Tax brief

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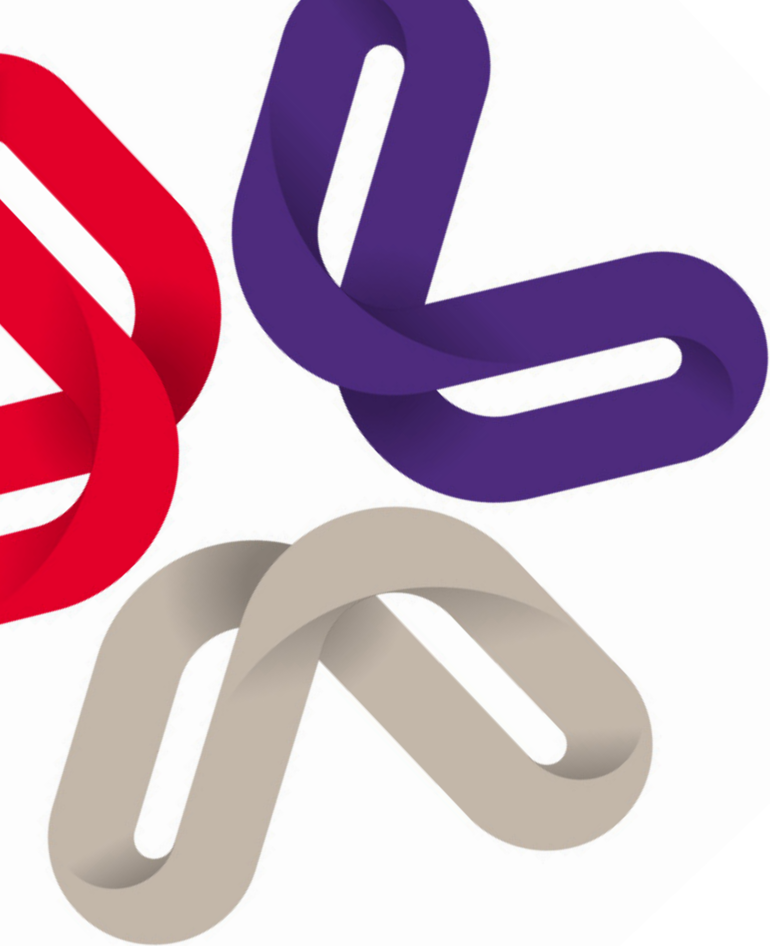

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BIR Issuances

Internal revenue stamps on cigarettes

(Revenue Regulations No. 6- 2017, October 12, 2017)

This regulation amends Revenue Regulations (RR) No. 7- 2014, as amended by RR 9- 2015, which provides that security features of the stamps be affixed on imported and locally manufactured cigarettes, whether for domestic sale or for export.

Internal revenue stamps are now narrowed down to 5 different color designs from the previous 6, irrespective of how cigarettes are packed. These stamps may be ordered in banderols, or pre-cut/stack, or in sheets according to the machine requirements of the importer or the local manufacturers. Each internal revenue stamp shall cost P0.15 centavos per piece, to be paid by the importer or local manufacturer of cigarettes to APO, the government printing office, before the stamps are released.

The internal revenue stamp shall be affixed at the upper portion of the immediate container of the cigarettes, including those packages containing cigarettes packed in 5 sticks and/or 10 sticks. Packages containing 5 sticks and/or 10 sticks that are bundled in packs of 20s and other packaging combinations of not more than 20 shall be taxed as one. However, the number of internal revenue stamps affixed shall be equivalent to the number of packs bundled together.

All locally manufactured packs of cigarettes shall be removed from place of production for the affixture of new internal revenue stamps on or before January 1, 2018. Effective June 1, 2018, no importation and subsequent release of cigarettes from customhouse shall be allowed unless new internal revenue stamps are affixed.

By September 1, 2018, all cigarettes manufactured in the Philippines and/or imported into the Philippines shall be affixed with the new stamps.

Guidelines in handling transfer of ITS/eTIS data and other records

(Revenue Memorandum Order No. 25- 2017, October 4, 2017)

In line with the objective to expand the large taxpayers' registry, a roster of newly-enlisted large taxpayers under the Large Taxpayers Service (LTS) was approved by the Commissioner of Internal Revenue (CIR). There were also transfers of large taxpayers from their current registration to other Large Taxpayers District Offices (LTDO) or to the Large Taxpayers Service (LTS) at the National Office as a result of the closure of LTDO Makati and the opening of LTDO Davao. This resulted to the transfer of existing large taxpayers from their current RDO/LTS audit divisions to a new one.

Transfer of Integrated Tax Systems/Electronic Tax System (ITS/eTIS) registration records Development and Operations Service (ISDOS) upon receipt of the List of Taxpayers for transfer as approved by the Commissioner. BIR Form No. 1905 shall be accomplished and submitted by taxpayers transferring the registration of their eTIS. A new Certificate of Registration (COR) shall be issued to the taxpayers in exchange of the old COR upon successful transfer of data. Pending applications shall be handled by the taxpayer's new LTS office. All newly-enlisted large taxpayers shall enroll with the Electronic Filing and Payment System (eFPS) within 30 days from receipt of the notification as large taxpayer.

All returns of the newly-enlisted/ transferred large taxpayers shall be filed with the new LTS office having jurisdiction over the said taxpayers using the eFPS facility. Newly-enlisted taxpayers that are not yet enrolled with eFPS shall submit their application with the required documents at the LTS office having jurisdiction over them. During the transition period, taxpayers not yet enrolled with eFPS shall be allowed to manually file their tax returns and pay taxes due thereon at the Authorized Agent Banks (AABs), until such time that they are enrolled with eFPS.

Investigation and assessment against taxpayers conducted prior to the effective date of transfer shall be continued by the issuing office. Collection from such audit shall be credited to the same office

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which conducted the investigation. Proper reconciliation of collection shall be carried out by the Revenue Accounting Division (RAD) in coordination with LTD to effect adjustment.

All large taxpayers are mandated to adopt Computerized Accounting Systems (CAS).

Alphanumeric tax code for microfinance NGOs

(Revenue Memorandum Order No. 27- 2017, October 4, 2017)

To facilitate the proper identification of tax collection from Microfinance NGOs pursuant to Republic Act No, 10693, otherwise known as the "Microfinance NGOs Act", which was implemented by Revenue Regulations No. 3-2017, the following ATC has been created for purposes of paying the 2% tax:

ATC	Description	Tax Rate	Legal Basis	BIR Form
PTT118	Preferential tax rate on Microfinance NGOs	2%	SEC. 20 of RA No. 10693 RR No. 3-2017	2551M

New daily minimum wage rates in Region II, Region IV-B, and NCR

(Revenue Memorandum Circular Nos. 86 to 88- 2017, October 12, 2017)

The new minimum wage rates in Region II, Region IV-B, and NCR have been circularized, as follows:

Sector/Industry	New Daily Minimum Wage Rate
Region II	
A. Non- Agriculture & Retail/Service - w/ > 10 workers	Php 340.00/day
B. Agriculture	Php 320.00/day
C. Retail/Service - w/ 10 workers and <	Php 300.00/day
Region IV-B	
A. Establishments w/ 10 workers and above	Php 300.00/day
B. Establishments w/ less than 10 workers	Php 282.00/day
National Capital Region	
A. Non-Agriculture	Php 512.00/day
B. Retail/Service - with less than 10 workers	Php 475.00/day

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Failure to file a timely appeal with CTA EB renders the decision final

(Commissioner of Internal Revenue v Acer Philippines, Inc., CTA EB No. 1690 re: CTA Case No. 8372, October 2, 2017)

Under Section 3 (b) Rule 8 of the 2008 revised rules of the Court of Tax Appeals (CTA), a party who wishes to file an appeal with the court En Banc (EB) from a decision or resolution of the division in court, may do so by filing a petition for review within 15 days from receipt of the questioned decision/resolution.

Settled is the rule that the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by law. The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed. Thus, failure to perfect an appeal within the prescribed 15-day period is not a mere technicality but jurisdictional, and failure to perfect an appeal renders the judgment final and executory.

Reimbursement of input VAT from suppliers of goods or services

(Hedcor, Inc. v Commissioner of Internal Revenue, CTA Case No. 8931, October 3, 2017)

Pursuant to RMO No. 53-1998, a claim for refund for the excess and unutilized input VAT shall be substantiated with supporting documents to back-up the claim. Without proper documentation showing full compliance with all the requirements for claiming unutilized input VAT, a claim for refund must fail.

The court held that in order to be entitled to a refund or issuance of tax credit certificate of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be met:

1. That the taxpayer is VAT-registered;
2. That the claim for refund was filed within the prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid;
5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

The court established that in instances when petitioner paid input VAT, notwithstanding that under the law it is subject to VAT at zero percent rate, petitioner's recourse is not against the government, but against the seller who shifted the output VAT. RMC No. 42-03 is clearly instructive on this matter.

Hence, the claim for input tax credit by the exporter-buyer was denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

Probable cause to issue warrant of arrest

(People of the Philippines v Market Solution/Bremel Peter R. Guiao, CTA Crim Case No. O-650, October 3, 2017)

Failure to pay tax shall be a ground for criminal offense to be charged under Section 255 of the 1997 Tax Code, as amended. Section 253 (d) of the same code, provides the persons to be held liable in case the crime is alleged to have been committed by a juridical person.

The main issue in this case is whether there is probable cause to issue the warrant of arrest on the president of the company which is being charged for tax evasion.

Based on the supporting documents submitted, the court finds that there is

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no probable cause to issue a warrant of arrest on the president for the following reasons:

a. There is a discrepancy in the name of the accused in the Information (Market Solution/ Bremel Peter Guiao) and the name appearing in the records of and notices/assessment by the BIR (Market Solutions Corporation).

b. There is also a discrepancy in the Referral Letter issued by Commissioner of Internal Revenue (CIR) which referred the case to the Department of Justice for the filing of Information. The referral letter cites "Market Solutions Corporation" while the Information contained the name "Market Solution" as the accused.

c. There are discrepancies in the type of taxes and total amount of deficiency taxes indicated in the Information filed with the CTA, the Referral Letter issued by the CIR, and the Resolution issued by the DOJ Task Force on BIR cases which was prepared and signed by the Assistant State Prosecutor.

d. The Information filed against the accused, identified someone as the President of "Market Solution" but failed to prove that he was acting in said capacity at commission of the crime described in Section 255 of the 1997 NIRC. No document was submitted to show that the accused is the President of "Market Solution" when the alleged violation of Section 255 of the 1997 NIRC took place.

In view of the foregoing, the case was dismissed.

Prior application for tax treaty not mandatory

(Commissioner of Internal Revenue v Lufthansa German Airlines- Philippine Branch, CTA EB No. 1489 re: CTA Case No. 8601, October 3, 2017)

RMO No. 1-2000 prescribes the procedures for processing tax treaty relief applications, amending RMO No. 10-1992.

In this case, the CIR insisted that failure to file an application to avail the benefit of the tax treaty provisions is a ground for denial of the preferential tax rates. It further stated that the availment of tax treaty provision is not ipso facto granted to the taxpayer who wishes to avail of the benefits of the tax treaty. Certain procedures must be complied with to be entitled to the benefits of the said tax treaty.

The CTA en banc ruled in favor of the taxpayer. As ruled in the Deutsche Bank case, non-compliance with RMO No. 1-2000 does not automatically deprive a taxpayer of the benefits provided under Philippine tax treaties. The CTA explained that non-compliance with the prior application rule as required by RMO No. 1-2000 should not operate to automatically divest entitlement to the tax treaty relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty. Hence, a prior application for tax treaty relief is not mandatory before a taxpayer may enjoy the relief provided under Philippine tax treaties.

Complaint shall be properly subscribed and sworn

(People of the Philippines v Arnel F. Hibo et. al, CTA Crim Case No. O-652, October 4, 2017)

Section 3 of Rule 112 of the revised rules of court prescribes that the complaint be subscribed and sworn to before the prosecutor. This was further emphasized by the Supreme Court in the case of Visitacion L. Estodillo, et. al, and Judge Teofilo D. Baluma when it made a distinction between information and complaint.

In this case, upon review of the Joint Complaint-Affidavit, it was found out that the said affidavit was not properly subscribed and sworn to before the prosecutor as there was no signature over

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the stamped name. The CTA dismissed the case for non-compliance with Section 3, Rule 110 and Section 3, Rule 112 of the Revised Rules of Court.

Inaction of CIR's authorized representative on a protest cannot be appealed to the CIR

(Philippine Electric Corporation v Commissioner of Internal Revenue, CTA Case No. 8793, October 10, 2017)

In case a protest is denied, the SC enumerated options available to a taxpayer under Section 228 of the NIRC of 1997, as amended, and as implemented by Section 3.1.5 of RR No. 12-99.

Following the verba legis doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer only three options:

1. If the protest is wholly or partially denied by the CIR or his authorized representative, the taxpayer may appeal to the CTA within 30 days from receipt of the denial of the protest.
2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the denial of the protest.
3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA.

There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.

Input VAT of the absorbed company may be claimed as refund by the surviving company in a merger

(WNS Global Services Philippines, Inc. v Commissioner of Internal Revenue, CTA Case No. 8574, October 10, 2017)

Section 4.106-8 (3) of RR No. 16-2005, as amended, explicitly provides for the absorption of the unused input tax in the event of a merger or consolidation of corporations. The unused input tax of the dissolved corporation, as of the date of merger or consolidation, shall be absorbed by the surviving or new corporation.

In this instant case, petitioner-taxpayer, being the surviving corporation in a merger, and as such has, by operation of law, absorbed all of the assets and liabilities of the absorbed corporation, including its input VAT, has legal standing to institute the instant claim for refund of the absorbed corporation's unutilized input VAT for the year the merger took place.

Denied claim for VAT refund is a deductible loss

(Maersk Global Service Centers (Philippines) Ltd. v Commissioner of Internal Revenue, CTA Case No. 8934, October 11, 2017)

Section 108 (B)(4) of the NIRC of 1997, as amended, provides that services rendered to persons engaged in international shipping or international air transport operations are zero-rated.

Under the provision above, herein petitioner-taxpayer filed a refund or tax credit for its excess input VAT attributable to zero-rated sales. However, DOF denied the claim on the grounds that invoicing requirements for zero-rated transactions were not substantially complied with. In view of the denial, taxpayer wrote off the amounts in its books and claimed it as deduction from gross income. The BIR

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disallowed the deduction which resulted to an assessment for deficiency income tax. The BIR alleged that the deduction was not supported with documentary requirements for the deductibility of bad debts.

Section 34(D)(1)(a) of the 1997 NIRC, as amended provides that a loss actually sustained during the taxable year, which is not compensated by insurance or otherwise, shall be deductible from gross income if the same is incurred in trade or business.

Taxpayer's claim for VAT refund was denied by the Department of Finance (DOF) due to non-compliance with invoicing requirements on its zero-rated sales. The propriety of the substantiation of its input VAT was never questioned. The input VAT, the application for refund, and the writing off as bad debt upon the denial were properly recorded in its books.

The CTA notes that the use of the account name "bad debts" does not necessarily equate to the bad debts expense under the Tax Code. In this case, the account refers to a deductible loss. A loss is defined as "an undesirable outcome of a risk; the disappearance or diminution of value, usually in an unexpected or relatively unpredictable way."

Accordingly, petitioner properly considered the amount pertaining to the denied VAT refund claim as a loss, which could be deducted from its gross income in CY 2010 (i.e., the year when it received the DOF' s letter of denial).

Section 34(D)(1)(a) of the 1997 Tax Code provides that a loss actually sustained during the taxable year, which is not compensated by insurance or otherwise, shall be deductible from gross income if the same is incurred in trade or business.

Section 96 of Revenue Regulations No. 02-40 provides that losses, in general, must be evidenced by closed and completed transactions. An actual loss may be claimed as a deduction from gross income if the following requisites are present:

1. The loss is actually sustained by the taxpayer;
2. The loss is sustained during the taxable year;
3. The loss is not compensated by insurance or other forms of indemnity;
4. The loss is incurred in the taxpayer's trade, profession, or business; and
5. The loss is evidenced by a closed and completed transaction.

On this basis, the denied VAT refund claim was a valid loss properly deductible from gross income in the year the refund was denied. The loss was actually sustained when the DOF denied the refund considering that the taxpayer no longer had any reasonable expectation to classify the same as a receivable. The loss was incurred in the conduct of its trade or business, i.e., the denied input VAT arose from its zero-rated sale of services. The DOF categorically slated in its denial letter that the claim for issuance of TCC "cannot be given due course."

The court ruled that it was proper to consider the amount of denied VAT refund as a loss which could be deducted from gross income.

BPRT cannot be imposed on the accumulated earnings account of a Philippine branch

(Maersk Global Service Centers (Philippines) Ltd. v Commissioner of Internal Revenue, CTA Case No. 8934, October 11, 2017)

Under Section 28(A)(5) of the 1997 NIRC, Branch Profit Remittance Tax (BPRT) at the rate of 15% of the total profits applied or earmarked for remittance is imposed on a Philippine branch of a foreign corporation.

It is not proper to impose the BPRT on the entire accumulated profits of the branch as a constructive remittance of profits.

Under the branch accounting principles in the Philippines, the net income is a standard component or entry under the Head Office Account, which entry is added to the Accumulated Earnings of the previous year in order to arrive at the

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Accumulated Earnings as of the end of the current year. The mere fact that Accumulated Earnings was booked under the Head Office Account does not automatically mean that said accumulated earnings were already applied or earmarked for remittance to the head office.

The BIR's allegation of a constructive remittance of profits cannot be countenanced. Section 28(A)(5) of the 1997 Tax Code requires that profits be applied or earmarked for remittance to the head office in order for the BPRT to apply. If there was no proof of actual remittance or earmarking for remittance, remittance cannot be alleged.

Refund claimant is not bound to prove actual remittance of the withholding taxes

(Honda Cars Makati, Inc. v Commissioner of Internal Revenue, CTA Case No. 8806, October 18, 2017)

Under Section 2.58.3 (B) of RR No. 2-98, the proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. The payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice a taxpayer-refund claimant who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee.

Herein petitioner-taxpayer then, has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is its agent. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by itself to the government through said agents. Pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for petitioner-taxpayer, claimant in this case, to prove actual remittance by the withholding agent (payor) to the BIR.

BIR's power to rule on compliance of a PEZA enterprise with its PEZA registration agreement

(AGM Packaging System Ltd. Corp. v Commissioner of Internal Revenue, CTA Case No. 8947, October 20, 2017)

The BIR has the authority to declare whether an entity registered with the Philippine Economic Zone Authority (PEZA) has violated its PEZA registration agreement and assess the resulting deficiency taxes.

The Court stressed that the power and duty to assess national internal revenue taxes are vested upon the BIR as provided under Sections 2 and 6 of the Tax Code of 1997, as amended. Moreover, RR No. 27-2002 provides the authority of BIR to assess the five percent (5%) special income tax under RA No. 7916, as amended by RA No. 8748. Therefore, the BIR's power to assess necessarily includes the power to determine whether the taxpayer is qualified to avail of the preferential income tax rate granted to PEZA registered entities.

Consequently, in the exercise of his power to assess, the BIR may also declare whether a PEZA registered entity violated its PEZA Registration Agreement and whether it is qualified to avail of the tax and fiscal incentives provided under the PEZA law.

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Income of financial institutions owned by a foreign government is exempt from Philippine income tax

(Monetary Authority of Singapore v Commissioner of Internal Revenue, CTA Case No. 8973, October 20, 2017)

Section 32 (B) (7) (a) of the NIRC of 1997, as amended, clearly exempts financial institutions owned and controlled by foreign governments from payment of income tax on income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines.

In this case, the taxpayer, the Monetary Authority of Singapore (MAS), applied for refund of final taxes erroneously withheld on its investments in the Philippines.

The BIR alleged that it failed to prove that it is a financing institution wholly-owned by the government of Singapore. BIR also cites that the investments in fixed-rate treasury notes were done through its custodians and not by institution itself.

The CTA ruled that the MAS has proven that it is a financing institution wholly-owned by the government of Singapore. Furthermore, it has sufficiently established that it acquired from various primary purchasers/government securities eligible dealers several investments in the form of interest-bearing fixed-rate treasury notes issued by the Philippine government through the Bureau of Treasury. The CTA held that the interest income derived therefrom are exempt from FWT.

Hence, the refund is proper.

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