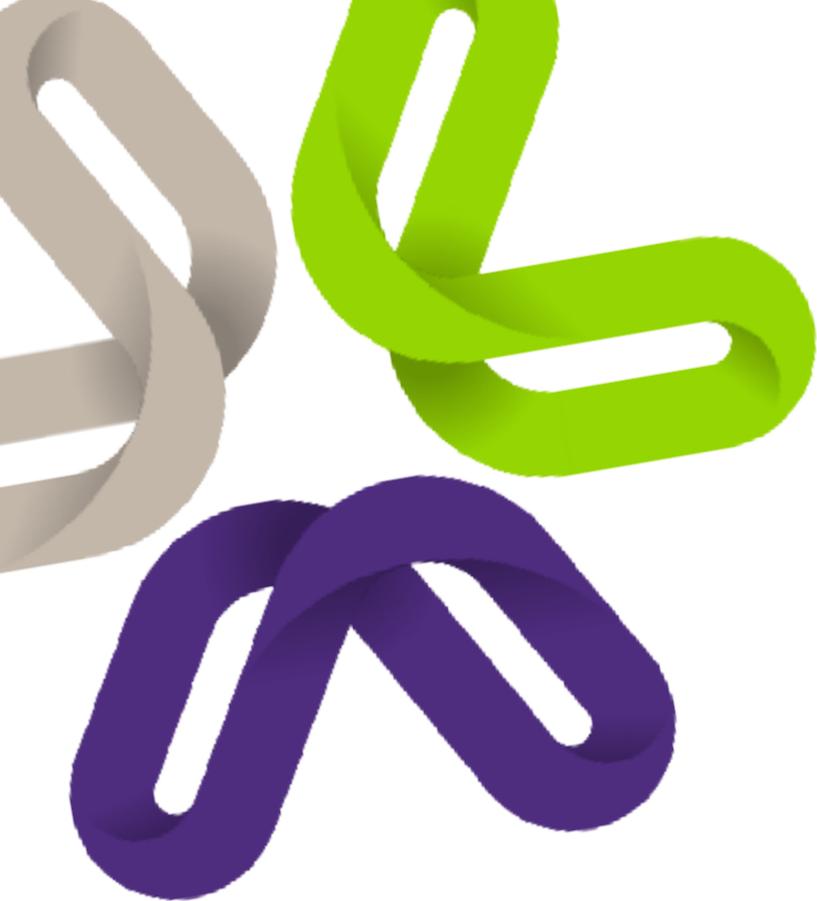




Tax *brief*

November 2019





BIR ISSUANCES

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RMO 54-2019
RMC 102
and 103-2019
RMC 105-2019
RMC 106-2019
RMC 107-2019

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CTA EB No. 1793
CTA EB No. 1819

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BIR Issuances

Guidelines and procedures on issuance of Tax Residency Certificate

(Revenue Memorandum Order No. 51-2019, October 22, 2019)

The BIR prescribes the requirements and procedures for the processing and issuance of Tax Residency Certificates (TRC), as follows:

- Only residents of the Philippines who are subject to tax on the basis of their worldwide income are entitled to claim treaty benefits, and thus, can obtain TRC;
- TRC applications shall be received and processed by BIR- International Tax Affairs Division (ITAD);
- In general, all applicants must be registered with the BIR under a regular taxpayer Identification Number (TIN);
- The BIR has designed its own TRC. ITAD shall no longer sign TRC forms of foreign jurisdictions;
- The prescribed TRC shall include, among others, the name of the taxpayer, TIN, place of business, period covered, nature of transaction or type of income, amount of income, based on the registration information appearing in the Integrated Tax System (ITS) of the Bureau and based on the documentary requirements submitted by the applicant.
- ITAD will no longer accept TRC applications of resident aliens and resident foreign corporations;
- Normal processing time for TRC is 14 working days from submission of complete documents.; and
- ITAD shall furnish the appropriate Revenue District Office (RDO) or Large Taxpayers

Division (LTD) of all documents submitted by the applicant. In turn, the concerned RDO or LTD shall verify whether or not the foreign-sourced income was properly disclosed or declared and the corresponding tax was paid by the income earner. If not, a letter notifying the concerned taxpayer for failure to declare his foreign-sourced income may be issued.

Updated documentary requirements are also provided in the RMO.

BIR Issuances



- > BIR Issuances
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Modified ATC on value-added tax

(Revenue Memorandum Order No. 54-2019, October 22, 2019)

To facilitate the proper identification and monitoring of tax collection from value-added tax (VAT) in BIR Forms 2550M (Monthly VAT declaration) and 2550Q (Quarterly VAT Return) and to align the ATC in the forms with the ATC handbook, pursuant to RR 8-2002, the following ATCs on VAT are modified:

Existing (per ATC handbook)			MODIFIED/NEW		BIR FORM NO.
ATC	DESCRIPTION	Tax Rate	Description	Legal Basis	
VB102	Dealers on Securities/ Lending Investors	12%	Lending Investors/ Dealer in Securities	RR No. 8-2002	2550M/ 2550Q
VB105 VB108	Operators of Common Carriers with respect to transport of cargo - Land Based (Road Freight) - Aircraft	12% 12%	Transport Storage and Communications - Land Transport-Cargo - Air Transport-Cargo		
VB010	On community, personal & household services	12%	Other community social and personal services only		

BIR Issuances



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Additional clarifications on the availment of estate tax amnesty

(Revenue Memorandum Circular Nos. 102 and 103-2019, October 4, 2019)

Additional clarifications on the Implementing Rules and Regulations (IRR) of the Estate Tax Amnesty have been circularized.

The estate tax amnesty can be availed by estates of decedents who died on or before December 31, 2017 and can be availed from June 15, 2019 to June 14, 2021

A. Availment of Estate Tax Amnesty and documentary requirements

o If the estate involves multiple stages of succession and the succeeding decedents, during their lifetime, owned separate properties other than the properties emanating from the first decedent, the Estate Tax Amnesty Return (ETAR) shall be individually filed at the Revenue District Office (RDO) having jurisdiction over the last residence of each decedent. The option to file at only one RDO is not available in this instance.

o A supplemental extra-judicial settlement (EJS) covering undeclared real or personal property is required in the availment of estate tax amnesty.

o If an estate tax return has been filed prior to 2018 for which a tax clearance was issued but the Certificate Authorizing Registration (CAR) was not released, the heirs should instead request for issuance and release of CAR subject to presentation of proof of payment and previously submitted

documentary requirements, instead of availing the estate tax amnesty.

o If the owner's copy of the Transfer Certificate of Title (TCT) was lost, estate tax amnesty can be availed provided that the filer submits a certified true copy of the OCT/TCT/CCT of the subject property which is issued by the Register of Deeds (RD)/Land Registration Authority (LRA).

o If the RD's copy of the OCT/TCT/CCT was lost, the owner's copy together with the Certificate of Loss issued by the RD shall be submitted for purposes of estate tax amnesty availment.

B. Estate subject to tax investigation

o If the decedent has an on-going investigation in an RDO other than the RDO of his domicile, the on-going investigation shall be consolidated in the RDO where the estate tax return shall be filed.

o The eCAR shall be issued only after the submission of the report of investigation on the other internal revenue tax liabilities, and after payment of deficiency taxes, if any. However, if the filer insists that the eCAR be issued even without the results of the audit, or even without the payment of deficiency taxes, the eCAR may be issued provided that the filer shall post a bond.

o If an eCAR has been issued for a regular estate tax transaction and deficiency tax was subsequently noted by the Assessment Division, the estate tax amnesty can still be availed. There is no need to issue another eCAR.

C. Allowable deductions from gross estate and other clarifications

o The judicial expenses pertaining to issue of heirship, if there is a pending case filed in court, is not an allowable expense against the estate.

o Family Home, Standard Deduction and Medical Expenses are treated as special item of deduction which should not affect the share of the surviving spouse.

o Starting from July 1, 1939, deductions shall only be allowed if the executor, administrator, or anyone of the heirs, as the case may be, includes in the return required to be filed, the value at the time of his death of that part of the gross estate of the nonresident situated in the Philippines.

o Self-adjudication is allowed if there is only one heir.

o There is no donation in a general waiver or renunciation of rights, interest and participation. There is also no Documentary Stamp Tax due.

The BIR also issued the following:

- *Revised Estate Tax Amnesty Return (July 2019 version)*

The revised ETAR was issued to clarify the treatment of items of deductions from the gross estate of the decedent, if no estate tax return has been previously filed.



> BIR Issuances

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BIR Issuances

• Revised Certificate of Availment (Version 2)

The revised Certificate of Availment shall reflect a statement that, “In case there are properties covered under Section 3 of RR No. 6-2019 which are included in the application for estate tax amnesty, the application pertaining to such properties shall be considered null and void”

The revised ETAR is downloadable through the **BIR website**.

Clarification on the tax treatment of maternity leave benefit

(Revenue Memorandum Circular No. 105-2019, October 9, 2019)

Pursuant to Section 5 (c) of Republic Act (RA) No. 11210 and its IRR, employed female workers availing of the maternity leave benefits shall receive their full pay for the duration of the maternity leave which consists of (1) the Social Security System (SSS) maternity benefit computed based on the average daily salary credit and (2) salary differential to be paid by the employer.

With these new provisions in the law, the Bureau of Internal Revenue (BIR) interpreted that the salary differential is now considered as benefit under the Social Security Law. Based on the provisions of RA No. 11210 and its IRR, the previous 100% of the average daily salary credit was expanded to a full pay, which now includes the salary differential as its component.

Therefore, the payment of the expanded maternity benefit which includes the SSS maternity benefit and the salary differential is not subject to withholding tax on compensation pursuant to Section 2.78.1(B) (1)(e) of Revenue Regulations (RR) No. 02-98, as amended, which provides that the payments of benefits made under Social Security Act of 1954 shall be exempt from withholding tax.

Availability of revised BIR Form No. 2000-OT

(Revenue Memorandum Circular No. 106-2019, October 10, 2019)

Following the implementation of the TRAIN Law, a revised BIR Form No. 2000-OT Documentary Stamp Tax Declaration/ Return (One Time Transaction) January 2018 (ENCS) was issued by the BIR.

One of the modifications made is the inclusion of donation of real property as transaction subject to documentary stamp tax.

The revised manual return is already available in the BIR website. However, it is not yet available on the Electronic Bureau of Internal Revenue Forms (eBIR Forms). Taxpayers shall use the manual return by downloading, printing and filling out the PDF version of the form and paying the tax due thereon through the BIR’s Authorized Agent Banks (AABs).

Further extension of the validity period of Certificate of Accreditation and Permits to Use of CRMs, POS Machines

(Revenue Memorandum Circular No. 107-2019, October 15, 2019)

The BIR further extended the validity period of the Certificates of Accreditation (COA) and Permits to Use (PTUs) of Cash Register Machines (CRMs), Point-of-Sale (POS) machines and other sales machines/ receipting software.

COA and PTUs issued on or before August 1, 2020 shall be valid until July 31, 2025. Those issued on August 1, 2020 onwards shall be valid for 5 years from the date of issuance. All primary and supplementary receipts/ invoices using the CRM/POS machines and other sales machine/ receipting software must reflect the “Date Issued” and “Valid Until”, based on the provisions of RMC 1 07-2019.

CTA Decisions



> BIR Issuances

> CTA Decisions

NIC and PAN not required when tax withheld is not equal to remitted amount

(New Coast Hotel, Inc. v Commissioner of Internal Revenue, CTA EB No. 1758, October 1, 2019)

Section 3.1.3 (ii) of Revenue Regulations 12-99 states that the Notice for Informal Conference (NIC) and Preliminary Assessment Notice (PAN) shall not be required when a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent.

In this case, there was discrepancy between the taxes withheld and the amount the taxpayer actually remitted to the BIR. Considering such discrepancy, an FAN was immediately issued without affording it the benefit of a PAN.

Since issuance of NIC and PAN is not required in case of discrepancy between amount withheld and amount actually remitted to the BIR, the taxpayer's right to due process was not impaired. The assessment is considered valid.

Proof of actual remittance is not a condition to claim for refund of unutilized tax credits

(Zuellig Pharma Corporation vs. Commissioner of Internal Revenue, CTA EB No. 1793, October 1, 2019)

Section 2.58 in conjunction with Section 2.58.3 of RR 2-98 provides that 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.

In this case, the taxpayer-claimant failed to provide proof that the taxes withheld from the income payment to it was actually remitted to the BIR.

As the best evidence to establish the fact that taxes are withheld would be the CWT certificate or BIR Form No. 2307 issued by the withholding agent, the payee-refund claimant is not required to provide proof of actual remittance of the taxes withheld.

Good-faith is a sufficient justification for waiver of surcharges and interest

(Commissioner of Internal Revenue vs Perpetual Succour Hospital of Cebu, Inc., CTA EB No. 1819, October 10, 2019)

As ruled by the Supreme Court in several cases, good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law is sufficient justification to delete the imposition of surcharges and interest.

In the instant case, the records showed indications that respondent-taxpayer honestly believed in good faith that it is not liable to pay the tax assessed following previous decisions of the Court of Tax Appeals (CTA). Hence, imposition of surcharge and interest must be discharged.

CTA Decisions



> BIR Issuances

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Failure to establish willful nonpayment of deficiency tax renders acquittal of taxpayer

(People of the Philippines v Jose Eduardo C. Delgado, Delbros, Inc., CTA Crim Case No. O-660, October 23, 2019)

Under Section 225 of the Tax Code, to sustain a conviction for willfully failing to pay the correct tax, the following elements must be established, the accused: (a) is required to pay any tax (b) failed to pay the required tax at the time required by law or rules and regulations (c) WILLFUL nonpayment of the required tax due. The term “WILLFUL” is defined as voluntary and intentional. It must be fully established as a positive act or state of mind and cannot be presumed nor attributed to mere negligent acts.

In this instant case, the accused alleged a change in its residence but failed to present evidence that it officially informed the BIR of its change of address. Despite the absence of a formal written notice of change of address, the fact remains that the BIR became aware of the new address, as shown by the various documents submitted which reflected the new address.

It has already been held that if the BIR is already aware of the new location of the taxpayer, even in the absence of any formal application for change of address, the BIR cannot simply pretend lack of knowledge of the change of address and is bound to send any issuances or notice to such new location of the taxpayer.

As shown by the foregoing discussion, it cannot be said that the PAN, FLD and assessment notices were “properly addressed”. The BIR failed to prove that the accused received the assessment notices. Thus, it cannot be concluded that the failure of the accused to pay the assessed deficiency taxes was willful.

FAN without due date is void

(Commissioner of Internal Revenue v South Luzon Tollway Corporation, CTA EB No. 2004, October 28, 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.

In this case, the CTA decided to nullify and void the assessment against the respondent. Despite petitioner-CIR’s insistence that the FAN it issued was valid on the grounds that it was received by respondent-taxpayer and that the FAN constituted written notice in accordance with Section 228 of the Tax Code, the CTA still invalidated the FAN for not having a due date for payment.

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