



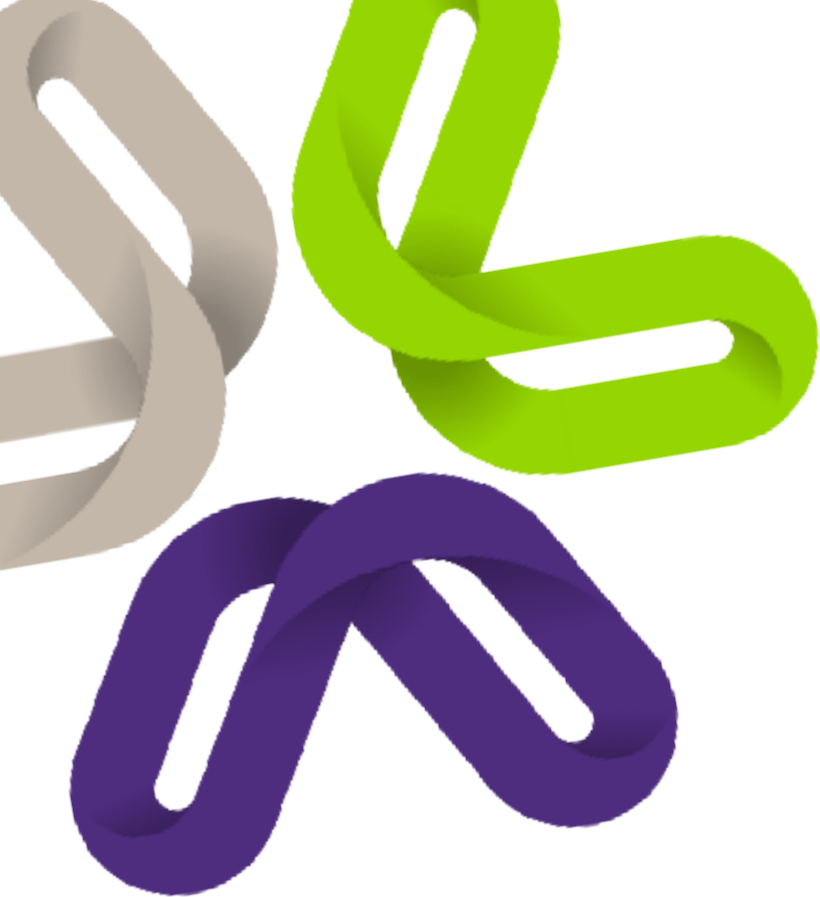
P&A
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Tax brief

March 2019
(February Issuances)





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Updated withholding tax rates on MERALCO payments and interest on loans

(Revenue Regulations No. 01-2019, February 8, 2019)

Pursuant to TRAIN Law, the rate of withholding shall not be less than one percent (1%) but not more than fifteen percent (15%) of the income payment. Thus, the creditable/expanded withholding tax rates applicable on the following income payments were updated effective January 1, 2019:

Income Payment	Before	RR No. 01-2019
MERALCO Refund pursuant to SC Case G.R. No. 14814	Customers with active contracts: 25% Customers with terminated contracts: 32%	15%
Interest income on the refund of meter deposits paid by MERALCO and other electric Distribution Utilities (DUs)	Residential and general service customers with monthly consumption exceeding 200kwh: 10% Non-residential customers: 20%	Residential and general service customers with monthly consumption exceeding 200kwh: 10% Non-residential customers: 15%
Interest income derived from all other debt instruments not within the coverage of deposit substitutes (Debt securities which are securitized, assigned or participated out as clarified in RMC No. 84-2012)	20%	15%

Based on the above, the highest creditable/expanded withholding tax rate applicable now is 15%.

Policies and guidelines in the certification of eTSPCert System

(Revenue Memorandum Order No. 08-2019, February 8, 2019)

To encourage taxpayer's compliance and keep pace with the shift of tax administration globally to digital tax services, the BIR recognizes innovations being introduced by private Tax Software Providers (TSPs) in automating tax return preparation, filing and payment of tax due thereon.

Under RMO No. 08-19, TSPs are required to secure certification from the BIR for the electronic Tax Software Provider Certification System (eTSPCert System). This is to ensure that the its output can be submitted to and processed by the BIR's database.

An individual or non-individual TSP is eligible to apply for testing and certification of their Tax filing and/ or Payment Solution (TFPS) if they are registered with the BIR. TSPs who apply for certification of their TFPS shall enroll in the eTSPCert System for evaluation, testing, and certification by the Bureau. Each approved application shall be given a corresponding eCert ID and Certificate (the eTSPCert System can be accessed at the BIR website). TSPs shall ensure that their TFPS will generate correct tax/payment information. However, the accuracy and truthfulness of the input

data shall be the responsibility of the concerned taxpayer-client.

For the automated payment of tax due, the TSP shall partner with any Authorized Agent Banks (AABs). Said AABs shall apply for certification of their ePayment system with the BIR using the eTSPCert System.

Non-individual TSPs are allowed to assign 3 authorized representatives in the application for testing and certification. While individuals are not allowed to assign any authorized representative.

The BIR shall issue certification for each approved BIR form application, provided that the output of the TFPS has passed the testing prescribed in the test procedures prescribed in this RMO. Should newer versions of eBIRForms become available, TSPs shall apply for re-testing and certification of their TFPS within 60 days from the date of publication of the announcement informing the public of new eBIRForms versions.

BIR Form Nos. 0619-E, 0619-F, 1601-EQ, 1601-FQ, 1601-C, 2551Q, 1701-Q, 1604-CF, 1604-E, 1701, 1606, 1706, 2000-OT, 2550M, 2550Q, and 1702Q are initially available for tax return filing solution certification.

Certification may be revoked by the BIR under certain circumstances.

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2019 BIR collection goal allocation

(Revenue Memorandum Order No. 09-2019, February 11, 2019)

For calendar year (CY) 2019, the BIR collection goal was set by Department of Finance at Php 2,330.693 Billion. This is inclusive of Php 79.012 Billion in additional revenues from the TRAIN Act and is higher than the CT 2018 goals by P 291.541 Billion or 14.3%.

For the CY 2019 collection goal was allocated on a per tax type as follows:

I. BIR Operations	P2.257T
a. Taxes on Net Income and Profits	P1.060T
b. Value Added Tax	P0.506T
c. Excise Taxes	P0.400T
d. Percentage Taxes	P0.112T
e. Other Taxes	P0.177T
I. Non-BIR Operations	P0.073T
a. Taxes on Net Income and Profits	P0.062T
b. Other Taxes	P0.012T

Reiteration on the grant of VAT privileges to RF missions, its qualified personnel and dependents

(Revenue Memorandum Order No. 10-2019, February 12, 2019)

The grant of VAT exemption to foreign missions, its qualified personnel and dependents is based on the international law principles of reciprocity and comity, which were adopted as part of the law of our jurisdiction, pursuant to Article II, Section 2 of the 1987 Philippine Constitution.

Based on the principle of reciprocity, resident foreign missions, its qualified personnel and dependents may be accorded VAT exemption on their local purchase of goods and/or services either at point-of-sale or on a refund reimbursement basis.

A resident foreign mission and its members, as endorsed by the DFA-OP shall be issued with a VAT Certificate (VC) or VAT Identification Card (VIC) granting them VAT exemption at point-of-sale. The initially issued VC/VIC shall, in general, be effective for two (2) years, renewable every two (2) years thereafter, or until the expiration of the term of office of the qualified personnel of a foreign mission, unless sooner cancelled, revoked or suspended for a valid cause.

All business establishments shall honor

the BIR-issued VC or VIC duly presented to them by the foreign mission and its personnel on their official (foreign mission) or personal (personnel) purchases of goods and services in the Philippines except on local purchases of motor vehicles. VAT zero-rating shall be applied by business establishments even without the prior application for effective zero-rating.

Local purchase of motor vehicles of residents foreign missions shall be covered by BIR ruling on indirect tax exemption.

When a foreign mission and its members are categorically endorsed by the DFA-OP as entitled to the grant of VAT exemption thru reimbursement or refund, a BIR ruling must be secured to confirm that the said foreign mission, its qualified personnel and the latter's dependent/s, are entitled to reimbursement/refund of VAT paid on purchase of goods and services in the Philippines. Refund must be applied within two years after the close of the taxable quarter when the sales were made.

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Clarifications on the filing of BIR Form 2316 and certified list of employees for substituted filing

(Revenue Memorandum Circular No. 24-2019, February 14, 2019)

As clarified in RMC No. 24-2019, the modes of submission of the copy of the BIR Form 2316 of employees qualified for substituted filing as provided in Revenue Regulations No. 02-2015 were not amended by RR No. 11-2018.

Under RR No. 02-2015, large taxpayers are required to submit scanned copies of BIR Form 2316 saved in a DVD, in lieu of hard copies. Non-LTS taxpayers duly registered under the Revenue District Offices may, at their option, comply with the said requirement provided they shall no longer be allowed to submit in hard copies once they opted for the scanned copies.

Under RMC No. 24-2019, a USB memory stick or other similar storage devices may be used in the absence or unavailability of DVDs provided that the scanned copies shall be made in uneditable format.

Certified list of employees for substituted filing shall follow the prescribed format under Annex F of RR 11-2018. In case additional pages or a separate list is needed to accommodate additional employees, a reference statement to the additional pages or attachments shall be clearly indicated in the certification. The

signature of the certifying employer or its duly authorized representative shall likewise be indicated at the bottom of ALL pages which are attached to the certification.

The prescribed format for the certification requires notarization. However, un-notarized certified list may be submitted provided that all pages attached to the certification are duly signed by the certifying employer or its duly authorized representative.

Availability of enhanced BIR registration forms

(Revenue Memorandum Circular No. 27-2019, February 21, 2019)

Enhanced versions (January 2018 ENCS) of the registration forms are now available as follows:

Form No.	Description
1901	Application for Registration for Self-Employed (Single Proprietor/ Professional), Mixed Income Individuals, Non-Resident Alien Engaged in Trade/ Business, Estate and Trust
1902	Application for Registration for Individuals Earning Purely Compensation Income (Local and Alien Employee)
1903	Application for Registration for Corporations, Partnerships (Taxable/ Non-Taxable), Including Government Agencies and Instrumentalities (GAls), Local Government Units (LGUs), Cooperatives and Associations
1904	Application for Registration for One-Time Taxpayer and Person Registering under E.O. 98 (Securing a TIN to be able to transact with any government office)
1905	Application for Registration Information Update/ Correction/ Cancellation
1906	Application for Authority to Print Receipts and Invoices

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The use of BIR printed receipt/sales invoices for new business taxpayers *(Revenue Memorandum Circular No. 28-2019, February 22, 2019)*

Aligned with the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, the BIR now allows new business taxpayers to use of BIR Printed Receipt (BPR)/ BIR Printed Invoices (BPI) for 15 days from the date of registration. This shall allow new business taxpayers to immediately start its business operations while waiting for the printing or delivery of its official receipts/ sales invoices by the BIR-accredited printers. The BPR/BPI may be secured only from the BIR New Business Registrant Counter (NBRC) at the time of registration. It shall be issued as principal evidence in the sale of goods and/or properties and/or services or lease of properties until the issuance of ATP by the BIR. It can be used as supporting document in claiming expenses as deduction from ordinary gross income or claim as input tax credit, subject to existing rules and regulations on invoicing requirements for taxation purposes. Pursuant to Section 237 of the 1997 Tax Code, as amended by RA 10963 (TRAIN Law), all person subject to internal revenue tax shall issue duly registered receipts/sale/commercial invoices at the point of each sale and transfer of merchandise or for services rendered valued at least Php100.00.

Keeping, maintaining and registration of Books of Accounts *(Revenue Memorandum Order No. 29-2019, February 22, 2019)*

All persons, partnerships, companies and corporations required by law to pay internal revenue taxes shall use and keep relevant and appropriate set of bookkeeping records duly authorized by the BIR.

Aligned with the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, the BIR now allows new business taxpayers to register manual books of accounts before the deadline for filing of the first quarterly income tax return or the annual income tax return whichever comes earlier.

Under the rules, books of accounts may be done in any of the following manner: (a) manual books of accounts (b) loose leaf books of accounts (with permit to use) (c) computerized books of accounts (with permit to use). Keeping of two or more sets of records or books of accounts is prohibited.

As reiterated in RMC No. 29-2019, the books of accounts shall be kept intact-unaltered and unutilized, at all times in the place of business of the taxpayer. These books of accounts, including subsidiary books and other accounting records are required to be preserved for 10 years reckoned from the day following the deadline in filing a return or from the date

of filing whichever comes later. Hardcopies of the books of accounts shall be preserved for 5 years. Thereafter, retention of electronic copies of the same would suffice.

All entries in the manual books of accounts shall be handwritten. Printouts of the account records pasted/glued/inserted onto pages/sheets of the registered manual books of accounts are prohibited and subject to penalty. Loose leaf books of accounts/invoices/receipts and other accounting records shall be permanently bound and presented for registration to the RDO/LTAD/ELTRD/LTD-Cebu/LTD-Davao on or before "15 days after the end of each taxable year: or "within 15 days from the closure of business operations" whichever comes earlier.

Computerized books of accounts and other accounting records in electronic format shall be submitted and registered to the RDO/LTAD/ELTRD/LTD-Cebu/LTD-Davao within 30 days from the close of each taxable year or "within 30 days from the closure of the business operations" whichever comes earlier. Corporations, companies, partnerships or persons whose gross annual sales, earning, receipts or output exceed Php 3,000,000.00 shall have their books of accounts audited and examined yearly by an iCPA.

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Tax treatment of unlisted shares sold for less than fair market value

(Revenue Memorandum Order No. 30-2019, February 29, 2019)

Prior to the TRAIN Law, Section 100 of the 1997 Tax Code provides that sale of unlisted shares for less than adequate or full consideration be subject to donor's tax. The TRAIN Law, however, amended this section to include a provision which provides an exception to the general rule. Under the amended Sec. 100 of the NIRC, a transaction that is bona fide, at arm's length, and free from any donative intent will be considered made for an adequate and full consideration, even if the selling price is lower than the established fair market value (FMV).

Under RMC No. 30-2019, it was clarified that the issue of whether the transaction is arm's length is a question of fact and not of law. The parties must present proof of business purpose to fall within the exception to the rule on the imposition of donor's tax on transfer of shares for less than its FMV. Thus, the facts claimed by the parties must be adequately established by supporting documents. The parties seeking to apply the exception to prove that indeed the sale involves no irregularity between unrelated and independent parties must present reasonable evidence sufficient enough to convince that the sale of shares of stock less than its FMV is without intent to evade tax and defraud the government.

The Tax Amnesty Act



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The Tax Amnesty Act

(Republic Act No. 11213, February 14, 2019)

The signed Tax Amnesty Act as partially vetoed by the President provides two types of tax amnesties – estate tax amnesty and tax amnesty on delinquencies.

The estate tax amnesty covers the estate of decedents who died on or before December 31, 2017, including estate or donor's taxes arising from transfers of the estate from all previous decedents or donors to the latest heirs or beneficiaries. The tax amnesty on delinquencies applies to taxes due under assessments which have become final and executory, criminal cases filed in court, and unremitted withholding taxes.

Type of Amnesty	Coverage	Exclusion	Immunities and Privileges	Amnesty Tax	Filing	Availment Period
Estate Tax Amnesty	All estate of decedents who died on before December 31, 2017 A separate estate tax amnesty shall be applied at every transfer of the property from every decedent to the heir.	<ol style="list-style-type: none"> 1. Final and executory tax cases 2. Properties involved in pending court cases: <ul style="list-style-type: none"> - Cases falling under the jurisdiction of PCGG; - Unexplained or unlawfully acquired wealth - Violations of AMLA - Tax evasion and other criminal offenses under Chapter II of Title X of the NIRC, as amended; - Felonies of frauds, illegal exactions and transactions, and malversation of public funds 	The estate shall be immune from payment of estate taxes as well as from all appurtenant civil, criminal and administrative cases and penalties.	6% of the net undeclared estate computed using the rules applicable at the time of death Estates with allowable deductions higher than the gross estate can still avail of the tax amnesty upon payment of minimum estate amnesty tax of P5,000. Truthfulness of the valuation of the subject properties may be evaluated by implementing agencies.	Sworn Estate Tax Amnesty Return to be filed in the RDO of the last residence of the decedent Non-resident decedent: RDO 39 or as indicated in IRR	Within two (2) years from the effectivity of the Implementing Rules and Regulations

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Type of Amensty	Coverage	Exclusion	Immunities and Privileges	Amnesty Tax	Filing	Availment Period
Tax Amnesty on Delinquencies	All national internal revenue taxes including VAT and excise taxes collected by BOC for taxable year 2017 and prior years	Not applica-ble	<p>1. Taxes due on those who avail shall be considered settled and the criminal case and corresponding civil or administrative case shall be terminated.</p> <p>2. The taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as from all appurtenant civil, criminal and administrative cases and penalties.</p>	<p>40% of the basic tax assessed for delinquencies and assessments which have become final and executory 50% of the basic tax assessed for tax cases subject of final and executory judgment by the courts</p> <p>60% of the basic tax assessed for pending criminal cases with criminal information filed with th Department of Justice or the courts for tax evasion and other criminal offenses</p> <p>100% of the basic tax assessed for withholding agents who withheld taxes but failed to remit the same to the BIR</p>	Sworn Tax Amnesty on Delinquencies Return, and a Certification of Delinquency to be filed in the appropriate BIR Office, which has jurisdic-tion over the residence or the principal place of business of the taxpayer. Payment of the amnesty tax shall be made at the time the return is filed.	Within one (1) year from the effectivi-ty of the Im-plementing Rules and Regulations

The proposed general tax amnesty was vetoed by the President. The proposed general tax amnesty would have applied to all national internal revenue taxes including those payable to the Bureau of Customs (BOC)- which have remained unpaid, including those covered by tax assessments which have not become final and executory. The President believed that there were not enough provisions to safeguard the government against those who might abuse the amnesty through declaring an untruthful asset or net worth, such as the relaxation of bank secrecy law. The act shall take effect within 15 days from the publication in a local newspaper. The necessary rules and regulations of the tax amnesty act shall be promulgated within 90 days from the effectivity of the act.

The Revised Corporation Code



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The Revised Corporation Code

(Republic Act No. 11232, February 20, 2019)

The President signed into law the Act providing for the Revised Corporation Code (RCC) on February 20, 2019. Below are the salient provisions of the RCC:

- Introduction of a new corporate vehicle – the one-person corporation (OPC). Under the new law, a single shareholder, who may be an individual, a trust or an estate may form an OPC. The single stockholder becomes the sole director and president of the OPC. However, banks and quasi-banks, preneed, trust, insurance, public and publicly-listed companies, and non-chartered government-owned and –controlled corporations may not incorporate as an OPC.
- Requirement for incorporators. RCC now allows one (1) person to register a business as a corporation by oneself, thus, removing the requirement of minimum 5 incorporators. Moreover, while the old Corporation Code required incorporators to be natural persons, the RCC provides that incorporators may be any person, partnership, association or corporation.
- Removal of the maximum 50-year corporate term. Corporations shall now have perpetual existence unless their Articles of Incorporation provide

otherwise. Even corporations existing prior to the effectivity of the RCC shall have perpetual existence, unless majority of the stockholders elect to retain the specific corporate term in their articles of incorporation.

- Revival of existence. A corporation whose term has expired may apply for revival of corporate existence. Upon approval by the SEC, the corporation shall be deemed revived and shall also be deemed to have perpetual existence, unless its application for revival provides otherwise.
- Issuance of no-par value shares of stocks. The corporations not allowed to issue no-par value shares now include preneed corporations and other corporations authorized to obtain or access funds from the public. The restriction applies to the covered corporations, whether publicly listed or not.
- Removal of subscribed and paid-up capital requirements. The RCC removed the requirement of 25%-25% subscription and paid-up capitalization requirement, except as specifically provided in special laws.
- Right to vote by stockholders/members. The stockholders or members now exercised their right to vote via remote communication or in absentia (previously through presence or representative only). A stockholder or member who participates via remote communication or in absentia shall be deemed present for purposes of quorum. Rules and regulations governing this shall be issued by SEC.
- Officers. The RCC now requires the treasurer to be a resident of the Philippines. While corporations vested with public interest must elect a compliance officer.
- Board of Directors/Trustees. Corporations vested with public interest are now required to have independent directors constituting at least twenty percent (20%) of the board. Trustees shall be elected for a term not exceeding three (3) years.
- Disqualification of Directors, Trustees or Officers. The RCC provided additional grounds for disqualification of directors, trustees, and officers of a corporation: violating RA 8799, otherwise known as “The Securities Regulation Code”; being found administratively liable for any offenses involving fraudulent acts; and being found liable by foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in paragraphs (a) and (b) of the new Section 26. The five-year limit on the violation of the Corporation Code has been removed. The SEC or the Philippine Competition

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Commission may also provide additional qualification and disqualification of directors, trustees and officers.

- Removal of Directors. A disqualified director or trustee can be removed by the SEC motu proprio (on its own initiative) or upon a verified complaint, and after due notice and hearing. The SEC may also impose sanctions on directors or trustees who failed to remove the disqualified director or trustee despite their knowledge of the disqualification.
- Emergency boards. When vacancy prevents the remaining directors from constituting a quorum and there is a need for emergency action to prevent damage to the corporation, the remaining directors may fill up the vacancy from among the officers of the corporation by unanimous vote of the remaining directors or trustees. However, the action by the designated director or trustee shall be limited to the emergency action necessary, and the term shall cease within a reasonable time from the termination of the emergency or upon election of the replacement, whichever comes earlier. A notification for the creation of emergency board must be done with SEC within 3 days from creation of the emergency board.
- Compensation of Directors/Trustees. The RCC now requires the submission to the shareholders and SEC of an annual report on the total compensation of each director or trustees.
- Dealings of Directors, Trustees or Officers with the Corporation. Limitation on the dealings of directors, trustees or officers with the corporation now includes contracts with the corporation of their spouses and relatives within the fourth civil degree of consanguinity or affinity. Such contracts are voidable unless all the requirements and conditions set forth in Sec. 31 of the Revised Corporation Code are complied.
- Donations to Political Party/Activity. Domestic corporations are now allowed to give donations in aid of any political party or candidate or for purposes of partisan political activity. Under the RCC, only foreign corporations are not allowed to give political donations.
- Mode of Notices to Stockholders. Electronic sending of notices for stockholder's meetings is now allowed provided the same is provided in the by-laws and in accordance with SEC's rules on the use of electronic messages.
- Regular and special meetings of stockholders/members. If date for the annual stockholders' meeting is not fixed, it may be held on any date after April 15 of every year (previously any date in April only). Written notices must be sent to stockholders not later than 21 days prior to the meeting.
- Consideration for Stocks. Shares of stock in another corporation and other generally accepted form of consideration are now considered acceptable consideration for the issuance of stocks.
- Financial Statements. Financial statements of corporations with total assets or total liabilities amounting to less than P600,000 or such other amount as may be determined by DOF, is now not required to be certified by an independent auditor. It may just be certified under oath by the treasurer and the president of the corporation.
- Merger or Consolidation. Additional information such as the carrying amounts and fair values of the assets and liabilities of the parties to the merger or consolidation as of the agreed cut-off date, method of merger or consolidation of accounts, and provisional or pro-forma values as merged or consolidated, are now required to be included in the articles of merger or consolidation.

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- Trustees. Non-stock corporations vested with public interest are now required to have independent trustees who are not members of the non-stock corporation.
- Dissolution. For voluntary dissolutions where no creditors are affected, the RCC now requires only a majority vote of the board of directors and the vote of the stockholders owning at least majority of the outstanding capital stock. Previously, affirmative votes of stockholders owning 2/3 of the outstanding capital stock are required.

However, the RCC added strict requirements for dissolution such as the need for a verified request for dissolution, stating: the reason for the dissolution; the form, manner, and time when notices were given; names of those stockholders and directors who approved the dissolution; date, place and time of the meeting in which the vote was made; and the details of publication.

- Securities deposit of branches. The required initial minimum actual market value of securities deposit of branches was increased from P100,000 to P500,000. Also, under the RCC, within six months from the close of the fiscal year of the branch, it is required to deposit additional securities equivalent in actual market value to two percent (2%) of the amount by which the branch's gross income

for the fiscal year exceeds P10 million (previously P5 million). Deductions from gross income in accordance with SEC rules, shall be allowed in computing the securities deposit amount.

- Penal Provisions. While the old Corporation Code only has one penal provision (Section 144), the RCC added an entire title on "Investigations, Offenses and Penalties". The title provides penal provisions for violations of the RCC.

SEC Circulars



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Amendments on the duties and responsibilities of an iCPA

(SEC Memorandum Circular No. 2 series of 2019, February 07, 2019)

Section 5.8.2 of the Investment Company Act Implementing Rules and Regulations is amended to enumerate the duties and responsibilities of the independent accountants and auditors in the performance of their financial audit function as follows:

- To observe the principles on the expectation for an effective audit function issued by the Commission under Financial Reporting Bulletin No. 19 and any amendments thereto;
- Perform the audit of financial statements of the Investment Company, Fund Managers, and Fund Distributor in accordance with the requirements of the Philippine Standards on Auditing, the Ethical Standards under International Ethics Standard Board of Accountants (IESBA) Code of Ethics for Professional Accountants, and the relevant regulatory issuances of the Commission such as SRC Rule 68, as amended and Financial Reporting Bulletin;
- Report to the Commission any non-compliance by the Investment, Fund Manager, and Fund Distributor

with their contractual and regulatory requirement, based solely on the matters discovered from performing the audit. The engagement contract between the said companies and the independent auditor shall contain a provision that the disclosure of information by the independent auditor to the Commission shall not constitute a breach of confidentiality nor shall it be ground for civil, criminal or disciplinary proceedings against the independent auditor.

Sustainability reporting for Publicly-Listed Companies

(SEC Memorandum Circular No. 4 series of 2019, February 15, 2019)

To help Publicly-Listed Companies assess and manage their non-financial performance across Economic, Environmental and Social aspects of their organization and enable them to measure and monitor their contributions towards achieving universal targets of sustainability, a sustainability reporting guidelines was issued by the Commission.

The reporting template (Annex A of the Guidelines) shall be submitted together with the Company's Annual Report (SEC Form 17-A). First report shall be attached to the 2019 Annual Report to be submitted in 2020. Existing sustainability reports of Companies prepared in accordance with international recognized frameworks and standards shall already be considered

compliance with the reporting template. Companies may choose to attached the whole sustainability report to their Annual Report or just include a statement providing a link to the said report. The guidelines shall be adopted on a "comply or explain" approach for the first three years upon implementation. The memorandum circular takes effect 15 days from publication.

Non-attachment of the Sustainability Report to the Annual Report shall be subject to the penalty for Incomplete Annual Report provided under SEC Memorandum Circular No. 6, series of 2005 (Consolidated Scale of Fines).

SEC Opinions



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Dividend declaration based on unrestricted RE without deducting cost of redeemed preferred shares is valid

(SEC-OGC Opinion No. 19-03, February 14, 2019)

While the rules governing redeemable and treasury shares (1982 Rules) provides that the cost of treasury shares acquired from the redemption of redeemable shares need not be deducted from the unrestricted Retained Earnings (RE) and need not be restricted from being declared and issues as dividends, guidelines on the determination of RE available for dividend declaration (2008 Guidelines) includes treasury shares (in general) as an item that is subtracted from the net income earned in order to determine 'RE available for dividend declaration'. The said 2008 guidelines however made no distinction as to the circumstances surrounding the acquisition of treasury shares- whether cost of treasury shares acquired from the redemption of redeemable preferred shares need to be deducted from unrestricted RE to determine amount allowed for declaration of cash dividends.

Based from the foregoing, the cost of treasury shares arising from the redemption of redeemable shares as provided for in the Articles of Incorporation (AOI) need not be considered and subtracted in the determination of the corporation's RE available for dividend declaration.

CTA Decisions



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SEC Certificate of Non-registration and Articles of Foreign Incorporation necessary to be subject to Zero percent VAT

(Citco International Support Services Limited-Philippine ROHQ v Commissioner of Internal Revenue, CTA Case No. 9102, February 4, 2019)

Section 108 (B) (2) of the NIRC provides that in order for a sale of service to be subject to zero percent VAT, the services must be rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed.

To prove that the recipients of services are doing business outside the Philippines, the taxpayer in CTA Case No. 9102 submitted Certificate of Authentication, Articles of Incorporation of Foreign Affiliates, SEC Certificate of Non-registration and Master Service Agreement.

The Court ruled that the non-resident foreign client, at the very least, must be supported by both a certificate of non-registration of corporation/ partnership issued by the SEC and Certificate/ Articles of Foreign Incorporation/ Association to prove that it is doing business outside the Philippines. These documents were duly submitted by the taxpayer. Hence, Section 108 (b)(2) of the 1997 Tax Code has been

complied with and the request for refund was partially granted.

A waiver of the statute of limitations executed after the lapse of the 3-year prescriptive period is invalid

(Commissioner of Internal Revenue v Coral Bay Nickel Corporation, CTA EB No. 1652 re CTA 8756, February 6, 2019)

Provided under Section 203 of the 1997 Tax Code, taxpayers may be assessed of taxes for a period of 3 years from the last day prescribed by law for the filing of the return, or the actual filing thereof, whichever comes later. However, Section 222 (b) authorizes the extension of the said three-year prescriptive period by the execution of a valid waiver, where the taxpayer and the Commissioner of Internal Revenue may stipulate to extend the period assessment by a written agreement executed prior to the lapse of the period prescribed by law, and by subsequent written agreements before the expiration of the period previously agreed upon.

In this case and as discussed in the assailed decision, the first waiver of the defense of prescription under the statute of limitations under the NIRC executed by both parties, became effective and binding only after the lapse of the 3-year prescriptive period to assess the deficiency final withholding tax for the months of January, February and March 2017. Hence, at the time the said first waiver became

effective, the period to assess respondent for the said taxes had already prescribed.

Payment confirmation receipts required to prove payment of withholding VAT for input VAT claim

(Halliburton Worldwide Limited-Philippine Branch v Commissioner of Internal Revenue, CTA Case No. 9449, February 14, 2019)

Section 4.110-8 of RR No. 16-05, as amended, provides that input tax from payments made to non-residents for purchases of services, royalties, and rentals shall be supported by a copy of the duly filed BIR Form 1600 evidencing the remittance of VAT due.

In the case, the taxpayer submitted copies of the duly filed remittance returns but failed to submit payment confirmation receipts. Since the taxpayer failed to prove the actual remittance of withholding VAT due, the Court ruled that the taxpayer's argument that BIR Form 1600 is a sufficient proof to substantiate the input VAT on services rendered by non-residents without need to submit any confirmation receipts without merit. The filing of BIR Form 1600 is insufficient to prove the amount actually remitted to the BIR and the dates when these were remitted and as such, these must be supported by payment confirmation receipts.



- > BIR Issuance
- > The Tax Amnesty Act
- > The Revised Corporation Code
- > SEC Circulars
- > SEC Opinions
- > CTA Decisions

CTA Decisions

Without these confirmation receipts, the Court could not determine the amount actually withheld and remitted/ paid to the BIR and the corresponding date of payment.

Assessments issued without LOA even with LN is void

(Ermilo Tan Ng Hua v Commissioner of Internal Revenue, CTA Case No. 9291, February 21, 2019)

Section 6 (A) of the 1997 Tax Code, as amended, vests the CIR the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due. Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is null and void.

In the case, the assessment and examination of petitioner's internal revenue taxes commenced after a Letter Notice (LN) was issued to him. However, no Letter of Authority (LOA) was issued to the taxpayer. As ruled by the court, LN is entirely different and serves a different purpose than an LOA. Due process demands, that after an LN has served its purpose, the revenue officer should have properly secured an LOA before

proceeding with the further examination and assessment of the petitioner. Since no LOA was issued, the assessment was considered null and void.

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