



TAX LAW FOR BUSINESS  
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## **Tax on listed shares**

As the present tax law is crafted, there are different tax rates that apply on the sale, transfer or other disposition of shares of stock. Except in cases where the regular income-tax rate or exemption applies, the sale of shares of stock in a domestic corporation may be subject to the 5-percent/10-percent capital-gains tax, a tax of one-half of 1 percent of the gross selling price or the 1-percent/2-percent/4-percent tax on sales through initial public offering of shares of stock in closely held corporations.

The 5-percent/10-percent capital-gains tax is imposed on the net capital gains realized from the sale of shares of stock in domestic corporations not traded in the stock exchange. On the other hand, the one-half of 1-percent tax, otherwise known as the stock-transaction tax, is levied, assessed and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local stock exchange, other than the sale by a dealer in securities.

The distinction between these two is plain and simple—the stock-transaction tax is imposed on the sale of shares of stock listed and traded through the local stock exchange, while the capital-gains tax applies if the sale involves shares of stock not traded in the stock exchange.

However, in a recent move by the Bureau of Internal Revenue (BIR), it intends to impose the 5-percent /10-percent capital-gains tax, and not the one-half of 1-percent stock-transaction tax, on sales of shares of stock of listed companies that fail to maintain or surpass their initial public-offering requirement. This is premised on the position of the BIR that these listed companies are technically no longer compliant with their "public ownership" status, thus they are deemed no longer publicly listed companies for taxation purposes. The BIR also contends that public ownership should, more or less, be maintained at 20 percent. It considers these as a continuing listing requirement for taxation purposes.

A reference to Section 127 of the 1997 Tax Code, which is the provision of the Tax Code imposing the one-half of 1-percent stock-transaction tax, would show that in order for this tax rate to apply, it only requires that the shares involved are listed and traded in the stock exchange. The law does not require any additional condition before the stock-transaction tax should apply. To do so would be expanding the coverage of the law.

Besides, in the matter of listing of shares and the requirements for the maintenance of “public ownership” status or the qualification as a publicly listed entity, which agency has the authority to determine these? Is this within the jurisdiction of the BIR?

This is a matter within the authority of the Securities and Exchange Commission and the Philippine Stock Exchange. We believe that once these agencies have determined that the public-listing requirements had been complied with or that an entity qualifies as publicly listed entity in accordance with their rules, the tax rules should normally follow and not the other way around. The BIR cannot dictate on what it believes to be the requirement for an entity to be considered “publicly listed” or to be continuously considered as such. That authority resides with the proper agency and once that agency has determined so or otherwise, then it is the responsibility of the BIR to impose the appropriate taxes.

This is just an example of some of the concerns investors face in relation to the grant and availment of tax incentives or certain preferential tax rates. There are cases where the BIR differed in its implementation of the tax laws from that of the investment agency or tax incentive-giving body. As a result, the incentives granted to investors by these investment agencies are disregarded. In cases like this, we believe the BIR should defer to the findings of the agencies that granted the incentives as they are the proper authority that evaluated and determined the qualifications of the grantees. And so in the matter of who is subject to the 5-percent /10-percent capital-gains tax and the one-half of 1- percent stock-transaction tax, the BIR should defer to the determination of who qualifies as a publicly listed entity to the appropriate agency. Once that determination is made, the BIR’s task is to impose the applicable taxes.

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