

# *Tax* brief

June 2016



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# BIR Issuance

## Reporting of paid campaign promotions by media outfits

*(Revenue Memorandum Order No. 16-2016, May 3, 2016)*

Media outfits are being required to report paid campaign promotions by the political candidates in the May 9, 2016 National and Local Elections, covering radio or TV commercials, print ads or publications and online advertisement.

The requirement is aimed at assessing the income or donor's tax on unspent or unreported campaign contributions.

The report shall cover all paid promotions from the three-month period prior to the start of the campaign period until the end of campaign period by the COMELEC, as follows:

Candidates Covered	Campaign Period	Period Covered by the Report
President, V-President, Senator and party-list groups	February 9, 2016 to May 7, 2016 (COMELEC Resolution No. 9981 dated August 18, 2015)	November 9, 2015 to May 7, 2016
Members of House of Representatives, elective regional, provincial, city, & municipal officials	March 25, 2016 to May 7, 2016 (COMELEC Resolution No. 9981 dated August 18, 2015)	December 25, 2015 to May 7, 2016

Both hard and soft copy (in DVD-R) shall be submitted to the Revenue District Office (RDO) where the media outfit is registered, within 15 days from the campaign end date or until May 22, 2016.

Non-compliance shall be penalized for 1,000 for each failure to submit within the prescribed period. Payment of penalties cannot relieve the media outfit of the obligation to submit the report.

Willful failure shall imply fraud and cannot be subject to compromise.

# BIR Issuance

## Additional guidelines on tax free exchange of property for shares

*(Revenue Memorandum Order No. 17-2016, May 5, 2016)*

Section 40 (C) of the National Internal Revenue Code (NIRC) of 1997 provides for capital gains tax exemption in case of transfers of property in exchange for shares of stocks in case of merger or consolidation or for purposes of gaining control in the corporation.

The BIR clarifies that, for purposes of the tax-free exchange, the value of shares to be issued should be equal to the fair market value of the value of property transferred (value for value exchange). Thus, number of shares to be issued are to be determined based on the fair market value of the property transferred.

Additional paid up capital shall not be allowed.

The following rules apply, in addition to the requirements in prior issuances.

1. For the corporation receiving the property (transferee corporation) and issuing the shares

- a. The property shall be recorded at fair market value.
  - b. The tax free exchange shall be annotated in the certificate of title of ownership of properties.
  - c. Transferee corporation shall place a note in the financial statements indicating that the property was acquired pursuant to Section 40(C) of the Tax Code, date of the transaction, the substituted basis of the property, the number of shares exchanged, and the name of the transferor corporation.
  - d. Tax-free exchange ruling should be presented in case the shares shall be subsequently sold/ transferred.
3. The shares shall be valued as follows:
- a. Listed shares - closing price on the day or nearest the date of transfer/exchange.
  - b. Unlisted shares - book value as shown in the annual audited financial statements submitted to the BIR nearest to the date of sale where assets are adjusted to their fair market value as of a date not earlier than 90 days from the date of the transaction. Assets in shares of stock of other companies shall be adjusted to its fair market value as of a date not earlier than 90 days from the date of the transaction, pursuant to RR 6-2013.
2. For the corporation transferring the property/assets (transferor corporation) and recipient of the shares
- a. The shares received in exchange for the property shall be recorded at its substituted value
  - b. Gain or loss on the subsequent transfer of the property shall be computed using the substituted basis as defined under RR 18-2001.
  - c. The tax free exchange shall be annotated in the certificate of title of ownership of properties.
  - d. Transferee corporation shall place a note in the financial statements indicating that the property was acquired pursuant to Section 40(C) of the Tax Code, date of the transaction, the substituted basis of the property, the number of shares exchanged, and the name of the shareholder(s) and the breakdown of shares to each.
  - e. Tax-free exchange ruling should be presented in case the property or the shares shall be subsequently sold/ transferred.



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# BIR Issuance



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## Certificate of compliance in lieu of certificate of good standing for cooperatives

*(Revenue Memorandum Circular No. 54-2016, May 17, 2016)*

The BIR has circularized the Cooperative Development Authority (CDA) Memorandum Circular (MC) No. 2015-08 providing guidelines on the issuance of the Certificate of Compliance (COC), in lieu of Certificate of Good Standing.

The COC shall be issued once a year and can be used to avail of the incentives and privileges provided.

COCs will be issued upon compliance with and submission of the following documents:

1. Letter request duly signed by the Chairperson/ authorized representative of the Cooperative with the reason for request;
2. Proof of Compliance that preceding fiscal year's required reports were submitted or complete copies of such reports; and

3. Copy of the minutes of meeting of the General Assembly.

Newly-registered cooperatives are exempted from complying with the above requirements and shall be issued with the COC upon payment of P1,000 certification fee.

Any of the following can be a ground for non-issuance of COC:

1. Non-submission of required reports
2. Failure to encode Cooperatives Annual Progress Report through web-based CAPRIS and to submit the printed form generated by the system
3. Willful failure to comply with the mandatory trainings for officers;
4. Non-settlement of fines and/or penalties for late or non-submission of mandatory reports and;
5. If cooperative has been declared dissolved.

Requests for the issuance of a COC shall be made on or before April 30 of the current year with 1 year validity. Request made after such period shall be considered as "late filing"

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## Validity of accreditation of CRM/POS machines

*(Revenue Memorandum Circular No. 55-2016, May 3, 2016)*

All certificates of accreditation issued prior to the issuance of RMC Nos. 30-2015 and 68-2015 (June and October respectively) shall still be valid and in effect based on its “date of issuance” with staggered implementation as follows:

Date of Issuance on the Certificate of Accreditation	Valid Until
Prior to July 31, 2013	July 31, 2018
August 1, 2013 to July 31, 2014	July 31, 2019
August 1, 2014 to July 31, 2015	July 31, 2020
August 1, 2015 onwards	Five-year validity period shall commence

Both primary and supplementary invoices/receipts must reflect the corresponding date of issuance and validity period to be printed at the bottom portion together with the Accreditation Number pursuant to Section 5 of Revenue Regulations No. 10-2015.

Applications for renewal should be filed within sixty days prior to the expiration of the validity period as provided under RMC 68-2015.

## Unacceptable bank checks for tax payments

*(Revenue Memorandum Circular Nos. 56 and 57-2016, May 12, 2016)*

BIR announced that checks drawn from the following banks are not to be accepted as payment for internal revenue taxes:

1. Surigao Evergreen Rural Bank, Inc.
2. Rural Bank of Amadeo (Cavite), Inc.

Said banks are prohibited by the Bangko Sentral ng Pilipinas (BSP) from doing business in the Philippines and has been placed under receivership with PDIC.

# SEC Opinion

## Sale of delinquent stocks

*(SEC-OGC Opinion No. 16-09, April 26, 2016)*

Delinquent stocks may be sold at public auction to the highest bidder.

Once the full amount of the bid price has been paid at the time of the sale, the stocks shall be transferred in the name of the purchaser in the books of the corporation and a certificate of stock shall be issued.

The bid price shall include the full amount of the balance on the subscription together with accrued interest, if any, cost of advertisement and expenses of sale.

Only then can the delinquent stockholder be entitled to the issuance of certificates of stock for the shares that he has paid.

## Minimum paid-up capital to allow foreign participation in retail trade

*(SEC-OGC Opinion No. 16-10, May 16, 2016)*

Foreign owned corporations engaged in the retail trade business that are formed and organized under Philippine laws may, upon registration with the Securities and Exchange Commission and Department of Trade and Industry, be subject to different categories for foreign ownership requirements depending on its minimum paid up capital in peso.

When proposed paid-up capital in peso equivalent of a corporation is less than two million five hundred thousand US dollars (US\$2,500,000), ownership of the corporation shall be reserved exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.

Hence, if the corporation wishes to include foreign stockholders, it has to increase its proposed paid-up capital to the peso equivalent of two million five hundred thousand US dollars (US\$2,500,000).

## Foreign BOD in a non-stock non-profit corporation

*(SEC-OGC Opinion No. 16-12, May 24, 2016)*

Non-stock non-profit corporation for charitable and knowledge sharing activities and not engaged in any nationalized or partly nationalized activities in the Philippines, is entitled to have alien trustees in its board, and a foreigner as its president/chairman.

In any instance that the nonstock nonprofit corporation starts to wholly or partly engage in a nationalized activity (e.g land ownership), foreigners within the company should not compromise more than 40% of its membership. Consequently, the corporation can elect foreign trustees in proportion to their allowable participation in the membership of the corporation. However, it cannot have a foreigner as president/chairman of the board.

# CTA Decision



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## Donor's tax for sale below market value applies even absence of any donative intent

*(Mr. Urbano L. Velasco v BIR (RDO 47), CTA Case No. 8497, May 17, 2016)*

Pursuant to Sec. 100 of the NIRC, transfer of properties, other than real properties, for less than an adequate and full consideration in money or money's worth, shall be deemed a gift, and shall be subject to donor's tax, if not specifically exempt.

In this present case, the taxpayer agreed to a share buy-back at a price which is less than the book value of the shares. He argues that when he agreed to return the shares to the company-issuer at less than the book value, there is never any donative intent and it should be considered an arm's length transaction.

The taxpayer notes that the relationship between him and the company has turned sour resulting to a series of court cases. The share buy-back was agreed upon to prevent the situation from turning into a full-blown intra-corporate dispute, which may affect the corporation's business stability.

The court, however, ruled that the absence of donative intent does not exempt the transferor from donor's tax. The difference in price alone is considered a donation by fiction of law.

## Filing of CGT return tolls the prescription period for donor's tax

*(Mr. Urbano L. Velasco v BIR (RDO 47), CTA Case No. 8497, May 17, 2016)*

The taxpayer agreed to a share buy-back at a price which is less than the book value of the shares. A Capital Gains Tax (CGT) Return was filed and paid and a Certificate Authorizing Registration (CAR) was subsequently issued.

More than 3 years after the filing of the CGT return, the transferor of the shares was assessed for donor's tax on the difference between the selling price and the higher book value of the shares. The BIR argued that the transaction is covered by the 10-year prescriptive period because no donor's tax return was filed.

The court ruled that the filing of the CGT return tolls the running of the prescription period. Although the assessed deficiency

tax is in the nature of a donor's tax, the filing of the CGT return constitutes sufficient compliance with the requirement of filing a tax return under Section 103 of the NIRC of 1997, as amended, for the purpose of determining the prescription period for assessment.

# Highlight on P&A Grant Thornton services



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## Tax Review

We evaluate clients' overall level of compliance with existing laws and regulations; caution them on procedures and practices that expose them to potential tax liabilities; quantify tax exposures, risks and penalties; and advise them on proper course of action and alternative tax-efficient policies and procedures. Tax due diligence review is particularly recommended for companies that are contemplating expansion, mergers and consolidation, acquisitions, change in ownership, or public listing.

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Tax Review

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### **Vier Aznar**

Partner  
Tax Advisory and Compliance  
T + 63 2 988 2215  
E [Vier.Aznar@ph.gt.com](mailto:Vier.Aznar@ph.gt.com)







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**Lina Figueroa**

Principal, Tax Advisory and Compliance Division

T +632 988-2288 ext. 520

E [Lina.Figueroa@ph.gt.com](mailto:Lina.Figueroa@ph.gt.com)



[grantthornton.com.ph](http://grantthornton.com.ph)

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