



Tax *brief*

September 2021





BIR ISSUANCES

RR No. 16-2021
issued on August 04, 2021

Submission of scanned copies of BIR Forms 2307 and 2316; manual submission of hard copies no longer allowed

RR No. 17-2021
issued on August 04, 2021

Availment period of estate tax amnesty extended until June 14, 2023; other updates on the availment of estate tax amnesty

RMO No. 24-2021
issued on August 13, 2021

New ATCs for excise taxes on exports of sweetened beverages products now available in payment (BIR Form No. 0605)

RMC No. 91-2021
issued on August 04, 2021

Tax filing and payment during ECQ/MECQ extended for 15 days; out-of-district filing and payment allowed

RMC Nos. 92 and 93-2021
issued on August 09, 2021

Extended deadline for filing of BIR assessment letters and correspondences, and VAT refund applications falling due during the ECQ and MECQ period; suspended running of the statute of limitations for the assessment and collection of taxes

RMC No. 94-2021
issued on August 10, 2021

Donor's tax is due in partial renunciation of inheritance

RMC No. 97-2021
issued on August 16, 2021

Clarifications on the tax obligations of income-earning social media influencers

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SEC MC No. 09 series of
2021 issued on
August 18, 2021

Rules on authorization of an investment company as a qualifying Collective Investment Scheme (CIS) and recognition of a foreign CIS under the ASEAN CIS Framework

CTA Decisions

CTA EB No. 2323

MOA issued in reference to the validly issued LOA should be signed by CIR or duly authorized representative to be valid

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Submission of scanned copies of BIR Forms 2307 and 2316; manual submission of hard copies no longer allowed

(Revenue Regulations No. 16-2021 issued on August 04, 2021)

Pursuant to RR No. 16-2021, only scanned copies of Certificate of Creditable Tax Withheld at Source (BIR Form 2307) and Certificate of Compensation Payment (BIR Form 2316) shall be accepted by the BIR. Taxpayers should ensure that the file format and naming conventions, as well as the actual submission of the said BIR Forms, are in accordance with the rules governing the selected mode or submission facilities of the BIR.

The submission of scanned copies of the said BIR Forms shall apply to all taxpayers whether or not registered with the Large Taxpayers Services (LTS) of the BIR.

The revenue regulations take effect after fifteen (15) days following its publication in the Philippine Star on August 4, 2021.

Availment period of estate tax amnesty extended until June 14, 2023; other updates on the availment of estate tax amnesty

(Revenue Regulations No. 17-2021 issued on August 04, 2021)

The period of availment of Estate Tax Amnesty is extended until June 14, 2023 pursuant to RA No. 11569, amending

RA No. 11213.

Duly accomplished and sworn Estate Tax Amnesty Return (ETAR) and Acceptance Payment Form (APF) with proof of payment, together with the complete documentary requirements, shall be submitted to the RDO in triplicate copies. Failure to submit the same until June 14, 2023 is tantamount to non-availment of the Estate Tax Amnesty.

The following amendments/clarifications to the existing rules on availment of Estate Tax Amnesty are also provided by the BIR:

- Within five (5) working days from receipt of ETAR, APF and other required documents, the concerned RDO shall endorse the APF for payment with the Authorized Agent Banks (AABs) or Revenue Collection Officers (RCOs). Only these duly endorsed APF shall be presented to and received by the AAB or RCO.
- Proof of settlement of the estate, whether judicial or extra-judicial, is not required in filing of the ETAR if it is not yet available at the time of filing. However, no electronic Certificate Authorizing Registration (eCAR) shall be issued unless such proof is presented and submitted to the concerned RDO.
- One eCAR shall be issued per real property until such time that the eCAR system is already capable of generating one (1) eCAR for all properties covered by a single transaction.
- eCAR shall only be issued upon submission

of the proof of estate settlement (e.g., Extra-Judicial Settlement of Estate (EJS), Copy of Court Order). If these documents include properties not indicated in the filed ETAR, the particular properties shall be excluded from the eCAR, unless additional estate tax amnesty payment shall be made within the amnesty period. Otherwise, the additional estate tax to be paid for the additional properties indicated in the EJS or Court Order shall be subject to applicable estate tax rate including interests and penalties.

All other existing rules and revenue issuances to implement and clarify the availment of Estate Tax Amnesty under RA No. 11213 shall continue to apply to the period of extension for availment of Estate Tax Amnesty under RA No. 11569.

New ATCs for excise taxes on exports of sweetened beverages products now available in Payment Form - BIR Form No. 0605

(Revenue Memorandum Order No. 24-2021 issued on August 13, 2021)

RMO No. 24-2021 provides the Alphanumeric Tax Code (ATC) EXB10 for excise tax on export of sweetened beverages products paid through Payment Form (BIR Form No. 0605), in relation to Revenue Regulations (RR) No. 10-2021 and in accordance with the provisions of RR No. 3-2008.

This ATC is created to facilitate the proper identification and monitoring of payment of excise tax on exports of sweetened beverages

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paid through BIR Form No. 0605.

Tax filing and payment during ECQ/MECQ extended for 15 days; out-of-district filing and payment allowed

(Revenue Memorandum Circular No. 91-2021 issued on August 04, 2021)

Deadlines of filing of returns and payment of taxes due thereon, and the submission of reports and attachments falling due within the ECQ and MECQ period of August 6, 2021 to August 20, 2021 are extended for fifteen (15) calendar days from August 20, 2021. If the ECQ/MECQ will be extended, the filing and payment of returns, and submission of reports and attachments shall also be extended for fifteen (15) days from the lifting of the ECQ/MECQ.

During the said period, taxpayers may also:

- Pay internal revenue taxes at the nearest Authorized Agent Banks (AABs) regardless of Revenue District Office (RDO) jurisdiction.
- File the return and pay the corresponding tax to the Revenue Collection Officer (RCO) of the nearest RDO, even in areas where there are AABs.
- Pay tax in cash not exceeding P20,000.
- Pay with checks without limit in amount. Check payment will be accepted even without the name of the receiving AAB branch indicated in the check as long as the check is made payable to the Bureau of Internal Revenue.

- Pay taxes using available online payment facilities.

If the extended deadline falls on a non-working day or holiday, the same shall be on the next working day.

Extended deadline for filing of BIR assessment letters and correspondences, and VAT refund applications during the ECQ and MECQ period; suspended running of the statute of limitations for the assessment and collection of taxes

(Revenue Memorandum Circular Nos. 92 and 93-2021 issued on August 09, 2021)

Deadline for filing of letters, replies, position papers, protests, and documents related to on-going BIR assessments, and VAT refund applications falling due falling due on August 6, 2021 and during the Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) period, including extensions thereof, as well as the suspension of the running of statute of limitations for assessment and collection of taxes during such period/s, are extended as follows:

Letter/ Correspondence	Extended deadline
Position paper and supporting documents in response to notice of discrepancy	30 days from lifting of the ECQ and/or MECQ

Reply and supporting documents in response to preliminary assessment notice (PAN)	15 days from lifting of the ECQ and/or MECQ
Protest letter in response to final assessment notice (FAN) or formal letter of demand (FLD)	30 days from lifting of the ECQ and/or MECQ
Transmittal letter and supporting documents in relation to request for reinvestigation	30 days from lifting of the ECQ and/or MECQ
Request for reconsideration to the CIR on final decision on disputed assessment (FDDA)	30 days from lifting of the ECQ and/or MECQ
Submission of documents in response to Subpoena Duces Tecum (SDT)	15 days from lifting of the ECQ and/or MECQ
Submission of documents in relation to first, second and final notice	10 days from lifting of the ECQ and/or MECQ
Other similar letters and correspondences	30 days from lifting of the ECQ and/or MECQ
Filing of VAT refund with VCAD	30 days from lifting of the ECQ and/or MECQ

Face to face meetings of BIR officials and employees with taxpayers and/or authorized representative in areas under ECQ/MECQ, are likewise deferred and rescheduled until lifting of ECQ and/or MECQ.

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Moreover, the running of statute of limitations for assessment and collection of deficiency taxes is suspended in affected areas while ECQ and/or MECQ is in effect, and for sixty (60) days thereafter.

The above extension of deadlines and suspension of statute of limitation shall also apply in case of any future declarations of ECQ and/or MECQ by the government.

Donor's tax is due in partial renunciation of inheritance

(Revenue Memorandum Circular No. 94-2021 issued on August 10, 2021)

This RMC clarified that donor's tax shall be imposed on the value forgone as a result of a partial renunciation of inheritance since the heir is waiving his share to only identified properties but not to the entire properties of the decedent.

General renunciation of an heir on his/her share from the inheritance is not subject to donor's tax. However, there are instances where in the settlement of the estate of the decedent, the heirs will agree among themselves for a specific property that each one of them will receive, instead of all the heirs receiving their respective shares in all the properties of the decedent. In this scenario, there will be an heir who will receive a share lower or higher than the value of what should have been his rightful share in all the properties of the decedent. In this case, there is actually a partial renunciation of inheritance since the heir is waiving his share to only identified

properties but not to the entire properties of the decedent. Accordingly, donor's tax shall be imposed on the value forgone as a result of such waiver/renunciation.

Refer to the full text of the RMC for the illustrative example of the manner of computation of donor's tax involving the above scenario.

Clarifications on the tax obligations of income-earning social media influencers

(Revenue Memorandum Circular No. 97-2021 issued on August 16, 2021)

Social media influencers are liable to income tax and percentage tax or value-added tax (VAT) pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other existing law.

These social media influencers, which can be an individual or corporation, includes all those receiving income, in cash or in kind, from any social media sites and platforms (YouTube, Facebook, Instagram, Twitter, TikTok, Reddit, Snapchat, etc.) in exchange for services performed as bloggers, video bloggers or "vloggers" or as an influencer, in general, and from any other activities performed on such social media sites and platforms.

Social media influencers, other than corporations and partnerships, are classified for tax purposes as self-employed individuals or persons engaged in trade or business as sole proprietors, and therefore, their income

is generally considered as business income.

Income Tax

Generally, social media influencers derive their income from the following sources: a) You Tube Partner Program; b) sponsored social and blog posts; c) display advertising; d) becoming a brand representative/ ambassador; e) affiliate marketing; f) co-creating product lines; g) promoting own products; h) photo and video sales; i) digital courses, subscriptions, e-books; and j) podcasts and webinars.

Such payments received by them in consideration for services rendered or to be rendered, irrespective of the manner or form of payment are subject to income tax. Therefore, if a social media influencer receives free products in exchange for the promotion thereof on his/her/it YouTube channel or other social media accounts, he/she/it must declare the fair market value of such products as income. Income treated as royalties in another country, including payments under the YouTube Partner Program, shall likewise be included in the computation of the gross income of the social media influencer and shall be subject to the schedular individual income tax or corporate tax rates.

Income derived from Philippine-based contents by resident aliens shall generally be taxable. The burden of proof that the income was derived from sources outside the Philippines lies upon the resident alien. Absent such proof, the income will be assumed to have been derived from sources

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within the Philippines.

Resident citizens and domestic corporations may claim income taxes paid or incurred to a foreign country as an item of deduction or as a tax credit but subject to the limitations under the Tax Code of the Philippines.

Itemized deductions and optional standard deductions (OSD)

In computing taxable income subject to graduated income tax rates, there shall be allowed as deduction from gross income, among others, all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on or which are directly attributable to the development, management, operation and/or conduct of the trade, business or exercise of profession. These itemized deductions may be claimed as deductions provided that they are directly and exclusively related to the production or realization of the income and can be substantiated with sufficient evidence, such as BIR-registered receipts and invoices. Refer to full text of the RMC for the list of common expenses that may be deducted from gross income of YouTubers.

In lieu of the itemized deductions, the taxpayer may elect OSD not exceeding forty percent (40%) of gross sales/receipts in the case of individual taxpayers, or 40% of its gross income in the case of corporations. No substantiation is required for the OSD. To be entitled to OSD, however, the taxpayer must signify in the return the intention to elect OSD in the first quarter income tax return; otherwise, he/she/it shall be considered as

having availed of the itemized deductions.

Double taxation

To avoid the risks of double taxation, a social media influencer receiving income from a nonresident person residing in a country with which the Philippines has a tax treaty must inform the latter that he/she/it is a resident of the Philippines and is entitled to claim treaty benefits provided under the relevant tax treaty.

Where the non-resident requires the presentation of proof of residency, the influencer must obtain a Tax Residency Certificate (TRC) from the International Tax Affairs Division (ITAD) of the BIR and submit the same to the former. The influencer shall exert all efforts to obtain treaty benefits in the state of source.

If the influencer did not avail of the treaty benefits and was, in fact, subjected to regular tax in the state of source, he/she/it shall not be allowed to claim foreign tax credits in excess of the appropriate amount of tax that is supposed to be paid in the source state had the income recipient invoked the provision/s of the treaty and proved his/her/its residency in the Philippines.

If, on the other hand, the influencer is denied treaty benefits despite being able to prove entitlement thereto, he/she/it must file an application for Mutual Agreement Procedure (MAP) with ITAD following the guidelines and procedures set out in the pertinent revenue issuance for MAP assistance.

Percentage tax or Value-added Tax

Social media influencers are also liable for business tax, which may either be percentage tax or VAT.

1. Self-employed individuals whose gross sales or gross receipts and other non-operating income do not exceed the VAT threshold of P3,000,000 shall have the option to avail of the eight percent (8%) tax on gross sales or gross receipts and other non-operating income in excess of Two Hundred Fifty Thousand Pesos (P 250,000), in lieu of the graduated income tax rates and Percentage Tax under the NIRC.

2. Mixed income earners or social media influencers who are also earning compensation income shall be taxable under Section 24(A)(2)(a) of the Tax Code for all income earned from compensation and income earned from business or practice of profession. Their income as social media influencers may be taxed using the schedular graduated income tax rates, or 8% income tax based on gross sales or gross receipts, provided that the total gross sales and/or gross receipts and other non-operating income do not exceed the VAT threshold as discussed in the preceding paragraph. However, if the total gross sales and/or gross receipts and other non-operating income exceed the VAT Threshold, the graduated rates shall apply and they shall likewise be liable for VAT.



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Tax Compliance

Social media influencers are required to register or update its registration with the BIR, keep its books of accounts, have their books of accounts audited and examined yearly by independent Certified Public Accountants as necessary, and withhold required creditable/expanded withholding tax, final tax on compensation of employees, and other withholding taxes, if applicable.

Penalties

Social Media influencers who willfully attempts to evade the payment of tax or willfully fails to make a return, to supply accurate and correct information or to pay tax shall, in addition to the payment of taxes and corresponding penalties, be liable criminally.

A substantial under-declaration of taxable sales, receipts or income, or a substantial overstatement of deductions shall constitute prima facie evidence of a false or fraudulent return, and failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding (30%) of actual deductions shall render the taxpayer liable for substantial under-declaration of sales, receipts or income or for overstatement of deductions.

The concerned BIR offices shall conduct a full-blown tax investigation against social media influencers residing and/or registered within their respective jurisdictions. Also, the BIR also has the power to obtain information

from foreign tax authorities pursuant to the Exchange of Information (EOI) provision of the relevant tax treaties. The BIR has the means to verify their income as it is clothed with a special power to obtain information from its treaty partners. The BIR may safely rely on the data provided by its treaty partners to establish the influencer's tax liability. Hence, social media influencers are, therefore, advised to voluntarily and truthfully declare their income and pay their corresponding taxes without waiting for a formal investigation to be conducted by the BIR to avoid being liable for tax evasion and for the civil penalty of fifty percent (50%) of the tax or of the deficiency tax.

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Rules on authorization of an investment company as a qualifying Collective Investment Scheme (CIS) and recognition of a foreign CIS under the ASEAN CIS Framework

(SEC MC No. 09 series of 2021 issued on August 18, 2021)

Relative to the ASEAN Capital Markets Forum (ACMF) established in 2004, the Securities and Exchange Commission Philippines was admitted as the fourth signatory to the ASEAN CIS Framework on 11 May 2021. The ASEAN CIS Framework was operationalized in Malaysia, Singapore and Thailand in August 2014 following the signing of the Memorandum of Understanding (MoU) on Streamlined Authorisation Framework for Cross-border Public Offers of ASEAN Collective Investment Schemes in October 2013.

To assist Investment Companies and their Fund Managers to offer cross-border under the Framework as well as the CIS Operators Of foreign collective investment schemes, the Commission deems it necessary to issue the rules on authorization of an investment company as a qualifying CIS and recognition of a foreign CIS under the ASEAN CIS Framework.

An Investment Company and its Fund Manager may offer the shares of the former in other Member Jurisdictions under the ASEAN CIS Framework only if:

1. the Investment Company is incorporated under the laws of the Philippines and authorized under the Investment Company Act (ICA) and Securities Regulation Code (SRC) to issue shares to the public.

2. the Investment Company has been assessed by the Commission as suitable to be a Qualifying CIS, the parties involved such as the Fund Manager and the respective Implementing Rules and Regulations (IRR) as well as the provisions of the Standards of Qualifying CIS and any amendments thereto.

Refer to the full text of the SEC MC for the specific additional requirements for Investment Companies offering cross-border and requirements for foreign Collective Investment Schemes to be offered in the Philippines.

The CIS Operator must appoint a local representative in the Philippines in relation to each foreign CIS that is to be offered, marketed and distributed in the Philippines. A mutual fund distributor, fund manager, or securities broker/dealer can be appointed by the CIS Operator as its representative.

In addition, the CIS Operator must appoint one or more local distributors for the purpose of offering, marketing or distributing a foreign fund that is to be offered in the Philippines under the ASEAN CIS Framework. A mutual fund distributor, fund manager, or securities broker/dealer can be appointed by the CIS Operator as Local Distributor provided each local distributor has at least one (1) Certified Investment Solicitor (CiSol).

A single entity can be appointed as both the representative and local distributor.

An application for the approval or recognition of a foreign CIS to be offered in the Philippines must be made by the CIS Operator or local representative of such foreign CIS with the Commission. Under certain circumstances, an application for a foreign Qualifying CIS for public offer in the Philippines may not be approved or may be suspended or revoked.

The CIS Operator or its authorised representative must also comply with the reportorial requirements of the Commission (refer to full text of the SEC MC for the list).

The applicable provisions of the SRC, ICA, and their IRRs on civil and/or criminal liabilities shall apply in case of any violation relative to the offering of the foreign CIS in the Philippines.

CTA Decisions



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Memorandum of Assignment (MOA) issued in reference to a validly issued LOA should be signed by CIR or duly authorized representative to be valid

(Commissioner of Internal Revenue vs BASF Philippines, Inc., CTA EB No. 2323 re CTA Case No. 9747, August 02, 2021)

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.

However, pursuant to the guidelines and procedures of RMO No. 69-2010, a manual serially numbered MOA in lieu of an LOA may be issued for reassignment for the continuation of the audit of a case to another RO due to resignation/ retirement/ transfer of the original RO. Hence, the petitioner-CIR contends the validity of its authority which originated from a reassignment notice signed by an RDO officer with reference to the validly issued LOA to examine respondent-taxpayer's records.

The CTA En Banc disagrees and mentioned that while new ROs may be deemed

authorized to continue audit/ investigation even without new LOA, the letter for reassignment or MOA should be signed by those authorized to issue LOA, i.e., Assistant Commissioner (ACIR)/ Head Revenue Executive Assistant of the Large Taxpayers Service.

Clearly, the authority of the RO didn't originate from an LOA or an MOA issued and approved by CIR or his duly authorized representative. Consequently, the resulting tax assessments, including the deficiency income tax assessments, are considered null and void.

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