

Tax Bulletin

June 2018



Highlights

BIR Rulings

- ▶ Section 109 (1) (B) of the Tax Code exempts from VAT the sale or importation of feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds. However, such feeds shall not be released from customs custody in the absence of a duly approved Authority to Release Imported Goods (ATRIG). **(Page 4)**
- ▶ The transfer of shares pursuant to court orders shall not be subject to Capital Gains Tax (CGT), donor's tax, and Documentary Stamp Tax (DST) since it is not a transfer contemplated under Sections 27 (D) (2), 98, and 175 of the Tax Code. **(Page 4)**
- ▶ Section 109 (1) (H) of the Tax Code exempts private educational institutions duly accredited by DepEd, CHED, and TESDA from VAT on gross receipts from rendering educational services. The exemption does not extend to activities other than rendering educational services, or to local purchases of goods or services and importation of goods. **(Page 5)**
- ▶ To be a tax-exempt joint venture (JV) for construction, the parties and the JV itself must be duly licensed by the Philippine Contractors Accreditation Board (PCAB). Otherwise, the JV shall be considered a taxable corporation. **(Page 5)**

BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 26-2018 prescribes the guidelines on the publication of the Top Withholding Agents pursuant to the pertinent provisions of Revenue Regulations (RR) No. 11-2018. **(Page 6)**
- ▶ Revenue Memorandum Circular (RMC) No. 46-2018 circularizes the ruling on the proper interpretation of Section 214 of the Tax Code, as amended, on the redemption of seized/ forfeited properties of delinquent taxpayers. **(Page 7)**
- ▶ RMC No. 48-2018 prescribes the processing time of Electronic Certificate Authorizing Registration (eCAR) on One-Time Transactions (ONETT). **(Page 7)**
- ▶ RMC No. 50-2018 clarifies certain provisions of RR Nos. 8-2018 and 11-2018 implementing the income tax provisions of the TRAIN Law. **(Page 8)**
- ▶ RMC No. 53-2018 amends RMC No. 17-2018, specifically the deadline for the processing of pending VAT refund/credit claims filed prior to the effectivity of RMC No. 54-2014.

The deadline for the processing of all pending VAT claims filed prior to the effectivity of RMC No. 54-2014 has been moved from 30 June 2018 to 14 December 2018. **(Page 15)**

- ▶ RMC No. 54-2018 clarifies the imposition of penalties and interest on the filing of an amended return. **(Page 15)**

BOC Update

- ▶ Customs Memorandum Order (CMO) 07-2018 provides for the Revised Rules for the Electronic/Manual Issuance and Lifting of Alert Orders at All Ports of Entry. **(Page 15)**

SEC Opinions

- ▶ A corporation, whose registration has been revoked, has three years from dissolution to continue as a body corporate for purposes of winding up its affairs. **(Page 16)**
- ▶ A foreign corporation engaged in the retail sale of goods does not violate the Retail Trade Liberalization Act (RTLTA) if it sells to manufacturers for re-sale to consumers who use the goods to render services to the general public. **(Page 17)**
- ▶ A foreign corporation does not acquire the license of a resident foreign corporation in the Philippines after a merger with the latter's head office. **(Page 17)**

BSP Issuances

- ▶ Circular No. 1005 provides for the New Bangko Sentral Registration Document (BSRD) form for foreign portfolio investments. **(Page 18)**
- ▶ Circular No. 1006 provides for the amendments to rules on conversion/transfer of foreign currency loans to peso loans. **(Page 18)**
- ▶ Circular No. 1007 provides for the implementing guidelines on the adoption of the Basel III Framework on Liquidity Standards - Net Stable Funding Ratio (NSFR). **(Page 19)**
- ▶ Circular No. 1008 provides for the amendments to pertinent regulations on rediscounting availments, and emergency loans or advances to banking institutions. **(Page 19)**

Court Decisions

- ▶ The receipt by a stockholder, whether corporate or individual, of liquidating dividends from a dissolving corporation is not subject to CGT but to ordinary income tax. **(Page 20)**
- ▶ The BOI does not have exclusive jurisdiction to rule on whether a particular source of revenue is part of the registered activity entitled to the Income Tax Holiday (ITH) incentive. The BIR has exclusive jurisdiction on the assessment and collection of taxes, fees and charges, against taxpayers including BOI-registered companies. **(Page 21)**
- ▶ Although classified as VAT-exempt under the Tax Code, a transaction is considered VATable if the VAT Official Receipt issued by the seller does not indicate that the sale is VAT-exempt. **(Page 22)**

BIR Rulings

BIR Ruling No. 816-18 dated 15 May 2018

Section 109 (1) (B) of the Tax Code exempts from VAT the sale or importation of feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds. However, such feeds shall not be released from customs custody in the absence of a duly approved ATRIG.

Facts:

X Co. imports and sells feed additives, feed supplement, and feed ingredients such as enzymes and minerals to local agricultural consumers.

Issue:

Is X Co.'s sale or importation of feeds exempt from VAT?

Ruling:

Yes. Section 109 (1) (B) of the Tax Code exempts from VAT the sale or importation of feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds, as defined under Section 3 of Livestock and Poultry Feeds Act, and Department of Agriculture Administrative Order No. 12-07. In BIR Ruling No. 044-2014, the BIR said that livestock feeds certified by the Bureau of Animal Industry (BAI) as a duly registered product for livestock, poultry, and aquaculture feeds use are exempt from VAT.

Hence, since X Co.'s products are classified as feed additives, feed ingredients, or feed supplements based on BAI certificates, the sale or importation of said feeds are exempt from VAT. However, the same shall not be released from customs custody in the absence of a duly approved ATRIG.

BIR Ruling 824-18 dated 17 May 2018

The transfer of shares pursuant to court orders shall not be subject to CGT, donor's tax, and DST since it is not a transfer contemplated under Sections 27 (D) (2), 98, and 175 of the Tax Code.

Facts:

Pursuant to various Supreme Court decisions, X Bank shares issued in the names of various corporate stockholders were sequestered by the Philippine Government for being purchased out of coco levy funds. As ordered by the Supreme Court, the X Bank shares issued in favor of the corporate stockholders were cancelled and new shares were issued in favor of the Philippine Government.

Issues:

1. Is the transfer of shares subject to CGT?
2. Is the transfer of shares subject to donor's tax?
3. Is the transfer of shares subject to DST?

Ruling:

1. No. The CGT under Section 27 (D) (2) of the Tax Code does not apply since the transfer is not pursuant to a sale, barter, or exchange of shares contemplated under the said provision. The transfer is made pursuant to the court decisions.

2. No. The donor's tax under Section 98 of the Tax Code is generally imposed on the transfer by any person of property by gift. Here, there is no intention to donate as the transfer was only made in compliance with the Supreme Court decisions. The transfer of legal titles to the Philippine Government is only a confirmation of its ownership over said shares.
3. No. The DST under Section 175 of the Tax Code does not apply since there is no sale, agreement to sell or memorandum of sale, or delivery or transfer contemplated under the said provision. However, the notarial acknowledgment on the Deed of Compliance is subject to the DST tax under Section 188 of the Tax Code.

BIR Ruling No. 969-18 dated 29 May 2018

Section 109 (1) (H) of the Tax Code exempts private educational institutions duly accredited by DepEd, CHED, and TESDA from VAT on gross receipts from rendering educational services. The exemption does not extend to activities other than rendering educational services, or to local purchases of goods or services and importation of goods.

Facts:

X Foundation is a corporation that operates as a social welfare and development agency implementing community-based programs and services for children with special needs. It is duly recognized by the then DECS (now DepEd) to operate a Complete Elementary Course for Special Children.

Issue:

Is X Foundation exempt from VAT on gross receipts from rendering educational services?

Ruling:

Yes. Section 109 (1) (H) of Tax Code and Section 4.109-1 (B) (H) of RR No. 16-2005 exempt from VAT educational institutions duly accredited by the DepEd, CHED, and TESDA. Hence, X Foundation is exempt from VAT on gross receipts from rendering educational services in relation to its offering Complete Elementary Course for Special Children.

However, pursuant to Section 105 of the Tax Code, the exemption does not extend to X Foundation's activities other than rendering educational services, or to its purchases of goods or services and importation of goods.

BIR Ruling No. 972-18 dated 6 June 2018

To be a tax-exempt JV for construction, the parties and the JV itself must be duly licensed by the PCAB. Otherwise, the JV shall be considered a taxable corporation.

Facts:

An unregistered Amended JV Agreement was executed between A Co., a residential subdivision developer, and B Co., an owner of land. Both A Co. and B Co. did not submit documents to the BIR showing that they are duly licensed by the Philippine Contractors Accreditation Board (PCAB) as general contractors. Neither did the parties submit proof that the JV itself was duly licensed by the PCAB.

Issue:

Is the JV considered tax exempt?

Ruling:

No. Section 3 of RR No. 10-2012, which implements Section 22 (B) of the Tax Code, provides that a tax-exempt JV: (a) should be for the undertaking of a construction project; (b) should involve joining or pooling of resources by PCAB-licensed local contractors; (c) the local contractors are engaged in construction business; and, (d) the JV itself must likewise be duly licensed by the PCAB. Absent any one of these requirements, the JV shall be considered a taxable corporation.

Here, the parties failed meet requirements (b) and (d). Consequently, the JV is considered a taxable corporation.

BIR Issuances

RMO No. 26-2018 prescribes the guidelines on the publication of Top Withholding Agents pursuant to the pertinent provisions of RR No. 11-2018.

RMO No. 26-2018 dated 24 May 2018

- ▶ The Top Withholding Agents (TWAs) shall include the following top taxpayers, which have been classified and duly notified by the Commissioner, unless previously de-classified as such or have ceased business operations:
 1. A large taxpayer under RR No. 1-98, as amended;
 2. Top twenty thousand (20,000) private corporations under RR No. 6-2009;
or
 3. Top five thousand (5,000) individual taxpayers under RR No. 6-2009.
- ▶ TWAs shall also include taxpayers which have been newly identified and included as Medium Taxpayers and those under the Taxpayer Account Management Program (TAMP).
- ▶ The following shall still be included in the initial publication of TWAs:
 1. Existing large taxpayers
 2. Top 20,000 private corporations
 3. Top 5,000 individual taxpayers
 4. Taxpayers identified as Medium Taxpayers and those under the TAMP if not yet previously classified as either Top 20,000 private corporations or Top 5,000 individual taxpayers
- ▶ A CIR-approved list of TWAs and the regular semestral lists of TWAs for inclusion or deletion shall be published in a newspaper of general circulation not later than 15 June and 15 December of each calendar year, with the complete names of taxpayers and RDOs/LTS Divisions where they are registered.
- ▶ The list shall also be posted in the BIR website and disseminated through the issuance of a Revenue Memorandum Circular (RMC).
- ▶ The publication of the CIR-approved list is sufficient notice to the concerned TWAs, but the concerned RDOs may still prepare and personally serve individual written notices of inclusion/deletion to the concerned TWAs under their respective jurisdictions.

- ▶ The obligation of the concerned TWAs to withhold the 1% and 2% creditable withholding taxes on goods and services, respectively, shall commence on the first day of the month following the month of publication (i.e., 1 July and 1 January, respectively, of each calendar year).

RMC No. 46-2018 circularizes the ruling on the proper interpretation of Section 214 of the Tax Code, as amended, on the redemption of seized/ forfeited properties of delinquent taxpayers.

RMC No. 46-2018 dated 21 May 2018

- ▶ On 13 March 2018, the Commissioner of Internal Revenue (CIR) issued a ruling in relation to the proper interpretation of Section 214 of the Tax Code regarding the taxes to be paid upon the redemption of seized/ forfeited properties by delinquent taxpayers.
- ▶ In case of redemption of property sold in public auction, the delinquent taxpayer or any one for him, shall have the right to pay to the Revenue District Officer the following:
 1. Public taxes;
 2. Penalties prescribed under Section 248 of the Tax Code;
 3. Interest prescribed under Section 249 of the Tax Code from the date of delinquency to the date of sale; and
 4. Interest on purchase price at the rate of 15% per annum from the date of purchase to the date of redemption.
- ▶ As such, all public taxes, including interests and penalties, must be paid in order for redemption to be valid, and failure to do so shall invalidate the redemption.

RMC No. 48-2018 prescribes the processing time of eCAR on ONETT.

RMC No. 48-2018 dated 30 May 2018

- ▶ Electronic Certificate Authorizing Registrations (eCARs) on One-Time Transactions (ONETT) shall be processed and issued within the timetable prescribed as follows, reckoned from the submission of complete documentary requirements:
 1. Individual Taxpayer/Corporation with 1 Deed of Sale/ Exchange/ Donation:
 1. 1 to 3 properties - 3 working days
 2. 4 to 10 properties - 5 working days
 3. 11 to 50 properties - 10 working days
 4. More than 50 properties - 20 working days
 2. Real Estate Developer -1 Deed of Sale/Exchange involving multiple properties:
 5. 1 to 10 properties - 5 working days
 6. 11 to 50 properties - 10 working days
 7. More than 50 properties - 20 working days

RMC No. 50-2018 clarifies certain provisions of RR Nos. 8-2018 and 11-2018 implementing the income tax provisions of the TRAIN Law.

RMC No. 50-2018 dated 11 May 2018

- ▶ The personal and additional exemptions have been removed under the TRAIN Law and have been replaced by the exemption of the first P250,000.00 of taxable income of individual taxpayers starting 1 January 2018.
- ▶ There is no change in the mandatory deductions from gross compensation of employees, such as SSS, GSIS, Philhealth and Pag-ibig contributions (limited to compulsory contributions), as well as union dues.
- ▶ "*De minimis*" benefits are still considered as compensation not subject to income tax and consequently, to withholding tax and fringe benefit tax.
- ▶ As of 1 January 2018, the following are the "*de minimis*" benefits:
 1. Monetized unused vacation leave credits of private employees not exceeding 10 days during the year
 2. Monetized value of vacation and sick leave credits paid to government officials and employees
 3. Medical cash allowance to dependents of employees not exceeding P1,500.00 per employee per semester or P250.00 per month
 4. Rice subsidy of P2,000.00 or 1 sack of 50 kg. rice per month amounting to not more than P2,000.00
 5. Uniform and clothing allowance not exceeding P6,000.00 per annum
 6. Actual medical assistance, such as medical allowance to cover medical and healthcare needs, annual medical/executive check-up, maternity assistance, and routine consultations, not exceeding P10,000.00 per annum
 7. Laundry allowance not exceeding P300.00 per month
 8. Employee achievement awards, such as for length of service or safety achievement, which must be in the form of tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding P10,000.00 received by the employee under an established written plan, which does not discriminate in favor of highly-paid employees
 9. Gifts given during Christmas and major anniversary celebrations not exceeding P5,000.00 per employee per annum
 10. Daily meal allowance for overtime work and night/graveyard shift not exceeding 25% of the basic minimum wage on a per region basis
 11. Benefit received by an employee by virtue of a collective bargaining agreement (CBA) and productivity incentive schemes in a combined amount not exceeding P10,000.00 per employee per taxable year
- ▶ Benefits given in excess of the maximum amount allowed as "*de minimis*" benefits shall be included as part of "other benefits" and shall be subject to the P90,000.00 ceiling.

- ▶ Any amount in excess of the P90,000.00 shall be subject to income tax and withholding tax on compensation.
- ▶ Premium on Health card paid by the employer for all employees, whether rank and file or managerial/supervisory, under a group insurance shall be included as part of other benefits of the employees and shall be subject to the P90,000.00 ceiling.
- ▶ However, individual premiums paid for selected managerial or supervisory employees are considered "fringe benefits" subject to fringe benefit tax.
- ▶ The additional income or benefits received as a result of the Attrition Law shall form part of compensation income subject to withholding tax on compensation.
- ▶ Any commission given to an employee in addition to the regular compensation shall be considered as supplementary income and shall be subject to income and withholding tax.
- ▶ A government employee shall be considered as a Minimum Wage Earner on the basis of the Statutory Minimum Wage (SMW) prescribed for a particular geographical region by the National Wages and Productivity Commission (NWPC) of the Department of Labor and Employment (DOLE).
- ▶ The MWE is exempt from income tax on his basic SMW, overtime (OT) pay, holiday pay, night shift differential (NDP) pay and hazard pay. However, any income other than those mentioned is subject to income tax.
- ▶ Employees whose basic pay is more than the SMW, but whose income does not exceed P250,000.00, are no longer considered as an MWE; thus, the amount of basic pay, OT pay, holiday pay, NDP pay and hazard pay shall be subject to income tax.
- ▶ Employees are not required to update their tax status and submit documents to the BIR.
- ▶ The following individuals are not qualified to avail of the 8% income tax rate:
 1. Purely compensation income earners
 2. VAT-registered taxpayers, regardless of the amount of gross sales/receipts and other non-operating income
 3. Non-VAT taxpayers whose gross sales/receipts and other non-operating income exceed the P3,000,000.00 VAT threshold
 4. Taxpayers, who are subject to other percentage taxes under Title V of the Tax Code, as amended, except those under Section 116 of the same title
 5. Partners of a General Professional Partnership (GPP) since their distributive share from the GPP is already net of costs and expenses
 6. Individuals enjoying income tax exemption, such as those registered under the Barangay Micro Business Enterprises (BMBEs)

- ▶ The features of the Graduated Income Tax (IT) rates and 8% IT rate are as follows:

Particulars	Graduated IT Rates	8% IT Rates
Applicability	In general, applicable to all individual taxpayers	May be availed of by qualified individuals engaged in business/practice of profession whose income does not exceed P3,000,000
Basis of IT	Net taxable income	Gross sales/ receipts and other non-operating income
Allowed Deductions	Allowable Itemized Deductions or Optional Standard Deduction (OSD)	Allows reduction of P250,000.00 from the gross sales/receipts, but only for individuals whose income comes purely from business/ practice of profession
Business Tax	Percentage Tax or VAT	Not subject to percentage tax, if qualified
Required Financial Statements (FS)	<ul style="list-style-type: none"> ▶ If claiming Itemized Deductions: <ol style="list-style-type: none"> 1. FS - if gross is less than P3M 2. Audited FS - if gross is more than P3M ▶ If claiming OSD - no FS required 	No FS required if qualified

- ▶ Taxpayers, who are qualified to be taxed at 8% income tax rate, must signify their intention to avail of the same as soon as possible by filing any of the following:
 1. For New Business Registrants:
 - ▶ BIR Form No. 1901
 - ▶ Initial Quarterly Percentage or Income Tax Return after the commencement of a new business or practice of profession
 2. For Existing Individual Business Taxpayers:
 - ▶ BIR Form No. 1905
 - ▶ 1st Quarterly Percentage Tax Return
 - ▶ 1st Quarterly Income Tax Return
- ▶ The option to avail of the 8% income tax rate must be signified annually, on or before 15 May, and shall be irrevocable unless the gross sales/receipts and other non-operating income exceed the VAT threshold, in which case, taxpayer shall automatically be subject to the graduated income tax rates.

- ▶ An individual taxpayer, who failed to signify his intention to avail the 8% income tax rate, shall be subject to the graduated income tax rates.
- ▶ Purely self-employed or professional individual taxpayers, who opted for the 8% income tax, are no longer required to file and pay the 3% percentage tax.
- ▶ The 8% income tax rate shall be based on the gross sales/receipts and other non-operating income, net of returns and cash discounts.
- ▶ Only individuals earning purely from self-employment and practice of profession are entitled to the amount allowed as reduction of P250,000.00. Mixed income earners are no longer entitled to such reduction.
- ▶ Individuals, who are earning income from both compensation and self-employment, shall be subject to the graduated income tax rates, with the option to avail of the 8% income tax rate, if qualified, for his income from business or practice of profession.
- ▶ Applicability of IT Rates per Individual Taxpayer's Income Classification:

Classification	Graduated IT Rates	&/or	8% IT Rates
I. Purely Compensation		n/a	Not Applicable (n/a)
II. Purely Business/ Practice of Profession			
A. If gross sales/ receipts and other non-operating income did not exceed P3M in a taxable year (at taxpayer's option)	Subject to applicable business taxes	OR	If qualified, taxable on gross sales/ receipts and other non-operating income in excess of P250k, in lieu of graduated rates and percentage tax under Sec. 116
B. If gross sales/ receipts & other non-operating income exceed P3M in a taxable year	Subject to applicable business taxes	n/a	n/a
III. Mixed income (both compensation and business/practice of profession)			
A. Compensation		n/a	n/a
B. Engaged in business/ practice of profession	Subject to applicable business	OR	If qualified, taxable on gross, in lieu of graduated rates and percentage tax under Sec. 116
<ul style="list-style-type: none"> ▶ If gross sales/ receipts & other non-operating income did not exceed P3M in a taxable year (at taxpayer's option) ▶ If gross sales/ receipts & other non-operating income exceed P3M in a taxable year 	Subject to applicable business taxes	n/a	n/a
	Under the graduated IT regime: <ul style="list-style-type: none"> ▶ Allowed deductions are itemized deductions or the OSD (40%) to get taxable net income ▶ Total IT due = sum of both the taxable income from compensation and business/ profession multiply by graduated IT rate 		Under the 8% IT regime: <ul style="list-style-type: none"> Total IT due = Income tax due from compensation (using graduated rates) plus income tax due from business/ practice of profession (8% of gross sales/ receipts & other non-operating income)

- ▶ An individual under a contract of service or job order arrangement is considered self-employed.
- ▶ The following are the applicable withholding taxes for individuals under a Job Order or Contract for Service Scheme:
 1. Hired by Public or Government Sector - the government entity shall withhold both income and the applicable business taxes.
 2. Hired by Private Sector - the private entity shall withhold income tax only and the payee shall pay the corresponding business tax.
- ▶ However, payees with annual gross receipts not exceeding P250,000.00 from a lone payor may be exempt from both withholding tax on income and withholding of percentage tax, if payee signified the option to avail the 8% income tax rate regime in the sworn declaration.
- ▶ The nature of the service rendered shall determine the applicable withholding tax rates on income. For services rendered by individuals falling under Section 2.57.2(A) of RR No. 11-2018, the rates prescribed under the Section shall be used. All other services shall be subject to 2%.
- ▶ Self-employed individuals whose services are not covered by the definition of a professional under RR No. 8-2018 and do not fall under Sec. 2.57.2(A) of RR No. 2-98, as amended by RR No. 11-2018, shall be subject to 2% withholding tax.
- ▶ The fees of directors, who are also employees of the same entity, shall form part of the compensation subject to withholding tax on compensation.
- ▶ If the director is not an employee of the entity, he is considered a professional and shall be subject to creditable expanded withholding tax and to the applicable business tax.
- ▶ A government employee who sits as board member of other Government Owned & Controlled Corporations (GOCCs) shall be subject to 10% creditable withholding tax.
- ▶ A GPP is not subject to income tax and creditable expanded withholding tax, but shall be subject to the applicable business tax.
- ▶ The partners of a GPP are subject to income tax and applicable withholding tax.
- ▶ Individual contractors are subject to the 2% creditable expanded withholding tax.
- ▶ The withholding tax rate for doctors/consultants, who submitted the sworn declaration (Annex B-2 of RR 11-2018), shall be 5%, regardless of whether they are availing of the 8% income tax or the graduated income tax rates.
- ▶ If Annex B-2 was submitted beyond the deadline of 20 April 2018, the payee's excess tax withheld, if any, prior to the approval of RR No. 11-2018, shall not be refunded by the income payor.

- ▶ The Affidavit of Declaration of Gross income is still required for non-individuals in relation to the P720,000.00 threshold since it is not part of the amendments under the TRAIN Act.
- ▶ The applicable withholding tax rate for self-employed professionals, who failed to submit the sworn declaration to the payor, is 10% for income tax. Moreover, if the payor is a government entity, the income is subject to 3% percentage tax or 5% withholding VAT, whichever is applicable.
- ▶ Below is a guide for individual taxpayers engaged in business and/or practice of profession, as well as for withholding agents/payors on the treatment of individual income earnings/payments:

Sales/Receipts		If Graduated IT rates		If 8% IT rate	
Gross Amount	Tax	Taxability	WT	Taxability	WT
P250,000 and below	IT	Taxable at 0%	Not Subject	<ul style="list-style-type: none"> ▶ Exempt, if taxpayer's entire income is derived from business and/or practice of profession ▶ Subject to 8%, if mixed income earner (with income from both compensation and business and/or profession) based on gross sales/ receipts & other non-operating income 	<ul style="list-style-type: none"> ▶ No, for purely business and/or profession ▶ Yes, if mixed income earner
	PT*	Subject	Subject to WT, if government payor	Not subject	Not subject
	Doc*	Payee's Sworn Declaration and COR		Payee's Sworn Declaration and COR	
Above P250,000.00 to P3M	IT	Taxable at applicable graduated rates on net income	Subject, at applicable rates	8% on gross sales/ receipts and other non-operating income, but entitled to reduction of P250,000.00 if income is purely from business/ practice of profession	Subject, at applicable rate
	PT	Subject	Subject, if government payor	Not subject	Not subject
	Doc	Payee's Sworn Declaration and COR		Payee's Sworn Declaration and COR	
Above P3M	IT	Subject to applicable rate	Subject to WT	Not entitled to avail	
	BT*	Now subject to VAT	Subject to WT of VAT, if government payor		

*PT-Percentage Tax; Doc - documents required to be submitted; BT - business tax

- ▶ Withheld taxes remitted, using the old BIR Form Nos. 1601-E, 1601-F and 0605 for the first 2 months of the quarter, shall be deducted from the taxes due to be remitted for the entire quarter.
- ▶ Individuals with consecutive employers are required to file an Annual Income Tax Return (AITR) and are not qualified to avail of the substituted filing of AITR.
- ▶ The Certification that shall be issued by the withholding agent to individuals under Job Order or contract of service arrangement shall be BIR Form 2307.
- ▶ An employee with a lone employer within a year, but is receiving retirement pension, is still qualified to avail of the substituted filing of AITR provided the income tax has been withheld correctly.
- ▶ An employee who is not qualified for substituted filing of Income Tax Return is required to use either BIR Form No. 1700 (for purely compensation income earner) or BIR Form No. 1701 (for self-employed or mixed income earner).
- ▶ The employer shall provide the employee with BIR Form No. 2316 not later than 31 January after the close of the calendar year.
- ▶ Creditable Withholding Tax Certificate and Form No. 1604C/F are still required to be filed with the BIR.
- ▶ An employee earning purely compensation income not exceeding P250,000.00 from a lone employer is not required to file an AITR.
- ▶ Financial Statements (FS) are not required to be attached when filing an AITR for taxpayers who availed of the 8% income tax rate.
- ▶ A taxpayer, who avails of the Optional Standard Deduction (OSD), is exempt from FS submission.
- ▶ A taxpayer, who opts to use the graduated tax rates on professional income, shall file a quarterly return of the amount of gross sales, receipts or earnings and pay the 3% percentage tax due thereon within 25 days after the end of each taxable quarter.
- ▶ Partners of GPPs are required to register as professionals and cannot avail of the 8% income tax rate.
- ▶ For the creditable withholding tax, a Quarterly, rather than a Monthly, Alphasheet (QAP) is required to be submitted as an attachment to the quarterly creditable/expanded withholding tax returns (form 1601EQ)
- ▶ The TRAIN Law did not amend the retention period of books of accounts prescribed by Sec. 203 of the Tax Code, as amended, and implemented by RR No. 17-2013.
- ▶ Under RR No. 5-2014, within the first 5 years from the day following the deadline for filing a return or if filed after the deadline, from the date of the filing of the return, the taxpayer shall retain hard copies of the books of accounts, including subsidiary books and other accounting records. Thereafter, taxpayer may retain only the electronic copy in an electronic storage system, which complies with the requirements of the RR.

RMC No. 53-2018 amends RMC No. 17-2018, specifically the deadline for the processing of pending VAT refund/credit claims filed prior to the effectivity of RMC No. 54-2014.

RMC No. 53-2018 dated 13 June 2018

The deadline for the processing of all pending VAT claims filed prior to the effectivity of RMC No. 54-2014 has been moved from 30 June 2018 to 14 December 2018.

RMC No. 54-2018 clarifies the imposition of penalties and interest on the filing of an amended return.

RMC No. 54-2018 dated 29 May 2018

- ▶ Beginning 1 January 2018, the effectivity date of the TRAIN Law, the interest rate shall be 12% per annum, until a new interest rate shall be prescribed by the BSP.
- ▶ In an amendment of a return where additional tax is due per amended return, the 25% penalty and 12% interest shall be imposed based on the additional tax to be paid.

BOC Update

CMO 07-2018 provides for the Revised Rules for the Electronic/Manual Issuance and Lifting of Alert Orders at All Ports of Entry.

CMO No. 07-2018 dated 31 May 2018

- ▶ Alert Orders shall be issued by the following:
 1. Commissioner;
 2. District Collector having jurisdiction over the goods; and
 3. Other Customs Officers duly authorized in writing by the Commissioner.
- ▶ Alert Orders shall be dated and assigned a unique reference number for reporting and monitoring purposes by the BOC Commissioner and the Finance Secretary.
- ▶ Alert Orders shall be issued based on derogatory information. The following shall not be considered derogatory information:
 1. General allegation of undervaluation unless based on allegation of submission of forged or spurious invoice or other commercial documents;
 2. General allegation of misclassification without providing the appropriate tariff heading and duty of the shipment alerted;
 3. General allegation of over-quantity without indicating the source of information supporting the allegation;
 4. General allegations of misdeclaration in the entry without indicating the suspected actual contents thereof; and
 5. General allegations of importation contrary to law without indicating the specific law or rule to be violated.
- ▶ Alert Orders must be issued only after lodgment of goods declaration and prior to release of goods from customs custody.

- ▶ All Alert Orders shall be issued electronically under the e2m alert system.
- ▶ Manual orders shall be issued only under following instances:
 1. When e2m system is not accessible;
 2. When the Import entry has already been finally assessed and the On-Line Release System (OLRS) has already been triggered in the e2m system;
 3. For unmanifested cargoes/shipments;
 4. For entries processed under Informal Entry;
 5. For export cargoes; and
 6. When issued by the Commissioner of Customs.
- ▶ *Effect of Issuance of Alert Orders.* An Alert Order shall result in the suspension of the processing of goods declaration, release of goods, and conduct of physical or non-intrusive inspection of the goods to verify the derogatory information against the shipment.
- ▶ *Notice of Issuance of Alert Orders.* Upon issuance of an Alert Order, the District Collector or his authorized representative shall immediately notify the importer/exporter or its broker of the issuance. Notice may be made through electronic mail indicated in the Client Profile Registration System (CPRS) profile of the importer. If none, through personal service or other means.
- ▶ *Conduct of Examination.* Physical or non-intrusive examination shall be conducted within 48 hours from issuance of the Alert Order.
- ▶ *Disposition of Alert Orders.*
 1. Within 5 days, or 2 days in case of perishable goods, from termination of the examination
 2. The District Collector shall either issue a Warrant of Seizure and Detention (WSD) or recommend to the Commissioner the release of goods or continuation of the processing of the import entry (goods declaration) in case of negative findings.
- ▶ This Order shall take effect after completion of the 15 calendar day publication.

(Editor's Note: CMO 07-2018 was published in The Manila Times on 2 June 2018.)

SEC Opinions

SEC-OGC Opinion No. 18-09 dated 4 June 2018

Facts:

The Regional Trial Court (RTC) dismissed a case filed by H Co. on the ground that it has no legal personality and standing to institute a case because of the revocation of its registration by the SEC.

A corporation, whose registration has been revoked, has three years from dissolution to continue as a body corporate for purposes of winding up its affairs.

Issue:

May a dissolved corporation institute and file actions in court?

Ruling:

The SEC refrained from examining and reviewing the ruling of the RTC but for purposes of information, the SEC noted the following rules involving dissolved corporations:

Under Sec. 122 of the Corporation Code, a corporation continues to be a body corporate for 3 years from dissolution for purposes of winding up its affairs, including prosecuting and defending suits by or against it. After 3 years, the corporation already lacks the legal capacity to sue as a corporation but a suit may be instituted or defended on its behalf by its trustees who must have been appointed within the said 3-year period. If the said period expires without a trustee or receiver having been expressly designated by the corporation, the board of directors (or trustees for non-stock corporations) would be considered as trustees by legal implication to complete the corporate liquidation. In the absence of a board of directors or trustees, those having any pecuniary interest in the assets may represent the dissolved corporation.

SEC-OGC Opinion No. 18-10 dated 4 June 2018

A foreign corporation engaged in the retail sale of goods does not violate the RTLA if it sells to manufacturers for resale to consumers who use the goods to render services to the general public.

Facts:

M Co., a 99.99% foreign-owned corporation, is registered before the SEC as a wholesaler of medical equipment, devices and supplies. However, it is actually engaged in directly selling its products to customers on retail basis.

Issue:

May a foreign-owned corporation be allowed to sell its products on a retail basis without violating any trade laws?

Ruling:

Yes, except consumer goods. Consumer goods are goods which are used or brought for use primarily for personal, family or household purposes and are not intended for resale or further use in the production of other products. These goods cannot be sold by foreign-owned corporations directly to the general public or the end-users without violating RA 8762 or the Retail Trade Liberalization Act (RTLA). On the other hand, under the implementing rules of the RTLA, sales to industrial and commercial users or consumers who use the products bought by them to render services to the general public and/or produce or manufacture of goods, which are in turn sold by them, are not considered as retail.

SEC-OGC Opinion No. 18-11 dated 5 June 2018

A foreign corporation does not acquire the license of a resident foreign corporation in the Philippines after a merger with the latter's head office.

Facts:

B Co., a foreign corporation, has license to transact business in the Philippines thru an ROHQ. It entered into a merger with R Co. outside of the Philippines where the latter is the surviving entity. Following the merger, R Co. would like to continue the business of B Co. in the Philippines.

Issue:

May R Co. acquire the license of B Co. in the Philippines?

Ruling:

No. Under Sec. 132 of the Corporation Code, whenever a resident foreign corporation shall be a party to a merger in its home country or state, such corporation shall file with the SEC a copy of the articles of merger or consolidation and shall file a withdrawal of its license should it be the absorbed corporation in the said merger. On the other hand, the surviving entity must file its own application for a license to do business in the Philippines if it intends to continue the business of the absorbed corporation in the Philippines.

Thus, if R Co. will continue the business of B Co., it must file its own application for a license in the Philippines.

BSP Issuances

Circular No. 1005 provides for the New BSRD form for foreign portfolio investments.

BSP Circular No. 1005 dated 31 May 2018

- ▶ An item under Appendix 20 of the Manual of Regulations on Foreign Exchange Transaction on processing fees on foreign exchange transactions payable to the Bangko Sentral ng Pilipinas was amended to increase the amount of fee to PHP100.00/piece of the Bangko Sentral Registration Document (BSRD) form printed by the BSP to be used in the registration of foreign portfolio investments.
- ▶ This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation.

(Editor's Note: BSP Circular No. 1005, s. 2018 was published in The Philippine Star on 8 June 2018.)

Circular No. 1006 provides for the amendments to rules on conversion/transfer of foreign currency loans to peso loans.

BSP Circular No. 1006 dated 1 June 2018

- ▶ Appendix 17 of the Manual of Regulations on Foreign Exchange Transactions on guidelines on the conversion to peso loans/Real and Other Properties Acquired (ROPA) and transfer to Regular Banking Unit (RBU) of foreign currency deposit unit (FCDU)/Expanded FCDU (EFCDU) loans/ROPA was amended.
- ▶ Item A of Appendix 17 was amended to provide that FCDU/EFCDU loans may be converted to peso loans and transferred from banks' FCDU books to the RDU books without prior BSP approval, subject to certain conditions.
- ▶ Item B of Appendix 17 was amended to provide that FCDU/EFCDU ROPA may also be converted to peso ROPA and transferred to the RBU books without prior BSP approval, subject to certain conditions.
- ▶ Annex A was added to Appendix 17 to provide for the prescribed accounting entries on the conversion and transfer of FCDU/EFCDU loans and ROPA to the RBU books.

(Editor's Note: BSP Circular No. 1006, s. 2018 was published in The Philippine Star on 8 June 2018.)

Circular No. 1007 provides for the implementing guidelines on the adoption of the Basel III Framework on Liquidity Standards -NSFR.

BSP Circular No. 1007 dated 6 June 2018

- ▶ Subsection X176.5/4176Q.5 of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBF) on net stable funding ratio was added to set out guidelines on NSFR with respect to minimum requirements, reporting and monitoring requirements, and implementation. The guidelines were set out to promote the long-term resilience of a bank/quasi-bank (QB) against liquidity risk by limiting overreliance on short-term wholesale funding and promoting enhanced assessment of funding risk across all on- and off- balance sheet accounts.
- ▶ Subsection X176.7/4176Q.7 of the MORB/MORNBF on supervisory framework for the minimum prudential liquidity requirements was amended to provide that the Bangko Sentral will assess the situation to determine the extent to which the reported decline in the Liquidity Coverage Ratio (LCR) or NSFR/non-compliance with the Minimum Liquidity Requirements (MLR) is due to a bank/QB-specific or market-wide shock and will accordingly provide the supervisory response necessary to address the situation. The bank/QB shall issue a shortfall notice to the Bangko Sentral of such situation within the banking/business day immediately following the occurrence of the third liquidity/stable funding shortfall.
- ▶ Subsection X176.20/4176Q.20 of the MORB/MORNBF on supervisory enforcement actions was amended to provide that the Bangko Sentral may deploy enforcement actions and bring about timely corrective actions. Sanctions may likewise be imposed by the Bangko Sentral on a bank/QB and/or its creditors, officers, and/or employees.

(Editor's Note: BSP Circular No. 1007, s. 2018 was published in the Manila Bulletin on 13 June 2018.)

Circular No. 1008 provides for the amendments to pertinent regulations on rediscounting availments, and emergency loans or advances to banking institutions.

BSP Circular No. 1008 dated 14 June 2018

- ▶ Subsection X269.2 of the MORB on eligible papers and collaterals was amended to effect the removal of the P3.0 billion cap per bank on rediscountable National Food Authority papers and the acceptability of syndicated loans and loans with underlying real estate collaterals under Mortgage Trust Indentures (MTI) for rediscounting and emergency loans, subject to minimum eligibility requirements.
- ▶ Subsection X272.6 of the MORB on acceptable collaterals and their corresponding loan values was amended to provide that mortgage credits arising from syndicated loans and loans with underlying real estate collaterals under MTI shall be assigned their applicable loan values based on the submission or non-submission of Surety agreement and/or Negative Pledge. The loans shall also be subject to the same minimum requirements under Subsection X269.2.

(Editor's Note: BSP Circular No. 1008, s. 2018 was published in the Manila Bulletin on 22 June 2018.)

Court Decisions

Commissioner of Internal Revenue vs. Premium Leisure Corp.

CTA (*En Banc*) Case No. 1702 promulgated 25 April 2018

The receipt by a stockholder, whether corporate or individual, of liquidating dividends from a dissolving corporation is not subject to CGT but to ordinary income tax.

Facts:

Respondent Premium Leisure Corporation (PLC) filed a claim for refund of erroneously paid capital gains tax (CGT) from its receipt of real property by way of liquidating dividends. Belle Bay City Corporation (BBCC) shortened its corporate life and distributed lots as liquidating dividends to shareholders including PLC. BBCC secured a ruling from the BIR exempting the transfer from income tax, withholding tax, and documentary stamp tax since BBCC will not realize any taxable gain or loss during the process of liquidation. In its Income Tax Return, PLC recognized the liquidating gain which it subjected to the 30% regular corporate income tax. It subsequently paid the CGT under protest and claimed a refund.

The CTA Third Division granted the refund, ruling that the mere distribution of liquidating dividends to a corporation should not be treated as a sale that is subject to CGT. It held that CGT is a tax on the gain from sale of taxpayer's property forming part of capital assets, hence in order to be liable for CGT, one has to profit or gain from sale, exchange or disposition of real property. In the absence of income, the imposition of CGT does not arise.

The CIR filed a Petition for Review at the CTA *En Banc*. It posited that it is not essential that a gain must be realized first before a corporation may be held liable under Section 27(D)(5) of the Tax Code arguing that gain is presumed from the disposition of real property considered as capital asset.

Issue:

Is PLC entitled to a refund of erroneously paid CGT?

Ruling:

Yes. The receipt by a stockholder, whether corporate or individual, of liquidating dividends from a dissolving corporation is not subject to CGT but to ordinary income tax. Since PLC had recognized the liquidating gain as part of its "Other Taxable Income Not Subjected to Final Tax" in its ITR and paid the corporate income tax for the gain derived, the subsequent payment of CGT for the same income is clearly erroneous and should be refunded.

Section 73(A) of the Tax Code provides that any gain derived, or any loss sustained by a stockholder from its receipt of liquidating dividends shall be treated as taxable income or deductible loss, as the case may be. Revenue Regulations 6-2008 clarifies that the capital gain or loss derived by stockholders from the receipt of liquidating dividends is subject to the regular corporate income tax rates prescribed for individual stockholders and corporate income tax rate for corporate stockholders.

Citing the decision of the Supreme Court in *Wise vs. Meer*, GR No. 48231 promulgated on 30 June 1947 and *Fernando vs. Spouses Lim*, GR No. 176282 promulgated on 22 August 2008, the CTA *En Banc* held that the surrender of shares by stockholders in exchange for assets distributed by the corporation upon dissolution and liquidation of its assets and liabilities is treated as sale by a stockholder of its shares in the dissolved corporation. Any gain derived by the stockholders from such transaction is subject to ordinary income tax.

Commissioner of Internal Revenue vs. Enjay Hotels, Inc.

CTA (*En Banc*) Case Nos. 1498 and 1500 promulgated 22 May 2018

The BOI does not have exclusive jurisdiction to rule on whether a particular source of revenue is part of the registered activity entitled to ITH incentive. The BIR has exclusive jurisdiction on the assessment and collection of taxes, fees and charges, against taxpayers including BOI-registered companies.

Facts:

Petitioner CIR assessed Respondent Enjay Hotels, Inc. (EHI), doing business under the name “Intercontinental Manila,” for deficiency income tax for 2008 arising from the disallowance by the Board of Investments (BOI) of other income reported by EHI as income from its registered activity. EHI protested the assessment and argued that it is a BOI-registered Operator of Tourist Accommodation Facilities which has been granted both fiscal and non-fiscal incentives, including 3-year Income Tax Holiday (ITH). EHI asserted that the issue on the other income disallowed by the BIR for purposes of ITH computation, such as rental income, MERALCO refund, and handling fee, was still pending appeal at the BOI. The case was subsequently elevated to the Office of the President.

The BIR denied the protest and issued a Final Decision on Disputed Assessment (FDDA) and subjected portions of EHI’s income to ITH as well as to the regular corporate income tax rate.

Aggrieved, EHI filed a Petition for Review with the CTA. The CTA First Division ruled partially in favor of EHI and considered handling fee, income from broadband services, revenues from in-house video as part of EHI’s ITH entitlement. Parking fee was subjected to regular tax rate. Both the CIR and EHI elevated the case to the CTA *En Banc* through a Petition for Review.

Issue:

Does the BOI have exclusive jurisdiction to rule on whether a particular source of revenues is part of the registered activity entitled to ITH incentive?

Ruling:

No. While the BOI has the power to decide controversies, such, however, is limited to those concerning the implementation of Executive Order 226 or the Omnibus Investments Code between registered enterprises or investors and government agencies. The BIR has exclusive jurisdiction on the assessment and collection of taxes, fees and charges.

Notwithstanding their independent mandate, both perform analogous functions. The BOI's decisions on EHI's case stated that the amount granted for EHI's income tax exemption is subject to adjustment, if any, by the BIR. Such statement is a recognition of the BIR' authority over tax assessment and collection.

Philmay Property, Inc. vs. Commissioner of Internal Revenue

CTA (Second Division) Case No. 8764 promulgated 23 May 2018

Although classified as VAT-exempt under the Tax Code, a transaction is considered VATable if the VAT Official Receipt issued by the seller does not indicate that the sale is VAT-exempt.

Facts:

Respondent CIR assessed Petitioner Philmay Property, Inc. (PPI) for various deficiency income tax, VAT, EWT and DST for fiscal year ending 30 June 2009. PPI protested the assessments but the CIR subsequently issued a warrant of distraint and levy after the assessments have become final and executory. PPI filed a Petition for Review at the CTA.

At the CTA, PPI argued that the right of the BIR to assess within the 3-year period has prescribed and the alleged finding of fraud to justify the application of the 10-year prescriptive period has no basis. It also posited that the reacquisition by Maybank Philippines Inc. of properties from PPI due to non-payment is not a transaction deemed sale subject to VAT.

The BIR, on the other hand, insisted that the assessments have not prescribed.

Issues:

1. Has the BIR's right to assess prescribed?
2. When does the VAT liability arise for cash sale, installment sale, or deferred-payment sale?
3. Can sale of real properties classified as VAT-exempt under Section 109 be considered VATable for failure to comply with the invoicing requirements?
4. Is the reacquisition of property as a result of Deed of Partial Rescission a transaction deemed sale under Section 106(B) of the Tax Code?

Rulings:

1. Yes. The assessments for income tax and VAT for the first 3 quarters have prescribed. When the assessments were received on 13 April 2013, the same were already beyond the 3-year prescriptive period provided under Section 203 of the Tax Code.

The CIR never indicated in the PAN, FLD/FAN, and Preliminary Collection Letter that the 10-year prescriptive period applies and no circumstance was alleged which warranted its application. Quoting the Supreme Court's decision in *CIR vs. Philippine Daily Inquirer, GR No. 213943 promulgated on 22 March 2017*, the CTA ruled that the alleged findings of deficiency tax do not also constitute falsity which would give rise to the extraordinary 10-year period.

2. The time of payment of the VAT depends on the type of sale. For cash sales, i.e. the consideration is paid in full by the buyer at the time of sale, the VAT on the entire consideration accrues at the time of sale. For installment sales, i.e. the initial payments of which do not exceed 25% of the gross selling price, the VAT accrues on the installment payments, inclusive of interest and penalties, and is due at the time of receipt thereof. For deferred payment sales, i.e. the initial payments of which exceed 25% of gross selling price, the entire selling price is subject to VAT in the month of sale.
3. Yes. Under Section 109, sales of residential lots valued at P1,500,000 and house and lot at P2,500,000 are exempt from VAT. However, while there were sale transactions that fall within the VAT-exempt threshold, the CTA ruled that these shall be subject to VAT for PPI's failure to indicate the term "VAT-exempt sale" on the official receipts it issued.
4. No. Rescission creates the obligation to return the thing which were the object of the contract and restores the parties to their relative positions as if there was no contract. The CTA also cited the BIR ruling confirming that with the rescission, it is as if no sale, transfer, or exchange ever took place between PPI and MPI.

About SGV & Co.

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

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

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

© 2018 SyCip Gorres Velayo & Co.
All Rights Reserved.
APAC No. 10000341
Expiry date: no expiry

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

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

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

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