

# Tax Bulletin

January 2019



# Highlights

## BIR Ruling

- ▶ Real property held by a corporation primarily engaged in the real estate business is considered an ordinary asset. Hence, the sale of such property will be subject to 30% regular corporate income tax, 5% CWT, and 12% VAT. **(Page 3)**

## BIR Issuances

- ▶ Revenue Memorandum Order (RMO) No. 2-2019 declares the TIN card (BIR Form No. 1931) as an Accountable Form. **(Page 4)**
- ▶ RMO No. 6-2019 provides guidelines, policies and procedures in the renewal of accreditation of printers of principal/supplementary receipts/invoices pursuant to Revenue Regulations (RR) No. 15-2012, as amended by RR No. 5-2016. **(Page 4)**
- ▶ Revenue Memorandum Circular (RMC) No. 5-2019 publishes and disseminates the BIR's Priority Programs for calendar year (CY) 2019. **(Page 5)**
- ▶ RMC No. 6-2019 clarifies the provisions of Section 3 of RMC No. 105-2018 relative to the submission of Alphabetical List of First Buyer/Possessor of Locally Produced Coal from whom excise taxes due on coal were collected by the producer acting as collecting agent for remittance to the BIR. **(Page 6)**
- ▶ RMC No. 17-2019 circularizes the availability of the new BIR Form No. 1701A (Annual Income Tax Return) in the Offline eBIRForms Package v7.3 for Individuals Earning Income Purely from Business/Profession. **(Page 6)**

## BOC Updates

- ▶ This Memorandum provides for the Updating of the Excise Tax Rates for Certain Products under the TRAIN Law and Sin Tax Law in the Electronic to Mobile (E2M) System of the Bureau of Customs (BoC) effective starting 4 January 2019. **(Page 7)**
- ▶ This Memorandum provides for the Strict Implementation of the Provisions of the Customs Modernization and Tariff Act (CMTA) on Implied Abandonment. **(Page 8)**
- ▶ This Memorandum provides for the Clarification on the Implementation of Alcohol and Tobacco Products Excise Tax in the E2M System. **(Page 8)**
- ▶ This Memorandum provides for the Tagging of Goods Abandonment in the E2M System. **(Page 9)**
- ▶ Customs Memorandum Order (CMO) No. 02-2019 provides for the Guidelines in the Conduct of Public Auction and in Setting the Floor Price of Goods Subject thereto. **(Page 10)**

## SEC Issuance

- ▶ SEC MC. No. 1 provides the schedule for the filing of annual reports of corporations registered with the SEC. **(Page 10)**

## BSP Issuances

- ▶ Circular No. 1026 provides for the amendments to Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on Loan Limit to a Single Borrower applicable to Non-Stock Savings and Loan Associations (NSSLAs). **(Page 11)**
- ▶ Circular No. 1027 provides for the Amendments to the Guidelines on the Computation of Required Capital. **(Page 12)**
- ▶ Circular No. 1028 provides for the New Digital Manual of Regulations for Banks (MORB) as of 31 December 2017. **(Page 14)**
- ▶ Circular No. 1029 provides for the Amendments to the Reporting Templates on Bank Loans and Deposits Interest Rates. **(Page 14)**

## Court Decisions

- ▶ A government instrumentality exercising corporate powers is not liable for real property tax on its properties unless the beneficial use of its properties has been extended to a taxable person. **(Page 15)**
- ▶ VAT exemption on sales made by the agricultural cooperatives to members or non-members necessarily includes exemption from the payment of “advance VAT” upon the withdrawal of the refined sugar from the sugar mill. **(Page 17)**
- ▶ The income from for-profit activities of a religious, non-stock, non-profit hospital is not exempt from income tax under Section 30 (E) of the Tax Code, but is subject to the 10% income tax prescribed under Section 27 (B) of the Tax Code. **(Page 18)**
- ▶ Despite acquittal in a criminal case based on reasonable doubt, a taxpayer can be held civilly liable for a tax assessment when the prosecution proves its case in the civil action by a preponderance of evidence.

Without a valid Letter of Authority (LOA), the assessment by the BIR is void. **(Page 19)**

## BIR Ruling

### **BIR Ruling No. 1451-2018 dated 21 December 2018**

---

Real property held by a corporation primarily engaged in the real estate business is considered an ordinary asset. Hence, the sale of such property will be subject to 30% regular corporate income tax, 5% CWT, and 12% VAT.

---

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

A Co., a VAT-registered real estate company, owns certain land and property development accounted for as investment property. The planned development for the property did not materialize, and as such, A Co. was unable to use such property in its business. Effectively, A Co. did not start commercial operations from the time of its incorporation. A Co. eventually sold the property to B Foundation, a non-stock, non-profit corporation.

#### ***Issues:***

Is the real property considered an ordinary asset?

**Ruling:**

Yes, the property is an ordinary asset. The Articles of Incorporation and AFS reveal that A Co. is primarily engaged in the real estate business. Hence, A Co.'s property is classified as an ordinary asset, which, when sold, is subject to regular corporate income tax of 30%, 5% CWT, and 12% VAT.

---

**BIR Issuances**

---

RMO No. 2-2019 declares the TIN card (BIR Form No. 1931) as an Accountable Form.

---

**RMO No. 2-2019 issued on 3 January 2019**

- ▶ To prevent the unauthorized issuance of fake TIN cards within and outside the BIR, the TIN card has been redesigned and declared as an accountable form.
- ▶ The new TIN card will bear a pre-numbered sequential serial number for control and accountability of the concerned BIR office and personnel.

---

RMO No. 6-2019 provides guidelines, policies and procedures in the renewal of accreditation of printers of principal/supplementary receipts/invoices pursuant to RR No. 15-2012, as amended by RR No. 5-2016.

---

**RMO No. 6-2019 issued on 15 January 2019**

- ▶ The accreditation of printers of principal and/or supplementary receipts/invoices shall be valid for 5 years from the date of issuance of the Certificate of Accreditation.
- ▶ Accredited printers of principal and/or supplementary receipts/invoices, who are compliant with the criteria for accreditation under Section 3(2) of RR No. 15-2012, as amended by RR No. 5-2016, are qualified for the renewal of their accreditation.
- ▶ The start of the application for renewal of accreditation shall be 30 days before the expiration of accreditation, and no penalty will be imposed if renewal is done within this 30-day period.
- ▶ A new accreditation number shall be assigned upon renewal of the accreditation and shall be used from the date of issuance of the new Certificate of Accreditation.
- ▶ All accredited printers, who failed to renew their accreditation before its expiration or those who did not pass the re-accreditation process, shall be considered as new applicants and shall undergo the accreditation process pursuant to RMO No. 13-2013.
- ▶ Printers with expired accreditation due to failure to apply for renewal shall not be allowed to continue using said accreditation and are prohibited from printing principal and supplementary receipts/invoices. Thus, all receipts/invoices issued by these printers are considered unauthorized receipts/invoices and should not be used by the taxpayer.
- ▶ Non-accredited printers or printers whose accreditation has expired, but who continue to print principal and supplementary receipts/invoices without valid accreditation, shall be penalized with a penalty of not less than P500,000.00 but not more than P10,000,000.00, and imprisonment of not less than 6 years but not more than 10 years.

- ▶ Applications for renewal of accreditation that are filed prior to the effectivity of this RMO and fall beyond the 30-day renewal period shall not be penalized and shall be processed following the procedures prescribed in this RMO.
- ▶ This RMO shall take effect immediately.

---

RMC No. 5-2019 publishes and disseminates the BIR's Priority Programs for CY 2019.

---

### **RMC No. 5-2019 issued on 16 January 2019**

The BIR has identified the following priority programs for CY 2019:

- ▶ **Run After Tax Evaders (RATE)** - To impress on the taxpayer the fact that tax evasion is a crime, and violators will be caught and punished;
- ▶ **Oplan Kandado** - To carry out at least 1 closure per semester per Revenue District Office (RDO);
- ▶ **Intensified Audit and Investigation** - To intensify audit through maximum utilization of Computer Assisted Audit Tools and Techniques (CAATS);
- ▶ **Enhanced Implementation of Arrears Management Program in the Regional Offices** - To increase by at least 7%, collection of arrears and cancelled/ closed arrears;
- ▶ **Broadening of the Tax Base** - To increase by 5% the active registered business taxpayers' registration from Taxpayer Compliance Verification Drive (TCVD) and Third Party Registration;
- ▶ **Taxpayer Account Management Program (TAMP) Monitoring** - To increase tax compliance of taxpayers included in TAMP on the filing of required returns, including TAMP Withholding Agents and VAT taxpayers, who are required to file the Monthly Alphalist of Payees (MAP)/ Summary Alphalist of Withholding Agents of Income Payments Subjected to Withholding Tax (SAWT)/ Annual Alphalist and the Summary List of Sales/ Purchases/ Importation (SLSP);
- ▶ **Fuel Marking and Field Testing Program** - To develop implementing guidelines for the marking of the locally refined fuels at the refineries and the testing of the presence of these markers on fuels at the fuel retail stations nationwide pursuant to the Fuel Marking and Field Testing Program of the following implementing agencies: the BIR, the Department of Finance (DOF), and the Bureau of Customs (BOC);
- ▶ **e-Invoicing / e-Receipting and eSales Reporting** - To develop the following: a) e-Invoicing/ e-Receipting system - an electronic platform capable of processing and storing electronic invoices and receipts issued by taxpayers on real time or near real time basis containing tax information, VAT and withholding tax details; and b) eSales reporting system - an electronic platform capable of summarizing the electronic invoices and receipts stored by the e-invoicing/ e-receipting system;
- ▶ **Optimization / Implementation of Internal Revenue Integrated System (IRIS) formerly Electronic Tax Information System (e-TIS)** - To roll out the following modules of IRIS System at Revenue Region No. 8 and the LTS: a) Tax Registration System (TRS); b) Collection Remittance and Reconciliation (CRR); c) Returns Filing and Processing (RFP); d) Audit (AUD); e) Case Monitoring System (CMS); f) Taxpayer Compliance System (TCS); g) Taxpayer Accounts System (TAS); and h) Tax Credit and Refund System (TCR);

- ▶ **TRAIN Law Implementation Program** - To monitor selected taxpayers on their compliance with the TRAIN Law, particularly taxpayers who changed registration from VAT to Non-VAT as a result of the increase in threshold and to clarify certain issues raised in the implementation of the TRAIN Law by issuing the appropriate revenue issuances;
- ▶ **Massive Tax Education Campaign / Public Awareness Program** - To develop standard information materials on the Tax Reform Packages;
- ▶ **Implementation of RA No. 11032 or Ease of Doing Business and Efficient Government Service Delivery Act of 2018** - To streamline frontline service of the BIR, to adopt and monitor the Single Window Policy in processing applications of new business registration at the RDO and to monitor the implementation of the Agency's Citizens Charter;
- ▶ **Information and Communications Technology (ICT) Solutions for Improved Taxpayers Services on Availment of Commercial Data Center and Implementation of Electronic Tax Software Provider Certification (eTSP Cert) and use of "PesoNet" and "InstaPay" for tax payments;**
- ▶ **Sustained Compliance with Data Privacy Act** - To continue the conduct of employee awareness relative to IT Security and Data Privacy Act and IT Security Compliance Audit/ Check of BIR offices;
- ▶ **Data Sharing Agreements with other Government Agencies** - To implement data sharing agreements with selected government agencies and LGUs consistent with the Data Privacy Act;
- ▶ **Action on administrative cases against erring revenue officials and employees** - To act upon administrative cases filed against erring revenue officials and employees;
- ▶ **Expedite recruitment of new personnel and promotion of qualified employees;**
- ▶ **Capacity Building Enhancements for BIR officials and employees; and**
- ▶ **Budget Utilization Program.**

---

RMC No. 6-2019 clarifies the provisions of Section 3 of RMC No. 105-2018 relative to the submission of Alphabetical List of First Buyer/ Possessor of Locally Produced Coal from whom excise taxes due on coal were collected by the producer acting as collecting agent for remittance to the BIR.

---

**RMC No. 6-2019 issued on 17 January 2019**

- ▶ On or before the 10<sup>th</sup> day following the close of the month when the sale, transfer, or disposition of coal was made, the producer/collecting agent shall file, through Electronic Filing and Payment System (eFPS), and remit the excise tax collected from first buyers/possessors, using BIR Form 2200M.
- ▶ Beginning January 2019, an alphabetical list of first buyers/possessors showing the TIN, volume of coal sold, and corresponding excise tax collected, shall be submitted on a monthly basis, through email at coal.attachment@bir.gov.ph, or the attachment facility of eFPS, once made available.

---

RMC No. 17-2019 circularizes the availability of the new BIR Form No. 1701A (Annual Income Tax Return) in the Offline eBIRForms Package v7.3 for Individuals Earning Income Purely from Business/Profession.

---

**RMC No. 17-2019 issued on 24 January 2019**

- ▶ The new ITR shall be used by individuals earning income purely from business/ profession who are under the graduated income tax rates with Optional Standard Deduction (OSD) as mode of deductions or those who opted to avail of the 8% flat income tax rate starting the year 2018, which is due on or before 15 April 2019.

- ▶ Taxpayers shall file using manual return, Electronic BIR Forms (eBIRForms) and eFPS and shall pay through manual or online payment.
- ▶ eFPS filers who had already filed and paid the income tax due for 2018 using the old return (BIR Form No. 1701) are still required to file the annual ITR using the new BIR Form No. 1701A and mark it as an amended return.

## **BOC Updates**

---

This Memorandum provides for the Updating of the Excise Tax Rates for Certain Products under the TRAIN Law and Sin Tax Law in the E2M System of the BoC effective starting 4 January 2019.

---

### **Memorandum dated 4 January 2019**

- ▶ Minerals and Mineral Products
  1. All domestic and imported coal and coke - Php 100.00
- ▶ Refined and manufactured mineral oils and motor fuels
  1. Php 9.00
    - ▶ Lubricating oils and greases including, but not limited to, base stock for lube oils and greases, high vacuum distillates, aromatic extracts and other similar preparations, and additives for lubricating oils and greases, whether such additives are petroleum based or not, per liter and kilogram respectively, of volume capacity or weight (Php 8.00; Php 9.00; Php 10.00)
    - ▶ Locally produced or imported oils previously taxed but subsequently reprocessed, re-refined, recycled, per liter and kilogram of volume capacity or weight
    - ▶ Processed gas, per liter of volume capacity
    - ▶ Waxes and petroleum, per kilogram
    - ▶ Denatured alcohol to be used for motive power, per liter of volume capacity;
    - ▶ Asphalts, per kilogram
    - ▶ Naphtha, regular gasoline, pyrolysis gasoline and other similar products of distillation, per liter of volume capacity
    - ▶ Unleaded premium gasoline, per liter of volume capacity
  2. Php 4.50
    - ▶ Diesel fuel oil, bunker fuel oil, and on similar fuel oils having more or less the same generating power, per liter of volume capacity
    - ▶ Liquefied petroleum gas used for motive power, per kilogram
    - ▶ Petroleum coke, per metric ton
  3. Php 2.00
    - ▶ Liquefied petroleum gas, per kilogram

- ▶ Alcohol and Tobacco Products
  1. Effective 2018 onwards, Excise Tax Rates on Alcohol and Tobacco Products shall be increased by 4% every year thereafter.

---

This Memorandum provides for the Strict Implementation of the Provisions of the CMTA on Implied Abandonment.

---

**Memorandum dated 8 January 2019**

- ▶ This Memorandum was issued in furtherance of the BoC's efforts to address port congestion and to improve revenue collection.
- ▶ Section 1129 (b) to (d), in relation to Sections 407 and 403 of the CMTA, which provides for the following cases of implied abandonment:

Implied Abandonment under Section 1129 of the CMTA	Period
Failure to file the goods declaration	Within 15 days from the date of discharge of the last package from the vessel or aircraft, after due notice
Failure to pay the assessed duties, taxes and other charges thereon, or, in case of regulated goods, failure to comply with the required clearances, licenses, and any other requirements, prior to importation	Within 15 days from the date of final assessment
Having paid the assessed duties, taxes and other charges, failure to claim the goods	Within 30 days from payment

- ▶ It is the duty of the District Collector to post a list of all packages discharged and their consignees, whether electronically or physically in the District Office, or send a notice to the consignee within 5 days from the date of discharge.
- ▶ The arrastre or warehouse operator shall report the unclaimed goods to the District Collector for disposition.
- ▶ The one-time extension provided in either Sections 407 or 403 of the CMTA, shall be granted only if the request is filed before the expiration of the original period and invoking for valid reason/s. No further or other extension shall be allowed.
- ▶ For immediate and strict compliance.

*[Editor's Note: This memo was signed by the Commissioner on 11 January 2019]*

---

This Memorandum provides for the Clarification on the Implementation of Alcohol and Tobacco Products Excise Tax in the E2M System.

---

**Memorandum dated 14 January 2019**

- ▶ Alcohol and Tobacco Products Excise Tax under RR Nos. 3-2018 and 17-2012 has been implemented in E2M System effective 4 January 2019:
  1. Alcohol and Tobacco Products
    - ▶ As per BIR RR No. 3-2018 (Date of effectivity of tax rates: 1 July 2018 until 31 December 2019)
      - a. Cigarettes packed by hand – Php 35.00 (Per Pack)



b. Cigarettes packed by machine – Php 35.00 (Per Pack)

► As per RR No. 17-2012

Description	2019
Distilled Spirits Ad Valorem Tax Specific Tax	Proof x Net Retail Price (NRP) per bottle X 20% Proof Liter x Php 23.4
Sparkling Wine NRP per 750 ml up to Php 500.00 NRP per 750 ml is more than Php 500.00	Gauge liter x Php 316.34 Gauge liter x Php 885.73
Fermented Liquors NRP per liter up to P50.60 NRP per liter of more than P50.60 Brewed in microbreweries	Gauge liter X Php 25.42 Gauge liter X Php 25.42 Gauge liter X Php 35.43
Still Wine Alcohol content of 14% or less Alcohol content of more than 14% up to 25%	Gauge liter X Php 37.96 Gauge liter X Php 75.93
Cigars Ad Valorem Tax Specific Tax	NRP per cigar X 20% No. of stick X Php 6.32

---

This Memorandum provides for the Tagging of Goods Abandonment in the E2M System.

---

**Memorandum dated 22 January 2019**

► The Management Information System and Technology Group (MISTG) has made adjustments in the settings of E2M pertaining to goods to be tagged as abandoned pursuant to Sections 1129 (b) and (c) of the CMTA.

1. The goods shall now be tagged abandoned upon the failure to lodge an entry within 15 days from the date of discharge of the last package from the vessel or aircraft (from the original 30 days under the old law). This period to file may be extended on valid grounds for another 15 days upon request by the stakeholder, provided the request is made before the expiration of the original period.

Due to system limitation, where the request for extension to file an entry was granted, the system will no longer tag it as abandoned after the extension has lapsed. Thus, Collection Districts are advised to monitor the 15-day extension.

2. Once the entry is lodged, the goods shall not be tagged abandoned in the E2M pending its final assessment.
3. Thereafter, the goods shall be tagged abandoned upon failure to make the final payment within 15 days from the date of final assessment.

---

CMO No. 02-2019 provides for the Guidelines in the Conduct of Public Auction and in Setting the Floor Price of Goods Subject thereto.

---

### **Customs Memorandum Order (CMO) No. 02-2019 dated 22 January 2019**

- ▶ The floor price of goods subject to Public Auction shall be duly approved by the Office of the Commissioner (OCOM) which shall not be less than the landed cost of the goods taking into account the obsolescence, condition or normal depreciation of goods, including unpaid duties, taxes and other charges, and shall be computed in any of the manner below, as may be applicable:
  1. The average of at least 3 values of similar articles at the time of importation or at least 3 months prior to, plus applicable duties and taxes.
  2. The domestic wholesale price arrived through backward computation using as basis the average of 3 canvassed retail prices of similar articles in the usual and ordinary course of trade.
- ▶ For this purpose, regularly published reference values used by the Imports and Assessment Service (IAS) shall be the basis.
- ▶ The award to the winning bidder, with proof of full payment of the bid amount shall be prepared by the Auction Committee and shall be submitted to the OCOM for approval.
- ▶ This Order shall take effect immediately until revoked.

*[Editor's Note: CMO No. 02-2019 was received by the UP Law Center on 28 January 2019]*

### **SEC Issuance**

---

SEC MC No. 1 provides the schedule for the filing of annual reports of corporations registered with the SEC:

---

### **SEC Memorandum Circular No. 1 dated 10 January 2019**

- ▶ Audited Financial Statements/Reports
  1. For corporations (including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations) whose fiscal year ends on 31 December 2018, the filing of AFS shall be pursuant to a coding schedule depending on the last numerical digit of their SEC registration or license number; For those whose fiscal year ends on date other than 31 December 2018, the filing of AFS shall be within 120 days from the end of their fiscal year;
  2. For Broker Dealers, whose fiscal year ends on a date other than 31 December 2018, the filing of their Annual Audited Financial Report or SEC Form 52-AR shall be within 110 calendar days after the close of their fiscal year; For Broker Dealers whose fiscal year ends on 31 December 2018, the filing of SEC Form 52-AR depends on the last numerical digit of their registration number as prescribed by the Commission.
  3. For listed companies, corporations whose securities are registered but not listed in PSE and other Public Companies covered under Sec. 17.2 of the SRC, the filing of AFS and SEC Form 17-A shall be within 105 calendar days after the end of their fiscal year.
  4. Advance filing may be done by all corporations regardless of the last numerical digit of their registration or license number on or before 22 April 2019.

5. Late filings shall be accepted starting 3 June 2019 and shall be subject to applicable penalties computed from the last day of filing based on the coding schedule depending on the last numerical digit of the SEC registration or license number.

The above schedules shall not apply to corporations whose AFS are being audited by the Commission on Audit (COA) provided that they attach to their AFS: (1) an affidavit signed by the President and Treasurer/Chief Financial Officer attesting to the fact that the company timely provided COA with the financial statements and supporting documents and that the audit of COA has just been concluded; and (2) a letter from COA confirming the information provided in the affidavit.

▶ General Information Sheet

1. For stock and non-stock corporations, the filing of GIS shall be within 30 calendar days from the date of actual annual stockholders/members meeting;
2. For foreign corporations, the filing shall be within 30 calendar days from the anniversary date of the issuance of their respective SEC License.

Corporations covered by the foregoing schedule may file their annual reports thru any of the following options: (1) direct filing in the SEC Head Office and Extension Offices; (2) SEC Express Nationwide; (3) via courier/regular mail for reports without a return copy (the reckoning date of submission shall be the date of actual delivery of the courier to the SEC); (4) SEC Express Online Submission.

*[Editor's Note: Published in The Manila Bulletin and The Manila Standard on 22 January 2019]*

---

## **BSP Issuances**

Circular No. 1026 provides for the amendments to MORNBF1 on Loan Limit to a Single Borrower applicable to NSSLAs.

---

### **BSP Circular No. 1026 dated 6 December 2018**

- ▶ The following are the amendments to the Manual of Regulations for Non-Bank Financial Institutions (MORNBF1) applicable to Non-Stock Savings and Loan Associations (NSSLAs) relative to the limit on the amount of loans that their members may avail of. Said amendments laid down the implementing rules and regulations of the loan limit prescribed under Section 7 of R.A. No. 8367, for consistent and uniform application by NSSLAs.
- ▶ Section 4303S on policy on Loan Limit to a Single Borrower (SBL) was transferred to Subsection 4304S.3. It states that NSSLAs' lending operations shall be bound by the standards and expectations set forth in the NSSLA Law and its implementing rules and regulations. Consistent with policies to encourage judicious utilization of credit among the members and to lay down the minimum requirements and standards under which NSSLAs may organize and operate, the rules on loan limit to a single borrower are hereby adopted.
- ▶ Subsection 4301S.1b on Loan Limit to a Single Borrower was renumbered as Subsection 4303S.1 of the MORNBF1, and amended as follows:

"A NSSLA may grant loans but shall not exceed the member's deposits and capital contributions, plus 12 months of his regular salary as the NSSLA may allow or up to 70% of the fair market value (FMV) of any property acceptable as collateral on first mortgage that he may offer as security.

It shall be the primary responsibility of the NSSLA, its trustees and officers to ensure compliance with the SBL. The Board of Trustees (BOT) shall adopt appropriate policies and procedures, including a system to reasonably monitor compliance, which shall be integrated in the NSSLAs applicable risk management system, e.g., credit, compliance, and/or operational risk management systems.

For this purpose, accurate and adequate records in support thereof shall be made available for verification by the Bangko Sentral.”

- ▶ Subsection 4303S.2 of the MORNBF1 was created to provide for SBL guidelines for purposes of implementing the foregoing.
- ▶ New section was added and the other existing sections of the MORNBF1 were transferred and renumbered as follows:

Section	Description	Numbered/Renumbered as Section/Subsection
New	Grant of Loans and Other Credit Accommodations	4304S
4304S	Loan repayment	4304S.4
4310S	Minimum required disclosure	4304S.10
4311S	Unfair collection practices	4304S.11
4312S	Confidentiality of information	4304S.12
4313S	Sanctions	4304S.15

- ▶ Considering the transfer and renumbering of the above Subsection and Sections, references to the transferred and renumbered provisions are correspondingly amended, as shown below:

Section	Existing cross-reference	Description	New cross-reference
4309S	4301s.1b	Renewal of loans	4303S.1
4311S	4312S	Unfair collection practices	4304S.12
4313S	4310S/4312S	Sanctions	4304S.10/4304.12

- ▶ 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. 1026, s. 2018 was published in The Manila Bulletin on 9 January 2019]*

---

Circular No. 1027 provides for the Amendments to the Guidelines on the Computation of Required Capital

---

#### **BSP Circular No. 1027 dated 28 December 2018**

- ▶ The following are the amendments to the guidelines on the computation of required capital as embodied under Section X111 and X128, Subsections X105.4 and X105.6, and Appendix 63b of the Manual of Regulations for Banks (MORB) as well as Sections 4111Q and 4137Q, Appendix Q-46 and Subsection 4111T.1 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBF1)

- ▶ Section X111 of the MORB was amended to provide for the definition of Capital and the manner of its computation applicable to all domestic banks and foreign bank subsidiaries. The following items shall be added to or deducted from capital:
  1. Deposit for stock subscription reorganized as equity pursuant to Section X128 shall be added to capital.
  2. The following shall be deducted from capital:
    - ▶ Treasury stock;
    - ▶ Unbooked allowance for probable losses (which includes allowance for credit losses and impairment losses) and other capital adjustments as may be required by the Bangko Sentral;
    - ▶ Total outstanding unsecured credit accommodations, both direct and indirect, to directors, officers, stockholders, and their related interests (DOSRI) granted by the bank proper;
    - ▶ Total outstanding unsecured loans, other credit accommodations and guarantees granted to subsidiaries;
    - ▶ Total outstanding loans, other credit accommodations and guarantees granted to related parties, as defined in terms "n", Subsection X141.1, that are not at arm's length terms as determined by the appropriate supervising department of the Bangko Sentral;
    - ▶ Deferred tax assets that rely on future profitability of the bank to be realized, net of any (a) allowance for impairment and (b) associated deferred tax liability, if the conditions cited in PAS 12 on Income Taxes are met: Provided, That, if the resulting figure is a net deferred tax liability, such excess cannot be added to net worth;
    - ▶ Reciprocal investment in equity of other banks/enterprises, whether foreign or domestic, the deduction shall be the lower of the investment of the bank or the reciprocal investment of the other bank or enterprise; and
    - ▶ In the case of RBs/Coop Banks, the government counterpart equity, except that arising from conversion of arrearages under the Bangko Sentral rehabilitation program. With respect to item "b. (3)" hereof, the provision in Subsection X326.1 shall apply except that in the definition of stockholders in said Subsection, the qualification that his stockholdings, individually and/or together with his related interest in the lending bank, should at least amount to two percent (2%) or more of the total subscribed capital stock of the bank, shall not apply for the purpose of this Item.
- ▶ Subsection X105.4.b for capital requirements of foreign banks and Subsection X105.6 for risk-based capital for foreign bank branch of the MORB were also amended by this Circular.
- ▶ Section 4111Q of the MORNBF on minimum required capitalization of quasi-banks was also amended. The applicable capital adjustments are the same as enumerated in Section X111, with added items "b. (7)" and "b. (8)". With

respect to Item “(2)(c)” of Section 4111Q, the provisions of Sec. 4326Q shall apply except that in the definition of stockholders in Subsection 4326Q1, the qualification that his stockholdings, individually and/or together with his related interests in the lending QB, amount to 10% or more of the total subscribed capital stock of the QB, shall not apply for purposes of this Item. Moreover, a QB shall have a minimum capital of P300 million.

- ▶ Subsection 4111T.1 of the MORNBF1 on the capital build-up program of trust corporations was also amended by this Circular.
- ▶ Sections X128/4137Q of the MORB/MORNBF1 on deposits for stock subscriptions was also amended by this Circular.
- ▶ Paragraph 11 of Part II of Appendix 63b/Q-46 of the MORB/MORNBF1 on Qualifying Capital under Basel III Risk-Based Capital (Section X115/4115Q of the MORB/MORNBF1) was also amended by this Circular.
- ▶ This Circular shall take effect 15 calendar days following its publication either in the Official Gazette or in a newspaper of general circulation.

*[Editor's Note: BSP Circular No. 1027, s. 2018 was published in The Manila Bulletin on 18 January 2019]*

---

Circular No. 1028 provides for the New Digital MORB as of 31 December 2017.

---

#### **BSP Circular No. 1028 dated 19 December 2018**

- ▶ This Circular provides for the adoption of the New Digital Manual of Regulations for Banks (MORB) as of 31 December 2017 as shown in Annex A. The New Digital MORB is also available in the BSP website ([www.bsp.gov.ph](http://www.bsp.gov.ph)).
- ▶ This Circular shall take effect 15 calendar days following the publication of the New Digital MORB in the Official Gazette.

*[No publication yet as of 30 January 2019]*

---

Circular No. 1029 provides for the Amendments to the Reporting Templates on Bank Loans and Deposits Interest Rates.

---

#### **BSP Circular No. 1029 dated 25 January 2019**

- ▶ Subsection 1192.13(a) of the Manual of Regulations for Banks (MORB) on Additional reports from Universal Banks (UBs)/Commercial Banks (KBs) was amended to reflect the enhancement of the reporting template on bank interest rates on loans and deposits. It also provided that erroneous/delayed/erroneous and delayed/unsubmitted reports shall be subject to penalties in accordance with the provision of Subsection x184.3 for Category B reports.
- ▶ Appendix 6 of the MORB was amended to reflect the simplified reporting framework, including the revised frequency of submission of report on bank interest rates on loans and deposits. The equivalent report for Thrift Banks in Appendix 6 of the MORB was also deleted by this Circular.
- ▶ The revised reporting templates covering amendments to the reporting templates on bank loans and deposits interest rates are attached as Annexes in this Circular.
- ▶ The following transitory provision shall be incorporated as footnote to Subsection 1192.13(a) as follows:

UBs and KBs shall submit both the existing and revised reports for one month beginning 01 February 2019 without penalty. Starting 01 March 2019, UBs and KBs shall submit the revised reports and erroneous/delayed/erroneous and delayed/unsubmitted reports shall be subject to penalties in accordance with Subsection x184.3 for Category B reports. The timelines are set out in the table below:

	Timelines
Transitory Period	01-28 February 2019
Actual implementation	01 March 2019

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

*[Editor's Note: BSP Circular No. 1029, s. 2019 was published in The Manila Bulletin on 30 January 2019]*

## Court Decisions

### **Metropolitan Waterworks Sewerage System (MWSS) vs. The Local Government of Quezon City, et al**

Supreme Court (Third Division) G.R. No. 194388, promulgated 7 November 2018

---

A government instrumentality exercising corporate powers is not liable for real property tax on its properties unless the beneficial use of its properties has been extended to a taxable person.

---

#### **Facts:**

MWSS was created by Congress "to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems." It was initially created as a corporation without capital stock, but in 1974, then President Ferdinand Marcos authorized MWSS to have an authorized capital stock to be subscribed exclusively by the government.

Sometime in 2007, MWSS received several Final Notices of Real Property Tax (RPT) Delinquency from the Local Government of Quezon City (QC) covering various taxable years on real properties owned by MWSS in QC. Upon MWSS's failure to pay, the QC Treasurer issued warrants of levy and notices of sale of MWSS's real properties.

MWSS filed a petition with the Court of Appeals (CA) and argued that its real properties in QC were exclusively devoted to public use, and thus, were exempt from RPT.

The CA denied the petition and ruled that since MWSS was not a municipal corporation, it could not invoke the immunity granted in Section 133(o) of the Local Government Code (LGC). The CA ruled that even if MWSS was an instrumentality of the government, it was not performing a purely governmental function and, therefore, cannot invoke immunity from real property taxation.

The CA also ruled that the properties were not part of the public dominion but were even made subject of concession agreements with private concessionaries due to its privatization. Since said properties are held by MWSS in the exercise of its proprietary functions, they are subject to RPT.

#### **Issue:**

Is MWSS liable for RPT?

***Ruling:***

No, MWSS is not liable for RPT.

The LGC provides two specific limitations on the power of taxation of local government units (LGUs).

First, Section 133(o) provides that LGUs cannot levy any tax, fee or charge of any kind on the national government or its agencies and instrumentalities, unless otherwise provided in the LGC.

Second, Section 234 enumerates the properties that are specifically exempted from the payment of RPT. Thus, real property owned by the Republic or any of its political subdivisions are exempt from RPT except when the beneficial use of the real property was granted, for consideration or otherwise, to a taxable person.

MWSS claims that it is an instrumentality of the Republic, while the QC Government claims that the MWSS is a government-owned or -controlled corporation or GOCC (whose tax exemption has since been withdrawn with the effectivity of the LGC).

A government instrumentality is an agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some, if not all, corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. Government instrumentalities are generally exempt from any kind of taxation from local governments.

On the other hand, a GOCC refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least 51% of its capital stock.

In *Manila International Airport Authority v. CA*, the Supreme Court ruled that “government instrumentalities” are exempt from the LGU’s levy of RPT. The instrumentality must not have been organized as a stock or non-stock corporation, even though it exercises corporate powers, administers special funds, and enjoys operational autonomy, usually through its charter. Its properties are exempt from RPT because they are properties of the public dominion, held in trust for the Republic, intended for public use, and cannot be the subject of levy, encumbrance, or disposition.

A GOCC, on the other hand, is not exempt from RPT due to the passage of the LGC which withdrew existing RPT exemptions which GOCCs previously enjoyed.

MWSS is a GOCC. Under its charter, MWSS is given the power to “acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose” of its real property. Properties held by MWSS under the exercise of this power cannot be considered properties of the public dominion.

However, the Court’s categorization cannot supplant that previously made by the executive and legislative branches which have already categorized MWSS not as a GOCC but as a Government Instrumentality with Corporate Powers. After the promulgation of *Manila International Airport Authority*, then President Gloria Macapagal-Arroyo issued Executive Order No. 596, which included MWSS in the list of government instrumentalities vested with corporate powers. Moreover, in 2011, Congress passed R.A. 10149 or the GOCC Governance Act of 2011, which



likewise explicitly listed MWSS as a government instrumentality together with other government agencies that were previously held by the Supreme Court to be exempt from the payment of RPT.

Thus, MWSS is not liable for RPT to the Local Government of QC except if the beneficial use of its properties has been extended to a taxable person, which is not alleged by the Local Government of QC.

### **CIR vs. Negros Consolidated Farmers Multi-Purpose Cooperative**

Supreme Court (First Division) G.R. No. 212735, promulgated 5 December 2018

---

VAT exemption on sales made by the agricultural cooperatives to members or non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill.

---

#### **Facts:**

Respondent Negros Consolidated Farmers Multi-Purpose Cooperative (COFA) is a multi-purpose cooperative organized under R.A. No. 6938 or the Cooperative Code of the Philippines.

COFA's farmer-members deliver sugarcane produce to be milled and processed in COFA's name to the sugar mill/refinery. Before the sugarcane is released by the sugar mill, an Authorization Allowing the Release of Refined Sugar (AARRS) from the Bureau of Internal Revenue (BIR) is required from COFA.

In several instances, upon COFA's application, the BIR issued the AARRS without requiring COFA to pay advance VAT pursuant to COFA's tax exemption under Section 61 of R.A. No. 6938 and Section 109(r) [now Section 109(L)] of the Tax Code.

However, beginning 3 February 2009, the BIR required as a condition for the issuance of the AARRS the payment of "Advance VAT" on the premise that COFA, as an agricultural cooperative, does not fall under the term "producer" which is one who tills the land it owns or leases, or who incurs cost for agricultural production of the sugarcane to be refined by the sugar refinery.

COFA paid the advance VAT under protest and subsequently filed before the Commissioner of Internal Revenue (CIR) a claim for refund of the advance VAT it paid in 2009. Due to the CIR's inaction, COFA filed a petition for review before the Court of Tax Appeals (CTA), which ruled that COFA is exempt from VAT and that its Certificate of Tax Exemption affirmed its status as a tax-exempt agricultural cooperative.

The CTA ordered the refund as it ruled that COFA is considered as the actual producer of the members' sugarcane production because it primarily provided the various production inputs (fertilizers), capital, technology transfer and farm management.

#### **Issue:**

Is COFA, at the time of the subject transactions, VAT-exempt and hence, entitled to a tax refund for the advance VAT it paid?

#### **Ruling:**

Yes, COFA is a VAT-exempt agricultural cooperative and is entitled to the refund.

Exemption from the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill.

Section 109(A) of the Tax Code provides that the sale of agricultural products in their original state, including those which underwent simple processes of preparation or services of preparation or preservation for the market, such as raw cane sugar, is exempt from VAT.

While the sale of raw sugar, by express provision of law, is exempt from VAT, the sale of refined sugar, on the other hand, is not so exempted as refined sugar already underwent several refining processes and as such, is no longer considered to be in its original state.

However, if the sale of the sugar, whether raw or refined, was made by an agricultural cooperative to its members or non-members, the transaction is still VAT-exempt under Section 109(L) of the Tax Code. R.A. 6938 similarly provides that the sale by the agricultural cooperative to their members and non-members are exempt from VAT.

COFA is considered the producer of the sugar as found by the CTA, and as affirmed by the BIR when it issued its ruling on the matter.

Since COFA is exempt from VAT, it is likewise exempted from the payment of advance VAT required under RR No. 13-2008.

The withdrawal from the sugar refinery by the cooperative is not the incident which gives rise to the imposition of VAT, but the subsequent sale of the sugar. If at all, the withdrawal of the refined sugar gives rise to the obligation to pay the VAT on the would-be sale. The advance VAT is the same VAT which would be imposed on the sale of refined sugar following its withdrawal from the refinery, hence, the term "advance." It is erroneous to treat the withdrawal of the refined sugar as a tax incident different from or in addition to the sale itself.

### **Perpetual Succour Hospital of Cebu, Inc. vs. CIR**

CTA (Special 3<sup>rd</sup> Division) Case No. 9166 promulgated 11 December 2018

---

The income from for-profit activities of a religious, non-stock, non-profit hospital is not exempt from income tax under Section 30 (E) of the Tax Code, but is subject to the 10% income tax prescribed under Section 27 (B) of the Tax Code.

---

#### **Facts:**

Respondent CIR assessed Petitioner Perpetual Succour Hospital of Cebu, Inc. (PSHC) for deficiency income tax for taxable year 2010. PSHC protested the assessment claiming that it is a charitable institution, hence exempt from income tax under Section 30(E) of the Tax Code. It argued that no part of its net income or asset belongs or inures to the benefit of any of its member, organizer, officer, or any specific person that would have otherwise subjected it to the 10% income tax rate under Section 27 (B) of the Tax Code.

PSHC also insisted that the CTA already ruled in a 2010 case (CTA Case 7304 and later, CTA EB 781) that it is a non-stock, non-profit, religious and charitable institution and that it was exempt from payment of income tax for taxable year 2001. The Supreme Court (GR No. 201905) affirmed the ruling in a minute resolution.

Upon denial of its protest, PSHC filed a Petition for Review with the CTA.

At the CTA, the BIR asserts that PSHC is subject to the 10% income tax applicable to proprietary education institutions and hospitals under Section 27(B) of the Tax Code. The BIR argues PSHC's records showed that it was run by the Congregation of the Sisters of Saint Paul de Chartres (SPC) and is not operated exclusively for charitable purposes. The BIR averred that PSHC regularly supported the activities of SPC, which is a member of the corporation, thus disproving the hospital's claim that no part of its income inured to SPC members, or any person.

**Issues:**

1. Is PSHC exempt from income tax?
2. Is the Supreme Court's judgment on the 2001 case conclusive and bars the BIR from subjecting PSHC from a new assessment?

**Rulings:**

1. No. Quoting the Supreme Court's decision in *CIR vs. St. Luke's Medical Center, Inc.*, GR Nos. 195909 and 195960 promulgated on 6 September 2012, the CTA ruled that a charitable institution like PSHC, although organized and operated exclusively for charitable purposes, is nevertheless allowed to engage in activities conducted for profit without losing its tax-exempt status for its not-for-profit activities. However, the "income of whatever kind and character" of a charitable institution from its activities conducted for profit, regardless of the disposition made of such income, shall be subject to tax, as provided under the last paragraph of Section 30 (E) of the Tax Code.

As PSHC failed to controvert the BIR's finding that the hospital was not operated exclusively for charitable purposes for taxable year 2010, the CTA sustained the imposition of the 10% income tax under Section 27 (B) of the Tax Code.

2. No. The 2001 case involves transactions made for taxable year 2001. There were also matters which were not considered in the previous CTA decision, i.e. the finding then that there was no evidence that persons other than PSHC's beneficiaries benefited from the hospital's assets.

The Supreme Court's decision was only a minute resolution where it found no ground to warrant the reversal of the CTA decision. A minute resolution is not considered a binding precedent.

**People of the Philippines vs. Robert Sia and John Kenneth L. Ocampo**

CTA (*En Banc*) Criminal Case No. 045 promulgated 12 December 2018

---

Despite acquittal in a criminal case based on reasonable doubt, a taxpayer can be held civilly liable for a tax assessment when the prosecution proves its case in the civil action by a preponderance of evidence.

Without a valid LOA, the assessment by the BIR is void.

---

**Facts:**

Respondents Robert Sia and John Kenneth L. Ocampo were criminally charged for violation of Sec. 255 of the Tax Code, or failure to pay deficiency taxes for taxable year 1998 despite notice and demand. Sia and Ocampo, who are officers of Roxy Industrial Sales Corporation (RISC), pleaded "Not Guilty" during arraignment. The CTA Third Division dismissed the case and acquitted the accused for failure of the prosecution to prove their guilt beyond reasonable doubt. Upon denial of the Motion for Reconsideration, the BIR filed the instant Petition for Review at the CTA *En Banc*.

The BIR contended that the deficiency assessments have become final, executory, and demandable for failure of Sia and Ocampo to protest.

Sia and Ocampo denied receiving the assessment notices and formal demand letters, as these were sent to the old corporate address of RISC. They averred that the BIR was duly notified of the company's transfer to a new address.

### **Issues:**

1. Can the accused be held civilly liable for the tax assessments despite their acquittal from the criminal case?
2. Is the BIR's assessment valid?

### **Rulings:**

1. Yes. Despite acquittal in a criminal case based on reasonable doubt, a taxpayer can be held civilly liable for a tax assessment when the prosecution proves its case in the civil action by a preponderance of evidence.

It is settled that the extinction of the penal action does not carry with it the extinction of the civil liability. An accused may be acquitted based on reasonable doubt but held liable civilly based on a preponderance of evidence.

2. No. The examination of the books of accounts and other accounting records of taxpayers by a revenue officer should be preceded by the issuance of a Letter of Authority.

Citing the Supreme Court's decision in *Medicard Philippines, Inc. vs. CIR, GR 222743 promulgated on 5 April 2017*, unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer may not be validly conducted without prior authority. Without an LOA, the assessment issued by the BIR is void. In the instant case, the revenue officer who conducted the audit was not the same person authorized in the LOA but was only authorized to continue the investigation of RISC's books and accounting records.

The CTA also sustained the claim of the accused that they failed to receive the assessment through registered mail. The CTA ruled that the BIR has the burden to prove that Sia and Ocampo duly received the mailed letter.

---

## **SGV | Assurance | Tax | Transactions | Advisory**

### **About SGV & Co.**

SGV is the largest professional services firm in the Philippines.

We provide assurance, tax, transaction and advisory services. In everything we do, we nurture leaders and enable businesses for a better Philippines.

This Purpose is our aspirational reason for being that ignites positive change and inclusive growth. Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. All this leads to building a better Philippines, and a better working world. 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 [ey.com/ph](http://ey.com/ph).

© 2019 SyCip Gorres Velayo & Co.  
All Rights Reserved.  
APAC No. 10000399  
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](http://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](mailto: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](mailto: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.