



FEU conducts filmed interview with Alex Cabrera on ethics

Client Advisory Letter

Settlement of dues ^{p3} | Unsafe to assume ^{p3} |
Swift and decisive ^{p7} | Taxing profession ^{p11}

July 2019



At a glance

Updates, reiterations, and clarifications on selected topics

Taxes, compliance matters, assessments, and refunds..... 3

Settlement of dues	3
Safe to assume	3
Beyond scope	3
Unsafe to assume	3
Square one	4
Irregular dealings	4
Exclusive club	4
Business trips	4
Dearly departed	4
New certificates.....	5
Bank notice	5
Annual returns.....	5
Modes of extinguishment	6
Current form.....	6
Service oriented	6
Model employees.....	7
Certified exempt.....	7
Swift and decisive	7
Insurance matters	8
Lone delegate	8
Refund status.....	8
Following instructions.....	8

Latest on regulatory landscape..... 9

Customs inspection.....	9
Containing containers	9
Third party.....	9
Special effect	10
Document revision	10
Model agency	10
Asian connections	10

Taxing profession	11
Making a mark.....	11
Let's get digital.....	11
Creation story	12
Global professionals	12
Bare bones	12
External affair	13
All Filipino	13
Grave consequences.....	13
Continuing incentive	14
Inspiring innovation.....	14
Fish and bread.....	14
Free for all	14
Cutting red tape	15
Necessary approval.....	15
Health recovery	15
Lowering the minimum.....	16
Tax sovereignty	16
Foreign workers.....	16

Taxes, compliance matters, assessments, and refunds

Settlement of dues

Club membership fees, assessment dues are not subject to income tax and VAT

Membership fees and assessment dues collected by recreational clubs from their members as an inherent consequence of their membership and intended for the maintenance, preservation, and upkeep of the clubs' general operations and facilities are not subject to income tax.

They are likewise not subject to VAT because in collecting such fees, the club is not selling its services to its members. Conversely, in paying such fees, the members are not purchasing services from the club.

(GR No. 228539, promulgated 26 June 2019)

Safe to assume

When proof of remittance of withholding taxes is not required

A taxpayer claiming a refund of or issuance of tax credit certificate for unutilized CWT is not required to prove actual remittance of CWT by withholding agents.

The taxpayer-claimant only needs to prove the fact of withholding by presenting the BIR Form No. 2307 which shows the income payments made by the withholding agent, and the amount of the tax deducted and withheld therefrom. Since the BIR Form No. 2307 is duly signed and prepared under the penalties of perjury, the figures appearing therein are presumed to be true and correct, and may be taken at face value.

(CTA EB No. 1789, promulgated 5 July 2019)

Glossary

BIR – Bureau of Internal Revenue

CTA – Court of Tax Appeals

CWT – Creditable Withholding Tax

VAT – Value-Added Tax

Beyond scope

The exercise of governmental functions are not subject to VAT

The sale of generating assets by the Power Sector Assets and Liabilities Management Corporation (PSALM) is not subject to VAT because such sale was made pursuant to the mandate of PSALM under the Republic Act No. 9136¹ to privatize assets of the National Power Corporation (NPC). In other words, the sale is not in pursuit of a commercial or economic activity, but a governmental function mandated by law.

Gross receipts from the lease of NPC assets, and collections of certain income and receivables are also not subject to VAT because these are within the powers of PSALM necessary to discharge its legal mandate and are undertaken in the exercise of governmental functions.

(GR No. 226556, promulgated 3 June 2019)

Unsafe to assume

Transfer of land for shares in a new corporation is not subject to VAT

A real estate company entered into a pre-incorporation subscription agreement. In consideration for its subscription of shares in the new corporation, the real estate company transferred two parcels of land instead of paying cash.

According to the CTA, the transfer of land is not a deemed sale transaction subject to VAT because, although the transferor was engaged in the real estate business, there was no proof or hint that the parcels of land were properties held for sale or originally intended for sale or for use in the ordinary course of business.

Further, since the transaction is in the nature of a pre-incorporation subscription pursuant to Sections 61 and 62 of the Corporation Code, the transfer is not a disposition or exchange in the ordinary course of trade or business subject to VAT.

(CTA EB No. 1776, promulgated 5 July 2019)

¹ Electric Power Industry Reform Act of 2001.

Square one

New documentary evidence may be submitted to the CTA

In deficiency tax assessments, the failure of the taxpayer to submit documents at the administrative (*i.e.*, BIR) level is not fatal to the petition for review at the judicial (*i.e.*, CTA) level because the case is litigated anew and decided based on what will be presented and formally offered by the parties during the trial.

(CTA EB No. 1881, promulgated 5 July 2019)

Irregular dealings

How to prove that a supplier is a non-regular supplier

A top ten thousand (10,000) private corporation is required to withhold a 2% EWT from its purchase of services from local/resident suppliers not otherwise covered by specific EWT rates.

However, one-time purchases below PHP10,000.00 from non-regular suppliers are not subject to deficiency 2% EWT, provided, that such fact is supported by the relevant Semestral Lists of Regular Suppliers.

(CTA Case No. 8141, promulgated 26 June 2019)

Exclusive club

Authority of OIC-Assistant Regional Director to sign and issue an LOA

Under the Tax Code and RMO No. 43-1990, only the Commissioner, Deputy Commissioners and Regional Directors are authorized to sign and issue LOAs. An OIC-Assistant Regional Director is not included.

Hence, a deficiency tax assessment arising from a tax investigation covered by a LOA that was signed and issued by an OIC-Assistant Regional Director without delegated authority is void.

Glossary

BIR – Bureau of Internal Revenue

CTA – Court of Tax Appeals

EWT – Expanded Withholding Tax

LOA – Letter of Authority

OIC – Officer-in-Charge

RDO – Revenue District Office

TIN – Taxpayer Identification Number

The subsequent appointment of said OIC as a Regional Director does not cure the defect because the validity of the LOA should be reckoned from its date of issuance.

(CTA Case No. 9387, promulgated 28 June 2019)

Business trips

Documents supporting the deductibility of travel and transportation expenses

In order to be deductible, the taxpayer should establish that the expense was incurred in connection with its business.

Expenses for foreign travels can be proven to be business-related if the taxpayer is able to submit documents such as certificates of attendance to conferences abroad or copies of minutes of meetings held abroad.

On the other hand, transportation expenses can be proven as business-related if corroborated by expense reports accompanied by receipts, invoices, tickets, and a document indicating the kind of work completed by the employee and signed off by the taxpayer's client.

(CTA Case No. 8141, promulgated 26 June 2019)

Dearly departed

Clarifying issues and concerns in the estate tax amnesty implementation

The BIR issued clarifications regarding the estate tax amnesty. These include the following:

- The Estate Tax Amnesty Return (ETAR) should be filed within two (2) years from 15 June 2019 or until 14 June 2021.
- The heirs, including minors, are required to have a TIN.
- Where to file the ETAR
 - If the estate has a previously issued TIN, the ETAR shall be filed with the RDO which issued said TIN
 - For a non-resident decedent, the ETAR shall be filed with the RDO where the executor or administrator is registered. If the latter is not registered, the ETAR shall be filed with the RDO having jurisdiction over the legal residence of the executor of administrator. If there is no executor or administrator, the ETAR shall be filed with RDO No. 39.

- If there are properties with multiple decedents emanating from the first decedent and no estate tax returns were filed, the ETAR for each stage of succession shall be filed with any of the RDOs having jurisdiction over the last residence of any of the decedents.

- Filing and payment of the estate tax amnesty shall be done manually.
- If there is no zonal valuation at the time of death, the fair market value appearing in the tax declaration issued at the date of death or the succeeding available tax declaration issued nearest to the date of death shall be used for valuation purposes.
- When an estate tax return was previously filed and there were properties not declared therein, the estate tax amnesty shall be six percent (6%) of the value of undeclared properties without deductions, except for the share of the surviving spouse in the conjugal property.
- The estate tax amnesty may be availed with respect to unpaid penalties provided the ETAR is filed and the minimum estate tax amnesty rate of PHP5,000.00 is paid.
- Installment payment of the amnesty tax is not allowed.
- With respect to real property involved in multiple successions, only one (1) eCAR will be issued if the ETARs are filed simultaneously with the same RDO.
- Delinquent estate tax liabilities are covered by the tax amnesty on delinquencies.
- Failure to submit the validated Acceptance Payment Form with proof of payment on or before 14 June 2021 is tantamount to non-availment of the estate tax amnesty.
- If no death certificate is issued by the Philippine Statistics Authority (PSA), a Certificate of No Record of Death from the PSA and any valid secondary evidence including those issued by any government agency are sufficient to establish the fact of death.

(Revenue Memorandum Circular No. 68-2019, issued 5 July 2019)

Glossary

BIR – Bureau of Internal Revenue

eCAR – Electronic Certificate Authorizing Registration

eFPS – Electronic Filing and Payment System

ETAR – Estate Tax Amnesty Return

RDO – Revenue District Office

New certificates

Availability of newly enhanced withholding tax certificates

The following enhanced BIR Forms are already available:

BIR Form No.	Description
2306	Certificate of Final Tax Withheld at Source
2307	Certificate of Creditable Tax Withheld at Source

(Revenue Memorandum Circular No. 74-2019, issued 24 July 2019)

Bank notice

Availability of BIR Form Nos. 0620 and 1621

All concerned banks are informed that BIR Form No. 0620 (Monthly Remittance of Taxes Withheld on the Amount Withdrawn from the Decedent's Deposit Account) and BIR Form No. 1621 (Quarterly Remittance of Taxes Withheld on the Amount Withdrawn from the Decedent's Deposit Account) are not yet available in pre-printed form, in the eFPS and in the eBIRForms. However, these can be downloaded from the BIR website under BIR Forms-Payment/Remittance Form section.

Banks availing the Philippine Payment Settlement System are advised to manually file the above forms and remit the corresponding tax until further notice.

(Revenue Memorandum Circular No. 76-2019, issued 31 July 2019)

Annual returns

Availability of newly revised annual information returns

All withholding agents are informed of the availability of the following revised BIR Forms (January 2018 ENCS):

BIR Form No.	Description
1604-C	Annual Information Return of Income Taxes Withheld on Compensation
1604-E	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/ Income Payments Exempt from Withholding Tax
1604-F	Annual Information Return of Income Payments Subjected to Final Withholding Taxes

The revised manual returns are available in the BIR website under the BIR Forms-Payment/Remittance Forms section. However, they are not yet available in the eFPS and eBIRForms.

(Revenue Memorandum Circular No. 73-2019, issued 24 July 2019)

Modes of extinguishment

Lifting of collection remedies exercised by the BIR

A Warrant of Garnishment, Notice of Tax Lien, Notice of Tax Levy and Notice of Encumbrance may be extinguished under any of the following instances:

1. Full payment of unpaid tax liabilities, including applicable delinquency penalties
2. Acceptance of full payment of taxpayer's offer for compromise settlement
3. Full payment of the basic tax due and subsequent approval of abatement of penalties by the CIR due on the subject tax liabilities
4. Full or partial cancellation of the original assessment as a result of reinvestigation or reconsideration
5. Prescription of BIR right to assess and/or collect
6. The taxpayer has opened an escrow account with an AAB or has filed a surety bond
7. Full destruction of the improvement of property subject to the lien due to fortuitous events
8. Issuance of a final and executory court order for the lifting thereof
9. The seized property was disposed and no longer owned by the delinquent taxpayer before the seizure, lien or encumbrance
10. The account garnished is for the salaries of government employees
11. Meritorious instances with prior approval by the CIR

However, the taxpayer should request for the issuance of a Notice of Lifting and comply with the procedure and requirements.

(Revenue Memorandum Order No. 41-2019, issued 31 July 2019)

Glossary

AAB – Authorized Agent Bank

BIR – Bureau of Internal Revenue

CIR – Commissioner of Internal Revenue

eFPS – Electronic Filing and Payment System

Current form

Prescribing the newly revised BIR Form No. 1914 for tax refund/credit applications

Taxpayers applying for tax credits or refunds should accomplish and file the newly revised BIR Form No. 1914 (*Application for Tax Credits/Refunds*) April 2019 (ENCS).

(Revenue Memorandum Circular No. 75-2019, issued 29 July 2019)

Service oriented

Procedures for serving assessment notices to taxpayers

The BIR prescribed guidelines and procedures when serving assessment notices such as the Preliminary Assessment Notice, Final Assessment Notice/Formal Letter of Demand and Final Decision on Disputed Assessment (FDDA).

The guidelines and procedures include the following:

- Manner of effecting personal service, substituted service and service by mail
- Substituted service can only be resorted to when the party is not present at the registered or known address.
- Service by mail shall be done through registered mail, reputable professional courier service, or ordinary mail.
- Personal or substituted service shall be effected by the Revenue Officer assigned to the case, or by any BIR employee duly authorized for such purpose.
- Personal service is complete upon actual delivery of the assessment notice to the taxpayer or his representative.
- Service through registered mail is complete upon actual receipt by the taxpayer or after five (5) days from the date of receipt of the first notice of the postmaster, whichever is earlier.
- Service by ordinary mail is complete upon the expiration of ten (10) days after mailing.
- Service to the tax agent/practitioner who is appointed or authorized by the taxpayer in accordance with existing revenue issuances shall be deemed service to the taxpayer.

(Revenue Memorandum Order No. 40-2019, issued 30 July 2019)

Model employees

Policies, guidelines and procedures on employee registration

The amended policies and guidelines on employee registration include the following:

- Employers shall secure the TIN of new employees through eRegistration within ten (10) days from the date of employment.
- Employees who subsequently move to a new employer shall transfer his/her TIN/registration to the RDO having jurisdiction over his/her place of residence and not to the RDO of the new employer.
- Applications for any change in registration information of an employee shall be submitted by the employee to the RDO where the employee's TIN is registered.
- Only the employee himself/herself shall request and receive the TIN Card by presenting at least one (1) valid government ID upon application and release. TIN card requests should be made personally by the requesting employee.

(Revenue Memorandum Order No. 37-2019, issued 23 July 2019)

Certified exempt

Clarifying the nature, character and tax treatment of exempt organizations

The BIR clarified the nature, character and tax treatment of organizations exempt from income tax under Section 30 of the Tax Code. However, the clarifications do not cover the processing of CTEs of non-stock, non-profit educational institutions.

The clarifications include the following:

- Characteristics, purposes and actual operations of each exempt organization
- Organizational and operational tests in determining entitlement to exemption
 - The organizational test - The constitutive documents must show that the primary purpose of an organization falls under Section 30 of the Tax Code.

Glossary

BIR – Bureau of Internal Revenue

CTE – Certificate of Tax Exemption

RDO – Revenue District Office

TIN – Taxpayer Identification Number

- The operational test - The regular activities must be exclusively devoted to the accomplishment of the purposes specified in Section 30 of the Tax Code.
- Non-profit, inurement prohibition
- Taxation of organizations under Section 30 of the Tax Code
- Documentary requirements and procedure in the processing and issuance of CTEs
 - The request for CTE shall be filed with the Revenue District Office where the organization is registered.
 - The Regional Director is responsible for signing and issuing the CTE.
- The CTE shall be valid for three (3) years from the effectivity date specified in the Ruling and may be revalidated for another 3 years.
- The Tax Exemption Ruling shall be deemed revoked if there are material changes in the character, purpose or method of operation which are inconsistent with the basis for exemption.

(Revenue Memorandum Order No. 38-2019, issued 24 July 2019)

Swift and decisive

Civil remedies for the collection of accounts receivable/delinquent accounts

The BIR offices responsible for the enforcement of collection remedies shall immediately pursue the civil remedies for collection (e.g., issuance Warrant of Dstraint and/or Levy) upon receipt of the "Form 40-Collectible" reports relative to the following:

1. List of Unpaid Revenues – These are self-assessed taxes arising from dishonored check, unpaid second installment and duly validated unpaid tax due per returns.
2. List of Unpaid Tax Assessments – These are tax assessments arising from tax investigations that have become final and executory.

Thus, Preliminary Collection Letters and Final Notices Before Seizure shall no longer be sent to delinquent taxpayers before collection remedies are pursued.

(Revenue Memorandum Order No. 35-2019, issued 18 July 2019)

Insurance matters

Modification of ATCs for certain percentage taxes

The following Alphanumeric Tax Codes (ATCs) for percentage taxes under RA No. 10001 have been modified:

Existing (per ATC Handbook)			New	
ATC	Description	Tax Rate	BIR Form No.	Tax Rate
PT120	Life insurance premium	5%	2551M/ 2551Q	2%
PT130	Agents of Foreign Insurance Companies	10%		4%
	Insurance agents			

(Revenue Memorandum Order No. 36-2019, issued 18 July 2019)

Lone delegate

Signatory of certificate of tax exemption for qualified retirement plans

The authority to act on and approve Qualified Reasonable Benefit Retirement Plans, and issue the appropriate CTE has been delegated to Assistant Commissioner Larry M. Barcelo, Legal Service.

(Revenue Delegation Authority Order No. 3-2019, dated 24 July 2019)

Refund status

Clarifying the transitory provisions and requirements for VAT refund claims

The BIR clarified the transitory provisions and requirements in Annex A.1 of RMC No. 47-2019 as follows:

1. For VAT refund applications filed from 1 June to 30 June 2019, the deadline for the submission of the following requirements was extended up to 31 July 2019:

Glossary

ATC – Alphanumeric Tax Code

BIR – Bureau of Internal Revenue

BOC – Bureau of Customs

CTE – Certificate of Tax Exemption

RA – Republic Act

RMC – Revenue Memorandum Circular

VAT – Value-Added Tax

- a. Certification of VAT payment from the Revenue Accounting Division of the BOC;
- b. Consularized/apostilled copy of certificate of foreign registration of the non-resident foreign corporation; and
- c. Certifications required for claims whose zero-rated sales are based on Section 108(B)(4) of the Tax Code.

2. For claims filed from the effectivity of RMC No. 47-2019, the following need not be authenticated by the BOC:

- a. Import Entry and Internal Revenue Declarations and/or Single Administrative Document;
- b. Statement of Settlement of Duties and Taxes; and
- c. Commercial Invoices on importations.

(BIR Tax Advisory, dated 28 June 2019)

Following instructions

Non-acceptance of BIR Form Nos. 1901 and 1903

All Authorized Agent Banks (AABs) are advised not to accept the following BIR Forms:

- **BIR Form No. 1901** – January 2018 ENCS (Application for Registration of Self-Employed and Mixed Income Individuals, Estates/Trusts), and
- **BIR Form No. 1903** – January 2018 ENCS (Application for Registration of Corporations/Partnership, Taxable/Non-Taxable), including GAls, LGUs, Cooperatives and Associations in the payment of business registration fee.

Taxpayers should use the BIR Form No. 0605 (Payment Form) in the business registration fee made thru AABs.

In encoding payments using BIR Form No. 0605 in the Limited Bank Data Entry System, AABs should select BIR Form 0605 in the Form Code List of Values (LOVs) and select the appropriate tax type code LOVs as indicated in the BIR Form No. 0605 under the tax type field.

(Bank Bulletin No. 2019-13, dated 17 June 2019)

Latest on regulatory landscape

Customs inspection

Issuance of Pre-Lodgement Control Orders (PLCO) and Alert Orders (AO)

The CoC issued orders regarding the issuance of a PLCO and an AO from the entry of imported goods in customs jurisdiction as well as in the exportation of goods. The orders include the following:

- A PLCO is issued prior to lodgement of Goods Declaration but does not suspend the period or prohibit the importer from lodging the goods declaration.
- Grounds for the issuance and effects of a PLCO and AO.
- An AO is issued after the lodgement of Goods Declaration but before actual release from customs custody. It suspends the customs clearance process.
- The Customs Officer is authorized to conduct non-intrusive inspection or physical examination of shipments.
- Non-intrusive inspection or physical examination should be conducted within forty-eight (48) hours from receipt of the PLCO or AO by the Office of the District Collector.
- Rights of the consignee, importer, broker or attorney-in-fact whose shipment is subject of a PLCO or AO

(Customs Administrative Order No. 7-2019, filed 7 June 2019)

Containing containers

Guidelines and procedure for the monitoring and control of containers

The CoC issued guidelines and procedure for the monitoring and control of the movement of all types, categories or classification of containers at the seaports. The guidelines provide for the following:

Glossary

BOC – Bureau of Customs

CoC – Commissioner of Customs

- Containers granted Temporary Admission shall not be subject to any form of security or payment of dues and taxes within ninety (90) days from the date of discharge of the last package.
- Containers shall be re-exported within 90 days from the date of discharge of the last package. This period may be suspended under specific circumstances.
- Containers that have not been re-exported within the prescribed period shall be considered importations.
- Termination of Temporary Admission
- Overstaying containers
- The shipping line and/or the carrying vessel shall be accountable for the movement, storage, monitoring and inventory of containers.
- Required information in the Container Discharging List
- Submission of Loading Sequence List and Application for Special Permit to Load with respect to the loading of containers for re-exportation
- Suspension of counting of prescriptive period to export

(Customs Administrative Order No. 8-2019, filed 11 June 2019)

Third party

Supervision and regulation of certain persons transacting with the BOC

The following 'Third Parties' shall be supervised and regulated by the BOC, in relation to the import, export, movement, storage and clearance of goods for, and in behalf of, another person:

1. Carriers
2. Airline Representatives or Airline Ground Handling Agents
3. Shipping Lines or their Agents
4. Pipeline Operators
5. Freight Forwarders
6. Consolidators
7. Deconsolidators

8. Non-Vessel Operating Common Carriers
9. Logistics Providers
10. Arrastre Operators

The foregoing shall be registered with the BOC if they submit a Permit to Operate, and apply for registration with the Account Management Office and submit the required documents. The registration may be cancelled or revoked on certain grounds.

Third Parties are obligated to submit true and authentic documents, cooperate in customs investigations, report violations, provide access to records, and comply with customs and other laws, rules and regulations.

(Customs Administrative Order No. 6-2019, filed 7 June 2019)

Special effect

Cargo clearance procedure for the movement of goods within the BIMP-EAGA

The CoC issued implementing guidelines for the special cargo clearance procedure for Qualified Enterprises in the import and export of goods within the Brunei, Indonesia, Malaysia, Philippines – East Asia Growth Area (BIMP-EAGA).

The implementing guidelines provide for, among others, registration of Qualified Enterprises, responsibilities of the District/Subport collectors, cargo clearance process for imported goods, export processing, One Stop Shop Office for BIMP-EAGA, and cross-border transport of local and foreign currencies. These guidelines took effect on 15 July 2019.

(Customs Memorandum Order No. 32-2019, filed 8 July 2019)

Document revision

Revised Guidelines for Accreditation of Importers and Customs Brokers

The Revised Guidelines for Accreditation of Importers and Customs Brokers were amended with respect to the documentary requirements for accreditation of new importers, renewal of importer's application, new customs broker, and renewal of customs broker application. The amendments took effect on 8 July 2019.

(Customs Memorandum Order No. 31-2019, filed 5 July 2019)

Glossary

ASEAN – Association of Southeast Asian Nations
 BOC – Bureau of Customs
 CoC – Commissioner of Customs

Model agency

Requiring the Certificate of Accreditation as Declarant

The CoC issued interim guidelines for the accreditation and registration of persons, other than Customs Brokers, entitled to act as Declarant and sign the goods declaration for consumption, warehousing or transit.

The interim guidelines provide for the following:

- All importers or persons acting as agent or attorney-in-fact intending to lodge and process goods declaration must file an application for accreditation and obtain a Certificate of Accreditation as Declarant.
- A Declarant may refer to a/an:
 - Consignee or importer in the bill of lading or airway bill
 - Exporter, being the owner
 - Customs broker acting under the authority of the importer or holder of the bill
 - Person having the right to dispose the goods
 - Holder of the bill of lading or airway bill indorsed by the shipping line or airline
 - Person duly empowered to act as agent or attorney-in-fact for each other
- The application for accreditation and required documents shall be filed with the Accounts Management Office.
- Grounds for denial of application for accreditation and motion for reconsideration
- Validity and renewal of accreditation
- Rights and obligations of a Declarant

(Customs Memorandum Order No. 34-2019, dated 9 July 2019)

Asian connections

Implementation of international agreements between the ASEAN and China

The Protocol to Amend the Framework Agreement on Comprehensive Economic Co-Operation and certain Agreements between the ASEAN and the People's Republic of China, the ASEAN-China Free Trade Agreement Rules of Origin upgraded protocol shall be implemented on 1 August 2019. There will be a

transition period of two (2) weeks from the date of implementation wherein Preferential Tariff shall be granted for importers submitting the Old CO Form E.

(Customs Memorandum Circular No. 176-2019, dated 18 July 2019)

Taxing profession

Local taxes, fees and charges on individual professionals

The Department of Finance issued guidelines governing the taxing powers of provinces, cities and municipalities (collectively, LGUs) relative to the practice of profession.

The following taxes shall be paid by an individual legally authorized to practice his/her profession:

- Professional tax
 - not to exceed ~~PHP~~300.00 or the rate provided under a local ordinance, subject to adjustment not exceeding ten percent (10%) every five (5) years
 - paid on or before January 31 to the LGU where the profession is practiced or where the principal office is maintained
- Community tax
 - ~~PHP~~5.00 plus ~~PHP~~1.00 for every ~~PHP~~1,000.00 of income from the practice of profession, but not to exceed ~~PHP~~5,000.00
 - paid on or before the last day of February to the LGU where the professional has his/her place of residence
- A professional who has paid his/her professional tax shall be exempt from the business permit fee. However, he/she is still required to secure a business permit but at no cost.

Glossary

ASEAN – Association of Southeast Asian Nations

BIR – Bureau of Internal Revenue

BOC – Bureau of Customs

CO – Certificate of Origin

CoC – Commissioner of Customs

LGU – Local Government Unit

PICC – Philippine International Convention Center

SEC – Securities and Exchange Commission

- Provinces, cities and municipalities may impose and collect other applicable fees and charges such as garbage fee, sanitary inspection fee and occupancy permit fee, which shall be reasonably commensurate to the cost of regulation or provision of service. No service charge shall be based on capital investments or gross sales or receipts.

(Department of Finance Local Finance Circular No. 1-2019, dated 12 June 2019)

Making a mark

Implementing the Fuel Marking Program

The Department of Finance, upon recommendation of the BIR and the BOC, issued guidelines implementing the mandatory testing and marking of petroleum products under the Fuel Marking Program. Said guidelines provide for the following:

- Definition of terms
- The BIR and the BOC are the accountable offices in the implementation of the Fuel Marking Program
- Responsibilities of the BIR and the BOC
- Marking of petroleum products
- Field testing
- Penalties for offenses related to the Fuel Marking Program
- Training and technology transfer from the Fuel Marking Provider to the BIR and the BOC

(Department of Finance Joint Circular No. 1-2019, dated 5 July 2019)

Let's get digital

Rules on Digital Asset Exchange

Exchanges, broker-dealers, investment houses, the investing public and other interested parties are invited by the SEC to submit their views, comments and inputs to the draft Rules on Digital Asset Exchange posted on the SEC website.

Comments may be sent to the Market and Securities Regulation Department, G/F Secretariat Bldg., PICC Complex, Roxas Blvd., Pasay City c/o Ms. Jessa Patilleros and Ms. Varelle Vargas, or sent via email to jfbpatilleros@sec.gov.ph and vcvargas@sec.gov.ph not later than 14 August 2019.

(SEC Market and Securities Regulation Department Notice, posted 15 July 2019)

Creation story

Guidelines on the number and qualifications of incorporators

The SEC issued guidelines regarding incorporators of domestic corporations under the Revised Corporation Code. The salient provisions include:

- Two (2) or more persons, but not exceeding fifteen (15), may form a new domestic corporation.
- Only a One-Person Corporation may have one stockholder and one director.
- An incorporator of a stock corporation must own or subscribe to at least one (1) share while an incorporator of a non-stock corporation must be a member.
- Incorporators may be composed of:
 - Natural persons
 - SEC-registered partnerships
 - SEC-registered domestic corporations or associations
 - Foreign corporations
- Requirements for each type of incorporator
- Signatories of the Articles of Incorporation
- Additional requirements for certain corporations

(SEC Memorandum Circular No. 16-2019, dated 30 July 2019)

Global professionals

Research Report under the ASEAN Capital Market Professional Mobility Framework

Broker-dealers, investment houses, the investing public and other interested parties are invited by the SEC to submit their views, comments and inputs to the draft *Guidelines on the Implementation of Cross-Border Publication of Research Report Under the ASEAN Capital Market Professional Mobility Framework* posted on the SEC website.

Glossary

ASEAN – Association of Southeast Asian Nations

PICC – Philippine International Convention Center

SEC – Securities and Exchange Commission

Comments may be sent to the Market and Securities Regulation Department, G/F Secretariat Bldg., PICC Complex, Roxas Blvd., Pasay City c/o Ms. Melita Pasagui and Ms. Lea Avellanosa or sent via email to mdpasagui@sec.gov.ph and jmavellanosa@sec.gov.ph not later than 16 July 2019.

(SEC Market and Securities Regulation Department Notice, posted 5 July 2019)

Bare bones

Beneficial ownership information in the General Information Sheet (GIS)

The SEC issued amended rules regarding the requirement for stock and non-stock corporations to disclose beneficial ownership in the GIS. Here are the salient provisions:

- The term “Beneficial Owner” covers natural persons who actually own or control the corporation as distinguished from the legal owners.
- Manner of identifying beneficial ownership
 - Controlling ownership interest
 - Exercise of control through other means
 - Board of Directors/Trustees and Senior Managing Official
- Definitions of “Beneficial Ownership Information”, “Direct Ownership”, “Indirect Ownership”, “Dominant Influence”, “Grandfather Rule”, “Legal Owner”, “Multiple Layers” and “Senior Managing Official”
- Information on Beneficial Owner includes date of birth
- Obligation of Directors/Trustees and Officers to ensure compliance with the requirement to disclose beneficial ownership
- Illustration using the Grandfather Rule in determining indirect ownership
- Penalties ranging between PH₱10,000 to PH₱400,000 for stock corporations, and PH₱5,000 to PH₱200,000 for non-stock corporations, depending on the amount of retained earnings or fund balance
- Failure to submit the GIS with required beneficial ownership information shall be considered *prima facie* proof of violation.

- Penalties on Directors/Trustees and/or Officers ranging between PHP5,000 to PHP50,000
- GIS submissions in electronic format are suspended until further notice.
- The GIS Form provided in SEC Memorandum Circular No. 15-2019 shall be used by corporations whose GIS are due beginning 31 July 2019.
- The new GIS forms (with the Beneficial Ownership Declaration page) are accessible through the following links and shall be implemented beginning 31 July 2019:

Stock Corporations

http://www.sec.gov.ph/wp-content/uploads/2019/09/2019Form_RevGIS_Stock_updated.xlsx

Non-Stock Corporations

http://www.sec.gov.ph/wp-content/uploads/2019/09/2019Form_RevGIS_NonStock_updated.xlsx

(SEC Memorandum Circular No. 15-2019, published 27 July 2019; and SEC Notice, posted 26 July 2019)

External affair

One-Stop-Shop accreditation of external auditors

The SEC issued proposed Guidelines on the Adoption of a Centralized Framework for Accreditation/Selection of External Auditors. These aim to streamline the accreditation/selection process and promote the ease of doing business.

All interested parties are invited to submit their comments thereon not later than 5 August 2019 to the Office of the General Accountant at the 3rd Floor, Secretariat Bldg., PICC, or via electronic mail to secoga@sec.gov.ph.

(SEC Notice, posted 19 July 2019)

Glossary

BIR – Bureau of Internal Revenue

BOI – Board of Investments

GIS – General Information Sheet

ITH – Income Tax Holiday

ITR – Income Tax Return

PICC – Philippine International Convention Center

SEC – Securities and Exchange Commission

All Filipino

Foreign ownership of a corporation engaged in digital media activities

Mass media has been defined as “any medium of communication designed to reach a mass of people” which includes the use of “electronic media such as but not limited to internet”. The ownership and management of mass media is limited to Filipino citizens or entities wholly owned and managed by Filipino citizens.

According to the SEC, if the Articles of Incorporation of a corporation do not qualify or limit the business purpose of engaging in “digital media”, or do not provide a specific type of “digital media” to be marketed, the “digital media” activities of said corporation will still fall within the ambit of mass media – notwithstanding the insertion of the excluding phrase “except mass media.” In such case, no foreign ownership is allowed in the corporation.

(SEC-OGC Opinion No. 19-27, dated 22 July 2019)

Grave consequences

Clarifying the penalties on late filing of applications for ITH incentive

All new and expanding enterprises, registered with the BOI that were issued Certificates of Entitlement and that claimed income tax exemptions in their ITRs, are required to file applications for ITH incentive with the BOI. Applications must be filed within thirty (30) days from the date of filing of the annual ITR with the BIR, or from the last day prescribed by law for the ITR filing, whichever comes later.

Late applications for ITH incentive shall be penalized as follows:

Late filing	Penalty
If filed within the 31 st and 180 th day from the date of annual ITR filing, or from the last day prescribed by law for the ITR filing, whichever comes later	Amount of ITH x 1% (but not less than PHP500.00 or more than PHP2m
After the 180 th day from the date of annual ITR filing, or from the last day prescribed by law for the ITR filing, whichever comes later	Forfeiture of the ITH for the taxable year

(Board of Investments Memorandum Circular No. 2019-2, dated 24 May 2019)

Continuing incentive

Extension of zero percent duty effective until 6 July 2019

Importations of capital equipment, spare parts and accessories classified under the CMTA shall be subject to the zero percent duty if:

- Made by a BOI-registered new and expanding enterprise;
- Report card survey
- They are not manufactured domestically in sufficient quantity, of comparable quality, and at reasonable prices; and
- They are reasonably needed and will be used exclusively by the BOI-registered enterprise in its registered activity.

Within five (5) years from the date of importation, the BOI-registered enterprise is not allowed to sell, transfer or dispose the imported equipment, parts and accessories without prior BOI approval. Otherwise, penalties will be imposed.

The zero percent duty takes effect immediately after complete publication of Executive Order (EO) No. 85 in a newspaper of general circulation, and shall be valid for three (3) years or upon amendment of EO No. 226, whichever comes earlier.

(Executive Order No. 85, dated 19 July 2019)

Inspiring innovation

Strengthening, promotion and development of startups

Republic Act No. 11337, otherwise known as the “Innovative Startup Act”, has been enacted to provide benefits and programs to strengthen, promote and develop the Philippine startup ecosystem. It provides for the following, among others:

- Creation of the Philippine Startup Development Program

Glossary

ATM - Automated Teller Machine

BOI – Board of Investments

BSP – Bangko Sentral ng Pilipinas

CMTA – Customs Modernization and Tariff Act

- Benefits and incentives for startups and startup enablers which include subsidies and grants-in-aid
- Creation of Philippine Startup Ecozones

(Republic Act No. 11337, approved 26 April 2019)

Fish and bread

Sustaining modern agriculture and food security

The “Sagip Saka Act” has been enacted to establish the Farmers and Fisherfolk Enterprise Development Program. This Program refers to the comprehensive set of objectives, targets, and holistic approach in promoting the establishment of enterprises involving agricultural and fishery products.

It provides the following tax incentives and exemptions:

1. Donor’s tax exemption of gifts and donations of real and personal properties;
2. Real property tax exemption of structures, buildings, and warehouses utilized for the storage of farm inputs and outputs, provided, that the assessed value does not exceed PHP 3m;
3. Provision by the Land Bank of the Philippines of preferential rates and special window to accredited farmers and fisherfolk enterprises; and
4. Exemptions from income tax if the farmer and the fisherfolk cooperatives and enterprises shall register as barangay micro-business enterprises pursuant to the “Barangay Micro-Business Enterprises Act of 2002.”

(Republic Act No. 11321, approved 17 April 2019)

Free for all

Lifting the moratorium on automated teller machine fees

The Monetary Board lifted the moratorium on ATM fees subject to the following conditions:

1. Each participating BSP-Supervised Financial Institution (BSFI) shall file a letter request with the BSP;
2. Costs declared should be clear and adequately supported;
3. Setting of fees should adhere to the pricing principles under BSP Circular No. 980, dated 6 November 2017;

4. Acquirer-based charging model should already be adopted; and
5. Appropriate disclosures on ATM fees and charges shall be provided to the cardholders.

(Bangko Sentral ng Pilipinas Memorandum No. M-2019-20 dated 19 July 2019)

Cutting red tape

Ease of Doing Business and Efficient Government Service Delivery

The Anti-Red Tape Authority with the Civil Service Commission and the Department of Trade and Industry, in coordination with various government departments and agencies, promulgated the implementing rules and regulations (IRR) for the Ease of Doing Business and Efficient Government Service Delivery Act of 2018.²

The IRR provides for the following:

- All government offices and agencies in the Executive branch are covered, including local government units, GOCCs and other government instrumentalities.
- Reengineering of systems and procedures
- Citizen's Charter
- Zero-Contact Policy
- Accountability of heads of offices or agencies
- Access to government services
- Automatic approval or extension of licenses, permits, certifications and authorizations
- Streamlined procedures for the issuance of local business licenses, clearances, permits, certifications and authorizations
- Establishment of a Business One Stop Shop (BOSS) – Negosyo Center

Glossary

ATM - Automated Teller Machine

EO – Executive Order

GOCC – Government-Owned and – Controlled Corporation

PD – Presidential Decree

SEC – Securities and Exchange Commission

TIN – Taxpayer Identification Number

- Interconnectivity infrastructure development
- Anti-red tape unit, authority and council

(CSC, ARTA, DTI Joint Memorandum Circular No. 2019-001, published 20 July 2019)

Necessary approval

Requirements for the merger or consolidation of insurance companies

Insurance companies must secure the favorable recommendation of the Insurance Commissioner before submitting articles of merger or consolidation with the SEC. To secure said recommendation, the following must be submitted with respect to the constituent corporations:

1. Certified true copy of articles of merger or consolidation;
2. Copies of the minutes of meetings of the board of directors and stockholders approving the merger or consolidation;
3. Deed of assignment or transfer of all assets;
4. Audited financial statements;
5. Affidavit of publication of the notice of dissolution of the absorbed company or companies;
6. Certification regarding increase of capital stock, if necessary;
7. Written proof of discharge of accrued liabilities of the absorbed company or companies; and
8. Other papers and documents as the Insurance Commissioner may require.

(Insurance Commission Circular Letter No. 2019-34, dated 18 July 2019)

Health recovery

Conservatorship of Health Maintenance Organizations (HMOs)

The Insurance Commissioner issued Guidelines for the Conservatorship of HMOs and Appointment of Conservators. The Guidelines provide for:

- Grounds for conservatorship
- Powers and obligations of the conservator

² Republic Act No. 11032.

- Remuneration and other expenses
- Termination of conservatorship

(Insurance Commission Circular Letter No. 2019-35, dated 18 July 2019)

Lowering the minimum

Amended rules regarding the number of independent directors

The Board of Directors of insurance companies, insurance and reinsurance brokers, mutual benefit associations, pre-need companies and health maintenance organizations shall have independent directors constituting at least twenty percent (20%) of such Board, consistent with the Revised Corporation Code. The original requirement was two (2) independent directors or 20% of the Board, whichever was higher.

(Insurance Commission Circular Letter No. 2019-36, dated 23 July 2019)

Tax sovereignty

Mandatory submission of TINs to the Bureau of Immigration (BI)

All applicants for the following visas must submit a copy of their TIN cards or any proof of TIN to the BI:

1. Non-immigrant visas allowing foreign nationals to work; and
2. Special non-immigrant visas under EO No. 226, EO No. 758 and PD No. 1034.

The BI shall include the TIN requirement in all consolidated general application forms and checklists of documentary requirements for work-related visas and permits.

(Bureau of Immigration Operations Order No. JHM-2019-9, dated 27 June 2019)

Foreign workers

Implementing rules on Special Work Permits and Provisional Work Permits

The Bureau of Immigration issued implementing rules regarding the issuance of Special Work Permits (SWPs) and Provisional Work Permits (PWPs). The rules provide for the following:

- SWPs shall be issued to foreign nationals who intend to work, engage in specific activities or render services outside an employment arrangement.
- Examples of persons covered by SWPs
- Documentary requirements for SWPs depending on the type of applicant
- PWPs shall be issued to foreign nationals who intend to engage work pursuant to an employment arrangement pending issuance of their Alien Employment Permit or Commonwealth Act No. 613, Section 9(g) work visa.
- Documentary requirements for PWPs
- A SWP and PWP shall be for a maximum period of six (6) months, non-renewable, with an initial duration of not more than three (3) months plus final 3 months when applied for.
- Refugees and other classes of aliens

(Bureau of Immigration Operations Order No. JHM-2019-8, dated 27 June 2019)

Glossary

BI – Bureau of Immigration

EO – Executive Order

PD – Presidential Decree

TIN – Taxpayer Identification Number

Meet us

Tax directors give CPD seminars for ACPACI

PwC Philippines Tax Directors Janey Balboa and Joel Navarro conducted seminars on tax topics during separate afternoons in July at the Columns, Ayala corner Sen. Gil Puyat Avenues, Makati City.

Organized by the Association of Certified Public Accountants in Commerce and Industry (ACPACI), the seminars benefitted CPAs by allowing them to earn Continuing Professional Development (CPD) credits.



Janey's seminar is entitled "Tax Compliance Check: Transfer Pricing", held on 2 July.



Joel talked about "Tax Compliance Check: DST (Documentary Stamp Tax), Donor's Tax, Estate Tax, OPT (Other Percentage Tax), and IAET (Improperly Accumulated Earnings Tax)" on 4 July.

PwC PH partners headline AWC-PICPA MMR Day opening ceremonies

Three partners brought significant visibility for PwC Philippines with their presence during the opening ceremonies of the 2019 Accountancy Week Celebration-PICPA Metro Manila Region (AWC-MM) Day on 15 July 2019 at EDSA Shangri-La Hotel, Mandaluyong City.

Risk Assurance Partner Gett Apostol, Assurance Partner Paul Chester See, and Consulting Partner Robby Bassig were in the second segment on technical sessions.



Paul, as Chair of the AWC-MM Committee, gave his welcome remarks.



Gett handled the first technical session, which was about robotics process automation and accounting evolution.



For the third technical session, Robby talked about building digital trust in finance and accounting.

The Philippine Institute of Certified Public Accountants-Metro Manila Region organized the week-long celebration that ran from 14 to 19 July 2019.

FEU conducts filmed interview with Alex Cabrera on ethics



The Far Eastern University (FEU), for its Public Intellectual Lecture Series, interviewed PwC Philippines Chairman and Senior Partner Alex Cabrera on the topic of Applied Ethics on 29 July 2019 at the FEU TV studio in Manila.

The interview was filmed like a TV talk show. In his role as Chairman of the Integrity Initiative, Alex answered questions on the culture of corruption and how civil society organizations and business organizations can contribute to good governance.

The resulting video material will run for an hour and will be made available on Canvas, the school's learning platform. It will be viewed by all students of Applied Ethics, which is one of FEU's General Education courses.

Talk to us

For further discussion on the contents of this issue of the **Client Advisory Letter**, please contact any of our partners.

For tax and related regulatory matters



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