

## In this issue...

Supreme Court Decisions

Court of Tax Appeals En Banc Decisions

Presidential Issuances

Department of Finance

Bureau of Internal Revenue

Board of Investment

The Investments Priorities Plan of 2007

Securities & Exchange Commission

**“Outstanding professionals working together to deliver value”**



Our Valued Clients:

I am glad to introduce the maiden issue of **InTax**, a project of the Tax and Corporate Services of KPMG Manabat Sanagustin & Co.

**InTax** aims to bring to you significant tax and customs developments as they happen. Our tax professionals will select what we believe to be the most relevant and significant decisions which impact on the businesses we handle. Initially, **InTax** will be published every two months and released to you electronically, to ensure that the bulletins are fresh and current. In between, we will provide you important updates as these develop.

We hope that **InTax** can help give your business a competitive edge. Knowing and understanding the legal framework in which you operate can guide your strategic plans and open more business opportunities. This is part of the KPMG commitment to turn knowledge into value.

We would be pleased if you would forward **InTax** to everyone in your company who may benefit from it. We would also welcome your feedback on this publication and how we can improve this service to you.

Happy Reading!

  
EMMANUEL P BONOAN  
Chief Operating Officer  
Vice Chairman, Tax & Corporate Services

<b>Editorial Board</b> Emmanuel P. Bonoan <b>Editor</b> Hermingildo G. Murakami Ma. Georgina J. Soberano <b>Assistant Editors</b>	<b>InTax</b> is an official publication of KPMG Manabat Sanagustin & Co. Tax & Corporate Services <b>Contributors:</b> Jeremy I. Gatdula; Roberto L. Tan; Ronald L. Carreon; Manuel P. Salvador; Maria Carmela L. Peralta; and Alma L. Barcelo.	<b>Layout, Design and Concept:</b> Markets Group (Joel C. Espejo)
--	--	--

# Supreme Court Decisions

## Atlas Consolidated Mining and Development Corporation vs. CIR

(G.R. No. 141104 & 148763; June 8, 2007)

The 2-year prescriptive period for filing a claim for refund/tax credit of excess input VAT attributable to zero-rated sales should be counted from the date of filing of the return and payment of the tax due. Unlike corporate income tax that is reported and paid on installment every quarter but is eventually subjected to a final adjustment at the end of the taxable year, the VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year.

Hence, until and unless the taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT; how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/tax credit.

On the aspect of evidence, the taxpayer-claimant must first establish that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then present sufficient evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis).

## Carlos Superdrug Corporation Et. Al vs. DSWD, DOH, DOF, DOJ, and DILG

(G.R. No. 166494; June 29, 2007)

The Court ruled as constitutional Section 4(a) of RA No. 9257, (effective March 21, 2004) otherwise known as the "Expanded Senior Citizens Act of 2003" (the "Act"); particularly the tax deduction of the discount extended to senior citizens.

Section 4 (a) of the Act entitles senior citizens to a 20% discount from certain establishments, including their purchase of medicines. It further provides that the establishment may claim the discounts granted as "a tax deduction based on the net cost of the goods sold: *Provided*, that the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided, further*, that the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the NIRC, as amended."

The taxpayers argued that Section 4(a) of the Act is unconstitutional as it constitutes a taking by the government without just compensation. They contended that the tax deduction does not allow them to collect the full amount





of the discount granted. This is contrast to a tax credit scheme which is a peso-for-peso deduction from a taxpayer's tax liability due to the government of the amount of discounts such establishment has granted to a senior citizen. The establishment recovers the full amount of discount given to a senior citizen and hence, the government shoulders 100% of the discounts granted (see illustration).

	<u>Tax Deduction</u>	<u>Tax Credit</u>
Gross Sales	x x x x x	x x x x x
Less : Cost of goods sold	<u>x x x x x</u>	<u>x x x x x</u>
Net Sales	x x x x x	x x x x x
Less: Operating Expenses:		
<b>Tax Deduction on Discounts</b>	x x x x	—
Other deductions:	<u>x x x x</u>	<u>x x x x</u>
Net Taxable Income	x x x x x	x x x x x
Tax Due	x x x	x x x x x
Less: <b>Tax Credit</b>	—	<u>x x x</u>
Net Tax Due	—	x x

In upholding the law's constitutionality, the court said that the State, in promoting health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program. The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object.

## CIR vs. Rosemarie Acosta

(G.R. No. 154068; August 3, 2007)

A return indicating an overpayment of taxes on income received in 1996 does not constitute the written claim for refund required under the old Tax Code – that is, prior to the 1997 NIRC.

The applicable law on refund of taxes pertaining to the 1996 compensation income is Section 230 of the old Tax Code, which was the law then in effect, and not Section 204 (c) of the new Tax Code, which took effect only on January 1, 1998. The (old) law is clear that a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court.

The provisions of the 1997 NIRC cannot be applied retroactively to the instant case, since this case involves a refund/tax credit of taxes withheld in 1996. Tax laws are prospective in application, unless the language of the statute clearly provides otherwise.

# Court of Tax Appeals En Banc Decisions

United Airlines vs. CIR  
(CTA EB No. 227; July 5, 2007)

An off-line international carrier with no passenger flights originating from the Philippines is not liable for Gross Philippine billings tax ("GPB") imposed by Section 28(A)(3)(a) of the Tax Code. However, cargo flights to and from the Philippines by said off-line international carrier are subject to GPB.

Fishwealth Canning Corporation vs. CIR  
(CTA EB No. 223; July 5, 2007)

A Final Decision on Disputed Assessment (FDDA) issued by the Commissioner of Internal Revenue precludes the filing of an administrative request for reconsideration because such a request will NOT stop the 30-day period within which the taxpayer may appeal the case before the CTA.

Philam Plans, Inc. vs. CIR  
(CTA EB No. 222; July 3, 2007)

The Commissioner of Internal Revenue has the authority to issue a Final Decision on Disputed Assessment (FDDA) despite the fact that the deficiency tax assessment has been elevated to the CTA. If submitted in Court, the FDDA will be subject to the final evaluation of the Court.



Section 228 of the Tax Code states that if the protest is denied in whole or in part, or is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the CTA within 30 days from receipt of the said decision or from the lapse of the 180 day period. In cases of inaction, the taxpayer has the following options: 1.) He may appeal to the Court of Tax Appeals within 30 days from the lapse of the 180 day period; or 2.) he may wait until the CIR decides on his protest. The CIR still has the authority to issue the final decision on the protest despite the elevation of the case with the CTA. This does not mean, however, that such decision will prevail over the findings of the Court

because if it is offered or presented by the BIR, the said decision would still be subject to the Court's final evaluation of the facts and the laws involved.

## Southern Philippines Power Corporation vs. CIR

(CTA EB No. 214; July 31, 2007)

The sale of electricity is considered a sale of service that should be substantiated by an official receipt (OR) for VAT purposes. To prove VAT zero-rated sales, the ORs must be imprinted with the word "zero-rated."

To be entitled to a refund or tax credit of input VAT payments directly attributable to zero-rated or effectively zero-rated sales (of service), compliance with the following requirements must be met: (1) that there must be zero-rated or effectively zero-rated sales evidenced by the presentation of official receipts which must be imprinted with the word "zero-rated"; (2) that input taxes were incurred or paid; (3) that such input VAT payments are directly attributable to zero-rated sales or effectively zero-rated sales; (4) that the input VAT payments were not applied against output VAT liability; and (5) that the claim for refund was filed within the 2-year prescriptive period. Non-presentation of the official receipts with "zero-rated" imprints is fatal to the taxpayer's claim.

**Dissenting Opinion of Presiding Justice Acosta:** Invoices can be validly used, just as official receipts. Sections 110, 113 and 237 of the 1997 NIRC, and Section 4.106-5 of RR No. 7-95 provide as requirements the issuance of an "invoice or receipt." The use of the word "or" means that they are interchangeable. Republic Act No. 9337 requiring that the term "zero-rated sale" be imprinted in the invoice/receipt became effective only on November 1, 2005. The case at hand involved claims for the unutilized VAT for the years 1999 and 2000, before RA No. 9337 became effective. Thus, the requirement of imprinting "zero-rated sale" should not have been applied.

[Editor's Note: As amended by R.A. No. 9337, Section 113 (A) of the Tax Code (Invoicing Requirements) currently provides that a VAT-Registered person shall issue: (1) A VAT invoice for every sale, barter, or exchange of goods or properties; and (2) A VAT official receipt for every lease of goods or property, and for every sale, barter or exchange of services.]

## The Treasurer of the City of Manila vs. Alcan Packaging Starpack Corporation

(CTA EB No. 261; July 30, 2007)

The City of Manila's imposition of two local business taxes under Tax Ordinance No. 7988, as amended, otherwise known as the "Manila Revenue Code, as amended" (MRC), which effectively are of the same nature, constitutes double taxation.

Section 14 of the MRC (Tax on Manufacturers, Assemblers and other Processors) imposes a graduated tax on manufacturers, assemblers, repackers, processors, brewers, distillers, and compounders of liquors, distilled

spirits, and wines or manufacturers of any article of commerce of whatever kind or nature, based on gross receipts of the preceding calendar year. On the other hand, Section 21 of the MRC (Tax on Business Subject to the Excise, Value-Added or Percentage Taxes under the NIRC) imposes a local business tax on business and articles of commerce subject to the excise, value-added or percentage taxes under the NIRC at the rate of 50% of 1% per annum on the gross sales or receipts of the preceding calendar year.

There is prohibited double taxation when two taxes are imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period, and they are of the same kind or character.

Pursuant to Section 14 of the MRC, a graduated tax is imposed on the gross sales of taxpayer as a manufacturer. Under Section 21 of the same code, taxpayer is also taxed as a business entity subject to excise, value-added or percentage taxes under the NIRC. The imposition of both taxes essentially taxes the same business activity twice. Taxpayer's manufacturing activity cannot be delineated from the sale of its products. Taking into account that taxpayer already pays the City of Manila business taxes on its gross receipts as a manufacturer under Section 14, the payment of taxes as a business entity subject to excise, value-added or percentage taxes under Section 21 for the same period constitutes direct duplicate taxation.

## CIR vs. Security Bank Corporation

(CTA EB No. 274; July 11, 2007)

When a taxpayer failed to protest the tax assessments made by the CIR, the same became final and demandable. Thus, in accordance with Section 318 of the Tax Code of 1977, as amended, the Commissioner of Internal Revenue should have initiated the collection proceedings of assessed taxes within five (5) years after the assessment of the tax has been made, or until November 16, 1992. Since no Warrant of Distraint and/or Levy was served, nor any judicial



proceedings initiated to collect the assessed taxes within the given period, the Commissioner of Internal Revenue is barred from collecting the same.

[Editor's Note: The case involves tax liabilities in 1982, with corresponding assessments issued in November of 1987. Section 203 of the Tax Reform Act of 1997, as amended, now provides a prescriptive period of three (3) years for the assessment of internal revenue taxes, as a general rule.]

## Shell Services International Sendirian Berhad vs. CIR

(CTA EB No. 196; June 13, 2007)

Section 76 of the Tax Code provides that excess tax credits in a given taxable year may be refunded or claimed as a tax credit or carried over and applied against its income tax liabilities for the taxable quarters of the succeeding taxable years. These remedies are to be availed of in the alternative and not cumulatively. Thus, once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed.

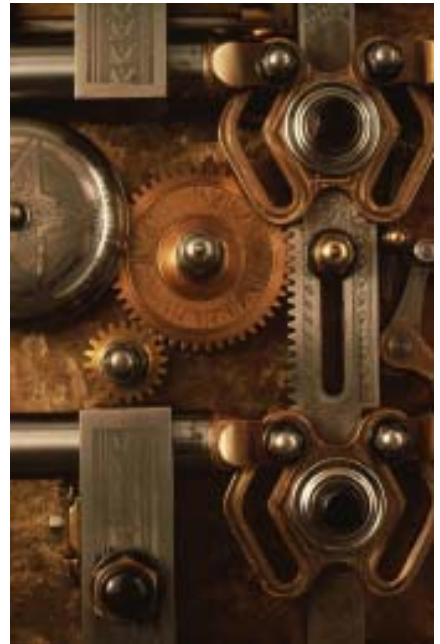
## Continental Micronesia, Inc. – Philippine Branch vs. CIR

(CTA EB No. 213; August 3, 2007)

Even in the absence of written request for reinvestigation, subsequent acts of the taxpayer were considered as acknowledgement of the BIR granting a reinvestigation; hence, the running of the 3-year prescriptive period to assess was considered suspended.

The Court ruled that – “the fact that the government was persuaded to suspend the proceedings and grant the request of the taxpayer, the statute of limitations will still be suspended”. Citing Republic vs. Arcache (10 SCRA 337, 1961), the Court stated that “(w)here the tax could have been collected, but the government withheld action at the specific request of the taxpayer, the latter is estopped and should not be permitted to raise the defense of the statute of limitations”.

As to the waiver, the Court ruled that Section 223 of the 1997 NIRC, as amended, does not explicitly require a waiver in order to suspend the Statute of Limitations. The requirement that the taxpayer signs a waiver depends on the particular facts of the case. Quoting the CTA En Banc – “When the taxpayer through his repeated demands persuaded the Government to postpone collection, then no waiver is necessary.”



## CIR vs. Financial Marketing Services Corporation

(CTA EB No. 159; July 19, 2007)

## Financial Marketing Services Corporation vs. CIR

(CTA EB No. 161; July 19, 2007)



This is an instance whereby refund of excess Creditable Withholding Tax (CWT) was granted due to the dissolution of the company, and the absence of tax clearance was disregarded due to a technicality.

The taxpayer has excess quarterly payments for the taxable years 1998 and 1999, which remained unapplied as of December 31, 2000. The taxpayer opted to carry-over and apply the excess quarterly income tax payments against income tax due for the taxable quarters of the succeeding taxable years. However, in 2001, its corporate existence was terminated. Considering that it can no longer utilize the excess payments, FMSC applied for a tax refund for excess CWT. The Commissioner on Internal Revenue refused to grant the refund on the ground that under Section 76 of the 1997 Tax Code, once the option to carry-over is made, such option shall be considered irrevocable and no application for refund of unutilized taxes shall be allowed. FMSC appealed the matter to the CTA. The Court in Division partially granted the appeal by ordering the CIR to issue a tax credit certificate in favor of FMSC for the excess payments made in 1999, but denied the portion of FMSC's claim for the 1998 excess payments for being barred by prescription. Both parties appealed to the CTA En Banc.

The Court ruled that the taxpayer is entitled to a tax refund of unapplied/excess income tax payments not barred by prescription. The rationale behind the purpose of requiring a corporate taxpayer with excess income tax payments to choose between filing a claim for refund or to carry-over the excess as tax credit against income tax due for the taxable quarters of the succeeding taxable years is to ease tax administration and facilitate tax collection. It also prevents taxpayers from getting a tax refund and a tax credit at the same time for the same excess income taxes paid. Considering that FMSC will no longer be able to apply its excess income tax payments on account of its corporate dissolution, the danger of double utilization of a single tax payment no longer exists.

The Court noted that in this case, the BIR revenue examiner recommended that a tax clearance be issued to the taxpayer and the corresponding tax credit certificate be issued for its unapplied tax payment. The Court ruled that the absence of a clearance would have been a valid argument against a claim for refund were it not for the fact that the issue of the absence of a tax clearance from the BIR was belatedly raised for the first time when case was already on appeal to the Court. The CIR did not even raise the issue at the administrative level nor in the proceedings in the Court in Division; consequently, the said issue can no longer be raised on appeal x x x."

On the other hand, the Court denied the taxpayer's claim for refund of excess taxes paid in 1998. Section 299 of the 1997 NIRC prescribes a two-year prescriptive period for filing an action for tax refund, regardless of any supervening causes that may arise after payment. The excess income tax payments for the taxable year 1998 were reported in the taxpayer's annual income tax return filed on April 15, 1999; thus, it should have filed a claim for refund before April 15, 2001.

## Office of the President

### Executive Order No. 646

(August 3, 2007)



Executive Order No. 646 is entitled, "Accessibility of Information between the BIR and the Local Government Units" (LGU), which provides that:

1. BIR records pertaining to any person, partnership, corporation or association subject to local taxes, fees, and charges shall be made available to the local treasurer, or his duly authorized representative; and
2. The LGUs shall provide the BIR with any information, such as a taxpayer's costs and volume of production, receipts or sales, and reported gross income for the purpose of ascertaining the correctness of any return filed and/or determining tax liability.

## Department of Finance

### DOF Department Order No. 29-07

(August 15, 2007)

The Department of Finance (DOF) by virtue of Department Order No. 29-07 dated 15 August 2007 issued the Rules and Regulations to Implement Republic Act No. (RA) 9480, also known as the "Tax Amnesty Law." The following are the salient features of the regulations:

- *Taxes Covered* - The tax amnesty covers all national internal revenue taxes for the year 2005 and prior years, with or without assessments that have remained unpaid as of 31 December 2005.
- *Exceptions* - The tax amnesty shall not extend to the following persons or cases existing at the time that RA 9480 took effect:

1. withholding agents with respect to withholding tax liabilities;
2. cases under the jurisdiction of Presidential Commission on Good Government;
3. cases involving unexplained or unlawfully acquired wealth, revenue or income under the Anti-Graft and Corrupt Practices Act;
4. cases in court involving the Anti-Money Laundering Law;
5. criminal cases filed in court or Department of Justice for tax evasion and other criminal offenses under Chapter II Title X of the Tax Code of 1997;
6. criminal cases filed in court for felonies of frauds, illegal exactions and transactions, malversation of public funds and property under Chapters III and Title VII of the Revised Penal Code; and
7. tax cases subject of final and executory judgment by the courts.



- **Procedures for Availment and Payment of Amnesty**

1. File the documents as prescribed by the BIR, which includes: (a) notice of availment; (b) statement of assets and liabilities & networth (SALN) as of 31 Dec 2005, and (3) tax amnesty return.
2. Upon filing of the tax amnesty return, payments should be made. An acceptance payment form shall be issued to the taxpayer.
3. Filing of the documents and payment of tax should be made within six (6) months from the effectivity of the Rules.

- **Tax Amnesty Rates** – The AMNESTY TAX is equivalent to: 1.) 5% of the total declared net worth as of 31 Dec 2005 as declared in the SALN; OR 2.) 5% of the resulting increase in net worth; OR 3.) the absolute minimum amnesty payment WHICHEVER IS HIGHER, in accordance with the following schedule:

1. Individuals (resident or non-resident citizens and aliens), Estates and Trusts – whichever is higher of the 5% or the minimum P50,000.00.
2. Corporations classified based on subscribed capital:
  - (a) with subscribed capital above P50M – whichever is higher of the 5% or P500,000.00;
  - (b) with subscribed capital above P20M to P50M – whichever is higher of the 5% or P250,000.00;
  - (c) with subscribed capital of P5M to P20M – whichever is higher of the 5% or P100,000.00; and
  - (d) with subscribed capital of below P5M – whichever is higher of the 5% or P25,000.00.
3. Other juridical entities, including partnerships, cooperatives and foundations, that have become taxable as of December 31, 2005 – whichever is higher between the 5% or P50,000.00.
4. Taxpayers who filed balance sheet/SALN together with income tax returns for 2005, who desire to avail of the tax amnesty by amending previously filed statements including still undeclared assets and or/ liabilities – whichever is higher of the 5% based on the resulting increase in networth, or the minimum absolute amounts of amnesty tax prescribed above.

- **Immunities and Privileges** –These are:
  1. Immunity from the payment of taxes and additions thereto as well as civil/criminal penalties arising from failure to pay any internal revenue tax for the year 2005 and prior years.
  2. Tax Amnesty Return and SALN as of 31 Dec 2005 shall not be admissible as evidence in all proceedings pertaining to taxable year 2005 and prior years in so far as these relate to internal revenue taxes, except for the purpose of ascertaining the networth beginning January 1, 2006.
  3. Books of accounts and other records of the taxpayer for the years covered by the amnesty shall not be examined by the BIR, except for the purpose of verifying the validity and correctness of claim for tax refund, tax credit (other than refund or credit of taxes withheld on wages), tax incentives and/or exemptions.
- **Effectivity of the Rules and Regulations** –The rules will take effect after 15 days from its publication in two newspapers of general circulation.

The last day for tax amnesty availment shall be six (6) months from the effectivity of the implementing rules.

[Editor’s Note: The IRR has been published in two (2) newspapers of general circulation. Taking the conservative stand, we are counting the effectivity of the IRR from the first publication last 21 August 2007. The Tax Amnesty IRR took effect 15 days after or on 05 September 2007. The last day to avail of the Tax Amnesty therefore is on 06 March 2008, which is six (6) months from 05 September 2007.]

# Bureau of Internal Revenue

## Revenue Regulations No. 7–2007

(July 9, 2007)

RR No. 7–2007 amends RR No. 21–2002 on documentary and/or procedural requirements in connection with the preparation and submission of financial statements (**F/S**) accompanying tax returns. We quote the highlights of RR 7–2007, wherein the underscored portions are actually highlighted in the RR itself, as follows:

1. “x x xThe account titles to be used must be specific and not control accounts, which must be completely enumerated in the financial statements and these accounts must conform to ***the basic framework of the financial reporting standards promulgated by the Financial Reporting Standards Council (FRSC) of the Philippines which are the Generally Accepted Accounting Principles in the Philippines which include Philippine Accounting Standards (PAS) and Philippine Financial Reporting Standards (PFRS) and the refinements introduced thereon in respect to certain types of industries as well as to*** the rules and requirements of regulatory agencies that have supervision over them xxx”
2. “The Profit and Loss Statement/Income Statement shall show separately by segment (there should be proper labeling), with breakdown of the specific accounts, the following:
  - I. Sales/Revenues
  - II. Cost of Goods Sold (for seller of goods)/Cost of Services (for seller of services);

- III. Selling and Administrative Expenses;
- IV. Financial Expenses, if any;
- V. Other Income; and
- VI. Other Expenses

**(Note: Items I, IV, V, and VI should be fully explained in the Notes to the Financial Statements; Items II and III should be supported by Schedules)**

3. "x x x The Financial Statements shall be composed of the following:
  - a) Balance Sheet;
  - b) Income Statement/Profit and Loss Statement;
  - c) Statement of **Changes in Equity, showing either:**
    - All changes in equity
    - Changes in equity, other than those arising from transactions with equity holders acting in their capacity as equity holders;
  - d) Statement of **Cash Flow;**
  - e) **Notes, comprising a summary of significant accounting policies and other explanatory notes;**  
**and**
  - e) Schedules attached to the afore-cited statements."

x x x

x x x

**"Moreover, it is the responsibility of the taxpayer to reflect in its books of accounts (i.e., general, subsidiary ledgers, and journals) the adopted/accepted year-end adjusting entries made corollary to the preparation and filing of its audited financial statements and annual income tax returns. Correspondingly, all the necessary working papers prepared by the taxpayer pertinent to the year-end adjustments shall, nevertheless, be made available to the investigating officers of the Bureau upon audit and/or verification."**

4. "Unless a longer period of retention is required under the Tax Code or other relevant laws (e.g. the Philippine Accountancy Act of 2004, etc.), the independent CPA who audited the records and certified the financial statements of the taxpayer, equally as the taxpayer, has the responsibility to maintain and preserve copies of the audited and certified financial statements for a period of three (3) years from the due date of filing the annual income tax return or the actual date of filing thereof, whichever comes later."

## Revenue Regulations No. 8–2007

(July 3, 2007)

RR No. 8–2007 prescribes additional requirements on recording business transactions and preparing financial statements by taxpayers mandated to adopt the Philippine Financial Reporting Standards (PFRS). The recording and the recognition of business transactions under the PFRS for financial accounting purposes, in a majority of



situation, differ from tax rules; resulting to disparity of reports for financial accounting vis-a-vis tax accounting. Hence, RR No. 8-2007 requires taxpayers to maintain books and records that would reflect the reconciling items between Financial Statement figures and/or data with those reflected/presented in the filed Income Tax Return (ITR).” This additional requirement of keeping books and records for the reconciling items shall start taxable year 2007, which means calendar year ending December 31, 2007 and all fiscal years ending not later than June 30, 2008.

## Revenue Regulations No. 10-2007

(July 18, 2007)

RR No. 10-2007, which amends Section 3 of RR No. 9-2001, expands the coverage of taxpayers required to file returns and pay taxes through the Electronic Filing and Payment System (EFPS) to include: (i) corporations with paid-up capital stock (which means subscribed and paid-up) of Ten Million Pesos (P10,000,000.00) and above; (ii) corporations with complete computerized system pursuant the RR 16-2006; and (iii) all government bidders pursuant to Executive Order No. 398, as implemented by RR 3-2005. The RR noted that non-stock non-profit corporations are excluded from the coverage of the regulation. Finally, the effectivity clause of RR No. 10-2007 provides “(t)hese Regulations shall take effect on all returns to be filed in October 2007 or after fifteen (15) days following publication in a newspaper of general circulation, whichever comes later.”



## Revenue Memorandum Order No. 16-2007

(July 20, 2007)

RMO No. 16-2007 imposes additional audit procedures to be conducted by Revenue Examiners during the audit of taxpayer's VAT liabilities;

The highlights of RMO are as follows:

1. It is not enough that the taxpayer is able to present, upon audit, the corresponding sales invoices/official receipts to evidence declared purchases. There is a further need (by the examiners) to ascertain the legitimacy and factual existence of “big-ticket” items of purchases and validate whether these have been appropriately recorded in the books of accounts and reflected in the filed tax returns (by the examiners). “Big-ticket” items refer to purchases to more than five percent (5%) of the taxpayer-purchaser's annual gross purchases.

2. Examiners must fully utilize the Integrated Tax System (ITS) database to ascertain that the purchases made by the taxpayer for which input taxes have been claimed were likewise reported as sales by the seller.
3. If it is determined that the supplier under-declared his sales, the revenue examiners must endorse such information to the Revenue District Office (RDO)/Large Taxpayers (LT) office where the supplier is registered. In cases where it is the taxpayer-purchaser who over-declared or over-claimed purchases, then the excessive input taxes claimed must be disallowed, and deficiency VAT must be assessed.
4. If it is determined that the suppliers are not registered, or registered as non-VAT taxpayers but are issuing VAT invoices, the examiners must endorse these information to the Special Investigation Division or the National Investigation Division for tax fraud investigation. ***“Disallowance of the input taxes attributable to the sales made by these questionable suppliers shall only be done if aside from the sales invoice no other evidence can be presented by the taxpayer-purchaser to substantiate the authenticity of the purchases made.”***



[Editor’s Note: A concern may be raised that the foregoing BIR audit policies effectively places the burden to verify the VAT registration of the suppliers with the taxpayer-purchaser. Also, another concern that may be raised is that under the Philippine VAT system, the supplier of goods and/or services is effectively a collecting agent of the government on the VAT shifted/billed to the taxpayer-purchaser. Assuming that there is fraud when a supplier misrepresents itself as a VAT registered-entity, the taxpayer-purchaser is equally a victim of this fraudulent act, as much as the government. Disallowing the relevant input taxes claimed by the taxpayer-purchaser only if shown that it had knowledge or participated in fraudulent act would have been more equitable.]

5. In all field audit case reports, the examiners should mention the type of physical assets, location of assets and bank accounts that the taxpayer is maintaining at the time of conclusion of the audit.

## Revenue Memorandum Order No. 18-2007

(July 30, 2007)

In the first half of 2007, the BIR intensified surveillance activities as well as stocktaking of inventory of certain businesses based on validly issued Mission Orders (MOs). The resulting factual findings obtained during the surveillance/stocktaking activities shall be analyzed, reconciled with the current books of accounts/accounting records of the concerned taxpayer by the assigned revenue officers and shall be compared with the latest final returns to determine the existence of discrepancies.

Under RMO No. 18–2007, if there are deficiencies established, short period audit or issue–based audit under a duly issued Letter of Authority (LA) covering the final returns (whether income and/or VAT) of the current year may be conducted to corroborate, validate and supplement the resulting discrepancies initially determined as a result of the surveillance or stocktaking activities. Deficiency assessments may then be issued for those discrepancies that have remained unsubstantiated or undisputed by the taxpayer.

## Revenue Memorandum Order No. 20–2007

(July 13, 2007)

RMO No. 20–2007 is entitled “Simplified Processing of Application to Avail Taxpayer’s Remedies under Section 204 (A), Compromise Settlement, and Section 204 (B), Abatement, both of the National Internal Revenue Code of 1997.”

### A. Policies on Abatement

1. The BIR processes applications for the abatement of only the surcharges, interests and compromise penalties. Any application for the abatement of the basic tax assessed will not be processed.
2. The RDO investigating offices of the Large Taxpayers Service having jurisdiction over the taxpayer–applicant shall, process the application, make the evaluation and prepare its recommendation. The duly constituted Technical Working Committee (TWC) shall review the report/recommendation, and prepare the final recommendation for the approval of the CIR.

### B. Policies on Compromise Settlement

Application for compromise settlement shall likewise be processed and evaluated by the investigating offices having jurisdiction over the taxpayer–applicant. The concerned TWC shall review the report/



recommendation of the investigating office, and provide the final recommendation for the approval of the Commission on Interview Revenue (CIR)/Regional Evaluation Board (REB)/National Executive Board (NEB). The recommendation/final report on the application for compromise shall be finally signed/approved as follows:

1. REB – for cases involving basic tax assessment amounting to not more than P500,000.00.
2. CIR – a.) other cases which were not delegated; and b. cases which, by law, have been entrusted to the CIR.
3. NEB – cases where the basic tax exceeds P1,000,000.00, or where the settlement offered is less than the prescribed minimum amount (10% for cases of financial incapacity; 40% for cases of doubtful validity of the assessment). [The CIR and the Deputy Commissioners of the BIR are the members of the NEB.]

RMO No. 20–2007 requires all applicants to pay the basic tax assessed for abatement cases, and the offers of compromise for compromise settlement, upon filing of the relevant application. In case of a disapproval of the application, payments already made shall be treated as partial or installment payments of the pertinent deficiency tax assessments.

# Board of Investments

## The Investments Priorities Plan (IPP) of 2007

On 18 July 2007, the BOI issued the General Policies and Specific Guidelines to implement the 2007 IPP.

The “General Policies” portion has a new item entitled “Export of Products in Short Domestic Supply”. It states that:

1. The BOI may, if national interest requires, suspend the acceptance of application for registration of projects engaged in the export of products including industry inputs that are in short domestic supply.
2. The export commitment of a registered enterprise may be suspended if there is a need to satisfy national interest or in an emergency case/situation that would warrant serving first the need of the economy.

To date, there has been no occasion to implement the above items per BOI’s One Stop Action Center (“OSAC”). As to No. 2, OSAC informally confirmed that there are yet no guidelines on how the suspension will affect the registered enterprise’s availment of the income tax holiday incentive and entitlement to zero-rating on its purchases.

In general, the “Specific Guidelines” portion still has the same classifications as in the 2006, namely:

### **I. Preferred Activities**

- Agriculture/agribusiness and fishery
- Information and communications technology
- Electronics
- Motor vehicle products
- Energy

- Infrastructure (now includes infrastructure projects under the BOT Law, which were previously a separate classification under “Mandatory Inclusions” in 2006)
- Tourism (now includes healthcare and wellness products and services, which used to be a separate classification under the 2006 guidelines)
- Shipping/Shipbuilding
- Iron and Steel (previously under “Mandatory Inclusions” in 2006)
- Research and Development/Training Institutions
- Machinery and equipment in support of the activities listed in the IPP

**Exception:** Jewelry and fashion garments are no longer listed.

## II. Mandatory Inclusions

- Tree plantation (PD 705)
- Exploration, mining, quarrying and processing of minerals (RA 7942)
- Publication or printing of books or textbooks (RA 8047)
- Refining, storage, marketing and distribution of petroleum products (RA 8479)
- Solid Waste Management (RA 9003)
- Clean Water Act (RA 9275)
- Rehabilitation, self–development and self–reliance of disabled persons (RA 7277)

**Exception:** The list no longer includes “activities covered under bilateral agreements”, which pertained to specific projects under bilateral agreements entered into by the Philippine government with other foreign governments specifically granting incentives to a particular activity.

## III. Export Activities

## IV. Projects under the Retention, Expansion and Diversification Program

[Editor’s Note: It is critical to review the relevant provisions of the specific guidelines for purposes of determining an activity’s eligibility for BOI registration and entitlement to the incentives.]





# Securities & Exchange Commission

SEC OGC Opinion No. 07-13

(July 5, 2007)

This is a clarification on who are qualified to issue the Certification required in Section 5 of the Revised Guidelines on Foundations, which states:

**Facts:** "Section 5. A registered Foundation shall attach to the sworn statement mentioned in the immediately preceding paragraph a Certification from the Office of the Mayor, or the Office of the Barangay Captain, or the Head of either the Department of Social Welfare and Development or Department of Health, on the existence of the subject Program/Activity in the locality on which it exercises jurisdiction."

The enumeration of government agencies and officers who can issue the Certification required in Section 5 of the Revised Guidelines on Foundations is not exclusive. Section 5 serves as a validation by the concerned government agency or officer that the reported program or activity is actually being implemented or conducted in the locality where it exercises jurisdiction. Thus, a Certification issued by a government agency, department, bureau, office or officer other than those enumerated in Section 5 of the Revised Guidelines on Foundations is valid as long as the issuer can attest, based on its knowledge or information, that the reported program or activity is actually being implemented in the locality where it exercises jurisdiction.

SEC OGC Opinion No. 07-14

(July 18, 2007)



A corporation that is empowered by its charter to engage in the business of selling is not necessarily authorized to engage in the business of manufacturing.

The purpose clause in the Articles of Incorporation confers and limits the powers which a corporation may exercise. Consequently, a corporation cannot engage in a business if it is not expressly authorized in its Articles of Incorporation. When the charter of the corporation enumerates the powers which a corporation may exercise, it should be interpreted to include only incidental powers necessary to implement the stated powers, and exclude powers which are not enumerated. Being a seller, trader, dealer or importer of goods does not automatically classify one as a manufacturer because manufacturing is not fairly and reasonably necessary or incidental to the business of selling. Thus, a corporation that is empowered by its charter to engage in the business of selling is not necessarily authorized to engage in the business of manufacturing because it is not necessary or indispensable that a trader or dealer of goods must also be the manufacturer or producer of the goods it sells.

# Contact us

## Manabat Sanagustin & Co.

### Manila-Head Office:

22<sup>nd</sup> Floor, Philamlife Tower  
8767 Paseo de Roxas  
Makati City, Metro Manila, Philippines  
Telephone: + 63 2 885 7000  
+ 63 2 893 8507  
Facsimile: + 63 2 894 1985  
+ 63 2 816 6595  
E-mail: manila@kpmg.com.ph

### Subic Office:

Units 126 & 128, Ground Floor  
Alpha Building, Subic International Hotel  
Compound  
Rizal corner Sta. Rita Roads  
Subic Bay Freeport Zone, 2222, Philippines  
Telephone: + 63 47 252 2825  
Facsimile: + 63 47 252 2826  
E-mail: subic@kpmg.com.ph

### Cebu Office:

Unit 503, 5/F Keppel Center  
Samar Loop corner Cardinal Rosales Ave.  
Cebu Business Park  
Cebu City, Philippines  
Telephone: + 63 32 233 9325  
Facsimile: + 63 32 233 9327  
E-mail: cebu@kpmg.com.ph

### Iloilo Office:

2nd Flr., Uy Bldg., Sen. B. Aquino Ave.  
Mandurriao, Iloilo City  
5000 Philippines  
Telephone: + 63 33 321 3821  
+ 63 33 321 3822  
Facsimile: + 63 33 321 3823  
E-mail: iloilo@kpmg.com.ph

### Bacolod Office:

Suite 3, Doll Building  
6th Street, Bacolod City  
6100 Philippines  
Telephone: + 63 34 433 1962  
+ 63 34 434 9225  
Facsimile: + 63 34 434 8015  
E-mail: bacolod@kpmg.com.ph

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

©2007 Manabat Sanagustin & Co., certified public accountants, a professional firm established under Philippine law, is a member of the KPMG network of independent member firms affiliated with KPMG International, a Swiss cooperative. All rights reserved. Printed in the Philippines.