

# Tax brief

May 2016



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## Mobile app to validate internal revenue stamps

*(Revenue Memorandum Circular No. 51-2016, April 28, 2016)*

The BIR has announced the availability of a mobile application known as Stamp Verifier app which will enable the user to verify the authenticity of internal revenue stamps affixed on cigarette packs. This will be useful in identifying smuggled or counterfeit cigarettes proliferating in the country.

The app can be downloaded on smart phones by both the BIR and the public.

Cigarette packs which fail the validation will show “Invalid QR Code” which means that these are either smuggled or counterfeit cigarettes. The information retrieved shall be uploaded to the IRSIS Mobile App Web Service for monitoring and evaluation purposes. Thereafter, BIR, based on the evaluated information, shall institute actions on persons responsible for the manufacture/sale of these cigarette packs.

## Unauthorized divulgence of information by BIR employees

*(Revenue Memorandum Circular No. 50-2016, April 22, 2016)*

BIR officials and employees are reminded that unauthorized disclosure of information acquired in the discharge of their duties is criminally and administratively punishable under the law. This covers, among others, information regarding the business, income or estate of a taxpayer, secrets, operation, style of work apparatus, of any manufacturer or producer, and confidential information regarding the business of the taxpayer.

Sec. 270 of the NIRC provides for fines of P50,000 to P100,000 and/or imprisonment for 2 to 5 years upon conviction. Under Sec. 19(A) of the Revised Code of Conduct of BIR Officials and Employees, such conduct shall constitute and be punishable as grave offense.

## Business registration for ease of doing business

*(Revenue Memorandum Circular No. 43-2016, April 7, 2016)*

As part of the efforts to ease doing business in the Philippines, the BIR reiterates that some

procedures may be done simultaneously and, thus, reduce the processing time in registering a business.

Application for authority to print manual receipts and invoices, registration of manual books of accounts and the issuance of the COR can be done simultaneously in one day or within 8 hours provided that the documentary requirements are submitted. All registration forms are downloadable at the BIR website. The registration fee can be paid by G-cash or other e-payment modes.

In lieu of manual receipts/invoices and manual books of accounts, newly registered business taxpayers may use Cash Register Machines (CRM), Point of Sale (POS) Machines, Computerized Accounting System (CAS) and/or Computerized Books of Accounts (CBA) upon commencement of business if such CRM/POS machines, CAS or CBA are acquired from the accredited BIR suppliers with Permit to Use (PTU).

Manual receipts/invoices to be used in case of systems downtime and other technical problems can be applied for after registration.

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## Bank checks not acceptable for tax payments

*(Revenue Memorandum Circular Nos. 53, 52, 49, 46, 45 – 2016, various dates)*

BIR announced that checks drawn from the following banks shall not be accepted as payment for internal revenue taxes:

1. Cathay United Bank Co. Ltd. – Manila Representative Office (CUBI)
2. ABN AMRO BANK, N.V. - Offshore Banking Unit (ABNAM-OBUS)
3. Koronadal Rural Bank (South Cotabato) Inc.
4. Rural Bank of Malinao (Aklan) Inc.
5. Rural Bank of Bayawan (Negros Oriental) Inc.

Per advise of the BSP, the first two have ceased business operations in the Philippines while the next three are prohibited from doing business in the Philippines and are currently under receivership with PDIC.

## Disclosure of other income of individuals suspended for 2015

*(Revenue Memorandum Circular No. 41-2016, April 1, 2016)*

The requirement for individuals to disclose

other income, which are exempt from tax or which have been subjected to final taxes, is suspended for the 2015 annual income tax return (ITR) due on or before April 15, 2016.

Unless further deferred, this will be mandatory for the 2016 ITR (BIR Forms 1700 and 1701).

Hence, taxpayers are advised to demand from their payors, and properly document their BIR Form No. 2306 and other pieces of evidence for amount of income and final taxes withheld or paid.

## Application for bank accreditation

*(Revenue Memorandum Order No. 15- 2016, April 27, 2016)*

Certain provisions of RMO No. 30-2001 are amended to specify the new names of Offices responsible for Bank Accreditation in order to conform to the Unnumbered Memorandum of the Commissioner of Internal Revenue dated February 20, 2013, relative to the Use of New Office Names in the National Office under the Rationalization Plan.

## Revised policies on the execution of waivers

*(Revenue Memorandum Order No. 14- 2016, April 18, 2016)*

The BIR issued revised procedures and policies for the proper execution of waivers from the defense of prescription pursuant to Section 222 of the National Internal Revenue Code (NIRC) of 1997.

The revised policies aim to address rampant practice by taxpayers of contesting the validity of their own waivers after having availed of the benefits thereof.

Waivers may be, but not necessarily, in the form prescribed by RMO No. 20-90 or RDAO No. 05-01. Compliance with the following shall render the waivers valid:

- a. Waiver shall be executed before the expiration of the period to assess or collect taxes. The date of execution shall be specifically indicated in the waiver.
- b. Waiver shall be signed by the taxpayer himself or his duly authorized representative. For corporations, any responsible official may sign the waiver.
- c. Expiry date of the agreed period to assess/ collect the tax after the regular three-year period of prescription should be indicated.

The particular taxes or amount need not be specified considering that the amounts may not yet be determinable at the time of the execution.

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It may simply state “all internal revenue taxes.” Since the taxpayer is the applicant, he is charged with the burden of ensuring that the Waiver is validly executed, as follows:

1. The Waiver shall be binding on the taxpayer upon its execution.
2. Taxpayer cannot anymore contest the authority of the signatory for purposes of invalidating the Waiver.
3. It shall be the duty of the taxpayer to submit its duly executed Waiver to the official designated in existing issuances or the RDO or group supervisor as designated in the LOA who shall then indicate acceptance by signing the same. Such Waiver shall be executed and accepted prior to the expiration of the period to assess or to collect. The taxpayer shall have the duty to retain a copy of the accepted Waiver.

All provisions of RMO 2-90 and other issuances inconsistent with this RMO are repealed or modified accordingly.

## Processing of registration of non-individuals under the eTISI-TRS

*(Revenue Memorandum Order No. 13-2016, April 14, 2016)*

In order to minimize the processing time for registration in eTISI-TRS pilot district offices, the BIR has prescribed the procedures for the encoding and scanning of information and related documents for the registration of non-individual taxpayers.

Scanning of documents and encoding of information on the stockholders/partners shall be done back-end to minimize the processing time in the frontline services. One scanner shall be provided in each pilot RDO which shall be used exclusively for the application of non-individual taxpayers.

All hard copies of application form and scanned documents shall be kept following existing rules and procedures on safekeeping and records disposition.

## Issuance of ATRIGs for automobiles already released from Customs

*(Revenue Memorandum Circular No. 43-2016, April 7, 2016)*

These guidelines are issued to allow importers, buyers and/or possessors of imported automobiles for which no Authority to Release Imported Goods (ATRIGs) have been secured to rectify their omissions and to regularize their documents.

The applications shall be filed with the Excise LT Regulatory Division (ELTRD). The ATRIG shall be issued only upon payment of the correct excise and value added taxes including 50% surcharge and 20% interest. The 20% interest shall be reckoned from the date of the Final Import Entry and Internal Revenue Declaration (IEIRD)/Single Administrative Document (SAD). Any prior payments shall be creditable against the amount computed.

The deadline for securing said ATRIGS has been extended to April 30, 2016. Consequently, all imported automobiles found to have been released from Customs custody without ATRIGs after April 30, 2016 shall be subject to seizure pursuant to the provisions of the Tax Code.

# CTA Cases



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## Final withholding tax due when dividends are payable

*(Hoya Glass Disk Philippines, Inc. vs CIR, CTA Case No. 8703, April 25, 2016)*

The final withholding tax on dividends is due on the date the dividend is payable to the shareholders, as provided in the Board Resolution on the declaration of dividends.

In this case, the Board meeting declaring the cash dividend was held on December 22, 2006 covering stockholders on record as of March 31, 2006. The dividends are payable on or before January 31, 2007. Actual pay out was done on February 2, 2007. The final withholding tax was remitted and paid the following month on March 10, 2007 using BIR Form 1601F.

The CTA confirmed that this is a case of late payment of the final withholding tax on dividends on which surcharge and interest applies.

## Late remittance can result to false return; Not subject to 50% surcharge if not willful

*(Hoya Glass Disk Philippines, Inc. vs CIR, CTA Case No. 8703, April 25, 2016)*

The final withholding tax was due on January

31, 2007 when the dividend became payable but actual payment was made only on February 2, 2007. Thus, the Monthly Remittance Return of Final Income Taxes Withheld was filed on March 10, 2007 covering taxes withheld "For the month of February 2007".

The BIR argued, and the CTA agreed, that the return filed was a false return on the ground that it reflected therein that the final income tax withheld relates "For the Month of February 2007", when it should have been properly relating to the final income tax withheld "For the Month of January 2007", the month when the dividends tax was due.

Hence, the surcharge and interest on the late remittance of the withholding tax can be assessed beyond the 3-year prescription period, within the 10-year period to assess taxes on the basis of a false return.

Nevertheless, the CTA denied the imposition of the 50% surcharge. The CTA found no evidence that the false return was willfully made or that there was willful neglect to file.

Pursuant to Sec 228, the 50% surcharge shall apply "in case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made."

## Excess credits carried forward may not be disallowed and made part of the income tax assessment

*(CIR vs Philippine Tobacco Flue-Curing and Redrying Corp., CTA EB Nos. 1218 and 1220, April 11, 2016)*

The CTA in division rejected the BIR's disallowance of the excess tax credits carried over to the following year and its inclusion in the amount of deficiency income tax being assessed. In its appeal to the Court en banc, the BIR argued that such disallowance was not the main issue in the assessment. In fact, it was not refuted by the taxpayer, and therefore, is not within the jurisdiction of the CTA. The CTA en banc noted that these matters are borne by the records of the case, hence, the CTA in division has the authority to pass upon the issue. The disallowance by the BIR of the excess tax credits carried over to the following year is one of the reasons for the deficiency income tax assessment against the taxpayer which was being appealed.

## Documenting offsetting arrangements

*(Marubeni Philippines Corporation vs CIR, CTA EB No. 799 re CTA Case No.7223, April 21, 2016)*

Any person claiming refund of input VAT

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arising from VAT zero-rated direct export sales must present at least three types of documents, as follows:

- a) the sales invoice as proof of sale of goods;
- b) the export declaration and bill of lading or airway bill as proof of actual shipment of the goods from the Philippines to a foreign country; and
- c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

In case of offsetting arrangements, taxpayer may not be able to show proof of inward remittance of foreign currency if offsetting resulted to net payable. RMC 42-03 enumerates the acceptable documentary requirements to prove the existence of offsetting arrangements, in lieu of presentation of proofs of inward remittance of export proceeds.

- a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
- b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;

c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;

d. Documents or correspondence regarding offsetting arrangements;

e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;

f. Documents to prove actual export of goods;

g. Documents to prove that the sales are zero-rated sales

On the first requirement, the phrase "import documents which created liability accounts in favor of the foreign parent or affiliated company" means that the liability should be in favor or to the benefit of the foreign parent company or its affiliates, and therefore, at the expense or liability of the local entity. The main purpose of the provision is to prove that the offsetting arrangement is actually in place, by proving that taxpayer has payables to the foreign parent or its affiliates against its receivables from the export of goods were offset. Hence, the sales invoices issued by the taxpayer to the foreign parent are not the proper documents to prove the existence of its payables to the foreign parent.

In the same manner, the "other contracts" should pertain to contracts that will also bring about liabilities of the taxpayer that can be offset against the receivables from export sales. Hence, a contract that allows the taxpayer local entity to earn a commission for services rendered to the foreign parent is not useful.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds are in the nature of tax exemptions. As such, these are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.

## Documents submitted at the PAN stage need not be re-submitted at FAN stage

*(CIR v Oakwood Overseas Ltd., CTA EB No. 1212 re CTA Case No. 8196, April 18, 2016)*

The CTA ruled that, in the protest to Final Assessment Notice (FAN), the taxpayer need not re-submit the same documents that were already submitted in the reply to Preliminary Assessment Notice (PAN). Non submission shall not invalidate the protest.



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In this case, the taxpayer was issued a PAN for which it submitted a reply together with the supporting documents. A day after it filed its reply, it was issued a FAN. The taxpayer protested the FAN but since it has already attached to its reply letter to the PAN the documents it deemed would substantiate its position against the assessments, it did not attach any to its protest to the FAN.

Subsequently, the taxpayer was issued a Final Decision on Disputed Assessment (FDDA) denying the protest for failure to submit the supporting documents. The taxpayer appealed the assessment at the CTA.

The BIR contends that, that under Section 228 of the NIRC, the taxpayer shall submit the required documents within 60 days from the date of filing of his protest, otherwise, the assessment shall become final, executory and demandable. According to the BIR, since the taxpayer failed to submit certain documents in support of its protest against the FAN, the assessment became final, executory and demandable and the same cannot be appealed at the CTA.

The CTA cited BIR records that the taxpayer already submitted the supporting documents in its reply to the PAN. In fact, the same documents were used as basis in protesting the FAN. The Court ruled that, to require

submission of the same set of documents to substantiate the FAN is superfluous if not a waste of resources.

## Assessment is invalid without a PAN

*(Philippine Aerospace Development Corporation v CIR, CTA Case No. 8346, April 5, 2016)*

The taxpayer avers that it did not receive any PAN from the BIR prior to the issuance of FAN.

The CTA quoted the Supreme Court that Section 228 of the Tax Code clearly requires that the taxpayer must first be informed that he is liable for deficiency taxes through the sending of a PAN.

The CTA held that procedures provided in Section 228 of the NIRC are mandatory and noncompliance therewith renders the assessment void.

## Questioning the validity of local tax assessments; Dividends and gains from sale of shares not subject to LBT

*(Michigan Holdings, CTA EB No. 1093, April 13, 2016)*

The taxpayer, a holding company, was

assessed local business tax on dividends that it received and on gains derived from sale of shares. Within 60 days from receipt of assessment, the taxpayer protested the assessment with the local treasurer and, later, with the Regional Trial Court (RTC). The RTC concluded that this is an issue on the validity and constitutionality of the Makati Revenue Code which imposed the tax, hence, beyond the jurisdiction of the RTC.

On appeal to the CTA, the Court noted that the taxpayer never challenged the validity of the Makati Revenue Code. What the taxpayer alleged was that the imposition of local business tax on dividend income constituted a breach of the limitation of the taxing powers of the local government under Section 133(a) of the LGC. Section 133 provides that the taxing power of local government cannot extend to the levy of income tax, except when levied on banks and financial institutions. A local tax on dividend and gains is a tax on income. Thus, it was not the specific provision in the tax ordinance itself that taxpayer was questioning, but rather, the exercise of a taxing power by the LGU beyond the limits authorized by the LGC and the NIRC.

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Section 195 of the Local Government Code provides that, within 60 days from receipt of notice of assessment, the taxpayer can file a written protest with the local treasurer. Section 187, on the other hand, allows that any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within 30 days from the effectivity thereof to the Secretary of Justice who shall render a decision within 60 days from the date of receipt of the appeal:

Section 195, as a taxpayer's remedy is separate, distinct, and independent from Section 187. It therefore follows that a taxpayer's failure to question the ordinance upon its effectivity and avail of the remedy of Section 187 does not necessarily bar recourse to Section 195 when the same is grounded on the illegality of the tax measure.



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# SEC Opinions

## Restaurant and gift shop in a hotel does not constitute retail trade

*(SEC-OGC Opinion No. 16-06, April 1, 2016)*

In establishing a gift shop within the hotel premises where hotel guests, as well as the public, may be able to purchase souvenirs and other gift items easily and without the hassle of having to venture outside the hotel, the hotel is merely adding a feature that is incidental to its hotel operations in line with providing quality service.

On this basis, both sales from the restaurant and gift shop operations by a hotel, as long as incidental to the hotel operations, are not considered retail and shall not be covered by the nationality restriction on retail trade.

## Determining the quorum in board meetings

*(SEC-OGC Opinion No. 16-07, April 4, 2016)*

The quorum in board meetings is the majority of the number of directors or trustees. However, the Corporation Code allows corporations to fix a greater number to constitute the quorum.

The formula in determining the “majority of the number of directors” is one-half plus one notwithstanding the existence of vacancies in the board. Hence, if there are 5 members in the board, the majority is at least 3.

If a corporation defines a majority lower than what is provided in the law, such provision is not valid as it is not in accordance with the law.

## Foreign-owned international freight forwarder can perform trucking services

*(SEC-OGC Opinion No. 16-07, April 4, 2016)*

A foreign owned international freight forwarder can perform trucking services to local clients directly or through a sub-contractor.

A freight forwarder is considered an operator of a public utility and must comply with the foreign equity limitations. However, the nationality requirement applies only to domestic air transport and not to international air freight forwarders. Public utilities engaged exclusively in international commerce are beyond the purview of the constitutional provision limiting the operation of public utilities to Philippine citizens or corporations.

Nevertheless, an international freight forwarder can provide trucking services, which is considered public utility service, to its local clients and will not be deemed violating the nationality requirements. The Philippine Shippers Bureau, which is mandated to register, accredit and regulate international freight forwarders, has issued an Administrative Order providing that an international freight forwarder can perform “other forwarding services such as trucking”.



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## CTA Litigation Support

To avoid prolonged trials, we offer independent verification of financial and other pertinent documents that are presented as evidence in tax cases/disputes or claims for refund before the Court of Tax Appeals (CTA) . This involves an evaluation of the completeness and validity of the documents and the correctness of the claims involved or other representations made by the taxpayer based on the requirements provided under applicable laws and regulations.

If you would like to know more about our CTA Litigation Support please contact

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