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Tax brief

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BIR Issuance

AAB-acquirer liable for penalties on late remittance of tax payments through credit cards
(Revenue Regulations No. 2- 2017, February 8, 2016)

Revenue Regulations (RR) 2-2017 amends Section 4 of RR 3-2016 prescribing the policies and guidelines on the adoption of credit/debit/prepaid card payments as additional modes of payment of internal revenue taxes.

In case taxes are paid through credit/debit/prepaid cards, the payment of taxes shall be deemed made on the date and time appearing in the system-generated payment confirmation receipt issued to the taxpayer by the AAB-Acquirer, regardless of when the payments are remitted to the BIR.

Section 4 of Revenue Regulations 3-2016 is amended to the effect that the AAB-acquirer shall be liable to the penalties in case of late remittance or non-remittance of the payments to BIR.

Prior to this amendment, the taxpayer who paid on time may still be liable to penalties if the AAB-acquirer fails to remit the payments to the BIR on time.

Tax incentives for microfinance NGOs
(Revenue Regulation No. 3-2017, February 22, 2017)

This RR was issued to implement the tax provisions of RA 10693 otherwise known as the "Microfinance NGOs Act". The Microfinance NGOs Act aims to address poverty by supporting and working in partnership with qualified NGOs in promoting financially inclusive and pro-poor financial and credit services.

This law covers only microfinance NGOs and does not cover for-profit microfinance institutions.

A duly registered and accredited microfinance NGO shall pay a 2% tax based on its gross receipts from microfinance operations in lieu of all national taxes. This rate shall only apply to lending activities and insurance commission of microfinance operations which are bundled and forming integral part of the qualified lending activities of the microfinance NGOs.

All other incomes by a microfinance NGO shall be subject to all applicable existing taxes.

The microfinance NGOs shall be deemed as a withholding agent for the government on payments of compensation to employees and on purchases of goods and services subject to withholding taxes.

Books of Accounts and other pertinent records of Microfinance NGOs shall be subject to periodic examination by revenue enforcement officers of the BIR.

To qualify for the incentive, the microfinance NGO should secure a Certificate of Accreditation from the Microfinance NGO Regulatory Council. The Microfinance NGO should be a non-stock non-profit corporation with capital contribution of at least P1 million.

BIR Issuance

Format for approval/denial of applications for compromise settlement and abatement of penalties
(Revenue Memorandum Order No. 3- 2017, February 2, 2017)

All approved Applications for Compromise Settlement and/or abatement of Penalties shall be issued Certificate of Availment while denied applications shall be issued Notice of Denial following the formats prescribed in this order.

The Certificate of Availment shall indicate the name and TIN of the taxpayer, the amount approved, taxes and taxable year covered.

The Notice of Denial shall indicate the reason for the denial and the amount of taxes/penalties which the taxpayer still needs to pay within 15 days from receipt of Notice. There is also a warning that, in case of non-payment, collection may be enforced through the summary administrative remedies under the law.

Mandatory information in the TSAC
(Revenue Memorandum Order No. 4- 2017, February 8, 2017)

It has been noted that the Tax Subsidy Availment Certificate (TSAC) presented as a mode of payment by concerned taxpayers often lack relevant information for purposes of completing the payment details in the Electronic Tax Information System-Collection Remittance and Reconciliation (eTIS-CRR).

All concerned TSAC-issuing offices are directed to print the number and the corresponding issue date of the Special Allotment Release Order (SARO) at the lower left portion of each copy of the TSAC form as this information is considered mandatory field in the eTIS-CRR.

BIR starts using electronic tax database
(Revenue Memorandum Order No. 5-2017, February 16, 2017)

The BIR implemented its first of eight modules of the Electronic Tax Information System-1 (eTIS-1) to streamline the process of capturing and accessing taxpayer data. eTIS-1 is capable of generating reports on monthly new business registrants, summary statistics, inactive taxpayers, and correspondence inventory reports.

This RMO signifies the guidelines for its personnel to use the Taxpayer Registration System (TRS) module of the system. This aims to increase the Bureau's efficiency in capturing and monitoring taxpayer's registration information, and the Bureau's requirements in order to support its revenue collection function.

The new system promises easier access to registered taxpayer's data, helping fast-track the audit process by the Bureau's personnel, and eases the plan of segmenting the taxpayer base into large, medium, and small taxpayers, as one of the BIR's priority programs for this year.

eTIS-1 is only available in selected pilot sites before fully migrating all revenue offices to the new system. These sites are: The Large Taxpayer Assistance Division, Excise Large Taxpayer Regulatory Division, Large Taxpayer Divisions in Makati and Cebu, and nine district offices of Revenue Region No. 8 Makati.

Currently, the Bureau's Integrated Tax System (ITS) requires manual filing of reports, and has been around for almost 20 years.

The seven other modules that are yet to be on a roll out include: Returns Filing and Processing (RFP), Collection, Remittance and Reconciliation (CRR), Audit, Case Management System (CMS), Taxpayer Accounting System (TAS), Batch Architecture Module (BAM) and System Administration Management (SAM).

BIR Issuance

AABs open on April 1 and 8 to accept tax payments
(Revenue Memorandum Circular No. 12-2017, February 7, 2017)

Item 2.1.2 of the memorandum of agreement executed by the Bureau of Internal Revenue (BIR) and the Bureau of Treasury (BTR) requires Authorized Agent Banks (AABs) to carry on bank operations for two Saturdays immediately prior to April 15 of every year.

AABs will observe regular banking days on April 1 and April 8, 2017 for purposes of accepting tax payments.

Since April 15, 2017 falls on a Black Saturday, the extension of banking hours from 3:00 PM to 5:00 PM from April 1 to the usual April 15 is stretched to last until April 17, 2017 (Monday).

Unacceptable checks from a certain rural bank
(Revenue Memorandum Circular No. 13- 2017, February 7, 2017)

All concerned are advised not to accept checks, as well as taxpayer's checks drawn from Eastern Rizal (JALAJALA) Rural Bank, Inc. with head office address at C. Villaran St., JalaJala, Rizal in payment of internal revenue taxes.

This bank is prohibited from doing business in the Philippines and has been placed under receivership with PDIC as the designated Receiver

Suspension of eFPS enrollment from March 1 to April 30
(Revenue Memorandum Circular No. 14- 2017, February 17, 2017)

BIR has announced that enrollment to eFPS will be temporarily suspended beginning March 1, 2017 to April 30, 2017. Mandated taxpayers who have not enrolled are advised to do so before March 1, 2017.

During the period of suspension, taxpayers who are required to secure the BIR importer's Clearance Certificate (ICC) and Broker's Clearance Certificate (BCC) and Government Bidders Tax Clearance can still proceed with eFPS enrollment during the suspension period by presenting their duly accomplished and notarized application form to the RDO.

eFPS enrollment shall resume on May 1.

BIR Issuance

BIR clarifies: No changes on required documents for ITR filing
(Revenue Memorandum Circular No. 16-2017, February 22, 2017)

The BIR clarified that there will be no changes in the existing documentary requirements in the filing of income tax returns.

The clarification was issued in view of the requirement of the Board of Accountancy (BOA) for the submission of a certification by an accredited CPA on the compilation services for the preparation of Financial Statements. Previously, circularized this requirement and the effectivity date in RMCs 21 and 36, series of 2016.

This implies that the BIR will not require that the FS be accompanied by a certification on the compilation/preparation.

BIR Ruling

Separation pay for termination due to dishonesty/disobedience not tax exempt
(BIR Ruling No. 002-17, January 12, 2017)

Section 32 (B) (6) (b) of the National Internal Revenue Code (NIRC) of 1997, as amended, states that any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer due to death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall be excluded from gross income and shall be exempt from taxation.

The phrase "for any cause beyond the control of the said official or employee" as mentioned in Section 32 (B) (6) (b) of the NIRC means involuntariness on the part of the official or employee. Separation must not be of his own making or choice.

If the employee was involuntarily separated/terminated from service on the ground of serious dishonesty and willful disobedience, the separation is not covered by the provision "for any cause beyond the control of the said official or employee". Hence, separation pay received by the said employee shall form part of his gross income subject to tax.

Withdrawals from donated deposit accounts prohibited prior to payment of donor's tax
(BIR Ruling No. 19-17, January 21, 2017)

The value of properties, real or personal, tangible or intangible, wherever situated, of the decedent at the time of his death shall form part of his gross estate. When a transfer is executed prior to his death, as evidenced by a notarized Deed of Assignment, the subject property of the transfer will now be excluded from transferor's gross estate. Hence, not subject to estate tax. However, the transfers shall be subject to donor's tax.

If the assets transferred are bank deposit accounts, withdrawals by the donee, or any form of distribution, from these accounts will not be allowed without presenting of the necessary tax clearance issued by the concerned RD office showing full payment of the donor's tax.

CTA Decisions

Protesting a local tax ordinance or assessment
(Davao Agricultural Ventures Corporation (DAVCO) v. City of Davao, CTC AC No. 135, February 20, 2017)

As a rule, the remedy within the administrative machinery must first be resorted to and pursued to its appropriate conclusion before the court's judicial power can be sought.

In cases of disputed local tax assessments, Section 195 of the Local Government Code provides that the taxpayer has 30 days from receipt of the denial of the local treasurer, or from the lapse of the 60-day period granted to the treasurer to decide on the protest, within which to appeal the assessment with the court of competent jurisdiction, which is the Regional Trial Court. An appeal filed directly with the CTA cannot be given due course.

On the other hand, a petition to declare a local ordinance as null and void should be raised in appeal within 30 days from effectivity of the ordinance, to the Secretary of Justice who has 60 days to act on it. Hence, failure of the taxpayer to appeal to the Secretary of the Department of Justice within the mandatory period of 30 days from the effectivity of the ordinance is fatal to its cause.

The Court of Tax Appeals, being a court of special jurisdiction, can only take cognizance of matters that are clearly within its jurisdiction specifically defined under Section 7 of R.A. 1125, as amended by R.A. 9282.

A holding company may be considered as a financial institution subject to local business tax
(AP Holdings, Inc. v. City of Davao, CTC AC 156, January 30, 2017; and Te Deum Resources, Inc. v. City of Davao, C.T.A. AC No. 150, February 10, 2017)

Generally, local government units are prohibited from levying taxes on income tax, except when levied on banks and other financial institutions. However, if the holding company's articles of incorporation shows a primary purpose is extensive enough to cover most of the principal functions of a financial intermediary, it can be treated as a nonbank financial intermediary for local business tax purposes.

A self-imposed prohibition in the primary purpose not to act as an investment company or securities broker/dealer does not guarantee that the company will not engage in any of the activities of investment company. By actually engaging in the business of stock investment and money market placements, the provision was negated, therefore, should be disregarded. Accordingly, company's act of investing in equity securities, holding of assets consisting of shares of stocks and placements of funds on a regular and recurring basis affirms the conclusion that it is a non-bank financial intermediary whose income may, therefore be subjected to local business tax under Section 143 (f) of the Local Government Code of 1991, as amended.

Definition of a non-bank financial intermediary for local business tax purposes
(Toda Holdings, Inc. v. City of Davao, C.T.A. AC No. 138: Civil Case No. 35,680-14, February 9, 2017)

Local government units can impose a local business tax on income only in case of banks, nonbank financial intermediaries and other financial institutions.

The court cited the basic requirements for a person or entity to be considered as a "non-bank financial intermediary", to wit:

1) The person or entity is "authorized by the Bangko Sentral ng Pilipinas (BSP) to perform quasi-banking activities";
(2) The principal functions of the said person or entity "include the lending, investing

CTA Decisions

or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others"; and

(3) The person or entity must perform said functions on a regular and recurring, not on an isolated, basis.

In this case, the corporation is not authorized by the BSP. The second requirement was not met as well. The Amended Articles of Incorporation of the Corporation stated its primary purpose which may cover the functions of a non-bank financial intermediary. However, it was not shown that these functions are "principal" in nature as distinguished from secondary or incidental. It follows that the third requirement was not met since it was not performed on a regular and recurring basis since this is not the principal function of the corporation.

Determination of output VAT and carried over input VAT is indispensable in a claim for refund

(Total (Philippines) Corporation v. Commissioner of Internal Revenue, CTA Case 7855, February 9, 2017)

Section 110 (A) and (B) in relation to Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, allows that input VAT from zero-rated transactions can be claimed for refund or issuance of tax credit certificate (TCC) provided that input VAT is greater than output VAT.

If taxpayer is applying for excess input VAT in 2007, the validation of the carried over excess input VAT from the last quarter of 2006 is necessary in the determination of petitioner's entitlement to refund. This is to verify that the carried over input VAT is sufficient to cover the output VAT so that the input VAT being refunded in 2007 remains undiminished by any output VAT. Refund claimant should present VAT invoices and official receipts to prove the existence of the carried over input VAT from prior year.

Without the substantiation, the carried-over input VAT cannot be validly applied against the output VAT in the year applied for refund. The alleged excess input VAT being claimed for refund must first be applied against the output VAT. If there is no excess, there is no input VAT that can be considered for refund.

Difference between judicial appeal of a disputed assessment and claim for VAT refund

(Allegro Microsystems Philippines, Inc. v. Undersecretary of the Department of Finance, C.T.A. EB Case No. 1327 Re:C.T.A. Case No. 8882, January 30, 2017)

The CTA emphasized the difference between the judicial appeal of a disputed assessment and the judicial appeal with respect to a claim for refund of unutilized input VAT.

The Supreme Court, in the case of Lascona Land Co., Inc. v. CIR, has interpreted the application of Section 228 of the NIRC in protesting disputed assessment. The Supreme Court held that, pursuant to Section 228, the taxpayer may await the final decision of the CIR on its protest and appeal the same (if unfavorable) within 30 days after receipt of the copy of the decision. The unfavorable decision can still be appealed even if issued after the expiration of the 180-day period given to the Commissioner to act on the protest.

In contrast, in Section 112 governing VAT refunds, the taxpayer should file its judicial appeal within 30 days from the lapse of the 120-day period given to the BIR to act on the taxpayer's claim. After the lapse of the 30-day period, the CTA Division loses its jurisdiction to entertain the appeal. A decision issued after the lapse of the 120 + 30 day period cannot anymore be appealed at the CTA.

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> Highlight on P&A Grant Thornton services

CTA Decisions

A Preliminary Collection Notice may constitute a final decision
(Organizational Change Consultants International Center for Learning, Inc. v. CIR, CTA Case No. 8625, February 10, 2017]

A Preliminary Collection Notice may constitute a final decision on disputed assesment, provided that, the notice reiterated the taxpayer's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges, and it is indicated that if taxpayer failed to pay the same, the BIR would be constrained to serve and execute the administrative summary remedies to enforce the collection of said tax liabilities.

In this case, the taxpayer disputed the Formal Letter of Demand (FLD) together with the Assessment Notices (FAN), however, instead of a Final Decision on Disputed Assessment, the taxpayer received a Preliminary Collection Notice.

The CTA ruled that the Preliminary Collection Notice can be considered as the final decision of the BIR. It was ruled by the Supreme Court, in the case of *Allied Banking Corporation v. CIR*, that CIR must indicate clearly and unequivocally to the taxpayer whether an action constitutes a final determination on a disputed assessment. The CTA held that since the notice reiterated the petitioner's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges and also indicated that if petitioner failed to pay the same, respondent would be constrained to serve and execute the Administrative Summary Remedies to enforce the collection of petitioner's tax liabilities, this notice can be considered as the final decision.

Resident Filipino citizens employed with ADB are subject to Philippine income tax
(Edzen Jogie B. Garcia, v. CIR, CTA Case No. 9075, February 9, 2017)

The ADB Charter has a tax exemption provision with respect to the salaries and emoluments paid by ADB to its officers and employees, but the same also contains a proviso that a member-country may opt to retain its right to tax the salaries and emoluments paid by ADB to the citizens or nationals of such member-country, which declaration must be made in the instrument of ratification or acceptance. Similarly, the ADB Headquarters Agreement recognizes the tax exemption privilege of ADB officers and employees but said Agreement also declares, in no uncertain terms, that the same is subject to the power of the Government to tax its nationals.

When the Agreement was ratified at the Philippine Senate, the Philippine Government made a specific declaration that it is retaining its right to tax the salaries paid by ADB to its citizens and nationals.

Without a specific grant of exemption, resident citizens who are officers and employees of ADB shall be subject to income tax on salaries and emoluments they receive from the Bank.

Supreme Court Decisions

Coverage of the tax exemption of minimum wage earners
(Soriano v. Secretary of Finance, G.R. Nos. 184450, 184508, 184538 & 185234, January 24, 2017)

Pursuant to RA 9504, minimum wage earners (MWEs) are exempt from payment of income tax on their minimum wage, holiday pay, overtime pay, night shift differential pay and hazard pay.

Sections 1 and 3 of Revenue Regulations (RR) No. 10-2008 implementing the law, however, provides that MWEs, who receive other benefits in excess of the P30,000 tax exempt limit, shall be taxable on the excess, as well as on its salaries, wages and allowances. In effect, MWEs who receive non-exempt income shall be disqualified for the exemption. RR10-2008 further limited the availability of the exemption for only six months in 2008, beginning in July.

The Supreme Court held that BIR committed grave abuse of discretion when it promulgated said implementing regulation. The additional requirements for exemption are not found in the law which it seeks to implement and these are, therefore, not valid impositions.

R.A. 9504 explicitly defines the coverage of the exemption to include wages that are not in excess of the minimum wage. RA 9504 is a social legislation which grants to the lowest paid employees an additional income by no longer demanding from them a contribution for the operations of government. Workers who received statutory minimum wage remain as MWEs and receipt of other taxable income during the year does not disqualify them as MWEs. MWEs are entitled to on the statutory minimum wage, any excess are still subject to appropriate taxes. The SC also ruled that the MWEs are exempt for the entire taxable year 2008 since taxable income is only determined on a yearly basis.

Increased personal exemption under RA 9504 available in full in 2008
(Soriano v. Secretary of Finance, G.R. Nos. 184450, 184508, 184538 & 185234, January 24, 2017)

RR No. 10-2008, in implementing RA 9504, mandates that the increased personal and additional exemptions under R.A. No. 9504 shall be available only for the half year in 2008.

The SC declared that this interpretation is against the legislative intent of the law which is to give the taxpayer the maximum exemptions that can be availed of as declared in the sponsorship speech and President's certification for the approval of the bill. In addition, the Tax Code does not require the prorating of the exemptions even in case of a status change during the taxable year.

Highlight on P&A Grant Thornton services

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