

Tax bulletin

September 2015



Highlights

BIR Rulings

- ▶ A regional or area headquarters (RHQ) is not subject to income tax and is exempt from value-added tax (VAT). **(Page 4)**
- ▶ The transfer of real property by way of disturbance compensation is exempt from capital gains tax (CGT) and documentary stamp tax (DST) under the Comprehensive Agrarian Reform Law (CARL) of 1998. **(Page 4)**
- ▶ Local purchases of motor vehicles for official use of the World Organization of the Scout Movement are subject to ad valorem tax and VAT. **(Page 5)**
- ▶ An international air carrier organized in Japan and licensed to do business in the Philippines as a provider of international air services is subject to the preferential 1.5% Gross Philippine Billings (GBP) tax rate under the RP-Japan Tax Treaty, as well as to the 3% percentage tax on the transport of cargo. **(Page 5)**
- ▶ The donation of a motor vehicle to a religious corporation is exempt from donor's tax, provided not more than 30% of the gift shall be used by the donee for administration purposes.

The non-exempt donee shall be considered as the purchaser of the motor vehicle and shall be liable for any unpaid excise tax. **(Page 5)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 9-2015 amends Section 9 of RR No. 7-2014 on the affixture of internal revenue stamps and other requirements on cigarettes intended for export. **(Page 6)**
- ▶ RR No. 10-2015 prescribes the use of non-thermal paper for all Cash Register Machines (CRMs)/Point-of-Sales (POS) Machines and other invoice/receipt-generating machines/software. **(Page 7)**
- ▶ RR No. 11-2015 amends Sections 2 and 7(6) of RR No. 7-2010, as amended by RR No. 08-2010, on Senior Citizens. **(Page 9)**
- ▶ RR No. 12-2015 amends RR No. 10-2015 and extends to October 31, 2015 the deadline for the reconfiguration of the CRMs/POS/other invoice/receipt-generating machines/software to reflect the information required by RR No. 10-2015. **(Page 10)**
- ▶ Revenue Memorandum Circular (RMC) No. 56-2015 clarifies the submission of a Monthly Electronic Sales (eSales) Report via the eSales Reporting System prescribed under RR No. 5-2005 and Revenue Memorandum Order (RMO) No. 12-2012. **(Page 10)**
- ▶ RMC No. 58-2015 circularizes the availability of eBIRForms Package Version 5.1. **(Page 11)**
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- ▶ RMO No. 20-2015 prescribes the policies and guidelines in the issuance of the Tax Identification Number (TIN) of employees using the eRegistration System and the procedures for the registration of employees. **(Page 16)**

BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 28-2015 prescribes the revised rules and regulations on the importation of balikbayan boxes from Overseas Filipino Workers (OFWs). **(Page 17)**
- ▶ CMO No. 28-2015 prescribes the rules on the mandatory filing of consumption entries for sea shipments at the port of discharge in cases where the port of discharge is not the port of final destination. **(Page 18)**
- ▶ CMO No. 29-2015 prescribes the revised procedures and documentation in the processing of formal consumption entries. **(Page 18)**
- ▶ CMO No. 30-2015 prescribes the rules and regulations on the establishment, supervision and control of wharves, container yards, container freight stations, warehouses, examination areas and other facilities within the customs zone, otherwise known as the Authorized Customs Facility (ACF). **(Page 19)**
- ▶ CMO No. 31-2015 prescribes the revised rules and procedures on the processing of an importer or consignee's request for amendment of the Bill of Lading (BL) and Airway Bill (AWB). **(Page 21)**
- ▶ CMO No. 32-2015 prescribes the revised rules and regulations on the establishment, supervision and control of off-dock container yards and/or container freight stations and other off-dock customs facilities outside of the customs zones. **(Page 22)**

BSP Issuance

- ▶ Circular No. 886 prescribes the guidelines on salary-based general-purpose consumption loans. **(Page 24)**

SEC Opinions

- ▶ Sale of vouchers or gift certificates to individuals does not fall within the definition of retail trade under RA No. 8762, otherwise known as Retail Trade Liberalization Act of 2000. **(Page 25)**
- ▶ The 10% allowable honorarium to be given to the Board of Trustees is based on the net income before tax of the previous year. There is no need to deduct the 10% honorarium from the computation of previous year's net income before tax. **(Page 25)**

Court Decisions

- ▶ To be exempt from tax, the income of a non-stock, non-profit educational institution must be used actually, directly, and exclusively for education purposes as prescribed by the Constitution and the Tax Code. **(Page 26)**
- ▶ Services rendered to PAGCOR and PAGCOR-authorized bingo operators are exempt from VAT, pursuant to Section 108(B)(3) of the Tax Code. **(Page 27)**
- ▶ The CTA has jurisdiction to review rulings of the Commissioner of Internal Revenue (CIR) and the Secretary of Finance, which are deemed decisions on "other matters" arising under the Tax Code, pursuant to Section 7(a)(1) of RA No. 1125.

Hotel services rendered in the Philippines to an international carrier are subject to 12% VAT. **(Page 28)**

BIR Rulings

BIR Ruling No. 270-15 dated August 14, 2015

An RHQ is not subject to income tax and is exempt from VAT.

Facts:

A Co. is a regional or area headquarters (RHQ) established in the Philippines by B Co., a New Zealand company. A Co.'s activities are limited to acting as a supervisory, communications and coordinating center for its affiliates, subsidiaries or branches in the region.

Issue:

Is A Co. exempt from income tax and from VAT?

Ruling:

1. Yes, A Co. is exempt from income tax. An RHQ is defined in Section 22(DD) of the Tax Code as a branch established in the Philippines by a multinational company, which branch does not earn or derive income from the Philippines and which acts as a supervisory, communications and coordinating center for affiliates, subsidiaries or branches in the Asia-Pacific Region and other foreign markets. Section 28(A)(6)(a) of the Tax Code provides that RHQs as defined in Section 22(D) shall not be subject to income tax.

However, an RHQ is constituted as a withholding agent of the government if it acts as an employer and its employees receive compensation income subject to withholding tax, or if it makes income payments to individuals or corporations subject to the expanded withholding tax (EWT).

2. Yes, A Co. is exempt from VAT. Under Section 109 of the Tax Code, services rendered by RHQs shall be exempt from VAT. However, sales of goods or services by VAT-registered suppliers to RHQs are subject to VAT at 0% rate.

BIR Ruling No. 275-15 dated August 24, 2015

The transfer of real property by way of disturbance compensation is exempt from CGT and DST under the CARL of 1998.

Facts:

Mr. X is the registered owner of a parcel of land in Bulacan. He executed a deed of conveyance over a portion of the land to the heirs of Mr. Y, his agricultural tenant, as disturbance compensation resulting from the extinguishment of a tenancy relationship in accordance with RA No. 3844, as amended by RA No. 6657, or the CARL.

Issue:

Is the transfer of real property by way of disturbance compensation exempt from CGT and DST?

Ruling:

Yes, the transfer of real property by way of disturbance compensation to the heirs of the agricultural tenant resulting from the extinguishment of the tenancy relationship is exempt from CGT and DST pursuant to Section 66 of RA No. 6657.

Local purchases of motor vehicles for official use of the WOSM are subject to ad valorem tax and VAT.

BIR Ruling No. ITAD 241-15 dated August 14, 2015

Facts:

The World Organization of the Scout Movement (WOSM) purchased 2 motor vehicles locally for official use. Under the Memorandum of Agreement (MOA) between the Philippine government and WOSM, WOSM is exempt from all taxes and customs duties on importation and exportation of articles, including motor vehicles for official purposes.

Issue:

Are the local purchases of motor vehicles by WOSM for official use exempt from ad valorem tax and VAT?

Ruling:

No. Under the MOA between the Philippine government and WOSM, the tax exemption only covers importation and exportation of motor vehicles, and not local purchases. Hence, WOSM's local purchases of motor vehicles for official use are subject to ad valorem tax and VAT.

BIR Ruling No. ITAD 243-15 dated August 28, 2015

An international air carrier organized in Japan and licensed to do business in the Philippines as a provider of international air services is subject to the preferential 1.5% GBP tax rate under the RP-Japan Tax Treaty, as well as to the 3% percentage tax on the transport of cargo.

Facts:

A Co., an international air carrier organized in Japan, is licensed to do business in the Philippines as a provider of international air services to and from the Philippines.

Issues:

1. Is A Co. subject to the 1.5% Gross Philippine Billings (GPB) tax rate under the RP-Japan Tax Treaty?
2. Is A Co. subject to the 3% percentage tax on international carriers?

Ruling:

1. Yes. Under Article 8(1) of the RP-Japan Tax Treaty, the Philippines can tax the profits derived by a resident of Japan from the operation of aircraft in international traffic in the Philippines, but the rate of income tax that may be imposed on such profits shall be 60% of the tax chargeable under Philippine laws. Under Section 28(A)(3) of the Tax Code, the normal GBP rate is 2.5%. Thus, the applicable rate under the RP-Japan Tax Treaty is 1.5%, or 60% of 2.5%.
2. Yes. A Co. is subject to the 3% percentage tax on gross receipts derived from the transport of cargo from the Philippines to another country under Section 118 of the Tax Code.

The donation of a motor vehicle to a religious corporation is exempt from donor's tax, provided not more than 30% of the gift shall be used by the donee for administration purposes.

The non-exempt donee shall be considered as the purchaser of the motor vehicle and shall be liable for any unpaid excise tax.

BIR Ruling No. ITAD 276-15 dated September 15, 2015

Facts:

The Embassy of the Holy See in the Philippines donated a motor vehicle to the Roman Catholic Bishop of Sorsogon, a corporation sole.

Issues:

1. Is the donation subject to donor's tax?
2. Is the donation of the motor vehicle subject to excise tax?
3. Is the deed of donation and acceptance subject to DST?

Ruling:

1. Under Section 101(A)(3) of the Tax Code, gifts in favor of a religious corporation are exempt from donor's tax, provided not more than 30% of the gifts shall be used by the donee for administration purposes.
2. Yes. Transfers made by a tax-exempt person/entity, such as the Embassy of the Holy See, to a person/entity not enjoying indirect tax exemption, such as the donee religious corporation, shall be subject to excise tax. The non-exempt transferee shall be considered as the purchaser of the motor vehicle and shall be liable for the unpaid excise tax pursuant to RA No. 9224, as implemented by RR No. 25-03.
3. Yes. Under Section 188 of the Tax Code, the certification to the deed of donation and acceptance is subject to a P15 DST.

BIR Issuances

RR No. 9-2015 amends Section 9 of RR No. 7-2014 on the affixture of internal revenue stamps and other requirements on cigarettes intended for export.

Revenue Regulations No. 9-2015 dated September 2, 2015

- ▶ Section 9 of RR No. 7-2014 is amended to read as follows:

"SECTION 9. AFFIXTURE OF STAMPS. - Subject to the transitory provisions of Section 13 hereof, and except as provided herein, all importations and removals from the place of production of cigarettes shall be affixed with the internal revenue stamps prescribed by these regulations.

Cigarettes manufactured for exports shall (a) comply strictly with all existing BIR rules and regulations relating to registration of brands, manufacture, import, utilization and withdrawal of raw materials, work in process and finished products, labels and posting of export bonds, among others; (b) have labels stating clearly that the cigarettes are strictly for sale in the country of destination for which it was allowed to be manufactured for; (c) have labels that are not similar in any way to the labels of cigarettes sold in the Philippines; and (d) provide proof that the cigarettes authorized for manufacture for a foreign destination were actually shipped to the country of destination for which it was authorized to be manufactured for, as evidenced by a certified true copy of the bill of lading and/or shipping manifest clearly identifying the quantity (as to number of packs) and brand of cigarettes actually shipped, where the country of destination is clearly identified. These cigarettes manufactured for export shall be provided the range of unique identifier codes (UICs) of internal revenue stamps, thru IRSIS, intended for affixture to the cigarettes for export, and said UIC shall be released to the local manufacturer. Provided, further, That the price of Three Centavos (P0.03), per piece of internal revenue stamp of such cigarettes for export, shall be paid by the local manufacturer-exporter. The payment thereof shall be considered constructive affixture of the internal revenue stamps on such cigarettes for export: Provided, finally, that the range of UICs that were released to the local manufacturer-exporter shall be reported to the BIR, thru IRSIS, pursuant to the provisions of the following Section of these Regulations.

The internal revenue stamp shall be affixed at the upper portion of the immediate container of the cigarettes (e.g. hard pack, soft pack, tin can, etc.) regardless of the number of sticks contained therein, overlapping the intended opening of the immediate container in such a manner as to effectively seal the container and prevent the removal of the sticks of cigarettes without breaking the said stamp, before the immediate container is wrapped in cellophane or transparent wrapper. However, for containers of cigarettes with pictogram, the internal revenue stamp may be affixed at the side overlapping the intended opening of the immediate container in a manner as to effectively seal the container and prevent the removal of the sticks of cigarettes without breaking the said stamp, before the immediate container is wrapped in cellophane or transparent wrapper. Moreover, the internal revenue stamp shall be affixed on the cigarette container in a manner without violating the health warning requirements prescribed under existing law, rules and regulations.

In order to facilitate the monitoring of internal revenue stamps duly issued to the importers and local manufacturers by the BIR, through APO, the stamps shall be affixed to the immediate containers of cigarettes on a first-in-first-out (FIFO) basis.

Any cigarettes found in any area in the Philippines without any internal revenue stamp affixed shall be presumed to have been withdrawn without the payment of the excise tax due thereon, and shall be subject to the penalties provided for in the National Internal Revenue Code, as amended and rules and regulations promulgated relating thereto."

- ▶ These Regulations shall take effect after 15 days following publication in leading newspaper of general circulation.

(Editor's Note: RR No. 9-2015 was published in the Manila Bulletin on September 2, 2015.)

RR No. 10-2015 prescribes the use of non-thermal paper for all CRMs/ POS Machines and other invoice/receipt-generating machines/software.

Revenue Regulations No. 10-2015 dated September 21, 2015

- ▶ All new business registrants with CRM/POS/other similar machines/software with built-in printer for their transactions shall only use non-thermal paper.
- ▶ Considering the associated costs of transitioning to non-thermal paper, concerned taxpayers are given a period of three years to comply with the new requirements, subject to the following staggered implementation dates:

For those subject machines registered starting	Staggered implementation dates
July 1, 2014 onwards	On or before July 1, 2018
July 1, 2013 - June 30, 2014	On or before July 1, 2017
Prior to July 1, 2012 - June 30, 2013	On or before September 1, 2016

- ▶ The Official Receipts (ORs) for sales of services or Sales Invoices (SIs)/ Other Commercial Invoices (CIs) for sales of goods shall be printed showing, among others, the following information:
 1. Taxpayer's Registered Name;
 2. Taxpayer's Business Name/Style (if any);
 3. A statement that the taxpayer is a VAT or Non-VAT registered followed by the Taxpayers Identification Number (TIN) and 4-digit Branch Code. (Example: VAT Registered TIN 123-456-789-0000);

4. Machine Identification Number (MIN);
 5. Detailed Business address where such ORs/SIs/CIs shall be used/located;
 6. Date of transaction;
 7. Serial Number of the OR/SI/CI printed prominently;
 8. A space provided for the Name, Address and TIN of the buyer;
 9. Description of the items/goods or nature of service;
 10. Quantity;
 11. Unit cost;
 12. Total cost;
 13. VAT amount (if transaction is subject to 12% VAT);
 14. If the VAT taxpayer is engaged in mixed transactions, the amounts involved shall be broken down into VATable Sales, VAT Amount, Zero-Rated Sales, and VAT-Exempt Sales;
 15. For Non-VAT ORs/SIs and other CIs (VAT or Non-VAT) such as delivery receipts, order slips, purchase orders, provisional receipts, acknowledgment receipts, collection receipts, credit/debit memo, job orders and other similar documents that form part of the accounting records of the taxpayer and/or issued to their customers, the phrase "THIS DOCUMENT IS NOT VALID FOR CLAIM OF INPUT TAX" in bold letters, shall be conspicuously printed at the bottom of the Non VAT ORs/SIs and other CIs;
 16. Taxpayers whose transactions are not subject to VAT or Percentage Tax shall issue non-VAT principal receipts/invoices indicating prominently at the face of such receipts/invoices the word "EXEMPT".
 17. If the taxpayer is subject to percentage tax under Title V of the Tax Code, but also sells goods/services exempt from VAT under Section 109 of the Tax Code, the non-VAT principal receipts/invoices shall indicate the breakdown of Sales Subject to Percentage Tax (SSPT) and Exempt Sales;
- ▶ The following information shall be printed at the bottom portion of the OR/SI/CI:
 1. Name, address and TIN of the accredited supplier of CRM/POS/other similar machines/software;
 2. Accreditation number and the date of accreditation (date issued "mm/dd/yyyy" and valid until "mm/dd/yyyy") of the accredited supplier;
 3. BIR Final Permit to Use (PTU) Number;
 4. The phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE."
 - ▶ For taxpayers transacting with Senior Citizens (SCs) and/or Persons With Disability (PWDs) pursuant to RA No. 9994, otherwise known as the "Expanded Senior Citizens Act of 2010", a space for the following shall also be required:
 1. Senior Citizen/PWD TIN;
 2. Office of the Senior Citizen Affairs (OSCA) ID No./PWD ID No.;
 3. Senior Citizen Discount/PWD Discount (show detailed breakdown of 20% discount and/or 12% VAT exempt); and
 4. Signature of the Senior Citizen/PWD.
 - ▶ All existing taxpayers issuing receipts/invoices generated thru CRM/POS/other similar machine/software (using thermal paper), including those connected to a network or linked to the Computerized Accounting System (CAS), generating electronic receipts, shall be covered by the requirements under these Regulations.

- ▶ Any violation of the regulations shall be subject to the corresponding penalties under the applicable provisions of the Tax Code, as amended, and revenue issuances.
- ▶ To give ample time for the reconfiguration of machines and systems in order to reflect the above information required in the ORs, CIs and SIs, the reconfiguration or adjustments should be done not later than October 1, 2015*; however, an extension not to exceed 6 months from the effectivity of these regulations may be sought from the concerned Revenue District Officer (RDO) or ACIR of the Large Taxpayers Service.
- ▶ These Regulations shall take effect after 15 days following publication in leading newspaper of general circulation.

(Editor's Note: RR No. 10-2015 was published in the Manila Bulletin on September 22, 2015. See also RR No. 12-2015 below.)*

RR No. 11-2015 amends Sections 2 and 7(6) of RR No. 7-2010, as amended by RR No. 08-2010 on Senior Citizens.

Revenue Regulations No. 11-2015 dated September 29, 2015

- ▶ A new paragraph to be known as paragraph (n) is inserted at the end of Section 2 of RR No. 7-2010, as amended, which shall read as follows:

“Section 2. Definitions.-For purposes of these Regulations, the following terms and phrases shall be defined as follows:

xxx

- n. Identification Document - any document or proof of being a senior citizen which may be used for the availment of benefits and privileges under these Rules. It shall be any of the following:
 - i. Senior Citizens' Identification Card issued by the Office of Senior Citizens Affairs (OSCA) in the city or municipality where the elderly resides;
 - ii. The Philippine passport of the elderly person or senior citizen concerned; and
 - iii. Government-issued identification card (ID) which reflects on its face the name, picture, date of birth and nationality of the senior citizen which includes any of the following:
 - 1) Digitized Social Security System ID
 - 2) Government Service Insurance System ID
 - 3) Professional Regulation Commission ID
 - 4) Integrated Bar of the Philippines ID
 - 5) Unified Multi-Purpose ID (UMID)
 - 6) Driver's License”

- ▶ Section 7(6) of RR No. 7-2010, as amended, is further amended to read as follows:

“SECTION 7. Tax Treatment of the Discount Granted to Senior Citizens. – xxx The claim of the discount granted under the Act as an additional item of deduction from the gross income of the seller is subject to the following conditions:

6. The business establishment giving sales discounts to qualified Senior Citizens is required to keep a separate and accurate record of sales, which shall include the name of the Senior Citizen, Identification Document, gross sales/receipts, sales discount granted, dates of transactions and invoice numbers for every sale transaction to Senior Citizen.”
- ▶ These Regulations shall take effect 15 days immediately following publication in leading newspaper of general circulation.

(Editor’s Note: RR No. 11-2015 was published in the Manila Bulletin on October 1, 2015.)

RR No. 12-2015 amends RR No. 10-2015 and extends to October 31, 2015 the deadline for the reconfiguration of the CRMs/POS/other invoice/receipt-generating machines/software to reflect the information required by RR No. 10-2015.

Revenue Regulations No. 12-2015 dated September 29, 2015

- ▶ Section 8 of RR No. 10-2015 is amended to read as follows:

“SECTION 8. TRANSITORY PROVISIONS. - In order to provide ample time in procuring, reconfiguring machines and systems, to comply with Section 5, adjustments shall be undertaken on or before October 31, 2015. Any extension due to enhancements of systems required to be undertaken abroad shall seek the approval from the concerned Regional Director or ACIR, Large Taxpayer Service, which shall not be longer than six (6) months from the effectivity of these Regulations.”

(Editor’s Note: RR No. 12-2015 was published in Manila Bulletin on October 8, 2015.)

RMC No. 56-2015 clarifies the submission of a Monthly eSales Report via the eSales Reporting System prescribed under RR No. 5-2005 and Revenue Memorandum Order (RMO) No. 12-2012.

Revenue Memorandum Circular No. 56-2015 dated July 20, 2015

- ▶ eSales is a real-time online reporting of actual sale transactions recorded by CRMs/POS/other similar machines/software. Since the CRM/POS machines are required to be tamper-proof, they are expected to contain the original data that should serve as basis for tax assessments by revenue examiners. Hence, sales records contained in the CRM/POS machines are not allowed to be altered or amended except in meritorious cases.
- ▶ However, in the course of the implementation of RR No. 5-2005 (which prescribes the monthly submission of sales reports and other information generated by CRM and POS machines and/or any machines generating invoices/ receipts) and RMO No. 12-2012 (which prescribes the guidelines and procedures in the implementation of eSales reporting), it was noted that several adjustments/amendments were made on the amount of monthly eSales as reported, resulting in the reconstitution of sales as recorded in CRM/POS machines.
- ▶ Given the foregoing, any amendment on the amount of monthly sales reported shall require a written justification addressed to the concerned Large Taxpayer Service (LTS) Investigating Office/Revenue District Office (RDO), with the corresponding adjusting entries properly recorded in the books of accounts.
- ▶ Monthly eSales reports shall be subjected to validation or verification by the concerned offices, provided no electronic Letter of Authority (eLA) or Letter Notice (LN) has been issued.

- ▶ In case an eLA or LN has been issued, an incident report on the post-validation or inspection conducted by the concerned investigating offices shall be consolidated with the ongoing audit/investigation covered by the eLA or LN.
- ▶ Taxpayers who fail to comply with the foregoing requirements shall be included in the priority audit program of the concerned investigating offices.

RMC No. 58-2015 circularizes the availability of eBIRForms Package Version 5.1.

Revenue Memorandum Circular No. 58-2015 dated September 17, 2015

- ▶ eBIRForms Package Version 5.1 is now available and downloadable from any of the following sites:
 1. www.knowyourtaxes.ph;
 2. www.dof.gov.ph;
 3. Dropbox using this link: <http://goo.gl/UCr8XS>;
 4. Direct link: http://ftp.pregi.net/bir/ebirforms_package_v5.1.zip; or
 5. www.bir.gov.ph
- ▶ The new eBIRForms package has the following modifications:
 1. BIR Form No. 1707-A (Annual Capital Gains Tax Return for Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange) is included in the package and 37 returns are now available in eBIRForms;
 2. BIR Form Nos. 1601E, 1702-MX and 2000 were enhanced; and
 3. Annual Income Tax Returns (BIR Form Nos. 1700, 1701, 1702-EX, 1702-MX & 1702-RT) can now be submitted online thru the eBIRForms System.
- ▶ All the 37 tax returns can be filed by clicking the "SUBMIT" or "FINAL COPY" button and the taxpayer will receive the corresponding confirmation thru email notification. Taxpayers using this new version shall follow these simple and convenient steps:
 - Step 1. DOWNLOAD, INSTALL and RUN eBIRForms Package Version 5.1;
 - Step 2. Complete the Profile page, select from the List of BIR Forms, then click "Fill up". Accomplish the selected tax return by directly encoding data in it;
 - Step 3. Click VALIDATE after accomplishing the tax return. If there are changes to make, click EDIT button. Make sure to validate after every change made;
 - Step 4. Click SUBMIT button:
 - 4.1. If successful, taxpayer will be redirected to eBIRForms Login page and shall enter his/her/its Username and Password.
 - 4.2. If unsuccessful, click FINAL COPY button to use an alternative mode of electronic submission and an email confirmation will be received by the taxpayer. Those who are not yet enrolled in the eBIRForms System are required to fully and unconditionally agree to the Terms of Service Agreement (TOSA).
- ▶ The previous eBIRForms Package Version 5.0 may still be used for filling all other BIR forms not included in the modifications stated in this RMC No. 58-2015.

RMO No. 19-2015 prescribes the policies, guidelines and procedures to be observed in the audit/investigation of tax returns.

Revenue Memorandum Order No. 19-2015 dated September 15, 2015

- ▶ In general, all taxpayers are considered possible candidates for audit.
- ▶ To cover such audit/investigation of taxpayers, electronic Letters of Authority (eLAs) shall be issued.
- ▶ The said audit/investigation shall include, but shall not be limited to, the following cases:
 1. *Mandatory Cases:*
 - ▶ Taxpayers with claims for income tax refund or issuance of tax credit certificate;
 - ▶ Taxpayers with claims for VAT refund/credit;
 - ▶ Claims for tax refund/credit of excise tax under Title VI of the Tax Code, regardless of amount;
 - ▶ Claims for tax refund/credit on erroneous/double payment of taxes, regardless of amount;
 - ▶ Request for tax clearance of taxpayers due to retirement/cessation of business, with gross sales/receipts exceeding P1,000,000.00 or gross assets exceeding P3,000,000.00;
 - ▶ Request for tax clearance of taxpayers undergoing merger/consolidation/split-up/spin-off and other types of corporate reorganizations;
 - ▶ Cases with unresolved Letter Notices (LNs);
 - ▶ Estate tax returns with other tax liabilities; and
 - ▶ Policy cases covered by written directive of the Commissioner.
 2. *Priority Taxpayers/Industries* - Unless revised through the issuance of an RMO, the tax returns to be audited shall be based on the following criteria:
 - ▶ Taxpayers mandatorily covered to file their returns using eFPS or eBIRForms under existing revenue issuances, but failed to use the same;
 - ▶ Taxpayers maintaining an ending inventory of 100% or more of their gross sales;
 - ▶ Issue-oriented audits (e.g., transfer pricing, Base Erosion Profit Shifting (BEPS), industry issues);
 - ▶ Taxpayers whose compliance is below the established benchmark rate;
 - ▶ Taxpayers who have failed to comply with the submission of information returns required under existing revenue issuances (e.g., Alphalist, Inventory List, List of Tenants, SLS/P, eSales);
 - ▶ Taxpayers enjoying tax exemptions/incentives;

- ▶ Taxpayers which were placed under surveillance, Oplan Kandado and other enforcement programs of the Bureau;
- ▶ Taxpayers reporting gross/net loss or no taxable income or no tax due for 2 consecutive years;
- ▶ Government agencies with validated "due to BIR" per COA report;
- ▶ Local Government Units (LGUs) engaged in proprietary activities or LGUs who fail to remit taxes withheld regularly;
- ▶ Taxpayers with income tax due of less than 2% of gross sales/revenues;
- ▶ Taxpayers with increase in assets of more than 50% from the previous year, but with reported net loss;
- ▶ Taxpayers with claims for losses/damages due to natural calamities or those claiming inventory obsolescence;
- ▶ Taxpayer deriving its revenue/income exclusively or substantially from its parent company/subsidiaries/affiliates;
- ▶ Taxpayers claiming write-off of input tax as allowable deduction in its annual income tax returns;
- ▶ Taxpayers with shared expenses and other interrelated charges being imputed by a parent company to its affiliates and, likewise, an affiliate to other affiliates in a conglomerate;
- ▶ Professionals (e.g., lawyers, doctors, engineers, architects, CPAs, actors/actresses, media personalities, professional athletes, insurance agents, real estate service practitioners, event planners) with low income and/or business tax compliance;
- ▶ Real estate industry;
- ▶ Telecommunications industry (Telcos);
- ▶ Contractors of National Government Agencies (NGAs), LGUs and Government Controlled Corporations;
- ▶ Sellers of goods and services via e-commerce;
- ▶ Hospitals, Clinics, Medical/Dental Laboratories;
- ▶ Amusement/Entertainment/Event Centers;
- ▶ Advertising Agencies;
- ▶ Business Processing Outsourcing Companies;
- ▶ Insurance Companies;
- ▶ Restaurants/Fast Food Chains/Catering Services/Bars/Coffee Shops;
- ▶ Taxpayers with zero-rated sales; and

- ▶ Taxpayers with intelligence information, such as specific business knowledge, third party data and publicly available information (e.g., from media press releases vs. actual revenue/tax declaration per return)
3. *Other priority audit that may be identified by the Regional Director (RD)/ Asst. Commissioner, Large Taxpayers Service (ACIR-LTS):*
- ▶ RD's/Revenue District Officer's (RDO) Other Audit Priority
 - ▶ ACIR-LTS/Chief, LT Division's– Makati & Cebu (LTD)/Chief, LT Audit Division's (LTAD) Other Audit Priority

The above Officials are not precluded from selecting taxpayers which do not fall within the foregoing criteria but may be possible candidates under other priority audit

- ▶ The tax returns to be selected for priority taxpayers/industries and other priority audit that may be identified by the RD/ACIR-LTS for regional tax cases, shall consist of 60% Taxpayer Account Management Program (TAMP) and 40% non-TAMP taxpayers of the Revenue District Office (RDO).
- ▶ The RDO and RD/LTD, LTAD and ACIR-LTS are equally responsible in ensuring that only returns of taxpayers registered within their jurisdiction and those that match the selection criteria of this Order are selected for issuance of eLAs; otherwise, they shall be subject to administrative sanctions.
- ▶ Any deviation, except those selected under other priority audits identified by the RD/ACIR-LTS, shall require a request with a written justification to be submitted by the RD to the Deputy Commissioner - Operations Group (DCIR-OG) for regional cases, and ACIR-LTS to the Commissioner for LT cases. A copy of the request approved by the DCIR-OG shall be furnished to the Assistant Commissioner, Assessment Service (ACIR-AS) for monitoring purposes.
- ▶ If the taxpayer has been audited for the last two years and has been again selected for audit in the current or third year, the RDO/LTD/LTAD shall submit a written explanation to the Commissioner, copy furnished the DCIR-OG for Regional cases, on why such taxpayer shall be subjected to audit for three succeeding years, unless the RDO/LTD/LTAD has established that such taxpayer has an under declaration of sales/income or overstatement of expenses/ deductions by at least 30% (*prima facie* evidence of fraud).
- ▶ The RDO/LTD/LTAD should evaluate discrepancies or audit/review findings arising from taxpayers with filed claims for VAT refund/credit referred by the VAT Credit Audit Division (VCAD) or Tax Audit Review Division (TARD) in order to determine any tax implications and may select the taxpayer-claimant for issuance of an eLA, if necessary.
- ▶ However, if the taxpayer-claimant is already the subject of an existing eLA for the same taxable year covered by the claim, the audit/review findings should be consolidated with the existing eLA/case.
- ▶ The Electronic Letter of Authority Monitoring System (eLAMS) shall be used in the request, approval and issuance of eLAs, as well as in updating the status of the same, until the Case Management System (CMS) of the enhanced Tax Information System (eTIS) is rolled-out in the National, Regional and District Offices.

- ▶ As a general policy, the simultaneous investigation of all liabilities of the taxpayer shall be followed and one eLA shall be issued for each taxable year or period to include all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined (e.g., audit of VAT under VAT Audit Program and VAT arising from claim of tax refund/credit).
- ▶ Notwithstanding the foregoing policies, eLAs shall be issued for the following tax cases:
 1. Specific audit of claims for VAT refund or issuance of Tax Credit Certificate (TCC) wherein one eLA shall be issued for each taxable period/quarter of claim.
 2. Retirement from business provided that cases where the gross sales/ receipts of the retiring taxpayer amount to P1,000,000.00 and below or gross assets do not exceed P3,000,000.00 shall no longer be verified/ investigated.
 3. For estate tax cases with other tax liabilities, 2 separate eLAs shall be issued to the same RO, one for the estate tax liability and a separate eLA covering the audit of other tax liabilities for the year immediately preceding the death of the taxpayer and the short period within the year up to the death of the decedent.
- ▶ In requesting documents to be presented during tax investigation, the RO shall comply with RMO No. 53-98, as amended by RMO Nos. 16-2007 and 22-2007, and other applicable revenue issuances.
- ▶ The RO shall mark in the Checklist of Requirements only the documents/records which are applicable and relevant in the audit, and should not require the taxpayer to submit tax returns and other information which can be retrieved within the Bureau.
- ▶ If an eLA has been issued under the VAT Audit Program and subsequently, the taxpayer becomes a candidate for regular audit in the RDO/LTD/LTAD based on the selection criteria under this Order for the same taxable year, the request for eLA for regular audit shall not include the VAT liability even if the eLA issued under the VAT Audit Program is for a particular taxable quarter only.
- ▶ The report of investigation/verification of cases covered by eLAs/Tax Verification Notice (TVN)/Memoranda of Assignment (MOA) pursuant to this Order shall be submitted by the RO within the following prescribed number of calendar days:

Case Classification	No. of Days
Cases covered by eLAs other than claims for VAT refund/credit	180 days for Regional cases and 240 days for LT cases, from the date of the eLA
Claims for VAT refund/ credit cases	60 days for Regional cases, and 80 days for VCAD and LT cases, from the date of filing of the application
TVN on estate tax cases	60 days from submission of complete documents
MOA on one-time-tax-transaction (ONETT) cases	5 days from submission of complete documents
MOA on protested cases/reinvestigation	60 days from the submission of complete documents in case of request for reinvestigation; 60 days from the date of MOA in case of request for reconsideration

- ▶ Failure on the part of the RO to render a report of investigation/verification within the prescribed time frame shall not nullify the eLA, which shall remain enforceable, subject to the period of limitation under Sections 203 and 222 of the Tax Code.
- ▶ However, the RO who fails to submit the report investigation/verification shall be subject to any applicable administrative sanction.

RMO No. 20-2015 prescribes the policies and guidelines in the issuance of the TIN of employees using the eRegistration System and the procedures for the registration of employees.

Revenue Memorandum Order No. 20-2015 dated September 18, 2015

- ▶ Employees shall be registered at the Revenue District Office (RDO) where the employee is registered or at the local RDO of the business address where the Large Taxpayer (LT)-Employer is physically located.
- ▶ The employer shall be responsible for transfer of registration of an employee due to a change of employer and shall submit the duly-accomplished and signed BIR Form No. 1905 (Application for Registration Information Update) of the employee.
- ▶ The transfer of registration of such employee shall be initiated by the RDO which receives the application. In case the employee or the employer is relatively far away and unable to visit the RDO for the application of transfer of registration, a faxed copy of the duly-signed BIR Form 1905 shall be accepted by the RDOs or Large Taxpayers Assistance Division (LTAD)/Excise Large Taxpayer Regulatory Division (ELTRD)/Large Taxpayers Division (LTD) - Makati/LTD - Cebu
- ▶ Taxpayers with the following circumstances cannot be registered using the eRegistration System:
 1. Those with incomplete data on the basic taxpayer information form; and
 2. Those with similar or found to have matching records in the BIR database that fall under any of the following validation rules:
 - ▶ same last name, first name and middle name
 - ▶ same last name, first name and middle initial
 - ▶ same last name, first name and birth date
 - ▶ same last name, middle name and birth date
 - ▶ for a married female whose civil status entered in eREG is married, the entered middle name, first name and birth date are the same as those of another female in the BIR database.
- ▶ Only an LT-Employer is allowed to transact business with the LTAD/ELTRD/LTD Makati/LTD-Cebu where the LT-Employer is duly registered in relation to the "Application for Registration" and "Update of Exemption" of their employees.
- ▶ An LT-Employer shall secure the TIN of its new employees using the eRegistration System.
- ▶ An LT-Employer that cannot register its new employees thru the eRegistration System shall secure its employees' TINs in the LTAD/ELTRD/LTD-Makati/LTD-Cebu where the LT-Employer is duly registered.

- ▶ The LT-Employer shall submit a written request for the TIN issuance with a corresponding transmittal list of its new employees who filed BIR Form No. 1902 (Application for Registration For Individuals Earning Purely Compensation Income, and Non-Resident Citizens/ Resident Alien Employee) to the Chief of Office together with the prescribed registration form and eRegistration System message.
- ▶ The LT-Employer shall submit a written request for the issuance of TIN Cards of its employees to the concerned LTAD/ELTRD/LTD-Makati/LTD-Cebu, attaching the list of newly registered employees in batches of 20, indicating their full name (surname, first name, middle name), birthdate, address and the date of registration or date of TIN issuance, together with BIR Form 1902 and the printed eReg Confirmation Page, if registered using the eRegistration System.
- ▶ Non-LT Employers, such as corporations under the Taxpayer Account Management Program (TAMP) and those registered/enrolled in eFPS, shall also secure the TIN of its new employees using the eRegistration System.
- ▶ All other Employers (who are not classified as Large Taxpayers, TAMP corporations or an eFPS registered users), may secure the TIN of their employees either through the eREG System or through the RDO having jurisdiction over the employer's business address.
- ▶ An employee with concurrent multiple employment shall secure a TIN at the RDO having jurisdiction over his principal/main employer.
- ▶ An employee shall request for the issuance of the TIN Card from the RDO having jurisdiction over the employer's business address or any computerized RDOs.
- ▶ Those employers who are required to use the eRegistration System but gave instructions to its new employees to visit the RDOs or LTAD/ELTRD/LTD-Makati/LTD-Cebu with photocopies of alleged eRegistration System message, shall be imposed a penalty of P1,000.00 per employee pursuant to Section 275 of the Tax Code.
- ▶ A penalty of P1,000.00 but not to exceed P25,000.00 for every instance shall be imposed on eRegistration System and Update of Exemption of Employee Data Entry Module users who supply erroneous/invalid information.

BOC Issuances

CMO No. 27-2015 prescribes the revised rules and regulations on the importation of balikbayan boxes from OFWs.

Customs Memorandum Order No. 27-2015 dated September 2, 2015

- ▶ This CMO applies to all non-commercial inbound consolidated shipments of OFWs and for returning OFWs bringing in personal and household effects.
- ▶ Operational Provisions
 1. Balikbayan boxes shall not be subject to random or arbitrary physical inspection, but shall only undergo mandatory X-ray scanning.
 2. In cases where the shipment is tagged as "suspect" after X-ray scanning, the inspector shall identify the specific balikbayan box and shall recommend the issuance of an Alert Order. Balikbayan boxes without violation shall be segregated and provisionally released to allow its continuous processing.

3. Balikbayan boxes which are alerted shall be subject to 100% physical examination at the authorized examination area to be conducted by a Customs Examiner in the presence of apprehending officers, freight forwarder/consolidator, and the representatives of Overseas Workers Welfare Administration (OWWA) and / or a designated officer of an OFW association.
 4. For purposes of trade facilitation and to address port congestion, the BOC may allow 100% examination of alerted shipments to be conducted at the warehouse of the freight forwarder/consolidator upon submission of an Affidavit of Undertaking.
 5. Failure on the part of the customs official or personnel to comply with any of these directives shall be dealt with in accordance with Section 3604 of the TCCP, as amended, and appropriate civil service rules and regulations.
- ▶ CMO No. 27-2015 takes effect immediately.

CMO No. 28-2015 prescribes the rules on the mandatory filing of consumption entries for sea shipments at the port of discharge in cases where the port of discharge is not the port of final destination.

Customs Memorandum Order No. 28-2015 dated September 1, 2015

- ▶ The mandatory filing of a consumption entry shall apply to all articles imported by sea and intended for consumption in the customs territory, in case the port of discharge is not the port of final destination. It shall not apply to articles which are:
 1. Imported by accredited locators of PEZA zones and freeports;
 2. Intended for use by accredited customs bonded warehouses (CBWs), or
 3. Imported for immediate exportation.
- ▶ All articles imported by sea, except for the exempted items, 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 Philippine territory. In such cases, transshipments shall not be allowed and the filing of the entry at the port of final destination shall be prohibited.
- ▶ CMO No. 28-2015 takes effect immediately.

CMO No. 29-2015 prescribes the revised procedures and documentation in the processing of formal consumption entries.

Customs Memorandum Order No. 29-2015 dated September 1, 2015

- ▶ The use of the Import Entry and Internal Revenue Declaration (IEIRD) or BOC Form 236 is discontinued and has been replaced by the Single Administrative Document (SAD) secured through the e2m Customs System and printed. The SAD shall serve as the entry declaration as required by existing rules and regulations.
- ▶ The declarations by the importers and licensed customs brokers in the SAD shall be under oath, and shall be printed in two copies and the required documents shall be attached to the SAD based on existing regulations. The first copy shall be for the BOC, the back side of which may be used for the return or findings of the customs officer concerned. The second copy shall be the copy of the importer and licensed customs broker and shall also serve as the acknowledgement receipt.
- ▶ MISTG shall provide a copy of the SAD to various government agencies like the BIR, PSO, TC and other government agencies.

- ▶ Documentary stamps in the amount of P265 on formal consumption entries shall be added by the MISTG in the computation of duties and taxes based on entry declarations and settled through PASS5.
- ▶ The use of Supplemental Declaration Value (SDV) shall be discontinued. To secure the basic information indicated in the SDV, Box 39 of the SAD is considered a mandatory field in the entry declaration.
- ▶ With the implementation of the mandatory submission of air manifests in the E2M, print out of the e-AWB shall be accepted as supporting document to the SAD. However, importers and licensed customs brokers shall be allowed to use the IEIRD in lieu of the SAD until such time as the inventory of the BOC is exhausted.
- ▶ CMO No. 29-2015 takes effect immediately and expressly repeals CMO Nos. 37-2001 and 20-2004 with regard to the use of IEIRD and SDV.

CMO No. 30-2015 prescribes the rules and regulations on the establishment, supervision and control of wharves, container yards, container freight stations, warehouses, examination areas and other facilities within the customs zone, otherwise known as the ACF.

Customs Memorandum Order No. 30-2015 dated September 15, 2015

- ▶ Coverage
 1. This CMO covers all wharves, container yards, container freight stations, warehouse, examination areas and other facilities located in customs zones and/or in airports and seaports, and used for the temporary handling and storage of imported goods immediately discharged from the carrying airplanes, vessels and other means of international transport.
 2. Existing facilities accredited as CBWs will be subject to review and re-accreditation as an Authorized Customs Facility (ACF).
 3. This CMO does not apply to warehouses and facilities with existing licenses as Container Yards and/or Container Freight Stations Outside Customs Zones (CY/CFS-OCZ) and other Off-Dock Customs Zones which are subject to a separate set of rules and regulations.
- ▶ General Provisions
 1. All wharves, container yards, container freight stations, warehouses, examination areas and similar facilities shall be considered as part of the customs zone and shall be subject to the supervision and control of the BOC as an ACF.
 2. These facilities shall also be subjected to such requirements, rules and conditions which may be imposed by the Commissioner of Customs and shall be made accessible to all authorized Customs officials or representatives upon proper demand for ocular inspection.
 3. Inventory and other management records of imported cargoes handled and stored by authorized operators shall be maintained and kept at all times in their places of business, and shall be accessible and available online to authorized BOC officers. These records shall also be subject to inspection by authorized customs officials or representatives and, upon proper demand, shall immediately be produced and submitted to such officials or representatives.

4. Only ACF operators shall be allowed to handle and store imported goods that are immediately discharged from the arriving airplane, vessel and other means of international transport.

▶ Operational Provisions

1. Any person or firm desiring to establish and operate an ACF shall apply in writing to the Collection District where the proposed ACF are to be located, and submit the required documentary requirements. An ACF must have also written and verifiable procedures relating to security procedures.

The ACF management shall cause the mandatory and periodic training of a sufficient number of its personnel for the handling, storage and management of dangerous goods. Upon issuance of the Certificate of Authority to Operate, the ACF shall comply with the following requirements:

- ▶ E2M Connectivity
 - ▶ CPRS Registration
 - ▶ Interest bearing account/Treasury Bond/Insurance from any government financial institution to cover for duties and taxes due on lost or damaged goods transferred to the ACF in the amount provided in the Certificate of Authority
 - ▶ Payment of an Annual Supervision Fee
2. The license to operate an ACF shall be valid for the period granted in the Certificate of Authority which shall not be less than 3 years.
 3. The application for renewal shall be filed not later than 6 months before the expiration of the authority to operate an ACF. Failure to file an application for renewal 6 months prior to its expiration shall automatically be subject to a penalty in the amount of P 100,000.
 4. Upon written request of the ACF operator, citing reasons therefor, an ACF may be closed voluntarily, at which point all cargoes remaining with the ACF shall be released to its consignees upon payment of all customs duties, taxes and other charges due thereon and after compliance with applicable laws and regulations. Any overstaying cargoes still remaining with the ACF shall be inventoried and transferred to BOC Warehouse at the expense of the ACF.
 5. The ACF shall be suspended or revoked on any of the following grounds:
 - ▶ When the facility is used in storing smuggled goods
 - ▶ If involved in pilferage
 - ▶ Cargoes cannot be accounted for
 - ▶ Overcharging of fees
 - ▶ Violation of customs laws, rules and regulations
 - ▶ Other violations of laws of the Philippines

In case of a customs-initiated revocation or cancellation, the District Collector concerned shall order its Deputy Collector for Operations to conduct an investigation, allowing the ACF operator to submit evidence to the contrary. The administrative proceeding should be summary in nature and should be terminated within 30 working days from receipt of the order to conduct hearing.

6. In case of relocation, expansion or provision of additional facilities, the ACF operator shall secure approval from BOC.
 7. Additional facilities outside the Collection District where the ACF acquired its authority to operate may be permitted upon application, which shall be considered as a new and original application.
- ▶ CMO No. 30-2015 repeals regulations inconsistent therewith, and takes effect immediately.

CMO No. 31-2015 prescribes the revised rules and procedures on the processing of importer or consignee's request for amendment of the BL and AWB.

Customs Memorandum Order No. 31-2015 dated September 15, 2015

- ▶ General Provisions
 1. All Bills of Lading (BLs) and Airway Bills (AWBs) which are subject to amendment must first be validated by the shipping line, airline, freight forwarder or consolidator concerned.
 2. The E2M prohibits the amendment of the following data elements:
 - ▶ Nature of BL or AWB
 - ▶ Consignee's name
 - ▶ Consignee's address

In case there is a request for change in the nature of the BL or AWB, consignee's name or consignee's address, the consignee, shipping line, airline, freight forwarder or consolidator concerned shall submit the amended BL or AWB in the E2M to replace the incorrect one.

3. Modification of "validated" BLs or AWBs is limited to certain data fields such as:
 - ▶ Type of BL
 - ▶ Universal Consignee Reference (UCR)
 - ▶ Container Number
 - ▶ Total Containers
 - ▶ Modification of container size (20/40/45)
 - ▶ Status (FCL/CL)
 - ▶ Unit of measure of packages
 - ▶ Volume (CBM)
 - ▶ Description of goods
 - ▶ Location of goods, freight and amount
 - ▶ Declared value and currency type
 - ▶ Transport and Insurance Cost.
4. When erroneous data need to be corrected, requests for amendment shall be filed with the District Collector concerned. Once approved, the amendment of data in E2M shall be performed by the Deputy Collector for Operations. The amended version of the BL or AWB shall be sent by E2M through the VASP through which the original version was submitted. The VASP shall send the amended copy of the BL to the temporary transit sheds to ensure the synchronicity of BL or AWB data between temporary transit sheds and the BOC.

- ▶ The District Collector of Customs may, at the written request of the consignee, shipping line, airline, freight forwarder or consolidator concerned, allow the amendment of BL and AWB only in the following instances:
 1. Amendments considered clerical in nature and not substantial or material;
 2. Amendments considered substantial or material such as change in consignee's name, addresses, description of goods, weight, volume and similar amendments shall be allowed only under the following conditions:
 - ▶ The written request shall be made under oath;
 - ▶ An import entry in the VASP has been lodged in the E2M and the Import entry, with supporting documents, have been submitted to the Entry Processing Division (EPD) or equivalent unit;
 - ▶ There is no covering alert or hold order and the subject shipment has not been tagged as "abandoned"; and
 - ▶ In case of requests for change in the consignee's name, the request must be supported by an undertaking of the original consignee that the BOC shall not be held responsible for the release of the cargo.
- ▶ The request shall be filed solely with the Office of the Deputy Collector for Operations who shall resolve the request promptly upon approval of the District Collector. Where such request is approved or disapproved by the District Collector, the same shall be forwarded to the Deputy Collector for Operations for the amendment in the E2M System or for the issuance of the notice of disapproval to the importer or consignee.
- ▶ All consignees, shipping lines, airlines, freight forwarders or consolidators concerned shall pay a P500 processing fee upon submission of its application.
- ▶ CMO No. 31-2015 takes effect immediately and shall govern all pending requests for amendment of BL and AWB, and other similar requests.

CMO No. 32-2015 prescribes the revised rules and regulations on the establishment, supervision and control of off-dock container yards and/or container freight stations and other off-dock customs facilities outside of the customs zones.

Customs Memorandum Order No. 32-2015 dated September 15, 2015

- ▶ Coverage

This CMO covers all off-dock container yards/container freight stations (OCC) and wharves, warehouses, examination areas and other off-dock customs facilities (OCF) located outside of customs zones used for the temporary handling and storage of imported goods, as well as OCFs operated by consolidators and freight forwarders of consolidated cargo, including those handling balikbayan boxes.
- ▶ General Provisions
 1. An OCC or OCF is to be treated like the container terminal inside the customs zone in all aspects, subject to whatever additional requirements, rules and conditions which may be imposed by the Commissioner of Customs.
 2. An OCC shall exclusively handle only Less Container Load (LCL) shipments. An OCF shall exclusively handle only Full Container Load (FCL) shipments. A facility shall either be an OCC or an OCF unless the same is given the authority to operate both as an OCC and an OCF. A Certificate of Authority (CoA) to operate an OCC or OCF shall be valid for a period of three years.

3. Inventory and other management records of imported cargoes handled and stored by authorized operators shall be maintained and kept at all times in their places of business and shall be accessible and available online to the BOC. Such records shall also be subject to inspection by authorized customs officials or representatives and, upon proper demand, shall immediately be produced and submitted to such officials or representatives.

▶ Operational Provisions

1. Any person or firm desiring to establish and operate an OCC or OCF shall apply in writing to the Collection District where the proposed OCC or OCF facilities are to be located. An applicant must likewise have written and verifiable procedures on matters relating to security.

The OCC or OCF management shall cause the mandatory and periodic training of a sufficient number of its personnel for the handling, storage and management of dangerous goods. Upon issuance of the CoA to Operate, which shall be valid for 3 years, the OCC or OCF shall comply with the following requirements:

- ▶ E2M Connectivity
 - ▶ CPRS Registration
 - ▶ Interest-bearing account/Treasury Bond/Insurance from any government financial institution to cover for duties and taxes due on lost or damaged goods in the amount of P1 million
 - ▶ Payment of an Annual Supervision Fee
2. The application for renewal of the CoA to operate, together with the updated documentary requirements, shall be filed with the District Collector concerned, through the Deputy Collector for Operations, not later than 6 months before the expiration of the authority to operate. Failure to file an application for renewal 6 months prior to its expiration shall automatically be subject to a penalty in the amount of P100,000.
 3. Upon written request of the OCC or OCF operator to the District Collector concerned, citing reasons therefor, the facility may be closed voluntarily. The District Collector shall require all cargoes remaining with the operator to be released to its consignees upon payment of all customs duties, taxes and other charges due thereon and after compliance with applicable laws and regulations. Any overstaying cargo still remaining with the operator shall be inventoried and transferred to a BOC Warehouse at the expense of operator.
 4. The OCC or OCF shall be suspended or revoked on any of the following grounds:
 - ▶ When used in storing smuggled shipments
 - ▶ If involved in pilferage
 - ▶ Cargoes cannot be accounted for
 - ▶ Overcharging of fees
 - ▶ Violation of customs laws, rules and regulations
 - ▶ Other violations of laws of the Philippines

In case of a customs-initiated revocation or cancellation, the District Collector concerned shall order its Deputy Collector for Operations to conduct an investigation, allowing the operator to submit evidence to the contrary. The administrative proceeding should be summary in nature and should be terminated within 30 working days from receipt of the order to conduct hearing.

5. In case of relocation, expansion or provision of additional facilities, the OCC or OCF operator shall secure approval from BOC.
 6. Additional facilities outside the Collection District where the OCC or OCF acquired its authority to operate may be permitted upon application to the District Collector concerned subject to the approval of the Commissioner, which shall be considered as a new and original application. Hence, a separate accreditation to operate is necessary on new applications to establish and operate an OCC or OCF as provided in this CMO shall apply.
 7. All OCC and OCF operators shall submit to the District Collector concerned and the Director, Port of Operations Service, AOCG, a weekly report in electronic format all shipments transferred to their facilities.
- ▶ The existing licenses of CY/CFS-OCZ at the time of implementation of this Order shall remain valid until December 31, 2015. All existing CY/CFS-OCZ are required to submit their application for issuance of CoA not later than October 31, 2015.
 - ▶ CMO No. 32-2015 takes effect immediately and expressly repeals all orders, memoranda, circulars or parts thereof, which are inconsistent with this CMO No. 32-2015.

BSP Issuance

Circular No. 886 prescribes the guidelines on salary-based general-purpose consumption loans.

BSP Circular No. 886 dated September 8, 2015

- ▶ The Monetary Board, in its Resolution No. 1380 dated 27 August 2015, approved the guidelines on salary-based general-purpose consumption loans, as well as the amendments of Section X321 of the Manual of Regulations for Banks (MORB) and Section 4337S of the Manual of Regulations for Non-bank Financial Institutions (MORNBF) including their respective subsections.
- ▶ The Financial Reporting Package, prescribed under Subsection X191.2 of MORB is further amended to revise the: (a) Manual of Accounts (MOA); and (b) reporting templates of the specific Financial Reporting Package for Banks (FRP) and the Simplified Financial Reporting Package for Rural and Cooperative Banks (SFRP).
- ▶ This Circular shall apply to all salary-based general-purpose consumption loans as defined herein including those outstanding prior to the effectivity of the Circular. Financial Institutions shall be given 6 months from the effectivity of this Circular to adopt/amend their policies, procedures and credit risk strategy on salary-based general-purpose consumption loans to comply with the provisions contained therein.

- ▶ 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. 886 was published in Malaya on September 11, 2015.]

SEC Opinions

SEC-OGC Opinion No. 15-10 dated September 2, 2015

Sale of vouchers or gift certificates to individuals does not fall within the definition of retail trade under RA No. 8762, otherwise known as Retail Trade Liberalization Act of 2000.

Facts:

A Co., a domestic corporation, was engaged in the sale of vouchers or gift certificates to its individual members. A Co. buys the said vouchers from different merchants who provide the gift certificates at discounted prices. A Co. pays for the gift certificates, net of discounts, and sells them to members at full price.

Issue:

Is the sale of vouchers or gift certificates considered retail trade within the purview of RA No. 8762?

Ruling:

No, the sale of vouchers or gift certificates is not considered retail trade. Vouchers or gift certificates are not goods for consumption. They are intended to be used by the bearer to purchase goods or services from merchants, and not as end-use for consumption to satisfy human wants and desires.

RA No. 8762 covers only the sale of goods for consumption to the general public as end-user. The term "retail" is associated with and limited to goods for personal, family or household use, consumption and utilization. The items sold must be "the final and end uses of a product which directly satisfy human wants and desires and are needed for home and daily life." Moreover, the law covers only the sale of goods for consumption to the general public as end-user.

SEC-OGC Opinion No. 15-12 dated September 22, 2015

The 10% allowable honorarium to be given to the Board of Trustees is based on the net income before tax of the previous year. There is no need to deduct the 10% honorarium from the computation of previous year's net income before tax.

Facts:

The President of a non-stock savings and loan association sought the opinion of the SEC on the interpretation of Section 30 of the Corporation Code, particularly on the manner of determining the honorarium to be given to its Board of Trustees.

Issue:

Should a non-stock savings and loan association deduct the proposed honorarium of its trustees from the net income of the previous year before computing the 10% allowable honorarium to be given to its Board of Trustees for the current year?

Ruling:

No, it shall be computed based on the “net income before income tax of the year during which the directors have served as such”. The compensation paid to the directors will be considered as an expense during the year and therefore deducted from gross income in order to produce the net income before income tax.

Any concerns involving non-stock savings and loan associations, such as the applicability of Section 30 of the Corporation Code should be addressed to the BSP which is the competent authority to determine such issues.

Court Decisions

De La Salle Lipa, Inc. vs. Commissioner of Internal Revenue

CTA (Third Division) Case No. 8363 promulgated August 24, 2015

To be exempt from tax, the income of a non-stock, non-profit educational institution must be used actually, directly, and exclusively for education purposes as prescribed by the Constitution and the Tax Code.

Facts:

Respondent Commissioner of Internal Revenue (CIR) assessed Petitioner De La Salle Lipa, Inc. (DLSL) for, among others, deficiency income tax on the income derived from the lease of its facilities to a school canteen operator. The school protested the assessment arguing that it is exempt from taxes as a non-stock, non-profit educational institution where all its assets and revenues are actually, directly and exclusively used for educational purposes. DLSL also argued that the amount paid by the canteen operator is not rent but an “advance donation” for the joint operation of the canteen, which is not subject to income tax. The BIR denied the protest.

DLSL filed a Petition for Review with the Court of Tax Appeals (CTA). The school argued that it is a non-stock non-profit educational institution exempt from tax under Section 30(h) of the Tax Code and Section 4(3), Article XIV of the Constitution. DLSL argued that, regardless of the source, its income is exempt from tax as long as it is actually, directly and exclusively use the funds for educational purposes. All its revenues are solely used for the expansion, operation and maintenance of its campus in the pursuit of its primary purpose of providing Christian education to the youth.

On the other hand, the CIR argued that DLSL’s claim of exemption from income tax has no basis since the sources of revenues being taxed are non-educational income. The school and the canteen operator purportedly entered into a joint venture contract to operate the canteen but they in fact executed a contract of lease. The BIR added that to be exempt, the canteen must be owned and operated by the education institution itself as an ancillary activity and the same is located within the school premises.

Issue:

Is DLSL liable for deficiency income tax?

Ruling:

Yes. A non-stock, non-profit education institution shall be entitled to income tax exemption under the Constitution and the Tax Code if it can prove that:

1. It is a non-stock, non-profit education institution; and,
2. The income it seeks to be exempted from tax is used actually, directly, and exclusively for education purposes.

DLSL failed to prove that the alleged donation by the canteen operator was commingled in the general fund. It also failed to establish that its funds were actually, directly, and exclusively used for education purposes as its Audited Financial Statements reveal, among others, that there were items that are not related to its function as an education institution, such as retirement contribution, entertainment, amusement and recreation.

The CTA also ruled that the BIR was correct in treating the contract between the school and the canteen operator as a contract of lease, and not a contract of donation as DLSL attempted to establish. There was no donative intent on the part of the operator and the purported donation was belatedly executed.

Perception Gaming, Inc. vs. Bureau of Internal Revenue

CTA (First Division) Case No. 8449 promulgated August 26, 2015

Services rendered to PAGCOR and PAGCOR-authorized bingo operators are exempt from VAT, pursuant to Section 108(B)(3) of the Tax Code.

Facts:

Petitioner Perception Gaming, Inc. (PGI) filed with the BIR a claim for refund of erroneously paid VAT and unutilized input VAT attributable to its zero-rated sales of service for the first quarter of 2010. PGI initially subjected to 12% VAT its gross receipts from the sale and lease of gaming machines to entities authorized by the PAGCOR to operate gaming centers or “bingo operators.”

As the CIR failed to act on the claim, PGI filed a Petition for Review with the CTA.

PGI argued that since PAGCOR and PAGCOR-authorized bingo operators are exempt from VAT under RA No. 9487 (or the PAGCOR Charter), its gross receipts from the lease of gaming equipment and performance of technical services in connection with the bingo operations of PAGCOR and its operators are subject to 0% VAT.

The BIR, on the other hand, insisted that the lease of gaming equipment to PAGCOR's operators is subject to 12% VAT because, while the operators are exempt from taxes, its exemption only covers taxes for which it is directly liable and not the VAT passed-on to them by PGI. Moreover, since PGI does not deal directly with PAGCOR but only with its operators, PAGCOR's exemption cannot be extended in its favor.

Issue:

Is PGI's sale of services to PAGCOR operators subject to 0% VAT?

Ruling:

Yes. PGI's sale of services to PAGCOR operators are VAT zero-rated.

Under Section 13(2)(a) and (b) of the PAGCOR Charter, PAGCOR is not the only entity exempted from taxes. The tax-exempt status is likewise expressly conferred on other entities that PAGCOR and its operators contract with in connection with the casino operations. These entities include the PAGCOR-authorized bingo operators since PAGCOR is authorized under RA No. 9487 to "license" third parties to operate gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc., except jai-alai.

Since PAGCOR and PAGCOR-authorized bingo operators are exempt from VAT under the PAGCOR Charter, the services rendered to them are effectively subject to 0% VAT pursuant to Section 108(B)(3) of the Tax Code.

Delta Air Lines, Inc. vs. Cesar V. Purisima, in his capacity as Department of Finance Secretary and Kim S. Jacinto-Henares, in her capacity as Commissioner of Internal Revenue

CTA (*En Banc*) Case No. 1113 promulgated September 10, 2015

Facts:

The CTA has jurisdiction to review rulings of the CIR and Secretary of Finance, which are deemed decisions on "other matters" arising under the Tax Code, pursuant to Section 7(a)(1) of RA No. 1125.

Hotel services rendered in the Philippines to an international carrier are subject to 12% VAT.

Petitioner Delta Air Lines (Delta) entered into an agreement with The Peninsula Manila (Peninsula) for room accommodation and other hotel services to its guests, pilots and cabin crew during flight layovers in the Philippines. Delta requested for a BIR ruling for VAT zero-rating under Section 108(B)(4) of the Tax Code covering services rendered to persons engaged in international air transport operations.

The BIR issued Ruling No. 099-2011 where it held that Peninsula's services to Delta are subject to 12% VAT, as the services were rendered within the hotel premises and had no direct connection with the transport of goods or passengers. Upon review, the Secretary of Finance sustained the ruling of the BIR. Delta filed a Petition for Review with the CTA.

The Secretary of Finance and the BIR argued, among others, that the CTA has no jurisdiction over the case since Delta failed to exhaust all administrative remedies, i.e., appeal to the Office of the President then to the regular courts. The CTA Second Division dismissed the petition on jurisdictional grounds. Upon denial of its motion for reconsideration, Delta appealed to the CTA *En Banc*.

Issues:

1. Does the CTA have jurisdiction to rule on the validity of rulings of the BIR and the Secretary of Finance?
2. Are the hotel services rendered by Peninsula to Delta subject to 12% VAT?

Ruling:

1. Yes. The CTA has jurisdiction to review rulings of the BIR and the Secretary of Finance.

Citing *CIR vs. Leal, G.R. 113459*, the CTA held that the jurisdiction to review rulings of the CIR and Secretary of Finance pertains to the CTA, not to the Regional Trial Court, considering that BIR rulings are opinions implementing the Tax Code pursuant to its power under the law. While there is no explicit legal provision that provides where to appeal decisions of the Secretary of Finance, Section 7(a)(1) of RA No 1125 addresses the seeming gap in the law as it vests the CTA, albeit impliedly, with jurisdiction over said decisions as “other matters” arising under the Tax Code or other laws or part of law administered by the BIR.

2. Yes. As a general rule, services performed in the Philippines by a VAT-registered person to persons engaged in international shipping or air transport operation are generally subject to 0% VAT. However, RR No. 16-2005, as amended by RR No. 4-2007, provides that when the services performed in the Philippines by a VAT-registered person are rendered to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place to another within the Philippines, the same is already subject to 12% VAT.

The services rendered by the hotel were rendered within the Peninsula’s premises and they have no direct connection with the transport of goods or passengers. As such, they cannot be considered services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port to be entitled to VAT zero-rating.

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