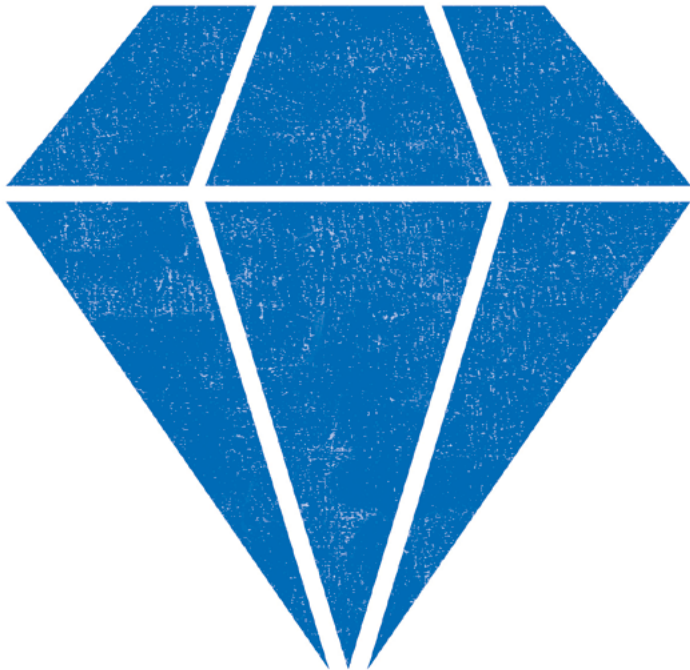


Tax brief

October 2016



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- Special disciplinary committee for investigation of revenue officers
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BIR Issuance

Extending the deadline for the use of non-thermal paper and for reconfiguration of information on all CRM/POS machines

(Revenue Regulations No. 6-2016, September 3, 2016)

In Revenue Regulations No. 10-2015, businesses were required to shift to the use of thermal papers for their cash register machines (CRMs), point of sale machines (POS) and other similar machines.

In the same regulations, the BIR also mandated the inclusion of additional information in the tape receipts.

In order to provide ample time in procuring, reconfiguring machines and systems, the period to make the adjustments has been extended to December 31, 2016.

The due dates are amended as follows:

For those subject machines registered starting:	Staggered implementation dates
July 1, 2014 onwards	On or before July 1, 2018
July 1, 2013 - June 30, 2014	On or before July 1, 2017
Prior July 1, 2012 - June 30, 2013	On or before December 31, 2016

Inventory of pending requests for tax exemption rulings

(Revenue Memorandum Order No. 52-2016, September 1, 2016)

The Commissioner has directed the Law Division to submit to his office an inventory of all pending Requests for Tax Exemption Rulings as of August 15, 2016 on or before September 15, 2016.

Special disciplinary committee for investigation of revenue officers

(Revenue Memorandum Order No. 54-2016, September 1, 2016)

Special Disciplinary Committee has been created at the BIR for the purpose of investigating revenue officers relative to questionable tax audits and investigations.

In RMC No. 70-2016, revenue officers were asked to submit an inventory of outstanding Letters of Authority/Audit Notices, and Letter Notices as of June 30, 2016. Based on the said inventory list, certain revenue officials and employees were asked to submit written explanations regarding what appear to be violations or substantial lapses or departure from existing revenue issuances in the conduct of tax audit or tax investigations.

The Committee shall hear and investigate these cases.

The Committee may likewise investigate/hear other cases of erring revenue officers as may be assigned by the Commissioner.

The procedures and due process in the investigation and hearings have been provided in the regulations

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BIR Issuance

Expediting the processing of eCAR to ensure timely issuance

(Revenue Memorandum Order No. 55-2016, September 2, 2016)

Amendments have been introduced to expedite the processing of the Electronic Certificate Authorizing Registration (eCAR) and ensure its timely issuance.

Among others, threshold amounts have been set for the designation of signatories. For some regions, the Assistant Revenue District Officer (ARDO) will be authorized to sign eCARS with taxable base of P3M and below. The RDO, on the other hand, shall sign eCARS with taxable base of more than P3M. For other regions, the threshold for this delegation is P1M in taxable base.

In cases where either one of the signatory is absent, either the RDO or the ARDO may sign an eCAR in the spirit of expedient taxpayer service.

eCARS shall have a validity of 3 years reckoned from the date of issuance for purposes of presenting the same to the Registry of Deeds. The LT Division Chiefs/RDOs or ARDOs shall issue a new eCAR to the taxpayer in case the latter fails to present the eCAR to the Registry of Deeds within the 3-year validity period.

New policies on applications for BIR ICC/BCC

(Revenue Memorandum Order No. 56-2016, September 2, 2016)

Amended the guidelines have been issued for securing BIR Importers Clearance Certificate (BIR-ICC) and BIR Customs Brokers Clearance Certificate (BIR BCC) to protect the interests of the public by ensuring that they are dealing with legitimate importers and brokers and at the same time to further streamline the application process.

Applications shall be filed with the Accounts Receivable Monitoring Division (ARMD) at the BIR National Office and shall be processed and released within five working days from the submission of the complete documents. The regulations enumerated the revised documentary requirements.

The applicant has an option to submit personally or via courier addressed to ARMD Tax Clearance Section. Any misrepresentation shall cause its outright denial or the immediate revocation of the any issued BIR ICC/BCC.

Applicants must satisfy the following criteria:

a. Compliant in the payment of the annual registration fee, in bookkeeping and invoicing requirements and in the submission of annual information returns

b. No valid open “stop-filer” cases

c. A regular user of the BIR’s Electronic Filing and Payment System (eFPS); For newly registered taxpayers, it is sufficient that they have an activated enrollment to the BIR’s eFPS facility.

d. No delinquent account. Delinquent account refer to outstanding tax liabilities arising either from self-assessed taxes or as a result of an audit or third party information which was not validly protested within the prescribed period. If delinquent accounts were subject of a pending application for compromise settlement or abatement of penalties, the BIR ICC/BCC shall still be issued if the applicant has paid the amount offered under compromise settlement or abatement of penalties.

e. Applicant should not have been tagged as a “Cannot be Located” taxpayer.

BIR Issuance

Special revalidation of outstanding LAs under the RATE program

(Revenue Memorandum Order No. 57-2016, September 5, 2016)

Taxpayers applying for issuance of tax credit/refund based on Writ of Execution issued by the Court of Tax Appeals and Supreme Court from the requirement of certifications on outstanding tax liabilities/delinquency verification slips prescribed under all existing revenue regulations, rules and procedures.

New deputy commissioner for information systems group

(Revenue Memorandum Order No. 58-2016, September 5, 2016)

In view of the assumption of Lane Cui-David to the duties of Deputy Commissioner of Internal Revenue, all papers and correspondence prepared for the signature of the Deputy Commissioner for Information Systems Group shall be prepared with her name.

VAT audit program for TY 2015 onwards

(Revenue Memorandum Order No. 59-2016, September 21, 2016)

Under the VAT audit program of the BIR for 2015 and thereafter, taxpayers will be selected based on two sets of criteria.

Taxpayers that will be subject to the regular VAT audit will be selected based on the criteria under RMO 20-2012.

On the other hand, taxpayers shall be selected for issue-based VAT audit based on the following criteria under RMO 59-2016:

- A. Mandatory Case:
 - VAT returns reflecting erroneous input VAT carry-over
- B. Priority Cases:
 1. VAT compliance is below industry benchmarks
 2. With zero-rated and exempt sales due to availment of incentives or exemptions
 3. With significant cash transactions (around 80%) and whose purchases do not generate substantial input tax (e.g., restaurants, remittance/payment centers)
 4. With revenues subjected to EWT but not reported for VAT
 5. With purchase of services from nonresidents which were not subjected to withholding VAT
 6. Failed to declare gross receipts subjected to withholding VAT with waiver

of privilege to claim input tax credit

7. Reporting higher sales/receipts per income tax than for VAT

8. Filing percentage tax returns but with gross sales/receipts exceeding the VAT threshold

For the issue-based VAT audit, one eLA shall be issued for each taxable quarter, or for two quarter if recommended by the VAT Audit Section Chief. If taxpayers is also selected for regular audit, the eLA shall exclude the VAT liability. The Audit Information Tax Exemption and Incentives Division (AITEID) at the National Office shall automatically provide the VAT Audit Sections the preprocessed RELIEF data for the selected taxpayers.

The taxpayer shall be given 10 days from receipt of Notice to present the required documents. A reminder letter shall be sent before a Subpoena Duces Tecum is issued. No extensions shall be allowed.

Revenue officers shall submit their reports within 60 or 90 days from issuance of eLAS covering one or two quarters, respectively. The PAN and FAN will be issued pursuant to existing regulations.

BIR Issuance

BIR resumes audit activities on RATE cases

(Revenue Memorandum Circular No. 91-2016, September 1, 2016)

All field audits, field operations, or any form of business visitation in execution of LOAs/eLAs/Audit notices, LNs, or Mission Orders can already be conducted starting September 1, 2016.

This is to ensure that collection of correct taxes at the times prescribed by law are enforced by the bureau.

Renaming the BIR contact center

(Revenue Memorandum Circular No. 92-2016, Revenue Memorandum Order No. 53-2016, September 1, 2016)

The Customer Assistance Division (CAD) was organized to officially assume the functions of the BIR Contact Center (BIR-CC) which existed and operated in the BIR under a temporary set-up since 2003.

The BIR-CC is therefore renamed as the CAD which is now a regular and full-fledged division under the Client Support Service and the Operations Group.

Streamlining the business registration process and documentary requirement

(Revenue Memorandum Circular No. 93-16, September 1, 2016)

A three-step process for the registration of business in the BIR will be implemented as follows:

Step 1: Apply for Registration with complete documentary requirements

Step 2: Pay Annual Registration Fee thru Mobile Revenue Collection Officers System (mRCOs), Authorized Agent Banks, Revenue Collection Officer or GCash

Step 3: Get Certificate of Registration with auto-approved Authority to Print (ATP) for initial principal receipts/invoices

The auto-approved ATP for initial principal receipts/invoices is only applicable to newly registered business taxpayer. However, subsequent application for receipts/invoices shall be processed in accordance with the procedures specified under existing issuances.

The number of documentary requirements has likewise been reduced.

Unacceptable checks from certain rural banks

(Revenue Memorandum Circular Nos. 95, 96 and 97-2016, September 5, 2016)

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 Claveria (Cagayan) Inc. with office address at #43 Gen. Claveria St., Brgy. Centro III, Claveria, Cagayan.

b. Rural Bank of Alabat (Quezon), Inc. with office address at Caliwara cor. Rizal Sts., Brgy. 2, Alabat, Quezon

c. Rural Bank of Cabadbaran (Agusan), Inc. with office address at Garam cor Cabiltes Sts. City of Cabadbaran, Agusan del Norte

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

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SEC Issuance

Submission of sworn statement and COEP by foundations

(SEC Memorandum Circular No. 15, s. 2016, September 9, 2016)

It is the government's policy to make doing business in the Philippines easier. Along this objective, the SEC has liberalized the requirement for submission of Sworn Statement by its President or Treasurer and on the Sources, Amount and Application of Funds and Program/Activity Planned, Ongoing and Accomplished (SS) and Certificate of Existence of Program/Activity (COEP) by registered foundations.

Effective September 9, 2016, the sworn statement and COEP shall only be mandatory for foundations receiving funds from the government and those receiving donations/grants amounting to P500,000 for one or aggregate transaction from one donor/grantor.

Other foundations may dispense with the submission of the SS and COEP. However, they must submit a Certification stating that they have not received government funds or donations, including a statement that there is no action or proceeding pending before any Court against the Foundation, its Trustees and officers.

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CTA Decisions



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Prior BIR confirmation of tax-free exchanges, not mandatory

(Lucio L. Co, Susan P. Co, Ferdinand Vincent P. Co, and Pamela Justine P. Co v. Commissioner of Internal Revenue, CTA Case No. 8831, September 1, 2016)

Four shareholders contributed their shareholdings in one company (property) to another company in exchange for shares of this other company. In the process, these four shareholders gained additional control therein. They paid capital gains tax and documentary stamp tax on the transfer of the shares.

Subsequently, they were advised that transfers of property for shares to gain additional control can qualify for exemption from capital gains tax under Section 40 (c)2 of the Tax Code. Hence, they filed a claim for refund of the capital gains tax with the BIR and, subsequently with the CTA.

Among the issues raised by the BIR is the failure of the shareholders to secure a BIR ruling confirming the exemption from capital gains tax.

The BIR claims that Regulations No. 18-2001, Revenue Memorandum Order Nos. 32-2001 and 17-2002 provide that there are certain conditions/requirements which should be complied with by the parties to an exchange transaction in order to avail of

the non-recognition of gain under Section 40(C)(2) of the NIRC. To qualify as a tax-free exchange, a prior application for a certification or ruling from the BIR must be secured. In the case at hand, the shareholders did not secure such prior request for a certification/ruling from the BIR. Hence, the BIR claims that the refund should be denied.

The CTA en Banc upheld the decision of the CTA in division that failure to secure a prior certification or ruling from the BIR on the exempt status of the transaction, based on RR No. 18-2001 and RMO Nos. 32-2001 and 17-2002 should not deprive a taxpayer of claiming exemption. In the course of the proceedings, the shareholders were able to prove that the transfer complied with all the four requisites as provided under Section 40 (C) (2) of the Tax Code to be entitled to exemption from CGT. The said issuances are mere guidelines for the proper monitoring and investigation of the basis of the properties transferred pursuant to a tax-free exchange, as explicitly stated in said issuances.

In addition, the CTA noted that failure to file BIR Form No. 1914, or the Application for Tax Credits/Refunds is of no moment since all the information required in said BIR Form was provided by petitioners in their written claims, constituting substantial compliance of the said legal requirement. The CTA cited that there is Jurisprudence

confirming that compliance with the requisites under the law constitutes a valid administrative claim even in the absence of BIR Form No. 1914

CTA Decisions

When secondary evidence is acceptable

(Cargill Texturizing Solutions Philippines, Inc. v Commissioner of Internal Revenue, CTA EB No. 1259 (re: CTA Case No. 8172, September 9, 2016))

The company was issued a Preliminary Assessment Notice and Final Assessment Notice for deficiency expanded withholding tax for 2006 for failure to submit the supporting documents. In both instances, the company claimed in its reply/protest that it has already submitted original copies of the certificates of creditable tax withheld. The company appealed the assessment at the CTA.

To prove that it had already submitted the original CWT certificates to the BIR, the company presented its transmittal letter with original receiving stamp by the BIR and the photocopies of the CWT certificates.

The CTA cited Sec. 5 Rule 30 of the Rules of Court that, if the original document is unavailable because it was lost or destroyed, or cannot be produced in courts, the offeror, upon proof of its execution or existence and the cause of its unavailability, without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

On that basis, the Court acknowledged that the company meets all the requirements to

allow it to present secondary evidence of the CWT certificates.

Validity of third party information in assessment cases

(Swift Foods, Inc., v Commissioner of Internal Revenue, CTA Case No. 8399, Sept 22, 2016)

Assessments issued based on third party information cannot be considered void for failure of the BIR examiners to require the third party information provider to submit their respective Sworn Statements. There is no legal provision on the matter.

The RMO 46-2004 mentions that, in the event a taxpayer who has been issued an LN protests the accuracy of the data provided by third party sources (as opposed to erroneous encoding of return information in the ITS), the revenue officer concerned shall, upon receipt of the Protest Letter of the taxpayer, evaluate the protest and require the latter to execute a Sworn Statement attesting to the alleged inaccuracies or errors in the TPI. The TPI provider (except BOC) shall also be required to execute a Sworn Statement attesting to the data provided. Enforcement action shall be taken in cases where the documents submitted by the taxpayer and the TPI provider suggest that there is possible evasion of taxes.

There is nothing in RMO 46-2004 that states that the absence of the alleged sworn statements will render the subject assessment

void.

Customs has jurisdiction on export of currencies

(Ronavie Renon Kamata v Commissioner of Customs, CTA Case No. 8845, September 26, 2016)

If a person is caught at the airport attempting to bring out currencies in excess of the amount allowed under the laws, the officials of the Bureau of Customs have authority to confiscate the excess in favor of government. Under the rules of the Bangko Sentral ng Pilipinas (BSP), there is a prohibition on unauthorized bringing of currencies outside the Philippines in excess of the amounts allowed. Under BSP regulations, the limit for is USD10,000 or the equivalent in other currencies. The threshold for the Philippine peso is P10,000.

The Philippine Tariff and Customs Code authorizes the forfeiture of any article of prohibited exportation or importation. The Supreme Court has previously ruled that Philippine peso bills come within the concept of “merchandise” and, therefore, fall within the jurisdiction of the Bureau of Customs.

CTA Decisions

Interest and penalties may not be imposed if error was made in good faith

(Brewery Properties, Inc. v Commissioner of Internal Revenue, CTA Case No. 8892, September 30, 2016)

The company was assessed documentary stamp tax (DST) on advances from related parties disclosed in its financial statements in 2008. In taking a position that such inter-company advances covered by inter-office memoranda are not subject to DST, the company relied on BIR Ruling DA (C-035) 127-08 dated August 8, 2008. Such reliance to the said ruling is confirmed in its Letter/Protest dated February 8, 2012. The company also cited that the Supreme Court decision in the case of Filinvest was issued and circulated only in 2011. Prior to said decision, the company relied on existing court decisions and BIR ruling at the time the advances were made.

The CTA agreed that the non-imposition of the surcharge and interest is justified in this case. The CTA relied on the 2008 Supreme Court decision on Antam Pawnshop Corporation which says that good faith and honest belief that one is not subject to tax on the previous interpretation of the government instrumentality tasked to implement the tax law are sufficient justification for petitioner to be spared of interest and surcharges.

Deficiency interest imposable only income, estate and donor's tax

(Composite Materials, Inc. v Commissioner of Internal Revenue, CTA Case No. 8365, October 3, 2016)

Section 249 of the Tax Code provides that deficiency in the tax due as defined the Code shall be subject to interest at 20% per annum which shall be assessed and collected from the date prescribed for its payment until the its full payment.

An analysis of the Tax Code shows that there are only three instances where the term “deficiency” is defined, and this relates only and respectively to three types of internal revenue taxes, namely, income tax, estate tax, and donor's tax, pursuant to Sections 56(B), 93 and 104 of the Tax Code.

Hence, the deficiency interest under Section 249 should be applied only whenever there is a deficiency income tax, a deficiency estate tax, and a deficiency donor's tax. No deficiency interest under Section 249(8) should be imposed on deficiency VAT because there is no definition of deficiency tax in the Tax Code pertaining to VAT.

Presentation of prior year's CWT certificate in a refund of excess CWT

(Philippine National Bank v Commissioner of Internal Revenue, CTA Case No. 8636, October 3, 2016)

A taxpayer can opt to apply for refund of its excess creditable withholding tax by checking the appropriate box in the tax return. The option applies only to creditable taxes acquired during the year.

To prove the qualification for refund, one of the requirements is to substantiate the fact of withholding by presenting 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.

If the excess CWT during the year resulted from the use of CWT earned during the past year and applied against income tax due during the year, the taxpayer should also present the CWT certificates for such CWTs carried forward from the prior years. The Schedule of Creditable Withholding Taxes for the prior years, standing alone, does not constitute proof that petitioner had prior year's excess credits. Without the corresponding CWT certificates to support taxpayer's claim, the amount carried forward cannot be applied against the reported income tax liability of petitioner for taxable year being applied for refund.

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Atty. Jennylyn V. Reyes
Manager
Tax Advisory and Compliance
T **+63 917 506 3804**
E **Jen.Reyes@ph.gt.com**

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Lina Figueroa

Principal, Tax Advisory and Compliance Division

T +632 988-2288 ext. 520

E Lina.Figueroa@ph.gt.com



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