



# **Tax** *brief*

September 2020





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RR No. 20-2020	Revised rules in the determination of fair market value of unlisted shares
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# BIR Issuances

## **Implements the Tax Neutrality provision of the Act Providing for the Regulation and Organization of Islamic Banks**

*(Revenue Regulations No. 17-2020, August 07, 2020)*

Under RA No. 11439, there should be a neutral tax treatment between Islamic banking transactions and equivalent conventional banking transactions within the provisions of the National Internal Revenue Code of 1997 (NIRC), as amended.

Hence, Islamic banking transactions must have a parity of tax treatment of equivalent conventional banking transactions within the provisions of the NIRC, as amended. The Islamic banking transactions shall be taxed no more heavily (and no more lightly) than conventional banking transactions. Thus, where an Islamic banking arrangement is economically equivalent to conventional bank product, the tax treatment of the two should be the same.

An Islamic Bank shall ensure that the following are complied with:

- Its financial statements are prepared in accordance with the Philippine Financial Reporting Standards (PFRS) taking into account the differences between Islamic and conventional banking transactions. Authorized conventional banks with Islamic banking arrangements shall maintain a system segregating the transactions of the Islamic banking unit from its conventional banking business.

- It shall register with the BIR similar to a conventional bank following the existing guidelines on business registration.
- It shall issue receipt on profits/gains/fees derived from its banking operations.

## **Revised rules in the determination of fair market value of unlisted shares**

*(Revenue Regulations No. 20-2020, August 17, 2020)*

For sale, barter or exchange of shares not traded through the local stock exchange, the BIR revised the rules in determining the fair market value of shares of stocks as follows:

- Common shares - the book value (BV) of common shares on the latest available financial statements duly certified by an independent Certified Public Accountant prior to the date of sale but not earlier than the immediately preceding year. Adjusted net asset method is no longer applicable.
- Preferred shares - liquidation value, which is equal to the redemption price of the shares as of the balance sheet date nearest to the transaction date, including any premium and cumulative preferred dividends in arrears.

In case there are both common and preferred shares, the book value per common share is computed by deducting the liquidation value of the preferred shares from the total equity of the corporation.

In view of the new rules, appraisal of the real

properties of the investee company is no longer required.

The revenue regulations take effect after 15 days following its publication on August 19, 2020, in Malaya Business Insight.

## **Relaxed rules on the filing and payment of taxes in NCR, Bulacan, Cavite, Laguna, and Rizal during MECQ**

*(Revenue Memorandum Circular Nos. 79 and 80-2020, August 05 and 06, 2020, respectively)*

Due to the Modified Enhanced Community Quarantine (MECQ) implemented in the National Capital Region, Bulacan, Cavite, Laguna, and Rizal, rules for filing returns and payment of internal revenue taxes applicable during the period of MECQ was relaxed.

During this period, taxpayers under Revenue District Offices (RDOs) Nos. 24 to 34 and 38 to 57 may:

- File the return and pay internal revenue taxes at the nearest Authorized Agent Banks (AABs), notwithstanding RDO jurisdiction.
- File the return and pay the corresponding tax to the Revenue Collection Officer (RCO) of the nearest RDO, even in areas where there are AABs.
  - Cash payment shall not exceed P20,000.
  - Check payment have no amount limit if made with the RCO in the district office.

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Check payment will be accepted even without the name of the receiving AAB branch indicated in the check if the check is made payable to the Bureau of Internal Revenue.

- eFPS filers who encounter problems in paying through EFPS may file and pay over the counter with an AAB. A printed copy of the pop-up message screenshot as proof of unsuccessful e-filing and/or copy of e-filed returns should be presented.
- EFPS filers who have trouble in using EFPS and eBIRForms filers may also pay through the following options:
  - Development Bank of the Philippines' (DBP) Pay Tax Online
  - LandBank of the Philippines (LBP) Link.biz Portal
  - Union Bank Online Web and Mobile Payment Facility
  - Mobile Payment Facilities (GCash/ PayMaya)

The above rules on acceptance of tax payments applies only during the MECQ period and does not apply during GCQ period.

## Fiscal year's annual ITR and quarterly ITR's attachments may now be submitted through eAFS system

*(Revenue Memorandum Circular No. 82-2020, August 11, 2020)*

All taxpayers, including those with fiscal-year accounting period, can now use the eAFS system in submitting attachments to their annual and quarterly ITRs.

The 3 categories for each group of scanned documents for manually and electronically filed documents prescribed under the provisions of Item II of RMC No. 49-2020 shall still be observed, except for the naming convention of the files, as follows:

- File 1 - Income Tax Return - EAFSXXXXXXXXITRXYMMYYYY
- File 2 - Audited of Financial Statements - EAFSXXXXXXXXAFSTYMMYYYY
- File 3 - Other Attachments - EAFSXXXXXXXXOTHTYMMYYYY-01

Where :

- XXXXXXXX is the 9-digit TIN
- TY is the placeholder for taxable year to identify it as annual submission, regardless if FY or CY
- MM is the Month end of the taxable year
- YYYY is the Year Ended
- 01 is the first file of other attachments, up to 99 (applicable for File 3)

## Relaxed rules on tax residency and creation of permanent establishment due to effects of COVID-19 measures

*(Revenue Memorandum Circular No. 83-2020, August 17, 2020)*

In cases where restrictions imposed by COVID-19 affect the applicability of Philippine tax laws and tax treaties on taxpayer's tax position, the following rules shall be considered:

### Tax Residency

- Individuals prevented from leaving the Philippines on their scheduled day of departure because of the travel restrictions imposed by the government will not be regarded as being present in the Philippines for the period after the scheduled day of departure until his actual departure. The said individuals should leave the Philippines as soon as the travel restrictions and/or quarantine measures have been lifted.
- Individuals who are supposed to be in the Philippines under a contract but were not able to travel to the Philippines due to travel restrictions will be subject to tax in the Philippines. The BIR will consider the circumstances that would have occurred absent such travel restrictions.



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## Creation of permanent establishments (PE)

- Employees of foreign enterprise who are working from home in the Philippines in compliance with government's home quarantine measures would not create a PE of the foreign enterprise in the Philippines. However, if an employee's home is used as continuous basis for carrying business activities of the foreign enterprise even after COVID-19, it may be considered a PE of the foreign enterprise.
- Temporary interruptions of construction activities due to COVID-19 should be included in computing the duration of a site in determining whether such construction site constitutes a PE.
- Where an employee, partner or agent of a foreign enterprise, who are not habitually concluding contracts on behalf of a foreign enterprise before the COVID-19 crisis, continue to be present in the Philippines due to travel restrictions related to COVID-19, such presence in the Philippines shall also be disregarded in counting the period of stay or presence of the foreign enterprise in the Philippines.

To prove that extended presence in the Philippines was due to COVID-19-related travel restrictions, records shall be maintained outlining the circumstances and submitted to the BIR in support of the taxpayer's application for relief from double taxation.

## Revised Exchange of Information Manual

*(Revenue Memorandum Order (RMO) No. 26-2020, August 11, 2020)*

The RMO prescribed the use of the revised Exchange of Information (EOI) Working Manual by the EOI Unit of the International Tax Affairs Division (ITAD) and by all officers of the Bureau of Internal Revenue (BIR) whose functions relate to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the exchange of information provision of the relevant tax treaty.

The revised EOI Working Manual now contains the streamlined internal processes related to incoming EOI requests, outgoing EOI requests, and to spontaneous EOI. These are made in response to the recommendation of the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) to be able to respond to all requests for information in a timely manner. The streamlining of the processes is also consistent with the Ease of Doing Business and Efficient Government Service Delivery Act of 2018.

For the copy of Revised Exchange of Information Manual, ***please refer to the full text of RMO No. 26-2020***

# SEC Issuances



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## Extended submission deadline of new manual on corporate governance

(SEC Memorandum Circular No. 19, August 06, 2020)

Public companies (PCs) and registered issuers (RIs), except publicly listed in the Philippine Stock Exchange, are mandated to submit a new Manual on Corporate Governance (MCG) on or before July 12, 2020 pursuant to SEC Memorandum Circular No. 24 s. 2019. However, due to COVID-19, the deadline to submit is extended to September 30, 2020.

Failure to submit or late submission of the MCG shall be penalized as follows:

Basic Penalty	Php 10,000
Monthly Penalty*	Php 1,000

\*The monthly penalty shall accrue until the MCG is submitted to the Commission

As clarified, the signatories of the MCG shall be the company's Chairman of the Board and Compliance Officer. MCGs submitted with incomplete and/or incorrect signatories shall be deemed as not filed.

## Prescribed number of independent directors and sectoral representatives of exchanges and other organized markets

(SEC Memorandum Circular No. 20, August 11, 2020)

Independent directors shall be one-third (1/3) of the members of the board of directors of exchanges and other organized markets.

Sectoral representatives shall be at least 4 persons representing the interests of issuers, investors, and other market participants. Each sector shall have at least one representative, in the board of directors of an exchange or organized market. Elected director representing any of these sectors may be elected for a maximum period of 10 years with a mandatory cooling period of at least 1 year after the first 5 years.

To qualify, independent director and sectoral representative shall have the relevant experience or working knowledge of the capital or financial markets for at least 3 years prior to his election.

## Simplified onboarding procedures for low risk accounts

(SEC Memorandum Circular No. 21, August 11, 2020)

The below rules shall apply to the regulated entities authorized by the Commission to intermediate and effect securities transactions for and on behalf of customers and are required to conduct customer due diligence.

Individual investors opening an account with a SEC regulated financial intermediary (FI) with an initial and subsequent deposit amounting to an aggregate of not more than Php50,000 shall be deemed to be a "low risk account" relative to the requirements of Anti-Money Laundering Act (AMLA) and its Implementing Rules and Regulations (IRR). An investor with a low risk account shall be allowed to invest more than the prescribed limit only for the purpose of exercising his right as a holder of securities.

Only individual Filipino investors shall be allowed to open low risk accounts in accordance with this circular. Legal person such as a corporation opening an account shall follow the regular requisites and procedures required by the concerned regulated (FI).

Subject to its prior approval, SEC may allow a regulated FI to prescribe a different threshold amount in determining an account as being low risk.

The following minimum information and documents shall be required in account opening involving low risk accounts:

1. Complete name of customer
2. Birthdate of customer
3. E-mail address
4. Residential/ business address
5. Mobile and/or landline number
6. Source of income
7. Copy of verifiable identification card or document with photo
8. Signature card

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A regulated FI shall still implement the necessary measures to establish the true identity and existence of its customers. This may be conducted before, during or after the opening of the account but not later than fifteen (15) days from the date the account is opened.

A regulated (FI) shall conduct account review in a random fashion or otherwise, to determine whether an account may retain its low risk status.

## Guidelines on corporate term

*(SEC Memorandum Circular No. 21, August 11, 2020)*

Corporations incorporated under R.A. No. 11232 or the Revised Corporation Code of the Philippines (RCC) shall have perpetual existence unless its articles of incorporation provide a specific corporate term.

The corporate term of a corporation with certificate of incorporation issued prior to the effectivity of the RCC and which continue to exist, shall be deemed perpetual upon the effectivity of the RCC, without any action on the part of the corporation.

A corporation with certificate of incorporation issued prior to the effectivity of the RCC and which continue to exist, but elects to continue with their present corporate term pursuant to the corporation's Articles of Incorporation, shall notify the SEC by filing a Notice with attached Directors' Certificate, certifying that the decision to retain the

specific corporate term was approved in a meeting duly held for the purpose by a majority vote of the Board of Directors or Trustees and by the vote of the stockholders representing a majority of the outstanding capital stock, including the non-voting shares, or a majority of the members, in case of a non-stock corporation. The corporate term of corporations which fail to comply with the required notification shall be treated as perpetual after the lapse of the two-year period.

Corporations may file an amendment of articles of incorporation to extend or shorten the specific corporate term as well as change specific corporate term to perpetual corporate term or vice versa. The amendments must be approved by vote or written assent of majority of the Board of Directors or Trustees and vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock of the corporation.

## Rules on corporate debt vehicle

*(SEC Memorandum Circular No. 23, August 18, 2020)*

In response to COVID-19 pandemic, the mutual fund industry launched a new investment vehicle called Corporate Debt Vehicle (CDV) that invests in portfolio of corporate debt papers of large corporations and medium sized enterprises.

A CDV may only be offered by a close-end investment company with the primary objective of investing in portfolios of

corporate debt papers. A CDV may offer different share or unit classes with similar investment objective but managed a separate asset pool. Each class corresponds to a distinct part of the assets and liabilities of the CDV.

An investment company organized as CDV must be registered with SEC.

Prior to the commencement of the offer, a notarized simplified Prospectus and Product Highlight Sheet shall be submitted to and approved by the Commission.

Refer to the full text of the memorandum circular for the detailed registration requirements, details of prospectus required, specific offering requirements, and reports and records required for a CDV.

## Extended deadlines for the postings of additional securities deposit, substitution of securities deposit, and change of resident agent

*SEC Memorandum Circular No. 24, August 24, 2020)*

Posting of additional securities for branch offices whose submission of Audited Financial Statements (AFS) was extended pursuant to SEC Memorandum Circular Nos 17 and 18 shall be extended until October 29, 2020. Securities that matured during the extended AFS filing deadline shall likewise be extended until October 29, 2020.

The extension shall automatically be applied without the need for a request from the



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affected branch offices.

For corporations incorporated prior to February 23, 2019, the adjustment in the computation of additional securities deposit based on the new figures of Sec. 143 of the RCC and compliance with the increase in initial deposit amounting to Five Hundred Thousand Pesos (P500,000.00) will commence on August 1, 2021, unless the foreign corporation opts to comply the minimum amount of Five Hundred Thousand Pesos (P500,000.00) imposed by the RCC.

For change of resident agents, the following applications will not incur penalty if payment of appropriate fees are made on or before September 30, 2020:

- Applications filed and reviewed before March 16, 2020 with issued Payment Assessment Form (PAF)
- Applications filed before the quarantine period (ECQ, MECQ, GCQ, MGCQ) but issued a PAF during the quarantine period (ECQ, MECQ, GCQ, MGCQ)
- Applications filed and reviewed during the quarantine period (ECQ, MECQ, GCQ, MGCQ) but without issuance of PAF.

Penalty shall commence to run on October 1, 2020.



# CTA Decisions



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## **Compromise settlements may be refunded if assessment is found void**

*(ED&F Man Philippines, Inc. vs Commissioner of Internal Revenue, CTA Case Nos. 9577 and 9739, August 05, 2020)*

In this case, the taxpayer was assessed deficiency VAT and compromise penalty pursuant to a Letter Notice (LN). No Letter of Authority (LOA) was issued to the revenue officer.

During the assessment process, the taxpayer filed an application for compromise settlement and paid the compromise amount on the basis of doubtful validity of assessment.

However, the Court ruled that the assessment is considered void since it was found out that the revenue officer failed to secure a Letter of Authority (LOA) as required under the NIRC before an examination of a taxpayer may be conducted.

Hence, having established that the assessment is void, it follows that there is no basis for the compromise settlement. The taxpayer is entitled to be refunded of the amount paid as compromise settlement.

## **Assessments with no basis of facts are void**

*(Morning Star Milling Corporation vs Commissioner of Internal Revenue, CTA Case Nos. 9294, August 25, 2020)*

Section 228 of the NIRC provides that taxpayers shall be informed in writing of the law and the facts on which the assessment is made. Otherwise, the assessment shall be void. Preliminary Assessment Notice (PAN) shall show details in facts, and the laws, rules and regulations, or jurisprudence on which the proposed assessment is based. The Formal Letter of Demand (FLD) must state among others, the facts on which the assessment is based. Absence of such details is a violation of due process and shall render the PAN and FLD void.

In this case, perusal of the undated PAN and the FAN show that both notices only contain arbitrary figures and did not even contain the facts on which the assessment were made. The same PAN and FAN contain no explanation as to where the figures came from and how they were determined.

Based on the above, the CTA cancelled the assessment against the taxpayer. It stressed that a significant part of the due process requirement in the issuance of tax assessments is that the concerned taxpayer must be informed, in writing, of the law and of the facts on which the assessment is made. Hence, in case the Commissioner of Internal Revenue or his duly authorized representative fails or effectively fails to observe the foregoing due process

requirements, it shall have the effect of rendering the assessment and collection of the pertinent deficiency tax void.

## **Premature issuance of FAN/ FLD renders the assessment void**

*(Morning Star Milling Corporation vs Commissioner of Internal Revenue, CTA Case Nos. 9294, August 25, 2020)*

Taxpayers are given 15 days to respond to PAN as mandated by RR No. 12-99. If the taxpayer fails to respond within 15 days from the date of receipt of PAN, he shall be considered in default, and an FLD/ FAN shall be issued by the CIR or his duly authorized representative. The CIR or his duly authorized representative is duty bound to wait for 15 days from the receipt of PAN before issuing the FLD/ FAN. Such procedure is part and parcel of the due process requirement in the issuance of a deficiency tax assessment.

In this case, records show that the PAN was issued on December 28, 2012. However, taxpayer's witness testified that it received the PAN only on January 10, 2013. Before it could respond to the PAN, it received the BIR's FAN and FLD on January 15, 2013, which is only 5 days from January 10, 2013. Following such facts, the BIR now has the burden of proof to prove that the receipt of the PAN is at a date earlier than January 10, 2013 to show observance of the 15-day given to taxpayer to respond to the PAN before the issuance of FAN and FLD.



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However, the BIR failed to present counter evidence to show earlier date of actual receipt of the PAN by the taxpayer. Hence, the court held that taxpayer was denied due process which renders the assessment void.

# Highlight on P&A Grant Thornton services

## **Tax Advocacy**

We actively participate in consultation and public hearings conducted by the Bureau of Internal Revenue on proposed tax rules and regulations, serving as a bridge between our clients and the BIR. Our advocacy work focuses on clarifying the interpretation of laws and regulations, suggesting measures to increasingly ease tax compliance, and protecting taxpayer's rights.

## **Tax seminars and training**

We offer seminars and training on tax-related developments and special issues of interest to taxpayers. Upon request, we provide customized in-house tax training – designed jointly by P&A Grant Thornton and the client – that directly addresses the specific issues of the client's industry and the training needs of its personnel.

If you would like to know more about our 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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