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Tax bulletin



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Highlights

BIR Issuances

- ▶ Revenue Regulations (RR) No. 2-2015 amends RR Nos. 2-2006 and 11-13 with respect to the submission of copies of the Certificates of Creditable Tax Withheld at Source (Form No. 2307) and Certificates of Compensation Payment/Tax Withheld for Compensation Payment with or without Tax Withheld (Form No. 2316). **(Page 4)**
- ▶ RR No. 3-2015 further amends RR No. 2-98 to implement the provisions of Republic Act (RA) No. 10653 on the increase to P 82,000.00 of the total amount of exclusion from gross income for 13th month pay and other benefits. **(Page 6)**
- ▶ RR No. 4-2015 further amends Section 2 of RR No. 13-08, as amended by RR No. 13-2013, on the definition of raw sugar and raw cane sugar for VAT purposes. **(Page 6)**
- ▶ RR No. 5-2015 amends RR No. 6-2014 by imposing penalties for failure to file returns under the BIR Electronic System by taxpayers mandatorily covered by Electronic Filing and Payment System (eFPS) or Electronic BIR Forms (eBIRForms). **(Page 7)**
- ▶ Revenue Memorandum Circular (RMC) No. 10-2015 directs all Revenue District Offices (RDOs) to accept/receive income tax returns (ITRs) filed by employees of Large Taxpayers (LT). **(Page 8)**
- ▶ RMC No. 11-2015 clarifies the tax agents/practitioners who are mandated to use the eBIRForms in the preparation and filing of their tax returns as provided under RR No. 6-2014. **(Page 8)**
- ▶ RMC No. 12-2015 clarifies the filing of “no payment” returns in relation to RR Nos. 6-2014 and 5-2015. **(Page 8)**
- ▶ RMC No. 13-2015 further amends RMC No. 57-2011, as amended by RMC Nos. 21-2014 and 9-2014, by deferring anew the requirement to disclose supplemental information in BIR Form Nos. 1700 and 1701 covering calendar year 2014. **(Page 9)**
- ▶ Revenue Memorandum Order (RMO) No. 7-2015 prescribes the revised consolidated schedule of compromise penalties for violations of the Tax Code. **(Page 9)**

BOC Issuances

- ▶ Customs Administrative Order (CAO) No. 3-2015 prescribes the consolidated guidelines and procedures for the imposition of penalties arising from post-entry audits. **(Page 23)**
- ▶ Customs Memorandum Order (CMO) No. 8-2015 implements the Joint Memorandum Order (JMO) between the BOC and the PEZA on the Mandatory Electronic Processing of Transshipments of PEZA Locators to PEZA Zones, and other procedures. **(Page 29)**

PEZA Issuances

- ▶ PEZA MC No. 2015-010 defines the regulated chemicals and goods which require permits and/or licenses from concerned agencies before they are transported into the PEZA economic zones. **(Page 34)**
- ▶ PEZA MC No. 2015-011 circularizes Bureau of Immigration (BI) Operations Order No. SBM-2015-007 which restores the exemption of the holders of PEZA endorsed Section 47(a)2 visas from payment of exit and re-entry fees. **(Page 35)**

BSP Issuances

- ▶ Circular No. 871 amends Subsections X185 - X185.12 and X186.4 of the Manual of Regulations for Banks (MORB) on the Internal Control System and Internal Audit Function in banks, respectively. **(Page 36)**
- ▶ Circular No. 872 amends Section X104 of the MORB. **(Page 38)**

BLGF Opinion

- ▶ Ordinance No. 169 of Valenzuela City which increases by 300% the market values of real property classified as "industrial" is legal. The BLGF has no authority to declare as null and void or suspend the implementation of any ordinance enacted by the LGU concerned. **(Page 39)**

Court Decisions

- ▶ The power of the Commissioner of Internal Revenue (CIR) to interpret the provisions of the Tax Code and other tax laws is subject to review by the Secretary of Finance. An adverse ruling of the Secretary of Finance is appealable to the Court of Tax Appeals (CTA).

When shares of stock not traded through the local stock exchange are sold at a price below their fair market value (FMV), the difference is subject to donor's tax. Section 100 of the Tax Code prescribes that the amount by which the FMV of the property sold exceeds the value of the consideration shall be deemed a gift. **(Page 40)**

- ▶ A debt instrument is considered a 'deposit substitute' if the borrowing is made from 20 or more corporate or individual lenders at any one time.

The phrase "at any one time" for purposes of the 20 or more lender threshold covers transactions not only at the time of issuance of the bond in the primary market but also during all subsequent sale or trading of the bond in the secondary market. **(Page 41)**

- ▶ To properly claim uncollectible receivables as a bad debt deduction, a taxpayer must comply with the requirements prescribed by Section 34 (E)(1) of the Tax Code, as implemented by RR No. 5-99, as amended by RR No. 25-02. **(Page 44)**

BIR Issuances

RR No. 2-2015 amends RR Nos. 2-2006 and 11-13 with respect to the submission of copies of the Certificates of Creditable Tax Withheld at Source (Form No. 2307) and Certificates of Compensation Payment/Tax Withheld for Compensation Payment with or without Tax Withheld (Form No. 2316).

Revenue Regulations No. 2-2015 issued on March 5, 2015

- ▶ The pertinent provisions of Section 2.D. of RR No. 2-2006 are amended to read as follows:

“Section 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST OF WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (SAWT) BY THE PAYEE/ INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT/ INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS

xxx

- D. Returns required to be filed with SAWT and Certificate of Creditable Tax Withheld at Source

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Provided, however, that the SAWT shall be submitted through the applicable modes of submission prescribed under RR No. 1-2014, using the data entry and validation module of the BIR. On the other hand, in lieu of the submission of hard copies of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) as an attachment to SAWT, the following procedures shall be strictly observed:

1. Scan the original copies of BIR Form No. 2307 through a scanning machine or device;
2. Store the soft copies of BIR Form No. 2307 using the “PDF” file format with the filenames alphabetically arranged in a Digital Versatile Disk-Recordable (DVD-R). The filename shall contain the following information separated by an underline:
 - a. BIR-registered name of the taxpayer-payor;
 - b. Taxpayer Identification Number (TIN), including the head office code or branch code of the payor, whichever is applicable; and
 - c. Taxable period.

Example: Rizal Mfg. Corp._131885220000_09312014;

3. Label the DVD-R containing the soft copies of the said BIR forms in accordance with the format prescribed in Annex “A” of these Regulations; and
4. Submit the duly accomplished DVR-R to the BIR Office where the taxpayer is duly registered, together with a notarized Certification, using the format in Annex “C” of these Regulations, duly signed by the authorized representative of the taxpayer certifying that the soft copies of the said BIR form contained in the DVD-R are the complete and exact copies of the original thereof.”

- ▶ The provisions of Section 2.83 of RR No. 2-98, as amended by RR No. 11-2013, are further amended to read as follows:

“Sec. 2. 83. Statements and Returns. -

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However, in cases covered by substituted filing, the employer shall furnish each employee with the original copy of BIR Form No. 2316 and, in lieu of the submission of hard copies of the duplicate original thereof, the following procedures shall be strictly observed:

1. Scan the duplicate original copies of BIR Form No. 2316 through a scanning machine or device;
2. Store the soft copies of BIR Form No. 2316 using the “PDF” file format with the filenames alphabetically arranged in a Digital Versatile Disk-Recordable (DVD-R). The filename shall contain the following information:
 - a. Surname of the employee;
 - b. Taxpayer Identification Number (TIN) of the employee; and
 - c. Taxable period.

Example: Dela Cruz_131885220000_12312014

3. Label the DVD-R containing the soft copies of the said BIR forms in accordance with the format prescribed in Annex “B” of these Regulations; and
4. Submit the duly accomplished DVR-R to the BIR Office where the taxpayer is duly registered not later than February 28 following the close of the calendar year, together with a notarized Certification prepared according to the format in Annex “C” of these Regulations and duly signed by the authorized representative of the taxpayer certifying that the soft copies of the said BIR form contained in the DVD-R are the complete and exact copies of the original thereof.

xxx.”

- ▶ All taxpayers registered with the Large Taxpayers Service (LTS) shall strictly comply with the requirements prescribed by these Regulations.
- ▶ Any non-LTS taxpayer duly registered in the Revenue District Office (RDO) may, at his or her option, comply with the said requirements.
- ▶ Upon election of the option to adopt the requirements of these Regulations, the non-LTS registered taxpayer shall no longer be allowed to submit hard copies.
- ▶ These Regulations shall take effect after 15 days following publication in leading newspaper of general circulation.

[Editor’s Note: RR No. 2-2015 was published in the Manila Bulletin on March 6, 2015.]

RR No. 3-2015 further amends RR No. 2-98 to implement the provisions of RA No. 10653 on the increase to P 82,000.00 of the total amount of exclusion from gross income for 13th month pay and other benefits.

Revenue Regulations No. 3-2015 dated March 9, 2015

- ▶ The total amount of 13th month pay and other benefits allowed as an exclusion from gross compensation income is increased from P30,000.00 to P82,000.00.
- ▶ The exclusion from gross compensation income of the amount of P 82,000.00 shall apply only to the 13th month pay and other benefits paid or accrued beginning January 1, 2015, and shall in no case apply to other compensation received by an employee under an employer-employee relationship, such as basic salary and other allowances. Further, said exclusion from gross income is not applicable to self-employed individuals and income generated from business.
- ▶ All taxpayers-employers shall ensure the correct computation and application of the said increase on the 13th month and other benefits of the employees in the year-end adjustments and shall clearly indicate the same in, among others, the Certificate of Compensation/Tax Withheld (BIR Form No. 2316).
- ▶ The said BIR form shall be issued by the employer to the employee on or before January 31 of the succeeding calendar year, or if the employment is terminated before the close of such calendar year, on the day the last payment of compensation is made.
- ▶ If an employee is terminated and then employed by another employer before the close of the calendar year, the employee-transferee shall immediately furnish the new employer the accomplished BIR Form issued by the previous employer, for the appropriate withholding tax computation of the employee's regular compensation and subsequent year-end adjustment, if any.
- ▶ These Regulations shall take effect 15 days immediately after its publication in a newspaper of general circulation.

[Editor's Note: RR No. 3-2015 was published in the Manila Bulletin on March 16, 2015.]

RR No. 4-2015 further amends Section 2 of RR No. 13-08, as amended by RR No. 13-2013, on the definition of raw sugar and raw cane sugar for VAT purposes.

Revenue Regulations No. 4-2015 dated March 13, 2015

- ▶ Section 2 (b) and (c) of RR No. 13-08, as amended by RR No. 13-2013 is amended to read as follows:

"Section 2. Definition of Terms. - For purposes of these regulations the following terms will be construed to mean:

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- a) **Raw Sugar** - refers to sugar whose content of sucrose by weight in dry state, corresponds to a polarimeter reading of less than 99.5°. Raw Sugar produced each production year shall be classified for internal revenue purposes, as follows:
 1. "A" is raw sugar, which is intended for export to the United States Market.
 2. "B" is raw sugar, which is intended for the Domestic Market.

3. "C" is raw sugar, which is reserved for, but have not yet matured for release to, the Domestic Market.
4. "D" is raw sugar, which is intended for export to the World Market;
5. "E" is reclassified "D" sugar for sale to Food Processors/ Exporters operating Customs Bonded Warehouse (CBW) or to an enterprise located within the special processing export zone.

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- e) **Raw Cane Sugar** - refers to sugar produced by simple process of conversion of sugar cane without need of any mechanical or similar device such as muscovado. Thus, only muscovado is exempt from VAT under Section 109 (1)(A) of the Tax Code.

xxx

- f) Sugar as used in these Regulations refers to sugar other than raw cane sugar."
 - ▶ Refined sugar and raw sugar, as defined in these Regulations, shall be subject to advance payment of VAT by the owner/seller before the sugar is withdrawn from any sugar refinery/mill.
 - ▶ These Regulations shall take effect after 15 days following publication in any newspaper of general circulation.

[Editor's Note: RR No. 4-2015 was published in the Manila Bulletin on March 16, 2015.]

RR No. 5-2015 amends RR No. 6-2014 by imposing penalties for failure to file returns under the BIR Electronic System by taxpayers mandatorily covered by eFPS or eBIRForms.

Revenue Regulations No. 5-2015 dated March 17, 2015

- ▶ Section 3, Paragraph 2 of RR No. 6-2014 is amended to read as follows:

"2. Non-eFPS filers, covered by Section 4 herein, shall mandatorily use the eBIR Forms facility in electronically submitting and filing all their tax returns.

Upon successful validation of the accomplished tax return, taxpayers shall receive a system-generated notification e-mail which acknowledges that the tax return has been successfully filed. Taxpayer should print the Filing Reference (FRN) page generated by the system and the same shall be submitted to the Authorized Agent Banks (AABs) for the payment of the taxes due thereon. Sample printed FRN page is herein attached as Annex "A"
- ▶ All taxpayers, who are mandatorily required to file their returns using eFPS or eBIRForms, but fail to do so, shall be liable to a penalty of P1,000.00 per return pursuant to Section 250 of the Tax Code.
- ▶ In addition, the taxpayer shall be liable to civil penalties equivalent to 25% of the tax due to be paid, for filing a return in a manner not in compliance with existing regulations, thus, tantamount to wrong venue filing pursuant to Section 248 (A) (2) of the Tax Code.

- ▶ Revenue District Offices are directed to include these non-compliant taxpayers in their priority audit program.
- ▶ These regulations shall take effect immediately.

[Editor's Notes: Under Section 4 of RR No. 6-2014, the following non-EFPS taxpayers are required to use the eBIRForms in the preparation and filing of their tax returns: 1) Accredited Tax Agents/Practitioners and all their client-taxpayers; 2) Accredited Printers of Principal and Supplementary Receipts/Invoices; 3) One-Time Transaction (ONETT) taxpayers; 4) Those who shall file a "No Payment" Return; 5) Government-Owned or -Controlled Corporations (GOCCs); 6) Local Government Units (LGUs), except barangays; and 7) Cooperatives registered with the National Electrification Administration (NEA) and Local Water Utilities Administration (LWUA).

RR No. 5-2015 was published in the Manila Bulletin on March 19, 2015.]

RMC No. 10-2015 directs all RDOs to accept/receive ITRs filed by employees of LT.

Revenue Memorandum Circular No. 10-2015 dated March 23, 2015

- ▶ ITRs with no tax payment shall be manually filed, using eBIRForms, in triplicate copies, with the RDO where the Large Taxpayer (LT) employer is physically situated/located.
- ▶ On the other hand, ITRs with payment shall be filed/paid at Authorized Agent Banks (AABs)/Revenue Collection Officers (RCOs), Special Collecting Officers (SCOs) and other authorized Collection Officers (COs) within the concerned RDO.
- ▶ Only employees not qualified for substituted filing or those qualified for substituted filing, but opted to file an ITR for purposes of promotion, loans, foreign travel requirements, etc., are required to file BIR Form No. 1700.

RMC No. 11-2015 clarifies the tax agents/ practitioners who are mandated to use the eBIRForms in the preparation and filing of their tax returns as provided under RR No. 6-2014.

Revenue Memorandum Circular No. 11-2015 dated March 30, 2015

- ▶ Under Section 4 of RR No. 6-2014, accredited Tax Agents/Practitioners and **all their client-taxpayers** are among the non-eFPS filers that are required to use the eBIRForms in the preparation and filing of their tax returns.
- ▶ The term "client-taxpayers" refer to taxpayers who authorize their tax agents/ practitioners to file on their behalf.
- ▶ 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 RR No. 6-2014.
- ▶ A taxpayer may cancel his agent's authorization any time prior to the termination of their client-agent relationship.

RMC No. 12-2015 clarifies the filing of "no payment" returns in relation to RR Nos. 6-2014 and 5-2015.

Revenue Memorandum Circular No. 12-2015 dated March 30, 2015

- ▶ The following taxpayers may manually file "no payment returns" with the RDO where they are registered, using officially printed forms/photocopied or electronic/computer-generated returns:
 1. Senior Citizens (SC) or Persons with Disability (PWD) filing their own returns;

2. Employees deriving purely compensation income where the income tax from such income has been withheld correctly and the tax due is equal to the tax withheld, whether from single or multiple employers (with two or more employers concurrently and successively, at anytime during the taxable year);
3. Employees qualified for substituted filing, but opted to file an ITR and are filing for purposes of promotion (PNP/AFP), loans, scholarship, foreign travel requirements, and so on.
4. All business taxpayers with no payment returns and are mandated to use eBIRForms/EFPS must electronically file their return.

RMC No. 13-2015 further amends RMC No. 57-2011, as amended by RMC Nos. 21-2014 and 9-2014, by deferring anew the requirement to disclose supplemental information in BIR Form Nos. 1700 and 1701 covering calendar year 2014.

Revenue Memorandum Circular No. 13-2015 dated March 31, 2015

- ▶ The disclosure of supplemental information under BIR Form Nos. 1700 and 1701 is optional on the part of the taxpayer filing his/her income tax return covering calendar year 2014 not later than April 15, 2015.
- ▶ Individual income tax filers using BIR Form Nos. 1700 and 1701 are advised that for income tax filing covering calendar year 2015, the disclosure required under the supplemental information portion of the forms will be mandatory.

RMO No. 7-2015 prescribes the revised consolidated schedule of compromise penalties for violations of the Tax Code.

Revenue Memorandum Order No. 7-2015 dated January 22, 2015

REVISED SCHEDULE OF COMPROMISE PENALTY					
CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE		
90/275	Failure to have the statement of assets of the decedent and the deductions from gross estate certified by an independent CPA duly accredited by the BIR	Fine of not more than P1,000 or imprisonment of not more than 6 months, or both. (Sec. 275, NIRC)	If the gross estate		
			Exceeds	But Does Not Exceed	Compromise is
			P 2,000,000	P 5,000,000	P 7,500
			5,000,000	10,000,000	10,000
			10,000,000	25,000,000	20,000
			25,000,000	50,000,000	25,000
232/235	Failure to keep/preserve records required by law or regulations	Fine of not more than P1,000 or imprisonment for not more than 6 months, or both. (Sec. 275, NIRC)	If gross annual sales, earnings or receipts		
			Exceeds	But Does Not Exceed	Compromise is
			P xxx	P 50,000	P 1,000
			50,000	100,000	3,000
			100,000	500,000	5,000
			500,000	5,000,000	10,000
			5,000,000	10,000,000	15,000
			10,000,000	20,000,000	20,000
20,000,000	50,000,000	30,000			
50,000,000		50,000			

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE		
232	Failure to have books of accounts audited and have the financial statements attached to the ITR certified by an independent CPA duly accredited by the BIR	Fine of not more than P1,000 or imprisonment of not more than 6 months, or both. (Sec. 275, NIRC)	If gross annual sales earnings or receipts		
			Exceeds P 25,000 (for any Quarter); 200,000 500,000 5,000,000 10,000,000 25,000,000	But Does Not Exceed P 200,000 (for the year); 500,000 5,000,000 10,000,000 25,000,000 xxx	Compromise is P 3,000 5,000 10,000 15,000 20,000 25,000
236/258	Failure to Register	Fine of not less than P5,000 but not more than P20,000 and imprisonment of not less than 6 months but not more than 2 years	If the subject establishment is located in the following:		
			a. Cities b. 1st class municipalities c. 2nd class municipalities d. 3rd class municipalities		P 20,000* 10,000* 5,000* 2,000*
			* Penalties provided are inclusive of all other violations		
258	Failure to pay annual registration fee by a person engaged in the business of distilling, rectifying, repacking, compounding or manufacturing article subject to excise tax	Fine of not less than P30,000 but not more than P50,000 and imprisonment of not less than 2 years but not more than 4 years	a. Cities b. 1st class municipalities c. 2nd class municipalities d. 3rd class municipalities		P 30,000 20,000 25,000 10,000
236/275	Failure to pay & display the Annual Registration Fee (BIR Form 0605)	Fine of not more than P1,000 or imprisonment of not more than 6 months (Sec. 275, NIRC)	P 1,000		
236/275	No Certificate of Registration displayed	Fine of not more than P1,000 or imprisonment of not more than 6 months (Sec. 275, NIRC)	P 1,000		
236/275	Failure to display the poster "Ask for BIR Receipt" or "Notice to the Public to demand receipts / invoice"	Fine of not more than P1,000 or imprisonment of not more than 6 months, or both. (Sec 275, NIRC)	P 1,000		

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE	
236/275	<p>Failure to attach or paste authorized sticker/DECAL authorizing the use of CRM/POS/CAS</p> <p>Failure to present application form (BIR Form 1900 and 1905) to use registered sales books/permit to use loose leaf sales books</p>	<p>Fine of not more than P1,000 or imprisonment of not more than 6 months, or both. (Sec 275, NIRC)</p>	<p>P 1,000 per unit</p> <p>P 1,000</p>	
238/275	<p>Failure of the printer to submit the required quarterly report (Sec. 238, NIRC)</p>	<p>Fine of not more than P1,000 or imprisonment of not more than 6 months or both</p>	<p>First Offense P5,000</p>	<p>Second Offense P10,000</p>
			<p>Subsequent offenses shall be considered as willful failure, and thus not subject to compromise</p>	
250	<p>Failure to make, file, or submit the complete quarterly Summary Lists of Sales and Purchases-Local & Imported (SLSP), the Annual Alpha List of Payees and/or Employees subjected to withholding taxes, or supply correct and accurate information therein at the time or times required by the Tax Code, as amended, or other existing rules and regulations</p>	<p>P1,000 for each failure to make, file, or submit the said information returns. Provided, however, that the aggregate amount to be imposed for such failures during a calendar year shall not exceed P25,000.</p> <p>For this purpose, failure to supply the required information for each buyer or seller of goods and services shall constitute a single punishable act or omission pursuant to RMC No. 51-2009.</p> <p>Notwithstanding the foregoing, failure on the part of the taxpayer to make, file or submit the required complete Schedules of Sales/Purchases including Importations, if any, (SLS/P/I)/Annual Alpha Lists at the time or times required by the Tax Code, as amended, and other existing rules and regulations under the following circumstances shall be considered as willful failure/neglect tantamount to fraud and thus cannot be compromised:</p> <p>(a) failure to submit for at least:</p> <ul style="list-style-type: none"> ▶ Two (2) times in a taxable year, in the case of required complete SLS/P/I; ▶ Two (2) consecutive years, in the case of Annual Alpha Lists of Payees from whom Taxes were Withheld; and <p>(b) non-submission in the format prescribed:</p> <p>Complete Summary Lists refers to the set of Summary Lists of Sales (SLS) and Summary Lists of Purchases (SLP). In the case of those with importations, completeness shall include not only SLS and SLP but also the Summary Lists of Importations (SLI). Failure to submit the full/complete lists shall be counted as one violation.</p> <p>Thus, submission of incomplete lists, including the submission of erroneous lists, shall be considered as an act of non-submission. The submission of falsified information is an act of fraud and cannot be compromised.</p> <p>Non-compliance with a duly issued Subpoena Duces Tecum (SDT) is penalized under Sec. 266 of the Tax Code, as amended, and the prosecution thereof is provided under RMO No. 10-2013.</p>		

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE		
250	Failure to make, file or submit information returns, schedules, reports, sworn statements, certifications and other documents, (except quarterly SLS/P/I, and the Annual Alpha List of Payees and/or the Annual Alpha List of Employees subjected to withholding taxes), or keep any record required by the Tax Code, as amended, or other existing rules and regulations		P1,000 for each information return, schedule, report, sworn statement, certification and other document not made, filed or submitted, or for each record not maintained. Provided, however, that the aggregate amount to be imposed for such failures during a calendar year shall not exceed P25,000.		
250	Failure to supply correct and accurate information in the information returns, schedules, reports, sworn statements, certifications and other documents (except quarterly SLS/P/I, and the Annual Alpha List of Payees and/or the Annual Alpha List of Employees subjected to withholding taxes) required by the Tax Code, as amended, or other existing rules and regulations.		P1,000 for each incorrect or erroneous information supplied in the information return, schedule, report, sworn statement, certification and other document. Provided, however, that the aggregate amount to be imposed for such failures during a calendar year shall not exceed P25,000.		
254	Willful attempt to evade or defeat any tax imposed by the NIRC or the payment thereof.	Fine of not less than P30,000 but not more than P100,000 and imprisonment of not less than 2 years but not more than 4 years	This violation cannot be compromised because it involves fraud. (Sec 204, NIRC)		
255	Failure to make/file/submit any return or supply correct information at the time or times required by law or regulation	Fine of not less than P10,000 and imprisonment of not less than 1 year but not more than 10 years	If gross sales, earnings or receipts; or gross estate or gift (based on the subject returns/information for filing/submission)		
			Exceeds P xxx 50,000 100,000 500,000 5,000,000 10,000,000 25,000,000	But Does Not Exceed P 50,000 100,000 500,000 5,000,000 10,000,000 25,000,000 xxx	Compromise is P 1,000 3,000 5,000 10,000 15,000 20,000 25,000
255	Failure to withhold or remit withheld taxes at the time or times required by law or regulations	Fine of not less than P10,000 and imprisonment of not less than 1 year but not more than 10 years	If the amount of tax not withheld or remitted		
			Exceeds P xxx 5,000 15,000 20,000 50,000 500,000 1,000,000	But Does Not Exceed P 5,000 15,000 20,000 50,000 500,000 1,000,000 Xxx	Compromise is P 1,000 3,000 5,000 10,000 15,000 20,000 25,000

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE		
255	Failure to refund excess taxes withheld on compensation	Fine of not less than P10,000 and imprisonment of not less than 1 year but not more than 10 years	If the amount of excess withholding taxes not refunded		
			Exceeds P xxx 5,000 15,000 20,000 50,000 500,000 1,000,000	But Does Not Exceed P 5,000 15,000 20,000 50,000 500,000 1,000,000 Xxx	Compromise is P 1,000 3,000 5,000 10,000 15,000 20,000 25,000
255	Misrepresentation as to actual filing of return or statement or withdrawal of return or statement already filed	Fine of not less than P10,000 but not more than P20,000 and imprisonment of not less than 1 year but not more than 3 years	This violation cannot be compromised because it involves fraud. (Sec. 204, NIRC)		
255	Failure to make, file or submit the required complete SLS/P/I, Annual Alpha List of Payees and Annual Alpha List of Employees in the prescribed format at the time or times required by the Tax Code, as amended, or other existing rules and regulations.	Fine of not less than P10,000 and imprisonment of not less than 1 year but not more than 10 years	"Willful failure" implies fraud which cannot be compromised.		
<p>Failure to make, file or submit for at least:</p> <ul style="list-style-type: none"> ▶ two times in a taxable year, in the case of complete SLS/P/I and/or ▶ two consecutive years, in the case of Annual Alpha List of Payees and/or Alpha List of Employees from whom Taxes were Withheld <p>in the prescribed format at the time or times required by the Tax Code constitutes willful failure and cannot be compromised.</p>					

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE		
255	Failure to file and/or pay any internal revenue tax at the time or times required by law or regulation	Fine of not less than P10,000 and imprisonment of not less than 1 year but not more than 10 years	If the amount of tax unpaid		
			Exceeds P xxx 5,000 10,000 20,000 50,000 100,000 500,000 1,000,000 5,000,000	But Does Not Exceed P 5,000 10,000 20,000 50,000 100,000 500,000 1,000,000 5,000,000 xxx	Compromise is P 1,000 3,000 5,000 10,000 15,000 20,000 30,000 40,000 50,000
256	Any act or omission by a corporation which is penalized under the NIRC	Fine of not less than P50,000 but not more than P100,000 (in addition to penalty set forth or imposed on the responsible corporate officer, partner or employee)	P10,000 for corporation, or the amount of compromise penalty set forth in this Schedule for particular act or omission, whichever is higher. P5,000 for responsible officer, partner or employee		
257	a) Violations committed by any financial officer or an independent CPA, or any person under his direction as follows:	Fine of not less than P50,000 but not more than P100,000 and imprisonment of not less than 2 years but not more than 6 years. (If the offender is a CPA, his certificate shall automatically be revoked or cancelled upon conviction.)			

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE
	1) Willful falsification of any report or statement on any examination or audit; rendering reports (including exhibits, statements, etc.) not verified by him personally or under his supervision or by a member of his firm or staff in accordance with sound auditing practices.		This violation cannot be compromised because it involves fraud. (Sec. 204, NIRC)
	2) Certification of financial statement of a business enterprise containing an essential misstatement of facts or omission as to transactions, taxable income, deduction and exemption of a client.		This violation cannot be compromised because it involves fraud. (Sec. 204, NIRC)
	b) Violations committed by persons who are not CPAs -	Fine of not less than P50,000 but not more than P100,000 and imprisonment of not less than 2 years but not more than 6 years. In case of foreigners, conviction under this Code shall result in his immediate deportation after serving sentence without further proceedings for deportation.	

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE																											
	<p>1) Examination and audit of books of accounts of taxpayers;</p> <p>2) Offering to sign and certifying financial statements without audit;</p> <p>3) Offers any taxpayer the use of accounting or bookkeeping records for internal revenue purposes not in conformity with the requirements in the Code and regulations;</p> <p>4) Knowingly making false entry or enters any false or fictitious name in the books of accounts mentioned in the preceding paragraphs;</p> <p>5) Keeping of two or more sets of such records or books of accounts;</p> <p>6) In any way commits an act or omission in violation of the provisions of Sec. 257, NIRC; or</p> <p>7) (i) Failure to keep books of accounts or records in a native language, English or Spanish or make a true and complete transaction</p> <p>(ii) Where books kept in a native language, English or Spanish are found to be at material variance with books kept in another language;</p>		<p>P25,000</p> <p>P25,000</p> <p>P25,000</p> <p>This violation cannot be compromised because it involves fraud (Sec. 204, NIRC)</p> <p>This violation cannot be compromised because it involves fraud (Sec. 204, NIRC)</p> <p>P1,000 or the compromise penalty set forth in this Schedule for the particular act or omission, whichever is higher, or cannot be compromised if it involves fraud.</p> <p style="text-align: center;">If gross sales, earnings or receipts</p> <table border="1" data-bbox="778 1491 1484 1809"> <thead> <tr> <th>Exceeds</th> <th>But Does Not Exceed</th> <th>Compromise is</th> </tr> </thead> <tbody> <tr> <td>P xxx</td> <td>50,000</td> <td>P 1,000</td> </tr> <tr> <td>50,000</td> <td>100,000</td> <td>3,000</td> </tr> <tr> <td>100,000</td> <td>500,000</td> <td>5,000</td> </tr> <tr> <td>500,000</td> <td>5,000,000</td> <td>10,000</td> </tr> <tr> <td>5,000,000</td> <td>10,000,000</td> <td>15,000</td> </tr> <tr> <td>10,000,000</td> <td>20,000,000</td> <td>20,000</td> </tr> <tr> <td>20,000,000</td> <td>50,000,000</td> <td>30,000</td> </tr> <tr> <td>50,000,000</td> <td>xxx</td> <td>50,000</td> </tr> </tbody> </table> <p>This violation cannot be compromised because it involves fraud (Sec. 204, NIRC)</p>	Exceeds	But Does Not Exceed	Compromise is	P xxx	50,000	P 1,000	50,000	100,000	3,000	100,000	500,000	5,000	500,000	5,000,000	10,000	5,000,000	10,000,000	15,000	10,000,000	20,000,000	20,000	20,000,000	50,000,000	30,000	50,000,000	xxx	50,000
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50,000,000	xxx	50,000																												

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE
	8) Willful attempt to evade or defeat any tax imposed under the Code or knowingly uses fake or falsified Revenue Official Receipts, Letters of Authority, Certificates Authorizing Registration, Tax Credit Certificates, Tax Debit Memoranda and other Accountable Forms.	Fine of not less than P50,000 but not more than P100,000 and suffer imprisonment of not less than 2 years but not less than 6 years.	This violation cannot be compromised because it involves fraud (Sec. 204, NIRC)
259	Illegal collection of foreign payments; collection of foreign payments under Sec. 67, NIRC without any license or in violation of implementing regulations	Fine of not less than P20,000 but not more than P50,000 and imprisonment of not less than 1 year but not more than 2 years	P20,000
260	Unlawful possession of cigarette paper in bobbins or rolls, cigarette tipping paper or cigarette filter tips	Fine of not less than P20,000 but not more than P100,000 and imprisonment of not less than 6 years and 1 day but not more than 12 years	P100,000 <i>including forfeiture of unlawful articles/items; Subsequent violations shall not be subject to compromise.</i>
261	Unlawful use of denatured alcohol	Fine of not less than P20,000 but not more than P100,000 and imprisonment of not less than 6 years and 1 day but not more than 12 years	P100,000 <i>including forfeiture of unlawful articles/items; Subsequent violations shall not be subject to compromise.</i>
261	Unlawful recovery or attempt to recover by distillation or other process any denatured alcohol or who knowingly disposes alcohol so recovered or redistilled	Fine of not less than P20,000 but not more than P100,000 and imprisonment of not less than 6 years and 1 day but not more than 12 years	P100,000 <i>including forfeiture of unlawful articles/items; Subsequent violations shall not be subject to compromise.</i>

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE																						
262	Shipment or removal of liquor or tobacco products under false name or brand or as an imitation of any existing name or brand	Fine of not less than P20,000 but not more than P100,000 and imprisonment of not less than 6 years and 1 day but not more than 12 years	P100,000 including forfeiture of unlawful articles/items; Subsequent violations shall not be subject to compromise.																						
263	a) Unlawful possession or removal of imported articles subject to excise tax without payment of tax	<p>If the appraised value of the article under the Tariff and Customs Code (TCC) -</p> <table border="1"> <thead> <tr> <th colspan="2">Value</th> <th rowspan="2">Penalty is Fine:</th> <th rowspan="2"></th> </tr> <tr> <th>Exceeds</th> <th>Does Not Exceed</th> </tr> </thead> <tbody> <tr> <td>P Xxx</td> <td>P1,000</td> <td>P1,000-2,000 & imprisonment of not less than 60 days but not more than 100 days</td> <td>P2,000*</td> </tr> <tr> <td>1,000</td> <td>50,000</td> <td>10,000-20,000</td> <td>2,000*</td> </tr> <tr> <td>50,000</td> <td>150,000</td> <td>30,000-60,000 & imprisonment of 4 years but not more than 6 years</td> <td>60,000*</td> </tr> <tr> <td>150,000</td> <td>xxx</td> <td>50,000-100,000 & imprisonment of not less than 10 years but not more than 12 years</td> <td>100,000*</td> </tr> </tbody> </table>	Value		Penalty is Fine:		Exceeds	Does Not Exceed	P Xxx	P1,000	P1,000-2,000 & imprisonment of not less than 60 days but not more than 100 days	P2,000*	1,000	50,000	10,000-20,000	2,000*	50,000	150,000	30,000-60,000 & imprisonment of 4 years but not more than 6 years	60,000*	150,000	xxx	50,000-100,000 & imprisonment of not less than 10 years but not more than 12 years	100,000*	<p>Compromise allowable on a case to case basis</p> <p>*Plus forfeiture of the untaxed article</p>
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	b) Unlawful possession of locally manufactured articles subject to excise tax without payment of the tax	Fine of not less than 10 times the amount of excise tax due but not less than P500 and imprisonment of not less than 2 years but not more than 4 years	<p>P100,000 plus forfeiture of the untaxed article.</p> <p>Subsequent violations shall not be subject to compromise.</p>																						
	c) Unlawful removal of untaxed articles subject to excise tax from the place of production	Fine of not less than 10 times the amount of excise tax due but not less than P1,000 and imprisonment of not less than 1 year but not more than 2 years	<p>P100,000 plus forfeiture of the untaxed article.</p> <p>Subsequent violations shall not be subject to compromise.</p>																						

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE		
			Specific Violation	First Offense	Second Offense
264	a) Failure or refusal to issue receipts or sales or commercial invoices; issuing receipts invoices not truly reflecting and/or containing all information required therein or using multiple or double receipts or invoices	Fine of not less than P1,000 but not more than P50,000 and imprisonment of not less than 4 years	a) For failure to issue receipts or sales or commercial invoices	P10,000	P20,000 <i>Subsequent violations shall not be subject to compromise.</i>
			b) For refusal to issue receipts or sales or commercial invoices	P25,000	P50,000 <i>Subsequent violations shall not be subject to compromise.</i>
			If the information missing is the correct amount of the transaction	P20,000	P50,000 <i>Subsequent violations shall not be subject to compromise.</i>
			c) For issuance of receipts that do not truly reflect and/ or contain all the information required to be shown therein	P5,000	P10,000 <i>Subsequent violations shall not be subject to compromise.</i>
			If the duplicate copy of the invoice is blank but the original copy thereof is detached from the booklet and cannot be accounted for	P20,000	P50,000 <i>Subsequent violations shall not be subject to compromise.</i>
			If the amount of the transaction stated in the taxpayer's copy is understated versus the amount per copy of the invoice issued to the purchaser	Not qualified for compromise.	
			d)(1) For use of unregistered receipts or invoices	P20,000	P50,000 <i>Subsequent violations shall not be subject to compromise.</i>
			(ii) Use of unregistered cash register machines in lieu of invoices or receipts	P25,000/unit	P50,000/unit <i>Subsequent violations shall not be subject to compromise.</i>
e) For possession or use of multiple or double receipts or invoices	Not qualified for compromise				

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE	
			f) For printing or causing, aiding or abetting the printing of: 1) Receipts or invoices without authority from the BIR 2) Double or multiple sets of receipts or invoices 3) Receipts or invoices not bearing any of the following: a. Consecutive numbers b. Name of Taxpayer c. Business Style d. Business address of the person or entity to use the same e. TIN f. Name, address, date, authority no. of the printer and inclusive serial numbers of the batch or receipts printed	P25,000 P50,000 <i>Subsequent violations shall not be subject to compromise.</i> Not qualified for compromise P20,000 P50,000 <i>Subsequent violations shall not be subject to compromise.</i>
265	Offenses relating to internal revenue stamps - 1) Making, importing, selling, using or possessing without express authority from the Commissioner any dye for printing or making stamps, label tags or playing cards 2) Erasing the cancellation marks of any stamps previously used or altering the written figures or letters, or cancelling marks on internal revenue stamps 3) Possession of false, counterfeit, restored or altered stamps, labels, or tags, or causes the commission of any such offense by another	Fine of not less than P20,000 but not more than P50,000 and imprisonment for not less than 4 years but not more than 8 years Fine of not less than P20,000 but not more than P50,000 and imprisonment for not less than 4 years but not more than 8 years Fine of not less than P20,000 but not more than P50,000 and imprisonment for not less than 4 years but not more than 8 years	P20,000, <i>including forfeiture of unlawful articles/items; Subsequent violations shall not be subject to compromise.</i> This violation cannot be compromised because it involves fraud (Sec. 204, NIRC) This violation cannot be compromised because it involves fraud (Sec. 204, NIRC)	

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE																								
	<p>4) Selling or offering for sale any box or package containing articles subject to excise tax with false, spurious or counterfeit stamps or labels or sells from any such fraudulent box, package or container</p> <p>5) Giving away or accepting from another or sells, buys, or uses containers on which the stamps are not completely destroyed</p>	<p>Fine of not less than P20,000 but not more than P50,000 and imprisonment for not less than 4 years but not more than 8 years</p> <p>Fine of not less than P20,000 but not more than P50,000 and imprisonment for not less than 4 years but not more than 8 years</p>	<p>This violation cannot be compromised because it involves fraud (Sec. 204, NIRC)</p> <p>P50,000, including forfeiture of unlawful articles/items; Subsequent violations shall not be subject to compromise.</p>																								
266	Failure to obey summons; to testify; or to appear and produce books of accounts, records, etc, or to furnish information required under the NIRC	Fine of not less than P5,000 but not more than P10,000 and imprisonment for not less than 1 year but not more than 2 years	<p>First offense: P10,000</p> <p>Second Offense: P20,000</p> <p>Subsequent violations shall not be subject to compromise.</p>																								
268	Misdeclaration or misrepresentation by manufacturers of articles subject to excise tax under Title IV, NIRC, or any pertinent data or information required therein	Summary cancellation of withdrawal of permit to engage in business as a manufacturer of articles subject to excise tax	This violation cannot be compromised because it involves fraud (Sec. 204, NIRC)																								
272	Failure of government officer or employee charged with the duty to deduct and withhold any internal revenue tax and failure to remit the same in accordance with the provisions of the NIRC.	Fine of not less than P5,000 but not more than P10,000 and imprisonment for not less than 6 months and 1 day but not more than 2 years, or both	<p>If the amount of tax not withheld or remitted -</p> <table border="1"> <thead> <tr> <th>Exceeds</th> <th>But Does Not Exceed</th> <th>Compromise is</th> </tr> </thead> <tbody> <tr> <td>P xxx</td> <td>5,000</td> <td>P 1,000</td> </tr> <tr> <td>5,000</td> <td>15,000</td> <td>3,000</td> </tr> <tr> <td>15,000</td> <td>20,000</td> <td>5,000</td> </tr> <tr> <td>20,000</td> <td>50,000</td> <td>10,000</td> </tr> <tr> <td>50,000</td> <td>500,000</td> <td>15,000</td> </tr> <tr> <td>500,000</td> <td>1,000,000</td> <td>20,000</td> </tr> <tr> <td>1,000,000</td> <td>xxx</td> <td>25,000</td> </tr> </tbody> </table>	Exceeds	But Does Not Exceed	Compromise is	P xxx	5,000	P 1,000	5,000	15,000	3,000	15,000	20,000	5,000	20,000	50,000	10,000	50,000	500,000	15,000	500,000	1,000,000	20,000	1,000,000	xxx	25,000
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275	Violation of any provision of the NIRC or any regulation of the Department of Finance for which no specific penalty is provided by law	Fine of not more than P1,000 or imprisonment of not more than 6 months or both	P1,000 for each violation																								

CODE SEC	NATURE OF VIOLATION	CRIMINAL PENALTY IMPOSED	AMOUNT OF COMPROMISE
276	Sale, transfer, encumbrance or any other disposition of any property or part thereof placed under constructive distraint, without the knowledge and consent of the Commissioner	Fine of not less than twice the value of the property sold, encumbered or disposed of, but not less than P5,000 or imprisonment of not less than 2 years and 1 day but not more than 4 years, or both	20% of the value of the property
277	Failure to surrender property placed under distraint	Violator is personally liable to pay a sum equal to the value of the property or rights not surrendered (not exceeding the amount of taxes due including penalties and interest together with costs and interests) In addition, such violation shall be fined in a sum not less than P5,000 or imprisonment for not less than 6 months and 1 day but not more than 2 years, or both.	P50,000
278	Procuring the unlawful divulgence of any confidential information regarding the business, income or inheritance of any taxpayer; unlawfully publishing or printing the income, profits, losses or expenditures appearing in any income tax return.	Fine of not more than P2,000 or imprisonment of not more than 6 months nor more than 5 years, or both	This violation shall not be compromised because it is against public policy to allow divulgence of confidential information, unless this is validly authorized under existing law.

- ▶ Cases involving fraud shall be referred to the concerned Division having jurisdiction over the case, for the institution of the corresponding criminal action.
- ▶ In no case shall the compromise penalty differ in amount from those specified in the schedule, except when duly approved by the CIR or concerned Deputy Commissioner, or in proper cases, by the Regional Directors.
- ▶ Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or demand letter, the same should not form part of the assessment notice that reflects deficiency basic tax, surcharge and interest, but should appear in a separate assessment notice/demand letter as the amount suggested to the taxpayer to pay in lieu of criminal prosecution.
- ▶ Since compromise penalties are only amounts suggested in settlement of criminal liability and may not, therefore, be imposed or exacted on the taxpayer, the violation shall be referred to the appropriate office for criminal action in case of refusal by the taxpayer to pay the suggested compromise penalty.
- ▶ The schedule of compromise penalties shall not prevent the CIR or his duly authorized representative from accepting a compromise amount higher than what is provided hereof.
- ▶ A compromise offer lower than the prescribed amount may be accepted after approval by the CIR or the concerned Deputy Commissioner/ Assistant Commissioner/ Regional Director.
- ▶ This RMO shall take effect immediately.

BOC Issuances

CAO No. 3-2015 prescribes the consolidated guidelines and procedures for the imposition of penalties arising from post-entry audits.

Customs Administrative Order No. 3-2015 dated March 20, 2015

▶ *Administrative Fines, Penalties, Surcharges and Other Sanctions*

1. Recordkeeping and Access to Records

- ▶ Failure to keep records

Any person who fails to keep and maintain all the records required to be kept and maintained under Section IV.a of CAO No. 5-2001, as amended by CAO No. 4-2004, shall be subject to the following:

- a. Administrative fine equivalent to 20% *ad valorem* on the article/s subject of the importations for which no records were kept and maintained.
- b. Hold delivery or release of subsequent imported articles to answer for the fine, any revised assessment, and / or as penalty for failure to keep records.

- ▶ Failure and / or refusal to give full and free access

Any importer and/or broker who denies an authorized officer full and free access under Section IV.B of CAO No. 5-2001, as amended by CAO No. 4-2004, shall be subject to the following:

- a. Re-assessment of the importations subject to audit applying the correct valuation method based on available data, the declared transaction value being presumed accurate.
- b. Administrative fine equivalent to 20% *ad valorem* on the article/s subject of the importations for which full and free access to the records was not given.
- c. Hold delivery or release of the subsequent imported articles to answer for the fine, any revised assessment, and/or as a penalty for failure or refusal to give full and free access.

2. Failure to Pay Correct Duties and Taxes on Imported Goods

Any person who, after being subjected to post-entry audit and examination, is found to have incurred deficiencies in duties and taxes for imported goods, shall be penalized according to 3 degrees of culpability, subject to any mitigating, aggravating, or extraordinary factors that are clearly established by the available evidence:

- ▶ *Negligence*. When a deficiency results from an offender's failure, through an act or acts of omission or commission, to exercise reasonable care and competence to ensure that a statement made is correct, it shall be determined to be negligent and punishable by an administrative fine equivalent to not less than 1/2 but not more than 2 times the revenue loss, computed as follows:

- a. Revenue loss percentage:

$$\frac{\text{what should have been paid} - \text{what was paid}}{\text{what should have been paid}}$$

- b. Penalty multiplier:

$$50\% + (\text{revenue loss percentage} \times 1.5)$$

- c. Penalty:

$$\text{Deficiency} \times \text{penalty multiplier}$$

- ▶ *Gross Negligence*. When a deficiency results from an act or acts of omission or commission done with actual knowledge or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligation under these rules or the TCCP, it shall be determined to be grossly negligent and punishable by an administrative fine equivalent to not less than 2-1/2 but not more than 4 times the revenue loss, computed as follows:

- a. Revenue loss percentage:

$$\frac{\text{what should have been paid} - \text{what was paid}}{\text{what should have been paid}}$$

- b. Penalty multiplier:

$$250\% + (\text{revenue loss percentage} \times 1.5)$$

- c. Penalty:

$$\text{Deficiency} \times \text{penalty multiplier}$$

- ▶ *Fraud*. When the material false statement or act in connection with the transaction was committed or omitted knowingly, voluntarily, and intentionally, as established by clear and convincing evidence, it shall be determined to be fraudulent and be punishable by an administrative fine equivalent to not less than 5 times but not more than 8 times the revenue loss, computed as follows:

- a. Revenue loss percentage:

$$\frac{\text{what should have been paid} - \text{what was paid}}{\text{what should have been paid}}$$

- b. Penalty multiplier:

$$500\% + (\text{revenue loss percentage} \times 1.5)$$

- c. Penalty:

$$\text{Deficiency} \times \text{penalty multiplier}$$

3. Except in cases of fraud, the Commissioner of Customs (CoC) may, pursuant to Section 2316 of the TCCP and subject to the approval of the Secretary of Finance, exercise his power to compromise the imposition of the fine prescribed above, when the importer makes a voluntary and full disclosure of the deficiency prior to the commencement of the audit on a date fixed by the CoC, provided that the compromise shall only be to the extent of the voluntary disclosure made.
4. The decision of the CoC to impose the penalties under negligence and gross negligence may be appealed to the Court of Tax Appeals (CTA) in accordance with Section 2402 of the TCCP.

▶ ***Criminal Prosecution and Resort to Judicial Remedies***

1. In addition to administrative sanctions under Section 2 herein, criminal prosecution under Sections 3601, 3602, 3610, 3611 and/or other pertinent sections of the TCCP may be instituted against the erring importer and/or broker.
2. The BOC may likewise seek remedies from the proper regional trial court having jurisdiction against the erring importer and/or broker under Section 2.A.2, including punishment for contempt.
3. Civil and criminal actions and proceedings instituted on behalf of the Government under the authority of the TCCP or other laws enforced by the BOC shall be brought in the name of the Government of the Philippines and the prosecution thereof shall be conducted by the Customs officers. However, the determination of probable cause in criminal cases for the purposes of filing the information in the appropriate court shall remain with the prosecutors of the Department of Justice or other authorized officials.
4. No civil or criminal action for the recovery of any fine, penalty or forfeiture under the TCCP shall be filed in court without the approval of the CoC.

▶ ***Guidelines and Procedures for the Imposition of Administrative Penalties***

1. After it finds the importer liable for deficiency duties and taxes, the Fiscal Intelligence Unit of the Department of Finance (DOF-FIU), or the concerned government body tasked by law to conduct post-entry audit, shall make an initial determination on the administrative sanctions which will be imposed against the audited importer.
2. Upon issuance of the Final Audit Report and Recommendation (FARR), the DOF-FIU shall include recommendations on the appropriate administrative sanctions either in the FARR or in a separate report, stating clearly the basis thereof and attaching thereto all pertinent documents and records.
3. The DOF-FIU shall forward the FARR, which includes the recommendations for the imposition of administrative sanctions, or the separate report containing the same, to the CoC for appropriate action.
4. Upon receipt of the FARR or the report, the CoC shall determine whether there is sufficient basis for the DOF-FIU's recommendations. To make such a determination, the CoC shall conduct, or cause the conduct of, hearings in compliance with Section 3611 of the TCCP, as amended by RA No. 9135, and may, directly or through the Legal Services Department or other groups within the BOC:
 - ▶ Require more information from the importer and/or customs broker, as the case may be, who shall be given a period of 15 days from receipt of the findings, to respond to such a request;
 - ▶ Instruct the Legal Services Department, or other groups within the BOC, to review the FARR or the report.
5. If and when the CoC accepts the recommendations of the DOF-FIU, pursuant to Section 9 of Department Order (DO) No. 44-2014, he / she shall forthwith issue the -
 - ▶ Collection letter; or
 - ▶ A formal assessment and demand letter to the importer, directing the latter to pay within 10 working days from receipt thereof the deficiency duties as well as the fines, penalties, surcharges and other sanctions.
6. The importer has 30 days from receipt of the collection letter, or formal assessment and demand letter of the CoC, as the case may be, to file an appeal to the CTA in accordance with applicable laws, rules and regulations.

▶ ***Indicators of Negligence, Gross Negligence and/or Fraud***

For purposes of determining the degree of culpability of the importer (i.e., negligence, gross negligence, fraud) and, consequently, the appropriate administrative penalty to be imposed, certain indicators may be considered during the proceedings, including but not limited to the following:

1. Negligence

Failure to take necessary measures to ensure:

- ▶ Completeness, accuracy, and correctness of the information, and statements made in pertinent documents relative to the importation resulting in the deficiency;
- ▶ Compliance with any requirement mandated by laws, rules, and regulations resulting in the deficiency.

2. Gross Negligence

In determining gross negligence, the appropriate office shall take into account the gravity of the offense, the amount of loss of duty, the extent of wrongdoing, and other factors bearing upon the seriousness of the violation.

3. Fraud

- ▶ Unresponsive Single Comprehensive Reply ("SCR") or misleading or unclear statements in the SCR;
- ▶ Importer's failure to file its SCR, or to respond to any finding;
- ▶ Unauthorized withdrawal of items entered for warehousing;
- ▶ Failure to liquidate warehousing entries or transshipment entries;
- ▶ Failure to comply with import requirements for regulated commodities;
- ▶ Importation of goods that do not conform with the standards and permit requirements required by applicable law and regulated by relevant government agencies;
- ▶ Type of commodity being imported is not in line with the importer's regular business activities;
- ▶ Misclassification of items resulting in the avoidance of tax clearance and/or reduction of duties and taxes;
- ▶ Mislabeling/non-marking of containers;
- ▶ Records that do not comply with generally accepted accounting principles;
- ▶ Recordkeeping and bookkeeping practices that produce dubious mistakes, suspiciously misplaced documents, and other doubtful facts and circumstances;
- ▶ Existence of duplication or otherwise multiple records pertaining to only one importation activity that contain varying information;
- ▶ Unexplained absence or lack of relevant documents, or unexplained missing pages or entries in the said relevant documents;

- ▶ Unusual format or importer's documents;
- ▶ Inconsistencies and/or contradictions in the data contained in the pieces of evidence submitted by the importer/customs broker in the post-entry audit; and between the data submitted by the importer/customs broker, and the data gathered by the DOF-FIU or the concerned government body tasked by law to conduct post-entry audit, from independent sources; and
- ▶ Habitual errors, mistakes or inaccuracies in import declarations or violations of customs laws, rules and regulations.

The listing above does not preclude the consideration of any other similar, analogous, or relevant indicators that can facilitate the determination of the degree of culpability.

▶ ***Mitigating and Aggravating Circumstances Affecting Culpability***

1. Mitigating Circumstances - The following circumstances may mitigate the culpability of the erring importer and/or broker:
 - ▶ Contributory error on the part of the government;
 - ▶ Cooperation throughout the post-entry audit process of such a nature that transcends mere submission of required documents or mere grant of access to records;
 - ▶ Corrective action immediately taken by the importer to address the issues pertaining to its management systems that resulted in the deficiency in duties;
 - ▶ Payment of deficiency duties immediately after being notified of the deficiency or prior to the issuance of the collection letter / formal assessment and demand letter;
 - ▶ Absence of any prior violations of the TCCP, and related rules and regulations; and
 - ▶ Any other circumstance that is similar or analogous to the foregoing.
2. Aggravating Circumstances - The following circumstances may aggravate the culpability of the erring importer and/or broker:
 - ▶ Unexplained delayed compliance and/or total non-compliance with the demand to produce documents;
 - ▶ Obstructing or unnecessarily delaying the conduct of any administrative proceeding conducted in relation to the post-entry audit;
 - ▶ Prior violations of the TCCP, and related rules and regulations; and
 - ▶ Any other circumstance that is similar or analogous to the foregoing.

The foregoing mitigating and aggravating circumstances may be considered in the determination of the degree of culpability of the erring importer, and in imposing the corresponding administrative penalty.

- ▶ This CAO shall take effect immediately upon publication.

[Editor's Note: CAO No. 03-2015 was published in The Manila Times on March 19, 2015.]

CMO No. 8-2015 implements the JMO between the BOC and the PEZA on the Mandatory Electronic Processing of Transshipments of PEZA Locators to PEZA Zones, and other procedures.

Customs Memorandum Order No. 8-2015 dated March 16, 2015

- ▶ From April 13, 2015, PEZA locators may, but are not required to, file their transshipment entries with the BOC through the e2m system as prescribed in this Joint Memorandum Order (JMO). From May 4, 2015, PEZA locators will be required to comply with this JMO in full.
- ▶ All PEZA locators importing goods for transshipment from any port of discharge to any PEZA location must file a transshipment entry through the BOC's e2m system at the port of discharge where the goods arrived.
- ▶ Enrollment of PEZA locators with PEZA and PEZA-accredited Value-Added Service Providers (VASPs)
 1. A PEZA locator shall enroll with PEZA through the PEZA VASPs to qualify for using the PEZA electronic Import Permit System (e-IPS) to secure electronic Import Permits (e-IPs) for the tax and duty-free importation of foreign goods it requires for its PEZA-registered activity, by submitting the following information and documents:
 - ▶ List of importables it requires for its PEZA-registered activity for PEZA approval;
 - ▶ List and contact information of responsible company officials/ personnel and authorized representatives;
 - ▶ List and contact information of customs brokers it is authorizing to secure e-IPS and arrange for the clearance, release and transfer of its transit goods from the ports of discharge to its economic zone location, as well as other information and/or documents PEZA may require;
 - ▶ Proof/s of enrolment with one or more PEZA-accredited VASPs; and
 - ▶ Other information which PEZA may require.
 2. PEZA locators shall be fully responsible for the actions of their designated responsible officials/personnel and authorized representatives and shall provide them with appropriate ID cards and written authorizations to act and sign official documents on behalf of the company, as well as pay the required BOC and PEZA fees, in connection with the clearance, release and transfer of their transit goods from the ports of discharge to their economic zone destinations.
 3. PEZA locators and authorized representatives shall enroll with PEZA-accredited VASPs for the electronic lodgment of e-IP applications and shall provide, among others, numbers of mobile phone and email addresses to which system-generated SMS and/or email alert messages shall be sent to inform them or e-IP applications lodges in their names.

► General Transportation Surety Bond

1. The District Collector in the port of discharge shall require PEZA locators processing transshipment entries to post a General Transportation Surety Bond with the Bonds Division of that district to guarantee the direct, immediate, and faithful delivery of good covered by transshipment entries to the destination PEZA locations, as stated in the transit SADs.
2. Boat notes will no longer be issued for transshipments to PEZA zones; nor will they be required to be underguarded.
3. Upon effectivity of this JMO, each PEZA locator shall post a General Transshipment Surety Bond in each port of discharge in which its shipments arrive, with a face value of (the higher of) P 1,000,000 and (dutiable value of imports admitted in last 3 months in the port of discharge) x $\frac{1}{3}$ x 1.4%

Locators may post a bond with a validity period of their choice, provided that at any point in time, the bond must have a remaining validity of at least 30 days. Locators whose bonds are expiring in less than 30 days shall not be allowed to file transshipment entries until they post a bond with an expiry of at least 30 days from the date of filing of an entry.

4. When a General Transportation Surety Bond is posted, it will be the only bond required to secure the transit of goods from a port of discharge to a destination PEZA location.
5. The Deputy Collector for Operations (DCfO) shall on a daily basis verify whether any PEZA locators in his port have bonds with a remaining validity of less than 30 days, including bonds which have already expired; and ensure that no transshipment entries are processed until a bond with the minimum amount and a remaining validity of at least 30 days is posted. On the first week of every calendar month, the DCfO shall calculate, for each PEZA locator, the minimum amount of the bond, which shall be the higher of P 1,000,000 and (dutiable value of imports admitted in last 3 months in the port of discharge) x $\frac{1}{3}$ x 1.4%
6. The DCfO shall maintain a record of every PEZA locator processing transshipment entries in his port or sub-port, which shall contain information on the Port of Discharge, Name of PEZA Locator, Amount of Bond, Expiration Date of Bond, Issuer of Bond, Duties and Taxes Due in the Last Month, and Minimum Bond Amount (10% of duties and taxes due in the last month).
7. At any given point in time, each PEZA locator should only have one bond posted in each port of discharge or sub-port of discharge. If a new bond must be posted to comply with a new minimum amount or new validity date, that new bond must, by itself, and not in combination with any other bonds posted in that port or sub-port. Upon posting of a new bond, any other bonds outstanding in that port or sub-port which were posted for purposes of complying with this JMO shall be cancelled or returned to the PEZA locator.
8. The BOC may draw upon the bond up to the amount duties, taxes and surcharges and any other amounts due to the BOC, for any transshipments for which any part does not arrived the DPZL within the timeframes specified in this JMO or otherwise determined by the BOC, or for other reasons specified in other issuances by the BOC.

9. To enable the DCfO to calculate the duties and taxes which would have been due for each PEZA locator in each port or sub-port, the Deputy Commissioner for MISTG will, by the second business day of every calendar month, send or make available an electronic file containing all transshipment entries for all consignees in all ports and sub-ports, and the duties and taxes which would have been payable for each entry.
- ▶ Procedures for clearance of good for tax-and-duty-free transit from ports of discharge to PEZA locations
 1. Electronic Lodgment - PEZA locators (and / or their authorized representatives) shall lodge their applications for e-IPS through PEZA VASPs, print their approved e-IPs with the system-generated barcodes, for submission to the BOC as a support to the Transshipment Entry.
 2. In the Port of Discharge
 - ▶ After lodging the Transshipment Entry, and within 30 days of the date of last discharge of all packages from the vessel in which a PEZA locator's goods arrived, the PEZA locator's authorized representative shall bring the print-out of its approved e-IP and its corresponding invoice to Joint-PEZA-Customs Office, for validation of authenticity, stamping and signing. The PEZA locator shall also pay the PEZA processing fees at this time.
 - ▶ After lodging the Transshipment Entry, and within 30 days of the last discharge of all packages from the vessel, the PEZA locator's authorized representative shall submit to the DCfO the print out of the e-IP, stamped and signed by the PEZA Staff of the Joint PEZA-Customs Office; a print out of the Transshipment Single Administrative Document ("TSAD") generated after lodging the Transshipment Entry; the Bill of Lading, or for cargo which arrived by air, and Airway Bill; invoice; Packing List; and where the goods are regulated, the license / permit / clearance issued by the appropriate regulating agency.
 - ▶ The DCfO shall -
 - a. Verify the authenticity of the e-IP
 - b. Verify the authenticity and consistency of the printed TSAD with the electronic entry lodged in e2m
 - c. Verify the completeness and correctness of the documents provided by the PEZA locator's authorized representative
 - d. Examine the documents provided by the PEZA locator's authorized representative, requesting additional information and documents if and only if they are required to determine a final assessment
 - e. Calculate the duties and taxes which would be payable if the goods were not duty- and tax-free
 - f. Perform final assessment, modifying any fields in the TSAD electronically, through the e2m system, when necessary
 - g. After performing final assessment, stamp the TSAD with the words "documents verified" and sign the TSAD
 - h. Inform the Joint PEZA-Customs Office within the PD that the shipment has been cleared to leave

- ▶ After the DCfO performs final assessment, the PEZA locator shall pay the transshipment fee.
 - ▶ Upon payment of the transshipment fee, the e2m system shall automatically trigger authorization to release goods from the PD through the On-Line Release System (OLRS) in e2m.
3. Transit between the port of discharge and the designated PEZA zone location - The authorized representative of the PEZA locator shall receive the transit cargo immediately, directly and faithfully transfer into the economic zone within a reasonable period of time, taking into account the distance and mode of transport. PEZA-issued e-IPS and Transit-SADs shall be used in the clearance and transfer of transit goods from ports of economic zone.
4. Procedures to be followed in the designated PEZA zone location
- ▶ Upon arrival at the economic zone, the authorized representative of the PEZA locator shall bring the transit cargo to the customs clearance area (CCA) for joint inspection by designated BOC and PEZA officials in the presence of a representative of the PEZA locator.
 - ▶ The PEZA locator or its authorized representative shall provide copies of the print-out of the e-IP, print-out of the TSAD, the Bill of Lading or Airway Bill, the invoice, the Packing List to the Customs Examiner and the PEZA Zone official.
 - ▶ The Customs examiner and PEZA Zone official shall examine the shipment in the presence of a representative of the PEZA locator. Both officials shall sign "inspected" on the TSAD and PEZA e-IP prior to its release to PEZA.
 - ▶ After the Customs examiner is satisfied as to the accuracy of the Transshipment Entry, he shall release the shipment to the PEZA locator. If the assessment needs to be modified in any way, the Customs examiner or other Customs personnel designated in writing by the District Collector, shall modify the assessment in the e2m system, and that modified assessment shall become the new final assessment.
 - ▶ The Customs examiner (or other Customs personnel designated in writing by the District Collector) shall tag the specific Transshipment Entry as "arrived" in the e2m system.
 - ▶ BOC and PEZA officials shall undertake appropriate action against a PEZA locator and/or its authorized representative in cases where customs rules and regulations and/or other existing laws are found to have been violated during the transfer of the transit - cargo from the port of discharge to the economic zone.
- ▶ Manual Filing of Transshipment Entries will only be allowed if the Deputy Commissioner for MISTG certifies that the e2m system is down for more than 2 hours.

- ▶ For transshipments which consist of more than 1 container, the port of discharge and the designated PEZA zone shall manually monitor the departure from the port of discharge and the arrival at the designated PEZA zone, until such time that all containers of the transshipment have arrived, and the entire entry is tagged "arrived" in e2m, following the procedures below:
 1. At the port of discharge, the DCfO shall maintain a record, using Excel, of all transshipments which consist of more than 1 container, which shall include information on the Transshipment Entry Number, Total Number of Containers, Container Number, Date Released from Port of Discharge, Date Confirmed Arrived at PEZA Zone, and Name of Official Confirming Arrival at Zone.
 2. Upon arrival of a container at the designated PEZA zone location, the Customs examiner at the PEZA zone location shall check the TSAD and e2m record to determine whether that container is part of a large shipment for which there are still parts or containers which have not yet arrived at the designated PEZA zone location.
 3. When all containers in that transshipment have arrived, the Customs examiner shall inform the DCfO at the port of discharge that all containers for that transshipment have arrived, and tag the transshipment as "arrived" in the e2m system.
 4. At any given point in time, the DCfO at the port of discharge should know the status all transshipment entries for which there is more than 1 container, i.e., which containers have left the port of discharge, and which containers have arrived at the port of destination.

- ▶ Penalties for Non-Compliance
 1. For all transshipments for which not all containers have arrived at the designated PEZA zone within the time frames provided:
 - ▶ If all containers have left the port of discharge, but not all have arrived, the locator shall liable to pay duties and taxes on the entire shipment, plus a 100% surcharge.
 - ▶ If not all containers have left the port of discharge, the DCfO shall cause the cancellation of the transshipment entry. The locator shall be required to file a consumption entry through e2m for the entire shipment to obtain release of the remaining containers, paying duties and taxes, plus a 100% surcharge, for the entire shipment, within 5 days of written instruction from the BOC.
 - ▶ After payment of all amounts due and upon verification of the portions of the transshipment which arrived at the designated PEZA zone location or did not leave the port of discharge, and the amounts of duties and taxes paid, the locator may file for a refund of duties, taxes, and surcharges with the BOC for any portions of the transshipped cargo which did not leave the port of discharge or which did not arrive at the designated PEZA zone location.
 - ▶ If payment is not made within this time frame, the BOC may draw upon the General Transportation Surety Bond for the amount due, plus an additional surcharge of 20%.

2. For all transshipments for which, for any portion of the cargo, the PEZA seal is found to have been opened or otherwise tampered, as attested and concurred to in writing by both BOC and PEZA examiners, the locator will be liable to pay duties and taxes on the entire shipment plus a 100% surcharge, within 5 days of written instruction from the BOC.
 3. The term "entire shipment" refers to all goods which are subject of the transshipment entry, including any goods which have not left the port of discharge, have arrived at the designated PEZA zone location, or have seals which were found to have been opened or otherwise tampered.
 4. The BOC may suspend the accreditation of any PEZA locator which does not comply with any part of the provision on Alert Orders of this JMO, without prejudice to other measures the BOC may take against it.
 5. Non-compliance by any Customs official with any provision of the JMO will be an incidence of Simple Neglect of Duty, and shall be punishable upon second offense by dismissal.
 6. The tagging of a shipment as "arrived" when any part of that shipment has not arrived, or the entry of wrong information in the tables required to be maintained shall be a Grave Offence and shall be punishable upon first offense by dismissal.
- ▶ The District Collector of any port (but not sub-port) may delegate the responsibilities and powers of the DCfO to the head of the Joint PEZA-Customs Unit in any office or sub-port within his or her district. Such delegation shall be in writing and shall cover all, and not only part, of the responsibilities of the DCfO.
 - ▶ Any reference to "port of discharge" refers equally to sub-ports of discharge. For transactions involving sub-ports of discharge, any responsibilities and powers of District Collectors in this JMO, except for those specifically excluded, will be exercised by the Sub-Port Collector, and any responsibilities and powers of DCfOs will be exercised by his equivalent in the sub-port.
 - ▶ This CMO shall take effect on a mandatory basis on May 4, 2015.

PEZA Issuances

PEZA Memorandum Circular No. 2015 - 010 dated 20 March 2015

- ▶ Definition of Regulated Chemicals

Regulated chemicals are substances containing any of the following components at any concentration/amount:

1. NOT listed in the Philippine Inventory of Chemicals and Chemical Substances;
2. Included in the Priority Chemical List or Chemical Control Order;
3. Considered as Controlled Precursor & Essential Chemicals; and
4. Considered as Explosive Ingredients.

PEZA MC No. 2015-010 defines the regulated chemicals and goods which require permits and/or licenses from concerned agencies before they are transported into the PEZA economic zones.

▶ Definition of Regulated Goods

Regulated goods are finished products (i.e., lead acid batteries, paints, adhesives, industrial solvents, cleaning agents, catalysts) that may contain a regulated chemical as described above and may be subject to additional regulations.

▶ Role of PEZA in the movement of locally purchased chemicals into economic zones:

1. PEZA Zone Offices may conduct random check of the Material Safety Data Sheet for locally purchased chemicals and its corresponding delivery receipt and request for a copy of the appropriate permits whenever applicable.
2. The PEZA Environmental Health and Safety Division at the public economic zones and the Environmental Safety Group at the PEZA Head Office shall check if chemicals (whether locally purchased or imported) have appropriate permits from concerned government agencies during annual compliance monitoring.
3. PEZA will impose appropriate sanctions on flagrant violations of permit and/or license requirements of concerned government agencies.

▶ Role of locator enterprises in the movement of locally purchased chemicals into the economic zones:

1. Locator enterprises must evaluate the Material Safety Data Sheet of locally purchased chemicals.
2. PEZA-registered enterprises are responsible for ensuring that appropriate permits are secured prior to purchase of regulated chemicals or regulated goods from local suppliers.

PEZA MC No. 2015-011 circularizes BI Operations Order No. SBM-2015-007 which restores the exemption of holders of PEZA endorsed Section 47(a)2 visas from payment of exit and re-entry fees.

PEZA Memorandum Circular No. 2015 - 011 dated 23 March 2015

- ▶ Holders of PEZA-endorsed Section 47(a)(2) visas including their spouses and qualified dependents whose passports have been previously stamped with "Subject to Payment of Emigration Clearance Certificate (ECC) and Special Return Certificate (SRC) Fees" do not need to have their visas re-stamped with "Exempt from ECC and SRC Fees" by the BI. They may just present a copy of the BI Operations Order and the PEZA Memorandum Circular in case they are asked by the BI Officer at the airport.
- ▶ BI Operations Order No. SBM-2015-007 repeals BI Operations Order No. SBM-2014-055, dated 04 November 2014, which required all holders of Section 47(a)(2) visas to pay all regular immigration fees, unless specifically exempted therefrom as specified in the indorsement issued by the Department of Justice.
- ▶ Sections 2 and 3 of BI Operations Order No. SBM-2015-007 are not applicable to PEZA-endorsed Section 47(a)(2) visas:
1. Section 2 provides that all other visas issued under Section 47(a)(2), CA No. 613, as amended, shall not be exempt from securing alien certificate, other BI clearance as well as payment of immigration fees unless specifically indicated in the Indorsement issued by the DOJ. Such fee-exempt visas shall clearly indicate the word "exempt" in the implementation thereof.

2. Section 3 provides that visas issued under Section 47(a)(2), CA No. 613, as amended, shall be subject to the payment of regular immigration fees and clearance requirements absent any contrary indication specified in the Indorsement issued by the DOJ. Such fee-required visas shall clearly indicate the directive "To secure ECC/SRC upon departure" in the implementation thereof.

BSP Issuances

Circular No. 871 amends Subsections X185 - X185.12 and X186.4 of the MORB on the Internal Control System and Internal Audit Function in banks, respectively.

BSP Circular No. 871 dated March 5, 2015

- ▶ Section 185 and Subsections X185.1 - X185.5 has been revised to reflect a more detailed, comprehensive and responsive description of responsibilities and guidelines for Banks. The revisions were brought about by the intent of the BSP to align its existing regulations with international standards and best practices in internal control and internal audit as embodied in related documents issued by the Basel Committee on Banking Supervision (BCBS) and the Committee on Sponsoring Organization of Treadway Commission (COSO).

- ▶ New section/subsection titles are as follows:

1. Section X185. Internal Control Framework

Subsection X185.1. Management oversight and control culture.

- ▶ The board of directors ...
- ▶ The audit committee ...
- ▶ Senior management ...
- ▶ All personnel ...

Subsection X185.2. Risk recognition and assessment.

Subsection X185.3. Control activities.

- ▶ Clear arrangements for delegating authority.
- ▶ Adequate accounting policies, records and processes.
- ▶ Robust physical and environmental controls to tangible assets and access controls to information assets.
- ▶ Segregation of conflicting functions.

Subsection X185.4. Information and communication.

Subsection X185.5. Monitoring activities and correcting deficiencies.

- ▶ Section X185.6 - X185.12 has been completely removed from the MORB.
- ▶ Section X186 and Subsections X186.1 - X186.4 has undergone revisions of the same nature as those mentioned in A above. New section/subsection titles are as follows:

Section X186. Internal Audit Function.

1. Permanency of the internal audit function.
2. Internal audit function in group structures.
3. Outsourcing of internal audit activities.
4. Internal audit function of branches of foreign banks.

Subsection X186.1. Qualifications of the Head of the Internal Audit function.

1. The head of the internal audit function of a universal bank (UB) or a commercial bank (KB) must be ...
2. The head of the internal audit function of a complex thrift bank (TB), rural bank (RB) and cooperative bank (Coop Bank); quasi-bank (QB) and; trust entity must be ...
3. The head of the internal audit function of a simple or non-complex TB, RB and Coop Bank; and non-stock savings and loan association (NSSLA) must be

Subsection X186.2. Duties and responsibilities of the head of the internal audit function or the Chief Audit Executive.

Subsection X186.3. Professional competence and ethics of the internal audit function.

Subsection X186.4. Independence and objectivity of the internal audit function.

Subsection X186.5. Internal audit charter.

Subsection X186.6. Scope.

- ▶ Subsections X426.1. Internal Audit. has been revised to allow audits to be conducted in intervals commensurate with the assessed levels of risk in trust and investment management operations. Provided, that such intervals are supported and reassessed regularly to ensure appropriateness given the current risk and volume of the trust and investment management operations.
- ▶ The provisions of the Circular apply to non-bank financial institutions and shall amend relevant provisions of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI), tabulated as follows:

Circular 871	MORNBFI
Section 1 and 2	Section 4185Q
Subsection 3.a.1 to 3.a.3; 3.b to 3.g	Subsection 4185Q.9; 4186Q; 4186Q.2 to 4186Q.4
Section 4	Section 4163S
Subsection 3.a.1 to 3.a.3 and Subsections 3.b. to 3.g	Section 4164S; 4164S.1 to 4164S.4
Section 1 and 2	Section 4163N
Subsection 3.a.1 to 3.a.3; 3.b to 3.g	Section 4164N; 4164N.1 to 4164N.4

- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor's Note: Circular No. 871 was published in Malaya on March 11, 2015.]

Circular No. 872 amends Section X104 of the MORB.

BSP Circular No. 872 dated March 13, 2015

- ▶ Section X104 of the MORB on Business Name was amended by adding the following paragraphs:

Section. X104 (2008 - X167) Business Name

1. UBs/KBs.
2. TBs. xxx
3. RBs/Coop Banks. xxx

Subject to prior approval of the BSP, a TB, RB or Coop Bank may apply to be exempted from the general requirements under items “b” and “c” above, provided that the applicant TB, RB or Coop Bank shows compliance with the following conditions:

1. The new business name of the bank must reasonably describe the business activities that the bank is engaged in.
2. The business name should not mislead, misrepresent or give a false impression to the public with respect to the banking category of a bank, the location/s and clientele it serves, as well as the products and services that the applicant bank is authorized to offer to the public.
3. The applicant bank shall not use a business name that is identical, deceptive or confusingly similar with existing corporate names, in accordance with existing applicable laws, rules and regulations governing the use of corporate names pursuant to the provisions of the Corporation Code of the Philippines.
4. The applicant bank must meet the minimum capitalization requirements applicable at the time of filing of its application to change its business name.
5. The applicant bank must not have any major supervisory concern/s that threaten its solvency or liquidity, as determined by the appropriate department/s of the Supervision and Examination Sector.
6. Other conditions which the Bangko Sentral may deem necessary in order to protect the public interest.

The Application of a TB, RB or Coop Bank for exemption from the general requirements on the use of name under (b) and (c) above shall be supported by the following:

1. Application letter signed by the president or officer of equivalent rank indicating the justification for the request;
2. Notarized secretary’s certificate on the resolution of the bank’s board of directors authorizing the request exemption;
3. Certification signed by the president or officer of equivalent rank that the bank has complied with all the conditions for the said application; and
4. Such other documents as may be required by the Bangko Sentral.

- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

[Editor’s Note: Circular No. 872 was published in The Manila Times on March 18, 2015.]

BLGF Opinion

BLGF Opinion dated March 6, 2015

Ordinance No. 169 of Valenzuela City which increases by 300% the market values of real property classified as "industrial" is legal. The BLGF has no authority to declare as null and void or suspend the implementation of any ordinance enacted by the LGU concerned.

Facts:

The Sangguniang Panglungsod of Valenzuela City passed Ordinance No. 169, Series of 2014, entitled "*An Ordinance Adopting the Schedule of Market Values for Land, Buildings and Other Structures Situated in Valenzuela City*". In effect, the said ordinance increased by 300% the market values of real properties classified as "industrial" in Valenzuela City.

Due to the said increase in market values, the BLGF was requested to rule on the legality of Ordinance No. 169 and to declare it as null and void, or suspend its implementation for being unconstitutional and violative of the Local Government Code (LGC) of 1991, as amended.

Issues:

1. Is Ordinance No. 169 legal?
2. Is BLGF authorized to declare as null and void or suspend the implementation of Ordinance No. 169?

Ruling:

1. Yes. The market value as prescribed by Ordinance No. 169 was approved by the Sangguniang Panglungsod of Valenzuela City based on existing applicable laws, rules and regulations, including the partial revision undertaken by classification of real properties.

In particular, the market value being questioned was prepared by the local assessor by virtue of Section 472 of the LGC, as amended. In addition, the said market value was previously reviewed by the BLGF and was certified as compliant with applicable rules, regulations and guidelines such as, but not limited to the Philippine Valuation Standards (DOF Order No. 37-09), Mass Appraisal Guidebook (DOF No. 10-2010), and Manual on Real Property Appraisal and Assessment Operations (DOF Local Assessment Regulations Nos. 1-04 and 1-07).

The question of constitutionality or legality of tax ordinances or revenue measures may be appealed to the Secretary of Justice or a court of competent jurisdiction for final resolution.

2. No. The BLGF has no authority to declare as null and void or suspend the implementation of any ordinance enacted by the LGU concerned since the power to enact ordinances are vested upon the local sanggunians after the conduct of public hearings.

Court Decisions

The Philippine American Life and General Insurance Company vs. The Secretary of Finance and the Commissioner of Internal Revenue

Supreme Court (Third Division), G.R. No. 210987, promulgated November 24, 2014

The CIR's power to interpret the provisions of the Tax Code and other tax laws is subject to review by the Secretary of Finance. An adverse ruling of the Secretary of Finance is appealable to the CTA.

When shares of stock not traded through the local stock exchange are sold at a price below their FMV, the difference is subject to donor's tax. Section 100 of the Tax Code prescribes that the amount by which the FMV of the property sold exceeds the value of the consideration shall be deemed a gift.

Facts:

In 2009, Petitioner Philippine American Life and General Insurance Company (Philamlife) sold through competitive bidding its PhilamCare common shares to STI Investments, Inc. After payment of the documentary stamp taxes and capital gains tax, Philamlife filed an application with the BIR for the issuance of a Certificate Authorizing Registration/Tax Clearance Certificate (CAR/TCL). The BIR notified Philamlife that it needed to secure a ruling, citing a potential donor's tax liability.

Philamlife filed a request for a ruling with the BIR to confirm that the transaction is not subject to donor's tax on the ground that the shares were sold at their FMV, at an arm's length consideration, and with no donative intent. Philamlife also argued that donor's tax does not apply to shares sold in an open bidding process.

Respondent CIR denied the request through BIR Ruling No. 015-12 and ruled that the transaction was subject to donor's tax pursuant to Section 100 of the Tax Code, considering that the selling price of the shares was less than the book value based on the financial statements as of the end of 2008.

Philamlife appealed the ruling with the Secretary of Finance. Upon denial by the Secretary, Philamlife elevated the case to the Court of Appeals (CA) via a petition for review under Rule 43. The CA dismissed the petition for lack of jurisdiction.

Issues:

1. Who has jurisdiction to review the adverse ruling of the Secretary of Finance?
2. Is the share transfer subject to donor's tax?

Ruling:

1. The Court of Tax Appeals (CTA) has jurisdiction to review the adverse ruling of the Secretary of Finance.

The CIR's power to interpret the provisions of the Tax Code and other tax laws is subject to review by the Secretary of Finance. An adverse ruling of the Secretary may be appealed to the CTA, which has jurisdiction over "other matters" arising under the Tax Code or other laws administered by the BIR.

RA No. 1125, as amended, provides that the CTA shall exercise exclusive appellate jurisdiction to review by appeal, among others, decisions of the CIR "in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue."

Even though the provision suggests that only rulings of the CIR are covered, it is sufficient to include appeals from the Secretary's review under Section 4 of the Tax Code. This is not a derogation of the power of the Office of the President (which, the BIR argues, is the proper forum for a taxpayer's appeal of an adverse ruling of the Secretary before appealing to the CA) but merely a recognition that matters calling for technical knowledge should be handled by the agency or body with specialization over the controversy. As the specialized quasi-judicial agency mandated to adjudicate tax, customs, and assessment cases, there can be no other court of appellate jurisdiction other than the CTA that can decide the issues raised in the petition, which involves the tax treatment of the shares of stock sold.

2. Yes, the excess of the FMV of the shares over the selling price is deemed a gift that is subject to donor's tax.

Section 100 of the Tax Code expressly provides that the amount by which the FMV of the property transferred exceeds the value of the consideration shall be deemed a gift. Thus, the absence of donative intent does not exempt the transaction from donor's tax. Even if there is no actual donation, the difference in price is considered a donation by fiction of law.

Banco de Oro et. al. vs. Republic of the Philippines et. al.

Supreme Court (*En Banc*), G.R. No. 198756 promulgated January 13, 2015

A debt instrument is considered a 'deposit substitute' if the borrowing is made from 20 or more corporate or individual lenders at any one time.

The phrase "at any one time" for purposes of the 20 or more lender threshold covers transactions not only at the time of issuance of the bond in the primary market but also during all subsequent sale or trading of the bond in the secondary market.

Facts:

In 2001, the Caucus of Development NGO Networks (CODE-NGO) requested the approval of the Department of Finance for the issuance by the Bureau of Treasury (BTr) of 10-year zero-coupon Treasury Certificates. Initially, these Treasury Certificates were to be purchased by a special purpose vehicle, on behalf of CODE-NGO, repackaged, and sold at a premium to investors as 'Poverty Eradication and Alleviation Certificates or the PEACe Bonds'.

On May 31, 2001, the BIR issued BIR Ruling No. 020-2001 in response to CODE-NGO's queries as to the tax treatment of the proposed PEACe Bonds. The BIR confirmed that the PEACe Bonds would not be classified as deposit substitutes and would therefore not be subject to the 20% final withholding tax (FWT), in light of the representation that the PEACe bonds will be issued to only one entity, i.e. CODE-NGO. The tax treatment of the PEACe Bonds was reiterated in BIR Rulings Nos. 035-2001 and DA-175-01, which held that to determine whether debt instruments and securities are deposit substitutes, the "20 or more individual or corporate lenders" rule must apply. The BIR added that the determination of the phrase "at any one time" for purposes of determining the "20 or more lenders" is to be determined at the time of the original issuance.

An auction was conducted and Rizal Commercial Banking Corporation (RCBC), on behalf of CODE-NGO, emerged as the winning bidder. CODE-NGO and RCBC Capital Corp. (RCBC Capital) entered into an underwriting agreement whereby the latter was appointed the Issue Manager and Lead Underwriter for the offering of the PEACe Bonds. RCBC Capital sold the Government Bonds in the secondary market. Petitioner banks purchased the PEACe bonds on different dates.

Shortly before the maturity of the PEACe bonds, and in response to a query by the Department of Finance, the BIR issued Ruling No. 370-2011, which declared that the PEACe Bonds are deposit substitutes subject to the 20% FWT on the discount or interest earned, and directed the BTr to withhold said FWT at maturity. Subsequently, the BIR clarified in Ruling No. DA-378-2011 that the liability for the FWT should be imposed not only on RCBC/CODE-NGO, but also on all subsequent holders of the PEACe Bonds. The BIR held that all treasury bonds, including the PEACe bonds, regardless of the number of purchasers/lenders at the time of origination/issuance, are considered deposit substitutes, and that the interest on these deposit substitutes are subject to the 20% FWT.

On October 28, 2011, the Supreme Court issued a temporary restraining order enjoining the implementation of BIR Ruling No. 370-2011 against the PEACe Bonds, subject to the condition that the 20% FWT on interest income shall be withheld by the petitioner banks and placed in escrow pending resolution of the petition. Petitioner banks allege that on the same day the TRO was issued, the BTr paid to Petitioner banks and other bondholders the amounts representing the face value of the bonds, net of the 20% FWT, and that the BTr refused to release the amounts corresponding to the 20% FWT.

Issues:

1. Are the PEACe Bonds considered 'deposit substitutes' subject to 20% FWT? Does the "20 lender rule" include trading of the bonds in the secondary market?
2. If the PEACe Bonds are considered 'deposit substitutes,' is the BIR estopped from imposing and/or collecting the 20% FWT?

Ruling:

1. The PEACe Bonds may or may not constitute 'deposit substitutes,' depending on the number of lenders "at any one time." The "20 lender rule" applies to every transaction in the primary or secondary market.

Sections 24(B)(1), 27(D)(1) and 28(A)(7) of the Tax Code impose upon individuals, domestic and foreign corporations, respectively, a 20% FWT on interest from deposit substitutes, which is defined in Section 22(Y) as "an alternative form of obtaining funds from the public (the term 'public' means borrowing from twenty (20) or more individual or corporate lenders *at any one time*) other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account xx."

The number of lenders determines whether a debt instrument should be considered a deposit substitute and consequently subject to the 20% FWT. The phrase '*at any one time*,' for the purpose of determining whether the 20 lender rule applies, means every transaction executed in the primary or secondary market in connection with the purchase or sale of securities.

Where the financial assets involved are government securities like bonds, the reckoning of '20 or more lenders/investors' is made at any transaction in connection with the purchase or sale of the Government Bonds, such as:

- a. Sale and distribution by Government Securities Eligible Dealers (GSEDs) to various lenders/investors in the secondary market;
- b. Subsequent sale or trading by a bondholder to another lender/investor in the secondary market usually through a broker or dealer; or

- c. Sale by a financial intermediary-bondholder of its participation interests in the bonds to individual or corporate lenders in the secondary market.

When, through any of the foregoing transactions, funds are simultaneously obtained from 20 or more lenders/investors, there is deemed to be a public borrowing and the bonds, at that point, are deemed deposit substitutes. Consequently, the seller is required to withhold the 20% FWT on the imputed interest income from the bonds.

The transactions executed for the sale of the PEACe Bonds are (a) the issuance of the bonds by the BTr to RCBC/CODE-NGO, and (b) the sale and distribution by RCBC Capital on behalf of CODE-NGO of the PEACe Bonds to undisclosed investors.

A reading of the underwriting agreement and RCBC term sheet reveals that the settlement dates for the sale and distribution by RCBC Capital to various undisclosed investors would fall on the same day when the PEACe Bonds were supposedly issued to CODE-NGO/RCBC. In reality, therefore, the entire borrowing received by the BTr in exchange for the PEACe Bonds was sourced directly from the undisclosed number of investors to whom RCBC Capital/CODE-NGO distributed the PEACe Bonds, all at the time of origination or issuance.

Should there have been a simultaneous sale to 20 or more lenders/investors, the PEACe Bonds are deemed deposit substitutes and RCBC Capital/CODE-NGO would have been obliged to pay the 20% FWT. The obligation to withhold the 20% FWT on the interest would likewise be required of any lender/investor had the latter turned around and sold said PEACe Bonds, whether in whole or part, simultaneously to 20 or more lenders or investors. However, interest income earned by individuals from long-term deposits or investments that have a holding period of not less than 5 years, is exempt from the FWT.

If the bonds are found to be deposit substitutes, the proper procedure is for the BTr to pay the face value of the PEACe Bonds to the bondholders and for the BIR to collect the unpaid FWT from RCBC Capital/ CODE-NGO as withholding agents.

The BTr is ordered to immediately release and pay to the bondholders the amount corresponding to the 20% FWT that it withheld on October 1, 2011.

2. The BIR is not estopped from imposing and collecting the taxes.

The three-year prescriptive period to assess and collect internal revenue taxes is extended to 10 years in cases of (1) fraudulent returns; (2) false returns with intent to evade tax; and (3) failure to file a return, to be counted from the time of the discovery of the falsity, fraud or omission.

Should it be found that RCBC Capital/CODE-NGO sold the PEACe Bonds to 20 or more lenders/investors, the BIR may still collect the unpaid tax from RCBC Capital/CODE-NGO within 10 years after discovery of the omission.

[Editor's Note: Under the Tax Code, the period of 3 years, which is extended to 10 years in case of fraudulent or false returns with intent to evade tax and failure to file a return, refers to the period to assess (and not collect) deficiency taxes.]

Allegro Microsystems Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (First Division) Case 8445 promulgated February 12, 2015

To properly claim uncollectible receivables as a bad debt deduction, a taxpayer must comply with the requirements prescribed by Section 34 (E)(1) of the Tax Code, as implemented by Revenue Regulations (RR) No. 5-99, as amended by RR No. 25-02.

Facts:

Respondent CIR assessed Petitioner Allegro Microsystems Philippines, Inc. for alleged deficiency income tax for taxable year ending March 31, 2008 arising from, among others, the disallowance of bad debts claimed as a deduction from gross income. The CIR claimed that Allegro's receivables from Kras Asia Limited and M/A Com cannot be considered bad debts properly written off during the taxable year.

Allegro protested the assessment and argued that the said uncollectible receivables were correctly treated as deductible bad debts for income tax purposes. The CIR denied the protest on the ground that Allegro failed to meet the requirements for deductibility of bad debts under Section 34 (E)(1) and Revenue Regulations 5-99, as amended by RR 25-2002.

Allegro filed a Petition for Review with the CTA.

Issue:

Are Allegro's receivables considered bad debts that are deductible from gross income?

Ruling:

No. Allegro failed to prove the requisites for deductibility of said receivables as bad debts as prescribed by the relevant provisions of the Tax Code and regulations.

Section 34 (E)(1) of the Tax Code generally allows as a deduction from gross income debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year. RR No. 5-99, as amended by RR No. 25-02, also prescribes the following requirements for valid deduction of bad debts from gross income.

- a. There must be an existing indebtedness due to the taxpayer which must be valid and legally demandable;
- b. The same must be connected with the taxpayer's trade or business;
- c. The same must not be sustained in a transaction entered into between related parties enumerated under Section 36 (B) of the Tax Code, as follows:
 - (1) Between members of a family; or
 - (2) Except in the case of distributions in liquidation, between an individual and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual; or

- (3) Except in the case of distributions in liquidation, between two corporations more than 50% in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company;
 - (4) Between the grantor and a fiduciary of any trust; or
 - (5) Between the fiduciary of a trust and the fiduciary of another trust if the same person is a grantor with respect to each trust; or
 - (6) Between a fiduciary of a trust and a beneficiary of such trust.
- d. The same must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and
- e. The same must be actually ascertained to be worthless and uncollectible as of the end of the taxable year.

Citing the Supreme Court decision in *Philippine Refining Company vs. Court of Appeals* (GR 118794 promulgated on May 8, 1996), the CTA ruled that before a debt can be considered worthless, the taxpayer must show that it is indeed uncollectible even in the future. There are steps that must be undertaken to prove that a taxpayer has exerted diligent efforts to collect the debts, viz: (1) sending of statement of accounts; (2) sending of collection letters; (3) giving the account to a lawyer for collection; and (4) filing a collection case in court. While it is not required to file a suit, the taxpayer is at least expected to produce reasonable proof that the debts are uncollectible although diligent efforts were exerted to collect the same.

The CTA ruled that Allegro failed to exert all reasonable efforts to collect the outstanding liability from its debtors. Although the receivables arose from deposits made to Kras Worldwide Limited, Allegro sent a demand letter to an affiliated entity, Kras Asia Limited. The emails discussing the change in management in M/A Com were also deemed insufficient proof of diligent efforts to collect the debt. Moreover, Allegro failed to establish that it has no relation to Kras Asia Limited and M/A Com in the capacities mentioned under Section 36 (B) of the Tax Code.

Deductions for income tax purposes partake of the nature of tax exemptions and are strictly construed against the taxpayer, who must prove by convincing evidence that he is entitled to the deduction claimed.

