

Tax brief

December 2016



BIR Issuances

- Issuance of tax clearance not barred by delinquent accounts
- Surcharge of 25% for deficiency assessment shall be imposed instead of 50%
- No suspension of BIR audit during Christmas Season
- New Monthly minimum wage rates in Region I, Zampen Region, and CARAGA Region
- Unacceptable checks from certain rural banks

BIR Rulings

- Execution of the deed of absolute sale constitutes consent for sale of property
- Indefinite stay within the Philippines renders a foreigner resident herein
- Importations of denatured ethyl alcohol not exempt from excise tax, and not subject to zero-rated VAT per company's PEZA certification

CTA Decisions

- When judicial claim is admissible even before final resolution of administrative claim
- Reclassification of brands between Jan 1, 1997 and Dec 31, 2003 not allowed except by act of congress



BIR Issuance



- > BIR Issuance
- > BIR Ruling
- > CTA Decision
- > Highlight on P&A Grant Thornton services

Issuance of tax clearance for NBI requirement

(Revenue Memorandum Order No. 62-2016, November 10, 2016)

This RMO is issued to inform all concerned on the latest BIR policy on the issuance of tax clearance for purposes of securing NBI clearance where there is pending application for compromise settlement/abatement.

Applicants with pending application for compromise settlement/abatement shall still be issued with tax clearances provided that full amount offered for compromise is paid upon the application of compromise settlement or abatement of penalties.

When application for compromise settlement/abatement is denied within the one-month validity of the tax clearance, taxpayer-applicant shall be notified accordingly. The applicant should fully settle unpaid tax liabilities within 30 days to avoid revocation of tax clearance previously issued.

Surcharge of 25% for deficiency assessment shall be imposed instead of 50%

(Revenue Memorandum Order No. 64-2016, November 15, 2016)

This RMO is issued to inform all concerned on the latest amendments of the audit program's existing policies and procedures.

For taxpayers who have been selected for audit for three consecutive years, the 50% surcharge imposed under RMO 19-2015 has been amended and reduced to 25%. However, if found out that under declaration of income or overstatement of expenses/ deductions reaches 30%, surcharge of 50% shall be imposed.

The RDO/LTD/LTAD can now directly encode the requested audit in eLAMS/ eTIS-CMS to be approved by the regional director/assistant commissioner. Selection code shall depend on the reason for which the taxpayer has been selected for the third consecutive audit.

No suspension of BIR audit during Christmas season

(Revenue Memorandum Circular No. 122-2016, November 28, 2016)

This RMC is issued to inform all concerned that BIR audit activities during Christmas season will not be suspended.

All field audits and other field operations supported by valid audit notices shall proceed as usual. Policies and procedures of the BIR audit program under RMO 19-2015 shall be strictly observed.

This is in line with the BIR thrust to intensify taxpayer compliance and enhance revenue collections.



BIR Issuance



- > BIR Issuance
- > BIR Ruling
- > CTA Decision
- > Highlight on P&A Grant Thornton services

New monthly minimum wage rates in Region I, Zampen Region, and CARAGA Region

(Revenue Memorandum Circular Nos. 115, 116 and 119- 2016, November 24, 2016)

The new minimum wage rates in Region I, Zampen Region, and CARAGA Region have been circularized, as follows:

Sector/Industry	Minimum Wage	Basic Wage Increase	New Monthly Minimum Wage Rate
Region 1			
A. Cities and first class municipalities	Php 2,000	Php 1,500	Php 3,500
B. Other municipalities	Php 1,500	Php 1,000	Php 2,500
Zampen region			
A. Cities and first class municipalities	Php 2,000	Php 500	Php 2,500
B. Other municipalities	Php 1,500	Php 500	Php 2,000
CARAGA Region			
A. Cities and first class municipalities			Php 3,000
B. Other municipalities			Php 2,500

Unacceptable checks from certain rural banks

(Revenue Memorandum Circular Nos. 109 and 121-2016, November 14 and 15, 2016 respectively)

All concerned are advised not to accept checks, as well as taxpayer's checks drawn from the following banks in payment of internal revenue taxes.

- a. Rural Bank of Luna (Isabela), Inc. with office address at Harana, Luna, Isabela
- b. Community Rural Bank of Dingras (Ilocos Norte), Inc. with office address at Medina St. cor. Purganan St., Brgy. Madamba (Poblacion), Dingras, Ilocos Norte

These banks are prohibited from doing business in the Philippines and have been placed under receivership with PDIC as the designated Receiver.



BIR Ruling



- > BIR Issuance
- > BIR Ruling
- > CTA Decision
- > Highlight on P&A Grant Thornton services

Execution of the deed of absolute sale constitutes consent for sale of property *(BIR Ruling No. 369-16, November 3, 2016)*

Sale of principal residence by natural person may be exempted from capital gains tax under Section 24 (d) (2) of the National Internal Revenue Code (NIRC) of 1997 subject to requirements therein.

Date of notarization showing that the sale of the principal residence is made after acquiring a new residence will not explicitly render such sale transaction subject to 6% CGT. Provisions of the new civil code on contracts and jurisprudence quotes that contracts are perfected and becomes valid and effective by mere consent.

In a sale of property, the execution date of the absolute sale manifests consent of both parties (seller and buyer) hence sale is effective and valid therefrom.

In this query, it appears that acquisition of the seller's new residence precedes the sale of its old residence as shown on the execution of the deed of absolute sale. Therefore, the sale shall not be subject to 6% CGT under Section 24 (d) (2) of the NIRC of 1997.

Indefinite stay within the Philippines renders a foreigner a resident *(BIR Ruling No. 401-16, November 21, 2016)*

An alien may be considered a resident of the Philippines for income tax purposes if:

1. He/she is not a mere transient or sojourner,
2. He/ she has no definite intention as to his stay, or
3. His/her purpose is of such nature that an extended stay may be necessary for its accomplishment, and to that end the alien makes his or he home temporarily in the Philippines.

Whether an alien is a transient or not is determined by his intentions with regard to the length and nature of his stay. A mere floating intention indefinite as to time, to return to another country is not sufficient to constitute him a transient.

The alien, in this ruling, has shown that there is an intention on his part to stay in the Philippines indefinitely given the fact that: a) he invested in the Philippines and served as

the company's President; b) he acquired real property and is actually present most of the time in the Philippines since 1989; and c) he registered as a taxpayer with the BIR. All of these circumstances show that he is not a mere transient or sojourner. Accordingly, it is clear that the alien has acquired residency in the Philippines.



BIR Ruling



- > BIR Issuance
- > BIR Ruling
- > CTA Decision
- > Highlight on P&A Grant Thornton services

Importations of denatured ethyl alcohol by a PEZA company

(BIR Ruling No. 412-16, November 24, 2016)

Importations of denatured ethyl alcohol are not covered by the exemption of excise tax per Section 134 of the Tax Code, and not subject to zero percent (0%) VAT on account of the Company's registration with PEZA.

The Company is duly registered with PEZA as an Ecozone Export Enterprise. It uses denatured ethyl alcohol in its PEZA-registered activity. However, its request that its importation of denatured ethyl alcohol be exempt from excise tax and VAT was denied for the following reasons:

- a. There is no provision under Section 134 of the Tax Code for exemption covering importations. Section 134 covers only domestic denatured alcohol.
- b. The Company's PEZA certification only mentions VAT-zero rating in its transactions with its local suppliers of goods, properties, and services in connection with its PEZA-registered activities. Thus, the Company cannot invoke said certification in claiming VAT zero-rating on its importations of the

denatured ethyl alcohol.

- c. Its Permit to Buy/Use Denatured Alcohol only allows the Company to use/buy denatured ethyl alcohol from local suppliers that are duly registered with the BIR. Non-compliance with or violation of any of the conditions for the grant of the Permit to Buy/Use Denatured Alcohol shall be a valid ground for the revocation of the same.



CTA Decision



- > BIR Issuance
- > BIR Ruling
- > CTA Decision
- > Highlight on P&A Grant Thornton services

When judicial claim is admissible even before final resolution of administrative claim

(Commissioner of Internal Revenue v Nanox Philippines, Inc., CTA EB No. 1256; re: CTA CASE No. 8320)

The company has cash dividends to its stockholders. As result of this discussion, its finance officer prepared documentation for the payment of the 10% final withholding tax (FWT) as well as the documentation for the payment of the cash dividends to be distributed. For this purpose, monthly remittance returns of final income taxes withheld (BIR Form No. 1601-F) indicating payment of the total withholding tax was filed with the BIR. On the same day, payment made was acknowledged by a system-generated document and was debited by its banking facility.

Roughly a month after, a discontinuance of the said cash dividends was directed by the company's president resulting to no actual release of cash dividends previously appropriated. Consequently, a written administrative claim for refund representing the 10% FWT paid in relation to the discontinued cash dividends payment was filed.

The BIR alleges that the taxpayer failed to exhaust the administrative remedies because it did not submit the documents supporting the claim. The CTA acknowledged that the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action through a judicial claim would follow unless the tax penalty alleged to have been collected erroneously or illegally is refunded. This however does not prohibit a taxpayer from filing a judicial claim even after final resolution of its administrative claim, considering that the administrative claim was never acted upon.

On that basis, the court acknowledged that the company rightfully filed its claim. Hence, the CTA granted the refund on FWT paid in relation to its discontinued cash dividends.



CTA Decision



- > BIR Issuance
- > BIR Ruling
- > CTA Decision
- > Highlight on P&A Grant Thornton services

Reclassification of brands between Jan 1, 1997 and Dec 31, 2003 not allowed except by act of congress

(Commissioner of Internal Revenue v San Miguel Brewery Inc., CTA EB No. 1274 (re: CTA Case Nos. 7953 & 7973))

Under Section 143 of the 1997 National Internal Revenue Code, as amended by R.A. 9334, a new brand is a brand registered after the date of effectivity of RA 8240 on January 1, 1997. It is distinguished from variants; being a brand on which a modifier is prefixed and/or suffixed to the root name of the brand. Also to be noted, brands of fermented liquors introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the BIR has determined them to belong.

In this present case, certain product of the respondent-taxpayer was previously classified as a new and medium priced brand. Several years later, a notice was issued by BIR LTS declaring the same product as a variant instead of a new and medium priced brand. Consequently, respondent-taxpayer was assessed and paid the amount of excise tax as per the higher rate on a variant of an existing brand. Finding the payment excessive since reclassification is incorrect and prohibited,

respondent-taxpayer filed for a tax refund.

The company proved and the CTA acknowledged that there are no actual products of more or less the same name as the newly registered products. Hence, reclassification to being a variant is incorrect. Further, reclassification of the product between January 1, 1997 and December 31, 2003, which was what actually happened, is prohibited. In fine, refund of the overpaid excise tax is granted to the taxpayer.

Highlight on P&A Grant Thornton services



- > BIR Issuance
- > BIR Ruling
- > CTA Decision
- > Highlight on P&A Grant Thornton services

Assistance during tax audit/contesting an assessment

We assist clients in handling audits by the Bureau of Internal Revenue (BIR), Bureau of Customs (BOC) and local government units (LGUs) in a systematic and efficient manner. We help evaluate the validity of assessments, determine the appropriate documents and reconciliations to be submitted, prepare protests, and represent clients in meetings and discussions with government agencies. With our knowledge of tax laws and audit procedures, we help safeguard the substantive and procedural rights of taxpayers and prevent unwarranted assessments.

If you would like to know more about our services

Atty. Farrah Andres-Neagoe C.P.A
Manager
Tax Advisory and Compliance
T + 63 2 988 2288 loc. 564
E farrah.andres-neagoe@ph.gt.com



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.

