



# **Tax brief**

March 2018





#### **BIR ISSUANCES**

RR 8-2018	Implementing the income tax provisions of TRAIN
RR 9-2018	Filing and payment of the increased stock transaction tax under TRAIN
RMO 9-2018	New ATCs for excise tax on cosmetic procedures, estate tax and DST
RMO 12-2018	CIR's power to obtain information

#### **DOF DEPARTMENT ORDER**

Order No. 011-2018	Processing of ICC/BCC reverts to BOC
--------------------	--------------------------------------

#### **SEC OPINIONS**

OGC Opinion 18-02	Online voting for members of nonstock corporations
-------------------	--

#### **CTA DECISIONS**

CTA Case No. 8801	Proof of actual remittance of CWT not a condition for tax refund
CTA Case No. 9189	Section 204 on recovery of tax erroneously collected governs all kinds of taxes
CTA Case No. 8829	PAN and FAN issued to a wrong address is void

# BIR Issuances



> BIR Issuances

> DOF  
Department  
Order

> SEC Opinions

> CTA Decisions

## Implementing the income tax provisions of TRAIN

(Revenue Regulations No. 8-2018, February 20, 2018)

The following are the highlights of the implementing rules and regulations on the Income Tax provisions of Republic Act No. 10963, otherwise known as the “Tax Reform for Acceleration and Inclusion (TRAIN)” Act:

### Citizen and Resident Alien

Taxpayers earning below P250,000 annually are now exempt from tax. However, those that are earning over P8,000,000 annually shall now be taxed at a rate of 35% from the old maximum rate of 32%. Base amounts of the new graduated rates are to be adjusted effective January 1, 2023.

Purely self-employed individuals have the option to be taxed either at:

1. Graduated tax rate; or
2. 8% on gross sales/receipts and other non-operating income in excess of P250,000

The option shall be communicated by the taxpayer in the 1st quarter return of the taxable year. Non-election shall subject taxpayer’s earnings to the graduated tax rates as default. Election shall be irrevocable for the said taxable year.

VAT-registered taxpayers, taxpayers subject to other percentage taxes, and partners of a General Professional Partnership (GPP) cannot avail of

the 8% income tax option. Conversely, non-VAT registered taxpayers who initially elected the 8% option but have exceeded the P3,000,000 VAT threshold during the taxable year shall be subject to 3% percentage tax on its first P3,000,000 and the excess be subjected to VAT prospectively. Previously paid 8% income tax may be credited against taxpayers’ income tax due under the graduated rates.

Income Tax Returns (ITR) of taxpayers opting the 8% income tax rate may be submitted even without attached Financial Statements (FS). Those that are subject to the graduated tax rates shall attach their FS in filing ITR.

Compensation income of mixed income earners shall be subjected to the graduated tax rates while their income from business or practice of profession shall be subject to the following:

- a. Gross sales/receipts and other non-operating income not exceeding the P3,000,000 VAT threshold gives the taxpayer the option to be taxed at either:
  - i. Graduated income tax rates; or
  - ii. 8% income tax based on gross sales/receipts and other non-operating income in lieu of the graduated income tax rates and percentage tax; or
- b. Gross sales/receipts and other non-operating income exceeding the P3,000,000 VAT threshold shall be subjected to the graduated income tax rates

## Final Tax on Passive Income

Income of individuals and domestic corporations from (1) interest on FCDU deposits and (2) capital gains from sale of shares of stocks not traded in the stock exchange are now taxed at 15% from previous 7.5% and 5%/10% respectively.

Lottery winnings in excess of P10,000 are now taxable at 20%.

## Non-resident Alien

Non-Resident Alien Engaged in Trade or Business (NRAETB) within the Philippines shall be subject to the same graduated rates imposed on individual citizen and a resident alien individual. Non-Resident Alien Not Engaged in Trade or Business (NRANETB) within the Philippines shall be subject to 25%.

Employees of Regional Headquarters (RHQs), Regional Operating Headquarters (ROHQs), Offshore Banking Units (OBUs), and Petroleum Contractors and subcontractors are now subject to the graduated income tax rates.

## Government Owned and Controlled Corporations (GOCCS), Agencies or Instrumentalities

Except for (1) Government Service Insurance System (GSIS) (2) Social Security System (SSS) (3) Philippine Health Insurance Corporation (PHIC); and (4) Local Water Districts, GOCCs, its agencies and instrumentalities shall be taxed as corporations.

# BIR Issuances



> BIR Issuances

> DOF  
Department  
Order

> SEC Opinions

> CTA Decision

## Exclusions from Gross Income

Threshold for 13th Month Pay and Other Benefits is increased to P90,000 from P82,000.

## Fringe Benefits Tax (FBT)

FBT rate shall be 35% except for NRRANETB (25%).

## Deductions from Gross Income

Personal exemption of P50,000 and additional exemption of P25,000 for each dependent (maximum of 4) is now repealed.

## Individuals Not Required to File Income Tax Return

The following shall be qualified for substituted filing:

1. Purely compensation income earners with taxable income less than P250,000
2. Individuals whose income has been correctly withheld by their employers
3. Taxpayers with their entire income subjected to FWT
4. Minimum Wage Earners

## Income Tax Return (ITR) Filing Deadline

First quarterly ITR filing shall now be on or before May 15 from previous April 15. Annual ITR deadline remains to be on April 15.

## Installment Payment of Individual Income Tax

Tax due of more than P2,000 may be paid in installment basis:

1. 1st installment: At the time annual ITR is filed
2. 2nd installment: On or before October 15

## Registration Updates

Non-VAT taxpayers contemplating to avail the 8% income tax rate shall file an Application for Registration Information Update (BIR Form No. 1905) on or before March 31, 2018. Taxpayers who failed to file before the deadline shall continue to file the percentage tax return reflecting a zero-amount with a notation signifying its intention to avail the 8% option. Non-VAT taxpayers who opted to be taxed under graduated tax rate shall continue to pay the required percentage tax.

Non-VAT taxpayers volunteering to be VAT taxpayers shall update their registration records. Said taxpayers shall be subject to the graduated tax rates if the 8% income tax rate option is initially selected. Previously paid under the said 8% income tax rate shall be deducted from the income tax due under the graduated tax rates. Percentage tax shall be paid monthly/quarterly immediately following registration update.

Conversely, non-VAT taxpayers who initially opted to be taxed under graduated tax rates ceases to be liable to percentage tax upon registration updates and shall thereafter be liable to VAT.

Taxpayers presuming their gross sales/receipts and other non-operating income will not exceed P3,000,000 VAT threshold but eventually exceeded during the same taxable year, shall immediately update registration information within a month after the gross sales/receipts exceeded the threshold. No penalty shall be imposed on the percentage tax previously paid when gross sales/receipt didn't exceed the VAT threshold yet.

VAT taxpayers who did not exceed the P3,000,000 VAT threshold for the immediately preceding 3 years may opt to be non-VAT taxpayers and avail the 8% income tax option. An update for registration information shall be filed on or before the first quarter of a taxable year.

These regulations are effective since January 1, 2018.

# BIR Issuances



## Filing and payment of the increased stock transaction tax under TRAIN

*(Revenue Regulations No. 9-2018, February 26, 2018)*

The percentage tax on the sale, barter or exchange of shares of stock listed and traded through local stock exchange is now increased to 6/10 of 1% from 1/2 of 1% pursuant to Section 39 of the TRAIN Law (RA 10963). BIR Form 2552 is currently being updated, hence, the following work around filing and payment procedures shall be followed:

### eFPS Filers

1. File and pay using existing rate of 1/2 of 1% (BIR Form 2552)
2. Deficiency tax of 1/10 of 1% shall be paid by filing BIR Form 0605

### eBIRForms Filers

1. File using existing rate 1/2 of 1% (BIR Form 2552 in the eBIRForms Package). Payment shall be made through either:
  - a. Online: GCASH, LBEPS, or BDPTO
  - b. Manual: OTC of AABs under the jurisdiction of the RDO where taxpayer is registered
2. Deficiency tax of 1/10 of 1% shall be paid by filing BIR Form 0605

## Manual Filers

1. Fill-in pre-printed BIR Form 2552 using the new tax rate of 6/10 of 1%
2. File and Pay manually via OTC of AABs under the jurisdiction of the RDO where taxpayer is registered.

ATC for filing BIR Form 2552 shall be PT 200, and MC-031-Deficiency Tax shall be used for BIR Form 0605 filing.

## New ATCs for excise tax on cosmetic procedures, estate tax, and DST

*(Revenue Memorandum Order No. 9-2018, February 6, 2018)*

The following Alphanumeric Tax Codes (ATCs) shall be used for the new excise tax on invasive cosmetic procedures, final withholding of the estate tax on amounts withdrawn from decedent's bank deposit, and documentary stamp taxes (DST):

ATC	Description	Rate	BIR Form
WI165	Final withholding of estate tax on amount withdrawn from decedent's deposit account	6%	1602/2306

WI800 WC800	Final withholding of excise tax on the performance of invasive cosmetic procedures  a. Individual b. Corporate	5%	1620-XC
DS101	DST on original issue of shares of stock	P2/P200	
DS102 DS125	DST on sale of shares of stocks a. w/ par value b. w/o par value	P1.50/P200 of par value	200 and 2000 OT
DS104	DST on Certificates of profit in property accumulation	P1/P200	2000
DS105	DST on Bank Checks, Drafts	P3	2000
DS106	DST on debt instruments (Original issue)	P1.50/ P2000 of issue price or a frac- tion of 365 days for instrument with term less than a year	2000
DS107	DST on Acceptance of bills of exchange	P.60/P200	2000
DS108	DST on Foreign bills of exchange and letters of credit	P.60/P200	2000



# BIR Issuances



- > BIR Issuances
- > DOF Department Order
- > SEC Opinions
- > CTA Decision

DS109	DST on Life insurance policies: a. <P1000,000 b. >P1000,000, < P300,000 c. >P300,000, < P500,000 d. >P500,000, < P750,000 e. >P750,000, <P1,000,000 f. >P1,000,000	Exempt P20 P50 P100 P150 P200	2000
DS112	DST on a. Policies of Annuities b. Pre-need plans	P1/P200 P.40/200	2000
DS114	DST on Certificates	P30	2000
DS115	DST on Warehouse receipts	P30 with value above P200	2000
DS116	DST on Jai-alai, horse race tickets, lotto, number games	P.20/P1.00	2000
DS117	DST on Bills of Lading	P100 - P1,000 (P2) >P1,000 (P2)	2000
DS118	DST on Proxies	P30	2000
DS119	DST on Powers of Attorney	P10	2000
DS120	DST on Leases	1st P2,000 (P2) P2/P1,000 excess	2000
DS126	DST on Bills of exchange or drafts	P.60 on each P200	2000

DS130	DST on Charter parties and similar instruments if gross tonnage is:  a. 1,000 tons and below  b. 1,0001 to 10,000 tons  c. Over than 10,000 tons	1st 6 months (P1,000) In excess + P100  1st 6 months (P2,000) In excess + P200  1st 6 months (P3,000) In excess + P300	2000
DS122	DST on Deeds of Sale and conveyances of real property	P15/P1,000	2000OT

The Circular clarifies that the power of the Commissioner under Section 5 of the NIRC to obtain information is an exception to both the attorney-client and accountant-client privilege. The privileged communication of attorney-client and accountant-client cannot be used to defeat the purpose of the Commissioner's power to obtain information for the purpose of ascertaining the correct tax liability of a person.

## CIR's power to obtain information

*(Revenue Memorandum Circular No. 12-2018, February 22, 2018)*

This circular is issued to clarify the nature and extent of the Commissioner of Internal Revenue's (CIR) power to obtain information, and to summon, examine, and take testimony of persons under Section 5 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Under the Code of Professional Responsibility and the Revised Rules of Evidence, there is an attorney-client privilege whereby an attorney cannot, without the consent of his client, be examined as to any communication made between him and his client to him. There is a similar accountant-client privilege under RA 9298 or the Philippine Accountancy Act of 2004.

# DOF Department Order



- > BIR Issuances
- > DOF  
Department  
Order
- > SEC Opinions
- > CTA Decision

## Processing of ICC/BCC reverts to BOC

*(BIR Advisory on DOF Department Order No. 011-2018, February 26, 2018)*

Pursuant to Department of Finance (DOF) Department Order No. 011-2018, the authority to accredit and register customs brokers and importers is reverted solely to the Bureau of Customs (BOC). Thus, the Bureau of Internal Revenue (BIR) will no longer accept applications for Importer's Clearance Certificates and Brokers Clearance Certificates (ICC/BCC) starting March 1, 2018.

On a quarterly basis, the list of approved/accredited customs brokers and importers shall be transmitted by the BOC to the BIR for post-accreditation validation of tax compliance. In turn, the BIR shall immediately notify the BOC for any findings of tax deficiency or non-compliance.

# SEC Opinions

## Online voting for members of non-stock corporations

*[SEC-OGC Opinion No. 18-02, February 28, 2018]*

Voting by mail or other similar means is allowed in non-stock corporations pursuant to Section 89 of the Corporation Code. However, the same must be specifically provided for in the association's by-laws subject to the conditions that may be imposed by the SEC in its approval.

Hence, online election for members of the Board of Directors can be valid if this is set forth in the corporation's by-laws and approved by the SEC.

However, voting by mail and other similar means cannot be allowed for purposes of amending the corporate by-laws. Section 48 of the same Code specifically required the actual presence of the stockholders/ members to cast their votes at a meeting duly called for this purpose.



> BIR Issuances

> DOF  
Department  
Order

> SEC Opinions

> CTA Decision



# CTA Decision



- > BIR Issuances
- > DOF Department Order
- > SEC Opinions
- > CTA Decision

## **Proof of actual remittance of CWT not a condition for tax refund**

*(Zuellig Pharma Corporation v Commissioner of Internal Revenue, CTA Case No. 8801, February 1, 2018)*

As extensively discussed by the Supreme Court (SC) in the case of CIR v Asian Transmission Corporation, En Banc, proof of actual remittance of taxes withheld is not required in a claim for refund of excess creditable withholding tax (CWT). Section 2.58.3 (B) of RR 2-98 clearly provides that the proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant.

Provisions of law and the established jurisprudence evidently demonstrates that there is no need for the claimant, to prove actual remittance by the withholding agent to the BIR. Further, it is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to personally testify to prove the authenticity of the certificates.

## **Sec. 204 on recovery of tax erroneously collected governs all kinds of taxes**

*(Nube Storage Systems, Inc. v Commissioner of Internal Revenue, CTA Case No. 9189, February 1, 2018)*

It is clear that Sections 204 (C) and 229 of the NIRC of 1997, as amended, govern all kinds of refund or credit of internal revenue taxes collected erroneously or illegally, provided that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the 2-year period from the date of payment of the tax.

In this case, the person who prepared the return and paid the tax erroneously indicated P2,500,000 instead of only P25,000 for DST on originally issued of shares of stock with par value of only P5,000.000.

To be entitled to the refund sought, (1) the tax should have been erroneously or illegally collected; and (2) the claim for refund or credit has been filed within 2 years.

## **PAN and FAN issued to a wrong address are void**

*(Daewoo Engineering & Construction Company Limited v Commissioner of Internal Revenue, CTA Case No. 8829, February 7, 2018)*

Receipt of Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) by the taxpayer is a pre-requisite for Warrants of Garnishment issued by the Commissioner of Internal Revenue. A PAN and FAN indicating a wrong address and therefore not duly received by the taxpayer are considered null and void.

In this case, the taxpayer transferred its registered address from Makati City to Pasig City. Proper notices to the BIR for the change in address was done. The new address was already reflected in the Integrated Tax System (ITS) of the BIR. However, the PAN and FAN still failed to indicate the new address of the taxpayer. Thus, the PAN and the FAN issued by respondent were not received by petitioner because both documents reflect the old address.

The Court disagreed with the BIR's position that, in order for the change of address to be valid, the taxpayer must give a written notice to the new RDO, the Revenue Computer Center, and to the Receivable Accounts Division at the National Office, and a copy of the updated Certificate of Registration (COR) to the old RDO.

# Highlight on P&A Grant Thornton services

## Tax outsourcing

We prepare clients' tax returns covering monthly, quarterly and annual income taxes, value-added tax and other percentage taxes, fringe benefits tax, withholding taxes, and documentary stamp tax. Based on the information provided to us, we ensure that the computation of clients' tax liabilities is made in accordance with existing tax laws and regulations. On their behalf, we file tax returns with the appropriate tax office and pay the corresponding taxes on or before the due date.

If you would like to know more about our services

---

**Flourence Kathrine Enriquez**  
Manager  
Tax Advisory and Compliance  
T +63 (2) 988 2288 ext. 562  
M +63 9088148774  
E [Kath.Enriquez@ph.gt.com](mailto:Kath.Enriquez@ph.gt.com)



---

Tax brief is a regular publication of Punongbayan & Araullo (P&A) that aims to keep its clientele, as well as the general public, informed of various developments in taxation and other related matters. This publication is not intended to be a substitute for competent professional advice. Even though careful effort has been exercised to ensure the accuracy of the contents of this publication, it should not be used as the basis for formulating business decisions. Government pronouncements, laws, especially on taxation, and official interpretations are all subject to change. Matters relating to taxation, law and business regulation require professional counsel.

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.

**Lina Figueroa**

Principal, Tax Advisory and Compliance Division

T +632 988-2288 ext. 520

E [Lina.Figueroa@ph.gt.com](mailto:Lina.Figueroa@ph.gt.com)



**[grantthornton.com.ph](http://grantthornton.com.ph)**

© 2017 Punongbayan & Araullo. All rights reserved.

Punongbayan & Araullo (P&A) is the Philippine member firm of Grant Thornton International Ltd (GTIL). “Grant Thornton” refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another’s acts or omissions.