TMAP Wish List

Issuance	Problem	Proposal	
Sale of Unlisted Shares of Stock	**Donor's tax on business transactions**		
RR 6-13 - Prescribing the net asset method in computing the adjusted net book value (NBV) at the time of sale. RR 6-08 - Automatically imposes donor's tax on the difference between NBV of the shares and actual consideration.	NBV based on the audited statements is adjusted for increase in appraised value of real properties at the time of sale. Any excess of the adjusted net book value over the actual consideration is subject to 30% donor's tax although there is no donative intent and the appraisal increase is still unrealized income. The donor's tax on business transactions is a "transaction killer" as stockholders who will sell at a loss will be slapped with a 30% donor's tax.	Reinstate RR 2-82 which allows the taxpayer to justify deviation from the NBV in the valuation of shares. Under RR 2-82 the NBV is treated like the zonal value, hence, any excess of NBV over actual consideration is subject to capital gains tax, not donor's tax. Issue clear guidelines on how to calculate the Fair Market Value of the unlisted shares of stock. The vague and unreasonable rules breed corruption. The Fair Market Value of unlisted shares of stock should be calculated based on the latest Audited Financial Statements of the company whose shares are being sold, unaffected by appraisal increases and undiminished by impairment losses which are temporary in nature and do not constitute realized gain or loss. Do away with the requirement to produce audited financial statements and appraisal reports of real properties as of <u>the date of sale</u> because a seller who is not the controlling shareholder cannot comply.	
Assessment Process	**Lack of Due Process**		
RR 18-13 - Amends RR 12-99 (i) to do away with informal	Because of the lack of informal conference and elimination of the PAN protest stage, final	Repeal RR 18-13 Since the FAN involving	

conference where taxpayer can present its side; (ii) to mandate automatic issuance of the final assessment notice (FAN) 15 days after issuance of the preliminary assessment notice (PAN), whether or not taxpayer protests the PAN; and (iii) to allow service of assessment to a "known address".	assessments based on misappreciation of facts are issued. Even if the taxpayer does not actually receive the FAN at the "known address" (not registered address), the taxpayer will be bound by the service which violates basic due process.	millions of pesos becomes due and demandable if not protested within 30 days, it should be served on the taxpayer himself, if a natural person or if a juridical person on the President, Managing Partner, General Manager, Corporate Secretary, Treasurer, In-house Counsel or Chief Financial Officer, similar to the rules on service of summons under Sec. 11, Rule 14 of the Rules of Court. The issue can be cured by a revenue regulation similar to the US Treasury Regulation but DOF may propose legislation.	
Withholding Taxes	**Excessive Burden on Withholding Agents**		
RR 12-13 - Amends RR 2-98 to disallow the remedy of the withholding agent to pay the deficiency withholding tax plus surcharge and interest to be able to claim the related expense as a deduction from gross income.	The disallowance of an otherwise valid business expense as deduction for non-withholding is too harsh considering the lack of clarity of the rules on withholding tax. Government should be lenient to withholding agents considering that the withholding agents collect taxes for the government without any remuneration but at huge administrative cost.	Repeal RR 12-13. A consolidated withholding tax regulations should be issued to address the timing difference between the withholding of the tax and the claim of the withholding tax credit.	
VAT Refund Claims	**Processing of VAT refund is devolved to CTA/ RMC impairs right to appeal and substantial rights**		
RMC 54-2014 - Provides that if the VAT refund claim is not acted upon in 120 days from submission of documents, the claim is deemed denied. The RMC	The remedies granted to the taxpayer under Section 112(C) of the NIRC to appeal to the CTA based on either (i) inaction or (ii) full or partial denial of the claim is reduced to a single remedy to appeal based on inaction only. With the issuance of RMC 54-	Revoke RMC 54-14. The BIR should continue processing VAT refund claims after the 120-day period and the taxpayer given the prerogative to wait for the denial of the claim before	

applies even to pending claims.	2014 with retroactive effect, all pending VAT claims were deemed denied and became time barred. The BIR's function of processing VAT refunds was effectively "devolved" to the CTA. Under the Constitution, even the legislature cannot increase the jurisdiction of a court of law without the consent of the Supreme Court but ironically the RMC effectively passes on a BIR function to the CTA.	going to the CTA.	
The RMC requires that the application should be accompanied by complete supporting documents with a statement under oath on the completeness of the documents.	The certification of completeness of documents precludes the BIR from requesting and the taxpayer from submitting pertinent documents not included in the checklist and is designed to accelerate the appeal to CTA based on inaction.	Issue a regulation clarifying issues on VAT refund claims.	
Reportorial, Bookkeeping Requirements, Prescription	**Complicated and Burdensome Filing / Bookkeeping Requirements**		
RMC 57-2011 - Requires disclosure of passive income in the Income Tax Return (ITR).	Requirement serve no purpose because the information on passive income is already submitted by the withholding agent/income payor to the BIR. It is unreasonable to require income recipients not engaged in business to keep records of tax-paid passive income.	Repeal RMC 57-11. Or make the disclosure of supplemental income, merely <u>voluntary.</u> The Commissioner had on 2 occasions released issuances (during the filing of the 2015 and 2014 ITRs) making the disclosure of mandatory income only voluntary.	
RR 17-2013, as amended by RR 5-2014 – Extends preservation of books of accounts and other accounting records to 10 years.	Increases cost of business because taxpayers are required to have electronic storage system. Taxpayers are required to preserve their books of accounts, including subsidiary books and other accounting records, for a period of ten (10) years from filing of tax return. Within the first five (5) years the taxpayer shall retain	Repeal RR 17-13 and 5-14.	

	hardcopies and thereafter, only an electronic copy in an electronic storage system. Not in accordance with Section 235 of the Tax Code which requires preservation of books of accounts for a period beginning from the last entry in each book until the last day prescribed by Section 203 within which the Commissioner is authorized to make an assessment (i.e. 3 years).		
RR 10-15 – Use of Non-Thermal Paper for all CRMs/POS Machines (Section 4)	Increases cost of business because taxpayers are required to replace their machines to accommodate the use of non-thermal paper, which is difficult to source.	Repeal RR 10-15 (Section 4) and revert back to RMO 10-15, in relation to the registration of CRMs/POS Machines	
RR 10-15 (Section 5) – Contents of Sales Invoices/Official Receipts	Unclear as to business style Unduly oppressive as to the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE."	Issue a clarification to avoid any confusion on how to fill up the invoices/receipts Amend RR 10-15 (Section 5) For taxpayers with Computerized Accounting Systems, this phrase should be deleted.	
Interest and Penalties	**40% interest is too onerous**		
RR 18-13 - Amends Section 5.5 of RR 12-99 and imposes 20% deficiency interest and 20% delinquency interest simultaneously.	Both the 20% deficiency interest and 20% delinquency interest or a total of 40% interest is imposed from the date of demand to actual payment. The 40% interest per annum effectively prohibits the taxpayer from defending against the tax assessment and encourages “compromise”.	Repeal RR 18-13 and issue a regulation to clarify that the interest is merely compensatory and only 1 form of interest at a time should be imposed. The DOF may propose amendment to the Tax Code to reduce or index interest rate with market rate and avoid the interest on interest situation.	
RR 13-2010 - Imposes penalties on late/out-of-district filing of tax returns.	All BIR accredited agent banks should be allowed to accept tax payments regardless of district. Information technology solutions can already allow the verification and validation of tax payments	Review and repeal RR 13-10.	

	wherever made. IT solutions should be utilized to make payment convenient for all taxpayers. Taxpayers are required to go first to BIR ONETT before filing a late payment tax return. This affects the voluntary filing and payment system that we have. Taxpayers should simply be allowed to file and pay without any prior review by the BIR. The BIR can always review the returns later and impose penalties, if warranted.		
Marginal Income Earners	**Marginal Income Earners are subject to regular invoicing and bookkeeping rules**		
RMC 7-2014 - Limits the definition of marginal income earners contrary to RR 11-2000 and RR 7-2012. These RRs define a "marginal income earner" as an individual whose gross sales or receipts do not exceed P100,000 in any 12-month period without any qualification.	Those whose income have been subjected to withholding tax by the payor are not considered marginal income earners. Marginal income earners are now required to register books of accounts and issue BIR registered invoices and receipts like a regular taxpayer. Businesses are discouraged to deal with marginal income earners (e.g., farmers, commission agents) because of the risk that expense can be disallowed as expense for lack of substantiation.	Revoke RMC 7-2014. Issue a Revenue Regulation updating RR 11-2000 to govern taxation of marginal income earners. Adjust the Php100,000 threshold to inflation. Set a decent income level for subsistence of marginal income earners. Propose amendment to the Tax Code to codify taxation of marginal income earners	
Tax Exempt Entities			
RMO 20-2013 requiring validation and revalidation of tax exempt non-profit non- stock corporations	The requirement for non-stock non-profit educational institutions to secure certification from the BIR is unconstitutional. Pending applications for revalidation of tax exemption are not acted upon.	Revoke RMC 20-2013.	
RMC 51-2014 clarifying the inurement prohibition of non-	There should be no inurement restriction applicable to tax exempt educational institution. The Tax Code did not qualify the	Clarify RMC 51-2014.	

stock, non-profit corporations.	exemption of educational institution with inurement restriction. Also, even with the regular NGOs, they should be given some leeway to pay reasonable compensation and benefits to their social workers and employees.		
Condominium Dues			
RMC 6-2012 - Imposes VAT on condominium dues, RMC 9-2013, reiterates RMC 6-2012 but exempts association dues of homeowner's association falling under Section 18 of Republic Act 9904.	Gross receipts of condominium corporations including association dues, membership fees, and other assessments/charges are subject to VAT, income tax and income payments made to it are subject to withholding taxes.	Revoke RMC 6-12 and RMC 9-2013. A condominium corporation is not engaged in business but is required to exist by the Condominium Act. There is no substantial distinction to treat condominiums and subdivisions differently.	
Joint Ventures (JV)			
RR 20-2012 – Requires parties to the JV and the JV itself to be licensed as a general contractor by PCAB and DTI to qualify as a tax exempt JV.	No legal basis to limit JV partners and the resulting JV to licensed general contractors by PCAB and DTI. Tax exempt JVs (as allowed in the past) wherein landowners and real estate developers can enter into a JV without paying any taxes upon contribution of property to the JV no longer possible.	Reinstate tax exempt status JVs for property development.	
BIR Ruling No. 296-14 - States that conveyance of land and common areas by an entity which is not the real estate developer to a condominium corporation is subject to withholding tax of 6%. A bank foreclosed the condominium project before the developer	The transfer of land and common areas to the condominium corporation should not be taxed because it is done to comply with the Condominium Act. There is no transfer of beneficial ownership.	Revoke BIR Ruling No. 296-2014 and issue RMC to clarify that the transfer of land and common areas to the condominium corporation is not subject to tax.	

could transfer the same to the condominium corporation			
Tax Treaties			
RMO 72-2010 - Requires prior application to avail of tax treaty benefits.	Although the Supreme Court has ruled that tax treaties are part of the law of the land and no administrative requirement should be imposed before taxpayers can avail of the preferential tax treaty rates, the RMC has not been recalled. Taxpayers are forced to apply for tax treaty relief each dividend declaration.	Issue a consolidated regulation to govern tax treaty relief applications taking into consideration the decision of the Supreme Court in Deutsche Bank vs. Commissioner. The BIR can also pro-actively determine through government-to-government channels the taxation by foreign countries of dividends paid from the Philippines for purposes of determining the application of the tax-sparing provision under Section 28 (B) (5) (b) of the Tax Code. This will minimize discussion between examiners and taxpayers on the issue.	
Retirement Funds			
BIR Rulings issued to Employees Retirement Plans include a provision stating: "xxx the trustee should not in any way use the Retirement Fund to invest/deposit in any of the employer's business ventures because it would destroy the separate entity of the trust."	Investment in a business with the employer is not among the prohibited transactions under the Tax Code and in RR 1-1968.	Clarify the condition in BIR Rulings issued to retirement plans regarding prohibition on investing in venture of the employer.	
Monetized Unused VL/SL as Part of Separation Pay			
BIR Ruling 119-2011 and subsequent rulings	Contrary to Section 32(B)(6)(b) of the Tax Code, as implemented by Section 2.78.1 (A)(5) in relation to	Revert to all rulings exempting monetized unused VL and SL paid upon involuntary	

taxed monetized unused VL in excess of 10 days and SL	(B)(5) of RR 2-98 which states that any amount received as a consequence of involuntary separation shall be tax exempt.	separation.	
Upstream Merger			
BIR Ruling No. 508-2012 considers an upstream merger a donation of assets of the subsidiary to the parent and a taxable liquidation of the absorbed subsidiary.	Both the Section 40 (C) (2) of the Tax Code and the Corporation Code does not distinguish between upstream and horizontal mergers.	Revoke BIR Ruling No. 508-2012 and revert to the old ruling which upstream and horizontal mergers as tax-free mergers.	
Tax on Dissolving Corporations			
BIR Ruling No. 479-2011 revoked previous rulings and taxed liquidating corporation on the liquidating dividends and imposed DST on the cancellation of shares and transfer of properties to stockholders as liquidating dividends.	A corporation in liquidation does not derive income on the return of assets as liquidating dividends.	Issue a RMC outlining the tax implications of the liquidation of a corporation.	
Improperly Accumulated Earnings Tax (IAET)			
RMC 35-2011- In determining paid-up capital for purposes of imposing the IAET only capital stock is considered paid-up capital while additional paid-in capital (APIC) is not.	Excluding APIC from paid-up capital is wrong because APIC is actually contributed to the corporation and therefore indicative of the amounts required to meet the reasonable needs of the business. The definition in the RMC is not consistent with the SEC definition of paid-up capital. SEC MEMORANDUM CIRCULAR NO. 11-08 (GUIDELINES ON THE	Amend RMC 35-2011 to include APIC	

	DETERMINATION OF RETAINED EARNINGS AVAILABLE FOR DIVIDEND DECLARATION)		
Stock Options			
RMC 79-2014 – Stock Option granted to rank and file is treated as compensation while stock options granted to managerial employees are treated as fringe benefit. The reportorial requirements are applied to stock options issued outside the Philippines.	Tax treatment of the income should not be dependent on the position of the recipient employee. It is difficult to comply for options and shares issued by a foreign parent company to employees of their Philippine affiliates particularly where the Philippine affiliate is not involved in the transaction.	Amend RMC 79-2014	
De Minimis Benefits			
RR 5-2011 – Provides a reduced exclusive list of de minimis benefits	It made the list exclusive and any benefit even if the same is of small value shall be subject to FBT (for supervisory & managerial) and WTC (for rank & file)	Remove exclusivity of the list of benefits. Benefits granted to employees regardless of position should be treated as compensation income not fringe benefit.	
Interest Income			
RR 14-2012, RMC 77, 81 & 84-2012 – Tax treatment of interest income on financial instruments & other related transactions	Imposition of 20% EWT, among others, on interest income derived from any other debt instruments not within coverage of deposit substitute is inequitable. Issuance of subsequent RMCs only show that the regulation was not properly thought of. The RMCs did not clarify but only added confusion on the proper implementation.	Amend RR 14-2012 to reduce rate, among others, to a more equitable and realistic EWT on interest income. RMCs should already be covered in the RR.	
Transfer Pricing			
RR 2-2013 -	While the issuance of the RR is a	Amend RR 2-2013 to provide	

Transfer Pricing Guidelines	welcome development there should be a threshold amount on the requirement for contemporaneous documentation. Most jurisdictions with TP rules provide a threshold. Securing TP study could be quite expensive. BEPs should also be considered.	for threshold amount and BEPS developments.	
Submission of Alphalist			
RR 1-2014 – Requires, among others, withholding agents to submit the Alphalist of payees on income payments subject to creditable and final withholding taxes and prohibit the lumping of various payees into a single amount or line item. Non-compliance will result to disallowance of expense	The required disclosure violates due process and data privacy laws.	Repeal RR 1-2014	
Gross Income Earned Computation			
RR 11-05, 12-05, 13-05 – Enumerates direct cost of enterprises registered with special economic zones for purposes of computing gross income earned subject to 5% tax	Definition of "direct costs" is not consistent with accounting definition of direct cost.	Align definition of direct cost with accounting definition.	
Optional Standard Deduction			
RR 2-2010 – Election of availing of OSD must be indicated in the first quarter ITR which	No basis in the Tax Code. Deprives the taxpayer of the right to final annual ITR at the end of the year.	Repeal RR 2-2010.	

election is irrevocable. Deprives partners of general professional partnerships to avail of OSD.			
Monitoring of Service Fees of Professionals			
RR 4-2014 – Requiring self-employed professionals to submit billing rates and service fees	Unconstitutional. Requirement will not boost revenue collection.	Repeal RR 4-2014	
Deposit for Out of Pocket Expenses			
RMC 89-2012 and 16-2013 – Deposits and advances for expenses of clients are automatically treated as income or receipt.	Deposits for out of pocket expenses are subjected to income tax and VAT outright. Totally disregards the concept of income and assets held for third parties. Prescribed accounting entries are wrong and distorts income.	Revoke RMC 89-2012 and 15-2013.	
Waivers of Statute of Limitations			
RMC 14-2016 – Relaxed the requirements of a valid waiver.	Safeguards to protect the taxpayer from protracted tax investigations are removed.	Revoke RMC 14-2016.	
BIR Rulings as Precedent			
RR 5-2012, as clarified by RMC 22-2012, providing that BIR Rulings issued prior to January 1, 1998 cannot be invoked as precedent.	Rulings issued prior to January 1, 1998 cannot be invoked as basis for any current business transaction/s even if there is no change in tax provision interpreted in the Ruling.	Repeal RR 5-12.	
Offer of			

Compromise			
RR 9-2013 – Requires payment as a pre-requisite for compromise offer.	The BIR does not act on the offer of compromise because it already collected from the taxpayer.	Remove the requirement of prepayment as condition for an offer of compromise.	
Product Replenishment on Excisable Goods for Export			
RR 03-08 requires payment of excise tax on products for export and then claim a refund under the product replenishment scheme.	Contrary to Section 129 of the NIRC which provides that only excise taxes are only applied on goods manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and for things imported. Authorizes the BIR to forfeit in its favor the amounts it required the taxpayer to advance or deposit if the taxpayer fails to file its claim for refund within the period prescribed in the regulations.	Repeal RR 03-08 and revert to the old rule exempting excisable articles earmarked for export from excise tax outright.	
	Notice and Publication and Effectivity of Tax Rules		
RMC 20-86 dated July 24, 1986 entitled: *"Notice, publication and effectivity of internal revenue tax rules and regulation"*	Regrettably, the past two Commissioners failed to observe due process in the issuance of tax rules and regulations. The preamble of RMC 20-86 issued by Commissioner Bienvenido Tan in 1986 is apropos: "It has been observed that one of the problem areas bearing on compliance with internal revenue tax rules and regulations is lack or insufficiency of due notice to the tax-paying public. Unless there is due notice, due compliance therewith may not be reasonably expected. And most importantly, their strict enforcement could possibly suffer from legal infirmity in the light of the Constitutional provision on "due process of law" and the essence of the Civil Code provision concerning effectivity of laws, whereby due notice is a basic	Issue a Revenue Regulation reiterating the due process requirements laid down under RMC 20-86.	

	requirement (Sec. 1, ART. IV, Constitution; ART. 2, New Civil Code). In order that there shall be a just enforcement of rules and regulations, in conformity with the said basic element of due process, the following procedures are hereby prescribed for the drafting, issuance and implementation of the said Revenue Tax Issuances: xxx"		
RMC 57-13 Circularization of BIR Ruling No 123-13 on the Recovery of Unutilized Input taxes – Denying request to claim as outright expense unutilized input tax after expiration of 2-year period to file claim for refund	Under RMC 42-03, if the claim for refund/TCC is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices (e.g., failure to indicate the TIN), its claim for tax credit/refund of VAT on its purchases shall be denied considering that the invoice it is issuing to its customers does not depict its being a VAT-registered taxpayer whose sales are classified as zero-rated sales. Nonetheless, this treatment is without prejudice to the right of the taxpayer to charge the input taxes to the appropriate expense account or asset account subject to depreciation, whichever is applicable.	Issue clarification allowing taxpayer to claim as expense accumulated input tax after expiration of the 2-year period to file claim for refund. This will allow taxpayer to recover 30% of the unutilized input tax in the form of income tax benefit.	