

**ISSN 2094-1226/May 2015**

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# ***Client advisory letter***



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Updates, reiterations and clarifications on selected topics

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# Wi-Fi, 4G LTE to collide?



The way Wi-Fi technology has grown over the last two decades is nothing short of phenomenal. What began as a simple way to wirelessly network isolated clusters of home or business infrastructure within a limited area has become an essential component of wireless communications.

From the days of 'warchalking', when users identified open Wi-Fi access points (a.k.a. hotspots), to today's active advertising of Wi-Fi availability, consumers have grown to expect a Wi-Fi signal nearly everywhere they go. They expect not only ubiquitous but, frequently, also free Wi-Fi access. Once, considered a threat to network security, enterprises often shunned the technology. But the needs of workforce mobility, cloud computing and virtual desktop applications have made high-performance, secure Wi-Fi networks indispensable.

Download the full article from "Communications Review", free of charge at <http://goo.gl/SGXkDL>.

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# *Accounting for investments in other entities in separate FS*

Investments in other entities would include investments in subsidiaries, associates and joint ventures. Under PAS 27 – Separate Financial Statements (FS), the current applicable standard, these investments should be accounted for **at cost, or in accordance with PFRS 9**, as long as an entity would apply the same accounting for each category of investments.

Currently, accounting at cost or in accordance with PFRS 9 are the only options available for entities preparing separate financial statements. The only exemption is when an investment would qualify as held-for sale or is included in a disposal group where it should be accounted for at **the lower of its carrying amount and fair value less costs to sell** following the guidance under PFRS 5 - Non-current assets Held for Sale and Discontinued Operations.

Further, when an entity availed of the exemption to prepare consolidated financial statements (PFRS 10 par 4) and it has an investment in a subsidiary, the guidance above should still apply in accounting for its investment in subsidiaries, as well as its investments in associates and joint ventures, in its separate financial statements.

In August 2014, the International Accounting Standards Board (IASB) issued an amendment to IAS 27, which includes the **option to use equity method** in accounting for investments in subsidiaries, associates and joint ventures in separate financial statements and in financial statements of entities that availed of the exemption to prepare consolidated financial statements.

Under the equity method, an investment is initially recognized at cost, and the carrying amount is increased or decreased to recognize the investor's share of the profit or loss and other comprehensive income or loss of the investee after the date of acquisition. When the investor's share of losses in a subsidiary, an associate or a joint venture equals or exceeds its interest, including any other unsecured receivables, the investor does not recognize further losses, unless it has incurred legal or constructive obligations or made payments on behalf of the subsidiary, associate or joint venture.

The application of the equity method in the separate financial statements is expected to result in the same net assets and profit or loss (attributable to owners) in the consolidated financial statements. However, the IASB noted certain instances wherein differences could arise, a straightforward example is on application of impairment testing. The carrying amount of the investment in a subsidiary in the separate financial statements includes goodwill, which is not tested separately, and impairment assessment is applied to the entire carrying amount of the investment. In the consolidated financial statements, goodwill is recognized separately and is tested for impairment separately. The amount of loss as result of impairment test may be different in each circumstance.

Note that the financial statements of an investor who has no investments in subsidiaries, but has investments in associates or joint ventures that are required by PAS 28 to be accounted for using the equity method, are not separate financial statements. Such an investor is less likely to prepare separate financial statements and its investments in associates or joint ventures should be always be accounted for using the equity method.

We expect that the option to use equity accounting in separate financial statements would also be adopted in the Philippines and shall also be effective for annual periods beginning on or after 1 January 2016. When the accounting policy choice to apply equity accounting is adopted, the application should be retrospective in accordance with PAS 8 - Accounting Policies, Changes in Accounting Estimates and Errors. This amendment to the standard permits early adoption.

# Latest on income, withholding taxes and VAT

## **BIR Form Nos. 2307 and 2316 in scanned copies**

Below are the guidelines on submission of scanned copies of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) and Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) under RR No. 2-2015:

1. Submission of the scanned copies of BIR Forms 2307 and 2316 took effect last 21 March 2015. For quarterly income tax return due for filing last 30 April 2015, taxpayers were still given the option to submit the required BIR Form No. 2307 in either scanned or hard copy. However, for quarterly filings with deadline falling beyond 30 April 2015, scanned copies of BIR Form No. 2307 must be submitted. For audit purposes, retention of the hard copy of said forms is still required as per RR No. 2-2006.
2. Only one set of BIR Form No. 2307 is required for multiple income payments made by an income payor-withholding agent to the same income recipient/payee covering the same taxable period. This applies even if the income payments are subject to different creditable withholding tax rates.
3. The BIR may issue a certified true copy of the scanned BIR forms subject to the payment of certification fee and a corresponding DST.
4. Only an attorney-in-fact of an individual taxpayer under a notarized Special Power of Attorney (SPA) is duly authorized to sign the notarized certification and the label of the DVD-R containing soft copies of the scanned BIR Forms. For juridical persons or corporate entities, any of the principal officers designated through a Board Resolution may sign the certification and the label of the DVD-R.
5. Taxpayers under the non-Large Taxpayers Services have the option to comply with the foregoing requirements under RR No. 2-2015. However, once they opt to submit scanned copies, they will not be allowed to file in hard copies anymore.

6. Non-compliance with the requirements shall subject the concerned taxpayer to penalties provided under Sec. 250 of the Tax Code and RMO No. 7-2015, if applicable.
7. Where several income payments were made by an income payor-withholding agent that are covered by separate BIR Form 2307 issued to the same income recipient for the same taxable period, the images of such certificates should be separately stored in the DVD-R using a sequential number annexed at the end of each file name.
8. Taxpayers are allowed to store/save images of the forms in PDF format in the DVD-R with a minimum resolution of at least 200 dot-per-inch set to black and white.
9. While there is no prescribed size of paper for purposes of printing the BIR forms, the DVD-R should be single-sided and single-layered.

(Revenue Memorandum Circular No. 24-2015 dated 13 April 2015)

## **Petroleum subcontractor is not exempted from 15% BPRT**

According to the BIR, while a foreign subcontractor providing maintenance and engineering services to a service contractor engaged in petroleum operation is entitled to the 8% preferential final withholding tax (instead of the 30% regular tax) in lieu of any and all taxes, it is not exempt from the 15% BPRT. The 8% final tax in lieu of any and all taxes as provided under PD No. 1354 applies only to a subcontractor's gross income derived from contracts with a service contractor engaged in petroleum operations in the Philippines. On the other hand, the BPRT is a tax on profit realized for remittance abroad.

(BIR Ruling No. 122-2015 dated 17 April 2015)

## Advance VAT or percentage tax on milling and refining sugar

In cases where the taxpayer is engaged in integrated operation of milling and refining of sugar: a) the advance business tax (i.e., VAT or percentage tax) shall be imposed on raw sugar produced in the milling operations if it is sold to another person/entity; and b) if such raw sugar is just transferred to the refinery operation of the taxpayer for purposes of converting the same into refined sugar, only the advance business tax on the refined sugar shall be imposed.

To illustrate, ABC Corporation, a sugar refinery, processes and converts into refined the raw sugar owned by XYZ Corporation, a sugar miller, which already paid the prescribed advance business tax on raw sugar. Thus, XYZ shall pay the advance VAT due on the refined sugar, net of the advance VAT paid on the raw sugar, since XYZ is the owner of both the refined and raw sugar. However, if XYZ instead sold the raw sugar to ABC, the advance VAT on the resulting refined sugar shall be paid by ABC without the benefit of deduction of the advance VAT paid by XYZ, since ownership is already transferred to ABC. The advance VAT paid by XYZ shall be considered as ordinary input VAT by ABC, if separately billed, as output VAT, in the sales invoice issued by XYZ.

Advance payments of percentage taxes by non-VAT taxpayers are not allowable as input tax credits in the computation of the VAT liabilities of their clients-customers.

Finally, the physical inventories of raw sugar and refined sugar covered by *quedans* dated before the effectivity of RR No. 6-2015<sup>1</sup> on 1 May 2015 are not subject to advance business tax.

(Revenue Memorandum Circular No. 25-2015 dated 6 May 2015)

1 Implements regulations imposing advance value-added tax or percentage tax on sugar

### Glossary

BIR - Bureau of Internal Revenue

BPRT - Branch Profit Remittance Tax

DST - Documentary Stamp Tax

PD - Presidential Decree

RMO - Revenue Memorandum Order

RR - Revenue Regulations

VAT - Value-Added Tax

## VAT and percentage tax exemption of publishers

Sale, importation, printing and publication of books, newspapers, magazines, reviews and bulletins are exempt from VAT. To qualify for exemption, the features of the said items should appear at regular intervals with fixed prices for subscription and sale and must not be devoted principally to the publication of paid advertisements. These four (4) transactions are likewise not subject to the 3% percentage tax imposed under Section 116, in relation to Section 109(1)(V). However, the corporation carrying on such business shall be subject to the 12% VAT on purchase of goods, properties or services from its suppliers, pursuant to Section 107 of the Tax Code.

(BIR Ruling No. 133-2015 dated 30 April 2015)





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

## ***Intent to evade tax is not vital in falsity***

The taxpayer was assessed in 2009 for deficiency VAT for the taxable year 2005 due to underdeclaration of gross receipts. To refute the charge of falsity and application of the ten-year prescriptive period, the taxpayer argued that in the absence of proof of intention to evade payment of tax, mere underdeclaration of gross receipts did not render its VAT returns false.

Citing an SC case<sup>2</sup>, the CTA held that as long as there is a deviation from the truth, whether intentional or not, the return filed is to be considered a false one, and the ten-year prescriptive period under Section 222(a) of the Tax Code applies. Consequently, an understatement in the taxpayer's return makes the said return false, subject to the ten-year period to assess VAT deficiency from date of discovery of the falsity.

(CTA EB Case No. 1059 dated 16 March 2015)

## ***FWT paid on recalled interim dividends refundable***

A domestic company paid interim cash dividends to its foreign parent company and consequently paid the corresponding FWT to the BIR. However, after the financial audit of its books, it was determined that the unrestricted retained earnings available for dividend declaration were insufficient to cover the dividends paid. Given that the dividends were already declared and remitted, the company reversed the excess dividends and recorded the overpayment as receivable from its parent in compliance with the Corporation Code of the Philippines.

Considering that there was proper reversal and disclosure of the overpayment of dividends in the audited FS of the company, and that the application of the 10% preferential tax rate was confirmed by the BIR in a ruling, the CTA granted the request for refund or issuance of TCC for the FWT paid on the excess cash dividends declared by the company.

(CTA Case No. 8393 dated 17 March 2015)

## ***An RDO letter is not a CIR decision appealable to CTA***

In this case, the taxpayer duly protested an FLD and later received a letter from the RDO containing merely a computation for the taxpayer's guidance rather than a formal assessment. Treating the RDO letter as a final decision, the taxpayer filed a petition for review with the CTA.

According to the CTA, in order to acquire jurisdiction, an assessment must first be disputed by the taxpayer and ruled upon by the CIR to warrant a decision in the form of a "final decision on disputed assessment" from which a petition for review may be taken to the CTA. The RDO letter had not ripened into an appealable decision.

Hence, the Court ruled that without such decision or inaction, a disputed assessment cannot be brought to the CTA under Section 228 of the Tax Code.

(CTA EB No. 1099 dated 6 April 2015)

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2 G.R. No. L-20569 dated 23 August 1974

## ***Oral testimony is not enough to support bad debts expense***

Under existing policies<sup>3</sup>, bad debts expense may be validly deducted from gross income if the following requisites are established: (1) existence of indebtedness due to the taxpayer, which must be valid and legally demandable; (2) the same must be connected with the taxpayer's trade, business or practice of profession; (3) the same must not be sustained in a transaction entered into between related parties as enumerated under Section 36(B) of the Tax Code; (4) the same must be actually charged off the books of accounts of the taxpayer as of the end of the taxable year; and (5) the same must be actually ascertained to be worthless and uncollectible as of the end of the taxable year.

Citing an SC case<sup>4</sup>, the CTA reiterated the following steps to prove that a taxpayer exerted diligent efforts to collect the debts: (1) sending of statement of accounts; (2) sending of collection letters; (3) giving the account to a lawyer for collection; and (4) filing a collection case in court. Hence, in the absence of supporting documentary evidence, the related bad debt expenses will be disallowed for purposes of deduction from gross income. Mere testimony of the accountant explaining the worthlessness and the efforts taken to collect the accounts, without documentary proof, is simply self-serving which lacks probative value.

## ***The 60-day period to submit documents is more appropriate in a request for reinvestigation***

The CTA reiterated the ruling of the SC<sup>5</sup> that if a protest letter does not specify whether the taxpayer is requesting for "reinvestigation" (based on newly-discovered evidence) or "reconsideration" (based on existing records), the same is to be treated as both letter of reinvestigation and reconsideration. The alleged non-submission of supporting documents should not be considered a fatal error since the protest is also in the nature of a request for reconsideration which requires only the re-evaluation of existing records. The 60-day requirement is more appropriately confined to protests by way of a request for reinvestigation, rather than for reconsideration.

(CTA Case No. 8541 dated 20 April 2015)

## ***Zero-rating status at the time of sales crucial in a refund claim***

The claim for refund was denied by the court for failure on the part of the company to prove the existence of excess or unutilized input tax attributable to zero-rated sales (i.e., sales to PEZA/CDC/BOI-registered entities). To establish the fact that the sales were made to PEZA-registered entities, and thus are VAT zero-rated, the taxpayer must submit Certificates of Registration, indicating that its customers are duly registered with PEZA/CDC/BOI during the period covered by the claim. For purposes of determining the zero-rated sales, the court cannot assume that the registrations cover the taxable year involved or are still valid at the time the sales were made.

Furthermore, the court emphasized that the input taxes must not only be duly substantiated but must also exceed the output tax. Under Section 112 of the Tax Code, it is only when the input tax attributable to zero-rated sales exceeds the output tax that a refund or credit is proper.

(CTA EB No. 1154 dated 21 April 2015)

### ***Glossary***

BIR	- Bureau of Internal Revenue
BOI	- Bureau of Investments
CDC	- Clark Development Corporation
CIR	- Commissioner of Internal Revenue
CTA	- Court of Tax Appeals
FLD	- Final Letter of Demand
FS	- Financial Statements
FWT	- Final Withholding Tax
PEZA	- Philippine Economic Zone Authority
RDO	- Revenue District Office
SC	- Supreme Court
TCC	- Tax Credit Certificate
VAT	- Value-Added Tax

3 Section 3 of RR No. 5-99, as amended by RR No. 25-02, in relation to Sec. 34(e) of the Tax Code

4 G.R. No. 118794 dated 8 May 1996

5 G.R. No. 76281 dated 30 September 1991

## ***Appeal to the CIR does not refresh the 180-day period***

- *The 180-day period from submission of documents continues to run even if the protest is appealed to the office of the CIR.*

Under RR No. 12-99, if the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within 180 days from date of submission of documents in support of the protest, the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

In this case, the taxpayer received a decision from the BIR Regional Office partially granting its protest based on the document submitted. The taxpayer opted to file a request for reconsideration to the office of the CIR. When the taxpayer elevated the case to the CIR, the 180-day period from the original protest is about to end (barely 18 days left). Instead of filing an appeal to the CTA, the taxpayer submitted additional documents with the CIR and erroneously counted another 180-day period for the CIR to render her decision. Only after the lapse of the new 180-day period did the taxpayer elevate the case to the CTA on appeal.

The CTA ruled against the taxpayer since the period to appeal to the CTA had already expired. The CTA clarified that the law provides only one "180-day period" from submission of documents for the CIR to decide on the protest.

Therefore, the CTA's decision is a reminder that an appeal to the CIR does not refresh the 180-day period and the period should still be counted from the date when the taxpayer submitted the relevant documents in support of its protest.

(CTA EB No. 1098 dated 28 April 2015)

## ***Services to international shipping company are zero-rated; no other proof required***

In this case, the CTA initially ruled that the taxpayer's services to an international shipping company cannot qualify as zero-rated because the latter is actually doing business in the Philippines. The following documents were presented by the VAT taxpayer in its claim for refund to prove that the recipient of its services was doing business outside the Philippines:

1. Certificate of non-registration issued by the Philippine SEC
2. Certificate of residency of the appropriate tax authority where the company is doing business
3. Articles of association/incorporation
4. Compiled summary

The CTA found these documents insufficient to prove that the taxpayer's foreign client was actually doing business outside the Philippines, with portion of its total sales attributable to Philippine operations.

Nonetheless, after re-examination, the CTA granted the refund of input tax since the taxpayer's services were rendered to a client engaged in international shipping which is subject to zero percent (0%) VAT under Section 108(B) (4) of the Tax Code. This provision does not require proof that the international shipping company is doing business outside the Philippines.

(CTA Case No. 8549 dated 13 March 2015)

### ***Glossary***

BIR - Bureau of Internal Revenue  
CIR - Commissioner of Internal Revenue  
CTA - Court of Tax Appeals  
eFPS - Electronic Filing and Payment System  
RMC - Revenue Memorandum Circular  
RR - Revenue Regulations  
SEC - Securities and Exchange Commission  
VAT - Value-Added Tax



# Latest on regulatory landscape

## Alternatives in filing BIR Forms using electronic platforms

With the exception of taxpayers not mandated to use eFPS/eBIRForms, the following guidelines shall govern the filing of various BIR forms using BIR's electronic platforms:

1. Taxpayers filing with payment or no payment using the Offline eBIRForms for the forms listed below, shall follow the same procedures in Annex D of RMC No. 14-2015 and efile the encoded tax return form in "xml file" using the following email subject and address:

Form No.	eMail Subject	eMail Address
1601-C	RDO_1601C_TIN_taxable_period	1601C@bir.gov.ph
1601-E	RDO_1601E_TIN_taxable_period	1601E@bir.gov.ph
1601-F	RDO_1601F_TIN_taxable_period	1601F@bir.gov.ph
1600	RDO_1600_TIN_taxable_period	1600@bir.gov.ph
1602	RDO_1602_TIN_taxable_period	1602@bir.gov.ph
1603	RDO_1603_TIN_taxable_period	1603@bir.gov.ph
1606	RDO_1606_TIN_taxable_period	1606@bir.gov.ph
2551M	RDO_2551M_TIN_taxable_period	2551M@bir.gov.ph
2551Q	RDO_2551Q_TIN_taxable_period	2551Q@bir.gov.ph
2550M	RDO_2550M_TIN_taxable_period	2550M@bir.gov.ph
2550Q	RDO_2550Q_TIN_taxable_period	2550Q@bir.gov.ph
1700	RDO_1700_TIN_taxable_period	1700v2013@bir.gov.ph
1701	RDO_1701_TIN_taxable_period	1701v2013@bir.gov.ph

Form No.	eMail Subject	eMail Address
1702EX	RDO_1702EX_TIN_taxable_period	1702EXv2013@bir.gov.ph
1702MX	RDO_1702MX_TIN_taxable_period	1702MXv2013@bir.gov.ph
1702RT	RDO_1702RT_TIN_taxable_period	1702RTv2013@bir.gov.ph
1701Q	RDO_1701Q_TIN_taxable_period	1701Qv2008@bir.gov.ph
1702Q	RDO_1702Q_TIN_taxable_period	1702Qv2008@bir.gov.ph

2. If the return is with payment, the taxpayer should print the eMail Notification from the BIR as proof of the efiled return together with the tax return, then manually make their payment to the Authorized Agent Bank/Collection Agent following existing procedures.
3. For taxpayers mandated to use the eFPS but were unsuccessful in efilings after several attempts, they must print evidence/proof of such attempts in the form of a print screen with the message as given by the system. Furthermore, to be protected from penalties, they should either:
  - Report/call HELPDESK and get Trouble Ticket Log on or before the due date, or
  - Report to the BIR Contact Center (981-8888) and get the Reference Number of the call.

Nonetheless, taxpayers should manually file and pay on or before the due dates of the respective returns with proof of unsuccessful eFPS attempts and re-file electronically within 15 days after the statutory deadline set for the relevant returns, starting return period April 2015 which will be filed on May 2015.

4. Penalties imposed under RR No. 5-2015, on filing using a mode/venue different from that prescribed, shall be waived upon taxpayer's electronic re-filing.

(Revenue Memorandum Circular No. 26-2015 dated 6 May 2015)

## ***REITs are not allowed to invest in real estate mortgages***

Under RA No. 9856<sup>6</sup>, a REIT is defined as a stock corporation established, in accordance with the Corporation Code of the Philippines and the rules and regulations promulgated by the SEC, principally for the purpose of owning income-generating real estate assets. It appears that a mortgage trust was not the primary intention under the REIT Act since preference was for equity trust transactions particularly on tangible real properties “generating a regular stream of income”. Thus, a REIT cannot invest in real estate mortgages, but only in income-generating real estate that provides interest or other regular payments to the REIT.

(SEC-OGC Opinion No. 15-01 dated 22 April 2015)

## ***Changes to the Regulations on Foreign Exchange***

The following are the revisions to the provisions of the Manual of Regulations on Foreign Exchange Transactions:

- a. The amount of peso refund of the International Passenger Service Charge (IPSC) to outbound exempt passengers shall not be included in the PHP10,000 limit on cross border transfer of Philippine currency. Exempt passengers include OFWs and the Philippine Sports Commission and its delegations/representatives to any international competition, convention, conference and meeting.
- b. Payments for exports through open account (O/A) arrangement, which does not require prior BSP approval, shall include intercompany netting among non-bank related parties, provided that the arrangement is made between a resident and a non-resident.

(BSP Circular No. 874-2015 dated 8 April 2015)

6 Otherwise known as the Real Estate Investment Trust Act of 2009

## ***BSP allows UITF with unit-paying feature***

Amending the regulations on UITF<sup>7</sup>, the BSP allowed the establishment of one or more UITFs as a feeder fund, fund-of-funds and/or multi-class fund. The UITF is allowed to have a unit-paying feature where the income of the fund is distributed in the form of unit income<sup>8</sup>. Accordingly, the distribution shall be made only from cash dividends and interest income received from several investment securities. On the date of distribution, the equivalent units shall be automatically considered redeemed.

The amendments also covered sections on the minimum disclosure requirements, key information in the Plan Rules, the allowable investments and other information on fees.

(BSP Circular No. 876 dated 20 April 2015)

## ***BOC enforces stricter rules on regulated imports***

Under this CMO, the BOC requires all importers of any product included in the Regulated Imports List to submit the required import permits upon filing their import entries. The complete list of regulated imports and the specific rules under the User's Guide are available for download on the BOC website and shall be strictly enforced starting 11 May 2015.

- 7 Subsections X410.2/4410Q.2, X410.5/4410Q.5, X410.6/4410Q.6, X410.7/4410Q.7, X410.9/4410Q.9 and Appendix 62/Q-34 of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI)
- 8 Unit income refers to “the number of units for every unit held by the participant entitled for distribution”.

### ***Glossary***

BOC - Bureau of Customs

BSP - Bangko Sentral ng Pilipinas

CMO - Circular Memorandum Order

IC - Insurance Commission

ITR - Income Tax Return

REIT - Real Estate Investment Trust

RMO - Revenue Memorandum Order

SEC - Securities and Exchange Commission

UITF - Unit Investment Trust Fund

The BOC also mandates that BOC officials, who shall require the submission of import permits for any product not included in the said list, shall be dismissed on the first offense. Noncompliance with any other sections of this CMO shall be an incidence of simple neglect of duty and punishable by dismissal on the second offense.

(Customs Memorandum Order No. 9-2015 dated 10 April 2015)

## ***Guidelines on amending non-life insurance policy forms***

Certain changes on previously approved policy forms, surety bond forms, endorsement and ancillary forms (i.e., changes on the company's legal and business name, logo, principal/branch office address, contact information, name of signatory, premium and amount of deductible, font, conversion to policy jacket or booklet type, conversion to electronic form, correction of typographical errors, amount of insurance/benefits and deductible, and pagination) can be effected by non-life insurance companies even without the prior approval of the Commissioner, subject to certain conditions.

Furthermore, in case of changes in the legal and business name, company logo, office addresses, contact information and website address, the company must submit a notification letter, together with a sample policy form showing the changes, to the IC within ten working days from the date of first issuance of the policy form.

A fine of PHP5,000 per day of delay, but not more than PHP200,000 shall be imposed for non-compliance.

(Insurance Commission Circular Letter No. 2015-12-C dated 24 March 2015)

## ***Guidelines on approval of non-life insurance products***

Individual insurance companies are required to submit to the Insurance Commission all forms of policies, certificates or contracts of insurance, riders, clauses, warranties, endorsements and other forms for approval (including amendments to the standard policy wordings) before they can be issued to the public. Non-compliance by the insurance companies shall be subject to a fine of PHP50,000 per contract or PHP5,000 per form.

On the other hand, submissions by representative industry associations shall not be considered as applications for policy approval but may be considered only to standardize policy provisions. It shall not be issued to the public unless already approved through an individual insurance company.

(Insurance Commission Circular Letter No. 2015-14 dated 25 March 2015)

## ***Rules on applications for registration to act as resident agents***

The IC provides new rules on applications for new certificates of registration and renewal of existing certificates to act as resident agents of the following: (1) Unauthorized Foreign Insurers, (2) Unauthorized Foreign Professional Reinsurers, (3) Unauthorized Foreign Brokers, and (4) Unauthorized Foreign Insurance Markets recognized as such in their respective jurisdictions.

These entities must either (1) meet the capitalization requirements equivalent to what is required of their domestic counterparts, or (2) have a minimum financial strength rating, duly certified by any of the following rating organizations: at least A- rating by A.M. Best, or at least AA rating by Fitch, Moody's or Standard and Poor's.

Applicants must submit the following documents: consularized power of attorney executed by the foreign entity authorizing the applicant to receive notices, summons and legal processes (for new applications); original Certificate of Registration (for renewals); copy of the certificate of authority, license or certificate of registration of the principal duly certified by the insurance supervisory authority where it is authorized to do insurance business; copy of the Audited Financial Statements of the principal for the three immediately preceding years; copy of the current Errors and Omissions Policy, if applicant is a broker; and the original or verified copy of the applicant's ITR.

(Insurance Commission Circular Letter No. 2015-16 dated 25 March 2015)

## ***Mandatory disclosure of personal information of directors and officers of insurance corporations***

The Annual Statements of Life and Non-life Insurance Corporations and Mutual Benefit Associations must contain the full names and actual addresses of the officers and members of the Board of Directors/Trustees of the corporation; such information must be updated regularly. Failure to comply shall warrant a penalty of PHP20,000 and an additional PHP5,000 per day of delay in compliance or correction of the error from date of receipt of the Commission's notice. Additionally, a copy of the General Information Sheet shall be furnished to the Commission within five days from submission to the SEC; otherwise, the foregoing fine of PHP5,000 shall likewise apply.

(Insurance Commission Circular Letter No. 2015-19 dated 17 April 2015)

## ***New rules on bancassurance*** ***Annual filing of audited FS of insurance brokers***

To implement the provisions on bancassurance under the Amended Insurance Code, the Insurance Commission issued new guidelines for insurance companies engaged in the sale of insurance products to bank customers. The implementing rules provide a definition of terms relative to bancassurance and expounds on the authority to engage in bancassurance by detailing the requirements to conduct bancassurance, the role of bank employees and the acts that are allowed and not allowed for bank employees.

The rules also identify the mandatory provisions required in the Bancassurance Arrangements or Agreements and the procedural mechanisms that must be in place in the conduct of cross-selling activities. Provisions on advertising and bancassurance activities discuss the standards that must be observed to ensure that activities are performed in an honest and orderly manner, as well as, the consequences of rule violation and suspension of activities. Furthermore, policies on consumer protection are enhanced by observance of the following practices: Product Highlight Sheet (PHS), Client Suitability Assessment (CSA), Investment Policy Statement (IPS), Disclosure of Conflict of Interest statement, and a standard disclosure statement. Handling of claims and complaints shall be facilitated under a complaint resolution mechanism. Lastly, reportorial requirements on bancassurance include an Annual Summary Report with specified contents, and other regulatory requirements pursuant to administrative issuances.

Nothing in the Letter shall amend or repeal the provisions relative to the grant of authority to the rural, cooperative or thrift banks to market, sell and service Microinsurance products as previously provided under BSP Circular No. 683.

(Insurance Commission Circular Letter No. 2015-20 dated 27 April 2015)

Insurance brokers and reinsurance brokers are reminded to file their Audited Financial Statements together with the complete set of documents required in this Circular Letter on or before 31 May of each year. Noncompliance shall be subject to a penalty of PHP5,000 per day of delay.

(Insurance Circular Letter No. 2015-21 dated 27 April 2015)

## ***Listing period for Negative List of officers and employees***

The Negative List contains names of active as well as inactive officers or employees, who may have been found guilty or have pending complaints filed against them for certain prohibited acts. However, the name in the Negative List cannot be left for an indefinite period where no determination of guilt has been pronounced, thus causing undue damage to the concerned officer/employee.

For purposes of providing a definite period in which a name appears in the list, a maximum period of three years shall apply for officer/employee with pending complaints filed against them. If after three years, no subsequent action/proceeding had been filed or had advanced against him/her, the Negative List shall be lifted. However, the name of the officer/employee shall be reinstated on the list once a ruling or finding of guilt has been issued.

(Insurance Commission Circular Letter No. 2015-22 dated 6 May 2015)

## ***Rules on licensing of lawyers as insurance adjuster***

In order for a person, partnership, association or corporation to act as an adjuster, two conditions must be met, i.e. 1) Filipino citizenship for natural persons, or ownership by Filipino citizens of 60% of capital for judicial persons; and 2) procurement of a license from the Insurance Commission in all cases. However, one exception is that a duly licensed attorney-at-law is not required to obtain such license, and may act in aid of his client in adjusting insurance claims, provided a) such engagement is merely an incident to the practice of his profession, and b) he does not advertise himself as an adjuster. Another exemption is a salaried employee of an insurance company, but this only applies to adjustment of claims filed under or issued by such insurance company.

To distinguish, an independent adjuster acts on behalf of the insurer, while a public adjuster acts on behalf of the insured. One may be issued a license to act either as an independent adjuster or a public adjuster, but not both. It thus follows

### ***Glossary***

BOC - Bureau of Customs  
BSP - Bangko Sentral ng Pilipinas  
eARS - Electronic Application for Registration System  
FS - Financial Statements  
JMO - Joint Memorandum Order  
PEZA - Philippine Economic Zone Authority



that a lawyer who was issued a license as adjuster cannot act as both an independent adjuster and a public adjuster, even when the said act is merely an incident to the practice of law.

(Insurance Commission Circular Letter No. 2015-24 dated 8 May 2015)

## ***Optional use of the BOC's e2m System by PEZA enterprises is extended***

Until 30 days from 4 May 2015, PEZA enterprises may opt to continue using the e2m Transshipment System of the BOC for their import cargoes, subject to the following guidelines:

- The mandatory compliance to file transshipment entries through the e2m system as prescribed in BOC-PEZA JMO No. 1-2015 shall be postponed for another 30 days from 4 May 2015.
- Pending issuance of further guidelines, the accreditation of PEZA enterprises through the BOC-Account Management Office will not be required as long as the company's Client Profile Registration System is active and its importations are covered by a bond with minimal face value of PHP1m.
- PEZA enterprises are strongly encouraged to lodge transshipment entries through the BOC's e2m system in preparation for the mandatory implementation of BOC-PEZA JMO No. 1-2015.
- Existing bonds shall continue to be valid until their respective expiry dates.

(PEZA Memorandum Circular No. 2015-14 dated 28 April 2015)

## ***Online application for PEZA registration now available***

For ease of doing business, PEZA recently activated the PEZA Electronic Application for Registration System (e-ARS), Phase 1, which can be used by new and existing registered Ecozone Developers and Ecozone Enterprises.

Through the e-ARS, which may be accessed through the PEZA website, the application form can be filled up and sent electronically, while the application fee can be paid in the PEZA Head Office or in any PEZA office. The required attachments, including the scanned copy of the official receipt, can be sent by the applicant to these email addresses: [eddapps@peza.gov.ph](mailto:eddapps@peza.gov.ph) (for Ecozone Developers) or [erdapps@peza.gov.ph](mailto:erdapps@peza.gov.ph) (for Ecozone Enterprises).

Hard copies of the documents sent by email shall be submitted to PEZA within 30 days from the date of approval of application (for Ecozone Developers) or prior to signing of the company's registration/supplemental agreement with PEZA (for Ecozone Enterprises).

(PEZA Memorandum Circular No. 2015-15 dated 8 May 2015)





# Meet us

## *“We Are HeForShe”: PwC commits to take action for gender equality*



Dennis Nally, Chairman of PwC International, announced in early May the commitments PwC has made to support the UN Women’s HeForShe movement.

This work will be done with UN Women, the United Nations entity dedicated to gender equality and the empowerment of women. On 20 September, 2014, UN Women introduced HeForShe, which aims to mobilise one billion men and boys in support of gender equality.

At the World Economic Forum Annual Meeting in Davos, Switzerland in January 2015, Dennis Nally became an IMPACT 10x10x10 champion— making PwC one of the first ten corporations around the world committing to take bold, game-changing action to achieve gender equality within and beyond their institutions.

The HeForShe’s IMPACT 10x10x10 programme engages 30 key leaders across three sectors—the public sector, private sector and academia. All 30 IMPACT champions have made common commitments and have also developed tailored commitments, formally reviewed by an expert team at UN Women and approved personally by the Executive Director of UN Women, Phumzile Mlambo-Ngcuka.

IMPACT champions were selected based on their reputation for strong ethical practices; their demonstrated excellence in public service; their global reach and relevance, and their willingness to use their full footprint and influence to drive and inspire change across the private sector.

Dennis Nally signed the UN’s CEO Statement of Support for the Women’s Empowerment Principles (WEPs), a set of principles for business offering guidance on how to empower women in the workplace, marketplace and community, and he has committed to implement Principle 7: “Measure and publicly report on progress to achieve gender equality.”

PwC has made the following commitments:

1. Develop and launch an innovative male-focused gender curriculum with global reach
2. Launch a Global Inclusion Index to further increase women in leadership roles
3. Raise the global profile of HeForShe with PwC people, clients, and communities

Dennis Nally, Chairman of PwC International, says: “Despite years of promoting gender equality, many women and girls around the world continue to face inequalities. Two things are clear. First, this problem isn’t going to correct itself. And second, to create a more equal world, everyone has a role to play.

“Achieving gender equality isn’t going to be an easy task. But I am personally committed to playing a part in solving the problem. And with the support of 195,000 PwC people in 157 countries, I’m very confident that we can help to make a real difference in the lives of women and girls around the world – and build a much more innovative world where men and women have more choices.”

To find out more about PwC’s involvement with HeForShe, visit [www.heforshe.org/impact](http://www.heforshe.org/impact). PwC is committed to promoting diversity and inclusion and has a range of programmes in place to make progress on the issue. These include Aspire to Lead: The Women’s Leadership Series, a global forum on women and leadership for students around the world. PwC also regularly produces research on diversity and inclusion including *The female millennial: A new era of talent*. More thoughts on diversity can also be found on PwC’s Gender Agenda blog.

## Basic entrepreneurial seminar held for Mindanao-based social enterprises

After the success of the Developmental Social Enterprise Awards ([www.dseawards.com](http://www.dseawards.com)), we continue to support social enterprises as part of PwC's focus on community engagement.

Last 22 May, the firm conducted the first leg of the "Mind Your Own Business: Basic Entrepreneurial Seminar" for social enterprises, the academe and micro-enterprises at the Central Mindanao University in Maramag, Bukidnon.

The seminar touched on basic accounting requirements for businesses as well as tips on managing finances, both discussing personal and business finances, governance and compliance as well as updates on minimum tax requirements for businesses.

Led by Assurance Partner and Corporate Responsibility Lead **Gina Detera**, the team was composed of Assurance and Markets Director **Allan Cao**, Assurance Manager **Wesley Lance Yu**, Tax Executive Director **Roselle Yu** and Tax Director **Brando Cabalsi**.

This seminar was made possible through the assistance of the DSEA finalist Coffee for Peace in coordination with the University Income Generation Program and the Social Enterprise and Agroforestry Management for Inclusive Growth of Central Mindanao University.



## 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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### Request for copies of text

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