

Tax Bulletin

August 2017



Highlights

BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 17-2017 prescribes policies for the close monitoring of the top taxpayers in Revenue Regions. **(Page 3)**
- ▶ Revenue Memorandum Circular (RMC) No. 60-2017 announces the official launch of the Seal of Honesty Certification Program in partnership with the Center for Strategic Reforms of the Philippines to promote a culture of honesty and integrity in paying taxes. **(Page 4)**
- ▶ RMC No. 68-2017 clarifies the venue for the processing of application and issuance of corresponding Permit to Use Loose-Leaf Books of Accounts/Invoices/Receipts and other Accounting Records. **(Page 6)**
- ▶ RMC No. 69-2017 clarifies the registration and tax compliance requirements of individuals under a Job Order or Service Contract Agreement with the Departments and Agencies of the Government, Instrumentalities, Local Government Units (LGUs), State Colleges and Universities, including Government Owned and/or Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs). **(Page 6)**

BOC Issuance

- ▶ CAO No. 5-2017 covers the establishment of an Authorized Economic Operator (AEO) Program in the Philippines by providing, among others, the infrastructure, facility, mechanism, process and benefits necessary for its full implementation. **(Page 9)**

BSP Issuances

- ▶ Circular No. 967 provides for Reportorial Requirements for Trust Entities. **(Page 11)**
- ▶ Circular No. 968 provides for the Extension of the Transitory Provision of Subsection 4511N.16 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF). **(Page 12)**
- ▶ Circular No. 969 provides for the Enhanced Corporate Governance Guidelines for BSP-Supervised Financial Institutions. **(Page 13)**
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SEC Opinions and Issuance

- ▶ A company intending to increase the par value of its shares without increasing the number of shares or its authorized capital stock (ACS) may undertake a reverse stock split by amending its Articles of Incorporation. **(Page 17)**

- ▶ A corporation engaged in providing a digital platform to assist businesses and companies in disseminating information is engaged in the business of mass media, and thus, must be wholly-owned and managed by Filipino citizens. **(Page 17)**
- ▶ SEC MC No. 9 provides for the rules and regulations on the implementation of the SEC Oversight Assurance Review (SOAR) Inspection Program. **(Page 18)**

Court Decisions

- ▶ The location of real property stated in the Certificate of Title, until cancelled or amended through judicial proceedings, determines the situs of local taxation.

The person conducting the business is the person whom the local government unit may pursue for payment of local business taxes. **(Page 18)**

- ▶ The transfer of properties in exchange for shares of stock and additional paid-in capital (APIC) qualifies as a tax-free exchange under Section 40 (C) (2) of the Tax Code.

The element of permanence prescribed in Revenue Memorandum Ruling (RMR) No. 1-2002 in a *de facto* merger pertains to the permanent transfer of assets from the transferee to the transferor such that the assets cannot be returned to the transferor corporation. **(Page 20)**

- ▶ Any VAT passed on to a taxpayer who is entitled to 0% VAT on its purchases of goods and services should be recovered from the seller and not from Government. **(Page 21)**

BIR Issuances

RMO No. 17-2017 prescribes policies for the close monitoring of the top taxpayers in Revenue Regions.

RMO No. 17-2017 dated 17 July 2017

- ▶ The top 500 non-individual taxpayers of the following Revenue Regions, who satisfy the criteria for Large Taxpayers, but have not been notified by the Commissioner of Internal Revenue, shall be considered for close monitoring:
 1. Revenue Region 1 - Calasiao, Pangasinan
 2. Revenue Region 4 - San Fernando, Pampanga
 3. Revenue Region 5 - Caloocan City
 4. Revenue Region 6 - Manila
 5. Revenue Region 7 - Quezon City
 6. Revenue Region 8 - Makati City
 7. Revenue Region 9A - Cavite, Batangas, Mindoro and Romblon
 8. Revenue Region 9B - Laguna, Quezon and Marinduque
 9. Revenue Region 12 - Negros Island Region
 10. Revenue Region 13 - Cebu City
 11. Revenue Region 16 - Cagayan de Oro
 12. Revenue Region 19 - Davao City
- ▶ The above taxpayers will comprise the Medium Taxpayers segment of the BIR, but shall exclude the following:
 1. National Government Agencies
 2. Local Government Units
 3. Government Owned and Controlled Corporations
 4. State Colleges and Universities

- ▶ A Regional Monitoring Team, which shall be directly under the supervision of the Regional Director, shall be created and perform the following functions:
 1. Monitor their compliance and analyze drastic changes in the monthly tax payments of taxpayers;
 2. Undertake profiling of taxpayers for sector or industry benchmarking;
 3. Act on pre-processed data (RELIEF, TRS and BIR-BOC), if available;
 4. Analyze the tax compliance report card;
 5. Provide inputs to be used in formulating strategies to maximize taxpayer compliance;
 6. Based on the analysis of tax compliance, recommend the conduct of audit and investigation of taxpayers by the concerned RDOs; and
 7. Submit monthly status reports to the National Monitoring Team.
- ▶ A National Monitoring Team shall be created to oversee the performance of the Regional Monitoring Teams, undertake a national analysis of taxpayer compliance, and provide specific guidelines on the operations of the regional teams.

RMC No. 60-2017 announces the official launch of the Seal of Honesty Certification Program in partnership with the Center for Strategic Reforms of the Philippines to promote a culture of honesty and integrity in paying taxes.

RMC No. 60-2017 dated 28 July 2017

- ▶ The BIR, together with the Department of Trade and Industry (DTI), has signed a Memorandum of Understanding (MOU) with the Center for Strategic Reforms of the Philippines (CSR Philippines), a non-stock, non-profit, non-government organization, to improve the ease of doing business and broaden the taxpayer's base.
- ▶ The CSR Philippines aims to assist Micro, Small and Medium Enterprises (MSMEs) in finding solutions to concerns, such as, but not limited to, financial support, low productivity and competitiveness, limited management and financial capabilities, as well as the lack of access to new technology through public-private collaborations to promote MSME development and genuine tax reform toward inclusive growth.
- ▶ Under the MOU, taxpayers are given the option to subscribe to the SOH Certification Program.
- ▶ SOH is a certification program spearheaded by CSR Philippines in partnership with the BIR and DTI to promote a culture of honesty and integrity in paying taxes.
- ▶ All taxpayers may apply to get SOH Certification, especially:
 1. Self-employed and professionals;
 2. Estate/Trust/Co-Ownership regardless of size and industry; and
 3. Taxpayers regularly monitored by the BIR for taxation and administration compliance.

- ▶ The applications for SOH Certification shall be submitted to the Evaluation Committee under the Office of the Commissioner of Internal Revenue (CIR).
- ▶ The following are the criteria to qualify for the SOH Certification:
 1. Settle all open cases and pending undisputed assessments as per Certification of the Revenue District Office (RDO);
 2. Observe full and honest compliance with all BIR regulations and requirements at all times;
 3. Sign the Integrity Pledge to promote and uphold honesty and integrity in paying taxes and in dealing with all government agencies, customers and suppliers without compromises;
 4. Not bribe any BIR personnel/official; and
 5. Increase their voluntary compliance by at least 20% in total tax payments for those who are regularly audited by the BIR, based on the level of their compliance.
- ▶ The following is the process for securing the SOH Certification:
 1. Sign the Integrity Pledge and commitment to promote a culture of honesty and integrity in paying taxes;
 2. Attend a roundtable discussion on paying the right taxes organized by any of the business organization, chamber or association in partnership with CSR Philippines;
 3. Apply for the Certification Program;
 4. Have a preliminary evaluation to determine the risk assessment and level of compliance;
 5. Undergo tax planning and compliance review;
 6. Submit compliance report to the Evaluation Committee for review and recommendation;
 7. Approval by Office of the CIR;
 8. Awarding of the SOH Certification;
 9. Revalidation after one year; and
 10. Renewal every year.
- ▶ The SOH Certification is valid for one year and renewable every year, subject to revalidation of CSR Philippines and approval by the Evaluation Committee under the Office of the CIR.
- ▶ A duly certified/awarded SOH Taxpayer shall be entitled to the following benefits:
 1. Issuance of annual tax clearance, without prejudice to information not available at the time of issuance;

2. Last priority in audit; and
 3. Other privileges, which DTI and other government agencies may also extend to certified honest taxpayers.
- ▶ The award of SOH Certification does not grant full immunity to the taxpayer. Any SOH taxpayer, who is found to have violated the Philippine tax laws and regulations, will be subject to audit and investigation.

RMC No. 68-2017 clarifies the venue for the processing of application and issuance of corresponding Permit to Use Loose-Leaf Books of Accounts/Invoices/Receipts and other Accounting Records.

RMC No. 68-2017 dated 15 August 2017

- ▶ Permits to Use (PTU) Loose-Leaf Books of Accounts/Invoices/Receipts and other Accounting Records shall now be processed and issued by the concerned Revenue District Office (RDO) where the principal office of the taxpayer is registered.
- ▶ The following are the documentary requirements for the PTU application:
 1. Duly-accomplished BIR Form No. 1900 (Application for Authority to Use Computerized Accounting System for Components Thereof/Loose-Leaf Books of Accounts);
 2. Sample format and print-out to be used;
 3. In lieu of the investigation prescribed under RMC No. 13-82, a Sworn Statement, which shall specify the following:
 - ▶ The books to be used, invoices/receipts and other accounting records, together with the serial numbers of principal and supplementary invoices/receipts to be printed; and
 - ▶ Commitment to permanently bind the loose-leaf forms within 15 days after the end of each taxable year or upon the termination of its use;
- ▶ The PTU Loose-Leaf issued to the taxpayer's Head Office shall cover all identified registered branches and shall be valid in any RDO where the taxpayer has registered branches at the time of issuance;
- ▶ Updating of PTU shall be required for subsequent additional branches; and
- ▶ Each branch authorized to use the approved Loose-Leaf shall be furnished with a certified true copy of the PTU issued by the RDO of the Head Office.

RMC No. 69-2017 clarifies the registration and tax compliance requirements of individuals under a Job Order or Service Contract Agreement with the Departments and Agencies of the Government, Instrumentalities, LGUs, State Colleges and Universities, including GOCCs and GFIs.

RMC No. 69-2017 dated 17 August 2017

- ▶ A professional having a Job Order or Service Contract Agreement with the Government is either a licensed professional or non-licensed professional.
 1. Licensed Professionals refer to individuals engaged in the practice of professions or callings or who render services for a fee, such as those enumerated under Section 2.57.2 (A) (1) of Revenue Regulations (RR) No. 2-1998, as amended,

2. Non-Licensed Professionals or Non-Professionals refer to those individuals who are not identified under Section 2.57.2 (A) (1) of RR No. 2-1998, as amended, and who are not registered with and regulated by the PRC, SC, Integrated Bar of the Philippines (IBP), etc. and render services or labor-only for a fee or under a contract of service.
- ▶ The following are the registration and tax compliance requirements of professionals under a Contract of Service or Job Order with the Departments and Agencies of the Government, Instrumentalities, LGUs, State Colleges and Universities, GOCCs and GFIs:
1. Professionals deriving annual gross receipts of P100,000 and/or amount equivalent to statutory minimum wage rates from lone payor with no other source of income:
 - ▶ *Registration Requirements:*
 - a. Registration with the BIR using BIR Form No. 1901 for Taxpayer Identification Number (TIN) issuance, with taxpayer type of "Professional" or "Professional - In General" with the following documents:
 - ▶ Copy of service contract showing the amount of income payment
 - ▶ Any identification issued by an authorized government body (e.g. birth certificate, passport, driver's license, Community Tax Certificate) that shows the name, address and birthdate of the applicant
 - b. Exemption from payment of Annual Registration Fee (ARF)
 - c. Tax Type: Income Tax
 - d. Exemption from issuance of Certificate of Registration (COR)
 - ▶ *Bookkeeping and Invoicing Requirements:*
 - a. Exemption from compliance with the issuance of registered receipts/invoices
 - b. Exemption from the requirement of maintenance of Books of Accounts
 - ▶ *Tax Compliance Requirements:*
 - a. Filing of Annual Income Tax Return (ITR) (BIR Form No. 1701) and payment, if applicable
 - b. Exemption from filing of Quarterly Income Tax Return (BIR Form No. 1701Q)
 - c. Not subject to creditable withholding taxes
 - d. Exemption from payment of business taxes (i.e. VAT or Percentage Tax)

2. Professionals deriving annual gross receipts above P100,000.00 and/or statutory minimum wage rates from lone payor with no other source of income:
- ▶ *Registration Requirements:*
 - a. Registration with the BIR using BIR Form No. 1901 for TIN issuance, together with the following documents:
 - ▶ Copy of service contract showing the amount of income payment
 - ▶ Any identification issued by an authorized government body that shows the name, address and birthdate of the applicant
 - b. Payment of ARF
 - c. Tax Types: ARF, Income Tax (IT-1701), VAT or Percentage Tax (end-dated if taxpayer will avail of substituted percentage tax/VAT return)
 - d. Exemption from issuance of COR
 - ▶ *Bookkeeping and Invoicing Requirements:*
 - a. Approval of Authority to Print (ATP) for the issuance of registered principal receipts/invoices (except if qualified under the substituted receipts)
 - b. Registration and maintenance of Books of Accounts (except if qualified under the substituted receipts)
 - ▶ *Tax Compliance Requirements:*
 - a. Filing and payment of Annual ITR (BIR Form No. 1701)
 - b. Exemption from filing of Quarterly Income Tax Return
 - c. Exemption from attaching financial statements or account information form to the filed ITR
 - d. Subject to creditable withholding tax rates of 10%/15% for licensed professionals, whichever is applicable, or 2% expanded withholding tax (EWT) for non-licensed professionals under RR No. 2-1998 as amended
 - e. Subject to withholding of percentage tax or VAT, with the government agency-payor being required to withhold 3% percentage tax or 5% final withholding VAT or 12% VAT, if the payee will avail of the substituted filing of VAT return under RR No. 14-2003
 - f. Filing and payment of monthly and quarterly VAT or monthly percentage tax returns

3. Professionals with multiple payors and/or other sources of income:
 - ▶ *Registration Requirements:*
 - a. Registration with the BIR using BIR Form No. 1901, together with the following documents:
 - ▶ Checklist of requirements under Annex A-1 of RMC No. 137-2016
 - ▶ Copy of service contract showing the amount of income payment
 - b. Payment of ARF
 - c. Tax Types: RF, Income Tax (IT - 1701/1701Q), VAT or Percentage Tax
 - ▶ *Bookkeeping and Invoicing Requirements:*
 - a. Registration and maintenance of Books of Accounts
 - b. Approval of ATP
 - c. Issuance of registered principal receipts/invoices
 - ▶ *Tax Compliance Requirements:*
 - a. Filing and payment of Quarterly ITR (BIR Form No. 1701Q) and Annual ITR (BIR Form No. 1701)
 - b. Subject to creditable withholding tax rates of 10% or 15% for licensed professionals, whichever is applicable; or 2% EWT for non-licensed professionals
 - c. Subject to creditable withholding of percentage tax or VAT, with the government agency-payor being required to withhold 3% percentage tax or 5% final withholding VAT
 - d. Filing and payment of the monthly and quarterly VAT or monthly percentage tax returns
 - e. Quarterly submission of the Summary List of Sales and Summary List of Domestic Purchases for VAT taxpayers

BOC Issuance

Customs Administrative Order No. 5-2017 dated 18 August 2017

- ▶ The objectives of the Authorized Economic Operator (AEO) Program are:
 1. To comply with the commitment of the Philippines to implement international trade agreements such as (a) World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework); (b) WCO Integrated Supply Chain Management (ISCM Guidelines); (c) the Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention); and (d) the WTO Agreement on Trade Facilitation;

CAO No. 5-2017 covers the establishment of an AEO Program in the Philippines by providing, among others, the infrastructure, facility, mechanism, process and benefits necessary for its full implementation.

2. To develop an AEO Program to attain a mutual recognition status in relation to the AEO or similar programs of other countries;
 3. To provide benefits to accredited members of the AEO Program by way of incentives to customs stakeholders with high level of compliances with customs rules and regulations on import and export clearance and cargo security; and
 4. To establish a special customs cargo clearance lane to further facilitate and secure international trade at the same time to increase the level of customs compliances through the optimum use of information and communication technology and risk assessment principles.
- ▶ AEO Definition - An AEO shall refer to the importer, exporter, customs broker, forwarder, freight forwarder, transport provider, and any other entity duly accredited by the Bureau of Customs (BOC) based on the WCO SAFE Framework, RKC, the WCO ISCM Guidelines, and the various national best practices to promote trade facilitation and to provide seamless movement of goods across borders through secure international trade supply chains with the use of risk management and modern technology.
 - ▶ Who may participate in the AEO program?
 1. Importers;
 2. Exporters;
 3. Customs Bonded Warehouses (CBW) and Customs Facilities Warehouses (CFW);
 4. Customs Brokers;
 5. Non-Vessel Operation Common Carriers (NVOCC), Freight Forwarders, and International Freight Forwarders with offices in the Philippines;
 6. Shipping Lines or Airlines and their agents;
 7. Authorized Agent Banks (AABs);
 8. Local Transport Operators and their facilities and equipment; and
 9. Foreign suppliers, manufacturers, and other entities in the logistics and International Supply Chain accredited as AEO by another country with which the Philippines has a Mutual Recognition Arrangement.
 - ▶ AEO Membership Accreditation Criteria - the applicant must meet the standard of reliability and trustworthiness which shall be measured by the level of risk, nature of business and the conduct of importation against customs revenue, compliance and cargo security:
 1. General Criteria
 - ▶ Business ownership, structure, and organization;
 - ▶ Corporate or business profile and projected business activity;
 - ▶ End-to-end import or export process (goods, documentation, and payment flow) and local distribution system, if any;
 - ▶ Entities involved in foreign supply and/or local distribution chain;
 - ▶ List of goods imported or exported including the nature, specific description in tariff terms, customs value, preferential rates to be availed of, and volume (over time);
 - ▶ Internal customs compliance control;
 - ▶ Customs compliance history;
 - ▶ Business process continuity mechanism; and
 - ▶ Other similar factors to be determined by the BOC

2. Security Infrastructure
 - ▶ Cargo handling and safekeeping;
 - ▶ Record keeping and IT System;
 - ▶ Supply and trading partner;
 - ▶ Physical premises and access control,
 - ▶ Personnel complement;
 - ▶ Security training, threat awareness, and outreach; and
 - ▶ Other similar factors to be determined by the Bureau
 3. The applicant entity must have been in operation for at least one year prior to the date of application.
 4. The applicant shall ensure that it has obtained the necessary permits, licenses, and/or concession if regulated by another government agency.
 5. That none of the executive officers and directors directly engaged in customs procedures and shareholders, as applicable, have been found criminally liable for violations of customs laws and procedures.
 6. The applicant must have a dedicated office or unit and responsible officer whose main function is to ensure the applicant's compliance with its duties and responsibilities under the AEO Program as an accredited member.
- ▶ AEO Application Processing and Approval - the BOC is mandated to establish a simplified system of processing, evaluation and action on the applications. The processing of AEO applications shall consist of the 3 Levels, providing criteria and corresponding benefits to members who demonstrate a sustained commitment to maintaining security measures and supply chain security practices that complies with or exceed the guidelines established.
 - ▶ Grounds for Denial of Application
 1. Failure to meet any of the requirements under the AEO Membership Accreditation Criteria such as an AEO member's security measures and supply chain security practices.
 2. False or misleading information during the validation process.
 - ▶ Suspension and Revocation of Accreditation - Once granted, AEO accreditation shall last until suspended or revoked depending on degree of culpability and resulting injury to the government after due notice and hearing.
 - ▶ Effectivity: 15 days from publication in the Official Gazette or a newspaper of general circulation.

[Editor's Note: CAO 5-2017 was received by the UP Law Center on 18 August 2017.]

BSP Issuances

Circular No. 967 provides for Reportorial Requirements for Trust Entities.

BSP Circular No. 967 dated 21 July 2017

- ▶ This Circular provides for the issuance of the Financial Reporting Package (FRP) for Trust Corporation (TC), amendments to Appendices T-1 and T-3 (T Regulations) of the MORNBF, and revisions on selected sections and schedules of the Financial Reporting Package for Trust Institutions (FRPTI).

- ▶ Trust Corporations
 1. The Manual of Accounts (MoA) for TCs shall be used in the preparation of the Financial Reporting Package reflecting the proprietary activities of TCs. The submission of the FRP for TCs shall start for the reporting period ended 30 September 2017.

Similarly, the corresponding BSP reporting templates are hereby issued which shall be submitted by TCs in the modes and manner as prescribed under Appendix T-3 of the MORNBFI-T Regulations.

2. Appendix T-1 List of Applicable Appendices under the MORNBFI- T Regulations is hereby amended by deleting reference to Appendix Q-10 to Basic Guidelines in Setting Up Allowance for Credit Losses (Attachment 3).
 3. Appendix T-3 List of Reports Required from Trust Corporations under Section 4192T of the MORNBFI- T Regulations is hereby amended to align with the recent regulatory issuances on reportorial requirements which are applicable to TCs (Attachment 4).
- ▶ Trust Entities
 1. The FRPTI issued under Circular No. 609 dated 26 May 2008 as amended, which is applicable to all trust entities, shall be revised. This revision reflects the changes in the presentation of assets net of securities custodianship under Item 10 - Breakdown of Trust and Agency Assets for the Quarter of the said report and Overnight Deposit and Term Deposit Accounts.

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

[Editor's Note: BSP Circular No. 967, s. 2017 was published in The Manila Times on 1 August 2017]

Circular No. 968 provides for the Extension of the Transitory Provision of Subsection 4511N.16 of MORNBFI.

BSP Circular No. 968 dated 10 August 2017

- ▶ This Circular provides for the amendment in Subsection 4511N.16 of the MORNBFI extending the transitory period on the effectivity of previously issued Certificates of Registration to Remittance and Transfer Companies (RTCs)/ Money Changers (MCs)/ Foreign Exchange Dealers (FXDs), to provide them more time to gather complete and updated documentary requirements.
- ▶ Subsection 4511N.16 of the MORNBFI shall be amended to read as follows:

“Transitory provisions. All Bangko Sentral Certificate of Registration (CORs) previously issued Certificates of Registration to Remittance and Transfer Companies (RTCs)/ Money Changers (MCs)/ Foreign Exchange Dealers (FXDs) shall remain effective until 31 January 2018. Upon the expiration of the transitory period, all previously-issued Bangko Sentral CORs shall be considered automatically cancelled, unless otherwise extended by the Bangko Sentral.”
- ▶ This Circular shall be effective immediately.

[Editor's Note: Circular 968 was published in Business World on 14 August 2017.]

Circular No. 969 provides for the Enhanced Corporate Governance Guidelines for BSP-Supervised Financial Institutions.

BSP Circular No. 969 dated 22 August 2017

- ▶ This Circular provides for the revisions to the guidelines in strengthening corporate governance in BSP Supervised Financial Institutions amending relevant provisions of the Manual of Regulations for Banks (MORB).
- ▶ Chapter H of Part One of the MORB on Directors, Officers and Employees is hereby retitled as “Corporate Governance Guidelines.”
- ▶ Section X141 (Policy Statement) and Subsections X141.1 (Definition of Terms) are amended. Subsections X141.2 to X141.5 and Subsections X141.9 to X141.10 are deleted.
- ▶ Section X142 (Board of Directors), Subsec. X142.1 (Powers/Corporate powers of the board of directors), Subsec. X142.2 (Composition of the board of directors), Subsec. X142.3 (Qualifications of a director), Subsec. X142.4 (Chairperson of the board of directors), Subsec X142.5 (Board of directors meetings) are amended.
- ▶ Section X143 (Duties and Responsibilities of the Board of Directors/Directors), Subsec. X143.1 (Specific duties and responsibilities of the board of directors), Subsec. X143.2 (Specific duties and responsibilities of a director) are amended.
- ▶ Section X144 (Board-level committees), Subsec. X144.1 (Audit Committee), Subsec. X144.2 (Risk oversight committee), Subsec. X144.3 (Corporate governance committee), Subsec. X144.4 (Related party transactions committee) are amended.
- ▶ Section X145 (Officers) and Subsec.X145.1 (Qualifications of an officer) are amended. The provisions of Subsec. X142.3 are transferred to Subsec. X145.2, and a new Subsection X145.3 is added, which provides for the Chief Executive Officer.
- ▶ Section X146 (Remuneration and other incentives) and Subsection X146.2 (Loans, advances and other credit accommodations to officers) are amended. The entire provisions of Subsections X147.1 and X147.2 are transferred to Subsections X146.1 and X146.3, respectively, and provisions of Subsections X338.2 and X338.3 are transferred as Items “a” and “b” of Subsection X146.2, respectively.
- ▶ Section X146.2 is amended and renumbered to Subsection X147.1 and provides for RPT policies/roles of senior management and self-assessment functions.
- ▶ Sections/Subsections X141.4, X144, X145, X145.1 and X150 are amended and transferred to Section 148 (Confirmation of the Election/Appointment of Directors/Officers; Bio-data of Directors and Officers; Interlocking Directorships and/or Officerships; Rules of Procedures on Administrative Cases Involving Directors and Officers of BSFIs), and to its Subsections X148.1 to X148.4.
- ▶ Section X186 of the MORB on internal audit function is amended and reads as follows:

“An effective and efficient internal audit function constitutes the third line of defense in the system of internal control.

Internal audit is an independent, objective assurance and consulting function x x x"

- ▶ Subsection X406.10 of the MORB on confirmation of the appointment/designation of trust officer and independent professional of Chapter A of part Four of the Trust, Other Fiduciary Business and Investment Activities is amended.
- ▶ The Sections/Subsections of the MORB are renumbered/deleted and references to the renumbered provisions are correspondingly amended/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 969 was published in The Philippine Star on 30 August 2017]

Circular No. 970 provides for the Enhanced Corporate Governance Guidelines for BSP-Supervised Financial Institutions Amending the MORNFBFI.

BSP Circular No. 970 dated 22 August 2017

- ▶ This Circular provides for the revisions to guidelines in strengthening corporate governance in BSP Supervised Financial Institutions amending relevant provisions of the MORNFBFI.
- ▶ Section 4002Q (Definition of Terms) is amended.
- ▶ Chapter H of Q Regulations of the MORNFBFI is retitled as "Corporate Governance Guidelines".
- ▶ Section 4141Q (Policy Statement) is amended, and Subsections 4141Q.1 to 4141Q.4 and Subsections 4141Q.9 to 4141Q.10 are deleted.
- ▶ Subsections 4141Q.3 Item "a", 4141Q.2 Item "a" and 4141Q.1 Items "b" to "e" are amended and transferred to Section 4142Q (Board of Directors) and Subsections 4142Q.1 to 4142Q.5.
- ▶ Subsection 4141Q.3 is amended and transferred to Section 4143Q and Subsections 4143Q.1 to 4143Q.2.
- ▶ Subsection 4141Q.3 Item "d" is amended and transferred to Section 4144Q (Board-level committees) and Subsections 4144Q.1 to 4144Q.3.
- ▶ Section 4142Q is amended and transferred to Subsection 4145Q. 1, the provisions of Subsection 4142Q.3 is transferred to Subsection 4145Q.2, and new Subsection 4145Q.3 is added.
- ▶ The entire provisions of Sections 4146Q and 4147Q are transferred to Subsections 4146Q.1 and 4146Q.3, respectively, and new Section 4146Q (Remuneration and Other Incentives) and Subsection 4146Q.2 are added.
- ▶ Sections/Subsections 4141Q.4, 4144Q, and 4145Q are amended and transferred to Subsections 4148Q.1 to 4148Q.4, and Subsection 4145Q.1 is transferred to 4148Q.3.
- ▶ Section 4186Q of the MORNFBFI on internal audit function is amended.
- ▶ Section 4406Q.10 of the MORNFBFI on confirmation of the appointment/designation of trust officer and independent professional of Chapter A of Part Four of the Trust, Other Fiduciary Business and Investment Activities is amended.

- ▶ The Sections/Subsections of the MORB are renumbered/deleted and references to the renumbered provisions are correspondingly amended/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 970 was published in Malaya on 30 August 2017]

Circular No. 971 provides for the Guidelines on Risk Governance

BSP Circular No. 971 dated 22 August 2017

- ▶ This Circular provides for the following guidelines on risk governance for BSP Supervised Financial Institutions amending relevant provisions of the MORB/MORNBF1.
- ▶ Section X174/4174Q of the MORB/MORNBF1 on Risk Management Function is amended and renamed as Risk Governance Framework.
- ▶ Subsection X174.1 of the MORB which provides for the Risk Management Function is amended.
- ▶ Subsection 4174Q.1 of the MORNBF1 on Risk management function is added and provides that the risk management function shall be responsible for identifying, measuring, monitoring and reporting risk on an enterprise-wide basis as part of the second line of defense.
- ▶ Subsection X174.2 of the MORB on Chief Risk Officer (CRO) is added and provides that UBs/KBs shall appoint a CRO to head the risk management function. Other banks, may at their own discretion, or as directed by the appropriate supervising department of the Bangko Sentral, appoint a CRO, or any equivalent position to carry out the responsibilities of the position. The appointment, dismissal and other changes to the CRO or its equivalent position shall have prior approval of the board of directors.
- ▶ Subsection 4174Q.2 of the MORNBF1 on Chief Risk Officer is also added.
- ▶ 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 971 was published in the Manila Standard on 30 August 2017.]

Circular No. 972 provides for the Enhanced Guidelines in Strengthening Compliance Frameworks

BSP Circular No. 972 dated 22 August 2017

- ▶ This Circular provides for the revisions in the compliance frameworks in BSP Supervised Financial Institutions amending relevant provisions of the MORB/MORNBF1.
- ▶ Section X180 and its Subsections X180.1 to X180.3 of the MORB on Compliance System/Compliance Officer are hereby amended, and provisions of Subsections X180.6 and X180.7 are transferred to Subsections X180.5 and X180.6.

- ▶ Section 4180Q and its Subsections 4180Q.1 to 4180Q.3 of the MORNBFI on Compliance System/Compliance Officer are amended, and provisions of Subsections 4180Q.6 and 4180Q.7 are transferred to Subsections 4180Q.5 and 4180Q.5.
- ▶ Considering the renumbering of the provisions in the above Sections/ Subsections, references to the renumbered provisions are correspondingly amended/deleted, as shown below:

Section/ Subsections	With cross- reference to:	On the:	New Section/ Subsection
Appendix 83a	X180	Risk Management Guidelines For Trust And Other Fiduciary Business and Investment Management Activities	X180.2; X180.3
X141.4 X180	X180.4	Confirmation of Chief Compliance Officer	X148.1
X661.6 X602.1	X180.2	Role of control functions - Responsibility in monitoring and assessing compliance with laws, rules and regulations	X180; X180.1
Appendix 98a	X180.2	List of documentary requirements - Approval of the Appointment of Trust and Compliance Officers of Banks	X180.1
Appendix 98	X180.4	Documentary Requirements to be submitted to Bangko Sentral for the Election/ Appointment of Directors/ Officers of Banks	X180.3
41001Q.1 Appendix Q-48a 4401S.2 4701N.2 4180T	4180Q	Compliance Program	4180Q.2
4180Q.3	4180Q.1	Business Risks	4180Q
4602Q.1	4180Q.1	Role of Control function - responsibility of compliance function	4180Q; 4180Q.1
4141Q.4 4180Q	4180Q.2 4180Q.4	Confirmation of Chief Compliance Officer	4148Q.1
4661Q.6	4180Q.5	Compliance function - Responsibility in monitoring and assessing compliance with laws, rules and regulations	4180Q; 4180Q.1
App Q-57 App Q-57a	4180Q.2	List of Documentary Requirements - Approval of the Appointment of Trust and Compliance Officers	4148Q.1

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

SEC Opinions and Issuance

SEC-OGC Opinion No. 17-06 dated 24 July 2017

A company intending to increase the par value of its shares without increasing the number of shares or its ACS may undertake a reverse stock split by amending its Articles of Incorporation.

Facts:

N Co. submitted a request for legal opinion to the SEC regarding its equity restructuring plan wherein it intends to increase the par value of its shares from P10.00 to P50.00 each without increasing its number of shares.

Issue:

What is/are the procedure/s that may be undertaken by N Co. to implement its plan?

Held:

A company that intends to increase the par value of its shares without increasing either the number of shares or its authorized capital stock may undertake a reverse stock split by amending its Articles of Incorporation (AOI). If the company intends to maintain the current number of shares, it must also apply for the increase of its authorized capital stock after prior approval of the majority of the board of directors and the stockholders representing at least 2/3 of the outstanding capital stock pursuant to Sec. 38 of the Corporation Code. On the other hand, if the company intends to maintain its authorized capital stock, it should undertake a reverse stock split only but its number of shares will, in effect, be reduced.

SEC-OGC Opinion No. 17-07 dated 24 July 2017

A corporation engaged in providing a digital platform to assist businesses and companies in disseminating information is engaged in the business of mass media, and thus, must be wholly-owned and managed by Filipino citizens.

Facts:

A Co. is a domestic corporation that offers technology solutions that help its clients promote their brands, products and services. It provides a digital platform that enables its clients to reach out to their target market and convey to them customized messages and point-of-sale advertising through digital media signages and audio playback. The messages and advertising content are, however, not created by A Co. itself.

Issue:

Whether or not A Co. is engaged in the business of mass media and advertising, thus, must be 100% Filipino-owned.

Held:

A Co. is engaged in the business of mass media. In a previous opinion, the SEC held that a corporation that provides an online platform for purposes of disseminating information to the general public is considered a mass media entity, thus, subject to the Constitutional requirement that the same must be wholly-owned and managed by Filipino citizens.

On the other hand, A Co. is not engaged in advertising since, as represented, it does not conceptualize, design, prepare and produce for its clients the commercial messages or advertisement but merely allows the posting of the same in the online platform.

SEC MC No. 9 provides for the rules and regulations on the implementation of the SOAR Inspection Program.

SEC Memorandum Circular No. 9 dated 18 August 2017

In order to enhance the quality of audits of the financial statements of publicly listed companies and, in turn, protect the interests of investors and other users of audited financial statements, the SEC implements the SEC Oversight Assurance Review (SOAR) Inspection Program with the following key features:

- ▶ The SOAR Inspection Program is conducted by the Office of the General Accountant (OGA);
- ▶ Only accredited auditing firms and audit engagement partners engaged by companies with equity or debt securities listed in an Exchange and portions of these firms' audit work for the listed companies shall be reviewed and covered under the SOAR Inspection Program;
- ▶ The OGA will follow a risk-based approach in the selection of engagements and firms to be subjected to SOAR inspection;
- ▶ The inspection of all covered firms shall be conducted once every three years wherein at least one engagement will be selected. However, the SEC is not precluded from subjecting firms to an annual inspection if circumstances would warrant;
- ▶ The administrative sanctions that can be imposed by the OGA on auditing firms or its employees or personnel found to be violating professional standards or the firm's own quality control procedures include censure, requiring of additional professional education and training, requiring the engagement of another consultant to design new policies for the firm, monetary fines, and suspension or revocation of accreditation for egregious or repeat violations; and
- ▶ Sanctions imposed by the OGA are appealable to the SEC *En Banc* in accordance with the existing Rules of Procedures of the Commission.

[Editor's Note: MC No. 9 was published in The Philippine Star and The Manila Times on 26 August 2017.]

Court Decisions

Consolidated Cases of Municipality of Cainta vs. City of Pasig and Uniwide Sales Warehouse Club, Inc. and Uniwide Sales Warehouse Club, Inc., vs. City of Pasig and Municipality of Cainta

Supreme Court Second Division, GR Nos. 176703 & 176721, promulgated 28 June 2017

The location of real property stated in the Certificate of Title, until cancelled or amended through judicial proceedings, determines the situs of local taxation.

The person conducting the business is the person whom the local government unit may pursue for payment of local business taxes.

Facts:

Uniwide Sales Warehouse Club, Inc. (Uniwide) conducted and operated business in buildings and establishments constructed on parcels of land covered by three Transfer Certificate of Titles (TCTs) issued by the Register of Deeds of Pasig City. The TCTs indicate Pasig City as the location of the parcels of land. Uniwide paid local business taxes (LBT) and realty taxes, fees and other charges to Pasig City from 1989 to 1996.

In 1994, the Municipality of Cainta filed a petition for settlement of boundary dispute with Pasig City before the Regional Trial Court (RTC) of Antipolo, which dispute covered Uniwide's subject properties.

In 1997, Uniwide started to pay local taxes to Cainta after the latter gave notice that the subject properties were within Cainta's territorial jurisdiction. Consequently, Pasig City filed a case for collection of LBT, fees and other legal charges due for fiscal year 1997 against Uniwide with the RTC of Pasig.

Uniwide, in turn, filed a third party complaint against Cainta for reimbursement in the event that it was adjudged liable for payment of taxes to Pasig.

The Pasig RTC ruled in favor of Pasig, which upheld the indefeasibility of the Torrens title held by Uniwide. The court ordered Uniwide to pay local taxes and fees and real estate taxes beginning 1997 up to the present to Pasig City. In the third party complaint, the RTC, having found that Uniwide paid taxes, fees and other charges to Cainta beginning 1997, ordered the said Municipality to return the amounts to Uniwide pursuant to the principle against unjust enrichment.

Aggrieved, Uniwide and Cainta separately appealed to the Court of Appeals, which affirmed the RTC decisions. Thus, Uniwide and Cainta appealed to the Supreme Court.

Issues:

1. Does the City of Pasig have the right to levy and collect realty taxes and LBT from Uniwide?
2. Can the City of Pasig directly recover from the Municipality of Cainta the LBT paid by Uniwide?

Rulings:

1. Yes, Pasig has the right to levy and collect realty taxes and LBT.

The Local Government Code (LGC) provides that LBT shall be paid to the LGU where the business is conducted, and realty taxes shall be paid to the LGU where the real property is located. To identify the LGU entitled to collect taxes, the location stated in the certificate of title should be followed until amended through proper judicial proceedings.

It is undisputed that the subject properties are covered by TCTs which clearly indicate that they are situated in Pasig; that Uniwide's business establishment is conducted within the subject properties; that the location stated in the TCTs remained unchanged since their issuance; that prior payments of the subject taxes, fees, and charges have been made by Uniwide to Pasig; and that there is no court order directing the amendment of the subject TCTs with regard to the location stated. Therefore, Pasig has the right to levy and collect realty taxes on the subject properties and LBT on the businesses conducted in said properties.

Without the adjudication of RTC Antipolo finally determining the precise territorial jurisdiction of these LGUs, the taxpayer is entitled to rely on the location clearly reflected in the TCT covering the properties.

Moreover, the rules implementing the LGC provide that in case of a boundary dispute, the status of the affected area prior to the dispute shall be maintained and continued for all purposes.

2. No, Pasig cannot directly recover from Cainta.

The LGC expressly provides that the LBT must be paid by the person conducting the same, which is Uniwide, in the present case. Even if Uniwide paid taxes to Cainta beginning 1997, Pasig cannot directly recover from Cainta. Uniwide is the person against whom Pasig may properly pursue for the payment of LBT.

Cainta is obligated to return the taxes erroneously paid to it by Uniwide.

Premium Tobacco Redrying and Fluecuring Corporation vs. CIR

CTA (First Division) Case No. 8897, promulgated 18 July 2017

The transfer of properties in exchange for shares of stock and additional paid-in capital (APIC) qualifies as a tax-free exchange under Section 40 (C) (2) of the Tax Code.

The element of permanence prescribed in Revenue Memorandum Ruling (RMR) No. 1-2002 in a *de facto* merger pertains to the permanent transfer of assets from the transferee to the transferor such that the assets cannot be returned to the transferor corporation.

Facts:

On 29 October 2009, Petitioner Premium Tobacco Redrying and Fluecuring Corporation (Premium) entered into Plan of De facto Merger with Fortune Tobacco Corporation (FTC), whereby Premium transferred to FTC more than 80% of its total assets and some of its liabilities in exchange for shares of stock and additional paid-in capital (APIC) recorded in the books of FTC.

Premium filed a request for ruling with the BIR Law Division to confirm that the transaction with FTC is a tax-free exchange pursuant to Section 40 (C) (2) of the Tax Code. The BIR did not act on the request for confirmatory ruling. Instead, the BIR assessed Premium for alleged deficiency income tax, value-added tax (VAT), and documentary stamp tax (DST) on the transfer of its assets and liabilities to FTC.

The BIR alleged, among others, that the transaction was not undertaken for a *bona fide* business purpose. The BIR asserted that the transaction was intended as a preliminary act of Premium to escape the burden of taxation considering that four months after, the assets subject of the *de facto* merger were immediately transferred to a newly formed corporation, PMFTC, Inc. The BIR argued that the element of permanence and not mere momentary holding, as prescribed by Revenue Memorandum Ruling (RMR) No. 1-2002, was not met.

Issue:

Does Premium's transfer of assets and liabilities to FTC in exchange for shares of stock and APIC qualify as a *de facto* merger under Section 40 (C) (2) of the Tax Code?

Ruling:

Yes, Premium's transfer of properties was a *de facto* merger, a tax-free exchange under Section 40 (C) (2) of the Tax Code.

The law requires only two conditions to constitute a tax-free *de facto* merger:

1. There must be a transfer of all or substantially all of the properties of the transferor corporation for stock; and,
2. It must be undertaken for a *bona fide* business purpose and not solely for the purpose of escaping the burden of taxation.

Premium complied with the foregoing requisites. It transferred assets and liabilities in exchange for FTC shares and APIC. The requirement of *bona fide* business purpose was also met since the purpose of the *de facto* merger under the Plan of De Facto Merger was mainly to streamline processes and maximize resources.

The phrase “element of permanence and not merely momentary holding” under RMR 1-2002 pertains to the permanent transfer of the assets to the transferee corporation and not merely temporary holding, such that the transferred assets cannot be returned to the transferor corporation.

Moreover, contrary to the assertion of the BIR, a tax ruling is not a condition precedent for a tax-free exchange under Section 40 (C) (2) of the Tax Code. Revenue Regulations (RR) No. 18-01, which is relied upon by the BIR, does not require a party to first secure a BIR confirmatory certification or tax ruling before it can avail itself of the tax exemption.

Maibarara Geothermal, Inc. vs. CIR

CTA (Third Division) Case Nos. 8871, 8937, 8999 & 9042 promulgated 2 August 2017

Any VAT passed on to a taxpayer who is entitled to 0% VAT on its purchases of goods and services should be recovered from the seller and not from Government.

Facts:

Petitioner Maibarara Geothermal, Inc. (MGI) is a domestic corporation engaged in the power generation business using geothermal resources. MGI filed a refund claim with the BIR for its unutilized input VAT allegedly attributable to its zero-rated sales for taxable year 2012.

Since the BIR failed to act on its refund claim, Maibarara elevated the refund claim to the CTA. The BIR argues that tax refunds are strictly construed against the taxpayer and Maibarara to prove its entitlement for refund.

Issue:

Is Maibarara entitled to refund on its unutilized input VAT for taxable year 2012?

Ruling:

No, Maibarara is not entitled to refund. The CTA ruled that Maibarara's local purchases of goods, properties, and services for the development, construction, and installation of its plant facilities are subject to VAT 0% under the Renewable Energy Act.

Thus, no input VAT should have been passed on to Maibarara from said purchases. If Maibarara paid input VAT on those purchases, its recourse is not against Government through a refund claim, but against the seller who shifted to it the output VAT.

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