



*Technical Report*

# **Streamlining the BIR Tax Rulings Process Phase 2 – Systems Diagnosis**

*Report on Stakeholders Needs, System Weaknesses and System Objectives*

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**Prepared for**

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Department of Finance  
Republic of the Philippines**

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# Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-00-03-00020 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

EMERGE assistance for this task was initially requested by letter dated 21 March 2005 from then Department of Finance (DOF) Undersecretary Emmanuel P. Bonoan to USAID Mission Director Michael J. Yates. The activity was put on hold due to subsequent DOF personnel changes. The request for assistance was later revived by Assistant Commissioner James Roldan of the Bureau of Internal Revenue (BIR) Legal Service to provide technical assistance to improve the framework and procedures in the issuance of tax rulings. The activity was to consist of 1) an update of a USAID-funded tax rulings study conducted for BIR in 2002, from which corrective measures based on the findings were to be developed, and 2) an enhancement of the management and processes of tax rulings with a new systems design and procedural automation. However, the BIR Management Committee decided they could handle the first task themselves and that the EMERGE consultants should concentrate on helping the Legal Service with the second one. EMERGE contracted Januario C. Aliwalas and Edmund Guamen for the task, which was divided into four components, each of which, after completion, is the subject of a separate report:

*Part 1 - Systems Investigation*

*Part 2 - Systems Analysis*

*Part 3 - Systems Design – Overall System (with Manual Components)*

*Part 4 - Systems Specifications for the Computerized Component*

The views expressed and opinions contained in these reports are those of the authors and are not necessarily those of USAID, the GRP, EMERGE or its parent organizations.

# **Streamlining the BIR Tax Rulings Process**

**A Joint Project of the BIR Legal Service and  
the USAID under the EMERGE Project**

**REPORT # 2**

## **Phase 2 – Systems Diagnosis**

*Report on Stakeholders Needs, System Weaknesses and System Objectives*

**November 2006**

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## INTRODUCTION TO THE PROJECT

Tax rulings are official positions of the Bureau of Internal Revenue (BIR) on queries of taxpayers, who request clarification on certain provisions of the National Internal Revenue Code or its implementing regulations, usually for the purpose of seeking tax exemptions. These issuances are part of the guidance that the BIR provides taxpayers to help them comply with the country's internal tax laws. Section 4 of the Code provides that the "provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance." In cases where there are already precedent tax rulings issued by the Commissioner, the issuance of tax rulings on similar queries may be delegated to the Deputy Commissioners, Assistant Commissioners and Revenue Regional Directors.

In 2002, the Department of Finance (DOF), with USAID technical assistance, organized an inter-agency body comprising of the DOF, BIR, and National Tax Research Center (NTRC) to review tax rulings issued from 1998 to 2001. The review covered only the rulings issued by the BIR National Office since not all tax rulings issued at the revenue regions were readily available. The inter-agency body noted that tax rulings issued differed in style and format. Moreover, many conflicting rulings were cited under the review. The body thus recommended rescinding or amending selected provisions in about 400 legally inconsistent rulings, which could have resulted in revenue leakages.

In 2005, then Finance Undersecretary Noel Bonoan requested EMERGE to assist his office in completing the reform process on tax rulings. The objective was to improve the framework and procedures in the issuance of the tax rulings. The framework and procedures would be designed to enhance the quality of the guidance BIR provides taxpayers, raise the level of transparency and accountability, and streamline the operations in processing and monitoring the issuance of tax rulings.

Early in 2006, separate meetings were held with new Finance Undersecretary Gaudencio Mendoza (who replaced Emmanuel Bonoan) and Assistant Commissioner James Roldan of the BIR Legal Service to discuss the technical assistance on tax rulings. Both officials expressed their support for the continuance of the project. ACIR Roldan, in particular, emphasized the need to strengthen the coordination between the legal service of the BIR National Office and the revenue regions in the issuance of tax rulings, and to streamline and possibly automate the process of application, processing, and monitoring of tax rulings.

## **PURPOSE AND OBJECTIVES OF THE PROJECT (SYSTEMS STUDY)**

The systems study is part of the technical assistance which is aimed to improve revenue collection by helping the BIR plug revenue leakages arising from the issuance of legally inconsistent tax rulings, improving the level of transparency and accountability in the issuance of tax rulings, and enhancing the quality of the guidance provided to taxpayers.

The systems study shall involve enhancing the management and processes of tax rulings and will look into the streamlining and possible automation of the process of application, processing, issuance and appeals of tax rulings, as well as the file management, monitoring and communication system of tax rulings.

Specifically, the project will include the following activities:

- Describing in detail the current tax ruling process by drawing process maps of the tax ruling processes in the National Office and the Regional Offices (This is Part 1 – Systems Investigation Phase)
- Identifying the various system stakeholders and prioritizing their needs; Evaluating the problems and weaknesses of the current set-up and clarifying the objectives of the ideal system (This is Part 2 – Systems Diagnosis Phase)
- Defining the functional requirements for the tax rulings process based on needs assessment of the different users and stakeholders and proposing immediate improvements to the system on a semi-automated, semi-manual mode (This is Part 3 – Systems Analysis Phase)
- Designing the enhanced tax ruling process and management system, including the system requirements and specifications; (This is Part 4 - Systems Design Phase)

## EXECUTIVE SUMMARY

### A. STAKEHOLDERS

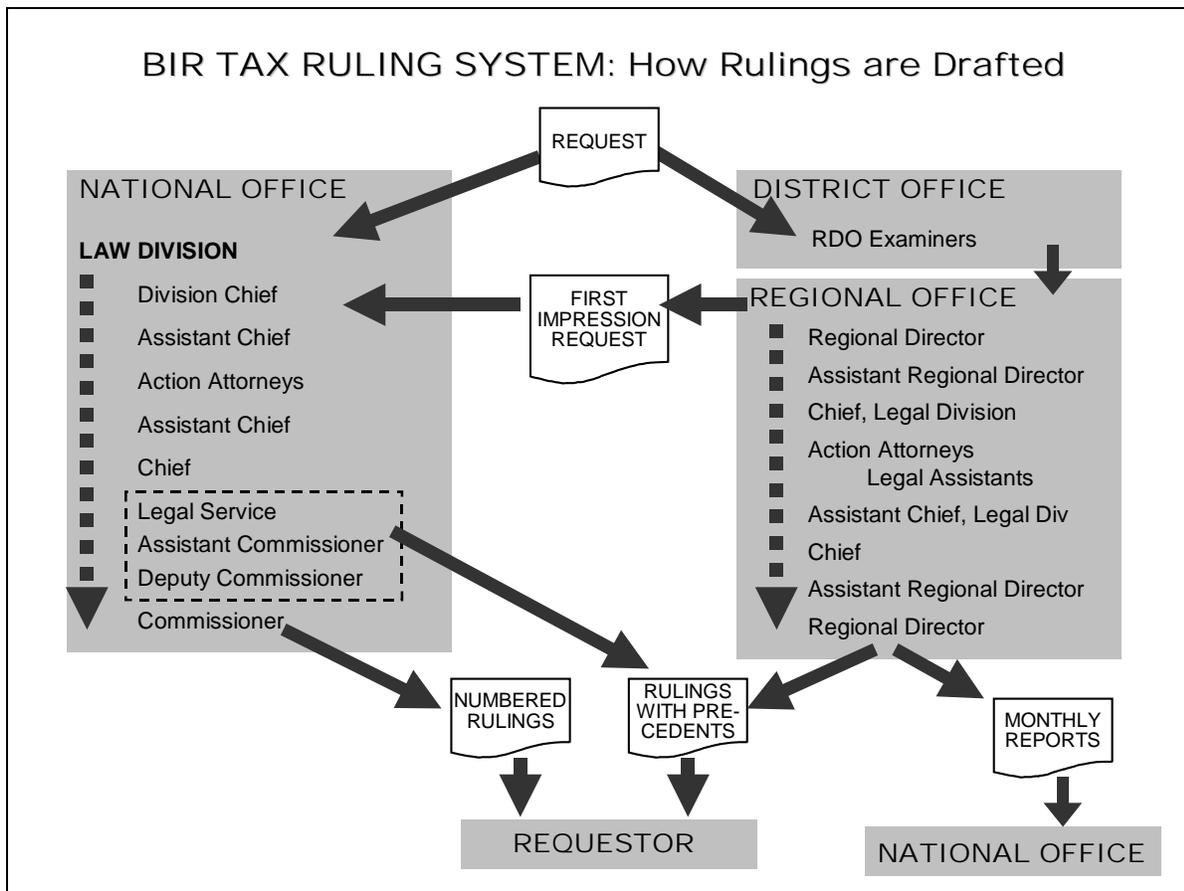
Part 1 of the Systems Study focused on two major sub-processes related to tax rulings:

- The preparation of tax rulings at the BIR's National Office and its Regional Offices and
- The way various entities access the file of previous rulings issued.

The stakeholders involved in the preparation of the tax rulings include:

- **The Requestor** (Taxpayer or his Tax Manager)
- **The National Office of the BIR** (Led by the Law Division and the Legal Service)
- **The Regional Offices** (Coordinated by the Legal Divisions)
- **The District Office Examiners**

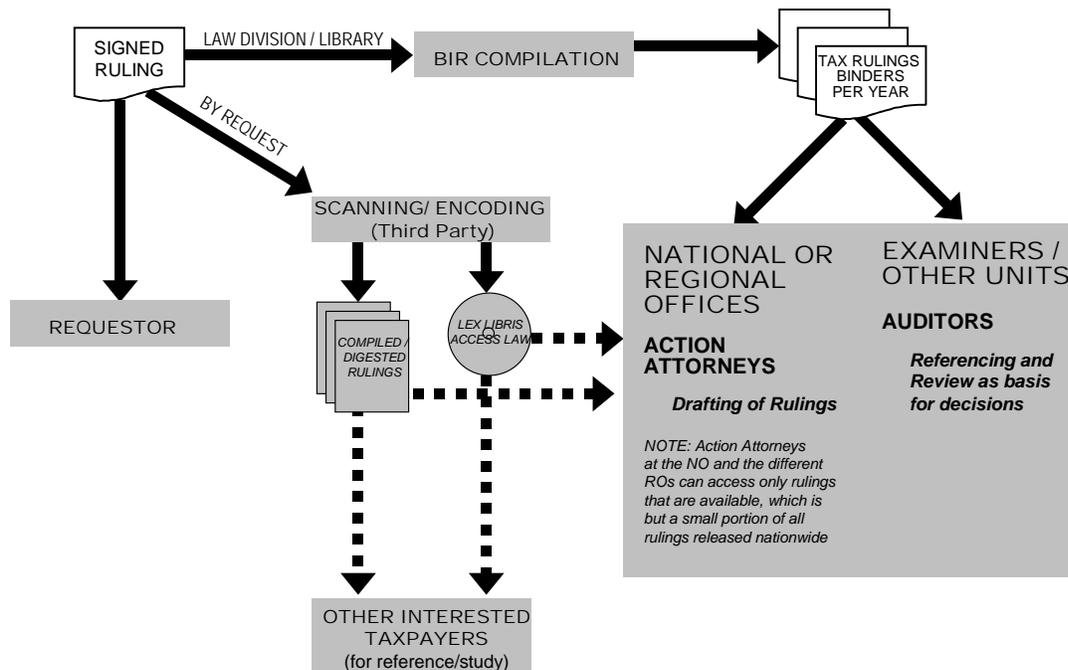
The figure below shows a general view of the roles of the various stakeholders in the preparation of tax rulings.



Additional stakeholders were noted after reviewing who need to access the previous rulings (see figure below). The additional entities interested in previous rulings are:

- **Independent Publishers / Compilers of tax rulings**
- **Other Interested Taxpayers**
- **Law Schools, Law Students, Researchers**

### BIR TAX RULING SYSTEM: How Rulings are Accessed



**B. STAKEHOLDERS' NEEDS**

The systems diagnosis identified 12 needs of the various stakeholders. The needs were next rated as High, Medium, or Low as to importance (level of impact/seriousness) and performance (how much of the need is being met now). The results are summarized in the table below:

<b>STAKEHOLDERS' NEED</b>	<b>Importance Level</b>	<b>Performance Level</b>
1. Timely/Quick Issuance of Rulings	<b>M</b>	<b>M</b>
2. Consistent, Clear, Correct Rulings	<b>H</b>	<b>M</b>
3. Convenience to Requestors	<b>L</b>	<b>M</b>
4. Access to Previous Rulings	<b>H</b>	<b>M</b>
5. Access to Other Reference Materials	<b>L</b>	<b>M</b>
6. Quick Search on Rulings	<b>M</b>	<b>L</b>
7. Cut and Paste Capability	<b>L</b>	<b>L</b>
8. Monitor Status of Rulings in Workflow	<b>M</b>	<b>L</b>
9. Monthly Reports on Time	<b>M</b>	<b>M</b>
10. Plug Tax Leakages	<b>M</b>	<b>M</b>
11. No First Impression Rulings at RO	<b>H</b>	<b>L</b>
12. Information on Implementation of Rulings and LA issuances	<b>H</b>	<b>L</b>

The needs were then plotted based on the data above to show their priority level and to get an indication of which needs require more immediate attention from BIR.



From the graph, we can classify the needs as to urgency as follows:

**Group 1 – Very Urgent; Address/Implement Soonest**

- Consistent and Correct Rulings (NEED # 2)
- Access to Past rulings (# 4)
- No 1<sup>st</sup> impression rulings issued by the Regional Offices (# 11)
- Information on Rulings Implementation (# 12)

**Group 2 - High Impact; Implement Next**

- Timely Issuance of Rulings (# 1)
- Quick Search on Previous Rulings (# 6)
- Monitor Status of requests (# 8)
- Timely/Monthly Reporting (# 9)
- Plug Tax Leakages (# 10)

### **Group 3 – Mid-term Opportunity; Implement Last**

- Cut and Paste Capability (# 7)
- Convenience in Filing and Receiving (# 3)
- Access to Other reference Materials (# 5)

### **C. PROBLEMS AND WEAKNESSES**

To validate the level of importance and performance given to the needs, the problems of the current process were identified and evaluated as to relevance as either Major or Minor. The seventeen (17) problems are listed below:

#### **Major**

1. Inconsistent rulings; Inability to track inconsistent rulings
2. Non-implementation or partial implementation of issued tax rulings, Inability to monitor proper implementation of rulings
3. Delayed issuance of tax rulings both in the National Office and the Regional Offices
4. No access to complete set of tax rulings at both National Office and Regional Offices
5. Lack of computers (outdated computers) for the use of Legal Division personnel
6. Taxpayers' Representatives (tax managers) are first to have copies of new tax rulings ahead of BIR personnel who are issuing the tax rulings
7. Incorrect/inconclusive rulings

#### **Minor**

8. No escalation/reminders for rulings requests that are not acted upon after some time.
9. No access to reference materials due to lack of materials; Outdated reference materials available at the Regional Offices
10. Lack of qualified Action Attorneys (e.g., Baguio)
11. Lack of training/instructions on new tax rulings to cover background information and explanation of basis for new rulings with no precedents
12. Lack of opportunity to meet and interact with Legal Division personnel at the National Office
13. Unsecured work area of the Legal Division in some Regional Offices (e.g., Baguio Regional Office)

14. Incomplete requirements or incomplete processing of tax rulings requests at the Revenue Districts (in Davao, about 33% of all requests are returned to the Districts)
15. Many layers of review/signatures required while drafting the tax rulings
16. No way to track if Rulings are still being issued for matters or cases covered under the No-Ruling Areas (NRAs)
17. No incentives for the Regional District Examiners to prioritize/attend to Rulings Requests

#### D. SYSTEM OBJECTIVES

The following objectives for two (2) phases of implementation are being proposed:

**Phase 1** – To implement a **semi-manual, semi-mechanized system** that will:

- Allow access to previous rulings by both the National Office and the Regional Offices
- Generate information on how the Rulings are implemented by the revenue examiners
- Generate consistent and correct rulings
- Ensure that only the National Office can issue rulings on first impressions

The interim system is envisioned to have the following general features:

- A central database of all rulings issued nationwide to be housed in the National Office. Two alternatives shall be explored:
  - Alternative 1: All Regional Offices shall be required to send copies of all rulings they issued during the month to the National Office. These copies in the form of Microsoft Word documents (the final approved version) shall be sent via the email system as attachments to the Regional Offices' monthly report. The national office then downloads the files and keeps them in a central file. In the same manner, all rulings issued by the National Office shall be sent to the Regional Offices via email attachments
  - Alternative 2: The Regional Offices shall post the rulings they issued into the BIR Knowledge Portal. The Law Division shall also post the rulings they issue into the BIR Knowledge Portal

- A mechanism whereby the BIR Examiners shall provide information to the Legal Service as to the final implementation of the Rulings issued by the National Office or by the Regional Offices. The following alternatives shall be explored:
  - A monthly report from the examiners informing the Law Division as to how the cases with rulings were finally assessed.
  - Restoration of the access by the Law Division to the status of tax cases being handled by the examiners.

**Phase 2** – To develop a fully **automated nationwide system** running on a wide area network that shall have the following functionalities:

- Sharing of a common database of rulings
- Access to electronic copies of all reference materials
- Email notification of newly issued rulings
- Workflow tracking of in-process rulings
- Automatic generation of monthly reports
- Automatic feedback on the status of the implementation of rulings issued
- Document management with full text/OCR capability for quick search and “cut and paste” functionality
- Electronic submission of requests and required attachments

## A. STAKEHOLDERS AND THEIR NEEDS VIA-S-VIS TAX RULINGS

The following are the needs of the various stakeholders of the Tax Ruling System of the BIR. The Needs were classified as High, Medium or Low based on the **degree of their importance** to the stakeholder:

<b>Importance: <i>Level of Impact / Seriousness of not addressing the Need</i></b>	
<b>LOW:</b>	Not much impact or consequence
<b>MEDIUM:</b>	Moderate Impact, Some problems may arise if Need is not met
<b>HIGH:</b>	Serious Impact, Major objectives will not be achieved if Need is not met

### 1. Taxpayers and their Representatives (Tax Managers)

#### NEEDS:

1.1. Timely and quick issuance of tax rulings. To get tax rulings within 15 days (or within a reasonable period of time) from the date of submission of request.

- Need Classification – **Medium**; Aside from irate customers, the impact of delayed ruling is the possibility of additional penalty to be paid by the taxpayer for late tax payment and delayed collection of revenues by the government

1.2. To get tax rulings that are consistent, clear, and correct

- Need Classification – **High**; A wrong ruling will result in the taxpayer having to pay incorrect taxes while an inconsistent ruling destroys the credibility of the BIR and leads to revenue leakages

1.3. Convenience in filing requests, following up, and getting the final ruling

- Need Classification – **Low**; The inconvenience caused by provisions that are not user-friendly can be tolerated as long as the rulings are consistent and issued expeditiously

## 2. Rulings Requestors other than the Taxpayers

Requestors may be classified into two:

- Examiners from the various Regional District offices: request for rulings from examiners are generally for clarifications of various assessment issues. Rulings issued under this circumstance are usually for BIR's use only and are not released to the public, like other rulings.
- Government units outside BIR, e.g. Congress, Office of the President, Department of Finance: request for rulings by these agencies are usually clarificatory as well

### NEEDS:

2.1. To get tax rulings within 15 days (or within a reasonable period of time) from the date of submission of request

- Need Classification – **Medium**; Aside from irate customers, the impact of delayed ruling is the possibility of additional penalty to be paid by the taxpayer for late tax payment and delayed collection of revenues by the government

2.2. To get tax rulings that are consistent, clear and correct tax

- Need Classification – **High**; A wrong ruling means the taxpayer having to pay incorrect taxes while an inconsistent ruling destroys the credibility of the BIR and leads to revenue leakages

2.3. Convenience in filing requests, following up, and getting the final ruling

- Need Classification – **Low**; The BIR unit or Government Unit requesting for the Ruling is not as concerned about this issue as the taxpayer

**3. BIR National Office Units involved in issuing the tax rulings**

The following are the units within the BIR National Office involved in the process of issuing tax rulings:

- Legal Service, under the Assistant Commissioner
- Law Division
- Office of the Deputy Commissioner for IAG
- Office of the Commissioner

NEEDS:

3.1. To Issue Tax Rulings on time

- Need Classification – **High**; Delayed rulings will result in backlog, poor performance rating, bad image, postponed tax payments from taxpayers

3.2. Access to complete set of tax rulings issued both in the National Office and the Regional Offices

- Need Classification – **High**; Impact of lack of access is high possibility of inconsistent rulings, difficulty in drafting a ruling and inability to monitor inconsistent rulings

3.3. Quick and easy access to available references, i.e. rulings that are properly indexed, and catalogued

- Need Classification – **Medium**; Cumbersome access methods lead to lower quality rulings and waste of precious time
- 3.4. Rulings that are searchable by topic, key words or phrases, type of tax involved, *etc.*
- Need Classification– **Medium**; Without this functionality, it will be more difficult to search for a specific ruling and takes longer to draft rulings
- 3.5. Facility to ‘cut’ parts of previous rulings and ‘paste’ to a Microsoft Word document
- Need Classification– **Low**; The Law Division can simply re-encode the data on a new document which will take longer and with the possibility of re-encoding error
- 3.6. Facility to copy facts and information from the request and the attachments (submitted requirements) without re-encoding
- Need Classification– **Low**; The Law Division can re-encode the data by copying from the hard copy documents that were submitted
- 3.7. Access to other, non-revenue-related reference materials, *e.g.* SCRA, CTA, *etc.*
- Need Classification – **Medium**; Inability to reference supreme court and/or court of appeals rulings may lead to low quality or incorrect rulings
- 3.8. Law Division to be able to monitor status of requests in the process of being drafted
- Need Classification– **Medium**; Long delayed requests for rulings can remain unnoticed; no basis for prioritizing requests

3.9. Law Division to be able to monitor tax rulings issued by Regional Offices

- Need Classification– **High**; The National Office needs to track unauthorized and/or incorrect/inconsistent rulings issued by the Regional Offices

3.10. Produce Monthly Reports easily and on-time

- Need Classification – **Medium**; Late and incomplete reports will impair the ability of the Regional Offices to reference previous rulings

3.11. Check/Monitor implementation status of tax rulings issued

- Need Classification – **High**; Inability to monitor if the rulings were followed will result in revenue leakages. It is important to track if Examiners/Assessors are not implementing the rulings

3.12. Raise more taxes by installing measures that will prevent inconsistent, incorrect rulings and plug tax leakages

- Need Classification – **Medium**; This is not the main objective of the group issuing tax rulings but is very important to the government

3.13. Make sure that no rulings of first impression are issued at the Regional Offices and that all rulings issued at the Regional Offices are numbered and properly accounted for

- Need Classification – **High**; This is one of the main reasons why the study is being conducted and a computerized system is being proposed

3.14. Information on whether an assessment (LA) is already issued on the case for which a ruling is being requested by another BIR unit.

- Need Classification– **Low**; The information is needed to prevent a ruling on a no-ruling area. The rating is low since ruling on a no-ruling area is discouraged but not entirely prohibited

3.15. How to detect Assessment Officers who are not asking for a tax ruling on cases with legal issues when they should

- Need Classification– **Low**; This is the lookout of the other BIR units involved with Revenue Operations

#### 4. BIR Regional Offices Units

The following are the units within each BIR Regional Office involved in the process of issuing tax rulings:

- Regional District Examiners
- Legal Division
- Office of the Assistant Regional Director
- Office of the Regional Director

#### NEEDS:

4.1. Access to tax rulings, past and current, issued at the National Office

- Need Classification – **High**; Impact of lack of access is possibility of inconsistent ruling, increased difficulty in drafting a ruling and inability to monitor inconsistent rulings

4.2. Access to other (non-BIR) reference materials, *e.g.*, SCRA, CTA, *etc.*

- Need Classification – **Low**; Lack of access may lead to lower quality rulings

4.3. Reasonable response time for First Impression tax rulings requests submitted to the National Office

- Need Classification – **High**; Leads to irate taxpayers, negative image, delayed collection of taxes due
- 4.4. Monthly reporting to the National Office of tax rulings issued by the Regional Office
- Need Classification – **Medium**; The National Office needs this information badly but there are currently no sanctions for late reports
- 4.5. Legal Division monitoring of status of requests for tax rulings in process in the Regional Offices
- Need Classification – **Medium**; Regional Offices needs to be able to answer follow-up calls from requestors regarding status of their request
- 4.6. Ability to search previous rulings by topic, key words or phrases, type of tax involved, etc.
- Need Classification – **Low**; Inability leads to longer time to access rulings to be used as reference
- 4.7. Facility to ‘cut’ parts of previous rulings and ‘paste’ to a Microsoft Word document
- Need Classification – **Low**; Lack of this feature simply leads to longer time to draft rulings
- 4.8. Facility to copy facts and information from the request and the attachments (submitted requirements) without re-encoding
- Need Classification – **Low**; Lack of capability leads to longer time to draft rulings

## 5. Independent Publishers / Compilers of tax rulings (e.g. Lex Libris, CATS-AccessLaw, etc.)

These are parties outside the BIR organization who gather all rulings issued and compile them either in electronic form (*i.e.*, compact disk-based, on-line) or in printed books. These include CD-Asia (the publisher of Lex Libris series), donor agencies like USAID (funding agency of Complete Access Tax System-Access Law or CATS), and various tax lawyers/authors (e.g., Bonoan). These compilations are usually for sale and are used by tax advisers as references in their practice. For electronic compilations like Lex Libris, an initial subscription fee for the tax rulings module alone can reach up to P40,000 per installation, and annual updates (covering rulings issued the previous year) may reach up to P5,000 per installation.

### NEED:

- 5.1. Access to copies of tax rulings issued by the BIR National Office and Regional Offices
  - Need Classification – **Low**; This is not a priority; If BIR can already provide this service, the need for other groups to collect rulings, publish and sell them can be made obsolete

## 6. Law Schools, Law students, Researchers

These are parties outside the BIR organization who refer to tax rulings as part of their studies or research.

### NEED:

- 6.1. Access to copies of tax rulings issued by the BIR National Office and Regional Offices
  - Need Classification – **Low**; This is not a priority but BIR should target to provide this service using electronic medium (e.g., Internet)

## 7. National Government

The national Government is a direct beneficiary of the outcome of any tax ruling, as the rulings can dictate the proper assessment that needs to be imposed.

NEED:

### 7.1. Plug tax leakages and generate more revenues

- Need Classification – **High**; This is a priority as the government needs more revenues

## **B. A SUMMARY OF THE NEEDS AND THEIR PERFORMANCE RATINGS**

The needs of the various stakeholders discussed above were analyzed, grouped based on similarities, and condensed into the 12 items below:

1. Timely/Quick Issuance of Rulings
2. Consistent, Clear, Correct Rulings
3. Convenience to Requestors
4. Access to Previous Rulings
5. Access to Other Reference Materials
6. Quick Search on Rulings
7. Cut and Paste Capability
8. Monitor Status of Rulings in Workflow
9. Monthly Reports on Time
10. Plug Tax Leakages
11. No First Impression Rulings at RO
12. Information on Implementation of Rulings and prior issuances of Letters of Authority (LA)

Next, the 12 items were rated as to their current performance (An assessment of the extent that the need is being met by the current system based on the rating below:

<b>Performance: <i>How much of the need is being met now?</i></b>	
<b>LOW:</b>	Not being met at all
<b>MEDIUM:</b>	Sometimes being met or partially being met
<b>HIGH:</b>	Always being met; Fully being met now

### 1. Timely/Quick Issuance of Rulings

Performance Rating is **Medium**.

There is a wide variance in the time required for rulings to be issued. While some rulings take only a few weeks, some take many months before issuance. While the performance is definitely not low, it also cannot be rated as high.

### 2. Consistent, Clear, Correct Rulings

Performance Rating is **Medium**.

BIR's Legal Service believes that there is a fair amount of inconsistency going on at the moment. This is the reason for the Medium rating.

### 3. Convenience to Requestors

Performance Rating is **Medium**.

Although the current system is not very inconvenient to filers, there is room for improvements to make the process simpler and easier for the taxpayer.

#### **4. Access to Previous Rulings**

Performance Rating is **Low to Medium**.

Both the National Office and the Regional Offices do not have access to the complete set of rulings issued (up to the last ruling issued).

#### **5. Access to Other Reference Materials**

Performance Rating is **Medium**.

While there is available access to the reference materials (*e.g.*, printed compilations, CDs) most of the materials are outdated and incomplete especially in the Regional Offices.

#### **6. Quick Search on Rulings**

Performance rating is **Low**.

Searching for the past ruling, even if a copy of the ruling is available, is time consuming as there is no ready index to search quickly for a particular ruling (if the reference number is not known to the Action Attorney or to the Reviewer). A facility to get to the particular ruling given any word or set of words will definitely be useful.

#### **7. Cut and Paste Capability**

Performance rating is **Low**.

There is no capability for the Action Attorneys to 'cut and paste' from an electronic document. They have to re-encode the paragraph or portions they wish to cite or quote.

## 8. Monitor Status of Rulings in Workflow

Performance rating is **Low**.

There is no report on the aging of requests for ruling. There is no way -- unless they go through each pending request -- to determine how long the rulings have remained outstanding.

## 9. Timely Submission of Complete Monthly Reports.

Performance rating is **Medium**.

The National Office gets the reports from the Regional Offices on time. The problem is that the reports are not detailed enough to determine if the rulings issued are correct and consistent.

## 10. Plug Tax Leakages

Performance rating is **Medium**.

The Legal Service is doing its best to plug the tax leakages arising from inconsistent rulings or unimplemented rulings but the information gathered is not enough since there is no systematic way to track these.

## 11. No First Impression Rulings at Regional Office

Performance rating is **Low**.

For various reasons (such as to allow the taxpayer to be tax-exempt), some Regional Offices violate the rule that only the National Office can issue rulings of first impression. There is no way the National Office can prevent this violation since the Regional Offices do not report these rulings to the National Office and they even issue these unauthorized rulings as unnumbered rulings.

## 12. Information of the Implementation of Rulings, LA issuances

Performance rating is **Low**.

Law Division has no access to the assessment files and reports of the Examiners.

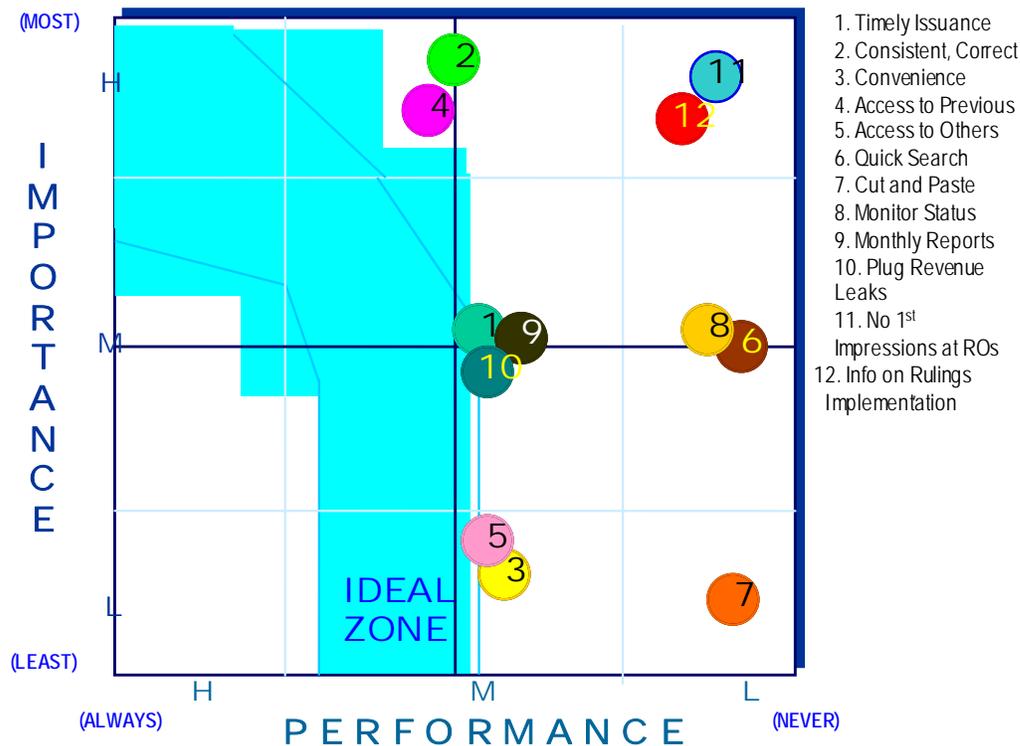
## C. CRITICAL PROCESSES, NEEDS, AND INFORMATION

The various needs are now graphed in a grid based on their importance and performance. It can be deduced from the graph which information and the resulting processes are critical to the BIR Tax Ruling System. The graph shows a prioritization of the needs and provides a guide as to which results in the most impact if properly addressed:

### BIR Tax Rulings System

#### *Matrix of Stakeholder Needs, Importance and Performance*

STAKEHOLDERS' NEED	Importance Level	Performance Level
1. Timely/Quick Issuance of Rulings	M	M
2. Consistent, Clear, Correct Rulings	H	M
3. Convenience to Requestors	L	M
4. Access to Previous Rulings	H	M
5. Access to Other Reference Materials	L	M
6. Quick Search on Rulings	M	L
7. Cut and Paste Capability	L	L
8. Monitor Status of Rulings in Workflow	M	L
9. Monthly Reports on Time	M	M
10. Plug Tax Leakages	M	M
11. No First Impression Rulings at RO	H	L
12. Information on Implementation of Rulings and LA issuances	H	L



AREAS INTERPRETATION:

- Ideal Zone (*currently getting enough performance level at the appropriate time*). No Stakeholder Need is found to be in this zone
- Critical Success Factor (*high value, high performance items that form the core foundation of success; implement soonest*). Items #2, #4, #11, and #12 are found to be in this zone
- Near-term Opportunities (*high impact, high leverage items with major and early influence on success; implement next*). Items #1, # 6, #8, #9, and #10 are found to be in this zone.
- Mid-Term Opportunities (*key success factors following Near-Term Opportunities; implement later*). Only item #7 is found to in this zone.
- Long-Term Opportunities (*potential opportunity items; implement last*). Items #5 and #3 are found to be in this zone.

## D. PROBLEMS AND WEAKNESSES

Below are the weaknesses of the current Tax Ruling System in the BIR and an assessment of their relevance to the project. These are classified as Major or Minor depending on their impact on the needs of the stakeholders.

### 1. Inconsistent rulings; Inability to track inconsistent rulings.

At this point, BIR has no formal mechanism to track inconsistent rulings. There is no permanent body that is tasked to monitor these. Inconsistent rulings are generally found only as presented by opportunity (*e.g.*, as researched by an Action Attorney (AA) during the drafting of a ruling, cited as a precedent within an RTR, pointed out by tax advisers, *etc.*).

Weakness : **Major**

### 2. Non-implementation or partial implementation of issued tax rulings; Inability to monitor proper implementation of rulings.

If the Examiners at the Revenue Districts do not follow the tax rulings, tax leakages result. Another potential problem are taxpayers' complaints on inconsistent tax rulings which Legal Service will have to defend.

Weakness : **Major**

### 3. Delayed issuance of tax rulings both in the National Office and the Regional Offices.

While some RTRs, especially those with precedents, are processed within an acceptable period of time, many take many months or even years to be released.

Weakness : **Major**

**4. No escalation/reminders for rulings requests that are not acted upon after some time.**

Division Chiefs, both at the Law Division in the National Office, and Legal Divisions in the Regional Offices, do not get immediate feedback on the status of the draft rulings – whether if it being processed, at what stage, or if it left unattended.

Weakness : **Minor**

**5. No access to reference materials due to lack of materials; Outdated reference materials available at the Regional Offices.**

Reference materials at the Regional Offices are found to be very limited. Furthermore, the few reference books maintained by the Regional Office's Legal Division units are generally outdated. AAs interviewed mentioned that they buy reference books on their own, or borrow elsewhere. Regional Offices generally have very limited budget for these reference materials.

Weakness : **Minor**

**6. No access to complete set of tax rulings at both National Office and Regional Offices.**

While tax rulings (specially mother rulings) are usually distributed by the National Office to the Regional Offices, it is not uncommon that these rulings do not reach the Regional Office's Legal Division, the primary user of the rulings. The AAs interviewed had either CDs of Lex Libris or CATS-Access Law, but with versions circa 1998-2000. These CD compilations do not include recent tax rulings releases.

Weakness : **Major**

**7. Lack of qualified Action Attorneys (e.g., Baguio).**

A number of those performing the work of AAs are not yet lawyers. While this does not automatically mean that the quality of tax rulings suffer, it is ideal that AAs are full-fledged lawyers

Weakness : **Minor**

**8. Lack of training/instructions on new tax rulings to cover background information and explanation of basis for new rulings with no precedents.**

The Regional Offices mentioned that aside from the copies of tax rulings provided, they would prefer a more thorough discussion of the rulings. This is to cover background information and explanation of basis for new rulings.

Weakness : **Minor**

**9. Lack of opportunity to meet and interact with Legal Division personnel at the National Office.**

Corollary to item 8. Regional Offices' Legal Division requests occasional interaction with key personnel from National Office, if only to establish communication with those involved in processing the mother rulings.

Weakness : **Minor**

**10. Lack of computers (outdated computers) for the use of Legal Division personnel.**

RO Legal Divisions generally have one or two communal desktop computers. These computers, unfortunately, are outdated (3-5 years old). Ideally, AAs, to be more effective in their work ,should have one computer each with the necessary software.

Weakness : **Major**

**11. More recent rulings from Tax managers**

Taxpayers' Representatives (tax managers) receive copies of new tax rulings ahead of BIR personnel who issue the tax rulings-

Weakness : **Major**

**12. Unsecured work area of the Legal Division in some Regional Offices (e.g., Baguio Regional Office).**

The office of Baguio's Legal Division is an open space with only a counter and swinging half-door to separate the restricted area and corridor. Passers-by can readily view work on the computer screen, or can eavesdrop when the division chief and AAs discuss the cases.

Weakness : **Minor**

**13. Incomplete requirements or incomplete processing of tax rulings requests at the Revenue Districts.**

Some RTRs submitted have incomplete attachments or incomplete preliminary work by the Revenue District Offices. In Davao, for example, about 33% of all requests are returned to the Districts. RTRs submitted in the Revenue District Office need to be checked by the receiving RDO Examiner for completeness of attachments. RDO Examiners are also expected to do preliminary investigation. –

Weakness : **Minor**

**14. Many layers of review/signatures required while drafting the tax rulings.**

Within the Regional Office, a draft ruling will undergo at least four reviews before approval. Within the National Office five to ten reviews are done, depending on the nature of the RTR, before approval.

Weakness : **Minor**

**15. No way to track if rulings are still being issued on matters or cases covered under the No-Ruling Areas (NRAs)**

Weakness : **Minor**

## 16. Incorrect/inconclusive rulings

Weakness : **Major**

## 17. No incentives for the Regional District Examiners to prioritize/attend to rulings requests.

The RDO Examiners' main function is assessment and collection, where they are closely monitored. The function of processing the RTR (*i.e.*, receiving the RTR, doing preliminary investigation) may be considered an additional burden to them. Consequently, this additional function becomes a low priority.

Weakness : **Minor**

## E. OBJECTIVES FOR THE STUDY AND OBJECTIVES FOR THE TAX RULING SYSTEM

1. The Objective for this study is to propose and implement changes to the BIR Tax Ruling System in 2 phases:

**Phase 1** – Immediate Implementation Items that will address some of the critical needs of the various stakeholders

**Phase 2** –Design a Computerized Tax Ruling System that will address all of the critical needs and most of the auxiliary needs of the various stakeholders

2. **System Objectives:** The BIR Tax Ruling System should be revised to produce the following:

**Phase 1** – To implement a **semi-manual, semi-mechanized system** that will:

- Allow access to previous rulings by both the National Office and the Regional Offices
- Generate information on how the Rulings are implemented by the revenue examiners
- Generate consistent and correct rulings
- Ensure that only the National Office can issue rulings on first impressions

The interim system is envisioned to have the following general features:

- A central database of all rulings issued nationwide to be housed in the National Office. Two alternatives shall be explored:
  - Alternative 1: All Regional Offices shall be required to send copies of all rulings they issued during the month to the National Office. These copies in the form of Microsoft Word documents (the final approved version) shall be sent via the email system as attachments to the Regional Offices' monthly report. The national office then downloads the files and keeps them in a central file. In

the same manner, all rulings issued by the National Office shall be sent to the Regional Offices via email attachments

- Alternative 2: The Regional Offices shall post the rulings they issued into the BIR Knowledge Portal. The Law Division shall also post the rulings they issue into the BIR Knowledge Portal
- A mechanism whereby the BIR Examiners shall provide information to the Legal Service as to the final implementation of the Rulings issued by the National Office or by the Regional Offices. The following alternatives shall be explored:
  - A monthly report from the examiners informing the Law Division as to how the cases with rulings were finally assessed.
  - Restoration of the access by the Law Division to the status of tax cases being handled by the examiners.

**Phase 2** – To develop a fully **automated nationwide system** running on a wide area network that shall have the following functionalities:

- Sharing of a common database of rulings
- Access to electronic copies of all reference materials
- Email notification of newly issued rulings
- Workflow tracking of in-process rulings
- Automatic generation of monthly reports
- Automatic feedback on the status of the implementation of rulings issued
- Document management with full text/OCR (optical character recognition) capability for quick search and “cut and paste” functionality
- Electronic submission of requests and required attachments

*Note:* A more detailed discussion of these recommendations can be found in the reports for Parts 3 and 4 of this Project.

## MEETING MINUTES/NOTES

### FOCUS GROUP DISCUSSION WITH TAX MANAGERS

26 October 2006, 8:00am – 11:00am  
South Room A, 25/F, Tower One and Exchange Plaza  
Ayala Triangle, Ayala Avenue, Makati City

#### Attendees:

1. Atty. Peaches Aranas – ACB Law Office
2. Atty. Rolando Devesa – Punongbayan & Araullo
3. Atty. Malou Lim – Isla Lipana
4. Atty. Thristle Buxani – Balmeo & Go
5. Atty. Carolina Racelis – SGV
6. Atty. Roberto Tan – KPMG Laya Mananghaya
7. Atty Mepe Cantillep – BIR Law Division
8. Atty. Charadine Bandon – BIR Legal Research
9. Dr. Romulo Miral – USAID/Emerge
10. Mr. Edmund Jose Guamen – USAID/Emerge
11. Mr. Jene Aliwalas – USAID/Emerge

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### 1. NUMBER OF REQUESTS FILED

The participants to the focus group discussion (FGD) said that, on the average, each of them would submit between two to five requests for tax rulings (RTR) per month.

### 2. TYPES OF REQUESTORS

The tax advisers classify requestors as follow:

- 2.1. Taxpayers without tax advisers: these taxpayers submit RTRs with less detail, and the requests are more generalized in nature.

- 2.2. Taxpayers with tax advisers: RTRs are basically written by the tax advisers, who are of course experts in the field. Thus, RTRs are more focused, and there is already reference to prior rulings and legal basis.
- 2.3. Internal BIR units: RTRs for internal BIR units are made generally for clarifications by the assessment section. Rulings issued under this circumstance are usually for BIR's use only and are not released to the public, like other rulings.

### **3. THE TAX RULING PROCESS.**

Based on the experience of the FGD participants, an RTR would undergo the following process:

- 3.1. The tax ruling requestor (either the taxpayer himself, his tax adviser, or from within the BIR organization) files a formal letter of request.
- 3.2. The letter of request is usually sent to BIR via a messenger, or the tax adviser (or his representative) personally submits it to BIR.
- 3.3. The letter is received and logged by the receiving clerk.
- 3.4. Within the Law Division,
  - 3.4.1. The RTR gets assigned to an Action Attorney (AA).
  - 3.4.2. AA studies/evaluates the request, and drafts the ruling.
  - 3.4.3. The Section Chief reviews the draft, and with the AA, makes necessary corrections if needed. The draft ruling is then forwarded to the Assistant Division Chief.
  - 3.4.4. The Assistant Division Chief reviews the draft, and with the AA, makes necessary corrections if needed. The draft ruling is then forwarded to the Division Chief.
  - 3.4.5. The Division Chief reviews the draft, and with the AA, makes necessary corrections if needed. The draft ruling is then forwarded to the Legal Service.
- 3.5. Within the Legal Service,

- 3.5.1. The Technical Assistant reviews the draft, and refers to the AA if any corrections or adjustments are necessary. The draft ruling is then forwarded to the Head Revenue Executive Assistant (HREA).
  - 3.5.2. The HREA reviews the draft, and refers to the AA if any corrections or adjustments are necessary. The draft ruling is then forwarded to the Assistant Commissioner for Legal Service.
  - 3.5.3. The Assistant Commissioner reviews the draft, and refers to the AA if any corrections or adjustments are necessary. If the ruling's final signatory is the Assistant Commissioner, he signs the final ruling it at this point. If not, the draft ruling is forwarded to the Office of the Deputy Commissioner – Legal & Inspection.
- 3.6. Within the Office of the Deputy Commissioner
- 3.6.1. The Technical Assistant reviews the draft, and refers to the AA if any corrections or adjustments are necessary. The draft ruling is then forwarded to the Chief of Staff.
  - 3.6.2. The Chief of Staff reviews the draft, and refers to the AA if any corrections or adjustments are necessary. The draft ruling is then forwarded to the Deputy Commissioner.
  - 3.6.3. The Deputy Commissioner reviews the draft, and refers to the AA if any corrections or adjustments are necessary. If the ruling's final signatory is the Deputy Commissioner, he signs the final ruling it at this point. If not, the draft ruling is forwarded to the Office of the BIR Commissioner.
- 3.7. Within the Office of the Commissioner,
- 3.7.1. The Technical Assistant reviews the draft, and refers to the AA if any corrections or adjustments are necessary. The draft ruling is then forwarded to the Chief of Staff.
  - 3.7.2. The Chief of Staff reviews the draft, and refers to the AA if any corrections or adjustments are necessary. The draft ruling is then forwarded to the Commissioner.
  - 3.7.3. The Commissioner reviews the draft, and refers to the AA if any corrections or adjustments are necessary. Once the review process is completed, the Commissioner signs the final ruling.

- 3.8. Once the final ruling is signed by the designated/authorized signatory (whether by the Assistant Commissioner, Deputy Commissioner, or by the Commissioner), the final ruling goes back to the Law Division or ITAD, for release to the requestor. Tax representatives/managers normally have representatives who frequent the Law Division, either to follow-up pending RTRs, or to receive the final tax rulings.

#### **4. ACCESS TO TAX RULINGS**

Tax managers refer to the following sources:

- 4.1. *Lex Libris* – a compact disk-based reference for local legal information, e.g., court rulings, tax rulings, etc. Access to *Lex Libris* is by subscription per area: for the tax-related module, there is a one-time fee of P40,000 per installation (usually per computer), with an annual maintenance (or updates) of at least P5,000 per installation. Tax managers prefer using *Lex Libris*.
- 4.2. CATS-Access Law – similar to *Lex Libris* but is a one-time publication sponsored by USAID.
- 4.3. Current Legal Resource – an e-mail based subscription to legal developments and rulings released/issued.

#### **5. EXPERIENCES AND IMPRESSIONS IN REQUESTING TAX RULINGS**

- 5.1. BIR has very limited resources, both in supplies (*i.e.*, paper, printing, etc.) and legal staff, to process RTRs.
- 5.2. AAs do not have access to enough resource materials.
- 5.3. Review of draft rulings is focused on Attorney Mape Cantillep (Assistant Division Chief of Law Division). Atty. Cantillep is over-loaded with work.
- 5.4. The BIR Law library is not updated as needed – copies of RAs are not the certified official copies but are mere clippings from newspapers.
  - 5.4.1. One suggestion is to bring the maintenance and management of the Law Library back to the Law Division. The Law Library is currently being managed by HR.
- 5.5. Tax rulings as contained in *Lex Libris* and Access Law are not scanned from the original/official copies, but are re-encoded by the compilers. Being so, these compilations are prone to errors.

- 5.6. Mertens, another reference material but based in the United States of America, is also available in soft version. There is a subscription fee for this.
- 5.7. Tax managers, on behalf of their clients, usually issue the RTRs to confirm if the tax rate assessed is indeed the correct one. They corrected the impression that they issue the RTR to try to get a lower assessment for their client's tax situation. Generally, differences in the tax rates assessed are due to differences in the client's set of facts, even if the situation or circumstances are very similar.
- 5.8. Tax managers agree that there are conflicting or inconsistent rulings issued by the BIR. Conflicting rulings may be a result of using or stating different sets of facts, erroneous interpretation of precedent rulings, or using erroneous rulings as references. In cases of conflicting rulings, at least one of these is erroneous.
- 5.9. Erroneous rulings may still be revoked: rulings may be revoked because there is error in the legal basis of the ruling itself. As such, these revoked rulings should not be used as reference for succeeding rulings.
- 5.10. Another reason for the issuance of conflicting rulings is that BIR, particularly the AAs, have very limited reference materials, and would usually use the first reference they can get hold of. There is generally no detailed research because of the lack of references, or limited access to references. It would be unfortunate if the ruling used as reference is the wrong ruling to begin with.
- 5.11. One suggestion is to have a regular (possibly weekly) briefing within the Law Division of rulings completed and in process.
- 5.12. In case there are conflicting or inconsistent rulings, the tax managers follow these courses of action to resolve:
  - 5.12.1. Go first to the provision of law as the main basis
  - 5.12.2. Refer to subsequent rulings for reference and guidance.

## **6. NEEDS OF TAX ADVISERS**

The FGD Participants enumerated their needs with respect to the tax rulings as follows:

- 6.1. Consistent rulings
- 6.2. Correct ruling
- 6.3. Faster (acceptable) turn-around time

The tax managers mentioned the following preferred and acceptable turn-around time:

- 6.3.1. For rulings with precedent, at most is one month
  - 6.3.2. For rulings on first impression, also one month, because taxpayers need these rulings to settle their obligations on time.
- 6.4. Tax advisers, as a rule, avoid Rulings on First Impressions because Rulings on First Impression generally take longer to complete. The reasons given for the longer processing time for Rulings on First Impressions are the following:
- 6.4.1. The draft ruling undergoes reviews from Law Division, Legal Service, the Office of the Deputy Commissioner, and the Office of the Commissioner.
  - 6.4.2. Legal staffs in some units at the BIR are new or are not very experienced and knowledgeable in doing the review (*i.e.*, lack of knowledge of prior rulings, *etc.*) so it takes more time to review.
  - 6.4.3. In certain parts of the process even simple typographical errors are coursed back to the Law Division instead of being corrected at that point so further delay is experienced. It was suggested that only drafts with substantial errors be sent back to Law Division.
- 6.5. Attachments to the rulings.

Tax advisers would prefer that attachments be included in the copies of the final rulings released to the public, so they will have a better appreciation of the issues involved. Tax advisers can further evaluate the process as to why and how the specific rulings came out if they can also read the attachments. BIR, however, maintains that attachments are confidential and should only be accessible by BIR personnel.

- 6.6. Submission of requirements.

Submission of requirements or attachments by the requestors seems to be not a major issue among the tax advisers in the FGD. The tax advisers mentioned that a checklist is available for RTRs, and other information may be requested in the course of the drafting – a practice they are comfortable with. This is because can already determine which information may be needed during the course of the drafting and thus make it available. (NOTE: unlike if the requestor does not have any tax adviser, and is not familiar with the submissions needed, will it be an issue.)

#### 6.7. Prioritizing requests.

Tax advisers, while they service many clients, acknowledge that indeed some RTRs may be urgent than others. They would usually follow-up more urgent requests more frequently.

One suggestion is for BIR to put up an 'Express Lane' for urgent rulings, even if this would require additional processing fees. However, BIR may not be equipped to handle an Express Lane at all, because its resources remain limited, and the whole process still requires many reviews.

#### 6.8. Shortening the process.

Process of tax rulings may be shortened, by having fewer reviewers before having the final ruling signed. This suggestion would require further consideration by the BIR. The current process of multiple reviews was developed precisely to capture possible inconsistencies or errors in the tax rulings. Shortening the process by having lesser reviews might adversely affect the quality of the tax rulings.

#### 6.9. DOF to review all rulings.

One suggestion is for DOF to form a permanent group who will review all tax rulings issued both in the National Office and the Regional Offices. A formal body with permanent members doing the review will allow capture of inconsistencies. One problem however, is the feasibility of forming this group with quality members. Also, determination of what is consistent or not may be an issue because it all depends on the interpretation of the provision of law by the incumbent commissioner.

### **7. ACCESS TO PREVIOUS RULINGS**

#### 7.1. Place all rulings on-line.

One option is to put the full final rulings – not just digested versions -- within a secured portion of the BIR website. Tax advisers prefer the full version of rulings so they can read the whole ruling and evaluate the issues themselves – unlike digested versions where certain pertinent facts may not be included.

The website should include all rulings, whether issued by the National Office or the Regional Office, and should also be searchable by topic and key phrases.

In this case, the Regional Offices should be mandated to submit all its tax rulings to the Law Division who will then upload these rulings into the Rulings database. Submission may be in the form of scanned copy of the rulings, or actual hardcopy of the ruling.

It is also suggested that access to this secured portion containing the tax rulings shall be by subscription, *i.e.*, authorized users will pay subscription fee for access, similar to what the tax advisers do with *Lex Libris*.

The tax managers agree that BIR should be the one to generate revenues from publishing tax rulings instead of private compilers like *Lex Libris*. Funds generated from this scheme may be used by BIR to further improve the Law Library and maintain the tax ruling computer system.

#### 7.2. Submission of RTR on-line.

To further enhance the BIR website, the tax advisers also suggested allowing the submission of the RTR, as well as the supporting attachments of the RTR, electronically. This will allow the RTR to be processed earlier.

Supporting attachments can be scanned copies of the originals. The original -- or certified copy of the original -- can be submitted later, and will not be used as a reason for not commencing the processing of the RTR.

#### 7.3. Workflow processing

A computerized workflow system, beyond the computerized database of previous rulings, is also proposed to enable a more streamlined processing of rulings. The workflow system can allow coordinated and even simultaneous review activity of the draft ruling (*e.g.*, a draft ruling can be reviewed at the same time by the Technical Assistant and the Assistant Commissioner, and their comments can be entered the same time, not sequentially).

It was noted that a simple paper flow or transfer of a reviewed draft ruling from one table (*e.g.*, the Technical Assistant's ) to another table (*e.g.*, the HREA's) may involve a few hours or even a few days of waiting time because the paper may be placed at the bottom of the paper heap.

### 8. IMPLEMENTATION OF TAX RULINGS AT REGIONAL OFFICES

- 8.1. The group acknowledged the infrastructure problems in the Regional Offices: the lack of computers, reference materials, access to the Internet, and more importantly, the number and quality of the legal staff.

- 8.2. It was also noted that Regional Offices issue a number of opinions, instead of rulings, usually characterized by the presence of '0000' series what should be rulings reference number.
- 8.3. The tax advisers suggested the creation of a ruling template for the Regional Offices, which can be used for standard rulings.