

# Tax brief

September 2016



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# BIR Issuance



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## Timely uploading of collection data from AABs

*(Revenue Memorandum Order No. 45-2016, August 3, 2016)*

All revenue district officers and LTS office heads shall ensure that details on tax payments are uploaded hence viewable in the integrated tax system-CBR system/electronic tax information system-collection and remittance reconciliation (ITS-CBRS/eTIS-CRR).

In line with this, a revenue personnel shall be assigned as an error handler to:

- Regularly monitor daily uploading of batch control sheets and consolidated report on daily collection for viewing purposes in the ITS-CBRS/eTIS-CRR.
- Maintain coordination with respective AABs to ensure that all tax payments transmitted are timely.
- Ensure that accurate tax payment details are correctly posted in the ITS-taxpayer accounting system ledger of the taxpayer.
- Reconcile daily tax collections per BCS with total tax collections per AAB branch as reflected in the daily CRDC. Reconciliation of discrepancies shall be effected the same day

of the discovery.

For one-time transactions, payment of required taxes shall be paid only through AABs to ensure immediate posting thereof. However, in the absence of a near AAB, tax payments may be made only on exceptional cases through RCOs; who will duly remit/ deposit such payments, using the revenue officer receipting device, through the MRCOS. For this purpose, a prior written approval by the CIR shall be secured by the concerned RDO.

Suspended cases arising from errors in the registration information of taxpayers shall be immediately raised to and resolved by the taxpayer assistance section of the RDO or concerned LTS office not later than the 3rd day from collection date. Accordingly, it shall be ensured that on or before the 4th day from collection date, all issues are resolved, payments are uploaded, and tax details can be viewed in the ITS-CRS/eTIS-CRR to be used as basis in the verification/validation of the tax payments of all taxpayers.

All pending un-uploaded tax payment details, unreconciled tax collection data, and suspended cases shall be resolved immediately.

## Prior CIR approval of BIR releases

*(Revenue Memorandum Order No. 46-2016, August 8, 2016)*

Advisories, revenue actions/decisions and policy statements that substantially affect the basic rights and remedies of taxpayers relative to the assessment and collection of taxes shall not be posted in the BIR website or released to the print and broadcast media without prior approval of the Commissioner of Internal Revenue.

## New deputy commissioners

*(Revenue Memorandum Order Nos. 47-2016, August 8, 2016 and 50-2016, August 18, 2016)*

Nestor S. Valeroso and Jesus Clint O. Aranas were named and assumed office as the new Deputy Commissioner of Internal Revenue, for the Operations and Legal Groups, respectively.

In line with this, all papers and correspondence prepared for the signature of the Deputy Commissioners shall bear the name of the new Deputy.



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## Designation of BIR official spokesperson

*(Revenue Memorandum Order No. 51-2016, August 22, 2016)*

ACIR Marissa O. Cabreros of the legal service is designated as the new spokesperson of the Bureau of Internal Revenue (BIR)

In line with this, she shall be directly and primarily responsible in the communication of significant challenges and development of the bureau in a clear, consistent, effective and timely manner to the public and all stakeholders. Further, she shall articulate for and in behalf of the CIR all relevant policies and programs, important revenue issuances and decisions of the Bureau in public forum and other events, including interviews and briefings on BIR issues and concerns in television programs and/or radio broadcasts/shows.

## Issuance of credit/refund based on court decisions

*(Revenue Memorandum Circular No. 84-2016, August 8, 2016)*

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

## Limited audit for tax refund claims

*(Revenue Memorandum Circular No. 85-2016, August 12, 2016)*

Processing of all requests/applications for tax refund/TCC, regardless of tax type, is not suspended. However, the LOA to be issued shall cover only the specific tax type which is the subject of the request/application for refund/TCC.

## Lifting the suspension of June RAOs

*(Revenue Memorandum Circular No. 88-2016, August 23, 2016)*

Revenue Memorandum Circular No. 69-2016 previously suspended the effectivity of all BIR issuances from June 1-30, 2016. The suspension of the following administrative issuances dealing with the Bureau's Organizational structure is now lifted:

- 1.) Revenue Administrative Order No. 2-2016 (Changes/modifications on the Bureau's Organizational Structure as Enhancement to Executive Order No. 366 Rationalization Plan)
- 2.) Revenue Administrative Order No. 3-2016 (Renaming of Revenue Region (RR) No. 12-Bacolod City to RR No. 12-Negros Island Region.)

## BIR resumes audit activities on RATE cases

*(Revenue Memorandum Circular No. 89-2016, August 23, 2016)*

Suspension of BIR audit activities pursuant to RMC 70-2016 is now partially lifted.

In line of this RMC, all field audits, operations, visitations pursuant to audit notices in the implementation of LOAs pertaining to Run After Tax Evader (RATE) cases shall be resumed in accordance with existing BIR rules and regulations

This is taken to encourage voluntary compliance with internal revenue tax laws and to allow BIR to continuously investigate criminal violations of the tax code.

## eFPS inaccessible from August 26 to 30

*(Revenue Memorandum Circular No. 90-2016, August 26, 2016)*

A scheduled maintenance will be conducted starting August 26 at 5:00 PM to August 30 at 6:00 AM.

In line with this, taxpayers are advised to use the eBIRForms facility in e-filing tax returns and pay either electronically (debit notes) or over-the-counter (cash or checks)



# BIR Rulings

## **ITH entitlement for BOI registered projects not automatic**

*(BIR Ruling No. 347--16, August 11, 2016)*

A company registered with BOI as a New Developer of Low-Cost Mass Housing Project can be entitled to Income Tax Holiday (ITH) for a period of four years from date of BOI certification or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. Income payments received by a corporation for a BOI registered project is exempt from creditable withholding tax (CWT) during the period under ITH.

However, such entitlement is not automatic. Exemptions shall be vested upon compliance with the provisions of the specific terms and conditions of the corporation's BOI registration. In the event that the registered enterprise fails to implement the project as represented in its project application, the BOI may reduce the project's ITH entitlement proportionate to the actual performance of the enterprise, in terms of its representations/commitments in terms of net value-added, job generation, investments and timetable.

Net income qualified for ITH availment shall not exceed by more than 10% of the projected income represented by the enterprise in its application provided the project's actual investments and employment match the enterprise's representations in its application.

In cases where the project's actual revenues exceed the projections in its application by more than 10%, the Board may increase the project's ITH availment proportionately for reasons such as but not limited to (a) additional investments; (b) new markets/orders; (c) additional employment and/or increase in number of working shifts.

In the event the enterprise fails to maintain the 75:25 debt-equity ratio requirement, it shall show proof that the construction of housing units have been completed and delivered to buyers prior to availment of ITH; otherwise, the enterprise shall not be entitled to ITH and shall be required to refund any capital equipment incentives availed of.

The enterprise shall submit proof of compliance that at least twenty percent (20%) of the total subdivision area or total subdivision project cost has been developed and allocated for socialized housing within one year from date of registration or prior to availment of ITH, whichever is earlier. This may be done through any of the following modes: (1) New Settlement; (2) Slum Upgrading; and (3) Joint Venture Projects. Otherwise, the ITH for that particular year shall be deemed forfeited.

The enterprise must also abide by the principles of Good Governance. It must likewise accomplish the self-rating Governance Scorecard to be provided by the BOI every year as a requirement for ITH availment.



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# PEZA Memorandum



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## Regulations implementing the TIMTA

*(DOF\_DTI Joint Administrative Order No. 1-2016, June 23, 2016; PEZA Circular No.2016-014, April 11, 2016; and PEZA Memorandum Order No. 2016-003, August 4, 2016)*

The rules and regulations to implement Tax Incentives Management and Transparency Act (TIMTA) pursuant to RA 1078 were jointly issued by the Department of Finance (DOF) and the Department of Trade and Industry (DTI).

The TIMTA covers all registered business enterprises (RBE) under the following investment promotion agencies (IPAs) and similar authorities that may be created by law in the future:

1. Board of Investments, (BOI)
2. Philippine Economic Zone Authority (PEZA)
3. Bases Conversion Development Authority (BCDA)
4. Subic Bay Metropolitan Authority (SBMA)
5. Clark Development Corporation (CDC)
6. John Hay Management Corporation (JHMC)
7. Poro Point Management Corporation (PPMC)
8. Bataan Technology Park, Inc. (BTPI)

9. Cagayan Economic Zone Authority (CEZA)
10. Zamboanga City Special Economic Zone Authority (ZCSEZA)
11. Phividec Industrial Authority (PIA)
12. Aurora Pacific Economic Zone and Freeport Authority (APECO)
13. Authority of the Freeport Area of Bataan (AFAB)
14. Tourism Infrastructure and Enterprise Zone Authority (TIEZA)

RBEs shall submit to their respective IPAs an Annual Tax Incentives Report within 30 days from the statutory deadline for filing of the Final Adjustment Return for Income Tax.

The IPAs shall validate the information submitted by the RBEs and submit consolidated report to the BIR and NEDA.

The BIR shall submit consolidated reports to the DOF. Within 90 days after the lapse of the period to assess, the BIR shall update the report to include amounts of assessments based on the incentives, deductions, exclusions and credits availed and submit these to DOF and NEDA.

The Bureau of Customs (BOC) shall also submit to DOF the amount of VAT and duty exemptions availed by the RBEs.

The DOF shall maintain a single database for monitoring and analysis of the tax incentives granted. The DOF shall also submit a report to the Department of Budget and Management (DBM), the Joint Congressional Oversight Committee (COC) and/or the NEDA the aggregate data on incentives claimed in the prior year and projections for the succeeding year categorized by sector, by IPA and by type of tax. Such data shall be reflected by the DBM in the annual Budget of Expenditures and Sources of Financing (BESF) which shall be known as the Tax Incentives Information (TII).

The NEDA shall conduct cost-benefit analysis to determine the impact of the incentives to the Philippine economy and provide the report to the DOF, DTI, DBM, IPAs and the COC.

During the transition, the reports covering the incentives for taxable year 2005 shall be submitted by the RBEs on or before September 15, 2016.

For PEZA RBEs, the reports shall be e-mailed through [timta@peza.gov.ph](mailto:timta@peza.gov.ph). Printed copies of these forms shall be submitted to the PEZA Zone administrator/manager/officer-in-charge which would then forward these to the



# PEZA Memorandum

PEZA Incentives Management Division  
(IMD).

For non-compliance with the reportorial requirements, the RBEs shall be subject to the following penalties:

- P100,000 on the first offense
- P500,000 on the second offense
- Cancellation of registration on the 3rd offense.

Failure to show proof of compliance shall not be a ground for suspension of the incentives where such failure is not due to the fault of the RBE.



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# SEC Opinion

## Control test to determine nationality of a corporation

*(SEC OGC Opinion No. 16-19, August 11, 2016)*

There are two acknowledged tests in determining the nationality of a corporation: the control test and the grandfather rule.

The control test is still the prevailing mode of determining whether or not a corporation is a Filipino corporation. According to the control test, shares belonging to corporations or partnerships with at least 60% of its capital owned by Filipino citizens shall be considered as of Philippine nationality. For as long as the corporation is 60% owned by Filipinos, its existing and would-be shareholdings to an investee corporation is considered owned by Filipinos for purposes of computing the required Filipino equity.

The grandfather rule is applied only when the 60%-40% ownership is in doubt. If ownership is less than 60% or is undeterminable, then the grandfather rule shall apply.



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## Tax exemption of redemption gains under the RP-US tax treaty

*(CIR v Goodyear Philippines Inc. GR 216130, August 3, 2016)*

In this case, the company redeemed preferred shares at a redemption price equal to the aggregate par value plus a premium representing accrued and unpaid dividends. The company filed an application with the Bureau of Internal Revenue (BIR) to confirm the applicability of the treaty provision on the tax exemption of the redemption gains. At the same time, the company took the conservative approach and withheld and remitted a final withholding tax (FWT) at 15% on the difference between the par value and the redemption price treated as taxable dividend.

Before the expiration of the two-year period to refund, the company opted to file an administrative claim for refund of the final withholding tax on grounds that the gain is exempt under the tax treaty and that the FWT was erroneously paid. Subsequently, a petition for review with the Court of Tax Appeals (CTA) was filed.

At the CTA, the BIR took the position that

the refund cannot be granted because the premium was correctly treated as dividend subject to the 15% FWT. The CTA in division and en Banc upheld the propriety of the refund so the BIR appealed the decision at the Supreme Court (SC).

Upholding the CTA, the SC reiterated that treaties have the force and effect of law. Hence, the RP-US Tax Treaty should govern the tax implications of company's transaction with its shareholder which is a US resident. Under the treaty, the term "dividends" should be understood according to the taxation law of the State in which the corporation making the distribution is a resident. Accordingly, under the Philippine Tax Code, dividend is defined as "any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property." The Board of Directors has to declare and pay the dividends to all of its shareholders. The company's financial statements, however, does not disclose unrestricted earnings. Absent the availability of unrestricted retained earnings, the BOD had no power to issue dividends.

Furthermore, an ordinary distribution of dividend should be in the nature of a recurring

return on stock. This was not the case with the company's redemption. The premium received by the shareholder did not represent a periodic distribution of dividend, but rather a one-time payment for the redemption of the preferred shares. The distinction between a distribution in liquidation and an ordinary dividend depends on the particular circumstances of the case and the intent of the parties. If the distribution is in the nature of a recurring return on stock it is an ordinary dividend. However, if the corporation is recapitalizing and narrowing its activities, the distribution may properly be treated as in partial liquidation and as payment by the corporation to the stockholder for his stock, not as dividend distribution.

The SC upheld the CTA and ruled that the redemption gains can qualify for exemption under the treaty provisions and cannot be treated as taxable dividends.



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## Tax privileges of PAGCOR contractees and licensees

*(Bloomberry Hotels and Resorts Inc. v CIR. GR 212530, August 10, 2016)*

This is a Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court seeking: (a) to annul the issuance by the Commissioner of Internal Revenue (CIR) of an alleged unlawful governmental regulation, specifically the provision of RMC No. 33-2013 1 dated April 17, 2013 subjecting contractees and licensees of the Philippine Amusement and Gaming Corporation (PAGCOR) to regular corporate income tax; and (b) to enjoin the CIR from implementing the assailed provision of RMC No. 33-2013.

The SC noted that it has already issued a decision on the tax treatment of PAGCOR. That is, PAGCOR is subject to a 5% franchise tax on its income realized from the operation of casinos. This is in lieu of all other taxes, including corporate income tax. Income from other related services are not entitled to the same privilege and are subject to the regular corporate income tax and all other applicable taxes.

The PAGCOR Charter states that exemptions granted for earnings derived from the operations conducted under the franchise shall inure to the benefit of and extend to corporations, associations, agencies, or individuals with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casinos authorized to be conducted under the Franchise. Hence, all contractees and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos. In the same manner, contractees and licensees shall likewise pay corporate income tax for income derived from other services.

The SC ordered the CIR to cease and desist from implementing RMC 33-2013 insofar as it imposes corporate income tax on petitioner Bloomberry Resorts and Hotels, Inc.'s income derived from its gaming operations.

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If you would like to know more about our services

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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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