

# Tax bulletin

July 2015



# Highlights

## BIR Issuance

- ▶ Revenue Memorandum Circular (RMC) No. 36-2015 prescribes the mandatory one-time submission of an inventory list of all cash register machines (CRMs), point of sale (POS) machines, special purpose machines (SPMs) and other similar machines. (Page 3)

## BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 19-2015 prescribes the revised procedures for the mandatory submission of the Electronic Sea Manifest in the E2M, to effectively implement the provisions of Customs Administrative Order (CAO) No. 1-2007 as amended by CAO No. 6-2007 and CAO No. 2-2013 and to make the Inward Foreign Manifest (IFM) and Consolidation Cargo Manifest (CCM) available to the different Bureau of Customs (BOC) offices at the earliest possible time. (Page 4)
- ▶ CMO No. 23-2015 exempts PEZA-registered enterprises from CMO No. 18-2010 titled "Procedure for the Bulk and Break-Bulk Cargo Clearance Enhancement Program Mandated under Administrative Order No. 243 as amended by AO 243-A". (Page 7)

## Executive Orders

- ▶ Executive Order (EO) No. 182 introduces the Comprehensive Automotive Resurgence Strategy (CARS) Program to stimulate the country's automotive industry and to attract new investments. (Page 7)
- ▶ EO No. 184 promulgates the 10<sup>th</sup> Regular Foreign Investment Negative List (FINL). (Page 10)

## PEZA Issuance

- ▶ Memorandum Circular No. 2015-018 circularizes CMO No. 9-2015 on the enforcement of rules on regulated imports in relation to the importation requirements for goods considered as household urban hazardous substances. (HUHS). (Page 14)

## BSP Issuances

- ▶ Circular No. 883 amends Subsection X191.2 and Section 4162S of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), respectively, specifically on motor vehicle loans. (Page 15)
- ▶ Circular No. 884 provides guidelines on the establishment and operation of Trust Corporations. (Page 16)

## SEC Issuances

- ▶ SEC Memorandum Circular (MC) No. 6 amends paragraph 15 of SEC MC No. 21, Series of 2013 (Omnibus Guidelines and Procedures on the Use of Corporate and Partnership Names) on the use of Corporate Names of Corporations with Dissolved and Revoked Certificates of Registration. (Page 17)

- ▶ A representative office is not allowed to invest in shares of stock of a domestic corporation and earn investment income from them. (Page 17)

## Court Decisions

- ▶ Revenue Regulations (RR) No. 2-2010, which requires taxpayers to choose during its first quarterly filing either the itemized or optional standard method of deduction, cannot be given retroactive application as it prejudices the rights of taxpayers. (Page 17)
- ▶ Section 3A.02(m) of the Revised Makati Revenue Code imposing local business tax on “owners and operators of real estate developer” is an *ultra vires* exercise of local taxing powers and hence is null and void. (Page 19)

## BIR Issuance

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RMC No. 36-2015 prescribes the mandatory one-time submission of an inventory list of all CRMs, POS machines, SPMs and other similar machines.

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### Revenue Memorandum Circular No. 36-2015 dated June 8, 2015

- ▶ All concerned taxpayers are required to submit an inventory list of CRMs/POs/SPMs and other similar machines that are located in their business establishments as of June 30, 2015 for validation.
- ▶ The following procedures shall be strictly observed in the submission of the inventory list:
  1. The inventory list shall be submitted in hard and soft copies in Excel format, using the schedule prescribed in the Circular and stored in DVD-R, labelled in accordance with the format prescribed in the Circular.
  2. A notarized sworn declaration shall be submitted in accordance with a prescribed format, duly signed by the taxpayer or its authorized representative, certifying the veracity of the information submitted.
  3. For corporate taxpayers, the inventory list, label of the DVD-R and the sworn declaration, shall be signed by the principal officer, duly designated through a Board Resolution and sworn to by the said officer and the Corporate Treasurer or Assistant Treasurer.
  4. Individual taxpayers may authorize other persons as their attorney-in-fact through a notarized Special Power of Attorney (SPA).
  5. For taxpayers registered with the Large Taxpayers Service (LTS), the hard copies of the inventory list, together with the DVD-R and the sworn declaration, shall be submitted not later July 31, 2015 to the Large Taxpayers Assistance Division (LTAD), Excise Large Taxpayers Regulatory Division (ELTRD) and Large Taxpayers Division (LTD-Makati/Cebu).
  6. For taxpayers not registered with the LTS, the requirements shall be submitted to the Revenue District Office (RDO) or Revenue Region (RR) where they are registered.
  7. The concerned BIR office shall cause the immediate verification and approval of pending applications for cancellation or withdrawal for use (either by retirement or sale of the machines) to achieve the purpose of the Circular.
- ▶ Failure to comply with this Circular shall subject the taxpayer to the following penalties:
  1. Automatic revocation of the permit to use of CRMs/POs/SPMs and other similar machines;
  2. Immediate post-evaluation of the CRMs/POs/SPMs and other similar machines;

3. Imposition of a penalty in the amount of P1,000.00 for each failure to submit an inventory as provided under the Tax Code. In case of a “willful failure” to submit the inventory list, this may not be subject to a compromise.
  4. Inclusion in the priority audit program of the concerned investigating BIR office.
- ▶ The payment of the appropriate penalty shall not relieve the taxpayer from the obligation to submit the inventory list.

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## **BOC Issuances**

CMO No. 19-2015 prescribes the revised procedures for the mandatory submission of the Electronic Sea Manifest in the E2M, to effectively implement the provisions of CAO No. 1-2007 as amended by CAO No. 6-2007 and CAO No. 2-2013 and to make the IFM and CCM available to the different BOC offices at the earliest possible time.

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### **Customs Memorandum Order No. 19-2015 dated June 30, 2015**

- ▶ **Scope**

CMO No. 19-2015 covers all sea manifests, including those from forwarders and consolidators in all ports that shall be submitted through the value-added service providers (VASPs).

- ▶ **General Provisions**

1. The Piers Inspection Division (PID) or its equivalent office shall record the estimated date and time of arrival (ETA), updates of actual date and time of arrival (ATA) and the date of last package discharge from the vessel in the E2M System.
2. Shipping Lines/Forwarders/Consolidators must be registered with the Client Profile Registration System (CPRS) through their respective accrediting agencies.
3. The e-manifest is the general term for e-IFM and e-CCM. The e-IFM consists of all the master bills of lading of shipments consigned to ultimate and nominal consignees. The e-CCM consists of all the house bills of lading of shipments consigned to the ultimate consignees degrouped / split from the master bills of lading of shipments whose consignees are just normal such as banks, forwarders and consolidators.
4. The e-IFM, in the case of shipping lines, and the e-CCM in the case of non vessel operating common carrier/Cargo Consolidator/co-Loader/Breakbulk Agents, shall be submitted by the concerned forwarders/consolidators at least 12 hours and 6 hours, respectively before arrival of the carrying vessel. However, in case the cut-off time for the submission of the e-CCM is outside of government regular working hours, the e-CCM shall be submitted after arrival of the carrying vessel but within the first 2 hours (before 1000 hours) of the immediately following day.
5. E-manifest submission shall be done through any of the accredited VASPs.
6. The e-manifest that passes the validation routine is registered in the e2m Customs System.
7. The e-IFM must be submitted ahead of the e-CCM. If the e-CCM is submitted ahead of the e-IFM, the e-CCM will not be registered but has to be re-submitted when the e-IFM is already registered.
8. The BOC shall use the e-IFM as primary e-document in the verification of the e-CCM.

9. The VASP shall provide the arrastre/terminal operator an electronic copy of the manifest lodged through the VASP's Manifest submission application.
10. The cut-off time for electronic manifest submission is calculated from the submitted ETA using the BOC Gateway Server Clock.
11. Based on the time of e-manifest submission, the Electronic Manifest System (EMS) processes the e-IFM and the e-CCM.
12. Supplemental e-manifest submission shall be treated as non-compliant submission. Supplemental e-Manifest shall be submitted in hard copies and electronic form within the period prescribed in CAO 6-2007; otherwise, the shipments subject of the Supplemental Manifest shall be considered unmanifested and subject to forfeiture proceedings.
13. Failure to submit the required information within the period prescribed in shall be subject to the payment of the following fines:
  - ▶ P10,000 per late submission of e-IFM
  - ▶ P1,000 per late submission of e-CCM
14. Late submission of the e-IFM and e-CCM shall be considered with justifiable cause and not subject to penalty under following circumstances:
  - ▶ e2m system breakdown or technical problems of the system and power failure;
  - ▶ VASP technical problems;
  - ▶ Fortuitous events;
  - ▶ Late submission of IFM, in case of CCM; or,
  - ▶ Early arrival of the vessel from that of the original schedule.

Under the above circumstances, the IFM and/or CM is allowed to be submitted within 24 hours from the cessation of the event, except in the case of early arrival of the vessel in case submission shall be within 24 hours from arrival.
15. The payment of fines is without prejudice to whatever additional recourse the BOC may pursue against the delinquent shipping line or NVOCC/ Consolidator/Co-Loader/Breakbulk Agent.
16. When the e-IFM/e-CCM is submitted to the BOC Gateway Server before the cut-off time, the shipping lines/forwarders/consolidators have the option to directly register the e-manifest with the BOC. Otherwise, when the cut-off time is reached, the e-manifest will be automatically registered with the BOC. Shipping lines are enjoined to directly register e-IFMs to give the forwarders/consolidators enough time to submit their e-CCMs before the cut-off time.
17. The e2m import declaration shall be accepted by the system only when the following requirements are accomplished:
  - ▶ The electronic manifest has been officially accepted (registered) by the Electronic Manifest System (EMS);
  - ▶ The Bill of Lading (B/L) is a house B/L;
  - ▶ The House B/L is also registered; and,
  - ▶ When the bill of lading number has been used in an e2m import declaration, the corresponding bill of lading in the e-manifest can no longer be subject of any amendment to the e-manifest.

18. The VASP shall be responsible for training their own shipping line/ consolidator-forwarder clients on the submission of electronic manifests and other related matters.

▶ **Operational Provisions**

1. Shipping lines representative of vessels arriving at the Port shall notify the PID or its equivalent office of the vessel arrival.
2. Shipping lines shall submit their e-IFM while consolidators and forwarders shall submit their e-CCM to the BOC through VASPs. The EMS shall send feedback messages to the VASPs on the result of validation. The EMS shall "timestamp" the e-manifest when the e-manifest is received by the BOC Gateway Server. Upon vessel arrival, the PID or equivalent office shall encode the actual date and time of arrival. Upon the completion of the discharging operation, the PID or equivalent office shall encode the date of discharge of the last package from the vessel, which serves as the reckoning date for the period of 30 days within which an import entry shall be filed; otherwise, an imported article is deemed abandoned. Late and non-compliant e-manifest submissions are subject to imposition of fines. The EMS shall transmit notification to the Alert System of the e2m Customs for non-compliant submissions. A late or non-compliant e-manifest submission is accepted by the EMS and held in stand-by status awaiting the decision of the Office of the Deputy Collector for Operations to manually register the e-manifest in the EMS. Such a decision to register may be given if the shipping line, forwarder or consolidator is able to formally justify the late or non-compliant submission of the e-manifest subject to payment of the proper fines.
3. Four sets of hard copies of the cargo manifest shall be submitted.
4. Amendments to the submitted manifest by shipping lines, forwarders and consolidators may be done:
  - ▶ Before the cut-off time, as a matter of right, by sending a new e-manifest to update the previous one;
  - ▶ If already registered, by a formal request with the Office of the Deputy Collector for Operations;
  - ▶ Amendments considered as not material like lack of punctuation marks and other clerical errors shall be done administratively through an on-line amendment;
  - ▶ Amendments considered as material like change in consignee's name, address, description of goods, weight, volume and similar amendments must be requested under oath and shall only be allowed in the following instances:
    - a. The covering import entry has been lodged with the VASP;
    - b. Import entry and supporting documents have been submitted to the Entry Processing Division (EPD) or equivalent unit;
    - c. After the lapse of the 30-day period in entry filing;
    - d. If the consignee appearing in the original amendment is not registered with AMO or with expired accreditation;
    - e. If the shipment is covered by an alert or hold order;
    - f. In case articles are regulated and the consignee in the original manifest does not possess the required import permit or authority to operate issued by concerned regulatory agency;

- g. Amendments with requests for change in consignee must be supported by a declaration of the original consignee under oath of undertaking that BOC shall not be held responsible for the release of the cargo; and,
  - h. In case of late or non-compliant e-manifest submission, by a formal request for both "manual" registration and amendment with the Office of the Deputy Collector for Operations.
- ▶ Cargoes/containers not listed in the IFM but are otherwise recorded in the Stowage Plan shall be submitted to the BOC through the VASP not later than 48 hours from date of discharge of the last package from the vessel. For cargoes/containers not listed in the IFM and Stowage Plan, the Supplemental Manifest must be submitted not later than 24 hours from date of discharge of last package. In both cases, the Deputy Collector for Operations and the Chief PID or its equivalent office shall monitor the cut-off time as the case may be before authorizing the registration of the supplemental e-manifest into the EMS.
5. CMO No. 19-2015 took effect immediately and repealed all orders, memoranda, circulars, or parts thereof which are inconsistent with this CMO.

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CMO No. 23-2015 exempts PEZA-registered enterprises from CMO No. 18-2010 titled "Procedure for the Bulk and Break-Bulk Cargo Clearance Enhancement Program Mandated under Administrative Order No. 243 as amended by AO 243-A".

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#### **Customs Memorandum Order No. 23-2015 dated July 09, 2015**

- ▶ Bulk and break-bulk import shipments of production-related requirements by PEZA-registered enterprises, for which PEZA Import Permits have been issued, are excluded from the mandatory coverage of CMO No. 18-2010 and Customs Administrative Order No. 06-2011.
- ▶ PEZA-registered enterprises need not secure a Load Port Survey in the port of origin from any CASCs-accredited cargo surveyor.
- ▶ For PEZA-registered enterprises whose bulk and break bulk import shipments are not covered by PEZA Import Permits, existing regulations shall remain applicable.
- ▶ CMO No. 23-2015 took effect immediately.

#### **Executive Orders**

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EO No. 182 introduces the CARS Program to stimulate the country's automotive industry and to attract new investments.

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#### **Executive Order No. 182 dated May 29, 2015**

- ▶ **Coverage**
  1. The Comprehensive Automotive Resurgence Strategy (CARS) Program is limited to the manufacture of three models of four-wheeled motor vehicles, and shall cover the following activities:
    - ▶ Production of the enrolled models;
    - ▶ Manufacture of Body Shell Assembly and Large Plastic Assemblies of the model;
    - ▶ Manufacture of Common Parts and Strategic Parts not currently produced in the country at Original Equipment Manufacturer (OEM) standards of the model/s; and
    - ▶ Shared testing facilities for vehicles and/or parts.

▶ **Definition of Terms**

1. *Body Shell Assembly* - consists of the full set of metal components that goes from the body shop to the paint shop for one vehicle.
2. *Common Parts* - refers to automotive vehicle parts not currently produced in the Philippines at OEM standards that the registered Participating Car Makers (PCMs) agree to source from one parts supplier, such as, but not limited to, automotive glass and automotive seat fabric.
3. *Full Model Change* - refers to the major design change in the external shell bumpers including grills and lamps and interior of a vehicle. Full Model Change typically happens every 4-6 years for passenger cars and light commercial vehicles.
4. *Large Plastic Parts* - refers to all major plastic parts of bumpers, instrument panels, center consoles and door trims.
5. *Logistics Efficiency Index* - refers to the measure of cost efficiency of the logistics involved in the supply of motor vehicle parts and components for the enrolled model.
6. *Model* - refers to a nameplate that is not currently manufactured in the country. However, a full model change of a nameplate that is currently manufactured in the country shall be considered a model under the CARS program.
7. *Model Life* - refers to the years during which there are no major changes in the over-all design and appearance of a model.
8. *Nameplate* - refers to the name used by the car maker in marketing a model, including its variants, in the Philippines.
9. *Parts* - refer to the Body Shell Assembly and Large Plastic Parts Assemblies of the model, as well as the Common and Strategic Parts.
10. *Planned Total Production Volume* - refers to the model life production volume up to a maximum of six years as submitted by the applicant.
11. *Segment Weighted Average Price* - refers to the weighted average Net Manufacturer's Price for the vehicle segment of an enrolled model, less the estimated manufacturer's net profit of 5%.
12. *Standard Production Support* - refers to the quotient of 60% of the Model Life Budget over the difference between the planned Model Life production volume and 100,000. Model Life in this case shall not exceed six years.
13. *Strategic Parts* - refers to automotive vehicle parts specific to an enrolled model not currently produced in the Philippines at OEM standards such as, but not limited to, struts and shock absorbers, plastic fuel tanks, head lamps, rear combination lamps, steering assembly, and aluminum radiators.

▶ **Criteria for Enrollment of a Model**

1. The enrollment of a model shall be based on, but not limited to, the following:
  - ▶ Track record and model competitiveness;
  - ▶ New investments in Body Shell Assembly and Large Plastic Parts Assemblies;
  - ▶ Planned volume, as may be determined by the Board of Investments (BOI), but in no case lower than 200,000 vehicles over the Model Life up to a maximum of six years;
  - ▶ Economic impact of the investment plan for the model, including impact on the parts manufacturing industry and linkages, jobs generation, and overall consumer welfare;
  - ▶ Overall competitive environment and long-term industry development; and,



- ▶ Compliance with fuel efficiency and emission level standards as may be determined by the BOI, which in no case shall be lower than the standards under the Clean Air Act.

▶ **Eligibility and Minimum Qualifications of Participants**

1. For car makers:
  - ▶ An internationally-recognized car maker/brand owner and/or its authorized in-country licensed manufacturer acting jointly with an internationally-recognized car maker/brand owner;
  - ▶ Proven global track record; and,
  - ▶ Existing multinational operations.
2. For parts makers:
  - ▶ Endorsed by the PCM to manufacture parts of its enrolled model;
  - ▶ OEM automotive parts maker and/or its authorized in-country licensed manufacturer acting jointly with an internationally-recognized car maker/brand owner;
  - ▶ Proven track record; and,
  - ▶ A member in good standing of the Philippine Parts Makers Association.
3. For the shared testing facility proponent:
  - ▶ Collectively endorsed by the PCMs; and,
  - ▶ Proven track record.

▶ **Application and Selection Process**

1. The BOI shall prescribe an application period during which a PCM can apply for enrollment of only one model.
2. However, if the three models are not fully subscribed within the said period, the BOI can set a new application period for enrollment of additional models, in which case, more than one model may be granted to a PCM.
3. Upon approval, the BOI shall issue a Certificate of Registration to the PCM which shall post a performance bond in an amount to be determined by the BOI. The registered PCM shall be deemed a member under the Motor Vehicle Development Program.

▶ **Fiscal Support**

1. Registered participants may be entitled to two kinds of fiscal support during the enrolled Model Life, up to a maximum of six years, namely:
  - ▶ Fixed Investment Support (FIS) and
  - ▶ Productive Volume Incentive (PVI)
2. Criteria to be eligible for FIS:
  - ▶ New investments in the manufacture of parts and/or establishment of a shared testing facility;
  - ▶ Delivery of parts to the PCM within the prescribed period as stipulated by the BOI;
  - ▶ Introduction of the enrolled model to the market using the parts manufactured under this CARS Program;
  - ▶ Consistently meeting the criteria for enrollment of PCMs; and
  - ▶ Attainment of other conditions that the BOI has imposed at the time of registration.

3. Criteria to be eligible for PVI:
  - ▶ Manufacture of at least 50% of the assembly by weight in the case of body shell assembly;
  - ▶ Manufacture of major components of the assemblies in the case of large plastic parts assemblies;
  - ▶ Exceeds 100,000 units in production volume; and
  - ▶ Attainment of other conditions that the BOI has imposed at the time of registration.
4. Fiscal support shall be computed based on the Segment Weighted Average Price, Standard Production Support, and Logistics Efficiency Index, during the manufacture of the enrolled models.
5. Fiscal support for the registered and eligible participant shall be evidenced by a non-transferrable Tax Payment Certificate (TPC), which shall be used to defray the tax and duty of the obligations of the participants to the National Government, specifically excise tax, income tax, import duties, and value added tax (VAT).
6. Registered participants shall not be allowed to register their activity under any other program granting incentives.

▶ **Monitoring and Compliance**

1. Production volume, including parts importation volume, deliverables and commitments shall be subject to periodic audit. Parts makers and/or service providers shall be audited to prevent parts trading.
2. Failure to meet the following shall cause the cancellation of the Certificate of Registration and/or forfeiture of support, and/or expulsion from the CARS Program:
  - ▶ Investment in the manufacture of parts and/or establishment of a shared testing facility within two years from the issuance of the Certificate of Registration; and
  - ▶ Delivery of parts to the PCM within the prescribed period.

▶ **Implementation**

1. The BOI shall be the lead implementing and coordinating agency. It shall, with the Department of Finance (DOF) and Department of Budget and Management (DBM), promulgate the rules and regulations to implement this EO.
2. An Inter-Agency committee on Automotive Industry Development shall administer and implement the CARS Program.

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EO No. 184 promulgates the 10<sup>th</sup> Regular Foreign Investment Negative List (FINL).

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**Executive Order No. 184 dated May 29, 2015**

▶ **Significant Changes**

1. No foreign equity for the practice of the following professions:
  - ▶ Pharmacy;
  - ▶ Radiological and X-Ray Technology;

- ▶ Criminology;
- ▶ Forestry; and,
- ▶ Law

2. Foreigners are now allowed to practice the following professions previously restricted under the 9<sup>th</sup> Regular FINL, provided the home country of the foreigner grants reciprocity (i.e., permits Filipinos to be similarly admitted to the practice of such professions in their country):

- ▶ Aeronautical Engineering;
- ▶ Agricultural Engineering;
- ▶ Chemical Engineering;
- ▶ Civil Engineering;
- ▶ Electrical Engineering;
- ▶ Electronics Engineering;
- ▶ Electronics Technician;
- ▶ Geodetic Engineering;
- ▶ Mechanical Engineering;
- ▶ Metallurgical Engineering;
- ▶ Mining Engineering;
- ▶ Naval Architecture and Marine Engineering;
- ▶ Sanitary Engineering;
- ▶ Medicine;
- ▶ Medical Technology;
- ▶ Dentistry;
- ▶ Midwifery;
- ▶ Nursing;
- ▶ Nutrition and Dietetics;
- ▶ Optometry;
- ▶ Physical and Occupational Therapy;
- ▶ Veterinary Medicine;
- ▶ Accountancy;
- ▶ Architecture;
- ▶ Chemistry;
- ▶ Customs Brokerage;
- ▶ Environmental Planning;
- ▶ Geology;
- ▶ Interior Design;
- ▶ Landscape Architecture;
- ▶ Librarianship;
- ▶ Marine Desk Officers;
- ▶ Marine Engine Officers;
- ▶ Master Plumbing;
- ▶ Sugar Technology;
- ▶ Social Work;
- ▶ Teaching;
- ▶ Agriculture;
- ▶ Fisheries;
- ▶ Guidance Counseling;
- ▶ Real Estate Service (Real Estate Consultant, Real Estate Appraiser, Real Estate Appraiser, Real Estate Assessor, Real Estate Broker, and Real Estate Salesperson);
- ▶ Respiratory Therapy; and,
- ▶ Psychology.

- ▶ Summary of the 10<sup>th</sup> Regular FINL
  1. List A: Foreign ownership is limited by mandate of the Constitution and specific laws
    - ▶ No foreign equity:
      - a. Mass media except recording;
      - b. Practice of the following professions:
        - ▶ Pharmacy;
        - ▶ Radiological and x-ray technology;
        - ▶ Criminology;
        - ▶ Forestry; and
        - ▶ Law;
      - c. Retail trade enterprises with paid-up capital of less than US\$2,500,000;
      - d. Cooperatives;
      - e. Private security agencies;
      - f. Small-scale mining;
      - g. Utilization of marine resources in archipelagic waters, territorial seas, and exclusive economic zones, as well as small-scale utilization of natural resources in rivers, lakes, bays, and lagoons;
      - h. Ownership, operation and management of cockpits;
      - i. Manufacture, repair, stockpiling and/or distribution of nuclear weapons;
      - j. Manufacture, repair, stockpiling and/or distribution of biological, chemical and radiological weapons and anti-personnel mines;
      - k. Manufacture of firecrackers and other pyrotechnic devices.
    - ▶ Up to 20% foreign equity:
      - a. Private radio communications network.
    - ▶ Up to 25% foreign equity:
      - a. Private recruitment, whether for local or overseas employment;
      - b. Contracts for the construction and repair of locally-funded public works except:
        - ▶ Infrastructure/development projects covered under RA No. 7718; and,
        - ▶ Projects which are foreign funded or assisted and required to undergo international competitive bidding;
      - c. Contracts for the construction of defense-related structures.
    - ▶ Up to 30% foreign equity:
      - a. Advertising.
    - ▶ Up to 40% foreign equity:
      - a. Exploration, development and utilization of natural resources;
      - b. Ownership of private lands;
      - c. Operation of public utilities;
      - d. Educational institutions other than those established by religious groups and mission boards;
      - e. Culture, production, milling, processing, trading except retailing of rice and corn and acquiring, by barter, purchase or otherwise, rice and corn and the by-products thereof;
      - f. Contracts for the supply of materials, goods and commodities to government-owned or controlled corporation, company, agency or municipal corporation;

- g. Facility operator of an infrastructure or a development facility requiring a public utility franchise;
  - h. Operation of deep sea commercial fishing vessels;
  - i. Adjustment companies; and,
  - j. Ownership of condominium units.
- ▶ Up to 49% foreign equity:
    - a. Lending companies regulated by the SEC.
  - ▶ Up to 60% foreign equity:
    - a. Financing companies and investment houses regulated by the SEC.
- ▶ List B: Foreign ownership is limited for reasons of security, defense, risk to health and moral and protection of small and medium-scale enterprises
    1. Up to 40% foreign equity:
      - ▶ Manufacture, repair, storage, and/or distribution of products and/or ingredients requiring Philippine National Police (PNP) clearance:
        - a. Firearms (handguns to shotguns), parts of firearms and ammunition therefore, instruments or implements used or intended to be used in the manufacture of firearms;
        - b. Gunpowder;
        - c. Dynamite;
        - d. Blasting supplies;
        - e. Ingredients used in making explosives: Chlorates of potassium and sodium; Nitrates of ammonium, potassium, sodium barium, copper (11), lead (11), calcium and cuprite; Nitric acid; Nitrocellulose; Perchlorates of ammonium, potassium and sodium; Dinitrocellulose; Glycerol; Amorphous phosphorous; Hydrogen peroxide; Strontium nitrate powder; Toluene; and,
        - f. Telescopic signs, sniper scope and other similar devices.
      - ▶ Manufacture, repair, storage, and/or distribution of products requiring Department of National Defense (DND) clearance:
        - a. Guns and ammunition for warfare;
        - b. Military ordnance and parts thereof (e.g. torpedoes, depth charges, bombs, grenades, missiles);
        - c. Gunnery, bombing and fire control systems and components;
        - d. Guided missiles/missile systems and components;
        - e. Tactical aircraft (fixed and rotary-winged), parts and components thereof;
        - f. Space vehicles and component systems;
        - g. Combat vessels (air, land and naval) and auxiliaries;
        - h. Weapon repair and maintenance equipment;
        - i. Military communications equipment;
        - j. Night vision equipment;
        - k. Stimulated coherent radiation devices, components and accessories;
        - l. Armament training devices; and,
        - m. Others as may be determined by the Secretary of the DND;
      - ▶ Manufacture and distribution of dangerous drugs;
      - ▶ Sauna and steam bathhouses, massage clinics and other like activities regulated by law;
      - ▶ All forms of gambling except those covered by investment agreements with PAGCOR;

- ▶ Domestic market enterprises with paid-in equity capital of less than the equivalent of US\$200,000; and,
- ▶ Domestic market enterprises which involve advanced technology or employ at least 50 direct employees with paid-in equity of less than the equivalent of US\$100,000.

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## PEZA Issuance

MC No. 2015-018 circularizes CMO No. 9-2015 on the enforcement of rules on regulated imports in relation to the importation requirements for goods considered as HUHS.

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### Memorandum Circular No. 2015-018 dated June 26, 2015

- ▶ In response to reports from locator enterprises that imported goods considered as household urban hazardous substances (HUHS) are being put on-hold at the port pending presentation of appropriate Food and Drug Administration (FDA) permits to port officials, the PEZA provides guidance on compliance with CMO No. 9-2015 issued on April 10, 2015.
  
- ▶ **Compliance with FDA regulations on importation of HUHS**
  1. Check the Material Safety Data Sheet of the chemical or materials to be imported and compare with the list of HUHS (the complete list of HUHS is available at the BOC website);
  2. Lodge the PEZA electronic import permit (e-IP) application and allow the supplier to ship the chemical or materials only after:
    - ▶ The goods are cleared by the PEZA Zone Office as unregulated; or
    - ▶ The regulated goods are accompanied by appropriate permits; and PEZA Zone Office has given clearance to lodge e-IP application.
  
- ▶ **Requirements for Importation of Materials considered as HUHS**
  1. Importers are required to secure the FDA License to Operate (LTO) and Certificate of Product Notification (PN) to be presented to the port of entry for every shipment of HUHS.
  2. If HUHS are already at the port and the appropriate permits have yet to be secured:
    - ▶ A BOC Clearance may be issued by the FDA Center Cosmetics Regulation and Research (CCRR) if the HUHS is intended solely for the company's own consumption and will not be for commercial or wholesale distribution
    - ▶ The BOC Clearance may be issued by the CCRR in lieu of the LTO and PN per shipment to establishments that import HUHS products subject to the submission of the following requirements to the FDA:
      - a. Letter of intent/cover letter addressed to Secretary of Health and Acting FDA Director General Janette P. Loreto-Garin, MD, MBA-H
      - b. Notarized affidavit of undertaking stating that the imported product/s does not contain any banned ingredient/s and is intended solely for own consumption and not for marketing nor for commercial or wholesale distribution
      - c. Copy of bill of lading, invoice and packing list
      - d. Proof of payment of PHP510.00
  3. Applications are processed by the FDA within five working days. The status of the application may be checked online.

▶ **Expanded BOC Clearance for Frequent Importation of HUHS**

1. PEZA is currently working with the FDA to streamline the requirements for registered enterprises who frequently import HUHS. The FDA will be issuing guidelines to enable this.
2. Applicants requesting for expanded BOC clearance for the release of the HUHS must write a letter to PEZA with the following information:
  - ▶ Material Safety Data Sheet of the HUHS;
  - ▶ Frequency and volume of importation per month of HUHS; and
  - ▶ Brief description of how the HUHS is used in any PEZA-registered activity with a declaration that the HUHS does not contain any banned ingredient/s and is intended solely for own consumption and not for marketing nor for commercial wholesale distribution.

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## **BSP Issuances**

Circular No. 883 amends Subsection X191.2 and Section 4162S of the MORB and MORNBF1, respectively, specifically on motor vehicle loans.

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### **BSP Circular No. 883 dated July 10, 2015**

- ▶ The Financial Reporting Package under Subsection X191.2 of the MORB is further amended to revise the: (a) manual of accounts (MOA) to include the definition of motor vehicle loans; and, (b) reporting templates of specific Financial Reporting Package for Banks (FRP) and Simplified Reporting Package for Rural and Cooperative Banks (SFRP), as follows:

1. Manual of Accounts

“xxx

“11. Loans and Receivables - xxx

“(a) Loans to Bangko Sentral ng Pilipinas - xxx

“(b) xxx

“(c) Loans and Receivables-Others - xxx

“(c.1) xxx

“xxx

“(c.8) Loans to individuals primarily for personal use purposes - This refers to the amortized cost of loans granted to individuals for personal use purposes.

(c.8a) Credit Card - xxx

(c.8b) Motor Vehicle Loans - This refers to the amortized cost of loans granted to individuals for the acquisition of motorized land transportation vehicles primarily for personal use. The loan may be considered secured if the motor vehicle purchased using the loan proceeds satisfies the full requirements of eligible chattel mortgage that is registered with both Registry of Deeds and LTO.

(c.8b.1) Auto Loans - This refers to loans granted to individuals for the acquisition of automobiles primarily for personal use.

Motorcycle Loans - This refers to loans granted to individuals for the acquisition of motorcycles primarily for personal use.

(c.8c) Salary Loans - xxx

(c.8d) Others - This refers to the amortized cost of loans granted to individuals to finance other personal and household needs such as purchase of household appliances, furniture and fixtures and/or to pay taxes, hospital and educational bills.”

xxx.”

2. The reporting templates of FRP are revised to show a line for Motor Vehicle Loans and sub-accounts Auto Loans and Motorcycle Loans under the category of Loans to Individuals Primarily for Personal Use Purposes. The revised schedules are 11, 11a1 to 11e1, 11h1, 11h2, 29d to 29d4 and 33.
  3. Similarly, the reporting templates of SFRP for Rural and Cooperative Banks were revised for schedules 11, 11a1 to 11e1, 11h1, 11h2, 29d1 and 33.
  4. Section 4162S of MORNBF1 is also amended to revise the reporting templates of (a) Consolidated Statement of Condition of Non-Stock Savings and Loan Associations (NSSLA) to show a line for each of the Motor vehicle Loans account (classified under Loans and Discounts) and its sub-accounts Auto Loans and Motorcycle Loans; and (b) the Consolidated Statement of Income and Expenses of NSSLAs to show a line for each of the Interests/Discounts Earned - Motor Vehicle Loans account, Interest/Discounts Earned - Auto Loans and Interest/Discounts Earned - Motorcycle Loans.
  5. Appendix N-L in the MORNBF1 is also amended to revise the report titled "Schedule of Loans/Receivables and Trading Account Securities - Loans" to show a line for each of the outstanding balances of Motor Vehicle Loans (classified under Loans and Discounts) and its sub-accounts Auto Loans and Motorcycle Loans. There will also be an "of which" line under the past Due category for each of the sub-accounts Auto Loans and Motorcycle Loans.
  6. Banks, NSSLAs and Financing Companies shall adopt the said revised reporting templates effective report ending June 30, 2015.
- ▶ 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 No. 883 was published in The Philippine Star on July 16, 2015.]*

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Circular No. 884 provides guidelines on the establishment and operation of Trust Corporations.

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**BSP Circular No. 884 dated July 22, 2015**

- ▶ The Monetary Board in its Resolutions Nos. 945 dated 11 June 2015, 961.A dated 18 June 2015 and 1091 dated 9 July 2015 approved the Guidelines on the Establishment and Operation of Trust Corporations, which shall be incorporated in the MORNBF1 as the Regulations Governing Trust Corporations.
- ▶ This Circular supersedes Part Nine (Sections 4901N-4999N and Appendix N-9) of the MORNBF1-N Regulations governing stand-alone trust corporations.
- ▶ The Circular shall take 15 days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

*[Editor's Note: Circular No. 884 was published in Business World on July 28, 2015.]*



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## SEC Issuances

MC No. 6 amends paragraph 15 of SEC MC No. 21, Series of 2013 (Omnibus Guidelines and Procedures on the Use of Corporate and Partnership Names) on the use of Corporate Names of Corporations with Dissolved and Revoked Certificates of Registration.

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### SEC Memorandum Circular No. 6 dated June 2, 2015

- ▶ Paragraph 15 now provides that the name of a corporation or partnership that has been dissolved or whose registration has been revoked shall not be used by another corporation, except in meritorious cases as determined by the Commission *En Banc*.
- ▶ Only expired corporations may apply for re-registration using the same corporate name.

[Editor's Note: SEC MC No. 6 was published in The Standard and in the Philippine Daily Inquirer on July 9, 2015.]

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### SEC-OGC Opinion No. 15-06 dated July 21, 2015

A representative office is not allowed to invest in shares of stock of a domestic corporation and earn investment income from them.

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#### Facts:

A representative office of a UK company in the Philippines requested for confirmation that it may invest in shares of stock of a Philippine company and earn dividend income from them, without violating its license, since dividend is a passive income that would not be derived from carrying out the business activities of the company or from doing business in the Philippines.

#### Issue:

Is a representative office allowed to invest in shares of stock of a Philippine company and earn dividend income?

#### Ruling:

No, the Foreign Investment Act is very clear that a representative office cannot derive any income from the host country. Any permissible act of a representative office should be akin to or resemble the same kind or class as those of information, dissemination and promotion of the company's products, or quality control for the parent company, or any other passive act that does not involve the earning of any income. To hold otherwise would run counter to the very nature of a representative or liaison office.

## Court Decisions

### Commissioner of Internal Revenue vs. COL Financing Group, Inc.

CTA (*En Banc*) Case 1187 promulgated June 30, 2015

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RR No. 2-2010, which requires taxpayers to choose during its first quarterly filing either the itemized or optional standard method of deduction, cannot be given retroactive application as it prejudices the rights of taxpayers.

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#### Facts:

Respondent COL Financing Group, Inc. (COL) filed its income tax return (ITR) for the first three quarters of taxable year 2009 using the itemized method of deduction in determining income tax payable, in accordance with RR No. 16-2008. RR No. 16-2008 allows taxpayers the option of using either itemized or optional standard deduction (OSD) in preparing quarterly ITRs, provided only one method shall be applied in the annual ITR.

In February 2010, Petitioner Commissioner of Internal Revenue (CIR) issued RR No. 2-2010 and Revenue Memorandum Circular (RMC) No. 016-10, prescribing that beginning taxable year 2009 taxpayers can choose the deduction method only during its first quarterly filing.

On April 12, 2010, COL filed its 2009 annual ITR using the OSD and paid the corresponding income tax due. Three days later, it paid under protest additional income tax amounting to P8,960,245 to avoid the imposition of interest, penalties, surcharges and other increments should the BIR require COL to use the itemized method of deduction pursuant to RR No. 2-2010.

COL then filed with the BIR a claim for refund of excess income tax paid and argued that RR No. 2-2010 violated the prohibition against non-retroactivity of rulings under Section 246 of the Tax Code. As the CIR failed to act on the claim, COL filed a Petition for Review with the Court of Tax Appeals (CTA). The CTA Third Division granted the petition and directed the BIR to issue a tax credit certificate for the amount of the additional income tax paid by COL.

The CIR appealed to the CTA *En Banc* and asserted that RR No. 2-2010 was merely an interpretative ruling, which neither had a prospective nor retroactive effect.

**Issue:**

Can RR No. 2-2010 be given retroactive effect?

**Ruling:**

No. RR 2-2010 cannot be given retroactive effect as it is prejudicial to taxpayers.

The prohibition against retroactive rulings is clear under Section 246 of the Tax Code, which states that any revocation, modification or reversal of any rules and regulations or any rulings shall not be given retroactive application if such will be prejudicial to taxpayers. The rule on non-retroactivity of rulings admits of only three exceptions, namely:

- (1) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the BIR;
- (2) Where the facts gathered by the BIR are materially different from the facts on which the ruling is based; or,
- (3) Where the taxpayer acted in bad faith.

The implementation of RR No. 2-2010 to cover taxable year 2009 in effect moved the deadline for choosing a method of deduction earlier, i.e., from the filing of the final adjustment income tax return on April 15, 2010 to the filing of the first quarterly tax return on May 30, 2009. COL filed its quarterly returns for the first 3 quarters of 2009 when RR No. 16-2008 was still effective during which the option to change the method of deduction from quarter to quarter was allowed. Having lost this option upon the issuance of RR No. 2-2010, the same should not be given retroactive application for being prejudicial to the rights of taxpayers.

The CIR failed to prove the existence of any of the exceptions to the rule of non-retroactivity of rulings provided under Section 246 of the Tax Code. Thus, RR No. 2-2010 cannot be given retroactive application.

## **Cityland, Inc. vs. City Treasurer of Makati City**

CTA (Third Division) Case AC-125 promulgated July 2, 2015

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Section 3A.02(m) of the Revised Makati Revenue Code imposing local business tax on “owners and operators of real estate developer” is an *ultra vires* exercise of local taxing powers and hence is null and void.

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### **Facts:**

Respondent City Treasurer of Makati (City Treasurer) assessed Petitioner Cityland, Inc. (Cityland) for alleged deficiency local business tax (LBT) for taxable years 2006 to 2008 as an “owner and operator of real estate developer” under Section 3A.02(m) of the Revised Makati Revenue Code. As a real estate developer, the City Treasurer alleged that Cityland is liable for LBT at the rate of 75% of 1% of gross receipts for the preceding calendar year. Cityland protested the assessment and argued that it should have been assessed as a real estate dealer under Section 3A.02(b) of the Revised Makati Revenue Code at the rate of 60% of 1% of its gross receipts.

As the City Treasurer did not act on its protest within the 60-day period, Cityland filed an appeal with the Makati Regional Trial Court (RTC). Cityland argued that the City Treasurer is estopped from reclassifying it as a real estate developer considering that from 2000 to 2011, the Business Permits Office of Makati City consistently issued Billing Assessments assessing Cityland as a real estate dealer. Cityland also argued that Section 3A.02(m) is invalid.

Upon denial by the RTC, Cityland filed a Petition for Review with the CTA.

### **Issues:**

1. Is the Makati City Treasurer estopped from assessing Cityland as a real estate developer?
2. Is Section 3A.02(m) of the Revised Makati Revenue Code imposing LBT on “owners and operators of real estate developer” valid?

### **Ruling:**

1. No. The fact that the Billing Assessments issued by the Business Permits Office of Makati City to Cityland from 2000 to 2011 consistently assessed the corporation as a real estate dealer is not conclusive that Cityland has been permanently classified as such for LBT purposes. Cityland cannot rely on documents issued in connection with the issuance of business permits to assail the deficiency assessment as the City Treasurer was not a signatory to any of them.
2. No. Section 3A.02(m) of the Revised Makati Revenue Code imposing LBT on “owners and operators of real estate developer” is an *ultra vires* exercise of local taxing power and hence is null and void.

Section 146 of the Local Government Code prescribes that the tax on business must be paid by the person conducting the same. This is a statutory limitation on the taxing authority of a local government unit. A business tax on gross sales or receipts must be levied upon the person who receives such gross sales or receipts. In a corporation, the stockholders are not the recipients of revenues but the corporation itself.

The City Treasurer’s assertion that the phrase “owners and operators of real estate developer” means nothing more than a real estate developer has no basis. The phraseology adopted by the Sangguniang Panlungsod of Makati City is clear enough, which leaves no ground for interpretation.

It is clearly beyond the scope of Makati City’s taxing authority to subject to LBT owners or operators of real estate developer. Thus, Section 3A.02(m) cannot be given effect without violating the principle that an ordinance can neither amend nor repeal but must conform to a statute.

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