Tax Management Association of the Philippines
Tax Digest for February to March 2017

BUREAU OF INTERNAL REVENUE

REVENUE REGULATIONS

REVENUE REGULATIONS NO. 2-2017

RR 2-17 amends Revenue Regulations (RR) No. 3-2016 particularly on when the payment of taxes through credit/debit/prepaid card is deemed made and the liability of the Authorized Agent Bank (AAB)- Acquirer in case of non-payment.

The payment of taxes through credit/debit/prepaid card shall be deemed made on the date and time appearing in the system-generated payment confirmation receipt issued to the taxpayer by the AAB-Acquirer.

In case of late remittance or non-remittance of taxes to the BIR, despite the timely issuance of a valid confirmation receipt by the AAB-Acquirer to the taxpayer-cardholder, the liability to pay the tax rests upon the AAB-Acquirer considering that from the time of issuance of a valid confirmation receipt to the taxpayer-cardholder, the AAB-Acquirer becomes the trustee of the government with the obligation to remit the payment to the BIR on time.

Revenue Regulation No. 3-2017

RR 3-17 implements the tax provisions of Republic Act (RA) No. 10693, otherwise known as "Microfinance NGOs Act". The Act encourages non-government microfinance institutions to work with the government to pursue community development and improvement in the socio-economic welfare of the poor and other basic and marginalized sectors through financially inclusive and pro-poor financial and credit policies and mechanisms, such as microfinance and its allied services.

Under RR 3-17, Microfinance Non-Government Organizations (NGOs) must secure a Certificate of Accreditation from the Microfinance NGO Regulatory Council (Council) as a condition for the availment of the incentives of RA No. 10693.

Under the Section on Transitional Accreditation, Microfinance NGOs which have been certified by the Securities and Exchange Commission (SEC) to have no derogatory information and are deemed accredited as Microfinance NGOs for a period of one (1) year from the effectivity of RA No. 10693, unless sooner revoked, shall be entitled to avail of the 2% Gross Receipts Tax.

A duly registered and accredited Microfinance NGO shall pay a 2% tax based on its gross receipts from microfinance operations in lieu of all national taxes. Preferential tax treatment, however, shall be accorded only to NGOs whose primary purpose is microfinance and only on their microfinance operations catering to the poor and low-income individuals. Moreover, the Certificate of Accreditation issued by the Council or the Certificate of No Derogatory Information

issued by the SEC, as the case may be, shall be an essential requirement for granting the 2% preferential tax treatment of Microfinance NGOs.

The preferential rate of 2% tax based on gross receipts from microfinance operations should only refer to lending activities and insurance commission which are bundled and forming integral part of the qualified lending activities of the Microfinance NGOs.

All other income by the Microfinance NGOs which are not generated from the lending activities and insurance commissions shall be subject to all applicable taxes.

Revenue Regulation No. 4-2017

RR 4-17 amends certain provisions of Revenue Regulations No. 2-2016 particularly in the issuance of Authority to Release Imported Goods (ATRIGs) for imported automobiles already released from customs custody.

The regulation confirms exemption of foreign embassies and recognized international organizations from securing ATRIG. However, in cases where automobiles are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, including the introduction and re-introduction into customs territory of automobiles intended for exclusive use within the freeport zones, the purchaser or transferee, owner/possessor of the automobiles shall be considered as the importer, and shall be liable for the Excise Tax due on such importation.

For foreign embassies and recognized international organizations, a one-time ruling confirming exemption from ATRIG on importation of automobiles shall first be secured from the International Tax Affairs Division of the BIR prior to the release of imported automobiles from customs custody.

An annual report of all importations shall be submitted by the said embassies/organizations to the BIR's Excise Large Taxpayers Regulatory Division on or before the fifth (5th) day of January of the following year.

REVENUE MEMORANDUM ORDERS

Revenue Memorandum Order No. 5-2017

RMO 5-17 prescribes the functional guidelines relative to the implementation of the Taxpayer Registration System (TRS) under the Electronic Tax Information Systems-1 (eTIS-1). The TRS eTIS-1 enables authorized users to: a. Register Taxpayer b. Manage Taxpayer c. On-line Approval d. Correspondence and Reports Generation. The TRS under eTIS-1 is currently being implemented in the following pilot sites: offices under Large Taxpayers Service (i.e. Large Taxpayer Assistance Division, Excise Large Taxpayer Regulatory Division, Large Taxpayer Division (LTD)-Makati, LTD-Cebu) and RDOs under Revenue Region No. 8 – Makati.

Revenue Memorandum Order No. 6-2017

RMO 6-17 prescribes the revised guidelines and procedures in the extraction, dissemination and reporting of utilization of preprocessed Third Party Information.

Under the RMO, the investigating offices need not request for access to "Preprocessed" RELIEF and BOC data for cases covered by electronic Letters of Authority (eLAs). The Audit Information, Tax Exemption and Incentives Division (AITEID) shall deploy the "Preprocessed" RELIEF and BOC data thru email or registered mail to the Revenue District Officer/Chiefs of concerned offices, including the Assessment Division (AD) of Regional Offices and reviewing offices in the National Office. The Revenue Officer of the investigating office shall utilize the said data in the audit, fully disclose the utilization thereof in his narrative memorandum and present its effect in his audit report in the applicable BIR Form No. 0500 Series. If such is not included in the findings for valid reasons, the explanation should be part of the memorandum report.

REVENUE MEMORANDUM CIRCULAR

Revenue Memorandum Circular No. 18-2017

Based on the said Memorandum, service cooperatives must not be totally prohibited from availing of the tax incentives provided under R.A. No. 9520, provided that they are duly registered with the Cooperative Development Authority (CDA) and have been issued Certificates of Good Standing to show that they are bona fide cooperatives falling under R.A. 9520. However, that these cooperatives will be subject to post audit verification to check on whether they are just being used as tax shield to avoid or evade payment of taxes.

SECURITIES AND EXCHANGE COMMISSION

SEC Memorandum Circular No.4

SEC MC No. 4 amends SEC's rules on the term limit of independent directors. Under the Circular, independent directors shall serve for a maximum cumulative term of nine (9) years; after which, the independent director shall be perpetually barred from re-election as such in the same company, but may continue to qualify as non-independent director. Reckoning of the cumulative nine (9) year term is from year 2012.

SEC Memorandum Circular No.5

SEC MC No. 5 updates the pro-forma certification required from all independent directors. The certification shall include, among others, disclosure of any pending criminal or administrative investigation or proceedings, position held in Government-Owned and Controlled Corporations and the required written permission or consent from the head if the Department/Agency (for those in government service).

BUREAU OF CUSTOMS

Customs Administrative Order No. 01-2017

CAO 01-2017 introduces guidelines implementing the provisions of Customs Modernization and Tariff Act (CMTA) relative to customs clearance of accompanied or unaccompanied baggage of travelers and crew.

Under the General Provisions of CAO 01-2017, all arriving travelers and crew shall accomplish a Customs Baggage Declaration Form (CBDF) which will be submitted to the assigned Customs Officer at the Customs Arrival Area. This is in addition to other applicable requirements (i.e. Certificate of Identification for goods previously exported, foreign currency declaration, necessary government permits, etc.).

Baggage of arriving travelers and crew shall be subject to non-intrusive inspection. When necessary, scanned baggage may be subject to physical inspection.

Dutiable goods that are not declared by any person arriving within the Philippines, if imported contrary to law, shall be seized and the traveler may obtain release of such goods, upon payment of a surcharge equivalent to thirty (30%) of the landed cost of such goods, in addition to all duties, taxes and other charges due.

CAO 01-17 likewise provides for the clearance formalities/requirements for baggage of OFWS, Resident Filipinos, Returning Residents, and Non-Resident Filipinos availing of the duty and tax free importation under Section 800 (f) and (g) of the CMTA; and clearance formalities for commercial goods or those imported by traveler in commercial quantity and in excess of the De Minimis value.

Customs Memorandum Circular No. 32-2017

CMC 32-17 the Bureau of Customs clarifies the construction and interpretation of CMO No. 11-2014 (Revised Guidelines on Registration of Importers and Customs Brokers), particularly on Section 8.c thereof which allows the suspension or revocation of customs accreditation where where the BOC, at any time, discovers any violation of law or regulation by the accredited importer or customs broker.

The CMC reiterates the instruction to District Collectors to include the issue on the suspension or cancellation of accreditation in the resolution of seizure and/or forfeiture cases.

In addition, the penalty of suspension and cancellation of customs accreditation have been categorized and graduated as follows:

i. Light Infractions- suspension of customs accreditation for one (1) to six (6) months;

ii. Less Grave Infractions - suspension of customs accreditation for six months and 1 day (6mos, 1dy) to twelve (12) months;
iii. Grave Infractions- cancellation/revocation of customs accreditation.

Court Decisions

Commissioner of Internal Revenue vs. St. Luke's Medical Center Inc.
(G.R. No. 203514; February 13, 2017)

Facts:
On December 14, 2007, St. Luke's Medical Center, Inc. (SLMC) received from the BIR Audit Results/Assessment Notice Nos. QA-07-0000965 and QA-07-000097 assessing SLMC deficiency income tax under Section 27(B) 7 of the Tax Code in the aggregate amount of P135,737,301 for taxable years 2005 and 2006.

SLMC filed an administrative protest assailing the assessments. SLMC claimed that as a non-stock, non-profit charitable and social welfare organization under Section 30(E) and (G)9 of the 1997 NIRC, as amended, it is exempt from paying income tax.

Meanwhile, on September 26, 2012, the Court rendered a Decision in G.R. Nos. 195909 and 195960, entitled CIR v. St. Luke's Medical Center, Inc., finding SLMC not entitled to the tax exemption under Section 30(E) and (G) of the NIRC of 1997 as it does not operate exclusively for charitable or social welfare purposes insofar at its revenue from paying patients are concerned. Accordingly, SLMC was ordered to pay the deficiency income tax based on the I0% preferential income tax rate under Section 27(B) of the National Internal Revenue Code.

SLMC argues that earning a profit by a charitable, benevolent hospital or educational institution does not result in the withdrawal of its tax exempt privilege. SLMC further claims that the income it derives from operating a hospital is not income from "activities conducted for profit.

Issue: Whether SLMC's profits from hospital operation exempt from income tax under Section 30 (E) and (G).

Ruling:
The Court reaffirmed its ruling in G.R. Nos. 195909 and 195960 (Commissioner Internal Revenue v. St. Luke's Medical Center, Inc.).

For an institution to be completely exempt from income tax, Section 30(E) and (G) of the 1997 NIRC requires said institution to operate exclusively for charitable or social welfare purpose. But in case an exempt institution under Section 30(E) or (G) of the said Code earns income from its "for-profit activities", it will not lose its tax exemption. However, its income from "for-profit activities" will be subject to income tax at the preferential 10% rate pursuant to Section 27(B) thereof.

Following earlier cases, St. Luke's fails to meet the requirements under Section 30(E) and (G) of the NIRC to be completely tax exempt from all its income. However, it remains a proprietary non-profit hospital under Section 27(B) of the NIRC as long as it does not distribute any of its profits to its members and such profits are reinvested pursuant to its corporate purposes. St. Luke's, as a proprietary non-profit hospital, is entitled to the preferential tax rate of 10% on its net income from its for-profit activities.

Commissioner of Internal Revenue vs. Asalus Corporation
(G.R. No. 221590; February 22, 2017)

Facts:
The case stems from an assessment issued by the CIR against Asalus Corporation for deficiency VAT for Calendar Year 2007 in the aggregate amount of Php106,761,025.17 based on the Final Decision on Disputed Assessment dated October 16, 2012.

The CTA, division and en banc, found that the VAT assessment (FAN) issued on August 26, 2011 had prescribed and consequently deemed invalid. The CTA ruled that Section 222 was inapplicable as neither the FAN nor the FDDA indicated that Asalus filed a false VAT return warranting the application of the ten (10) year prescriptive period. In addition, the CTA found that the CIR did not present any evidence during the trial to substantiate its claim of falsity in the return.

On appeal, the CIR asserts that there was substantial understatement in Asalus' income, which exceeded 30% of what was declared in its VAT returns as appearing in its quarterly VAT returns; and the under-declaration was supported by the admission of its witness that not all the membership fees collected from members applying for healthcare services were reported in its VAT returns. Thus, the CIR concludes that there was prima facie evidence of a false return.

Issue: Whether the VAT assessment issued against Asalus Corporation had prescribed.

Ruling:

While, as a general rule, the findings of fact of the CTA are, as a rule, respected by the Court, they can be set aside in exceptional cases.

Under Section 248(B) of the NIRC, there is a prima facie evidence of a false return if there is a substantial under-declaration of taxable sales, receipt or income. The failure to report sales, receipts or income in an amount exceeding 30% what is declared in the returns constitute substantial under-declaration. In other words, when there is a showing that a taxpayer has substantially underdeclared its sales, receipt or income, there is a presumption that it has filed a false return.

Applied in this case, the audit investigation revealed that there were undeclared VA Table sales more than 30% of that declared in Asal us' VAT returns. Moreover, Asalus' lone witness testified

that not all membership fees, particularly those pertaining to medical practitioners and hospitals, were reported in Asalus' VAT returns. This supported the presumption that the return filed was indeed false precisely because not all the sales of Asalus were included in the VAT returns. Accordingly, failure to overcome the same warranted the application of the ten (10)-year prescriptive period for assessment under Section 222 of the NIRC.

Hon. Kim S. Jacinto-Henares, in her capacity as Commissioner of Internal Revenue vs. St. Paul College of Makati
(G.R. No. 215383; March 8, 2017)

Facts:
The Petition filed before the Supreme Court assails the Decision of the Regional Trial Court of Makati declaring Revenue Memorandum Order No. 20-2013 unconstitutional.

RMO 20-13 was issued by then Commissioner Jacinto-Henares entitled "*Prescribing the Policies and Guidelines in the Issuance of Tax Exemption Rulings to Qualified Non-Stock, Non-Profit Corporations and Associations under Section 30 of the National Internal Revenue Code of 1997, as Amended."*

St. Paul College of Makati (SPCM) filed a Civil Action to Declare Unconstitutional RMO No. 20-2013 before the RTC of Makati. SPCM alleged that "RMO No. 20-2013 imposes as a prerequisite to the enjoyment by non-stock, non-profit educational institutions of the privilege of tax exemption under Sec. 4(3) of Article XIV of the Constitution both a registration and approval requirement in the form of a Tax Exemption Ruling, which is valid for a period of three years and subject to renewal. According to SPCM, RMO No. 20-2013 adds a prerequisite to the requirement under Department of Finance Order No. 137-87 and makes failure to file an annual information return a ground for a non-stock, non-profit educational institution to "automatically lose its income tax-exempt status.

Ruling:

The Supreme Court took judicial notice that the present CIR Caesar R. Dulay issued RMO No. 44-2016, which amended Revenue Memorandum Order No. 20-2013. RMO 44-16 specifically excludes non-stock, non-profit educational institutions from the coverage of Revenue Memorandum Order No. 20-2013, as amended.

With the issuance of RMO No. 44-2016, a supervening event has transpired that rendered this petition moot and academic, and subject to denial. RMO No. 44-2016 clarified that non-stock, non-profit educational institutions are excluded from the coverage of RMO No. 20-2013.

COURT OF TAX APPEALS, en banc

San Paolo Development Corporation vs. Commissioner of Internal Revenue
(CTA EB No. 1388; March 15, 2017)

Facts:
San Paolo Development Corporation (SPDC) is a domestic corporation engaged in real estate business. The Company received Preliminary Assessment Notice on October 19, 2011, and a Formal Letter of Demand on November 29, 2011 with an assessment for deficiency income tax, VAT, and EWT for taxable year 2008 in the amount of Php 6,652,245.27.

SPDC disputed the assessment, particularly the alleged deficiency VAT, among others. SPDC argued that the sale property (parcel of land), should not be subject to VAT since the property is a capital asset and that the same should not automatically considered as ordinary asset even if SPDC is in the real estate business.

In addition, SPDC argued that the BIR's right to assess taxes (quarterly VAT, in particular) had already prescribed.

Issues: Whether SPDC is liable for deficiency VAT.
Whether BIR's right to assess had prescribed.

Ruling:

The proceeds from the sale of land is subject to VAT.

While SPDC argues that the parcel of land sold is a capital asset, considering that it is vacant and idle property, the court found the same to be an ordinary asset pursuant to Revenue Regulation No. 01-03, which provides:

> "Section 3. e. Treatment of abandoned and idle real properties. — Real properties formerly forming part of the stock in trade of a taxpayer engaged in the real estate business, or formerly being used in the trade or business of a taxpayer engaged or not engaged in the real estate business, which were later on abandoned and became idle, shall continue to be treated as ordinary assets. Real property initially acquired by a taxpayer engaged in the real estate business shall not result in its conversion into a capital asset even if the same is subsequently abandoned or becomes idle.

On the basis of the above regulation, the Court ruled that the property continues to be an ordinary asset and is not converted into a capital asset even if the same has not been used and remains idle.

As to the issue on prescription of the BIR's right to assess, the CTA en banc, found that SPDC failed to prove that the land sold is a capital asset. As such, SPDC clearly did not report the sale in its VAT returns. These undeclared revenues (together with discrepancy in other rentals) rendered SPDC VAT returns false and justifies the application of the ten (10)-year prescriptive period.