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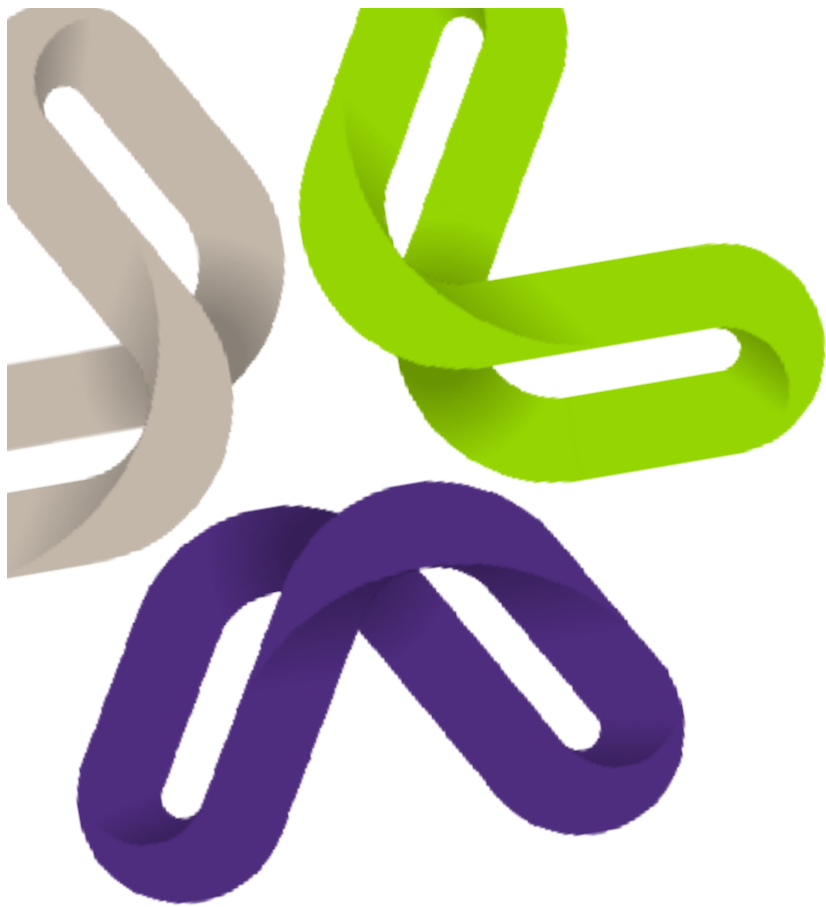
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# Tax *brief*

February 2019



Punongbayan & Araullo (P&A) is the Philippine member firm of Grant Thornton International Ltd.



#### **BIR ISSUANCES**

RMC 02 and 04-2019  
RMC 05-2019  
RMC 06-2019

RMC 16-2019

RMC 17-2019  
RMC 19-2019

RMO 03, 04, and  
and 05-2019

RMO 06-2019

#### **BIR RULINGS**

BIR Ruling No. 122-19

#### **SEC ISSUANCES**

SEC Memo Circular  
No. 1 s. 19

#### **CTA DECISIONS**

CTA EB No. 1714

CTA Case No. 9272  
CTA EB No. 1691

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BIR priority programs for CY 2019

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from Whom Excise Taxes Due on Coal Were Collected by the Producer

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# BIR Issuance

## Implementing Guidelines on the VAT-exemption of Prescribed Drugs for Diabetes, High-Cholesterol and Hypertension Drugs

(Revenue Memorandum Circular Nos. 02-2019 and 04-2019, January 10 and 15, 2019)

Based on the Department of Finance (DOF), Department of Health (DOH), Bureau of Internal Revenue (BIR), and Food and Drug Administration's (FDA) Joint Administrative Order (JAO) No. 2-2018, below guidelines shall be observed on Value Added Tax (VAT) Exemption of sale of drugs prescribed for diabetes, high-cholesterol and hypertension:

- Only the sale by manufacturers, distributors, wholesalers and retailers of drugs prescribed for diabetes, high-cholesterol and hypertension shall be exempt from VAT. The importation of such drugs shall be subject to VAT.
- Only the drugs included in the "List of List of VAT-exempt Diabetes, High-Cholesterol and Hypertension Drugs" published by the FDA, shall be exempt from VAT. Any drugs not included in the list shall be subject to VAT.
- All drugs included in the VAT exemption list should be reported by all manufacturers, distributors and retailers in

the Electronic Drug Price Monitoring Systems (EDPMS) in accordance with DOH guidelines.

- All manufacturers, distributors and retailers shall likewise submit to the DOH a sworn statement containing the wholesale price, suggested retail price and actual price of such drugs/medicines prior to and after the effectivity of the guidelines.

For the list of VAT-exempt drugs prescribed for diabetes, high cholesterol, and hypertension, please see below links on the list.

[https://www.bir.gov.ph/images/bir\\_files/internal\\_communications\\_2/RMCs/Full%20text%202019/Diabetes.pdf](https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/Full%20text%202019/Diabetes.pdf)

[https://www.bir.gov.ph/images/bir\\_files/internal\\_communications\\_2/RMCs/Full%20text%202019/High-Cholesterol.pdf](https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/Full%20text%202019/High-Cholesterol.pdf)

[https://www.bir.gov.ph/images/bir\\_files/internal\\_communications\\_2/RMCs/Full%20text%202019/Hypertension.pdf](https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/Full%20text%202019/Hypertension.pdf)

## BIR priority programs for CY 2019

(Revenue Memorandum Circular Nos. 17-2019, January 17, 2019)

To ensure the achievement of the BIR's calendar year (CY) 2019 Collection Target and the fulfilment of the Bureau's mandate, the following are the priority programs of the BIR for the CY 2019:

- Run After Tax Evaders (RATE)
- Oplan Kandado
- Intensified Audit and Investigation
- Enhanced Implementation of the Arrears Management Program in the Regional Offices
- Broadening of the Tax Base
- Taxpayer Account Management Program (TAMP) Monitoring
- Fuel Marking and Field Testing Program
- e-Invoicing/e-Receipting and eSales Reporting
- Optimization/Implementation of Internal Revenue Integrated System (IRIS) formerly e-TIS
- Tax Reform for Acceleration and Inclusion (TRAIN) Law Implementation Program
- Massive Tax Education Campaign/Public Awareness Program
- Implementation of RA 11032 or Ease of Doing Business and Efficient Government Service Delivery Act of 2018
- Information and Communications Technology (ICT) Solutions for Improved Taxpayers Services
- Sustained Compliance with Data Privacy Act



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# BIR Issuances

- Data Sharing Agreements with other Government Agencies
- Action on administrative cases against erring revenue officials and employees
- Expedite recruitment of new personnel and promotion of qualified employees
- Capacity Building Enhancements for BIR officials and employees
- Budget Utilization Program

## **Submission of Alphabetical List of First Buyer/Possessor of Locally Produced Coal from Whom Excise Taxes Due on Coal Were Collected by the Producer**

*[Revenue Memorandum Circular No. 006-19, [January 10, 2019]]*

An alphabetical list of first buyers/possessors, showing the TIN, the volume of coal sold and the corresponding excise tax collected therefrom, is now required to be submitted by coal producers acting as collecting agent by the BIR.

The alphabetical list shall be submitted via electronic mail at coal.attachment@bir.gov.ph on a monthly basis, beginning January 2019 and every month thereafter. Failure to submit the alphabetical list shall be subject to penalties under Sec. 250 and 255 of the NIRC, as amended, in relation to the compromise penalties under RMO No. 07-2015.

## **Validity of the Certifications on the existence of Outstanding Tax Liabilities and Certification on the Status of Cases Pending legal or judicial resolution of Taxpayers claiming for VAT refund**

*[Revenue Memorandum Circular No. 16-2019, January 17, 2019]*

### The Certification

One of the requirements in claiming VAT refunds is the Certification on Outstanding Tax Liabilities of Taxpayer and Certification on the Status of Cases Pending Legal or Judicial Resolution. As clarified under RMC No. 16-2019, such certifications shall be valid for a period of six (6) months.

## **New annual income tax return for individuals availing OSD and 8% income tax rate**

*[Revenue Memorandum Circular No. 17-2019, January 17, 2019]*

Starting taxable year 2018, BIR Form 1701A shall be used by individuals earning income purely from business/profession who elected optional standard deduction (OSD) or who availed 8% tax on gross sales/receipts and other income in lieu of graduated income tax rates.

Pursuant to the TRAIN Law as implemented, such individuals who elected OSD or 8% flat income tax rate are no longer required to submit financial statements.

Individuals earning income purely from business/profession who elected itemized deduction and those individuals earning both compensation income and income from business/profession shall still use old Annual Income Tax Return for self-employed individuals (BIR Form 1701).

The new return is already available manually and in Offline eBIRForms package v7.3, but is not yet available in the electronic filing and payment system (EFPS). As a work-around procedure, EFPS filers are advised to use the new return in Offline eBIRForms package v7.3.

# BIR Issuances



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## New annual income tax and capital gains tax returns

(Revenue Memorandum Circular No. 19-2019, January 30, 2019)

Aligned with the TRAIN Law's requirement for simplified individual and corporation returns, the BIR issued the following January 2018 versions of income tax and capital gains tax returns:

Tax Return	Availability		
	Manual Form	Offline eBIR Form	EFPS
<b>BIR Form No. 1700</b> (Annual Income Tax Return for Individuals Earning Purely Compensation Income subject to regular rate or 25% in case of Non-resident Alien Not Engaged in Trade or Business)	YES	NO	NO
<b>BIR Form No. 1702-RT</b> (Annual Income Tax Return for Corporation, Partnership and Other Non-individual Taxpayer subject ONLY to Regular Income Tax Rate)	YES	NO	NO
<b>BIR Form No. 1702-EX</b> (Annual Income Tax Return for Corporation, Partnership and Other Non-individual Taxpayer EXEMPT under the Tax Code and Other Special Laws with NO other Taxable Income)	YES	NO	NO
<b>BIR Form No. 1707</b> (Capital Gains Tax Return for Onerous Transfer of Shares Not Traded Through the Local Stock Exchange)	YES	NO	NO

Due to the unavailability of the revised forms in eBIRForm and EFPS, eBIRForm and EFPS filers shall still use the existing old versions of BIR Form Nos. 1702-RT, 1702-EX and 1707 available in eBIRForm and EFPS. While all filers of BIR Form No. 1700 shall use the manual return in filing and paying the income tax due thereon.

Manual filers shall download and print the PDF version of the form and fill up the applicable fields. Payment can be made manually with AABs or BIR's Revenue Collection Office, or through the available online payment modes [Gcash, Landbank of the Philippines Linkbiz Portal, and DBP tax online].

## New, dropped, and modified ATCs for Microfinance NGOs, DST, Excise Tax on exports, and Compensation Income

(Revenue Memorandum Circular Nos. 03, 04, and 05-2019, January 15, 2019)

To facilitate the proper identification and monitoring of tax collections pursuant to RA 10963 (TRAIN Law), below ATCs are created and/ or modified:

### A. Microfinance NGOs and Documentary Stamp Tax

ATC	Description	Tax Rate	Legal Basis	BIR Form
Newly Created ATCs				
IC210	Preferential tax rate on Microfinance NGOs	2%	Sec. 20 of RA 10963 (RR 3-17)	1702Q 1702MX
DO102 DO125	Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificate of Stock  a. In case of stock with par value  b. In case of stock without par value	P1.50/ P200.00  50% of DST paid on original issue	Sec. 52 of RA 10963	2000-OT
DO122	Deeds of Sale, Conveyances, and Donation of Real Property	P15.00/ P1,000	Sec. 69 of RA 10963	2000-OT
Dropped ATCs				
PT118	Preferential tax rate on Microfinance NGOs	2%	Sec. 20 of RA 10963 (RR 3-17)	1702Q 1702MX
DS102 DS125	Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificate of Stock  a. In case of stock with par value  b. In case of stock without par value	P1.50/ P200.00  50% of DST paid on original issue	Sec. 52 of RA 10963	2000-OT
DS122	Deeds of Sale, Conveyances, and Donation of Real Property	P15.00/ P1,000	Sec. 69 of RA 10963	2000-OT

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## B. Excise Taxes on Exports

ATC	Description	Legal Basis	BIR Form
EXA10	Excise Tax on Export of Alcohol	RR 3-2008	0605
EXT10	Excise Tax on Export of Tobacco Products		
EXP10	Excise Tax on Export of Petroleum		
EXM10	Excise Tax on Export of Coal and Coke		
EXG10	Excise Tax on Export of Automobiles and Non-Essentials		

## C. Compensation Income

Existing (per ATC Handbook)					Modified/ New
ATC	Description	Tax Rate	BIR Form	Legal Basis	BIR Form
II010	Compensation Income	Graduated Income Tax Rates	1701 1701Q	RA 10963 RR 11-18	1700 1701 1701Q
WI450	Income payments subject to FWT  1. Capital gains tax on sale/ exchange or other disposition of real property- individual	6%	1600 1601E  1601F  2307	RR 17-03 Sec. .571(A) (6)  RR 17-03 Sec. 2.571(A)(6)	1706 2307
WC450	2. Capital gains tax on sale/ exchange or other disposition of land and building- corporate	6%			

## Policies, guidelines and procedures in the reaccreditation of printers of principal/ supplementary receipts/ invoices

(Revenue Memorandum Circular No. 06-2019, January 15, 2019)

The accreditation of printers of principal and/or supplementary receipts and invoices is valid for five (5) years from the date of issuance of the Certificate of Accreditation. Compliant accredited printers should apply for renewal of accreditation within thirty (30) days prior to the expiration of the validity period. Upon approval of renewal, a new accreditation number shall be assigned to the printer. Such new accreditation number shall then be used in printing of receipts/invoices from the date of issuance of Certificate of Accreditation. To verify existence, compliance, and accuracy of the information provided in the application, an ocular inspection shall be done within 30 days from the date of reaccreditation.

Failure to renew accreditation prior to the expiration of accreditation shall follow the same procedure as a new applicant. Printers with expired accreditation shall be prohibited from printing receipts/invoices. Receipts/invoices printed by such printers shall be considered unauthorized and therefore, should not be used by taxpayers.

Pursuant to TRAIN Law, printing of receipts/invoices without valid accreditation shall be imposed a penalty of not less than P500,000 but not more than P10M, and imprisonment of 6 to 10 years.



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# BIR Ruling

## **Policies, guidelines and procedures in the reaccreditation of printers of principal/ supplementary receipts/invoices**

*(Revenue Memorandum Circular No. 06-2019, January 15, 2019)*

Section 30 (E) of the 1997 Tax Code provides that a non-stock corporation or association organized exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans- no part of its net income or asset shall belong to inure to the benefit of any member, organizer, officer or any specific person, are exempt from income tax.

Revenue Memorandum Circular No. 51-2014 clarified that in order for an entity to qualify as a non-stock and/or non-profit corporation/ association/ organization exempt from income tax under Section 30 of the 1997 Tax Code, as amended, its earnings/assets shall not inure to the benefit if its trustees or any specific person. Such inurement includes the payment of compensation, salaries, or honorarium to its trustees or organizers.

The amended by-laws of the herein subject foundation disclosed that the members of the Board of Trustees (BOTs) are receiving per diems for attending regular and special meetings as may be approved by the members. As ruled by the BIR, these per diems are considered distributions of equity including the net income which the

law prohibits in the organization and operation of a non-stock, non-profit corporation. Hence, the BIR ruled that the subject foundation cannot qualify as a tax-exempt non-stock, non-profit corporation or association and shall therefore be subject to 30% income tax.

# SEC Issuances



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## Filing of Annual Financial Statements (AFS) and General Information Sheet (GIS)

(SEC Memorandum Circular No. 1 series of 2019, January 11, 2019)

To maintain an organized and orderly filing of AFS and GIS, the Commission, pursuant to its authority under the Corporation Code and Securities and Regulation Code adopt the following measures in the filing of annual reports:

- Filing Deadline of Audited Financial Statements:

Covered Companies	Deadline of Submission
Corporations whose accounting period ends on December 31, 2018	Depends on the last numerical digit of their SEC registration or license number in accordance with the following schedule:  April 22, 23, 24, 25, 26 : 1 and 2 April 29, 30, May 2 & 3 : 3 and 4 May 6, 7, 8, 9, 10 : 5 and 6 May 20, 21, 22, 23, 24 : 7 and 8 May 27, 28, 29, 30, 31 : 9 and 10
Corporations whose accounting period ends on a date other than December 31, 2018	within 120 calendar days from the end of their fiscal year
Corporations whose securities are listed on the Philippine Stock Exchange (PSE) and those whose securities are registered but not listed in PSE and Public Companies	within 105 calendar days after the end of fiscal year, as attachment to their Annual Reports (SEC Form 17-A), in accordance with the Implementing Rules and Regulations of the Securities Regulation Code

- All corporations may file their AFS regardless of the last numerical digit of their registration or license number on or before the first day stated in the coding schedule pertaining to said digit.
- Late filings or filing after respective due dates shall be accepted starting June 3, 2019 and shall be subject to the prescribed penalties which shall be computed from the date of the last day of filing schedule as discussed above.
- The AFS, other than the consolidated financial statements, shall have the stamped "received" by the Bureau of Internal Revenue (BIR) or its authorized banks, unless the BIR allows an alternative proof of submissions for its authorized banks (e.g. bank slips).
- Failure to comply with any of the formal requirements on the submission of AFS as prescribed under SRC Rule 68, as amended, including the prescribed qualifications for independent auditors and/or any material deficiency or misstatement that may be found upon evaluation of the specific contents thereof, shall be considered a sufficient ground for the imposition of penalties by SEC.
- **Filing of GIS**

All corporations shall file their GIS within 30 calendar days from:

- (a) **Stock Corporations** - date of actual annual stockholders' meeting

- (b) **Non-Stock Corporations** - date of actual annual members' meeting
- (c) **Foreign Corporations** - anniversary date of the issuance of the SEC License.

All filers of AFS and GIS, regardless of the number of reports to be filed with the SEC, complying with the circularized SEC-issued number coding schedule (for AFS only) may submit through SEC Express Nationwide Submission or any courier/regular mail.



# CTA Decisions



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## **FAN issued via email is not valid; Failure to submit additional supporting documents within the 60-day period shall not invalidate the administrative protest**

(Commissioner of Internal Revenue v Freelifa Philippine Distribution, Inc.- Philippine Branch, CTA EB No. 1714, January 04, 2019)

Section 3.1.4 of RR 12-99 provides that the Formal Letter of Demand (FLD) and assessment notices shall be sent to the taxpayer only by registered mail or by personal delivery. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from the receipt of the assessment. For request for reinvestigation, all relevant supporting documents shall be submitted within 60 days from filing of the protest.

In this case, the FLD and assessment notices were issued to the taxpayer through electronic mail. The Company protested the assessment on time. However, it failed to submit additional supporting documents within the 60 day period.

Since the FLD and assessment notices were not served through registered mail or by personal delivery, it is clear that the BIR failed to comply with due process requirement in the issuance of the subject FLD and assessment notices. Moreover, since the Company have submitted supporting documents when it filed its protest let-

ter, the administrative protest cannot be nullified for failure to submit additional supporting documents. As such, the assessment is considered null and void.

In addition, the Court also ruled that premature issuance of FLD/FAN prior to the lapse of the 15 day period from submission of reply to PAN, is a violation of due process. Thus, the FLD/FAN issued is indeed null and void.

## **FAN without definite due date for payment is void**

(South Luzon Tollway Corporation v Commissioner of Internal Revenue, CTA Case No. 9272, January 14, 2019)

A fixed and definite period or a date within which petitioner must pay the assessed deficiency tax liabilities is not a mere formality but a substantive requirement for assessment notices to be valid. The absence of such requirement violates taxpayer's right to due process of law, and renders the assessment void. This substantive requirement was categorically and expressly declared by the Supreme Court (SC) in a previous decision.

In this case, the Formal Letter of Demand (FLD) does not indicate a payment due date. The BIR argues that an assessment is valid as long as it states the fact, the law, the rules and regulations or jurisprudence on which it was based; that it remains to be valid irrespective of an additional re-

quirement on the fixed and definitive date to pay.

Since the FLD lacks the required due date for payment, the assessment was considered null and void.

## **Proof of remittance not required in CWT refund**

(Commissioner of Internal Revenue v Sonoma Service, Inc., CTA EB No. 1691, January 14, 2019)

Section 2.58 in conjunction with Section 2.58.3 of RR 2-98 provides that the every withholding agent is required to issue BIR Form 2307 to each payee subjected to withholding tax. The tax withheld as supported by the BIR Form 2307 shall be allowed as tax credit against income tax liability or applied for refund/carry over to the succeeding period, in case the taxes withheld is more than the income tax liability for the period.

For claims for refund, existing issuances provides that the taxpayer does not need to prove actual remittance of the taxes to the BIR. It is sufficient that the certificate of creditable tax withheld at source is presented in evidence to prove that taxes were indeed withheld.

In this case, the taxpayer submitted BIR Form 2307 as proof of taxes withheld. The BIR insists that in addition to the BIR Form 2307, the taxpayer should also prove of remittance to the BIR of such taxes withheld. However, the court ruled that the certificate of creditable tax withheld at source is the competent proof to establish that taxes are withheld, and thus, the taxpayer was entitled to the refund.

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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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