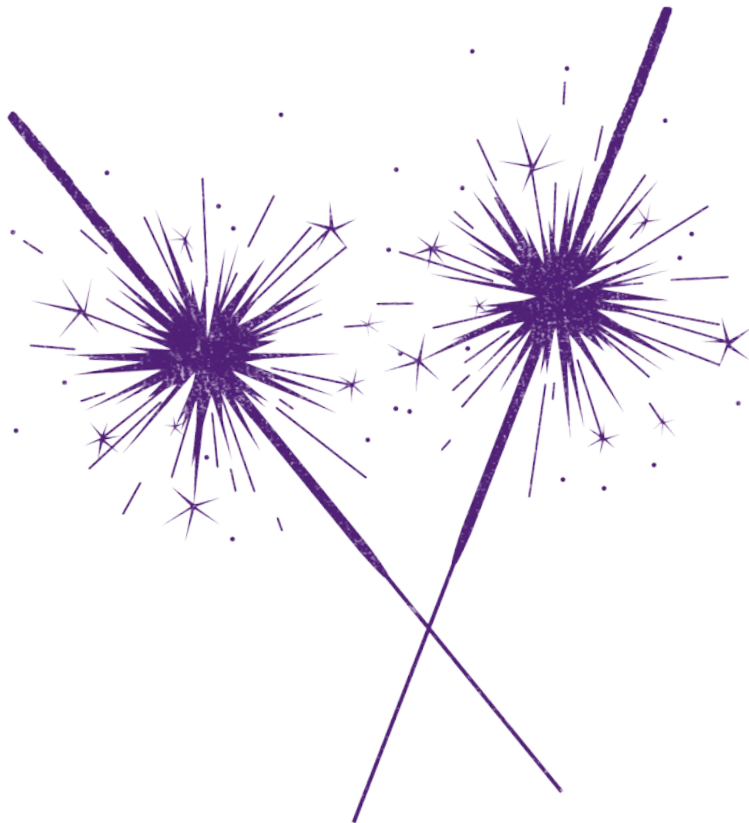


Tax brief

January 2017



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One-year validity for tax clearance of government bidders

(Revenue Regulations No. 8- 2016, December 7, 2016)

Guidelines for the issuance of tax clearance of government bidders as required under Executive Order (EO) 398 has been amended.

The tax clearance shall be valid for one (1) year, stretched from its previous six (6) month validity. As an additional condition, the applicant should not be tagged as “Cannot Be Located” taxpayer.

Applicants with pending application for compromise settlement/abatement shall still be issued with tax clearances provided that full amount offered for compromise is paid upon the application of compromise settlement or abatement of penalties.

When application for compromise settlement/abatement is denied within the one-year validity of the tax clearance, taxpayer-applicant shall be notified accordingly. The applicant should fully settle unpaid tax liabilities within 30 days to avoid revocation of tax clearance previously issued.

If a tax delinquency arises during the one-year period, the applicant shall be notified and the delinquency must be paid within 30 days.

ONETT taxpayers required to use eBIR Forms

(Revenue Regulations No. 9- 2016, December 8, 2016)

The following One-Time Transaction (ONETT) taxpayers who are not eFPS registered are required to use eBIR Forms:

- a. Taxpayers who are classified as real estate dealers/developers;
- b. Taxpayers who are considered as habitually engaged in the sale of real property; and
- c. Regular taxpayers already covered by eBIRForms.

Thus, ONETT taxpayers who are filing the following are not required to use eBIR Forms:

1. BIR Form 1706 - Capital gains tax return for onerous transfer of real property classified as capital asset
2. BIR Form 1707 - Capital gains tax return for onerous transfer of shares of stock not

traded through the local stock exchange

3. BIR Form 1800 - Donor’s tax return
4. BIR Form 1801 - Estate tax return
5. BIR Form 2000-OT - DST for one-time transaction (under BIR Form 1706 only - onerous transfer of real property classified as capital asset)

Reduced penalties for premature withdrawal of PERA

(Revenue Regulations No. 10-2016, December 27, 2016)

The penalties applicable to the early withdrawal of PERA outside of the qualified and allowable distributions have been reduced to two, namely:

- a. Payment of the 5% tax credit availed by the contributor for the entire PERA period
- b. Flat rate of 20% on total income earned by the account from date of opening until the withdrawal.

This is a significant reduction from the 10-item penalties provided under RR 17-2011.

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New guidelines in securing tax exemption ruling for separation pay *(Revenue Memorandum Order No. 66-2016, December 8, 2016)*

Processing of requests for Certificate of Tax Exemption (CTE) for separation benefits received due to other causes beyond the control of the employee has been devolved to the RDOs or the appropriate Large Taxpayers (LT) office where employer is registered. These include separation due to retrenchment, redundancy, installation of labor saving device, and closure of business, among others.

The documentary requirements are as follows:

1. Written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment (DoLE) at least 30 days before the effectivity of termination, specifying the ground for termination.
2. Board Resolution, in case of a juridical entity, or sworn affidavit to be executed by the owner, in case of a sole proprietor, stating the following:

a. In case of retrenchment -- that the retrenchment is reasonably necessary and likely to prevent business losses; that the losses, if already incurred, are not merely de minimis, but substantial, serious, actual and real, or if only expected, are reasonably imminent, with appropriate supporting evidence of said losses; and that the retrenchment is made in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure.

b. In case of redundancy -- that there have been superfluous positions or services of employees; that the positions or services are in excess of what is reasonably demanded by the actual requirements of the enterprise to operate in an economical and efficient manner; and that the redundant positions have been abolished in good faith.

The BIR may still require additional documents to prove that the separation pay received by the official or employee is indeed qualified for tax exemption under the prevailing circumstances.

New ATCs for income from business and profession *(Revenue Memorandum Order No. 67-2016, December 23, 2016)*

The Alphanumeric Tax Code (ATCs) have been modified to facilitate the identification of income from pure business and from profession for purposes of the annual income tax return for individuals engaged in business or practice of professions (BIR Form 1701).

A new ATC I1014 for "Income from Profession" has been created. On the other hand, ATC I1012 which used to refer to "Pure Business" is modified to "Business Income".

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Unacceptable checks from a certain rural bank

(Revenue Memorandum Circular No. 125-2016, December 2, 2016)

All concerned are advised not to accept checks, as well as taxpayer's checks drawn from Sampaguita Savings Bank, Inc. with office address at #10 J. Luna St. Brgy. Poblacion, City of San Pedro, Laguna including its branch located at #131 A. Bonifacio St., Canlalay, City of Binan, Laguna.

This bank is prohibited from doing business in the Philippines and has been placed under receivership with PDIC as the designated Receiver.

Issuance of certificate of zonal values of real properties

(Revenue Memorandum Circular No. 126-2016, December 2, 2016)

In order to facilitate the efficient and responsive service to taxpayers and to ensure the timely processing of electronic Certificate Authorizing Registration (eCAR), the issuance of Certificate of Zonal Values of Real Properties will be decentralized to the Revenue District Offices (RDO).

This is in response to a significant number of taxpayers complaining on the inconvenience of getting certification of zonal values for Estate, Donors and Capital Gains Taxes before the issuance of eCAR.

The following guidelines shall be observed in the issuance of Certification of Zonal Values of Real Properties by the RDOs:

- The RDO, assistant RDO, or its representative from the Sub-Technical Committee on Real Property Valuation in the district shall issue the certification based on the historical/current zonal values; and
- The Certification fee prescribed under existing law which is PhP 100.00 and PhP 5.00 documentary stamp tax on the certificates shall be charged to the taxpayer/ authorized representative for each released certification.

Effectivity of RMC nos. 61 and 62-2016

(Revenue Memorandum Circular No. 127-2016, December 2, 2016)

The suspension of the following RMCs are now lifted. They shall be effective immediately.

- RMC 61 – 2016: Prescribing policies

and guidelines for the accounting and recording of transactions involving “netting” or “offsetting”

- RMC 62-2016: Clarification on tax treatment of passed-on GRT

Documents for reissuance of CAR

(Revenue Memorandum Circular No. 128-2016, re Revenue Memorandum Order No. 22- 2016, December 7, 2016)

For the request for reissuance, replacement or reprinting of CARs, the following documents shall not anymore be required:

- the original and duplicate copies of the manually issued CAR that are still outstanding and not presented to the Registry of Deeds and the expired CAR; and
- Proof of tax payment previously made (Official Receipt)

The RDO/ONETT officer shall instead access the BIR's internal systems and data repositories or CAR Registry Book to gather the information. Payments on 1999 and prior years should be verified and certified by the Chief – Revenue Accounting Division pursuant to RMO 7-2016.

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Taxation of government job-order personnel

(Revenue Memorandum Circular No. 130-2016, December 8, 2016)

The performance of services by personnel under a job-order or individual contract of services arrangement with Government is not under an “employer-employee relationship”. The tax treatment of the remuneration for such services shall be as follows:

a. Creditable withholding tax

If the contracted individual renders professional and other services listed under Sec. 2.57.2(A) of Revenue Regulations 2-98, the 10% or 15% creditable withholding tax on professionals, etc. shall be withheld. If the service does not qualify as professional services, the remuneration shall be exempt from creditable withholding tax. However, the remuneration should be declared in his income tax return and subject to individual income tax.

b. Value-added tax/percentage tax

The sale or performance of service which is within the ambit of the Tax Code provisions

on the Value Added tax (VAT). However, the same law exempts from VAT the taxpayers with annual gross receipts that do not exceed P1,919,500.00.

If the total income of the contracted personnel does not reach the VAT threshold, he shall pay the 3% of his gross quarterly sales or receipts in lieu of the 12% VAT. The percentage tax shall be withheld by the Bureau, office or instrumentality, or government-owned and controlled corporation involved as required by Revenue Regulations 2-98.

Stamp tax verifier for android gadgets

(Revenue Memorandum Circular No. 132-2016, December 21, 2016)

The BIR announced the limitation of the availability of the mobile application for authenticating internal revenue stamps on cigarettes for non-android phone users. However, the BIR clarified that the limitation being referred to is with regard to non-android users and not on the application itself.

The stamp authenticator application can be downloaded in the Google Play Store.

Facilitating the registration of sole proprietorships

(Revenue Memorandum Circular No. 133-2016, December 21, 2016)

The BIR and the Department of Trade and Industry (DTI) have signed a Memorandum of Agreement to facilitate the issuance of Taxpayer Identification Number (TIN) to sole proprietors as part of their registration with the DTI.

The BIR shall:

- Issue TIN through the web service of the eReg System linked to the Philippine Business Registry under the DTI
- Process the registration of new business and issue the Certificate of Registration (COR) and other permits after completion of documentary requirements
- Provide information materials to DTI for dissemination to its clients.

For its part, the DTI shall:

- issue the TINs through the Philippine Business Registry connected to the BIR web service.
- Generate a monthly list of DTI-registered business with issued TIN and submit to BIR for further processing and monitoring
- Inform their clients to secure the BIR

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COR by submitting complete registration requirements to the BIR.

The DTI and BIR shall jointly issue further guidelines for implementation

IRR for the benefits of PWDs

(Revenue Memorandum Circular No. 135-2016, December 28, 2016)

The BIR has circularized the Implementing Rules and Regulations of RA 10754, An Act expanding the benefits and privileges of persons with disability (PWD). The IRR was jointly issued by the Secretaries of the DSWD, DOH, DOF and the Executive Director of the National Council for Disability Affairs (NCDA).

The IRR provides the guidelines for the 20% discount and VAT exemption on purchases of PWDs of qualified goods and services and other benefits and privileges.

PWDs shall be entitled to 20% discount and VA exemption of the following purchases:

- Lodging establishments
- Restaurants
- Recreation centers
- Purchase of medicine and food for

special medical purposes

- Medical and dental services, diagnostic and laboratory fees and professional fees of attending doctors
- Domestic air and sea travel
- Land transportation
- Funeral and burial services for the death of the PWD

Express lanes for PWDs shall be provided in all commercial and government establishments. In the absence of an express lane, priority shall be given to the PWD in all transactions with the establishment.

Proof of entitlement. The benefits and privileges shall be given on submission of any of the following proof of entitlement:

- ID card issued by the PWD Affairs Office or the Social Welfare and Development Office in the city/municipality where the PWD resides
- Passport
- ID card issued by the NCDA

The benefits shall be available to Filipino citizens and dual citizens as well as Filipinos who have reacquired their Filipino citizenship.

Tax treatment of the discount. The establishment granting the discount may

claim the discounts as tax deductions based on the net cost of the goods sold or services rendered in the year the discount is granted. The total amount of claimed tax deduction, net of VAT, shall be included in the gross sales/receipts for tax purposes and subject to proper documentation under tax rules. The records of sales must contain the name of the PWD, the PWD ID and TIN, if applicable. Improper compliance can result to disallowance of the deduction for the discount and the input VAT from exempt sale as cost or expense.

PWDs as dependents. Persons caring for PWDs, up to the fourth degree of affinity or consanguinity, may claim the PWD as a dependent and avail of the additional personal exemption for dependents in computing the individual income tax. The BIR shall issue the Revenue Regulations to implement this privilege.

PWD IDs. The NCDA shall revise the PWD identification card to include the name of the guardian, tax claimant, TIN and contact numbers.

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Unavailability of the eFPS

(Revenue Memorandum Circular No. 136-2016, December 28, 2016)

The deadline for BIR Forms 2550M, 2550Q and 2551M for the month of December falls on December 27. However, in view of the unavailability of the eFPS since December 26, 2016, taxpayers are allowed to file said returns using other means (manual or through the eBIR Forms facility) and pay the taxes over-the-counter with an AAB until December 29 without being imposed penalties for late filing.

eFPS filers who opted to file the returns manually are required to re-file through the eFPS once the system becomes available.

Clarifications on streamlining of business registration

(Revenue Memorandum Circular No. 137-2016, December 29, 2016)

The following clarifications are issued relative to the streamlining of business registration at the BIR pursuant to RMC 93-2016:

1. The checklist of requirements shall be accomplished by the applicant in duplicate, one copy for the BIR and one for the taxpayer.
2. Application with incomplete documents shall be received and processed upon submission of the complete documents within 5 working days.
3. Pending applications with incomplete documents shall be kept by the RDO up to 30 working days.
4. The RDO shall prepare and maintain the list of unprocessed applications with incomplete requirements exceeding the 30-day period with recommendation for disposal due to non-compliance.

The list of documentary requirements has also been amended by either adding or excluding certain documents.

CTA Decisions



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No payment-under-protest for local business taxes

(ASC Investors, Inc. v City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao, CTA AC No. 134, December 1, 2016)

The Court of Tax Appeals (CTA) ruled that, the only requirement under the law is that, the protest against a local business tax assessment must be filed within 60 days from the receipt of notice of assessment; otherwise it will become final and executory. Hence, an Ordinance that requires the taxpayer to first pay the deficiency local tax before the protest is acted upon is inconsistent with Section 195 of the Local Government Code. The ordinance, therefore, is not valid. One of the conditions for a local ordinance to be valid is that it “must not contravene the Constitution or any statute.”

A power producer is a “manufacturer” and not a “contractor”

(The City of Makati and Nelia A. Barlis, in her capacity as the City Treasurer of Makati City v Trans-Asia Power Generation Corporation, CTA AC No. 144, December 2, 2016)

An entity that accumulates bunker fuel as raw material; fed into diesel engine and ignited by activating the engine; that by activating such, the fuel is converted by combustion into electricity; thereby preparing the electricity for any industry and sold, clearly falls within the scope of the definition of a “manufacturer” engaged in the production and sale of electricity to its end-user.

A power producer is therefore a manufacturer subject to the local business tax on manufacturers under the local revenue ordinance, not the tax on contractor.

Section 130 (h) of the LGC defined “contractors” as persons, natural or juridical, not subject to professional tax under its Section 139, whose activity consists essentially of the sale of all kinds of services for a fee, regardless of whether the performance of the service calls for the exercise or use of the physical or

mental faculties of such contractor or his employees.

On this case, the Board of Investments categorized the company as an “operator of power-generating plant” and not as a “power producer”. The CTA ruled that the categorization of the BOI is not determinative of the real nature of the business as a manufacturer.

Appealing the decision of the Secretary of Finance on a BIR ruling

(Egis Road Operation S.A. v The Secretary of Finance and Commissioner of Internal Revenue, CTA Case No. 8414, December 15, 2016)

The company’s tax treaty relief application was denied by the BIR. The taxpayer appealed the BIR’s ruling with the Secretary of Finance. The Secretary sustained the BIR ruling. Subsequently, the taxpayer filed a petition for review with the CTA.

The BIR asserted that the appeal should have been filed with the Regional Trial Court as it is questioning the validity or constitutionality of an issuance of the BIR on the implementation of the provisions of

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tax treaties. The CTA however ruled that the case is within its jurisdiction since it is an appeal on the decision of the Secretary of Finance which affirmed the ruling of the BIR. The CTA only needs to refrain from ruling over the issues on the validity or constitutionality of the related BIR issuance.

Failure to file TTRA before the transaction should not invalidate availment of treaty relief

(Egis Road Operation S.A. v The Secretary of Finance and Commissioner of Internal Revenue, CTA Case No. 8414, December 15, 2016)

Revenue Memorandum Order (RMO) 1-2000 requires that a prior Tax Treaty Relief Application (TTRA) must be filed at least 15 days before the transaction to avail of the preferential tax rates under the treaty. Under the RMO, failure to properly file the TTRA with the International Tax Affairs Division (ITAD) of the BIR within the period prescribed shall have the effect of disqualifying the TTRA and the availment of the treaty rates.

However, the Supreme Court has previously ruled that the period of application for the availment of tax treaty relief as required by RMO No. 1-2000 should not operate to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with the tax treaty. The denial of the availment of tax relief for the failure of a taxpayer to apply within the prescribed period under the administrative issuance would impair the value of the tax treaty. At most, the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief.

Interest income from loan incidental to leasing business is subject to VAT

(McDonal's Philippines Realty Corporation v Commissioner of Internal Revenue, CTA Case No. 8766, December 15, 2016)

A foreign corporation established its branch office in the Philippines for the purpose of purchasing and leasing back assets as stated in its License to Transact Business issued by the Securities and Exchange Commission (SEC). It extended a loan to its lone client for purchase of land and equipment and received interest

income. It also received interest income on unpaid rentals. The CTA ruled that the interest income received by the company is incidental to its leasing business. Consequently, the lending activity is deemed a transaction "in the course of trade or business" which is subject to VAT pursuant to Section 105, in relation to 108(A) of the Tax Code.

The SC once ruled that the phrase "In the course of trade or business" refers to regular conduct or pursuit of a commercial or an economic activity, including transactions incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business. It is not necessary that the company be a lending investor for the interest to be subject to VAT.

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Prescriptive period in VAT refunds

(Carmen Copper Corporation v Commissioner of Internal Revenue, CTA Case No. 8873, December 16, 2016)

Section 112(A) and (C) of the Tax Code provides the basis for administrative and judicial claims for refund or tax credit of unutilized input tax attributable to zero-rated or effectively zero-rated sales.

The CTA held that an administrative claim for refund of unutilized input VAT must be filed with the Commissioner of Internal Revenue (CIR) within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. From the date of submission of complete documents in support of the administrative claim for refund, the CIR has a period of 120 days within which to act on a claim for refund or application for issuance of tax credit certificate. Upon denial of the claim or expiration of the 120-day period, the taxpayer has a 30-day period within which to appeal the unfavorable decision or unacted claim before the division of the Court of Tax Appeals (CTA).

In the words of the Supreme Court in the case of Silicon Philippines: “the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.”

PAN is a requisite to a FAN

(Bloat and Ogle, Inc. v Commissioner of Internal Revenue, CTA Case No. 8682, December 16, 2016)

It is a requirement of due process that a taxpayer be fully apprised of the facts and the law on which a final assessment was issued, that the final assessment, demand letter and details of discrepancies were all sent to him. Section 228 of the Tax Code is instructive of the procedure in complying with due process.

The law clearly state that the taxpayer should be given the Preliminary Assessment Notice (PAN) before a final assessment is issued. Tax laws are civil in nature. Under the Civil Code, acts executed against mandatory laws are generally void.

The CTA ruled that an undated PAN addressed to a taxpayer’s old address does not provide proof to support that the taxpayer was apprised. In cases where the taxpayer denies receiving the PAN, the burden is shifted to the BIR to prove otherwise. The BIR should prove that the taxpayer received the PAN in the due course of the mail.

Citing a case law, the CTA further ruled that failure to strictly comply with Section 228 and RR No. 12-99, is a denial of due process and does not only render the assessment void, but also finds no validation in any provision of law.

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For IAET exemption, intention manifested at the time of accumulation is controlling
(1Maple Sales, Inc. v Commissioner of Internal Revenue, CTA Case No. 8925, December 16, 2016)

The imposition and collection of Improperly Accumulated Earnings Tax (IAET) is pursuant to Section 29 of the Tax Code and particularly discussed in Revenue Regulations (RR) No. 2-2011 and RMC 35-2011. The touchstone of the liability is the intention behind the accumulation of the income and not the consequences of the accumulation. However, if there is a determination that a corporation has accumulated income beyond the reasonable needs of the business, the 10% improperly accumulated earnings tax shall be imposed.

Under the said Section 29, the taxpayer must prove that the accumulation of the earnings or profits are not for the purpose of avoiding the tax upon its members or association. The controlling intention of the taxpayer is that which is manifested at the time of accumulation, not subsequently declared intentions which are merely the product of afterthought.

The CTA ruled that a Secretary's Certificate wanting the details of a planned expansion is not adequate to warrant exemption from IAET. The Certificate mentions that the retained earnings have been appropriated for corporate expansion and this is also reflected in the audited financial statements. However, the planned expansion never took place. Cash flow statements show that the amounts were used to pay current liabilities. The company acknowledged that the expansion plan did not push through and that appropriated amounts were reverted to unappropriated status. Cash dividends were declared in the succeeding year.

It should be noted that Section 7 of RR 2-2011 provides explicitly that a speculative and indefinite purpose will not suffice. Definiteness of plans coupled with actions taken towards its consummation are essential.

The SOA cannot be considered a notice of assessment required under the Local Government Code

(City Treasurer of Manila v Philippine Beverage Partners, Inc., substituted by Coca-Cola Bottlers Philippines, Inc., CTA EB No. 1342, December 22, 2016)

A SOA is not a deficiency tax assessment, but a mere computation of the current tax liabilities based on taxpayer's certification of gross sales during the preceding year.

The CTA ruled that the SOA cannot be considered the "notice of assessment" required under Section 195 of the LGC as the notice of assessment contemplates a computation based on deficiency taxes, fees, and charges that were not paid.

Hence, an appeal for refund of the local business tax based on the said SOA cannot be treated as an appeal concerning a deficiency tax assessment. The rules governing refunds shall apply.

Supreme Court Decisions



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Exemption of cooperatives from RPT

(Provincial Assessor of Agusan del Sur v. Filipinas Palm Oil Plantation, Inc., G.R. 183416, October 5, 2016)

Section 234 of the LGC exempts all real property owned by cooperatives, without distinction, from real property tax (RPT). Nothing in the law suggests that the real property tax exemption only applies when the property is used by the cooperative itself. The clear absence of any restriction or limitation in the provision could only mean that the exemption applies to wherever the properties are situated and to whoever uses them. Similarly, the instance that the real property is leased to either an individual or corporation is not a ground for withdrawal of tax exemption.

The exemption from real property taxes given to cooperatives applies regardless of whether or not the land owned by the cooperatives is leased to and used by another entity which does not enjoy exemption from real property tax..

Characterization of “machinery” as a real property/immovable is governed by the LGC and not the Civil Code

(Provincial Assessor of Agusan del Sur v. Filipinas Palm Oil Plantation, Inc., G.R. 183416, October 5, 2016)

Section 199(o) of the LGC defines “machinery” as real property subject to RPT. On the other hand, Article 415(5) of the Civil Code defines “machinery” as that which constitutes an immovable property.

In a previous SC decision, it was settled that harmonizing the two laws “would necessarily mean imposing additional requirements for classifying machinery as real property for real property tax purposes not provided for, or even in direct conflict with, the provisions of the Local Government Code.”

Therefore, in determining whether machinery is real property subject to RPT, the definition and requirements under the LGC are controlling.

Highlight on P&A Grant Thornton services

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We welcome your suggestions and feedback so that the Tax brief may be made even more useful to you. Please get in touch with us if you have any comments and if it would help you to have the full text of the materials in the Tax brief.

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