

Tax brief

April 2016



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ATRIGs required before release of imported automobiles from Customs

(Revenue Regulations 2- 2016, March 4, 2016)

All imported automobiles released from customs custody after March 31, 2016 without required Authority to Release Imported Goods (ATRIGs) may be detained, and if warranted, shall be subject to seizure.

In the transition, those that were released without securing ATRIGs may still apply until March 31, 2016 with the Excise LT Regulatory Division (ELTRD) and pay any unpaid excise tax and VAT, subject to 50% surcharge and 20% interest for late payment.

An ATRIG is an authority issued by the BIR, addressed to the Commissioner of Customs, allowing the release of imported goods from customs custody upon payment of applicable taxes, or proof of exemption from payment thereof, whichever is applicable.

The ATRIG shall be issued for all importations of articles subject to excise tax (whether exempt or taxable), including raw materials in the

production thereof, as well as the machinery, equipment, apparatus or any mechanical contrivances especially used for its assembly/ production; and on all importations of articles exempt from VAT.

Excisable items released without the requisite ATRIG presupposes that taxes due were not paid or not properly paid. Such items may be detained by any Revenue Officer, and if warranted, subsequently forfeited. Responsible person for such unlawful possession or removal shall be held liable for the penalties under the law.

Credit/debit/prepaid card for payment of taxes

(Revenue Regulations No. 3- 2016, March 23, 2016)

The BIR has authorized additional mode of payments for internal revenue taxes through credit/debit/prepaid cards. However, authority to accept payments through these new modes shall be limited to Authorized Agent Banks (AABs) with whom the BIR has entered into service level agreement (SLA)

after qualifying the testing procedures.

Payments by credit/debit/prepaid cards shall be voluntary on the part of the taxpayers.

As such, the taxpayer shall bear the convenience fee and other fees being charged by banks and/or credit card companies for the use of this payment facility. Such fees, including the “Merchant Discount Rate” (MDR), shall not be deducted from the amount of tax due to the BIR.

Only Philippine-issued cards under the name of the taxpayers shall be used in payment of taxpayers’ liabilities.

The BIR shall neither have any responsibility nor liability on any issues concerning the taxpayer-cardholder and the card issuer, including, but not limited to, “charge back”, erroneous posting or charging, nonpayment of the taxpayer-cardholder to the issuer, and other issues.

In case of erroneous tax payments, BIR shall not be liable to automatically charge the amount back to the taxpayer-cardholders’

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account. The taxpayer may file an application for refund/tax credit with the BIR.

AABs-acquirer are responsible to accurately and timely report payment transactions to the BIR and remit the payments to the BTr. In case the EPSP is not the AABs-acquirer, EPSP shall electronically transmit daily payment transactions to the BIR not later than 9:00 a.m. the next day.

The payment shall be deemed made on the date and time appearing in the system-generated payment confirmation receipt issued to the taxpayer-cardholder by the MB-Acquirer, provided that payment is actually received by the BIR pursuant to these Regulations. The taxpayers' liability shall exist until actual receipt of payments by the BIR.

AABs open on March 19 and April 02 to accept tax payments

(Revenue Memorandum Circular No. 26-2016, March 3, 2016)

Authorized Agent Banks (AABs) will observe regular banking days on March 19 and April 02 for purposes of accepting tax payments. This is in lieu of March 26 and April 9 which are non-working holidays (Black Saturday

and Araw ng Kagitingan),

Extension of banking hours from 3:00 PM to 5:00 PM from April 1 – 15 still stands. Item 2.1.2 of the memorandum agreement executed by the Bureau on Internal Revenue (BIR) and Bureau of Treasury (BTR) mandates that Authorized Agent Banks (AABs) to carry bank operations two (2) Saturdays immediately prior to April 15 of every year.

RP-Turkey tax treaty in effect starting Jan 1, 2016

(Revenue Memorandum Circular No. 31-2016, March 15, 2016)

The Agreement between the Republic of the Philippines and the Republic of Turkey for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income shall effect starting January 1, 2016.

The following preferential treaty rates are provided:

Dividends

- 10% if payee is a company (except partnerships) who owns at least 25% of the company's capital

- 15% in all other cases

Interest

- 0% when paid to the government
- 10% in all other cases

Royalties

- Maximum of 15% for broadcasting activities

Professional Income of a Turkish resident shall not be taxable in the Philippines provided that such services are not rendered regularly and residence herein does not exceed 183 days within any 12-month period.

Turkish resident income earner or an authorized representative should file a duly accomplished BIR Form No. 0901 (Application for Relief from Double Taxation) together with required documents to the International Tax Affairs Division (ITAD) National Office to effect.

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Protocol amending RP- New Zealand tax treaty

(Revenue Memorandum Circular No. 32-2016, March 21, 2016)

The protocol amending the Republic of the Philippines and Government of New Zealand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion has entered into force on October 2, 2008 and shall take effect on taxes due beginning January 2009.

New Zealand resident income earner or an authorized representative should file a duly accomplished BIR Form No. 0901 (Application for Relief from Double Taxation) together with required documents to the International Tax Affairs Division (ITAD) National Office to effect the treaty rates.

Availability of version 6.0 of eBIRForms package and other reminders

(Revenue Memorandum Circular No. 35-2016, March 21, 2016)

The latest eBIRForms Package Version 6.0 is now available and may be downloaded from the following sites:

1. www.knowyourtaxes.ph;
2. www.dof.gov.ph

3. Dropbox using this link: <http://goo.gl/UCr8XS>;
4. Direct link: http://ftp.pregi.net/bir/ebirforms_package_v6.0.zip; or
5. www.bir.gov.ph

Modification of the new package includes:
a. one-click submission of Tax Returns; and
b. reduced package size for easier downloading

Filing procedures:

1. eFPS Taxpayers
a. annual income tax returns and excise tax returns: prepare using the offline package and submit to eFPS by clicking the SUBMIT/FINAL COPY button.
b. other returns: file using the online eFPS. Payments shall be made online through eFPS facility.
2. Non-eFPS Taxpayers: tax returns shall be prepared through eBIRForms, printed, and payment be made through Authorized Agent Banks (AABs), Revenue Collection Officer (RCOs), or GCASH
3. Schedules and manual attachments, duly signed printed efiled return and printed system-generated confirmation receipt shall be

submitted by the taxpayer within 15 days after filing of the return to the concerned LT Office/RDO.

4. Summary Alphalist of Withholding Tax (SAWT) shall be emailed to esubmission@bir.gov.ph

BOA resolution no. 3 effective fiscal year ending June 30, 2016

(Revenue Memorandum Circular No. 36-2016, March 21, 2016)

Implementation of BOA Resolution No. 3 shall become effective only for the Financial Statements to be submitted for fiscal year ending June 30, 2016 and subsequent periods. This is still not applicable for the Income Tax Return (ITR) filing covering calendar year 2015, due on or before April 15, 2016.

Among others, the Resolution requires that annual FS of companies who have gross sales exceeding P10 million should be accompanied by a "Certificate on the Preparation of Financial Statement and Notes to the Financial Statements" issued by a BOA-accredited CPA who can either be an employee of the company or a CPA in public practice contracted by the company

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Additional/ alternative documentary requirements on application for registration with BIR

(Revenue Memorandum Circular No. 37-2016, March 22, 2016)

The list of documentary requirements on application for registration of individuals/entities with the BIR has been amended and updated. Below are the specific additions or alternatives of documents to be presented for registration applications.

Self-employed, professionals, mixed income earners:

1. Original or certified true copy of NSO birth certificate
2. Proof of ownership/ legal possession of business
 - a. Owned place of business- photo copy of OR of RPT (current year); or transfer/ original certificate of title (TCT/OCT)
 - b. Rented place of business- photo copy of contract of lease and lessor's permit
 - c. Free of use of business place- consent from the owner with ID and proof of ownership
3. Contract of service
4. Two (2) valid government-issued IDs or Barangay clearance
5. Original or certified true copy of birth

certificate with civil registry number of declared dependents

New application for Authority to Print (ATP):

1. Job Order
2. Final & clear sample of principal and supplementary receipts/invoices

New registration of books of accounts:

1. Manual books of accounts
 - a. new sets of permanently bound books of accounts
 - b. official appointment book (for professionals only)
 - c. current year proof of payment- annual registration fee (BIR Form 0605)\
2. Manual loose-leaf books of accounts and/or OR or SI
 - a. permit to use loose-leaf books of accounts and/or OR or SI
 - b. permanently bound loose-leaf books of accounts
 - c. affidavit attesting completeness, accuracy and correctness of entries and number of used loose-leaf books of accounts
 - d. current year proof of payment- annual registration fee (BIR Form 0605)
3. Computerized books of accounts
 - a. computerize accounting system (CAS)/ computerized books of accounts (CBA) and/ or its components permit

b. properly authenticated DVDs containing electronic books of accounts and records

c. affidavit attesting completeness, accuracy and correctness of entries and number of used loose-leaf books of accounts

d. current year proof of payment- annual registration fee (BIR Form 0605)

Securing permit for use:

1. Manual loose-leaf books of accounts and/or OR or SI
 - a. letter of request to use manual loose-leaf books of accounts and/or OR or SI
 - b. application for permit to use manual loose-leaf books of accounts and/or OR or SI
 - c. sample format and print-out to be used
2. Computerized accounting system (CAS)/ computerized books of accounts (CBA) and/ or its components
 - a. duly accomplished BIR Form No. 1900
 - b. photocopy of previously issued permit to use CAS/CBA and/ or its components, if applicable
 - c. proof of ownership or license agreement, whichever is applicable
 - d. location map of the place of business
 - e. list of branches that will use CAS/CBA and/ or its components, if any

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f. certification that the branch/es use the same CAS/CBA and/or its components with that of the head office, if applicable

g. photocopy of previously issued permit of mother/sister company, another branch using the same system, if any

h. certification from the NAB which previously evaluated the approved system, if any

Employees:

1. Local

a. Original or Certified True Copy of NSO birth certificate

2. Alien

a. Passport; and

b. Working Permit

Corporations, partnerships:

1. Certificate of Recording (alternative option for the copy of SEC certificate of incorporation)

2. Proof of ownership/ legal possession of business

a. Owned place of business- photo copy of OR of RPT (current year); or transfer/ original certificate of title (TCT/OCT)

b. Rented place of business- photo copy of contract of lease and lessor's permit

c. Free of use of business place- consent from the owner with ID and proof of ownership

Branch/Facility types:

1. Proof of ownership/ legal possession of business

a. Owned place of business- photo copy of OR of RPT (current year); or transfer/ original certificate of title (TCT/OCT)

b. Rented place of business- photo copy of contract of lease and lessor's permit

c. Free of use of business place- consent from the owner with ID and proof of ownership

Purely TIN issuance:

1. One-time taxpayer (ONETT)

a. Affidavit of self-adjudication (alternative option for extrajudicial settlement of estate)

Other Updates:

1. Update of books of accounts

a. new sets of permanently bound books of accounts; and

b. current year proof of payment- annual registration fee (BIR Form No. 0605)

2. Change in accounting period

a. letter request

b. duly filled-up BIR Form No. 1905

c. certified true copy of SEC certificate of filing of amended by-laws showing the change in accounting period

d. sworn certification of "non-forum shopping"

e. sworn undertaking by a responsible officer of the taxpayer



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Appealing Oplan Kandado at the CTA

(Commissioner of Internal Revenue v Elric Auxiliary Services Corporation, CTA EB No. 1174, March 3, 2016)

The decision of the Commissioner of Internal Revenue (CIR) on “Oplan Kandado”, through the 48-Hour Notice and 5-Day VAT Compliance Notice as implemented by Revenue Memorandum Order No. 3-2009, can be appealed to the Court of Tax Appeals (CTA). The appellate jurisdiction of the CTA is not limited to cases which involve decisions of the CIR on matters relating to assessments or refunds. The CTA also has jurisdiction on other cases that arise out of the NIRC or related laws administered by the BIR.

In this case, the CIR issued a 48-hour notice and 5-day VAT compliance notice demanding that the taxpayer pay an amount of deficiency VAT calculated as a result of surveillance conducted by revenue officers. The taxpayer was correct when, within 30 days from receipt of the BIR’s denial of the taxpayer’s explanation, he filed an appeal with the CTA. It has already been previously ruled that such proceedings are within the scope of CTA’s jurisdiction.

The CTA further ruled that the assessment for

VAT was invalid because of failure to indicate the basis of the assessment, how the surveillance was conducted and the method used in arriving at the estimated tax due. The result only showed that daily sales over the 10-day surveillance was averaged and multiplied by 365 days to arrive at the VAT due for the whole year. The CTA ruled that it is necessary that the basis of the assessment must likewise be disclosed to enforce the assessment of the deficiency VAT.

Government issued certificates are deemed valid unless proven to the contrary

(Commissioner of Internal Revenue v VMC Farmers Multi-purpose Cooperative, CTA EB No. 1253, March 3, 2016)

Section 109 (L) of the National Internal Revenue Code (NIRC) 1997 alongside Sections 6 and 7 of the joint rules and regulations classifies registered cooperatives into:

1. those which transact business with member only; and
2. those which transact business with both members and non-members

Cooperatives belonging to the first category are exempted from internal revenue taxes.

In this case, taxpayer is a multi-purpose agricultural cooperative belonging to the first category as shown by its Certificate of Tax Exemption. As such, it shall not be subject to taxes and fees imposed under internal revenue laws and other tax laws, including VAT. However, pending the release of its Certificate of Tax Exemption, the BIR required the cooperative to pay the advanced VAT for the issuance of the Certificate Authorizing Release of Refined Sugars (CARRS).

The Cooperative subsequently applied for the refund of the VAT paid. To prove its entitlement, the Cooperative presented its (1) Certificate of Registration with the CDA; (2) Certificate of Good Standing issued by the CDA; and (3) Certificate of Tax Exemption issued by the BIR.

The BIR argued that the Cooperative should have presented additional documents such as:

- a. proof that it actually and exclusively transacted with its members by providing its list of members and sales invoices;
- b. copies of the quedans to show that the refined sugar were actually produced by the cooperative through its members;

The CTA ruled that the certificates presented created the presumption that, in the issuance of the same, official duty has been regularly

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performed and that the law has been obeyed. The certificates are sufficient and the Cooperative is deemed a tax-exempt cooperative on that basis.

Being disputable presumptions, these should have been controverted by the BIR by offering evidence to the contrary, which the BIR did not do.

The CTA ruled that the Cooperative is entitled to the refund.

BIR cannot compel payment of compromise penalties

(Oriental Assurance Corporation v Commissioner of Internal Revenue, CTA Case No. 8582, March 7, 2016)

Under RMO No. 01-90, as amended by RMO No. 19-07, compromise penalties are amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that the taxpayer refuses to pay the same. It is also well-settled that even the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty. By its very nature, a compromise implies a mutual agreement between the parties with respect to the thing or subject matter that is so compromised, and the choice of paying or not paying the penalty distinctly belongs to the taxpayer.

In this case, BIR imposed on the taxpayer compromise penalty amounting to Php75,000.00. It is however clear that taxpayer, through its replies and protests, does not consent to such penalties. The CTA ruled that, absence of any clear showing that taxpayer consented to the compromise penalty, its imposition should be cancelled.

Assessment is invalid for failure to prove receipt by the taxpayer; WDL may be directly appealed to the CTA

(Esper R. Vargas, Jr. v Commissioner of Internal Revenue, CTA Case No. 8750, March 8, 2016)

In assessments made against taxpayers, it is elementary that a taxpayer must actually receive any assessment issued in order for it to be valid. This is true in so far the existing presumption that constructive service of an assessment-provided the same is properly addressed with postage prepaid and is actually mailed is received by the taxpayer in the ordinary course of mail. However, the same is merely a disputable presumption, which can be directly denied by the taxpayer. In such an instance, respondent-CIR has the burden of proving that the assessment was indeed received by the taxpayer. Failure to prove such renders the assessment void and unenforceable.

In this present case, the BIR alleged that the Letter Notice, follow-up letter, Preliminary Assessment Notice, Final Assessment Notice, Preliminary Collection Letter, Final Notice before Issuance of Warrant of Distrainment and Levy were all sent by registered mail or left in the mailbox of at the registered address of the taxpayer. Subsequently, the Warrants of Garnishment addressed to several commercial banks was issued.

The taxpayer denied receipt of said notices. The BIR, on the other hand, failed to present proof of actual receipt of the notices by the taxpayer.

The taxpayer informed that learned of the WDL only when his bank wrote him a letter informing him of the Notice of Garnishment. On the same date, the taxpayer, through his personal accountant, secured a copy from the BIR of the FAN with attached Assessment Notices for deficiency income tax and VAT. Within thirty days from securing a copy of the FAN, the taxpayer filed a Petition for Review, with an application for Temporary Restraining Order (“TRO”) and Writ of Preliminary Injunction with the Court of Tax Appeals.

According to the CTA, where the BIR cannot prove that service of the assessment was made on the taxpayer, the date when a taxpayer

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secures a copy of the assessment shall be considered the date of service of the assessment. In this case, considering respondent could not prove that the assessment was duly served on petitioner, the date of service of the assessment shall be deemed the date when petitioner secured a copy of the same. However, the period to assess had already prescribed by the time petitioner secured a copy of the FAN.

The CTA ruled that the taxpayer was correct in going directly to the CTA upon securing the FAN. The CTA disagreed with the BIR's argument that, since the taxpayer did not protest the FAN, the CTS does not have jurisdiction over an undisputed assessment.

The CTA reiterated that its jurisdiction is not limited to validly protested assessments. It also has jurisdiction over "other matters" including prescription of the BIR's right to collect taxes and determination of the validity of a warrant of distraint and levy issued by the CIR, such as in the case of the taxpayer-petitioner.

The CTA ruled that the assessments made against the taxpayer are void for failure to comply with due process, and cannot be final, executory, and demandable.

Form 1606 as proof of withholding on sale of real properties

(PBCom v Commissioner of Internal Revenue, CTA EB No. 1194, March 21, 2016)

The following requisites must be satisfied to be entitled to a refund of excess creditable withholding taxes (CWT):

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC);
2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3. The income upon which the taxes were withheld must be included in the return of the recipient.

The statement referred to in item (2) is the Certificate of Creditable Tax Withheld at Source or BIR Form 2307. The taxpayer, however, presented BIR Form 1606 instead, which is the Withholding Tax Remittance Return (For Transactions Involving Real Property other than Capital Asset including Taxable and Exempt) required by law to be filed by the buyer in triplicate copies for the transfer of title of the property to the buyer. The form supports the certification (BIR

Form No. 2307) issued by the withholding agent/buyer attesting to the fact of withholding.

BIR Form No. 2307's probative value is to establish only the fact of withholding of the claimed CWT. Considering that BIR Form No. 1606 contains the same key information that could be gathered from BIR Form No. 2307, it necessarily follows that BIR Form No. 1606 can likewise prove the fact of withholding.

Substantial compliance with statutory and administrative requirements is relevant for the entitlement to refund/issuance of Tax Credit Certificate (TCC) as provided under RR 2- 98. However, the same RR does not specifically prohibit a taxpayer from introducing evidences other than the prescribed BIR Form No 2307 to support claim for refund of creditable withholding tax CWT. In fact, there is no basis in law or jurisprudence to say that BIR Form No. 2307 is the only evidence to support such claim.

Strict compliance with documentation for tax refund

(Commissioner of Internal Revenue v. Nokia Philippines Inc., CTA EB No. 1241, March 30, 2016)

Tax refunds are in the nature of tax exemptions which result to loss of revenue for

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the government. Such exemptions therefore must be strictly construed against the taxpayer, as taxes are the lifeblood of the government.

The burden of justifying the exemption rests upon the person claiming an exemption from tax payments. The exemption is never presumed, nor allowed solely on the ground of equity. These exemptions, therefore, must not rest on vague, uncertain or indefinite inference, but should be granted only by a clear and unequivocal provision of law.

Hence, in this case where taxpayer is claiming for tax refund/TCC for unutilized input VAT, strict compliance with the invoicing and substantiation requirements as provided by law shall be observed. The invoicing and substantiation requirements to support the input VAT must be followed because it is the only way to determine the veracity of petitioner's claims.

Input VAT supported by non-compliant documents were therefore denied for refund, as in the following instances:

- a. the VAT is not separately indicated in the invoice/receipt
- b. the address of the buyer indicated in the invoice/receipt is not the same as the registered address
- c. the VAT amount claimed is higher than

the amount in the invoice/receipt/IEIRD

d. the authority to print is dated later than OR date

e. name and TIN of the company is not indicated

f. input VAT on importation not supported by IEIRD



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Tax ruling

We prepare and file, for and on behalf of our clients, requests for rulings to confirm the proper tax treatment of certain business structures and transactions. Requests for rulings are generally required in the case of tax-free exchange of assets for shares of stock; application of preferential rates of withholding taxes on income payments to nonresident aliens and foreign corporations pursuant to tax treaties; entitlement to tax exemption under Section 30 of the Tax Code; and other transactions whose tax treatment is not clearly provided in the Tax Code, implementing regulations, or other issuances of the BIR or the Department of Finance (DOF).

If you would like to know more about our Tax Ruling

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We welcome your suggestions and feedback so that the Tax brief may be made even more useful to you. Please get in touch with us if you have any comments and if it would help you to have the full text of the materials in the Tax brief.

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