



Tax *brief*

February 2020





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RR No. 3-2020
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BIR Issuances

Employees to file own registration information update

(Revenue Regulations No. 01-2020, January 09, 2020)

Application for any change in the registration information (BIR Form 1905) shall be filed by the employee in the Revenue District Office (RDO) where the employee is registered. Copy of the BIR Form 1905, as stamped received by the RDO, shall be submitted by the employee to its current employer. The employer shall then make the necessary adjustments on the withholding tax of the employee based on the new information.

Previously, under Revenue Regulations (RR) 11-2018, an employee is required to furnish BIR Form 1905 to his employer and the employer transmits the same to the BIR. RR 1-2020 amends RR 11-2018 which amended RR 2-1998, the withholding tax regulations.

With this amendment, the procedures in updating registration information of employees are now aligned with the procedures provided under Revenue Memorandum Order (RMO) RMO 37-2019.

Tax exemption of Bangko Sentral ng Pilipinas

(Revenue Regulations No. 02-2020, January 15, 2020)

The tax exemption privileges of the Bangko Sentral ng Pilipinas (BSP) under The New Central Bank Act of 2019 [Republic Act (RA)

11211] is in effect as implemented by RR 2-2020.

The BSP shall be exempt from all national internal revenue taxes on income derived from its governmental functions, specifically:

a. Income from its activities or transactions in the exercise of its supervision over bank operations and its regulatory and examination power over non-bank financial institutions performing quasi-banking functions, money service businesses, credit granting businesses and payment system operators; and

b. Income in pursuit of its primary objective to maintain price stability conducive to a balanced and sustainable growth of the economy, and the promotion and maintenance of monetary and financial stability and the convertibility of peso.

All other income not included in the list above shall be considered as proprietary income, hence, subject to all applicable national internal revenue taxes.

The law became effective on March 21, 2019. This RR becomes effective beginning Jan 31, 2020.

BIR Issuances



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BIR amendments on the REIT rules

(Revenue Regulations No. 03-2020, January 30, 2020)

The Bureau of Internal Revenue (BIR) issued the amendments on the Implementing Rules and Regulations (IRR) of The Real Estate Investment Trust (REIT) Act of 2009 (RA 9856).

A Real Estate Investment Trust or REIT is a publicly-listed stock corporation established principally for the purpose of owning income-generating real estate assets.

Under RR No. 03-2020, the following are the amendments to RR No. 13-2011, which implements the tax provisions of the REIT Act of 2009:

Minimum Public Ownership (MPO)

The previous minimum public ownership requirement of 40% at the initial year of listing, which should be increased to 67% within three years from the year of listing, is now lowered to 1/3 of the outstanding capital stock at any period.

Reinvestment Plan

A REIT is now required to have a Reinvestment Plan. In case of sale by the Sponsor/Promoter of REIT shares or other securities issued in exchange for income-generating real estate transferred to the REIT or sale of any of the Sponsor/Promoter's income-generating real estate to the REIT, the proceeds realized must be reinvested in any real estate, including

redevelopment thereof, and/or infrastructure projects. Reinvestment must be made within one year from the date of receipt of proceeds/money.

Upon registration, the sworn declaration providing for the said reinvestment plan as certified by SEC, must be submitted, together with the other registration documents. Also, two (2) copies of the reinvestment plan as duly received by the BIR, shall be required in processing the CAR for the transfer of shares/real property.

Proof of compliance with the reinvestment plan as secured from SEC must be attached also to the annual income tax return to be filed with the BIR. Failure to comply with the reinvestment plan shall disqualify the REIT from availing the Documentary Stamp Tax (DST) and dividend deduction incentives.

Documentary Stamp Tax (DST)

DST due on transfer of property and shares of stocks shall still be 50% of the applicable DST under the National Internal Revenue Code (NIRC), as recently amended by TRAIN Law.

The requirement to put in escrow the 50% of the DST given as incentive is no longer required. However, in case of failure to comply with the public listing, 90% dividend distribution requirement, and certification requirement on the reinvestment plan, the 50% of the DST given as incentive, together with the applicable penalties, shall immediately become due and demandable without the need of an assessment. A formal

letter of demand shall be issued.

Value Added Tax (VAT)

Aligned with the amendment under the TRAIN Law, the transfer of property to the REIT in exchange for shares is exempt from VAT. Annual BIR Compliance Requirement The REIT shall comply with the BIR annual reportorial requirements on or before April 15 (or 15th day of the 4th month following the close of the fiscal year). See Sec. 18 of the RR 13-2011, as amended by RR No. 03-2020 for the complete list of reportorial requirements.

BIR Issuances



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Submission of Sworn Declaration of inventory by all gasoline stations

(Revenue Memorandum Circular No. 02 and 06-2020, January 03, 2020)

All gasoline stations are required to submit a sworn declaration of inventory of diesel, gasoline and kerosene as of December 31, 2019 identified per branch, specifying the volume and product description, among others. The report should also state whether the inventory has been marked or not.

The sworn declaration statement of inventory should be submitted to the Revenue District Office/Large Taxpayers Division where the principal place of business is registered on or before January 31, 2020 (as extended pursuant to RMC 6-2020, January 23, 2020).

The BIR template of the report can be accessed from the BIR website.

Availability of revised BIR Forms 1702-Q

(Revenue Memorandum Circular No. 03-2020, January 03, 2020)

To implement the provisions of the TRAIN Law (RA 10963), a newly revised quarterly income tax return for corporations, partnerships and other non-individual taxpayers, BIR Form No. 1702Q - January 2018 (ENCS), is now available.

The revised return is already available manually and can be downloaded from the BIR website. However, this is not yet available in the Electronic BIR Form

(eBIRForm) and Electronic Filing and Payment System (EFPS). Thus, eBIRForms/eFPS filers shall use the existing version of BIR Form 1702-Q in the eFPS and Offline eBIRForms Package v7.5 in filing and paying the income tax due thereon.

New daily minimum wage rates in Cordillera Administrative Region

(Revenue Memorandum Circular No. 05-2020, January 22, 2020)

The new minimum wage rates in Cordillera Administrative Region (CAR) pursuant to Wage Order No. RB-CAR-20 have been circularized, as follows:

AREA	New Daily Minimum Wage Rates For All sectors and industries in CAR
Baguio City & La Trinidad, Benguet Tabuk City, Kalinga	Php340 (Basic) + Php10(COLA) = Php 350
Other Areas in the Region	Php330 (Basic) + Php10(COLA) = Php 340

Pursuant to the TRAIN Law, compensation income of minimum wage earners within the statutory minimum wage, including holiday pay, overtime (OT) pay, night shift differential, and hazard pay are exempt from withholding tax on compensation.

Suspension of January tax deadlines for RDO 58 and 59 in Batangas

(Revenue Memorandum Circular No. 07-2020, January 23, 2020)

Deadlines in the acceptance of tax returns and payment of internal revenue taxes in the province of Batangas is suspended due to the recent eruption of Taal Volcano.

The suspension shall cover the tax return deadlines falling in the month of January for taxpayers under the jurisdiction of RDO 58 (Batangas City, West Batangas) and RDO 59 (Lipa City, East Batangas). No late-filing penalties shall be imposed.

A separate advisory will be issued by the BIR to lift the suspension and resume regular operations of said RDOs.

BIR collection goal for CY 2020

(Revenue Memorandum Order No. 02-2020, January 16, 2020)

The overall collection goal of the BIR for calendar year 2020 was set at P2.576 trillion. This is inclusive of the P0.090 trillion additional revenues from the TRAIN Law implementation.

The collection goal per tax type and implementing agencies can be accessed from the BIR website.



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SEC Circulars

Revised SEC IRR of REIT Act of 2009

(SEC Memorandum Circular No. 1 s. 2020, January 21, 2020)

The Taxpayer shall be notified, in writing or through email, of the decision on its request for adjustment within 5 working days from receipt of the written recommendation of the concerned RDO or LTS division.

The following are the salient provisions of the SEC's revised implementing rules and regulations of the REIT Act of 2009:

- To encourage the formation of REITs, the SEC lowered the minimum public ownership requirement in line with the provision of the REIT Act that a REIT must have at least 1,000 public shareholders each owning at least 50 shares of any class of shares and, in aggregate, at least 1/3 of the outstanding capital stock.

A 6-month trading suspension shall be imposed by PSE if a REIT fails to maintain the required public ownership level. If it remains non-compliant after the suspension period, the REIT shall be automatically delisted.

Previously, REITs are required to increase their public float to 67% within three years from their listing.

- A sponsor or promoter is required to reinvest any proceeds from the sale of shares or other securities issued in exchange for income-generating real estate transferred to the REIT and from the sale of any

income-generating real estate to the REIT. The reinvestment shall be in any real estate, including any redevelopment and infrastructure projects, in the Philippines.

- To afford more protection to investors, the REIT must create a related party transactions committee. Majority of the committee members must be independent directors who shall vote unanimously in approving related party transactions.

- Qualification requirements of REIT fund managers and property managers were enhanced to ensure independence.

SEC Circulars



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2020 Filing of AFS and GIS

(SEC Memorandum Circular No. 2 s. 2020, January 21, 2020)

To maintain an organized and orderly filing of audited financial statements (AFS) and general information sheet (GIS), the following measures shall be observed in the filing of the said reports:

- Filing deadline of AFS:

Covered Companies	Deadline of Submission
Corporation whose accounting period ends on December 31, 2019	Depending on the last numerical digit of their SEC registration or license number in accordance with the following schedule: April 20, 21, 22, 23, 24 : 1 and 2 April 27, 28, 29 30 : 3 and 4 May 4, 5, 6, 7, 8 : 5 and 6 May 11, 12, 13, 14, 15 : 7 and 8 May 18, 19, 20, 21, 22 : 9 and 10
Corporation whose accounting period ends on a date other than December 31, 2019	Within 120 calendar days from the end of fiscal year Broker dealer: within 110 calendar days from the end of fiscal year
Corporations whose securities are listed on the Philippine Stock Exchange (PSE); corporations whose securities are registered but not listed in the PSE; and Public Companies	Within 105 calendar days after the end of their fiscal year, as attachments to their Annual Reports (SEC Form 17-A)

- 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 May 25, 2020 and shall be subject to the prescribed penalties which shall be computed from the date of the last day of the filing schedule.

- The AFS, other than the consolidated financial statements, shall have the stamp “received” by the BIR or its authorized banks, unless the BIR allows an alternative proof of submissions for its authorized banks (e.g. bank slips).

- The requirement for an AFS shall be based on the threshold provided in the Revised Securities Regulations Code Rule 68. Corporations which do not meet such threshold may file an unaudited FS accompanied by a duly notarized Treasurer’s Certification.

- 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, in complying with the circularized SEC-issued number coding schedule (for AFS only), may submit manually at any SEC head office, satellite and extension offices, or through SEC Express Nationwide Submission or any courier/regular mail.

SEC Opinions



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Delisted PLCs are no longer covered by the “Code of Corporate Governance for PLCs”

(SEC-OGC Opinion No. 20-01, January 31, 2020)

Companies with debt securities listed on the Philippine Dealing Exchange with assets in excess of P50,000,000 and with more than 200 stockholders owning at least 100 shares, but which were delisted from the Philippine Stock Exchange, will not be considered as publicly-listed companies. Thus, these companies are no longer covered by the Code of Corporate Governance for Publicly- Listed Companies (CG-PLCs).

Companies which are registered issuers of debt securities are however, covered by the “Code of Corporate Governance for Public Companies and Registered Issuers” issued by SEC last December 19, 2019.

CTA Decisions



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Noncompliance with the rules on the service of LOA renders the assessment void

(AC Corporation v Commissioner of Internal Revenue, CTA Case No. 8485, January 06, 2020)

The Letter of Authority (LOA) is the authority given to the appropriate revenue officer assigned to perform assessment functions. It commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment. Under Revenue Memorandum Order (RMO) No. 43-90, “An LOA must be served or presented to the taxpayer within 30 days from its issue date; otherwise it becomes null and void”.

In the case herein, the LOA was served on the same date it was issued, However, it was established to have been received by a security guard who is not a duly authorized representative of the taxpayer. An LOA shall be received only by the taxpayer himself or any duly authorized representative of the taxpayer. Hence, for failure of the BIR to serve the LOA to the taxpayer or authorized representative within the 30-day period, the LOA has become void.

It was also noted that the examiner who conducted the examination and who recommended the issuance of the Preliminary Assessment Notice (PAN) was not the Revenue Officer indicated in the LOA. The Revenue Officer was only authorized through a Memorandum of Assignment. Hence, the service and receipt

of the LOA cannot legally bind the taxpayer, and the assessment was considered null and void.

FLD and FAN without definite due dates for payment are void

(Commissioner of Internal Revenue vs. San Miguel Foods Inc, CTA EB No. 1800 re CTA Case No. 9046, January 07, 2020)

An assessment notice, to be valid, must indicate a fixed and definite period within which a taxpayer must pay the tax deficiency.

In this case, the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) failed to demand payment of taxes within a specific period. The FLD only requested the respondent-taxpayer to pay its deficiency tax liabilities using BIR Form 0605. No specific period or due date on when the payment should be made was indicated in the FAN.

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

CTA Decisions



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Revocation of rulings cannot be retrospective in nature except in cases of deliberate misstatement of facts, different facts, or act of bad faith

(Meridien East Realty & Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9130, January 07, 2020)

Section 246 of the NIRC, as amended, provides that a revocation, modification or reversal of rulings or circulars issued by the BIR should not be given retroactive effect, except in cases when (1) the taxpayer deliberately misstates or omits material facts from the documents required by the BIR, (2) the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or (3) the taxpayer acted in bad faith.

In this case, the BIR issued an assessment for taxable year 2010 by retroactively applying RMC 20-2010 which revoked BIR Ruling DA-245-05. In the ruling, the BIR confirmed that the transfer of the condominium project under a build-to-own concept pursuant to a Co-Development and Construction Management Agreement is tax exempt, there being no sale transaction. However, in 2010, the said ruling was revoked and considered null and void by the BIR.

There is no sufficient evidence of the existence of any of the exceptions enumerated in Section 246 for the revocation under RMC 20-2010 to have a

retroactive effect. Hence, the BIR assessment on the basis of a retroactive application of the revocation of a BIR ruling was considered null and void.

Assessment where amount of tax liability is indefinite is void

(Alphaland Makati Place vs. Commissioner of Internal Revenue, CTA Case No. 9609, January 15, 2020)

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

In the context of the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a tax liability that is there definitely set and fixed. The amount due as tax and a demand for payment thereof must be indicated in the notice.

In this case, the FLD states that the interest will still be adjusted if paid beyond the period given. Although the disputed notice provides for the computation of the liability, the amount or adjustment, remains indefinite, since the amount assessed is still subject to modification or adjustment depending on the date of payment.

Accordingly, the assessment was considered null and void.

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