

## Tax Exemption for Minimum Wage Earners and Increased Tax Exemptions



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A tax measure that will provide substantial financial relief to taxpayers who fall within its coverage was recently signed into law. Republic Act (R.A.) No. 9504 will exempt workers earning the minimum wage from the payment of income tax, and will also exempt their holiday pay, overtime pay, night shift differential, and hazard pay from income tax. The term "minimum wage earner" refers to a worker in the private sector paid the statutory minimum wage. For an employee in the public sector, the minimum wage shall be equivalent to the statutory minimum wage for non-agricultural employees prescribed in the place where he has been assigned to work.

Apart from the tax exemption for minimum wage earners, the law will provide for an increase in the personal exemption of all taxpayers. From the current P20,000 personal exemption for a single taxpayer, P25,000 for the head of a family, and P32,000 for a married individual, the tax exemption will be fixed at P50,000. The additional exemption for dependents will be increased from P8,000 to P25,000. In addition to the reprieve in financial burden for taxpayers, this is also good news for employers who will be relieved of the current burden of obtaining the numerous documentary requirements from employees to establish their civil status for tax purposes.

Furthermore, the optional deduction which an

individual engaging in trade or business or pursuit of profession may claim, in lieu of the itemized deduction of business expenses, will be increased from 10% of gross income to 40% of gross sales or receipts. Domestic corporations and resident foreign corporations shall also be given the option to avail of the optional deduction equivalent to 40% of gross income. The adjustment of the rate of the standard optional deduction for individuals and introduction of the optional standard deduction for corporations is expected to generate additional revenues for the government.

The logic used is that with the simplification of the computation of taxes and elimination of the need to keep complex records and other documents to substantiate deductible expenses, individuals engaging in business or practice of profession will be enticed to report their income and pay correct taxes. It should be noted that while the rate is the same, the basis is different: for individuals, the 40% optional deduction shall be based on gross sales, while for corporations; it shall be based on gross income. The definition of gross sales is different from that of gross income. Gross sales is the total amount at which goods or services are sold. Gross income is gross sales minus cost of goods sold or cost of services.

One interpretation that has been submitted is that a corporation opting to avail of the standard deduction will be allowed to claim cost of goods sold or cost of service as a deduction from its gross sales plus a standard deduction equal to 40% of its gross income. On the other hand, an individual engaged in business or practice of a profession shall be allowed to deduct its cost of goods/service plus a standard deduction equal to 40% of its gross sales or gross receipts. With this interpretation, the individual is subject to a lesser amount of income tax because it can claim a higher amount of standard deduction.



Another interpretation is that an individual opting for the standard deduction will be allowed to claim a deduction equal to 40% only of gross sales, with no deduction for cost of goods sold/service. This puts individual taxpayers at a less favorable position compared to that of a corporation.

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## New Tax Guidelines on Shares of Stock Held as Capital Assets



The Bureau of Internal Revenue (BIR) recently published Revenue Regulations (RR)

No. 6-2008, providing the tax rules for the sale, barter, exchange or other forms of disposition of shares of stock classified as capital assets.

The regulation states that for shares already listed and traded through the local stock exchange, the stock transaction tax of 1/2 of 1% of the gross selling price or gross value in money of the shares of stock shall apply to all sales, trades, or transactions through the trading system and/or the facilities of the local stock exchange, including block sales of a listed stock.

The regulation also provides that in ascertaining the tax on initial public offering (also known as the IPO tax), the rate of tax applicable on the primary and secondary offerings will be separately computed. The ratio of each type of offering to the total outstanding shares will be identified and used separately, rather than using the aggregated number of shares from the two types of offering. As such, the rate of IPO tax on the primary offering may be different from the rate to be used for the secondary offering. In addition, the regulation also provides that follow-on or follow-through offerings of shares by the listed company shall no longer be subject to the IPO tax. A follow-on or follow-through offering is an offering of shares to the public subsequent to an IPO.

As regards the sale, barter or exchange of shares of stock not traded through the local stock exchange, the net capital gains not exceeding the amount of P100,000 shall be subject to a tax rate of 5% while those in excess of P100,000 shall be subject to a tax rate of 10%. It should be noted that the similar guideline in the Tax Code explicitly refers only to the sale, barter or exchange of shares of stock of a domestic corporation not

traded through the local stock exchange. Prior to the new regulation, the practice has been to include gains from sales or disposition of shares of stock of a foreign corporation as part of other income subject to regular income tax rates, and the transaction is not covered by the 5% or 10% capital gains tax. With this development, transactions involving stocks of foreign corporations outside local exchanges may also be taxed using the 5% or 10% tax regime.

In determining the selling price, fair market value, and cost of the shares disposed, existing guidelines and some new rules were included in the regulation.

For the selling price, the following guidelines were provided:

- > In case of cash sale - the selling price is the total consideration per deed of sale;
- > If the consideration is partly in money and partly in kind - the selling price is the sum of cash or money received plus the fair market value of the property received;
- > In case of exchanges - the selling price is the fair market value of the property received; and
- > If the fair market value of the shares of stock sold, bartered or exchanged is greater than the amount of amount and/or fair market value of the property received, the excess of the fair market value of the shares of stock disposed over the amount of money and the fair market value of the property, if any, received as consideration shall be deemed a gift subject to the donor's tax.

The new regulation clarified that the fair market value of shares of stock not listed and traded through the local stock exchange is the book value of the shares of stock as shown in the financial statements duly certified by an independent certified public accountant nearest to the date of sale. On the other hand, the fair market value of listed shares disposed, sold or exchanged outside the trading system or the local stock exchange shall be the closing price on the day when the shares are sold, transferred, or exchanged. When no sale is made in the local stock exchange, the closing price on the day nearest to the date of sale, transfer or exchange of the shares will be used.

The regulation does not amend the rules for the cost basis in determining the capital gains or losses if the shares of stock are acquired by purchase. However, new guidelines were added for transactions involving shares of stock acquired by devise, bequest or inheritance (fair market value of the property at the time of the death of the decedent); acquired by gift (value or basis used by the donor or the last preceding owner by whom it was not acquired by gift); and those acquired for inadequate consideration (amount paid by the transferee for the property). Lastly, the guidelines for determining the substituted basis of tax free exchanges of shares of stock copy the rules provided in Section 40(C)(2) of the Tax Code.

The new regulation consolidates the existing tax rules applicable to these transactions and provides new guidelines intended to clarify the treatment of certain transactions. Companies or individuals holding shares of stocks for investment purposes are advised to take note of the new guidelines and rules.

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The law amends Sections 22, 24, 34, 35, 51, and 79 of R.A. 8424 or the National Internal Revenue Code of 1997 and will take effect 15

days after its publication. It will be interesting to see how Bureau of Internal Revenue (BIR) interprets these provisions and how the changes in taxation will be implemented as the BIR now conducts public hearings to be able to prepare the implementing rules.

## The Cheaper Medicine Law

Republic Act (R.A.) No. 9052 (the Universally Accessible, Cheaper, and Quality Medicine Act of 2008) introduces sweeping reforms aimed at lowering the cost of medicines in the market. With R.A. 9052, the Philippine International Trading Corporation (PITC) can continue its parallel importation of patented medicines from other countries where prices are significantly lower than the prevailing price in the Philippines. It may even include more brands and types of medicines in its list of imports.



Private groups or organizations will also be able to import medicines directly from other countries provided that they register with the Bureau of Food and Drugs (BFAD). Drug outlets or pharmacies are now mandated to

carry a variety of brands, including those brought in through parallel importation, in order to provide consumers with more choices. The BFAD is revitalized with the grant of legislative imprimatur to retain its revenues for the upgrading of its facilities, equipment and human resources. This will help BFAD in its goal of ensuring that all imported medicines are of high quality.

The new law amends the Intellectual Property (IP) Code (R.A. 8293) by declaring the following as non-patentable: the mere discovery of a new form of a new property of a known substance which does not result in the enhancement of the known efficacy of that substance; the mere discovery of any new property or new use for a known substance; or the mere use of a known process unless such new process results in a new product that employs at least one new reactant. Another amendment provides that the owner of a patent has no right to prevent third parties from using a patent without his authorization after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent holder or by any party authorized to use the invention. The law also allows the government to use patented drugs when the interest of the public is at stake. The President is given the power to impose price ceilings on various medicines, including those that are used for chronic illnesses and life-threatening conditions. The Generics Act (R.A. 6675) was also amended so that all generic drugs will carry a label which indicates that the product has the same therapeutic effect as any other product of the same make. The Pharmacy Law (R.A. 5921) was also amended to allow supermarkets, convenience stores, and other retail establishments to sell over-the-counter or non-prescription medicines in their original package or container, or in quantities not in their original containers.



## Expansion of the Court of Tax Appeals



Republic Act (R.A.) No. 9503 introduces landmark changes to the organizational structure of Court of Tax Appeals (CTA). In addition to being raised to the same level as that of the Court of Appeals (CA), the CTA may now sit *en banc* or in three (3) Divisions, each consisting of three (3) justices. The number of CTA justices was also increased from six (6) to nine (9), consisting of a presiding justice and eight (8) associate justices. Five (5) justices shall constitute a quorum for sessions *en banc* and two (2) Justices for sessions of

a Division. The CTA justices shall have the same qualifications, rank, category, salary, emoluments and other privileges, be subject to the same disqualifications, and enjoy the same retirement and other benefits as those provided for under existing laws for the presiding justice and associate justices of the CA. The new law will help hasten the disposition of tax cases and increase revenues for the government to fund social services, food, oil and education subsidies and infrastructure. RA 9503 was signed into law on June 12, 2008 and will take effect 15 days after its publication in at least two newspapers of general circulation.

## NCIP Transfers to the DENR



By virtue of Executive Order No. 726, the Department of Environment and Natural Resources

(DENR) is tasked to exercise supervision and control over the National Commission on Indigenous Peoples (NCIP). The transfer of the NCIP from the Department of Land Reform (DLR) to the DENR is described as a measure which will aid in preserving the culture and natural heritage of the country's indigenous peoples. The transfer takes effect immediately.

The move will allow DENR to leverage control and influence the implementation of the Indigenous Peoples Rights Act (R.A. 8371) and also of other policies which affect indigenous peoples such as the Philippine Mining Act (R.A. 7942). It will also expedite the approval of grants and concessions with one-stop shop processing in cases where the Free and Prior Informed Consent (FPIC) of the indigenous peoples are required, i.e. where development projects are situated in areas occupied by indigenous peoples. The transfer is expected to heighten the collaborative effort between the officials of the two agencies in ensuring a balance between the cultivation of market interests over natural resources and the protection of the rights of indigenous cultural communities in terrestrial areas and marine resources. It is important to note that based on the Philippine Asset Reform Report Card by the Philippine Partnership for the Development of Human Resources in Rural Areas, more than half of the priority mining projects of the country overlap or are found within ancestral domains. Logging is also a major extractive industry present in ancestral domains. As such, the coordination and critical engagement between the two government agencies is vital to the proper utilization and safeguarding of the natural resources in protected areas and ancestral domains.