

Tax brief

August 2016



BIR Issuances

- No gift policy for BIR
- Streamlined processing of CARs and tax clearance
- Guidelines in establishing PERA
- CIR now responsible for issuance of ICSC and ICGC
- Issuance of tax exemption rulings to NSNP educational institutions
- Suspension of BIR audit activities
- RTAOs issued from June 1-30, 2016 recalled and revoked
- Unacceptable bank checks for tax payments
- New daily minimum wage rates in NCR, Region II and CARAGA Region
- Effectivity of June 2016 BIR issuances

Republic Acts

- PWDs qualified as dependents for tax purposes

SEC Opinions

- Leasing out of advertising spaces are nationalized activities

CTA Decisions

- Failure to file for tax treaty relief application not fatal to avail 10% preferential tax rate
- Passive income of holding companies not subject to local business tax

BIR Issuance



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services

No-gift policy for BIR

(Revenue Memorandum Order No. 40-2016, July 4, 2016)

All BIR officials and employees were reminded that the BIR has adopted a “no gift policy”.

Performance of duties and responsibilities should be taken without expectation of any favor or material reward in any form. Solicitations or acceptance of gifts prohibited.

Gifts given are to be politely returned. The internal security division is expected to strictly implement the policy.

Streamlined processing of CARs and tax clearance

(Revenue Memorandum Order No. 41-2016 and Revenue Memorandum Circular No. 74-2016, July 12 and 13, 2016 respectively)

Timeliness in the processing of Certificate Authorizing Registration (CAR) and tax clearance applications shall be observed as prescribed in the regulations.

RMO 41-2016 reiterates that CARs shall be issued within five days from the submission of complete documentary requirements pursuant to the provisions of RMC 39-2015 (Updated BIR Citizens Charter as Consolidated). These include CARs covering transactions on sale of real property, transfer or assignment of shares of stock traded in the stock exchange, transfers subject to donor’s tax, estate tax and other taxes including the related documentary stamp tax.

RMC 74-2016 streamlines the requirements for tax clearance which shall be processed and released within two working days from the submission of the following documents:

a. Duly accomplished and notarized application form with two pieces loose DST;

b. Print-out of Certification fee paid thru BIR’s eFPS, with payment confirmation; and

c. Delinquency Verification issued by concerned LTS or National/Regional Offices with a validity period of one month from the date of issue.

Delinquency verification shall be issued by the concerned BIR offices 24 hours from taxpayer’s filing of application.

Officials and employees found to be in violation of these issuances shall be subject to the administrative and criminal penalties enumerated under RA 9485, otherwise known as the “Anti-Red Tape Act of 2007”



BIR Issuance

Guidelines in establishing PERA

(Revenue Memorandum Order No. 42-2016, July 25, 2016)

The guidelines and rules governing the establishment and implementation of the Personal Equity and Retirement Account PERA have been issued.

Accreditation of PERA Administrators

1. The Audit Information, Tax Exemption and Incentives Division (AITEID) shall be the BIR's PERA processing office. Applications for accreditation (BIR Form 1941) shall be accepted. Only applications pre-filed by PERA administrators who were issued a "Qualification Certificate" by the concerned Regulatory Authority (BSP, SEC or IC) shall be accepted.

2. Certificate of Accreditation (BIR Form 2336) shall be issued to the PERA Administrator, and a copy to the RDO/LTS having jurisdiction over the PERA administrator, for monitoring and to ensure maintenance of a separate books of accounts for PERA contributions and related transactions.

3. Accreditation shall be valid until suspended or revoked for violations or non-compliance.

PERA Incentives

The PERA law allows employees and/or their employers or self-employed individuals to

contribute to the PERA account up to Php 100,000 per calendar year, or Php 200,00 for an overseas Filipino contributor and enjoy the following incentives:

a. 5% of the aggregate PERA contributions in a calendar year as income tax credit to employee or self-employed contributor.

b. 5% tax credit against internal revenue tax liabilities, excluding withholding tax liabilities, to an overseas Filipino contributor. Overseas Filipino contributor without income within the Philippines shall also be entitled to a 5% tax credit but will eventually be forfeited in favor of the government.

The tax credits can be used as payment for delinquent accounts, but cannot be refunded, converted into cash or transferred.

c. Employer's contribution to employee's PERA shall likewise be exempt from withholding tax on compensation and fringe benefits tax. This is a tax deductible expense to the extent that would complete the allowable PERA contributions.

d. All income earned from investments and re-investment of PERA assets are not included in the maximum allowable PERA contribution, and shall be exempted from income taxes, but subject to other applicable taxes.

e. Qualified PERA distributions (QPD) are not taxable on the contributor, nor in the hands of the heirs or beneficiaries. However, for non-qualified distributions, taxes from

all income earned, utilized tax credits and corresponding penalties shall be computed and deducted from the net proceeds.

Maximum of five PERAs with one category of investment product may be created and maintained at any one time by one contributor. Investment decisions pertaining to PERA is vested on the owner of the account.

Issuance of Tax Credit Certificates

Concerned RDOs shall issue the following:

a. Certification of entitlement to 5% tax credit for employee-contributor (BIR Form No. 2339) for release to the PERA administrator who will in turn transmit such certificate to the employer for automatic adjustment of withholding tax on employee's compensation; or

b. PERA tax credit certificate (TCC) to the qualified overseas Filipino or self-employed contributor for release to the PERA administrator who will in turn transmit to the PERA contributor. (BIR Form 2337)



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services



BIR Issuance

Reports and Monitoring

1. PERA administrator shall file with the concerned RDOs the following:

a. Certification of Aggregate amount of Qualified PERA Contribution (BIR Form No. 2338) within 45 days from the close of the calendar year; and

b. Application for PERA-TCC (BIR Form No. 1942) within 90 days from the end of the calendar year for self-employed contributors.

2. PERA administrator shall submit quarterly and annual reports of PERA transactions made by the contributors.

3. Concerned RDOs may recommend the suspensions or revocation of accreditation of PERA administrator.

CIR now responsible for issuance of ICSC and ICGC

(Revenue Memorandum Order No. 43-2016, July 25, 2016)

Issuance of the International Carrier's Special Certificate (ICSC) and the International Carrier's General Certificate (ICGC) shall now be the responsibility of the Office of the Commissioner of Internal Revenue (CIR).

This used to be the responsibility of Manila Regional Director pursuant to RMO 29-94. The certificates, BIR Form No. ICC-3 and BIR Form No. ICC-4, shall be issued after the verification of payments of the 2 ½% income tax on gross Philippine billings and 3% carrier's tax prior to the departure of the international carriers (shipping and airline).

The certificates shall be signed by the commissioner or his duly authorized representative before submission to the Bureau of Customs (BOC) by the international carriers.

Issuance of tax exemption rulings to NSNP educational institutions

(Revenue Memorandum Order No. 44-2016, July 24, 2016)

The Philippine Constitution provides that all revenues and assets of NSNP educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. This is further reiterated in Section 30 of the NIRC. There are only two requisites: (a) the school is non-stock and non-profit; and (b) the income is actually, directly and exclusively used for educational purposes.

These new guidelines are issued to ensure the implementation and interpretation of the constitutional exemption is in a manner that will not defeat or diminish the intent and language of the constitution. These will be in lieu of the guidelines issued under RMO 20-2013.

Applications for tax exemption shall be filed by the NSNP educational institutions with the Office of the Assistant Commissioner, Legal Service Law division.

NSNP educational institutions who have been issued a certification/ruling after June 30, 2012 need not apply for a new one. Those whose rulings were issued prior to June 30, 2012 shall be required to apply for a new ruling/certificate under these new guidelines.



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services



BIR Issuance



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services

The following documents shall be required:

- Original copy of the application letter for issuance of tax exemption ruling;
- Certified true copy of the Certificate of Good Standing issued by SEC
- Original copy of the Certification under Oath of the Treasurer as to the amount of income, compensation, salaries or any emoluments paid to its trustees, officers and other executive officers
- Certified true copy of government permit (CHED, DepEd, TESDA) to operate as an educational institution
- Original copy of the certificate of utilization of annual revenues
- Additional information or documents which may be requested by the Bureau

The Certificate of Tax Exemption or Tax Exemption Ruling shall remain valid for an indefinite period, unless recalled for valid grounds.

Suspension of BIR audit activities

(Revenue Memorandum Circular No. 70-2016, July 1, 2016)

BIR field audit and other field operations have been suspended until further notice. The suspension of audit activities will cover the following:

- All field audits/operations/visitation pursuant to audit notices
- Issuance of written orders to audit and/or investigate any internal revenue tax liabilities except for:
 - Investigation of cases prescribing on or before October 31, 2016
 - Processing and verification of one-time tax payments (estate, donor's, capital gains, withholding tax returns, and DST on the sale of real properties or shares of stocks);
 - Examination of taxpayers retiring from business;
 - Audit of government agencies and corporations
 - Other concerns where deadlines have been imposed or under the orders of the Commissioner of Internal Revenue.

However, service of Assessment Notices, Warrants and Seizure Notices should still be effect. Taxpayers may still opt to pay their

known deficiency taxes even without securing authority from revenue officials.

All concerned BIR offices shall submit an inventory of all outstanding LOAs and Letter Notices as of June 30, 2016 on or before July 16, 2016.



BIR Issuance



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services

RTAOs issued from June 1-30, recalled and revoked

(Revenue Memorandum Circular Nos. 71 and 72-2016, July 4, 2016)

Revenue Travel Administrative Orders (RTAOs) effecting the appointment and/or transfer of BIR officers to new offices/positions have been revoked to give the new administration the opportunity to make appointments in line with its policies.

All affected revenue personnel were directed to return to their previous offices and positions.

RTAOs involving designation of Revenue Collection Officers and Presidential appointees previously approved by the Secretary of Finance, as well as Revenue Special Orders for international and/or local trainings are not affected by the revocation.

Unacceptable bank checks for tax payments

(Revenue Memorandum Circular Nos. 73 and 83, July 5, 2016 and July 18, 2016 respectively)

BIR announced that checks drawn from New Rural Bank of Binalbagan (Negros Occidental), Inc. and Rural Bank of Siaton (Siaton, Negros Oriental), Inc. are not to be accepted as payment for internal revenue taxes.

Said banks are prohibited from doing business in the Philippines by the Bangko Sentral ng Pilipinas (BSP) and have been placed under receivership with PDIC as the designated receiver.

New daily minimum wage rates in NCR, Region II and CARAGA Region

(Revenue Memorandum Circular Nos. 76, 78 and 79- 2016, July 7, 2016)

The new minimum wage rates in the National Capital Region (NCR), Region II and CARAGA Region have been circularized, as follows:

Sector/ Industry	Minimum Wage	Basic Wage Increase	New Daily Minimum Wage Rate
<i>National Capital Region</i>			
A. Non-Agriculture	Php 481.00/day	Php 10.00/day	Php 491.00/day
B. Agriculture	Php 444.00/day	Php 10.00/day	Php 454.00/day
C. Retail/Service	Php 444.00/day	Php 10.00/day	Php 454.00/day
D. Manufacturing	Php 444.00/day	Php 10.00/day	Php 454.00/day
<i>Region II</i>			
<i>Isabela</i>			
A. Non-Agriculture	Php 255.00/day	Php 45.00/day	Php 300.00/day
B. Agriculture	Php 243.00/day	Php 73.00 day	Php 280/day
<i>C. Retail/Service</i>			
w/ >10 employees	Php 247.00/day	Php 53.00/ day	Php 300/day
w/ <10 employees	Php 229.00	Php 31.00	Php 260/day



BIR Issuance



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services

<i>Cagayan</i>			
A. Non-Agriculture	Php 252.00/day	Php 48.00/day	Php 300.00/day
B. Agriculture	Php 240.00/day	Php 40.00/day	Php 280.00/day
C. Retail/Service			
w/ >10 employees	Php 244.00/day	Php 56.00/day	Php 300.00/day
w/ <10 employees	Php 229.00/day	Php 31.00/day	Php 260.00/day
<i>Nueva Vizcaya</i>			
A. Non-Agriculture	Php 248.00/day	Php 52.00/day	Php 300.00/day
B. Agriculture	Php 236.00/day	Php 44.00/day	Php 280.00/day
C. Retail/Service			
w/ >10 employees	Php 240.00/day	Php 60.00/day	Php 300.00/day
w/ <10 employees	Php 229.00/day	Php 31.00/day	Php 260.00/day
<i>Quirino/Batanes</i>			
A. Non-Agriculture	Php 247.00/day	Php 53.00/day	Php 300.00/day
B. Agriculture	Php 235.00/day	Php 45.00/day	Php 280.00/day
C. Retail/Service			
w/ >10 employees	Php 239.00/day	Php 61.00/day	Php 300.00/day
w/ <10 employees	Php 229.00/day	Php 31.00/day	Php 260.00/day
<i>CARAGA Region</i>			
A. Non-Agriculture	Php 260.00/day	Php 20.00/day	Php 280.00/day
B. Agriculture			
plantation	Php 255.00/day	Php 25.00/day	Php 280.00/day
non-plantation	Php 245.00/day	Php 35.00/day	Php 280.00/day
C. Retail/Service			
w/ >10 employees	Php 245.00/day	Php 35.00/day	Php 280.00/day
w/ <10 employees	Php 260.00/day	Php 20.00/day	Php 280.00/day



BIR Issuance

Effectivity of June 2016 BIR issuances

(Revenue Memorandum Circular Nos. 69-2016, July 1, 2016 and 80-2016, July 21, 2016)

Early July 2016, revenue issuances issued within June 1-30 have been suspended pursuant to RMC 69-2016.

Suspension covered the following:

1. Revenue Regulations (RR) No. 5
2. Revenue Memorandum Order (RMO) Nos. 22, 23 and 26-37, and
3. Revenue Memorandum Circular (RMC) Nos. 59-68

On the other hand, RMO Nos. 24 and 25 which requires determination of financial capacity in transfers of properties have been revoked.

Meanwhile, the suspension of the following issuances have been lifted pursuant to RMC 80-2016 and these are now in effect:

Issuance Number	Title/Description of Issuance
Revenue Memorandum Order (RMO)	
RMO No. 22-2016	Prescribing the policies and procedures for the Issuance of electronic Certificate Authorizing Registration (eCAR)
RMO No. 28- 2016	Authorizing the policies, guidelines and procedures in implementing the Memorandum of Understanding between the Home Development Mutual Funds and the BIR in electronic filing of tax returns thru eBIR Forms and issuance of eCAR
RMO No. 30- 2016	Prescribing guidelines, policies and procedures for replacement of spoiled/bad order and factory defected internal revenue stamps under the Internal Revenue Stamps Integrated System (IRSIS)
RMO No. 31- 2016	Amends RMO No. 13-2014 particularly on the public auction sale of absolutely forfeited and seized properties
RMO No. 32- 2016	Further clarifying and amending certain policies, guidelines and procedures in the issuance of importer/broker clearance certificates relative to the accreditation as importer/customs broker
RMO No. 33- 2016	Prescribing uniform procedures for the implementation of Internal Revenue Stamp Integrated System (IRSIS)
RMO No. 34- 2016	Amending the prescribed format for the Notice of Denial that shall be prepared by concerned Regional Offices relative to Applications for Compromise Settlement and/or Abatement of Penalties



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services



BIR Issuance



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services

Revenue Memorandum Circular (RMC)	
RMC No. 59- 2016	Publishing the Daily Minimum Wage Rates in ARMM pursuant to Wage Order No. ARMM- 16
RMC No. 66- 2016	Clarifications on the provisions of RMC 60-2016
Bank Bulletins	
Bank Bulletin No. 2016-19	COMSAVINGS BANK with trade name GSIS FAMILY BANK (A THRIFT BANK)
Bank Bulletin No. 2016-20	Electronic Submission of the Dishonored Check details in Comma Separated Value Format and the Encoding of Payments Details in the Limited Bank Data Entry System (LBDES)

When suspension was partially lifted, effectivity of the following BIR issuances remain suspended.

- 1.Revenue Regulation (RR) No. 5
- 2.Revenue Memorandum Oder (RMO) Nos. 23, 26, 27, and 37
- 3.Revenue Memorandum Circular (RMC) Nos. 61, 62, 64, 65 and 68.



Republic Acts

PWDs qualified as dependents for tax purposes

(Republic Act 10754, July 25, 2016)

Persons with disabilities (PWD) can again be considered as qualified dependents for tax purposes. In line with this purpose, the establishments may claim the discounts it granted as tax deductions based on the net cost of goods sold or services rendered. The claim for deductions can only be done in the same taxable year the discount is granted. Such claim shall be included in gross sales receipts subject to proper documentation for tax purposes.

In addition, taxpayers taking care of PWDs who are within their fourth civil degree of consanguinity or affinity may include these PWDs in their list of dependents and enjoy the corresponding additional personal exemption of P25,000 for tax purposes. To qualify as dependents, the PWDs should be unemployed and chiefly dependent on the taxpayer for support.



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services



SEC Opinion

Leasing out of advertising spaces are nationalized activities

(SEC- OGC Opinion No. 16-17, July 11, 2016)

Advertising or mass media are nationalized activities subject to the foreign equity limitations imposed by the 1987 Constitution and other pertinent laws.

The activities of leasing out or subleasing of advertising spaces, such as waiting sheds, billboard structures, electronic LED displays and other fixed or movable structures where advertisements can be displayed actually provides a medium to convey messages to public. Hence, these are covered by the definition of mass media and no foreign ownership is allowed. The business should be 100% owned by Filipinos.



- > BIR Issuance
- > Republic Acts
- > SEC Opinions
- > CTA Decisions
- > Highlight on P&A Grant Thornton services



CTA Decisions



- > BIR Issuance
- > CTA Decisions
- > SC Decisions
- > Highlight on P&A Grant Thornton services

Failure to file TTRA not fatal to avail 10% preferential tax rate

(Commissioner of Internal Revenue v PMFTC Inc., CTA EB No. 1385, July 11, 2016)

The company withheld the regular 30% final tax on royalties paid to a US resident. Subsequently, the company applied for refund of the tax remitted in excess of the preferential rate of 10% under the Philippines-US tax treaty.

The BIR Commissioner argued that the treaty rate cannot apply because the company failed to file a TTRA. The CTA, however, pointed at a previous Supreme Court ruling stating that a taxpayer's failure to comply with BIR's administrative issuance should not deprive it of its entitlement to tax treaty benefits because such would impair the treaty's value.

The underlying principle of prior application with the BIR becomes moot in refund cases where the very basis of the claim is erroneous or excessive payment arising from non-availment of a tax treaty relief at the first instance. In this case, the company should not be faulted for not complying with RMO No. 1-2000 prior to the transaction.

The CTA approved the refund.

Passive income of holding companies not subject to local business tax

(City of Makati and City Treasurer v Metro Pacific Investments Corporation (MPIC), CTA AC No. 143, July 20, 2016)

A holding company was assessed local business tax on its dividend and interest income and gains from sale of assets. The company paid the tax and subsequently applied for cash refund. The refund claim was appealed at the Regional Trial Court (RTC) which ruled in favor of the company. The local government appealed the decision of the RTC at the CTA. The CTA approved the refund.

The local business tax on holding companies under the Makati Revenue Code (MRC) is imposed under Section 3A.02(p) which provides that a Holding Company shall be taxed at the rate prescribed either under subsection (g) or (h), of the gross sales and/ or receipts during the preceding calendar year.

Subsection (h) imposes a rate of 20% of 1% on banks and other financial institutions while Subsection (g) imposes graduated rates on establishment rendering various services including business management services.

The RTC ruled and the CTA confirmed that the nature of the activities of the holding company are in the same nature as the activities enumerated in Subsection (g)

specifically business management services. It cannot be considered as or similar to financial institutions.

The courts acknowledged that the MRC is clear on the definition of gross receipts as the amount or fee for the services rendered. A holding company is subject to local business tax only on its gross receipts. Nowhere does the provision state that it includes dividend income, interest income, rental income or gain from the sale of fixed assets.

The CTA likewise noted that this levying of a tax on the income of a holding company is a deliberate attempt to bypass the prohibition laid down by Section 133(a) that LGUs shall not levy income tax, except on banks and other financial institutions.

Highlight on P&A Grant Thornton services



- > BIR Issuance
- > Republic Acts
- > SEC Opinion
- > CTA Decision
- > Highlight on P&A Grant Thornton services

Tax Review

We evaluate clients' overall level of compliance with existing laws and regulations; caution them on procedures and practices that expose them to potential tax liabilities; quantify tax exposures, risks and penalties; and advise them on proper course of action and alternative tax-efficient policies and procedures. Tax due diligence review is particularly recommended for companies that are contemplating expansion, mergers and consolidation, acquisitions, change in ownership, or public listing.

If you would like to know more about Tax Review

Des Politado-Aclan
Senior Manager
Tax Advisory and Compliance
T +63 920 983 1887
E Des.politado-aclan@ph.gt.com





- > BIR Issuance
- > Republic Acts
- > SEC Opinion
- > CTA Decision
- > Highlight on P&A Grant Thornton services

Tax brief is a regular publication of Punongbayan & Araullo (P&A) that aims to keep its clientele, as well as the general public, informed of various developments in taxation and other related matters. This publication is not intended to be a substitute for competent professional advice. Even though careful effort has been exercised to ensure the accuracy of the contents of this publication, it should not be used as the basis for formulating business decisions. Government pronouncements, laws, especially on taxation, and official interpretations are all subject to change. Matters relating to taxation, law and business regulation require professional counsel.

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.

Lina Figueroa

Principal, Tax Advisory and Compliance Division

T +632 988-2288 ext. 520

E Lina.Figueroa@ph.gt.com



grantthornton.com.ph

© 2016 Punongbayan & Araullo. All rights reserved.

Punongbayan & Araullo (P&A) is the Philippine member firm of Grant Thornton International Ltd (GTIL). "Grant Thornton" refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires. GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.

