

Tax Bulletin

February 2019



Highlights

BIR Issuances

- ▶ Revenue Regulation (RR) No. 1-2019 further amends certain provisions of RR No. 2-98, as amended by RR No. 11-2018, by prescribing changes in the Creditable Withholding Tax (CWT) rates on certain income payments pursuant to the TRAIN Law. **(Page 4)**
- ▶ Revenue Memorandum Order (RMO) No. 8-2019 prescribes the policies and guidelines in the certification of electronic tax return filing and/or payment solutions. **(Page 4)**
- ▶ RMO No. 10-2019 clarifies the grant of value-added tax (VAT) privileges to resident foreign missions, their qualified personnel and the latter's dependents. **(Page 5)**
- ▶ Revenue Memorandum Circular (RMC) No. 30-2019 clarifies Section 100 of the National Internal Revenue Code (NIRC) of 1997, as amended by the TRAIN Law, in relation to the sale of shares of stock not traded or listed in the stock exchange. **(Page 7)**

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PEZA Update

- ▶ PEZA Memorandum Circular No. 2019-006 circularizes the Implementing Rules and Regulations of the Occupational Safety and Health Act. **(Page 13)**

SEC Opinions and Issuances

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- ▶ The term 'foreign national' under RA 8556 or the Financing Company Act, as amended by RA 10881, refers to both individuals and juridical entities. **(Page 14)**
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Court Decisions

- ▶ The issuance of the Final Assessment Notice (FAN) via electronic mail is not sanctioned by any law, rules or regulations. **(Page 22)**
- ▶ Income derived by foreign governments from investments in Philippine bonds is exempt from income and final withholding tax (FWT).

Proof of actual remittance of a final withholding tax to the BIR is not a condition before a taxpayer can refund erroneously or illegally collected FWT. **(Page 23)**

- ▶ Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, justify the non-imposition of surcharges and interest.

The conduct by the revenue officers of a tax examination on years which were not covered by the Letter of Authority (LOA) justifies the cancellation of the assessment. **(Page 23)**

- ▶ A change in the corporate name does not make a new corporation and has no effect on the identity of the corporation, or on its property, including entitlement to a tax refund, rights or liabilities. **(Page 24)**
- ▶ Gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding four persons. **(Page 25)**

BIR Issuances

RR No. 1-2019 further amends certain provisions of RR No. 2-98, as amended by RR No. 11-2018, by prescribing changes in the CWT rates on certain income payments pursuant to the TRAIN Law.

RR No. 1-2019 issued on 8 February 2019

- ▶ Section 2.57.2 of RR No. 2-98, as amended, is further amended to implement the following changes in the Creditable Withholding Tax (CWT) rates pursuant to the TRAIN Law:
 1. MERALCO refund given to customers arising from the Supreme Court decision in the case of *Republic of the Philippines vs. MERALCO, G. R. No. 141314*, as approved by the Energy Regulatory Board (ERC) - **15%**
 2. Interest income on the refund of meter deposits as determined and computed by the ERC:
 - ▶ **10%** - residential and general service customers whose monthly electricity exceeds 200 kwh as classified by MERALCO; and
 - ▶ **15%** - non-residential customers.
 3. Interest income on the refund paid through direct payment or applied against the customers' billings by other electric Distribution Utilities (DU):
 - ▶ **10%** - residential and general service customers whose monthly electricity exceeds 200 kwh as classified by the concerned DU; and
 - ▶ **15%** - non-residential customers.
 4. Interest income derived from any other debt instruments not within the coverage of "deposit substitutes" and RR No. 14-2002, unless otherwise provided by law or regulations - **15%**
- ▶ These regulations took effect on 1 January 2019.

(Editor's Note: RR No. 1-2019 was published in the Manila Bulletin on 11 February 2019)

RMO No. 8-2019 prescribes the policies and guidelines in the certification of electronic tax return filing and/or payment solutions.

RMO No. 8-2019 issued on 8 February 2019

- ▶ The Bureau shall certify the Tax Filing and/or Payment Solution (TFPS) of the Tax Software Provider (TSP) provided it has passed the prescribed evaluation and testing procedures.
- ▶ An individual or non-individual TSP, which is registered with the BIR, may apply for evaluation, testing and certification of its TFPS through the Electronic Tax Software Provider Certification System (eTSPCert System).
- ▶ TSPs, who shall apply for certification of their TFPS, shall partner with any of the Authorized Agent Banks (AABs) and shall abide by the Terms of Service Agreement (TOSA) prescribed by the Bureau.
- ▶ AABs shall, likewise, apply for certification of their ePayment System in the eTSPCert System.
- ▶ Certification for e-filing shall be issued for every BIR form applied for while the certification for e-payments shall be issued only once and covers all tax forms and types.

- ▶ TSPs applying for e-filing integrated with e-payments should complete the certification for e-filing before proceeding to the testing and certification of e-payments.
- ▶ Non-AAB TSPs applying for ePayment or eFiling and ePayment solution shall partner with AABs, which have certified ePayment facility.
- ▶ If the nominated partner AABs do not have a certified BIR ePayment facility, they shall apply for an ePayment solution certification through the eTSPCert System.
- ▶ TSPs with certified TFPS shall ensure compliance with the provisions of Republic Act No. 10173, otherwise known as "Data Privacy Act of 2012," in handling taxpayer information.
- ▶ TSPs shall be held responsible for any breach in their system, or any violations committed by their users, whether authorized or unauthorized.
- ▶ AABs shall remain the BIR collection agent. Thus, TSPs with a certified tax filing solution can enter into agreements for technical integration with the internet banking collection or internet payment gateways of AABs.
- ▶ TSPs are required to submit a list of their taxpayer clients.
- ▶ VAT-registered TSPs shall follow the existing issuance on the submission of the summary list of sales (SLS) as prescribed by RR No. 8-2002 and amended by RR No. 1-2013.

RMO No. 10-2019 clarifies the grant of VAT privileges to resident foreign missions, their qualified personnel and the latter's dependents.

RMO No. 10-2019 issued on 12 February 2019

- ▶ Subject to the principle of reciprocity, a resident foreign mission, its qualified personnel and the latter's dependents may be granted VAT exemption on their purchase of goods and services either at point-of-sale or on refund/reimbursement basis.
- ▶ The method of granting the VAT exemption depends on the VAT privilege granted to Philippine Foreign Service Posts (PFSP) by the different tax jurisdictions abroad.
- ▶ The Office of Protocol of the Department of Foreign Affairs (DFA-OP) will provide the list of countries/jurisdictions that grant PFSPs and their members the VAT privilege on the purchase of goods and services.
- ▶ A resident foreign mission and its members, who have been granted VAT exemption at point-of-sale, will be issued a VAT Certificate (VC).
- ▶ A VAT Identification Card (VIC) may be issued to qualified personnel and their qualified dependents, in lieu of a VC, subject to compliance with certain additional procedures.
- ▶ When a resident foreign mission or its qualified personnel is issued a VC, the sellers cannot pass on any VAT to them on their official (for the foreign mission) or personal (for personnel) purchase of goods and services in the Philippines because such purchases qualify for VAT zero-rating.

- ▶ The BIR will issue a ruling to confirm that the foreign mission, its qualified personnel and the latter's dependents, are entitled to reimbursement or refund of VAT paid on purchase of goods and services in the Philippines.
- ▶ The BIR ruling shall be the basis for the VAT reimbursement/ refund applications, which shall be processed by the appropriate Revenue District Office (RDO) having jurisdiction over the foreign mission.
- ▶ The following may apply for the grant of the VAT exemption privilege:
 1. Resident foreign missions;
 2. Qualified personnel;
 3. Dependents of qualified personnel; and
 4. Entities that are similarly categorized as missions, its personnel and the latter's dependents.
- ▶ A qualified foreign mission shall be issued one VC while qualified personnel of a foreign mission and the qualified dependents of the latter shall be issued separate VCs/VICs.
- ▶ The VC/VIC shall, in general, be effective for 2 years, renewable for another 2 years, or until the expiration of the term of office of the qualified personnel of a foreign mission, unless sooner cancelled, revoked or suspended for a valid cause.
- ▶ The duly authorized representative of the resident foreign mission shall present the original VC/VIC and his Special Power of Attorney or authorization letter upon each official purchase of goods and services.
- ▶ The qualified personnel of the foreign mission and their dependents, shall present the DFA ID, together with the original VC/VIC, upon each purchase of goods and services.
- ▶ All VAT-registered business establishments in the Philippines shall require the presentation of the following: a) VC and authorization of the foreign mission for foreign mission official purchase; or b) VC/VIC and DFA ID from qualified personnel of the foreign mission personnel or his dependents for personal purchase of goods and services.
 1. Such establishments shall subject the sale of goods or services to VAT at zero percent, even without prior application for effective zero-rating.
 2. These establishments shall also refuse to subject the sale of goods or services to zero percent VAT for failure to present the VC/VIC or if the holder of the VC/VIC is different from the person named in the VC/VIC.
- ▶ A resident foreign mission, its qualified personnel or the latter's dependents, who have been issued a BIR ruling confirming VAT exemption, may secure reimbursement or refund of VAT paid within 2 years after the close of the taxable quarter when the sales were made.
- ▶ A BIR ruling shall be issued for indirect tax exemption for the local purchase of motor vehicles of resident foreign missions.

- ▶ Upon the effectivity of this RMO, all holders of a valid and current VC/VIC may continue to use the same until the end of the validity period.
- ▶ This RMO shall take effect immediately.

RMC No. 30-2019 clarifies Section 100 of the NIRC of 1997, as amended by the TRAIN Law, in relation to the sale of shares of stock not traded or listed in the stock exchange.

RMC No. 30-2019 issued on 28 February 2019

- ▶ Prior to the amendment by the TRAIN Law of Section 100 of the Tax Code, where the fair market value (FMV) of the shares of stock not traded or listed in the stock exchange is higher than the selling price, the excess shall be treated as gift subject to donor's tax.
- ▶ However, the TRAIN Law amended Section 100 so as to exempt the excess amount from donor's tax when it is sold at arm's length, free from any donative intent, and in the ordinary course of business.
- ▶ In such cases, determining whether the shares of stock not traded or listed is at arm's length is a question of fact, and this must be established by the party seeking to apply the exception.
- ▶ The party must provide reasonable evidence sufficient to convince that the sale of the shares of stock for less than its FMV is without intent to evade tax and defraud the government.

BOC Updates

CAO No. 02-2019 provides for the Marking of Imported Goods and Containers.

CAO No. 02-2019 dated 29 January 2019

- ▶ This CAO applies to all goods or their containers of foreign origin imported into the Philippines for consumption into the domestic territory unless otherwise exempted by other laws, rules and regulations.

- ▶ General Provisions

1. All goods of foreign origin imported into the Philippines or their containers, shall be conspicuously marked in any official language of the Philippines as legibly, indelibly and permanently as the nature of the goods or container will permit and in such manner as to indicate to an ultimate purchaser or end-user or consumer in the Philippines the name of the country of origin of the goods.

Country of Origin of Goods - refers to the country in which the goods have been produced or manufactured, according to the criteria laid down for the purposes of application of the Customs tariff, of quantitative restrictions or of any other measure related to trade; provided that when goods require further work or a material is added in a country other than the country of origin, the latter is determined by the country in which the last substantial manufacturing or processing, deemed sufficient to give the commodity its essential character, has been carried out.

2. The character of words and phrases or abbreviation to be used in the marking of imported goods shall be based on the United Nations Terminology Database (UNTERM) which shall be acceptable as indicating the country of origin.

3. All goods of foreign origin imported into the Philippines shall be marked by any reasonable method of marking, whether by printing, stenciling, stamping, branding. When goods cannot be marked under any of the foregoing methods, any method of legible and conspicuous marking which will remain on the article until it reaches the ultimate purchaser is acceptable.

▶ Operational Provisions

1. **Fine for Failure to Mark.** 5% of the Dutiable Value which shall be deemed to have accrued at the Time of Importation.

2. **Release Withheld Until Marked.** No imported goods of foreign origin held in customs custody shall be released until such goods or their containers have been marked in accordance with the requirements of this Order and until the amount of the assessed marking duty has been deposited. For this purpose, the conduct of marking may be done at consignee's warehouse, upon request, and subject to the supervision of the Bureau of Customs (BOC) and Department of Trade and Industry (DTI) representative, if applicable.

3. **Implied Abandonment.** The failure or refusal of the owner or importer to mark the goods within 30 days after due notice shall constitute an act of abandonment and their disposition shall be governed by the provisions of the Customs Modernization and Tariff Act (CMTA) relative to the abandonment of imported goods.

4. **Exemptions from Marking Requirement.** Imported goods of foreign origin are exempted from the marking requirements if:

- ▶ Such goods or their container are incapable of being marked;
- ▶ Such goods cannot be marked prior to shipment to the Philippines without injury thereto;
- ▶ Such goods cannot be marked prior to shipment to the Philippines, except at an expense economically prohibitive of their importation;
- ▶ The marking of a container of such goods will reasonably indicate the origin of such goods;
- ▶ Such goods are crude substances which require further processing;
- ▶ Such goods are imported for use by the importer and not intended for sale in their imported or any other form;
- ▶ Such goods are to be processed in the Philippines by the importer or for the importer's account other than for the purpose of concealing the origin of such goods and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;
- ▶ An ultimate purchaser, by reason of the character of such goods or by reason of the circumstances of their importation, must necessarily know the country of origin of such goods even though they are not marked to indicate their origin;

- ▶ Such goods were produced more than 20 years prior to their importation into the Philippines; or
- ▶ Such goods cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the goods before importation was not due to any purpose of the importer, producer, seller or shipper to avoid compliance with the provision on exemption.

5. **Marking of Exempted Goods.** Whenever goods are exempt from the marking requirements, the immediate container, if any, of such goods, or such other container or containers of such goods, shall be marked in such manner as to indicate to an ultimate purchaser in the Philippines the name of the country of origin of such goods in any official language of the Philippines.

- ▶ This Order specifically amends or repeals CAO No. 228-1958, CMO No. 122-1988 and other previously issued CAOs and CMOs which are inconsistent with the provisions herein stated.
- ▶ This Order shall take effect 30 days after its complete publication in the Official Gazette or a newspaper of general circulation.

(Editor's Note: CAO No. 02-2019 was published in The Manila Times on 6 February 2019)

CMO No. 05-2019 provides for the Rules and Regulations on Registration of Truckers.

CMO No. 05-2019 dated 4 February 2019

- ▶ This Order shall apply to all truckers dealing directly with the BOC, for and on behalf of the importer or exporter relating to the transportation of goods.
- ▶ The term "Truckers" refer to the operators of land carriers that transport imported goods from the port of entry to another port of entry as exit point, Customs Facilities and Warehouses (CFWs), Customs Bonded Warehouses (CBWs), Free zones, and to the consignee's premises.
- ▶ Operational Provisions
 1. **Registration of Truckers with the BOC.** All Truckers are required to be registered with the BOC before they may be authorized to transport imported goods; provided that, prior thereto, all Truckers shall first register with the BOC's Client Profile Registration System (CPRS).
 2. **Registration Office.** Truckers or their duly authorized representative shall file their registration application with the:
 - ▶ Account Management Office (AMO), if the applicant is within Metro Manila; or
 - ▶ Office of the District Collector nearest to its principal place of business, if the applicant is outside Metro Manila.
 3. **Procedure of New Application for Registration.** A duly accomplished application for registration under oath and a copy thereof shall be filed with the AMO upon payment of a P5,000 registration fee. The application shall be accompanied with the supporting documents enumerated in the CAO.

4. **Inspection of Office Address.** The BOC may conduct an on-site verification or a post-inspection to ascertain whether the declared office provided in the application is correct. If during the inspection it was found out that the applicant is not maintaining the declared office and garage, the registration shall be disapproved.
 5. **Approval/Disapproval of Application for Registration.** Pending the restructuring of BOC offices, all applications for registration shall be approved or disapproved by the Commissioner of Customs, upon the recommendation of the Deputy Commissioner for Intelligence Group. Applications shall be processed and evaluated by the AMO within five working days from receipt of complete documentary requirements. In case of discrepancy in the documents submitted, the AMO shall inform the applicant through email to address the discrepancy.
 6. **Certificate of Registration.** Approved application for registration shall be evidenced by a Certificate of Registration which is automatically issued under the CPRS.
 7. **Grounds for Denial of Application.** Submission of spurious documents or making untruthful statements shall warrant a denial of the application for registration with the BOC.
- ▶ **Validity Period of Registration.** The registration of truckers with the BOC shall be valid for 3 years from the date of its approval, unless sooner revoked or suspended. In case the issued Certificate of Public Convenience (CPC) provides for a shorter period of its validity, the period of registration with the BOC shall be valid with the same duration as that of its CPC. Applications for renewal of registration should be filed at least 30 days prior to the expiration of the validity period to ensure continuous validity of accreditation.
 - ▶ **Security.** Truckers that transport imported goods that shall be placed under customs transit from a port of entry to other ports shall post a general transportation security amounting to at least P50,000 to ensure the complete and immediate delivery of goods to the customs officer at the port of destination, and the payment of pertinent customs charges and expenses and other transfer costs. The amount of the security may be adjusted by the Commissioner, upon approval of the Secretary of Finance.
 - ▶ **Reportorial Requirements.** Any change in the information provided to the BOC in any of the documentary requirements must be reported to the AMO by submitting an affidavit stating such change, attaching thereto the relevant supporting document/s for said purpose. The report shall be made within 30 days from the occurrence of such change.
 - ▶ **Change in CPRS.** In case of change of circumstance in the CPRS registration of the Trucker, the following shall be submitted: (1) Affidavit of Change of Circumstances with supporting documents; (2) Letter-request for amendment / cancellation of CPRS.
 - ▶ **Annual Documentary Updating for Registered Truckers.** Registered Truckers shall be required annually to submit to the AMO within 15 days from the date of approval of BOC Registration some of the updated documents submitted during the application for registration.

- ▶ It shall be mandatory for registered Truckers to provide the AMO their existing, accurate and official e-mail addresses and contact numbers, and changes, modification or update thereto where the BOC shall send notices and communications. Notices and communications sent to the registered Trucker's official e-mail addresses shall be deemed received, unless there is an electronic system notification of non-delivery.
- ▶ Any complaint or recommendation for suspension, revocation or cancellation and reactivation of the registration of the Trucker shall be filed with the Chief, AMO, who shall prepare a disposition for consideration of the Commissioner which shall be subject to the latter's approval. The final order on the matter shall be endorsed to the AMO for immediate implementation.
- ▶ This CMO shall take effect 30 calendar days after its publication at the Official Gazette or a newspaper of national circulation.

(Editor's Note: CMO No. 05-2019 was published in The Manila Times on 13 February 2019 and should be effective 15 March 2019. However, the implementation of CMO No. 05-2019 is currently suspended until further notice based on Memorandum dated 19 February 2019 from the BOC Commissioner)

CMO No. 06-2019 provides for the Amendment to Section 3.1 (Issuance of Alert Orders) of CMO No. 07-2018 on the "Revised Rules for the Electronic/ Manual Issuance and Lifting of Alert Orders at All Ports of Entry."

CMO No. 06-2019 dated 11 February 2019

- ▶ Pursuant to Section 111, paragraph 7 of the CMTA, Sec. 3.1, paragraph 2 of CMO No. 07-2018 is hereby amended to read as follows:

Sec. 3.1 Issuance of Alert Orders.

Alert Orders shall be validated, dated, assigned a unique reference number in series, and monitored by the Alert Order Clearing House Desk under the Deputy Commissioner, Intelligence Group, which shall be the basis for reporting to and monitoring by the Commissioner and the Secretary of Finance. Hence, all alert orders for issuance shall be coursed thru the Alert Order Clearing House Desk.

- ▶ All other provisions of CMO No. 06-2018 which are not in conflict and inconsistent with this CMO shall remain valid and in effect.
- ▶ This Order shall take effect immediately.

(Editor's Note: CMO No. 06-2019 was received by the UP Law Center on 15 February 2019)

CMO No. 07-2019 provides for the Use of BOC Logos and Marks by Third Parties.

CMO No. 07-2019 dated 14 February 2019

- ▶ This Order aims to provide clear guidelines on the allowable usage of logos and marks which belong to the BOC and to prevent public confusion caused by inappropriate usage of BOC logos and marks by third parties and shall apply to all documents, communications, or forms, whether in printed or electronic format, that are issued by or through third parties that work with, connect to, or anyway interact with, the BOC.
- ▶ Violation of the provisions of this Order shall be subject to the appropriate civil and/or criminal liability, in addition to the administrative sanctions that may be imposed by the BOC.

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

(Editor's Note: CMO No. 07-2019 was published in The Manila Times on 15 February 2019)

CMO No. 10-2019 provides for the Revised Procedure Governing Utilization of TCC.

CMO No. 10-2019 dated 19 February 2019

- ▶ The original grantee of the Tax Credit Certificate (TCC) or the authorized transferee/representative must file with the TCC Secretariat a written request to utilize the TCC, attaching thereto the Affidavit of Authenticity, balance and no outstanding obligation, original TCC/s, Debit Memos, if any, Import Entry and Internal Revenue Declaration (IEIRD) copy, Bill of Lading/Airway Bill, Packing List, Invoice and other pertinent documents.
- ▶ Upon approval of the Commissioner of the written request to utilize the TCCs, the Office of the District Collector shall evaluate the completeness of all documents before the issuance and release by the Cash Division of the corresponding BOC Official Receipt (BCOR) to the claimant.
- ▶ This Order shall take effect immediately.

(Editor's Note: CMO No. 10-2019 was received by the UP Law Center on 33 February 2019)

CMO No. 11-2019 provides for the Revised Procedure for the Verification of Outstanding Balances of VAT TCCs for the Issuance and Processing of NPS.

CMO No. 11-2019 dated 19 February 2019

- ▶ This order covers all VAT TCCs issued by the BOC pursuant to Sec. 112 of the National Internal Revenue Code (NIRC) and VAT portions of TCCs issued jointly by the BOC and the Department of Finance, and Section 900 of the CMTA.
- ▶ Operational Provisions
 1. The TCC holder shall surrender the original TCC together with a letter request for application for VAT monetization of the outstanding balance of the TCC, and for the issuance of the corresponding NPS. All the documents shall be submitted to the Tax Credit Committee or equivalent office.
 2. The Tax Credit Secretariat shall prepare a resolution for signature of the Tax Credit Committee members approving the request for monetization and shall submit the same to the Commissioner for approval. Thereafter, the TCC resolution duly approved by the Commissioner shall be indorsed to the Financial Management Office (FMO) for preparation of the corresponding NPS equivalent to the amount or remaining balance of the VAT TCC.
 3. The Holder/Transferee may opt not to monetize the NPS immediately subject to the condition that its conversion will only be allowed if it is surrendered to the BOC at least 2 months before its maturity date; or may monetize the NPS through the authorized Government Financial Institutions (GFI) at a discounted price to be prescribed by the latter.
 4. Upon maturity of the NPS, the Cashier will prepare a check corresponding to the Disbursement Voucher prepared by the FMO and release the check.

- ▶ This Order shall take effect immediately.

(Editor's Note: CMO No. 11-2019 was received by the UP Law Center on 22 February 2019)

CMO No. 12-2019 provides for the Provisional Safeguard Duty of Imported Cement Classified under AHTN Codes 2523.2990 and 2523.9000.

CMO No. 12-2019 dated 14 February 2019

- ▶ This CMO is implemented to provide the provisional safeguard duty to all imported cement in compliance to the directive of the Secretary of Finance and covers all importation of cements with HS Code 2523.2990 and 2523.9000 from various countries, except developing countries listed in Annex A of the CMO. Further, shipments of cement that are in transit prior to the effectivity of this Order shall be exempted herein.
- ▶ The provisional safeguard duty in the form of cash bond amounting to Php 210/MT is hereby imposed for all importation of cements with HS code 2523.2990 and 2523.9000 for a period of 200 days from the date of effectivity of this CMO.
- ▶ This Order shall take effect immediately until revoked.

(Editor's Note: CMO No. 12-2019 was received by the UP Law Center on 22 February 2019)

PEZA Update

PEZA Memorandum Circular No. 2019-006 circularizes the IRR of the Occupational Safety and Health Act.

PEZA Memorandum Circular No. 2019-006 dated 30 January 2019

- ▶ The Department of Labor and Employment (DOLE) issued the Implementing Rules and Regulations (IRR) of Republic Act No. 11058 (Occupational Safety and Health Act) under Department Order No. 198 series of 2018:
 1. Link to full text: http://www.bwc.dole.gov.ph/images/Issuances/DepartmentOrder/DO198_19_IRR_of_RA_11058_AnActStrengtheningCompliancewithOSHSandProvidingPenaltiesForViolationsThereof.pdf
- ▶ Salient features -
 1. Safety officers may be classified as safety officer 1 to 4, depending on hours of Occupational Safety and Health (OSH) training and experience.
 - ▶ Accreditation with DOLE is no longer necessary.
 2. Workplaces are now classified as low, medium, or high risk establishments
 - ▶ The company's safety officer, in coordination with DOLE, is tasked with identifying the level of risk of its workplace.
 - ▶ The number of safety officers and occupational health personnel, and nature of facilities, will depend on the level of risk of the workplace and the number of workers.
 3. Worker's OSH seminars, which is an 8-hour module as prescribed by the OSH standards, are required to be given to all workers by the company safety officer or by a DOLE-accredited training organization.

4. Work stoppage order (WSO) may now be implemented by the employer, safety officer, or worker if there is imminent danger in the workplace.
 - ▶ The DOLE must be immediately notified that an imminent danger situation exists in the workplace.
5. Administrative fines may be imposed by the DOLE for any willful failure to comply with OSH standards or with a compliance order issued by the said agency.

SEC Opinions and Issuances

SEC-OGC Opinion No. 19-01 dated 31 January 2019

A sale or disposition of all assets of a single branch office does not constitute a sale or disposition of all or substantially all of the assets of a corporation that would require the approval of the stockholders.

Facts:

A Co. maintains 5 branches across the country. It intends to assign all assets of one of its branches to a single proprietorship. The assets of the 5 branches are more or less about the same size.

Issue:

Does the sale constitute a sale of all or substantially all of the assets of A Co. that would require the stockholders' approval?

Held:

No. Sec. 40 of the Corporation Code defines the term 'sale or disposition of all or substantially all the assets' as one which will render the corporation incapable of continuing the business or accomplishing the purposes for which it was incorporated. Any disposition short of this will not need stockholders' action. Thus, since the property to be sold constitutes merely a part of the assets of A Co., the board of directors, even without stockholders' approval, may dispose the same.

SEC-OGC Opinion No. 19-02 dated 28 January 2019

The term 'foreign national' under RA 8556 or the Financing Company Act, as amended by RA 10881, refers to both individuals and juridical entities.

Facts:

A foreign corporation seeks to establish a 100% foreign-owned financing company in the Philippines where it will be the majority stockholder.

Issue:

Can a foreign corporation hold or own the majority shares of stock of a financing company?

Held:

Yes. Under the Foreign Investments Act, a Philippine national is an individual Filipino citizen or a domestic corporation or partnership either wholly owned or 60% owned by Filipino citizens. It likewise defines a non-Philippine national as the reverse of the term Philippine national.

Applying this rule to RA 8556, as amended by RA 10881, the term 'foreign national' cannot be said to relate exclusively to individuals but shall include even juridical entities. Thus, since the nationality requirement has been removed by RA 10881, a foreign corporation can own the majority shares of stock of a financing company.

SEC MC. No. 2 provides for the amendment of the implementing rules of the Investment Company Act pertaining to the responsibilities of independent accountants and auditors.

SEC Memorandum Circular No. 2 dated 7 February 2019

The following key amendments have been incorporated in Rule 5.8.2:

- ▶ Report of any non-compliance by an investment company, fund manager and/or fund distributor with their contractual and regulatory requirement shall be based solely on the matters discovered from performing the audit.
- ▶ The engagement contract between the company and the independent auditor shall contain a provision that the disclosure of information by the independent auditor shall not constitute a breach of confidentiality nor shall be a ground for civil, criminal or disciplinary proceedings against the independent auditor.
- ▶ Independent auditors and accountants shall observe the principles on the expectation for an effective audit function under Financial Reporting Bulletin No. 19.

(Editor's Note: Published in the Philippine Daily Inquirer & The Manila Times on 12 February 2019)

SEC MC. No. 3 defers the application of the guidelines for the implementation of PFRS No. 15 issued by the PIC for the real estate industry.

SEC Memorandum Circular No. 3 dated February 8, 2019

In order to address the issues raised by the real estate industry, the SEC resolved to defer the application of PIC Q&A Nos. 2018-12(H) and 2018-14, as follows:

- ▶ The deferment shall be for a period of 3 years or until 1 January 2021;
- ▶ A real estate company may opt to defer the application of the above guidelines but shall disclose in the Notes to the Financial Statements the accounting policies applied and a qualitative discussion of the impact in the financial statements had the said guidelines been adopted; and
- ▶ A change in the accounting period resulting from the deferment have to be accounted for under Philippine Accounting Standard (PAS) 8 together with the corresponding required quantitative disclosures.

(Editor's Note: Published in the Manila Standard & Manila Bulletin on 21 February 2019)

SEC MC. No. 4 provides for adoption of the Sustainability Reporting Guidelines for publicly-listed companies.

SEC Memorandum Circular No. 4 dated 15 February 2019

To promote sustainability reporting and make it relevant for the publicly-listed companies, the SEC resolved to issue the above guidelines and shall be complied as follows:

- ▶ The report shall be submitted together with the company's Annual Report (SEC Form 17-A);

- ▶ The guidelines shall be adopted on a “comply or explain” approach for the first 3 years upon implementation, i.e., companies may either attach the reporting template to the Annual Report or provide explanations for items where they still have no available data on; and
- ▶ Non-attachment of the report shall be subject to the penalty for Incomplete Annual Report provided under SEC MC No. 6 series of 2005.

(Editor’s Note: Published in the Manila Standard & Manila Bulletin on 21 February 2019)

BSP Issuances

BSP Circular No. 1030 dated 5 February 2019

Circular No. 1030 provides for the amendments to the foreign exchange regulations.

- ▶ The following provisions of the Manual of Regulations on Foreign Exchange Transactions (FX Manual, issued under Circular No. 645 dated 13 February 2009, as amended) are further revised.
 1. PART ONE. RULES ON FOREIGN EXCHANGE TRANSACTIONS - Chapter 1 - GENERAL PROVISIONS - Sections 5 and 6
 2. Part TWO. CURRENT ACCOUNT TRANSACTIONS - Chapter 1 - NON-TRADE FOREIGN EXCHANGE RECEIPTS AND DISBURSEMENTS, CROSS-BORDER TRANSFER OF LOCAL AND FOREIGN CURRENCIES, AND GOLD TRANSACTIONS - Section 3 - Peso Accounts of, and Sale of Foreign Exchange to, Non-Residents
 3. PART THREE. FINANCIAL ACCOUNT TRANSACTIONS -
 - ▶ Chapter 1 - LOANS/BORROWINGS AND GUARANTEES - Section 22 - General Policy; Section 24 - Private Sector Loans/Borrowings; Section 25 - Servicing; Section 30 - Guarantees and Other Similar Arrangements; and Section 31 - Other Financing Schemes/Arrangements
 - ▶ Chapter 2 - INWARD INVESTMENTS - Section 32- General Policy; Section 33 - Inward Foreign Investments in instruments issued by Residents; Section 34 - Inward Investments in Instruments Issued by Non-Residents; Section 35 - Other Forms of Investments; Section 36 - Registration with BSP; Section 37 - Registration with AABs; Section 38 - Servicing of Investments; Section 39 (Reserved); Section 40 (Reserved); Section 41 - Deposit of Peso Divestment/Sales Proceeds; and Section 42 - Reinvestment
 - ▶ Chapter 3 - OUTWARD INVESTMENTS - Section 43 - General Policy and Section 44 - Outward Investments by Philippine Residents
 4. PART FIVE. FOREIGN EXCHANGE FORWARDS AND SWAPS AND OPEN FOREIGN EXCHANGE POSITION OF BANKS
 - ▶ Chapter 1 - FOREIGN EXCHANGE FORWARDS AND SWAPS WITH AABs INVOLVING THE PHILIPPINE PESO - Section 88 - General Policy; Section 90 - Documentation; and Section 91 - Tenor/Maturity and Settlement
 5. PART SIX. GENERAL PROVISIONS
 - ▶ Chapter 1 - REPORTS AND POST VERIFICATION - Section 101 - Reportorial Requirements

- ▶ Section 2 of this Circular enumerates Appendices/Annexes to the FX Manual which have been revised, added and/or deleted by this Circular.
- ▶ Section 3 of this Circular on Transitory Provision provides that the submission of the revised Annex X (Report on Foreign Investments Registered with the BSP) and new Annex AD [Report on Foreign Direct Investments (FDIs)] Registered with Authorized Agent Banks (AABs) shall commence six months from effectivity of this Circular. During the transitory period, AABs shall continue to submit the old Annex X.
- ▶ Section 4 of this Circular supersedes/amends/modifies the provisions of existing BSP circulars, circular letters, memoranda and/or regulations that are inconsistent herewith.
- ▶ Section 5 of this Circular provides that any violation of the provisions of this Circular shall be subject to applicable penalties/sanctions under the Manual of Regulations on Foreign Exchange Transactions (as amended), Republic Act No. 7653 or the New Central Bank Act, and other applicable laws.
- ▶ This Circular shall take effect 15 banking days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

(Editor's Note: BSP Circular No. 1030, s. 2019 was published in The Manila Bulletin on 14 February 2019)

Circular No. 1031 provides for the Additional Guidelines on the Grant of Licenses/Authorities and Types of Licenses of Permissible Activities.

BSP Circular No. 1031 dated 7 February 2019

- ▶ The Circular provides for the (i) classification of existing licenses being granted by the Bangko Sentral in accordance with the types of licenses provided under Subsection X1101.1 of the Manual of Regulations for Banks (MORB) and Subsections 41101Q.1/4501S.1/4501P.1/4110N.1/4201T.1. of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI); and (ii) corresponding amendments to the licensing requirements of the Bangko Sentral.
- ▶ Section X1102 of the MORB provides for the type of license attached to permissible activities of Bangko Sentral supervised financial institutions (BSFIs).
- ▶ Section 41102Q/4502S/4502P/4111N/4202T of the MORNBFI provides for the Type of License of Permissible Activities of Bangko Sentral supervised financial institutions (BSFIs).
- ▶ Subsection X1101.2 of the MORB provides the prudential criteria in determining the eligibility of BSFIs for the licenses/authorities being applied for. In this respect, Sections 2404/3404 and Subsections X151.3/X151.5/X151.10/X376.1/X376.5/X382.1/ X382.3/X404.1/X404.2/X404.4 of the MORB are hereby amended to apply the prudential criteria set out under Subsection X1101.2 and to amend the licensing requirements for each classification as follows:

1. Permissible Activities with Type A License

- ▶ Establishment of Branches/Branch-lite Units
- ▶ Equity Investment in Allied and Non-Allied Undertaking

- ▶ Investments in Subsidiaries and Affiliates Abroad
- ▶ Trust and Other Fiduciary Business

2. Permissible Activities with Type C License

- ▶ Relocation/Voluntary Closure of Branches/Branch-lite Units
- ▶ Outsourcing/Insourcing of Banking Functions
- ▶ Servicing Deposits Outside Bank Premises
- ▶ Amendment of the Plan Rules of UITF

3. Permissible Activities with Type A License upon Initial Application and Expansion of Activities/Licenses classified as Type C License

- ▶ Bank Offices as Outlet of Financial Products of Allied Undertakings/ Investment Houses (Cross-Selling Activities)
- ▶ Marketing, Sale and Servicing of Microinsurance Products

▶ Sections X1103/41103Q/4503P/4112N/4203T of the MORB/MORNBF are hereby added to cover the types of fees applicant BSFIs are required to pay consequent to its filing of an application for Types A and B license/authority.

▶ The following Subsections of the MORB are hereby deleted:

Deleted Subsections	Title/Description	Covered by Section/ Subsection
Subsection X382.2	Requirements for establishing subsidiaries or affiliates abroad	Subsection X382.1
Subsection X404.4	Prerequisites for engaging in trust and other fiduciary business	Subsection X404.1,
Subsection X151.19	Telling booths	Section X213
Subsection 4151Q.3	Other requirements/ factors to be considered	Subsection 41101Q.2
Subsection 4151Q.4	Conditions precluding processing of applications	Subsection 41101Q.2

▶ The following provisions with reference to “special licensing fee” under Subsection X151.5 are hereby deleted:

Subsections	Deleted Provision
Sec. X152	Xxx Provided, That head offices located outside the cities previously considered as restricted areas as defined under Subsec. X151.4 which will be relocated therein shall be subject to the special licensing fee under Subsec. X151.5 upon approval of the relocation. Xxx
Subsection X153.2	Xxx Provided, That sub-branch applications in the cities previously considered as restricted areas as defined under Subsec. X151.4 shall also be subject to the special licensing fee under Subsec. X151.5, as applicable.

- ▶ Applications filed with the Bangko Sentral prior to the effectivity of this Circular shall not be charged with processing and licensing fees provided under Sections X1103/ 41103Q/4503P/4112N/4203T. For applications related to branching activities covered under Subsection X151.5, as amended, approved after the effectivity of this Circular, the processing fees provided under the said Subsection, as amended, shall be collected upon approval of the application.

Applications for Type C licenses received prior to the effectivity of this Circular shall be deemed to have complied with the notification/certification requirements if after thirty (30) banking days from the effectivity of this Circular, the appropriate supervising department of the FSS does not advise the BSFI concerned of any deficiency on such application.

The foregoing provision shall be incorporated as a footnote to Sections X1102/41102 Q/4502S/4502P/4111N/4202T of the MORB/MORNBFI.

- ▶ 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. 1031, s. 2019 was published in The Manila Bulletin on 19 February 2019)

Circular No. 1032 provides for the amendments to the Guidelines on the Basic Security Deposit Requirement.

BSP Circular No. 1032 dated 15 February 2019

- ▶ The following are the amendments to the MORB and MORNBFI on the administration of compliance with the basic security deposit requirement.
- ▶ Subsections X405.4/4405Q.4, X415.4/4415Q.4 and X960.5/4960Q.5 on Compliance with the basic security deposit requirement of the MORB/MORNBFI were amended by this Circular.
- ▶ Subsections X441.14/4441Q.14/4441N.14 on Required Reports were amended to provide that an accredited securities custodian shall comply with the reportorial requirements, prescribe under item "b" of Subsec. X405.4/4405Q.4
- ▶ The amendments to Appendices 34/34a and Q21/Q21a of the MORB/MORNBFI are attached as Annex A of this Circular.
- ▶ The reportorial templates covering reports on basic security deposit transactions and quarterly compliance were amended by this Circular in the following annexes:

Annex	Form Number	Report Title
B	BSD-Form-1	Quarterly Report on Compliance with the Basic Security Deposit Requirement (with certification from the authorized officer)
C	BSD-Form-2	Report Basic Security Deposit Transaction (with certification from the authorized officer)
D	BSD-PERA-Form-1	Quarterly Report on Compliance with the Basic Security Deposit Requirement for the PERA Administrator (with certification from the authorized officer)
E	BSD-PERA-Form-2	Report on Basic Security Deposit Transaction for the PERA Administrator (with certification from the authorized officer)

- ▶ Appendix 6 of the MORB and Appendices Q-3, T-3 and N-1 of the MORNBF1 were amended by this Circular to include the following reports:

Category	Form Number (Annex Number)	MOR/ MORNFI Ref	Report Title	Frequency	Submission Deadline	Submission Procedure
B	BSD-Form-1 BSD-PERA-Form-1	X405.4/ X415.4/ 4405Q.4/ 4112.4 X960.5/ 4960Q.5	Quarterly Report on Compliance with the Basic Security Deposit Requirement (with certification from the Trust Officer in the case of trust entities, and designated/ authorized officer)	Quarterly	20 banking days after end of every quarter	e-mail to BSD-Quarterly@bsp.gov.ph SDC e-mail and to appropriate supervising departments
B	BSD-Form-2 BSD-PERA-Form-2	X405.4/ X415.4/ 4405Q.4/ 4112T.4 X960.5/ 4960Q.5	Report on Basic Security Deposit Transactions with certification from the designated/ authorized officer	On every deposit, withdrawal, replacement or redemption of securities	3 banking/ business days prior to date of securities transfer	e-mail to BSD-Transactiona@bsp.gov.ph and to appropriate supervising departments

- ▶ Financial Reporting Package for Trust Institutions (FRPTI) and Financial Reporting Package for Trust Corporation (FRPTC) were amended by this Circular.
- ▶ This Circular shall take effect 15 days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

(Editor's Note: BSP Circular No. 1032, s. 2019 was published in the Manila Bulletin on 27 February 2019)

Circular No. 1033 provides for the amendments to the Regulations on Electronic Banking Services and Other Electronic Operations.

BSP Circular No. 1033 dated 22 February 2019

- ▶ The following are the amendments to the MORB and MORNBF1 on electronic banking services and other electronic operations. The amendments mainly take into account the developments in electronic payment and financial services (EPFS).
- ▶ Section X701/4701Q on Policy Statement on Electronic and Financial Services was amended by this Circular.
- ▶ The following Subsections were also amended by this Circular:
 1. Subsection X701.1/4701Q.1 - Definition of Terms to include the definition of "EPFS" and "Transaction Account"
 2. Subsection X701.2/4701Q.2 - Classification of EPFS into 1) Basic EPFS and 2) Advanced EPFS

3. Subsection X701.3/4701Q.3 - Requirements for the Grant of Authority to Offer EPFS which provides that BSFIs that intend to offer EPFS shall obtain the appropriate authority/license
 4. Subsection X701.4/4701Q.4 - Compliance with Relevant Regulations of the BFSI that has been granted an advanced EPFS authority
 5. Subsection X701.5/4701Q.5 - Enhancements and Other Changes in EPFS which provides that BSFIs shall seek prior Bangko Sentral approval in certain changes in their licensed EPFS
 6. Subsection X701.6/4701Q.6 - Reportorial Requirements
 7. Subsection X701.12/4701Q.12 - Enforcement Action
 8. Subsections 4641S.1/4641P.1/4904T.1/4641N.1 - Requirements for the Grant of Authority to Offer EPFS which provide that BSFIs that intend to offer EPFS shall obtain the appropriate authority/license
 9. Subsections 4641S.2/4641P.2/4904T.2/4641N.2 - Reportorial Requirements
 10. Subsections 4641S.3/4641P.3/4904T.3/4641N.3 - Participation in Automated Clearing Houses (ACHs) which provide that BSFIs that have been licensed to offer funds transfer services shall make these services interoperable by participating in an ACH. Prior to its participation, a BFSI shall observe certain guidelines.
- ▶ Some portions of the MORB/MORNBFi were amended to reflect the revised licensing requirements for EPFS. In particular, the rules applicable to transactions performed under the National Retail Payment System (NRPS) are hereby revised and all references to the previous title of Part Seven of the MORB/MORNBFi Q-regulations are hereby changed to Electronic Payment and Financial Services.
 - ▶ Subsections X701.7 and X701.8/4701Q.7 and 4701Q.8 were deleted by this Circular.
 - ▶ BSFIs shall re-register their EPFS by accomplishing the re-registration form with covering certification (Attachment 2 of this Circular). The re-registration form shall be electronically submitted with the subject "EPFS Re-registration - <name of BSFI> - <date-YYYYMMDD>" to epfs-licensing@bsp.gov.ph not later than 31 March 2019 while the covering certification shall be sent to the Financial Technology Sub-sector of the Bangko Sentral. Failure to submit the re-registration form by 31 March 2019 shall result in the revocation of the issued license/s.
 - ▶ Appendix 6 of the MORB and Appendix Q-3/S-2/N-1/P-13/T-13 of the MORNBFi were amended by this Circular. The specific guidelines on the mode and manner of submission of the abovementioned reports (including corresponding reporting templates) shall be covered by a separate memorandum issuance.
 - ▶ This Circular shall take effect 15 days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

(Editor's Note: No publication yet as of 27 February 2019)

Court Decisions

CIR vs. Freeliffe Philippines Distribution, Inc. - Philippine Branch

CTA (*En Banc*) Case No. 1714 promulgated 4 January 2019

The issuance of the FAN via electronic mail is not sanctioned by any law, rules or regulations.

Facts:

Petitioner CIR assessed Respondent Freeliffe Philippines Distribution, Inc. - Phil. Branch (FPDI) for deficiency income tax and VAT for taxable year 2009. FPDI protested and upon issuance of a Final Decision on Disputed Assessment (FDDA), filed a Petition for Review with the CTA.

At the CTA, FPDI argued that the assessment is void for failure of the BIR to strictly comply with the procedural due process as the Final Assessment Notice (FAN) was issued even before the lapse of the 15-day period to protest the Preliminary Assessment Notice (PAN). The CIR took the position that the assessment was valid as FPDI was fully apprised of the facts and the law on which it was issued. Due to FPDI's failure to timely file a Petition for Review at the CTA, the BIR posited that the assessment has already become final, executory, and demandable.

The CTA Second Division ruled in favor of FPDI. Aside from the premature issuance of the FAN, it voided the assessment as the mode of delivery of the FAN was neither through personal service nor registered mail, as provided under Section 3.1.4 of RR 12-99, but through electronic mail.

Issue:

Can the FAN be served to taxpayers through electronic mail?

Ruling:

No. The issuance of the FAN via electronic mail is not sanctioned by any law, rules or regulations.

Section 3.1.4 of RR 12-99 provides that the Final Letter of Demand (FLD) and assessment notice shall be sent to the taxpayer only by registered mail and by personal delivery. The use of the word "shall" indicates the mandatory nature of the requirement. It is essential for the BIR to prove that the FLD and assessment notices were duly served to FPDI either by registered mail or by personal service.

As found by the CTA 2nd Division and as admitted by the parties, the FLD and assessment notices were issued through electronic mail. The BIR did not present any evidence to prove that the FLD and assessment notices were served either through registered mail or by personal delivery, which are the only valid modes of service.

As the BIR failed to comply with the due process requirement in the issuance of the FAN, the deficiency tax assessments are null and void.

CIR vs. GIC Private Limited (Formerly, Government of Singapore Investment Corporation Private Limited)

CTA (*En Banc*) Case No. 1753 promulgated 18 January 2019

Income derived by foreign governments from investments in Philippine bonds is exempt from income and final withholding tax.

Proof of actual remittance of a final withholding tax to the BIR is not a condition before a taxpayer can refund erroneously or illegally collected FWT.

Facts:

Respondent GIC Private Limited (formerly, Government of Singapore Investment Corporation Private Limited) filed a claim for refund with Petitioner CIR for erroneously collected final withholding tax (FWT) by the Bureau of Treasury on interest income earned on its investments in Philippine T-Bonds for January 2013 to July 2014.

Due to the inaction of the CIR on the administrative claim, GIC filed a Petition for Review with the CTA. The CTA Third Division granted the FWT refund, holding that GIC is a non-resident foreign corporation wholly owned by the Government of Singapore and exempt from payment of income tax and consequently, from FWT.

The CIR elevated the case to the CTA *En Banc*.

Issues:

1. Is GIC entitled to the FWT refund?
2. Is proof of actual remittance of FWT required?

Ruling:

1. Yes. Section 32(B)(7)(a) of the NIRC provides that income derived from investments in the Philippines in loans, stocks, bonds, or other domestic securities in the Philippines by foreign governments or financing institutions owned, controlled, or enjoying refinancing from foreign governments are not to be included in gross income and shall be exempt from taxation.
2. No. Proof of actual remittance of a final withholding tax to the BIR is not a condition before a taxpayer can claim erroneously or illegally collected FWT.

FWT is the full and final payment of income tax due from the recipient of the income and the obligation to withhold the tax is imposed by law on the withholding agent. However, it is incumbent upon GIC to prove that it earned income from investments in the Philippines and that taxes were collected thereon. In the instant case, GIC was able to present the Statements of Taxes Withheld and BIR Forms 2306 issued by the Bureau of Treasury showing the FWT on the interest due on the government securities.

Good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, justify the non-imposition of surcharges and interest.

The conduct by the revenue officers of a tax examination on years which were not covered by the LOA justifies the cancellation of the assessment.

CIR vs. Trustmark Holdings Corporation

CTA (*En Banc*) Case No. 1697 promulgated 31 January 2019

Facts:

Petitioner CIR assessed Respondent Trustmark Holdings Corporation for, among others, deficiency Documentary Stamp Tax on intercompany loans. THC paid the basic DST not only for 2009 (the year covered by the Letter of Authority), but also for 2000, 2006, 2007 and 2008. However, it requested the BIR to waive the surcharge and interest as the late payment of DST was due to difficulty in the interpretation of the law. THC subsequently filed an application for abatement to cancel the interest and penalties. Upon receipt of a Final Decision on Disputed Assessment upholding the assessment, THC filed a Petition for Review at the CTA.

The CTA Second Division ordered the cancellation of the interest and surcharge, ruling that intercompany advances were not subject to DST prior to 19 July 2011 when the Supreme Court promulgated its decision in *CIR vs. Filinvest Development Corporation*, GR Nos. 163653 and 167689.

Aggrieved, the BIR elevated the case to the CTA *En Banc*.

Issue:

Is THC liable to interest and penalties on the unpaid DST?

Ruling:

No. Citing *Michel J. Lhuillier Pawnshop, Inc.*, GR No. 166786 promulgated on 11 September 2006, the CTA *En Banc* held that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, justify the non-imposition of surcharges and interest.

The CTA *En Banc* also noted that the BIR acted beyond the scope of its authority in the issuance of the deficiency DST assessment. The coverage of the BIR tax audit is 2009 only. The breakdown of deficiency DST assessment shows that taxable years 2000 and 2006 – 2008 were included. No DST was even assessed for 2009.

The CTA ruled that even assuming THC could not rely on good faith on the rulings issued by the BIR and the courts as these were not specifically issued to THC, the DST assessment should nonetheless be cancelled as the revenue officers who conducted the tax examination assessed alleged deficiency for years which were not even covered by the LOA.

CIR vs. Oce Holding B.V.

CTA (*En Banc*) Case No. 1644 promulgated 23 January 2019

Facts:

Respondent Oce Holding B.V. filed a claim for refund of capital gains tax (CGT) erroneously paid in connection with the transfer of shares in Oce Business Services Philippines, Inc. (now Canon Business Process Services Philippines, Inc.) in favor of Oce Business Services, Inc. in November 2012. Notwithstanding the filing of a tax treaty relief application on capital gains pursuant to Article 14 of the Philippines-Netherlands Tax Treaty, Oce Holding still paid the CGT on the transaction.

Due to the inaction of the BIR, Oce Holding filed a Petition for Review at the CTA. The BIR argued that the BIR Certification attesting that the transaction is exempt from CGT does not state the CGT amount. It also averred that the seller of shares and the exempt entity is Oce N.V., not Oce Holding. Oce Holding argued that Oce N.V. is its former corporate name.

The CTA Second Division ruled in favor of Oce Holding and ordered the BIR to refund the amount representing CGT of the transaction.

Upon denial of its Motion for Reconsideration, the BIR filed a Petition for Review with the CTA *En Banc*.

A change in the corporate name does not make a new corporation and has no effect on the identity of the corporation, or on its property, including entitlement to a tax refund, rights or liabilities.

Issue:

Is Oce Holding entitled to the CGT refund?

Ruling:

Yes. The CTA *En Banc* sustained the ruling of the CTA Second Division that since the sale or transfer of shares of stock is not subject to CGT, it is not important whether the BIR Certification states the exact CGT amount which Oce Holding is exempted from paying. The exemption certification specifically pertains to the subject transaction.

The CTA also held that it was sufficiently proven that Oce Holding and Oce N.V. are one and the same entity. Quoting the Supreme Court ruling in *Javier Sons vs. CA, GR No. 129552 promulgated on 29 June 2005*, a change in the corporate name does not make a new corporation, whether effected by a special act or under a general law. It has no effect on the identity of the corporation, or on its property, rights or liabilities. The corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation. It is the same corporation with a different name, and its character is in no respect changed.

Moreover, the CTA *En Banc* noted that the CIR has a judicial admission in its Petition for Review that Oce Holding B.V. and Oce N.V. are one and the same.

CIR vs. Northern Tobacco Redrying Co., Inc.

CTA (*En Banc*) Case No. 1664 promulgated 31 January 2019

Gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding four persons.

Facts:

Petitioner CIR assessed Respondent Northern Tobacco Redrying Co. (NTRC), Inc. for, among others, deficiency income tax, VAT and EWT on the transfer of assets between NTRC with 4 other related entities and Fortune Landequities and Resources, Inc. (FLRI) in 2010. NTRC executed a Deed of Transfer dated 25 February 2010 in favor of FLRI, transferring land parcels in Vigan, Ilocos Norte in exchange for FLRI shares. As a result of the transaction, NTRC - together with Fortune Tobacco Corporation, Dominion Realty and Construction Co. (DRCC), Parity Packaging Corporation and Orecla Realty, Inc., increased their combined ownership up to 99% resulting in their gaining control over FLRI.

NTRC protested the deficiency assessment and argued that the transaction is a tax-free exchange under Section 40(C)(2) of the NIRC. The CIR posited that a securing a tax-free exchange ruling is a requirement under Revenue Regulations 18-01.

Due to the inaction of the BIR, NTRC elevated the case to the CTA. The CTA Third Division ruled that the transfer of land is a tax-free transaction, and a portion of the assessment against NTRC for VAT, EWT and Withholding Tax on Compensation has prescribed, thereby reducing its tax liability. It ruled that a prior BIR ruling to exempt the transaction from income tax is not required.

Aggrieved, the BIR filed a Petition for Review at the CTA *En Banc*.

Issue:

Is the transaction considered a tax-free exchange under Section 40 (C)(2) of the Tax Code?

Ruling:

Yes. The transaction is not subject to income tax. Citing the Supreme Court ruling in *CIR vs. Filinvest Development Corp.*, GR 163653 and 167689 promulgated on 19 July 2011, the CTA *En Banc* ruled that the property-for-shares transfer qualifies as a tax-free exchange. Gain or loss will not be recognized in case the exchange of property for stocks results in the control of the transferee by the transferor, alone or with other transferors not exceeding four persons.

Pursuant to Section 40 (C)(2) of the Tax Code, the requisites of non-recognition of gain or loss are:

1. The transferee is a corporation;
2. The transferee exchanges its shares of stock for properties of the transferor;
3. The transfer is made by a person, acting alone or together with others, not exceeding four persons; and,
4. As a result of the exchange the transferor, alone or together with others, not exceeding four, gains control of the transferee.

The CTA *En Banc* held that the transaction complies with all the requisites. After the transfers, the transferor continued to collectively control FLRI.

A tax-free exchange ruling is not necessary to claim exemption under the NIRC.

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