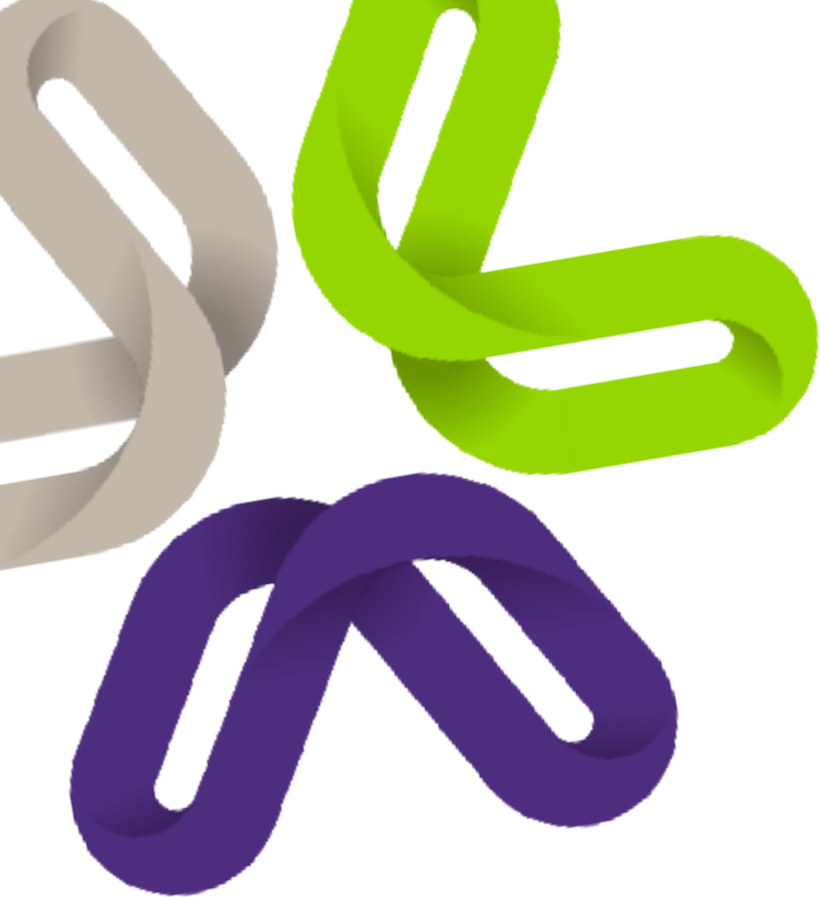


# Tax *brief*

September 2019





### **BIR ISSUANCES**

RR No. 9-2019  
RMO No. 42-2019

RMO No. 43-2019  
RMO No. 44-2019

RMO No. 45-2019

RMO No. 46-2019

RMC No. 81-2019  
RMC No. 82-2019  
RMC No. 83-2019  
RMC No. 84-2019  
RMC No. 85-2019  
RMC No. 86-2019

RMC No. 87-2019  
RMC No. 88-2019  
RMC No. 89-2019  
RMC No. 90-2019

### **SEC CIRCULARS**

SEC Memorandum  
Circular No. 17  
SEC Memorandum  
Circular No. 18

### **COURT DECISIONS**

CTA No. 9172

CTA No. 9502

CTA EB No. 1956  
CTA AC No. 214

5% discount for PWDs on basic necessities and prime commodities

Prescribes the policies, guidelines and procedures in the Accomplishment Reporting on BIR Priority Programs and Other Major Programs and Projects

Amends portion of RMO No. 7-2019

Prescribes the policies, guidelines and procedures on the transmittal of BIR Records/Dockets to the Litigation, Prosecution, Appellate and Legal Divisions of Revenue Regions

Amends the definition of Accounts Receivable/Delinquent Accounts (AR/DAs) to be reported in the Financial Statements

Further amends the procedures, policies and guidelines in the preparation of the "Reports on Drastic Changes in Collection Performance" (BIR Forms Nos. 1771A to 1771C) and revises the format thereof

New tax payment facility utilizing the PESONet through Landbank Link.biz Portal

Circularizes the Improvement Action Plan for Customer Satisfaction (Fiscal Year 2019)

Notifies the loss of one (1) pad of unused BIR Form No. 0423 (Apprehension Slip)

Notifies the loss of several BIR Form No. 0423 (Apprehension Slip)

Implementing Guidelines of the Fuel Marking Program

Publishes the full text of Department Order No. 049-2019 issued by the Secretary of the Department of Finance entitled "Revised Travel Guidelines for Officials and Employees as Contained in the Department of Finance's Officials and Employees Travel Guide"

Publishes the full text of several Presidential Issuances

Publishes the full text of several Presidential Issuances

Updated List of Accredited Microfinance NGOs

Notifies the loss of a duplicate copy from one (1) unused set of BIR Form No. 2524 (Revenue Official Receipt)

Revised Guidelines on Securities Deposit of Branch Offices of Foreign Corporations

Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies

Unverified third party information matching cannot be used as basis in estimating tax liabilities

BIR has no authority to make another assessment for the same taxable year after the 3-year prescriptive period

Issuance of a new LOA in reassignment of assessment cases is mandatory

Reckoning of the 30-day period to appeal the local treasurer's decision on local business tax assessment

# BIR Issuances



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## 5% discount for PWDs on basic necessities and prime commodities

(Revenue Regulations No. 9-2019, August 27, 2019)

Pursuant to RA No. 10754 entitled “An Act Expanding the Benefits and Privileges of Persons with Disability”, every PWD shall enjoy a special discount of five percent (5%) of the regular retail price, without exemption from value-added tax (VAT), of basic necessities and prime commodities. For purposes of these regulations, necessities and commodities shall include:

### Necessities:

1. All kinds and variants of rice
2. Corn
3. All kinds of bread (Pastries and cakes not included)
4. Fresh, dried and canned fish and other marine products (including frozen and in various modes of packaging)
5. Fresh pork, beef and poultry meat
6. All kinds of fresh eggs (excluding quail eggs)
7. Potable water in bottles and containers
8. Fresh and processed milk excluding milk labelled as food supplement)
9. Fresh vegetables including root crops
10. Fresh fruits
11. Locally manufactured instant noodles
12. Coffee and coffee creamer
13. All kinds of sugar (excluding sweetener)

### Prime commodities:

1. Flour
2. Dried processed and canned pork, beef and poultry meat
3. Dairy products not falling under the definition of basic necessities
4. Onions and garlic
5. Vinegar, patis and soy sauce
6. Toilet/Bath Soap
7. Fertilizer
8. Pesticides
9. Herbicides
10. Poultry feeds, livestock feeds and fishery feeds
11. Veterinary products
12. Paper, school supplies
13. Nipa shingle
14. Sawali
15. Cement, clinker, GI sheets
16. Hollowblocks
17. Plywood
18. Plyboard
19. Construction nails
20. Batteries (excluding cellphone and automotive batteries)
21. Electrical supplies and light bulbs
22. Steel wires

The total amount of said purchase shall not exceed Php 1,300 per calendar week without carry-over of unused amount. Said amount shall be spent on at least four kinds of items listed as basic necessities and prime commodities.

Similar with the tax incentive for granting the existing 20% sales discount from identified establishments relative to the sale of goods

and services for the PWDs’ exclusive use and enjoyment, the 5% special discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted subject to certain conditions prescribed under Section 5 of RR No. 5-2017.

## New tax payment facility utilizing the PESONet through Landbank Link.biz Portal

(Revenue Memorandum Circular No. 81-2019, August 14, 2019)

Taxpayers filing their tax returns using eBIRForms and taxpayers mandated to use Electronic Filing and Payment System (eFPS) with an account in any of the Bangko Sentral-regulated Financial Institutions (BSFIs) participating in the PESONet payment system may now opt to pay their taxes online through Land Bank of the Philippines’ (LBP) Link.Boz Portal. As of now, the new payment facility is available to depositors of Rizal Commercial Banking Corporation (RCBC) and will soon be available to depositors of other PESONet Participating BSFIs.

## Implementing Guidelines of the Fuel Marking Program

(Revenue Memorandum Circular No. 85-2019, August 22, 2019)

This circular publishes the full text of Joint Circular No. 001-2019 of the Department of Finance (DOF), Bureau of Internal Revenue (BIR) and Bureau of Customs (BOC).

# BIR Issuances



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The said joint circular was issued to implement a Fuel Marking Program pursuant to the TRAIN law which refers to the mandatory marking and testing of petroleum products bound for domestic consumption as a control procedure for preventing duties and tax evasion in the fuel industry.

A firm shall be engaged by the government to be the Fuel Marking Provider (FMP) responsible for providing, monitoring and administering the Official Fuel Marker. Aside from the FMP, the BIR and the BOC are the accountable government agencies in the implementation of the Fuel Marking Program, with BOC performing duties (i.e., supervision of marking, testing, collection of marking fees) in connection with imported petroleum products and BIR in connection with local manufactured or refined petroleum products.

## Fuel Marking:

- Only petroleum products for domestic consumption with proof of payment of taxes will be subject of marking.
- The BIR and BOC shall ensure that all locally manufactured or refined petroleum products and all imported products are properly marked with Official Fuel Marker before the same are removed from the place of manufacture or refinery for distribution or in the case of imported petroleum, before release from the Customs custody or removal from tax-paid storage facilities/depots, for distribution into the domestic market.
- The person, entity or taxpayer who owns or imports the product or to

whom it is consigned, or whoever brings the same into the Philippines, or manufactures and/or refines the same shall cause and accommodate the marking thereof with the official marker.

- The oil company/depot representative shall make the necessary request for marking at least two (2) calendar days prior to the manual marking. Notice shall likewise be made to BIR and BOC. In case of automated injection, the request for marking must be done at least eight (8) hours.
- The marking process shall be undertaken in the presence of oil company/depot representatives, to witness and attest to the veracity of the marking process, together with BOC and/or BIR Officers, if warranted.
- Upon completion of the marking, a Certificate of Marking shall be issued, in duplicate, by the Fuel Marking Provider to the oil company, depot representative or transporter, as applicable, and the BIR and/or BOC representatives witnessing the marking. No marked fuel, in whole or in part shall be allowed to be removed or transferred for exportation.
- Fuel marking fees shall be paid by the refiner, manufacturer or importer of petroleum products for the marking services of the Fuel Marking Provider. The BIR and BOC are tasked to collect the fuel marking fees which collection shall be done at the same time as the internal revenue taxes on manufactured, refined or imported petroleum products are collected.

## Field Testing:

- The FMP, with the supervision of Field

Inspection Team comprised of BIR and BOC officers, shall conduct a nationwide testing on petroleum product samples taken from refineries, gasoline stations and other retail outlets as well as vessels, depots, warehouses, tank trucks or similar fuel-transporting vehicle.

- The field testing plan containing the selection of sites (fuel retail stations) to visit, any intelligence report on the site and previous test results shall be drawn daily. An authorized representative of the owner of the fuel to be tested, which could be an employee assigned or working at the place where the test is conducted, shall also be present during the testing.
- When there is reasonable cause or verified information received that a transporting vehicle is carrying any unmarked, adulterated, or diluted petroleum products, the BIR and/or BOC Officer nearest the vicinity may stop and search the same in line with the said agencies' authority to search for taxable products under Section 171 of the NIRC and Section 222 of the CMTA. In all instance, the FMP must immediately conduct the testing of the petroleum product suspected to be unmarked, adulterated, or diluted.
- In case petroleum product is found without the official marker and does not contain the required level of marker, the appropriate excise taxes plus appropriate penalties shall be assessed and collected. Pending said assessment and payment of excise tax and penalties due thereon, the Field Inspection Team shall effect the seizure of non-compliant fuel on site in accordance with the procedures to be issued.

# BIR Issuances



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## Updated List of Accredited Microfinance NGOs

(Revenue Memorandum Circular No. 89-2019, August 30, 2019)

This circular publishes the 2019 Updated List of Microfinance NGOs with Microfinance NGO Regulatory Council (MNRC) accreditation as of June 14, 2019 and List of Microfinance NGO with expired accreditation as of March 31, 2019.

Under the implementing rules and regulations of Microfinance NGOs Act, a Certificate of Accreditation from MNRC shall be valid for a period of 3 years for the date of issuance, unless earlier revoked by MNRC.

## Policies on transmittal of BIR Dockets to the Litigation, Prosecution, Appellate and Legal Divisions of Revenue Regions

(Revenue Memorandum Order 44-2019, August 7, 2019)

To ensure the integrity, retention and availability of the BIR's records for any legal action and collection of deficiency taxes, the following policies and procedures shall be observed:

- The BIR has 15 days from the receipt of the request from the concerned Legal Division to transmit the original or certified true copies of the entire BIR records/docket as required by the Department of Justice and/or Court of Tax Appeals for any legal action.

Before transmittal, the concerned RDO shall reproduce the records/docket in its entirety with proper indexing. The total number of pages contained in the docket must be certified in the transmittal letter.

- Either the original or certified true copies shall be retained by the assessing office for the purpose of immediately enforcing collection procedures such as issuance and service of warrants of distrains and garnishment and/or levy, if necessary, while the legal case or request for consideration is still pending before the concerned Legal Division.

## Definition of Accounts Receivable/Delinquent Accounts (AR/DAs) to be reported in the BIR FS

(Revenue Memorandum Order 45-2019, August 7, 2019)

Accounts Receivable/Delinquent Accounts (AR/DAs) of the BIR refers to the tax due from a taxpayer which was not paid within the time prescribed for its payment. It includes the following:

“Unpaid Revenues” -

- Dishonored check;
- Validated unpaid tax due per tax returns filed by the taxpayer;
- Validated unpaid second installment of income tax by individual taxpayers; and

- Tax liabilities of taxpayers per final and executory decision of the Court.

“Unpaid Assessments” - which have become final and executory due to taxpayer's failure to do the following:

- File valid protest within the prescribed period;
- Submit necessary documents to support request for reinvestigation
- Appeal the decision of the BIR either to the Commissioner's Office or Court of Tax Appeals
- File a motion for reconsideration the decision of the Court favorable to the BIR or appeal the same to higher court within the prescribed time for its filing
- Update the BIR on the change of address or cancellation of business registration resulting to the non-receipt of the assessment notice delivered or served to the address indicated in the Registration database.

However, only the “Unpaid Revenues” shall be reported in the Financial Statements (FS) of the BIR as assets. “Unpaid Assessments” should not be reported in the Financial Statements considering that the taxpayer can still invoke doubtful validity of the tax assessment at any stage of collection enforcement.



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# SEC Circulars

## **Revised Guidelines on Securities Deposit of Branch Offices of Foreign Corporations**

(SEC Memorandum Circular No. 17, August 06, 2019)

All branch offices of foreign corporations duly licensed to do business in the Philippines that are mandated to deposit securities with the Securities and Exchange Commission (SEC) shall do so in accordance with the following revised schedule:

- a. Within 60 days from issuance of SEC license, securities with an actual market value of at least P500,000;
- b. Additional securities shall be deposited within 6 months after the end of fiscal year in the following situations:
  - If gross income within the Philippines for the fiscal year exceeds P10,000,000, additional securities with actual market value of 2% of the increase in gross income; and
  - If the market value of the securities has decreased by at least 10% from the time it was deposited, additional securities with market value that would cover the decrease.

# Court Decisions



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## **Unverified third party information matching cannot be used as basis in estimating tax liabilities**

(First Global Byo Corporation v Commissioner of Internal Revenue, CTA No. 9172, 9212 and 9242 August 06, 2019)

The BIR derived the deficiency income tax and VAT assessments based on the computerized matching system on third-party information sources. The BIR stated that comparing the sales submitted by the suppliers of petitioner against the purchases declared in petitioner's tax returns would show an understatement of purchases resulting in undeclared income and undeclared sales. The BIR also alleged fraud and applied the 10-year prescriptive period to asses in as-much as the computed under-declaration of receipts is more than 30%. However, during the cross-examination of the BIR's witness, the third-party information sources were not verified by the revenue officers who conducted the examination or assessment. Likewise, in cases where confirmation letters were received by respondent from the suppliers, such letters were not provided to the petitioner.

Since the assessments were based on presumptions, the Court held that the BIR failed to prove by clear and convincing evidence that petitioner committed fraud, hence, declared the assessments as void for having been issued beyond the 3-year prescriptive period.

The Court noted that while Section 5, in

relation to Section 6, of the NIRC of 1997, as amended, gives the BIR the power to assess the taxpayer on best evidence obtainable, such power, however, should not be used arbitrarily and capriciously in computing the taxes due. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts. The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption.

## **BIR has no authority to make another assessment for the same taxable year after the 3-year prescriptive period**

(The Professional Services, Inc v Commissioner of Internal Revenue, CTA No. 9502, August 13, 2019)

Section 203 of NIRC provides that except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

The petitioner received the first LOA on August 8, 2008 covering all internal revenue taxes for the taxable year 2007. This led to the issuance of a report which have been settled and paid by the petitioner. Nevertheless, an anonymous memorandum dated June 22, 2012 involving certain parcel of lands was received by the BIR which spurred the issuance of the second LOA for the same taxable year.

Based on the memorandum, the petitioner sold a parcel of land in May 2007 and paid the CGT and DST thereof. Prior the sale, the lot was leased to another entity starting December 7, 2005 with a term of two (2) years. The petitioner disclosed the lot as part of its "Investment Property." In the second LOA, the BIR claims that there was a deliberate misclassification pertaining to the sale of land classified as capital asset since the same was being rented out within 2 years prior to its sale, and thus, being used for trade or business. As such, the sale of the said parcels of land should be subject to income tax and VAT.

To justify the second LOA, the BIR asserts that its first LOA did not cover the Income Tax and VAT issues on the sale of the said investment property. Moreover, since it involves deliberate misclassification, the BIR claimed that the running of the 3-year prescriptive period to assess finds no application in the instant case.

The Court ruled that since the first LOA specifically mentioned that the scope of the examination of taxpayer's books of accounts and other accounting records was for "all internal revenue taxes" for period from January 1, 2007 to December 31, 2007, the petitioner should not have been assessed again for taxable year 2017. Moreover, the 3-year prescriptive period for deficiency VAT and income tax for the year 2017 had already prescribed prior to issuance of the second LOA. Further, the Court finds no sufficient evidence to prove fraud or intentional falsity of the part of the taxpayer to merit the 10-year prescriptive period.

# Court Decisions



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## **Issuance of a new LOA in reassignment of assessment cases is mandatory**

(Commissioner of Internal Revenue v Orient Overseas Container Line Ltd, CTA EB No. 1956 re CTA 9179, August 22, 2019)

Sections 6 and 13 of the Tax Code, as amended, provide that the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax. A Revenue Officer (RO) assigned to perform assessment functions may examine taxpayers in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due, pursuant to a Letter of Authority (LOA) issued by the Revenue Regional Director. For the exigencies of the service, other officials may be authorized to issue and sign LOA but only upon prior authorization by the BIR Commissioner himself.

RMO No. 43-90 is explicit that the continuation of audit by an RO other than the officer named in a previous LOA requires the issuance of a new LOA in cases of reassignment or transfer to another RO.

In the case, there has been a reassignment of the investigation to a new RO but the BIR failed to comply with the issuance of a new LOA. Thus, the investigation conducted by the new RO was without the requisite authority. The Court held that absent the necessary issuance of a new LOA specifically naming the person to whom the case will be reassigned with the corresponding annotation per RMO No. 43-90, there is no

authority to conduct the investigation or audit, thus, the assessment was considered void.

## **Reckoning of the 30-day period to appeal the local treasurer's decision on local business tax assessment**

(Public Safety Mutual Benefit Fund, Inc. v Acting City Treasurer, San Juan City, CTA AC No. 214, August 27, 2019)

Section 195 of the Republic Act No. 7160 (The Local Government Code of 1991), as amended, provides that when a local treasurer or his duly authorized representative finds that correct taxes, fees or charges have not been paid, he shall issue a notice of assessment stating the nature of tax, fee or charge, the amount of deficiency, surcharges, interest and penalties. Within 60 days from the receipt of the notice, the taxpayer may file a written protest with the local treasurer contesting the assessment. The local treasurer shall decide the protest within 60 days from the time of its filing. Should the local treasurer find the protest wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days to file an appeal from (1) the receipt of the denial of the protest, or (2) from the lapse of the 60-day period for the local treasurer to decide on the protest. Failure to file an appeal within the prescribed period makes the assessment conclusive and unappealable.

In the instant case, the taxpayer received two (2) tax order of payment (TOP) assessing

him of deficiency local business taxes. The first TOP covered taxable years 2009 to 2015 while the second TOP covered the years 2009 to 2017.

For the first TOP, the issue being contested is when the 30-day period to file an appeal should commence. The Court held that it can be surmised that the intention of the law is for the local treasurer to issue the denial of the protest before the lapse of the 60-day period. Considering the foregoing, the 30-day period to file an appeal should be reckoned from (1) from the receipt of the denial before the lapse of the 60-day period, or (2) upon the lapse of the 60-day period for the local treasurer to decide on the protest.

For the second TOP, the taxpayer failed to file a protest, thus, the assessment has become conclusive and unappealable.



# Highlight on P&A Grant Thornton services

## **Tax Advocacy**

We actively participate in consultation and public hearings conducted by the Bureau of Internal Revenue on proposed tax rules and regulations, serving as a bridge between our clients and the BIR. Our advocacy work focuses on clarifying the interpretation of laws and regulations, suggesting measures to increasingly ease tax compliance, and protecting taxpayer's rights.

## **Tax seminars and training**

We offer seminars and training on tax-related developments and special issues of interest to taxpayers. Upon request, we provide customized in-house tax training – designed jointly by P&A Grant Thornton and the client – that directly addresses the specific issues of the client's industry and the training needs of its personnel.

If you would like to know more about our services

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We welcome your suggestions and feedback so that the Tax brief may be made even more useful to you. Please get in touch with us if you have any comments and if it would help you to have the full text of the materials in the Tax brief.

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