

Tax Bulletin

July 2016



SGV TAX BULLETINS
(NOS. 52 - 1 TO 55 - 32)

1952 - 1955

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TAX BULLETIN

08-99

October 1999

HIGHLIGHTS

BIR RULINGS

The NOLCO and excess MCIT credit balances of the corporations in a statutory merger of commonly owned companies transferred and carried over to the surviving corporation loan is subject to tax only on the dividends paid in the final withholding tax return.



HIGHLIGHTS

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Voluntary Assessment and Abatement Program

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

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Highlights

BIR Rulings

- ▶ Except for the five entities named in Section 27 (C) of the Tax Code (i.e., GSIS, SSS, PHIC, LWDs and PCSO), all other corporations, agencies or instrumentalities owned or controlled by the Government are subject to income tax. **(Page 4)**
- ▶ The Documentary Stamp Tax (DST) on deeds of sale and conveyances of real property shall be computed based on the consideration contracted to be paid for the realty or on its fair market value, whichever is higher. **(Page 4)**

BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 40-2016 prescribes that the BIR observe the "No Gift Policy". **(Page 4)**
- ▶ RMO No. 41-2016 reiterates the provisions of Revenue Memorandum Circular (RMC) No. 39-2015 titled "Updated BIR Citizens Charter as Consolidated" and RMC No. 80-2012 titled "Strict Adherence to the Anti-Red Tape Act Provision on Accessing Frontline Services" to warn BIR officials and employees against the issuance of Certificates Authorizing Registration (CAR) beyond the prescribed periods. **(Page 5)**
- ▶ RMO No. 42-2016 prescribes the guidelines and procedures in implementing Republic Act (RA) No. 9505 or the "Personal Equity and Retirement Account (PERA) Act of 2008". **(Page 5)**
- ▶ RMO No. 43-2016 amends the guidelines for issuing of the International Carrier's Special Certificate (ICSC) and the International Carrier's General Certificate (ICGC). **(Page 7)**
- ▶ RMO No. 44-2016 excludes non-stock, non-profit educational institutions from RMO No. 20-2013 and prescribes new policies and guidelines in issuing tax exemption rulings to such educational institutions. **(Page 7)**
- ▶ Revenue Memorandum Circular (RMC) No. 70-2016 suspends all tax audits effective 1 June 2016 and requires all revenue officers to submit an inventory of pending Letters of Authority (LA)/Letter Notices (LN) as of 30 June 2016. **(Page 8)**
- ▶ RMC No. 71-2016 recalls and revokes all Revenue Travel Assignment Orders (RTAOs) issued within the period 1 June to 30 June 2016. **(Page 8)**
- ▶ RMC No. 72-2016 clarifies RMC No. 71-2016 concerning transfers of presidential appointees. **(Page 9)**
- ▶ RMC No. 74-2016 streamlines the requirements and the process in issuing Tax Clearances under Executive Order (EO) No. 398. **(Page 9)**
- ▶ RMC No. 75-2016 clarifies certain issues relative to the suspension of all BIR audits as mandated under RMC No. 70-2016. **(Page 9)**
- ▶ RMC No. 80-2016 lifts the suspension of the effectivity of certain revenue issuances provided under RMC No. 69-2016 dated 1 July 2016. **(Page 11)**

BOC Issuance

- ▶ CMO No. 17-2016 provides the guidelines and procedures on implementing the electronic certificate of origin system (eCOS). **(Page 13)**

BSP Issuances

- ▶ Circular No. 914 provides for the Amendments to Prudential Policy on Loans, Other Credit Accommodations, and Guarantees Granted to Directors, Officers, Stockholders, and their Related Interests (DOSRI), Subsidiaries and Affiliates. **(Page 14)**
- ▶ Circular No. 915 provides for the Amendment on the Accounting Guidelines for Prudential Reporting to the BSP. **(Page 17)**
- ▶ Circular No. 916 provides for the Revision of the Rediscount Rates on Rediscounting Window (RW) I. **(Page 18)**
- ▶ Circular No. 917 provides for the Amendments to the Manual of Regulations for Banks and Manual of Regulation for Non-Bank Financial Institutions as of 31 December 2015. **(Page 18)**

SEC Opinions and Issuances

- ▶ Treasury shares are still considered “issued shares” since they do not revert to the unissued shares of a corporation but are regarded as property acquired by the corporation. The requirements that at least 25% of the amount of the authorized capital stock shall be subscribed and at least 25% of the total subscription shall be paid, are mandatory only during the pre-incorporation period of a corporation. **(Page 21)**
- ▶ The business of leasing out or sub-leasing of advertising spaces falls within the purview of mass media which is a nationalized activity and is subject to the foreign equity limitations imposed by the 1987 Constitution and other relevant laws. **(Page 22)**
- ▶ SEC MC No. 8 provides for the exemption from the 5% liquidity requirement of mutual fund index trackers. **(Page 23)**

PEZA Update

- ▶ DTI Memorandum dated 20 July 2016 designates Mr. Justo Porfirio LL. Yusingco as the OIC of PEZA. **(Page 23)**

Court Decisions

- ▶ Satellite airtime service fees paid to a non-resident foreign corporation are considered income from sources within the Philippines that are subject to final withholding tax. **(Page 23)**
- ▶ Any alteration to the VAT invoice or official receipt must be counter-signed by an authorized signatory or the counter signature must be verified to comply with the invoicing requirements for VAT refund purposes. **(Page 24)**
- ▶ Maintenance service fees payable to a US resident under a software license agreement are not considered royalties but business profits, which are subject to final withholding tax only when the payee is deemed to have a permanent establishment in the Philippines. **(Page 25)**

BIR Rulings

BIR Ruling No. 335-2016 dated 29 June 2016

Except for the five entities named in Section 27 (C) of the Tax Code (i.e., GSIS, SSS, PHIC, LWDs and PCSO), all other corporations, agencies or instrumentalities owned or controlled by the Government are subject to income tax.

Facts:

X Hospital is a government hospital created by virtue of RA No. 1859, as amended. It requested for the issuance of a certificate of exemption from income tax claiming that it is a retained hospital of the Department of Health (DOH), and therefore, a government agency entitled to income tax exemption.

Issue:

Is X Hospital exempt from income tax?

Ruling:

No. Under Section 27 (C) of the Tax Code, all corporations, agencies or instrumentalities owned or controlled by the Government, except for the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the local water districts (LWDs) and the Philippine Charity Sweepstakes Office (PCSO), shall be subject to the regular corporate income tax. The said provision specifically exempted only five entities from income tax. Hence, all other corporations, agencies or instrumentalities owned or controlled by the Government are subject to income tax.

BIR Ruling No. 345-2016 dated 30 June 2016

The DST on deeds of sale and conveyances of real property shall be computed based on the consideration contracted to be paid for the realty or on its fair market value, whichever is higher.

Facts:

Ms. A, an individual buyer of a condominium unit from a developer, was made to pay the DST on the transfer of real property computed based on the contract price, inclusive of VAT. She filed a claim for refund of alleged overpaid DST on the basis that the tax payable could have been lower if computed based on the fair market value of the property.

Issue:

Is there a legal basis to grant Ms. A's claim for refund?

Ruling:

No. Under Section 196 of the Tax Code, the DST on deeds of sale and conveyances of real property shall be computed based on the consideration contracted to be paid for the realty or on its fair market value as determined in accordance with Section 6 (E) of the Tax Code, whichever is higher.

BIR Issuances

RMO No. 40-2016 prescribes that the BIR observe the "No Gift Policy".

Revenue Memorandum Order No. 40-2016 dated 5 July 2016

- ▶ All BIR officials and employees are not allowed to accept or solicit gifts from the public or private sectors and are expected to perform their duties and responsibilities without expectation of any favor or material reward.
- ▶ Those concerned are directed to immediately return any gift that they have received.

RMO No. 41-2016 reiterates the provisions of RMC No. 39-2015 titled "Updated BIR Citizens Charter as Consolidated" and RMC No. 80-2012 titled "Strict Adherence to the Anti-Red Tape Act Provision on Accessing Frontline Services" to warn BIR officials and employees against the issuance of CARs beyond the prescribed periods.

RMO No. 42-2016 prescribes the guidelines and procedures in implementing RA No. 9505 or the "PERA Act of 2008".

Revenue Memorandum Order No. 41-2016 dated 14 July 2016

- ▶ CARs covering the following transactions shall be issued within five days from the submission of complete documentary requirements:
 1. Sale of real property;
 2. Transfer or assignment of stocks not traded in the stock exchange; and
 3. Transfers subject to donor's tax, estate tax, and documentary stamp tax related to the sale or transfer of properties
- ▶ BIR officials and employees violating this RMO shall be subject to administrative and criminal penalties enumerated under the Anti-Red Tape Act of 2007.

Revenue Memorandum Order No. 42-2016 dated 21 July 2016

- ▶ The PERA Act of 2008 establishes the framework of retirement plans for persons, comprised of voluntary personal savings and investments while providing various tax incentives and privileges.
- ▶ The RMO sets the guidelines and procedures for the proper administrative reporting of PERA transactions, involving contributions, income, withdrawals, and/or terminations.
- ▶ The BIR's PERA Processing Office (i.e. the Audit Information, Tax Exemption and Incentives Division (AITEID) under the Assessment Service) shall only accept Applications for Accreditation which are filed by pre-qualified PERA Administrators based on a "Qualification Certificate" issued by either the *Bangko Sentral ng Pilipinas* (BSP), SEC, or the Insurance Commission (IC).
- ▶ A Certificate of Accreditation shall be issued by the AITEID to the PERA Administrator, which will be valid until suspended or revoked due to violations of RA 9505 or any of the grounds enumerated by law.
- ▶ A copy of the Certificate shall be transmitted to the concerned Revenue District Office (RDO) to ensure that the PERA administrator maintains separate books of accounts to record all PERA contributions and related transactions.
- ▶ Contributions to PERA must not exceed the following amounts per calendar year:
 1. By employees and/or employers or self-employed individuals - P100,000.00
 2. By Overseas Filipino Workers -P200,000.00
- ▶ A PERA Contributor may designate the PERA Administrator who will handle the PERA established by its employees.
- ▶ The employees' PERA contribution, together with the contribution made by the employer, must not exceed the employee's qualified PERA contribution.
- ▶ The PERA Administrator must validate in the PERA Contributor's database provided by the BSP that the contributions are under his exclusive administration.
- ▶ A Contributor may create and maintain a maximum of five PERAs at any one time, and each PERA must be confined to only one category of PERA Investment Product.

- ▶ An employee or self-employed qualified Contributor is entitled to a 5% tax credit of his total PERA contributions in a calendar year.
 1. The tax credits arising from PERA contributions may be used as payment for delinquent accounts, but are non-refundable, non-transferrable and non-convertible to cash.
 2. In case of an Overseas Filipino Contributor, the 5% tax credit may be claimed against any internal revenue tax liabilities except for withholding tax liabilities. However, if he does not have taxable income in the Philippines, the 5% tax credit will eventually be forfeited in favor of the government.

- ▶ A qualified employer shall not be entitled to the 5% tax credit. However, the employer's contribution to the employee's PERA:
 1. is exempt from withholding tax on compensation and final withholding tax on fringe benefits;
 2. may be claimed as a deduction from gross income to the extent that such contribution would complete the maximum allowable PERA contribution.

- ▶ Any income earned from the investment and re-investment of PERA assets in PERA Investment Products are not included in the maximum allowable contributions.

- ▶ In addition, such income shall be exempt from income taxes but will be subject to other taxes, such as percentage tax, VAT, stock transaction tax, and documentary stamp tax.

- ▶ The following Qualified PERA Distributions (QPD) are excluded from the gross income of the Contributor and shall not be subject to estate tax in the hands of the heirs or beneficiaries of the Contributor:
 1. QPD received by the Contributor after making contributions for at least five years and upon reaching the age of 55;
 2. QPD received by the heirs or beneficiaries of the Contributor, regardless of age and number of contributions made by the Contributor;
 3. When the Contributor is hospitalized for more than 30 days, as evidenced by a notarized doctor's certificate;
 4. When the Contributor becomes permanently disabled as evidenced by a certificate issued by the concerned government agency; or
 5. Immediate transfer of proceeds to another PERA Investment Product and/or Administrator within two working days from the withdrawal of the same.

- ▶ The RDOs or Offices under the LTS shall issue the following as may be necessary:
 1. Certification of Entitlement to the 5% Tax Credit; or
 2. PERA-Tax Credit Certificate (TCC) to be issued in the name of the Overseas Filipino or self-employed Contributor for release to the PERA Administrator.

RMO No. 43-2016 amends the guidelines for issuing the ICSC and the ICGC.

Revenue Memorandum Order No. 43-2016 dated 21 July 2016

- ▶ The Office of the Commissioner shall issue the International Carrier's Special Certificate (ICSC) (BIR Form No. ICC-3) and the International Carrier's General Certificate (ICGC) (BIR Form No. ICC-4), after verifying that payment of the 2 ½% gross Philippine billings tax and the 3% carrier's tax has been made by the international carrier prior to departure.
- ▶ The Commissioner or his duly authorized representative shall sign the certificates which shall be submitted by the international carrier to the Bureau of Customs.

RMO No. 44-2016 excludes non-stock, non-profit educational institutions from RMO No. 20-2013 and prescribes new policies and guidelines in issuing tax exemption rulings to such educational institutions.

Revenue Memorandum Order No. 44-2016 dated 25 July 2016

- ▶ The Philippine Constitution directly confers a tax exemption on non-stock, non-profit educational institutions for all revenues and assets used actually, directly, and exclusively for educational purposes.
- ▶ Only two requisites have to be met in order to avail of the constitutional exemption: 1) the school must be a non-stock and non-profit institution; and 2) the income is actually, directly, and exclusively used by the school for educational purposes.
- ▶ There are no other conditions and limitations imposed in order to avail of the exemption.
- ▶ Non-stock, non-profit educational institutions are now directed to file their applications for tax exemption with the Office of the Assistant Commissioner, Legal Service, Attention: Law Division, and shall submit the following documents:
 1. Original copy of the application letter;
 2. Certified true copy of the Certificate of Good Standing issued by the SEC;
 3. Original copy of the Certification under Oath of the Treasurer as to the amount of the income, compensation, salaries, or any emoluments paid to trustees and officers;
 4. Certified true copy of its Financial Statements for the last 3 years;
 5. Certified true copy of the permit to operate issued by either the Commission on Higher Education (CHED), Department of Education (DepEd), or Technical Education and Skills Development Authority (TESDA) and if the permit to operate was issued five years before the application for tax exemption, a Certificate of Operation/Good Standing issued by the CHED, DepEd, or TESDA;
 6. Original copy of the Certification of Utilization of Annual Revenues and Assets issued by the Treasurer.
- ▶ Unless recalled by the BIR on valid grounds, tax exemption rulings issued in favor of non-stock, non-profit educational institutions shall remain valid and effective, and need not be renewed or revalidated.
- ▶ Tax exemption rulings may be revoked if there are material changes in the character, purpose, or method of operation of the educational institution which are inconsistent with the basis of its income tax exemption.

- ▶ Non-stock, non-profit educational institutions, which were issued tax exemption rulings prior to June 30, 2012, are required to apply anew for tax exemption with the BIR.

RMC No. 70-2016 suspends all tax audits effective 1 June 2016 and requires all revenue officers to submit an inventory of pending LAs/LNs as of 30 June 2016.

Revenue Memorandum Circular No. 70-2016 dated 1 July 2016

- ▶ The RMC suspends all BIR field audit and field operations in relation to examinations and verifications of taxpayers' books of accounts, records and other transactions.
 1. As such, all LAs/LNs, or Mission Orders shall not be executed;
 2. No written orders to audit and investigate taxpayers for internal revenue taxes shall be issued or served, except in the following cases:
 - ▶ Investigation of cases prescribing on or before October 31, 2016;
 - ▶ Processing and verification of estate tax, donor's tax, capital gains tax and withholding tax returns on the sale of real properties or shares of stocks and the corresponding documentary stamp tax returns;
 - ▶ Examination or verification of internal revenue tax liabilities of taxpayers retiring from business;
 - ▶ Audit of National Government Agencies (NGAs), Local Government Units (LGUs) and Government-Owned and Controlled Corporations (GOCCs), including its subsidiaries and affiliates; and
 - ▶ Other matters/concerns with impending deadlines, or matters upon the orders of the Commissioner of Internal Revenue.
 3. Assessment Notices, Warrants and Seizure Notices shall still be served. Taxpayers may voluntarily pay their deficiency taxes without the need to secure authority from revenue officers.
 4. Revenue Officers are required to submit to the Commissioner's Office on or before 16 July 2016, an inventory of all outstanding LAs and LNs as of 30 June 2016.

RMC No. 71-2016 recalls and revokes all RTAOs issued within the period from 1 June to 30 June 2016.

Revenue Memorandum Circular No. 71-2016 dated 5 July 2016

- ▶ The RMC recalls and revokes all RTAOs issued and published in BIR Outlook/Internal Communications from 1 June to 30 June 2016.
- ▶ All affected revenue personnel are directed to return to their previous offices and positions.
- ▶ RTAOs covering the transfer and designation of Revenue Collection Officers and Revenue Special Orders (RSOs) on local and international training are not covered by the revocation.

RMC No. 72-2016 clarifies RMC No. 71-2016 concerning transfers of presidential appointees.

Revenue Memorandum Circular No. 72-2016 dated 8 July 2016

- ▶ On 21 October 2010, the Department of Finance issued a Memorandum requiring a clearance from the Secretary of Finance on transfers involving Presidential Appointees.
- ▶ In line with this, RTAOs involving Presidential Appointees issued within 1 June to 30 June 2016, having been approved by the Secretary of Finance, are excluded from the general revocation of RTAOs as prescribed under RMO No. 71-2016.

RMC No. 74-2016 streamlines the requirements and the process in issuing Tax Clearances under EO No. 398.

Revenue Memorandum Circular No. 74-2016 dated 14 July 2016

- ▶ EO No. 398 requires individuals and corporations that wish to enter into contracts with the Government, to submit a tax clearance from the BIR to prove full and timely payment of taxes.
- ▶ The Tax Clearance shall be processed and released within two working days from the submission of the following documentary requirements:
 1. Duly-accomplished and notarized application form with two pieces loose Documentary Stamp Tax;
 2. Print-out of Certification fee paid through the BIR's electronic Filing and Payment System (eFPS), with payment confirmation; and
 3. Delinquency Verification with a validity period of one month from the date of issue, which shall be issued by the concerned BIR Offices within 24 hours from filing of the application by the taxpayer.

RMC No. 75-2016 clarifies certain issues relative to the suspension of all BIR audits as mandated under RMC No. 70-2016

Revenue Memorandum Circular No. 75-2016 dated 18 July 2016

- ▶ The investigation of the cases prescribing on the following dates is not covered by the suspension:

TAXABLE PERIOD	PRESCRIPTIVE PERIOD
Income Tax	
Calendar Year 2012	15 April 2016
Fiscal Year Ending 30 June 2013	15 October 2016
Calendar Year 2013	15 April 2017
Value-Added Tax (VAT)	
Calendar Year 2013	
First Quarter (Q1)	25 April 2016
Second Quarter (Q2)	25 July 2016
Third Quarter (Q3)	25 October 2016
Fourth Quarter (Q4)	25 January 2017
Fiscal Year Ending 31 October 2013	
1 st Quarter (1 Nov. 2012 to 31 Jan. 2013)	25 February 2016
2 nd Quarter (1 Feb. 2013 to 30 April 2013)	25 May 2016
3 rd Quarter (1 May 2013 to 31 July 2013)	25 August 2016
4 th Quarter (1 August 2013 to 31 Oct. 2013)	25 November 2016

TAXABLE PERIOD	PRESCRIPTIVE PERIOD
Withholding Taxes	
January 2013	10-15 February 2016
February 2013	10-15 March 2016
March 2013	10-15 April 2016
April 2013	10-15 May 2016
May 2013	10-15 June 2016
June 2013	10-15 July 2016
July 2013	10-15 August 2016
August 2013	10-15 September 2016
September 2013	10-15 October 2016
October 2013	10-15 November 2016
November 2013	10-15 December 2016
December 2013	15 January 2017

- ▶ In addition, the following cases are not covered by the suspension:
 1. All cases with Letters of Authority (LOAs) covering taxable year 2013 and prior years;
 2. Processing of applications for tax refund and tax credit certificate (TCC) is not covered by the suspension.

- ▶ The following Assessment Notices can be served despite the suspension:
 1. Assessment Notices covering taxable year 2013 and prior years, which include Preliminary Assessment Notices (PANs), Formal Letter of Demand/Final Assessment Notices (FANs) and Final Decision on Disputed Assessment (FDDA); and
 2. Assessment Notices issued and signed by the Commissioner of Internal Revenue (CIR) or his authorized representative as of 30 June 2016, covering taxable year 2014 onwards, provided that the audit fieldwork has been completed.

- ▶ The processing of taxpayers' complaints will still continue despite the suspension, but will be limited to a preliminary evaluation where the "No Contact with Taxpayer" policy is enforced.

- ▶ No Mission Order shall be issued during the period of suspension of audit or investigation.

- ▶ During the suspension period, the BIR may still send reminder letters to taxpayers with open stop-filer cases, and follow-up letters for compliance in the submission of required schedules (e.g., summary list of sales, summary list of purchases) to the BIR.

- ▶ The BIR, during the suspension period, may still issue and serve Collection Letters, Seizure Notices, Notices of Levy or Tax Lien, and other similar correspondences for enforcement of collection.

- ▶ However, all activities connected with the implementation of Mission Orders issued prior to 1 July 2016, including the service of notices or communications relating to said Mission orders, are suspended.

RMC No. 80-2016 lifts the suspension of the effectivity of certain revenue issuances provided under RMC No. 69-2016 dated 1 July 2016.

Revenue Memorandum Circular No. 80-2016 issued on 22 July 2016

- ▶ The suspension of the following revenue issuances is lifted and shall be effective immediately:

ISSUANCE NO.	TITLE/DESCRIPTION OF ISSUANCE
REVENUE MEMORANDUM ORDERS (RMO)	
RMO No. 22- 2016	Prescribing the Policies and Procedures for the Issuance of Electronic Certificate Authorizing Registration (eCAR).
RMO No. 28- 2016	Prescribes the policies, guidelines and procedures in implementing the Memorandum of Understanding between the Home Development Mutual Fund and the BIR in electronic filing of tax returns through eBIR Forms and Issuance of eCAR.
RMO No. 29- 2016	Revised Uniform Guidelines and Procedures in the Designation, Assignment of RCO Codes and Issuance of Fidelity Bonds for RCOs Authorized to Accept Tax Returns and Collect Tax Payments.
RMO No. 30- 2016	Prescribing Guidelines, Policies and Procedures for replacement of spoiled/bad order and factory defected Internal Revenue Stamps under the Internal Revenue Stamps Integrated System (IRSIS).
RMO No. 31- 2016	Amends the Pertinent Provisions of RMO No. 13- 2014, more particularly on the Public Auction Sale of Absolutely Forfeited and Seized Properties.
RMO No. 32- 2016	Further Clarifying and Amending Certain Policies, Guidelines and Procedures in the Issuance of Importer/Broker Clearance Certificates Relative to the Accreditation as Importer/Customs Brokers Prescribed under the RMO No. 10- 2014, as amended by RMO Nos. 33- 2014 and 1- 2015.
RMO No. 33- 2016	Prescribing uniform procedures for the implementation of Internal Revenue Stamps Integrated System (IRSIS).
RMO No. 34- 2016	Amending the Prescribed Format for the Notice of Denial that Shall be Prepared by Concerned Regional Offices Relative to Applications for Compromise Settlement and/or Abatement.
RMO No. 35- 2016	Revised Consolidated Warrant of Dstraint and/or Levy (WDL) Status Report with Monthly Consolidated List of Seized Properties as an Additional Annex Report.
RMO No. 36- 2016	Prescribing Policies and Procedures in the Decentralization of Recording and Reporting of Internal Revenue Taxes to All Regional Finance and Collection Divisions.

ISSUANCE NO.	TITLE/DESCRIPTION OF ISSUANCE
REVENUE MEMORANDUM CIRCULARS (RMC)	
RMC No. 59- 2016	Publishing the Daily Minimum Wage Rates in ARMM Pursuant to Wage Order No. ARMM- 16.
RMC No. 60- 2016	Non- Acceptance of Checks/ Drawn Check from SUMITOMO MITSUI BANKING CORPORATION - Manila Representative Office (SMBC- Manila Representative Office) by RCO.
RMC No. 63- 2016	Consolidated Price of Sugar at Millsite for the Month of May 2016
RMC No. 66- 2016	Clarifications on the Provisions of RMC No. 60- 2016
RMC No. 67- 2016	Non-Acceptance of Checks/Drawn Checks from COMSAVINGS BANK with trade name GSIS FAMILY BANK (A THRIFT BANK), (A Closed Bank) by RCO.
OPERATIONS MEMORANDA (OM)	
OM No. 2016-06-01	Price of Sugar at Millsite for the week ending 22 May 2016 by the Licensing and Monitoring Division, Regulation Department, Sugar Regulatory Administration.
OM No. 2016-06-03	Price of Sugar at Millsite for the week ending 29 May 2016 by the Licensing and Monitoring Division, Regulation Department, Sugar Regulatory Administration.
OM No. 2016-06-04	Price of Sugar at Millsite for the week ending 5 June 2016 by the Licensing and Monitoring Division, Regulation Department, Sugar Regulatory Administration.
OM No. 2016-06-05	Price of Sugar at Millsite for the week ending 12 June 2016 by the Licensing and Monitoring Division, Regulation Department, Sugar Regulatory Administration.
OM No. 2016-06-07	Price of Sugar at Millsite for the week ending 19 June 2016 by the Licensing and Monitoring Division, Regulation Department, Sugar Regulatory Administration.
BANK BULLETINS	
Bank Bulletin No. 2016- 19	COMSAVINGS BANK with trade name GSIS FAMILY BANK (A THRIFT BANK)
Bank Bulletin No. 2016- 20	Electronic Submission of the Dishonored Check Details in Comma Separated Value Format and the Encoding of Payments Details in the Limited Bank Data Entry System (LBDES)
REVENUE SPECIAL ORDERS (RSO)	
RSO No. 328- 2016	Creation of Technical Working Group (TWG) under the Arrears Management Project
RSO No. 329- 2016	Task Force for the Preparation of the Terms of Reference (TOR) of the Forfeited Assets Management Project
RSO No. 366- 2016	Glenn B. Alde
RSO No. 375- 2016	Kim Charlie N. Orpiada

BOC Issuance

CMO No. 17-2016 provides the guidelines and procedures on implementing the eCOS.

Customs Memorandum Order No. 17-2016 dated 10 June 2016

- ▶ This CMO is issued to facilitate exports by implementing an electronic system for submitting and issuing an electronic Certificate of Origin (“eCO”), as well as to provide inputs in formulating policies and procedures to the ASEAN Trade in Goods Agreement (“ATIGA”) exchange of the eCO, and other eCO exchange pursuant to the various Free Trade Agreements (“FTAs”) as may apply.
- ▶ Value Added Service Providers (“VASPs”) accredited to provide E2M Customs services shall submit their respective eCO Systems (“eCOS”) for accreditation to the Deputy Commissioner, MISTG. Accreditation shall be given on the basis of capability to support the electronic process. The use of the eCOS is prescribed in lieu of manual and paper-based applications.
- ▶ Detailed procedures for the submission, approval and issuance of the Requests for Origin Ruling (“RFOR”) are provided, which include:
 1. Verification of the supporting documents
 2. Completeness and correctness of information and documents
 3. Factory visit and examination of books of records of the Company as recorded
 4. Determination of origin compliance of the product(s)
 5. Preparation of Report including proposed Origin Ruling
- ▶ Once approved, the Chief ECD/ED issues the written RFOR ruling and, at the same time, updates the status of the application in eCOS as approved, and sends an email notification of the approval to the exporter or his agent with an invitation to pick up a hard copy of the same.
- ▶ Procedures for submission and approval of the eCO
 1. Once the VASP eCOS has been approved, an exporter can then apply for an eCO through this system.
 2. Printing of the approved eCO may be made only upon payment of the Documentary Stamp Tax (DST) through the pre-payment facility. However, exporters duly registered with PEZA and BOI are exempt from prepayment of DST.
 3. The exporter can then print the eCO, which he shall sign and submit to the ECD/ED for the signature of the authorized customs officer.
 4. Customs officers can perform post-verification of the eCO in the eCOS, as may be necessary. After verification, the eCO Form shall be signed and stamped with the approved BOC seal.
- ▶ All other rules and regulations inconsistent with this CMO are hereby considered repealed, superseded or modified accordingly.
- ▶ Existing CO forms may be used until such time that the inventory of the BOC is exhausted.
- ▶ CMO No. 17-2016 shall take effect on June 27, 2016 for preferential treatment given under the ATIGA. The date of implementation for other preferential treatment shall be indicated in a separate order.

- ▶ The BOC shall advise the respective customs authorities of the FTAs where the Philippines is a Contracting Party on the implementation of the eCOS and submit and/or update the specimen signatures of the authorized customs officers at the ECD.

BSP Issuances

Circular No. 914 provides for the Amendments to Prudential Policy on Loans, Other Credit Accommodations, and Guarantees Granted to DOSRI, Subsidiaries and Affiliates

BSP Circular No. 914 dated 23 June 2016

- ▶ The Monetary Board, in its Resolution No.974 dated 2 June 2016, approved the revisions to prudential policy on loans, other credit accommodations, and guarantees granted to DOSRI, subsidiaries and affiliates, amending the relevant provisions of the Manual of Regulations for Banks/Manual of Regulations for Non-Bank Financial Institutions (MORB/MORNBFI).
- ▶ Chapter E of Part Three of the MORB on Loans/Other Credit Accommodations to DOSRI is amended by the Circular.
- ▶ Chapter E of Part Three of the MORNBFI on Loans/Credit Accommodations to DOSRI is also amended by the Circular, to read as follows:
- ▶ Sections X311/4311Q to 4311N of the MORB/MORNBFI on secured loans and other credit accommodations are amended to read as follows:

“Sec. X311/4311Q/4311N Secured Loans and Other Credit Accommodations.

A loan may be considered secured by collateral to the extent the estimated value of net proceeds at disposition of such collateral can be used without legal impediment to settle the principal and accrued interest of such loan: x x x

A loan may also be considered as secured to the extent covered by a third party financial guarantee or surety arrangement where the credit enhancement provider is itself considered to be of high credit quality (credit rating of at least AA or equivalent) or is recognized by the Bangko Sentral as eligible guarantor under existing regulations.

xxx”

- ▶ Subsection X192.12 of the MORB on reports required of foreign subsidiaries/affiliates/banking offices or non-bank entities of domestic banks is amended to read as follows:

“xxx

- f. For purposes of this Subsection, affiliate shall refer to an entity linked directly or indirectly to a bank by means of:
 - (1) Ownership, control as defined under Subsec. XI46.L, or power to vote of at least twenty percent (12%) of the outstanding voting stock of the borrowing entity, or vice-versa;
 - (2) Interlocking directorship or officership, where the concerned director or officer owns; controls, as defined under Subsec. X146.L; or has the power to vote of at least twenty percent (20%) of the outstanding voting stock of the borrowing entity;

- (3) Common stockholders owning at least ten percent (10%) of the outstanding voting stock of the bank and at least twenty percent (20%) of the outstanding voting stock of the borrowing entity;
- (4) Management contract or any arrangement granting power to the bank to direct or cause the direction of management and policies of the borrowing entity; or
- (5) Permanent proxy or voting trusts in favor of the bank constituting at least twenty percent (20%) of the outstanding voting stock of the borrowing entity, or vice versa.

For purposes of this Manual, the above definition of affiliate shall be adopted except where the provision of the regulation expressly states otherwise."

- ▶ Section 4002Q of the MORNBF1 on definitions of terms is amended with respect to the definition of an affiliate.
- ▶ Subsection X146.1 of the MORB on definition of terms is amended with respect to the definition of related parties.
- ▶ Subsection X146.5 of the MORB on supervisory enforcement actions is amended to read as follows:

"Subsec. X146.5. Supervisory Enforcement Actions. The Bangko Sentral reserves the right to deploy its range of supervisory tools to promote adherence to the requirements set forth in the guidelines under this Section and bring about timely corrective actions and compliance with Bangko Sentral directives. The Bangko Sentral considers abuses in credit to related parties as serious offenses and shall be dealt with severely. In this regard, abuse shall be interpreted to include extending credit to related parties without adopting appropriate internal policies. For this purpose, the Bangko Sentral may, among others, issue directives or sanctions on the Bank and responsible persons, which may include restrictions or prohibitions of lending to related parties or from certain authorities/activities, restrictions or prohibitions on dividend declarations; and warning, reprimand, suspension, removal and disqualification of bank directors, officers and/or employees concerned."

- ▶ Section X111/4111Q of the MORB/MORNBF1 on minimum required capital is hereby amended to read as follows:

"Sec. X111 (2008 - X106) Minimum Required Capital. The following provisions shall govern the capital requirements for banks.

The term capital shall be synonymous to unimpaired capital and surplus, combined capital accounts and net worth, and shall refer to the total of the unimpaired paid-in capital, surplus and undivided profits, less:

xxx

- b. Total outstanding unsecured credit accommodations, both direct and indirect, to directors, officers, stockholders, and their related interests (DOSRI) granted by the bank proper;
- c. Total outstanding unsecured loans, other credit accommodations and guarantees granted to subsidiaries;

- d. Total outstanding loans, other credit accommodations and guarantees granted to related parties that are not at arm's length terms as determined by the appropriate supervising department of the Bangko Sentral;
- e. Deferred income tax;
- f. Appraisal increment reserve (revaluation reserve) as a result of appreciation or an increase in the book value of bank assets;
- g. Equity investment of a bank in another bank or enterprise, whether foreign or domestic, if the other bank or enterprise has a reciprocal equity investment in the investing bank, in which case, the investment of the bank or the reciprocal investment of the other bank or enterprises, whichever is lower; and
- h. In the case of RBs/Coop Banks, the government counterpart equity, except those arising from conversion of arrearages under the Bangko Sentral rehabilitation program.

xxx"

"Sec. 4111Q (2008 - 4106Q) Minimum Required Capitalization. A QB shall have a minimum combined capital accounts of P300.0 million.

Combined capital accounts shall mean the total capital stock, retained earnings and profit and loss summary, net of (a) such unbooked valuation reserves and other capital adjustments as may be required by the Bangko Sentral, (b) total outstanding unsecured credit accommodations, both direct and indirect, to directors, officers, all stockholders and their related interests (DOSRI), (c) total outstanding unsecured loans, other credit accommodations and guarantees granted to subsidiaries, and (d) total outstanding loans, other credit accommodations and guarantees granted to related parties that are not at arm's length terms as determined by the appropriate supervising department of the Bangko Sentral. x x x

xxx"

- ▶ Paragraph 4 of Part II of Appendix 63b/Q-46 of the MORB/MORNBF1 on Qualifying Capital under Basel III Risk-Based Capital (section X115/4115Q of the MORB/MORNBF1) is amended by the Circular.
- ▶ Parts II and III of Appendix 63c of the MORB on Qualifying Capital and Credit Risk-Weighted Assets, respectively, under the Revised Risk-Based Capital Adequacy Framework for Stand-Alone Thrift Banks, Rural Banks, and Cooperative Banks (Section X118 of the MORB) is amended by the Circular.
- ▶ Subsections 4116Q.2 and 4115Q.3 of the MORNBF1 on qualifying capital and risk-weighted assets are also amended by the Circular.
- ▶ 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 No. 914 was published in Malaya on 29 June 2016.]

Circular No. 915 provides for the Amendment on the Accounting Guidelines for Prudential Reporting to the BSP.

BSP Circular No. 915 dated 5 July 2016

- ▶ The Monetary Board, in its Resolution No. 1107 dated 16 June 2016, approved the following amendments to the MORB and MORNBFI on the guidelines for prudential reporting by BSP supervised financial institutions.
- ▶ Subsection X191.3 of the MORB and Subsection 4191Q.3 of the MORNBFI are hereby amended, where the BSP now adopts the Philippine Financial Reporting Standards (PFRS) and the Philippine Accounting Standards (PAS) issued by the Financial Reporting Standards Council (FRSC) (previously Accounting Standards Council [ASC]), and the provision on the preparation of separate financial statements is amended as follows:

“Guidelines on the preparation of solo/separate financial statements.

For purposes of preparing solo/separate financial statements, financial allied, non-financial allied and non-allied subsidiaries/associates/joint ventures, including insurance subsidiaries/associates, shall be accounted for using the equity method, in accordance with PAS 27, as amended.

The rules on the preparation of solo financial statements are also provided under Appendix 77 on the Financial Reporting package.”

- ▶ Subsection 4161S.2 and Section 4161N of the MORNBFI are also amended to change ASC to FRCS and the provision on the preparation of separate financial statements is amended follows:

“For purposes of preparing solo/separate financial statements, financial allied, non-financial allied and non-allied subsidiaries/associates/joint ventures, including insurance subsidiaries/associates, shall be accounted for using the equity method, in accordance with PAS 27, as amended.

Non-stock savings and loan associations/NBFIs shall adopt the full provisions of PFRS 9 Financial Instruments only upon its mandatory effectivity date of 01 January 2018. Prior to said mandatory effectivity date, financial instruments of non-stock savings and loan associations/NBFIs shall continue to be accounted for in accordance with the provisions of PAS 39.”

- ▶ Subsection 4161P.2 of the MORNBFI is also amended to change ASC to FRCS and the provision on the preparation of separate financial statements is amended follows

“For purposes of preparing solo/separate financial statements, financial allied, non-financial allied and non-allied subsidiaries/associates/joint ventures, including insurance subsidiaries/associates, shall be accounted for using the equity method, in accordance with PAS 27, as amended.

Pawnshops shall adopt the full provisions of PFRS 9 Financial Instruments only upon its mandatory effectivity date of 01 January 2018. Prior to said mandatory effectivity date, financial instruments of pawnshops shall continue to be accounted for in accordance with the provisions of PAS 39.”

- ▶ 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 No. 915 was published in The Standard on 9 July 2016.]

Circular No. 916 provides the Revision of the Rediscount Rates on RW I.

BSP Circular No. 916 dated 8 July 2016

- ▶ Pursuant to Monetary Board Resolution No. 1067 dated 15 June 2016, the following provisions of Subsection X269.6 of the MORB, covering the guidelines of the Bangko Sentral ng Pilipinas Rediscounting Facility, are hereby amended as follows:

Subsection X269.6 Rediscount/Lending Rates and Liquidated Damages. The rediscount rates for peso, dollar and yen loans shall be as follows:

a. Peso Rediscounts

	RW I	RW II
Interest Rate	BSP overnight (O/N lending rate plus term premium:	BSP overnight reverse repurchase (O/N RRP) rate plus term premium:
90 days	BSP O/N lending rate + 0.0625	BSP O/N RRP rate
180 days	BSP O/N lending rate + 0.1250	BSP O/N RRP rate + 0.0625
360 days	n/a	BSP O/N RRP rate + 0.1250

xxx

- ▶ This Circular shall take effect on 25 July 2016.

[Editor's Note: Circular No. 916 was published in The Manila Times on 13 and 14 July 2016.]

Circular No. 917 provides the Amendments to the MORB and MORNBF I as of 31 December 2015

BSP Circular No. 917 dated 8 July 2016

- ▶ The Monetary Board, in its Resolution No. 1043 dated 9 June 2016, approved the following additions/revisions to the MORB and MORNBF I as of 31 December 2015.
- ▶ Subsection X108.4 [SPRB Plus and Strengthening Program for Cooperative Bank (SPCB) Plus] is amended to reflect the revival of the expired SPCB Plus.
- ▶ New appendices shall be added to the MORB and MORNBF I to incorporate the following guidelines:
 1. Appendix 113a (Consolidated Program for Rural Banks) of the MORB to include the Implementing Guidelines for the Consolidated Program for Rural Banks provided under Memorandum No. M-2015-043 dated 11 December 2015; and
 2. Appendix Q-67 (Regulatory Relief for Non-Bank Financial Institutions with Quasi-Banking Functions [NBQBs] Affected by Calamities¹) of the MORNBF I to summarize the Regulatory Relief for Quasi-Banks affected by typhoons² (Annex A).

¹ To align with the summary of regulatory reliefs of banks which was incorporated in the Manuals.

² Typhoon Lando M-2015-039 dated 4 November 2015; Typhoons Luis and Mario - M-2014-039 dated 1 October 2014; Typhoon Ruby - M-2015-005 dated 20 January 2015; Typhoon Seniang - M-2015-009 dated 28 January 2015.

- ▶ Appendix 89 (Regulatory Relief for Banks affected by Calamities) of the MORB is amended to add the grant of regulatory relief to covered regions affected by typhoon “Lando” pursuant to Memorandum No. M-2015-039 dated 4 November 2015 (Annex B).
- ▶ The following Sections/Appendices of the MORB/MORNBF1 are amended to change “Centralized Applications and Licensing Group (CALG)” to “appropriate department of the SES”:
 1. Item c of Sec. 2404/3404 (Grant of Authority to Engage in Limited Trust Business to Thrift/Rural Banks)
 2. Item (3) of Sec. X611/Sec 4611Q (Derivatives)
 3. Section 3. Item 2 of App. 38 (Rules and Regulations for Cooperative Banks)
 4. Last paragraph of App. 93 (Processing Guidelines for Microfinance Other Banking Offices or Microbanking Offices)
- ▶ Appendix 6 (Reports Required of Banks) of the MORB is amended to change certain titles of report and add relevant e-mail address in line with the provisions of Circular No. 895 dated 14 December 2015³ and Memorandum No. M-2015-042 dated 2 December 2015⁴. The affected reports are listed in Annex C.
- ▶ Sections X661/4661Q and X146 of the MORB/MORNBF1 are hereby amended to reflect as footnotes the Transitory Provisions of Circular Nos. 891 dated 9 November 2015 and 895 dated 14 December 2015, respectively.

a. “Section X661/4661Q Sales and Marketing Guidelines for Financial Products¹.

General Principles. xxx

xxx”

¹ BSFIs shall be given three months from 28 November 2015 to make appropriate changes in their sales and marketing policies, processes and materials in order to comply with the requirements of Sec. X661/4661Q as well as Subsecs.X661.1/4661Q.1 to X661.8/4661Q.8.

b. “Sec. X146¹ (2014 - Profit Sharing Program) Policy Statement.

xxx”

¹ Banks including their FI subsidiaries and affiliate shall be given six (6) months from 06 January 2016 to comply with the Related party transaction (RPT) requirements prescribed in Sec. X146 as well as Subsecs. X146.1 to X146.5.

³ Guidelines on Related Party Transactions

⁴ Guidelines on the Submission of Bank Quarterly Report on Residential Real Estate Loans (RRELs) for the Generation of the Residential Real Estate Price Index (RREPI)

- ▶ Subsec. X156.1 of the MORB and Appendix T-2a of the MORNBF1 are amended to correct the cross-references to reflect appropriate Subsection/Appendix of the MORB:

- a. **“Subsection X156.1 Banking hours beyond the minimum; banking services during holidays.** Banks may, at their discretion, remain open beyond the minimum six hours and, for as long as they find it necessary, even before 8:00 AM or after 8:00 PM, subject to the submission of prior written notice required under Subsec. X156.2 on report of, and changes in, banking days and hours, and compliance with the provisions of Subsecs. X156.3 on posting of schedule of banking days and hours, and X181.5 on minimum security measures.

xxx”

- b. **App. T-2a of the MORNBF1**

“Aggravating and Mitigating Factors to be Considered in the Imposition of Penalty

- 1. **Aggravating Factors:**

xxx

- (1) Substantial actual loss - xxx
- (2) Minimal actual loss or substantial risk of loss - xxx. While a loss was incurred, the trust corporation could absorb the loss in the normal course of business. Substantial risk of loss includes any potential losses the aggregate of which amounts to at least one percent (1%) of the capital of the trust corporation⁵.

- ▶ Sections 2172 and 3172 of the MORB are updated to reflect the Insurance Commission Circular-Letter No. 2015-54 requiring the adoption and implementation of the Enhanced Microinsurance Regulatory Framework.

- a. **“Sec. 2172 Marketing, Sale and Servicing of Microinsurance Products by Thrift Banks⁶.** xxx

xxx”

- b. **“Sec. 3172 Marketing, Sale and Servicing of Microinsurance Products by Rural and Cooperative Banks¹.** xxx

xxx”

[Editor’s Note: Circular No. 917 was published in Business Mirror on 14 July 2016.]

⁵ Item H 1. (b) Appendix Q-30 provides that external auditors of trust entities must report to BSP, among others, any potential losses the aggregate of which amounts to at least one percent (1%) of the capital to enable the BSP to take timely and appropriate remedial action.

⁶ Insurance Commission (IC) issued Circular Letter No. 2015-54 dated 16 October 2015 requiring the adoption and Implementation of the Enhanced Microinsurance Regulatory Framework

xxx

SEC Opinions and Issuances

SEC - OGC Opinion No. 16-16 dated 17 June 2016

Treasury shares are still considered as “issued shares” since they do not revert to the unissued shares of a corporation but are regarded as property acquired by the corporation.

The requirements that at least 25% of the amount of the authorized capital stock shall be subscribed and at least 25% of the total subscription shall be paid, are mandatory only during the pre-incorporation period of a corporation.

Facts:

Company A has an authorized capital stock of P2,750,000.00 divided into 27,500 shares of stock with par value of P100.00 per share, of which P7,810,764 shares (or 28.4028%) are subscribed.

Company A bought back the shares of stock held by three of its shareholders. In effect, these shares of stock were converted into treasury shares. Further, this buy-back effectively reduced the subscribed capital stock of Company A to 15.8127%, which is less than the 25% minimum capital stock that is required to be subscribed pursuant to Section 13 of the Corporation Code.

Issues:

1. Under the circumstances, may Company A treat the treasury shares as part of the issued shares?
2. Because of its buy-back program, did Company A violate Section 13 of the Corporation Code on minimum stock subscription?

Held:

1. Yes. Company A may treat the treasury shares as part of the issued shares as long as they are not cancelled or retired. Treasury shares do not revert to the unissued shares of a corporation but are regarded as property acquired by the corporation which may be reissued or resold by the corporation at a price to be fixed by the Board of Directors. Thus, since treasury shares do not revert back to unissued shares, they do not lose their status as “issued shares.” These are still part of the issued capital stock although no longer outstanding. This is so because the amount paid for the acquisition of treasury shares does not represent return of capital to the stockholders but an investment out of retained earnings on a salable property known as treasury shares.
2. No. Section 13 of the Corporation Code mandates that at the time of incorporation, at least 25% of the amount of the authorized capital stock shall be subscribed and at least 25% of the total subscription must be paid (except where the capital stock consists of no par value shares, in which case, the subscription must be fully paid). This “25% and 25%” requirement is mandatory only during the: (1) pre incorporation period and (2) when the corporation undertakes to increase its authorized capital stock.

The acquisition of treasury shares does not reduce the number of issued shares or the amount of stated capital, and their “sale” does not increase the number of issued shares or the amount of the stated capital. Thus, the redeemed shares (treasury shares) are still part of the total shares of stocks issued to subscribers or stockholders whether or not fully paid or partially paid but no longer outstanding.

SEC - OGC Opinion No. 16-17 dated 11 July 2016

The business of leasing out or subleasing of advertising spaces falls within the purview of mass media which is a nationalized activity and is subject to the foreign equity limitations imposed by the 1987 Constitution and other relevant laws.

Facts:

H Co. is engaged in the business of leasing out or subleasing advertising spaces, such as waiting sheds, billboard structures, electronic LED displays and other fixed or movable structures where advertisements can be displayed.

In this regard, H Co. sought for an opinion on whether its business activities may be classified under advertising or mass media which are nationalized activities subject to foreign equity requirement under the 1987 Constitution, the Foreign Investments Act, and other relevant laws.

Issue:

Is H Co.'s business of leasing out or subleasing of advertising spaces subject to the foreign equity limitation under the 1987 Constitution, the Foreign Investments Act, and other relevant laws?

Held:

Yes. The SEC ruled that H Co. is a mass media entity subject to the requirement of paragraph 1, Section 11, Article XVI of the 1987 Constitution.

Mass media in the Constitution refers to any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses, the distinctive feature of which is the dissemination of information and ideas to the public, or a portion thereof. Mass media is divided into two groups: Print Media and Broadcast Media. "Print Media" includes all newspapers, periodicals, magazines, journals, and publications and all advertising therein, and billboards, neon signs and the like. "Broadcast Media" includes radio and television broadcasting in all aspects, including all forms of audio, visual, or audio-visual communications such as video tapes, citizens bands, and other electronic devices, and cinematography, to the extent that these forms are utilized as mass media through radio or television broadcasting transmission.

On the other hand, advertising is the "business of conceptualizing, presenting or making available to the public, through any form of mass media, fact, data or information about the attributes, features, quality or availability of consumer products, services or credit." As such, advertising agencies do not actually disseminate the materials they prepare as they have to utilize or avail of the facilities of mass media, and thus, do not fall within the concept of mass media. However, where advertising agencies actually disseminate information, or operates, controls or otherwise engages in the business of mass media, a specific example of which is an outdoor advertising firm which sells billboard space to advertisers, then such advertising agencies would fall within the purview of the constitutional limitation.

By leasing out or subleasing advertising spaces, such as waiting sheds, billboard structures, electronic LED displays and other fixed or movable structures where advertisements can be displayed, H Co. actually provides a medium to disseminate or convey advertising messages to the public. Thus, being a mass media entity, it is engaged in a nationalized activity subject to the foreign equity limitations imposed by the 1987 Constitution and other pertinent laws.

SEC MC No. 8 provides for the exemption from the 5% liquidity requirement of mutual fund index trackers.

SEC Memorandum Circular No. 8 dated 28 June 2016

This refers to the 5% minimum liquidity requirement imposed on an open-end company fund.

The SEC approved the amendments of Investments Company Act (ICA) Rule 35-1(d) (4), as amended, which now provides:

- ▶ A Mutual Fund Index Tracker may be exempted from complying with the 5% liquidity requirement provided that it submits a notarized contingency plan signed by the President of the Fund and its Fund Manager.
- ▶ The said contingency plan must include this statement: "In making any redemption to meet a client obligation, the fund manager will exercise the requisite prudence and diligence necessary under the circumstances and taking into account all relevant factors that will ensure market stability."

[Published in The Manila Times on 9 July 2016, page B3 and the Philippine Star on 9 July 2016, page B-8]

PEZA Update

DTI Memorandum dated 20 July 2016 designates Mr. Justo Porfirio LL. Yusingco as the OIC of PEZA.

DTI Memorandum dated 20 July 2016

Effective upon the retirement of Director General Lilia B. de Lima on 30 June 2016, Deputy Director General Justo Porfirio LL. Yusingco is designated as Officer-in-Charge of PEZA. He shall be authorized to assume the powers, duties, and responsibilities of the Director General until a Director General has been appointed by the President.

Court Decisions

Aces Philippines Cellular Satellite Corporation vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case No. 1242 promulgated 8 June 2016

Facts:

Respondent CIR assessed Petitioner Aces Philippines Cellular Satellite Corporation (Aces) for, among others, deficiency final withholding tax (FWT) for taxable year 2006. The CIR alleged that Aces is liable for 35% FWT on the satellite airtime fees paid to Aces International Limited (AIL), a non-resident foreign corporation.

Aces protested the assessment and argued that it is not liable for deficiency FWT because the payments to AIL arise from satellite airtime services rendered outside the Philippines. Aces further argued that even assuming that services are rendered within the Philippines, it should only be subject to 7.5% FWT for the use of AIL's equipment. The CIR denied the protest. Aces filed a Petition for Review with the CTA.

The CTA 2nd Division ruled that satellite air time service fees paid by Aces to AIL are considered income from sources within the Philippines that are subject to 35% (now 30%). Upon denial of its Motion for Reconsideration, Aces elevated the case to the CTA *En Banc*. Aces insisted that payments for satellite air transmission are derived from sources outside of the Philippines, hence not subject to FWT.

Satellite airtime service fees paid to a non-resident foreign corporation are considered income from sources within the Philippines that are subject to final withholding tax.

Issue:

Are the satellite air time service fees paid by Aces to AIL considered income from sources within the Philippines that are subject to 35% (now 30%) FWT?

Ruling:

Yes. The source of income relates to the property, activity or service that produced the income. Under Philippine tax law, it is sufficient that the income derived from an activity is within the Philippines. The place of activity, not place of business, is controlling.

Section 28(B)(1) of the Tax Code provides that income of a non-resident foreign corporation *from all sources within the Philippines* is subject to 35% (now 30%) income tax.

The services for satellite airtime fees do not only cover the use of the Garuda satellite (located in outer space) and the Network Control Center (located in Indonesia), but also require that satellite communication time be available and delivered in the Philippines. There is continuous and very real connection starting from the Philippines (i.e. agreement to sell satellite communications time for the ACES System in the Philippines), Garuda Satellite, Network Control Center, and again the Philippines, through Aces' gateway facilities. AIL's contract with Aces extended its activities within the Philippine boundaries, which arises from the activity and services that produce the income within the Philippines.

Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case No. 1269 promulgated 29 June 2016

Any alteration to the VAT invoice or official receipt must be counter-signed by an authorized signatory or the counter signature must be verified to comply with the invoicing requirements for VAT refund purposes.

Facts:

Petitioner Coral Bay Nickel Corporation (CBNC) filed a claim for refund of unutilized input VAT attributable to VAT zero-rated sales for 2007. CBNC simultaneously filed a Petition for Review with the CTA covering the refund claim. The BIR argued that the refund claim must be denied for, among others, failure of CBNC to comply with the VAT refund requirements under Revenue Memorandum Order No. 53-98.

After trial, the CTA Third Division partially granted the claim. It disallowed input VAT covered by official receipts and invoices that were altered without proper counter-signatures.

Upon denial of its Motion for Reconsideration, CBNC appealed to the CTA *En Banc*. It argued that the input VAT disallowances are not proper as the Tax Code and regulations do not require counter-signatures for any alteration or addition to the VAT invoice or official receipt.

Issue:

Is a counter-signature required for any alteration to the VAT invoice or official receipt in order to comply with the VAT invoicing requirements?

Ruling:

Yes. For failure to have the alterations in the supporting VAT invoices or official receipts countersigned or to have the counter-signature verified, CBNC did not comply with the invoicing requirements under the Tax Code and related BIR issuances.

CBNC was aware of the insertions/alterations on the VAT official receipts issued by its supplier. While CBNC had the right to request its supplier to issue a compliant receipt/invoice, it had the corresponding obligation to check whether the insertions/alterations were properly validated or countersigned by the authorized signatory.

By failing to have the insertions/alterations on the official receipts countersigned by the authorized signatory, CBNC did not act with ordinary prudence in connection with its claim for refund.

Well-settled is the rule that tax refunds, when based on statutes granting tax exemption or tax refund, partake the nature of tax exemptions. The rule of strict interpretation against the taxpayer-claimant applies. CBNC has the burden of proof to establish the factual basis of its claim for tax refund.

Fluor Daniel, Inc. - Philippines vs. Commissioner of Internal Revenue

CTA (Third Division) Case No. 8444, promulgated 11 July 2016

Maintenance service fees payable to a US resident under a software license agreement are not considered royalties but business profits, which are subject to FWT only when the payee is deemed to have a permanent establishment in the Philippines.

Facts:

Respondent CIR assessed Petitioner Fluor Daniel, Inc. - Philippines (FDIP) for, among others, alleged deficiency final withholding tax on software maintenance service fees paid to Fluor Intercontinental, Inc. (FII). The CIR claims that the payments constitute royalties within the definition of Revenue Memorandum Circular (RMC) No. 77-2003, as amended by RMC 44-2005.

FDIP protested the assessment. Upon receipt of the Final Decision on Disputed Assessment denying its protest, FDIP filed a Petition for Review with the CTA.

FDIP argued that it is not liable for deficiency FWT as its payments to FII constitute business income. Under their agreement, FDIP was granted free authority to access and use a suite of software helpful and necessary to its operations and activities. FDIP, however, is required to pay its share in the software maintenance (at cost, with no markup) computed based on project hours for trouble shooting, periodic system checking and related services to ensure proper operation of the software.

FDIP further argued that the contract is in the nature of compensation for services rendered abroad, hence beyond the jurisdiction of the Philippine taxing authority. Assuming that the fees are Philippine sourced, FDIP insisted that the payments are not taxable pursuant to the Philippines-US Tax Treaty as FII has no permanent establishment in the Philippines.

Issue:

Are the software maintenance fees paid by FDIP to FII considered royalties subject to FWT?

Ruling:

No. The nature of the payments by FDIP to FII is for “business support services.” A plain reading of the Licensing Contract shows that the use of the software is free and that FDIP will only pay FII a fee to shoulder its share in the maintenance of the software. The contract also shows that FII does not transfer all its substantial rights in the software.

The contract deals with both “know-how” for the use of the suite of software, for which FII did not receive income payment, and services for maintenance of the software.

As to the service contract, the business profits of FII shall be taxable only in the US unless it has a PE in the Philippines. Since FII has no PE in the Philippines pursuant to Article 5 of the Philippines-US Tax Treaty, the maintenance service fee is exempt from FWT.

The CTA further held that since the services were rendered in the US or outside the Philippines, the maintenance service fees paid by FDIP to FII are beyond the taxing jurisdiction of the BIR and exempt from FWT.

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