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# *Client advisory letter*



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# At a glance

Updates, reiterations and clarifications on selected topics

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# Key reminders for

Impairment is an ongoing area of concern for management. Regulators remain focused on this area and continue to push for increased transparency in disclosures. Entities holding significant amounts of goodwill and intangibles are at greater risk of a regulatory challenge to their impairment assessments and in particular the related disclosures of International Accounting Standards (IAS) 36, *Impairment of assets*.

The following areas have become common pitfalls when preparing impairment testing:

- **Allocate goodwill to the appropriate cash generating units (CGU)**

Goodwill does not generate cash flows independently from other assets or groups of assets, so the recoverable amount of goodwill as an individual asset cannot be determined. However, goodwill often contributes to the cash flows of individual or multiple CGUs. Therefore, goodwill acquired in a business combination is allocated from the acquisition date to each of the acquirer's CGUs or groups of CGUs that are expected to benefit from the synergies of the business combination.

Determining the recoverable amount of the goodwill then becomes part of determining the recoverable amount of the CGU or CGUs to which it has been allocated. It is important to think about how the goodwill is going to be subsequently tested for impairment before finalizing the allocation process.

- **Compare like with like**

Make sure the cash flows being tested are consistent with the assets being tested. Watch for consistency when including or excluding working capital from the CGU. Also make sure that the forecast cash flows make allowance for investment in working capital if the business is expected to grow.

Cash flows should exclude cash flows relating to financing (which include interest payments), as liabilities are excluded from the carrying amount and because the cost of capital is taken into account by discounting the cash flows.

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# Impairment reviews

- **Scrutinize the discount rate**

Watch out for illogical discount rates. Other factors affect discount rates in impairment calculations. These include corporate lending rates, cost of capital and risks associated with cash flows, which are all increasing in the current volatile environment and may well result in an increase in the discount rate.

- **Value-in-use (VIU) should comply with the standard**

In calculating VIU, future cash flows should be estimated for assets in their current condition.

Key constraints concerning the assumptions that can be made in value-in-use compliant cash flow forecasts relates to future restructuring or reorganizations and capital investment. The costs and benefits of a future restructuring should not be recognized in the cash flow forecasts, unless the entity is committed to the restructuring and the related provisions have been made. The costs and benefits of future expenditure that is intended to improve or enhance the assets or business should be excluded from the forecast cash flows.

The practical implication of this is that the cash flow forecasts for a VIU test may differ from the cash flows in the board-approved budgets for future years. For example, where management has approved restructuring plans, the most recent formally approved budgets are likely to include both the costs and benefits of the planned restructuring. However, accounting for the restructuring provision may be delayed until post-balance sheet if the plans have not been communicated to those impacted by it in sufficient detail. In this case, forecasts would need to be adjusted to remove the related costs and benefits of the restructuring.

- **Reconcile the conclusion to the current environment**

When you have finished your detailed calculations, ensure as a cross-check that the final impairment testing makes sense by comparison to external market data. The current economic climate assumptions that were reasonable a year ago are possibly no longer reasonable. For example, a lack of availability of credit would result in many planned

investments being cut back, impacting on growth prospects.

## Insight

Do not underestimate how long the impairment testing process takes. It includes identifying impairment indicators, assessing or reassessing the cash flows, determining the discount rates, testing the reasonableness of the assumptions and benchmarking the assumptions with the market. The process should be started early. It is not an exercise that can be safely left to the last minute, especially as no one likes nasty surprises. Goodwill does not have to be tested for impairment at year-end; it can be tested earlier. But if any impairment indicator arises between the date of the test and the balance sheet date, the impairment assessment should be updated.

Regulators have observed that, whilst the long-term growth rate used to extrapolate cash flow projections (to estimate a terminal value) and the pre-tax discount rate are important; they are not 'key assumptions' on which the cash flow projections for the period covered by the most recent budgets or forecasts are based. Therefore, attention should also be paid to the discrete growth rate assumptions applied to the cash flows projected to occur before the terminal period.

The required disclosures in IAS 36 are extensive. IAS 36 requires disclosure of the key assumptions (those that the recoverable amount is most sensitive to) and related sensitivity analysis. Note also IAS 1, *Presentation of financial statements*, para 125 requires disclosure of critical accounting judgments and of key sources of estimation uncertainty.

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# Latest on income tax and other taxes

## **FOREX gains from hedging not entitled to PEZA or BOI perks**

The CTA ruled that forex gain earned or realized from converting dollar to peso under a hedging contract is not part of the PEZA or BOI-registered activities of an entity, and hence, it is not entitled to income tax holiday or preferential tax treatment. Such income shall be subject to the regular corporate income tax.

The taxpayer tried to convince the court that the forex gains are necessarily related to its PEZA-registered activity. The taxpayer explained that it earns service fee in dollars and pays in peso significant portion of expenses for it to carry on its PEZA-registered activity (i.e. providing customer care service). In view thereof, it had to convert some of its dollar revenues into peso and in the process, it realized forex gain.

However, the CTA found that the forex gains are derived from the hedging contract of the taxpayer with a bank and not from its registered activity as a contact center or any activity necessarily related to it. Thus, such forex gains are not covered by the PEZA incentives and therefore are subject to the regular corporate income tax.

(CTA EB Case No. 1231 dated 17 May 2016)

## **Transfer of goodwill via sale of shares is subject to CGT**

In this case, the taxpayer transferred its POS terminals and merchant acquiring business, together with the underlying business goodwill, in exchange for shares of a newly established company. Such transfer was covered by a tax-free exchange ruling. Subsequently, it sold the shares to another and paid the CGT thereon.

The BIR attempted to re-characterize the sale of shares as a sale of business and goodwill subject to ordinary income tax instead of CGT. The BIR alleged that the tax-free exchange transaction was undertaken as a scheme to evade tax.

The CTA *en banc* did not agree with the BIR. Affirming the decision of its division, it upheld the validity of the transaction as sale of shares subject to CGT. The tax court explained that the business goodwill is a capital asset contrary to the BIR's characterization as ordinary asset. According to the CTA, goodwill clearly falls within the definition of capital asset under the Tax Code. Thus, the taxpayer's sale of its merchant acquiring business at a premium whereby goodwill was recognized and valued in the Share Sale and Purchase Agreement is a sale of capital asset.

(CTA EB Case No. 1257 dated 17 May 2016)

## **Royalties qualify as direct costs of PEZA-entities**

The CTA reiterated that the list of allowable deductions for the 5% tax rate on gross income of PEZA-registered entities under the PEZA is not meant to be all-inclusive. PEZA-registered entities should be allowed to deduct expenses which are in the nature of direct costs even though the same are not included in the list. If the cost or expense can be directly attributed in conducting the PEZA-registered activities, then it should be treated as direct cost. In this case, the CTA confirmed that the royalties paid by the PEZA-registered taxpayer in relation to its manufacturing design, logo or process are considered part of the manufacturing cost allowable as deduction for 5% gross income tax.

(CTA EB Case No. 1346 dated 2 June 2016)

## **Satellite airtime is taxable in the Philippines**

Fees paid by a Subic Bay Freeport Enterprise to a non-resident foreign entity for satellite communication time, are considered income derived from within the Philippines. The CTA was not convinced that satellite airtime services were performed outside the Philippines just because the service facilities, such as network control center and satellite, are located in Indonesia and in outer space. According to the CTA, it is the place of the activity producing the income ("source of income") that is controlling to determine if

income is subject to Philippine tax. Since the undertaking of providing satellite communication time is offered and subscribed in the Philippines, the CIR is correct in imposing FWT.

(CTA EB Case No. 1242 dated 8 June 2016)

## ***Inventor's perks extend to the manufacturer***

The CTA confirmed that the corporate taxpayer, as the manufacturer and seller of the inventions of an inventor, is entitled to tax incentives under RA No. 7459<sup>1</sup> for the first ten years from the date of first sale of the inventions involved. Any income derived from these technologies, including gains from the sale on a commercial scale of a manufacturer, shall be exempted from all kinds of taxes. The tax exemption privilege pertaining to inventions also extends to the legal heir or assignee upon the death of the inventor.

(CTA Case No. 8530 dated 19 May 2016)

1 Also known as the “Inventors and Invention Incentives Act of the Philippines”

### ***Glossary***

BIR - Bureau of Internal Revenue  
BOI - Board of Investments  
CGT - Capital Gains Tax  
CIR - Commissioner of Internal Revenue  
CTA - Court of Tax Appeals  
FOREX - Foreign Exchange  
FWT - Final Withholding Tax  
PEZA - Philippine Economic Zone Authority  
POS - Point of Sale  
RA - Republic Act





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# ***Latest on tax assessments/ refund procedures***

## ***Void FDDA does not nullify a duly issued FAN***

The SC affirmed the ruling of the CTA that an FDDA which does not contain the facts and law on which it is based renders the decision void. However, the High Court clarified that a void FDDA does not automatically nullify the underlying assessment. The decision resulting from a void FDDA is different from an assessment from which it is based. The invalidity of one does not necessarily result to the invalidity of the other, unless the law or regulations otherwise provide. In tax assessments, the decision of the CIR evidenced in the FDDA will only give rise to a disputed assessment, which may then be appealed to the CTA. Thus, the assailed decision arising from a voided FDDA may still be appealed (denial due to inaction) and decided upon, without voiding the assessment itself.

(G.R. No. 215534 dated 18 April 2016)

## ***Notice to BIR of change in address need not be formal***

Actual knowledge by the BIR is sufficient without the need for a formal written notice of the taxpayer's change in address. What is important is that the BIR is notified and became aware of the taxpayer's new address so that the running of the prescription to assess tax is not suspended.

Moreover, an update in change of business filed in one RDO of the BIR is already sufficient notice to the entire BIR.

In this case, the issued FAN was sent to the taxpayer's old business address. However, it was discovered that the tax authorities already became aware of the taxpayer's change in business address prior to the issuance of the FAN. This was proven in the documents submitted to the BIR evidencing the transfer of business address, such as the taxpayer's filed Certificate of Registration, Application for Registration Update (BIR Form No. 1905), and annual income tax return (BIR Form No. 1702), among others. Consequently, the running of the three-year period to assess taxes was not suspended and had already prescribed.

(CTA EB Case No. 1226 dated 8 June 2016)

## ***Filing of CGT return reckons prescription of donor's tax***

The BIR assessed donor's tax on a transfer of shares of stock for less than the fair market value. The CTA upheld the imposition of donor's tax on the transfer of shares but cancelled the assessment because of prescription.

In this case, the taxpayer was able to file a CGT return and paid the tax thereon. The CTA stated that although the tax being assessed is donor's tax, filing of the CGT return for the sale of shares is sufficient compliance with the requirement of filing a tax return under Section 103 of the Tax Code, for computing the prescriptive period. Hence, the FAN should have been issued within three years from the filing of the CGT return. The ten-year prescriptive period for failure to file a return also does not apply because the taxpayer filed a CGT return. Given that the FAN was issued after the three-year prescriptive period, the CTA voided the donor's tax assessment.

(CTA Case No. 8497 dated 17 May 2016)

## ***CTA can review a BIR ruling if linked to an assessment***

A BIR ruling is an interpretation of a provision of the Tax Code or pre-existing law; thus, the action of the CIR in issuing an opinion by means of a circular or memorandum is an exercise of its quasi-legislative power. The CTA has jurisdiction to rule not only as to the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the RR or RMC on which the said assessment is based. Hence, the CTA can directly rule on the propriety of a BIR circular or ruling, provided an assessment had been issued.

In this case, CMC No. 164-2012 dated 18 July 2012, which provides that alkylate is subject to excise tax under Section 148(e) of the Tax Code, is considered a BIR ruling. Considering however that no assessment exists, the CTA has no jurisdiction to directly pass on the validity of the assailed CMC. Instead, the power to review the CIR's ruling belongs

to the Secretary of Finance. The taxpayer cannot directly question the propriety of CMC No. 164-2012 before the CTA without giving the Secretary of Finance the opportunity to review the ruling.

(CTA Case No. 8544 dated 17 May 2016)

## ***No audit authority renders the assessment void***

In this case, the BIR issued a Letter of Authority (LOA) authorizing the examination of the taxpayer's books of accounts and other accounting records for assessment purposes. However, the revenue officers who conducted the actual examination of books were different from those named and authorized under the LOA.

Citing an SC case<sup>2</sup>, the CTA ruled that there must be a grant of authority before any revenue officer can conduct an examination or assessment. As the revenue officer who conducted the audit has no authority, the assessment or examination is void. Consequently, the deficiency assessment is void and must be set aside.

## ***Referral Memo is not a substitute for LOA***

A Referral Memo is not a valid substitute for the LOA with respect to the appropriate authorization of the revenue examiners/officers to examine the taxpayer's accounting records. Rather, it is the LOA, which is the legally recognized document, which gives the revenue officer/s named therein the power to examine the books of account and other accounting records of a taxpayer.

(CTA Case No. 8655 dated 1 June 2016)

## ***Tax-free exchange ruling not mandatory***

The taxpayers entered into a deed of exchange where they transferred all their shares in a company in exchange for the shares of stock of a supermarket company. They paid CGT on the transfer of shares but subsequently realized that the transaction qualifies as a tax-free exchange under the Tax Code. Thus, they filed for tax refund.

The CIR denied the refund saying that the subject transaction did not qualify as a tax-free exchange because the prior application for a BIR certification or ruling, declaring the transaction a tax-free exchange, was not

secured as mandated by existing regulations<sup>3</sup>.

The CTA ruled in favor of the taxpayers reiterating that a prior certification or BIR ruling is not a precondition for a tax-free exchange under Section 40(C)(2) of the Tax Code. It is sufficient that the four elements are present, namely: (1) the transferee is a corporation; (2) the transferee exchanges its shares of stock for property/ies 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 the others, not exceeding four, gains control of the transferee.

Echoing an earlier ruling in another case<sup>4</sup>, the CTA said that a BIR certification or ruling merely serves as guidelines for the proper monitoring and investigation of the basis of the properties transferred pursuant to a tax-free exchange. It is not a prerequisite for availment of a tax exemption.

(CTA Case No. 8831 dated 2 June 2016)

<sup>3</sup> RR No. 18-2001 and RMO Nos. 32-2001 and 17-2002

<sup>4</sup> CTA EB No. 1150 dated 12 May 2015

<sup>2</sup> G.R. No. 178697 dated 17 November 2010

### ***Glossary***

BIR - Bureau of Internal Revenue

CGT - Capital Gains Tax

CIR - Commissioner of Internal Revenue

CMC - Customs Memorandum Circular

CTA - Court of Tax Appeals

FAN - Final Assessment Notice

FDDA - Final Decision on Disputed Assessment

LOA - Letter of Authority

RDO - Revenue District Office

RMC - Revenue Memorandum Circular

RR - Revenue Regulation

SC - Supreme Court

# Latest on regulatory landscape

## SEC mandates disclosure of specific address

Entities within the scope of the SEC shall state the specific principal office address in the Articles of Incorporation including the specific residence address of each incorporator, stockholder, director, trustee or partner. Those with general address indicated as their principal office address, such that it refers only to a city, town or municipality, have been given until 31 December 2015 to file an amended articles of incorporation/partnership specifying their complete address. Those who failed to do so shall be subject to penalties.

Corporations are not required to file an amended articles of incorporation if it has moved or moves to another location *within the same* city or municipality, provided that its previous principal office address in its articles is already specific and complete. Nonetheless, it is encouraged to declare its new specific address in its GIS. In contrast, partnerships are required to file an amended articles of partnership every time it transfers to a new location, whether *within the same* or *another* city or municipality. Failure to effect changes in the Articles within the prescribed period shall be imposed a penalty.

(SEC Memorandum Circular No. 6 series of 2016 dated 9 June 2016)

## Residual voting rights of the BOD chairman

A non-stock savings and loan Association requested for confirmation of the proper interpretation of the provisions on Quorum and Voting Rights of their By-Laws. The by-laws provide that attendance of majority of the members shall constitute a quorum, and that the chairman of the board of trustees shall be entitled to cast the remaining registered number of votes after deducting the total votes cast by the members present or represented by proxies from the total registered number of votes of qualified members.

The general rule is that in a non-stock corporation, each member shall be entitled to one vote regardless of the

amount of contribution, except when the right to vote is limited, broadened or denied as specified in the articles of incorporation or by-laws. Thus, the automatic proxy right under the by-laws, which allows the chairman to cast the remaining registered number of votes after deducting the total votes cast, is valid. However, the residual voting right of the chairman to determine the presence of a quorum is unwarranted. Thus, in determining a quorum, only stockholders or members who are entitled to vote, and are present or represented by another person, must be counted.

The SEC clarified that the foregoing opinion was issued for information only, and not as a categorical answer to the queries since the issues raised are subject to review by the BSP. Under SEC Memorandum Circular No. 15, Series of 2003, the Commission cannot review rulings of another government agency and those involving the substantive and contractual rights of private parties.

(SEC-OGC Opinion No. 16-11 dated 24 May 2016)

## Foreign participation in a real estate brokerage firm

A query was raised on whether a foreigner may be an incorporator in a real estate brokerage company where 60% of the shares are owned by Filipinos and 40% by foreign nationals. Section 14, Article XII of the 1987 Constitution limits the practice of all professions in the Philippines to Filipino citizens, save in cases prescribed by law. The Real Estate Service Act of the Philippines<sup>5</sup> (RESA) allows corporate practice but is silent on foreign participation in such corporate practice. Under FINL-9<sup>6</sup>, no foreign equity is allowed for corporations in the practice of real estate services. However, List A of FINL-10 indicated in a footnote that foreigners are allowed to practice several professions, including real estate services, subject to the reciprocity rule. In view of the conflicting statutes, the SEC recommended that the NEDA and PRC be consulted regarding the amendment in the FINL in relation to the RESA.

(SEC-OGC Opinion No. 16-14 dated 23 May 2016)

5 Real Estate Service Act of the Philippines, RA No. 9646

6 List A, The Ninth Regular Foreign Investment Negative List



## Acquisition of real estate by a foreign corporation

A non-stock, non-profit corporation requested for an opinion regarding its nationality for purposes of acquiring land in the Philippines. The corporation is established in the Philippines and organized solely to conduct charitable activities, where 90% of its initial capital was contributed by foreign nationals. Under the incorporation test and control test<sup>7</sup>, the nationality of a corporation is determined on the basis of the nationality of its members, taking into consideration the extent of voting power of the members, and not premised on the membership contribution. Moreover, foreigners should not constitute more than 40% of the members of the Board of Trustees to be considered a domestic corporation pursuant to Section 2-A of the Anti-Dummy Law. If the company fails to comply with the foregoing conditions, it is not qualified to own land in the Philippines.

However, aliens may be granted temporary rights, such as lease contracts of lands, subject to a fixed maximum period of lease under P.D. No. 471<sup>8</sup>. They may also be a possessor in the concept of holder, such as a usufructuary or hold the property in trust for equitable-title holder/s.

(SEC-OGC Opinion No. 16-15 dated 1 June 2016)

## Banks and quasi-banks to adopt PFRS 9

Banks or quasi-banks including their trust entities shall adopt PFRS 9 Financial Instruments only upon its mandatory effectivity date of 1 January 2018. Prior to the effectivity date, they shall continue to account their financial instruments in accordance with the provisions of PAS 39. As an exception, those who have adopted PFRS 9 as of 31 December 2015 shall continue to account for their financial instruments until 31 December 2017, in accordance with relevant provisions on the MORB/MORNBFI. BSP-supervised financial institutions, including their trust entities, shall also adopt PFRS 9 on 1 January 2018. Prior to that date, they shall continue accounting their financial instruments using PAS 39.

(BSP Circular No. 912 Series of 2016 dated 27 May 2016)

## Bill of Rights of policyholders

To promote and safeguard the interest and welfare of the insuring public, the Insurance Commission issued a Bill of Rights of Policyholders (“Bill of Rights”) which enumerates the following basic rights of the insured under the Insurance Code, as amended:

1. Right to a financially sound and viable insurance company.
2. Right to access insurance companies’ official financial information.
3. Right to be informed of the license status of insurance companies, intermediaries and soliciting agents.
4. Right to be offered a duly approved insurance product.
5. Right to be informed of the benefits, exclusions and other provisions under the policy.
6. Right to receive the policy.
7. Right to confidentiality of information.
8. Right to efficient service from insurance companies, intermediaries and soliciting agents.
9. Right to prompt and fair settlement of claims.
10. Right to seek assistance from the Insurance Commission.

### Glossary

BOD - Board of Directors
BSP - Bangko Sentral ng Pilipinas
FINL - Foreign Investment Negative List
GIS - General Information Sheet
MORB - Manual of Regulations for Banks
MORNBFI - Manual of Regulations for Non-Bank Financial Institutions
NEDA - National Economic and Development Authority
PAS - Philippine Accounting Standards
PD - Presidential Decree
PFRS - Philippine Financial Reporting Standards
PRC - Professional Regulation Committee
RA - Republic Act
RESA - Real Estate Service Act of the Philippines
SEC - Securities and Exchange Commission

7 SEC Opinion dated 12 October 2011, in relation to Section 7, Article XII of the 1987 Constitution and Sections 22 and 23 of Commonwealth Act No. 141 governing land acquisition

8 SEC Opinion dated 4 September 1990

Any violation of the Bill of Rights shall be considered as breach of pertinent insurance laws, rules and regulations, for which the Insurance Commission is authorized to impose appropriate sanctions and penalties.

(Insurance Commission Circular Letter No. 30-2016 dated 26 May 2016)

## ***E2M Customs System Phase 1 implementation***

The Commissioner of the Bureau of Customs released the new policies to cover the transfer of goods from NAIA Airport to Airport CBWs or Phase 1 implementation. The operational provisions for Outside CY-CFS or Airport CBW are as follows: (a) pre-lodgement with emphasis on the processing of transit permit application; (b) payment of the transfer fees by outlaying a deposit with the Collection Division of the port with a minimum balance equivalent to one month transfer fees; (c) posting of a General Transportation Surety Bond; (d) approval of the transit permit application by the Deputy Collector for operations; (e) transfer of cargo from the transit facility to the CY-CFS/ Airport CBW and; (f) arrival of shipments at the CY-CFS/ Airport Facility with BOC Wharfinger confirmation.

Furthermore, manual processing of the transit permit application shall be allowed in case of system breakdown and power failure. Manual processing must have the necessary authorization of the Deputy Commissioner, MISTG or his authorized representative.

(Customs Memorandum Order No. 13 series of 2016 dated 6 June 2016)

## ***Creation of ICT Department***

On 23 May 2016, the President signed into law RA No. 10844, which created the Department of Information and Communication Technology (DICT). The Department shall be the primary policy, planning, coordinating, implementing, and administrative entity of the Executive Branch of the government that will plan, develop, and promote the national ICT development agenda.

The following agencies are abolished, and their powers and functions, funds and appropriations, property, and personnel shall be transferred to the DICT: (a) National Computer Center; (b) National Computer Institute; (c) Information and Communications Technology Office; (d) Telecommunications Office; (e) National Telecommunications Training Institute; and (f) all operating units of the Department of Transportation and Communications.

Furthermore, the following agencies are attached to DICT for policy and program coordination: (a) National Telecommunications Commission (NTC); (b) National Privacy Commission; and Cybercrime Investigation and Coordination Center.

The transfer of functions, assets, funds, properties, and personnel of the affected agencies, and the formulation of the internal organic structure, staffing pattern, operating system, and revised budget of the DICT, shall be completed within six months from the effectivity of the law.

(Republic Act No. 10844 approved on 23 May 2016)

## ***Philippine Green Jobs Act now a law***

To promote the rights of the people to a balanced and healthful ecology and to affirm labor as the primary social economic force in promoting sustainable development, the Philippine Green Jobs Act of 2016 (RA No. 10771) was signed into law.

To encourage generation and sustainability of green jobs as certified by the Climate Change Commission, business enterprises shall enjoy the following incentives: (a) special deduction from the taxable income equivalent to 50% of the total expenses for skills training and research development expenses; and (b) tax and duty free importation of capital equipment.

The necessary rules and regulations to implement the provisions of this Act shall be formulated by the Secretary of Labor and Employment within 180 from the effectivity of the law.

(Republic Act No. 10771 approved on 16 May 2016)

## ***Farm Tourism Development Act***

To maximize the benefits that can be derived from agriculture and tourism combined, the President signed into law RA No. 10816, also known as Farm Tourism Development Act of 2016 (FTDA). It mandates the formulation and implementation of the Farm Tourism Strategic Action Plan, which shall be the comprehensive set of programs, projects and activities for the growth of farm tourism in the country.

Furthermore, a Farm Tourism Development Board, which shall be attached to the DOT was created. The Board shall be composed of the following: (a) Secretary of the DOT as Chairperson; (b) Secretary of the DA as Vice-Chairperson; (c) Secretary of the DTI; (d) president of an educational institution providing farm tourism programs, to be identified by the DOT and the DA; (e) president of a national farm tourism organization; (f) president of a national inbound tour operators association; and (g) president of a national federation of farmers cooperatives.

The Board, in consultation with concerned government agencies, LGUs and their leagues, and farm tourism industry stakeholders, shall issue the implementing rules and regulations within 90 days starting from the effectivity of this Act.

(Republic Act No. 10816 approved on 16 May 2016)

## Anti-Agricultural Smuggling Act

To shield itself from the manipulative scheme of economic saboteurs, to protect the livelihood of farmers and to ensure their economic well-being, the Anti-Agricultural Smuggling Act of 2016 (RA No. 10845) was signed into law. Its salient features include the following:

- The crime of large-scale agricultural smuggling as economic sabotage, including sugar, corn, pork, poultry, garlic, onion, carrots, fish, and cruciferous vegetables in its raw state or undergone simple process of preservation, with a minimum amount of PHP1,000,000 or rice with a minimum amount of PHP10,000,000.00 as valued by the BOC, is committed through any of the following acts:
  - Importing or bringing into the Philippines without the required import permit from the regulatory agencies;
  - Using import permits of persons, natural or juridical, other than those specifically named in the permit;
  - Using fake, fictitious or fraudulent import permits or shipping documents;
  - Selling, lending, leasing, assigning, consenting or allowing the use of import permits of corporations, non-government organizations, associations, cooperatives, or single proprietorships by other persons;
  - Misclassification, undervaluation or misdeclaration upon the filing of import entry and revenue declaration with the BOC;
  - Organizing or using dummy corporations, nongovernment organizations, associations, cooperatives, or single proprietorships for the purpose of acquiring import permits;
  - Transporting or storing the agricultural product subject to economic sabotage regardless of quantity; or
  - Acting as a broker of the violating importer

- The penalty of life imprisonment and a fine of twice the fair value of the smuggled agricultural product, plus the aggregate amount of the taxes, duties and other charges avoided, shall be imposed on the parties involved in the crime.

(Republic Act No. 10845 approved on 23 May 2016)

## Creation of Credit Surety Fund Cooperatives

To foster national development, promote inclusive growth and reduce poverty, the Credit Surety Fund Cooperative Act of 2015, was enacted into law on 6 February 2016. The newly enacted law serves to (a) encourage, promote and assist in the creation and organization of Credit Surety Fund Cooperatives (CSFC); (b) improve the creditworthiness of micro, SMEs, cooperatives and NGOs; (c) establish Credit Surety Funds in the countryside; (d) instill to the cooperatives and NGOs the system of credit evaluation, loan and risk management and good governance principles; (e) increase investments and economic activities to generate more jobs and alleviate poverty; and (f) strengthen the Cooperative Development Authority (CDA).

Furthermore, the law gives tax privileges to cooperatives registered with the CDA under the Philippine Cooperative Code of 2008, while members of the CSFC which are not cooperatives shall be subject to regular taxes under the Tax Code and other tax laws. The maximum loan amount of qualified borrowers under the program shall not exceed ten times its contributions to the fund at any given time.

(Republic Act No. 10744 approved on 6 February 2016)

### Glossary

BOC - Bureau of Customs
CBW - Customs Bonded Warehouse
CY/CFS - Container Yard/Container Freight Station
DA - Department of Agriculture
DOT - Department of Tourism
DTI - Department of Trade and Industry
E2M - Electronic-to-Mobile
ICT - Information and Communication Technology
LGU - Local Government Unit
MISTG - Management Information System and Technology Group
NAIA - Ninoy Aquino International Airport
NGO - Non-Government Organization
RA - Republic Act
SME - Small and Medium-sized Enterprise

## Enhancing the liquidation framework for banks

To promote and safeguard the interests of the depositing public, President Benigno S. Aquino III signed into law RA No. 10846 entitled, An Act Enhancing the Resolution and Liquidation Framework for Banks, amending for the purpose Republic Act No. 3591. The relevant features of the law are as follows: The Philippine Deposit Insurance Corporation (PDIC), together with the BSP now has the authority to commence the resolution of a bank upon (a) failure of prompt corrective action as declared by the Monetary Board; or b) request by a bank to be placed under resolution. The PDIC shall inform the bank of its eligibility for entry into resolution.

When a bank is ordered closed by the Monetary Board, the PDIC shall be designated as the receiver and it shall proceed with the takeover and liquidation of the closed bank in accordance with the provisions of the Act. Consequently, banks closed by the Monetary Board shall no longer be rehabilitated.

(Republic Act No. 10846 approved on 23 May 2016)

## Philippine Halal Export Development

To promote growth and ensure the integrity and quality of the Philippine Halal exports, the Philippine Halal Export Development and Promotion Act of 2016 was signed into law. Under this act, the Philippine Halal Export Development and Promotion Board is created to be the policy-making body of the Philippine Halal Export Development and Promotion Program. The Board shall administer the implementation of the program and the harmonization of Philippine National Standards for Halal by standard setting agencies.

Another feature of the law focuses on (a) the enhancement of the capabilities and global competitiveness of existing and potential exporters of Halal products, processes and services through business matching; (b) organization of trade fairs and business missions; and (c) the conduct of seminars and product consultancy, and such other competence-building programs. The enhancement of export promotion will be a coordinated venture between the DTI, DA, DOH, and other concerned government agencies.

(Republic Act No. 10817 approved on 16 May 2016)

## Modernizing the Customs and Tariff Administration

To protect and enhance government revenue, to prevent and curtail any form of customs fraud and illegal acts, and to modernize customs and tariff administration, the President of the Philippines signed into law the Customs Modernization and Tariff Act (CMTA). Salient features of the law are as follows:

- Imported goods shall be valued in accordance with the provisions of the Transaction Value System under Section 701. When the customs value cannot be determined under the provisions of the aforementioned system, the following methods may be used: Transaction Value of Identical Goods (Section 702); Transaction Value of Similar Goods (Section 703); Deductive Value (Section 704); Computed Value (Section 705); and Fallback Value (Section 706).
- Title VIII, Chapter 1, Sec. 800 of the CMTA further reiterates the goods that shall be exempt from the payment of import duties upon compliance with the formalities prescribed in the regulations promulgated by the Commissioner with the approval of the Secretary of Finance.
- Imported goods shall be admitted into a free zone when the goods declaration and required documents are electronically lodged with the BOC and other relevant government authorities at the time of admission. Goods admitted into the free zone shall not be subject to duty and tax.
- Stores which are carried on a vessel, aircraft, or train arriving in the customs territory shall be exempted from import duties and taxes provided that they remain on board. The same shall also apply to stores for consumption by the passengers and the crew.

### Glossary

BOC - Bureau of Customs  
BSP - Bangko Sentral ng Pilipinas  
CMTA - Customs Modernization and Tariff Act  
DA - Department of Agriculture  
DOH - Department of Health  
DOLE - Department of Labor and Employment  
DTI - Department of Trade and Industry  
LLCS - Labor Laws Compliance System  
PDIC - Philippine Deposit Insurance Corporation  
RA - Republic Act



- On the other hand, Title IX, Chapter 1, Sec. 900 of the CMTA reiterates the basis of duty drawback that shall be applicable to certain goods and products. It shall prescribe if the claim is not filed within one year from date of importation. All eligible claims for refund or tax credit shall be paid or granted by the BOC to claimants within 60 days after receipt of properly accomplished claims.
- Refund shall be granted where it is established that duties and taxes had been overcharged as a result of error in the assessment or declaration. However, such refund shall not be granted if the amount of duties and taxes involved is less than PHP5,000.00. Further, all claims and application for refund of duties and taxes shall be made in writing and filed with the BOC within 12 months from the month of payment of duties and taxes.
- Civil and criminal action and proceedings instituted on behalf of the government may be filed upon failure of the person to pay delinquent duty, tax and other charges at the time required by the BOC.

(Republic Act No. 10863 approved on 30 May 2016)

## ***The revised rules on Labor Laws Compliance System***

The Department of Labor and Employment (DOLE) issued the revised rules on Labor Laws Compliance System (LLCS) which embodies compliance-enabling approach in the regulatory framework. The LLCS shall be implemented through any of the following approaches: (a) joint assessment; (b) compliance visit; (c) occupational safety and health standards; and (d) special assessment or visit of establishments.

The LLCS was designed to achieve the following developmental tracks: (a) promote harmonious working relationship through the plant-level joint assessment of compliance by employer and worker's representative with the DOLE Labor Law Compliance Officer; (b) raise awareness of both employers and the workers and/or unions through a structured needs-based approach to workforce and enterprise wellness (known as the DOLE #Engage+Motivate+Achieve or #EMA Toolkit); (c) free technical assistance on productivity and occupational safety and health standards; (d) recognition of voluntary compliance by establishments; and (e) enhancement of plant-level partnership mechanisms.

(DOLE Department Order No. 131-B series of 2016 dated 30 May 2016)

## ***Telcos are included in the Credit Information System Act***

Telecommunications companies are now included within the scope of the Credit Information System Act. A Credit Information Corporation (CIC) is created to establish a centralized credit information system to determine the credit standing and track records of borrowers. Deadline for telecommunication companies to submit to the CIC their current Subject and Contract Data is on 31 December 2016. Submission of historical data shall be as follows: (a) first minimum submission of historical data (1 January 2014 to 31 December 2015) with deadline on 31 March 2017, and (b) second minimum submission of historical data (1 January 2011 to 31 December 2013) with deadline on 30 June 2017.

(CIC Circular No. 1 Series of 2016 dated 7 June 2016)

## ***Deadlines for submission of historical data for banks***

After taking into consideration the technological issues and challenges surrounding compliance, the Credit Information Corporation has determined the deadlines for submission of the five-year historical data for banks, scheduled as follows: (a) credit card issuer's first tranche (minimum submission) is 30 August 2016, covering data from 1 November 2013 to 31 October 2015, while the remaining is to be submitted on 31 December 2016 with data covered from 1 November 2010 to 31 October 2013; (b) universal and commercial banks including their trust departments' first tranche is 30 September 2016, covering data from 1 March 2014 to 29 February 2016, while the remaining is to be submitted on 31 January 2017 with data covered from 1 March 2011 to 28 February 2014; (c) thrift banks including their trust departments' first tranche is 31 October 2016, covering data from 1 April 2014 to 31 March 2016 while the remaining is to be submitted on 28 February 2017 with data covered from 1 April 2011 to 31 March 2014, while the second tranche is due on 28 February 2017 with data covering 1 April 2011 to 31 March 2014; and (d) rural banks and entities with quasi-banking license issued by the BSP, including their subsidiaries and/or affiliates that are engaged in the business of providing credit's first tranche is 30 November 2016, covering data from 1 June 2014 to 31 May 2016, while the remaining is to be submitted on 31 March 2017 with data covered from 1 June 2011 to 31 May 2014.

(CIC Circular No. 2 Series of 2016 dated 7 June 2016)



# ***Suspended BIR Issuances***

***As per Revenue Memorandum Circular No. 69-2016 dated 1 July 2016, the following issuances are subsequently suspended by the new CIR:***

## ***Accreditation of receipts and invoices printers***

An amendment to RR No. 15-2012 was released by the BIR last 1 June 2016 providing additional criteria in accrediting printers of receipts and invoices used for commercial purposes. Printers must: (a) have no record of any criminal complaint of tax evasion and/or other criminal offenses under the Tax Code, (b) have not been labelled as “Cannot Be Located (CBL) Taxpayer”, and (c) have not been considered as “Inactive” in any BIR tax system.

The Certificate of Accreditation issued by the respective RDO/LTAD/ELTRD/LTD office shall be valid for five years, subject to renewal within 30 days prior to expiration of validity period.

(Revenue Regulation No. 5-2016 dated 1 June 2016)

## ***Accounting of “netting” or “offsetting” transactions***

The CIR had set standardized procedures for taxpayers with respect to offsetting arrangements of accrued/trade receivables against accrued/trade payables pursuant to Section 6(H) in relation to Sections 57(B), 113 and 237 of the Tax Code.

(Revenue Memorandum Circular No. 61-2016 dated 13 June 2016)

## ***Tax treatment of passed on gross receipts tax***

This circular laid down the guidelines on the proper tax treatment of passed on Gross Receipts Tax (“GRT”).

(Revenue Memorandum Circular No. 62-2016 dated 13 June 2016)

## ***New rules in handling disputed assessments***

The CIR has set the prescribed policies and uniform guidelines in handling disputed assessments and in issuing Final Decision of Disputed Assessment .

(Revenue Memorandum Order No. 26-2016 dated 13 June 2016)

### ***Glossary***

BIR - Bureau of Internal Revenue
CIR - Commissioner of Internal Revenue
ELTRD - Excise Large Taxpayers Regulatory Division
LTAD - Large Taxpayers Assistance Division
LTD - Large Taxpayers Division
RDO - Revenue District Office
RMO - Revenue Memorandum Order
RR - Revenue Regulations
TTRA - Tax Treaty Relief Application

## ***TTRA not needed for dividend, interest and royalty payments***

To reduce double taxation and prevent fiscal evasion, new procedures in claiming preferential tax treaty benefits on dividend, interest and royalty income sourced within the Philippines of non-residents have been set by the CIR, amending RMO No. 72-2010.

In lieu of the mandatory tax treaty relief application (TTRA), preferential treaty rates for dividends, interests and royalties are granted outright by withholding final taxes at applicable treaty rates.

For income other than dividends, interest and royalties, the provisions contained in and procedures required in RMO No. 72-2010 shall continue to apply, and obtaining a ruling shall still be required.

(Revenue Memorandum Order No. 27-2016 dated 23 June 2016)



# Meet us

## Isla Lipana & Co. Foundation holds Scholars' Day 2016



PwC scholars visit the firm on Scholars' Day. Joining them in this photo are Foundation Trustee Anjji Gabriel and Assurance Partner, Corporate Responsibility Leader and Foundation President Gina Detera (seated fourth and fifth from left, respectively).

Isla Lipana & Co. Foundation, Inc. recently welcomed its PwC scholars in the firm at a simple meet and greet event to mark its annual Scholars' Day celebration.

Currently, the Foundation provides financial assistance to 15 Accountancy students from Polytechnic University of the Philippines (PUP), Pamantasan ng Lungsod ng Maynila (PLM), University of the East (UE), University of the Philippines (UP) and Lyceum of the Philippines University (LPU) including scholars enrolled in the CPA Review School of the Philippines.

The program started with a welcome and inspirational talk from Assurance Partner, Corporate Responsibility Leader and Foundation President **Gina Detera**. Foundation Trustee **Anjji Gabriel** came to greet the scholars and gave helpful advice on how to succeed in their studies and career. Former scholars now Assurance B Associates **Romel De Vivar** and **Ellaine Saberón** shared their experiences working in the firm as CPA professionals.



Highlights of Scholars' Day were the signing of memorandum of agreement between two new scholars and the Foundation represented by Ms. Gina Detera, and the distribution of scholarship checks.

The scholars were given a tour of the office and treated to a sumptuous meal. Vice Chairman, Territory Assurance and Markets Leader **Rick Danao**, who is a Foundation trustee, joined them for lunch.

## Our people at the Special Joint Meeting of the Canada Trade Mission

The special joint meeting organised by the Embassy of Canada and the Government of British Columbia (BC) was held last 27 May 2016 at the Ballroom 2, Fairmont Hotel, Makati City.

The meeting's theme of *Connecting Our Gateway Economies: A New Chapter in the British Columbia-Philippines Relationship* was another great initiative by the Canadian government for growing its trade and investment relationship with the Philippines following on the successful Canada Trade Mission last May 2015.

The business delegation this time was led by the Honourable Christy Clark, Premier of British Columbia, Canada and composed of BC-based companies. Tax Partner **Carlos Carado** joined the joint business luncheon and mingled with the participants from the Agriculture and Processed Foods, Clean Technology, Information and Communications Technology, and Infrastructure sectors.

Tax Director **Jaffy Azarraga** discussed the Philippine regulatory framework relative to trade and investment, and touched upon updates on policies in doing business in the country as well as the relevant regulations and experiences in dealing with the tax authorities.

Guillermo Manuel Luz, Chairman of the National Competitiveness Council of the Philippines discussed about the Philippine economic outlook and Canadian Chamber of Commerce President Julian Payne talked about the challenges and opportunities for Canadians in the Philippines.

Special thanks goes to Advisory Manager **Maita Quiocho** for coordinating this with the British Columbia secretariat.

# Talk to us

For further discussion on the contents of this issue of the *Client Advisory Letter*, please contact any of our partners.

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