



# TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

## TAX UPDATES FOR THE MONTH OF OCTOBER, 2016 Prepared by: SGV & Company

### BIR ISSUANCES

#### Revenue Memorandum Order (RMO) No. 54-2016 dated September 1, 2016

- A Special Disciplinary Committee (“Committee”) is hereby created to hear or investigate cases involving BIR officials and employees in relation to violations or substantial lapses committed in the conduct of tax audits or investigations referred to under RMC No. 70-2016.
- The BIR officer/employee shall submit, within 3 days from the issuance of a Notice/Memorandum to Explain, a written explanation why no administrative case should be filed against him.
- The BIR officer/employee may be summoned to a conference where the Committee may ask clarificatory and other relevant questions.
- Within 5 days from the termination of a preliminary investigation, the Committee shall submit a report on whether there is a *prima facie* case to warrant the issuance of a formal charge.
- After finding a *prima facie* case, the Commissioner shall issue a formal charge to which the concerned BIR employee shall submit an answer within 5 days from the service of such charge.
- The answer shall state clearly the complete facts and issues involved in the case, as well as the reasons relied upon for a favorable appreciation and review of the case.
- A formal investigation or hearing shall be called by the Committee to discuss the facts and issues raised or taken up, and such hearing shall be held not earlier than 5 days nor later than 10 days from receipt of the answer or upon expiration of the period to submit an answer.
- The Committee shall submit its report of investigation and recommendation to the Commissioner, who shall approve and sign the Committee’s recommendation within 15 days from its receipt, unless the Commissioner decides otherwise.
- The aggrieved BIR officer/employee may file a motion for reconsideration of the Commissioner’s decision within 5 days from receipt of the decision.
- Upon receipt of the denial, the BIR officer/employee may appeal to the appropriate administrative or judicial body or tribunal as may be allowed under existing rules and regulations.



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- Failure to appeal the Commissioner's decision shall render the decision final and executory.

### **Revenue Memorandum Circular (RMC) No. 91-2016 dated September 1, 2016**

- Effective September 1, 2016, the RMC lifts the suspension of all field audits and other field operations of the BIR concerning examinations and verifications of taxpayer's books of accounts, records and other transactions.
- Thus, the concerned BIR officials and employees may now resume all field audits, field operations, or any form of business visitation in execution of Letters of Authority, eLAs, Audit Notices, Letter Notices, or Mission Orders.

### **RMC No. 102-2016 dated October 24, 2016**

Clarifies the requirement on the Taxpayer Identification Number (TIN) for members of cooperatives applying for a Certificate of Tax Exemption (CTE) under Revenue Memorandum Order (RMO) No. 76-2010 and RMC No. 81-2010.

### **BIR RULINGS**

#### **BIR Ruling No. 354-2016 dated October 19, 2016**

Under RR No. 2-2016, the ATRIG shall be issued for the following: 1) all importations of articles subject to excise tax (whether exempt or taxable), including raw materials in the production thereof; 2) machineries, equipment, apparatus or any mechanical contrivances especially used for their assembly/production; and 3) all importations of articles exempt from VAT, except on those articles (e.g., live animals, live marine food products, etc.) specifically identified and enumerated in the BIR-BOC Joint Memorandum Circular No. 1-2002.

Hence, RR No. 2-2016 now requires an ATRIG for the removal of covered articles from customs custody intended for sale/delivery even to tax exempt entities or agencies.

#### **BIR Ruling No. 358-2016 dated October 19, 2016**

Gifts in favor of a religious corporation are exempt from the payment of donor's tax, subject to the condition that not more than 30% of the said gift shall be used by the donee for administration purposes. Conveyances of real properties, not in connection with a sale, to trustees of other persons without consideration, are not taxable. Hence,



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the deed of donation is not subject to DST under Section 196 of the Tax Code, but only to the DST of Php15.00 under Section 188 of the same Code.

### **BIR Ruling No. 363-2016 dated October 26, 2016**

Separation pay given to an employee due to termination by reason of redundancy of position shall not be included in the gross income, and as such, shall be exempt from income tax and withholding tax. The exemption does not cover payment of salaries and payment of 13<sup>th</sup> month pay and other benefits in excess of Php82,000 threshold under Section 2.78.1 (A) (3) (a) and (A) (7) of RR No. 2-98, as amended.

### **BUREAU OF CUSTOMS ISSUANCES**

#### **Customs Administrative Order No. 2-2016 issued on September 28, 2016**

*CAO No. 2-2016 provides the new rules on Imported Goods with De Minimis Value not subject to duties and taxes*

- ▶ The following terms are defined:
  - ▶ Commercial quantity – refers to the quantity for a given kind or class of articles which are in excess of what is compatible or commensurate with a person’s normal requirements for personal use
  - ▶ *De Minimis* Value – refers to the value of goods for which no duty is collected, being considered as negligible in amount and entitled to immediate release
  - ▶ FCA – means free carrier, or that the seller delivers goods to the carrier or another person nominated by the buyer at the seller’s premises or another named place
  - ▶ FOB – means free on board, or that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already delivered
  
- ▶ The following are considered prohibited importations:
  - ▶ Written or printed goods in any form, containing any matter advocating or inciting treason, rebellion, insurrection, sedition against the government, or forcible resistance to any law, or containing any threat to take the life of, or inflict bodily harm upon any person in the Philippines;
  - ▶ Goods, instruments, drugs and substances designed, intended or adapted for producing unlawful abortion, or any printed matter which advertises or gives information on abortion;



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- ▶ Written or printed goods, negatives, or cinematographic films, photographs, engravings, lithographs, objects, painting, drawings, or other representation of an obscene or immoral character;
  - ▶ Any goods manufactured in whole or in part of gold, silver or other precious metals or alloys and the stamp, brand or mark does not indicate the actual fineness of quality of the metals or alloys;
  - ▶ Any adulterated or misbranded food or goods for human consumption or any adulterated or misbranded drug;
  - ▶ Infringing goods as defined under the Intellectual Property Code and related laws; and
  - ▶ All other goods or parts thereof which are explicitly prohibited to be imported.
- ▶ Regulated Importation – Goods which are subject to regulation shall be imported only after securing the necessary goods declaration, clearances, licenses and any other requirements prior to importation.
- ▶ Restricted Importation – Except when authorized by law or regulation, the importation and transit of the following restricted goods are prohibited:
- ▶ Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, or parts thereof;
  - ▶ Roulette wheels, gambling outfits, loaded dices, marked cards, machines, apparatus or mechanical devices used in gambling or distribution of money, cigars, cigarettes or other goods when such distribution is dependent on chance, including jackpot and pinball machines, or similar contrivances, or parts thereof;
  - ▶ Lottery and sweepstakes tickets, except advertisements thereof and lists of drawings therein;
  - ▶ Marijuana, opium, poppies, coca leaves, heroin or other narcotics or synthetic drugs which are or may thereafter be declared habit forming by the President of the Philippines, or any compound, manufactured salt, derivative or preparation thereof, except when imported by the government of the Philippines or any person duly authorized by the Dangerous Drugs Board, for medicinal purposes;
  - ▶ Opium pipes or parts thereof, of whatever material; and
  - ▶ Any other goods whose importation are restricted.



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### ▶ General Provisions

- ▶ The *De Minimis* value is ₱ 10,000 FCA or FOB or below. The Secretary of Finance shall adjust this value every three years using the Consumer Price Index, as published by the Philippines Statistics Authority.
- ▶ *De Minimis* importations shall be lodged and processed under a simplified system and with the use of information and communications technology (“ICT”) enabled system to allow advance clearance, and ensure proper customs monitoring and control;
- ▶ *De Minimis* importations shall, as far as practicable, be subject to a non-intrusive examination (e.g. x-ray or any other equivalent device) on a random basis based.
- ▶ The customs examiner may physically inspect the imported goods.
- ▶ Treatment of *De Minimis* importations brought by passengers or sent through Balikbayan boxes or as postal parcels shall be without prejudice to the application of the CMTA provision on Conditionally-Free importations.
- ▶ Importations of tobacco goods, wines, spirits, within the *De Minimis* value shall be subject to the provisions of the Tax Code on excise tax.
- ▶ Goods forfeited for violation of this CAO shall be disposed of in accordance with the CMTA provisions.

### ▶ Exclusions from Immediate Release. The following shall not be entitled to immediate release as *De Minimis* importations:

- ▶ Importations declared as “without commercial value” or “of no commercial value” or with specific amount but qualified by the phrase “for customs purposes” or analogous phrases. The party concerned must declare the specific value of the goods, supported by available invoice, receipt or equivalent document.
- ▶ Tobacco and liquor products carried by passengers in excess of the allowable limits but within the *De Minimis* value.
- ▶ Goods subject to requirements or conditions imposed by the concerned regulatory agency, unless for personal use and within the limits allowed by regulations.
- ▶ Prohibited and restricted importations.
- ▶ Importations to be entered conditionally-free, for warehousing, for transit, and / or admission to a free zone.



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- ▶ Unless otherwise provided, this CAO shall be reviewed every three (3) years and be amended or revised, if necessary.
- ▶ This CAO specifically amends or repeals previously issued CAOs and CMOs which are inconsistent with the provisions herein. If any part of this CAO is declared unconstitutional or contrary to existing laws, the other parts not so declared shall remain in force and effect.
- ▶ CAO No. 2-2016 shall take effect after 15 days from publication at the Official Gazette or a newspaper of general circulation.

### **COURT OF TAX APPEALS EN BANC DECISION**

**Dakay Construction and Development Corporation vs. Commissioner of Internal Revenue** (CTA EB Case No. 1294, promulgated September 20, 2016)

All audits or investigations must be conducted under a valid LOA, which should be properly served on the taxpayer within 30 days from the date of issue or it becomes null and void pursuant to Revenue Memorandum Order 43-90 and Revenue Audit Memorandum Order 1-2000.

### **SUPREME COURT DECISIONS**

**Banco De Oro, et al. vs. Republic of the Philippines, et al.**  
Supreme Court *En Banc*, G.R. No. 198756 promulgated August 16, 2016

The CTA may rule on cases directly challenging the constitutionality or validity of a tax law, regulation or administrative issuance (such as a revenue order, revenue memorandum circular, and ruling).

In determining whether a debt instrument may be considered a deposit substitute, the interest of which shall be subject to the 20% final withholding tax (FWT), the borrowing must be made from 20 or more lenders at any one time.

The courts may grant legal interest in cases where patent arbitrariness on the part of the revenue authorities has been shown or where the collection of tax was illegal.



## **TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.**

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**Bloomberry Resorts and Hotels, Inc. vs. Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares**

Supreme Court (Third Division), G.R. No. 212530 promulgated August 10, 2016

The preferential tax treatment of PAGCOR under its Charter inures to the benefit of and extends to its contractees and licensees.

Hence, PAGCOR's contractees and licensees are liable to a 5% franchise tax on their revenues from casino operations, and to income tax on their revenues from other related services.