

Tax brief

April 2017





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Foreign embassies/international organizations exempt from securing ATRIG

(Revenue Regulations No. 4- 2017, March 6, 2016)

Foreign embassies and recognized international organizations are not required to secure the Authority to Release Imported Goods (ATRIG) on automobile importation, pursuant to the reciprocity and international agreements. However, these embassies and organizations shall secure from the International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR) a one-time ruling confirming exemption from ATRIG on importation of automobiles which it shall submit to the Bureau of Customs.

Annual reports of all importations shall also be submitted to the Excise LT regulatory Division (ELTRD), BIR on or before January 5 of the following year and should contain the following information:

(See Table I)

Table I

•	Name of Importer;
•	Address of Importer;
•	Importer's TIN;
•	Quantity/No. of Unit;
•	Description of Imported article(s);
•	Year model
•	Brand
•	Vehicle Identification Number/Chassis No.
•	Bill of Lading/Airway Bill Number, date of issue;
•	Name of vessel/carrier and flight/voyage number;
•	Value of importation (In US Dollars);
•	Purpose of importation; and
•	Date released from BOC.

In cases where automobiles are subsequently sold, transferred, or exchanged in the Philippines to non-exempt persons/ entities, or buyers outside the freeport zones, the purchaser or transferee, owner/possessor of the automobiles shall be considered as the importer and shall be liable for the excise tax due on such importation.

Utilization of preprocessed RELIEF and BOC Data in tax audits

(Revenue Memorandum Order No. 6- 2017, March 8, 2016)

Preprocessed RELIEF and BOC Data of taxpayers who were issued electronic Letters of Authority (eLAs) will be automatically generated and transmitted to respective investigating offices for use in the audit. Prior to this RMO, these Third Party Information are generated only upon request of the investigating offices.

The Business Intelligence Division (BID) of the BIR Information Systems Group (ISG) will access the Electronic Letter of Authority Monitoring System (eLAMS) every Tuesday for the list of eLAs issued by each investigating office.

Based on the list of taxpayers who were issued eLAs, BID will access the Data Warehouse (DW) to extract the RELIEF data on SLS/SLP and the data on importations from the BOC. Within 3 days from extraction, data will be transmitted to the Audit Information, Tax Exemption and Incentives Division (AITEID) who in turn shall deploy these data through email or registered mail to respective revenue officers.

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Revenue officers are required to submit a status report on how the data were utilized in the audit and its impact on the assessment to the AITEID. Justification for non-utilization of data in the investigation is likewise required for submission.

BIR waives TTRA requirement for dividends, interest and royalties

(Revenue Memorandum Order No. 8- 2017, March 28, 2017)

BIR has issued a new and streamlined procedures for claiming tax treaty privileges of nonresident income earners:

1. Tax Treaty Relief Applications (TTRAs) are no longer required to be filed with the International Tax Affairs Division (ITAD) for dividends, interests and royalties only.
2. The newly created Certificate of Residence for Tax Treaty Relief (CORRT) shall be used in lieu of the 0901 Forms for TTRA. The non-resident income recipient shall submit a duly accomplished CORRT Form to the Philippine income payor/ withholding agent before income is paid or credited. Among others, the non-resident income recipient shall have Part I signed by the Competent Authority (Tax Office) of his country of residence certifying that the income recipient is a tax resident of said

country. If there is a prescribed certificate of tax residency in the home country, the same shall be attached to the CORRT form in lieu of the signature required in Part I. The authorized representative of the non-resident income recipient shall also sign on both Part I and II of the form.

3. The new form shall be valid for 2 years upon issuance or following the date of validity indicated in the Certificate of Residency, if any, whichever comes earlier.
4. Withholding agents shall apply the reduced treaty rate or exemption upon receipt of the CORRT Form, remit the withholding tax using BIR Form No. 1601-F and file 1604-CF at yearend. For failure to submit the form, regular withholding tax rates shall be applied.

5. The Philippine income payor/ withholding agent shall submit an original of the CORRT Form to ITAD and RDO No. 39 within 30 days after payment of withholding taxes due on the interest, dividend or royalties.

6. In case there is another dividend payment within the period of validity of the CORRT, and in case of staggered payments of interest and royalties, the withholding agent only needs to submit an updated Part II within 30 days from payment of the withholding taxes.

7. The CORTT form which shall also serve as proof of residency of the nonresidents shall contain the following information:

(see Table II)

Table II

Part I	
✓	Applicable Tax Treaty
✓	Information of Income Recipient/Beneficial Owner (Individual);
✓	Information of Income Recipient/Beneficial Owner (Non-Individual); and
✓	Certification of Competent Authority or Authorized Tax Office of Country of Residence.
Part II:	
✓	Information of Withholding Agent/Income Payor;
✓	Details of Withholding of Tax;
✓	Type of Income Earned within the Philippines in Respect to which Relief is claimed;
✓	Declaration of Income Recipient/Beneficial Owner; and
✓	Declaration of Withholding Agent/ Income Payor.

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8. Transitory provision:

Nonresidents who have filed TTRA prior to this RMO shall be already allowed to use the invoked tax treaty rates.

9. Effectivity: The RMO shall take effect after 90 days to afford the non-resident income earners time to secure the certification of residency.

Certificate of Tax Exemption for service cooperatives

(Revenue Memorandum Circular No. 18-2017, March 1, 2017)

BIR shall resume processing and issuance of Certificate of Tax Exemption to service cooperatives not specifically defined in RA 9520. Service cooperatives are entitled to tax incentives provided they are able to present Certificates of Registration and Good Standing issued by the Cooperative Development Authority (CDA). They should also be subject to post-audit verification and submit the requisite documents stated in Section 5 of RMO No. 76-2010.

Issuance of eLAs for VAT refund claims of exporters

(Revenue Memorandum Circular No. 19-2017, March 2, 2017)

Currently, the field audit investigation of VAT credit/refund claims with direct exporters is conducted by the VAT Credit Audit Division (VCAD) under Assessment Service. Hence, this RMC amends Question and Answer No. 12 in RMC No. 80-2010, regarding the issuance of Electronic Letters of Authority (eLA) for VAT credit/refund claims of direct exporters.

The VCAD Chief shall momentarily utilize the Electronic Letter of Authority Monitoring System (eLAMS) for eLA issuance while the Case Management System (CMS) of the Electronic Tax Information System (eTIS) is not yet rolled out. This shall then be signed by the Assessment Service Assistant Commissioner.

Unacceptable checks from various rural banks

(Revenue Memorandum Circular Nos. 20 and 26- 2017, March 15, 2017)

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

1. Countryside Cooperative Rural Bank of Batangas, with Head Office address at National Road, Brgy. Pallocan Kanluran, Batangas City.

2. Rural Bank of Barotoc Viejo (Iloilo), Inc., with Head Office address at Zulueta Drive, Brgy. Poblacion, Barotac Viejo, Iloilo City.

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

Reports on dishonored checks not required from AABs

(Revenue Memorandum Circular No. 21-2017, March 6, 2017)

Authorized Agent Banks (AABs) with returned/dishonored check transactions are not required to submit Batch Control Sheet (BCS) and tax returns/forms when the concerned RDO acknowledges receipt of the original copies of dishonored checks. These documents are regularly being retrieved by authorized personnel of the concerned RDO, hence requiring submission by the AAB should not be necessary.

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New daily minimum wage rates in Region VIII

(Revenue Memorandum Circular No. 22-2017, March 7, 2017)

The new minimum wage rates in Region VIII have been circularized, as follows **(see table III)**

New VEIC template for qualified officials of the US Embassy

(Revenue Memorandum Circular No. 23-2017, March 7, 2017)

Based on the principle of reciprocity, the VAT Exemption Identification Card (VEIC) serves as a certification that the person is VAT-exempt from his/her local purchase of

goods and services as it appears on the list submitted by the DFA to the BIR.

VEIC is issued by the BIR to qualified diplomats, officials and their dependent along with their VAT Exemption Certificate. Confusion among business establishments as to the validity of such IDs usually arises since the VEIC appears to be issued by the US embassy rather than the BIR. To address this issue, the BIR revises the layout to give the VEIC a new look.

Table III

Sector/Industry	Minimum Wage	Basic Wage Increase (under Wage Order No. RB VIII-17)	New Daily Minimum Wage Rate
A. Non- Agriculture - including sugar mills	Php 278.00/day Php 278.00/ day	Php 7.00/day Php 7.00/ day	Php 285.00/day Php 285.00/ day
B. Cottage/Handicraft	Php 246.00/day	Php 7.00/day	Php 253.00/day
C. Retail/Service - w/ 10 workers and < - w/ 11 to 30 workers	Php 238.00/day Php 268.00/day	Php 7.00/day Php 7.00/day	Php 245.00/day Php 275.00/day
D. Agriculture - Non-sugar - Sugar farm	Php 244.00/day Php 238.00/day	Php 7.00/day Php 7.00/day	Php 251.00/day Php 245.00/day

VEICs issued before the issuance of this RMC shall remain valid until its expiry date which is 2 years from the date of issue.

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Suspension of eFPS enrollment from March 1 to April 30 not applicable to all taxpayers

(Revenue Memorandum Circular No. 24-2017, March 8, 2017)

RMC No. 24-2017 supplements RMC. No. 14-2017 with the following conditions:

1. Suspension of eFPS enrollment from March 1 to April 30, 2017 does not cover those taxpayers that are required to secure the BIR Importer's Clearance Certificate (ICC) and Broker's Clearance Certificate (BCC), and Government Bidder's Tax Clearance.
2. Processing of eFPS applications by these taxpayers shall still be accommodated by the RDO concerned with their eFPS accounts which shall be activated immediately.
3. Taxpayers who received an auto-email confirmation for its successful eFPS enrollment shall file their returns through the eFPS facility. Otherwise, eBIRForms facility shall be used for taxpayers who did not receive confirmation within 24 hours upon enrollment.

These conditions shall apply only from March 1 to April 30 of every year.

BIR clarifies basis for tax on sale of real properties

(Revenue Memorandum Circular No. 27-2017, March 29, 2017)

RMC No. 27-2017 was issued to clarify the basis for tax imposition on the sale, exchange or other disposition of real properties as provided under Section 6 of the National Internal Revenue Code (NIRC).

Under the Tax Code, the gross selling price or current fair market value (as determined under Sec 6E the Tax Code) of the property, subject to sale, exchange or other disposition shall be used as basis for the 6% capital gains tax.

Section 6 (E) of the National Internal Revenue Code provides that for purposes of computing any internal revenue tax, the fair market value of the property shall be either the fair market value as determined by the Commissioner or the fair market value by Provincial and City Assessors, whichever is higher.

Revenue officials or employees cannot apply any other basis for the imposition of capital gains tax/income tax/withholding

tax on sale, exchange or disposition of real property. The comparative sale or any other tax base shall not be acceptable.

Receiving and stamping of ITR and AFS

(Revenue Memorandum Circular No. 28-2017, March 30, 2017)

ITRs shall be printed in 3 copies to be submitted to the respective Revenue District Office (RDO), Large Taxpayer Division (LTD), or Authorized Agent Banks (AABs), as the case may be.

For ITR of individual taxpayers, the official receiving seal of the accepting office shall be stamped on the space provided for in the 3 copies of the returns. Any excess over the 3 copies will not be stamped as received.

In case of corporations and other juridical entities, at least 2 additional copies of the AFS will be stamped for purposes of filing with the Securities and Exchange Commission (SEC).

Only the page of the Audit Certificate, Statement of Financial Position, Statement of Comprehensive Income and Statement of Manager's Responsibility of the AFS shall be stamped as "RECEIVED".

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An assessment has to be disputed first, before a Petition for Review may be taken to the Court

(Nanox Philippines, Inc., v. Commissioner of Internal Revenue, CTA Case No. 8433, March 2, 2017)

The Court of Tax Appeals ruled that the Court has jurisdiction over the decisions of the Commissioner of Internal Revenue (CIR) in cases involving disputed assessments. As a rule, the assessment must be first disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be filed before the court. The Court's jurisdiction does not include those assessments that have become final, executory and demandable.

In the case of CIR v. Hambrecht and Quist Philippines, Inc., where the Supreme Court held that an assessment that has become final for failure of the taxpayer to file a protest within the time allowed means that the validity or correctness of assessment may no longer be questioned on appeal.

Section 228 of the NIRC provides that the taxpayer may file a request for reconsideration or reinvestigation within 30 days from the receipt of the assessment from the Commissioner or his duly authorized representative.

Filing of the request for reconsideration or reinvestigation should be made within 30 days from receipt of the assessment followed by the submission of the necessary documents within 60 days thereafter. Failure to comply within the timeline will result in the assessment becoming final.

In order to avoid the decision from becoming final, executory and demandable, the taxpayer should file a valid protest against the formal letter of demand and assessment within 30 days from its receipt.

30 days to submit additional documents

(Zuellig Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue, CTA Case No. 8899, March 9, 2017)

In a claim for refund of excess input VAT, the 120-day period begins to run from the date

of submission of complete documents in support of the administrative claim. Should the taxpayer decide to submit additional documents and effectively extend the 120-day period, it grants the CIR more time to decide the claim.

Consequently, upon filing of his application for tax credit or refund for excess creditable input taxes, the taxpayer-claimant is given thirty (30) days within which to complete the required documents, unless given further extension by the head of the processing unit. If, in the course of the investigation and processing of the claim, additional documents are required for the proper determination of the legitimate amount of claim, the taxpayer-claimants shall submit such documents within thirty (30) days from request of the investigating/processing office. Notice, by way of a request from the tax collection authority to produce the complete documents in these cases, became essential. It is only upon the submission of these documents that the 120-day period would begin to run.

When the supporting documents have been completed – it is the taxpayer who

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ultimately determines when complete documents have been submitted for the purpose of commencing and continuing the running of the 120-day period. Except in those instances, where the BIR would require additional documents in order to fully appreciate a claim for tax credit or refund, in terms of what additional document must be presented in support of a claim for tax credit or refund – it is the taxpayer who has the right and the burden to prove his cause of action. The completeness of the documentary evidence will then be determined by the CIR and courts.

In summary, the taxpayer is given 30 days from filing of tax refund to submit the documents supporting his claim for excess unutilized VAT, unless extension is given by CIR. Upon completion of the documents or expiration of the given period, the CIR will decide the claim within 120 days. If the taxpayer no longer wishes to submit additional documents, the 120 days will run from the date of filing. Furthermore, the taxpayer determines when complete documents have been submitted to determine the 120-day reckoning period.

The party-litigants must prove every minute aspect of their cases as the cases in the CTA are litigated de novo

(Philex Mining Corporation v. Commissioner of Internal Revenue, CTA EB No. 1434, February 28, 2017)

The Court of Tax Appeals (CTA) ruled that even the Court of Tax Appeals is not strictly governed by technical rules of evidence, the non-presentation of evidence to prove that an entity is a VAT-registered is not a mere procedural technicality which may be disregarded, considering that it is one of the essential requisites to prove entitlement of the VAT refund/tax credit.

The court further discussed that it cannot be faulted on its refusal to take judicial notice that the entity is VAT-registered. As a rule, courts are not authorized to take judicial notice in the adjudication of cases brought before them of the contents of the records of other cases. Before the courts may take judicial notice of records of other cases, the parties should be informed and be given opportunity to be heard and to object thereon

CTA cases are litigated de novo, hence party-litigants are required to prove every aspect of their case. Consequently, they must comply with the Rules of Court specifically, Section 34 which states that a formal offer of evidence is necessary. This allows both parties the chance to examine or object the presentation of evidence and enables the trial judge to base their judgment upon the offered evidence.

Withholding tax is considered as internal revenue tax which is required to be assessed within three years

(First Philippine Holdings Corporation v. Commissioner of Internal Revenue, CTA Case No. 8991, March 9, 2017)

The law on assessment and prescription does not distinguish the types of taxes that must be assessed within the prescriptive period provided under Section 203 of the NIRC of 1997, as amended. Hence, one cannot exclude withholding tax assessments in the application of the prescriptive period under Section 203.

In Republic of the Philippines v. Ablaza, the Supreme Court elucidated that the

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prescriptive period for the filing of actions for collection of taxes is justified by the need to protect law-abiding citizens from possible harassment. Thus, in *Commissioner of Internal Revenue v. BF. Goodrich Phils., Inc.*, this Court ruled that the legal provisions on prescription should be liberally construed to protect taxpayers and that, as a corollary, the exceptions to the rule on prescription should be strictly construed.

In *Commissioner of Internal Revenue v. Basf Coating + Inks Phils., Inc.*, prescription in the assessment and the collection of taxes is for the benefit of the government and the taxpayer; that is, to expedite the collection of taxes for the government; and to let the taxpayer contest or comply with the assessment.

Refund or Credit of Local Tax

(Soriano Shares, Inc. v. City of Davao, CTC AC No. 151, March 13, 2017)

Based on Section 196 of the Local Government Code (LGC), in order for claim for a refund/credit to prosper, a taxpayer must comply with the following

procedural requirements: (1) a written claim for refund/credit must be filed with the local treasurer, and (2) the case or proceeding must be filed within two years from the date of the payment of the tax, fee, or charge or from the date the taxpayer is entitled to a refund or credit.

Definition of “bank and other financial institutions”

(Soriano Shares, Inc. v. City of Davao, CTA AC No. 151, March 13, 2017)

Pursuant to Section 143 of the LGC a municipality may impose taxes only on banks and other financial institutions. City’s taxing power does not extend to the levy of income tax, except when levied on banks and other financial institutions. Section 131(e) of the LGC defines the term “bank and other financial institutions” but does not define the term “non-bank financial intermediary”; hence, resort to applicable laws, rules and regulations is proper.

The NIRC of 1997, as amended defines the term “non-bank financial intermediary in Section 22 (W) as a financial intermediary defined in the General Banking Act. The

General Banking Act on the other hand, defines “financial intermediary” as person or entities whose principal functions include the lending, investing or placement of funds or evidences of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others.

The General Banking Act provides that it is the Monetary Board that has the authority to determine whether a person or entity is performing banking or quasi-banking functions or engaged in other types of financial intermediation. It is certainly not enough that a local government’s finding that an entity acts as a financial intermediary be based on the primary business purpose stated in the Articles of Incorporation. Such a conclusion is based on assumption, with no support in evidence.

BCDA is exempt from all taxes on sale of military camps

(Commissioner of Internal Revenue v. Bases Conversion and Development Authority, CTA EB No. 1384, March 21, 2017)

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The Congress did not make the Bases Conversion Development Authority (BCDA) itself a tax exempt entity. It however clearly and unequivocally declared that the proceeds from the sale by petitioner of portions of Metro Manila military camps are exempt from all forms of taxes.

The Tax Code refer in general to the taxability of government owned or controlled corporations (GOCCs), agencies or instrumentalities. While the BCDA charter specifically governs petitioner's proceeds from the sale of portions of Metro Manila military camps.

It is a well-established rule of statutory construction that a special law prevails over a general law regardless of their dates of enactment; and the special law is to be considered as remaining an exception to the general law.

Likewise, in the case of Fort Bonifacio Development Corporation vs. CIR, the Supreme Court settled the issue of exemption from all forms of taxes that arises from the proceeds of petitioner's sale of properties in Metro Manila military camps.

Regarding BCDA's claim for DST refund, the CTA does not have the jurisdiction over the rights or obligations of the contracting parties. Obligations arising from a contract have the force of law and should be abided with in good faith.

Rules on constructive service of FAN

(Commissioner of Internal Revenue v. Starsmash Badminton Center Corporation, CTA EB No. 1379, March 21, 2017)

Procedures provided in Section 3 of Revenue Regulation No. 12-99 are mandatory and non-compliance therewith renders the assessment void. As such, constructive service under RR No. 12-99 shall be considered effected by (1) leaving the same in the premises of the taxpayer; (2) the fact of constructive service should be attested to, witnessed and signed by at least two revenue officers other than the revenue officer who constructively served the same; and (3) the revenue officer who constructively served the same shall make a written report of this matter which shall form part of the docket of the case. There should be strict compliance with the requirements authorizing substituted service.

Issuance of the Final Assessment Notice (FAN) is important so as to inform the taxpayer of his/her tax deficiency and for the timely filing of protest. An assessment cannot be final, executory and demandable unless the Preliminary Assessment Notice (PAN) and FAN were properly served. Thus, the requisites for constructive service listed above should be followed.

There is no estoppel in statute of limitations on the assessment of taxes

(Commissioner of Internal Revenue v. Starsmash Badminton Center Corporation, CTA EB No. 1379, March 21, 2017)

Parenthetically, Article 1431 of the New Civil Code provides that the doctrine of estoppel is anchored on the rule that "an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." However, Article 1432 of the same code expressly states that the principles of estoppel are adopted insofar as they are not in conflict with the provisions of the



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New Civil Code, the Code of Commerce, the Rules of Court and special laws, such as the National Internal Revenue Code (Tax Code).

Thus, being a principle in equity. Estoppel cannot be applied in the presence of a law which is clearly applicable in a given case. It also does not apply as an exception to the statute of limitations on the assessment of taxes.

The importance of due process

(Commissioner of Internal Revenue v. Polymer Products (Phil.), Inc., CTA EB No. 1320, March 21, 2017)

The Tax Code and RR No. 12-99, as amended, specifically give taxpayers fifteen (15) days from receipt of the Preliminary Assessment Notice (PAN) within which to reply thereto; that the tax audit should be conducted with the proper letter of authority; and that the PAN and FAN should contain the facts and the law upon which the assessments were based.

Procedural rules were made in order to facilitate the adjudication process. Courts and litigants alike are this

enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. ‘

Procedural rules which are often considered as technical should only be relaxed when the need to further justice arises and to benefit the deserving. To reiterate, they should not be used in favor of one party.

Withholding Tax on the sale of ordinary assets

(Commissioner of Internal Revenue, v. Leo Mario Celdran, CTA EB No. 1527, March 14, 2017)

The rate 6% EWT/CWT on the sale of ordinary assets applies if the taxpayer is a bank, not habitually engaged in the real estate business, or an entity not engaged in the real estate business, pursuant to Section 2.572 (J) of Revenue Regulations No. 2-98. Bank is not defined in the said Revenue Regulation, however, in Section 2 of Republic Act No. 337, as amended by Republic Act No. 8791, it is defined as an entity engaged in

the lending of funds obtained in the form of deposits.

On the other hand, to be considered as habitually engaged in real estate business, registration with the HLURB or HUDCC shall be sufficient. In case the seller is not registered with HLURB or HUDCC, it may be proven through other satisfactory evidence. Notwithstanding the foregoing, banks shall not be considered as habitually engaged in the real estate business.

In case the entity is considered as Special Purpose Vehicle (SPV), it is not automatic that the entity will be considered as bank, since not all SPV are banks within the definition set by Republic Act No. 9182, otherwise known as The Special Purpose Vehicle Act of 2002. Section 15 of The SPV Act of 2002 also provides tax exemptions, incentives and fee privileges to Financial Institutions and SPV.

Taxpayer’s failure to substantiate its claim will uphold the BIR’s assessment

(Commissioner of Internal Revenue, v. Global Quickservice Restaurant, Inc., CTA EB No. 1393, March 15, 2017)

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The CTA ruled that in transactions that involve distribution and sharing of supplies between affiliates, the transfers and replenishment must be shown through proper documentation. The taxpayer is required to prove that no income or profit was derived from the transaction, otherwise, it will fall in deemed-sale transactions. The BIR will assess the taxpayer for the deficiency of tax for that deemed-sale transaction.

The failure of the taxpayer to prove its contention will sustain the assessment of the BIR. Further, any expense items claimed by the taxpayer will be disallowed in case there is a failure to substantiate the same.

Compromise penalties should only be exacted on the taxpayer upon his/her conformity since they are only applicable in the settlement of criminal liability.

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