

Tax Bulletin

November 2016



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.

SGV Tax Bulletin

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Highlights

BIR Rulings

- ▶ The value of the gross estate of the decedent shall be determined by including the value of all properties at the time of death. Bank accounts assigned or transferred by the decedent during his or her lifetime shall be excluded from the gross estate. **(Page 4)**
- ▶ The sale of a principal residence by a natural person shall be exempt from Capital Gains Tax (CGT), provided that the proceeds thereof are utilized in the acquisition or construction of a new principal residence within 18 calendar months from the date of the sale. **(Page 4)**
- ▶ Private sectors participating in socialized housing are exempt from paying project-related income taxes, CGT and VAT. **(Page 5)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 7- 2016 implement the fiscal incentives available to Tourism Enterprises (TEs) duly registered with the Tourism Infrastructure and Enterprise Zone Authority (TIEZA) under Republic Act (RA) No. 9593, the "Tourism Act of 2009." **(Page 5)**
- ▶ Revenue Memorandum Order (RMO) No. 61-2016 establishes the Standard Taxpayer Feedback System. **(Page 10)**
- ▶ RMO No. 62-2016 prescribes the procedure in issuing BIR tax clearances required for securing a National Bureau of Investigation (NBI) Clearance. **(Page 10)**
- ▶ Revenue Memorandum Order (RMO) No. 64- 2106 amends certain provisions of RMO No. 19- 2015 pertaining to audit policies. **(Page 11)**
- ▶ Revenue Memorandum Circular (RMC) No. 105-2016 amends certain provisions of RMC No. 76-2007 relative to the submission of mandatory documentary requirements for one-time transactions involving transfers of real property. **(Page 11)**
- ▶ RMC No. 108-2016 orders the manual filing of withholding tax returns for the month of October 2016 and payment of taxes due to the unavailability of the Electronic Filing and Payment System (eFPS). **(Page 11)**
- ▶ RMC No. 109- 2016 orders the non-suspension of all audit and other field operations of the BIR during the Christmas Season. **(Page 12)**
- ▶ RMC No. 110-2016 clarifies the provisions of RMC No. 108-2016, prescribing the requirements for the payment of withholding taxes for the month of October 2016 by eFPS taxpayers while the said system is unavailable for use. **(Page 12)**
- ▶ RMC No. 111- 2016 reiterates the procedures for issuing a *subpoena duces tecum* and submitting reports of investigation/verification on tax cases/ dockets to the concerned BIR reviewing office. **(Page 12)**

BOC Issuances

- ▶ Customs Administrative Order (CAO) No. 4-2016 increases the rate of auction bond, amending CAO No. 10 - 2007. **(Page 12)**
- ▶ Customs Memorandum Order (CMO) No. 28-2016 provides for the guidelines for implementing of CAO No. 2 - 2016. **(Page 13)**
- ▶ CMO No. 29-2016 reiterates and amends CMO No. 28-2015. **(Page 14)**

BSP Issuances

- ▶ Circular No. 929 provides for the Amendments to Subsection X102.5 of the Manual of Regulation for Banks (MORB) on the Conversion of Microfinance-Oriented Thrift/Rural Banks/Branches. **(Page 15)**
- ▶ Circular No. 930 provides for the Amendments to the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) as of 31 March 2016. **(Page 15)**

SEC Opinion and Issuances

- ▶ Banks not directly involved in the sale of securities are not acting as a Securities Market Professional or performing activities that are governed by SEC-administered laws, rules and regulations. **(Page 17)**
- ▶ SEC MC No. 18 streamlines the documentary requirements for financing and lending companies. **(Page 18)**
- ▶ SEC MC No. 19 provides for the Code of Corporate Governance for Publicly-listed companies. **(Page 18)**

BLGF Opinion

- ▶ The exemption from real property tax of a parcel of land donated to the local government should begin only the following year after the donation was actually made. **(Page 19)**

Court Decisions

- ▶ To be exempt from tax, a non-stock, non-profit educational institution must prove that its income is used actually, directly, and exclusively for educational purposes. Otherwise, it is considered a proprietary educational institution that is subject to 10% income tax prescribed under Section 27(B) of the Tax Code. **(Page 19)**
- ▶ An insurance broker that issued VAT official receipts on the gross premiums collected is liable for output tax on the whole amount.

False returns willfully made upon taxpayer's admission justify the application of the 10-year prescriptive period and the imposition of the 50% surcharge. **(Page 20)**

- ▶ As a rule, a registered cooperative is tax-exempt on income derived from transactions with its members. It is also exempt from tax even if it transacts business with both members and non-members provided that it has accumulated reserves and undivided net savings of not more than PHP10 Million. **(Page 22)**

BIR Rulings

BIR Ruling No. 365-2016 dated 27 October 2016

The value of the gross estate of the decedent shall be determined by including the value of all properties at the time of death. Bank accounts assigned or transferred by the decedent during his or her lifetime shall be excluded from the gross estate.

Facts:

During her lifetime, Mrs. A assigned several bank accounts in favor of her son, Mr. B. Not needing cash on hand at the time of assignment, Mr. B did not exert efforts to have the accounts immediately transferred to his name. When Mrs. A died, Mr. B requested for the transfer of the said bank accounts to his name, but the bank refused in the absence of proof of estate tax payment.

Issue:

Should the bank accounts form part of Mrs. A's gross estate for estate tax purposes?

Ruling:

No. Section 85 of the Tax Code provides that the value of the gross estate of the decedent shall be determined by including the value, at the time of his death, of all property, real or personal, tangible or intangible, wherever situated. Since the bank accounts already belonged to Mr. B by virtue of the assignment prior to Mrs. A's death, the said bank accounts should be excluded from Mrs. A's gross estate for estate tax purposes.

BIR Ruling No. 369-2016 dated 3 November 2016

The sale of a principal residence by a natural person shall be exempt from CGT, provided that the proceeds thereof are utilized in the acquisition or construction of a new principal residence within 18 calendar months from the date of the sale.

Facts:

Ms. A sold her principal residence to Ms. B as evidenced by a Deed of Absolute Sale executed on 2 September 2013 and notarized on 10 September 2013. Ms. A also acquired a new principal residence from Mr. C as evidenced by another Deed of Absolute Sale executed and notarized on 2 September 2013.

Ms. A requested for a CGT exemption on the sale of her principal residence pursuant to Section 24 (D) (2) of the Tax Code. However, the BIR questioned the exemption since the Deed of Absolute Sale of the principal residence was notarized only on 10 September 2013, and thus argued that the sale was not yet effective as of the date of acquisition of the new principal residence on 2 September 2013.

Issue:

Is the sale of principal residence exempt from CGT?

Ruling:

Yes. The sale of a principal residence by a natural person shall be exempt from CGT, provided that the conditions under Section 24 (D) (2) of the Tax Code, as implemented by RR No. 13-99, as amended, are duly complied with. One such condition is that the proceeds of the sale of the principal residence are utilized in the acquisition or construction of a new principal residence within 18 calendar months from the date of the sale. The condition implies that the sale of the principal residence must precede the acquisition of the new principal residence. In this case, the sale of the principal residence was found to have preceded the purchase of the

new principal residence on the basis of Article 1315 of the New Civil Code, which provides that contracts are perfected by mere consent. The consent of the parties was manifested upon the date of execution of the Deed of Absolute Sale, not upon the date of its notarization.

[Editor's note: RR No. 13-99, as amended, states that, "the date of sale or disposition of a property refers to the date of notarization of the document evidencing the transfer of the property"].

BIR Ruling No. 375-2016 dated 8 November 2016

Private sectors participating in socialized housing are exempt from paying project-related income taxes, CGT and VAT.

Facts:

A Co., a private project contractor, was engaged by the National Housing Authority to undertake the construction of medium rise buildings under an NHA-certified socialized housing program for informal settlers in danger areas.

Issue:

Is A Co. entitled to tax incentives under the law?

Ruling:

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

BIR Issuances

RR No. 7-2016 implement the fiscal incentives available to Tourism Enterprises duly registered with the TIEZA under RA No. 9593, the "Tourism Act of 2009."

RR No. 7-2016 dated 18 November 2016

- ▶ *Tourism Infrastructure and Enterprise Zone Authority (TIEZA)* refers to the body corporate which shall designate, regulate and supervise the TEZs established under RA No. 9593, as well as develop, manage and supervise tourism infrastructure projects in the country.
- ▶ *Tourism Enterprise Zones (TEZs)* are zones created and qualified under the criteria pursuant to RA No. 9593 and designated by the TIEZA Board.
 1. *Brownfield Tourism Zones* refer to an area with existing infrastructure or development, as determined by the TIEZA.
 2. *Greenfield Tourism Zones* refer to a new or pioneer development, as determined by TIEZA.
- ▶ *Tourism Enterprises (TEs)* are facilities, services and attractions involved in tourism, such as, but not limited to: a) travel and tour services; b) tourist transport services, whether for land, sea or air transportation; c) tour guides; d) adventure sports services (mountaineering, spelunking, scuba diving, and other sports activities of significant tourism potential); e) convention organizers; f) accommodation establishments; g) tourism estate management services, restaurants, shops and department stores, sports and recreational centers, spas, museums and galleries, theme parks, convention centers and zoos.

1. *Registered Tourism Enterprises (RTE)* are enterprises located within a TEZ that is duly-registered with the TIEZA.
 - ▶ *New Registered Tourism Enterprise (NRTE)* is a tourism enterprise whose facilities or place of business shall be constructed or established within a Greenfield, or a Brownfield TEZ, and has not started business operations at the time of its registration with TIEZA.
 - ▶ *Existing Registered Tourism Enterprise (ERTE)* is a tourism enterprise located within a TEZ which has started operations at the time of its application for registration with TIEZA.
2. *Accommodation establishments (AEs)* include, but are not limited to, hotels, tourists inns, motels, apartelles, resorts, home stay operators and pension houses;
 - ▶ *Original Investment* refers to the fair market value of the physical assets, exclusive of land acquisition costs, as defined by TIEZA.
 - ▶ *Start of Business Operations* refers to the date specified in an enterprise's application for registration with the TIEZA or the actual date of commencement of operation, whichever is earlier.
 - ▶ *Substantial Expansion* refers to an expansion, renovation, or upgrade of the physical assets of an enterprise which is intended to extend the life of its assets or to increase the capacity or efficiency of the enterprise, resulting in a significant change in its category classification under the Department of Tourism's accreditation system in appropriate cases, and amounting to at least 50% of its original investment.
 - ▶ The fiscal incentives (FI) that may be granted to TEs located within or outside TEZs are as follows:

FI	TEs located WITHIN the TEZ	TEs located OUTSIDE the TEZ
Income Tax Holiday (ITH)	<ul style="list-style-type: none"> ▶ 6 years from the start of the business operations on income from its TIEZA-registered activity or activities. <ol style="list-style-type: none"> 1. Extendible subject to the following conditions: <ul style="list-style-type: none"> ▶ A substantial expansion is undertaken prior to the expiration of the first 6 years ▶ Extension not to exceed a total additional period of 6 years ▶ A written application is filed with TIEZA not later than 3 months prior to the expiration of the initial ITH 2. An ERTE in a Brownfield TEZ is entitled to avail only of a non-extendible ITH of 6 years if it undertakes a substantial expansion 	<ul style="list-style-type: none"> ▶ Existing accommodation establishments are entitled only to a non-extendible ITH of 6 years if it undertakes a substantial expansion

FI	TEs located WITHIN the TEZ	TEs located OUTSIDE the TEZ
Gross Income Tax (GIT)	<ul style="list-style-type: none"> ▶ As an alternative to the ITH incentive, a 5% GIT on gross income earned (GIE) from the registered activity or activities may be availed of ▶ 5% GIT is in lieu of all national internal revenue taxes, except real estate tax and other fees that may be imposed by TIEZA. <ol style="list-style-type: none"> 1. Gross income is the gross sales or gross revenues derived by an NRTE from its registered business activity within a TEZ, net of discounts, sales returns and allowances, minus cost of sales and direct costs but before any deduction is made for administrative, marketing, selling, and operating expenses or incidental losses during a given taxable period as provided in the National Internal Revenue Code of 1997, as amended, and other pertinent revenue regulations. 2. The following direct costs are included in the allowable deductions to arrive at GIE: <ul style="list-style-type: none"> ▶ Direct salaries, wages or labor expense; ▶ Service supervision salaries; ▶ Direct materials or supplies used in registered activities; ▶ Depreciation of machinery and equipment used in registered activities, and of that portion of the building owned or constructed that is used exclusively for the registered activities; ▶ Rent and utility charges for buildings and capital equipment used in undertaking registered activities; and ▶ Financing charges with fixed assets used in registered activities, the amounts of which have not been capitalized. ▶ The GIT shall be remitted as follows: <ol style="list-style-type: none"> 1. 1/3 to be proportionally allocated among affected cities or municipalities based on the area of the RTE as determined by TIEZA 2. 1/3 to the national government 3. 1/3 to the TIEZA 	
Net Operating Loss Carry Over (NOLCO)	<ul style="list-style-type: none"> ▶ NOLCO may be availed of in lieu of the ITH or the 5% GIT incentive ▶ The net operating loss for any taxable year immediately preceding the current taxable year may be carried over as a deduction from gross income for the next 6 consecutive years immediately following the year of such loss, provided that the loss: <ol style="list-style-type: none"> 1. has not been previously offset as a deduction from gross income 2. shall cover net operating losses incurred after the start of the business operations and registration with TIEZA; and 3. does not arise from unregistered business activities 	▶ Same as that granted to TEs within the TEZ

FI	TEs located WITHIN the TEZ	TEs located OUTSIDE the TEZ
<p>Exemption from Tax on Importation of Capital Investment and Equipment</p>	<ul style="list-style-type: none"> ▶ The exemption shall apply to capital investment and equipment that: <ol style="list-style-type: none"> 1. Are directly and actually needed and to be used exclusively in the registered activity; and 2. Have a rated capacity within the registered capacity of the RTE, subject to reasonable allowances. ▶ The TIEZA must first approve the importation. ▶ Any sale, transfer, assignment, donation or any disposition of imported capital investment and equipment or machinery, which have been brought into the TEZ duty- and tax-free, is subject to prior approval of the TIEZA and may be allowed: <ol style="list-style-type: none"> 1. If the transaction is made within 5 years from date of acquisition: 2. If sold to an RTE or TE entitled to duty- and tax-free importation of machinery or any other enterprise enjoying similar incentives; 3. For reasons of proven technical obsolescence; 4. For purposes of replacement to improve and/or expand the operations of the RTE intending to sell, transfer, assign or otherwise dispose of such machinery or spare parts; or 5. In cases of withdrawal or cessation from operations of the RTE. ▶ The RTE and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of tax exemptions granted if the transaction was made without the approval of the TIEZA. 	<ul style="list-style-type: none"> ▶ Same for an accommodation enterprise if pursuant to a substantial expansion
<p>Exemption from Taxes on Importation of Transportation Equipment and Spare Parts</p>	<ul style="list-style-type: none"> ▶ New or expanding RTEs importing transportation equipment and other accompanying spare parts are exempt from national taxes if such equipment and parts are: <ul style="list-style-type: none"> ▶ Not manufactured domestically in sufficient quantity, comparable quality and at reasonable prices; ▶ Reasonably needed to perform the TIEZA-registered activities of the RTE; and ▶ Exclusively for the use by the RTE. ▶ The approval of the TIEZA is necessary prior to importation. ▶ Any sale, transfer, assignment, donation or any disposition of imported transportation equipment or accompanying spare parts, brought into the TEZ duty- and tax-free, is subject to prior approval of the TIEZA and may be allowed under the same conditions prescribed for the sale or disposition of capital investment and equipment that were previously imported tax and duty-free. 	

FI	TEs located WITHIN the TEZ	TEs located OUTSIDE the TEZ
Goods and Services Incentives	<ul style="list-style-type: none"> ▶ RTEs engaged in the sale of services are entitled to the following: <ol style="list-style-type: none"> 1. Exemption from VAT and excise taxes on the importation of goods necessary to carry out its TIEZA-registered activities and which are actually consumed in the course of such activities. 2. Tax credit equivalent to the national revenue taxes paid on all locally-sourced goods and services used by the RTE, provided that input VAT paid by an RTE shall only be allowed as a credit against its output VAT liability. ▶ No goods shall be imported for the purpose of operating a wholesale or retail establishment in competition with the Duty Free Philippines Corporation 	
Social Responsibility Incentive	<ul style="list-style-type: none"> ▶ RTEs engaged in the sale of services are entitled to a deduction of up to 50% of the cost of: <ol style="list-style-type: none"> 1. Environmental protection activities in the surrounding areas of the enterprise or the TEZ as certified by the Department of Environment and Natural Resources (DENR) except for the following: <ul style="list-style-type: none"> ▶ Those conducted in order to secure an Environmental Compliance Certificate (ECC); or ▶ Those conducted to secure other requirements under applicable laws and regulations. 2. Cultural heritage preservation activities in the surrounding areas of the enterprise or the TEZ. 3. Sustainable livelihood programs for local communities in the surrounding areas of the enterprise or the TEZ; and 4. Other similar activities determined by the TIEZA Board. ▶ The approval of the TIEZA Board is necessary prior to undertaking such activities, which should not comprise or be ancillary to the registered activity of the RTE. ▶ The cost of the activities includes only those directly incurred to undertake the same. 	

- ▶ TEs must secure a Certificate of Entitlement (CE) from TIEZA on an annual basis in order to avail of the foregoing incentives.
- ▶ In availing the incentives, the CE and the TIEZA Certificate of Registration must be attached to the Income Tax Returns (ITRs) and/or applicable tax returns upon the filing of the same; otherwise, the BIR shall disallow any claim for incentives.
- ▶ RTEs or TEs availing of incentives are also required to maintain distinct and separate books of accounts for each TIEZA-registered activity.
- ▶ TEs availing the incentive scheme discussed above are not qualified to avail of similar or identical incentives schemes under other laws, decrees, presidential issuances, rules and regulations and are not exempt from their obligation as a withholding agent.
- ▶ The regulations do not operate to give TEZs the status of separate customs territories similar to that of freeport zones.
- ▶ In case of the downgrade, suspension or revocation of the RTE or TE's TIEZA registration, the same will be ordered by the TIEZA to pay back the taxes equivalent to the difference between the taxes it should have paid if the incentives have not been availed of and the actual amount of taxes it has paid under RA 9593.
- ▶ The regulations shall take effect after 15 days following publication in the Official Gazette or a newspaper of general circulation, whichever comes first.

(Editor's Note: RR No. 7-2016 was published in the Manila Bulletin on 21 November 2016)

RMO No. 61-2016 establishes the Standard Taxpayer Feedback System.

RMO No. 61-2016 dated 28 October 2016

- ▶ All revenue district offices must implement a standard taxpayer feedback system in compliance with the Anti Red-Tape Act of 2007.
- ▶ The feedback system seeks to evaluate the efficiency of the BIR frontline services as provided under Revenue Memorandum Circular (RMC) No. 80-2012.

RMO No. 62-2016 prescribes the procedure in issuing BIR tax clearances required for securing a NBI Clearance.

RMO No. 62-2016 dated 9 November 2016

- ▶ A tax clearance shall be issued to applicants with delinquent accounts, upon compliance with the following conditions:
 1. The tax liabilities involved were the subject of a pending application for compromise settlement or abatement of penalties pursuant to Section 204 of the Tax Code; and
 2. The taxpayer has fully paid the amount offered for payment upon the application for compromise settlement or abatement of penalties.
- ▶ If, during the one-month validity period of the tax clearance, the application for compromise settlement or abatement has been denied by the National/Regional Evaluation Board/Commissioner, the taxpayer-applicant shall be notified of such denial and be given a period of 30 days within which to fully settle the unpaid tax liabilities; otherwise, the tax clearance issued to the taxpayer-applicant shall be revoked;

- ▶ No tax clearance shall be issued to the applicant until the tax liabilities have already been fully settled.

RMO No. 64-2106 amends certain provisions of RMO No. 19-2015 pertaining to audit policies.

RMO No. 64-2016 dated 14 November 2016

- ▶ In auditing a taxpayer for a third successive year, the Revenue District Officer (RDO) is no longer required to submit a written explanation to the Commissioner on why such taxpayer is being subjected to audit for 3 succeeding years.
- ▶ The RDO shall automatically encode the requested audit of the subject taxpayer in the Electronic Ledger Account Monitoring System/Electronic Tax Information System-Case Management System (eLAMS/eTIS-CMS), which shall be approved by the Regional Director/Assistant Commissioner who heads the investigating office.
- ▶ The deficiency assessment on these cases shall only be imposed with a 25% surcharge unless there is underdeclaration of income or overstatement of expenses/deductions by 30% or more, in which case, a 50% surcharge will be imposed.

RMC No. 105-2016 amends certain provisions of RMC No. 76-2007 relative to the submission of mandatory documentary requirements for one-time transactions involving transfers of real property.

RMC No. 105-2016 dated 28 October 2016

- ▶ The submission of the following documents shall no longer be required in the processing of one-time transactions involving transfers of real property and the issuance of electronic Certificate Authorizing Registration (eCAR):
 1. Certified true copy of the original CAR (copy of the Registry of Deeds) pertaining to the transfer of property prior to the issuance of the Original or Transfer Certificate of Title (OCT/TCT) or Condominium Certificate of Title (CCT), which is the subject of the current sale or transfer; or
 2. Certification issued by the Registry of Deeds indicating the serial number of the CAR, date of issuance of CAR, Revenue District Office Number of the district office that issued the CAR, the name of the Revenue District Officer who signed the CAR, the type of taxes paid, and the amount paid per tax type.

RMC No. 108-2016 orders the manual filing of withholding tax returns for the month of October 2016 and payment of taxes due to the unavailability of the eFPS.

RMC No. 108-2016 dated 10 November 2016

- ▶ Authorized Agent Banks (AABs) are advised to manually accept, until the close of banking hours of 11 November 2016 (free of penalties for late payment), "over-the-counter" withholding tax returns filed by eFPS taxpayers covering their withholding tax liabilities for the month of October 2016, which were due on 10 November 2016.
- ▶ All other non-eFPS taxpayers and eFPS taxpayers without AAB-activated epayment accounts shall be subject to penalties for late remittance of withholding taxes covering the taxable month of October 2016.

RMC No. 109- 2106 orders the non-suspension of all audit and other field operations of the BIR during the Christmas Season.

RMC No. 109-2016 dated 14 November 2016

To ensure maximum revenue collection throughout the year, all field audit and other field operations, including all enforcement activities of the BIR, shall continue during the holiday season.

RMC No. 110-2016 clarifies the provisions of RMC No. 108-2016, prescribing the requirements for the payment of withholding taxes for the month of October 2016 by eFPS taxpayers while the said system is unavailable for use.

RMC No. 110-2016 dated 18 November 2016

- ▶ eFPS taxpayers, which are allowed to file the applicable withholding tax returns on a staggered basis and pay the corresponding taxes due thereon on a specified date other than the 10th day immediately following the taxable month, can still do so within the deadlines prescribed under existing revenue issuances.
- ▶ However, such taxpayers are required to file electronically their withholding tax returns through the BIR's eBIR Form System in case of continued unavailability of eFPS.

RMC No. 111- 2016 reiterates the procedures for issuing a *subpoena duces tecum* and submitting reports of investigation/verification on tax cases/dockets to the concerned BIR reviewing office.

RMC No. 111-2016 dated 18 November 2016

- ▶ To prevent the issuance of jeopardy assessments, the procedure and guidelines for issuing and enforcing a *subpoena duces tecum*, as prescribed under RMO Nos. 20- 2012 and 8- 2014, must be strictly observed to compel taxpayers to submit or present the required books, records, and documents.
- ▶ A "jeopardy assessment," one that is made without the benefit of a complete or partial audit, is issued and resorted to by Revenue Officers in case of a failure of a taxpayer to present or submit his books of accounts and/or pertinent records, or to account for all, or any of the deductions, exemptions, or credits claimed in his return.
- ▶ A tax docket with the deficiency tax collections/assessments shall be transmitted by the investigating office to the reviewing/approving BIR official not later than the 6th month prior to the prescription date, to preserve the Bureau's right to assess and collect the correct amount of taxes.
- ▶ After the said period, the reviewing/approving official shall not accept any tax docket unless a duly executed "Waiver of the Statute of Limitations" is attached.

BOC Issuances

CAO No. 4-2016 increases the rate of auction bond, amending CAO No. 10 - 2007.

Customs Administrative Order No. 4-2016 issued on 26 October 2016

- ▶ In accordance with the Customs Modernization and Tariff Act ("CMTA"), which became effective on 2 June 2016, the Bureau of Customs ("BOC") issued CAO No. 4-2016, increasing the rate of auction bond. An auction bond is required for parties who intend to bid in public auctions conducted by BOC. Shipments that have been abandoned or seized may be disposed of through such public auctions.

- ▶ The new rates are as follows:

Floor Price						Bond
Not Over				P	10,000.00	None
Over	P	10,000.00	but not over	P	1,000,000.00	20%
Over	P	1,000,000.00	but not over	P	2,500,000.00	15%
Over	P	2,500,000.00	but not over	P	5,000,000.00	10%
Over	P	5,000,000.00				5%

- ▶ The bond shall be refunded to the losing bidder after the closing of auction. Thus, where the bidder was not awarded the shipment, the bond which such bidder posted will be refunded.
- ▶ CAO No. 4-2016 shall be reviewed every 3 years and be amended or revised, if necessary.
- ▶ CAO No. 4- 2016 specifically amends or repeals CAO No. 10-2007 and previous issuances which are inconsistent with its provisions. If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in full force and effect.
- ▶ This Order shall take effect 15 days after its publication.

(Editor's Note: CAO No. 4-2016 was published in the Philippine Daily Inquirer on November 12, 2016; p.A6)

CMO No. 28-2016 provides for the guidelines for implementing CAO No. 2 - 2016.

Customs Memorandum Order No. 28-2016 issued on 14 November 2016

- ▶ CMO No. 28-2016 applies to importations which are otherwise dutiable, with a Free Carrier ("FCA") or Free on Board ("FOB") *De Minimis* Value.
- ▶ This CMO is issued to better illustrate the determination of *de minimis* value in various circumstances, as well as to guide customs personnel and stakeholders of the rules, and to avoid any misapplication. *De Minimis* value refers to the value of goods for which no duty is collected, being considered as negligible in amount and entitled to immediate release.
- ▶ Any imported goods which exceeds the *De Minimis* value shall be dutiable and subject to tax for the full dutiable amount. The *De Minimis* value rule covers all importations for consumption entered through various modes such as passenger baggage and on-board couriers transported through air or sea.
- ▶ Importations of wines, spirits and tobacco, or bought from an establishment other than from Duty-Free Philippines, shall be subject to excise tax regardless of value. Provided, that purchases of 200 cigarettes or 50 cigars and 2 liters of wine or 1 liter of spirits brought in by passengers shall not be subject to duty or tax, provided that these products fall with the *De Minimis* value.
- ▶ Allowable limits carried by a passenger bought at Duty Free Philippines, and within the *De Minimis* value shall be exempted from duties and taxes. However, goods in excess of the allowable limits shall be subject to excise tax, whether they fall under the *De Minimis* value or not.

- ▶ Shipments through air express shall continue to be subject to mandatory x-ray scanning procedure, as provided for in the specific regulations covering their operations.
- ▶ No duties and taxes shall be collected on the importation of books with *De Minimis* value, regardless of the quantity. A Tax Exemption Certificate from the Department of Finance is required for importation of books exceeding the *De Minimis* value and in commercial quantity. Otherwise, the excess shall be subject to duties and taxes.
- ▶ Shipments covered by one Master Bill of Lading or Master Airway Bill of Lading but with several House Bills of Lading or House Airway Bills with single or multiple invoices with the same consignee or shipper is considered as a single consignment and subject to duties and taxes should the total value exceed the *De Minimis* value.
- ▶ **Form and Declarant of Goods Declaration for *De Minimis* value**

Mode of Entry	Form	Declarant
Air Express Consignments	informal entry	air express operator
Consolidation shipments	informal entry	importer, consignee, or authorized freight forwarded
Postal Consignments	simplified procedure using CN 22 and CN 23	
On-Board Courier Consignments	under existing procedures until a prescribed form is available	
Other Air Cargo	informal entry	Consignee

- ▶ CMO No. 28-2016 takes effect immediately.

(Editor's Note: Not published yet.)

CMO No. 29-2016 reiterates and amends CMO No. 28-2015.

Customs Memorandum Order No. 29-2016 issued on 17 November 2016

- ▶ CMO No. 29-2016 reiterates and amends the rules on the mandatory filing of consumption entries for sea shipment at the port of discharge in cases where the port of discharge is not the port of final destination, as covered by CMO No. 28-2015.
- ▶ All articles imported by sea shall immediately be covered by the necessary import entry for immediate consumption, whether formal or informal, which shall be filed at the assessment office at the port of first discharge upon importation into the Philippines. Otherwise, transit shall not be allowed and the filing of the entry at the port of final destination shall be prohibited.
- ▶ The foregoing rules shall not apply to the following articles:
 1. Imported by accredited locators of PEZA zones and Free Ports;
 2. Intended for use by accredited CBWs;
 3. Imported for immediate exportation;
 4. Intended for transit covered by Republic Act No. 10668, otherwise known as "An Act Allowing Foreign Vessels to Transport and Co Load Foreign Cargoes for Domestic Transshipment and for Other Purpose."
- ▶ This order takes effect immediately.

BSP Issuances

Circular No. 929 provides for the Amendments to Subsection X102.5 of the MORB on the Conversion of Microfinance-Oriented Thrift/Rural Banks/Branches.

BSP Circular No. 929 dated 28 October 2016

- ▶ The Monetary Board, in its Resolution No. 1855 dated 13 October 2016, approved the amendments to Subsec. X102.5 of the MORB to allow the conversion of microfinance-oriented thrift banks (TBs) and rural banks (RBs) to regular TBs and RBs as well as the conversion of their microfinance-oriented branches to regular branches.
- ▶ Subsec. X102.5 of the MORB on the conversion of microfinance-oriented TBs/RBs is hereby amended to read as follows:

“Subsection X102.5 (2008 - X102.3) Conversion of microfinance-oriented thrift banks/ rural banks

“a. Microfinance-oriented TBs and RBs are allowed to convert to regular TBs and RBs: Provided, That they have complied with all the requirements for a regular TB/RB license and subject to the submission of the following:

- (1) Certification signed by the president or officer of equivalent rank stating that the allocation of at least 50% of the gross loan portfolio to microfinance is no longer feasible due to changes in market conditions. The certification shall be supported by:
 - a) A market study citing, among others, changes in demographic, social, and economic factors; and
 - (b) Strategic plan and business strategy contemplating the conversion to a regular bank; and
- (2) Certified true copy of the resolution of the bank’s board of directors authorizing the conversion of the microfinance-oriented bank into a regular bank. The bank must also change its business name to reflect its reclassification to a regular bank.

“b. Microfinance-oriented branches may convert into regular branches x x x

“xxx”

- ▶ Effectivity. 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. 929 was published in the Philippine Daily Inquirer on 7 November 2016]

Circular No. 930 provides for the Amendments to the MORB and MORNBFI as of 31 March 2016.

BSP Circular No. 930 dated 18 November 2016

- ▶ The Monetary Board, in its Resolution No. 1635 dated 8 September 2016, approved the following amendments to the MORB and MORNBFI as of 31 March 2016.

- ▶ The following subsections/appendix of the MORB/MORNBF1 are amended to codify the provisions on Transitional Arrangements under Circular No. 905 dated 18 March 2016 and Effectivity of the Cooling-Off Provisions under Circular No. 898 dated 14 January 2016, as follows:

Subsections/ Appendix of the MORB/ MORNBF1	Source
Last paragraph, Subsection 1176.1 on Liquidity Coverage Ratio	1 st sentence, Section 2, Circular No. 905 dated 18 March 2016
Part III Appendix 74a on Basel III Framework on Liquidity Standards-Liquidity Coverage Ratio	2nd sentence up to last sentence Section 2, Circular No. 905 dated 18 March 2016
Footnote of Item "c", Subsections X1002.3/41002Q.3/4402S.3/4402P.3/4702N.3 on Cooling Off Period	Section 3, Circular No. 898 dated 14 January 2016

- ▶ The following appendices of the MORB/MORNBF1 are added to codify the annexes of Circular Nos. 888 and 908 dated 09 October 2015 and 14 March 2016, respectively, as follows:

MORB/MORNBF1 Appendix No.	Source
114/Q-68	Annex A (Format Certification on Compliance with Requirements on Dividend Declaration) Circular No. 888 dated 9 October 2015
115/Q-69	Annex A (Agriculture Value Chain - Business Models) Circular No. 908 dated 14 March 2016

- ▶ The cited Subsection 4197N.4 under Section 6 of Circular No. 900 dated 18 January 2016 is corrected to Subsection 4198N.4, as follows:

"Section 6. Subsections X179.4/4179Q.4/4198N.4/4179T.4 Operational risk management framework. Xxx"

- ▶ Subsection X162.7 of the MORB is amended to correct the cross-reference from "Subsection X162.7 on intra-group outsourcing" to "Subsection X162.6 on intra-group outsourcing".
- ▶ The following section/subsections and appendix of the MORB are amended to correct the cross-references from "Subsection X181.4" to "Subsection X181.5":
 1. Item b(1), Subsection X151.8;
 2. Item c, Section X152;
 3. 1st paragraph, Subsection X156.1; and
 4. Item 3. a, Post Approval, Appendix 37.

- ▶ The following subsections of the MORB/ MORNBF1 are amended to change the cross-references from “Circular No. 871 dated 5 March 2015/ Circular No. 875 dated 15 April 2015” to specific sections/subsections/appendices of the MORB/ MORNBF1 to which the said circulars were codified, as follows:

Subsections of the MORB/ MORNBF1	Old cross-reference	New cross-reference
Item c, Subsection X179.4	Circular No. 871 dated 5 March 2015	Section X185 Section X186 Subsec. X426.1 Appendix 112
Item c, Subsection 4179Q.4		Section 4185Q Section 4186Q Subsec. 4426Q.1 Appendix Q-66
Item c, Subsection 4198N.4		Section 4163N Section 4164N
Item c, Subsection 4179T.4		Section 4185T Section 4186T
Subsection X179.11 Subsection X162.9 Subsection X950.8	Circular No. 875 dated 15 April 2015	Section X009
Subsection 4179Q.11 Subsection 4198N.11		Section 4009Q
Subsection 4179T.11		Section 4009T

SEC Opinion and Issuances

SEC Opinion No. 16-26 dated 23 November 2016

Banks not directly involved in the sale of securities are not acting as a Securities Market Professional or performing activities that are governed by SEC-administered laws, rules and regulations.

Facts:

M Bank is a domestic corporation authorized by the BSP to operate as a universal bank, and is also a listed company in the Philippine Stock Exchange (PSE).

M Bank is proposing to act as settlement bank of depositor-investors engaged in the purchase and sale of securities with the following terms:

- ▶ M Bank will accept applications from depositor-investors to open a bank account;
- ▶ M Bank, upon the instruction of depositor-investors, will remit the funds maintained in the bank accounts to the accounts of the sellers of securities for any legitimate purpose, such as to pay for any investment or purchase of securities effected by the depositor-investor, and
- ▶ The depositor-investor may use such bank account to receive interest accruing to, and proceeds of the sale of such investment or securities.

Issue:

Is the proposed arrangement between M Bank and the depositor-investors under the supervision of the SEC pursuant to the Securities Regulation Code (SRC)?

Held:

No. Under the SRC, the SEC has the power to regulate, investigate or supervise the activities of persons to ensure compliance. Specifically, the SEC is charged with the regulation of Securities Market Professionals such as Brokers, Dealers and Associated persons and their transactions or dealing in securities.

Under the proposed arrangement, it is apparent that M Bank will not be directly involved in the purchase and sale of the securities of its clients. M Bank will only pay for the securities purchased and receive the proceeds of securities sold, upon order or action by the client. Particularly, M Bank will not be acting as a clearing agency. This is because M Bank does not, at any point of the transactions, hold the securities purchased or sold, nor act in behalf of any broker or dealer. To reiterate, it merely pays for the securities upon order of the clients. Since M Bank would not be directly involved in the sale of securities, it would not be acting as a Securities Market Professional or performing activities that are governed by SEC-administered laws, rules and regulations.

However, M Bank must comply with the specific rules of the Securities Clearing Corporation of the Philippines and the Philippine Dealing Exchange if the accounts opened by its clients are to be used as settlement accounts as defined by the rules of the aforementioned entities.

SC MC No. 18 streamlines the documentary requirements for financing and lending companies.

SEC Memorandum Circular No. 18 dated 8 November 2016

Pursuant to the government's policy to make doing business in the Philippines easier, registered financing and lending companies are no longer required to submit the following:

- ▶ SEC Form Q-EPS;
- ▶ Certification of the Corporate Secretary on the attendance of Directors in Board Meetings; and
- ▶ Corporate Governance Scorecard.

Note: This MC has not yet been published.

SEC MC No. 19 provides for the Code of Corporate Governance for Publicly-listed companies.

SEC Memorandum Circular No. 19 dated 22 November 2016

To promote the development of a strong corporate governance culture and keep abreast with recent developments in corporate governance, the Commission resolved to approve the "CG Code for PLCs" which shall take effect on 1 January 2017.

The CG Code for PLCs supersedes the following Memorandum Circulars:

- ▶ SEC MC No. 6 series of 2009 (Revised Code of Corporate Governance)
- ▶ SEC MC No. 9 series of 2011 (Term Limits for Independent Directors)
- ▶ SEC MC No. 20 series of 2013 (All Members of the Board of Directors and Key Officers of Publicly Listed Companies to Attend Corporate Governance Trainings only with SEC Accredited Training Providers)
- ▶ SEC MC No. 9 series of 2014 (Amendment to the Revised Code of Corporate Governance); and
- ▶ Parts VI (Duration of Training) and VII (Exemption from SEC MC No. 20 series of 2013) of SEC MC No. 2 series of 2015 (Additional Guidelines on Corporate Governance Training Programs and Lectures)

The aforementioned MCs shall remain in effect for other covered companies, when applicable; and all other relevant MCs on corporate governance shall remain in force and effect until further notice.

All publicly listed companies shall be required to submit a new Manual on Corporate Governance to the SEC on or before 31 May 2017.

(Editor's Note: SEC MC No.19 was published in The Manila Times (p.E1) and the Philippine Star (p.B-14) on December 9, 2016)

BLGF Opinion

BLGF Opinion No. 29-2016 dated 7 October 2016

The exemption from real property tax of a parcel of land donated to the local government should begin only the following year after the donation was actually made.

Facts:

CPI Corporation is the developer of X Resortville located in Dasmariñas City, Cavite. On 21 July 2008, it donated the road lots, alleys, easements and open spaces of X Resortville to the Municipality of Dasmariñas. In a Resolution No. 056-2009, the Municipal Mayor was authorized to sign the Deed of Donation accepting the donation of CPI. However, the Tax Declaration for the property was not issued to the City Government due to non-payment of real property tax ("RPT") from 2003 to present. When required to pay the RPT, CPI argued that the road lots, alleys, easements and open spaces are exempt from RPT as they are classified for its "actual use" and that they are now government properties for public use, pursuant to the Local Government Code ("LGC") and Presidential Decree ("PD") No. 1216.

Issue:

Whether the road lots, alleys, easements and open spaces are exempt from RPT.

Ruling:

The prior liability or delinquencies for RPT due on the open spaces, road lots and alleys when it was still taxable, under the ownership of CPI, is not extinguished and remains due. The exemption from payment of RPT should begin only the following year after the donation was actually made. Since the donation was made in 2009, the RPT exemption may only be invoked starting 2010. Thus, CPI is liable for RPT from 2003 to 2009.

Court Decisions

The Abba's Orchard School, Inc. vs. Commissioner of Internal Revenue

CTA (*En Banc*) Case 1298, promulgated 20 September 2016

To be exempt from tax, a non-stock, non-profit educational institution must prove that its income is used actually, directly, and exclusively for educational purposes. Otherwise, it is considered a proprietary educational institution that is subject to 10% income tax prescribed under Section 27(B) of the Tax Code.

Facts:

Respondent CIR assessed Petitioner The Abbas' Orchard School, Inc. (the "School"), a non-stock, non-profit, educational institution, for deficiency income tax for taxable year 2008. The School protested the assessment, arguing that as a non-stock, non-profit educational institution, it is exempt from tax on income derived from its school-related activities pursuant to Section 30(H) of the Tax Code.

Upon denial of its protest, the School filed a Petition for Review with the CTA. The CIR argued the School is not exempt from income tax but is subject to the 10% tax under Section 27(B) of the Tax Code as a proprietary educational institution. The CIR asserted that the School failed to (a) present a Certificate of Tax Exemption as provided in RMC No. 14-2001 and Revenue Memorandum Order (RMO) No. 20-2013, and (b) prove that its income was actually, directly, and exclusively used for educational purposes as required by Section 4(3), Article XIV of the Constitution.

The CTA Third Division sustained the BIR assessment. Aggrieved, the School elevated the case to the CTA *En Banc*.

Issue:

Is the School exempt from income tax?

Ruling:

No. For the School to be exempt from income tax, it must show that (a) it is a non-stock, non-profit educational institution, and (b) its income is used actually, directly, and exclusively used for educational purposes.

While the School is correct that a Certificate of Tax Exemption is not a condition precedent for the enjoyment or entitlement of the income tax exemption, it failed to prove that its income is used actually, directly, and exclusively for educational purposes. The CTA ruled that the School's Audited Financial Statements, Annual Income Tax Return, as well the affidavits of the School's chief accountant and independent CPA, cannot adequately verify that the school's income was utilized actually, directly and exclusively for educational purposes or that such income has been derived from non-profit activities. It should have provided the Court with copies of its books of accounts and source documents (i.e. official receipts, invoices, and disbursement vouchers), upon which the figures shown in the said AFS were based.

The Court dismissed the School's claim that it cannot present the lacking documents as the originals have been forwarded to the BIR. It could simply request the CTA to issue a *subpoena duces tecum* to compel the BIR to submit the documents. The testimonies of the School's witnesses were deemed "self-serving."

Due to its failure to discharge the burden of proving that the income it seeks to be exempted from income tax was used actually, directly and exclusively for educational purposes, the CTA considered the School as a proprietary educational institution, which income is subject to the 10% income tax as provided under Section 27(B) of the Tax Code.

Lacson & Lacson Insurance Brokers, Inc. vs. Commissioner of Internal Revenue
CTA (*En Banc*) Case 1272, promulgated 4 October 2016

An insurance broker that issued VAT official receipts on the gross premiums collected is liable for output tax on the whole amount.

False returns willfully made upon taxpayer's admission justify the application of the 10-year prescriptive period and the imposition of the 50% surcharge.

Facts:

Respondent CIR assessed Petitioner Lacson & Lacson Insurance Brokers, Inc. (Lacson) for alleged deficiency VAT arising from a discrepancy between its sales per VAT returns and the purchases reported by its customers. Lacson protested the assessment. Upon denial of its protest, Lacson filed a Petition for Review with the CTA.

At the CTA, Lacson argued that as an insurance broker that liaises between the clients and the insurance companies, it is liable for VAT only on the commission earned from policies placed with various insurance companies and not on the gross premiums collected. Lacson also argued that the assessment was issued beyond the 3-year prescriptive period. The BIR countered that Lacson is liable for VAT based on the gross premiums since it issued VAT official receipts for the full amount of premiums and the clients claimed input tax based on gross premiums reflected on the VAT official receipts issued to them. The BIR also argued that the 10-year prescriptive period applies since Lacson filed a false return.

The CTA Third Division sustained the BIR's deficiency VAT assessment, noting that Lacson issued VAT official receipts to its clients on the gross amount of premiums collection from which the latter claimed their input VAT.

Lacson elevated the case to the CTA *En Banc*. Lacson insisted that their VAT returns were not false by themselves as the mistake was merely brought about by the erroneous claim of input VAT by some of Lacson's clients. Lacson also argued that the 10-year prescriptive period should not apply since the government was not placed at a disadvantage as to prevent the proper assessment of tax liabilities. It added that to justify the imposition of the 50% surcharge, proof of actual fraud or filing of a false return with intent to evade taxes is required.

Issues:

1. Is Lacson liable for VAT on the gross amount of premiums?
2. Did Lacson file false returns to justify the application of the 10-year prescriptive period?

Rulings:

1. Yes. Although Lacson is only a broker, it becomes liable to output tax on the gross premiums collected for issuing VAT official receipts for the said premiums and considering that the clients claimed input tax based on the gross premiums reflected on the VAT official receipts issued to them. Lacson failed to present documentary evidence to refute the existence of the undeclared gross receipts. The CTA ruled that it cannot rely on testimony that Lacson wrongfully issued original receipts on insurance premium of the insurance company in the absence of documentary evidence to prove otherwise.
2. Yes. False returns were willfully made and this is evident from Lacson's own admission that its VAT returns only reflected its income, which consists of commissions. It did not report in its VAT returns the gross amount of premiums reflected in the VAT official receipts it issued to its clients resulting in substantial underdeclaration of sales of more than 30%.

Quoting the decision of the *Court of Appeals in Holiday Inn (Phils), Inc. vs. CIR, CA-G.R. SP No. 78828. September 9, 2004*, although there may be no malicious intent to evade payment of tax, this does not preclude a finding of a false return. While a fraudulent return implies a malicious and deliberate intent to evade payment of the tax, a false return merely implies a deviation from the correct amount of tax. As the false returns were willfully made upon admission of Lacson, the 50% surcharge applies.

Kilusang Magkaibigan Multi-Purpose Cooperative vs. Commissioner of Internal Revenue

CTA (Third) Division Case 8751, promulgated 17 November 2016

As a rule, a registered cooperative is tax-exempt on income derived from transactions with its members. It is also exempt from tax even if it transacts business with both members and non-members provided that it has accumulated reserves and undivided net savings of not more than Php10 Million.

Facts:

Respondent CIR assessed Petitioner Kilusang Magkaibigan Multi-Purpose Cooperative (KMMC) for, among others, deficiency income tax, for alleged failure to pay tax on income derived from its construction business, equipment rental, and buy-and-sell of hardware materials and basic commodities to members and non-members for taxable year 2006.

KMMC protested the assessment, arguing that it is exempt from tax under RA 6938, the Cooperative Code of the Philippines.

The CIR denied the protest and revoked KMMC's tax exemption privileges as a cooperative, noting that even if it is engaged in the construction business, it does not have the adequate equipment to undertake construction contracts. The projects are assigned to the members, who supervise and implement them. In return, the cooperative gets only 4% to 6% of the projects it implements. The CIR subsequently issued a Preliminary Collection Letter and a Final Notice Before Seizure. KMMC filed a Petition for Review with the CTA.

Issue:

Is KMMC exempt from tax on income derived from non-members?

Ruling:

Yes. Articles 61 and 62 of the RA 6938, as implemented by Section 3 of Revenue Regulations 20-2001, exempts from income tax and VAT the income of duly registered cooperatives dealing or transacting business with its members. A registered cooperative transacting business with both members and non-members, however, is still tax-exempt if it has accumulated reserves and undivided net savings of not more than Php10 Million.

After evaluating the documents presented by KMMC, the CTA found that it sufficiently proved it is tax-exempt on its operations. It is not liable to pay income tax because it only has Php293,421.12 reserves, which is less than the required Php10 Million of accumulated reserves and undivided net savings pursuant to RA 6938 and its implementing rules and regulations.

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