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Client advisory letter



Mother and daughter, Former Chairman and Senior Partner Tammy Lipana and Deals and Corporate Finance Director Kate Lipana-Gomez

At a glance

Updates, reiterations, and clarifications on selected topics

Taxes, compliance matters, assessments, and refunds

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Global economic growth expected to slow in 2019

The global economy as a whole is expected to slow in 2019 as G7 countries return to long-run average growth rates, according to new projections from PwC in its latest Global Economy Watch.

PwC expects that the pick-up in growth of most major economies seen between the end of 2016 and the beginning of 2018 is now over. In the US, the boost from fiscal stimulus is expected to fade, higher interest rates are likely to dampen consumer spending and a strong dollar will continue to drag on net exports. PwC projects US growth will moderate from an estimated 2.8% in 2018 to around 2.3% in 2019.

Barret Kupelian, senior economist at PwC, said: “Last year, the big economic news was centered around advanced economies creating around 4.5 million jobs. We expect this trend to gradually moderate in 2019 with some economies like the US, Canada and Germany hitting structural floors in their unemployment rates, and wage growth starting to gradually pick up. Assuming an orderly Brexit, we expect the UK to also see unemployment flattening off, though a disorderly Brexit could lead to a marked rise of unemployment.”

The full predictions piece is available to read here pwc.com/GEW

Disclosure of the expected impact of IFRS/PFRS 16 Leases

At a glance

IFRS/PFRS 16, the new accounting standard for leases, becomes effective for annual reporting periods commencing on or after 1 January 2019. As with other new accounting standards, IFRS/PFRS reporters are required to disclose information relevant to assessing the impact of IFRS/PFRS 16 in periods prior to adoption.

The 2018 annual reporting period is the final reporting period prior to the mandatory adoption of IFRS/PFRS 16; and, by the time that companies publish their 2018 annual reports, they will have implemented IFRS/PFRS 16.

What is the issue?

Paragraphs 30 and 31 of IAS/PAS 8, 'Accounting Policies, Changes in Accounting Estimates and Errors', detail the disclosure requirements for the expected impact of new accounting standards which have not yet been adopted. In particular, IAS/PAS 8 requires entities to disclose known or reasonably estimable information relevant to assessing the possible impact that application of IFRS/PFRS 16 will have on an entity's financial statements in the period of initial application.

It is therefore important that entities carefully consider the expected impact of IFRS/PFRS 16, to provide specific and meaningful disclosure.

What is the impact and for whom?

Practical suggestions for robust disclosure of the impact of IFRS/PFRS 16

All entities with leases, or arrangements where significant judgement has been made in assessing whether it contains a lease, will need to consider their disclosure of the expected impact of IFRS/PFRS 16. Entities without leases should consider disclosing the fact that IFRS/PFRS 16 is not expected to impact them.

With reference to the requirements of IAS/PAS 8, we set out below our practical suggestions of matters for entities to consider disclosing in relation to the expected impact of IFRS/PFRS 16. These practical suggestions are solely an indicative guide of how an entity could respond to the need

to disclose the impact of IFRS/PFRS 16. Disclosures should be entity-specific, and each entity should consider what disclosures best meet the requirements of IAS/PAS 8 and regulator expectations, based on their specific facts and circumstances.

- Disclose the fact that IFRS/PFRS 16: *Leases* has not yet been applied, that it is applicable for annual reporting periods commencing 1 January 2019, and the date on which the entity expects to first apply IFRS/PFRS 16.
- Information about the structure and status of the entity's implementation project.
- A description of the changes in accounting policy which will take effect, including whether exemptions will be applied (such as low-value or short-term exemptions).
- A description of which transition approach will be taken, and whether any practical expedients will be applied.
- A description of the key judgements and estimates made (such as assessing whether an arrangement contains a lease, determining the lease term, calculating the discount rate and whether any service/lease components of arrangements will be separated), and identifying lease portfolios for which IFRS/PFRS 16 has a significant impact.
- Quantification of the expected impact (restatement to assets, liabilities and retained earnings/opening retained earnings adjustment, or the change in assets, liabilities, income, expense on adoption, depending on transition approach).
- If taking the simplified transition approach, an explanation of any differences between the current operating lease commitment disclosure and IFRS/PFRS 16 lease liability balances, and a statement that lease liability comparative information has not been restated.

When does it apply?

IFRS/PFRS 16 applies for annual reporting periods beginning on or after 1 January 2019. Therefore there is an expectation, as explained above, that disclosures within the 2018 annual reports will sufficiently explain the expected impact of IFRS/PFRS 16, particularly given that 2018 annual reports will be released during 2019, after IFRS/PFRS 16 has been adopted.

Taxes, compliance matters, assessments, and refunds

Spirit of giving

Donation incidental to the dissolution of the absolute community of property

A regional trial court annulled the marriage between two spouses and approved the Agreement for Custody and Support and Liquidation, Dissolution, and Separation of the Property Regime (Agreement).

The Agreement provided for the donation of a condominium unit to their child. Accordingly, the spouses executed the donation and paid donor's taxes. Subsequently, the former spouses applied for a refund of the donor's taxes because:

- a. there was no donative intent on their part given that the donation was merely premised upon their compliance with the legal requirements for the dissolution of property relations, and
- b. the transfer of property is a legal consequence of the dissolution of the absolute community.

The CTA denied the refund claim ruling that there was donative intent when the spouses gave their property to their child without consideration. Further, although the Family Code mandates the delivery of the presumptive legitimate to the child upon dissolution and partition of the absolute community, ownership was not transferred to the child by operation of law. It was transferred when the spouses executed the donation in compliance with the law.

(CTA Case No. 9765, promulgated 23 November 2018)

Glossary

CIR - Commissioner of Internal Revenue

CTA - Court of Tax Appeals

LOA - Letter of Authority

RMO - Revenue Memorandum Order

Issue with authority

Who can sue in behalf of a local government unit

The City Treasurer of Tagum City is not authorized by the Local Government Code or by the city charter to file a judicial suit for or on behalf of Tagum City. Thus, a prior *Sangguniang Panglungsod* resolution is necessary to authorize the City Treasurer to file a suit.

(CTA AC No. 190 [UDK-SP 015], promulgated 14 November 2018)

Franchise player

Imposition of the franchise tax on a transmission company

The franchise tax under the Local Government Code is imposed on the privilege of operating a franchise. Since it partakes the nature of an excise tax, the situs of the franchise tax is the place where the privilege is exercised.

The CTA ruled that a city cannot impose franchise tax on a transmission company because the latter does not operate and have a principal office in said city. Also, the imposition cannot be justified by the fact that the transmission company has a customer with an office in the city.

(CTA AC No. 190 [UDK-SP 015], promulgated 14 November 2018)

CTA divisions

Mandatory issuance of a new LOA when reassigning a tax investigation

According to the CTA First Division, a reassignment of tax investigation cases requires the issuance of a new LOA. Hence, the issuance of a Memorandum of Assignment instead of a new LOA renders an assessment void.

Note: In an earlier decision¹ by the CTA Second Division, the latter held the view that although RMO 43-1990 requires the issuance of a new LOA in the event of a transfer or reassignment to new tax examiners, the CIR or

¹ CTA Case No. 9179, promulgated 2 August 2018.

his/her duly authorized representative has the prerogative to modify or amend the existing LOA instead of issuing a new one – in order for the assessment to validly proceed.

(CTA Case No. 9168, promulgated 8 November 2018)

Misplaced presumption

When PILAA cannot be used in assessing local business taxes

Balanga City assessed local business taxes using the Presumptive Income Level Assessment Approach (PILAA) despite the taxpayer's submission of sworn certifications of gross sales or receipts for the preceding calendar years. The taxpayers paid under protest and subsequently filed a refund claim.

The CTA granted the refund. Pursuant to Section 2M.04(d) of the Balanga City Revenue Code, the sworn declaration of gross sales and/or receipts should have been used in computing the local business tax due. Best available evidence or the PILAA may be resorted to only if the taxpayer failed to provide said sworn declaration on account of its failure to maintain books of accounts and records.

(CTA AC No. 200, promulgated 22 October 2018)

Wider acceptance

Revenue District Offices are already allowed to accept ONETT-related tax payments

Revenue Collection Officers (RCOs) assigned in RDOs are now allowed to accept tax payments pertaining to One-Time Transactions (ONETT) such as payments of CGT, DST, donor's tax, estate tax and other ONETT-related taxes.

Payments for ONETT-related taxes amounting to PHP20,000 and below shall be in cash; while those above PHP20,000 shall be made through Manager's or Cashier's Checks to the RCO.

(Revenue Memorandum Circular No. 107-2018 issued 28 December 2018; Revenue Memorandum Order No. 49-2018 issued 13 November 2018)

Simple cases

Clarifying the instances when a TVN may be issued

A TVN shall cover the verification of the following cases:

1. Estate tax cases where the decedent has no other tax liabilities;
2. Claims for tax refund
 - a. VAT refund pursuant to Section 112 of the Tax Code,
 - b. Claims of Job Order personnel, or
 - c. Claims arising from erroneous/double payment of taxes, including double payment due to system error/glitch.

The TVN shall be signed the Head of Office authorized to process the estate tax return/claim for tax refund, and shall be manually issued until the TVN system is in place.

(Revenue Memorandum Order No. 48-2018 issued 5 November 2018)

Status quo ante

Deleting the provisions regarding taxation of group health insurance premiums

In June 2018, RMC 50-2018 was issued to address frequently asked questions in relation to the income tax and withholding tax provisions of the TRAIN Act.

The BIR has amended said RMC by deleting the following questions and answers that were not affected by the TRAIN Act:

- Q7/A7 – group health insurance premiums
- Q34/A34 – directors fees

(Revenue Memorandum Circular No. 96-2018 issued 29 November 2018)

Glossary

BIR - Bureau of Internal Revenue

CTA - Court of Tax Appeals

LOA - Letter of Authority

RDO - Revenue District Officer

RMC - Revenue Memorandum Circular

TRAIN - Tax Reform for Acceleration and Inclusion

TVN - Tax Verification Notice

VAT - value-Added Tax

New package

Availability of the updated eBIRForms Package Version 7.2

The offline eBIRForms Package Version 7.2 is now available and downloadable from the following sites:

1. www.bir.gov.ph; and
2. www.knowyourtaxes.ph

The package includes the following revised BIR forms:

BIR Form No.	Form Name
1601C	Monthly Remittance Return of Income Taxes Withheld on Compensation
1602Q	Quarterly Remittance Return of Final Taxes Withheld on Interest Paid on Deposits and Deposit Substitutes/Trusts/Etc.
1603Q	Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid to Employees Other Than Rank and File
2551Q	Quarterly Percentage Tax Return

(Revenue Memorandum Circular No. 93-2018 issued 5 November 2018)

Micro-management

Clarifying the tax returns to be used by Microfinance NGOs

The BIR has clarified the forms to be used by duly registered and accredited Microfinance Non-Government Organizations (MF-NGOs) in the filing and payment of the 2% tax based on gross receipts in lieu of all national taxes.

The clarifications distinguish the forms to be used by MF-NGOs with purely microfinance operations and MF-NGOs with income from non-microfinance operations.

(Revenue Memorandum Circular No. 92-2018 dated 31 October 2018)

Glossary

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BIR - Bureau of Internal Revenue

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NGO - Non-Government Organization



Latest on regulatory landscape

Negative outlook

Issuance of the 11th Regular FINL

The President promulgated the 11th Foreign Investment Negative List (FINL). The FINL is a list of investment areas or activities which are reserved for Filipino nationals and/or open to foreign investors.

(Executive Order No. 65 dated 29 October 2018)

Transportation assistance

Additional inclusions to the 2017 IPP

The BOI amended the “General Policies and Specific Guidelines to implement the 2017 IPP” to include the following additional provisions on air and water transport:

- Sale and leaseback, or leaseback option of brand-new aircraft may be allowed.
- Pure lease of new aircraft may be qualified for registration – but shall be eligible for a 2-year ITH.
- Pure lease and bareboat charter of new vessels may be qualified for registration.

(BOI Memorandum Circular No. 2018-08 dated 10 October 2018)

Rural development

Issuing the new list of Less Developed Areas under the 2017 IPP

Following its consultations with the NEDA and other government agencies, the Board of Investments approved the new list of Less Developed Areas (LDAs) which is applicable to enterprises registered under the 2017 IPP.

Other than the incentives provided under EO No. 226, BOI-registered enterprises located in LDAs are also entitled to pioneer incentives and incentives for necessary and major infrastructure and public utilities, and other facilities such as irrigation, drainage or other similar waterworks infrastructure.

(BOI Memorandum Circular No. 2018-07 dated 21 September 2018)

Fair is fair

Releasing guidelines on the valuation of financial instruments

The Monetary Board has issued guidelines to align existing regulations with the provisions of PFRS 13 on Fair Value Measurement, particularly, with respect to:

- Marking to market of financial instruments
- Other related guidelines on the valuation of allowable investments
- Amendment of the guidelines in the establishment of the market benchmarks/reference prices and computational methodology used to mark-to-market debt and marketable equity securities

(BSP Circular No. 1021-2018 dated 15 November 2018)

Clearing the smoke

Requiring domestic corporations to disclose their beneficial owners

The SEC requires all SEC-registered domestic stock and non-stock corporations to disclose their beneficial owners which are defined as natural persons who:

- a. Ultimately own or control the corporation; or
- b. Have ultimate effective control over the corporation.

When a corporation is owned through multiple layers, any intermediate layers within the structure should be fully identified.

Glossary

BOI - Board of Investments
IPP - Investment Priorities Plan
ITH - Income Tax Holiday
NEDA - National Economic Development Authority
PFRS - Philippine Financial Reporting Standards
SEC - Securities and Exchange Commission

The above disclosure requirement must be complied with starting 1 January 2019 and accomplished through the revised General Information Sheet (GIS). In case of changes in beneficial ownership, the corporation is required to file an updated GIS within seven (7) days from the date of occurrence or effectivity of the change.

(SEC Memorandum Circular No. 17-2018, published 28 November 2018)

Terrorist funding

Issuance of guidelines for non-profit organizations

The SEC issued guidelines for the protection of SEC-registered non-profit organizations (NPOs) against money laundering and terrorist financing abuse. The salient features of guidelines include:

- Adoption of a risk-based approach in applying focused measures in dealing with identified threats of terrorist financing abuse to NPOs
- Compliance requirements of NPOs
- Mandatory disclosures
- Good governance and internal audit systems
- Preventive measures

With respect to the mandatory disclosures, all NPOs are required to submit the same to the SEC within six (6) months from the effective date of the guidelines. Failure to comply will be a cause for revocation of SEC registration.

(SEC Memorandum Circular No. 15-2018 dated 7 November 2018)

In due time

Providing relief to the real estate industry in relation to PIC Q&A No. 2018-12

The SEC deferred the application of the provisions of the PIC Q&A No. 2018-12 for three (3) years with respect to:

- accounting for significant financing component
- uninstalled materials
- exclusion of land in the calculation of percentage of completion, for a period of three (3) years.

Glossary

NCR - National Capital Region

NWPC - National Wages and Productivity

Commission

PFRS - Philippine Financial Reporting Standards

PIC - Philippine Interpretations Committee

SEC - Securities and Exchange Commission

SEC-OGC - Securities and Exchange Commission -

Office of the General Counsel

PIC Q&A No. 2018-12 was issued by the Philippine Interpretation Committee to provide guidance on some implementation issues affecting the real estate industry due to the adoption of PFRS 15.

(SEC Memorandum Circular No. 2018-14 dated 29 October 2018)

Raising the minimum

Minimum wage rates have been increased in the NCR

The Regional Tripartite Wages and Productivity Board – National Capital Region increased the daily minimum wage in the NCR as follows:

Sector/ Industry	Basic Wage/ Integration of COLA	Basic Wage Increase	New Minimum Wage Rates
Non-agriculture	PHP512	PHP25	PHP537
Agriculture (Plantation and non-plantation)	PHP475	PHP25	PHP500
Retail/service establishments employing 15 workers or less			
Manufacturing establishments regularly employing less than 10 workers			

The daily wage rates are applicable to all minimum wage earners in the private sector in the NCR and shall take effect 15 days after publication of the subject Wage Order in a newspaper of general circulation. According to the NWPC, the minimum wage increase took effect on 22 November 2018.

(DOLE Wage Order No. NCR-22 dated 30 October 2018)

Mixed marriage

Merger between a domestic corporation and a foreign corporation

According to the SEC-OGC, a domestic corporation may merge with a foreign corporation licensed to do business in the Philippines provided:

1. That the merger will be governed by the Corporation Code; and
2. That the merger is allowed by a reciprocal provision in the laws of the jurisdiction under which the foreign corporation is organized.

(SEC-OGC Opinion No. 18-18 dated 16 November 2018)

Overwhelmed

Handling the Passenger Personal Accident Insurance program

In August 2018, the DOTr transferred the Passenger Personal Accident Insurance (PPAI) program from the LTRFB to the Insurance Commission. Accordingly, the latter issued a circular which provides that:

- A status quo shall be implemented on the existing accredited insurance providers of the PPAI and on the existing two-group system currently in place.
- An indefinite transition period was put in place to give the IC time to consider all relevant matters and issues and to verify the complete compliance of non-life insurance companies with the required net worth of PHP900m by 31 December 2019.
- There will be no accreditation process during the transition period.

(IC Circular Letter No. 2018-59 dated 15 November 2018)

Temporary relief

Granting options to pre-need companies in the valuation of securities

In order to stabilize the impact of high volatility in the Philippine financial market for the pre-need industry, the IC issued rules and regulations to provide regulatory relief for publicly listed equity securities, fixed income debt securities and pre-need reserves, and to provide the corresponding illustrative disclosure.

Pre-need companies may opt to use the prevailing market rate in the valuation of publicly listed equity securities and to use the amortized cost in the valuation of fixed income debt securities.

The above rules and regulations are applicable only for 2018 financial reporting.

(IC Circular Letter No. 2018-58 dated 14 November 2018)

Attention to detail

Reporting requirements for insurance companies and reinsurers

All insurance companies and professional reinsurers are required to report their respective Particulars of Reinsurance Treaty which should specify the material information in the treaty using prescribed forms.

In case a treaty covers several lines of business and/or programs, the same should be indicated in the Reinsurance Program which is required to be submitted to the Reinsurance Division annually and within three (3) months after the treaty's inception or renewal.

For existing reinsurance treaties, the first report shall be submitted on or before 31 March 2019.

(IC Circular Letter No. 2018-57 dated 13 November 2018)

Limited admission

Leasehold improvements are not considered admitted assets

The IC clarified that leasehold improvements are not considered as admitted assets for purposes of determining compliance with the minimum paid-up capital or net worth requirements under the Amended Insurance Code for the following reasons:

1. Leasehold improvements are not included in the list of admitted assets under the Amended Insurance Code.
2. Although other assets may qualify as admitted assets, these assets must be readily realizable and available for the payment of losses and claims. Since leasehold improvements will revert to lessor at the end of the lease term, the same are not readily realizable and available.

Nevertheless, leasehold improvements may be capitalized and considered assets upon acquisition of the building where the improvements are attached, subject to the approval of the Insurance Commissioner.

(IC Circular Letter No. 2018-56 dated 12 November 2018)

Glossary

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DOTr - Department of Transportation
.....
IC - Insurance Commission
.....

Meet us

PwC Philippines goes back to high school for Christmas

PwC Philippines held its annual Christmas Party on 12 December 2018 at the SMX Aura - SMX Convention Center.

Over a thousand people from the Makati office and friends of the firm celebrated an evening at PwC High, the fictional high school where everyone dressed up as their chosen character (popular ones, nerds, athletes, faculty, and so on).

This year's Christmas Party Committee, headed by Consulting Principal Veronica Bartolome, organized the event. Party highlights include:

- PwC Philippines Chairman and Senior Partner Alex Cabrera gave a rousing opening number with some of the talented dancers from different lines of service.
- Fifty-one (51) awards for ten, 15, 20, 25, and 30 years of service were given out that evening. Alex, recognized for his 30 years of service, led the awardees. He is joined in that category by General Office Services Administrative Assistant II Luderic Pacheco. Former partners and their spouses were among the guests, notably two former senior partners: Tammy Lipana and Joe Florento, who jointly gave Alex his service award.
- Performing groups competed in "Curtain Call", where talents such as singing, dancing, and playing of musical instruments were showcased. Each team chose one public school as their prospective beneficiary. The winning team will receive their prize and a matching amount from the firm to support their planned corporate responsibility activity for their chosen school.
- Best Dressed Awards and raffle prizes were given away, and after-party dancing to DJ music capped the event.



Awardees for 15 years of service, flanked by Chairman and Senior Partner Alex Cabrera (far right) and Human Capital Leader Emy Castro (far left)





Left to right: former Vice Chairman Fortune Cruz, and former senior partners Joe Florento and Tammy Lipana.



Awardees for 20 years of service, flanked by Chairman and Senior Partner Alex Cabrera (far right) and Human Capital Leader Emy Castro (far left)



Chairman and Senior Partner Alex Cabrera (second from left) and staff perform a dance medley for the opening number

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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