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## **TAX LAW FOR BUSINESS**

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### **Philippines on cryptocurrency**

With the current pace of global industrial development, cryptocurrency is becoming a global phenomenon as several countries now recognize its importance. Cryptocurrency is a digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds. It is a variety of virtual currency that uses cryptography for security and is neither issued nor guaranteed by a Central Bank nor backed by any commodity. The most common type of cryptocurrency is the Bitcoin.

On March 6, 2014, alarmed by the Bitcoin exchanges in the Philippines, the Bangko Sentral ng Pilipinas (BSP) issued a Warning Advisory for the public that exchanges of virtual currency, such as the Bitcoin, are not regulated by the BSP or any other regulatory authority, and thus, there are no regulations that would specifically protect consumers and businesses for financial losses from transacting with the use of virtual currencies.

On February 6, 2017, realizing that virtual currency (VC) system can revolutionize the delivery of financial services, the BSP issued Circular 944, or the Guidelines for Virtual Currency Exchanges, requiring VC exchanges to obtain certificate of registration to operate as remittance and transfer company. As such, all VC Exchanges shall adhere to the guidelines issued by the BSP. However, the BSP emphasized that this issuance is not to endorse VCs as currencies but merely to regulate

the use of VCs in financial or business transactions. Thus, the BSP reminds the public to be cautious in entering into VC transactions as it is a risky investment.

In a 2017 Securities and Exchange Commission Advisory on Initial Coin Offerings and the 2018 SEC Advisory warning the public on Bitcoin-related Ponzi Schemes, the SEC warned the public that investment schemes with the use of cryptocurrencies or digital currencies are considered securities transactions subject to its regulatory authority. Thus, such entities engaged in VC transactions should secure prior registration and/or license to solicit investment or sell securities as required under the Securities Regulation Code. Further, the SRC requires that cryptocurrencies or digital currencies, which are treated as securities, should be registered with the SEC prior to its offer to the public.

In a resolution issued by the SEC on March 2, 2018, in the case of *In re: Black Cell Technology Inc., Black Sands Capital Inc., BlackCell Technology Limited and Krops v. Enforcement and Investor Protection Department, SEC CDO Case 01-18-046*, using the Howey Test and Section 3.1 of the SRC, the SEC ruled that Kropcoins, a cryptocurrency, are considered unregistered securities that are being offered and/or sold within the Philippines; and though the offer was initiated by a Hong Kong company, it is accessible via the Internet to buyers in the Philippines. Based on the foregoing, the Philippines treats cryptocurrencies as securities, which may be subjected to taxes under the National Internal Revenue Code (NIRC), as amended by the Tax Reform for Acceleration and Inclusion law.

The Bureau of Internal Revenue (BIR), on the other hand, has not yet issued its guidelines on the tax treatments of cryptocurrency transactions, despite the emerging interest on the VC exchanges in the Philippine market. Nonetheless, since the SEC treated it as securities, the BIR may also tax them as securities. Further, the NIRC, as amended, provides that any income of an individual or corporation, in whatever form, sourced from the Philippines, is taxable in general. Thus, depending on the transaction involved using cryptocurrencies, income, percentage and other business taxes provided under the NIRC may be imposed by the BIR.

The use of cryptocurrencies is, indeed, helpful to the fast-growing global industry since cashless transactions bring convenience to business dealings and promote faster operations, especially on international engagements. However, it comes with a great risk of financial losses due to the volatility of cryptocurrency market. Further, due to its cryptographic feature, cryptocurrencies can

be easily used in money laundering or in funding terrorist activities. Thus, vigilance on both users and the government authorities is the key to the effective use of cryptocurrency.

At present, the Philippine government is yet to stabilize its laws and regulations on VC exchanges. Despite the fact that the BSP and the SEC recognized VC exchanges, it is still unregulated as most cryptocurrencies are unregistered; and thus, it would be a challenge on the part of the BIR to track and impose the necessary taxes on cryptocurrency transactions. One can even mine a crypto coin worth millions of dollars and sell it to a foreign buyer without the knowledge of the tax authorities. At this current state, our government has very limited means in monitoring the cryptocurrency market and cannot fully protect the financial interest of its citizen users. Therefore, one who enters the cryptocurrency market should always be on guard because “Cashless is good, but you may lose your goods.”

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