

INSIGHTS

MARCH 2018

A monthly digest of significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies)

First Issue, Series of 2018



Competent Representation

We provide competent representation and excellent service to our wide array of clients in the area of taxation and corporate law.

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CEO MESSAGE

This April 2018, we are launching the first issue of **INSIGHTS**, an electronic monthly publication containing important updates and developments, as well as insights from our experts, on matters related to tax, incentives and regulatory issuances.

INSIGHTS is our response to the clamor of clients seeking to be equipped with deeper knowledge and timely guidance on taxation. Our summaries, case digests and insights are presented in the simplest way possible for easier understanding and enjoyable reading.

Of significant importance in this Issue are the revenue issuances (Revenue Regulations 11-13, 2018) released by the BIR to implement the changes introduced by **TRAIN**. The changes are presented via infographics to make it easily understandable even at first glance.

I hope you find this publication useful. We would be glad to receive your feedback as we commit to continuously improve not only its contents but its overall layout as well.



Benedicta Du-Baladad
Managing Partner and CEO

HIGHLIGHTS for MARCH 2018

Court Decisions

- **The computation for interests and penalties under the TRAIN Law takes effect as of January 1, 2018.** (Moog Controls Corporation, Philippines v. Commissioner of Internal Revenue, CTA Case No. 9077)
- **The CTA has no jurisdiction when the issue involved is the issuance of a local government business permit because it is not a local tax case.** (The City Government of Makati v. RTC Makati City Branch 59 and MACTEL Corporation, CTA EB No. 1465)
- **A final Resolution of the Court of Tax Appeals decision requires the presence at the deliberation and the affirmative vote of at least two justices.** (UNISYS Philippines Limited v. CIR, CTA EB Case No. 1450)
- **Royalty payments made to the seller in connection with the purchase of products abroad are part of the valuation of imported items subject to customs duties.** (Colgate-Palmolive Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1471)
- **A Letter of Authority (LOA) has a 120-day validity period. Any investigation and report issued by an examiner without revalidating the LOA is void.** (GS MTE Grains Corporation v. Commissioner of Internal Revenue, CTA Case No. 8837)

BIR Issuances

- **RR 11-2018, March 15, 2018** - Amendments to withholding tax on income payments, to implement the changes introduced by TRAIN.
- **RR 12-2018, March 15, 2018**- Estate and Donors Taxes Implementing Regulations, to implement the changes introduced by TRAIN.
- **RR 13-2018, March 15, 2018** - Amendment to Implementing VAT Regulations, to implement the changes introduced by TRAIN.

SEC Opinions

- **OGC Opinion 18-02, February 28, 2018** - On-line election for members of the Board of Directors of a SEC-registered professional organization can only be resorted to if it is expressly set-forth in the by-laws of the corporation.

Articles Written

- **Lawyers Must Kiss and Tell, Business Mirror: Tax Law for Business, March 8, 2018** - The article questions the validity of RMC 12-2018 which mandates the Commissioner of Internal Revenue (CIR) to obtain any information on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation. This includes lawyers, which may result in violation of lawyer-client privilege.

COURT ISSUANCES

I

Significant Court of Tax Appeals Decisions

A taxpayer is allowed to pay an assessed deficiency tax and to subsequently file a claim for refund. (CTA Case No. 9337)

The taxpayer was assessed DST for its intercompany transactions, based on the Filinvest Case and RMC 48-2011. Maybe, to avoid accumulation of deficiency and delinquency interest in case of an adverse decision, the taxpayer opted to pay the amount assessed in the PAN and subsequently file a claim for refund. The court ruled that this is a remedy that may be availed of by a taxpayer.

Note: But what if a case has already been filed in court and a taxpayer decides to pay, instead, just to arrest the accumulation of interest in the event of an adverse decision? Can he amend his petition for cancellation of an assessment to a claim for refund? The court in another case, ruled that the taxpayer can amend his petition from cancellation of an assessment to a claim for refund. A substantial amendment to a pleading is allowed provided that leave of court is obtained and intent to delay is absent on the part of the movant. If the original Petition for Review prayed for the cancellation of the disputed assessment, that relief according to the court is inextricably interwoven with a prayer for refund in an Amended Petition for Review. (CTA EB 1515)

Also, the court ruled that the Supreme Court's (SC) interpretation of a statute constitutes part of the law as of the date it was originally passed. (CTA Case 9337)

The Decision of the SC in the Filinvest case, which was issued in 2011, may be applied to advances made to the taxpayer in 2010 without violating the principle of non-retroactivity of laws and rulings. The SC's interpretation of a statute constitutes part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law it is only when a prior ruling of the SC finds itself later overruled, and a different view is adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.

Dissent of Justice Manahan: Since the SC decision is prejudicial to the taxpayer, it should not have been given retroactive effect. She applied the general interpretative rule doctrine laid down in the San Roque case.

An assessment based on third-party matching without validation from third parties is void. (CTA EB 1572)

The taxpayer was assessed with deficiency income tax and VAT from undeclared purchases. The BIR arrived at the assessment using third-party matching. The court ruled that the third-party matching was not verified in accordance with RMO No. 46-04.

Further, the court ruled that since what was undeclared were purchases, the BIR has the burden to prove that the same undeclared purchases resulted in deficiency taxes.

What does "verification" mean? Proper verification requires the execution and presentation of sworn statements from third-party informants to attest to the veracity of the schedules and data on which the assessment is based. If there is no verification, the reliability of such information is questionable. Any assessment derived from the same is void for having no factual basis.

Concurring Opinion of PJ Del Rosario: The LOA is invalid for being received by the taxpayer beyond its 30-day validity, and that the FAN has no date of demand.

The computation for interests and penalties under the TRAIN Law takes effect as of January 1, 2018. (CTA Case 9077)

The taxpayer was found liable for deficiency taxes by the CTA. The decision was promulgated on January 3, 2018. The taxpayer filed for reconsideration of the decision, arguing that the amendments brought about by the TRAIN Law prohibits the simultaneous application of deficiency and delinquency interest. The court ruled that given the effectivity period of the TRAIN Law, the computation of interests from January 1, 2018 onwards should follow the said law. In other words, the computation of interests using the Tax Code prior to the amendments of the TRAIN Law should apply, but only up to December 31, 2017. From January 1, 2018 onwards, the interests as imposed by the TRAIN Law, which is a flat rate of 12% per annum, should apply.

Note : This is a novel decision on the application of interest as prescribed under the TRAIN Law.

FAN must indicate not only the legal and factual bases for the assessment but must also state a clear and categorical demand for payment of the computed tax liabilities within a specific period. (CTA Case 9406)

The taxpayer was assessed for deficiency tax. The BIR erroneously left the spaces for due dates in the enclosed FAN blank. The assessment was cancelled because there is no definite demand for payment. This doctrine has already been affirmed by the Supreme Court in the Medicaid case.

Note: Interestingly, prior to the Medicaid case, the CTA was in a position that the due dates for payment may be derived from the tax due in the FAN since it indicates until when the interest is computed. (CTA Case 8227)

The CTA has no jurisdiction when the issue involved is the issuance of a local government business permit because it is not a local tax case. (CTA EB Case 1465)

The City Treasurer of Makati made an assessment for deficiency local taxes against the taxpayer. Meanwhile, the taxpayer tried to apply for the renewal of its business permit, but the City of Makati refused to issue the same due to an alleged business tax deficiency of the taxpayer for a prior year. The RTC issued a Writ of Preliminary Injunction in favor of the taxpayer. The City Treasurer assailed the said order before the CTA. The CTA ruled that it does not have jurisdiction over a Petition for Certiorari assailing the interlocutory order issued by RTC when the case filed in the RTC does not involve a local tax case nor an appeal pursuant to the Local Government Code.

Note: When a local government refuses to issue a business permit, what is the remedy of the taxpayer considering that it is not a local tax case?

Tax Verification Notice (TVN) is not the valid LOA contemplated under the law. The subsequent issuance of the Revalidation Notice to substitute Revenue Officers directing them to continue the audit did not cure said infirmity. (CTA Case 8555)

A TVN was issued authorizing a Revenue Officer (RO) to examine the taxpayer's records. Due to the transfer of the first RO, a Revalidation Notice was issued authorizing a new RO to continue the examination. Thereafter, the taxpayer received the Final Assessment Notice (FAN), finding it liable for deficiency taxes.

The court ruled that mere "Tax Verification Notice" is not the valid LOA contemplated under the law. Thus, considering that the RO who conducted the examination was not validly authorized to do so, the assessment is void.

A Preliminary Collection Letter (PCL) from the BIR is among the “other matters” arising under the NIRC” from which a taxpayer may file an appeal with the CTA. (CTA Case 8199)

A PCL was received by the taxpayer after it filed its Motion for Reconsideration on the FDDA. According to the court, a PCL can be treated as the decision on the MR, which can be elevated to the CTA.

Note: Generally, when a collection notice, like the PCL, is elevated to the CTA, what the taxpayer will question is not the validity of the assessment but the validity of the collection. In this case, since the court treated the PCL as the decision on the FDDA, can the taxpayer still question the validity of the assessment and not just the validity of the collection?

A final Resolution of the Court of Tax Appeals decision requires the presence at the deliberation and the affirmative vote of at least two justices. (CTA EB 1450)

The court ruled that the taxpayer’s motion for reconsideration was a mere scrap of paper. But the required quorum was not met in the issuance of said Decision order, requiring at least the presence and affirmation of at least two justices. The CTA in division is mandated to act as collegiate body in the deliberation of final resolution. Thus, the Division order, ruling on the taxpayer’s Motion for Reconsideration was improperly issued.

Note: The MR was considered as a mere scrap of paper because it does not state the date and time when the said MR will be heard. Thus, in any motion, a specific date and time of hearing must be stated and the other parties must be notified of the same.

Microfinancing activities are subject to VAT. (CTA Case 9003)

The taxpayer, a non-stock, non-profit corporation, is engaged in microfinancing activities. It was assessed by the BIR with deficiency VAT. The taxpayer argues that VAT does not cover microfinancing, as it is not an activity aimed at turning a profit. In other words, the taxpayer argues that microfinancing is not in “the course of trade or business”. However, the CTA upheld the assessment. In quoting previous SC decisions, the CTA held that pursuit of profit is not necessary for an activity to be subject to VAT. The sole requirement is that the good or service exchanged is for remuneration. Thus, in charging interest from its borrowers, the transaction is already subject to VAT.

Royalty payments made to the seller in connection with the purchase of products abroad are part of the valuation of imported items subject to customs duties. (CTA EB 1471)

The taxpayer was assessed with deficiency customs duties and VAT, in connection with its importation of products to be sold.

The deficiency stemmed from the under-valuation of the imported products, as the taxpayer did not include the royalties paid to the seller as part of the value of the imported goods. The taxpayer argues that the royalty payments are not necessary for its purchase of the imported goods, and that the same were incurred for purposes of being able to use the seller’s brand here in the Philippines. However, the court ruled that the purpose for which the royalties are paid are substantially related to the purchase of the products. Further, the court noted that the purchase agreement between the taxpayer and the seller require the payment of royalties, and failure to do so would result to the termination of the contract. Thus, the payment of royalties should be included in the computation of the value of the imported goods.

Bad Debts written-off in previous year should not be added back to the accounts receivable in the succeeding year. (CTA Case 9108)

The taxpayer was assessed with deficiency income tax due to undeclared receipts. In its protest, the taxpayer contends that the alleged undeclared receipts are actually receivables from the previous taxable year that were written off. The BIR argues that its computation of taxpayer’s cash flow is similar to that of the taxpayer, thus the

finding that there were undeclared receipts is correct. The court ruled that unless the BIR found that the previous year's bad debts were actually collected on the current taxable year, then the same cannot be added back to the taxpayer's receivables for the year.

Subsequent issuance of Final Decision on Disputed Assessment (FDDA) does not validate a Protest to the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) filed beyond the 30-day period. (CTA Case 8476)

The taxpayer was assessed with various deficiency taxes. The said findings of deficiency were questioned before the CTA. The BIR argued that the CTA had no jurisdiction over the case, as the FAN has already attained finality due to the taxpayer's failure to protest the same within 30 days from receipt of the FAN. The taxpayer argues that since the BIR subsequently issued an FDDA, then the proper period to compute the filing period would be from receipt of the FDDA. The court, however, ruled that the FAN has indeed attained finality since the taxpayer failed to protest the same within 30 days from receipt. The subsequent issuance of the FDDA does not cure the lapse of the opportunity to file a protest.

In a claim for VAT refund, taxpayer must submit additional documents when he receives "verbal" or "written" requests from the BIR. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period. (CTA 9032)

The taxpayer filed a claim for refund after the expiration of the 120-day waiting period. But, on April 27, 2012, it received a Letter of Authority (LOA) with a Checklist of Requirements. The said checklist enumerated the additional documents requested by the BIR from the taxpayer for the complete determination of its claim for refund. However, there is no evidence on record which shows that it complied with the request. The court ruled that the 120-day period should be counted 30 days from April 27, 2012 when the taxpayer received the LOA with the Checklist of Requirements, or from May 27, 2012, pursuant to the ruling laid down in the Pilipinas Total case in relation to RMC No. 49-2003. The reason for this is that records do not show that the taxpayer submitted any documents within the 30-day period from April 27, 2012 (the date it received the Checklist of Requirements), hence the 120-day period should be counted from the lapse of the 30-day period or on May 27, 2012. Thus, the taxpayer's judicial claim was filed out of time.

Note: Does this ruling still apply today with the issuance of RMC 17-2018? What if after filing a claim for refund together with the complete documents (with a sworn statement that the complete documents have been submitted), the BIR still issue an LOA with a checklist of requirements, should the taxpayer comply? The reckoning of the 120-day period and the 30-day period to appeal to the CTA will be affected whether the taxpayer chooses to submit or not.

1. A Letter of Authority (LOA) has a 120-day validity period. (CTA 8837)

The Revenue Officer according to the court is allowed only 120 days from the date of the receipt of the LOA by the taxpayer to conduct the audit and submit the required report of investigation. If the Revenue Officer is unable to submit the final report of investigation within the 120-day period, the Revenue Officer must then submit a Progress Report to the head office and surrender the LOA for revalidation. If the Revenue Officer submits a final report of investigation without a revalidated LOA, he will be considered to have acted beyond his authority, making the assessment void.

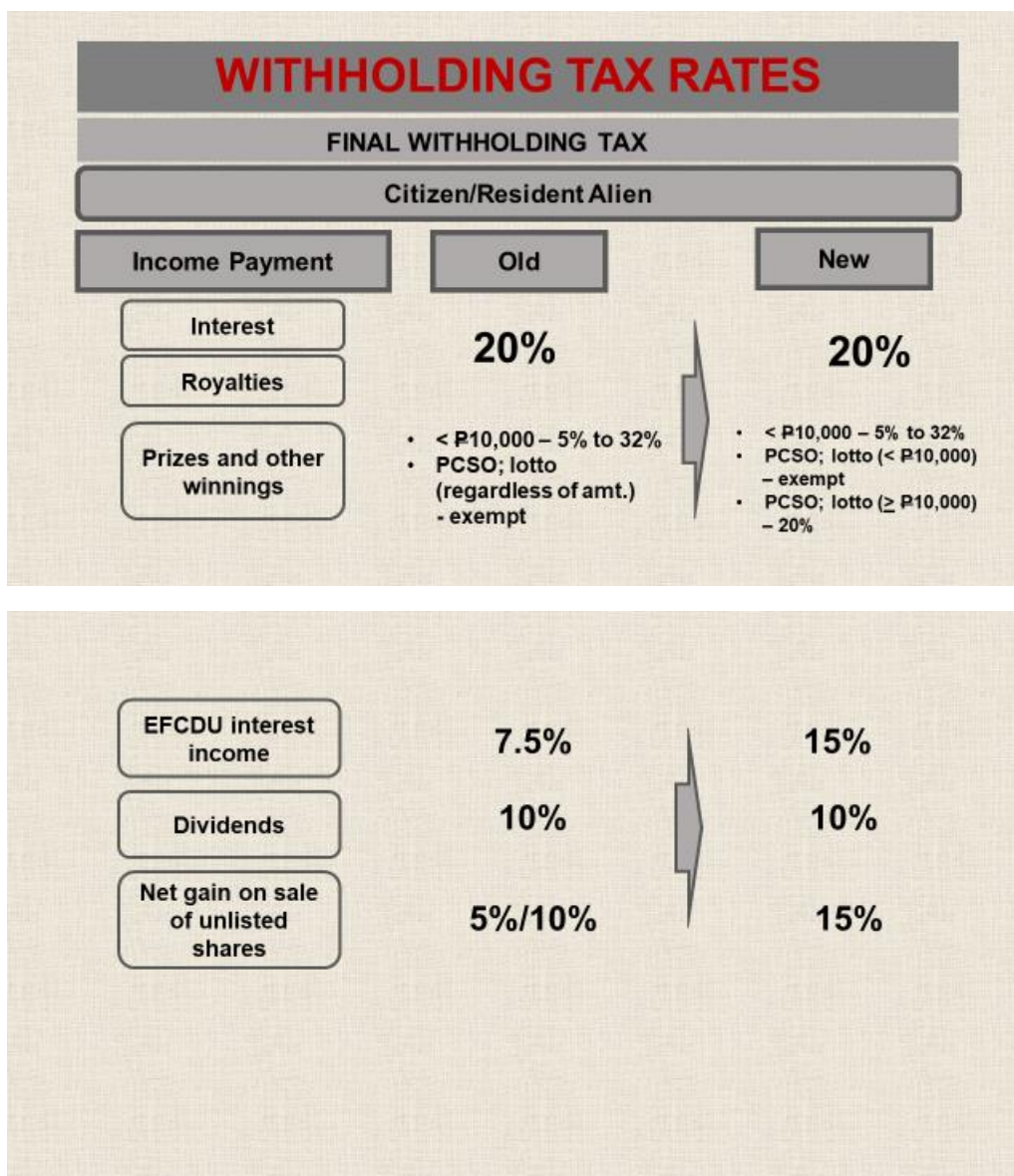
Note: This is a deviation from the previous decisions of the court where it has consistently ruled that failure to revalidate an LOA does not make an assessment void. It will only subject erring revenue officers to administrative sanctions.

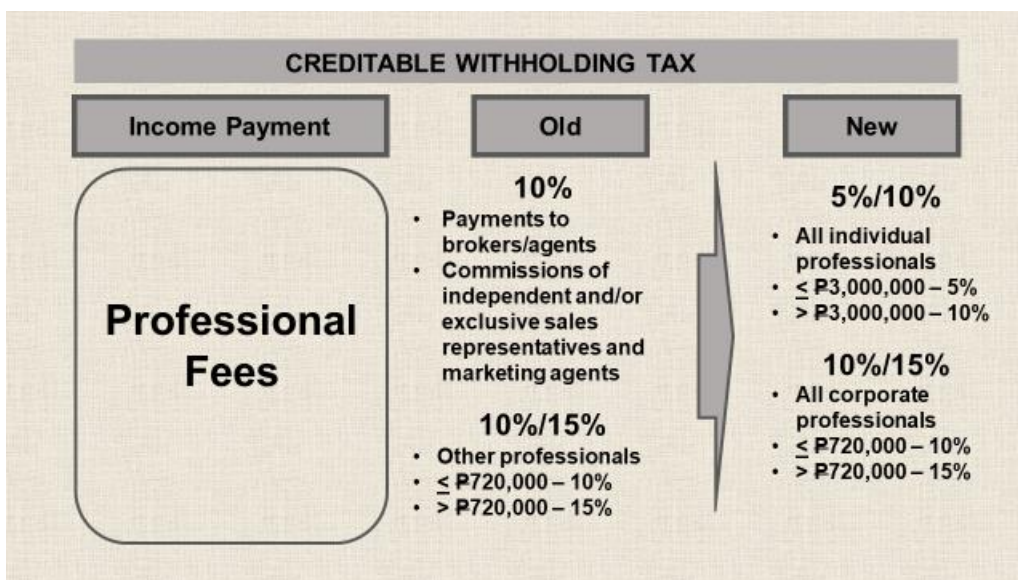
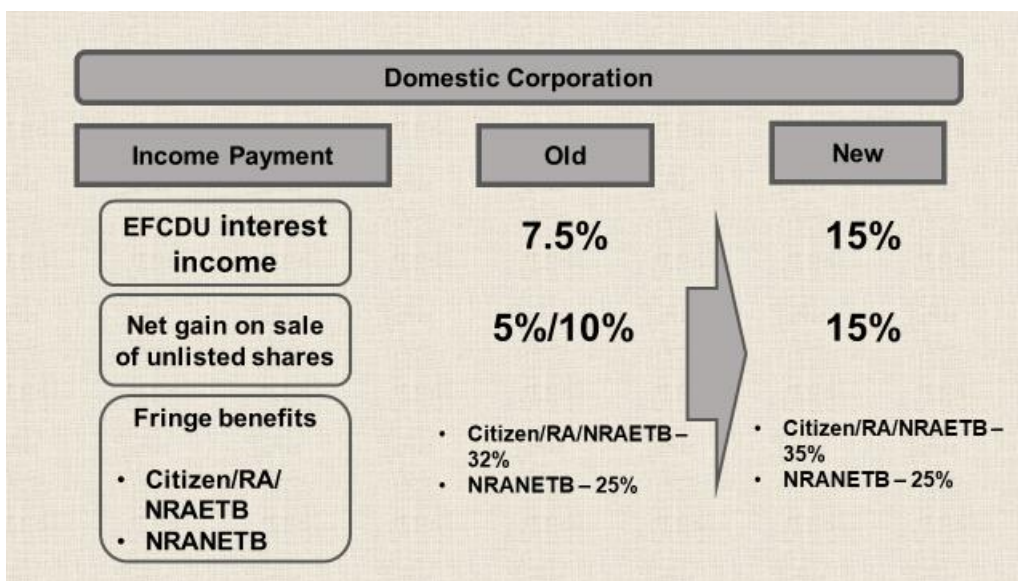
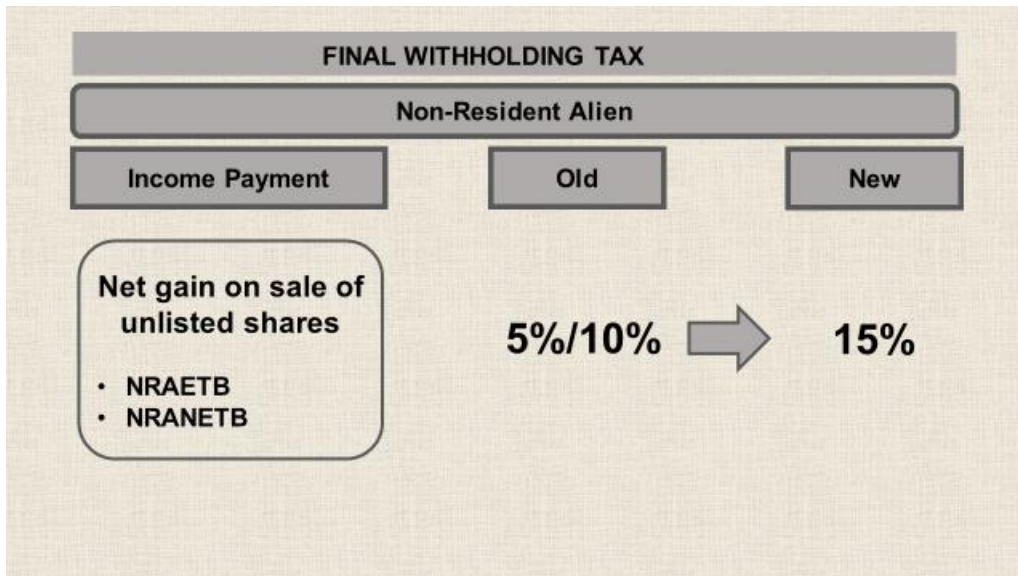
The court is now adapting the January 2018 En Banc decision in CTA EB 1535.

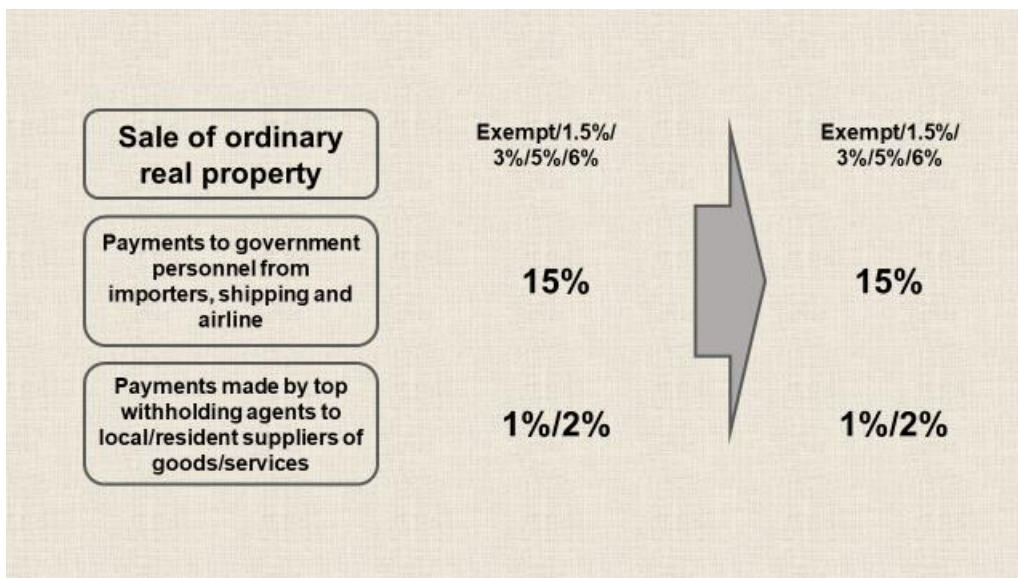
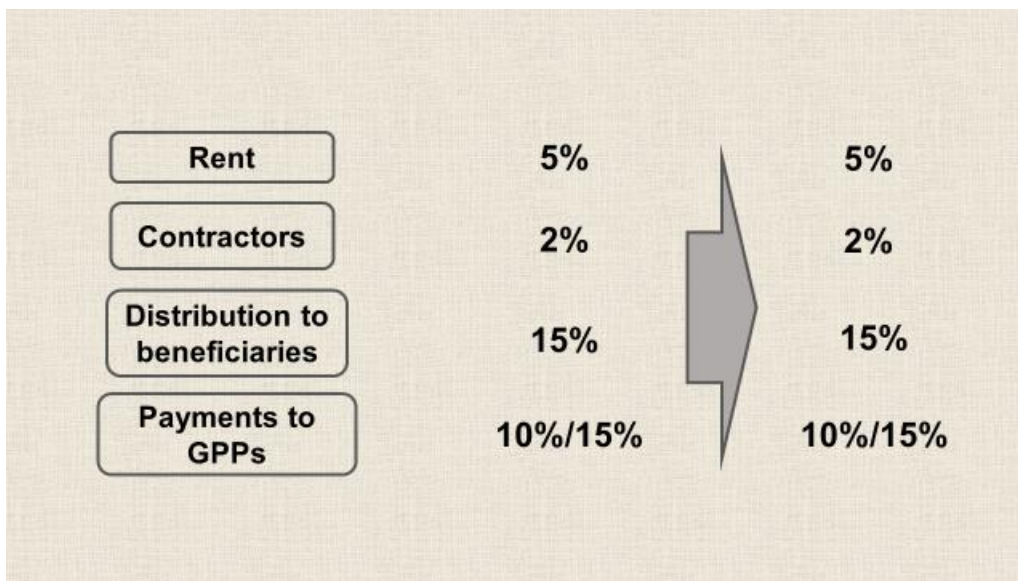
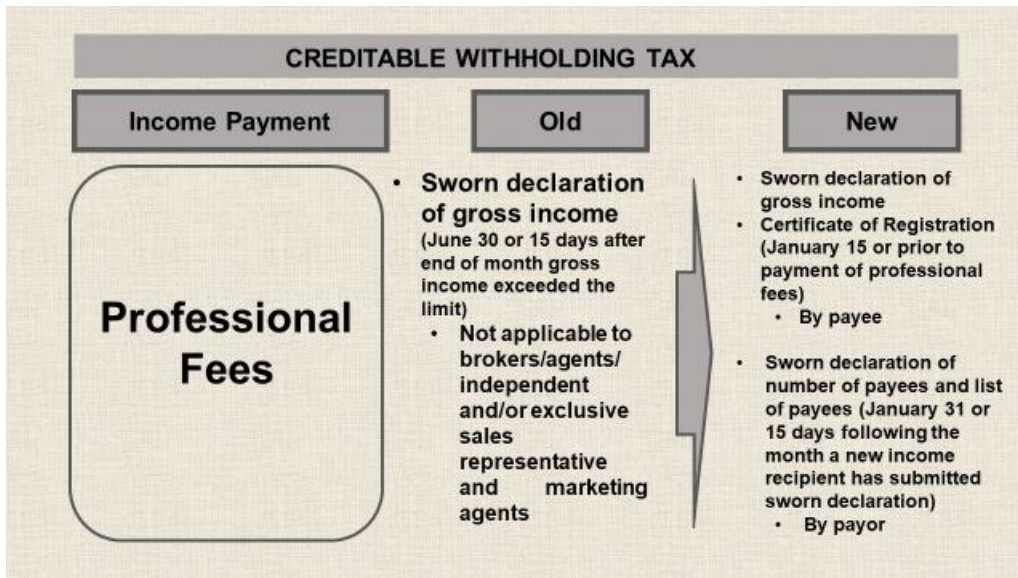
BIR Issuances

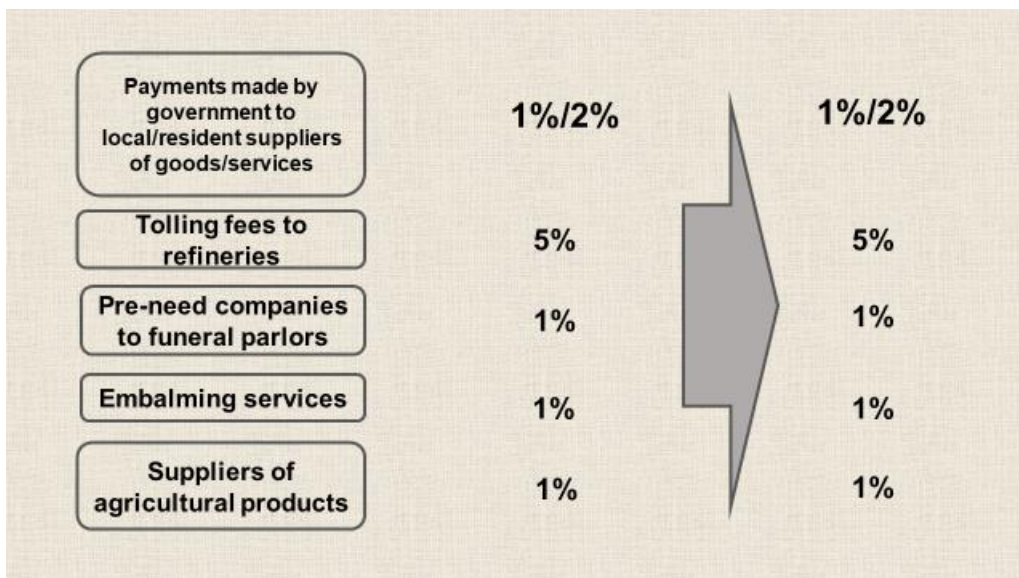
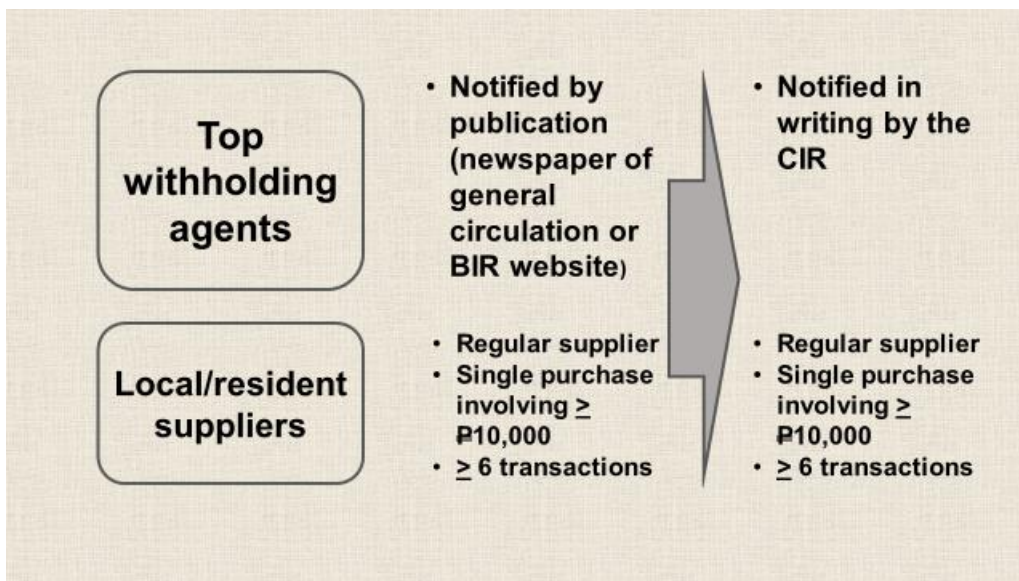
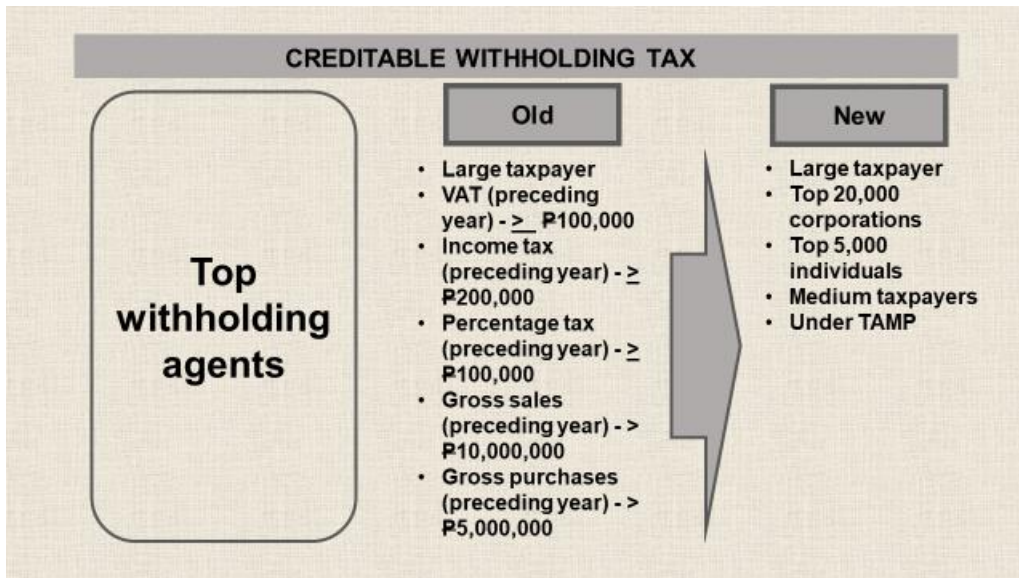
RR 11-2018, March 15, 2018

This revenue regulation amends some of the withholding tax rates on income payments prescribed under RR 02-98, as amended, to implement the changes introduced by RA No. 10963, otherwise known as the “Tax Reform for Acceleration and Inclusion (TRAIN).” This revenue regulation also introduced additional payments exempt from withholding tax and codified the conditions for exemption from withholding of sale of real properties in socialized housing projects and of joint ventures or consortium formed for the purpose of undertaking construction projects. Further, it also introduced some changes in the (a) amount of *de minimis* benefits; (b) nature of tax-exempt benefits of statutory minimum wage earners; (c) manner of filing and payment of withholding taxes; and (d) procedure in application for registration update. The changes introduced by RR 11-2018 are presented below.









CREDITABLE WITHHOLDING TAX		
Income Payment	Old	New
Purchases of minerals, mineral products, and quarry resources	5% except BSP which is 1%	5% except BSP which is 1%
Campaign expenditures	5%	5%
Interest income from any other debt instruments that are not deposit substitutes	20%	20%
Payments to REIT	1%	1%

INCOME PAYMENTS EXEMPT FROM WITHHOLDING		
Income Payment	Old	New
Payments made by lone payor to an individual payee	No such exemption	<p>Exempt provided:</p> <ul style="list-style-type: none"> Total income payment = ≤ ₱250,000 Payee submitted to payor sworn declaration of gross receipts/sales and COR (January 15 or before initial payment) Payor submitted sworn declaration of list and number of payees who submitted their own sworn declaration and COR (January 15 or 15 days following the month a new income recipient has submitted sworn declaration)

<p>Sale of real property by corporation registered with HLURB or HUDCC as engaged in socialized housing project</p>	<ul style="list-style-type: none"> Selling price must not exceed the socialized housing price applicable to the area as prescribed and certified by the board/council 	<ul style="list-style-type: none"> Selling price must not exceed: <ul style="list-style-type: none"> ₱180,000 – Metro Manila and other highly urbanized areas ₱150,000 – other areas Adjusted amount as may be determined by HLURB
<p>GOCCs exempt from income tax</p>	<ul style="list-style-type: none"> GSIS, SSS, PHIC, PCSO and PAGCOR 	<ul style="list-style-type: none"> GSIS, SSS, PHIC and local water districts

INCOME PAYMENTS EXEMPT FROM WITHHOLDING

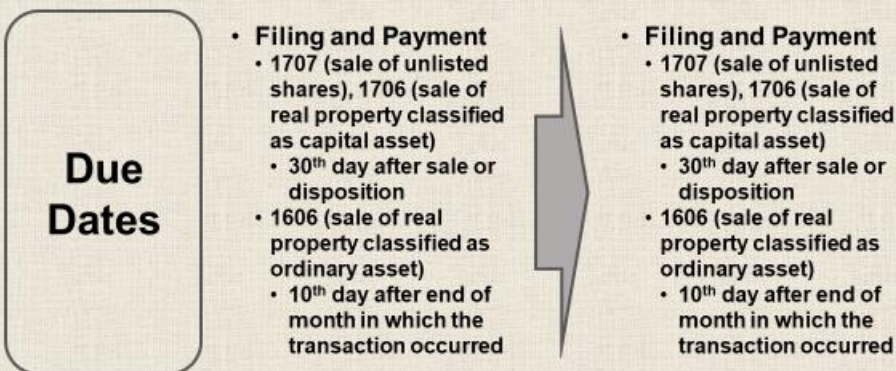
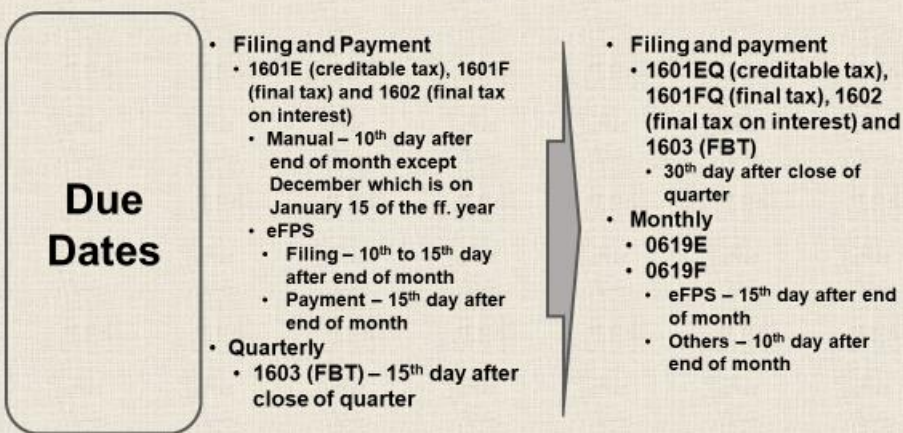
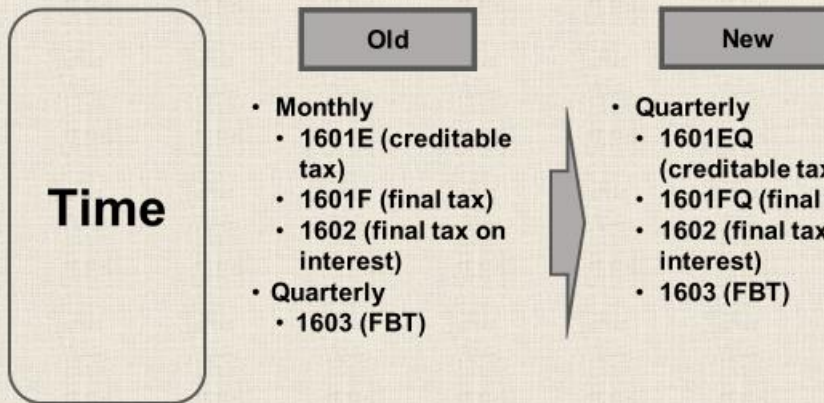
Income Payment	Old	New
<p>Joint ventures or consortium formed for the purpose of undertaking construction projects</p>	<ul style="list-style-type: none"> • Conditions not previously provided 	<ul style="list-style-type: none"> • Conditions: <ul style="list-style-type: none"> • Should involve joining or pooling of resources by licensed local contracts (licensed as general contractor by the PCAB of DTI) • Engaged in construction business • Joint venture licensed as such by PCAB of the DTI

<p>Joint ventures or consortium formed for the purpose of undertaking construction projects</p>	<ul style="list-style-type: none"> • Conditions not previously provided 	<ul style="list-style-type: none"> • Foreign contractors included only if: <ul style="list-style-type: none"> • Special licensed by the PCAB of the DTI • Construction project is certified by the appropriate government office that the project is a foreign financed/internationally-funded project and that international bidding is allowed under the Bilateral Agreement entered into by and Philippines and the foreign/international financing institution
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FILING AND PAYMENT

Venue	Old	New
<p>Venue</p>	<ul style="list-style-type: none"> • Mandatorily required to electronically file and pay – eFPS • Not mandated – AAB under the RDO where the taxpayer was registered • No AAB – Revenue collection officer or duly authorized municipal/city treasurer of RDO 	<ul style="list-style-type: none"> • Mandatorily required to electronically file and pay – eFPS • Not mandated – eFPS or AAB under the RDO where the taxpayer was registered • No AAB – Revenue collection officer or duly authorized municipal/city treasurer of RDO

FILING AND PAYMENT



FILING AND PAYMENT

	Old	New
Due Dates	<ul style="list-style-type: none"> • Filing • 1604E – March 1 of the following year • 1604CF – January 31 of the following year 	<ul style="list-style-type: none"> • Filing • 1604E – March 1 of the following year • 1604F – January 31 of the following year

TAX-EXEMPT BENEFITS

	Old	New
<i>De minimis</i> and other exempt benefits		
Medical cash allowance	P750/semester	P1,500/semester
Rice subsidy	P1,500/month or 1 sack of 50 kg. (P1,500)	P2,000/month or 1 sack of 50 kg. (P2,000)
Uniform and clothing allowance	P5,000/month	P6,000/month
13 th month pay and other benefits	P82,000/year	P90,000/year

Compensation of employees who are not paid more than SMW

Exempt all if MWE received only the ff:

- SMW
- Holiday pay
- Overtime
- NSD
- Hazard pay (list of MWEs and justification attached to 1601C for March, June, Sept., and December)

Exempt:

- MW
- Holiday pay
- Overtime
- NSD
- Hazard pay ((list of MWEs and justification attached to 1604C))

TAX-EXEMPT BENEFITS

De minimis and other exempt benefits

Old

New

Compensation of employees who are not paid more than SMW

Taxable if SMW received other than above additional compensation (commissions, honoraria, fringe benefits, allowances, other benefits in excess of ₱82,000

Taxable:
• Additional compensation other than the above (commissions, honoraria, fringe benefits, allowances, other benefits in excess of ₱90,000

APPLICATION FOR REGISTRATION INFORMATION UPDATE

Changes in information data in BIR Form No. 1902

Old

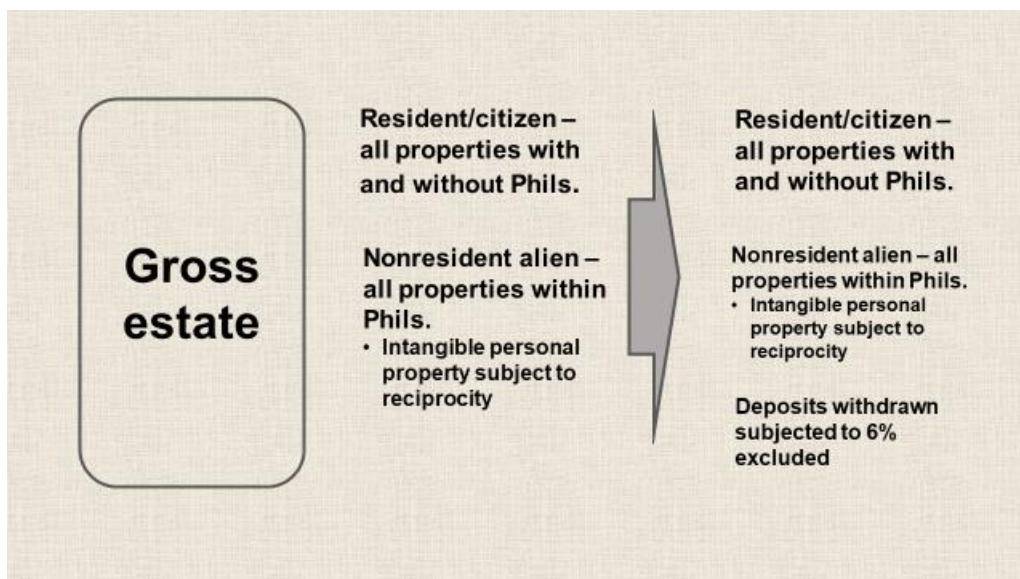
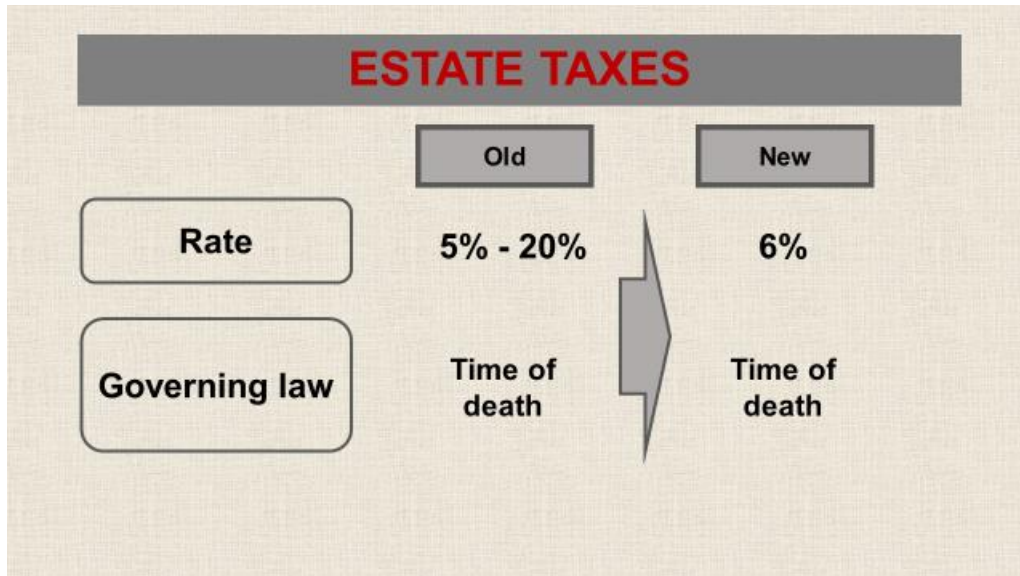
New

BIR Form No. 2305

BIR Form No. 1905

RR 12-2018, March 15, 2018

This revenue regulation implements the provisions in Chapters I and II of Title III of the Tax Code, as amended by the TRAIN, thereby repealing RR 02-2003. The TRAIN has introduced some changes in the (a) estate and donor's tax rates; (b) deductions from the gross estate and gross gifts; and (c) manner of filing and payment of estate tax.



ESTATE TAXES

Valuation of gross estate (FMV at time of death)

Old

Real property – zonal value or FMV per tax declaration, whichever is higher

Shares of stock –

- Unlisted
 - Common – BV
 - Preferred – par
- Listed – mean of highest and lowest quotation

New

Real property – zonal value or FMV per tax declaration, whichever is higher

Shares of stock –

- Unlisted
 - Common – BV
 - Preferred – par
- Listed – mean of highest and lowest quotation

Deductions

Resident/citizen

- Expenses, losses, indebtedness and taxes (ELIT)
- Funeral expenses
- Judicial expenses
- Claims against estate
- Claims against insolvent
- Unpaid mortgage, taxes and casualty losses

Resident/citizen

- Expenses, losses, indebtedness and taxes (ELIT)
- Claims against estate
- Claims against insolvent
- Unpaid mortgage, taxes and casualty losses

(No more funeral and judicial expenses)

Deductions

- Property previously taxed (vanishing deduction)
- Transfers for public use
- Family home (≤ P1,000,000)
- Standard deduction (P1,000,000)
- Medical expenses
- Amount received by heirs under RA No. 4917
- Share of surviving spouse

- Vanishing deduction
- Transfers for public use
- Family home (≤ P10,000,000)
- Standard deduction (P5,000,000)
- Amount received by heirs under RA No. 4917
- Share of surviving spouse

(No more medical expenses)

ESTATE TAXES

Filing and payment

Old

Mandatory filing

- Transfers subject to tax
- Gross estate > ₱200,000
- Contains registrable properties

6 months from death of decedent, extendible to 30 days

New

Mandatory filing

- Transfers subject to tax
- Contains registrable properties

1 yr. from death of decedent, extendible to 30 days

Filing and payment

Pay as you file

Payment extendible to 2 yrs. (extra-judicial) or 5 yrs. (judicial)

Pay as you file

Payment extendible to 2 yrs. (extra-judicial) or 5 yrs. (judicial)

Installment allowed

- 2 yrs. from filing
- Return filed within 1 yr.
- Terms approved by BIR

Withdrawal of bank deposits

- **Only when it has been certified that tax has been paid unless amount did not exceed ₱20,000**

Allowed, regardless of amount, even without certification:

- Subject to 6% withholding tax
- Withdrawal within 1 yr. from death
- TIN (BIR Form No. 1904) presented to the bank
- Withdrawal slips
- Sworn statement that all joint depositors are living at time of withdrawal
- Withdrawal subject to 6%

DONOR'S TAXES

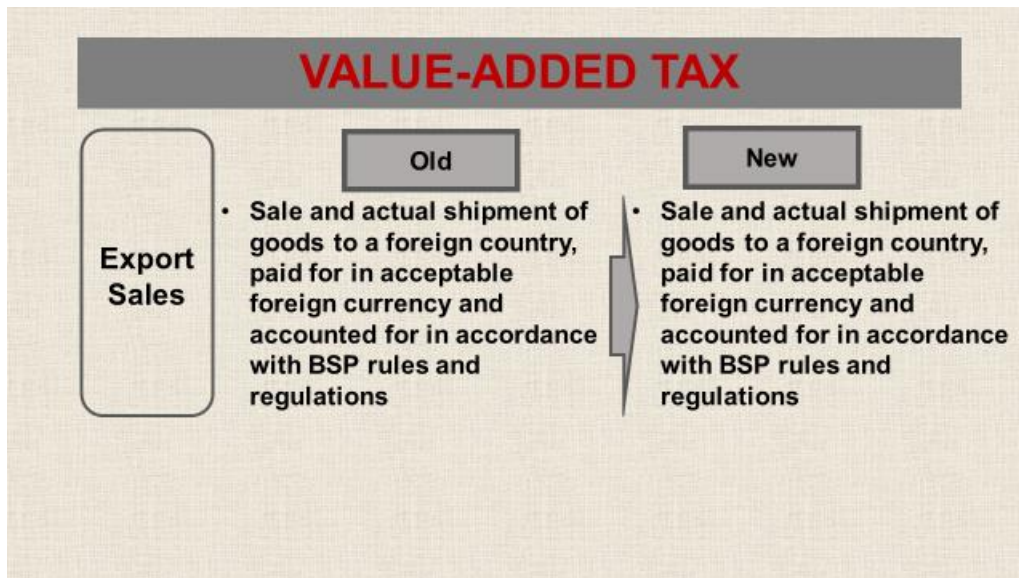
	Old	New
Rate	2% - 15%	6%
Governing law	Time of donation	Time of donation
Valuation	Value at time of donation	Value at time of donation

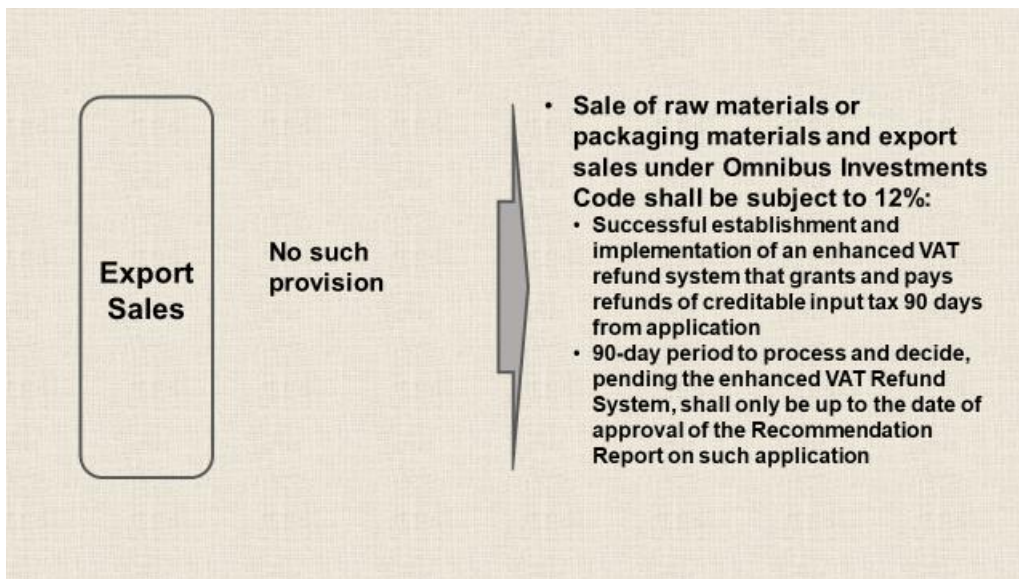
	Old	New
Filing and payment	30 days after donation	30 days after donation
Contents of return	<ul style="list-style-type: none"> • Each gift made within the calendar year • Deductions claimed and allowable • Previous gifts made within the same calendar year • Name of the donee • Other information that the CIR may require 	<ul style="list-style-type: none"> • Each gift made within the calendar year • Deductions claimed and allowable • Previous gifts made within the same calendar year • Name of the donee • Other information that the CIR may require

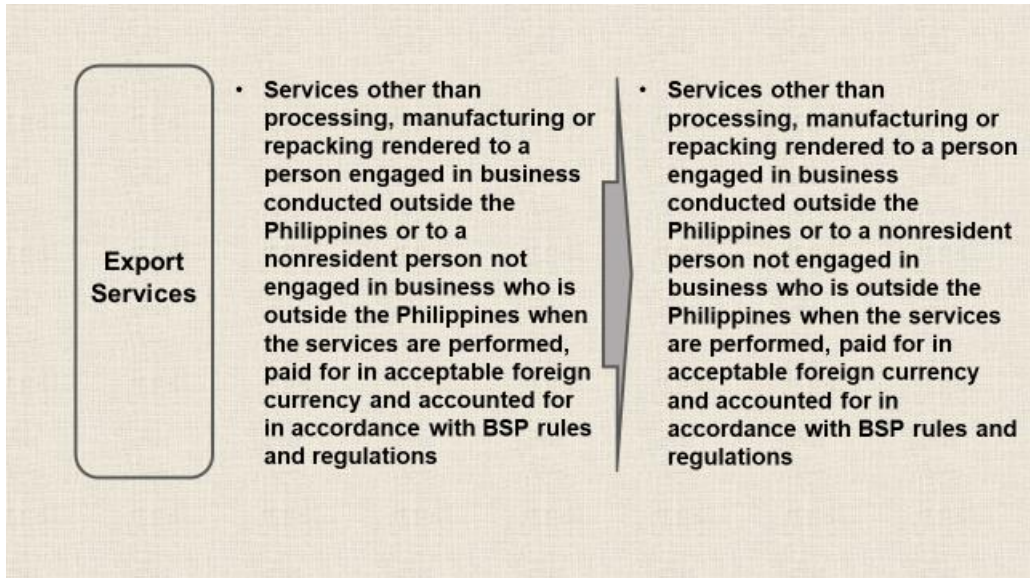
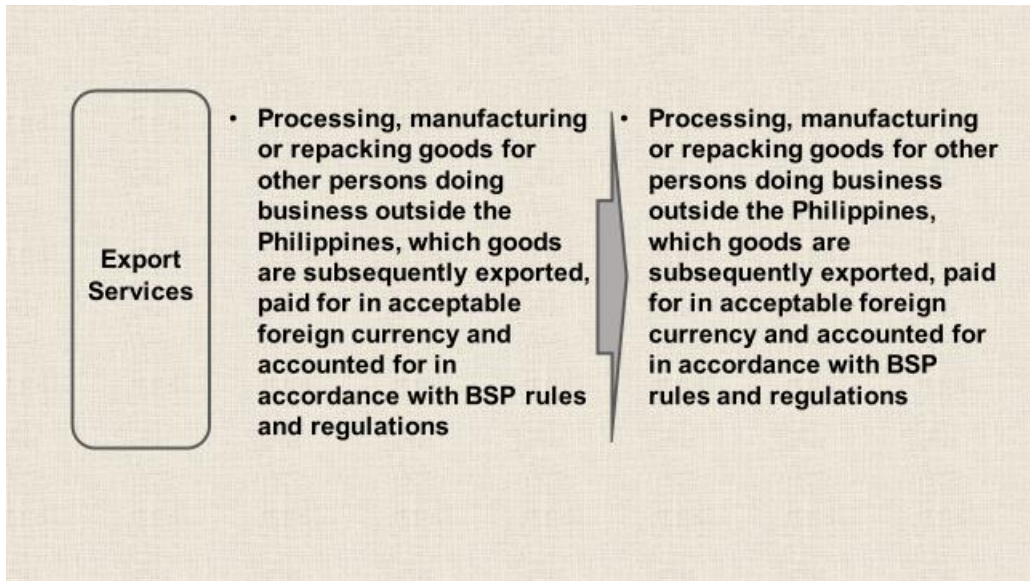
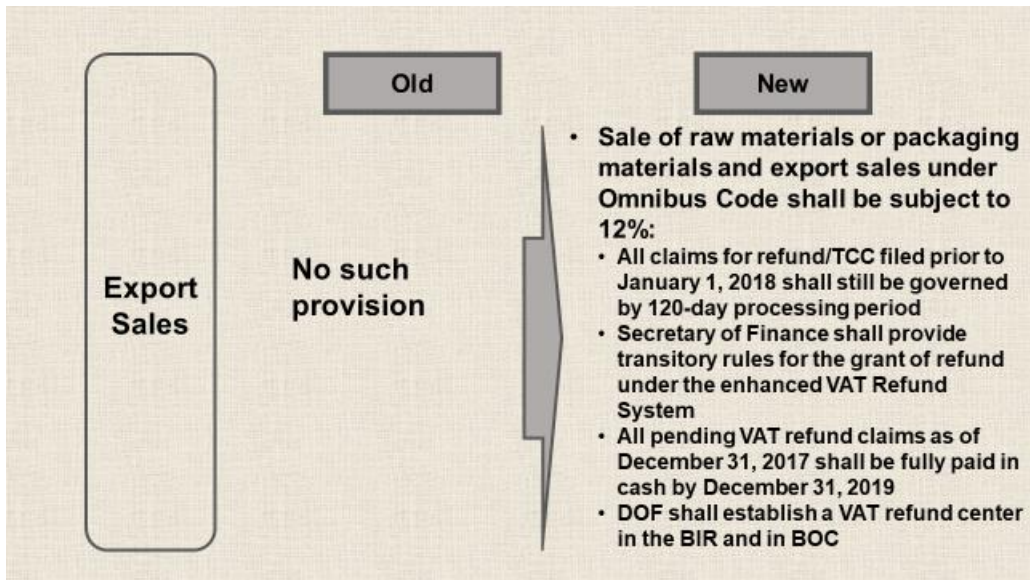
	Old	New
Exempt gifts	<ul style="list-style-type: none"> • Made to the Government • Dowries in case of resident donee • Made to certain non-stock non-profit organizations 	<ul style="list-style-type: none"> • Made to the Government • Made to certain non-stock non-profit organizations <p style="text-align: center;"><i>(No more dowries)</i></p>

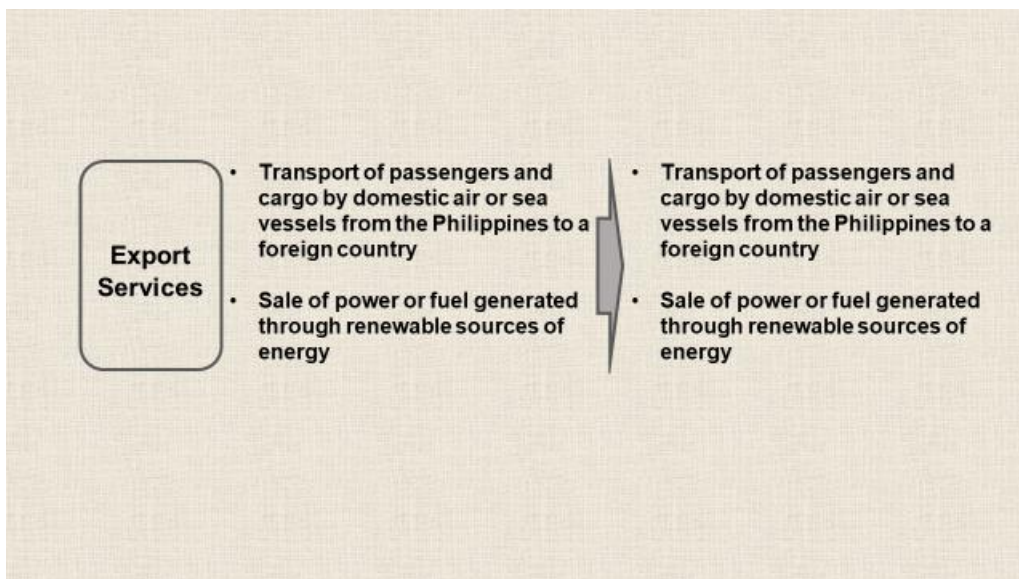
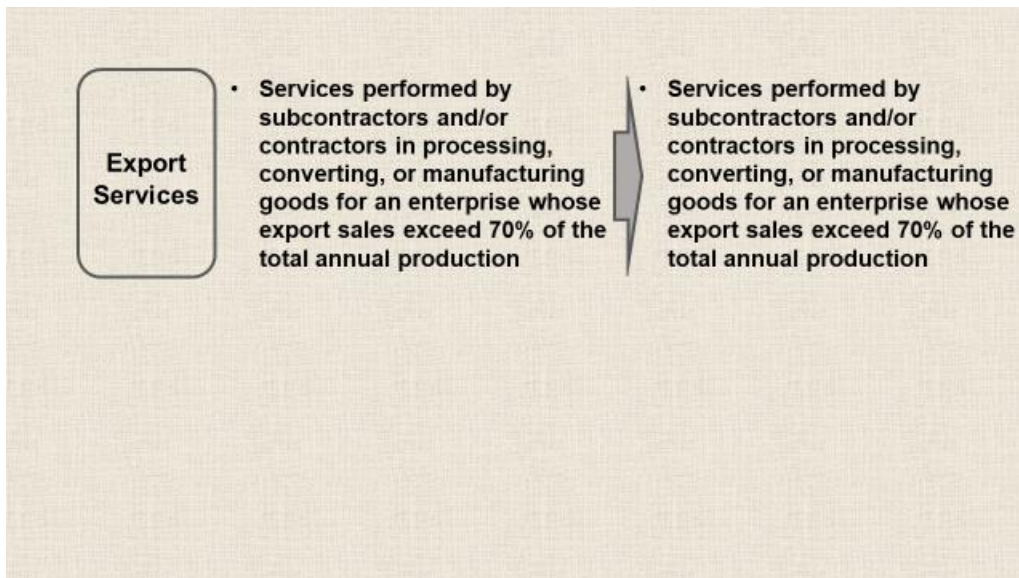
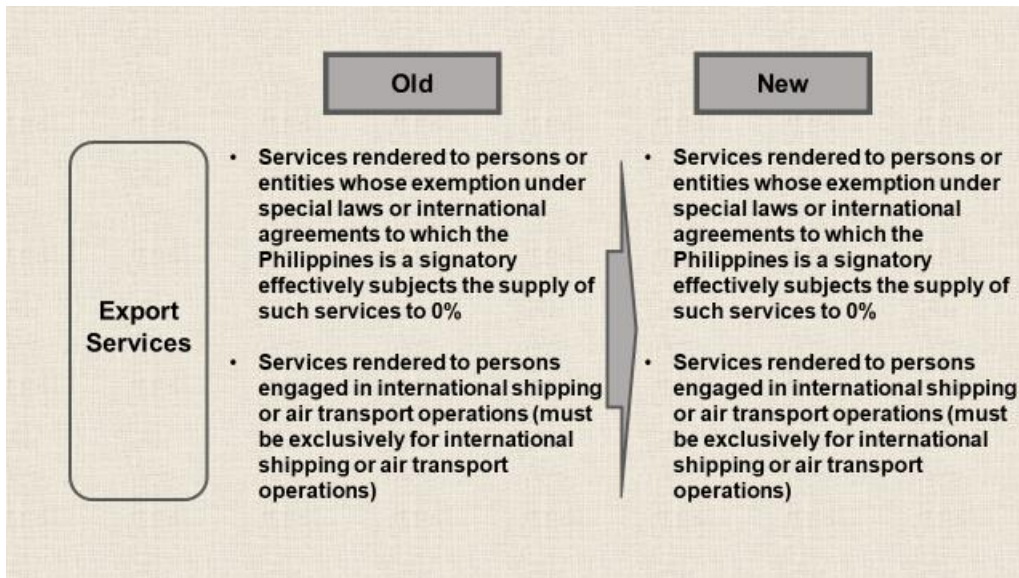
RR 13-2018, March 15, 2018

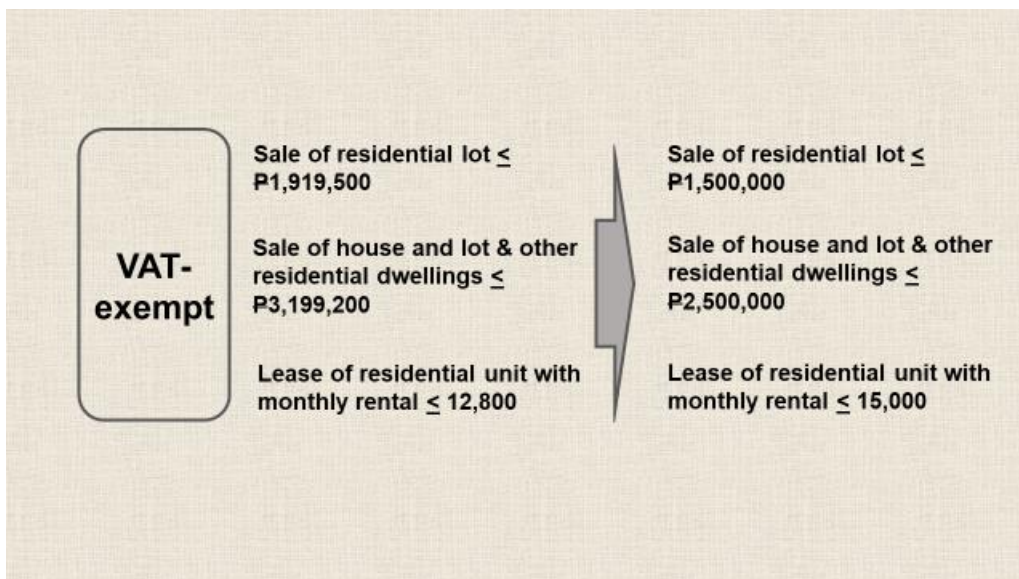
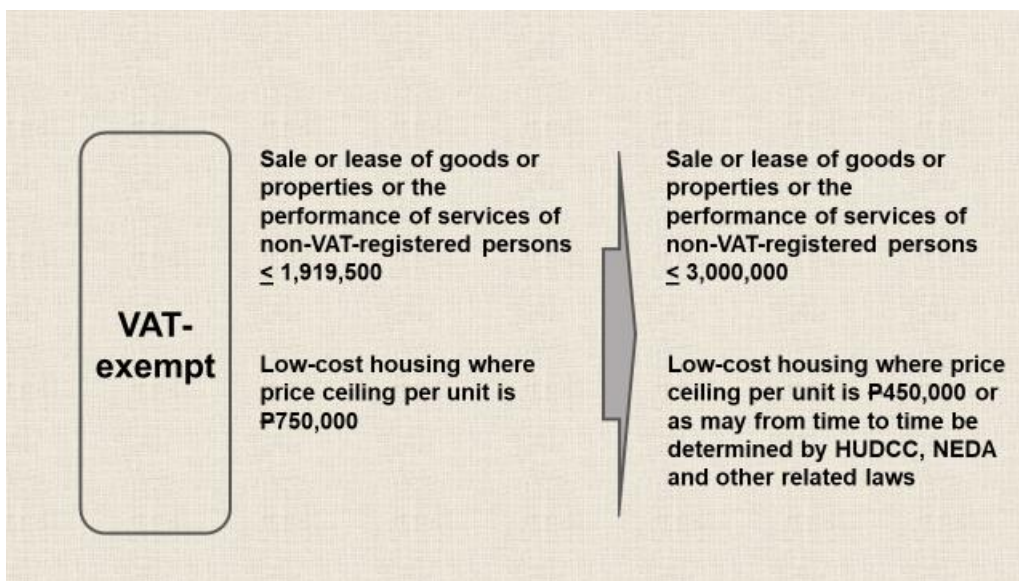
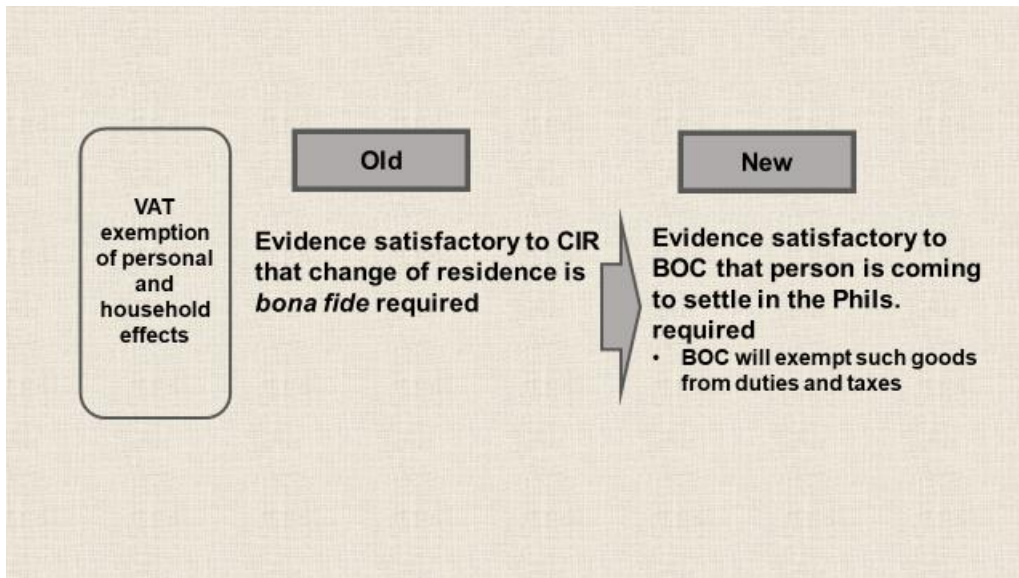
This revenue regulation implements the value-added tax (VAT) and percentage tax provisions in the TRAIN, thereby amending RR 16-05, as amended. The revenue regulation introduced some changes in the classification of the transactions into VAT zero-rated and VAT-exempt sale of goods and services. Under this new revenue regulation, the period granted to BIR to decide on the application for input VAT refund is now 90 days and no longer 120 days.

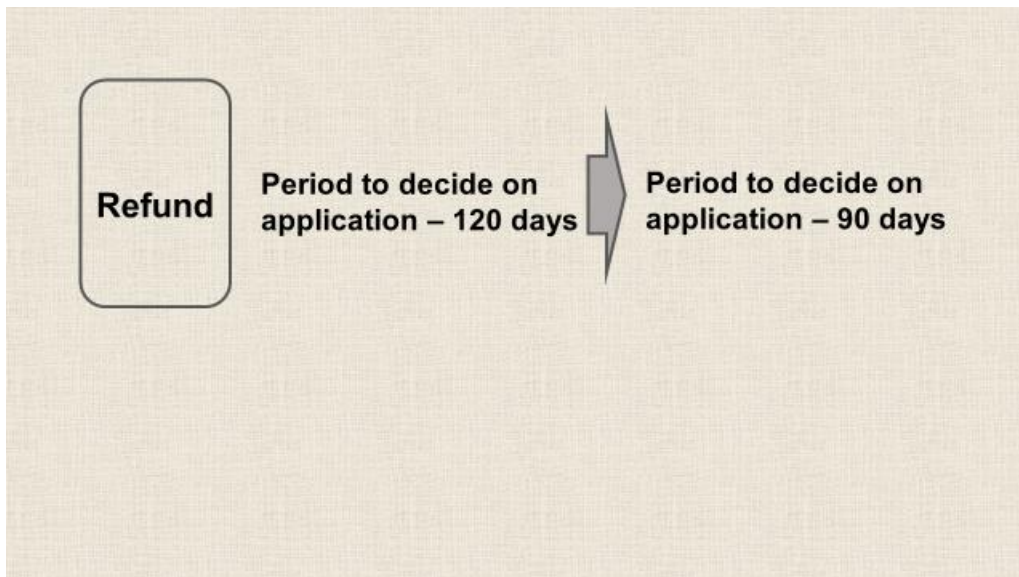
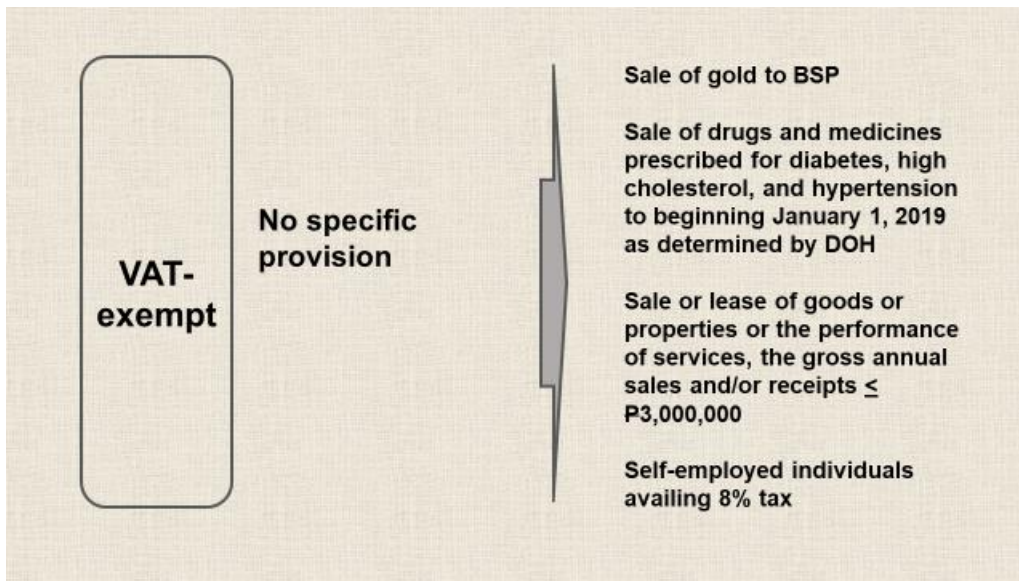
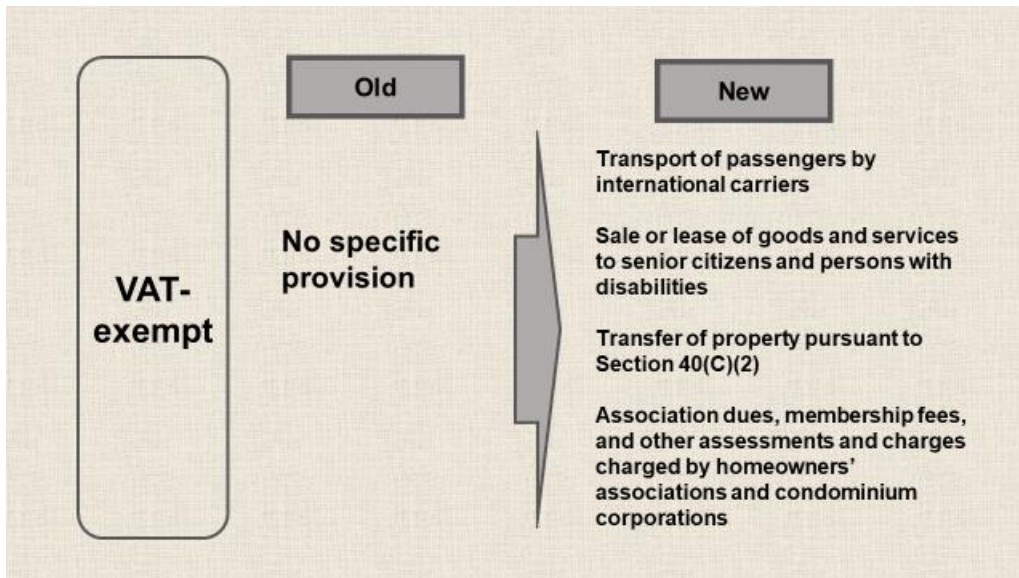












SEC Issuances

MC No. 04, S. 2018, March 2, 2018

The certification requirements for Salesman (Brokers/Issuers of Proprietary/Non-Proprietary Shares) as follows:

- One year transitory period or until Feb. 28, 2019 is given to the existing licensed salesmen to take and pass the SEC Certification examination, otherwise their license shall be revoked.
- New salesmen who had not yet taken and passed the SEC Certification Examination will be allowed to register under provisional license which will automatically be cancelled at the end of one year period mentioned in number 1 (above) if they fail to take and pass the exam within said period; and
- New applicants for registration as broker/issuer of propriety/non-propriety shares shall be allowed to register as such subject to compliance with requirements under items 1 and 2.

OGC Opinion No. 18-02, February 28, 2018

In response to a letter dated December 26, 2017 requesting the Securities and Exchange Commission's opinion regarding the on-line election of members of a SEC-registered professional organization and compliance with the organization's By-laws, the SEC opined as follows:

- On-line election of the members can only be resorted to if it is expressly set-forth in the By-laws of the organization. Thus, if the By-laws of the organization does not include provision for on-line election, any on-line voting done by the organization shall not be valid.
- The By-laws may, however, be amended to provide for on-line election. The amendment of the By-laws must be made in accordance with the provisions of the Corporation Code and the amended By-laws be approved first by the SEC before on-line election may be valid. Amendment of By-laws through a referendum is not therefore valid.
- No rules and regulations contrary or in conflict with the provisions of the organization's constitution and by-laws may be promulgated, even if voted for or promulgated by the organization's Board of Directors or the organization's appointed body in the constitution and by-laws to set such rules and regulations.

OGC Opinion No. 18-03, March 19, 2018

Is it mandatory to seek SEC's approval for the conversion of stockholder's advances to a corporation into additional paid-in capital (APIC) of the corporation to use the APIC in wiping out the capital deficit of the corporation, in case the conversion will not involve any issuance of new shares? As a rule, no. The SEC gives corporations only an option to apply for approval, subject to payment of filing fees, except if the application of the APIC was already reflected as such in the audited financial statements to wipe out the capital deficit of the corporation. In the latter case, corporations will seek the approval of the SEC upon the filing of a request for equity restructuring and upon payment of the corresponding filing fee.

OGC Opinion No. 18-04, March 19, 2018

Is AT Phil., Inc. (API), doing business under the name and style of ASIATRAVEL.COM and pursuing its business of tours and travel agency and other related activities, servicing both local and foreign markets, qualified to have foreign equity of 100%? If yes, are the owners required to be residents of the Philippines? If yes, can a foreign juridical entity alone hold 100% of its ownership?

- It cannot be concluded whether API is qualified to have foreign equity of 100%. API must be either (a) an export enterprise whose products and services do not fall within Lists A and B of the Foreign Investment Negative List (FINL) or (b) a domestic market enterprise not falling within the same lists of the FINL and whose paid-in capital is at least US\$ 200,000 before 100% of its equity may be owned by foreign stockholders. Although API does not fall within the lists and its paid-up capital is more than US\$ 200,000, the SEC was not able to conclude if API qualifies as either an export or domestic market enterprise, given that there was no adequate information provided if (a) it exports sixty percent (60%) or more of its output to fall under the definition of an export enterprise or (b) if it fails to consistently export at least sixty percent (60%) thereof in order to be considered as a domestic market enterprise.
- Assuming that 100% of API's equity may be foreign-owned, it is not required that the owners be residents of the Philippines, unless the stockholders become members of the Board of Directors. In the latter case, majority of the stockholders, who at the same time are members of the Board, must be residents of the Philippines.
- Assuming that 100% of API's equity may be foreign-owned, there is no prohibition in the Corporation Code for a juridical entity to be the lone entity that will own 100% of API's ownership. Stockholders of a corporation may be either juridical entities or natural persons.

IC Issuances

Circular Letter 2018-19, March 9, 2018

Margins for Adverse Deviation (MfAD) that companies shall be allowed are set, as follows:

Period Covered	Percentage (%) of company-specific MfAD
2017	0%
2018	50%
2019 onwards	100%

Article Written

Lifted from Business Mirror: Tax Law for Business, March 8, 2018

Lawyers Must Kiss and Tell

By: Irwin C. Nidea Jr.

Imagine a world with no lawyers. Some will be elated considering how lawyers are maligned mercilessly by our society. But many will also cringe at the idea, since for them, lawyers are the bastion of justice and the protector of their rights.

In order for lawyers to fulfill their role, they need to enjoy the trust and confidence of their clients. This trust is protected by what is called attorney-client privilege. This privilege is held by the client and not by the lawyer. It is used by the client for his protection so he can freely communicate his secrets without fear of disclosure.

In a bold move, the BIR is challenging this legal tenet that traces its roots way back in the Roman era. Revenue Memorandum Circular (RMC) 12-2018 mandates that the Commissioner of Internal Revenue (CIR) is empowered by Section 5 of the Tax Code to obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation any information. According to the CIR, this provision of the Tax Code should be taken as an additional exception to the attorney-client privilege because of the following reasons:

- 1) The Lawyer's Code of Professional Responsibility ("Lawyer's Code") provides that a lawyer shall not reveal the confidence or secrets of his client except, among others, when required by law;
- 2) The Supreme Court has stressed that the privilege against disclosure of confidential communication or information does not extend to those made in contemplation of a crime or perpetration of fraud.

In the same RMC, the CIR warned that a lawyer must submit all privilege information upon his request. Failure to do so is tantamount to 1 to 10 years of imprisonment.

I cannot blame the CIR for trying to find ways, to obtain information so that he can achieve his mandate. But will RMC 12-2018 fly, if questioned in the Supreme Court?

As to the first reason laid down in the RMC, the Lawyer's Code states that the privilege cannot be invoked if a law provides for an exception. What this contemplates is a categorical provision of law saying that the privilege must be waived. This is not present in Section 5 of the Tax Code. Although the Tax Code states that the CIR can obtain information from "any person", there is no specific provision calling for an exception to the attorney-client privilege. A mere inference will not do. Thus, the exception must remain.

As to the second ground, an important distinction must be made between a case where a client takes on the services of an attorney for illicit purposes, seeking advice about how to go around the law for the purpose of evading tax and a case where a client thinks he might have previously committed something illegal and consults his attorney about it. The first case clearly does not fall within the privilege because the same cannot be invoked for purposes illegal. The second case falls within the exception because whether or not the act for which the advice turns out to be illegal, the privilege cannot be waived if the disclosure leads to evidence, not yet in the hands of the BIR, which might lead to possible action against him. These cases may be readily distinguished, because the privilege cannot be invoked or used as a shield for an illegal act, as in the first example; while the BIR may not have a case against the client in the second example and cannot use the attorney-client relationship to build up a case against the latter [*G.R. No. 105938, September 20, 1996*]. Thus, unless a lawyer is engaged for the purpose of committing or furthering tax evasion, the attorney-client privilege cannot be waived.

According to the Supreme Court, the fiduciary duty of a lawyer is what makes the law profession a unique position of trust and confidence, which distinguishes it from any other calling. Imagine a world where lawyers are free to reveal your secrets to the BIR. It will be a world full of insecurities and it will be an environment that ultimately undermines the constitutionally guaranteed right to counsel.

BDB Law's "Tax Law for Business" appears in the opinion section of Business Mirror every Thursday.

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If you have any comments or questions concerning the contents of this issue of Insights, you may contact any of our experts.