

# Tax Bulletin

September 2017



# Highlights

## BIR Rulings

- ▶ Sales to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs), of goods and/or services are generally subject to 12% VAT. **(Page 4)**
- ▶ The sale of power or fuel generated through renewable sources of energy is subject to VAT zero-rating. **(Page 4)**
- ▶ The tax exemption granted to PAGCOR extends or inures to the benefit of its licensees and contractees. **(Page 5)**
- ▶ Gifts made in favor of an educational institution are exempt from donor's tax, provided that not more than 30% of said gifts shall be used by the donee for administration purposes. **(Page 5)**
- ▶ Transfer of real properties in favor of the Republic of the Philippines, without any monetary consideration, is not subject to Capital Gains Tax (CGT) and Documentary Stamp Tax (DST). **(Page 6)**
- ▶ Transfer of real properties by virtue of a Compromise Agreement approved by the Court is not taxable. **(Page 6)**
- ▶ Joint ventures formed for the purpose of undertaking construction projects under service contracts with the Government are not subject to corporate income tax and to the 2% Creditable Withholding Tax (CWT), provided that they comply with the conditions imposed under RR No. 10-2012. **(Page 7)**
- ▶ Income from the sale of real property prior to 9 September 1979 shall not be subject to CGT but to regular income tax. The said sale shall also be subject to DST. **(Page 7)**
- ▶ The socialized housing project that is granted exemption from CGT under RA No. 7292 is the Community Mortgage Program project. **(Page 8)**
- ▶ Transfers of real property by way of disturbance compensation are exempt from CGT and DST. **(Page 8)**
- ▶ In the absence of a specific law excluding reconveyance of property from the coverage of Section 24 of the Tax Code, said reconveyance shall be deemed included within the purview of the said provision for CGT purposes. **(Page 9)**

## BIR Issuances

- ▶ Revenue Memorandum Circular (RMC) No. 75-2017 promulgates and implements the People's Freedom of Information Manual of the BIR. **(Page 9)**

## BOC Issuances

- ▶ Customs Memorandum Order (CMO) 14-2017 dated 31 August 2017 covers the Authorization to Issue Alert Orders. **(Page 12)**

- ▶ CMO 15-2017 dated 7 September 2016 provides for the Guidelines on the Implementation of Customs Administrative Order (CAO) No. 06-2016 on Conditionally Tax and/or Duty-Exempt Importation of Returning Residents and Returning Overseas Filipino Workers (OFWs). **(Page 13)**
- ▶ CMO 16-2017 dated 22 September 2017 provides for the Transfer of the Account Management Office (AMO) under the Direct Supervision of the Customs Intelligence & Investigation Service (CIIS) of the Intelligence Group (IG). **(Page 14)**
- ▶ Tariff Commission Order 2017-01 provides for the Procedure on the Application for an Advance Ruling on Tariff Classification Related to Importation or Exportation of Goods pursuant to Chapter 1 of Title XI of Republic Act No. 10863 or the Customs Modernization and Tariff Act (CMTA). **(Page 15)**

### **SEC Opinions**

- ▶ A corporation whose registration has been revoked by the SEC retains the title to its assets until after the completion of the liquidation process. Should it opt to re-register, the re-registered corporation is separate and distinct from its previous personality that has been previously terminated. **(Page 17)**
- ▶ The term or lifespan of a Condominium Corporation provided under the Condominium Act (Republic Act No. 4726), a special law, is an exception to the 50-year term limit provided under the Corporation Law, which is a general law. **(Page 18)**
- ▶ Intra-corporate disputes, matters that involve the contractual rights of private parties and matters which require determination of factual issues, are beyond the jurisdiction of the SEC. **(Page 18)**

### **BLGF Opinions**

- ▶ Revenue from equity in net earnings of an associate is not considered as gross receipts subject to Local Business Tax (LBT). **(Page 19)**
- ▶ The RPT for any year shall accrue on the first day of January from the start of the commercial operation. **(Page 20)**

### **Court Decisions**

- ▶ A non-stock, non-profit educational institution cannot avail of the 40% Optional Standard Deduction. It is also not entitled to the 10% preferential tax under Section 27 (B) of the Tax Code, which is applicable only to proprietary educational institutions. **(Page 21)**
- ▶ An assessment resulting from an audit conducted by revenue officers not indicated in a Letter of Authority (LOA) is invalid.

If after the issuance of an LOA, a new set of revenue officers is assigned to continue the audit, a new LOA is indispensable to authorize the new revenue officers to conduct the audit and issue an assessment. **(Page 22)**

## **BIR Rulings**

### **BIR Ruling No. 356-2017 dated 8 August 2017**

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Sales to the Government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, of goods and/or services are generally subject to 12% VAT.

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#### ***Facts:***

X Association requested for a definitive ruling on the applicable VAT rate in the preparation of Program of Works (“POW”) and Approved Budget of the Contract (“ABC”) of Government infrastructure projects in connection with an order from the DPWH. The said order set the computation of the VAT component at 5% of the sum of the estimated direct cost (EDC), overhead, contingencies and miscellaneous (OCM), and the profit.

#### ***Issue:***

What is the appropriate VAT rate to be used by the DPWH in the preparation of the ABC and POW?

#### ***Ruling:***

The appropriate VAT rate to be used by the DPWH in the preparation of the ABC and POW is 12%. Sales to the Government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs), of goods and/or services are generally subject to 12% VAT.

While government purchases are subject to the 12% VAT, the procuring Government entity is only required to deduct and withhold a 5% final VAT based on the gross payment. The 5% final VAT represents the net VAT that is payable by the seller of goods or services. The remaining 7% would effectively account for the standard input VAT for the sale of goods or services to the Government entity in lieu of the actual input VAT directly attributable or ratably apportioned to such sale. The difference between the 7% VAT and the actual input tax incurred may form part of the seller's expense or cost or will be closed to expense or cost, as the case may be.

### **BIR Ruling No. 358-2017 dated 9 August 2017**

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The sale of power or fuel generated through renewable sources of energy is subject to VAT zero-rating.

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#### ***Facts:***

A Co., a domestic corporation, is registered with the DOE as a renewable energy developer of a hydroelectric power project.

#### ***Issue:***

Is the sale by A Co. of hydroelectric power subject to VAT zero-rating?

#### ***Ruling:***

Yes. RR No. 16-05, as amended, provides that the sale of power or fuel may be subject to VAT zero-rating, provided that said power is generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal and steam, ocean energy, and other emerging sources using technologies such as fuel cells and hydrogen fuels.

Also, under RA No. 9513, local purchases of goods and services by renewable energy developers are subject to VAT zero-rating, provided that they are needed for the development, construction and installation of their power plant facilities. Note that the grant of VAT zero-rating shall be subject to post audit verification by the BIR as to whether the purchased goods/services were indeed utilized in the development, construction and installation of the hydroelectric power project.

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#### **BIR Ruling No. 359-2017 dated 9 August 2017**

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The tax exemption granted to PAGCOR extends or inures to the benefit of its licensees and contractees.

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##### **Facts:**

A Co., a domestic corporation engaged in providing technical and customer support services, and X Co., a BVI corporation and grantee of an Offshore Gaming License by PAGCOR, entered into a service agreement whereby A Co. will act as a service provider to X Co. Specifically, the scope of service shall include performance of interactive gaming services for and on behalf of X Co., which includes operations and technical support services. In consideration for the services, X Co. agreed to pay A Co. a monthly service fee.

##### **Issue:**

1. Is the income derived by A Co. subject to the 5% franchise tax in lieu of all taxes?
2. Are the domestic purchases of goods and services by A Co. directly related to its gaming operation subject to 12% VAT?

##### **Ruling:**

1. Yes. Since X Co. is a grantee of an Offshore Gaming License and A Co. is an accredited operator as an online gaming agent and business process outsourcing, both issued by PAGCOR, the exemption from taxes, fees and charges enjoyed by PAGCOR extends to A Co. pursuant to Section 12 (2) (b) of PD No. 1869, as amended. Therefore, the income derived by A Co. from the service agreement with X Co., particularly the performance of interactive gaming services, which includes operations and technical support services, is subject only to the 5% franchise tax, and shall be exempt from the 30% corporate income tax under Section 27 of the Tax Code. However, for the purpose of applying the 5% franchise tax, any income that may be realized from related services or such services not falling under gaming operations shall be subject to the 30% corporate income tax.
2. No. All domestic purchases of goods and services and importations made by A Co. directly related to its gaming operation shall not be subject to the 12% VAT because of its exemption from all taxes pursuant to Section 13 (2) (b) of PD No. 1869, as amended.

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#### **BIR Ruling No. 360-2017 dated 9 August 2017**

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Gifts made in favor of an educational institution are exempt from donor's tax, provided that not more than 30% of said gifts shall be used by the donee for administration purposes.

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##### **Facts:**

X, Y and Z executed a Deed of Extrajudicial Settlement of Estate with Donation, whereby they donated two parcels of land to A Co., an educational institution.

##### **Issue:**

Is the donation exempt from donor's tax?

**Ruling:**

Yes. Since A Co. is an educational institution, any donation to it is exempt from donor's tax pursuant to Section 101 (A) (3) of the Tax Code, subject to the condition that not more than 30% of said gift shall be used by the donee for administration purposes.

*[Editor's Note: The Certificate Authorizing Registration should be verified and validated pursuant to applicable revenue issuances. Otherwise, the properties should be subjected to the appropriate Estate Taxes before it can be transferred to the donee]*

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**BIR Ruling No. 364-2017 dated 9 August 2017**

Transfer of real properties in favor of the Republic of the Philippines, without any monetary consideration, is not subject to CGT and DST.

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**Facts:**

A Memorandum of Agreement ("MOA") was executed by and between the Bases Conversion Development Authority ("BCDA") and the Department of National Defense/ Armed Forces of the Philippines - Philippine Air Force ("DND-PAF"), whereby the parties agreed to let the DND-PAF swap an equivalent portion of the Villamor Air Base ("VAB") Golf Course for parcels of land in VAB, which included the then proposed site for the NAIA International Passenger Terminal III. Upon delineation, the PAF Retention Area covers the parcels of land already registered in the name of BCDA and the Republic of the Philippines.

**Issue:**

Is the transfer of lands by BCDA to the DND-PAF taxable?

**Ruling:**

No. Considering that the conveyance by BCDA of the subject properties is made to give effect to RA No. 7227 providing for PAF Retention Area, said conveyance is exempt from the CWT and CGT imposed under Section 57(B) and Section 27(D)(5) of the Tax Code, respectively.

Moreover, the transfer of the real properties by the BCDA in favor of the Republic of the Philippines under the administration of the DND-PAF, having been executed without any monetary consideration and made in accordance with RA No. 7227 providing for the PAF Retention Areas, is not subject to DST under Section 196 of the Tax Code, as amended.

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**BIR Ruling No. 377-2017 dated 14 August 2017**

Transfer of real properties by virtue of a Compromise Agreement approved by the Court is not taxable.

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**Facts:**

In compliance with a Court decision, former spouses A and B submitted a Compromise Agreement as to the partition of their properties.

**Issue:**

Is the transfer of real properties taxable?

**Ruling:**

No. Considering that the transfer, adjudication or distribution of conjugal properties is not pursuant to a sale, hence, without any monetary consideration, the said transfer, adjudication or distribution is therefore not subject to CGT imposed under Section

24 (D) (1) of the Tax Code. Neither is the said adjudication, transfer or distribution subject to the donor's tax imposed under Section 98 of the Tax Code, there being no donative intent on the part of the parties since the transfer is made only in compliance with property settlement which was approved by the court.

However, should one spouse get a share more than the other spouse, the excess thereof is considered "other disposition" of property subject to CGT and DST.

The adjudication of property to the children shall be considered as a delivery of their presumptive legitimes, and therefore not subject to CGT, DST and donor's tax.

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Joint ventures formed for the purpose of undertaking construction projects under service contracts with the Government are not subject to corporate income tax and to the 2% CWT, provided that they comply with the conditions imposed under RR No. 10-2012.

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#### **BIR Ruling No. 378-2017 dated 15 August 2017**

##### ***Facts:***

A Co., a Korean company, and X Co., a domestic corporation, are both registered with the Philippine Contractors Accreditation Board ("PCAB"). They formed a Joint Venture ("JV") for the exclusive purpose of pre-qualifying, participating and actually undertaking the construction of an expressway. The JV entered into a contract with the DPWH for the implementation and construction of the said project. It also registered with the PCAB.

##### ***Issue:***

Are the payments to the JV exempt from the 2% CWT?

##### ***Ruling:***

Yes. RR No. 14-2002 provides that the CWT shall not apply to payments made to JVs formed for the purpose of undertaking construction projects under a service contract with the Government. The JV is considered as a non-taxable corporation for complying with the conditions provided in RR No. 10-2012, which are: (1) the JV is for the undertaking of a construction project; (2) the JV should involve joining or pooling of resources by licensed local contractors; (3) the local contractors are engaged in the construction business; and (4) the JV itself must likewise be duly licensed by PCAB. The JV is not subject to the corporate income tax under Section 27 (A) of the Tax Code, and consequently, to the 2% CWT prescribed under Section 57 (B) of the same Code, as implemented by RR No. 2-98, as amended.

However, the co-venturers, upon filing their respective income tax returns, shall include the net revenue derived from the above-mentioned JV project as an item of their gross income.

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Income from the sale of real property prior to 9 September 1979 shall not be subject to CGT but to regular income tax. The said sale shall also be subject to DST.

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#### **BIR Ruling No. 384-2017 dated 22 August 2017**

##### ***Facts:***

A and B executed a Deed of Sale over a parcel of land on 2 December 1965. A requested for exemption from payment of CGT and DST since the effectivity of the imposition of said taxes was only on 9 September 1979.

##### ***Issue:***

1. Is the sale subject to CGT?
2. Is the sale subject to DST?

***Ruling:***

1. No. There is no CGT due on the sale since Commonwealth Act (“CA”) No. 466, the governing law at the time of the sale, did not have any provision imposing CGT. However, the same law provided that income from sale of real property shall be considered part of an individual or a corporation’s gross income and subjected the same, not to CGT, but to regular income tax rates.
2. Yes. The sale is subject to DST pursuant to Section 233 of CA No. 466, as amended by RA No. 1094. Thus, for purposes of the issuance of the Certificate Authorizing Registration on the property subject of the sale, proof of payment of income tax and DST based on the value of the property received by B must be presented to the BIR office having jurisdiction over the said property.

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**BIR Ruling No. 428-2017 dated 6 September 2017**

The socialized housing project that is granted exemption from CGT under RA No. 7292 is the Community Mortgage Program project.

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***Facts:***

ABC Homeowners Association acquired a parcel of land for the benefit of its members through a loan availed from the Local Housing Fund earmarked for the congressional district of Valenzuela City.

***Issue:***

Is the sale of the parcel of land to ABC Homeowners Association exempt from CGT?

***Ruling:***

No. RA No. 7835 does not provide any tax exemption for a cost recoverable socialized housing project. The socialized housing project that is explicitly given exemption from CGT under RA No. 7279 is the Community Mortgage Program (“CMP”) project. Since the subject lot is not a CMP project, it is not covered by the tax exemption.

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**BIR Ruling No. 430-2017 dated 6 September 2017**

Transfers of real property by way of disturbance compensation are exempt from CGT and DST.

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***Facts:***

A document entitled “Kasulatan ng Paglilipat Bilang Disturbance Compensation” was executed by registered owners of parcels of land in favor X, the agricultural lessee over said parcels as certified by the DAR.

***Issue:***

Is the transfer of real property by way of disturbance compensation exempt from CGT and DST?

***Ruling:***

Yes. Pursuant to Section 66 of Republic Act No. 6657, transfers of real property by way of disturbance compensation are exempt from taxes arising from capital gains. These transactions shall also be exempted from the payment of registration fees, and all other taxes and fees for the conveyance or transfer thereof.



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**BIR Ruling No. 456-2017 dated September 25, 2017**

In the absence of a specific law excluding reconveyance of property from the coverage of Section 24 of the Tax Code, said reconveyance shall be deemed included within the purview of the said provision for CGT purposes.

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**Facts:**

The National Power Corporation (“NPC”) executed a Deed of Reconveyance in favor of X due to alleged erroneous entries made by the Register of Deeds, which transferred to NPC certain portions of land that were outside the scope of a Deed of Absolute Sale between NPC and X.

**Issue:**

Is the Deed of Reconveyance exempt from the payment of CGT and DST?

**Ruling:**

No. The phrase “other disposition” includes within its purview all kinds of dispositions of real property under Section 24 (D) (1) of the Tax Code, unless specifically excluded therefrom or subject to another tax treatment pursuant to different provisions of the Tax Code. Thus, the Deed of Reconveyance executed by the NPC in favor of X, in the absence of a specific law excluding it from the coverage of Section 24 (D) (1) of the Tax Code, is deemed included within the purview of the said provision. Therefore, it shall be subject to the CGT imposed therein.

Also, the reconveyance being a disposition of real property is likewise subject to the DST imposed in Section 188 and Section 196 of the Tax Code.

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**BIR Issuances**

RMC No. 75-2017 promulgates and implements the People’s Freedom of Information Manual of the BIR.

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**RMC No. 75-2017 dated 20 September 2017**

- ▶ The People’s Freedom of Information Manual prescribes the rules and procedures to be followed by the BIR in processing requests for information received under Executive Order (EO) No. 2 on Freedom of Information (FOI).
- ▶ There shall be an FOI Receiving Officer (FRO), with a rank not lower than Revenue Officer IV or its equivalent, designated at the following BIR offices that regularly render “frontline services”:
  1. All regional offices and its divisions, except the administrative and the document processing divisions
  2. All Revenue District Offices
  3. All Divisions under the Large Taxpayers Service, except the Large Taxpayers (LT) Document Processing & Quality Assurance Division and the LT Performance Monitoring & Programs Division
  4. Public Information and Education Division
  5. Accounts Receivable Monitoring Division
  6. Collection Programs Division
  7. Miscellaneous Operations Monitoring Division

8. Law and Legislative Division
  9. International Tax Affairs Division
  10. Appellate Division
  11. National Investigation Division
  12. Audit Information, Tax Exemption and Incentives Division
  13. VAT Credit Audit Division
- ▶ The FRO shall have the following functions:
    1. Serve as the initial point of contact to the public on FOI requests;
    2. Receive all FOI requests on behalf of the office/s within its jurisdiction;
    3. Conduct initial evaluation of FOI requests and determine whether these are fully compliant FOI requests; and
    4. Deny or refuse to accept FOI requests based on the results of the initial evaluation on the following grounds:
      - ▶ The information is incomplete; or
      - ▶ The information is already disclosed in the BIR's official website; or
      - ▶ The information requested is protected and among the exceptions to FOI as provided under pertinent laws, such as but not limited to the following:
        - a. Section 270 of the Tax Code, as amended, which prohibits the unlawful divulgence of trade secrets;
        - b. Sensitive personal information, as defined under the Data Privacy Act of 2012
  - ▶ The Chief of the Division having possession or custody of the requested information/document shall be the FOI Decision Maker (FDM), who shall evaluate the request for information and shall grant or deny the request based on the following grounds:
    1. The BIR does not have the information requested;
    2. The information requested contains sensitive personal information protected by the Data Privacy Act of 2012;
    3. The information requested falls under the list of exceptions to the FOI;
    4. The request is an unreasonable, subsequently identical or substantially similar request from the same requesting party whose request has already been previously granted or denied by the BIR; and
    5. Section 270 of the Tax Code, as amended.

- ▶ There shall be an FOI Appeals Authority in the following BIR offices, who shall have the power to review by appeal, decisions of the FDM and take final action on any FOI request within the BIR:

BIR Office	FOI Appeals Authority
National Office	Deputy Commissioner for the Legal Group or his duly authorized representative
Regional Offices	Assistant Regional Director

- ▶ The following are some of the rules to be followed in processing the request for information:
  1. The FRO shall receive the request for information and check compliance with the following requirements:
    - ▶ The request must be in writing;
    - ▶ The request shall state the name and contact information of the requesting party, as well as valid proof of identification or authorization;
    - ▶ The request shall describe the information requested and the reason or purpose of the request for information
  2. The FOI request may be made through registered mail or electronic mail, provided that the requesting party shall provide all the required information and attach the supporting documents.
  3. If the requesting party is unable to make a written request because of illiteracy or disability, he or she may make an oral request, which shall be reduced in writing by the FRO and thumb-marked by the requesting party.
  4. The BIR must respond to the request within 15 working days following the date of receipt of the request.
  5. Should the requested information need further details to identify or locate, the 15 working days will commence the day after it receives the required clarification from the requesting party.
  6. If no clarification is received from the requesting party after 60 days, the request shall be closed.
  7. In case of partial or full denial of the request, the FRO shall, within the prescribed period, notify the requesting party of the denial in writing.
  8. Failure to notify the requesting party of the action taken on the request within the prescribed period shall be deemed a denial of the request.
  9. A party whose request has been denied may appeal the denial as follows:
    - ▶ File an administrative FOI appeal with the FOI Appeals Authority within 15 calendar days from receipt of the notice of denial or from the lapse of the period to respond to the request;

- ▶ The appeal shall be decided by the FOI Appeals Authority within 30 working days from filing of the written appeal;
- ▶ Failure to decide within the 30-day period shall be deemed a denial of the appeal;
- ▶ The denial of the appeal by the FOI Appeals Authority shall be considered final, and the requesting party may, then, file the appropriate judicial action.

10. The BIR shall not charge any fee for accepting requests for access of information, except the cost of reproduction and copying of the information once the request has been approved.

*[Editor's Note: This RMC shall take effect immediately]*

## **BOC Issuances**

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CMO 14-2017 covers the Authorization to Issue Alert Orders dated 31 August 2017.

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### **Customs Memorandum Order No. 14-2017 dated 31 August 2017**

- ▶ The Command Center (ComCen) created under Customs Special Order (CSO) No. 45-2016 is abolished.
- ▶ CMO 23-2016, which provides that only the Office of the Commissioner through ComCen has the power to issue Alert Order, and Customs Special Order No. 45-2016 are repealed and all powers and functions conferred upon ComCen by CSO No. 45-2016 shall be exercised by the corresponding offices and officials of the Bureau pursuant to the Customs Modernization and Tariff Act (CMTA) and Executive Order (EO) No. 127, series of 1987.
- ▶ The following Customs Officials are authorized to issue Alert Orders:
  1. Customs Commissioner or his authorized representative
  2. Deputy Commissioner, Intelligence Group (IG)
  3. Deputy Commissioner, Enforcement Group (EG)
  4. All District Collectors, for shipments within their District and subports
- ▶ All authorized officers who issue Alert Orders are directed to submit a report to the Office of the Commissioner. In cases where the physical examination of alerted shipments were not conducted within 48 hours from the issuance of the Alert Order, the status report should also indicate the reason for the delay in the conduct thereof.
- ▶ The order shall take effect immediately.

*[Editor's Note: CMO 14-2017 was received by the UP Law Center on 6 September 2017]*

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CMO 15-2017 provides for the Guidelines on the Implementation of CAO No. 06-2016 on Conditionally Tax and/or Duty-Exempt Importation of Returning Residents and Returning OFWs dated 07 September 2016.

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### **Customs Memorandum Order No. 15-2017 dated 28 July 2017**

- ▶ This CMO implements Section 800 (f) of the CMTA pertaining to tax and duty-free importations of personal and household effects belonging to Returning Residents and Returning OFWs. This also covers the additional tax and/or duty exemption of Returning OFWs for home appliances and other durables in the amount not exceeding Php 150,000.00.
- ▶ General and Administrative Provisions
  1. Returning Residents and OFWs availing of the privilege under this Order must apply with the Revenue Office of the Department of Finance (DOF) for the issuance of a Tax Exemption Indorsement (TEI) either personally or through a representative with a duly notarized authorization, together with the required supporting documents.
- ▶ Submission of Documentary Requirements:
  1. Supporting Documents. The Bureau shall, in addition to the Informal Import Declaration and Entry (IIDE), require the submission of the following documents:
    - ▶ Duly filled out Personal and Household Effects Declaration (PHED) Form (Annex "A" of the CMO) which may be downloaded from the BOC website or secured at the Customs arrival area;
    - ▶ TEI;
    - ▶ Bill of Lading (BL) or Airway Bill (AWB) duly endorsed by the shipping agent or air carrier, respectively;
    - ▶ Certificate of Identification (CI), if any;
    - ▶ Permits/Licenses, if necessary;
    - ▶ Accomplished Permit To Deliver Imported Goods (PDIG), for sea freight shipment; and
    - ▶ Other necessary documents as may be required by the Bureau.
  2. In cases where the Returning Resident or Returning OFW opts for the conditional release of their shipments arriving before their actual date of return in the country, the PHED must be submitted in advance to the Informal Entry Division (IED) or equivalent unit of the port concerned for cargo clearance formalities.
  3. For shipments arriving as accompanied baggage, the Returning Resident or Returning OFW shall submit to the Customs Officer the accomplished PHED Form upon arrival.
- ▶ Conditional Release of Shipments Arriving in Advance. Shipments arriving in advance of the date of return of a Returning Resident or Returning OFW and without the requisite TEI may be allowed conditional release upon the posting of a cash bond equivalent to one hundred percent (100%) of the assessed duties and taxes due thereon.

- ▶ Accompanied Baggage of Returning Residents or Returning OFWs.
  1. In general, accompanied baggage of Returning Residents and Returning OFWs shall be subject to non-intrusive inspection except when the same is subject of derogatory information or selection based on profiling or risk management parameters, in which case physical examination shall be conducted thereon.
  2. A Returning Resident or Returning OFW with accompanied baggage who opts to avail in full of the privilege under the CMO but without the required TEI, must comply with the following which must be submitted upon arrival:
    - ▶ Submission of the following documents: (a) Duly filled out PHED Form; (b) Customs Baggage Declaration Form (CBDF); (c) Photocopy of the biographical page of the passport including the page/s with Immigration stamp of the last departure and latest arrival; (d) Invoice, receipt or equivalent document covering the goods contained in the shipment, if any; (e) CI or Authenticated Owner's Declaration, if any; and (f) Other necessary documents as may be required by the Bureau.
    - ▶ Posting of a cash bond with the BOC Cashier equivalent to 100% of the assessed duties and taxes;
    - ▶ Approval of the Chief, Arrival Operations Division or Duty Collector for the release of the goods; and
    - ▶ Submission of TEI within 45 days from his arrival but not to exceed 60 days from the release of the shipment.
- ▶ Exclusions. The following shall not be entitled to the exemption privilege granted under Section 800, subparagraph (f) of the CMTA: (a) Luxury items, unless covered by a pre-departure Certificate of Identification; (b) Vehicles; (c) Watercrafts; (d) Aircrafts; (e) Animals; (f) Donations; (g) Goods intended for barter, sale or for hire; (h) Goods in Commercial Quantity; and (i) Regulated Goods in excess of the limits allowed by regulations.
- ▶ Effectivity. This CMO shall take effect immediately.

*[Editor's Note: CMO 15-2017 was received by the UP Law Center on 6 September 2017]*

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CMO 16-2017 provides for the Transfer of the AMO under the Direct Supervision of the CIIS of the IG dated 22 September 2017.

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**Customs Memorandum Order No. 16-2017 dated 18 September 2017**

- ▶ In exigency of the service, the Accounts Management Office (AMO) is transferred from Legal Service, Revenue Collection and Monitoring Group (RCMG) to the Customs Intelligence & Investigation Service, Intelligence Group (CIIS-IG) under the direct supervision and control of CIIS.
- ▶ The order shall take effect immediately and shall last until revoked.

*[Editor's Note: The AMO is principally responsible for the managing and maintaining information on accredited importers and customs brokers. This Office is also responsible for the CPRS registration of importers and customs brokers. CMO 16-2017 was received by the UP Law Center on 22 September 2017]*

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Commission Order 2017-01 provides for the Procedure on the Application for an Advance Ruling on Tariff Classification Related to Importation or Exportation of Goods pursuant to Chapter 1 of Title XI of Republic Act No. 10863 or the CMTA.

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#### **Tariff Commission Order No. 2017-01 dated 29 August 2017**

- ▶ Scope
  1. This covers the procedure on the application for an Advance Ruling regarding tariff classification under Section 1100, Chapter 1, Title XI of the CMTA, related to importation or exportation of goods. In accordance with Sections 1610 and 1611 of the CMTA, tariff classification refers to the act or process of determining the subheading in the ASEAN Harmonized Tariff Nomenclature (AHTN) to which goods appropriately belong.
  2. Applications for an Advance Ruling on tariff classification of goods shall be filed with the Tariff Commission (Commission) for determination. Requests for Advance Rulings on valuation and rules of origin shall be filed with the Bureau of Customs (BOC).
  3. This Order shall also apply to movement of goods into and from free zones.
- ▶ Administrative provisions
  1. An Applicant or his/her Authorized Representative may apply for an Advance Ruling.
  2. An application for an Advance Ruling shall cover only one product or good, as determined by the Commission.
  3. Applications for an Advance Ruling should be filed at least 90 days before the date of the importation or exportation by submitting three copies of the filled-out application form prescribed by the Commission together with supporting documents and samples of the good, if required. The Commission shall assess the sufficiency of the filled-out form and the supporting documents before payment of appropriate fees and assignment of a unique application reference number.
- ▶ Grounds for Non-Acceptance of an Application for an Advance Ruling on Tariff Classification.
  1. The application is not in the prescribed application form
  2. It is not possible to determine tariff classification based on the presented information/documents;
  3. The request pertains to multiple goods under different subheadings as ascertained by the Commission;
  4. The application is filed less than 90 days before importation or exportation;  
or
  5. Non-payment of filing fee.
- ▶ Within 10 calendar days, the Commission shall acknowledge receipt of the application and notify the Applicant of the need for additional information and on-site verification. The Commission may request additional information/ verification from the Applicant at any time during the prescribed period to issue a ruling.

- ▶ The Applicant should submit additional information or allow on-site verification within 10 calendar days from notice.
- ▶ Pending submission of the additional information or on-site verification, the running of the 30-day period to issue a ruling shall stay.
- ▶ Grounds for Non-Issuance of Advance Ruling on Tariff Classification.
  1. When the Applicant fails to provide any additional information requested within the reasonable period required by the Commission, without prejudice to the filing of a new application;
  2. The goods involved are subject of a pending court litigation or of an administrative review or of an appeal involving tariff classification;
  3. The Applicant did not allow the Commission to conduct on-site verification;
  4. Misrepresentation; or
  5. Other similar cases.
- ▶ An Application for an Advance Ruling on Tariff Classification may be withdrawn by the Applicant, in writing, at any time before the issuance of an Advance Ruling.
- ▶ The Commission shall issue the Advance Ruling within 30 days from receipt of the application, sufficient in form and substance, or upon the submission of all additional documents required, as the case may be.
- ▶ Tariff Classification rulings of the Commission shall be binding to the BOC.
- ▶ Should the BOC deems the ruling to be adverse to the government, it shall, within five days from receipt of a copy of the Advance Ruling, elevate the same to the Secretary of Finance for review pursuant to Section 1128 of the CMTA. In turn, the Secretary of Finance shall automatically review the Ruling within 15 days from receipt of the BOC notice. When no ruling is rendered within the period, the decision of the Commission is deemed confirmed.
- ▶ The Advance Ruling shall be effective from the date it is issued and shall be valid for a period of five years from the date of its issuance unless it is earlier revoked or modified due to changes in facts or circumstances on which the Advance Ruling is based.
- ▶ Advance Ruling may be modified whenever there is an error, change in material facts/circumstances, change in law or judicial decision, or change in policy, as the case may be. Modification of Advance Ruling will have prospective application.
- ▶ The Advance Ruling may be revoked by the Commission upon discovery of any false or misleading material information provided in the application, without prejudice to the filing of criminal, civil and/or administrative case against the Applicant.



- ▶ The Applicant may file a motion for reconsideration with the Commission, in writing, within 10 days from receipt of an Advance Ruling, on the ground of mistake of fact and excusable negligence or newly discovered evidence or information not discovered during the Application that, if presented, may alter the result of the Advance Ruling. The Commission shall resolve the application within 10 days from receipt. Only one motion for reconsideration is allowed.
- ▶ An appeal may be filed by the Applicant before the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of the decision of the Commission denying its motion for reconsideration, or of the decision of the Secretary of Finance.
- ▶ The Commission shall publish its Advance Rulings on its website. All information provided on confidential basis shall be treated as confidential and will not be disclosed unless with written permission of the Applicant or government agency which provided such information or to the extent that it may be required in the context of judicial proceedings.
- ▶ This Order shall take effect 15 days after its complete publication in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: Published in the Manila Times on 20 September 2017. Takes effect on 5 October 2017]*

## **SEC Opinions**

### **SEC-OGC Opinion No. 17-08 dated 5 September 2017**

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A corporation whose registration has been revoked by the SEC retains title to its assets until after the completion of the liquidation process. Should it opt to re-register, the re-registered corporation is separate and distinct from its previous personality that has been previously terminated.

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#### **Facts:**

The SEC revoked the registration of P Co., a corporation organized in 1974, for failure to comply with reportorial requirements. During its dissolution process, P Co. re-registered with the SEC. The number of directors and authorized capital stock decreased but the name, primary purpose and principal place of business were all retained. A new registration number and pre-generated TIN were issued by the SEC.

#### **Issues:**

1. Does the revocation of registration by the SEC, in effect, extinguish P Co.'s right of dominion over its assets?
2. Is P Co. a new entity or merely a continuation of the original corporation registered in 1974?

#### **Held:**

1. No. P Co.'s right of dominion over its corporate assets is not immediately extinguished by the revocation of its Certificate of Registration by the SEC. Under Sec. 122 of the Corporation Code, a corporation shall continue as a body corporate for 3 years, following termination of its existence, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets. Furthermore, a corporation is allowed to complete its liquidation process even beyond the said 3-year period.

2. The re-registered corporation is a new entity and has a separate personality from the first company registered in 1974. Revocation of corporate franchise has the effect of dissolution. Dissolution ends the capacity of a corporation to act as such and extinguishes all its legal relations (except as stated in Sec. 122 of the Corporation Code).

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#### **SEC-OGC Opinion No. 17-09 dated 5 September 2017**

The term or lifespan of a Condominium Corporation provided under the Condominium Act (Republic Act No. 4726), a special law, is an exception to the 50-year term limit provided under the Corporation Law, which is a general law.

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##### ***Facts:***

U Co. is a condominium corporation organized in 1971 pursuant to Republic Act No. 4726 or the Condominium Act (the "Act"). Under its Articles of Incorporation, U Co.'s term shall be co-terminus with its condominium project. This is the term limit of condominiums provided under the Act. In 1980, the Corporation Code or Batas Pambansa Blg. 80 (the "Code") was enacted which provides that every corporation shall exist for a period not exceeding 50 years but extendible thereafter. It further provides that all laws or parts thereof that are inconsistent to the Code are deemed repealed.

##### ***Issue:***

Did the Corporation Code repeal the Condominium Act, thus, affecting the term of U Co.?

##### ***Held:***

No. A special law prevails over a general law since it evinces the legislative intent more clearly than that of the general statute and must be taken as intended to constitute an exception to the general act. The circumstance that the special law is passed before or after the general act does not change the principle. Where the special law is later, it will be regarded as an exception to, or qualification of, the prior general act. On the other hand, where the general act is later, the special statute will be construed as remaining exception to its terms, unless repealed expressly or by necessary implication. The Condominium Act is a special law since it relates to a particular class, i.e. condominium corporations, while the Corporate Code is a general law because it covers private corporations in general. Since there is no inconsistency between the two laws, the Condominium Act is considered an exception to the Corporation Code.

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#### **SEC-OGC Opinion No. 17-10, dated 10 August 2017**

Intra-corporate disputes, matters that involve the contractual rights of private parties and matters which require determination of factual issues, are beyond the jurisdiction of the SEC.

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##### ***Facts:***

L Co. requested the SEC to render an opinion regarding its intra-corporate issues which include alleged violations of the by-laws by its Officers and Board of Directors, scope of work and compensation of its employees, validity and duration of its proxy documents and validity and limitation of compensation of its Directors and Officers.

##### ***Issue:***

May the SEC issue a categorical opinion on L Co.'s issues?

**Held:**

No. As a matter of policy, the SEC refrains from rendering opinion on intra-corporate disputes and matters which are factual in nature. These issues are beyond the jurisdiction of the SEC. All actions of such nature shall be commenced and tried in the regular courts or appropriate administrative body, such as the Labor Arbiter, with regard to work and compensation of L Co.'s employees.

**BLGF Opinions**

**BLGF Opinion dated 14 July 2017**

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Revenue from equity in net earnings of an associate is not considered as gross receipts subject to LBT.

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**Facts:**

P HoldCo is a holding company that owns 51% of P Co. It reported its proportionate share in the income of P Co. as "revenue from equity in net earnings of an associate" in its Statement of Comprehensive Income.

The local government of Muntinlupa City imposed local business tax ("LBT") on P HoldCo on the ground that the revenue falls under the category of "Gross Sales or Receipts" under Section 143(f) in relation to Section 151 of the Local Government Code (LGC) of 1991.

**Issues:**

1. Is the "revenue from equity in net earnings of an associate" considered as gross receipts subject to LBT?
2. May P HoldCo be considered as a bank or other financial institution subject to LBT?

**Ruling:**

1. No. "Revenue from equity in net earnings of an associate" does not fall under the category of gross receipts since this is a mere paper entry mandated by accounting rules. Its indication in the financial statement of P HoldCo is only for the purpose of its compliance with accounting rules, i.e., where an entity holds 20% or more of the voting power (power to participate in the financial and operating policy decisions of the investee but is not control or joint control of those policies) on an investee, the Equity Method of Accounting is used to report the revenue account of the holding company.

"Gross Sales or Receipts" include the total amount of money or its equivalent representing the contract price, compensation or service fee, including the amount charged or materials supplied with the services and the deposits or advance payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person excluding discounts if determinable at the time of sales, sales return, excise tax, and value-added tax (VAT).

On the other hand, "Equity Method" is defined as a method of accounting whereby the investment is initially recognized at cost and adjusted thereafter for the post-acquisition change in the investor's share of the investee's net assets. As such, the investor's profit or loss includes its share of the investee's

profit or loss and the investor's other comprehensive income includes its share of the investee's other comprehensive income. Based on this, it can be gleaned that "revenue from equity in net earnings of an associate" does not fall under the category of gross receipts and thus, not subject to LBT.

2. No. P HoldCo as a holding company does not fall under the category of banks or other financial institutions as defined under Section 131(e) of the LGC.

The mere fact that the petitioner is a holding company does not ipso facto lead to the conclusion that it is a non-bank financial intermediary. P HoldCo proved that it is not a bank or financial institution because (a) it has no secondary license to conduct as bank; (b) it does not hold itself out as a financial intermediary; and (c) it does not perform the functions of a financial intermediary on a regular and recurring basis.

### **BLGF Opinion dated 11 July 2017**

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The RPT for any year shall accrue on the first day of January from the start of the commercial operation.

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#### ***Facts:***

T Co. is an Ecozone Export Enterprise registered with the Philippine Economic Zone Authority ("PEZA"). It started its commercial operations in October 2013 and enjoys a four-year income tax holiday (ITH) which will expire on 30 September 2017, after which it shall be subject to the 5% gross income tax ("GIT") incentive, in lieu of all national and local taxes. T Co. likewise enjoyed a three-year exemption from real property tax ("RPT") on its machinery and equipment under PEZA Memorandum Circular No. 2004-24 until fiscal year (FY) 2016.

For fiscal year 2017, T Co. paid in advance its RPT. However, it paid under protest the RPT for the fourth quarter of FY 2017 claiming that by that time, T Co. is already under the GIT tax incentive.

#### ***Issue:***

Is T Co. subject to RPT for the fourth quarter of FY 2017?

#### ***Ruling:***

Yes. Under Section 246 of the Local Government Code (LGC) of 1991, the RPT for any year shall accrue on the first day of January from the start of the commercial operation (e.g. January 2014) and not on the date of the start of its commercial operation (e.g. October 2013).

While it may be true that the 5% GIT incentive shall be applied to T Co. at the time of expiration of its ITH, it cannot, however, apply to RPT since its accrual begins on the first day of January on the year following its operation. Hence for RPT purposes, the GIT incentive claimed by T Co. will be applied in January 2018 and not on the fourth quarter of FY 2017. Thus, T Co. is subject to RPT for the whole year of 2017.

## Court Decisions

### **CIR vs. De La Salle Lipa, Inc.; De La Salle Lipa, Inc. vs. CIR**

CTA (*En Banc*) EB Case Nos. 1424 and 1430, promulgated 17 August 2017

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A non-stock non-profit educational institution cannot avail of the 40% Optional Standard Deduction. It is also not entitled to the 10% preferential tax under Section 27 (B) of the Tax Code, which is applicable only to proprietary educational institutions.

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#### **Facts:**

The BIR assessed De La Salle Lipa, Inc. ("La Salle Lipa") for, among others, deficiency income tax and VAT on rental income from the use of its facilities by third parties for the fiscal year ending May 31, 2005. The BIR argues that the said income was not proved to have been actually, directly, and exclusively used for educational purposes, in compliance with the Constitutional requirement for tax exempt non-stock non-profit educational institutions.

La Salle Lipa argues that its income was used for educational purposes hence it is not liable for deficiency income tax and VAT. Assuming it is liable for income tax, La Salle Lipa argues that its income tax liability should be based on its taxable income by allowing 40% Optional Standard Deduction (OSD).

#### **Issue:**

1. Is La Salle Lipa subject to income tax and VAT on its rental income?
2. Assuming it is taxable, is La Salle Lipa entitled to avail of the 40% OSD to arrive at taxable income?

#### **Ruling:**

1. Yes, La Salle Lipa is subject to income tax and VAT on its rental income as it was not able to clearly prove that the said income was used actually, directly and exclusively for educational purposes.

Based on the evidence presented, the CTA *En Banc* could not trace and determine whether the rental income formed part of La Salle Lipa's "General Fund", which was used to defray expenses and pay for the operations of the school.

2. No, La Salle Lipa is not entitled to avail of the 40% OSD. As a non-stock, non-profit educational institution, La Salle Lipa is generally a tax-exempt entity. Any income received by it is tax exempt provided it has complied with the constitutional requirements for tax exemption. The 40% OSD is only given to individual taxpayers (citizens or residents of the Philippines) and to corporate taxpayers (domestic and resident foreign corporations).

Neither can La Salle Lipa avail of the 10% preferential income tax, since Section 27 (B) of Tax Code clearly states that this applies only to proprietary educational institutions and not to non-stock, non-profit educational institutions.

## **Splash Corporation vs. Commissioner of Internal Revenue**

CTA (First Division) Case No. 8483 promulgated 18 August 2017

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An assessment resulting from an audit conducted by revenue officers not indicated in a Letter of Authority (LOA) is invalid.

If after the issuance of an LOA, a new set of revenue officers is assigned to continue the audit, a new LOA is indispensable to authorize the new revenue officers to conduct the audit and issue an assessment.

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### **Facts:**

Petitioner Splash Corporation (Splash) filed a Motion for Partial Reconsideration, assailing the CTA First Division's Decision which partially sustained the BIR's deficiency assessments for income tax, VAT, and Expanded Withholding Tax (EWT) for taxable year 2008. In its motion, Splash now argues that the assessment is void for having been carried out without a valid letter of authority (LOA).

Evidence presented reveals that an LOA was issued to Splash authorizing identified BIR officers to conduct the tax audit. A Memorandum was later issued to direct revenue officers other than those identified in the LOA to continue the tax audit. The LOA was subsequently revalidated to reiterate the reassignment of the revenue officers indicated in the Memorandum to the tax audit on Splash. A Final Notice was then issued to Splash to confirm the reassignment of the revenue officers indicated in the revalidated LOA.

### **Issue:**

Is the assessment valid?

### **Ruling:**

No, the assessment is invalid since the examination was conducted on Splash by BIR revenue officers without the required authority contained in an LOA.

In granting Splash's Motion for Reconsideration, the CTA First Division applied the ruling of the Supreme Court in the case of *Medicard Philippines Inc. vs. CIR* (G.R. No. 222743 promulgated April 5, 2017), which declared as void the BIR's assessment for lack of an LOA authorizing the revenue officers to examine taxpayer's books of account. Revenue Memorandum Order (RMO) No. 43-90 clearly prescribes that the continuation of an audit by a revenue officer other than the person named in a previous LOA requires the issuance of a new LOA. The issuance of an LOA before the conduct of a tax audit is indispensable to the validity of an assessment.

In this case, no new LOA was issued that gives authority to the new revenue officers to continue the tax audit. The revalidation of the LOA and the issuance of a Memorandum by the BIR did not cure the invalidity of the tax audit conducted.

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