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Tax bulletin



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Highlights

BIR Issuances

- ▶ Revenue Memorandum Circular (RMC) No. 15-2015 defers the implementation of electronic filing (eFiling) of certain withholding tax forms that were due on April 15, 2015. **(Page 3)**
- ▶ RMC No. 17-2015 updates the alternative modes to download the Offline eBIRForms Package. **(Page 4)**
- ▶ RMC No. 18-2015 defers the implementation of eFiling of “No Payment” Income Tax Returns (ITRs). **(Page 4)**
- ▶ RMC No. 19-2015 provides answers to frequently asked questions (FAQs) on the implementation of the electronic platform in filing tax returns through the eFPS or the eBIRForms for filing ITRs for calendar year 2014. **(Page 4)**
- ▶ RMC No. 20-2015 prescribes alternative modes in filing BIR Form Nos. 1701Q and 1702Q with payments using the BIR’s electronic platform. **(Page 8)**
- ▶ RMC No. 21-2015 prescribes alternative modes in filing BIR Form Nos. 2551M (Monthly Percentage Tax Return), 2551Q (Quarterly Percentage Tax Return), 2550M (Monthly VAT Declaration) and 2550Q (Quarterly VAT Return) 2551M using the BIR’s electronic platform. **(Page 9)**

BOC Issuances

- ▶ Customs Memorandum Order (CMO) No.9-2015 prescribes the final and complete list of regulated imports and the strict enforcement of rules thereon. **(Page 10)**
- ▶ CMO No. 10-2015 requires the mandatory submission of manifests for air cargo. **(Page 12)**

BOI Issuance

- ▶ BOI Memorandum Circular (MC) No. 2015-01 prescribes the implementing rules and regulations (IRR) of the 2014 Investments Priorities Plan (IPP). **(Page 16)**

PEZA Issuance

- ▶ Memorandum Circular No. 2015-014 extends the period of optional use by PEZA enterprises of the BOC’s e2m Transshipment System for Import Cargo. **(Page 34)**

SEC Opinion

- ▶ A Real Estate Investment Trust (REIT) is a stock corporation established principally for the purpose of owning income-generating real estate assets. For real estate to be considered as an investment in “income-generating real estate” under the REIT Act, the same must consist of tangible real properties. Real estate mortgages are not considered by the SEC as tangible real properties. **(Page 34)**

Court Decisions

- ▶ In claims for refund of excess creditable withholding tax (CWT), the utilization or non-utilization of the CWT subject of the claim may be established by evidence other than BIR Form No. 2307, such as the audited financial statements (AFS), annual ITR, and schedule of prepaid tax for the year. **(Page 35)**
- ▶ A corporation that has ceased operations prior to the full utilization of tax credits previously carried over may file a claim for refund of said unutilized tax credits. The 2-year prescriptive period to file said claim commences 30 days after approval by the SEC of its plan for dissolution. The short period ITR filed by the taxpayer must show that the tax credits previously carried over remain unutilized as of the said period. **(Page 36)**

BIR Issuances

RMC No. 15-2015 defers the implementation of the eFiling of certain withholding tax forms that were due on April 15, 2015.

Revenue Memorandum Circular No. 15-2015 dated April 1, 2015

- ▶ The eFiling of the following withholding tax forms that were due on April 15, 2015 is temporarily deferred:

Form No.	Latest Revision Date	Form Name
1600	September 2005	Monthly remittance return of value-added tax (VAT) and other percentage taxes withheld
1601-C	July 2008	Monthly remittance return of income taxes withheld on compensation
1601-E	August 2008	Monthly remittance return of creditable income taxes withheld (expanded)
1601-F	September 2005	Monthly remittance return of final income taxes withheld
1602	August 2001	Monthly remittance return of final income taxes withheld on interest paid on deposits and yield on deposit substitutes/trusts/etc.
1603	November 2004	Quarterly remittance return of final income taxes withheld on fringe benefits paid to employees other than rank and file
1606	July 1999	Withholding tax remittance return for onerous transfer of real property other than capital asset (including taxable and exempt)

- ▶ The above returns may be filed manually on or before their due date through the use of the regular printed forms or the offline eBIRForms, and tax payments may be made to the concerned Authorized Agent Banks (AABs).
- ▶ For no-payment returns, the same may be filed at the concerned Revenue District Offices (RDOs), provided that receipt of the returns shall be acknowledged through the Mobile Revenue Collection Officers System (MRCOS).
- ▶ In both instances, the returns filed manually shall be re-filed electronically after April 15, 2015 but not beyond April 30, 2015 in order that the imposable penalties shall be waived.

RMC No. 17-2015 updates the alternative modes to download the Offline eBIRForms Package.

Revenue Memorandum Circular No. 17-2015 dated April 10, 2015

- ▶ Offline eBIRForms Package may be downloaded from any of the following links:
 1. www.knowyourtaxes.ph
 2. <http://www.dof.gov.ph>
 3. Dropbox using the new link <http://goo.gl/UCr8XS>
 4. Direct link using: http://ftp.pregi.net/bir/ebirforms_package_v4.7.08_ITRv2013.zip
- ▶ Previously-encoded Annual ITRs using Offline eBIRForms Package version 4.7.07 can still be viewed and used in Offline eBIRForms Package version 4.7.08.
- ▶ In cases where the "Final Copy" has not been executed in Offline eBIRForms Package version 4.7.07, the same can be submitted using Offline eBIRForms Package version 4.7.08.
- ▶ Where the "Final Copy" has already been executed or there is NO EMAIL notification received after two hours from eFiling, or a message appeared that the ITR was not successfully eFiled, the suggested procedure in Annex D of RMC No. 14-2015 shall be followed.

RMC No. 18-2015 defers the implementation of eFiling of "No Payment" ITRs.

Revenue Memorandum Circular No. 18-2015 dated April 10, 2015

- ▶ "No Payment" Returns (using the official forms or the offline eBIRForms Package listed in the RMC) may be filed manually not later than April 15, 2015 with the RDO where the concerned taxpayers are registered.
- ▶ "No Payment" Returns filed manually shall be re-filed electronically not later than June 15, 2015.
- ▶ Penalties imposed under Revenue Regulations (RR) No. 5-2015 (on filing using a mode/venue that is different from that prescribed), are deemed waived, provided the subject ITRs have been re-submitted electronically in the BIR's system not later than June 15, 2015.
- ▶ Newly-enrolled EFPS taxpayers whose registration with AABs has not been completed shall electronically file their returns and pay the tax manually through the AABs or Revenue Collection Officers not later than April 15, 2015. The completion of their ePayment registration and compliance with eFile and ePay on all succeeding returns must be done not later than June 15, 2015.
- ▶ If the ePayment registration is not completed by June 15, 2015, all returns filed electronically and paid over the counter from April 15, 2015 shall be subject to the penalties imposed under RR No. 5-2015.

RMC No. 19-2015 provides answers to FAQs on the implementation of the electronic platform in filing tax returns through the eFPS or the eBIRForms for filing ITRs for calendar year 2014.

Revenue Memorandum Circular No. 19-2015 dated April 13, 2015

- ▶ There are 2 BIR electronic platforms available for filing tax returns:
 1. eFPS
 2. eBIRForms

- ▶ To use eBIRForms, a taxpayer must first download the Offline eBIRForms Package from either of the following websites:
 1. www.bir.gov.ph
 2. www.knowyourtaxes.ph
 3. www.dof.gov.ph
 4. www.bamaquino.com
 5. Dropbox using this link: <http://goo.gl/UCr8XS>
 6. Direct link using: http://ftp.pregi.net/bir/ebirforms_package_v4.7.08_ITRv2013.zip;

- ▶ The system requirements for the BIR electronic platforms are the following:
 1. Supported Operating System: Windows Vista, Windows 7;
 2. Hard disk drive space needed: at least 100 MB free space;
 3. RAM memory needed: Runs best on 2GB or higher;
 4. ActiveX components via Internet Explorer version 9;
 5. Java Run-time Environment version 1.7; and
 6. The eBIRForms Package is best viewed in 1152 x 864 screen resolution.

- ▶ The following browsers comply with the BIR electronic platforms requirements:
 1. Internet Explorer v9;
 2. Mozilla Firefox v16 or higher;
 3. Google Chrome v23 or higher

- ▶ The following are mandated to use eFPS:
 1. Taxpayer Account Management Program (TAMP) Taxpayers;
 2. Accredited and prospective importers required to secure the BIR Importer's Clearance Certificate (BIR-ICC) and BIR Broker's Clearance Certificate (BIR-BCC);
 3. National Government Agencies (NGAs);
 4. All Licensed Local Contractors;
 5. Enterprises enjoying fiscal incentives (PEZA, BOI, Various Zone Authorities, etc.);
 6. Top 5,000 Individual Taxpayers;
 7. Corporations with Paid-Up Capital Stock of P10 Million and above;
 8. Corporations with a complete computerized accounting system (CAS);
 9. Procuring Government Agencies with respect to Withholding of VAT and Percentage Taxes;
 10. Government Bidders;
 11. Insurance companies and stock brokers;
 12. Large taxpayers;
 13. Top 20,000 private corporations.

- ▶ The following are mandated to use eBIRForms and eFile:
 1. Accredited tax agents, practitioners and all their client-taxpayers who have authorized them to file on their behalf;
 2. Accredited printers of principal and supplementary receipts/invoices;
 3. One-Time Transaction (ONETT) taxpayers;
 4. Those engaged in business, or those with mixed income (both compensation and business income) who shall file a "NO PAYMENT" Return;
 5. Government-Owned or Controlled Corporations (GOCCs);
 6. Local Government Units (LGUs), except barangays;
 7. Cooperatives, registered with National Electrification Administration (NEA) and Local Water Utilities Administrations (LWUA).

- ▶ Under RR No. 6-2014, the term “Client-Taxpayers” refers to taxpayers who are otherwise authorizing their tax agents/practitioners to file on their behalf. Thus, client-taxpayers whose tax agents/practitioners only sign the audit certificate but have no authority to file the returns on their behalf are not covered by the mandatory requirement to use eBIRForms.
- ▶ The following are exempted from the mandatory use of eBIR Forms and electronically filing “NO PAYMENT RETURNS”:

 1. Senior Citizens (SCs) or Persons with Disability (PWDs) filing their own returns;
 2. Employees deriving purely compensation income whether from one or more employers, whether or not they have any tax due that has to be paid;
 3. Employees qualified for substituted filing under RR No. 2-98, Section 2.83.4, as amended, but who opted to file an ITR and are filing for purposes of promotion (PNP/AFP), loans, scholarship, foreign travel requirements, etc.

- ▶ Only taxpayers previously enumerated are required to file electronically.
- ▶ Other taxpayers, such as Micro Small Medium Enterprises (MSMEs), which are filing their own returns and have tax payments due, are not required to file electronically, but can voluntarily enroll and file using either the eFPS/eBIRForms electronic platforms of the BIR.
- ▶ RDOs and AABs should continue to accept manually filed returns for calendar year 2014 (either printed BIR Forms or generated forms from the Offline eBIRForms).
- ▶ Taxpayers who are mandated to use the eFPS and eBIRForms but continue to file manually, shall be subject to the P1,000.00 penalty per return pursuant to Section 250 of the Tax Code, and 25% surcharge for wrong venue under RR No. 5-2015.
- ▶ RDOs are directed to include non-compliant taxpayers in their priority audit programs.
- ▶ For purposes of penalty calculation, the date when the returns are filed shall be determined as follows:
 1. If no payment is required, it shall be the date the original eFiling was duly submitted. Hence, it is necessary that the Filing Reference Number (FRN) and/or email notification must always be kept as evidence of eFiling.
 2. If payment is required, it is the date of the payment that determines whether the returns were filed on time and whether or not surcharges, penalties and/or interest shall be due.
 3. In case of dispute in determining the eFiling date, the final copy of the return in file extension .xml, which can be viewed in the electronic platform of the BIR, shall prevail.
- ▶ RR No. 5-2015 prescribes the penalties for those mandated to eFile but have filed manually. Likewise, penalties are imposed for those not filing electronically but are mandated to use eFPS/eBIRForms.

- ▶ If the taxpayer electronically files and pays using eBIRForms or eFPS without any attachment required, additional documents are not required to be submitted to the RDO/LTDO/LT Office.
- ▶ If there are required attachments to the ITR, the taxpayer shall submit the following documents to the RDO/Large Taxpayers District Office (LTDO)/Large Taxpayers (LT) Office within 15 days from the date of eFiling:
 1. For eFPS:
 - ▶ Printed copy of tax returns with FRN Page; and
 - ▶ Required attachments.
 2. For eBIRForms eFile and ePay (upon availability):
 - ▶ Printed copy of the return with the email Notification Page received; and
 - ▶ Required attachments
 - ▶ If there are other attachments to be submitted, such as the Summary Alphalists of Withholding Tax (SAWT), the Monthly Alphalists of Payees (MAP) required under BIR Form Nos. 1600, 1601E, 1601F, they shall be prepared using the Data Entry Module or Summary List of Sales/Purchases/Importation for all VAT taxpayers in BIR Form No. 2550Q prepared using the RELIEF of the BIR and submitted via email to: esubmission@bir.gov.ph.
- ▶ The tax return has been successfully filed if the system displays the FRN along with the "continue" button to go to the FRN page. The page should also display the message "The form has been successfully filed."
- ▶ For eBIRForms on 2014 ITR filing (BIR Form Nos. 1700, 1701, 1702RT, 1702EX, 1702MX), instead of an FRN, a system-generated email notification will be received by the taxpayer as evidence of an eFiled return. Users can also view their submitted forms by clicking on the "Submitted Tax Returns" link.
- ▶ After clicking the "FINAL COPY", a pop-up a message will appear that the data was successfully sent to the BIR. An email notification will likewise be sent to the taxpayer's inbox, which should be saved as evidence of an eFiled return.
- ▶ The attached file in the email notification cannot be directly opened by the taxpayer. To print the final copy of the eFiled return, the taxpayer must click "PRINT" for each page of the return. The printed returns from electronic platform should be similar to the official printed form issued by the BIR without resizing/shrinking/enlarging.
- ▶ All RDOs/AABs are mandated to accept photocopied or electronic/computer-generated income tax returns in lieu of the officially printed forms, provided that the said forms are updated and originally filled-out and signed by the taxpayer or his duly authorized representative.
- ▶ To be able to receive the email nitification from the BIR on the submitted tax return, the taxpayer must comply with the following requirements:
 1. The email address indicated in the return is active and valid;
 2. The mailbox has enough memory space;
 3. The BIR email is not in the SPAM folder; and
 4. The BIR website bir.gov.ph is NOT BLOCKED by the email provider.

- ▶ Non-compliance with any of the foregoing requirements requires re-encoding and re-submission of the return as follows:
 1. If all of the above requirements were undertaken but still NO EMAIL is received after two hours from eFiling, the taxpayer should manually email the generated .xml file following the procedures in Annex D of RMC No. 14-2015.
 2. If NO EMAIL is received after two hours, the taxpayer should call the BIR help desk as provided in Annex D of RMC No. 14-2015.
- ▶ A taxpayer mandated to use eFPS and eBIRForms must use eFPS, except for forms which are only available in eBIRForms.
- ▶ If the TIN is not yet uploaded in the eFPS/eBIRForms system, and if the taxpayer receives an error notification during enrollment regarding his TIN, he must request the RDO where he is registered to upload his TIN in order to proceed with the enrollment.
- ▶ RMC No. 13-2015 provides that all juridical entities/corporations are mandated to disclose supplementary information, such as Income/Receipts/Revenue subjected to Final Withholding, including Real Properties/stock transactions, Income/Receipts/Revenue Exempt from Income Tax, etc.
- ▶ For individuals filing BIR Form Nos. 1700 and 1701, it shall be optional for calendar year 2014 due for filing on or before April 15, 2015, and mandatory starting calendar year 2015.
- ▶ All taxpayers enrolled in either eFPS or eBIRForms, or those who will file manually, are encouraged to use Offline eBIRForms for ease and convenience, and to provide them ample time to encode/edit and complete their returns.
- ▶ In the payment of annual income tax due on the returns eFiled using eBIRForms, the taxpayer needs to present the following to the AABs:
 1. Printed copy of returns duly signed, and
 2. Email notification of successful e-Filing
- ▶ For eFPS taxpayers, the eFile and FRN shall be generated by the system prior to ePay.
- ▶ With respect to voluminous attachments for creditable withholding taxes under BIR Form No. 2307 and 2316, the taxpayer must scan the original copies of BIR Form No. 2307 and store the soft copies using pdf file format with filenames alphabetically arranged in DVD-R.
- ▶ As required under RR No. 2-2015, the taxpayer must submit the DVD-R to the BIR where he is registered, together with a Notarized Certification duly signed by the authorized representative of the taxpayer, certifying that the soft copies are the complete and exact copies of the original BIR Form No. 2307.

RMC No. 20-2015 prescribes alternative modes in filing BIR Form Nos. 1701Q and 1702Q with payments using the BIR's electronic platform.

Revenue Memorandum Circular No. 20-2015 dated April 15, 2015

- ▶ This circular does not cover taxpayers who are not mandated to use eFPS/ eBIRForms and who have not opted to file electronically; in these cases, the existing procedures on manual filing shall apply.

- ▶ Those with “No Payment” returns should follow the procedure prescribed in RMC No. 18-2015, may file manually not later than April 15, 2015, and subsequently re-file electronically using the BIR’s system not later than June 15, 2015.
- ▶ Taxpayers filing BIR Form Nos. 1701Q or 1702Q with payment using the eBIRForms shall follow the same procedure in Annex D of RMC No. 14-2015.
- ▶ Taxpayers must click “FINAL COPY” and open the directory “C:\eBIRForms\IAF_RDO_Copy\” after validating the tax return. The taxpayers should, then, look for the .xml file of the encoded tax return form with the following naming convention:

FILENAME = <999999999999-XXXXXX-99999999.xml>,

Wherein:

999999999999	Represents the first 12 digits of the Taxpayer Identification Number (TIN) including the branch code;
XXXXXX	Represents the next digits (maximum of 6) of the BIR Form Number;
99999999	Represents the return period or the taxable year (maximum of 8 digits);
.xml	Represents the file type extension

- ▶ After locating the .xml file of the encoded tax return, taxpayers must attach the same to an email and send to the BIR using the following format:

Form Number	Email Subject	Email Address
1701Q	RDO_1701Q_TIN_taxable_period	1701Qv2008@bir.gov.ph
1702Q	RDO_1702Q_TIN_taxable_period	1702Qv2008@bir.gov.ph

- ▶ Taxpayers must print the email notification from the BIR as evidence of the eFiled return and the tax return, and manually pay to the AABs or collection agents.
- ▶ For unsuccessful eFiling, taxpayers must follow the following guidelines to avoid penalties:
 1. Print evidence/proof (Print Screen on the Message given by the system) that EFPS was tried several times but unsuccessful;
 2. Report/call helpdesk and get trouble ticket log; or
 3. Report to BIR Contact Center and get reference number of the call.
- ▶ After complying with the guidelines, a taxpayer may proceed with the manual filing and payment, following existing procedure by filing not later than April 15, 2015 and attaching the proof of unsuccessful eFPS. They must then re-file electronically not later than June 15, 2015.

RMC No. 21-2015 prescribes alternative modes in filing BIR Form Nos. 2551M (Monthly Percentage Tax Return), 2551Q (Quarterly Percentage Tax Return), 2550M (Monthly VAT Declaration) and 2550Q (Quarterly VAT Return) 2551M using the BIR’s electronic platform.

RMC No. 21-2015 dated April 15, 2015

- ▶ This circular does not cover taxpayers who are not mandated to use eFPS/ eBIRForms and have not opted to file electronically; in these cases, the existing procedures on manual filing shall apply.

- ▶ Taxpayers filing BIR Form Nos. 2551M, 2551Q, 2550M and 2550Q with payment using eBIRForms shall follow the same procedure in Annex D of RMC 14-2015.
- ▶ Taxpayers must click "FINAL COPY" and open the directory "C:\eBIRForms\IAF_RDO_Copy\" after validating the tax return. The taxpayers should, then, look for the .xml file of the encoded tax return form with the following naming convention:

FILENAME = <999999999999-XXXXXX-99999999.xml>,

Wherein:

999999999999	Represents the first 12 digits of the TIN including the branch code;
XXXXXX	Represents the next digits (maximum of 6) of the BIR Form Number;
99999999	Represents the return period or the taxable year (maximum of 8 digits);
.xml	Represents the file type extension

- ▶ After locating the .xml file of the encoded tax return, taxpayers must attach the same to an email and send to the BIR using the following format:

Form Number	Email Subject	Email Address
2551M	RDO_2551M_TIN_taxable_period	2551M @bir.gov.ph
2551Q	RDO_2551Q_TIN_taxable_period	2551Q @bir.gov.ph
2550M	RDO_2550M_TIN_taxable_period	2550M @bir.gov.ph
2550Q	RDO_2550Q_TIN_taxable_period	2550Q @bir.gov.ph

- ▶ Taxpayers must print the email notification from the BIR as evidence of the eFiled return and the tax return, and manually pay to the AABs or collection agents.
- ▶ For unsuccessful eFiling, taxpayers must follow the following guidelines to avoid penalties:
 1. Print evidence/proof (Print Screen on the Message given by the system) that EFPS was tried several times but unsuccessful;
 2. Report/call helpdesk and get trouble ticket log; or
 3. Report to BIR Contact Center and get reference number of the call.
- ▶ After complying with the guidelines, taxpayers should manually file and pay on or before the due dates of the respective returns and attach the proof of unsuccessful eFPS attempts. They must then re-file electronically not later than 30 days from the deadline.

BOC Issuances

CMO No.9-2015 prescribes the final and complete list of regulated imports and the strict enforcement of rules thereon.

Customs Memorandum Order No. 9-2015, dated April 10, 2015

- ▶ The BOC has published the final and complete list of all regulated imports. The list can be downloaded from:

<http://customs.gov.ph/regulated-imports-list-2015-04-06/>

The user's guide on how the list is organized can be viewed at

<http://customs.gov.ph/users-guide-to-the-bureau-of-customs-regulated-imports-list-2015-04-06-version/>

and downloaded from

<http://customs.gov.ph/regulated-imports-list-2015-04-06/>

► Implementing Provisions

1. All importers of regulated imports must provide import permits when filing import entries.
2. Entries containing any regulated import, including those destined for PEZA zones and freeports, must be verified whether the required permit has been issued and submitted to the BOC prior to their final assessment. In the case of transshipments, the permits must be obtained, and a copy provided to the BOC, prior to transshipment from the port of discharge.
3. No BOC official shall require the submission of import permits for any product which is not on the Regulated Imports List.
4. BOC staff are reminded to take particular care in processing imports of food and drink, drugs and pharmaceutical products, and chemicals:
 - All food and drinks, whether for human or animal consumption, are regulated imports, and must have a permit from one of the following agencies:
 - a. Bureau of Animal Industry (BAI);
 - b. Bureau of Fisheries and Aquatic Resources (BFAR);
 - c. Bureau of Plant Industry (BPI);
 - d. Food and Drug Administration (FDA);
 - e. BIR (for alcoholic drinks)
 - All drugs and pharmaceutical products, whether for human or animal consumption, are regulated imports, and must have a permit from one of the following agencies:
 - BAI;
 - BFAR;
 - BPI;
 - FDA
 - Many chemicals are regulated imports, in some cases by more than one agency. The BOC contains all known regulated chemicals. If a particular chemical is not on the list, it does not necessarily mean that it is not regulated. It must be determined if such chemical is in the Philippine Inventory of Chemicals and Chemical Substances (PICCS).
 - If a chemical is not on the list but is in the PICCS, then that chemical is not a regulated import.
 - If a chemical is not on the list and also not in the PICCS, then that chemical is a regulated import and must secure a permit from the Environment Management Bureau.

5. If any BOC staff believes that a product which is not in the Regulated Imports List should be regulated, he shall inform the Office of the Commissioner, and wait for the inclusion of the product in future versions of the Regulated Imports List before requiring import permits for it.
 6. Importers and brokers must acquire the necessary import permits prior to the scheduled arrival of their imports in the Philippines. Failure to present the necessary import permits within the time frames for filing of entry (30 days after date of last discharge of the last package) or claiming of importation (15 days after filing of entry) shall not be grounds for extension of the periods after which a shipment shall be deemed abandoned, nor be accepted as a justification for lifting of abandonment.
 7. Non-compliance by any BOC official with the rule that the submission of import permits shall not be required for any product which is not on the Regulated Imports List will be an incidence of grave offense and shall be punishable upon first offense by dismissal. Non-compliance by any Customs official with any other section of this CMO will be an incidence of simple neglect of duty, and shall be punishable upon second offense by dismissal.
- ▶ Strict enforcement of this CMO shall begin on May 11, 2015.

[Editor's Note: CMO No. 9-2015 was published in The Manila Times on April 12, 2015.]

CMO No. 10-2015 requires the mandatory submission of manifests for air cargo.

Customs Memorandum Order No. 10-2015, dated April 10, 2015

▶ **Definitions:**

1. Electronic Inward Foreign Manifest (e-IFM) - the electronic list of House Airway Bills and/or Master Airway Bills, which contain information about the cargo arriving on a flight;
 2. Electronic Consolidated Cargo Manifest (e-CCM) - the electronic list of House Airway Bills and/or Master Airway Bills, which contain information about the cargo covered by a Master Airway Bill. This list is filed for each Master Airway Bill consigned to an airline, an air express operator, an airfreight forwarder, or a de-consolidator.
 3. Only a House Airway Bill has an ultimate consignee. Master Airway Bills do not have ultimate consignees.
 4. VASP - Value Added Service Provider accredited by the BOC (Intercommerce, Cargo Data Exchange Center [CDEC], and e-Konek)
- ▶ Airlines, Air Express Operators (AEO), Air Freight Forwarders, De-consolidators must be accredited with BOC, as per CMO No. 39-2008.
- ▶ Submission of Flight Schedules, Updating of Actual Flight Arrival, Updating of Last Discharge:
1. Airlines and AEOs shall submit flight schedules containing all the required information to the Aircraft Operations Division (AOD) of the Customs office of the airport to which the flight shall arrive, at least one month in advance.

2. The AOD personnel shall then encode the respective estimated times of arrival (ETA) in BOC's E2M system as soon as the flight schedules are submitted by the airlines and AEOs, to allow the airlines and AEOs to submit e-IFMs as prescribed by this CMO. Soft copies of flight schedules shall also be furnished to the VASPs.
 3. On the date of arrival of the aircraft, the AOD shall record in E2M the actual date and time of the aircraft's arrival.
 4. The Deputy Collector for Operations shall update the e-IFM for the actual date of last discharge.
 5. The Deputy Collector for Operations can assign the above-mentioned AOD functions to BOC personnel of other offices.
- ▶ ***Submission of e-IFM by Airlines and AEO:***
1. Submission of e-IFMs and e-CCMs is done through the facility of the VASPs.
 2. Airlines or AEOs should submit an e-IFM for every flight arrival. For each house bill and master airway bill, the required fields must be completely filled in. Filers are advised to take extra care as the fields are case- and values- sensitive. Subsequent revisions in the data may require a formal amendment process which may result in processing delays as well as the incurrence of penalties.
 3. Upon filing of the e-IFM, the BOC's E2M system will verify the completeness of the prescribed fields, ETA was encoded by the AOD, accreditation by the airline or AEO. Upon verification, its status in the E2M will be tagged as "stored."
 4. The filer must submit the e-IFM prior to the cut-off time. Once accomplished, all the waybills filed as part of the e-IFM will automatically be "validated."
- ▶ ***Submission of Consolidated Cargo Manifest by Airline, AEO, Air Freight Forwarder, or De-Consolidator:***
1. Once an e-IFM reaches "validated" status, the consignees of each Master Airway Bill can file an e-CCM.
 2. For each house bill and master airway bill, the filer must fill in all the required fields.
 3. Filers of e-CCM must provide information on the gross weight per house airway bill.
 4. The E2M system will compare the sum of the gross weights of the airway bills which are covered under the same Master Airway Bill. The sum of the gross weights of the airway bills which form part of the e-CCM must equal the gross weight of that particular e-CCM.

▶ **Timelines:**

1. The cut-off time for the submission of the e-IFMs is as follows:
 - ▶ If the Port of Loading is in Asia, submission time is upon arrival of aircraft.
 - ▶ If the Port of Loading is other than Asia, submission time is 4 hours before the aircraft arrival.
2. If the airline or AEO submits the e-IFM after the cut-off time, it will be considered a late submission and there will be a penalty of P 10,000
3. The cut-off time for the submission of e-CCMs is as follows:
 - ▶ If the e-IFM is submitted by the cut-off time, the cut-off time for e-CCM is one hour after the aircraft's actual arrival.
 - ▶ If the e-IFM is submitted late, the e-CCM shall be accepted without penalty provided that the time of submission in the E2M system shall not exceed 24 hours after the e-IFM is registered by the Office of the Deputy Collector for Operations. This same privilege shall apply in case e-IFMs are not validated on in time (e.g., due to system error).

▶ **Supplemental e-IFM:**

1. A supplemental e-IFM should be filed for cargo which arrives aboard a plane for which an e-IFM has already been submitted, and was not covered by either master or house airway bills that were part of e-IFM which was submitted.
2. Provided an e-IFM has been filed, a supplemental e-IFM may be submitted without penalty up to 24 hours after cut-off time. Any cargo not covered by an e-IFM or supplemental e-IFM within the timeline provided will be considered un-manifested articles/items and will be subject to seizure.

▶ **Late submission of the e-IFM:**

1. Submissions of e-IFM beyond the timeline stated shall be considered "Late".
2. Late filing of e-IFM will only be accepted within 8 government working hours after the actual arrival of the aircraft. Beyond that, all the cargo on the flight will be considered as un-manifested and will be subjected to the rules on seizure.
3. Seizure of un-manifested cargo - All un-manifested cargo shall be subject to forfeiture in accordance with Section 2530 of the Tariff and Customs Code (TCCP).

▶ **Late submission of the e-CCM:**

1. Submissions of e-CCMs beyond the timeline stated shall be considered "Late".

2. The late e-CCM is subject to approval by the District Collector. Once approved, the Office of the Deputy Collector for Operations will directly validate the way bills of the e-CCM. At this point, the e-CCM will be accessible for the filing of entries for House Airway Bills, and the filing of e-CCMs for Master Airway bills.

▶ **Exceptions: Short Landed Cargo**

1. Definitions:

- ▶ Short landed cargo (SLC) - cargo which is the subject of an airway bill in the e-IFM, but arrives on the flight incomplete (i.e., only some but not the entire quantity listed on the airway bill arrives on the flight).
- ▶ First part of the SLC - The portion of the SLC which arrives on the flight for which an airway bill is first filed in the e-IFM.
- ▶ Second part of the SLC - The portion of the SLC which does not arrive on the flight for which an airway bill is first filed in the e-IFM.

2. Separate procedures are provided for cases where -

- ▶ No entry has been filed
- ▶ An entry has been filed but not paid
- ▶ An entry has been filed and paid

3. Whether short-landed or offloaded, once an entry is filed and payments are made, if the remaining cargo does not arrive, or is not dealt with in accordance with procedural requirements for short-landed or offloaded cargo, then the consignee can file a refund of any duties and taxes paid.

▶ **Exceptions: Off-Loaded Cargo**

1. Off-loaded cargo-cargo which is the subject of an airway bill in the e-IFM, but for which none of the cargo that is the subject of that airway bill arrives on the flight

2. Separate procedures are provided for cases where -

- ▶ No entry has been filed
- ▶ An entry has been filed but not paid
- ▶ An entry has been filed and paid

3. Whether short-landed or offloaded, once an entry is filed and payments are made, if the remaining cargo does not arrive, or is not dealt with in accordance with procedural requirements for short-landed or offloaded cargo, then the consignee can file a refund of any duties and taxes paid.

▶ **Amendments to airway bills**

1. Amendments on quantity and gross weight on e-IFMs can be made without penalty provided those are done before the cut-off time. The amendments shall be made through the VASP. Amendments other than on quantity and gross weight, even if made before the cutoff, must be coursed through the Legal Division.
2. Amendments to e-IFMs after the cut-off must be coursed through the Legal Division. Penalties may be imposed for major amendments to the initial submission.

▶ **Hard Copy of Documents to be Submitted**

1. Upon arrival of the aircraft, the general declaration, passenger list, and store list containing complete information, must be submitted to the Customs Officer.
 2. Upon opening of the belly of the aircraft, the cargo manifest, master airway bill, and house airway bill, containing complete information, must be submitted to the AOD.
 3. Upon opening of the tail of the aircraft, the AV7 (mail list), containing the number of sacks and the weight of each sack, must be submitted.
- ▶ CMO 10-2015 is effective May 11, 2015. Beginning then, all manifests for Air Cargo must be filed electronically with the BOC, following the prescribed procedures in this CMO.

[Editor's Note: CMO No. 10-2015 was published in The Manila Times on April 12, 2015.]

BOI Issuance

BOI Memorandum Circular (MC) No. 2015-01 prescribes the IRR of the 2014 IPP.

Memorandum Circular NO. 2015 - 01 dated April 6, 2015

The following are the salient features of the IRR:

▶ **General Policies**

A. Equity Requirement

- ▶ The minimum equity of the project applied for registration is 25% of the project cost unless exempted under any of the following:
 1. Projects of applicants with good track records in implementing registered project;
 2. Projects of publicly-listed companies;
 3. Projects not entitled to income tax holiday (ITH)
- ▶ For projects with a gestation period of more than three years, the 25% equity requirement shall be based on the annual capital requirement of the project, provided that the total equity requirement of 25% is complied with in the first year of ITH availment. Non-compliance shall result in forfeiture of ITH incentive for the taxable year.
- ▶ For multi-phase projects, the 25% equity requirement shall be based on the annual capital requirement of each phase, provided that (i) the total equity requirement for the first phase is complied with in the first year of ITH availment; and (ii) the corresponding cumulative equity requirement for the succeeding phases is complied with in the first ITH availment of each succeeding phase thereafter. Non-compliance shall result in forfeiture of ITH incentive for the taxable year.

B. Geographical Consideration in Industry Development Policy

- ▶ The BOI shall include geographical considerations in evaluating projects to be qualified for incentives based on, among others, regional development plans, industry roadmaps, industry clustering strategies and other relevant government initiatives to fill in the gaps of supply chains, enhance competitiveness, and promote global value chains.
- ▶ Projects in any of the identified Less Developed Areas (LDAs) shall be entitled to pioneer incentives and additional deduction from taxable income equivalent to 100% of expenses incurred in the development of necessary and major infrastructure facilities, unless otherwise specified in the Specific Guidelines.
- ▶ The BOI shall limit incentives to firms that locate in congested urban centers. The locational restriction applies to the National Capital Region wherein projects are not entitled to ITH.
- ▶ Exemption from the locational restriction may be given to the following:
 1. Projects in government industrial estates declared by national law or presidential proclamation prior to 01 January 1989 (unless subsequently privatized);
 2. Projects that will engage in service type activities;
 3. Expansion of export-oriented projects effected within the firm's existing premises;
 4. Modernization projects.

C. ITH Availment

▶ General Rules

1. The extent of the project's ITH entitlement shall be based on the following parameters:
 - ▶ Project's Net Value Added;
 - ▶ Job Generation;
 - ▶ Multiplier Effect;
 - ▶ Measured Capacity.
2. The income qualified for ITH shall be limited to the income directly attributable to the eligible revenue generated from registered project.
3. Except for renewable energy projects, the basis of net income qualified for ITH shall be limited to the 110% of the projected gross revenues as represented by the firm in its application for registration.
4. In cases where the project's actual revenues exceed the projections in its application (e.g., new markets/orders, additional employment/shifts, additional investments), the Board may increase the project's ITH availment proportionately. Request/s for adjustments of projected revenue must be filed before the projected revenue is exceeded; otherwise, ITH on the excess revenue (i.e., in excess of 110% of the projected gross revenue) shall not be granted.

5. ITH shall only be applicable to revenues on sales generated/ services rendered to other enterprises.
6. Only net income from operation of registered activity as certified under oath by CEO or CFO shall be entitled to ITH.
7. Enterprises with multiple registrations with the Board and/or several activities (whether BOI-registered or not) shall submit a list of cost items that are common with the qualified project and their cost allocation methodology for the said cost items, to ensure proper, fair and equitable allocation of common cost such as overhead and administrative costs.

▶ **Projects with Government Guarantee**

1. Projects with government guarantee/subsidy are not entitled to ITH except in cases where ITH has been considered in the rates/tariffs approved by the regulatory agency concerned.
2. The ITH is deemed to have been inputted in the grant of the government guarantee/subsidy if the ITH was incorporated in the bid documents of the project proponent/contract with government on the project, or the ITH was included in the financial model by the regulatory agency in approving the project's tariffs/rates. The latter case is particularly applicable to power projects and, thus, subject to a certification by the Energy Regulatory Commission (ERC).

▶ **Multi-Phase Projects**

Projects of an enterprise with multiple phases/locations may be registered on a per phase/location.

▶ **Inclusive Business**

1. Registered enterprises are encouraged to adopt the Inclusive Business strategy that provides: a) goods and services; and b) income and decent work opportunities for the low-income segment of society within the enterprise's supply or value chain, directly contributing to the improvement of living standards and poverty reduction.
2. The Inclusive Business strategy of the registered enterprise may be accredited by the Board subject to the guidelines that will be issued by the Board separately.

▶ **Specific Guidelines**

I. **Preferred Activities**

▶ **Manufacturing**

1. **Motor Vehicle based on Logistics Efficiency Index (excluding motorcycles, e-bikes and golf carts) and motor vehicle parts and components** - This covers the assembly of motor vehicles, manufacture of parts and components, research & development (R&D), research/testing laboratories, and technical vocational education and training institutions.

Motor Vehicle (excluding motorcycles, e-bikes and golf carts):

- ▶ Projects must include the manufacture of parts and components.
- ▶ Any of the following may qualify as new:
 - a. Projects that will involve the establishment of a factory complete with production machinery/equipment and facilities.
 - b. Projects of an existing motor vehicle manufacturer/ assembler of passenger cars/commercial vehicles that involves the production of a new model or a full model change (FMC) provided there is a new investment of at least Php 200 million.
- ▶ Any of the following may qualify for pioneer status:
 - a. Projects on the manufacture/assembly of alternative fuel vehicle and electric vehicles. Alternative fuel vehicles include hybrid vehicles, and flexible-fuel vehicles.
 - b. Manufacture/assembly of brand new three or four-wheel Philippine utility vehicles for cargo and/or passengers.
- ▶ The project's ITH Rate of Exemption shall be proportionate to the Logistics Efficiency Index (LEI).

Motor Vehicle Parts and Components:

- ▶ This covers the following:
 - a. Body panel stamping;
 - b. Engines, transmissions, and transaxle;
 - c. Large injection molded parts;
 - d. Bumpers; instrument panel; door trims; center console; grill; wheel house finisher; lamps; shock absorber; wiper motor/blade; engine mounts; electric power steering; combination meter; instrument cluster; chassis & sub-frame; interior finishing; switches; seat mechanism; retractable seat belts; window regulator; constant velocity joints/transmission; aluminum radiators; plastic fuel tanks; fuel pumps; brake system and components; evaporators and condensers; relays; flame laminated automotive fabric; door & rear view mirrors; automotive glass; engine parts & assembly; and transmission parts & assembly;
 - e. Controller assembly, motor, and battery (other than lead acid) for electric vehicle.
- ▶ Original Equipment Manufacturer (OEM) parts and components may qualify for pioneer status.

2. **Shipbuilding including parts and components** - This covers shipbuilding, manufacture of parts and components, R&D, and technical vocational education and training institutions.

Shipbuilding - This covers the construction of ships that are at least 500 GT and the manufacture of parts and components.

Registered enterprises must comply with Department of Labor and Employment (DOLE) Department Circular No. 1 series of 2009 on the Guidelines on Occupational Safety and Health in Shipbuilding, Ship Repair and Shipbreaking Industry.

Prior to start of commercial operation, the registered enterprise must submit a copy of its License to Operate or its equivalent from the Maritime Industry Authority (MARINA) or other concerned agency.

Shipbuilding Parts and Components - This covers the manufacture of parts and components such as but not limited to fit-outs, pumps, marine engines, navigational equipment, marine boilers, and propellers.

3. ***Aerospace Parts and Components*** - This covers the manufacture of aerospace parts and components, and support activities (e.g., R&D activities, research/testing laboratories, and technical vocational education and training institutions).
4. ***Chemicals*** - This covers the production of the Oleo-chemicals, Petrochemicals and derivatives, and Chlor-Alkali Plants products, R&D and research/testing laboratories.

Oleo-Chemicals- Oleochemical products include the manufacture of fatty acid and fatty alcohol.

Petrochemicals and Derivatives - include, but are not limited to, the manufacture of derivatives from ethylene such as ethylene dichloride (EDC) and vinyl chloride monomer (VCM); olefins and polyolefins [Polyethylene (PE), Polypropylene (PP), Polystyrene (PS), and Polyvinyl Chloride (PVC)], derivatives from propylene, derivatives from mixed C4, and aromatic derivatives.

Chlor-Alkali Plant - includes the manufacture of chlorine, alkali (caustic soda), and hydrochloric acid (muriatic acid).

5. ***Virgin Paper Pulp*** - This covers the production of pulp integrated with forest plantation, R&D, and technical vocational education and training institutions.
6. ***Copper Wires and Copper Wire Rods*** - This covers the manufacture of copper wire rods and enamelled wires, R&D, and technical vocational education and training institutions.

Copper Wires - This covers the production of copper enamel wires. All enamelled wire products must be compliant with the applicable Philippine National Standards (PNS).

Copper Wire Rods - Projects must have a minimum production capacity of 12,000 MT per year and would produce wire rods compliant with applicable international or Philippine National Standards for the production of copper wires and cables.

7. **Basic iron and steel products, steel grinding balls, long steel products (billets and reinforcing steel bars), and flat hot/cold-rolled products** - All iron and steel products must be compliant with the applicable Philippine National Standards (PNS).

8. **Tool and Die** - This covers the following:

- ▶ Production of dies and molds, research & development, and technical vocational education and training institutions;
- ▶ Simple, Compound and Progressive Dies for metal stamping or metal forging;
- ▶ Molds for die casting, for plastic injection or blow molding, glass blow molding, forging, encapsulation molds;
- ▶ Jigs and fixtures for metal cutting and metal forging.

▶ **Agribusiness and Fishery**

1. **Commercial Production subject to geographical supply considerations** - This covers the following:

- ▶ Coconut, corn, cassava, coffee, cocoa, fisheries, poultry and livestock (poultry and livestock production limited to areas in ARMM, Mindoro and Palawan);
- ▶ High value crops - rubber, spices, vegetables and fruits;
- ▶ Emerging commodities - sampaloc, jackfruit, peking duck, native pigs, siling labuyo, peanuts, monggo, and achuete.

All projects must be endorsed by the Department of Agriculture (DA).

2. **Commercial processing subject to geographical supply considerations** - This covers the following:

- ▶ Extraction of higher value substances from agricultural and forest-based raw materials through bioprocessing;
- ▶ Conversion of agricultural and fishery products, their by-products and wastes, to a form ready for further processing or final consumption.

Commercial processing of agricultural products should involve the use of domestically-produced raw or semi-processed agricultural products, unless these inputs are not locally produced or are not in sufficient quantity.

If using imported raw or semi-processed agricultural products that are locally produced or in sufficient quantity, the project may qualify for registration, provided that the finished/final product is for export, or the project qualifies for pioneer status.

3. **Production of animal and aqua feeds excluding those for game animals, fowls and other species for pet/leisure purposes subject to geographical supply considerations.**

4. **Production of fertilizers and pesticides subject to geographical supply considerations.**

5. **Modernization of sugar mills which will increase mill efficiency measured in terms of Overall Recovery rate to at least 85% subject to geographical supply considerations.**

6. **Mechanized agriculture support services** such as harvesting, plowing, spraying/dusting subject to geographical supply considerations.
7. **Agriculture support infrastructures** subject to geographical supply considerations such as facilities for drying, cold chain storage, blast freezing, bulk handling and storage; packing houses, trading centers, ice plants in Less Developed Areas, AAA slaughterhouse, AAA dressing plant.

▶ **Services**

1. **Integrated Circuit Design** - This covers R&D, technical vocational education and training institutions, and all logic & circuit design techniques required to design integrated circuits (ICs).
2. **Creative Industries/Knowledge-Based Services of small newly incorporated domestic players/enterprises only** - This covers the start-ups of small newly incorporated domestic players/enterprises engaged in the following:

- ▶ Animation;
- ▶ Software development with its own Intellectual Property developed for commercial sale;
- ▶ Game development;
- ▶ Health Information Management Systems.

3. **Ship Repair** - This covers repair of all types of vessels and offshore structures.

Ship repair facilities must have a dry-docking facility with a minimum capacity of 1,500 DWT.

Prior to start of commercial operation, the registered enterprise must submit a copy of its License to Operate or its equivalent from the MARINA or other concerned agency.

4. **Charging Stations for e-Vehicles** - This covers the establishment of charging stations for electric vehicles. The charging stations could refer to a 'service station' designed to simultaneously fast charge multiple vehicles similar to gasoline/diesel stations or a network of at least 5 charging stands.

Application for registration must be accompanied by an endorsement from the Department of Energy-Investment Promotion Office (DOE-IPO).

5. **Maintenance, Repair and Overhaul (MRO) of Aircraft** - This covers R&D activities and the establishment of research/testing laboratories, Centers of Excellence and technical vocational education and training institutions in support of the manufacturing of aerospace parts and components (or maintenance, repair and overhaul of aircraft).
6. **Industrial Waste Treatment** - This covers the establishment of treatment facilities for toxic and hazardous wastes (THW) from an industrial operation.

The following are the qualifications for registration:

- ▶ Must involve treatment, storage and disposal (TSD);
- ▶ Must be capable of handling THW;
- ▶ Must handle only locally generated industrial wastes.

Prior to start of commercial operation, the registered enterprise must submit a copy of its TSD Registration Certificate issued by the Environmental Management Bureau (EMB) of the DENR.

- ▶ **Economic and Low-cost Housing (horizontal and vertical) based on a price ceiling of PHP3 million and subject to geographical considerations**
- This covers the development of economic and low-cost housing and the manufacture of modular housing components.

1. *Economic and Low Cost Housing*

The following are the qualifications for registration:

- ▶ The selling price of each housing unit shall be more than Php450,000.00 but not exceeding Php3.0 million;
- ▶ Minimum of 20 livable dwelling units in a single site or building;
- ▶ Must be new or expanding economic/low-cost housing project;
- ▶ For vertical housing projects, at least 51% of the total floor area, excluding common facilities and parking areas, must be devoted to housing units.

In cases of unincorporated joint venture and similar arrangements between landowner and developer wherein the sharing scheme is in terms of the number of lots or units built, only the share of the developer may qualify for registration.

Projects that have already been completed and have incurred sales (booked sales) of housing packages shall not qualify for registration.

Any of the following may be considered as an expansion project:

- ▶ Construction of additional floors or annexes intended for housing units;
- ▶ If the project will locate adjacent or contiguous to an existing housing project owned by the same entity and shall share common facilities including access to the existing project.

All economic/low-cost housing projects must comply with the following:

- ▶ Socialized housing requirement by building socialized housing units in an area equivalent to at least 20% of the total registered project area or total BOI registered project cost for horizontal housing and 20% of the total floor area of qualified saleable housing units for vertical housing projects.

This may be done through any of the following modes:

- a. Development of a new settlement directly undertaken by the registered entity;

- b. Development of a new settlement through joint venture arrangements with any of the following: Local Government Unit, Affiliate or other related enterprise of the BOI-registered entity, Developer accredited by the HLURB. In the case of joint venture projects, the BOI registered entity shall be required to provide proof of funds transferred to the implementing entity.
 - c. Development of a new settlement through donation of land with basic infrastructure facilities (roads, water system, etc.) and/or construction materials intended for the calamity stricken areas as identified in the "Comprehensive Rehabilitation and Recovery Plan of the Areas Battered by Yolanda" in partnership either with any of the housing agencies, relevant LGUs, or with HLURB accredited NGOs.
- ▶ In lieu of the above modes for compliance with the socialized housing requirement, vertical housing projects may opt to donate provided: (1) the donation is made to a BOI-accredited NGO; and (2) the amount to be donated shall be equivalent to 30% of (20% of the building construction cost based on the actual number or equivalent total floor area of qualified saleable low cost housing units) or not less than 40% of the estimated ITH. Equivalent total floor area refers to the sum total of the floor area of all the registered low-cost housing units.
 - ▶ For purposes of ITH availment, compliance with the 20% socialized housing requirement shall be computed based on the actual units sold during the ITH availment period. Failure to submit proof of compliance shall result in forfeiture of ITH for that particular taxable period.
 - ▶ Non-compliance with the 20% socialized housing requirement on previous registrations using the ITH-based Compliance (IBC) shall result in denial of applications for registration for succeeding projects.
 - ▶ Project shall conform with the design standards set forth in the Rules and Regulations to Implement B.P. No. 220/P.D. No. 957 and other related laws.

Eligible projects in NCR, Metro Cebu, and Metro Davao may only be granted three years ITH, unless the socialized housing requirement compliance of the said projects would be undertaken in any of the identified calamity-stricken areas in the "Comprehensive Rehabilitation and Recovery Plan of the Areas Battered by Yolanda." In such cases, said projects may be eligible for four years of ITH.

Interest income arising from in-house financing shall not be entitled to ITH.

Application for registration must be accompanied by a copy of the Development Permit issued by HLURB or concerned LGU.

Prior to registration, a horizontal housing project applicant must submit copies of License to Sell (LTS) and Certificate of Registration (CoR) issued by HLURB. For a vertical housing project, the applicant may submit a copy of its temporary LTS provided that the copies of the final LTS and CoR shall be submitted prior to start of commercial operation.

2. **Modular Housing Components** - This covers the manufacture of modular housing components preferably using indigenous materials. These include roof/framing systems, wall/partition systems, flooring systems, door/window systems, and finishing/ceiling systems.

Application for registration must be accompanied by an endorsement from Accreditation of Innovative Technologies for Housing (AITECH).

- ▶ **Hospitals subject to geographical considerations** - This covers the establishment and operation of general and specialty hospitals and other health facilities.

Any of the following may qualify for registration:

1. General Hospitals (Level 1, 2 and 3) in any of the identified locations
2. General Hospital Level 3 in the following locations: Boracay Island, Cebu City, Lapu-Lapu City, Puerto Princessa City, Baguio City, Albay, Batangas, Cagayan de Oro City, Davao City, and Bohol
3. Specialty Hospitals and Other Health Facilities outside Metro Manila.
4. Other Health Facilities include:
 - ▶ Custodial Care Facilities (excluding those for rehabilitation owing to substance abuse);
 - ▶ Diagnostic/Therapeutic Facilities (excluding Clinical Laboratory; Drug Testing Laboratory, Laboratory for Drinking Water Analysis);
 - ▶ Specialized Out-Patient Facilities (excluding In-Vitro Fertilization Center and Stem Cell Facility); and
 - ▶ Geriatric Care Facilities.

Only revenues derived from medical and diagnostic services rendered by the registered entity shall be entitled to ITH. Income from lease/rent, and revenues from any other non-treatment related services will not be eligible for ITH.

Prior to start of commercial operation, the registered enterprise must submit the License to Operate from the Bureau of Health Facilities and Services of the DOH, where applicable.

Prior to availment of ITH, the registered enterprise must submit a copy of its Certificate of PhilHealth Accreditation, where applicable.

- ▶ **Energy**

1. **Exploration and development of energy sources (including energy crops or upstream biofuels)**

Exploration and Development of Energy Sources

Exploration and development of energy sources should be covered by a valid service contract with the DOE.

Exploration projects shall only be entitled to duty free importation of capital equipment.

Energy Crops

Only new plantations/growing areas dedicated for energy feedstock may qualify for BOI registration.

Applications for registration must be accompanied by a certification from the DA as provided under Section 4 of Joint Administrative Order (JAO) No. 2008-1, Series of 2008 (Guidelines Governing the Biofuel feedstock production under R.A. 9367).

2. **Power generation plants subject to capacity installation gap based on DOE's 5-year supply-demand forecast or up to 2019 (for example, if forecast is 6000MW, then the first 6000MW capacity receives the incentives and said installation gap will be divided among areas in Luzon, Visayas and Mindanao)**

This covers power generation projects utilizing conventional fuels (i.e., coal, diesel, bunker, natural gas, and geothermal), waste heat and other industrial wastes.

Only projects that will respond to the capacity installation gap based on DOE's 5-year supply-demand forecast and will operate on or before 2019 may qualify for registration. Availment of ITH shall be on a first to operate basis.

Power projects that are built contiguous to its existing generating facilities shall be considered as expansion projects. However, if the existing base load power plant has consistently dispatched at least 80% of its registered capacity for the past 3 years, the project to be registered may be considered new.

Revenues of base load plants derived through the Wholesale Electricity Spot Market (WESM) shall not be entitled to ITH.

Within one year from the date of registration, projects with loan components in their financing scheme must have achieved Financial Close; otherwise the project's registration shall be subject to automatic cancellation. As evidence of financial closing, the enterprise shall submit a certification, in a form and substance satisfactory to BOI, issued and addressed by the lenders to BOI confirming the financial agreements are in full force and in effect.

Power generation projects located in missionary areas or off-grid areas may qualify for pioneer status.

3. **Ancillary Services** - This includes the following:
 - i. Drilling Services for Geothermal Projects
 - ii. Support services such as frequency regulation and contingency reserves, voltage control, load following, reactive power support, and black start capability which are necessary to support the transmission capacity and energy that are essential in maintaining power quality and the reliability and security of the grid.
4. **Energy Efficiency Projects** - This covers the establishment of energy efficiency-related facilities and the manufacture of equipment for use in energy efficient systems.

Projects should utilize energy sources adopting environmentally-friendly technologies that comply with the Clean Air Act, the Environmental Impact System law, the Biofuels Act, where applicable, and other relevant environmental laws.

Applications for registration must be accompanied by an endorsement from the DOE.

► **Public Infrastructure and Logistics**

1. Airports and seaports (includes RORO ports) for cargo and passenger

The qualification for registration of projects is based on the government's infrastructure development policy and other relevant plans.

Application for registration must be accompanied by an endorsement from the Civil Aviation Authority of the Philippines (CAAP) or the Philippine Ports Authority (PPA), whichever is applicable.

2. Air, land and water transport limited to brand new ships, aircrafts, seaplanes, RORO; buses, boats, mass rail - limited to capital equipment incentive only

Air Transport - This covers passenger and/or cargo air transport operation for commercial purposes.

Lease with option to purchase an aircraft may be allowed.

Acquisition of additional brand new aircraft may be registered as new.

Application for registration must be accompanied by an endorsement from the Civil Aeronautics Board (CAB), when applicable. Such endorsement must contain information on the routes to be served.

Prior to start of commercial operation of each aircraft, the registered enterprise must submit a copy of the Certificate of Airworthiness issued by Civil Aviation Authority of the Philippines (CAAP).

Only revenues derived from cargo air freight fares, passenger air fares, and revenues on refund, cancellation and rebooking fees shall be entitled to ITH. Incidental revenues such as those earned from excess baggage (including prepaid baggage), seat selector options, merchandise sales such as the sale of meals/beverages, souvenirs, travel related products and other commodities, package tours and other incidental revenues as may be determined by the Board shall not be entitled to ITH.

Land Mass Transport - This covers mass transport using brand new buses that run on electric batteries, and/or compressed natural gas.

The following are the qualifications for registration:

- i. Must utilize buses with at least Euro IV-compliant engine and using Euro IV fuel, if applicable; and
- ii. Must have own terminal and garage that can accommodate all the buses under its franchise(s).

Application for registration must be accompanied by a copy of the application for franchise with the Land Transportation Franchising & Regulatory Board (LTFRB).

Prior to start of commercial operation, the registered enterprise must submit a copy of its original LTFRB Franchise Verification with Original Receipt.

Water Transport - This covers domestic/inter-island shipping, i.e. pure cargo, passenger, and passenger-cargo vessel operations including RORO Terminal System operations.

Tankers, High-speed Craft, RORO Vessels serving primary routes and Passenger/Cargo vessels having gross weights of 150 GT and above may qualify for registration.

Application for registration must be accompanied by an endorsement of the project and proof of accreditation of the shipping enterprise by MARINA.

Prior to start of commercial operation, the registered enterprise must submit proof that the vessel is registered with MARINA and a copy of the vessel's Class and Statutory Certificate as required by MARINA.

RORO operator/ enterprise serving missionary routes, as indicated in the Certificate of Public Convenience (CPC) issued by MARINA, may qualify for pioneer status.

Acquisition of additional brand new vessel/s may be registered as new projects.

Mass Rail - This covers mass rail transport system for passengers and cargoes in line with the transport development plans and programs of the Department of Transportation and Communications (DOTC).

3. **LNG Storage and Regasification Facility** - This covers the establishment and operation of natural gas storage and regasification facilities in accordance with relevant Philippine National Standards (PNS).

LNG gasification plants may be located on land and/or on floating barges.

The following are the qualifications for registration:

- i. Must have new facilities;
- ii. Must cater to power plants, industrial plants, commercial establishments, etc. ;
- iii. Must cater to at least one (1) clientele, other than the proponent's own business;
- iv. The registered enterprise must submit a copy of its Permit to Operate issued by the DOE prior to start of commercial operations.

4. **Bulk water treatment and supply**

Bulk water supply projects must involve extraction of water from its natural source, except shallow and deep wells, and water treatment for commercial purposes. The water treatment facility shall cover the minimum basic process flow of a treatment plant (i.e. screening, mixing, flocculation, sedimentation, filtration and chlorination) with capacity sufficient to handle the volume of raw water to be supplied to its target service area.

Only new bulk water treatment and supply projects may qualify for registration. Supply of water (or distribution) should include extraction of water, treatment and installation of distribution lines and flow metering systems. Treated water should be in accordance with the PNS for Drinking Water.

Projects involving any of the foregoing areas of water operations dedicated to a particular industrial estate, industrial community, or subdivision are not qualified for registration.

Application for registration must be accompanied by a copy of the Water Permit.

Prior to start of commercial operations, the registered enterprise must submit a copy of the Certificate of Public Convenience (CPC), if applicable. Applications covering both supply and distribution projects shall be unbundled showing the revenue and cost structure of each.

- ▶ **PPP Projects** - This covers projects implemented under RA No. 6957, as amended by RA No. 7718 (Amended Build-Operate-and-Transfer Law). Application for registration must be accompanied by an endorsement from the Public-Private Partnership (PPP) Center.

II. **Export Activities** - This covers the manufacture of export products, services exports and activities in support of exporters.

- ▶ **Production and Manufacture of Export Products** - This covers the production/manufacture of non-traditional export products and with export requirement of at least 50% of its output, if Filipino-owned, or at least 70%, if foreign-owned.

Export products include electronics, garments and textiles (including brassieres, gloves and mittens, and infant's wear), footwear and leather goods, furniture, jewelry, marine and aquaculture, mineral products, and others.

In the export of mineral products, the Specific Guidelines for RA No. 7942 of this IPP shall apply suppletorily.

- ▶ **Services Exports** - This covers service activities rendered to clients abroad and paid for in foreign currency with export requirement of at least 50% of its revenue, if Filipino-owned, or at least 70%, if foreign-owned. This also covers non-voice business processing operations such as administrative and business services including analytics, data management, engineering and architectural services.

Mere deployment of people or individual practice of profession abroad is not qualified for registration.

For contact centers, the project must have a minimum investment cost of the Philippine Peso equivalent of US\$5,000 per seat to qualify for registration. This amount covers the cost of equipment (hardware and software), office furniture and fixture, building improvements and renovation, and other fixed assets except land, building and working capital. If the equipment used were leased, the same should be converted to assets in terms of commercial interest rates and amortized over a five-year period. If the equipment were consigned, the same should have an assigned value to be considered as part of the project cost.

In the case of contact centers, revenues shall be unbundled to show the breakdown of servicing domestic and overseas markets.

- ▶ **Activities in Support of Exporters** - This covers activities directly supporting export producers as follows:
 1. Manufacture of parts/components and materials and supplies directly/ reasonably needed in the production of the export product;
 2. Services comprising a portion of the manufacturing process;
 3. Product testing and inspection;
 4. Repair and maintenance; and
 5. Logistics services.

This also covers service providers to foreign film and television production projects in the country as endorsed by the Philippine Film Export Services Office (PFESO) as mandated by EO No. 674.

III. Special Laws

- ▶ **Industrial Tree Plantation** - This covers extensive plantation of forest land of tree crops (except fruit trees) for commercial and industrial purposes.

Tree crops include timber and non-timber species such as rubber, bamboo, rattan and so on (excluding fruit trees) for commercial and industrial purposes.

In cases of tree plantations that are joint venture agreements with other private entities, community organizations or government entities, only the share of the registered enterprise may be entitled to ITH.

Application for registration must be accompanied by an endorsement from the DENR.

- ▶ **Exploration, Mining, Quarrying and Processing of Minerals** - This covers the exploration and development of mineral resources, mining/quarrying and processing of metallic and non-metallic minerals.

Mining/quarrying and mineral processing projects are limited to capital equipment incentives.

Application for registration must be accompanied by a copy of the Exploration Permit, Mineral Production Sharing Agreement (MPSA), or Financial or Technical Assistance Agreement (FTAA), whichever is applicable.

- ▶ **Publication or Printing of Books** - This covers content development intended for books and publication of books in print or digital format.

The following may qualify as new:

1. New book titles (original works, and original text with annotations); and
2. First format by which the new book title will be produced or published. The succeeding format (e.g., print to digital, or vice versa) by which the same title is published will be regarded as "Expansion."

Re-prints, revisions, and succeeding editions of existing titles will not qualify for registration.

For unpublished content, application for registration may be on a per book title or a maximum of five book titles per application.

For publishing, the following will apply:

1. A minimum of 10 titles with 1,000 copies each for its first print run, in case of printed books; and
2. A minimum of 10 titles each, in case of e-books.

Application for registration must be accompanied by an endorsement from the National Book Development Board (NBDB).

- ▶ **Refining, Storage, Marketing and Distribution of Petroleum Products** - This covers refining, storage, distribution, and marketing of petroleum products.

For gasoline retailing stations, except those locating in LDAs listed in this IPP, the applicant shall be required to invest a minimum capital of PhP10 million per station, excluding land, or such amount as may be determined jointly by BOI and DOE for augmentation purposes, as the need arises; Provided, that foreign retailers shall comply with the requirements provided under RA No. 8762, otherwise known as the Retail Trade Liberalization Law, and its implementing rules and regulations.

For storage, marketing and distribution, only investments of new industry participants may be entitled to incentives.

Application for registration must be accompanied by an endorsement from the DOE certifying that the applicant is a new industry participant with new investments.

For storage, marketing and distribution, petroleum products excluding liquefied petroleum gas (LPG), shall be sourced from the new industry participants as defined under RA No. 8479, except in cases of emergency supply situation.

For projects that involve more than one activity, i.e., storage, marketing and distribution, each must be unbundled showing the revenue streams and costs for each activity.

Blending of petroleum products alone may only be entitled to capital equipment and other non-fiscal incentives.

Applicant enterprises shall elect to be governed by the provisions of EO No. 226 or RA No. 8479 at the time of their application for registration, provided that such election once made shall be final.

- ▶ **Rehabilitation, Self-Development and Self-Reliance of Persons with Disability** - This covers the manufacture of technical aids and appliances for the use and/or rehabilitation of persons with disability, and the establishment of special schools, day care centers, homes, residential communities or retirement villages solely to suit the needs and requirements of persons with disability.

Manufacturing of technical aids and appliances used by persons with disability includes but is not limited to the following:

1. Walk-in baths designed for persons with disabilities;
2. Commode chairs;
3. Braille books;
4. Hoists and lifting chairs designed for incapacitated people, including stair lifts;

5. Wheelchairs, scooters and automobiles using special controls or assistive technology designed for persons with disabilities;
6. Hearing-aids;
7. Artificial limbs, orthotics, prosthetics and orthopedic braces;
8. Automatic/mechanical lifts to be attached to motor vehicle.

Application for registration must be accompanied by an endorsement from the Department of Social Welfare and Development (DSWD).

- ▶ **Renewable Energy** - This covers developers of renewable energy (RE) facilities, including hybrid systems. This also covers manufacturers, fabricators and suppliers of locally-produced RE equipment and components.

Application for registration must be accompanied by a copy of the DOE Certificate of Registration, Certificate of Accreditation or DOE endorsement, whichever is applicable.

Applicant enterprises shall elect to be governed by the provisions of EO No. 226 or RA No. 9513 at the time of their application for registration.

- ▶ **Tourism** - This covers tourism enterprises that are outside the tourism enterprise zones (TEZs) and are engaged in the following:
 1. Tourist transport services whether for land, sea and air transport for tourist use;
 2. Establishment and operation of:
 - ▶ Accommodation establishments such as but not limited to hotels, resorts, apartment hotels, tourist inns, motels, pension houses, private homes for home stay, eco-lodges, condotels, serviced apartments, and bed and breakfast facilities;
 - ▶ Convention and exhibition facilities or meetings, incentives, conventions and exhibition (MICE) facilities;
 - ▶ Amusement parks;
 - ▶ Adventure and eco-tourism facilities;
 - ▶ Sports facilities and recreational centers;
 - ▶ Theme parks;
 - ▶ Health and wellness facilities such as but not limited to spas;
 - ▶ Agri-tourism farms and facilities; and
 - ▶ Tourism training centers and institutes.
 3. Development of retirement villages;
 4. Restoration/ preservation and operation of historical shrines, landmarks and structures.

Tourist Transport - This covers transport services whether for land, water and air transport for tourist use.

Land transport covers the operation of brand new, world-class buses and/ or mini-buses/coasters. The quantity or number of units of vehicles that may be allowed shall be determined based on the number of tourist arrivals in the area or the ratio of hotel/resort facilities/rooms.

Tourist transport operators must have garage, hangar or berthing/docking facilities.

Application for registration of water and air transport operators must be accompanied by an endorsement from MARINA or CAAP, respectively.

Prior to start of commercial operation, the registered tourist land transport operator must submit a copy of Certificate of Public Convenience (CPC).

Tourism-Related Facilities - Application for registration must be accompanied by an endorsement from the Department of Tourism (DOT).

Prior to ITH availment, the registered enterprise must submit a copy of DOT accreditation.

Only income derived from tourism-related activities shall be entitled to ITH.

Accommodation Facilities

Condotel/apartment hotel/serviced apartment/ tourist inn/pension house/motel, must cater to tourists/guests to qualify for registration. For condotel/apartment hotel/serviced apartment, each unit must have fully equipped kitchen and laundry facilities.

Income arising from gaming and mall operations are not qualified for ITH.

For modernization projects, replacement of carpets, pillows, mattresses and other similar items shall be excluded from the computation of the ITH rate of exemption.

For hotels and resorts:

1. The quantity or number of units of buses and/or mini-buses/coasters that may be allowed shall be determined based on the number of tourist arrivals in the area or the ratio of hotel/resort facilities/rooms.
2. Accommodation establishments locating in the following areas shall not be entitled to ITH: Metro Manila; Cebu City; Mactan Island; and Boracay Island.
3. Only income directly attributable to revenue generated from the hotel operations, specifically from room accommodation and income from food and beverage outlets within the hotel owned by the registered enterprise shall be qualified for ITH.

Health and Wellness - This covers the establishment and operation of destination spa, resort/hotel spa, therapeutic centers, traditional healing (e.g., Philippine "hilot", "dagdagay", "ventosa", etc).

Tourism Training Centers and Institutes

The following are the requirements for registration:

1. The curriculum must be endorsed by the appropriate industry association and approved by either the TESDA for training courses or CHED for degree courses or other concerned government agencies/ authority.
2. The registered education/training/learning institutions must provide training laboratories/On-the-Job facilities and equipment.

Retirement Village

Locators engaged in the activities listed in the IPP that are related to retirement business may be registered as separate activity.

Requirements:

1. Must have a minimum of four hectares of contiguous land;
2. Project cost must be at least the Philippine Peso equivalent of US \$10 million.

Restoration/Preservation and Operation of Historical Shrines, Landmarks and Structures - This covers the conservation, preservation or restoration of national sites or properties.

Projects undertaking the conservation and preservation, restoration or maintenance of historico-cultural heritage that includes any of the following may qualify for registration:

1. National shrines, monuments, and/or landmarks;
2. Local historical sites/properties classified, identified, and listed in the National Registry of Historic Structures;
3. Cultural properties, treasures and/or artifacts.

Application for registration must be accompanied by an endorsement from the National Historical Commission of the Philippines (NHCP).

PEZA Issuance

Memorandum Circular No. 2015-014 extends the period of optional use by PEZA enterprises of the BOC's e2m Transshipment System for Import Cargo.

Memorandum Circular No. 2015 - 014 dated April 28, 2015

- ▶ In lieu of the effectivity of BOC-PEZA JMO No. 01-2015, the use by PEZA-registered enterprises of BOC's e2m Transshipment System for their import cargo, including the implementation of corollary procedures, shall continue to be optional for another 30 days from 4 May 2015.
- ▶ Pending issuance of further guidelines, BOC accreditation of PEZA enterprises through the BOC-Account Management Office will not be required for purposes of lodgment in BOC's e2m Transshipment System, as long as the company's Client Profile Registration System is active and its importations are covered by a sufficient bond, the minimum face value of which shall be PhP 1,000,000.00.
- ▶ All existing bonds shall not be cancelled and shall continue to be valid until their respective expiry dates provided that the prescribed minimum face value is complied with.
- ▶ PEZA enterprises are strongly encouraged to lodge transshipment entries for their respective importations through BOC's e2m Transshipment System in preparation for the mandatory implementation of BOC-PEZA JMO No. 01-2015.

A REIT is a stock corporation established principally for the purpose of owning income-generating real estate assets. For real estate to be considered as an investment in "income-generating real estate" under the REIT Act, the same must consist of tangible real properties. Real estate mortgages are not considered by the SEC as tangible real properties.

SEC Opinion

SEC-OGC Opinion No. 15-01 dated April 22, 2015

Facts:

A Co is a government-owned and controlled corporation. Its primary purpose is to develop and provide a secondary market for home mortgages granted by public and/or private home financing institutions. A Co is now considering other options to develop the secondary market for home mortgages, one of which is through investing in real estate mortgages under the Real Estate Investment Trust (REIT) Act.

Issue:

Can a REIT invest in real estate mortgages under the REIT Act, and consequently, is a real estate mortgage considered “income-generating real estate” under the REIT Act?

Ruling:

A REIT is defined under the REIT Act as a stock corporation established principally for the purpose of owning income-generating real estate assets. Thus, from the foregoing definition, the law primarily recognizes the purchase of commercial real estate deriving income from rentals thereto, or equity trust, as a mode for establishing a REIT here in the Philippines.

Another mode of establishing a REIT recognized in other jurisdictions is mortgage trust; the investment of assets in loans secured by mortgages in real property. This kind of REIT is what A Co seeks to establish. However, mortgage trusts are not the proper subject under the REIT Act. Further, to be considered as an “income-generating real estate”, the subject matter must consist of tangible real properties. Thus, a REIT cannot invest in real estate mortgages under the present REIT Act because real estate mortgages are not tangible real properties.

Court Decisions

Philippine National Bank vs. Commissioner of Internal Revenue

Supreme Court Third Division, G.R. No. 206019 promulgated March 18, 2015

In claims for refund of excess CWT, the utilization or non-utilization of the CWT subject of the claim may be established by evidence other than BIR Form No. 2307, such as the AFS, annual ITR, and schedule of prepaid tax for the year.

Facts:

Gotesco Tyan Ming Development, Inc. (Gotesco) entered into a syndicated loan agreement with Petitioner Philippine National Bank (PNB) and three other banks. To secure the loan, Gotesco mortgaged the Ever Ortigas Commercial Complex in favor of PNB. Gotesco defaulted in its obligations and PNB foreclosed the mortgaged property.

A certificate of sale was issued in favor of PNB. After the one-year redemption period lapsed without Gotesco redeeming the property, PNB prepared to consolidate its ownership over the foreclosed property and paid documentary stamp tax (DST) to the BIR. It also withheld and remitted to the BIR CWT equivalent to 6% of the bid price.

PNB filed a claim with the BIR, and a day later, a Petition for Review with the Court of Tax Appeals (CTA), for the refund of excess CWT paid to the BIR. PNB claimed that it inadvertently applied the 6% CWT on the sale of real property classified as an ordinary asset. Since Gotesco is primarily engaged in the real estate business, PNB argued that it should have applied the 5% CWT in accordance with Section 2.57.2(J) (B) of RR No. 2-98 as amended by RR No. 6-01, or the Consolidated Withholding Tax Regulations.

Although the CTA agreed with PNB that the applicable CWT rate is 5%, it denied the claim for refund due to PNB's failure to present in evidence Gotesco's Certificates of Creditable Taxes Withheld (BIR Form No. 2307). The CTA ruled that without Gotesco's BIR Form No. 2307, PNB cannot establish the fact that no part of the CWT sought to be refunded was used for the settlement of Gotesco's tax liabilities for the same year 2003.

The CTA *En Banc* denied PNB's appeal and ruled that the requirement to present BIR Form No. 2307 is significant, considering that PNB is claiming for the refund of the erroneously withheld tax in its capacity as a withholding agent, as the amount claimed for refund is not PNB's unutilized CWTs, but those of Gotesco.

Issue:

Is BIR Form No. 2307 required to prove Gotesco's non-utilization of the CWT subject of the claim for refund?

Ruling:

No. The fact of utilization or non-utilization of the CWT subject of the claim for refund may be established by evidence other than the BIR Form No. 2307.

In claims for refund of excess and unutilized CWT, the submission of BIR Form 2307 is required to prove the fact of withholding of the excess CWT being claimed for refund. There is nothing in BIR Form No. 2307 which would establish either utilization or non-utilization, as the case may be, of the CWT. There is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence that may be adduced to prove such non-utilization.

PNB presented in evidence the pertinent Withholding Tax Remittance Returns (BIR Form No. 1606) to prove the withholding and remittance to the BIR of the CWT subject of the refund.

To establish that Gotesco did not utilize the CWT subject of the refund, PNB presented in evidence Gotesco's AFS, ITR, and Schedule of Prepaid Tax for taxable year 2003, as well as the testimony of Gotesco's former accountant.

Gotesco's 2003 AFS, which still included the mortgaged property in the asset account "Properties and Equipment," proved that Gotesco did not recognize the foreclosure sale and continued to assert ownership over the property. It stands to reason that it also refused to recognize the payment of the CWT that was due on the sale.

On the other hand, Gotesco's 2003 ITR and Schedule of Prepaid Tax showed that it did not utilize the CWT subject of the refund. This was corroborated by Gotesco's former accountant, who testified that the amount subject of PNB's claim for refund was not included among the CWTs stated in Gotesco's 2003 ITR.

Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue

CTA (*En Banc*) EB Case 1045 promulgated March 30, 2015

Facts:

Petitioner Mindanao II Geothermal Partnership (MGP) is a partnership between Marubeni Pacific Energy Holdings Corporation (MPEHC) and Marubeni Pacific II Energy Holding Corporation (MP2EHC). The partnership was effectively dissolved on March 29, 2010 when the SEC approved the merger of MPEHC and MP2EHC with Axia Power Holdings Philippines Corporation (APHPC), with the latter as the surviving entity.

On April 12, 2010, MGP filed with Respondent CIR a request for the refund or issuance of a Tax Credit Certificate (TCC) of its excess or unutilized CWT. On April 15, 2010, MGP filed with the CTA a Petition for Review for the refund or issuance of a TCC representing the excess CWT.

A corporation that has ceased operations prior to the full utilization of tax credits previously carried over may file a claim for refund of said unutilized tax credits. The 2-year prescriptive period to file said claim commences 30 days after approval by the SEC of its plan for dissolution. The short period ITR filed by the taxpayer must show that the tax credits previously carried over remain unutilized as of the said period.

The CIR argued, among others, that MGP is not entitled to the claim since it has chosen the “carry-over of excess income tax” option in its ITR, which choice is irrevocable pursuant to Section 76 of the Tax Code. The CTA Special Third Division denied the claim on the grounds of prescription and insufficiency of evidence. MGP appealed the decision to the CTA *En Banc*.

Issue:

Is MGP entitled to the claim for refund?

Ruling:

No, MGP failed to present sufficient evidence to prove its claim for refund.

Citing the Supreme Court in *Bank of Philippine Islands vs. Commissioner of Internal Revenue, GR No. 144653 promulgated August 28, 2001*, the CTA summarized the principles covering claims for refund of excess CWT of corporations that have ceased operations:

1. When a corporation opts to carry over the excess CWT for a given taxable year as credit against the income tax due for the succeeding taxable quarters or years, such option is irrevocable for the whole amount of the excess CWT;
2. The excess tax credits will remain in the taxpayer’s account to be carried over and applied against its income tax liabilities in the succeeding taxable periods until fully utilized;
3. If the excess tax credits remain unutilized or partly utilized in the year the corporation permanently ceases its operation, the same may be the subject of a refund claim;
4. The corporation must file an ITR with the BIR covering the short period or from the beginning of the year when the corporation was dissolved up to the date of its dissolution or retirement as approved by the SEC. It shall pay the corresponding tax due, if any, or reflect any excess tax credits from the previous year or the short period;
5. The short period tax return must be filed within 30 days after approval by the SEC of the plan or resolution of dissolution; and,
6. The 2-year prescriptive period for filing a claim for refund of excess CWT shall commence 30 days after the approval by the SEC of the plan for dissolution.

Where a corporation ceases operations before full utilization of the tax credits previously carried over, it may file a claim for refund of the remaining tax credits. In such case, the irrevocability rule ceases to apply as the credits can no longer be carried over.

However, the CTA found that MGP did not file a short period ITR covering the period January 1, 2010 to March 29, 2010, which proved fatal to its claim. While the company permanently ceased operations on March 29, 2010 upon approval of the merger, there is no indication that the excess tax credits carried over from prior taxable years remained unutilized as of such date. MGP should have presented and offered in evidence the short period ITR as well as pertinent accounting records and books of accounts to show that the said excess tax credits remained unutilized as of the said period.

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