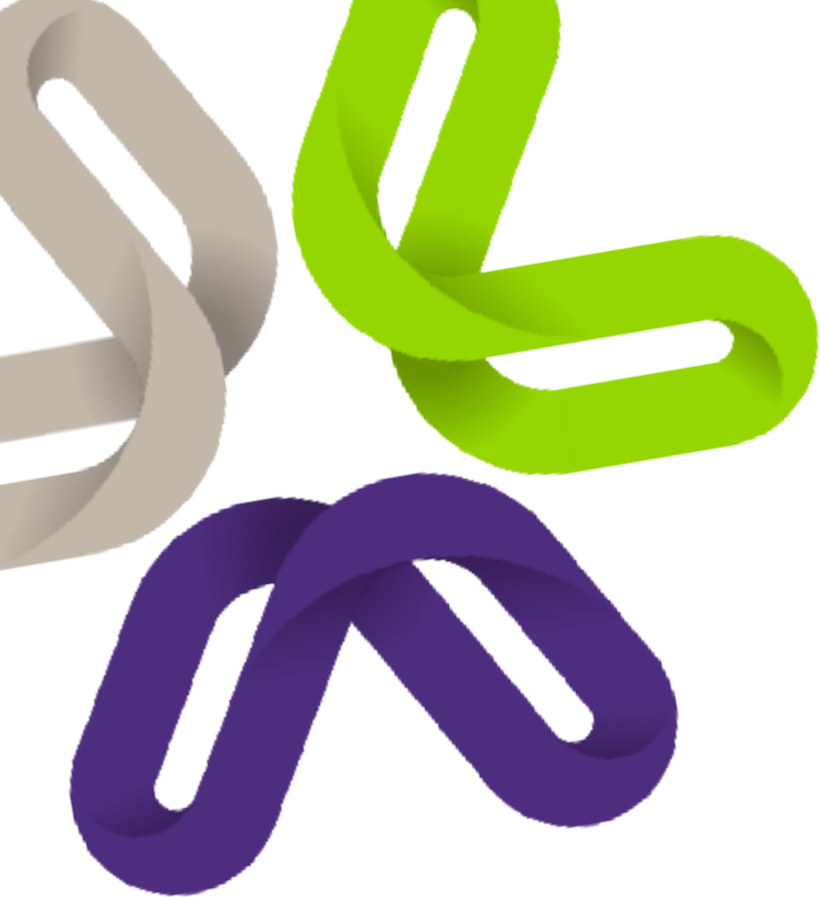




Tax *brief*

December 2019





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RMC 118-2019

RMC 121-2019

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RMC 124-2019

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BIR Issuances



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Treatment of Alien Individuals Employed by RHQ and ROHQ, OBUs and Petroleum Service Contractors and Subcontractors

(Revenue Memorandum Circular No. 116-2019, November 06, 2019)

Alien individuals employed by Regional or Area Headquarters (RHQ) and Regional Operating Head Quarters (ROHQ), Offshore Banking Units (OBU) and Petroleum Service Contractors and Subcontractors are subject to the regular income tax and related administrative requirements. They may qualify for substituted filing if considered resident aliens.

On the other hand, alien individuals employed by foreign principals rendering services to the abovementioned local entities (seconded employees) are also subject to regular income tax. The following procedures shall apply for these seconded employees:

- Under “Current Employment Status” of the alphalist of employees, a separate description (“Seconded Employees”) shall be provided. The BIR should issue an updated alphalist and Data Entry and Validation Module to reflect this.
- Seconded employees cannot qualify for substituted filing. They shall file their annual income tax return.
- BIR Form 2316 issued to seconded employees shall indicate the phrase “For Seconded Employee” which shall be typed or printed in bold capital letters in parenthesis under the form’s title.

- In case of termination before end of taxable year, the annualized withholding tax should be computed and fully withheld.

Amended Rules on the Use of BIR Printed Receipts/Invoices

(Revenue Memorandum Circular No. 117-2019, November 06, 2019)

Below are the amended rules on the use of BIR Printed Receipts/Invoices:

- New business registrants shall be allowed to buy BPR/BPI at the time of registration, if they chose not to secure an Authority to Print (ATP) principal receipts/invoices. The said BPR/BPI may be used during the first year of business operation or until full consumption, whichever comes first.
- The Authority to Print principal receipts/invoices is required to be secured beginning the second year of operation or before the BPR/BPI are fully consumed in the first year.
- Taxpayers which require the use of not more than one (1) booklet of 50 sets in one taxable period can secure BPR/BPI even beyond the one-year period from date of registration.
- The BPR/BPI is in lieu of principal receipts/invoices only. Thus, an ATP is required if supplementary receipts/invoices will be used.

Availability of eRegistration (eREG) system to corporate/non-individual employers

(Revenue Memorandum Circular No. 118-2019, November 08, 2019)

Pursuant to RMC No. 118-2019, the eRegistration (eREG) System is now available for use by corporate or non-individual taxpayers-employers in securing TIN of their employees.

Corporate or non-individual employers shall enroll an authorized user who shall access the eREG system of the BIR and apply for the Tax Identification Number (TIN) of its new employees without existing TIN. Existing users of the eREG system are required to re-enroll to create an authorized user account.

For self-employed individual employers, the TIN of new employees shall still be manually secured from the RDO having jurisdiction over the place of business of the employer.



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BIR Issuances

Use of computer/ system generated BIR Forms 2306, 2307, and 2316

(Revenue Memorandum Circular No. 121-2019, November 25, 2019)

The use of computer/system generated BIR certificates (BIR Forms 2306, 2307, and 2316) shall be accepted if the BIR Certificates are in accordance with the latest version officially approved by the BIR.

Moreover, the signatories to the BIR Certificates must have been duly authorized by the taxpayer to sign thereof. The BIR Certificates should contain both the signature of the parties involved to be valid and binding.

Semestral List of Regular Suppliers no longer required

(Revenue Memorandum Circular No. 122-2019, November 25, 2019)

The submission of SRS as provided under RR No. 14-2008 is no longer required. This requirement is deemed abandoned since it was not mentioned under RR No. 11-2018 which required the TWAs to withhold and deduct 1% and 2% CWT on their purchase of goods and services. Consistent with the policy of ease of doing business, this will also address the issue on overlapping reports since the Quarterly Alphalist of Payees (QAP) and Annual Alphalist of Payees already contain the same information in the SRS.

Extended deadline for submission of BIR Form Nos. 1604C and 1604F

(Revenue Memorandum Circular No. 124-2019, November 27, 2019)

The deadline for submission of Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form No. 1604C and 1604F), including the alphalist of employees/ payees for the taxable year 2019, is extended from January 31, 2020 to February 28, 2020. This is due to the enhancements currently being made by the BIR to the Alphalist Data Entry and Validation Module (Version 6.1) which is prescribed for accomplishing the alphalist of employees/ payees.

This extension is only applicable for taxable year 2019.

Use of old version of BIR Form Nos. 2306, 2307, and 2316

(Revenue Memorandum Circular No. 126-2019, November 27, 2019)

Taxpayers who generate BIR Form Nos. 2306, 2307, and 2316 using their Computerized Accounting System (CAS) may still use the old versions of the said BIR Certificates for transactions covering the taxable year ending December 31, 2019, pending reconfiguration of their CAS. The reconfigurations of all CAS in order for them to generate the revised format of the BIR Certificates should be made not later than December 31, 2019.

SEC Circulars



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Guidelines on the Revival of Expired Corporations

(SEC Memorandum Circular No. 23 s. 2019, November 25, 2019)

Under Section 11 of the Revised Corporation Code, a corporation whose term has expired (“Expired Corporation”) may apply for a revival of its corporate existence, together with all the rights and privileges under its certificate of incorporation and subject to all its duties, debts and liabilities existing prior to its revival.

The following corporations may file a Petition for Revival of Corporate Existence:

- Generally, a corporation whose term has expired;
- An Expired Corporation whose Certificate of Registration has been revoked for non-filing of reports (e.g. General Information Sheet, and Audited Financial Statements), provided that it shall file the proper Petition to Lift its Revoked Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof;
- An Expired Corporation whose Certificate of Registration has been suspended, provided that it shall file the proper Petition to Lift its Suspended Status, which may be incorporated in its Petition to Revive, and must settle the corresponding penalties thereof; and
- An Expired Corporation whose corporate name has already been validly re-used, and is currently being used, by another existing corporation duly registered with the

Commission, provided that the former shall change its corporate name within thirty (30) days from the issuance of its Certificate of Revival of Corporate Existence.

The required number of votes for the revival of an Expired Stock Corporation is at least a majority vote of the board of directors, and the vote of at least majority of the outstanding capital stock. For nonstock corporations, at least a majority vote of the board of trustees, and the vote of at least majority of the members is required.

The guidelines also provide the documentary requirements and the procedures for the revival of corporate existence which starts with the filing of the Petition for Revival of Corporate Existence with the SEC’s Company Registration and Monitoring Department (“CRMD”), any SEC Satellite Office, or any SEC Extension Office. Please refer to the full copy of the memorandum circular as uploaded in the SEC website for the detailed list of documentary requirements and procedures for the application of revival of corporate existence.



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SEC Opinions

Voting in absentia cannot be enforced yet; waiving of stockholder's right to vote is not valid

(SEC-OGC Opinion No. 19-56, November 28, 2019)

The Revised Corporation Code (RCC) now allows voting via remote communication or in absentia in stockholders' or members' meeting, provided that the same is allowed in the corporation's by-laws. Rules and regulations governing this shall be issued by SEC.

However, as opined by SEC in SEC-OCG Opinion No. 19-56, the same cannot be enforced yet since as of date, the SEC has not issued any rule, regulation, circular or guideline for this matter.

Likewise, a corporation cannot voluntarily exclude stockholders or members from the computation of the required quorum since it will be in the nature of restriction of a stockholder's or member's right to vote. The right to vote may only be waived personally upon initiative of the stockholder/member.

CTA Decisions



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Tax Verification Notice cannot be a substitute to LOA

(Salcedo Ristorante Italiano, Inc. v Commissioner of Internal Revenue, CTA EB No. 1774 re CTA Case No. 8880, November 4, 2019)

Section 13 of the Tax Code states that a Revenue Officer (RO) assigned to perform assessment functions may examine taxpayers in order to collect taxes from, or to recommend the issuance of deficiency tax assessment against taxpayers, pursuant to a Letter of Authority (LOA) issued by the CIR or his duly authorized representatives.

The grant of authority is indispensable before an RO can conduct an examination or assessment. Absence of an LOA results to the nullity of the examination or the tax assessment itself.

In this case, the authority for the examination of petitioner-taxpayer's records originated from a Tax Verification Notice issued to the RO by the Revenue District Officer. In connection with the same TVN, the RO submitted as evidence a Memorandum of Assignment to prove his authority to conduct an investigation of internal revenue taxes.

Clearly, the authority of the RO didn't originate from an LOA. Consequently, the resulting tax assessments, including the deficiency income tax assessments, are considered null and void.

Assessment is essential to a warrant of distraint and/or levy

(Commissioner of Internal Revenue v Pacific Hub Corporation, CTA EB No. 1837 re CTA Case No. 8895, November 8, 2019)

Pursuant to the lifeblood doctrine, the Supreme Court has allowed tax authorities enough discretion to avail themselves of the most efficient way to collect taxes, with as little interference as possible. The SC also held that the BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.

In this case, petitioner-commissioner claims that respondent-taxpayer is a delinquent taxpayer. However, no assessment was issued for purposes of collecting the delinquent taxes.

As ruled by CTA, issuance of an assessment is necessary to proceed with tax collection. Issuance of a warrant of distraint or levy without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigation. Hence, when there is no assessment, the BIR cannot proceed to exercise the summary administrative remedy of distraint and/or levy as provided by law.

Acceptance of an LOA served beyond 30 days from issuance still makes assessment invalid

(Kokoloko Network Corporation v Commissioner of Internal Revenue, CTA Case No. 9574, November 18, 2019)

The power of a Revenue Officer (RO) to conduct audit examination of taxpayers are delegated through a Letter of Authority (LOA). An LOA shall be served to the taxpayer within 30 days from its issuance.

In this case, the LOA was served beyond 30 days from its issuance.

The Court ruled that the deficiency assessment should be cancelled and withdrawn because the LOA is invalid for having been served beyond 30 days from the date of its issuance. The CTA disagreed with respondent-commissioner's position that petitioner-taxpayer should be deemed estopped because it accepted the LOA even if served beyond 30 days from the date of its issuance. There is no basis to rule that estoppel exists in this particular matter.

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