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INTERNATIONAL FINANCIAL LAW REVIEW

INTERNATIONAL BRIEFINGS 2013



Philippines

SyCip Salazar Hernandez & Gatmaitan

Valuing unlisted shares

On April 11 2013, the Philippine Bureau of Internal Revenue issued Revenue Regulations No 6-2013 (RR 6-2013) amending certain provisions of Revenue Regulations No 6-2008, which provides for, among other things, the rules involving the determination of the fair market value of shares of stock not listed and traded in the local stock exchanges. These regulations implement the provisions of the Philippine National Internal Revenue Code (the Tax Code) relating to the imposition of capital gains tax on the sale or transfer of shares that are not traded through a local stock exchange.

The general rule under the Tax Code is that gains realised from the sale or disposition of shares of stock is subject to a capital gains tax of 10% (other than a sale of shares through a stock exchange, which is generally subject to a stock transfer tax of 0.5%). For the purposes of calculating the tax, the gain is the amount by which the selling price or fair market value of the shares (whichever is higher) exceeds the seller's acquisition cost. Under the previous set of rules, the fair market value of the shares was deemed equal to their book value, as shown in the financial statements duly certified by an independent certified public accountant nearest to the date of sale. In case the fair market value of the shares of stock sold or transferred was greater than the amount of money and/or fair market value of the property received, the excess received as consideration will be deemed a gift subject to the donor's tax under section 100 of the Tax Code (at a rate of up to 30% of the net gifts).

RR 6-2013 adopted a new rule, however. Under the new rule, the fair market value of the shares will be determined as of the time of the sale, using the adjusted net asset method, whereby all assets and liabilities of the target corporation are adjusted to their fair market value, and the amount by which the adjusted value of the assets exceeds that of the liabilities will be the fair market value of the equity. RR 6-2013 is not, however, clear on the person or entity responsible for the adjustment of such assets and liabilities.

RR6-2013 was published on April 24 2013.

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International Financial Law Review

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