

Tax Bulletin

July 2017



Highlights

BIR Rulings

- ▶ A donation made in favor of a state-owned institution is exempt from donor's tax and documentary stamp tax (DST). **(Page 3)**
- ▶ A transferee of real property may request for a compromise settlement of capital gains tax (CGT) and DST due on the transfer on the basis of the transferor's financial incapacity. **(Page 4)**

BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 16-2017 amends certain provisions of RMO No. 5-2004, particularly on the application, processing and issuance of the Authority to Release Imported Goods (ATRIG) on importations of wheat by millers and traders relative to the advance payment of VAT on the sale of flour. **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 48-2017 circularizes the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 10524 entitled "An Act Expanding the Positions Reserved for Persons with Disability (PWDs)". **(Page 5)**

BSP Issuances

- ▶ Circular No. 963 provides for the Bank Responsibility for the Generation and Timely Submission of Required Reports to the Bangko Sentral. **(Page 6)**
- ▶ Circular No. 964 provides for the Amendments to Section X269 and Subsections X269.5 and X269.6 of the Manual of Regulations for Banks (MORB). **(Page 7)**
- ▶ Circular No. 965 provides for the Exclusion of clearing and settlement accounts of banks and quasi-banks from the Single Borrower's Limit (SBL). **(Page 8)**
- ▶ Circular No. 966 provides for the Rationalization of the Regulatory Requirements of Trust, Other Fiduciary and Investment Management Accounts under Discretionary and Non-Discretionary Mandates. **(Page 9)**

PEZA Update

- ▶ PEZA Memorandum Order No. 2017-008 lays down the guidelines for the roll-out of Phase 1 of the PEZA Electronic Zone Transfer System (eZTS), which covers intra-zone transfers of goods between Ecozone Logistics Service Enterprises (ELSE) to their Ecozone Export Enterprise (EEE) -Clients. **(Page 10)**
- ▶ PEZA Memorandum Order No. 2017-009 requires PEZA-registered enterprises to accomplish an Information Report for NEDA's cost-benefit study on the investment incentives. **(Page 12)**

BOI Updates

- ▶ DTI-BOI Administrative Order No. 01-A provides clarificatory amendments to the Implementing Rules and Regulations of Executive Order (EO) No. 22. **(Page 13)**

Court Decisions

- ▶ Under the tax assumption clause of the Exchange of Notes between the Governments of the Philippines and Japan, the Philippine Government, through the government executing agency, shall assume all taxes and fiscal levies imposed on Japanese contractors on the project subject of the loan from the OECF (now the Japan Bank for International Cooperation - JBIC).

If the Japanese contractor erroneously paid the tax to the BIR, it can file a claim for refund with the BIR, which in turn can collect from the concerned government executing agency. **(Page 13)**

- ▶ Section 191 of the Local Government Code (LGC), which allows an adjustment in local tax rates not more than once every five years, and not exceeding 10%, may apply provided two requirements are present, namely: (1) there is a tax ordinance that already imposes a tax in accordance with the LGC, and (2) there is a second ordinance that made an adjustment on the tax rate fixed by the first.

Hence, where an old city ordinance applied the same tax rate and tax base to wholesalers and retailers prior to the enactment of the LGC, a new ordinance providing for a separate local business tax for retailers under the LGC is invalid and constitutional, as it does not meet the two requirements. **(Page 15)**

- ▶ Filipino employees of the Asian Development Bank (ADB) are not exempt from income tax since the Philippines reserved its right to tax citizens and nationals employed by the ADB.

RMC No. 31-2013 which clarifies the tax treatment of compensation income earned by Philippine nationals and alien individuals by embassies and international organizations in the Philippines cannot be applied retroactively. **(Page 16)**

BIR Rulings

BIR Ruling No. 319-2017 dated 28 June 2017

A donation made in favor of a state-owned institution is exempt from donor's tax and DST.

Facts:

X Bank, a domestic banking institution, executed a Deed of Donation conveying four parcels of land to A University, a state-owned university. X Bank made the donation in view of the significant impact of A University's mission, which is supportive of the declared national policy of accelerating human resources education on national development.

Issues:

1. Is the donation subject to donor's tax?
2. Is the donation subject to DST?
3. Is the donation subject to VAT?

Ruling:

1. No. Since the donation is made to A University, a state-owned institution, such donation is exempt from donor's tax pursuant to Section 101 (A) (2) of the Tax Code.

2. No. Section 185 of Regulations No. 26 or the Revised DST Regulations provides that conveyances of realties not in connection with a sale to trustees or other persons without consideration are not taxable. Hence, the Deed of Donation is not subject to the DST prescribed under Section 196 of the Tax Code. It is however subject to the DST of P15.00 imposed under Section 188 of the same Code.
3. It depends. If the donor is a VAT-registered person and the donation is an ordinary asset, such donation is subject to VAT pursuant to Section 4.106-7 of RR No. 16-2005, as amended, the same being considered a transaction deemed sale. However, if the donor is not a VAT-registered person, the donation is exempt from VAT.

BIR Ruling No. 335-2017 dated 4 July 2017

A transferee of real property may request for a compromise settlement of CGT and DST due on the transfer on the basis of the transferor's financial incapacity.

Facts:

X Co., a domestic corporation declared insolvent by court, conveyed two parcels of land by way of donation in payment to its creditors, the members of ABC Family. Citing the financial incapacity of X Co. to pay the CGT and DST due on the transfer, the members of ABC Family requested the BIR to allow a compromise settlement of such CGT and DST by offering to pay 10% of the basic tax liability.

Issue:

Can the members of ABC Family request for a compromise settlement based on the financial incapacity of X Co.?

Ruling:

Yes. The financial position of X Co. demonstrates its inability to pay the CGT and DST due on the transfer. Hence, the CGT and DST due on the transfer of properties may be the subject of a compromise settlement on the ground of X Co.'s financial incapacity under Section 204 (A) (2) of the Tax Code, provided that the tax liability for the said transactions has already been finally determined via issuance of assessment.

BIR Issuances

RMO No. 16-2017 amends certain provisions of RMO No. 5-2004, particularly on the application, processing and issuance of the ATRIG on importations of wheat by millers and traders relative to the advance payment of VAT on the sale of flour.

RMO No. 16-2017 issued on 21 July 2017

- ▶ This RMO amends Sections II.4 and II.6 of RMO No. 5-2004 as follows:
 1. For importation of wheat by millers and traders, the application for the issuance of the ATRIG shall be filed with the following offices:
 - ▶ Excise Large Taxpayers Regulatory Division (ELTRD) for all Large Taxpayers registered with the Large Taxpayers Service (LTS)

- ▶ Revenue District Offices having jurisdiction over the port of entry for all other taxpayers
2. The procedures and guidelines prescribed under RMO Nos. 35-2002, 14-2014 and 1-2016 for the processing and issuance of the ATRIG shall also apply in the processing and issuance of ATRIG for importations of wheat subject to advance VAT payment under the provisions of Revenue Regulations (RR) No. 29-2003.
 3. All references to Large Taxpayers Audit Division (LTAD) II and Large Taxpayers District Office (LTDO) under RMO No. 5-2004 are amended to refer to ELTRD and Large Tax Division (LTD) Cebu/Davao, respectively.

RMC No. 48-2017 circularizes the IRR of RA No. 10524 entitled "An Act Expanding the Positions Reserved for PWDs."

RMC No. 48-2017 issued on 30 June 2017

The following are the highlights of the tax-related provisions of the IRR of RA No. 10524, otherwise known as "An Act Expanding the Positions Reserved for Persons with Disability (PWDs):"

- ▶ Private entities that employ PWDs either as regular employee, apprentice or learner, shall be entitled to an additional deduction from their gross income of 25% of the total amount of salaries and wages paid to PWDs, subject to the following conditions:
 1. The entities shall present proof as certified by the Department of Labor and Employment (DOLE) that such PWDs are under their employment.
 2. The PWD is accredited with DOLE and the Department of Health (DOH) as to his disabilities, skills and qualifications.
- ▶ Private entities that improve their physical facilities in order to provide reasonable accommodation for PWDs shall be entitled to an additional deduction from their net income of 50% of the direct costs of the improvements or modifications. This deduction shall not apply to improvements or modifications of facilities required under *Batas Pambansa Blg. 344* (An Act to Enhance the Mobility of Disabled Persons by Requiring Certain Buildings, Institutions, Establishments and Public Utilities to install Facilities and Other Devices).
 - ▶ "Reasonable Accommodation" means necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure PWDs the enjoyment and exercise on an equal basis with others of all human rights and fundamental freedom. This includes:
 1. Improvement of existing facilities used by employees in order to render these readily accessible to PWDs;
 2. Modification of work schedules;

3. Acquisition or modification of equipment or devices;
 4. Modification of examinations, training materials or company policies, rules and regulations pertaining to hiring; and
 5. Provision of auxiliary aids and assistive devices, and other similar accommodations to PWDs, which include the following:
 - ▶ Qualified interpreters or other effective methods of delivering materials to individuals with hearing impairments
 - ▶ Qualified readers, taped test, or other effective methods of delivering materials to individuals with visual impairments
 - ▶ Acquisition or modification of equipment or devices
 - ▶ Other similar services and actions or all types of aids and services that facilitate the learning process of persons with mental disability
- ▶ The IRR shall take effect 15 days after its complete publication in two national newspapers of general circulation.

[Editor's Note: The IRR of RA No. 10524 was published in the Manila Times on 15 August 2016.]

BSP Issuances

Circular No. 963 provides for the Bank Responsibility for the Generation and Timely Submission of Required Reports to the Bangko Sentral.

BSP Circular No. 963 dated 27 June 2017

- ▶ The Monetary Board, in its Resolution No. 963 dated 8 June 2017, approved the following amendments to the Manual of Regulations for Banks (MORB) setting forth the Bangko Sentral's expectation on banks to establish an effective reporting system with an appropriate governance process that enables the generation and timely submission of reports that are in accordance with the Bangko Sentral's reporting standards.
- ▶ Section X184 and its subsections are now added to the MORB.
- ▶ Section X184 on the governance process on the quality of bank provides that it is incumbent upon the Board and Senior Management to implement an effective reporting system to generate complete, accurate, consistent, reliable and timely reports to the Bangko Sentral.
- ▶ Subsection X184.1 on the reporting standards provides that reports submitted to the Bangko Sentral must be complete, accurate, consistent, reliable and timely to be considered compliant with the Bangko Sentral reporting standards. It follows that the report shall conform to the relevant submission and validation guidelines as prescribed by the Bangko Sentral.

- ▶ Subsection X184.2 on the governance process provides that an effective governance process over the bank's reporting system must be established by the Board and implemented by Senior Management to ensure the bank's adherence to the reporting standards. The bank's reporting system should be supported by a combination of systems, policies and procedures that are intended to facilitate the accurate and timely generation of bank reports.
- ▶ Subsection X184.3 provides for sanctions on reports for non-compliance with the reporting standards.
- ▶ Subsection X184.4 on the assessment of reporting system states that, if the results of the assessment disclose significant deficiencies in the reporting system, the bank shall be required to submit a Board-approved action plan. Such action plan shall include measures that the bank must undertake within a specified period of time to address the deficiencies noted.
- ▶ Subsection X184.5 which provides for transitory provisions is also added by this Circular to the MORB.
- ▶ The provisions of Subsection X192.2 of the MORB are hereby deleted.
- ▶ This Circular also amends the following Subsections of the MORB: SX115.4; X115.6.b; X126.2; 1176.3ii; X190.1; X192.4; X192.18; X341.15 (1)(b); X361.9; X410.6; X190.7b; and Appendix 107 of the MORB.
- ▶ The pertinent portions in Appendix 6, as shown in Annex B of this Circular, are amended to indicate the new requirement for their electronic submission.
- ▶ 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: BSP Circular No. 963 was published in Malaya on 30 June 2017.]

Circular No. 964 provides for the Amendments to Section X269 and Subsections X269.5 and X269.6 of the MORB.

BSP Circular No. 964 dated 27 June 2017

- ▶ The approved amendments to Section X269 and Subsections X269.5 and X269.6 of the MORB reflect the termination of a sunset provision in favor of thrift banks, rural banks, and cooperative banks resulting in a unified rediscount window for all types of banks.
- ▶ Section X269 of the MORB shall be amended to read as follows:

“Sec. X269 Rediscounting Availments. Banks may avail of the rediscounting facility under a unified rediscounting window. They shall enroll in the Electronic Rediscounting System (eRS) by executing and submitting to the Department of Loans and Credit a notarized Electronic Rediscounting System Participation Agreement before availing of the rediscounting facility of the Bangko Sentral.”

- ▶ Subsections X269.5 and X269.6 of the MORB shall be amended to reflect a unified rediscount window, retaining only the provisions of Rediscounting Window I, as follows:

“**Subsection X269.5 Maturities.** The maturities of Bangko Sentral rediscounts are as follows:

Type of Credit	Maturity Date
a. Commercial Credits	180 days from date of rediscount but shall not go beyond the maturity date of the credit instrument
(1) Export Packing	
(2) Trading	
(3) Transport	
(4) Quedan	
(5) Export Bills (EBs)	
At Sight	15 days from date of purchase
Usance EB	Term of draft but not to exceed 60 days from shipment date
b. Production Credits	180 days from date of rediscount but shall not go beyond the maturity date of the promissory note (PN). Renewable, not to exceed 180 days
c. Other Credits	180 days from date of rediscount but shall not go beyond the maturity date of the PN (renewable depending on the type of credit).

Subsection X269.6 Rediscount/Lending rates and liquidated damages. The rediscount rates for peso, dollar and yen loans shall be as follows:

a. Peso Rediscount

Rediscount Maturities	Rediscount Rates
	Bangko Sentral overnight (O/N) lending rate plus term premium:
1-90 days	Bangko Sentral O/N lending rate + 0.0625
91-180 days	Bangko Sentral O/N lending rate + 0.1250

xxx”

- ▶ 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: BSP Circular No. 964 was published in Business Mirror on 5 July 2017.]

Circular No. 965 provides for the Exclusion of clearing and settlement accounts of banks and quasi-banks from the SBL.

BSP Circular No. 965 dated 5 July 2017

- ▶ The following guidelines provide for the exclusion from the SBL of banks’ and quasi-banks’ short-term exposures to clearing and settlement banks arising from payment transactions.

- ▶ Subsection X303.4 of the Manual of Regulations for Banks (MORB) and Subsection 4303Q.1 of the Manual of Regulations for Non-bank Financial Institutions (MORNBF), which provide for exclusions from the loan limit, now excludes short-term exposures of banks/QBs to settlement banks arising from payment transactions pertaining to fund transfer services, check clearing, foreign exchange trades, security trades, security custody services, and other short-term payment transactions from loan limit. This exclusion applies if certain conditions are met.
- ▶ Portions of the Financial Reporting Package (FRP) required under Subsection X191.2 of the MORB are also amended by this Circular.
- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in any newspaper of general circulation in the Philippines.

[Editor's Note: BSP Circular No. 965 was published in Business World on 11 July 2017.]

Circular No. 966 provides for the Rationalization of the Regulatory Requirements of Trust, Other Fiduciary and Investment Management Accounts under Discretionary and Non-Discretionary Mandates.

BSP Circular No. 966 dated 11 July 2017

- ▶ Subsections X409.2/4409Q.2, X411.4/4411Q.4, X425.1/4425Q.1 and Appendix 83/Q-48 of the Manual of Regulations for Banks (MORB) and of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF), respectively, are amended to tailor fit the regulatory requirements with the degree of discretion exercised by the trust entities in managing clients' portfolios.
- ▶ Subsections X409.2/4409Q.2 of the MORB/MORNBF (lending and investment disposition for trust and other fiduciary business) now provide that when a trustee or fiduciary is granted discretionary powers in the investment disposition of trust or other fiduciary funds, and unless otherwise specifically enumerated in the agreement or indenture and directed in writing by the client, a court of competent jurisdiction or other competent authority, the loans and investments of the fund shall be limited to the those enumerated under the said subsections.
- ▶ Same subsections provide that the specific directives required shall consist of the following information:
 1. The transaction to be entered into;
 2. Name of the issuer or borrower;
 3. Amount involved; and
 4. Terms of the security, including collateral, if any.

Moreover, Trust Entities (TEs) with composite rating of at least "3" under the Revised Trust Rating System in the latest Bangko Sentral examination will not be subject to the said investment limitations.

- ▶ Subsections X411.4/4411Q.4 of the MORB/MORNBF (lending and investment disposition investment management activities) are also amended to provide that, when an investment manager is granted discretionary powers in the investment disposition of investment management funds and unless otherwise specifically enumerated in the agreement or indenture and directed in writing by the client, loans and investments of the fund shall be limited to the items a. to f. enumerated under X409.2/4409Q.2 of the MORB/MORNBF as amended.

- ▶ Same subsections provide that the specific directives required shall also consist of the information as enumerated above.

Moreover, Trust Entities (TEs) with composite rating of at least “3” under the Revised Trust Rating System in the latest Bangko Sentral examination will not be subject to the said investment limitations.

- ▶ Reporting requirements for discretionary and non-discretionary accounts under Subsections X425.1/4425Q.1 of the MORB/MORNBF1 are also amended by this Circular.
- ▶ This Circular also amends Part III.A.2 Items (a) and (b) of Appendix 83/Q-48 of the MORB/MORNBF1.
- ▶ The following provision shall be incorporated as a footnote to Subsections X409.2/4409Q.2 on “Lending and Investment Disposition of Trust and Other Fiduciary Business”, X411.4/4411Q.4 on “Lending and Investment Disposition of Investment Management Activities”, and X425.1/4425Q.1 on “Reports Required to Trustor, Beneficiary, Principal”, and Part III.A.2 Item (a) on “Account Opening Process” of Appendix 83/Q-48 of the MORB/MORNBF1:

TEs shall be given six months from the effectivity of this Circular to make appropriate changes in their policies, processes, and procedures in order to comply with the above requirements.

- ▶ 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: BSP Circular No. 966 was published in Malaya on 17 July 2017.]

PEZA Update

PEZA Memorandum Order No. 2017-008 lays down the guidelines for the roll-out of Phase 1 of the PEZA Electronic Zone Transfer System (eZTS), which covers intra-zone transfer of goods between Ecozone Logistics Service Enterprises (ELSE) to their Ecozone Export Enterprise (EEE) - Clients.

PEZA Memorandum Order No. 2017-008 dated 30 June 2017

- ▶ PEZA rolls out the eZTS - Phase 1 to be implemented as follows:
 1. 1 July - 15 August 2017: Optional implementation/Preparation for mandatory implementation
 2. 16 August 2017: Start of mandatory implementation of eZTS - Phase 1

Scope and Coverage: The eZTS - Phase 1 shall apply only to the delivery of goods by ELSEs to their EEE-clients **within the same zone location** as the ELSE’s warehouse facility, which includes goods that are: (i) imported; (ii) “indirectly” imported from PEZA-registered EEEs, including those located in other PEZA zones; those purchased from enterprises in Freeport Zones and non-PEZA special economic zones; and those purchased from BOI-registered Export Producer Enterprises; (iii) locally purchased from suppliers in the domestic territory.

Enrolment in the eZTS

- ▶ All ELSEs delivering goods to their EEE-clients within the same zone location as the ELSE’s warehouse facility and EEEs availing of the services of/ receiving goods from an ELSE with a warehouse facility located within the same zone location as the EEE are required to enroll in eZTS for the Phase 1 implementation.

- ▶ The ELSE and EEE shall separately accomplish the Enrolment Application Form, which shall name at most three in-house officers/personnel to access the eZTS.
- ▶ The Value Added Service Providers (VASP) used by the EEE in nominating its ELSE should be the same VASP that will be used by the ELSE for its applications for electronic Letter of Authority (eLOA), electronic zone transfer document (eZTD), and for tagging requirements in the eZTS.
- ▶ No enrollment fee shall be charged by the VASP and PEZA.

Filing of Application for and Approval of EEE's Electronic Certificate of Nomination of its ELSE (eCertificate)

- ▶ EEEs shall coordinate with its appointed ELSE on the online generation of the Certificate of Nomination (eCertificate) through the eZTS.
- ▶ The approved eCertificate shall indicate the generic type, specific description, HS Code, Unit of Measure, Volume/Quantity and Value of goods to be supplied by the ELSE and a system-generated reference number, and shall be valid for use/application for corresponding eLOA within 90 days from the date of approval.
- ▶ The eCertificate is a pre-requisite for ELSE's subsequent eLOA application through the eZTS.
- ▶ The status of the eCertificate shall be automatically converted to "Expired" if not "Used" within 90 days from the approval date.

Filing of Application for and Approval of Electronic Letter of Authority (eLOA)

- ▶ The ELSE shall electronically file in the eZTS, through its VASP, its application for eLOA corresponding to an approved eCertificate. Each eLOA application shall be specific to only one EEE-client.
- ▶ The electronic filing of an application for eLOA shall be subject to VASP's lodgment fee.
- ▶ An approved eLOA shall be valid for one year from the date of approval.
- ▶ The ELSE may request for the cancellation of an approved eLOA at any time within the validity period, provided all transactions made therein are properly liquidated. Likewise, the ZA/ZM/OIC may initiate the cancellation of an approved eLOA for violation by the ELSE of any of the terms and conditions or of PEZA rules.
- ▶ The ELSE may file an application for renewal of an expired eLOA provided all approved eZTDs filed by the ELSE against the said expired LOA have been "Closed".

Filing and Approval of Electronic Zone Transfer Document (eZTD)

- ▶ Prior to each transfer of goods by the ELSE to its EEE-client under an approved eLOA, the ELSE shall electronically file through the eZTS an application for corresponding eZTD.
- ▶ An eZTD application may be filed ahead of the intended Transfer Date.

- ▶ The electronic filing of an application for eZTD shall be subject to payment of the VASP's lodgment fee and PEZA processing fee.
- ▶ The electronically-submitted eZTD shall be electronically approved by the System provided the application complies with the following: (a) all the details conform to the approved eLOA; (b) eLOA is not yet expired; (c) the volume and value of goods in the eZTD is equal or less than the remaining balance of goods in the corresponding eLOA; (d) there is no "Open" previously approved eZTD against the same eLOA.
- ▶ Upon approval, a system-generated barcode shall be inscribed on the eZTD, representing the control number and PEZA electronic signature.

Transfer of Goods under an Approved eZTD

- ▶ Immediately prior to actual delivery of goods, the ELSE shall print the approved eZTD and present to the PEZA Zone Office/Gate Guard for inspection and stamping.
- ▶ Withdrawal of ELSE's goods and actual delivery thereof to its EEE-client shall take place not later than 12 midnight of the indicated Transfer Date.
- ▶ Upon receipt of the goods by the EEE, but not later than 5 days from the indicated Transfer Date, the EEE-client shall confirm receipt by electronically tagging the eZTD as "Received", thereby rendering the eZTD as "Closed".
- ▶ If the actual goods received are not equal to the volume/value indicated in the eZTD, the EEE shall indicate the actual volume/value in the "Remarks" and will render the eZTD as "Open".

The eZTS is web-based and available 24/7. Filing of eCertificate, eLOA, and eZTD shall be within regular work hours/days (i.e. Monday to Friday, 8:00 am - 5:00 pm).

When the eZTS of all VASPs is down for a minimum of 4 hours or for acts of nature (force majeure) that render the system totally inaccessible, the application process will be reverted to a manual system until access to the System is restored.

- ▶ This Memorandum Order shall take effect on 1 July 2017.

PEZA Memorandum Order No. 2017-009 requires PEZA-registered enterprises to accomplish an Information Report for NEDA's cost-benefit study on the investment incentives.

PEZA Memorandum Order No. 2017-009 dated 30 June 2017

Under the Tax Incentives Management and Transparency Act ("TIMTA"), the National Economic Development Authority ("NEDA") is tasked to conduct a cost-benefit analysis on the investment incentives to determine their impact on the Philippine economy. In response to NEDA's role under the TIMTA, all PEZA-registered Enterprises and Ecozone Developers/Operators that are entitled to tax incentives are required to submit two sets of reports covering taxable years 2015 and 2016.

The report contains the following information: (a) registration details; (b) actual investment (current assets, non-current assets including PPE, and stockholder's equity); (c) number of employees and corresponding compensation package; and (d) tax withheld and remitted to the BIR and local taxes paid.

The concerned PEZA-registered enterprise should e-mail the (i) soft copy of the report in Excel format and (ii) the scanned copy of the excel worksheet bearing the certification of the 2 highest officials to the Enterprise Services Division (esd@peza.gov.ph) on or before 31 July 2017.

The report to be submitted by PEZA to NEDA shall be consolidated by sector or industry only and not on a per company or enterprise level.

In addition to the penalties on late submission of reports under PEZA rules and regulations, non-compliance will also be covered by the penalties indicated in the TIMTA Act.

BOI Updates

DTI-BOI Administrative Order No. 01-A provides clarificatory amendments to the Implementing Rules and Regulations of EO No. 22.

DTI-BOI Administrative Order No. 01-A s2017 dated 19 July 2017

- ▶ DTI-BOI Administrative Order No. 01 implements E.O. No. 22, which extends for another year the duty-free incentive for importations of capital equipment and machinery, spare parts, and accessories for BOI-registered entities.
- ▶ **Clarificatory Amendments**
 1. Qualified activities: Activities listed under the Investment Priorities Plan (IPP) prepared by the BOI every three years and duly approved by the President.
 2. Qualified enterprises: Enterprises registered with the BOI starting year 2012, of good standing, with project/s qualified as new or expanding under the Omnibus Investments Code (E.O. 226) may import at 0% duty capital equipment, spare parts, and accessories classified under Chapters 40, 59, 68, 69, 70, 73, 76, 82, 83, 84, 85, 86, 87, 89, 90, 91, and 96 of the Customs Modernization and Tariff Act (CMTA).
- ▶ This Administrative Order shall take effect immediately upon publication in a newspaper of general circulation.

[Editor's Note: This Administrative Order was published in The Philippine Star on 26 July 2017.]

Court Decisions

Mitsubishi Corporation - Manila Branch vs. Commissioner of Internal Revenue Supreme Court (First Division) G.R. No. 175772, promulgated 5 June 2017

Facts:

In 1987, the Governments of Japan and the Philippines executed an Exchange of Notes, whereby the former agreed to extend a loan to the latter through the then Overseas Economic Cooperation Fund (OECF, now Japan Bank for International Cooperation or JBIC) for the implementation of the Calaca II Coal-Fired Thermal Power Plant Project (Project).

In the Exchange of Notes, the Philippine Government, by itself or through its executing agency, undertook to assume all taxes imposed by the Philippines on Japanese contractors engaged in the Project. Consequently, the OECF and the Philippine Government entered into a loan agreement.

The National Power Corporation (NPC), as the government executing agency, entered into a contract with Mitsubishi Corporation (Petitioner's head office in Japan) for the engineering, supply, construction, installation, testing, and

Under the tax assumption clause of the Exchange of Notes between the Governments of the Philippines and Japan, the Philippine Government, through the government executing agency, shall assume all taxes and fiscal levies imposed on Japanese contractors on the project subject of the loan from the OECF (now JBIC).

If the Japanese contractor erroneously paid the tax to the BIR, it can file a claim for refund with the BIR, which in turn can collect from the concerned government executing agency.

commissioning of a steam generator, auxiliaries, and associated civil works for the Project (Contract). The Contract's foreign portion was funded by the OECF loan. In line with the Exchange of Notes, the Contract indicated NPC's undertaking to pay any and all forms of taxes that are directly imposable under the Contract.

Petitioner Mitsubishi Corporation Manila Branch (or MC Manila Branch) filed its Income Tax Return for the fiscal year ended 31 March 1998 with the Bureau of Internal Revenue (BIR). Its income tax due included the amount pertaining to the income from the OECF-funded portion of the Project. MC Manila Branch also filed its Monthly Remittance Return of Income Taxes Withheld and remitted a Branch Profit Remittance Tax (BPRT) on branch profits remitted to its head office in Japan out of its income for the fiscal year ended 31 March 1998.

MC Manila Branch filed with the respondent Commissioner of Internal Revenue (CIR) a claim for refund of the erroneously paid income tax and BPRT. It then filed a petition for review before the Court of Tax Appeals (CTA), which ruled that MC Manila Branch is not entitled to the refund.

The CTA explained that the CIR has no power to grant a refund under Section 229 of the National Internal Revenue Code (NIRC) absent any tax exemption, and that the Exchange of Notes granted no tax exemption to Mitsubishi Corporation. In addition, the CTA ruled that Revenue Memorandum Circular (RMC) No. 42-99, which was already in effect when the claim for refund was filed, specifies MC Manila Branch's proper remedy, which is to recover the subject taxes from the NPC, and not from the CIR.

MC Manila Branch appealed to the Supreme Court.

Issues:

1. Is MC Manila Branch entitled to a refund?
2. If so, from which government entity should the refund be claimed?

Rulings:

1. Yes, MC Manila Branch is entitled to a refund.

The subject taxes were erroneously collected from MC Manila Branch, considering that the obligation to pay the same had been assumed by the Philippine Government by virtue of its Exchange of Notes with the Japanese Government. An exchange of notes is considered an executive agreement, which is binding on the State even without Senate concurrence.

The Philippine Government's assumption of "all fiscal levies and taxes," which includes the subject taxes, is a form of concession given to Japanese suppliers, contractors or consultants in consideration of the OECF Loan, the proceeds of which were used for the implementation of the Project. In line with the tax assumption provision under the Exchange of Notes, the Contract states that NPC shall pay any and all forms of taxes that are directly imposable under the Contract.

Hence, it is the Philippine Government, through the NPC, which should shoulder the payment of the subject taxes.

2. The refund should be claimed from the BIR.

The NIRC vests upon the CIR, as head of the BIR, the authority to credit or refund taxes which are erroneously collected by the government. This specific statutory mandate cannot be overridden by adverse interpretations made through mere administrative issuances, such as RMC No. 42-99, which provides that in case the income tax was previously paid directly by the Japanese contractor, the cash refund shall be recovered from the government executing agency (NPC in this case).

A revenue memorandum circular is an administrative ruling issued by the CIR to interpret tax laws. While entitled to respect from the courts, such interpretation is not conclusive and will be disregarded if judicially found to be incorrect.

The section of RMC No. 42-99, which directs MC Manila Branch to claim for refund from NPC, cannot prevail over Sections 204 (Authority of the CIR to Refund Taxes) and 229 (Recovery of Tax Erroneously or Illegally Collected) of the NIRC, which provide that claims for refund of erroneously collected taxes must be filed with the BIR.

MC Manila Branch correctly filed its claim for tax refund under Sections 204 and 229 of the NIRC to recover the erroneously paid taxes. Its entitlement to refund is based on the tax assumption provision in the Exchange of Notes. Given that this is a case of tax assumption and not an exemption, the BIR is not without recourse; it can properly collect the subject taxes from the NPC as the proper party that assumed MC Manila Branch's tax liability.

Mindanao Shopping Destination Corporation et al. vs. Hon. Rodrigo R. Duterte, in his capacity as Mayor of Davao City, et al.

Supreme Court *En Banc*, G.R. No. 211093, promulgated 6 June 2017

Section 191 of the LGC, which allows an adjustment in local tax rates not more than once every five years, and not exceeding 10%, may apply provided two requirements are present, namely: (1) there is a tax ordinance that already imposes a tax in accordance with the LGC, and (2) there is a second ordinance that made an adjustment on the tax rate fixed by the first.

Hence, where an old city ordinance applied the same tax rate and tax base to wholesalers and retailers prior to the enactment of the LGC, a new ordinance providing for a separate local business tax for retailers under the LGC is invalid and constitutional, as it does not meet the two requirements.

Facts:

Petitioners Mindanao Shopping Destination Corporation et al. are corporations engaged in the retail business of selling general merchandise within Davao City.

On 16 November 2005, Respondent City Council of Davao enacted Davao City Ordinance No. 158-05, which separated the tax liability of retailers and wholesalers. Under the old Davao City Ordinance No. 230, the two were taxed in the same manner at 50% of 1% of the gross sales/receipts. The new ordinance imposed a tax rate of 1.5% of gross sales in excess of P400,000 or a 200% increase from the rate under the old ordinance. (The rate was reduced in 2006 to 1 ¼% or 0.25% short of the maximum tax rate of 1.5% for cities sanctioned by the Local Government Code or LGC.)

Petitioners claim that this increase or adjustment of the tax rate violates Section 191 of Republic Act No. 7160 or the LGC, which provides that local government units shall have the authority to adjust the tax rates not oftener than once every five years, but in no case shall such adjustment exceed ten percent of the rates fixed in the LGC.

Issue:

Does the Davao City ordinance violate the LGC?

Ruling:

No, Davao City Ordinance No. 158-05 does not violate the LGC.

Under the old tax ordinance, wholesalers and retailers were grouped as one and thus, the tax base and tax rate imposed upon retailers were the same as those imposed upon wholesalers. Subsequently, the LGC authorized a difference in the tax treatment between wholesale and retail businesses.

There are two requirements before Section 191 of the LGC may apply to an amendment of tax rates, namely: (1) there is a tax ordinance that already imposes a tax in accordance with the LGC; and (2) there is a second ordinance that made an adjustment on the tax rate fixed by the first.

The first requirement is not met as Davao City Ordinance No. 158-05 was actually the first to impose the tax on retailers in accordance with the provisions of the LGC. The second requirement is also absent as Section 191 contemplates a situation where there is already an existing tax as authorized under the LGC and only a change in the tax rate would be effected. The new ordinance provided not only a tax rate but also a tax base that were appropriate for retailers, following the parameters under the LGC.

While it may appear that there was a significant adjustment on the tax rate of retailers which affected petitioners, the adjustment was not by virtue of a unilateral increase of the tax rate but merely incidental as a result of the correction of the classification of wholesalers and retailers and its corresponding tax rates in accordance with the LGC.

Cristeta May Galang, Caridad Ortega, Mildred Villareal, Rona Marie Yngson, Tanglaw Lupe Gutierrez, and Trinidad Jacob vs. Commissioner of Internal Revenue

CTA (Second Division) Case No. 9081, promulgated 8 June 2017

Facts:

On 4 December 1965, the Asian Development Bank (ADB) Charter Agreement was adopted with the Government of the Republic of the Philippines (GRP) being one of the signatories. Article 56 of the ADB Charter provides that no tax shall be levied on salaries and emoluments paid by ADB to its directors, officers, employees, except where a member state, in its instrument of ratification, retains for itself and its political subdivisions, the right to tax salaries and emoluments paid by ADB to the citizens or nationals of the member state.

On 22 December 1966, the GRP and the ADB executed the ADB Headquarters Agreement, which provides for the exemption of the officers and staff of ADB from taxation on their compensation paid by the ADB, subject to the power of the GRP to tax its nationals. This agreement was ratified by the Senate.

On 12 April 2013, the CIR issued Revenue Memorandum Circular (RMC) No. 31-2013 which clarifies the tax treatment of Philippine nationals and alien individuals on compensation income received from foreign governments/embassies and missions and international organizations. RMC No. 31-2013 provides that only officers and staff of the ADB who are not Philippine nationals are exempt from income tax.

Filipino employees of the Asian Development Bank (ADB) are not exempt from income tax since the Philippines reserved its right to tax citizens and nationals employed by the ADB.

RMC No. 31-2013 which clarifies the tax treatment of compensation income earned by Philippine nationals and alien individuals by embassies and international organizations in the Philippines cannot be applied retroactively.

Pursuant to RMC 31-2013, Petitioners who are employees of the ADB paid taxes due on their income for 2012. In 2014, Filipino employees of the ADB questioned RMC No. 31-2013 before the RTC of Mandaluyong City, which ruled in their favor. The CIR appealed such ruling, which is pending with the Supreme Court.

Based on the RTC ruling, Petitioners filed a refund claim for income taxes paid with the BIR for 2012. Due to the BIR's inaction, Petitioners elevated the refund claim to the CTA.

Issues:

1. Are Filipino employees of the ADB exempt from tax on their salaries and emoluments paid by the ADB?
2. Can RMC No. 31-2013 be given retroactive application and require Petitioners to pay income tax for taxable year 2012?

Ruling:

1. No, Filipino employees of ADB are not exempt from income tax since the GRP retained its right to tax the salaries and emoluments of Filipino ADB employees.

It is clear from the ADB Charter and the ADB Headquarters Agreement that the GRP reserved its power to tax its citizens and nationals. The accession to these international agreements which grant tax exemption to ADB personnel is conditional and not absolute.

2. No, RMC No. 31-2013 cannot be given retroactive application.

From the effectivity dates of the ADB Charter Agreement and the ADB Headquarters Agreement (1966 to 2013), there was no explicit and categorical ruling or issuance from the BIR implementing the reserved taxing power of the GRP on ADB Filipino employees until the issuance of RMC No. 31-2013.

Section 246 of the Tax Code prohibits the retroactive application of rulings and circulars promulgated by the CIR if this will be prejudicial to the taxpayers. In this case, the CIR's acts of setting up kiosks within the ADB's premises and filing of criminal case of tax evasion against the ADB's Filipino employees to collect income tax for taxable year 2012 prejudiced the status of the Petitioners.

Thus, the income tax payments of Petitioners for taxable year 2012 were illegally collected in violation of Section 246 of the Tax Code and must be refunded.

About SGV & Co.

SGV is the largest professional services firm in the Philippines that provides assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities. SGV & Co. is a member firm of Ernst & Young Global Limited.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

For more information about our organization, please visit www.ey.com/PH.

© 2017 SyCip Gorres Velayo & Co.
All Rights Reserved.
APAC No. 10000253
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Victor C. De Dios via e-mail at victor.c.de.dios@ph.ey.com or at telephone number 8910307 loc. 7929 and Reynante M. Marcelo via e-mail at reynante.m.marcelo@ph.ey.com or at telephone number 894-8335 loc. 8335.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.