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Inventors only income tax-exempt, says BIR ^{p4} | Investee company not subject to donor's tax on APIC ^{p4} | CWT certificate not required for credit — CTA ^{p6} | BIR computation sheet is not an assessment ^{p6} | RMC cannot amend RR ^{p7}

Client advisory letter



Isla Lipana & Co.

At a glance

Updates, reiterations and clarifications on selected topics

Latest on income tax and other taxes

Inventors only income tax-exempt, says BIR	4
Unincorporated JV for construction not taxable in BIR ruling	4
Retirement plan, no income tax on land sale	4
Investee company not subject to donor's tax on APIC	4
Gift to government exempt from donor's tax	5
Technical service fees not royalties.....	5
BIR clarifies taxing of non-stock savings & loan associations....	5

Latest on tax assessments/ refund procedures

CWT certificate not required for credit — CTA	6
BIR computation sheet is not an assessment.....	6
Sale to foreign corp. doing business in PH not zero-rated	6
RMC cannot amend RR.....	7
CTA has jurisdiction to review abatement cases	7

Latest on regulatory landscape

Use of eFPS prerequisite for tax clearance	8
New daily minimum wage rates in Region III	8
Processing of application for tax abatement simplified	9
IC launches Enhanced Licensing System	9
Guidelines for overseas branches of local insurance companies	9
Activities allowed for micro-banking offices expanded.....	10

New PFRSs for 20

This series of articles will outline the new standards and interpretations under Philippine Financial Reporting Standards (PFRS) that will come into effect for 2016 year ends. Part one will cover Annual Improvements to PFRSs 2012-2014 Cycle.

The annual improvements project provides a streamlined process for dealing efficiently with a collection of amendments to IFRSs/PFRSs. The primary objective of the process is to enhance the quality of standards, by amending existing IFRSs/PFRSs to clarify guidance and wording, or to correct for relatively minor unintended consequences, conflicts or oversights. Amendments are made through the annual improvements process when the amendment is considered non-urgent but necessary.

The table identifies the more significant changes to the standards arising from the 2012 to 2014 annual improvements project and the implications for management.

Standard/Interpretation	Amendment	Effective date
PFRS 5, 'Non-current assets held for sale and discontinued operations' regarding methods of disposal	The amendment clarifies that, when an asset (or disposal group) is reclassified from 'held for sale' to 'held for distribution', or vice versa, this does not constitute a change to a plan of sale or distribution, and does not have to be accounted for as such. This means that the asset (or disposal group) does not need to be reinstated in the financial statements as if it had never been classified as 'held for sale' or 'held for distribution' simply because the manner of disposal has changed. The amendment also rectifies an omission in the standard by explaining that the guidance on changes in a plan of sale should be applied to an asset (or disposal group) which ceases to be held for distribution but is not reclassified as 'held for sale'.	Annual periods beginning on or after 1 January 2016.
PFRS 7, 'Financial instruments: Disclosures'	<p>There are two amendments to PFRS 7.</p> <ul style="list-style-type: none"> • Servicing contracts. <p>If an entity transfers a financial asset to a third party under conditions which allow the transferor to derecognize the asset, PFRS 7 requires disclosure of all types of continuing involvement that the entity might still have in the transferred assets. PFRS 7 provides guidance on what is meant by continuing involvement in this context. The amendment adds specific guidance to help management determine whether the terms of an arrangement to service a financial asset which has been transferred constitute continuing involvement. The amendment is prospective with an option to apply retrospectively. A consequential amendment to PFRS 1 is included to give the same relief to first-time adopters.</p> <ul style="list-style-type: none"> • Interim financial statements. <p>The amendment clarifies that the additional disclosure required by the amendments to PFRS 7, 'Disclosure - Offsetting financial assets and financial liabilities' is not specifically required for all interim periods, unless required by PAS 34. The amendment is retrospective.</p>	Annual periods beginning on or after 1 January 2016.
PAS 19, 'Employee benefits'	The amendment clarifies that, when determining the discount rate for post-employment benefit obligations, it is the currency that the liabilities are denominated in that is important, and not the country where they arise. The assessment of whether there is a deep market in high-quality corporate bonds is based on corporate bonds in that currency, not corporate bonds in a particular country. Similarly, where there is no deep market in high-quality corporate bonds in that currency, government bonds in the relevant currency should be used. The amendment is retrospective but limited to the beginning of the earliest period presented.	Annual periods beginning on or after 1 January 2016.
PAS 34, 'Interim financial reporting'	The amendment clarifies what is meant by the reference in the standard to 'information disclosed elsewhere in the interim financial report'. The amendment further amends PAS 34 to require a cross-reference from the interim financial statements to the location of that information. The amendment is retrospective.	Annual periods beginning on or after 1 January 2016.

Latest on income tax and other taxes

Inventors only income tax-exempt, says BIR

In a ruling issued early this year, the BIR reiterated that the Inventors and Inventions Incentive Act¹ grants inventors income tax exemption only during the first ten years from the date of the first commercial sale of the invention. Thus, an inventor shall be subject to other taxes, e.g. FWT on interest from bank deposit, CGT on sale of shares of stock and real property, income tax on income not arising from the inventor's productive activity, VAT, other percentage taxes, excise taxes, and DST. Nonetheless, the manufacture and sale of technologies (invented products) shall be exempt from payments of license, permit fees, customs duties, and charges on imports.

The BIR also clarified that the tax exemption applies to the inventor as a sole proprietor and not for any entity that commercially produces and distributes an invented product.

(BIR Ruling No. 11-2016 dated 8 January 2016)

Unincorporated JV for construction not taxable in BIR ruling

According to the BIR, a joint venture (JV) formed for undertaking construction projects is not taxable as a corporation if it complies with the conditions set in RR No. 10-2012. The JV partners must be licensed local contractors and/or foreign contractors with a special license as a contractor by PCAB with the construction project being certified by the appropriate government office as a foreign-financed/internationally-funded project. Further, the JV itself must be duly licensed by PCAB. Such qualified JV shall not be subject to corporate income tax and 2% CWT, and will not be required to file quarterly and final adjustment returns.

Instead, the co-venturers are the ones separately subject to tax and are required to enroll under eFPS. The JV shall withhold the tax based on the net income of its co-venturers.

(BIR Ruling Nos. 37-2016 and 38-2016 dated 15 January 2016)

Retirement plan, no income tax on land sale

Citing several SC decisions², the BIR affirmed that the sale of a qualified retirement plan of its undivided share in a parcel of land is not subject to income tax. The BIR recognized the clear declaration of the SC that the income of a pension trust should not be subject to any tax, assessment, fee or charge. Otherwise, it would result in a diminution of the accumulated earnings and reduce whatever trust beneficiaries would get out of the trust fund. This would defeat the intent of the law.

However, the BIR found that the land is being used for commercial purposes. Consequently, the BIR ruled that the sale is subject to VAT and DST.

(BIR Ruling No. 409-15 dated 14 December 2015)

Investee company not subject to donor's tax on APIC

In this case, the BIR attempted to assess donor's tax against the investee company for the capital infusion, in the form of contribution as additional paid-in capital (APIC), made by a non-resident corporation. The APIC was contributed to sustain the viability of the company's operations. While the CTA did not rule on whether or not an APIC is a donation, it held that even assuming that the same is a donation, the investee company is considered the donee. The burden to pay the donor's tax is imposed upon the donor and not upon the donee. Moreover, the liability for the payment of donor's

1 Section 6 of RA No. 7459, otherwise known as the "Inventors and Inventions Incentives Act of the Philippines"

2 G.R. No. 95022 dated 23 March 1992 and G.R. No. 162175 dated 28 June 2010

tax is not transferrable. Consequently, the taxpayer is not liable to pay the donor's tax.

(CTA Case No. 8653 dated 27 January 2016)

Gift to government exempt from donor's tax

The BIR confirmed that the donation to the Office of Civil Defense-National Disaster Risk Reduction and Management Council is not subject to donor's tax. The Tax Code³ is clear that donations made to or for the use of the National Government or any entity created by any of its agencies, which is not conducted for profit, or to any political subdivision of the Government, by a local or foreign donor, are not subject to donor's tax.

(BIR Ruling No. 437-2015 dated 23 December 2015)

Technical service fees not royalties

Income derived by a foreign corporation not engaged in trade or business in the Philippines is generally subject to income tax⁴. However, should the said income fall within the coverage of income exempt under a treaty⁵, the same may be exempt or partially exempt to the extent applicable.

In this case, the taxpayer filed a TTRA requesting for confirmation that its technical assistance fees paid to a Japanese entity are subject to relief under the PH-Japan tax treaty.

In its ruling, the ITAD stated that the fees for technical assistance are considered as business profits, instead of royalty payments under the OECD Model since the agreement only required the performance of services, rather than the supply of technical know-how or the transfer of skills, knowledge and expertise. Further, since the service fees are not attributable to any permanent establishment of the foreign company in the Philippines, the fees are exempt from income tax pursuant to paragraph 1, Article 7 of the PH-Japan treaty.

(BIR Ruling No. ITAD 375-15 dated 29 December 2015)

BIR clarifies taxing of non-stock savings & loan associations

As a rule, non-stock savings and loan associations (NSSLAs) are exempt from income tax with respect to income they receive, including interest on their deposits with any bank. However, any income derived from their properties, real or personal, or any activity conducted for profit is subject to applicable income tax. Likewise, any disposition of their properties is subject to income tax, depending on the classification of their properties, whether capital or ordinary assets, pursuant to Section 5 of RA No. 8367.

Further, NSSLAs are classified as non-bank financial intermediaries (NBFIs) under the BSP Manual of Regulations. As NBFIs, they are generally subject to gross receipts tax on income derived from their operations unless otherwise exempted under special rules.

Furthermore, NSSLAs are subject to DST under the provisions of RR No. 13-2004 implementing Title VII of the Tax Code. Thus, whenever an NSSLA is one of the parties to a taxable transaction, the NSSLA shall be responsible for the remittance of the DST due, regardless of who will bear the burden of paying the DST pursuant to RR No. 9-2000.

(Revenue Memorandum Circular No. 9-2016 dated 12 January 2016)

Glossary

APIC - Additional Paid-in Capital

BIR - Bureau of Internal Revenue

BSP - Bangko Sentral ng Pilipinas

CGT - Capital Gains Tax

CTA - Court of Tax Appeals

CWT - Creditable Withholding Tax

DST - Documentary Stamp Tax

eFPS - Electronic Filing and Payment System

FWT - Final Withholding Tax

ITAD - International Tax Affairs Division

JV - Joint Venture

NBFI - Non-bank Financial Intermediary

NSSLA - Non-stock Savings and Loan Association

PCAB - Philippine Contractors Accreditation Board

RA - Republic Act

RR - Revenue Regulations

SC - Supreme Court

TTRA - Tax Treaty Relief Application

VAT - Value-Added Tax

3 Section 101(A)(2) and 101(B)(1) of the Tax Code

4 As provided under Section 28(B)(1) and (5)(a) of the Tax Code

5 Under Section 32(B)(5) of the Tax Code

Latest on tax assessments/ refund procedures

CWT certificate not required for credit — CTA

The CTA did not agree with the BIR in disallowing the taxpayer's excess tax credits for failure of the taxpayer to support its claim with BIR Form No. 2307, also known as the Certificate of Creditable Tax Withheld at Source (CWT). The BIR argued that because the taxpayer only presented its Annual ITR for the succeeding years, to show that the excess credits were not utilized, the total amount of tax credits claimed cannot be ascertained by mere presentation of the Annual ITR. It must be established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld from it.

The CTA *en banc* ruled that the requirement⁶ of showing a copy of the withholding tax statement to establish the fact of withholding specifically pertains only to claims for tax credit or refund. Thus, it cannot be used or cited by the BIR as a requirement in a case that does not involve a claim for tax credit or refund, but one involving tax assessments.

(CTA EB No. 1202 dated 28 January 2016)

BIR computation sheet is not an assessment

The CTA held that a computation sheet from BIR's One-Time Transaction (ONETT) imposing surcharges and penalty interest is not considered an assessment as contemplated under the Tax Code. An assessment must contain not only a computation of tax liabilities, but also a demand for payment within a prescribed period. Without the formal demand for payment, the taxpayer has no way to determine the period within which to protest the tax liabilities made by the BIR.

In this case, given that there is no assessment to speak of, the CTA has no jurisdiction over the case on appeal. The rule is that the appellate jurisdiction of the CTA is limited to decisions and inaction of the CIR in cases involving disputed assessments.

(CTA Case No. 8684 dated 21 January 2016)

Sale to foreign corp. doing business in PH not zero-rated

The CTA denied the VAT refund of a taxpayer-claimant for failure to prove its VAT zero-rated sales. The taxpayer represented that its sales of services to a foreign affiliate is VAT zero-rated under Section 108(B)(2) of the Tax Code. However, the CTA found that part of the taxpayer's unutilized input taxes include input taxes on purchases from the same foreign affiliate. The taxpayer-claimant can only generate these input taxes if the foreign affiliate has performed services or is doing business in the Philippines.

This being the case, the taxpayer's sales to such foreign affiliate doing business in the Philippines do not qualify for VAT zero-rating. The CTA stressed that for sales of service to be zero-rated, the recipient (the foreign affiliate in this case) of such services must be doing business outside the Philippines.

(CTA Case No. 8628 date 22 January 2016)

Glossary

BIR - Bureau of Internal Revenue
CIR - Commissioner of Internal Revenue
CTA - Court of Tax Appeals
CWT - Creditable Withholding Tax
EWT - Expanded Withholding Tax
ITR - Income Tax Return
ONETT - One-Time Transaction
RA - Republic Act
RMC - Revenue Memorandum Circular
RR - Revenue Regulations
SC - Supreme Court
VAT - Value-Added Tax

6 Under Section 2.58.3 (B) of RR No. 2-98

RMC cannot amend RR

In this case, the CTA clarified the withholding tax rule on income payments to agricultural supplies.

In 2004, RR No. 3-2004 was issued to suspend the withholding tax on purchases of agricultural products. However, on 6 July 2007, the BIR issued RMC No. 44-2007 saying that the 1% withholding tax on income payments to agricultural suppliers is still required if the buyer is a Top 10,000 corporation. On this basis, the BIR tried to assess deficiency 1% EWT against the taxpayer.

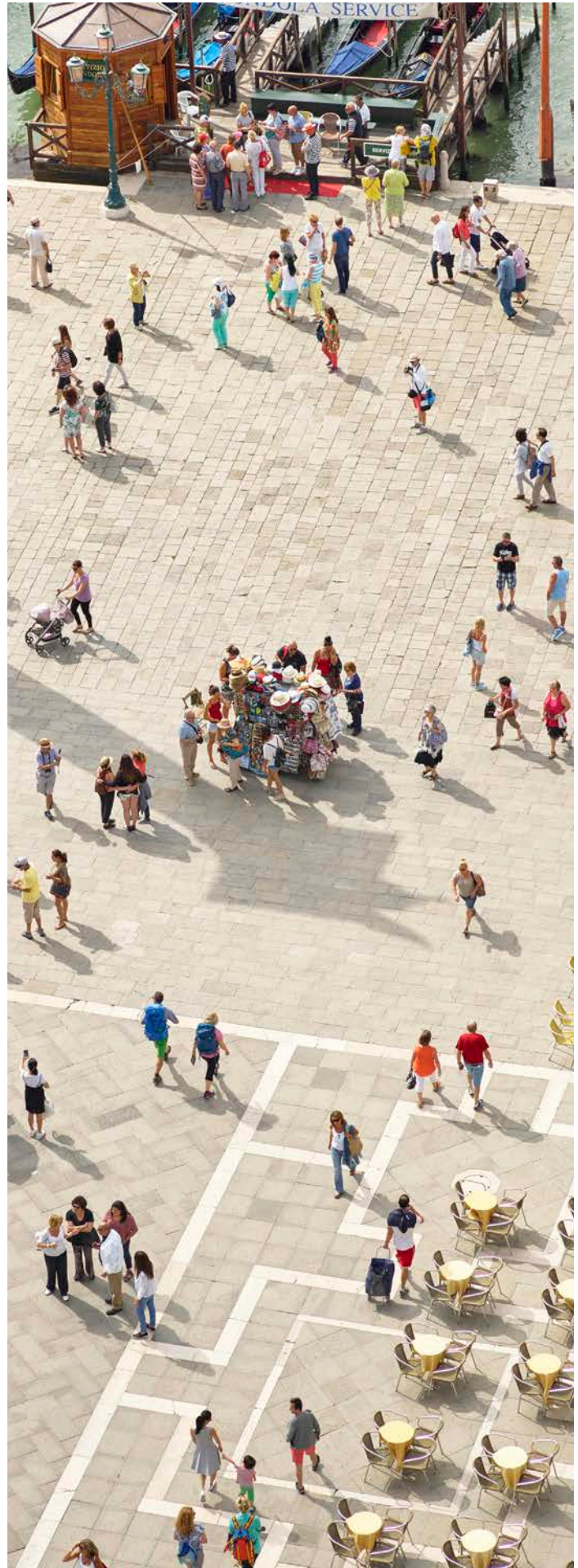
The CTA cancelled the EWT assessment. Citing an SC case⁷, the CTA ruled that if and when an administrative rule goes beyond being interpretative in nature and substantially increases the burden of those governed, it is the duty of the government agency to at least inform those that are directly affected and accord them the chance to be heard before the new issuance is given the force and effect of law. On its part, the CIR failed to show any record or such other documentary evidence that may prove its compliance with said requirement. The taxpayer was not informed of the clarifications made in the RMC since it was addressed and directed only to all internal revenue officers for compliance.

(CTA Case No. 8593 dated 9 February 2016)

CTA has jurisdiction to review abatement cases

Under RA No. 1125, as amended by RA No. 9282, the CTA, as an appellate court, has exclusive jurisdiction to review, among others, the decisions of the CIR for cases which arise under the Tax Code or other laws administered by the BIR. While the said provision does not expressly indicate cases on application for abatement of surcharge, the CTA has appellate jurisdiction over tax abatement cases since these arise from the existing provisions of the Tax Code and its regulations.

(CTA Case No. 8816 dated 22 January 2016)



⁷ G.R. No. 150947 dated 15 July 2003

Latest on regulatory landscape

Use of eFPS prerequisite for tax clearance

The BIR issued new regulations, amending the provisions of RR No. 3-2005, which govern the issuance of a tax clearance as a precondition for participating in any government contract. The salient provisions are as follows:

- Only tax returns filed through eFPS will be accepted as the required submission for participating in public biddings.
- New tax clearance applicants must be regular users of the BIR's eFPS for at least two consecutive months prior to the application. Other applicants who were previously issued a tax clearance for bidding purposes should be regular users from the time of enrollment up to the time of application.
- Tax clearance applicants must have no unpaid annual registration fee, no open valid "stop-filer" cases, no pending criminal charges with the Department of Justice

or any competent court, and no delinquent account and/or judicially protested tax assessments with decisions favorable to the BIR. Delinquent accounts may arise from self-assessed taxes, or an assessment notice which was not protested within the prescribed period.

- Names of prospective bidders/taxpayers who shall be found to have submitted a spurious tax clearance shall be forwarded to the BIR Prosecution Division for the filing of appropriate criminal charges.

(Revenue Regulations No. 1-2016 dated 10 February 2016)

New daily minimum wage rates in Region III

The Regional Tripartite Wages and Productivity Board – Region III issued a new wage order for the provinces in Region III that took effect last 1 January 2016 or 15 days from its publication. Region III covers the provinces of Aurora, Bataan, Bulacan, Nueva Ecija, Pampanga, Tarlac and Zambales and the cities of Angeles, Balanga, Cabanatuan, Gapan, Malolos, Muñoz, Olongapo, Palayan, San Fernando, San Jose, San Jose Del Monte and Tarlac.

The two-tiered wage system will be implemented as follows:

- **PHP15.00/day** basic pay increase in all provinces (except retail/service with less than 16 workers in Aurora) to be given in two tranches:
 - **PHP8.00** per day upon effectivity of the order
 - **PHP7.00** per day effective 1 May 2016
- **PHP20.00/day** basic pay increase for the retail and service establishments with less than 16 workers in the province of Aurora to be given in two tranches:
 - **PHP10.00** per day upon effectivity of the order
 - **PHP10.00** per day effective 1 May 2016

The said wage rate, however, does not cover household or domestic helpers, persons in the personal service of another and workers of duly registered Barangay Micro Business

Glossary

AFS - Audited Financial Statement
BIR - Bureau of Internal Revenue
BSP - Bangko Sentral ng Pilipinas
CIR - Commissioner of Internal Revenue
DST- Documentary Stamp Tax
EB - Evaluation Board
eFPS - Electronic Filing and Payment System
IC - Insurance Commission
LTS - Large Taxpayers Service
RA - Republic Act
REB - Regional Evaluation Boards
RMO - Revenue Memorandum Order
RR - Revenue Regulations
TWC - Technical Working Committee
TWG - Technical Working Groups

Enterprises with Certificates of Authority pursuant to RA No. 9178.

(Revenue Memorandum Circular No. 10-2016 dated 21 January 2016)

Processing of application for tax abatement simplified

To facilitate and expedite the processing of the applications for compromise settlement and abatement or cancellation of internal revenue tax liabilities, the CIR issued the following amendments to RMO No. 20-2007:

1. All applications for compromise settlement, abatement or cancellation of internal revenue tax liabilities filed by concerned taxpayers under the respective jurisdictions of the Revenue Regions and Large Taxpayers Service (LTS), regardless of the amount of threshold prescribed for compromise settlement⁸, that have been evaluated resulting to a recommendation for denial of the application, shall be considered final and the outstanding tax liabilities shall be immediately collected from the taxpayer.
2. The Notice of Denial (Annex A of the Order) shall be prepared by the Office of the Regional Director for regional cases and Office of the LTS for LTS cases. In case the recommendation of the Evaluation Board (EB), regional or LTS as the case maybe, is to approve the taxpayer's application, the procedural requirements set forth under RR No. 30-2002 and RR No. 13-2001, as amended, and other related issuances shall still be observed.
3. The LTS sub-Technical Working Committee (TWC)/EB and all regional Technical Working Groups (TWG)/Regional Evaluation Boards (REB) shall evaluate and release their decision within 15 calendar days from the receipt of application for compromise settlement or abatement.
4. The prescribed reports (Annexes A to G of the Order) for applications for compromise settlement/abatement penalties under Operations Memorandum No. 13-01-003 shall be strictly observed by all revenue offices.

This Order shall not apply to all applications for compromise settlement and abatement of penalties transmitted and pending with TWG/NEB/TWC in the National Office as of 29 January 2016; instead, the pertinent procedural requirements set forth under relevant revenue issuances shall apply.

(Revenue Memorandum Order No. 4-2016 dated 25 January 2016)

IC launches Enhanced Licensing System

All regulated entities of the IC are directed to process their new and renewal application for license via the Enhanced Licensing System (ELS) of the IC starting 1 February 2016.

(Insurance Commission Circular Letter No. 2016-04 dated 27 January 2016)

Guidelines for overseas branches of local insurance companies

To monitor the activities of branches established outside the Philippines by domestic insurance companies, the IC issued the following set of guidelines:

- All domestic insurance companies intending to carry out their activities through a branch in other jurisdictions should seek for prior approval with the IC. Sales, purchases, exchanges, loans or extensions of credit or investments made by the branch also require prior approval of the Commission.
- The parent company should comply with the minimum paid-up capital and net worth under the Insurance Code for a domestic company.
- The branch should have secured the necessary license in the jurisdiction in which it operates.
- The branch should limit the exposure of policyholders from the host jurisdiction to the risks associated with the branch's legal structure.
- The branch should submit its AFS annually, not later than 30 March.
- The branch should provide the names of the representatives or officers in the jurisdiction where it operates.

(Insurance Commission Circular Letter No. 2016-07 dated 5 February 2016)

⁸ Under the provisions of Section 204(A) of the Tax Code

Activities allowed for micro-banking offices expanded

In addition to non-transactional banking-related activities and services allowable for regular “other banking offices” (OBOs), all “microfinance oriented OBOs” (MF-OBOs) or “micro-banking offices” (MBOs) may also approve, open and accept micro-deposits including initial deposit and service withdrawals provided that: (1) only an MF-OBO/MBO will perform the said task; (2) the bank shall ensure timely accounting and proper recording of all financial transactions of its MF-OBOs/MBOs and observe appropriate internal control procedures; and (3) the bank’s compliance program shall take into account MF-OBOs/MBOs and their activities. Under the Manual of Regulations for Banks, the average daily savings account balance for a micro-deposit account shall not exceed PHP40,000.00, unless a higher amount has been approved by the BSP.

(BSP Circular No. 901-2016 dated 29 January 2016)

Meet us

“PwC’s Needles in a Haystack” column debuts in the Manila Times



The firm’s newest column, entitled “PwC’s Needles in a Haystack”, debuted today in the *Manila Times*.

Vice Chairman and Assurance Managing Partner Rick Danao penned the maiden article “Is your profit real?”

By way of ushering in readers to the new column, Rick wrote, “Our clients often turn to us for help in identifying operational, accounting, tax, legal and other issues of which they may not be aware of and could present serious problems to their businesses. We are honored that The *Manila Times* has provided our PwC partners a venue to bring to light significant but often undetected issues affecting businesses of every size and scale through this weekly column, ‘PwC’s Needles in a Haystack.’”

This is the firm’s third newspaper column. The first one is “Taxwise or Otherwise” mainly written by our Tax people, and it appears every Thursday in *BusinessWorld*. The other one is “As Easy as ABC” by Chairman and Senior Partner Alex Cabrera, published every Sunday in the *Philippine STAR*.

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Glossary

BSFI - BSP-supervised Financial Institution

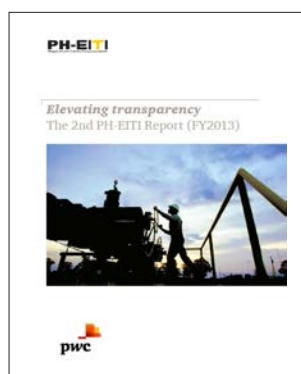
BSP - Bangko Sentral ng Pilipinas

MBO - Micro-banking offices

MF-OBO - Microfinance-oriented OBO

OBO - Other Banking Offices

PH-EITI elevates transparency with PwC



Our firm completed the second Philippine Extractive Industries Transparency Initiative (PH-EITI) Report, which was launched 16 February 2016 at the Manila Hotel. This is the firm's second win to serve as Independent Administrator for the PH-EITI last April 2015.

Major stakeholders at the launch included representatives from participating mining and oil and gas companies, relevant government agencies, civil society organizations, EITI International Secretariat, World Bank, and USAID Philippines. The guest speaker was His Excellency Asif Ahmad, United Kingdom Ambassador to the Philippines.

The second PH-EITI Report, covering CY 2013 government collections/revenues from 36 participating companies, was submitted to EITI International Board, based in Norway, in December 2015.

EITI is a global standard of transparency that requires oil and gas, and mining companies to publish what they pay to the government; and the government to publish what they collect from these companies. Currently, there are 31 EITI compliant countries and 18 EITI candidate countries, including the Philippines. Indonesia is the first ASEAN country declared EITI Compliant in October 2014. The Philippines and Myanmar are the ASEAN countries now pursuing EITI compliance. Becoming an EITI Compliant Country is included in the 2010-2016 Philippine Development Plan of the Aquino administration.

To access the full report, go to www.pwc.com/ph/eiti2013

Talk to us

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

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Request for copies of text

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