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Tax brief

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BIR Issuances

VAT-exempt sale of drugs and medicines prescribed for diabetes, high-cholesterol and hypertension

(Revenue Regulations No. 25-2018, December 27, 2018)

Under the Tax Reform for Acceleration and Inclusion Law (TRAIN Law), the sale of drugs and medicines prescribed for diabetes, high cholesterol and hypertension shall be exempt from VAT beginning January 1, 2019.

As implemented by RR No. 25-2018, the exemption from VAT shall apply to the sale by manufacturers, distributors, wholesalers and retailers of drugs and medicines prescribed for the treatment and/or prevention of the aforementioned illnesses. Importation of the said medicines shall be subject to 12% VAT.

The Food and Drug Authority (FDA) shall issue the "List of VAT-exempt Diabetes, High-Cholesterol and Hypertension Drugs" which shall be posted in the BIR website. Any registration of new and/or additional drugs and medicines, as well as de-registration of those previously published shall likewise be posted. Sale of drugs not included in the list published by the FDA shall be subject to VAT.

The word "VAT-EXEMPT" shall appear in the invoice issued for the VAT-exempt sale of drugs/medicines.

Violations of the provisions of the revenue regulations shall be subject to a fine of not more than One Thousand Pesos (P1,000) or suffer imprisonment of not more than six (6) months, or both, in addition to the tax required to be paid, if any.

90-day processing of claim for VAT refund

(Revenue Regulations No. 26-2018, December 27, 2018)

Under the TRAIN Law, refund of creditable input taxes shall be processed within ninety (90) days.

Previously under RR No. 13-2018, the 90-day period shall commence from the date of submission of the documents in support of the application up to the date of approval of Recommendation Report on the application by the Commissioner or his authorized representative.

Under RR No. 26-2018, the 90-day period shall now be up to the release of the payment of the VAT refund. In the event that the 90-day period has lapsed without having the refund released to the taxpayer-claimant, the VAT refund claim may still continue to be processed administratively.

New daily minimum wage rates in National Capital Region

(Revenue Memorandum Circular No. 97-2018, December 3, 2018)

The new minimum wage rates in National Capital Region to Wage Order No. NCR-22 have been circularized, as follows:

Covered Areas	Basic Wage	Adjust-ment	New Minimum Wage Rate
Non-Agriculture	P 512.00	P 25.00	P 537.00
- Agricultural (Plantation & Non-Plantation) - Retail/ Service Establishments employing 15 workers or less - Manufacturing establishments regularly employ-ing less than 10 workers	P 475.00	P 25.00	P 500.00

Household or domestic helpers, and workers of registered Brgy. Micro Business Enterprises (BMBEs) are not covered under this Wage Order.

Under the TRAIN Law as implemented, minimum wage earners are exempt from income tax on their minimum wage, holiday pay, overtime pay, hazard pay and night differential.

BIR Issuances

New efiling and payment option for non-eFPS filers

(Revenue Memorandum Circular No. 98-2018, December 5, 2018)

This RMC reiterates the mandate of the Bureau as prescribed on RR 6-2014 requiring non-users of the eFPS to use eBIRForms. This is after finding out that despite this mandate, many are still continuing to file the tax returns manually.

To encourage more taxpayers to maximize the use of eBIRForms, the BIR is introducing another electronic filing and payment option they can use. A tax filing and/or payment solutions developed by Tax Software Providers (TSPs) may be used by taxpayers to file and pay for their taxes.

It is to be noted however that the software being used by these TSPs must be tested and certified by the BIR to ensure compliance with data structure requirements. Certification of these TSPs (eTSPCert) can now be accessed by TSPs on the BIR website.

Availment of the services of the TSP are considered compliant with the mandate to use the eBIRForms.

Clarifications on the PERA Act of 2008

(Revenue Memorandum Circular No. 99-2018, December 07, 2018)

Upon the effectivity of the Personal Equity and Retirement Account (PERA) Act of 2008 as regulated by RR 17-2011, as amended, certain questions are hereby answered pursuant to RMC 99-2018 as discussed below:

Fringe Benefits Tax
The qualified employer's contribution to the employee's PERA is not subject to FBT since said contribution does not form part of the employer's gross taxable income. The same consideration applied when the contribution is granted by way of a benefit or other form, regardless of whether said benefit is granted to all or only some of the employees.

5% Tax credit for employers
Employer shall not be entitled to any 5% credit from its contribution to an employee's PERA (Section 7B of RR 17-2011). Employer may however claim the actual amount contributed as deduction from its gross income.

Early withdrawal of PERA contribution
There will be no effect on the part of the employer. Employers will not be required to add back the previous deduction for contribution to its gross income. Also, change of PERA administrator shall not be subject to early withdrawal penalty as long as long as the transfer is made within fifteen (15) calendar days from the withdrawal thereof.

Substituted filing of PERA contributors
PERA contributors are still entitled to substituted filing of their income tax returns, provided that they meet the conditions for substituted filing.

Stock transaction tax on PERA transactions
PERA transactions are subject to percentage taxes under Title V of the 1997 NIRC.

TIN requirements
BIR does not require submission of the TIN and RDO code of the contributor's employer for purposes of account opening. The contributor is however required to have a TIN.

Further extension of the deadline for processing of VAT refund/ credit

(Revenue Memorandum Circular No. 102-2018, December 11, 2018)

As previously prescribed under RMC No. 53-2018, processing of pending VAT refund/ credit claims prior to the effectivity of RA 10963 (TRAIN Law) was extended from June 30, 2018 to December 14, 2018.

In order to give sufficient time to all concerned revenue office to complete processing, review and approval of all pending VAT claims, the

BIR Issuances

extended December 14, 2018 deadline is hereby further amended by RMC 102-2018 to March 29, 2019.

Excise tax on domestic coal products for domestic consumption

(Revenue Memorandum Circular No. 105-2018, December 19, 2018)

Under the TRAIN Law, all domestic or imported coal and coke shall be subject to excise tax of P50/metric ton effective January 1, 2018, P100/metric ton effective January 1, 2019, and P150/metric ton effective January 1, 2020.

Such excise tax on coal is a tax levied on the product, rather than on the performance, carrying on or the exercise of an activity, such as mining of coal. Thus, generally, the producers of the coal are liable for the excise tax due thereon. However, in case the excise tax is unpaid and possession is transferred to the buyer, the buyer/possessor of the product can be made liable for the excise tax. The producer shall collect from the first buyer/possessor the excise tax due to be remitted to the BIR using BIR Form 2200-M within ten (10) days from the date of such sale, transfer or disposition. Excise taxes on domestic coal collected from the first buyer/possessor covering the period January 1, 2018 to November 30, 2018 can be remitted to the BIR on or before December 31, 2018 without surcharge and interests.

Fast lane for all One-Time Transactions (ONETT) involving simple transactions

(Revenue Memorandum Circular No. 107-2018, December 28, 2018)

Pursuant to RMC No. 43-2018, there shall be a fast lane that caters to individuals or corporations filing Capital Gains Tax or Donor's Tax Returns with only one (1) Deed of Sale/Exchange/Donation involving one to three properties. Electronic Certificate Authorizing Registration (eCAR) shall be released within three (3) working days upon submission of complete documents.

Previously, all payment of the CGT or donor's tax due should be made with the Authorized Agent Bank (AAB) with the Certificate of Payment from the Bank to be submitted to the BIR.

Through RMC No. 107-2018, the BIR now requires that payments be made to the Revenue Collection Officer (RCO) in order to avail of the fast lane. Payments amounting to twenty-thousand pesos (P20,000.00) shall be paid in cash while payments above twenty-thousand pesos (P20,000.00) shall be made through Manager's Check or Cashier's Check.

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BIR Rulings

Direct costs and expenses of service-oriented PEZA enterprises are deductible from gross income

(BIR Ruling No. 1351-18, November 15, 2018)

Section 2, Rule XX of the PEZA IRR, as further clarified by RR No. 11-2005, enumerated the allowable direct costs/expenses deductible from gross income for purposes of determining the taxable base of Ecozone Export Enterprise, Free Trade Enterprises and Domestic Market Enterprises. In a number of BIR rulings before, the BIR ruled that such list of deductible costs is exclusive. Any expenses not included in the list should be considered non-deductible.

In BIR Ruling No. 1351-18, it was emphasized that the deductible direct costs as enumerated in the revenue regulations are applicable to manufacturing enterprise. However, existing ecozone enterprises are not necessarily manufacturer-exporters of products. There are also service enterprises registered as ecozone enterprises. To date, there is no separate set of deductions prescribed for service-oriented enterprise. Hence, direct costs and expenses incurred in connection with the performance of the services provided by these types of PEZA-registered enterprises are equally deductible for purposes of the 5% special tax in the same manner that raw materials and supplies used in production by PEZA-registered enterprises undertaking manufacturing activities are allowed as deductible expenses.

Advertising expenses and salaries and employee benefits for administrative personnel of service-oriented PEZA- entities are not deductible from gross income.

SEC Opinions

Grandfather rule is a supplement to the control test
Nationality requirement of the third telco

(SEC-OGC Opinion No. 18-24, January 11, 2018)

Philippines acknowledges two tests to determine the nationality of a corporation- Control test and Grandfather rule, respectively. Under the control test, a corporation which is at least 60% Filipino-owned is already considered Filipino. There is no need to further trace the ownership of the 60% (or more) Filipino stockholdings of an investing corporation. The grandfather rule, on the other hand, provides that the nationality of the stockholders is material or critical in determining the nationality of a corporation or its compliance with laws on permissible foreign investments.

It is to be noted however that the application of the grandfather rule is only necessary when the 60-40 Filipino-foreign equity ownership is in "doubt". "Doubt" refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders. Should there be no reason to believe that there is non-compliance with the provisions of the Constitution on the nationality restriction, application of the grandfather rule is not necessary.

In the herein opinion, it can be noted that based on the bidding agreement, and using the two-tiered test of SEC-MC No 8, the control test and the grandfather rule, the proposed ownership structure of Mislatel complies with the 60-40% nationality requirement for operators of public utilities.

CTA Decisions

Application of the 10% preferential tax rate on charitable institutions

(Perpetual Succour Hospital of Cebu, Inc. v Commissioner of Internal Revenue, CTA Case No. 9166, December 11, 2018)

Under Section 30 (E) of the NIRC of 1997, as amended, one of the requirements for a charitable institution to be exempt from income tax is that no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person.

A charitable institution does not lose its character as such and its exemption from taxes simply because it derives income from paying patients so long as the money received is used altogether for the charitable object which it is intended to achieve, and no money inures to the benefit of the person managing or operating the institution. Noncompliance of the aforementioned subjects the income of a proprietary non-profit hospitals to 10% preferential tax rate.

In this case, the evidence of petitioner shows that the contribution inured to the benefit of a member because as testified by the petitioner's witness, the funds were used to support the activities of a member. In short, the 10% preferantial tax rate shall apply instead of the income tax exemption.

Dividends received by holding companies not subject to LBT

(The City of Makati v Cemco Holdings, Inc., CTA EB No. 1661, December 12, 2018)

Section 133 (a) of the Local Governent Code (LGC) forbids the imposition of LBT on income, including dividend income, realized by entities not classified as a bank or financial institution.

In the herein case, both petitioner and respondent expressly acknowledged in their joint stipulation of facts that respondent is not a bank or financila institution as defined under Section 131 (e) of the LGC. Note that once the stipulations are reduced into writing and signed by the parties and their counsels, as in this case, they become binding on the parties who made them.

With the parties/ admission that respondent does not fall under the classification of a bank or a financial institution, petitioner's imposition of LBT on dividend income realized by respondent undoubtedly traverses the statutory impediment ensrhined under Section 133 (a) of the LGC, rendering the issuance of the subject assessment void.

Alkalyte is a product of distillation hence subject to excise tax

(Petron Corporation v Commissioner of Internal Revenue, CTA Case No. 8914 & 8981, December 18, 2018)

Section 148 (e) of the NIRC of 1997 states that naptha, regular gasoline, and other similar products of distillation as well as the by-products of processing of naptha are subject to excise tax as soon as they are produced.

Petitioner argues that alkalyte is not a product of distillation as contemplated under Section 148 (e). Petitioner further asserts that alkalyte is not in any way similar to naptha or regular gasoline.

However, upon cross examination of petitioner's witnesses, the court concluded that although alkalyte is formed through a different process, the raw materials in producing it are formed through distillation. It has become obvious that alkalyte first undergoes the process of distillation, because it cannot come into existence without its raw materials, olefins, and isobutane. Since it can be considered as a product of distillation similar to naptha, alkalyte is subject to excise tax, prusuant to Section 148 (e) of the NIRC of 1997, as amended.

Highlight on P&A Grant Thornton services

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