

Tax Bulletin

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Highlights

BIR Rulings

- ▶ A commercial property owners' association does not fall within the purview of associations exempt from income tax, as defined under RA No. 9904 or the Magna Carta for Homeowners and Homeowners' Associations. **(Page 4)**
- ▶ Section 3 (e) of RR No. 7-2003 provides for the automatic conversion of ordinary assets into capital assets owned by a taxpayer not engaged in a real estate business upon showing proof that such assets have not been used in business for more than two years. **(Page 4)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 5-2017 prescribes the rules and regulations implementing the tax provisions of Republic Act (RA) No. 10754 entitled "An Act Expanding the Benefits and Privileges of Persons with Disability (PWD)." **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 30-2017 circularizes the additional list of Personal Equity Retirement Account (PERA) Unit Investment Trust Funds (UITFs) duly approved by the Bangko Sentral ng Pilipinas (BSP). **(Page 8)**
- ▶ RMC No. 31-2017 circularizes the advisory issued by the Microfinance NGO Regulatory Council in relation to the implementation of RR No. 3-2017, which implements the tax provisions of RA No. 10693, otherwise known as the "Microfinance NGOs Act." **(Page 8)**
- ▶ RMC No. 33-2017 allows the over-the-counter acceptance of certain tax returns/ payments of internal revenue taxes due to the unavailability of the electronic Filing and Payment System (eFPS). **(Page 8)**
- ▶ RMC No. 34-2017 amends paragraph 6 of RMC No. 28-2017 regarding the guidelines on filing, receiving and processing 2016 Income Tax Returns (ITR), including attachments. **(Page 9)**
- ▶ RMC No. 35-2017 clarifies the imposition of capital gains tax (CGT) on the sale, exchange or other disposition of real property. **(Page 9)**

BSP Issuances

- ▶ Circular No. 953 provides for the amendment to the Regulation on Interlocking Directorships and/or Officerships of Representatives of Government. **(Page 9)**
- ▶ Circular No. 954 provides for the amendment of BSP Circular No. 935, dated 28 December 2016 - Extension of the deadline for the exchange or replacement of the New Design Series (NDS) banknotes. **(Page 10)**
- ▶ Circular No. 955 provides for the Amendment to Appendix 39 of the Manual of Regulations for Banks (MORB). **(Page 10)**

- ▶ Circular No. 956 provides for amendments to the Guidelines on the Submission of Annual Reports and the Sanctions to be imposed for Non-Disclosure of Relevant Information. **(Page 10)**
- ▶ Circular No. 957 provides for the Examination and Records of BSP-Supervised Financial Institutions. **(Page 11)**

SEC Issuances

- ▶ SEC MC No. 7 amends the requirement, under SEC MC No. 13 series of 2009, for Financing and Lending Companies to have an independent auditor accredited by the Commission. **(Page 12)**
- ▶ A corporation engaged in virtual transactions consummated within the Philippines is considered as “doing business” in the Philippines and must obtain a license to do business. **(Page 13)**

BOC Issuances

- ▶ CAO No. 1-2017 provides for the rules on customs clearance of accompanied and unaccompanied baggage of travelers and crew. **(Page 13)**

Court Decisions

- ▶ The sale of non-performing assets from a Special Purpose Vehicle (SPV) to a third party is exempt from the Expanded Withholding Tax (EWT) imposed on the transfer of land or buildings treated as ordinary assets, subject to the conditions under the SPV Act of 2002. **(Page 16)**
- ▶ A mere finding of an unaccounted source of cash, arising from the difference between the expense payments reported in the Alphabet and the Financial Statements, does not lead to undeclared income. Even if this translates into income, the same will be offset by recording the expense as a deduction for income tax purposes.

Funds received by the branch from its Home Office should not be treated as loans subject to DST. The branch and its Home Office are one and the same entity and the same entity cannot be a creditor and debtor of itself. **(Page 17)**

- ▶ Fraud or intentional falsity in the filing of a tax return will extend the BIR’s prescriptive period to assess tax to ten years.

Failure of the BIR to comply with the requirements under RMO 20-90 and RDAO 05-01 invalidates the waiver of the statute of limitations. **(Page 18)**

- ▶ The issue on the constitutionality of RMO No. 20-2013, which requires non-stock non-profit educational institutions (NSNPEIs) to file an application for tax exemption with the BIR, has been rendered moot by the subsequent issuance of RMO No. 44-2016, which excludes NSNPEIs from the coverage of RMO No. 20-2013. **(Page 19)**

- ▶ The RTC has no jurisdiction over a case involving the reconveyance of property, if founded on the question of validity of an assessment and collection of taxes.

The CTA has exclusive appellate jurisdiction over appeals on the decisions of the CIR. **(Page 20)**

BIR Rulings

BIR Ruling No. 174-2017 dated 6 April 2017

A commercial property owners' association does not fall within the purview of associations exempt from income tax as defined under RA No. 9904 or the Magna Carta for Homeowners and Homeowners' Associations.

Facts:

A Co., an organization of commercial property owners in the Makati Central Business District, provides for vital community services and facilities to its members in support of the Makati City local government. A Co. earns association dues, rental fees, parking fees and other income from trade, business and other for-profit activities.

Issues:

Is A Co. an association exempt from income tax within the purview of RA No. 9904?

Ruling:

No. The association referred to in Section 3 (b) of RA No. 9904 is one that is organized by homeowners or residential property owners or by persons having legal rights over housing units or residential properties. It does not cover an organization of commercial property owners. Hence, A Co. is subject to tax on its association dues, rental fees, parking fees and other income from trade, business and other for-profit activities.

BIR Ruling No. 187-2017 dated 17 April 2017

Section 3 (e) of RR No. 7-2003 provides for the automatic conversion of ordinary assets into capital assets owned by a taxpayer not engaged in a real estate business upon showing proof that such assets have not been used in business for more than two years.

Facts:

A Co. is a domestic corporation engaged in the manufacture, assembly, fabrication, production, purchase and selling of cottage industry products. It ceased operations on 1 January 2006, leaving parcels of land and improvements idle up to the present.

Issue:

Can the parcels of land and improvements be automatically converted from ordinary assets into capital assets?

Ruling:

Yes. The two conditions under RR No. 7-2003 for the automatic conversion of ordinary assets into capital assets were met, i.e., (1) the assets were previously used in business by a taxpayer not engaged in the real estate business; and (2) the assets have not been used in business for more than two years.

BIR Issuances

RR No. 5-2017 issued on 20 April 2017

RR No. 5-2017 prescribes the rules and regulations implementing the tax provisions of RA No. 10754 entitled "An Act Expanding the Benefits and Privileges of PWDs."

► The following terms are defined under the RR:

1. Persons with Disability (PWD) - those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. For purposes of these regulations, the term "PWD" shall further be classified or categorized by the Department of Health (DOH).

2. Disability - a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individuals; a record of such an impairment; or being regarded as having such an impairment.
 3. Benefactor - refers to a Filipino citizen or resident alien, caring for, giving chief support and living with the PWD, who is within the 4th civil degree of consanguinity or affinity, claiming such PWD as dependent.
 4. PWD-Dependent - refers to a Filipino citizen who is a PWD, whether minor or of legal age, related to the benefactor within the 4th civil degree of consanguinity or affinity, not gainfully employed and who is living with and chiefly dependent upon such benefactor for his/her support.
 5. Sales Discount - refers to the actual discount, or that discount which shall not exceed 20% of the gross selling price of goods sold or services rendered to PWD by certain business establishments enumerated under the regulations.
 6. Establishment - refers to any entity, public or private, duly licensed and/or authorized by the national government agencies or by the local government units to operate.
- ▶ A qualified PWD is entitled to claim at least a 20% discount from the following establishments, for the sale of goods and services, for their exclusive use and enjoyment:
1. Hotels and similar lodging establishments, restaurants and recreation centers.
 2. Theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement.
 3. All drugstores for purchases of generic and branded medicine.
 4. Medical and dental services, including diagnostic and laboratory fees, and professional fees of attending doctors in all government facilities or all private hospitals and medical facilities, subject to the guidelines issued by the DOH and in coordination with the Philippine Health Insurance Corporation (Philhealth).
 5. Domestic air and sea transportation based on the actual fare. For promotional fares, the PWD can avail of either the promo or the 20% discount, whichever is higher or more favorable.
 6. Land transportation privileges based on the actual fare.
 7. Funeral and burial services for the death of the PWD, provided that the beneficiary or any person who shall shoulder the funeral and burial expenses, shall claim the discount upon submission of certain documents.
- ▶ All other goods and services sold by the foregoing establishments, not included in the above enumeration, shall not be entitled to the 20% discount.

- ▶ Sales of goods and services to a qualified PWD are exempt from VAT, and the sellers are, therefore, precluded from billing any VAT to the PWD.
 1. The input tax attributable to the VAT-exempt sale is considered as cost or an expense of the establishment and shall not be allowed as input tax credit.
 2. If the establishment fails to indicate the name of the PWD and the PWD ID number, the input tax attributable to the VAT-exempt sale, which was claimed as an expense by the establishment, shall be disallowed.
 3. The VAT exemption does not cover other indirect taxes, such as percentage tax, excise tax, among others. In such a case, the discount must be on the total cost of the goods or services charged by the seller, exclusive of VAT.

- ▶ Sales discounts granted to the PWD by qualified establishments shall be allowed as a deduction from the gross income of such establishments, subject to the following conditions:
 1. The claim must be made in the same taxable year that the discount is granted.
 2. The PWD name and ID number are reflected in the required record of sales for the PWD.
 3. The total amount of the claimed tax deduction, net of VAT, shall be included in the gross sales receipt for tax purposes, subject to proper documentation in accordance with the provisions of the Tax Code.
 4. For percentage taxpayers, the amount of sales discounts shall be excluded from the computation of the 3% percentage tax, but shall be included as part of the gross sales/receipts for income tax purposes.
 5. Only the portion of the gross sales exclusively used, consumed or enjoyed by the PWD shall be eligible for the deductible sales discount.
 6. The sales discount must be recorded as a deduction from gross income (sales less cost of sales), and not as a reduction of sales to arrive at net sales.
 7. The discount shall be treated as a necessary and ordinary expense that may be deducted from the gross income of the seller as part of the itemized deductions.
 8. For taxpayers availing the Optional Standard Deduction (OSD), the sales discount shall not be allowed as a deductible expense.
 9. The gross selling price and the sales discount must be separately indicated in the official receipt or sales invoice issued by the establishment.

10. For sales discount not exceeding 20% of the gross selling price or gross receipts, only the actual amount can be deducted from the gross income, net of VAT.
 11. The establishment is required to keep separate and accurate records of sales, which shall include the name of the PWD, PWD ID number, gross sales/receipts, sales discount granted, date of transactions, and invoice number for every sales transaction to PWD.
- ▶ Effective taxable year 2016, a benefactor of a qualified PWD is entitled to an additional exemption of P25,000.00 for each PWD, if such PWD, regardless of age, satisfies the following:
 1. Filipino citizen
 2. Within the 4th civil degree of consanguinity or affinity of the benefactor
 3. Not gainfully employed
 4. Chiefly dependent upon and living with the benefactor.
 - ▶ The total number of dependents, including qualified dependent children and/or qualified dependent PWD, shall not exceed four.
 - ▶ The additional exemption shall be claimed only by one taxpayer or by one of the spouses in case of married individuals.
 - ▶ In the case of legally separated spouses, additional exemptions may be claimed only by the spouse who has custody of the child or children or PWD, provided that the additional exemptions claimed by both do not exceed four.
 - ▶ Any person who violates any provision of RA No. 10754 shall be penalized as follows:
 1. First violation - Fine of not less than P50,000.00 but not exceeding P100,000.00 or imprisonment of not less than six months, but not more than three years, or both at the discretion of the court.
 2. Subsequent violation - Fine of not less than P100,000.00, but not exceeding P200,000.00 or imprisonment for not less than two years, but not more than six years, or both at the discretion of the court.
 3. Any person who abuses the privileges granted under the law shall be punished with imprisonment of not less than six months or a fine not less than P5,000.00, but not more than P50,000.00, or both, at the discretion of the court.
 - ▶ These regulations shall take effect 15 days after its publication in the Official Gazette or any two newspapers of general circulation, whichever comes earlier.

(Editor's Note: RR No. 5-2017 was published in the Manila Bulletin on 22 April 2017)

RMC No. 30-2017 circularizes the additional list of PERA UITFs duly approved by the BSP.

RMC No. 30-2017 issued on 12 April 2017

To supplement the list contained under RMC No. 131-2016 dated 13 December 2016, the following are the additional PERA UITFs/Investment products duly approved or accredited by the BSP:

No.	Name of Bank	Name of Fund	Sub-type	Detailed Type of Fund	Denomination	Date of BSP Approval
1	Metropolitan Bank and Trust Company	Metrobank PERA Money Market Fund	Money Market	PERA-Money Market	Peso	3/28/2017
2	Metropolitan Bank and Trust Company	Metrobank PERA Bond Fund	Bond	PERA-Bond	Peso	3/28/2017
3	Metropolitan Bank and Trust Company	Metrobank PERA Equity Fund	Equity	PERA-Equity	Peso	3/28/2017

RMC No. 31-2017 circularizes the advisory issued by the Microfinance NGO Regulatory Council in relation to the implementation of RR No. 3-2017 which implements the tax provisions of RA No. 10693, otherwise known as the "Microfinance NGOs Act."

RMC No. 31-2017 issued on 12 April 2017

The Microfinance NGO Regulatory Council has issued an advisory regarding the transitory accreditation of Microfinance NGOs, the pertinent portions of which are as follows:

- ▶ Microfinance NGOs, which have been certified by the SEC to have no derogatory information and are deemed accredited, shall be entitled to avail of the 2% gross receipts tax on its income from microfinance operations.
- ▶ All Microfinance NGOs that were able to secure a Certificate of No Derogatory Information are advised to update their registration using BIR Form 1905 and submit their Certificate of No Derogatory Information issued from 2016 to the present.

RMC No. 33-2017 allows the over-the-counter acceptance of certain tax returns/payments of internal revenue taxes due to the unavailability of the eFPS.

RMC No. 33-2017 issued on 26 April 2017

- ▶ The BIR's eFPS will not be available for the filing of BIR Form Nos. 2550Q, 2550M and 2551M and the payment of the corresponding taxes on the prescribed deadline of 25 April 2017.
- ▶ Thus, all taxpayers, who are mandated to use the eFPS, are allowed to file the said returns through the eBIRForms facility and to pay the corresponding taxes to any Authorized Agent Bank (AAB) within the jurisdiction of the concerned RDO, without penalties for late filing until 26 April 2017.

RMC No. 34-2017 amends paragraph 6 of RMC No. 28-2017 regarding the guidelines on filing, receiving and processing 2016 ITRs including attachments.

RMC No. 34-2017 issued on 27 April 2017

- ▶ Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later, the taxpayer shall submit a copy of the electronically filed ITR with the Filing Reference Number (FRN) or an email Tax Return Receipt Confirmation and a copy of the electronically-filed ITR through the eBIR Forms facility, together with the required attachments.
- ▶ The following table illustrates the counting of the 15-day period:

Date of Electronic Filing	Deadline of Filing	Deadline of Submission of Attachments
February 14, 2017	April 17, 2017	May 2, 2017
April 17, 2017	April 17, 2017	May 2, 2017
April 18, 2017 (<i>Late Filing</i>)	April 17, 2017	May 3, 2017
April 28, 2017 (<i>Late Filing</i>)	April 17, 2017	May 15, 2017 (<i>May 13 is the 15th day which falls on a Saturday</i>)

RMC No. 35-2017 clarifies the imposition of the CGT on the sale, exchange or other disposition of real property.

RMC No. 35-2017 issued on 27 April 2017

- ▶ In order to be liable for payment of the 6% CGT under Sections 24(D)(1) and 27(D)(5) of the Tax Code, there must be a transfer of ownership through the sale, disposition or conveyance of real property, which results in a profit or gain presumed to have been realized by the seller.
- ▶ The payment of the CGT is a direct consequence of the sale, transfer or exchange. It is not the transfer of ownership per se that subjects these transactions to the CGT, but the profit or gain presumed to have been realized by the seller.
- ▶ Thus, the mere issuance of a tax declaration in the absence of any sale, exchange or other form of conveyance is not subject to CGT.
- ▶ This Circular shall take effect immediately.

BSP Issuances

Circular No. 953 provides for the amendment to the Regulation on Interlocking Directorships and/or Officerships of Representatives of Government.

BSP Circular No. 953 dated 27 March 2017

- ▶ Amendments to the MORB and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) were approved to limit the applicability of the rules on interlocking directorships and/or officerships of representatives of government to those of government or government-owned or controlled entities holding voting shares of stock of banks/quasi-banks/non-bank financial institutions/trust corporations.

- ▶ Subsections X145.1/4145Q.1/4140N.1/4145T.1 of the MORB/MORNBFI on Representatives of Government are hereby amended to read as follows:

“The provision of this Section shall apply to persons appointed to such positions as representatives of the government or government-owned or controlled entities holding voting shares of stock of banks/quasi-banks/non-bank financial institutions/trust corporations unless otherwise provided under existing laws.”

- ▶ 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 953 was published in The Manila Times on 31 March 2017)

Circular No. 954 provides for the amendment of BSP Circular No. 935, dated 28 December 2016 - Extension of the deadline for the exchange or replacement of the NDS banknotes.

BSP Circular No. 954 dated 30 March 2017

- ▶ The deadline for the exchange or replacement of New Design Series (NDS) banknotes with the Bangko Sentral ng Pilipinas and its authorized agent banks and financial institutions at par with New Generation Currency banknotes and without charge is extended from 31 March 2017 to 30 June 2017.
- ▶ This Circular shall be effective immediately.

(Editor's Note: BSP Circular No. 954, s. 2017 was published in the Philippine Daily Inquirer on 7 April 2017)

Circular No. 955 provides for the Amendment to Appendix 39 of the MORB.

BSP Circular No. 955 dated 11 April 2017

- ▶ The Monetary Board approved the amendment to Appendix 39 of the MORB for the change in timing of the Bangko Sentral ng Pilipinas' (BSP) reverse repurchase (RRP) facility auction.
- ▶ This Circular shall take effect on 17 April 2017.

(Editor's Note: Circular No. 955, s. 2017 was published in The Philippine Star on 13 April 2017)

Circular No. 956 provides for amendments to the Guidelines on the Submission of Annual Reports and the Sanctions to be imposed for Non-Disclosure of Relevant Information.

BSP Circular No. 956 dated 17 April 2017

- ▶ The Monetary Board approved the amendments to the Guidelines on the submission of Annual Reports of banks and quasi-banks (QBs) as well as the sanctions to be imposed for non-disclosure of relevant information as provided for under existing regulations.
- ▶ Subsection X190.5 (2008 - X166.5) of the MORB was revised to provide the minimum disclosure requirements in the Annual Report of banks to ensure that proper disclosure is made on all significant matters regarding the bank, including its financial condition, performance, ownership and governance. The revised disclosures will start with Annual Reports for financial year 2017.
- ▶ Subsection X190.6 (2008 - X166.6) provides for the amended guidelines on posting and submission of Annual Report for banks.

- ▶ Subsection 4190Q.5 (2008 - 4172Q.4) of the MORNBF1 was also revised to provide the minimum disclosure requirements in the Annual Report of QBs to ensure that proper disclosure is made on all significant matters regarding the QB, including its financial condition, performance, ownership and governance. The revised disclosures shall commence with Annual Reports for financial year 2017.
- ▶ Subsection 4190Q.6 (2008 - 4172Q.5) provides for the amended guidelines on posting and submission of Annual Report for QBs.
- ▶ Subsections X190.7 and 4190Q.7 of MORB and MORNBF1, respectively, which provide for sanctions for non-disclosure of certain information and/or delayed submission of Annual Reports, are added by this Circular.
- ▶ Subsection X115.9(b)/Section X118(c)(2) Item (a)/Part VIII of Appendix 63c Item (B) of the MORB and /Subsection 4115Q.9(b) Sanctions of MORNBF1 are hereby amended to read as follows:

For non-compliance with required disclosures. Willful non-disclosure or erroneous disclosure of any item required to be disclosed under this framework in the Published Statement of Condition shall be considered as a serious offense for purposes of determining the appropriate penalty that will be imposed on the bank/QB. x x x"

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

(Editor's Note: Circular 956, s. 2017 was published in BusinessWorld on 21 April 2017)

Circular No. 957 provides for the Examination and Records of BSP-Supervised Financial Institutions.

BSP Circular No. 957 dated 17 April 2017

- ▶ The Monetary Board approved amendments to the relevant provisions of the MORB and the Q-Regulations of the MORNBF1 on the examination and record-keeping of BSP-Supervised Financial Institutions (BSFIs).
- ▶ Section X001 of the MORB and Section 4001Q of the MORNBF1 are amended to provide for examination by the Bangko Sentral. Under these sections, the term "examination" shall refer to an investigation of an institution under the supervisory authority of the Bangko Sentral to determine whether the institution is operating on a safe and sound basis, inquire into its solvency and liquidity, and assess the effectiveness of its compliance function to ascertain that it is conducting business in accordance with laws and regulations.
- ▶ These sections provide that regular or periodic examinations shall be done once a year, with an interval of 12 months from the last date thereof. Special examination may be conducted earlier, or at a shorter interval, when authorized by the Monetary Board by an affirmative vote of five members.

In the full exercise of the supervisory powers of the Bangko Sentral, examination by the Bangko Sentral of institutions shall be complemented by the overseeing thereof. In this regard, the term 'overseeing' shall refer to a limited investigation of an institution, or any investigation that is limited in scope, conducted to inquire into a particular area/aspect of an institution's operations, for the purpose of overseeing that laws and regulations are complied with,

inquiring into the solvency and liquidity of the institution, enforcing prompt corrective action, or such other matters requiring immediate investigation: Provided, That (i) specific authorizations be issued by the Deputy Governor, Supervision and Examination Sector (SES), and (ii) periodic summary reports on overseeing conducted be submitted to the Monetary Board.

- ▶ These sections also provide for the scope and conduct of examination.
- ▶ Subsection X001.1 of the MORB and Subsection 4001Q.1 of the MORN BFI are amended to provide for refusal to permit examination. Under these sections, any act or omission that impedes, delays or obstructs the duly authorized Bangko Sentral examiner from conducting an examination of a BSFI, including the act of refusing to accept or honor the letter of authority to examine presented by the examiner of the Bangko Sentral, shall be considered as a refusal to permit examination.
- ▶ Subsection X192.2 of the MORB and Subsection 4192Q.2 of the MORN BFI which provide for sanctions in case of willful delay in the submission of reports are amended by this Circular.
- ▶ Sections X191 of the MORB and 4191Q of the MORN BFI which provide for records to be maintained by banks and QBs are also amended by this Circular.
- ▶ Subsections X602.1 of the MORB and 4602Q.1 of the MORN BFI which provide for treasury operations are also amended by this Circular.
- ▶ The reference to Subsection X192.2b(1)b in Subsection X190.1 of the MORB shall be amended to refer to Subsection X192.2a(1)b. The reference to Subsection 3191.9 in Appendix 50 of the MORB shall be amended to refer to Section X191. Subsection X3191.9 of the MORB and Item e of Subsection 4002Q of the MORN BFI shall be deleted.
- ▶ 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 957, s. 2017 was published in The Manila Times on 22 April 2017)

SEC Issuances

SEC MC No. 7 amends the requirement, under SEC MC No. 13 series of 2009, for Financing and Lending Companies to have an independent auditor accredited by the Commission.

SEC Memorandum Circular No. 7 dated 30 March 2017

In order to limit the unnecessary burden imposed upon small-sized financing and lending companies, the mandatory requirement for accredited External Auditors/ Certified Public Accountants shall no longer be required for the following:

- ▶ Financing Companies whose asset in the preceding fiscal year is 10 Million Pesos and below;
- ▶ Lending companies whose asset in the preceding fiscal year is 5 Million Pesos and below.

(Editor's note: SEC MC No. 7 was published in The Manila Standard on 19 April 2017)

SEC-OGC Opinion No. 17-03, dated 4 April 2017

A corporation engaged in virtual transactions consummated within the Philippines is considered as “doing business” in the Philippines and must obtain a license to do business.

Facts:

S Co. is a foreign corporation that operates an internet-based system offering various content and services such as online community and gaming systems. In order to access the online platform, an account must be created where the account holder will have a virtual wallet which can be funded by using a credit or a debit card. S Co. does not have physical presence in the Philippines. Its employees are based in Hong Kong and its servers are based in the US.

Issue:

Is a foreign corporation engaged in electronic commerce required to obtain a license to do business in the Philippines?

Held:

Yes. Under the twin-characterization test, a foreign corporation is considered doing business in the Philippines when the following criteria are met: (1) its transactions are done in pursuit of the main business; and (2) it has intention to continue the body of its business in the country for some time. S. Co. is primarily engaged in an online business with customers from different parts of the world including the Philippines. For customers within the Philippines, the creation of an online account, the sale and delivery of online content and services, the funding of the online wallet by using credit or debit cards issued by domestic banks, are transactions which will be consummated in the Philippines although to be done in a virtual plane. These activities imply continuity of commercial dealings and contemplate the performance of acts incident to and in pursuit of the business of S. Co. for which a license is required.

BOC Issuances

CAO No. 1-2017 provides for the rules on customs clearance of accompanied and unaccompanied baggage of travelers and crew.

Customs Administrative Order No. 1-2017 dated 10 March 2017

- ▶ The objective of this CMO is to provide customs formalities in the clearance of accompanied and unaccompanied baggage of travelers and crew in all ports of entry and exit, and to provide simplified clearance procedures for different types of travelers.
- ▶ All arriving travelers and crew shall accomplish a Customs Baggage Declaration Form (“CBDF”), to be submitted to the assigned customs officer at the arrival area for clearance.
- ▶ Foreign travelers with diplomatic status shall continue to avail of the privileges accorded to them by applicable conventions, laws, rules, and regulations, regarding traveler and baggage clearance.
- ▶ Different lanes shall be provided to cater to different types of travelers, including but not limited to OFWs, returning residents and non-resident Filipinos; foreign travelers with diplomatic status; airline crew members; and travelers with accompanied and/or unaccompanied baggage containing goods in commercial quantity.

- ▶ Baggage of arriving travelers and crew shall be generally subject to non-intrusive inspection, but subject to clearance formalities. When necessary, scanned baggage may be subject to physical inspection. The traveler, crew or baggage may also be subject to inspection based on derogatory information or reasoned and/or random selection. The entry of unauthorized personnel into the customs arrival area shall be restricted.
- ▶ Dutiable goods in accompanied baggage brought in by travelers through the airports which are intended for re-exportation may be allowed release upon posting of a cash bond equivalent to 100% of the assessed duties and taxes, or temporarily deposited for safekeeping in the deposit facility, provided that the goods shall be re-exported not exceeding three months from the date of acceptance, and that the service and storage fees are paid. Failure to re-export the goods within the period agreed shall subject the cash bond and the goods to forfeiture.
- ▶ Departing travelers with goods for export in commercial quantities shall accomplish and file a Special Permit to Load ("SPL").
- ▶ Dutiable goods that are not declared by any person arriving within the Philippines shall be seized and the traveler may obtain release of such goods upon payment of a surcharge equivalent to 30% of the landed cost of such goods, in addition to all duties, taxes and other charges due. These shall not preclude the filing of a criminal case against the offender.
- ▶ The District Collector shall designate a time and place for the unloading of cargo upon arrival. The owner or operator of any vessel or aircraft that does not follow this designated time and place shall be fined not less than P100,000 but not more than P300,000. The fine shall not apply upon satisfactory proof that the unloading was necessary by stress of weather, accident, or other necessity.
- ▶ Without prejudice to the other provisions of the CMTA, imported goods are deemed abandoned once the assessed duties, taxes and other charges have been paid and the owner, importer or consignee fails to claim the goods within 30 days from payment.
- ▶ The 250% surcharge on misdeclaration as to quantity, quality description, weight, or measurement of the goods, as well as the 250% surcharge on undervaluation in goods declaration, which ultimately results in a discrepancy in duties and taxes to be paid, shall not be imposed when the discrepancy in duty is less than 10%.
- ▶ Clearance formalities are prescribed for baggage of specific arriving travelers and crew. OFWs, resident Filipinos, returning residents and non-resident Filipinos shall undergo regular clearance formalities. Baggage of crew members shall undergo mandatory physical inspection. Resident aliens and other foreign travelers shall undergo clearance procedures based on traveler profiling and risk management control measures.

- ▶ For those availing of conditionally tax-free and duty-exempt importations, certain forms, such as the Personal and Household Effects Declaration (“PHED”) Form, as well as other information, must be provided in compliance with the clearance formalities. The same holds true for those who are availing of the tax and duty-free shipment of Balikbayan boxes.
- ▶ Clearance formalities are also prescribed for commercial goods. Travelers with accompanied and/or unaccompanied baggage containing goods in commercial quantity and in excess of the *de minimis* value shall fill out certain forms. The baggage shall be subject to 100% physical examination by the customs officer assigned to determine the duties, taxes and other charges due.
- ▶ For travelers and crew not passing through airports and port terminals, the District Collector shall require the operator or handler of an aircraft or vessel arriving in a designated area other than the airport or port terminal to provide certain data and information. The traveler and crew shall not be permitted to board or leave the aircraft without the permission of the customs officer until clearance formalities have been completed.
- ▶ All international baggage ultimately destined for a domestic port shall be cleared at the first port of entry in the Philippines.
- ▶ Interline baggage, or those mistagged, erroneously offloaded, advanced or delayed baggage, left-behind baggage, or those transit baggage for foreign destinations, shall be subject to non-intrusive inspection before storage. All claimed interline baggage for entry into the Philippines shall be subjected to 100% physical examination by the customs officer in the presence of the traveler or authorized representative to determine the duties, taxes, and other charges due.
- ▶ In-bond baggage, or baggage received and placed temporarily under customs custody, shall be subject to physical inspection before storage. Those in-bond baggage which are prohibited in nature shall be immediately turned over to the appropriate agencies.
- ▶ *Periodic Review.* This CAO shall be reviewed every 3 years and amended and revised if necessary.
- ▶ *Repealing Clause.* This CAO specifically amends or repeals CAO Nos 02-2014, 03-2013, 07-2006, and 02-1990, CMO Nos. 08-2014, 20-2003, 32-1990 and NAIA CMO Nos 18-1997, 02-1997, 05-1989 as well as other previous issuances which are inconsistent with this CAO.
- ▶ *Separability Clause.* If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in full force and effect.
- ▶ *Effectivity.* This CAO shall take effect after 15 days from publication at the Official Gazette or a newspaper of general circulation.

(Editor’s Note: CAO No. 1-2017 was published in The Manila Times on 5 April 2017)

Court Decisions

Commissioner of Internal Revenue vs. Leo Mario Celdran

CTA (*En Banc*) Division Case 1527, promulgated 14 March 2017

The sale of nonperforming assets from an SPV to a third party is exempt from EWT imposed on the transfer of land or buildings treated as ordinary assets, subject to the conditions under the SPV Act of 2002.

Facts:

Respondent Leo Mario Celdran (Celdran) filed a claim for refund of erroneously paid expanded withholding tax (EWT) on his purchase of four land parcels from Star Asset Management Ropoas, Inc. (SAMRI), a Special Purpose Vehicle (SPV). SAMRI was established mainly to acquire portfolios of non-performing assets such as foreclosed real properties owned or acquired (ROPOAs) from financial institutions.

Upon execution of the Deed of Sale, Celdran reported and paid 3% EWT on the transaction. However, the BIR alleged that the transaction is subject to 6% EWT and refused to issue the Certificate Authorizing Registration unless the balance is paid. Celdran paid under protest and requested for the refund of the 3% EWT.

As the BIR failed to act on the claim, Celdran filed a Petition for Review at the CTA. The BIR argued that SAMRI is not habitually engaged in the real estate business but, as an SPV, is “akin to a bank or a financial institution” and its sale of ROPOA, being an ordinary asset, is subject to 6% EWT.

The CTA Third Division sustained Celdran, prompting the BIR to elevate the case to the CTA *En Banc*.

Issue:

Is SAMRI entitled to the claim for refund of erroneously paid EWT?

Ruling:

Yes. SAMRI is not a bank hence, the sale of ROPOA is not subject to 6% EWT.

For the 6% EWT to be imposed on the sale of ordinary assets under Section 2.57.2 (J) of Revenue Regulations 2-98, the taxpayer should either be:

1. A bank, in which case, it is considered as not habitually engaged in real estate business; or
2. An entity not engaged in real estate business.

The BIR concluded that SAMRI is a bank based merely on the fact that it is an SPV. However, not all SPVs are banks within the definition of the law. SAMRI is habitually engaged in real estate business as confirmed by the Housing and Land Use Regulatory Board.

Moreover, Section 15 of RA 9182 or The Special Purpose Vehicle (SPV) Act of 2002 provides that the sale of non-performing assets (NPAs) from an SPV to a third party shall be exempt from, among others, EWT imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to Revenue Regulations 2-98, as amended. The incentive is subject to the conditions set forth under the SPV Act of 2002.

Although Celdran would have been entitled to a refund of the entire 6% EWT remitted, the CTA *En Banc* held that it is constrained to grant only the refund of 3% EWT which he claimed and prayed for in the petition. The fundamental rule is that reliefs granted a litigant are limited to those specifically prayed for in the complaint.

Modern Imaging Solutions, Inc. vs. Commissioner of Internal Revenue
CTA (Second) Division Case 8987, promulgated 21 March 2017

A mere finding of an unaccounted source of cash, arising from the difference between the expense payments reported in the Alphasheet and the Financial Statements, does not lead to undeclared income. Even if this translates into income, the same will be offset by recording the expense as a deduction for income tax purposes.

Funds received by the branch from its Home Office should not be treated as loans subject to DST. The branch and its Home Office are one and the same entity and the same entity cannot be a creditor and debtor of itself.

Facts:

Respondent CIR assessed Petitioner Modern Imaging Solutions, Inc. (MISI), a Philippine branch of a US corporation, for alleged deficiency income tax, withholding tax, and documentary stamp tax (DST) for taxable year 2009. The BIR alleged that MISI had undeclared income as there was an unaccounted source of cash based on the finding that some of the rental payments declared in its Alphasheet were not reflected on the Financial Statements. The BIR also alleged that MISI is liable for DST resulting from the increase of funds received from its Home Office.

MISI protested the assessments. It denied that it has unaccounted sources of cash and argued that the "increase in fund received from Home Office" is not a debt instrument that is subject to DST. MISI further argued that a Philippine branch office of a foreign corporation has no separate personality from said foreign corporation.

As the BIR failed to act on its protest, MISI filed a Petition for Review at the CTA.

Issues:

1. Is MISI liable for deficiency income tax on the alleged undeclared income?
2. Is MISI liable to deficiency DST on the additional funding from the home office?

Rulings:

1. No, MISI is not liable for deficiency income tax arising from the alleged unaccounted source of cash.

The allegation of undeclared income is based on a mere presumption that since there were undeclared rent payments, there was a corresponding undeclared income. Even if these alleged undeclared rent payments are to be considered as unaccounted sources of cash translating into income, the same will be offset by recording the alleged undeclared rent payments as expenses. Hence, no taxable income will result from said transaction.

Moreover, for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount or not claim any deduction at all. What is prohibited is to claim a deduction beyond the amount authorized by law.

2. No. The branch and its home office are one and the same entity and the same entity cannot be a creditor and debtor of itself.

Funds received by MISI from its head office should not be treated as loans. It is also important to note that the "Due to Home Office" account appears in the "Equity" section, which is a separate item from the Liabilities section of the Balance Sheet.

The ruling of the Supreme Court in *Marubeni Corporation vs. CIR and CTA*, GR No. 76573 promulgated on September 14, 1989, which held that the head office and branch were treated as separate entities does not apply in this case. Unlike in the *Marubeni* case, MISI's head office did not transact business in the Philippines independently from its branch that would set aside the principal-agent relationship, thus treating them as separate entities.

Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc.

Supreme Court (Second Division) G.R. No. 213943 promulgated 22 March 2017

Fraud or intentional falsity in the filing of a tax return will extend the BIR's prescriptive period to assess tax to ten years.

Failure of the BIR to comply with the requirements under RMO 20-90 and RDAO 05-01 invalidates the waiver of the statute of limitations.

Facts:

Based on information from its "Reconciliation of Listing and Enforcement (RELIEF) system - Summary Lists of Sales and Purchases and Third Party Matching," the Bureau of Internal Revenue (BIR) found that the output VAT declared by suppliers of the Philippine Daily Inquirer (PDI) exceeded the input VAT declared by PDI in its 2014 VAT returns.

Thus, the BIR alleged that PDI underdeclared its input VAT, which meant that PDI had underdeclared purchases. Consequently, this meant that PDI likewise underdeclared its gross income. On this basis, the BIR assessed PDI for deficiency VAT and income tax on the amount of underdeclared gross income for taxable year 2014.

In computing the deficiency income tax, the BIR grossed up the underdeclared gross income by PDI's cost ratio (computed by dividing Cost of Sales by the Gross Income, as declared in PDI's income tax return).

PDI protested the assessment and argued, among others, that it is a service company deriving its main source of income from newspaper and advertising sales. Hence, any understatement of expenses or purchases does not mean it understated its sales. It also argued that its transactions with the advertising agencies which were subject of the BIR's findings should not be treated as Cost of Sales since these were "not materials" required by PDI to generate income.

Upon the lapse of the 180-day period for the BIR to rule on its protest, PDI appealed to the Court of Tax Appeals (CTA), which cancelled the BIR's assessment.

In determining whether the taxes were assessed on time, the CTA determined whether the returns filed by PDI were false or fraudulent. This was in line with the execution by PDI of three Waivers of the Defense of Prescription under the Statute of Limitations (or Waivers) to extend the BIR's period to assess and/or collect taxes.

The CTA ruled that while the First and Second Waivers were executed in three copies, in accordance with the regulations, the offices accepting the waivers were not provided with copies of the waivers. In addition, the officer who signed the Third Waiver was not authorized to do so. The CTA concluded that the 3-year prescriptive period was not extended due to such defects.

The CTA also rejected the BIR's theory that an underdeclaration of input VAT and purchases translated to taxable income. The CTA ruled that the BIR erroneously imposed deficiency tax income based on underdeclared input VAT.

The BIR appealed to the Supreme Court.

Issues:

1. Did PDI adequately refute the BIR's assessment?
2. Did PDI file a false or fraudulent return, where the 10-year prescriptive period would apply?
3. Are the waivers executed by PDI valid?

Ruling:

1. No, PDI was not able to sufficiently refute the BIR's assessment.

PDI failed to justify its erroneous listing of its purchases from advertising agencies as general expenses. PDI is a service-oriented company and it derives its income from the sale of newspapers and advertisements. The services rendered by advertising agencies were meant to promote and market the services of PDI. Thus, their services should be considered as part of Cost of Services (which may be grossed up to compute the undeclared income) instead of general and administrative expenses and operating expenses.

2. No. Citing from the Supreme Court's 1974 decision (First Division) in the case of *Aznar vs. Court of Tax Appeals*, in three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. A false return implies deviation from the truth, whether intentional or not, while a fraudulent return implies intentional or deceitful entry with intent to evade the taxes due.

While the filing of a fraudulent return necessarily implies that the act of the taxpayer was intentional and done with intent to evade the taxes due, the filing of a false return can be intentional or due to an honest mistake. The entry of wrong information due to a mistake, carelessness, or ignorance, without intent to evade tax does not constitute a false return. There is not enough evidence to prove fraud or intentional falsity on the part of PDI.

Hence, notwithstanding that PDI failed to refute the assessment, the BIR's assessment is still void due to prescription.

3. No, the waivers are invalid.

The rules for a proper execution of a waiver are contained in Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegated Authority Order (RDAO) No. 05-01. While the First and Second Waivers were executed in three copies, the CIR failed to provide the office accepting the Waivers with the third copy of each, as these were still attached to the docket of the case. In addition, the Third Waiver was not executed in three copies.

The failure to provide the office accepting the Waiver with the third copy violates RMO No. 20-90 and RDAO No. 05-01. Thus, the three-year prescriptive period was not extended and the assessments issued by the BIR are void.

Hon. Kim S. Jacinto-Henares, in her official capacity as Commissioner of the Bureau of Internal Revenue vs. St. Paul College of Makati

Supreme Court (Second Division), G.R. No. 215383 promulgated 8 March 2017

The issue on the constitutionality of RMO No. 20-2013, which requires NSNPEIs to file an application for tax exemption with the BIR, has been rendered moot by the subsequent issuance of RMO No. 44-2016, which excludes NSNPEIs from the coverage of RMO No. 20-2013.

Facts:

Petitioner Kim S. Jacinto-Henares, in her capacity as then Commissioner of Internal Revenue (CIR), issued Revenue Memorandum Order (RMO) No. 20-2013, which requires tax-exempt entities, including non-stock, non-profit educational institutions (NSNPEIs), to submit an application for tax exemption to the Bureau of Internal Revenue (BIR). The application is subject to approval by the CIR in the form of a Tax Exemption Ruling, which is valid for three years and subject to renewal.

St. Paul College of Makati (SPCM) filed an action with the Regional Trial Court (RTC) to declare RMO No. 20-2013 as unconstitutional. SPCM argued that RMO No. 20-2013 imposes a prerequisite for availing the tax exemption granted to NSNPEIs under Sec. 4(3) of Article XIV of the Constitution, and makes failure to file an annual information return a ground for an NSNPEI to automatically lose its income tax-exempt status.

The RTC ruled in favor of SPCM and declared RMO No. 20-2013 as unconstitutional because it serves as a diminution of the constitutional privilege, which even Congress cannot diminish and, more so, the CIR who merely exercises quasi-legislative functions.

The CIR appealed to the Supreme Court.

Issue:

Is RMO 20-2013 unconstitutional?

Ruling:

The issue on the constitutionality of RMO No. 20-2013 has been rendered moot when, on July 25, 2016, the present CIR Caesar Dulay issued RMO No. 44-2016 amending RMO No. 20-2013, and clarifying that NSNPEIs are excluded from the coverage of RMO No. 20-2013.

With the issuance of RMO No. 44-2016, a supervening event has transpired that rendered the petition moot and academic, and subject to denial. The RTC decision no longer stands, and there is no longer any practical value in resolving the issues raised by CIR Henares in her petition.

(Editor's note: RMO No. 44-2016 requires NSNPEIs whose Tax Exemption Rulings or Certificates of Tax Exemption (TERs/CTEs) were issued prior to June 30, 2012 to file an Application for Tax Exemption with the BIR. The TERs/CTEs shall remain valid and effective unless recalled for valid grounds, and NSNPEIs are not required to renew or revalidate the TERs previously issued to them.)

Demetrio R. Alcantara vs. Republic of the Philippines, thru its agency, Bureau of Internal Revenue, Revenue Region No. 11-B, Davao City, et al.

Supreme Court (Third Division), G.R. No. 192536 promulgated 15 March 2017

The RTC has no jurisdiction over a case involving the reconveyance of property, if founded on the question of validity of an assessment and collection of taxes.

The CTA has exclusive appellate jurisdiction over appeals on the decisions of the CIR.

Facts:

In 1988, the Bureau of Internal Revenue (BIR) Revenue Region No. 11-B issued two demand letters with accompanying assessment notices to Plaintiff Demetrio R. Alcantara (Alcantara) for the payment of deficiency income tax with penalties and interests for taxable years 1982 and 1983.

The letters were sent to Alcantara's address at Ecoland Subdivision, Matina, Davao City. Alcantara failed to respond to such demand letters, prompting the BIR to issue a Warrant of Dstraint and/or Levy against the properties of Alcantara, followed by a Notice of Seizure of Real Property, where Alcantara was informed that his parcel of land located at Panorama Homes, Buhangin, Davao City, has been levied to satisfy the deficiency tax due and would be subjected to public sale.

As there were no bidders during the public sale, Alcantara's property was forfeited to the Government in satisfaction of the taxes due. Subsequently, the BIR held a resale in 1995 of the forfeited property where Maximo Lagahit (Lagahit) was proclaimed the winning bidder, for which a new Certificate of Title was issued to Lagahit.

Upon learning of the forfeiture and sale of his property in 1997, Alcantara filed a case with the Regional Trial Court (RTC) to demand reconveyance of the forfeited property. Primarily, he argued that he was unaware of the deficiency tax assessment of the BIR and that the assessment notices were not properly served to him since he and his family had left for the United States in 1985.

The RTC dismissed the complaint on the ground that Alcantara's failure to receive the assessment notices was because Alcantara did not inform the BIR of any change in his address and the BIR relied on the address indicated by Alcantara in his tax returns.

On appeal, the Court of Appeals (CA) affirmed the dismissal for the reason that the RTC had no jurisdiction over the complaint because Alcantara was challenging the validity of the assessment made by the BIR. The CA also ruled that assuming that the RTC had jurisdiction over the complaint, the Court of Tax Appeals (CTA) and not the CA had jurisdiction over the appeal made by Alcantara on the RTC's decision.

Issues:

1. Does the RTC have jurisdiction over Alcantara's complaint?
2. Is the decision of the RTC on Alcantara's case appealable to the CA?

Rulings:

1. No, the RTC does not have jurisdiction over Alcantara's complaint. The allegations in the complaint and the character of the relief sought determine the nature of an action as well as which court has jurisdiction over the action.

It is clear in the complaint that despite assailing the supposedly illegal confiscation of his property in order to satisfy his tax liabilities, Alcantara was really challenging the assessment and collection of taxes made against him for being in violation of his right to due process. Thus, the complaint concerned the validity of the assessment and eventual collection of the taxes by the BIR. The declaration of nullity of the sale and reconveyance is merely based on the validity of the assessment and eventual collection of the deficiency tax.

The remedies available to Alcantara were an administrative protest of the assessment or the filing of a claim for refund for the erroneously or illegally paid taxes. Either is a prerequisite before any resort to the courts could be made.

2. No, the decision of the RTC is not appealable to the CA.

Republic Act (RA) No. 1125 (An Act Creating the CTA), prior to its amendment by RA No. 9282, provides that the CTA had exclusive jurisdiction over the appeal of the decisions of the CIR.

Accordingly, the CA correctly dismissed Alcantara's appeal on the ground of lack of jurisdiction to entertain the same.

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