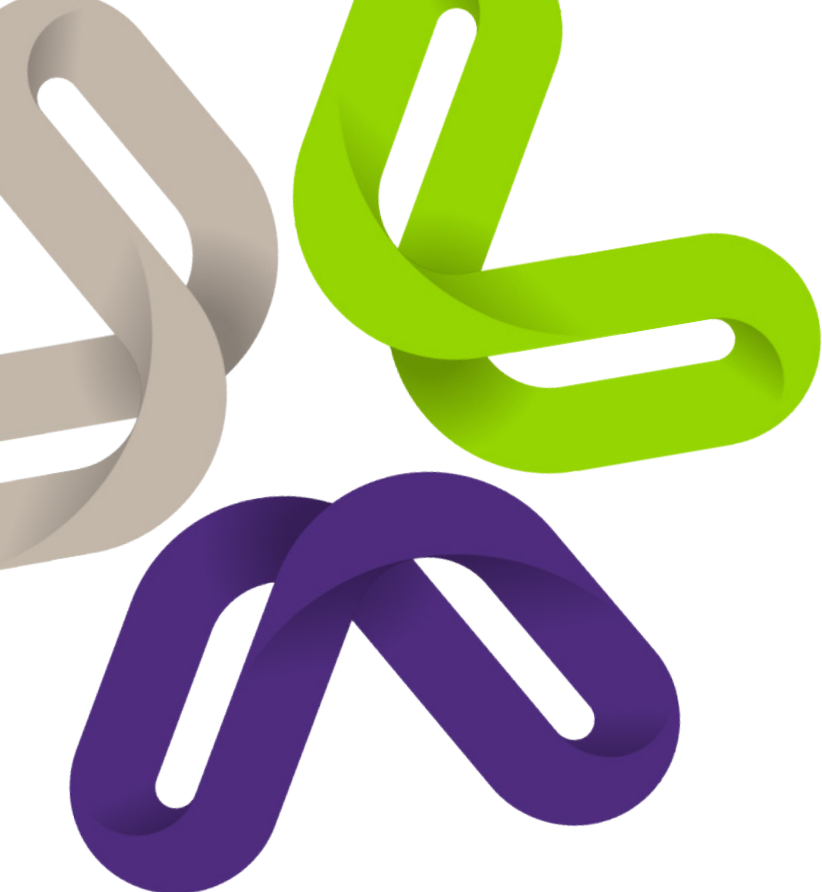




# **Tax brief**

September 2018





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# CTA Decisions

## **Interest on refund is allowable only in case authorized by law or arbitrary collection of taxes**

*(Y&R Philippines, Inc. v Commissioner of Internal Revenue, CTA Case No. 9437, August 31, 2018)*

The payment of interest on the amount to be refunded to the taxpayer can only be made if it is either authorized by law or the collection of the tax was attended by arbitrariness.

In this case, the BIR garnished the taxpayer's bank account. However, the Court decided that the BIR's assessment is void since Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN) were not duly received by the taxpayer, only Letter Notice was issued without any Letter of Authority; and (3) the right of the BIR to assess the taxpayer had prescribed. Thus, the taxpayer is requesting for refund of the garnished amount, together with legal interest of 6%.

The 1997 Tax Code, as amended, does not contain any provision for interest in case of improperly collected taxes. Also, the court ruled that the BIR did not violate any law when it collected the garnished amount. Thus, no legal interest is due on the refund of the garnished amount.

## **Examination by unauthorized BIR examiner is not valid**

*(Orient Overseas Container Line Ltd., Inc. v CIR, CTA Case No. 9179, August 2, 2018)*

The Letter of Authority (LOA) is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit. Absent the necessary issuance of LOA specifically naming the person to whom the case will be re-assigned, there is no authority to conduct the investigation/audit. An audit conducted by an examiner without an authority is considered null and void.

In this case, the audit/investigation was done by the revenue officer (RO) and group supervisor (GS) not named in the LOA. They conducted the audit pursuant only to a Memorandum of Referral signed by the OIC-Chief of the LTS-RLTAD II reassigning to them the examination of books of accounts and other accounting records.

Since the RO and GS acted without authority when they conducted the audit, the deficiency tax assessment arising therefrom is null and void.

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## Revised guidelines on applications for tax clearance for bidding purposes

*(Revenue Regulations No. 18-2018, August 3, 2018)*

All applications for the issuance of tax clearance for bidding purposes shall now be manually filed with the Collection Division of the Revenue Regional Office where the taxpayer is duly registered for non-large taxpayers, or the concerned office under the Large Taxpayers Service for large taxpayers. Previously, all applications are required to be filed with the National Office – Accounts Receivable and Monitoring Division (ARMD).

New applicants shall not be covered by the requirement of regular usage of electronic filing and payment system (EFPS). The submission of the new applicant's latest income tax return and percentage tax/value added tax returns not filed and paid thru EFPS shall be sufficient compliance. Previously, new applicants are required to be regular user of EFPS for two consecutive months prior to the application for tax clearance.

## Use of old invoices/receipts by previously VAT-registered taxpayers

*(Revenue Regulations No. 19-2018, August 9, 2018)*

Pursuant to the increase in VAT threshold under the TRAIN Law, there are previously VAT registered taxpayers who opted to be Non-VAT registered.

Prior to the availability of new non-VAT invoices/receipts, a number of unused invoices/receipts stamped with the phrase "Non-VAT registered as of (date of filing an application for update of registration). Not valid for claim of input tax" has been allowed to be used. However, pursuant to RR No. 19-2018, use of such stamped invoices/receipts cannot be later than August 31, 2018. Thus, effective September 1, 2018, such non-VAT registered taxpayers should already issue their new non-VAT invoices/receipts.

On the same day of receipt of newly-printed registered non-VAT invoices or receipts, the taxpayer shall submit an inventory list of all unused previously-stamped invoices/receipts, and surrender the same for cancellation.

## Implementing rules and regulations on excise tax on sweetened beverages

*(Revenue Regulations No. 20-2018, August 22, 2018)*

Effective January 1, 2018, sweetened beverages shall be subject to excise tax as follows:

Product Description	Tax Rate (/Liter)
Using purely caloric and/ or non-caloric sweeteners	P6.00
Using purely or partly high fructose corn syrup	P12.00
Using purely coconut sap sygar/ purely steviol glycosides	Exempt

Certain identified milk products, soymilk and flavored soymilk, 100% natural fruit/vegetable juices, meal replacement and medically indicated beverages, and coffee products are exempt from excise tax on sweetened beverages.

Excise tax on powdered juices shall be computed based on the serving suggestion appearing on the label.

Raw materials that clearly do not need further processing (i.e. for repacking) shall be subject to excise tax. Only removal of raw materials intended for further processing shall not be subject to excise tax. Moreover, sweetened beverages intended for exports may not be subject to excise tax, subject to certain terms and conditions.

Semi-processed goods (i.e. syrups/puree/concentrates) sold to fast food chains, for mixture with carbonated water through soda vending or juice dispensing machines, shall be considered as finished goods subject to excise tax. Sweetened beverages produced or manufactured and are subsequently consumed within the place of production shall also be subject

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to excise tax.

All local manufacturers of sweetened beverages shall pay the excise tax. For imported sweetened beverages, all owners or importers shall pay the excise tax imposed. Excise tax on goods removed from the place of production or customs custody without payment shall be paid by the person having possession of the said goods.

Toll manufacturers, bottlers and other sub-contractors of manufacturers or importers of sweetened beverages shall not be subject to excise tax. Such sub-contractors shall secure Permit to Operate as a sub-contractor at the Excise LT Regulatory Division (ELTRD).

For locally manufactured sweetened beverages, BIR Form 2200-S shall be filed and paid for each place of production with the concerned RDO where the Head Office is duly registered. All importers/ traders of excisable sweetened beverages shall apply for an Authority to Release Imported Goods (ATRIG) with the Excise LT Regulatory Division (ELTRD), BIR National Office and pay the corresponding excise tax.

Every person or entity engaged in the manufacture or importation of sweetened beverages shall keep Official Register Books (ORBs). The transcript sheets of ORBs shall be submitted on or before the eighth (8th) day of the month immediately

following the month of operation and every eighth 8th day of every month thereafter, to be submitted to the LT Performance Monitoring and Programs Division. Starting June 1, 2018, all manufacturers and importers of sweetened beverages subject to excise tax shall indicate on the label the type of sweetener used, and on sweetened beverages in powder form, the number of liters per pack size.

Taxpayers engaged in manufacturing and importation of sweetened beverages shall update, on or before August 31, 2018, their Certificate of Registration (BIR Form 2303) using BIR Form 1905 to add the excise tax type 'XB' with the LT Assistance Division or Excise LT Regulatory Division for Large Taxpayers; or with the RDO for non-large taxpayers where they are registered. The same taxpayers shall also secure a permit to operate as manufacturer or importer on before August 31, 2018.

## **Post evaluation of POS/CRM/SPM/Other Sales Receipting System Software**

*(Revenue Memorandum Circular No. 72-2018, August 30, 2018)*

To improve taxpayers' voluntary compliance and increase revenue collections, the BIR shall be conducting Post Evaluation of POS/CRM/SPM/Other Sales Receipting System Software, including Receipting/

Invoicing of Computerized Accounting System (CAS). This shall be conducted simultaneously with other enforcement activities such as TCVD, Surveillance, Inventory Stocktaking and Audit/Investigation.

During the evaluation, the BIR shall conduct an inventory of all POS/CRM/SPM and other receipting machines/software, whether used for issuance of invoices or for internal control purposes. The list shall be matched and reconciled with the list from the BIR database. Any unmatched POS/CRM/SPM of the taxpayer with the BIR database shall result to issuance of Letter Notice to the taxpayer. The taxpayer shall reconcile and explain in writing the discrepancy and account for the unmatched POS/CRM/SPM and other receipting machines/software within five (5) days from receipt of Letter Notice.

Also, during the evaluation, an extraction of sales data and/or Z-reading, and sales per e-journal shall be required. Sales derived from Z-Reading per machine shall be compared with eSales and e-Journal. If the amount extracted from the e-journal is higher than the reported eSales, the taxpayer may be assessed for under declaration of sales. On the other hand, if the e-journal amount is less than the reported eSales, the violation is equivalent to non-issuance of sales invoice or receipt; or issuance of an unregistered receipt. Thus, the taxpayers should ensure that

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POS/CRM/SPM and other sales receipting system software are duly registered with the BIR, and that all sales are properly receipted and recorded in the books of the Company.

Failure to transmit sales data to the Bureau's electronic sales reporting system shall be subject to penalty, for each day of violation, at 1/10 of 1% of the annual net income as reflected in the taxpayer's audited financial statement for the second year preceding the current taxable year, or P10,000/day of violation, whichever is higher. In case the aggregate number of days of violation exceed one hundred eighty (180) days within a taxable year, an additional penalty of permanent closure of the business shall be enforced, except in cases of force majeure.

### Availability of New BIR Form Nos. 0619-E and 0619-F (January 2018 Version) in EFPS

*(Revenue Memorandum Circular No. 73-2018, August 31, 2018)*

Under Revenue Regulations No. 11-2018, the creditable/expanded and final taxes withheld on the first two (2) months of the calendar quarter shall still be remitted on a monthly basis using the new BIR Form Nos. 0619-E (Monthly Remittance Form for Creditable Income Taxes Withheld (Ex-

panded)) and 0619-F (Monthly Remittance Form of Final Income Taxes Withheld).

Previously, the said new BIR Forms are available only manually and in the e-BIR forms. Thus, taxpayers registered under the electronic filing and payment system (EFPS) were using BIR Form 0605 in remitting the creditable/final taxes withheld.

Pursuant to RMC No. 73-2018, the following remittance returns are already available in the electronic filing and payment system (EFPS). Thus, remittances for the month of August 2018 shall be remitted using the below new forms:

BIR Form No.	Due Date
0619-E	Non-eFPS taxpayers: on or before the 10th day of the following month
0619-F	eFPS taxpayers: on or before the 15th day of the following month, depending on the industry grouping

The below remittances of final withholding taxes shall be covered by two (2) separate BIR Form 0619-F.

Tax Type Code	ATC	Description Code
WB	WMF10	Remittance of Final Income Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/Etc.
WF	WMF10	Remittance of Final Income Taxes Withheld on Other Final Income Taxes

### Revised Checklist of Documentary Requirements for ONETT

*(Revenue Memorandum Order No. 35-2018, August 8, 2018)*

To effectively monitor the processing of all One Time Transactions (ONETT), the BIR implemented serially numbered Assignment/Routing Slip to replace the current Memorandum of Assignment (MOA) system. Relative to this, BIR has revised the checklist of documentary requirements for the issuance of electronic Certificate of Registration (CAR) for onerous transfer of real property classified as capital asset, shares of stocks not traded through the Local Stock Exchange, assets of the estate and gratuitous transfer of real property. The revised checklist is annexed to the RMO.



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## **New and modified alphanumeric tax codes for creditable/expanded and final withholding taxes**

*(Revenue Memorandum Order No. 38-2018, August 29, 2018)*

The BIR issued the new and modified alphanumeric tax codes (ATCs) to be used in reporting the income payments subject to creditable and final withholding taxes in the quarterly remittance return and alphalist of payees. The BIR now prescribes separate ATCs for each type of professional fee payment (i.e. separate for directors, athletes, bookkeeping agents, medical practitioners, entertainers, insurance agents/adjusters, sales agents, and brokers). The complete list of new and modified ATCs is published in the RMO.

# Highlight on P&A Grant Thornton services

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