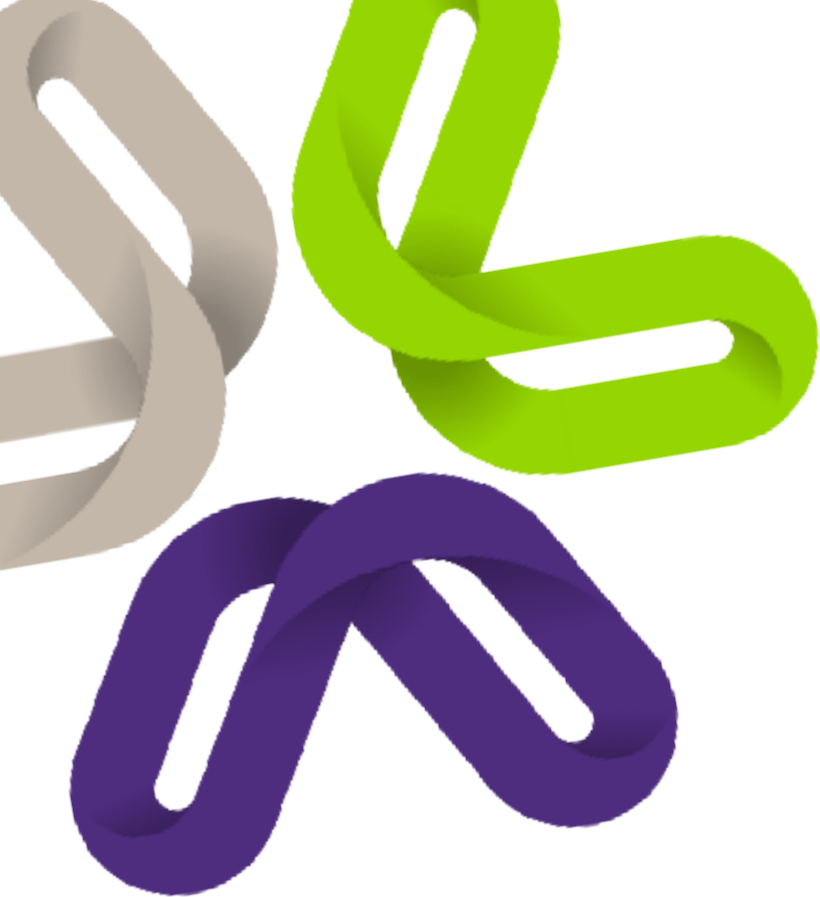




Tax *brief*

March 2020





BIR ISSUANCES

RR No. 4-2020
RMO No. 6-2020
RMO No. 7-2020
RMC No. 10-2020
RMC No. 11-2020
RMC Nos. 12
and 13-2020
RMC No. 14-2020
RMC No. 15-2020
RMC No. 16-2020
RMC No. 17-2020

RMC No. 18-2020
Bank Bulletin 2020-20

SEC CIRCULARS

SEC Memorandum
Circular 3 s 2020

CTA DECISIONS

CTA EB No. 1721
CTA EB No. 1831
CTA Case No. 9415

CTA EB No. 1855

Sale of gold by registered SSMs and accredited traders to BSP is tax exempt
New VAT ATC for lending investors, dealer in securities, or pre-need companies
Audit program for cooperatives
BIR suspends requirement for PTU for CAS/CBA
Expanded coverage of Tax Amnesty on Delinquencies: A second chance to qualify
Availability of revised BIR forms 2552, 1600-VT, and 1600-PT

Clarifications on the tax exemption of BSP
Procedures in responding to deficiency tax assessments
Availability of new offline eBIRForms Package v7.6
Deadline for submission of BIR Forms 1604CF, 2316, and 1604E extended to
March 31
Use of old BIR Forms 1604CF and 1604E in EFPS and eBIRForms
AABs open on March 28 and April 4 to accept tax payments

Written notices for regular meetings

Compensation income of ADB's Filipino employees are subject to income tax
Inclusion of a new finding in the FDDA is a violation of due process
Issuance of FLD before the 15-day reply period from receipt of PAN is a violation of due
process
Appeal to CTA within 30 days even after expiration of the 180-day period is permissible
in case of receipt of BIR denial

BIR Issuances



- > BIR Issuances
- > SEC Circulars
- > CTA Decisions

Sale of gold by registered SSMs and accredited traders to BSP is tax exempt

(Revenue Regulations No. 04-2020, February 18, 2020)

Through the issuance of Revenue Regulations (RR) No. 04-2020, the Bureau of Internal Revenue implements the tax exemption of income derived from sale of gold to Bangko Sentral ng Pilipinas (BSP) pursuant to Republic Act (RA) 11256, also known as “An Act to Strengthen the Country’s Gross International Reserves”.

Income of registered Small-Scale Miners (SSMs) and accredited traders derived from sale of gold to BSP, and income of SSMs from sale of gold to accredited traders for eventual sale to the BSP are exempt from income tax, withholding taxes and excise tax.

To avail of the exemption, all registered SSMs and accredited traders are required to obtain a Tax Identification Number (TIN) and a BSP Certification. Sale to accredited traders by SSMs for eventual sale to BSP shall be supported by Acknowledgement of Gold Delivery and Sale. In events when exemption is found by the Bureau of Internal Revenue (BIR) as not applicable, the SSMs or accredited traders shall be primarily and solely liable for any deficiency taxes that may be assessed by the BIR.

During the transition period, the SSMs and accredited traders are given one (1) year from the effectivity of the IRR to comply with the registration and accreditation requirements to avail of the exemption.

New VAT ATC for lending investors, dealer in securities, or pre-need companies

(Revenue Memorandum Order No. 06-2020, February 6, 2020)

To facilitate the proper identification and monitoring of tax collection from Value-Added Tax (VAT) in BIR Form Nos. 2550M (Monthly VAT Declaration) and 2550Q (Quarterly VAT Return) and to align the Alphanumeric Tax Codes (ATCs) in the forms with the ATC Handbook and RR No. 10-2004 (which includes pawnshops as other non-bank financial intermediaries), the following modified/new ATC shall be used:

Existing (per ATC Handbook)			Modified/New		BIR Form No.
ATC	Description	Tax Rate	Description	Legal Basis	
VB 102	Lending investors/dealer in securities/pawnshops/pre-need co.	12%	Lending investors/dealer in securities/pre-need co.	RR 10-2004/ RMC 73-2004	2550M/ 2550Q

BIR Issuances



- > BIR Issuances
- > SEC Circulars
- > CTA Decisions

Audit program for cooperatives

(Revenue Memorandum Order No. 07-2020, February 18, 2020)

Revenue Memorandum Order (RMO) 07-2020 prescribes the policies and guidelines on the audit to be conducted by the BIR on cooperatives.

Pursuant to the TRAIN Law, the BIR is no longer required to secure authorization from the Cooperative Development Authority (CDA) before the examination of the books of accounts and other accounting records of a cooperative.

Under RMO 07-2020, the BIR shall issue Electronic Letters of Authority (eLAs) for the audit of cooperatives for taxable year 2018 and onwards. The following cooperatives shall be prioritized for audit:

1. Cooperatives which transact business with both members and non-members whose accumulated reserves and undivided net savings is more than P10,000,000; and
2. Cooperatives with income not related to their principal business under their Articles of Cooperation.

The audits are intended to ensure the correctness of availment of the tax exemptions/ incentives and to effectively monitor the tax compliance of cooperatives.

BIR suspends requirement for PTU for CAS/CBA

(Revenue Memorandum Circular No. 10-2020, February 6, 2020)

Revenue Memorandum Circular (RMC) 10-2020, suspends the requirement for Permit-to-use (PTU) Computerized Accounting System (CAS), Computerized Books of Accounts (CBA) and components thereof.

Taxpayers with pending applications for PTU for CAS, CBA, and/or components thereof which were filed with the National Accreditation Board (NAB) and were assigned to the Technical Working Group (TWG), including those that have already undergone system demonstration, shall be allowed to use the said CAS, CBA, and/or components even without the PTU.

In lieu of the PTU, the TWG Secretariat of the taxpayer's Revenue District Office (RDO) shall issue an "Acknowledgement Certificate" within three days from submission of the following documents by the taxpayer:

- a. Accomplished and notarized Sworn Statement with attached Summary of System Description, Commercial Invoice/Receipts/ Document Description, Forms/Records and Reports Specification, executed and signed by the taxpayer's authorized representative, including the Special power of Attorney, Board Resolution, or Secretary's Certificate stating such authority

Templates of the Sworn Statement and Summary are annexed to the RMO;

b. Sample print copy of system-generated Principal and Supplementary Receipts/ Invoices as defined under Section 2 of RR No. 18-2012 showing compliance with RR No. 16-2018, if applicable; and

c. Sample print copy of system-generated books of accounts such as but not limited to General Journal, General Ledger, Sales Journal, Purchase Journal, Inventory Book, Cash Receipts Book and Cash Disbursements Book reflecting the mandatory fields stated in RR No. 9-2009, if applicable.

To authorize the use of system generated receipts/invoices, the control number indicated in the "Acknowledgement Certificate" shall be indicated on the face of the principal and/or supplementary receipts/ invoices to be generated from the systems.

All CAS, CBA, and/or components thereof used without the required PTU shall be subject to post-evaluation which may be done simultaneously with the audit of the taxpayer pursuant to a Letter of Authority (LOA).

In case of any system enhancement/ modification and/or upgrade of CAS/CBA and/or Components thereof, a matrix showing the comparative changes of the current and upgraded system shall be submitted together with the letter notification to the TWG Secretariat of the RDO/LT Office.



> BIR Issuances

> SEC Circulars

> CTA Decisions

BIR Issuances

The requirement to secure permit to use loose-leaf books of accounts/receipts/invoices is not covered by this suspension. Thus, taxpayers opting to use loose leaf books of accounts/receipts/invoices shall still secure the required PTU.

The circular took effect 15 days after its publication.

Expanded coverage of Tax Amnesty on Delinquencies: A second chance to qualify

(Revenue Memorandum Circular No. 11-2020, February 7, 2020)

Under RMC 11-2020, clarifications on the implementing rules and regulations of the Tax Amnesty on Delinquencies were provided. The clarifications open the tax amnesty to taxpayers who received the FAN/FDDA on or before March 25, 2019.

• Extended period up to April 23, 2020 to withdraw a protest to qualify as delinquent case. Tax liabilities covered by Final Assessment Notice/Final Letter of Demand (FAN/FLD) or Final Decision on Disputed Assessment (FDDA) covering taxable year 2017 and prior years, received before March 25, 2019, and which was timely protested/disputed but withdrawn on or before April 23, 2020, can now be covered by the tax amnesty on delinquencies. Previously, only a protest which was withdrawn before April 24, 2019 can be covered by the said tax amnesty.

• Instances when protest is invalid and case qualifies for amnesty. The following instances will render the protest to the FAN/FLD or appeal to the FDDA invalid and will make the assessment final and executory, and therefore delinquent, from the lapse of the 30-day period from receipt of the FAN/FDDA:

1. The protest to FAN/FLD was filed beyond 30 days from receipt of the FAN/FLD;
2. The appeal to the FDDA was filed beyond 30 days from receipt of the FDDA;
3. The protest to FAN/FLD was not filed with the duly authorized representative of the Commissioner of Internal Revenue (CIR) who signed the FAN/FLD;
4. The appeal to the FDDA (i.e. motion for reconsideration) was not filed with the office of CIR;
5. The protest/appeal failed to state the applicable law, rules and regulations or jurisprudence on which it is based;
6. The request for reinvestigation did not specify the newly discovered or additional evidence which the taxpayer intends to present as required in a valid protest.

In the above instances, the FAN/FDDA should have been received before March 25, 2019 to be deemed final and executory by April 24, 2019.

• Extended period to submit documents after payment of amnesty tax. Taxpayers who can secure Certificate of Tax Delinquencies/ Tax Liabilities and endorsement of the Acceptance Payment Form, and who can pay the amnesty tax due on April 23, 2020, the last day of the availment period, shall be given additional 30 days to submit the complete documentary requirements to fully comply with the availment of the tax amnesty.

BIR Issuances



- > BIR Issuances
- > SEC Circulars
- > CTA Decisions

Availability of revised BIR forms 2552, 1600-VT, and 1600-PT

(Revenue Memorandum Circular Nos. 12-2020 and 13-2020, February 07, 2020)

The BIR circularized the availability of the following revised BIR forms pursuant to the implementation of the TRAIN Law:

Form	Description
BIR Form 2552	Percentage Tax Return - For Transactions Involving Shares of Stock Listed and Traded Through the Local Stock Exchange (LSE) or Through Initial; and/or Secondary Public Offering
BIR Form 1600-VT	Monthly Remittance Return of Value-Added Tax Withheld
BIR Form 1600-PT	Monthly Remittance Return of Other Percentage Taxes Withheld

The revised returns are already available manually and can be downloaded from the BIR website. However, these are not yet available in the Electronic BIR Form (eBIRForm) and Electronic Filing and Payment System (EFPS).

Thus, eFPS/eBIRForms filers shall use the existing BIR Form 2552 and BIR Form 1600 in the eFPS and in the Offline eBIRForms in filing the return.

Clarifications on the tax exemption of BSP

(Revenue Memorandum Circular No. 14-2020, February 24, 2020)

Under RR No. 02-2020, implementing the tax provisions of “The New Central Bank Act”, income/revenues of the BSP derived from the exercise of its governmental function shall be exempt from all national internal revenue taxes. While proprietary income shall be subject to all applicable national internal revenue taxes.

RMC 14-2020 further clarifies that only the following income derived from the exercise of BSP’s governmental functions are considered exempt from income tax and, consequently, not subject to withholding tax:

1. Interest income;
2. Income derived from sale of BSP owned and acquired properties;
3. Fees and commissions;
4. Penalties;
5. Miscellaneous income;
6. Gain on fluctuation, trading gains, and premium received/ paid on call/ put options; and
7. All other income derived by BSP relative to its governmental functions.

Thus, banks and other financial institutions performing quasi banking functions who have the above income payments to BSP shall no longer subject to withholding tax such income payments. These include, among others, annual supervision fees and PhilPass fees.

In addition, BSP transactions are exempt from business taxes and document stamp tax (DST).

Refer to the full copy of the RMC for the detailed list of income which are tax-exempt and those that are subject to national internal revenue taxes.

BIR Issuances



- > BIR Issuances
- > SEC Circulars
- > CTA Decisions

Procedures in responding to deficiency tax assessments

(Revenue Memorandum Circular No. 15-2020, February 27, 2020)

In order to inform the taxpayer on the proper procedures in responding to deficiency tax assessment arising from the conduct of audit/investigation, a printed guideline of such procedures shall be furnished by the revenue officer (RO) to the taxpayer during the Notice of Informal Conference (NIC) stage.

The Revenue Officer assigned to the case shall prepare three (3) copies to be distributed as follows:

1. Original : Taxpayer's copy
2. Duplicate : To be attached to the docket of the case
3. Triplicate : Office's file copy

The taxpayer or its authorized representative shall print his name and affix his signature on the space provided on the printed guideline to acknowledge receipt.

(See Annex A of the RMC 15-2020 for the full copy of the Procedures in Responding to the Deficiency Tax Assessments https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2020%20RMCs/RMC%20No.%2015-2020%20Annex%20A.pdf)

Availability of new offline eBIRForms Package v7.6

(Revenue Memorandum Circular No. 16-2020, February 27, 2020)

The offline eBIRForms Package version 7.6 is now available and downloadable from www.bir.gov.ph and www.knowyourtaxes.ph.

The new offline eBIRForms package now includes the January 2018 (ENCS) version of the following forms:

BIR Form No.	Form Name
1700 v2018	Annual Income Tax Return for Individuals Earning Purely Compensation Income (Including Non-Business/ Non-Profession Income)
1702MX v2018	Annual Income tax Return for Corporation, partnership and other Non-Individual with MIXED Income Subject to Multiple Income Tax Rates or with Income Subject to SPECIAL/ PREFERENTIAL RATE

In addition, field validation and automated computation on BIR Form 1701 [Annual Income Tax Return for Individuals (including MIXED income earners), Estates and Trusts] is already implemented in the new package.

Payment of the taxes due shall be made through the following:

1. Manual payment
 - AAB located within the territorial jurisdiction of the RDO where the taxpayer is registered
 - In places where there are no AABs, the return shall be filed and tax due be paid with the concerned RC under the jurisdiction of the RDO using the Mobile Revenue Officers System (mRCOs) facility.
2. Online payment
 - Through GCash Mobile Payment
 - Landbank of the Philippines (LBP) Link. bizPortal, for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/ Debit Card
 - DBP Tax online, for holders of VISA/ Master Credit Card and/or Bancnet ATM/ Debit Card
 - Union Bank online web and mobile payment facility, for taxpayers who have account with Union Bank
 - PESONet through LBP Link.BizPortal, for taxpayers who have account with RCBC and Robinsons Bank.

BIR Issuances



> BIR Issuances

> SEC Circulars

> CTA Decisions

Deadline for submission of BIR Forms 1604CF, 2316, and 1604E extended to March 31

(Revenue Memorandum Circular No. 17-2020, February 28, 2020)

Deadline for the submission of the following tax returns, together with the related alphalists, for the year 2019 was further extended to March 31, 2020:

- a. Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form 1604CF), together with the alphalist of employees/payees;
- b. Certificate of Compensation Payment/Tax Withheld (BIR Form 2316) of employees; and
- c. Annual Information Return of Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Tax (BIR Form 1604E), together with the alphalists of payee subject to withholding tax or exempt from withholding tax.

Under existing rules on the submission of BIR Form 2316, only the BIR Form 2316 of employees qualified for substituted filing are required to be submitted to the BIR.

Use of old BIR Forms 1604CF and 1604E in EFPS and eBIRForms

(Revenue Memorandum Circular No. 18-2020, February 28, 2020)

RMC 18-2020 prescribes the use of old BIR Forms 1604CF and 1604E and existing Alphalist Data Entry and Validation Module (Version 6.1).

The electronic formats of BIR Forms 1604C, 1604F and 1604E are not yet available in the eFPS and eBIRForms. Hence, the old BIR Form 1604CF and 1604-E shall be used in online filing. Also, the related alphalists for these returns shall be prepared and validated using the existing Alphalist Data Entry and Validation Module (Version 6.1).

The resubmission of alphalists following the future release of an enhanced Alphalist Data Entry and Validation Module is not required. The submitted alphalist in the old format is sufficient.

AABs open on March 28 and April 4 to accept tax payments

(Bank Bulletin No. 2020-20, February 19, 2020)

The following AABs will observe regular banking days on the last two Saturdays prior to the April 15, 2020 deadline, i.e. March 28, 2020 and April 4, 2020, for purposes of accepting tax payments:

1. Australia New Zealand Bank
2. Bank of Commerce
3. Bank of the Philippine Islands
4. China Banking Corporation
5. Citibank, N.A.
6. CTBC Bank (Formerly China Trust Corp.)
7. Deutsche Bank
8. Development Bank of the Philippines
9. East West Banking Corporation
10. Hongkong and Shanghai Banking Corporation
11. Land Bank of the Philippines
12. Metropolitan Bank & Trust Co.
13. MUFG BANK LTD. (Formerly Bank of Tokyo Mitsubishi UFJ, Ltd.)
14. Philippine Bank of Communications
15. Philippine National Bank
16. Philippine Veterans Bank
17. Philippine Trust Company
18. Rizal Commercial Banking
19. Security Bank Corporation
20. Standard Chartered Bank
21. Union Bank of the Philippines
22. United Coconut Planters Bank

The banking hours will also be extended from 3:00 PM to 5:00 PM from April 1 to April 15, 2020.

SEC Circulars



- > BIR Issuances
- > SEC Circulars
- > CTA Decisions

Written notices for regular meetings

(SEC Memorandum Circular No. 3 s 2020, February 21, 2020)

Written notices of regular meetings by all corporations shall be sent to all stockholders/ members of record at least 21 calendar days prior to the date of the meeting. In case of postponement of the regular meetings, a written notice bearing the reason of postponement shall be sent to all stockholders/members of record at least two (2) weeks prior to the date of the meeting as originally scheduled.

The written notice must contain all information and deadlines relevant to the stockholders'/members' participation in the meeting and exercise of their right to vote remotely (in absentia or through a proxy).

CTA Decisions



> BIR Issuances

> SEC Circulars

> CTA Decisions

Compensation income of ADB's Filipino employees are subject to income tax

(Commissioner of Internal Revenue vs Cristela May Galang, et Al, CTA EB No. 1721 re CTA Case No. 9081, February 05, 2020)

The Asian Development Bank (ADB), under its charter agreement with the Government of the Republic of the Philippines, is granted exemption from taxation. This includes exemption from withholding tax responsibility on the salaries paid to its employees. In 2013, the BIR issued RMC 31-2013 clarifying that the tax exemptions enjoyed by the employees of ADB are only limited to non-Filipino citizens.

In the herein case, the ADB Filipino employee applied for refund of income taxes paid for taxable years 2012 and 2013 citing that the BIR failed to recognize the tax-exempt status of ADB employees granted by the ADB charter. Furthermore, the employee questioned the retroactive application of RMC 31-2013 for being illegal.

The Court of Tax Appeals (CTA) ruled that, although the ADB charter provides a tax exemption provision with respect to the salaries paid by ADB to its officers and employees, the same also contains a proviso wherein the Philippines opts to retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of the Philippines. The said provision does not need an enabling legislation before it may take effect. Also, the CTA held that RMC 31-2103 merely reiterated the general principles in the taxations of citizens and alien individuals

which have been in effect since 1998 before the payment of income tax which is the subject of the claim for refund. Thus, the request for refund was denied.

Inclusion of a new finding in the FDDA is a violation of due process

(Commissioner of Internal Revenue vs First Sumiden Circuits, Inc., CTA EB No. 1831 re CTA Case No. 8924, February 12, 2020)

Section 228 of the National Internal Revenue Code (NIRC) provides that taxpayers should be informed in writing of the law and the facts on which the assessment is made; otherwise the assessment shall be void. The issuance of notice to taxpayers affords them the chance to respond to said notice.

In this case, the finding of the BIR on "realized forex gain not subject to tax" appears only in the FDDA. Such is not found in the Preliminary Assessment Notice (PAN) and FLD previously issued by the BIR. The CTA held that since an entirely new assessment item was included in the FDDA, petitioner was not given the chance to refute within the administrative level the said assessment and therefore, the assessment should be cancelled.

Issuance of FLD before the 15-day reply period from receipt of PAN is a violation of due process

(Script 2010, Inc. vs Commissioner of Internal Revenue, CTA Case No. 9415, February 17, 2020)

Section 3.1.2 of RR 12-99 provides that, if the taxpayer fails to respond within 15 days from receipt of the PAN, he shall be considered in default. Accordingly, a formal letter of demand and assessment notice shall be caused to be issued by the BIR.

With the above provision, the BIR is duty bound to wait for the expiration of 15 days from taxpayer's date of receipt of PAN. Such a process or procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In the instant case, the taxpayer received the PAN, dated December 22, 2014, on December 29, 2014. Thus, the taxpayer had until January 13, 2015 to respond to the PAN. However, on January 8, 2015, the BIR prematurely issued the Formal Letter of Demand (FLD). Thus, resulting in denial of due process on the part of the taxpayer. This violation of the due process rendered the assessment void.



- > BIR Issuances
- > SEC Circulars
- > CTA Decisions

CTA Decisions

Appeal to CTA within 30 days even after expiration of the 180-day period is permissible in case of receipt of BIR denial

(Commissioner of Internal Revenue vs Rickerman Philippines Inc, CTA EB No. 1855, February 24, 2020)

Under Section 228 of the NIRC, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within 30 days from receipt of the said decision, or from the lapse of 180-day period.

In this case, the BIR claimed that the subject assessments became final, executory and unappealable by reason of the failure of the taxpayer to timely file a petition for review with the CTA within 30 days from the lapse of the 180-day period.

However, the CTA ruled that filing of the petition for review with the CTA even beyond the 30-day period from the lapse of the 180-day period is permissible as long as the petition was filed within 30 days from the receipt of the decision denying the protest. Thus, the taxpayers petition was still considered to be timely appealed.

Highlight on P&A Grant Thornton services

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.

If you would like to know more about our services

Paulo Garcia

Manager, Tax Advisory and Compliance

T +63 2 8988 2288 loc. 506

M +63 906 047 8850

E paulo.garcia@ph.gt.com



Tax brief is a regular publication of Punongbayan & Araullo (P&A) that aims to keep its clientele, as well as the general public, informed of various developments in taxation and other related matters. This publication is not intended to be a substitute for competent professional advice. Even though careful effort has been exercised to ensure the accuracy of the contents of this publication, it should not be used as the basis for formulating business decisions. Government pronouncements, laws, especially on taxation, and official interpretations are all subject to change. Matters relating to taxation, law and business regulation require professional counsel.

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.

Lina Figueroa

Principal, Tax Advisory and Compliance Division

T +63 2 988 2288 ext. 520

E Lina.Figueroa@ph.gt.com



grantthornton.com.ph

© 2019 Punongbayan & Araullo. All rights reserved.

Punongbayan & Araullo (P&A) is the Philippine member firm of Grant Thornton International Ltd (GTIL). “Grant Thornton” refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another’s acts or omissions.