

June 2014

# Tax bulletin



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PHILIPPINE TAX FIRM  
OF THE YEAR  
AND  
TRANSACTION TAX TEAM  
OF THE YEAR

# Highlights

## BIR Rulings

- ▶ An unincorporated joint venture (UJV) for a construction project is not subject to income tax and creditable withholding tax (CWT) upon compliance with the conditions prescribed under Revenue Regulations (RR) No. 10-2012. **(Page 4)**

## BIR Issuances

- ▶ Revenue Memorandum Circular (RMC) No. 50-2014 reiterates and clarifies the preparation and issuance of a Withdrawal Certificate (WC) for every removal of petroleum products from the refinery, depot, or any storage facility, for purposes of monitoring the movement of petroleum or petroleum products and ensuring that correct taxes are paid. **(Page 5)**
- ▶ RMC No. 51-2014 clarifies the inurement prohibition on tax-exempt non-stock and/or non-profit organizations under Section 30 of the Tax Code. **(Page 6)**
- ▶ RMC No. 54-2014 clarifies issues relative to the application for refund or tax credit certificate (TCC) of unutilized Input VAT under Section 112 of the Tax Code. **(Page 6)**
- ▶ RMC No. 55-2014 clarifies the requirements for livestock and poultry feeds, or ingredients used in the manufacture of finished feeds, to be exempt from VAT. **(Page 8)**
- ▶ Revenue Memorandum Order (RMO) No. 22-2014 prescribes supplemental guidelines, policies and procedures in the accreditation of importers and customs brokers. **(Page 8)**

## DOF Issuances

- ▶ Department of Finance (DOF) Department Order (DO) No. 44-2014 prescribes the post-entry audit guidelines under the DOF's Fiscal Intelligence Unit (FIU). **(Page 9)**
- ▶ DOF DO No. 46-2014 further extends the application period for importers and customs brokers with valid and existing accreditation. **(Page 12)**

## BOC Issuances

- ▶ Customs Memorandum Order (CMO) No. 13-2014 clarifies the computation of excise taxes for automobiles. **(Page 12)**
- ▶ Customs Administrative Order (CAO) No. 2-2014 prescribes simplified procedures for the clearance of baggage of passengers and crew of international airlines arriving in international airports of entry. **(Page 13)**

## SEC Issuances

- ▶ Securities and Exchange Commission (SEC) Memorandum Circular (MC) No. 10 prescribes the guidelines and directives to assist issuers of securities listed and traded in the Philippine Stock Exchange (PSE) in complying with the requirements of RR No. 1-2014, which mandates all withholding agents to submit an alphalist of payees of income payments subject to withholding taxes. **(Page 14)**

- ▶ SEC MC No. 11 prescribes the template for publicly-listed companies' websites. **(Page 15)**
- ▶ SEC MC No. 12 clarifies the changes and updates in the Annual Corporate Governance Report (ACGR). **(Page 15)**
- ▶ SEC MC No. 13 adds units in financial reporting and audit to the prescribed curriculum on corporate governance training. **(Page 16)**
- ▶ A Philippine entity engaged in recreational and amusement activities, funfairs, character shows, competitions, sideshows, and other related performances is considered engaged in mass media and should not be 100% owned by a foreign corporation. **(Page 17)**
- ▶ A corporation may not nullify the additional paid-in capital (APIC) previously contributed by its stockholders to pay for the subscription to unissued shares of stock, or convert the same to a loan, as both options would be a violation of the Trust Fund Doctrine. **(Page 17)**
- ▶ A public offering, which requires prior registration with and approval of the SEC, is not only limited to listing and selling securities in a stock exchange. **(Page 18)**

### **BSP Issuances**

- ▶ Bangko Sentral ng Pilipinas (BSP) Circular No. 833 amends Appendix 75c of BSP Circular No. 808 on software acquisition. **(Page 19)**
- ▶ BSP Circular No. 834 amends the guidelines governing the issuance of long-term negotiable certificate of time deposits (LT-NCTDs) and unsecured subordinated debt (UnSD). **(Page 19)**
- ▶ BSP Circular No. 835 amends Subsection X156.1 of the Manual of Regulations for Banks (MORB) on banking hours. **(Page 20)**
- ▶ BSP Circular No. 836 amends the reportorial requirements on microfinance operations and definitions of "Microfinance Loans" and "Small and Medium Enterprises Loans" accounts under the Financial Reporting Package (FRP). **(Page 20)**
- ▶ BSP Circular No. 837 amends the pertinent regulations of the MORB and of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on salary loans. **(Page 21)**
- ▶ BSP Circular No. 838 amends the Foreign Exchange Regulations. **(Page 22)**

### **Court Decisions**

- ▶ A cooperative engaged in mutual life insurance need not register with the Cooperative Development Authority (CDA) in order to be exempt from documentary stamp tax (DST) under Section 199 of the Tax Code. **(Page 22)**
- ▶ The enumeration in RR No. 11-2005 on the direct costs that are deductible from gross income earned (GIE) is not exclusive. PEZA-registered enterprises that are subject to the 5% tax on GIE are allowed to deduct expenses which are in the nature of direct costs, even if these are excluded in the list. **(Page 23)**

- ▶ Association or condominium dues, membership fees and other assessments or charges, which are held in trust by the condominium corporation to be used solely for administrative expenses, are excluded from the condominium corporation's gross income, hence, not subject to income and withholding tax. (Page 24)
- ▶ Where property is transferred for less than adequate and full consideration, the amount by which the fair market value (FMV) of the property exceeds the value of the consideration shall be deemed a gift that is subject to donor's tax under Section 100 of the Tax Code. (Page 25)

## **BIR Ruling**

### **BIR Ruling No. 176-14 dated June 9, 2014**

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A UJV for a construction project is not subject to income tax and CWT upon compliance with the conditions prescribed under RR No. 10-2012.

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#### **Facts:**

A Co. and B Co., are both domestic corporations and are both engaged in the construction business. They are separately registered with the Philippine Contractors Accreditation Board (PCAB). They formed an Unincorporated Joint Venture (UJV) to undertake a road improvement project for the Philippine Government. The UJV is also registered with the PCAB. A Co. and B Co. agreed to mutually contribute all the necessary capital equipment, technical personnel, management supervision, efforts and resources for the proper implementation of the project.

#### **Issues:**

1. Is the UJV exempt from income tax and CWT?
2. What are the conditions required for the income tax and CWT exemption of the UJV?
3. Are the co-venturers exempt from income tax and CWT?
4. Is there an administrative requirement that the co-venturers need to comply with?

#### **Ruling:**

1. Yes. Under Section 22(B) of the Tax Code, the term "corporation" for income tax purposes specifically excludes JVs formed for purposes of undertaking construction projects. In addition, Section 4(B)(5) of RR No. 14-2002 provides that the CWT shall not apply to income payments made to JVs or consortia formed for the purpose of undertaking construction projects. Further, the UJV, being exempt from corporate income tax, is not required to file quarterly and final adjustment returns.
2. UJVs for construction projects are not subject to income tax upon compliance with the following conditions under Section 3 of RR No. 10-2012:
  - ▶ The UJV is formed for undertaking a construction project;
  - ▶ The UJV should involve joining or pooling of resources by licensed local contractors (licensed as general contractor by the PCAB);
  - ▶ The local contractors are engaged in the construction business; and
  - ▶ The UJV itself must likewise be duly licensed by PCAB.
3. No. The co-venturers are separately subject to the regular corporate income tax imposed under Section 27(A) of the Tax Code on their respective taxable income derived during each taxable year from the construction project. Further, their income is subject to CWT imposed under Section 57 of the Tax Code. Thus, upon distribution of profits, the JV shall withhold taxes based on the net income of its co-venturers.

4. Yes. The co-venturers should enroll under the BIR's Electronic Filing and Payment System at the Revenue District Office where they are registered.

## **BIR Issuances**

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RMC No. 50-2014 reiterates and clarifies the preparation and issuance of a WC for every removal of petroleum products from the refinery, depot, or any storage facility, for purposes of monitoring the movement of petroleum or petroleum products and ensuring that correct taxes are paid.

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### **Revenue Memorandum Circular No. 50-2014 dated June 10, 2014**

- ▶ Manufacturers of petroleum or petroleum products, including importers of finished petroleum products, are required to prepare an official Withdrawal Certificate (WC) for every removal of products from the refinery, irrespective of destination, indicating therein the name and address of the consignee, the date of removal, quantity and description of every product removed.
- ▶ A WC shall accompany every transfer/shipment of petroleum or petroleum products, whether from the refinery or storage facility.
- ▶ The WC shall at all times accompany each and every removal of petroleum or petroleum products, regardless of the mode of conveyance.
- ▶ The WC shall be attached to the bill of lading if the products are shipped through a conveyance not owned or operated by the consignor/manufacturer.
- ▶ For petroleum or petroleum products removed and transported through the use of tankers or marine vessel, the following details shall be indicated in the WC:
  1. The manufacturer/importer
  2. Full name and address of consignee
  3. Place of final destination
  4. Carrier/truck number
  5. Date withdrawn
  6. Due date of payment
  7. Exact description of the product, volume and amount of excise tax paid, whether imported or locally manufactured
- ▶ The taxpayer must indicate whether the product is bonded, tax-exempt or tax-paid on the space provided under "Remarks". If the product is imported, the official receipt (OR) number and date of payment must be indicated.
- ▶ If payment is made through a Product Replenishment Debit Memo (PRDM) pursuant to the Product Replenishment Scheme under RR No. 3-2008, the PDRM No. with the corresponding date and amount must be indicated.
- ▶ If the petroleum product is being removed from a storage facility, the tank number shall be indicated in the WC.
- ▶ If the removal is destined for the depot or storage facility owned or operated by the manufacturer/consignor, all WCs shall be supported by sales invoice, delivery invoice and/or internal transfer documents.
- ▶ Any petroleum or petroleum product found to be unaccompanied by an official WC shall be considered illegally removed, subject to confiscation or forfeiture, regardless of whether the same is tax-paid or not.
- ▶ All WCs must be certified by the Revenue Officer on Premise as to the correctness of the entries in the said WC.

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RMC No. 51-2014 clarifies the inurement prohibition on tax-exempt non-stock and/or non-profit organizations under Section 30 of the Tax Code.

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**Revenue Memorandum Circular No. 51-2014 dated June 6, 2014**

- ▶ Section 30 of the Tax Code enumerates the non-stock and/or non-profit corporations, associations, organizations (NSNPs) that are exempt from income tax on income received by them as such.
- ▶ “Non-stock” means no part of its income is distributable as dividends to its members, trustees or officers, and that any profit obtained as an incident to its operations shall, whenever necessary or proper, be used for the purpose or purposes for which the NSNP was organized.
- ▶ “Non-profit” means that no net income or asset accrues to, or benefits, any member or specific person, with all the net income or assets devoted to the NSNP’s purposes and all its activities are conducted not for profit.
- ▶ Therefore, for an entity to qualify as an NSNP exempt from income tax under Section 30 of the Tax Code, its earnings or assets shall not inure to the benefit of any of its trustees, organizers, officers, members or any specific person.
- ▶ The following are considered “inurements” of such nature:
  1. Payment of compensation, salaries, or honorarium to its trustees or organizers;
  2. Payment of exorbitant or unreasonable compensation to its employees;
  3. Provision of welfare aid and financial assistance to members. An organization is not exempt from income tax if its principal activity is to receive and manage funds associated with savings or investment programs, including pension or retirement programs. This does not cover a society, order, association, or non-stock corporation under Section 30(C) of the Tax Code providing for the payment of life, sickness, accident and other benefits exclusively to its members or their dependents;
  4. Donation to any person or entity (except donations made to other entities formed for a purpose/purposes similar to its own);
  5. Purchase of goods or services for amounts in excess of the fair market value of such goods or value of such services from an entity in which one or more of its trustees, officers or fiduciaries has an interest; and
  6. When, upon dissolution and satisfaction of all liabilities, its remaining assets are distributed to its trustees, organizers, officers or members. Its assets must be dedicated to its exempt purpose.
- ▶ RMC No. 51-2014 takes effect immediately.

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RMC No. 54-2014 clarifies issues relative to the application for refund or TCC of unutilized Input VAT under Section 112 of the Tax Code, as amended.

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**Revenue Memorandum Circular No. 54-2014 dated June 11, 2014**

- ▶ ***Prescriptive period within which an administrative claim for refund or TCC of unutilized Input VAT shall be made***
  1. Any VAT-registered person whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a TCC or refund of creditable

Input VAT due or attributable to such sales, except transitional input tax, to the extent that such Input VAT has not been applied against output tax.

2. A taxpayer can file his administrative claim for VAT refund or TCC at any time within the two-year prescriptive period.

► **Filing and Processing of Administrative Claims**

1. The application for VAT refund must be accompanied by complete supporting documents as specifically enumerated in Annex A of the RMC. In addition, the taxpayer should attach a sworn statement/affidavit (i) attesting to the completeness of the submitted documents; (ii) stating that the attached supporting documents are the only documents which the taxpayer will present to support the claim; and, additionally, (iii) in the case of corporations or other juridical persons, there should be a sworn statement that the officer signing the affidavit (which should at the very least be the Chief Finance Officer) has been authorized by the company's Board of Directors.
2. Upon submission of the administrative claim and its supporting documents, the BIR shall process the claim, and no other documents shall be accepted or required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer.
3. The application shall be denied if the taxpayer fails to submit the complete supporting documents. For this purpose, the concerned processing/ investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.
4. The Commissioner shall have 120 days from the date of submission of complete documents to decide whether or not to grant the claim for refund or the issuance of the TCC.
5. If the claim for VAT refund or TCC is not acted upon by the Commissioner within the 120-day period as required by law, such inaction shall be deemed a denial of the application for tax refund or TCC.

► **Mandatory 120 + 30 day period**

1. The taxpayer can file the appeal in one of two (2) ways:
  - File the judicial claim with the Court of Tax Appeals (CTA) within 30 days after the Commissioner denies the claim within the 120-day period; or
  - File the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
2. The exception to the mandatory and jurisdictional 120+30 day period is from the time BIR Ruling No. DA-489-03 was issued on December 10, 2003 up to its reversal by the Supreme Court in the *Aichi* case on October 6, 2010 (or a period of almost 7 years). Under this exception, taxpayers/ claimants need not wait for the lapse of the 120-day period before they could seek judicial relief with the CTA by way of Petition for Review.

▶ **Pending Administrative Claims**

1. In cases where the taxpayer has filed a Petition for Review with the CTA, the Commissioner loses jurisdiction over the administrative claim. However, the Processing Office of the Administrative Agency shall still evaluate internally the administrative claim for purposes of intelligently opposing the taxpayer's judicial claim.
2. Thus, failure to file a judicial claim with the CTA within 30 days from the expiration of the 120-day period renders the Commissioner's decision or inaction "deemed a denial", final and unappealable. This applies to all currently pending administrative claims for refund/tax credit.

- ▶ RMC No. 54-2014 takes effect immediately.

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RMC No. 55-2014 clarifies the requirements for livestock and poultry feeds, or ingredients used in the manufacture of finished feeds, to be exempt from VAT.

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**Revenue Memorandum Circular No. 55-2014 dated June 17, 2014**

- ▶ Section 4.109-1(B)(1)(b) of RR No. 16-2005, as amended, exempts from VAT:

"(b) Sale or importation of fertilizers, seeds, seedlings and fingerlings, fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);

"*Specialty feeds*" refers to non-agricultural feeds or food for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets."

- ▶ The above provision exempts from VAT the sale or importation of livestock or poultry feeds or ingredients used in the manufacture of finished feeds. However, it has been noted that some ingredients of finished feeds may also be used for the production of food for human consumption.
- ▶ Thus, to give effect to the legislative intent that only livestock or poultry feeds or ingredients used in the manufacture of finished feeds are exempted from VAT, it is clarified that the sale or importation of ingredients which can also be used for the production of food for human consumption is subject to VAT. Thus, for the sale or importation of livestock or poultry feeds or ingredients used in the manufacture of finished feeds to be exempt from VAT, there must be a showing that the same is unfit for human consumption, or that the ingredient cannot be used for the production of food for human consumption, as certified by the Food and Drug Administration.

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RMO No. 22-2014 prescribes supplemental guidelines, policies and procedures in the accreditation of importers and customs brokers.

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**Revenue Memorandum Order No. 22-2014 dated June 20, 2014**

- ▶ This RMO applies to applicants that are included in the existing list of importers and brokers with valid BOC accreditations whose applications for BIR-ICC or BCC are received by the BIR on or before June 30, 2014.
- ▶ In order to expedite the processing of applications for BIR Importer and Broker Clearance Certificates (BIR-ICCs/BCCs) by importers and brokers that have valid and existing accreditations with the Bureau of Customs (BOC) as of February 14, 2014 but will expire on June 30, 2014, the following supplemental guidelines and procedures shall be observed:



1. The BIR's Data Warehouse Systems Operations Division (DWSOD) shall extract tax compliance data or information from the BIR database of taxpayers that are included in the list of BOC accredited importers and brokers provided by the BOC.
2. The Accounts Revenue and Monitoring Division (ARMD) shall sort the listed taxpayers based on their respective levels of tax compliance:
  - ▶ *First Level* refers to importers or brokers that have fully satisfied the criteria for accreditation as duly verified and validated by the concerned offices of the BIR. Accordingly, they will receive a regular BIR-ICC or BCC that is valid for 3 years.
  - ▶ *Second Level* refers to those that appear to have satisfied the accreditation criteria but require further verification from the concerned BIR offices, including those who have applied for and have not yet submitted their Certificates of Good Standing from the SEC. They will receive a provisional BIR-ICC or BCC that is valid for 6 months pending the verification process.

Those who previously received BIR ICCs or BCCs which are valid for 3 months shall not be entitled to an extension if the deficiencies noted in their application have not been duly resolved. In this case, upon expiration of the 3-month period, the ARMD may issue a regular BIR ICC or BCC which is valid for 3 years from the effective date of the provisional BIR ICC or BCC or a Notice of Denial of the Application for Accreditation as an Importer/Broker (NDIAB).

- ▶ *Third Level* refers to those who fail to satisfy the criteria for accreditation, including those whose applications were not received by the ARMD due to incomplete documents. Consequently, they will receive an NDIAB.
- ▶ Applications not qualified under this RMO shall be processed pursuant to RMO No. 10-2014 and are not eligible for the issuance of provisional BIR ICCs or BCCs.
- ▶ RMO 22-2014 takes effect immediately.

## DOF Issuances

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DOF DO No. 44-2014 prescribes the post-entry audit guidelines under the DOF's FIU.

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### DOF Department Order No. 44-2014 dated June 17, 2014

- ▶ The following are the guidelines and procedures in the performance by the Fiscal Intelligence Unit (FIU) of the audit examination, inspection, verification and/or investigation of transaction records of importers and brokers:

- ▶ Importer and Import Selection

Through a computer-aided risk management system, the FIU shall identify entities and transactions to be subjected to post-entry audit based on objective and quantifiable data, including but not limited to existing independent studies and information on imported products determined to have a high risk of being subject to erroneous classification, misdeclaration or undervaluation; relative magnitude of customs revenue from certain

imported products; rates of duties of the imports; compliance track record of the importer; and assessment of the risk to revenue of the importer's import activities.

Upon selection of the importers and import entries, the FIU may analyze whether there exists a potential valuation, classification and/or other compliance issue.

- ▶ Coordination with the BIR

The FIU shall inform the BIR of the selection of the importer and the grounds for the selection. The BIR may issue a Letter of Authority (LOA) to investigate and examine the importer's records and books of accounts for any deficiency taxes.

- ▶ Notice of Post-Entry Audit Findings

Upon determination by the FIU of any deficiency in the duties declared and paid on importation, it shall notify the importer concerned by sending Post-Entry Audit Findings (PEAF) to the importer's address stated in the import entry filed with the BOC. The PEAF to be issued shall state the specific import transactions covered; amount of deficiency duties found thereon; basis of the findings; and a notice that the findings of deficiency duties shall be submitted to the BOC and the BIR, unless said deficiencies are satisfactorily explained by the importer. The importer shall be allowed to submit relevant supporting documents.

- ▶ Single Comprehensive Reply to PEAF

Within a non-extendible period of 30 calendar days from receipt of the PEAF, the importer may file one reply, sworn under oath, with the FIU. The reply shall state whether the importer admits, or disagrees with, each of the findings in the PEAF. In case of disagreement, the importer shall state all reasons therefor. The Reply to PEAF shall be executed by the importer personally if a natural person, by any authorized partner if a partnership, or by a duly authorized officer if a corporation.

- ▶ Strictly No Contact Policy

Under no circumstance shall the FIU hold a conference with the importer or broker or any of the importer's or broker's officers, agents or representatives regarding any finding stated in the PEAF. Any official or employee of the FIU found to have committed a violation of this provision shall be held administratively liable, without prejudice to any civil or criminal proceedings which may be filed against such erring officer or employee.

- ▶ Notice of Acceptance of Explanations

If the FIU finds all explanations stated in the Reply to PEAF satisfactory, it shall notify the importer that it accepts the explanations, copy furnished the BOC and BIR.

- ▶ Final Audit Report and Recommendation (FARR)

The FIU shall submit the FARR to the BOC and/or the BIR, as the case may be, where the importer admits the findings in the PEAF; where

explanations contained in the Reply to PEAFF are not satisfactory; or where no Reply to the PEAFF is filed within the prescribed period. The FARR shall include a recommendation on the administrative fines and penalties to be imposed on the importer.

- ▶ Investigation of Broker

If upon review of all the documents submitted by the importer and such other documents as may be available to the FIU, there is a *prima facie* evidence that the broker committed violations of the Tariff and Customs Code of the Philippines (TCCP) in relation to the transactions under consideration, it may also submit to the BOC a report on its findings with appropriate recommendation.

- ▶ Assessment and Collection

Within 5 days from receipt of the FARR, the Commissioner of Customs (CoC) shall issue a collection letter directing the importer to pay, within 10 working days from receipt thereof, the deficiency duties admitted, and the appropriate fines and penalties; and/or a formal assessment of deficiency duties and demand letter directing the importer to pay, within 10 working days from receipt thereof, the deficiency duties not admitted, and the appropriate fines and penalties.

Within 5 days from receipt of the FARR, the Commissioner of Internal Revenue (CIR) shall act on the findings stated in the FARR in accordance with the provisions of the Tax Code.

- ▶ Failure to Pay Deficiency Duties

In case of failure to pay the deficiency duties and penalties within the period prescribed, the CoC shall immediately revoke, cancel and withdraw the accreditation privileges granted to the importer, and avail of administrative and judicial remedies provided for by law and rules and regulations.

- ▶ Failure to Pay Deficiency Taxes

In case of failure to pay deficiency taxes and penalties as may be assessed by the BIR, the CIR shall take appropriate action in accordance with the provisions of the Tax Code. The CIR shall also inform the CoC of such failure to pay deficiency taxes and penalties. The CoC shall then immediately impose the same sanctions as in the case of failure to pay deficiency duties.

- ▶ Authority to Compromise

The CoC shall not be precluded from exercising his powers to compromise, subject to the approval of the Secretary of Finance, the imposition of the appropriate fines and surcharges on the deficiency duties provided for under Section 2316 of the TCCP.

- ▶ DO No. 44-2014 shall take effect 15 days after publication.

[Editor's Note: DO No. 44-2014 was published in The Manila Standard Today on June 20, 2014.]

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DOF DO No. 46-2014 further extends the application period for importers and customs brokers with valid and existing accreditation.

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#### **Department Order No. 46-2014 dated June 26, 2014**

- ▶ The deadline to apply for the required BIR Importer or Broker Clearance Certificate (BIR-ICC/BCC) and BOC Importer Accreditation (BOC-IA) was further extended from June 30 to July 31, 2014.
- ▶ The extension applies to importers and customs brokers with valid and existing importer accreditations to provide them with additional time to prepare and secure the documents required for the above applications.
- ▶ Failure to file the proper application with the BIR and BOC by July 31, 2014 shall result in automatic cancellation of the existing accreditation, if any, effective August 1, 2014 or the date of expiration as indicated in the original BOC accreditation, whichever is earlier.

#### **BOC Issuances**

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CMO No. 13-2014 clarifies the computation of excise taxes for automobiles.

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#### **Customs Memorandum Order No. 13-2014 dated June 17, 2014**

- ▶ This CMO simplifies the computation of excise tax due on importation of automobiles categorized as follows:
  - ▶ Brand new automobiles consigned to car manufacturers, dealers and natural persons;
  - ▶ Used automobiles consigned to returning Filipino diplomats and/or officials of the Department of Foreign Affairs; returning Filipino residents who have resided abroad for at least one year (accumulated within 3 years of his/her stay abroad immediately preceding the date of filing of the Certificate of Authority to Import (CAI) at the Bureau of Import Services (BIS) and immigrants holding 13A or 13G visas, or those with dual citizenships, provided a prior Certificate of Authority to Import had been issued by the DTI-BIS prior to exportation.
  - ▶ Used automobiles under the local purchase scheme, sold by persons exempt from duties and taxes to non-exempt and exempt individuals.
- ▶ For purposes of computing the Excise Tax payable for imported brand new automobiles consigned to car manufacturers or dealers, the importer first needs to determine its net importer's selling price' (ISP). For this purpose, the net ISP shall be the higher value between (a) and (b):
  - (a) Net ISP1 = Gross Selling Price - Excise Tax - VAT
  - (b) Net ISP2 = 80% x (Suggested Retail Price - Excise Tax - VAT)
- ▶ Once the appropriate ISP has been determined, the Excise Tax payable shall be computed based on the following:
  - ▶ If net ISP is Php600,000.00 or less, the formula to compute for the Excise Tax is:  
  
Excise Tax = ISP x 2%

- ▶ If net ISP is more than Php600,000.00, but not more than Php1,100,000.00, the formula to compute the Excise Tax payable is:

$$\text{Excise Tax} = (\text{ISP} \times 20\%) - \text{Php}108,000.00$$

- ▶ If net ISP is more than Php1,100,000.00, but not more than Php2,100,000.00, the formula to compute the Excise Tax payable is:

$$\text{Excise Tax} = (\text{ISP} \times 40\%) - \text{Php}328,000.00$$

- ▶ If net ISP is more than Php2,100,000.00, the formula to compute the Excise Tax payable is:

$$\text{Excise Tax} = (\text{ISP} \times 60\%) - \text{Php}748,000.00$$

- ▶ The CMO takes effect 15 days from publication in the Official Gazette or newspaper of general circulation and 3 certified true copies are deposited with the UP Law Center.

*[Editor's Note: CMO No. 13-2014 was published in The Manila Times on June 24, 2014.]*

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CAO No. 2-2014 prescribes simplified procedures for the clearance of baggage of passengers and crew of international airlines arriving in international airports of entry.

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#### **Customs Administrative Order No. 2-2014 dated March 25, 2014**

- ▶ All passengers arriving in international airports of entry shall choose between the following types of channels with regard to their accompanied baggage:
  - ▶ Green Channel for passengers of international airlines with nothing to declare. These passengers need not accomplish a Customs Declaration Form.
  - ▶ Red Channel for passengers of international airlines with goods to declare.
- ▶ Members of the Diplomatic Corps from foreign countries may continue to avail of the privileges accorded to them by any applicable international conventions, laws, rules or regulations as regards baggage clearance. The CoC may create a special lane within or outside the Green Channel to cater to members of the Diplomatic Corps for the proper observance of special protocols applicable to them and their accompanied baggage.
- ▶ If a passenger chooses the Green Channel and the Customs Examiner is satisfied that said passenger has nothing to declare for purposes of import duties and taxes or is not carrying any prohibited/restricted or regulated importation, the Customs Examiner shall clear the passenger and authorize the release of the accompanied baggage.
- ▶ If a passenger chose or was directed to the Red Channel, the Customs Examiner assigned at the arrival area shall require the presentation of the duly accomplished Customs Declaration Form together with the passport of the passenger before commencing an examination or clearance of the accompanied baggage.
- ▶ If a Customs Declaration Form submitted shows that some articles are declared dutiable, the Customs Examiner shall conduct an examination and report his findings and assessment in the Declaration Form under column "For Customs Use Only," indicating therein all the necessary information. Thereafter, a non-

lane Customs Officer shall be requested to escort the passenger/crew member to the Cashier/Collecting Officer, turning over the assessed Customs Declaration and the passport. The CoC may authorize the assignment of a Flight Supervisor and/or Customs Appraiser to review/approve the findings of the Customs Examiner.

- ▶ After payment of the duties and taxes, the Cashier/Collecting Officer shall issue the validated/original official receipt and return the passport to the passenger/ crew member. The passenger's accompanied baggage shall then be cleared.
- ▶ All provisions of CAO No. 3-2013 and other orders which are inconsistent with this Order are hereby amended, modified or repealed accordingly.
- ▶ CAO No. 2-2014 shall take effect 15 days after its publication in two newspapers of general circulation.

*[Editor's Note: CAO No. 2-2014 was published in The Manila Times and Malaya on March 28, 2014.]*

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## **SEC Issuances**

SEC MC No. 10 prescribes the guidelines and directives to assist issuers of securities listed and traded in the PSE in complying with the requirements of RR No. 1-2014, which mandates all withholding agents to submit an alphalist of payees of income payments subject to withholding taxes.

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### **SEC Memorandum Circular No. 10 dated May 22, 2014**

- ▶ SEC MC No. 10 prescribes the following guidelines and directives for issuers of securities listed and traded in the Philippine Stock Exchange (PSE), in order to comply with the requirement of RR No. 1-2012 mandating all withholding agents to submit an alphalist of payees of income payments subject to withholding taxes:
  - ▶ The Philippine Depository and Trust Corporation (PDTC) shall prepare an alphalist of all depository account holders and the total shareholdings in each of the accounts and sub-accounts as of Record Date upon receiving information on a dividend declaration, and provide the Issuer or its authorized Transfer Agent with the same.
  - ▶ All depository account holders which are registered broker dealers and which hold shares for the account of their clients or for their own account, and which are payees of dividend declared by the Issuer/Paying Company, shall prepare an alphalist showing the total shareholding of each account and sub-account belonging to these payees and the dealer account as of Record Date.
  - ▶ The broker dealer alphalist shall provide the following information:
    - ▶ Name of Client/ Payee
    - ▶ Tax Identification Number (TIN)
    - ▶ Address of Payee
    - ▶ Status (Residence/Nationality)
    - ▶ Total Shareholding
    - ▶ Birth Date (for individuals)/ Registration Number (for non-individuals)
- ▶ The Issuer/Transfer Agent shall compute the dividends due and applicable tax for each payee based on the reconciled or balanced alphalists of PDTC and depository account holders including the broker dealers.

- ▶ The Issuer/Transfer Agent shall also provide the PDTC, not later than the Payment Date, with information on the total amounts of income payment and total amount of tax withheld for each depository account of PDTC's participants.
- ▶ The Issuer or its authorized Transfer Agent shall pay the dividend not later than the Payment Date in accordance with the existing payment procedure unless otherwise directed or ordered by SEC.

*[Editor's Note: SEC MC No. 10 was published in The Philippine Star and The Manila Times on May 13, 2014.]*

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SEC MC No. 11 prescribes the template for publicly-listed companies' websites.

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**SEC Memorandum Circular No. 11 dated May 26, 2014**

- ▶ SEC MC No. 11 prescribes that template and requires that the websites of publicly-listed companies' websites should be arranged as follows:
  - ▶ Home
    - ▶ Our Business
    - ▶ Our Company
  - ▶ Corporate Governance
    - ▶ Manual on Corporate Governance
    - ▶ Code of Business Conduct and Ethics
    - ▶ Annual Corporate Governance Report (ACGR)
    - ▶ Board Committees
    - ▶ Corporate Social Responsibility
    - ▶ Enterprise Risk Management
    - ▶ Company Policies
  - ▶ Company Disclosures
    - ▶ SEC Filings
    - ▶ Notice of Annual or Special Stockholders' Meeting
    - ▶ Minutes of all General or Special Stockholders' Meetings
    - ▶ Other Disclosures to SEC, PSE and other Pertinent Agencies
  - ▶ Press Materials
  - ▶ Investor Relations
    - ▶ Investor Relations Programs
    - ▶ Share Information

*[Editor's Note: SEC MC No. 11 was published in Business Mirror and The Philippine Star on June 2, 2014.]*

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SEC MC No. 12 clarifies the changes and updates in the ACGR.

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**SEC Memorandum Circular No. 12 dated May 26, 2014**

- ▶ SEC MC No. 12 clarifies that:
  - ▶ There is no need to amend the notarized signature page of the ACGR for the updates and changes posted in the website.
  - ▶ All updates and changes reportable using SEC Form 17-C shall be signed by the duly authorized officer of the company.

- ▶ All updates and changes not reportable using SEC Form 17-C but reported to the SEC through advisement letter shall be signed by the Corporate Secretary and Compliance Officer.
- ▶ For updates and changes, there is no need for the signatures of the other original signatories of the ACGR.
- ▶ The ACGR submitted on the 5<sup>th</sup> year from initial submission will be notarized and signed by all 5 required signatories.
- ▶ Within 10 days from the end of the 2<sup>nd</sup> to 4<sup>th</sup> year, the company will consolidate all the updates and changes made for the whole year.
- ▶ In lieu of the notarized signature page, the Consolidated Changes in the ACGR shall be accompanied by a Secretary's Certificate with excerpts of Board Resolutions or Minutes of meetings regarding said updates and changes in the ACGR.

*[Editor's Note: SEC MC No. 12 was published in Business Mirror and The Philippine Star on June 2, 2014.]*

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SEC MC No. 13 adds units in financial reporting and audit to the prescribed curriculum on corporate governance training.

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#### **SEC Memorandum Circular No. 13 dated June 23, 2014**

- ▶ SEC MC No. 13 directs all SEC-accredited corporate governance training providers to include in their prescribed curriculum course units the following units on financial reporting:
  - ▶ Basic Course:
    - ▶ Framework for Financial Statement Reporting
    - ▶ Principal Financial Statements and their Uses
    - ▶ What Decision-makers Need to Know about the Principal Financial Statements
    - ▶ What Board Directors and Management Need to Know about Accounting Principles
    - ▶ Income Statement, Balance Sheet and Statement of Cash Flows
    - ▶ Financial Statement Analysis
    - ▶ What to Spot in Financial Statements
    - ▶ Issue Spotting
    - ▶ What should be Included in Performance Dashboards
    - ▶ Pointers to Ensure that Recording, Processing and Reporting Data Do Not Result in Material Misstatement of Financial Statements
    - ▶ Pointers to Avoid Material Weaknesses in Internal Controls
    - ▶ Financial Policies for Fraud Prevention that Decision-Makers Should Have
    - ▶ What Decision-Makers Need to Know about the External Auditor's Opinion
    - ▶ Understanding Basic Concepts in Making Business Decisions
    - ▶ What Decision-Makers Can Get from Reading Financial Statements
  - ▶ Advanced Course:
    - ▶ Provisions of the Philippine Financial Reporting Standards that are relevant to the company's specific industry.

*[Editor's Note: SEC MC No. 13 was published in Manila Standard Today on June 26, 2014.]*



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**SEC-OGC Opinion No. 14-11 dated June 2, 2014**

A Philippine entity engaged in recreational and amusement activities, funfairs, character shows, competitions, sideshows, and other related performances is considered engaged in mass media and should not be 100% owned by a foreign corporation.

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**Facts:**

X Co., a Japanese company mainly engaged in the establishment and operation of indoor theme parks, is planning to expand its business in the Philippines through the incorporation of a proposed Philippine entity. The proposed primary purpose of said entity includes, among others, "other recreational and amusement activities, funfairs, character shows, competitions, sideshows, and other performances, dances and skating".

**Issue:**

Can the proposed Philippine entity of X Co. be considered engaged in mass media activities which should not be 100% owned by X Co?

**Ruling:**

Yes, the inclusion of "other recreational and amusement activities, funfairs, character shows, competitions, sideshows, and other performances, dancing, skating, and other forms and types of enterprise" in the Articles of Incorporation of the Philippine entity of X Co. is too broad and encompassing, making possible the undertaking of mass media activities such as live productions and film/motion pictures.

The term "mass media" in the Constitution refers to any medium of communication designed to reach the masses and that tends to set the standards, ideals and aims of the masses. The distinctive feature of any mass media undertaking is the dissemination of information and ideas to the public, or any portion thereof. The citizenship requirement is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interests of the nation. Accordingly, activities of live productions, short and full length television shows and movies, and direct to audience, all constitute dissemination of information and ideas to the public, and tend to influence the public's standards, ideals, aims and opinion, which may be considered mass media.

Based on the primary purpose of the proposed Articles of Incorporation of the Philippine entity of X Co., "recreational and amusement activities, funfairs, character shows, competitions, sideshows, and other related performances," may be considered mass media activities under the Constitution and should not be 100% owned by X Co.

*[Editor's Note: Article XVI, Section 11, of the Constitution provides that: "(1) The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens."]*

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**SEC-OGC Opinion No. 14-13 dated June 11, 2014**

A corporation may not nullify the APIC previously contributed by its stockholders to pay for the subscription to unissued shares of stock, or convert the same to a loan, as both options would be in violation of the Trust Fund Doctrine.

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**Facts:**

T Co., a domestic corporation engaged in general and specialty construction services and regulated by the PCAB, is required to maintain good financial standing as well as maintain its status as a Filipino corporation (i.e., foreign equity should be limited to 40%) in order to renew its license. The foreign stockholders of T Co. decided to infuse additional paid-in capital (APIC) into T Co. to eliminate T Co.'s

capital deficit as a requirement for renewal of its license from PCAB. However, the PCAB declined T Co.'s application for renewal of license on the ground that the infusion of the APIC resulted in an increase in the foreign ownership of T Co. beyond the 40% limit.

In order to comply with the 40% foreign ownership requirement and secure a renewed license from PCAB, the foreign stockholders of T Co. propose to nullify the previous APIC contribution through either of two alternatives:

1. T Co. will increase its authorized capital stock to accommodate the issuance of new shares wherein both foreign and Filipino stockholders of T Co. will contribute proportionate amounts to maintain their respective shareholdings in the company; or
2. The stockholders will invest the APIC in the form of a loan.

**Issue:**

Can the stockholders of T Co. nullify the APIC for the purpose of reinvesting the same in T Co. either as payment for the subscription of unissued shares, or as a loan.

**Ruling:**

No, T Co. may not reverse the APIC and subsequently convert the same into payment for additional subscription, or convert the same into a loan.

If the reversal of the APIC and its conversion into subscribed capital is allowed, the same would result in T Co.'s using its corporate trust fund to pay for the subscription of its stockholders for the issuance of its own shares. The corporate trust fund should only be used for 3 purposes:

1. Amendment of the Articles of Incorporation to reduce authorized capital stock;
2. Purchase of redeemable shares by the corporation; and
3. Dissolution and eventual liquidation of the corporation.

If the corporate trust fund is used for other purposes such as to pay for the stockholders' additional subscription to capital stock, the same would result in an unauthorized distribution of the corporate trust fund.

On the other hand, the nullification of APIC and its subsequent conversion into a loan can be considered as a reduction of the corporate trust fund, as the same will be transferred from the equity account to a liability account. In other words, upon the APIC's conversion into a loan, it is as if there will be advance payment to the stockholder of his investment which equates to a distribution of corporate assets to said stockholder in preference over the other creditors of the corporation.

**SEC-OGC Opinion No. 14-14 dated June 13, 2014**

**Facts:**

The SEC previously opined that the sale of securities to 20 or more persons is selling to the public, which necessarily involves a public offer, and requires registration to and approval of the SEC, pursuant to Section 8.1 of the Securities Regulation Code (SRC). Said provision states that the "mere offer for sale of securities requires the registration and approval of the SEC before the same can be made."

Three corporations sought the opinion of the SEC on whether "listing and selling securities in the Philippine Stock Exchange or any stock exchange" is the only form of public offering which needs prior registration of the SEC.

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A public offering, which requires prior registration with and approval of the SEC, is not only limited to listing and selling securities in a stock exchange.

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**Issue:**

Does “public offering” in and of itself necessarily require listing and selling in the PSE or any stock exchange?

**Ruling:**

No, public offering, which requires prior registration to and approval of the SEC, is not only limited to listing and selling securities in a stock exchange. Under Rule 3, Section 1(N), of the SRC implementing rules and regulations (IRR), “public offering” is defined as a random or indiscriminate offering of securities in general to anyone who will buy, whether, solicited or unsolicited. Specifically, public offering pertains to any solicitation or presentation of securities for sale, presumably through any of the following modes:

1. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
2. Presentation in any public or commercial place;
3. Advertisement or announcement in any radio or television or in any online or e-mail system; or
4. Distribution and/or making available flyers, brochure, or any offering material in a public or commercial place or mailing the same to prospective purchasers.

Accordingly, listing and selling securities in an exchange, while it involves randomly and indiscriminately offering for sale or selling securities to the public, is not the only form of public offering since the same may include any of the forms enumerated in Rule 3, Section 1(N), of the SRC IRR.

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## **BSP Issuances**

BSP Circular No. 833 amends Appendix 75c of BSP Circular No. 808 on software acquisition.

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### **BSP Circular No. 833 dated May 28, 2014**

- ▶ A new paragraph has been added to the guidelines on software acquisition. It provides that guidelines and procedures on installation, use, maintenance and retirement of software should be set out and formally defined, to optimize use of acquired software and limit or minimize risks from unauthorized or obsolete software.
- ▶ BSP Circular No. 833 shall take effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor’s Note: BSP Circular No. 833 was published in Business Mirror on May 31, 2014.]*

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BSP Circular No. 834 amends the guidelines governing the issuance of LT-NCTDs and UnSD.

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### **BSP Circular No. 834 dated May 26, 2014**

- ▶ A new caveat has been added to the terms and conditions on the issuance of long-term negotiable certificate of time deposits (LT-NCTDs) and unsecured subordinated debt (UnSD), particularly on negotiations/transfers from one holder to another, viz:

“For tax purposes, negotiations/transfers from one holder to another shall be subject to the pertinent provisions of the National Internal Revenue Code of 1997, as amended and Bureau of Internal Revenue (BIR) regulations.”

- ▶ BSP Circular No. 834 shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: BSP Circular No. 834 was published in the Philippine Daily Inquirer on May 31, 2014.]

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BSP Circular No. 835 amends Subsection X156.1 of the Manual of Regulations for Banks (MORB) on banking hours.

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#### **BSP Circular No. 835 dated June 5, 2014**

- ▶ Banks may, at their discretion, remain open beyond the minimum 6 hours and for as long as they find it necessary, even before 8:00 AM or after 8:00 PM, provided that there is a prior written notice to the BSP, and the schedule of banking days and hours should be posted. The bank should also comply with the prescribed security measures.
- ▶ BSP Circular No. 835 shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: BSP Circular No. 835 was published in The Philippine Star on June 11, 2014.]

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BSP Circular No. 836 amends the reportorial requirements on microfinance operations and definitions of "Microfinance Loans" and "Small and Medium Enterprises Loans" accounts under the FRP.

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#### **BSP Circular No. 836 dated June 13, 2014**

- ▶ Some of the new definitions provided under the Circular are summarized below:
  - ▶ *Microfinance Loans* - amortized cost of loans granted under the bank's microfinance loan products.
  - ▶ *Microfinance Loans - Past Due/Portfolio-At-Risk (PAR)* - outstanding microfinance loans with at least one missed installment. PAR Microfinance Loans are considered non-performing loans.
  - ▶ *Deposit Component* - total deposits generated from a bank's microfinance clients.
  - ▶ *Wholesale Microfinance Loan* - amortized cost (i.e. gross of allowance for credit losses) of wholesale loans granted to conduit financial institutions (FIs) for on-lending to qualified microfinance clients.
  - ▶ *Conduit Bank/Quasi-Bank* - bank/quasi-bank which avails of wholesale microfinance loans for on-lending to qualified microfinance clients.
  - ▶ *Conduit Non-Bank* - financial institution other than a bank/quasi-bank which avails of wholesale microfinance loans for on-lending to qualified microfinance clients. It includes non-government organizations and foundations with microfinance operations.
  - ▶ *Microenterprise Loans* - amortized cost of loans granted to microenterprises, which shall be further classified as (1) microfinance loans and (2) other microfinance loans.
  - ▶ *Regular Deposits: Regular Embedded Deposits* - savings account, other than micro-deposit, which is collected regularly together with loan repayments, and is typically not withdrawable during the term of an existing loan.

- ▶ *Regular Deposits: Regular Savings of Clients with Micro-Credit* - savings account maintained by a microfinance borrower not attached to the loan transaction.
  - ▶ *Micro-deposit* - savings account that caters to the needs of the basic sectors, low-income clients and those who are unserved for underserved by the financial system.
  - ▶ *Fees and Commission* - fees and commissions income from microfinance intermediation services, other than microinsurance, which do not form part of the effective interest rate of the account.
  - ▶ *Commissions from Microinsurance* - fees and commissions income from acting as microinsurance agent or broker.
- ▶ The Reportorial Templates in Annex A of BSP Circular No. 607, s. 2008, have been renamed from "Report on Microfinance Loans Outstanding" and "Income Statement on Microfinance Operations" to "Report on Microfinance Operations". The contents thereof have also been amended.
  - ▶ The Financial Reporting Package for Banks and Simplified Financial Reporting Package for Rural and Cooperative Banks are also amended to incorporate the new definitions.
  - ▶ BSP Circular No. 836 shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: BSP Circular No. 836 was published in The Philippine Star on June 17, 2014.]*

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BSP Circular No. 837 amends the pertinent regulations of the MORB and of the MORNBFBI on salary loans.

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**BSP Circular No. 837 dated June 18, 2014**

- ▶ The term "Salary Loans" under Subsection X321.1 of the MORB and Subsection 4337.1S of the MORNBFBI is defined as:

"Unsecured loans, granted to individuals on the basis of regular salary, pension or other fixed compensation, where repayment would come from such future remunerations, either through salary deduction, debit from the borrower's deposit account, over-the-counter payment or other type of payment arrangement agreed upon by the borrower and lender."

- ▶ The Financial Reporting Package for banks is amended to include the definition of Salary Loans in the Manual of Accounts. Various reporting templates such as the Financial Reporting Package for Banks and Simplified Financial Reporting Package for Rural and Cooperative Banks are likewise amended to include Salary Loans.
- ▶ BSP Circular No. 837 shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: BSP Circular No. 837 was published in The Manila Bulletin on June 25, 2014.]*

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BSP Circular No. 838 amends the Foreign Exchange Regulations.

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#### **BSP Circular No. 838 dated June 20, 2014**

- ▶ As an additional requirement for registration of non-resident investments with custodian banks, the investor or his duly authorized representative shall submit a duly accomplished "Authority to Disclose Information" in the prescribed format relative to all investments registered/held by each custodian bank for the account of the investor.
- ▶ BSP Circular No. 838 shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

*[Editor's Note: BSP Circular No. 838 was published in the Manila Standard Today on June 26, 2014.]*

#### **Court Decisions**

**Commissioner of Internal Revenue vs. The Insular Life Assurance Co., Ltd.**  
Supreme Court (First Division) G.R. No. 197192 promulgated June 4, 2014

##### **Facts:**

Petitioner CIR assessed The Insular Life Assurance, Co., Ltd (Insular Life), a non-stock mutual life insurer, deficiency documentary stamp tax (DST) on premiums from its direct business or sums assured for calendar year 2002. As the CIR denied its protest, Insular Life appealed to the Court of Tax Appeals (CTA).

The CTA ruled that Insular Life is a cooperative company exempt from DST on insurance policies granted to its members. The CTA cited Section 199 of the Tax Code, which grants DST exemption on "policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit." This was previously confirmed in the Supreme Court ruling in *Republic of the Philippines vs. Sunlife Assurance Company of Canada (G.R. No. 158085 promulgated October 14, 2005)*.

The CIR argued that the doctrine in the *Sunlife* case should be reconsidered as it failed to note the registration requirement under the Cooperative Code of the Philippines, in order for an association to be deemed a cooperative entitled to tax privileges.

##### **Issue:**

Is Insular Life exempt from DST on premiums from insurance policies granted to its members?

##### **Ruling:**

Yes, Insular Life is exempt from DST on the insurance policies granted to its members.

The Cooperative Code of the Philippines does not prescribe registration with the Cooperative Development Authority (CDA) as a requirement for DST exemption. The Insurance Code also does not require registration with the CDA.

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A cooperative engaged in mutual life insurance need not register with the CDA in order to be exempt from DST under Section 199 of the Tax Code.

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Moreover, Insular Life does not fall under any of the kinds of cooperatives required to be registered with the CDA. Section 123 of the Tax Code applies, which defines a cooperative company or association as those “conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit.” Insular Life is a cooperative, as defined in the Tax Code, since it is managed by members, operated with money collected from the members, and has for its main purpose the mutual protection of members for profit.

The Tax Code does not require registration with the CDA as a requirement for DST exemption. RMC No. 48-91, which requires the submission of a Certificate of Registration with the CDA before the BIR may issue a tax exemption certificate, cannot prevail over provisions of the Tax Code.

### **East Asia Utilities Corporation vs. Commissioner of Internal Revenue**

Court of Tax Appeals (Second Division) Case No. 8179 promulgated May 21, 2014

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The enumeration in RR No. 11-2005 on the direct costs that are deductible from GIE is not exclusive. PEZA-registered enterprises that are subject to the 5% tax on GIE are allowed to deduct expenses which are in the nature of direct costs, even if these are excluded in the list.

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#### **Facts:**

Petitioner East Asia Utilities Corporation (EAC) is a PEZA-registered Ecozone Utilities Enterprise that operates a power plant within the Mactan Export Processing Zone. As a PEZA-registered enterprise, EAC is subject to the 5% tax on gross income earned (GIE) which is in lieu of national and local taxes. Respondent CIR assessed EAC alleged deficiency income tax for taxable year 2006 arising from the disallowance of certain expenses that the BIR considered as not part of direct costs under RR Nos. 2-2005 and 11-2005.

The CIR disallowed EAC’s claimed deductions for SSS and Pag-ibig employer cost, medical/health and accident/life insurance, uniform/working gear, employee activities, training and development, insurance and freight, hauling and trucking services, brokerage fees, other inventory incidental cost, safety program and services, other professional fees, insurance for power plant and other assets, general office expenses, and taxes and licenses.

Upon denial of its protest, EAC filed a Petition for Review with the CTA. EAC argued that the enumeration of direct costs under RR No. 11-2005 is not exclusive for purposes of computing the 5% tax on GIE. EAC asserted that the list is intended as a guide to determine the items of direct costs that are deductible from gross income.

#### **Issue:**

Is the enumeration of direct costs deductible from gross income under RR No. 11-2005 exclusive?

#### **Ruling:**

No, the enumeration of direct costs in RR No. 11-2005 is not exclusive.

It is clear in RR No. 11-2005 that the list is not meant to be all-inclusive but merely enumerates the expenses that can be considered as direct costs. PEZA-registered enterprises may be allowed to deduct expenses which are in the nature of direct costs even though these are not included in the list.

The criterion in determining whether the item of cost or expense should be part of direct cost is the relation of such item in the conduct of its PEZA-registered activities. If the cost or expense can be directly attributed in providing the PEZA-registered services, then it should be treated as direct cost.

Section 27(E)(4) of the Tax Code defines cost of services as “xxx direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the services and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: xxx”. The rest of the costs can be classified as operating expenses which are defined as “primary recurring costs associated with central operations, other than cost of goods sold, which are incurred to generate sales.”

To validly claim a deduction, EAC needs to prove that the disallowed expenses were directly used in or related to its power generation services, and not just for the continued efficient and effective operations of the company.

Upon evaluation, the CTA determined that certain expenses form part of direct cost that are deductible from gross income, including SSS and Pag-ibig employer cost, medical/health and accident/life insurance, uniform/working gears, technical training and development, hauling and trucking services, insurance and freight, brokerage fees, other inventory incidental cost, insurance for power plant and other assets, safety program and services, and other professional fees.

On the other hand, the CTA held that the following expenses are deemed operating expenses, hence, not deductible from gross income: employee activities, non-technical training and development, DOE electrification fund, general office expense, business expense, taxes and licenses.

### **Officemetro Philippines, Inc. vs. Commissioner of Internal Revenue**

Court of Tax Appeals (Third Division) Case No. 8382 promulgated June 3, 2014

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Association or condominium dues, membership fees and other assessments or charges, which are held in trust by the condominium corporation to be used solely for administrative expenses, are excluded from the condominium corporation's gross income, hence, not subject to income and withholding tax.

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#### **Facts:**

Respondent CIR assessed Petitioner Officemetro Philippines, Inc. (OPI) deficiency expanded withholding tax (EWT) for taxable year 2005. The CIR alleged that OPI failed to withhold tax on certain income payments, including property service charges representing payments for condominium dues, in violation of Section 2.57.2 or RR No. 2-98.

Upon denial of its protest, OPI filed a Petition for Review with the CTA. OPI argued that payments for condominium dues are not taxable income of a condominium corporation that is subject to withholding tax.

#### **Issue:**

Are the condominium dues subject to income and withholding tax?

#### **Ruling:**

No, payments for condominium dues are not subject to income and withholding tax.

In various rulings issued between 2004 and 2009, the BIR held that association or condominium dues, membership fees and other assessment or charges collected from members, which are merely held in trust to be used solely for administrative expenses to implement specific purposes, must not be included in the condominium corporation's gross income.



The purposes may include, among others, to protect and safeguard the welfare of the owners, lessees and occupants and provide utilities and amenities for the members. The corporation could not realize any gain or profit as a result of the receipt of condominium dues specifically for these purposes. Thus, condominium dues are not subject to income and withholding tax.

### **Metro Pacific Corporation vs. Commissioner of Internal Revenue**

Court of Tax Appeals (Second Division) Case No. 8318 promulgated June 11, 2014

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Where property is transferred for less than adequate and full consideration, the amount by which the fair market value (FMV) of the property exceeds the value of the consideration shall be deemed a gift that is subject to donor's tax under Section 100 of the Tax Code.

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#### **Facts:**

On October 29, 2009, Petitioner Metro Pacific Investment Corporation (MPIC) sold to Columbus Holdings, Inc. (CHI) 2,597,197 common shares in Bonifacio Land Corporation (BLC), with a par value of P100 per share, for P410,357,126.00. The acquisition cost of the shares is P1,142,563,358.91, while the aggregate book value is P864,303,593.03.

MPIC filed a request for ruling to confirm that the sale by MPIC to CHI of its BLC shares is not subject to donor's tax under Section 100 of the Tax Code, on the ground that it is an ordinary business transaction negotiated in good faith by unrelated parties for legitimate business purposes. MPIC then filed a capital gains tax (CGT) return declaring a capital loss on the transaction, as the selling price is lower than the acquisition cost. MPIC also filed a DST return and paid the corresponding tax due.

On November 27, 2009, the Assistant Commissioner for Legal Service issued BIR Ruling DA (DT-065) 715-2009, confirming that the share transfer transaction is not subject to donor's tax, because it is an ordinary commercial transaction negotiated in good faith between unrelated parties and motivated by legitimate business reasons. The BIR subsequently issued the Tax Clearance Certificate and the Certificate Authorizing Registration covering the share transfer.

On June 17, 2011, the CIR issued RMC No. 25-2011 revoking BIR Ruling DA (DT-065) 715-2009. According to the CIR, when property is sold for less than an adequate and full consideration, the amount by which the fair value of the property exceeded the value of the consideration received shall be deemed a gift subject to donor's tax, under Section 100 of the Tax Code, as implemented by RR No. 6-2008.

On January 14, 2011, MPIC received from Respondent CIR a Final Assessment Notice (FAN) demanding payment of deficiency donor's tax on the share transfer transaction. MPIC protested the assessment but the CIR denied the protest in its Final Decision on Disputed Assessment (FDDA) received on July 11, 2011. MPIC filed a Petition for Review with the CTA.

#### **Issues:**

1. Is MPIC's sale of the BLC shares subject to donor's tax?
2. Is the revocation of BIR Ruling DA (DT-065) 715-2009 in RMC No. 25-2011 given retroactive effect?

***Ruling:***

1. Yes, MPIC's sale of the BLC shares is deemed a transfer for less than an adequate consideration, hence, subject to donor's tax under Section 100 of the Tax Code.

Section 100 of the Tax Code clearly states that where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the FMV of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

It is important to determine the FMV of the property sold or transferred, and whether it exceeded the value of the consideration. As the BLC shares were not listed in the local stock exchange, the book value of the shares of stock as shown in the financial statements duly certified by an independent certified public accountant nearest the date of sale shall be the FMV, as provided under Section 7(c.1.4) of RR No. 6-2008.

In its CGT return, MPIC admitted that the FMV is P332.78 per share, notwithstanding that the selling price as stipulated in the Deed of Absolute Sale is only P158 per share. Since the FMV/book value of the unlisted shares is higher than the consideration received, the excess is subject to donor's tax under Section 100 of the Tax Code.

A plain reading of Section 100 shows that no exception is stated therein. If the legislature intended an exception to Section 100, it could have clearly stated therein such exception. The alleged exemption from donor's tax under Section 100 was not clearly established.

2. Yes. RMCs are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the CIR.

In issuing RMC No. 25-2011, the CIR simply exercised her original and exclusive jurisdiction to interpret Tax Code provisions, including the "power to revoke and nullify BIR rulings." RMC No. 25-2011 is merely an interpretative rule which provides guidelines to the law which the administrative agency is in charge of enforcing. The assailed RMC does not increase the burden of those governed but only ensures the enforcement of RR No. 6-2008. Its applicability, therefore, needs nothing further than its bare issuance. No prior notice or hearing is necessary.

Moreover, a careful scrutiny of BIR Ruling DA (DT-065) 715-2009 shows that it is a ruling of first impression issued by an Assistant Commissioner. Under Section 7 of the Tax Code, the power of the Commissioner to issue rulings of first impression shall not be delegated. The ruling therefore is invalid as it was issued in violation of Section 7. Accordingly, the provision on the non-retroactivity of rulings does not apply.

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