 to 31 December 2016 shall be submitted for exchange with NGC banknotes within one (1) year from date of registration at any BSP office. On the other hand, NDS banknotes registered from 1 January 2017 to 31 March 2017 shall be submitted for exchange with NGC banknotes until 31 December 2017 at any BSP office. The NDS banknote exchange facility provided by the BSP shall be limited to PHP50,000.00 for each OFW/Filipino immigrant/non-resident.
- ▶ This Circular shall be effective immediately.

*[Editor's Note: Circular 939 was published in The Manila Times on 18 January 2017.]*

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Circular No. 940 provides for the Guidelines on Deposit and Cash Servicing Outside of Bank Premises.

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#### **BSP Circular No. 940 dated 20 January 2017**

The Monetary Board, in its Resolution No. 37 dated 05 January 2017, approved the amendments to the MORB on the guidelines on and regulations related to servicing deposits outside of bank premises, and the adoption of regulations

to allow banks to accredit third party service providers to perform cash pick-up and cash delivery services and to accept and disburse cash on its behalf in order to promote operational efficiency, improve their service delivery channels, and for greater customer convenience.

- ▶ Subsection X162.2 of the MORB is hereby amended to provide for the prohibition against outsourcing of inherent banking functions such as: taking of deposits from the public, granting of loans and extension of other credit exposures, managing of risk exposures and general management.
- ▶ Section X213 of the MORB on servicing deposits outside bank premises is amended.
- ▶ Section X266 (Deposit Pick-up/Cash Delivery Services) of the MORB is on the cash pick-up/cash delivery services delegated to cash agents is amended.
- ▶ Subsection X266. 1 (Operation of armored cars) of the MORB is hereby amended to provide for the conditions on cash pick-up/cash delivery services delegated to cash agents.
- ▶ This Circular adds Subsection X266.2 which provides for use of cash agents.
- ▶ Sections 1266 (Reserved), 2266 (Reserved) and 3266 (Qualifying Criteria before a Rural/Cooperative Bank Engages in Deposit Pick-up Services), and Appendix 82 (Format Certification on Deposit/Cash Delivery Services) of the MORB are hereby deleted.

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

*[Editor's Note: Circular 940 was published in Malaya on 25 January 2017]*

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Circular No. 941 provides for Amendments to the Regulations on Past Due and Non-Performing Loans.

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#### **BSP Circular No. 941 dated 20 January 2017**

- ▶ Section X306 of the MORB is amended and renamed to Past Due Accounts and Non-Performing Loans. Said provision shall guide BSP-supervised financial institutions (BSFIs) in determining their past due accounts and non-performing loans.
- ▶ The entire provision of Subsection X306.1 of the MORB on accounts considered past due is amended.
- ▶ The entire provision of Subsection X306.2 of the MORB on demand loans is hereby deleted. Accordingly, this Subsection is renamed to non-performing loans.
- ▶ Applicability to non-bank financial institutions (NBFI). The provisions above shall likewise apply to NBFIs as follows:
  - a) The amendment to Section X306 of the MORB under Section 1 above shall also be adopted under Sections 4306Q and 4306S of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI). A new Section 4306N shall be added in the MORNBFI and shall also adopt the provisions of Section X306 of the MORB above.
  - b) The amendment to Subsection X306.1 of the MORB shall also be adopted under Subsections 4306Q.1 and 4306S.1 of the MORNBFI.

- c) Subsections 4306Q.2 and 4306S.2 of the MORNBF on demand loans and extension/renewal of loans, respectively, shall be renamed to non-performing loans and shall adopt the provisions of Subsection X306.2 of the MORB under Section 3 above.
  - d) New Subsections 4306N.1 and 4306N.2 of the MORNBF on accounts considered as past due and non-performing loans, respectively, shall be added in the MORNBF and shall adopt the provisions of Subsections X306.1 and X306.2 of the MORB under Sections 2 and 3 above, respectively.
- ▶ Subsection X192.9 of the MORB on publication/posting of balance sheet is amended by this Circular.
  - ▶ Section 6. The following Section and Subsections are hereby deleted:

Section/ Subsection	Title/Description	Covered By or Transferred To
X309/4309Q	Non-Performing Loans	X306/4306Q
X309.1/4309Q.1	Accounts considered non-performing; definitions	X306.2/4306Q.2
Subsection/ Subsection	Title/Description	Covered By or Transferred To
X309.5	Reportorial Requirement	X191.2 (Schedules 11H1 and 11H2 of the FRP)
X320.5/4309Q.2/ 4320Q.5/4301N.5	Interest accrual on past due loans	X305.4/4305Q.4/4312N.6
4309Q.3	Allowance for uncollected interest on loans	4305Q.4
X361.1 Items "b and "c"	Definition of past due/portfolio-at-risk (PAR), restructured loans	X306.1 X306

- ▶ Transitory Provision. The following provision shall be incorporated as a footnote to Section X306 of the MORB and Section 4306Q/4306S/4306N of the MORNBF on Past Due Accounts and Non-Performing Loans.

Upon the effectivity of this Circular up to 31 December 2017, BSFs shall make the necessary revisions in their management information and reporting systems relating to past due and non-performing loans. Effective 01 January 2018, past due and NPLs shall be mandatorily reported in accordance with the requirements of this Section.

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

*[Editor's Note: Circular 941 was published in Business Mirror on 26 January 2017]*

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Circular No. 942 provides for the Amendment to Section 4511N of the Manual of Regulations for Non-Bank Financial Institutions.

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#### **BSP Circular No. 942 dated 20 January 2017**

- ▶ Section 4511N and its Subsections in the MORNBF1 are amended to provide for rules on the money service business operations.
- ▶ All Bangko Sentral Certificates of Registration (CORs) previously issued to Remittance and Transfer Companies (RTCs)/Money Changers (MCs)/Foreign Exchange Dealers (FXDs) shall remain effective for a period of 6 months from the effectivity of this Circular. Upon the expiration of the transitory period, all previously issued Bangko Sentral CORs shall be considered automatically cancelled, unless otherwise extended by the Bangko Sentral.
- ▶ Appendix N-8 shall be entirely deleted and amended to include Appendices N-8-a (Registration Procedures for RTC/MC/FXD), N-8-b-1 and N-8-b-2 (Deeds of Undertaking) and N-8-c (Minimum Documentary Requirements for the Sale of Foreign Currencies).
- ▶ Appendix N-1 shall be amended to include the required reports for RTCs/MCs/FXDs listed in Appendix N-8-d.
- ▶ This Circular shall take effect 15 calendar days following its publication in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Circular 942 was published in Manila Standard on 26 January 2017.]*

#### **BOI Update**

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MC No. 2017-001 directs all foreign investors in export enterprises to submit an Annual Export Performance Report.

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#### **MEMORANDUM CIRCULAR No. 2017-001 dated 18 January 2017**

- ▶ **Background**
  1. Foreign investors registered in export enterprises are required to export 60% or more of their output and are mandated to submit reports to the Board of Investments ("BOI") within six months after the end of each taxable year to ensure continuing compliance of the export enterprise with its export requirement pursuant to Section 6 of Republic Act (RA) No. 70942 or the Foreign Investment Act of 1991 and Rule VI (3) of the Implementing Rules and Regulations thereof.
- ▶ **Submission of Annual Report**
  2. Foreign investors in export enterprises must submit their duly accomplished Annual Export Performance Report and supporting documents
    - ▶ Due date: On or before 30 May of each year
    - ▶ Form: Soft copy and hard copy
    - ▶ Receiving office: Legal and Compliance Service, Board of Investments
  3. Key disclosures in the report
    - ▶ Total sales (in volume and value)
    - ▶ Domestic sales (in volume and value)
    - ▶ Export sales (in volume and value)
    - ▶ Export ratio (in volume and value)

## Court Decisions

### **Mannasoft Technology Corporation vs. Commissioner of Internal Revenue**

CTA (Third Division) Case No. 8745, promulgated 13 January 2017

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The receipt of the notices by unauthorized personnel cannot be deemed receipt by the taxpayer.

The filing of a protest to the FAN does not cure the BIR's violation of its right to due process.

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#### **Facts:**

Respondent CIR assessed Petitioner Mannasoft Technology Corporation (MTC) for deficiency income tax, VAT and EWT for taxable year 2008, which MTC protested. The BIR issued a Warrant of Dstraint and/or Levy (WDL), which MTC likewise protested on 23 October 2012. On 13 November 2012, it filed a request for reinvestigation, which the BIR denied on 25 November 2013 with a statement that it was its final decision on the matter. MTC filed a Petition for Review with the CTA on 10 December 2013.

At the CTA, MTC argued that the BIR violated its right to due process when it did not receive the Notice of Informal Conference (NIC), the Preliminary Assessment Notice, and the Final Assessment Notice (FAN). It also noted that the FAN and WDL were not received by the company's duly authorized officers. The BIR maintained that the assessments were made and issued in accordance with the law, rules and regulations.

#### **Issues:**

1. Did the receipt of the NIC, PAN and FAN by unauthorized personnel invalidate the assessment?
2. Did the submission of a protest by the taxpayer cure the infirmity?

#### **Rulings:**

1. Yes. The client service assistant, receptionist and the reliever security guard, who received the NIC, PAN, and FAN, respectively, do not have the authority to receive the notices from the BIR. The receipt of the notices by unauthorized personnel cannot be deemed receipt by MTC.

It is incumbent upon the BIR to prove that the personal service of the notices was done properly and that the taxpayer or the taxpayer's authorized representative received the notices. Non-receipt of the NIC and the PAN results in the invalidity of the FAN issued thereafter, for being violative of MTC's right to due process.

2. No. The fact the MTC was able to protest the FAN, albeit belatedly, does not cure the BIR's violation of its right to due process. The filing of a protest to the FAN "does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued."

## **Mt. Blanc Motors, Inc. vs. Commissioner of Internal Revenue**

CTA (Third Division) Case 8588, promulgated 4 January 2017

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An employee who earns additional compensation in excess of the allowable statutory amount of P30,000 (now P82,000) shall not enjoy the privilege of being a Minimum Wage Earner and his entire earnings are not exempt from income tax and consequently, from withholding tax.

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### **Facts:**

Respondent CIR assessed Petitioner Mt. Blanc Motors, Inc. (MBMI) for deficiency income, VAT, and withholding tax on compensation (WTC) for taxable year 2008. MBMI protested but the CIR issued a Final Decision on Disputed Assessment (FDDA) denying the protest. MBMI filed a Petition for Review at the CTA.

The BIR alleged, among others, that several of MBMI's employees should not have been classified Minimum Wage Earners (MWE) and should have been subjected to WTC. MBMI argued that its employees listed under Schedules 7.1 and 7.2 were MWEs whose *de minimis* benefits did not exceed the threshold amount P30,000 pursuant to RR 10-08 and as such, MBMI rightfully did not withhold taxes from its salary payments to MWEs.

### **Issues:**

1. Can an employee who earns additional compensation in excess of the P30,000 (now P82,000) threshold still be considered a Minimum Wage Earner exempt from income tax and consequently, to withholding tax?
2. Is documentation required to prove that an employee is a MWE?

### **Rulings:**

1. No. Section 2.78.1(B)(13) of Revenue Regulations 2-98, as amended by RR 10-08, provides that an employee who receives/earns additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of P30,000 (now P82,000), taxable allowances and other taxable income other than SMW, holiday pay, overtime pay, hazard pay, and night differential pay shall not enjoy the privilege of being a MWE and therefore, his entire earnings are not exempt from income tax and consequently, from withholding tax.
2. Yes. Without showing the details of the "Salaries and Other Forms of Compensation" earned by MBMI's employees, the Court cannot ascertain whether the same includes other forms of compensation which may affect the enjoyment of the privilege of being a MWE as far as the exemption from withholding tax is concerned.

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