

Tax brief

November 2016



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Taxpayer feedback system

(Revenue Memorandum Order No. 61-2016, October 28, 2016)

A taxpayer feedback system will be implemented by the BIR pursuant to the Anti-Red Tape Act of 2007 to gather inputs on taxpayer satisfaction towards providing world-class frontline services.

Customer Survey Forms (CSF) shall be given to taxpayers together with their queue number slip. Frontliners are tasked to remind taxpayers to accomplish survey form. The name of the employee serving the taxpayer must be written in the CSF and the queueing reference number. The CSF shall contain a checklist of the frontline services from which the taxpayer can tick the transactions rendered to them.

A drop box shall be provided at the frontline Taxpayer Service Area, particularly near or prior to taxpayer exit point, where the CSF can be lodged.

Unannounced visit shall be conducted including retrieval of the CSFs to ensure that implementation of the feedback system is being followed.

Submission of members' TIN by cooperatives

(Revenue Memorandum Circular No. 102-2016, October 24, 2016)

Cooperatives applying for a Certificate of Tax Exemption (CTE) must submit an original copy of certification under oath of the list of cooperative members with their respective TIN and their capital contributions prepared by an authorized cooperative official.

The processing and issuance of the CTE cannot be denied or put on hold solely on the basis of the non-submission of the TIN of the cooperative members. However, cooperatives which have been granted with CTE are still required to complete and submit to the concerned RDO the TINs of their members within six months from the issuance of CTE. Otherwise, the CTW may be revoked.

For members in marginalized sectors without TIN, the cooperative, with proper authorization from the members, may apply for the issuance of TIN in behalf of its members. The cooperative shall collate the accomplished BIR form 1904 of the members together with a photocopy of any identification issued by an authorized government body showing the name, address and birthdate of the person.

This TIN requirement is pursuant to Executive Order (EO) No. 98, series of

1999 requiring the incorporation of TIN in all forms, permits, licenses, clearances, official papers and documents secured from government agencies, instrumentalities, GOCCs and LGUs.

However, Revenue Memorandum Circular (RMC) No. 81-2010 relaxed the requirement and allowed, in lieu of the TIN, the submission of certified photocopy of the list of cooperative members with their respective capital contributions



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Tax incentives for employing PWDs

(Revenue Memorandum Circular No. 104-2016, October 28, 2016)

This circular outlines the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 1052 also known “An act expanding the positions reserved for persons with disability, amending for the purpose RA No. 7277, as amended, otherwise known as the magna carta for persons with disability”.

Government Agencies are mandated to reserve at least 1% of all regular and non-regular positions for Persons with Disability (PWDs). Civil Service Eligibility is not a requirement in hiring PWDs unless the positions are covered by special laws requiring such eligibility.

Though private corporations are not mandated to reserve positions for PWDs, those which employ PWDs can claim 25% of the total amount paid as salaries and wages to PWDs as additional deduction from gross income for purposes of computing the corporate income tax of the employer.

Furthermore, 50% of direct cost of the improvement or modifications to provide reasonable accommodation for PWDs can also be claimed as additional deduction.

To enjoy the incentive, the company must present proof, as certified by the Department of Labor and Employment, that such PWDs are under its employ. The PWD should be

accredited with the Department of Labor and Employment and Department of Health as to his disability, skills, and qualifications.

Submission of original CAR waived for eCAR on real property transfers

(Revenue Memorandum Circular No. 105-2016, October 28, 2016)

The BIR has further reduced the documentary requirement for purposes of processing one-time transactions involving transfer of real property and issuance of electronic Certificate Authorizing Registration (eCAR).

The BIR has waived the requirement to submit certified true copy of the original CAR, or the certification issued by the Registry of Deeds indicating the serial number of the CAR, date of issuance, issuing RDO, signatory RD officer, type of taxes paid and the breakdown of payment per tax.



BIR Rulings



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IPO tax applies only on closely-held corporations

(BIR Ruling No. 349- 16, October 6, 2016)

Sale, barter or exchange of shares of stock in a closely-held corporation through initial public offering are subject to percentage tax (IPO tax) ranging from 1% to 4%.

A closely held corporation is a corporation at least 50% in value of the outstanding capital stock of all classes entitled to vote is owned directly or indirectly by or for not more than 20 individuals. For purposes of determining whether the corporation is a closely-held corporation, stock owned directly or indirectly by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. In case of a multi-tiered corporation, the stock attribution must be allowed to run continuously along the chain of ownership until it reaches the individual shareholders.

In this ruling, the issuing corporation has more than 200 shareholders holding at least 100 shares each. At the time of listing, 68.19% of the shares is owned by a company whose ultimate parent (fourth tier) is listed in three stock exchanges and owned by more than 600,000 corporate and individual shareholders.

Since 68.19% of the company is owned by more than 600,000 corporate and individual

shareholders prior to its listing, it cannot be considered a closely-held corporation. Hence, the primary and/or secondary sale of its shares of stocks in an IPO through the facilities of the Philippine Stock Exchange (PSE) will not be subject to the IPO tax.

However, the sales of shares by the existing shareholders through the PSE as part of or in connection with the IPO will be subject to the ½ of 1% stock transaction tax (STT). The STT is in lieu of the capital gains tax, and the corporate or individual income tax.

Sales through the IPO or secondary offering through the PSE are exempt from the documentary stamp tax.

Transfer of land to member-beneficiaries under CMP exempt from taxes

(BIR Ruling No. 351- 16 and 352- 16, October 7, 2016)

Transfer of title of subdivided lots from the homeowners' association to its qualified member-beneficiaries pursuant to the "Urban Development and Housing Act of 1992" is exempt from payment of taxes on the transfer of properties.

The company is a non-stock non-profit organization registered with the Home Insurance and Guaranty Corporation (HIGC). The lot was acquired through a loan under the Community Mortgage Program with the National Housing

Authority as originator. The transfer is without monetary consideration. It is a formality to finally effect the transfer of ownership from the association to its member-beneficiaries who actually bought the property through the Association.

Hence, the transfer is not subject to either the CGT or CWT, nor to the DST. However, notarial acknowledgement to the deed of conveyance is subject to documentary stamp tax of Php 15.00 pursuant to Section 188 of the Tax Code.

Likewise, no donor's tax shall be imposed. There is no donative intent or donation where the property is being transferred to the member-beneficiaries to whom the properties belong.



BIR Rulings

Separation pay exempt from tax

(BIR Ruling No. 353-16, October 18, 2016)

The company is engaged in business process outsourcing (BPO). Three of its employees had to be separated as a result of the termination of the company's contract with one of its clients. The company has informed the Department of Labor and Employment (DOLE) through an Establishment Termination Report and the workers have been notified of the termination.

The separation pay that will be received by retrenched employees shall be exempt from income tax and, consequently, from withholding tax.

Tax Code of 1997, as amended, excludes from the computation of gross income any amount received by an employee from his employer as a consequence of separation from service due to death, sickness or other physical disability or for any cause beyond the control of the said employee.

The terminal pay shall likewise not be subject to income tax and consequently to withholding tax, i.e., commutation and payment of monetized unused vacation leave credits not exceeding 10 days. This however is not applicable to sick leave credits since an

employee must actually go on sick leave to be able to avail said leave credits.

This exemption does not include payment of salaries, and 13th month pay and other benefits in excess of Php 82,000.

Donation to religious corporation exempt from donor's tax and DST

(BIR Ruling No. 358-16, October 19, 2016)

Any donation in favor of a religious corporation is exempt from donor's tax pursuant to Section 101 (A) (3) of the National Internal Revenue Code (NIRC) of 1997. The exemption, however, requires that not more than 30% of the said gift shall be used by the donee for administrative purposes.

For donation of land, the Register of Deeds shall annotate the 30% condition at the back of the titles because failure to comply with this condition will subject the donation to donor's tax. In addition, conveyance of realties without consideration such as through donation is likewise not subject to DST as prescribed under Section 196 of the NIRC. Only Php 15.00 DST under Sec. 188 shall be imposed.



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SEC Opinion

Corporate term of a NSNP educational institution constituted before May 1980

(SEC-OGC Opinion No. 16-24, October 13, 2016)

The Corporation Law, Act No. 1459 does not prescribe a maximum corporate term of existence for educational institutions. However, after the effectivity of the Corporation Code on May 1, 1980, a maximum of fifty (50) years was provided for corporate existence.

Those that are in existence prior to May 1980 were required to amend its Articles of Incorporation (AOI) to comply with the new law within a period of two years after the effectivity of the new Code. Failure to take necessary amendments within the two-year period shall mean that such amendments will be considered written into the AOI.

In the query at hand, the corporation made no amendments on its corporate term. Hence, the 50-year corporate term shall be deemed to have been written on the AOI. The corporation will exist only for a period of 50 years reckoned from May 1, 1980 unless sooner dissolved or extended within the prescribed period under the Corporation Code.

Sale of equipment to laboratories and hospitals not considered retail trade

(SEC-OGC Opinion No. 16-25, October 14, 2016)

Under the Retail Trade and Liberalization Act (RTLA) of 2000, retail trade is defined as any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or good for consumption.

Further, it is to be noted that products sold shall be consumer goods so that sale transactions can be considered retail trade.

Hence to be considered as “retail”, the following elements should concur:

1. The seller should be habitually engaged in selling.
2. The sale must be direct to the general public.
3. The object of the sale is limited to merchandise, commodities, or goods for consumption.

In this ruling, the company, which is 100% foreign-owned, is engaged in the sale of laboratory, medical and healthcare equipment to hospitals, laboratories, schools, commercial and industrial users, government entities and

distributors in the Philippines. The equipment are used for storing, protecting, handling and analyzing substances, hazardous chemicals and other related materials. Clearly, these products are not intended for personal, family and household purposes for they are mainly for the production of goods or rendering of other services by the establishments. Hence, the products could not be classified as consumer goods.

As such, the transaction cannot be considered retail trade for which foreign ownership is restricted.



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