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Tax brief

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BIR Issuances

Mandatory updating of taxpayers' registration in Makati

All taxpayers registered in the Makati BIR region (Non-Individual & Individual Taxpayers) are mandated to update their registration records for the following information:

Non-Individual: (Corporation/Partnership/ Others)
- Contact method- email address
- SEC Registration
- Contact Person and TIN of the Contact Person
- Line of Business/ PSIC

Individual: (Single Proprietor/Professional)
- Name of Father
- Name of Mother
- Place and Date of Birth
- Contact Method: email address
- DTI- Business Name
- Line of Business/PSIC

Updated BIR forms 1901 (for individuals) and 1903 (for corporations/partnerships) should be submitted to the Revenue District Offices (RDO) where the taxpayer is registered.

New daily minimum wage rates in CAR

(Revenue Memorandum Circular No. 51-2017, July 20, 2017)

The new minimum wage rates in CAR pursuant to Wage Order No. RB-CAR-18 have been circularized, as follows:

in Php			
Sector/ Industry	Baguio City & La Trinidad	Tabuk City, Bangued, Bontoc, Lagawe, Banaue. Buguias, Bauko, Sagada & Tublay	Other areas in the region
All industries/ Sectors employing 11 or more	BASIC + COLA	BASIC + COLA	BASIC + COLA
	285 + 15	275 + 15	265 + 15
	300	290	280
All industries/ Sectors employing 10 or less	BASIC + COLA	BASIC + COLA	BASIC + COLA
	270 + 15	265 + 15	255 + 15
	285	280	270

Covered workers in Itogon, Sablan and Tuba shall continue to receive the minimum wage rates of Php 285 basic rate per day in all industries and Php 270 basic rate per day for microenterprises.

New daily minimum wage rates in Region VII
(Revenue Memorandum Circular No. 52-2017, July 20, 2017)

The new minimum wage rates in Region VII pursuant to Wage Order No. ROVII-20 have been circularized, as follows:

In Php			
GEORGRAPHIC AREAS	**NON-AGRICULTURE**	**AGRICULTURE**	
		NON-SUGAR	**SUGAR**
	NEW BASIC WAGE		
CLASS A Cities of Carcar, Cebu, Danao, Lapulapu, Mandaue, Naga, Talisay Municipalities of Compostela, Consolacion Cordova, Liloan, Minglanilla, San Fernando, or Expanded Metro Cebu	366	348	316
CLASS B Cities of Toledo, Bogo, and the rest of Municipalities in Cebu Province except Bantayan and Camotes Islands	333	318	303
CLASS C All cities and municipalities in Bohol & Negros Oriental provinces	323	303	303
CLASS D Municipalities in Siquijor Province & Municipalities in Bantayan and Camotes Islands	308	288	303

SEC Opinion

Equity restructuring options to increase par value

(SEC-OGC Opinion No. 17-06, July 24,2017)

A company requesting for an increase in par value may undertake any of these 2 options.

1. Option 1 - Increase the par value while maintaining the number of shares:

- Step 1: Reverse stock split. This involves a simultaneous reduction in the number of shares and increase in par value in order to maintain the level of authorized capital stock (ACS).

- Step 2: Increase the ACS

The company may then increase its ACS through amendment of its articles of incorporation, provided that 25% of the increased ACS has been subscribed and 25% thereof has been paid in either actual cash or property.

For Option 1, separate applications must be filed with the SEC. Said applications may be simultaneous. Thus, approval of the reverse stock split need not precede the application for ACS increase.

2. Option 2 - Increase the par value while maintaining its ACS
A company may opt for a reverse stock split similar to the first item in Option 1 above. Company may determine early on if fractional shares may arise and so that the company can repurchase them as treasury shares at a pre-determined price. Both scenarios will lead to the cancellation of current stock certificates and the issuance of new ones.

CTA Decisions

Assignment of errors must specify the points for reversal

(Commissioner of Internal Revenue v. Manulife Data Services, CTA EB No. 1547, July 05, 2017)

Litigants have to specify the alleged errors committed by the lower court. A general assignment of errors is not acceptable under the rules and established jurisprudence, thus the appellant has to point out the aspect of the law that the trial court erred in order to allow the reviewing court and the opposing party to see the points for reversal and to focus discussions on the said points.

In this case, the BIR filed a petition for review and reversal of the CTA decision in Division partially granting the application for refund of input VAT. The BIR claimed that the taxpayer was not able to fully substantiate its claim for refund of alleged unutilized input VAT on purchases of goods and services attributable to its zero-rated sales, in particular, on the stating of the required information in the VAT invoice or official receipt.

The Court ruled that the arguments are in the nature of general assignments of error. The BIR has the responsibility to specifically pinpoint which of the invoices or official receipts failed to comply with the substantiation requirements under Sec. 110 and 113 of the 1997 NIRC as implemented by Sec. 4.110-8 of RR No. 16-2005. The Court dismissed the petition.

Non-retroactive application of circulars and rulings

(Rowena Vicente Et al. v. Commissioner of Internal Revenue, CTA Case No. 9096, July 7, 2017)

Pursuant to Sec. 246 of the 1997 NIRC, rulings or circulars shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers. Exceptions are when there is misstatement or omission of material facts from the taxpayer's return, and when the taxpayer acted in bad faith. That is, facts from the BIR findings are materially different from the facts provided by the taxpayer on which the ruling is based. In such cases, circulars, rulings, rules and regulations would have no retroactive application should they be prejudicial to taxpayers.

In the case at bar, the legality of Sec. 2(d) (1) of RMC No. 31-2013 was challenged. The circular provides that only officers and staff of the Asian Development Bank who are not Filipino nationals are exempt from income tax. Hence, the BIR ordered the Filipino employees to pay taxes from 2012 onwards as the RMC issued in 2013 was given retroactive effect to cover 2012 income. The employees applied for refund of the taxes they paid for 2012 and 2013 which they claimed were erroneously paid.

The CTA granted the refund for taxable year 2012. The CTA declared that, on the basis of Sec. 246 of the Tax Code, the interpretation issued in 2013 cannot be retroactively applied to taxable year 2012. Since the establishment of the ADB headquarters in the Philippines after 1967, the BIR has not enforced the taxation of Filipino ADB employees. Instead, in various pronouncements prior to 2013, the BIR has acknowledged or confirmed the income tax exemption. It was only through the 2013 RMC that there was an official pronouncement on the liability of the Filipino employees.

The RMC already caused serious prejudice to the Filipino employees who relied heavily on the pronouncements/ interpretations made by the government officials in prior years. The Filipino employees were not ready to incur such huge tax obligations for the past taxable year 2012, neither were they prepared to face the grim prospect of law suits and potential garnishment of their bank deposits and assets if they fail to settle such deficiency income tax assessment.

SEC Opinions

Filipino ADB employees are not exempt from income tax

(Rowena Vicente Et al. v. Commissioner of Internal Revenue, CTA Case No. 9096, July 7, 2017)

Article 56(2) of the ADB charter provides that "No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to the Directors, alternates, officers or employees of the Bank, including experts performing missions for the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member."

In the presidential ratification which followed the ratification of the ADB charter, then President Marcos declared that the Philippine government "retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to its citizens or nationals of the Philippines."

The CTA pronounced that this particular statement overrules and clarifies any semblance of tax exemption accorded by the international agreement pertaining to Filipino employees of the ADB and upholds the applicability of national laws on taxation insofar as their compensations are concerned.

The CTA acknowledged that the clarifications provided by RMC 1-2013 as to the taxability of the compensation received by the Filipino employees is in accord with the law. It does not require an enactment of an enabling law to put this into effect because the Philippines had already enacted its own Tax Code at the time of the ratification of the ADB Charter imposing the types and rates of tax of citizens of the Philippines. Sec. 23 of the 1997 NIRC provides that Filipino citizens are taxable on their income derived from within and outside the country.

Procedural rules in the filing of a CTA appeal

(Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation, CTA EB No. 1410; Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, CTA EB No. 1414 re: CTA Case Nos. 7696 and 7728, July 11, 2017)

Pursuant to Sec. 1, Rule 8 of the Revised Rules of the CTA, the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial.

Based on sec. 18 of RA No. 1125, as amended by RA No. 9282, An Act Expanding the Jurisdiction of the CTA, an appeal should be filed with the CTA prior to a civil proceeding involving matters arising under the NIRC, the Tariff and Customs Code or the Local Government Code. Hence, a motion for reconsideration or new trial resolved by a CTA decision must precede an appeal to the CTA En Banc. Failure to timely file a motion for reconsideration will result in the dismissal of the appeal. The same also applies to an amended decision.

An amended decision is a different decision which mandatorily requires the filing of a timely motion for reconsideration or new trial with the CTA division before filing an appeal to the CTA En Banc.

In the present case, petitions for review of the amended decision were filed directly with the CTA En Banc. The petitions for review were denied for failure to move a reconsideration of the amended decision. Consequently, the amended decision has attained finality.

Non-bank financial intermediaries are subject to LBT

(Te Deum Resources, Inc. v. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA AC No. 150, July 19, 2017)

Non-banking financial intermediaries perform the functions of a financial intermediary which include holding assets consisting primarily of debt or equity securities such as stocks, bonds, promissory notes, bills of exchange, mortgages and commercial papers.

CTA Decisions

Non-bank financial intermediaries are subject to local business tax

In the issue at bar, the company is applying for the refund or credit of local business tax (LBT) paid on dividends received for owning shares of stocks of San Miguel Corporation (SMC). It argues that ownership of shares does not automatically classify it as a non-bank financial intermediary. It further contends that it is a mere holding company and is not engaged in lending, investing or trading securities on a regular basis. Petitioner's primary purpose according to its Amended Articles of Incorporation include purchasing, subscribing, acquiring, owning shares of stock, bonds, debentures, notes, among others. Specifically, it owns a substantial number of shares of stock in SMC. The Court notes that the dividends it regularly receives and the profit from its money market placements are not considered incidental to its business but are the principal sources of income of the petitioner in the regular course of its business. These functions fall within the definition of a non-bank financial intermediary. Hence, the company is deemed a nonbank financial intermediary subject to LBT on its dividend and other income.

Income payments to city governments are exempt from CWT

(Conal Holdings Corporation v. Commissioner of Internal Revenue, CTA Case No. 9099, July 17, 2017)

Withholding of creditable withholding tax (CWT) shall not apply to income payments made to national government agencies and its instrumentalities including provincial, city or municipal governments and barangays, except government-owned and controlled corporations, pursuant to Sec. 2.57.5(A) of RR No. 2-98.

In the present case, a corporation was assessed for failure to withhold tax on its payments for the purchase of the diesel power plants, classified as real properties, owned by the City Government of Iligan. The power plants were originally owned by the Northern Mindanao Power Corporation but were levied for failure to pay real property taxes. The City was unsuccessful in selling the property in a tax delinquency auction, hence ownership was transferred to the City. It was again offered for sale since the City Government is not capable of operating the power plants.

Under Sec. 2.57.2(J) of RR 2-98, all sale of real property, other than land or building treated as capital assets, are subject to expanded withholding tax, However, the same section provides for exemption from the withholding tax for entities listed under Sec. 2.57.5 which includes city governments.

It is clear that the company is not liable to the deficiency withholding tax assessed on its income payments to the City Government of Iligan.

Conditions for exemption of nonstock nonprofit religious charitable organizations

(Perpetual Succour Hospital of Cebu v. Commissioner of Internal Revenue, CTA Case No. 8912, July 25, 2017)

Sec. 30(E) of the 1997 NIRC provides that nonstock corporation or association organized and operated exclusively for religious or charitable purposes shall be exempt from income tax provided that no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person. This section further provides that if a tax exempt charitable institution conducts 'any' activity for profit, such activity is not tax exempt even as its not-for-profit activities remain tax exempt.

The corporation, in this case, is a religious, non-stock, non-profit and charitable institution operating a hospital.

The CTA highlighted that, notwithstanding its nature, the company must continually satisfy the requirements provided for by law for tax exemption in order to enjoy immunity from taxation. The BIR is not precluded from conducting an investigation in order to insure that taxpayer continuously meets the criteria for exemption for each taxable year.

CTA Decisions

The hospital was generating revenues from paying patients. It is not "operated exclusively for charitable purpose". Hence, the income tax exemption cannot apply. Instead, the hospital shall be subject to the 10% tax on net income.

The BIR also noted that the hospital gave donations and support, lodged as part of general and administrative expenses, to the congregation that formed and operates the hospital. The articles of membership of the corporation would show that the membership includes the provincial superior, provincial assistants and members of the congregation assigned to the hospital. The BIR argued that, by giving donations to the congregation, the company violated the condition that no benefit shall inure to any member. The CTA, however, noted that the BIR was not able to prove that the donations to the congregation inured to the benefit of the members of its board of trustees in their individual capacity. Consequently, the inurement issue was deemed only a presumption and cannot be upheld by the Court.

Similarly, in this case, the Court noted that the company appears to have honestly believed in good faith that it is not liable to pay the tax assessed because of the previous findings of the Court in CTA Case No. 7304. Thus, the assessment for interest and compromise penalty shall likewise be deleted on the basis of good faith and honest belief on the part of the company that it is not subject to tax.

VAT passed on to RE developers should be refunded from the supplier, not the government

(Hedcor Sibulan, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8990, August 01, 2017)

Pursuant to Sec. 108(B)(7) of the 1997 NIRC, as amended by RA No. 9337, and Sec. 4. 108-5 of RR No. 16-2005 which implements the said provision state that sale of power or fuel generated through renewable sources is among the transactions subject to 0% VAT, provided that it shall not extend to the sale of services related to the maintenance or operation of power-generating plants.

Furthermore, according to Sec. 15(g) of RA No. 9513 or the Renewable Energy Act of 2008, all renewable energy developers are entitled to zero-rated VAT on the purchases of local supply of goods, properties and services used for the development, construction and installation of its plant facilities, including the whole process of exploring and developing energy resources up to conversion into power.

In this case, the Company is engaged in the business of generating electricity from hydropower. It has been issued a Certificate of Compliance by the Energy Regulatory Commission. Its sale of electricity to the Napocor is subject to zero percent VAT. Being a RE developer, it is also entitled to zero-rated VAT on its purchases of local supply of goods, properties and services. However, some of its supplies subject its purchases to VAT. The company, therefore, applied for issuance of Tax Credit Certificate on its unutilized input VAT arising from its zero-rated sale.

The CTA ruled that, purchases of goods and services of the company as an RE developer should be VAT-free. Therefore, no input VAT should be paid by the company. The claim for input tax credit was denied. The CTA decided that the proper party to seek the reimbursement of the input VAT should be the seller who shifted the output VAT, instead of the government.

CTA Decisions

PAN is mandatory

(Travel Warehouse, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9103, August 7, 2017)

Issuance of a Preliminary Assessment Notice (PAN) is mandatory; absence thereof shall render the assessment invalid.

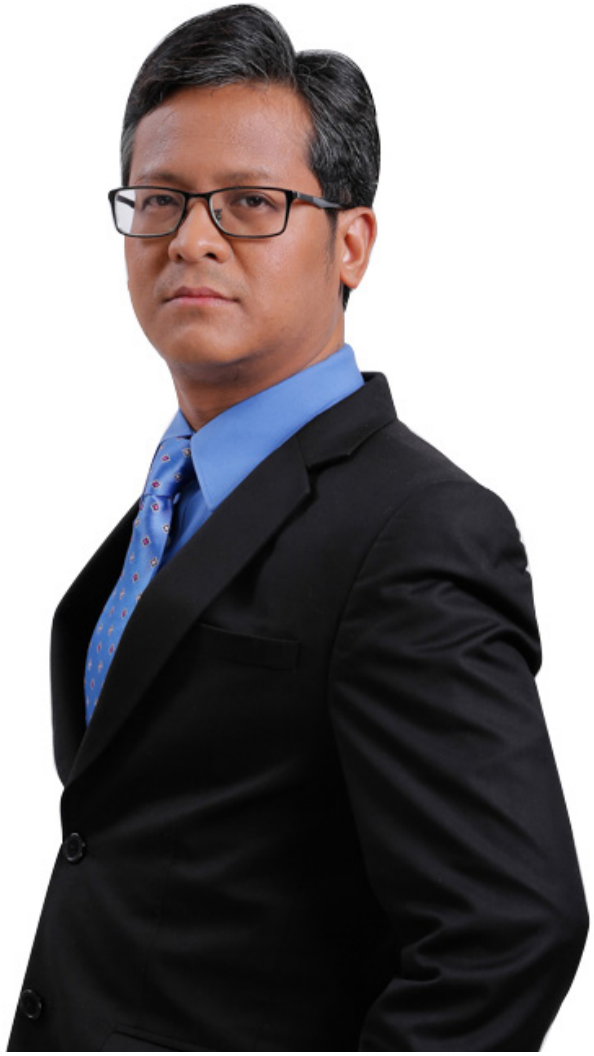
Sec. 3 of Revenue Regulations No. 18-2013 prescribes that, in a deficiency tax assessment, the BIR shall issue a PAN which states the facts and the law on which the assessment was based. Should the taxpayer fail to respond within 15 days from receipt thereof, a Formal Letter of Demand and Final Assessment Notice (FAN) shall be issued.

In the case at bar, the company received both the PAN and FAN prior to the lapse of the 15-day period given to reply to the PAN. This is clearly a violation of the taxpayer's right to due process, rendering the assessment void. Escalation in the levels of protest at the FAN issuance leaves a few options for the taxpayer, i.e. going to the CTA or entering into a compromise settlement, which can create financial burden to the taxpayer. Thus, the mandatory period of 15 days to assail the PAN is integral to the taxpayer's right to due process."

Highlight on P&A Grant Thornton services

CTA litigation support

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



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