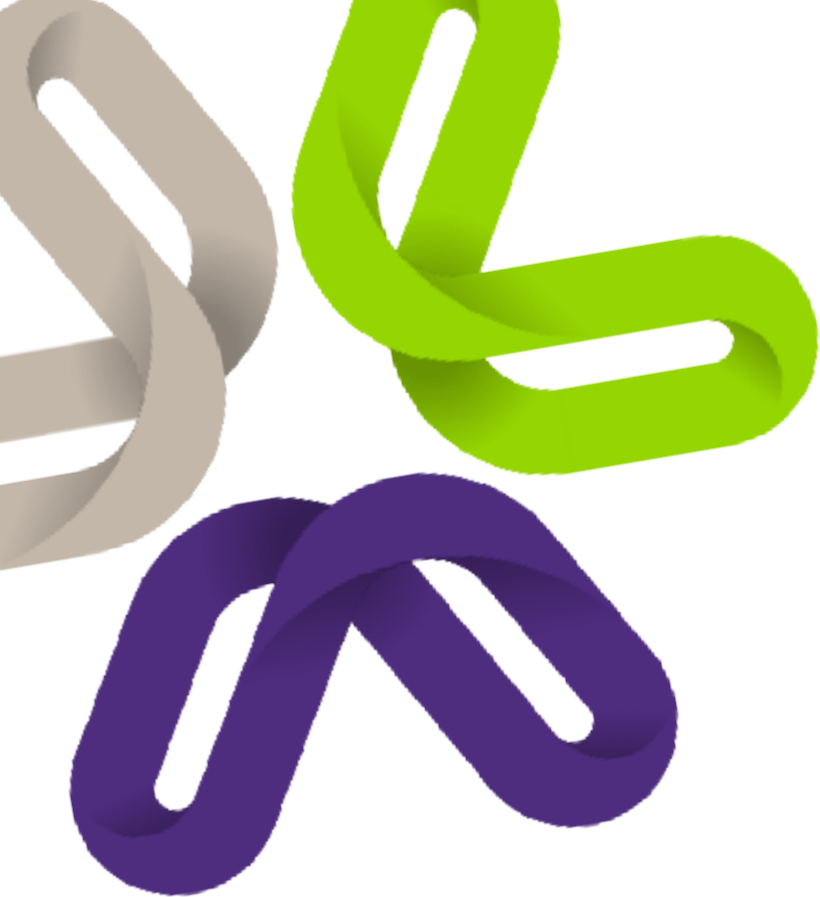




Tax *brief*

January 2020





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RMC No. 132, 133-2019
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RMC No. 135-2019
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New format of BIR Notice to the Public to be exhibited at the place of business

(Revenue Regulations No. 10-2019, December 02, 2019)

The Bureau of Internal Revenue (BIR) provides a new format of the BIR Notice to the Public on the requirement to issue official receipt (OR)/sales invoice (SI) to be exhibited at the place of business.

The new format informs the public that the establishment must issue OR/SI for every sale of goods or service. The old format directs the buyers to ask for receipt. Persons required by law to issue OR/SI are directed to post the Notice in their places of business, including branches and mobile stores, in an area clearly visible to the public.

In addition to the registered name, TIN and applicable penalties for non-issuance of receipts, the new format of the Notice to the Public now includes the Business Name.

Tax incentives under the National Vision Screening Act

(Revenue Memorandum Circular No. 131-2019, December 4, 2019)

RMC 131-2019 circularizes Republic Act (RA) No. 11358 entitled “An Act Establishing a National Vision Screening Program for Kindergarten Pupils and Appropriating Funds Therefor”. Under this Act, also known as the National Vision Screening Act, any donation to the Department of Education (DepEd), the Department of Health (DOH), or the

Philippine Eye Research Institute (PERI) to be used actually, directly and exclusively by these agencies for the National Vision Screening Program (NVSP) and the Vision Screening Continuing Research (VSCR) Fund, shall be exempt from donor’s tax and the same shall be allowed as deduction from gross income for purposes of computing the taxable income of the donor.

Tax incentives to new state universities

(Revenue Memorandum Circular No. 132, 133-2019, December 4, 2019)

RMC 132-2019 circularizes RA Nos. 11399 converting Northwestern Mindanao State College of Science and Technology (NMSCST) into University of Northwestern Mindanao, and RA 11186 converting Zamboanga City State Polytechnic College in the City of Zamboanga into Zamboanga Peninsula Polytechnic State University.

Under the said acts, the new universities shall be entitled to exemption from customs duties on their importation of economic, technical and cultural books or publications, which is for economic, technical, vocational, scientific, philosophical, historical or cultural purposes, made by the University upon certification by the Commission on Higher Education (CHED).

All grants and donations to the universities, to be used actually, directly, and exclusively by them, shall be exempt from the donor’s tax and shall be considered as allowable

deduction from the gross income of the donor.

Availability of revised BIR Forms 1702-EX and 1702-RT

(Revenue Memorandum Circular No. 134-2019, December 04, 2019)

The revised BIR Form 1702-EX is already available in the BIR Website (www.bir.gov.ph) under the BIR Forms-Income Tax Return Section and in the offline eBIR Forms Package v7.5.

The said revised form is not yet available in the eFPS. Hence, eFPS filers are instructed to use the offline eBIR Forms Package v7.5 in filing the said return.

BIR Form 1702-RT likewise, is now available in the offline eBIRForms Package v7.5.

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Clarifications in the availment of tax amnesty on delinquencies

(Revenue Memorandum Circular No. 135-2019, December 11, 2019)

The BIR reiterated the following guidelines in the availment of Tax Amnesty on Delinquencies:

- “Stop-filer” cases and delinquent accounts arising from non-payment of self-declared tax due are not considered “delinquent accounts”. Hence, such cases are not qualified for tax amnesty except in cases of unremitted withholding taxes in which a preliminary collection letter demanding remittance/payment of taxes withheld but not remitted, as declared per return, has been sent by the BIR.
- In the application for availment of tax amnesty on delinquencies, the Acceptance Payment Form (APF) or BIR Form 0621-DA must be duly endorsed by the concerned BIR officials. The Certificate of Tax Delinquencies (CTD) must be issued and signed only by the authorized BIR officer and not by the taxpayer availing of the tax amnesty.
- The immunities and privileges under the tax amnesty are only applicable to the particular tax type and taxable period as indicated in the Tax Amnesty Return (TAR) and paid under duly approved APF.

- Notice of Issuance of Authority to Cancel Assessment (NIATCA) shall be issued by the BIR to the taxpayer availing of the Tax Amnesty on Delinquencies within 15 days from submission of the APF and TAR. Otherwise, the stamped “received” duplicate copies of the APF and TAR shall be deemed sufficient proof of availment.

- Only tax agents/ practitioners, partners, or officers of GPPs, or officers or directors of corporate entities engaged in tax practice with Certificate of Accreditation or ID card shall be allowed to represent a taxpayer for the purpose of the availment of tax amnesty.

New list of additional and delisted top withholding agents

(Revenue Memorandum Circular No. 136-2019, December 19, 2019)

The BIR published the list of additional and delisted Top Withholding Agents last December 16, 2019. The list is based on the amended criteria in determining the Top Withholding Agents (TWAs) under Revenue Regulations (RR) No. 7-2019.

Pursuant to RR No. 7-2019, the publication of the TWAs shall serve as the “notice” to the TWAs to deduct and remit to the BIR the 1% and 2% creditable withholding tax (CWT) from regular suppliers of goods and services, respectively.

For those in the December 16 publication, the obligation to withhold shall continue, commence or cease, as the case may be, beginning January 1, 2020.

Taxpayers that cannot be found in any of the lists of existing and additional TWAs published in October 2018, March 2019 and December 2019 are deemed to have been excluded and therefore, are not required to deduct and remit the 1% or 2% CWT on purchases of goods and services from regular suppliers.

The published lists can be accessed in the BIR website.

Tax incentives under the Farmers and Fisherfolk Enterprise Development Program Act

(Revenue Memorandum Circular No. 138-2019, December 18, 2019)

RMC 138-2019 circularizes the implementing rules and regulations (IRR) of RA 11321 entitled “an Act Instituting the Farmers and Fisherfolk Enterprise Development Program of the Department of Agriculture” issued through Administrative Circular No. 8, series of 2019, by the DA. Under the RA, also known as the “Sagip Saka Act”, the following tax incentives can be availed under the Farmers and Fisherfolk Enterprise Development Program:

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- Gifts and donations of real and personal properties to the Program beneficiaries shall be exempt from donor's tax;

- The LGUs shall exempt from real property tax the structures, buildings, and warehouses utilized for the storage of farm inputs and outputs whose assessed value does not exceed P3,000,000.00; and

- Exemptions from income tax for farmer and the fisherfolk cooperatives and enterprises registering as barangay micro-business enterprises pursuant to the Barangay Micro-Business Enterprises (BMBEs) Act of 2002.

Availability of enhanced BIR Forms 1601-EQ and new 1602Q

(Revenue Memorandum Circular No. 139-2019, December 18, 2019)

The BIR issued new BIR Form 1602Q and enhanced BIR Form 1601-EQ, in relation to the implementation of the TRAIN Law (RA 10963). The newly issued BIR Form 1602Q (Quarterly Remittance Return of Final Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/Etc.) shall be used by banks and other institutions in remitting their quarterly final taxes withheld on interest paid on deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements.

The BIR Form 1601-EQ (Quarterly Remittance Return of Creditable Income Taxes Withheld -Expanded) was revised due to some

changes in the rate of creditable withholding tax on MERALCO payments and interest income on all other debt instruments not within the coverage of deposit substitutes (i.e. from 32%/20% to 15%).

The new/enhanced returns are already available manually and can be downloaded from the BIR website. However, these are not yet available in the Electronic BIR Form (eBIRForm) and Electronic Filing and Payment System (eFPS). Thus, eFPS/eBIRForms filers shall use the existing version of BIR Forms 1601-EQ and 1602 in the eFPS, and existing version of BIR Form No. 1602Q in the Offline eBIRForms Package v7.5 in filing and remitting taxes due thereon.

Rules on the execution of waivers of the defense of prescription

(Revenue Memorandum Circular No. 141-2019, December 20, 2019)

The BIR reiterated the following revised rules on the proper execution of waiver of defense of prescription:

- The waiver is a unilateral and voluntary undertaking and binding on the taxpayer immediately upon execution. It need not specify the type and amount of taxes to be assessed. It need not be notarized to be valid.
- Delegation of authority to a representative of the taxpayer is no longer required to be in writing and notarized. A taxpayer cannot seek to invalidate his waiver by contesting the authority of his own representative.

- It is the duty of the taxpayer to submit his waiver to the authorized BIR officials, which include the RDO or Group Supervisor as designated in the LOA or MOA. The date of acceptance by the BIR officer is no longer required to be indicated for the waiver to be valid.

- There is no strict format prescribed for the waiver. Any format may be utilized by a taxpayer. The format will not affect its validity.

- The burden of ensuring that the waiver is validly executed is the responsibility of the taxpayer. Hence, taxpayers must ensure that the waivers they execute are valid.

Recovering erroneously deducted DST through eDST System

(Revenue Memorandum Circular No. 142-2019, December 27, 2019)

Taxpayers now have an additional option to recover erroneously deducted amount of DST from their respective ledger balances in the eDST system as a result of erroneous encoding of information by the taxpayer-user, or multiple affixture/printing of stamps due to taxpayer-user's error or a system error.

Aside from filing a claim for refund, the taxpayer-user may file a request for adjustment to the taxpayer's ledger balance in the eDST System, provided that the following conditions are satisfied:

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a. Revised BIR Form 2000 filed with the BIR is properly accomplished, more particularly on the tax computations for the eDST System (Part II.A and Schedule 1); and

b. The erroneously deducted amount from the taxpayer's ledger account in the eDST system has not been declared in Schedule 1 of the said return.

Below are the guidelines and procedures in filing for the adjustment:

1. Request for adjustment in the taxpayer's ledger balance shall be filed in writing by the taxpayer-user to the Chief, Miscellaneous Operations Monitoring Division (MOMD), Collection Service located in the NO. All relevant documentary proofs on the incident shall likewise be submitted.

2. The MOMD shall conduct a preliminary evaluation of the request. The request for verification and investigation adjustment shall be transmitted by MOMD to the concerned revenue offices within 5 working days from the receipt of taxpayer's written request.

3. The head of the concerned RDO/ LTS division shall issue a MOA authorizing the revenue officers to conduct verification of the request.

Results of the verification and corresponding recommendation for approval or denial shall be transmitted to the Chief, MOMD, within 30 working days from receipt of the request for verification.

4. The recommendation- approved or denied, as evaluated by the MOMD, shall be endorsed to the Assistant Commissioner, Collection Service for final approval.

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 reasons for the denial of the taxpayer's request shall be clearly stated in the notice to the taxpayer. In case it was determined by the BIR that a request for refund should have been filed instead, the same should be categorically stated in the notice of denial. In case the taxpayer's request does not arise from a system error and there is a need for a further verification at the taxpayer's side, the same shall also be communicated to the taxpayer.

Clarifications the inclusion of taxpayers as top withholding agents (TWAs)

(Revenue Memorandum Circular No. 143-2019, December 27, 2019)

RMC 143-2019 clarifies issues pertaining to the inclusion of taxpayers as top withholding agents (TWAs) who are required to withhold 1% and 2% on purchases of goods and services, respectively.

The following taxpayers shall be excluded from the list of TWAs:

1. Taxpayers which are included in the lists of TWAs published last October 2018, March 2019 and December 2019 but who failed to satisfy the criteria set under RR No. 07-2019 (i.e., gross sales/ receipts, gross purchases, or claimed deductible itemized expenses amounted to Php12M during the preceding taxable year), and;

2. Taxpayers which, despite having met the criteria, were excluded pursuant to OM No. 20-2019, as follows:

a. National government agencies, government-owned or controlled corporations, state universities and colleges, and local government units;

b. Taxpayers who were included as TWA because of one-time transactions (i.e. estate and donor's tax);

c. Individual taxpayers deriving income on commission basis such as but not limited to insurance agent and real estate broker, subject to verification of their duly filed 2018 Quarterly Income Tax Returns in order to determine the regularity of their transactions. Accordingly, if the Php12M criteria has been satisfied only in one taxable quarter, the taxpayer shall not be qualified as TWA; and



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d. Taxpayers who are exempt from payment of income taxes with no proprietary activities (i.e. foundations, non-stock, non-profit and tax exempt educational institutions, religious and charitable institutions, etc.).

Their liability to withhold the 1% and 2% creditable withholding tax shall cease immediately.



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SEC Opinions

Incorporators are not required to be Philippine residents

(SEC-OCG Opinion No. 19.59, December 18, 2019)

As confirmed in the SEC opinion, incorporators of a corporation are not required to be residents of the Philippines.

The Revised Corporation Code (RCC), which took effect last February 23, 2019, already omitted the residency requirement of incorporators of any corporation. Only the treasurer and the corporate secretary are required to be residents of the Philippines.

DOF Opinions



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Transfer of land and common areas from a mortgagee-bank to the condominium corporation is tax-exempt

(DOF Opinion No. 017-2019, December 13, 2019)

The BIR, in its BIR Ruling 296-2014, ruled that the transfer of land and common areas of the mortgagee bank to the condominium corporation, is not tax-exempt and should be subject to 6% capital gains tax. The BIR concluded that said transfer is not covered by RMO 18-2009 since the transfer is not similar to the facts provided under the RMO. In the RMO, the transfer cited was from a real property developer, not a mortgagee bank, to the condominium corporation.

However, based on its review, the Department of Finance (DOF) reversed the BIR ruling.

RMO 18-2009 only dispenses the necessity of securing a ruling from the BIR as a requisite for the issuance of the CAR on the conveyance of land and common areas from the real property developer to the condominium corporation for purposes of holding title to and managing and maintaining the land and the common areas for the benefit of the condominium unit owners.

However, the RMO also provides that the taxpayer may still secure a prior ruling from the BIR to confirm the tax-exempt status of such transfer. RA No. 4726, which provides for the exemption, does not require that the transfer of land and common areas must be from the original real estate developer. A mortgagee

bank can be considered as the real estate developer as the bank is considered successor in the rights and interest having foreclosed the properties from the owner-developer. Hence, the transfer of land and common areas from the bank to the condominium corporation was considered tax-exempt.

CTA Decisions



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An FNBS may constitute an FDDA

(Esca International, Inc. v Commissioner of Internal Revenue, CTA EB No. 1980 re CTA Case No. 9648, December 04, 2019)

As have been ruled by the Supreme Court, not all final decisions of the BIR Commissioner come in the form of a Final Decision on Disputed Assessment (FDDA). Content and tenor of a document issued by the Commissioner to a taxpayer may constitute a final decision despite not being in the form of an FDDA.

In the instant case, the taxpayer filed its protest letter to the Formal Letter of Demand (FLD) issued by the BIR. After six months, the BIR issued a Preliminary Collection Letter (PCL). The BIR further proceeded to issue a Final Notice Before Seizure (FNBS) to the taxpayer.

As ruled by the CTA, the PCL and FNBS constitute a final decision of the BIR. Hence, the taxpayer has no more remedy but to appeal the case with the CTA. Failure to do so shall make the assessment final and executory.

BIR tax assessment purely based on a BOI report is not valid

(Pueblo De Oro Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9553, December 12, 2019)

In this case, the BOI, based on its evaluation, forfeited the income tax holiday (ITH)

incentive of the company for failure to comply with the requirements under the terms and conditions for the incentive. Pursuant to its mandate, the BOI informed the BIR of the forfeiture of the ITH of the company. On the basis of this BOI letter, the BIR issued a Preliminary Assessment Notice (PAN) and an FLD to the company. The BIR did not issue an LOA nor conducted its own examination. Instead, the BOI report was annexed as basis of the FLD.

The findings of the BOI cannot substitute for the investigation of the BIR. The BIR should conduct its own investigation and thereafter issue a tax assessment pursuant to applicable laws and regulations. This necessitates, among others, the issuance of a LOA providing the revenue officers/ examiners with the authority to examine the taxpayer and to recommend the issuance of an assessment. Since no LOA was issued to the taxpayer, the assessment was considered null and void.

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