



P&A
Grant Thornton

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Tax brief

February 2018





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Revised tax rates on mineral products

(Revenue Regulations No. 1-2018)

Pursuant to the Tax Reform for Acceleration and Inclusion (TRAIN) Law, the following shall be the applicable rates and bases of excise tax on minerals:

Mineral	Excise Tax Rate	Tax Base
Domestic and imported coal and coke regardless of any exemption under other laws	January 1, 2018 - Fifty Pesos (P50.00)	Metric Ton
	January 1, 2019 - One hundred pesos (P100.00)	
	Starting January 1, 2020 - One hundred and fifty pesos (P150.00)	
Nonmetallic minerals and quarry resources (except locally extracted natural gas and liquefied natural gas)	4%	Locally extracted/produced - Actual market value of the gross output at the time of removal
	4%	Imported - Value used by the BOC in determining tariff and customs duties (Net of excise tax and VAT)

Metallic minerals	4%	Locally extracted/produced - Actual market value of the gross output at the time of removal
	4%	Imported - Value used by the BOC in determining tariff and customs duties (Net of excise tax and VAT)
Indigenous petroleum	6%	Fair international market price on the first taxable sale, barter, exchange or such similar transaction

Rules in determining Gross Output:

- Gross output refers to the actual market value of minerals or mineral products or of bullion from each mine or mineral land operated as a separate entity.
- No deduction from mining, milling, refining, (including all expenses incurred to prepare the said minerals or mineral products in a marketable state), as well as transporting, handling, marketing or any other expenses.
- If the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted.
- In the case of mineral concentrate not traded in commodity exchanges in the Philippines or abroad, such as copper concentrate, the actual market value shall be the world price quotations of the refined

mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining and other charges incurred in the process of converting the mineral concentrates into refined metal traded in those commodity exchanges.

Revised tax rates on petroleum products

(Revenue Regulations No. 2-2018)

Pursuant to the TRAIN Law, the following shall be the applicable rates on refined and manufactured oils and motor fuels:

Products	Effectivity		
	January 1, 2018	January 1, 2019	January 1, 2020
a. Lubricating oils and greases b. Locally produced or imported oils c. Processed gas d. Waxes and petrolatum e. Denatured alcohol f. Asphalts	P8.00	P9.00	P10.00
g. Naphtha. Regular gasoline, pyrolysis gasoline h. Unleaded premium gasoline	P7.00	P9.00	P10.00
i. Kerosene	P3.00	P4.00	P5.00
j. Aviation turbo jet fuel, aviation gas, and kerosene when used as aviation fuel	P4.00	P4.00	P4.00
k. Diesel fuel oil l. Liquefied petroleum gas used for motive power m. Bunker fuel oil n. Petroleum coke	P2.50	P4.50	P6.00
o. Liquefied petroleum gas	P1.00	P2.00	P3.00
p. Naphtha and pyrolysis gasoline when used either in the productions of	P0.00	P0.00	P0.00

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petrochemicals, refining of petroleum products, or as replacement fuel for natural gas fired plants; liquefied petroleum gas when used either in the productions of petrochemicals; petroleum coke when used as feedstock to any power generating facility			
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Above revised excise tax rates shall not apply to lubricating oils and greases produced from base stocks and additives, and denatured alcohol mixed with gasoline on which the excise tax has already been paid. In case of the latter, only the alcohol content shall be subject to the tax.

Any excise tax paid on the purchased base stocks (bunker) used in the manufacture of excisable articles and forming part thereof can be credited against the excise tax due thereon. For purposes of these regulations, any excess of excise taxes paid on raw materials resulting from manufacturing, blending, processing, storage and handling losses shall not give rise to a tax refund or credit.

The above scheduled increase in the excise tax shall be suspended when the average Dubai crude oil based on Mean of Platts Singapore (MOPS) for three months prior to the scheduled increase of the month reaches or exceeds eighty dollars per barrel.

There shall be mandatory markings

on all petroleum products. Further, manufacturers and/or importers shall provide themselves with counting or metering devices to determine volume of production and importation.

Revised tax rates on tobacco products

(Revenue Regulations No. 3-2018)

Pursuant to the TRAIN Law, the excise tax on tobacco products shall be imposed in accordance with the following schedule:

Product	Date of Effectivity of Tax Rates			
	01/01/18-06/30/18	07/01/18-12/31/19	01/01/20-12/31/21	01/01/22-12/31/23
	Per pack	Per pack	Per pack	Per pack
Cigarettes packed by hand	P32.50	P35.00	P37.50	P40.00
Cigarettes packed by machine	P32.50	P35.00	P37.50	P40.00

*Tax rate shall be increased by 4% every year starting 01/01/2024

Revised documentary stamp tax rates

(Revenue Regulations No. 4-2018)

Pursuant to the TRAIN Law, the new DST rates shall be as follows:

	Rates
On original issue of shares of stocks	P2.00/ P200 par value of shares/ actual value of shares
On sale agreements, deliveries or transfer of shares or certificate of stock	P1.50/ P200 of par value of shares Without par value: 50% of DST on original issue
On certificate of profits or interest in Property or Accumulations	P1.00/ P200 face value of such certificate
On bank check, drafts, certificate of deposit not bearing interest & other instruments	P3.00 on each document
Stamp tax on all debt instruments	P1.50/ P200 of issue price of the instrument
Stamp tax on all bill of exchange or drafts	P0.60 on each P200 face value of the bill
Stamp tax upon acceptance of bills of exchange and others	P0.60 on each P200 face value of the bill
Stamp tax on foreign bills of exchange and letters of credit	P0.60 on each P200 face value of the bill
On life insurance Policies	Exempt if < P100,000 P20.00 if > P100,000 < P300,000 P50.00 if > P300,000 < P500,000 P100.00 if > P500,000 < P750,000 P150.00 if > P750,000 < P1,000,000 P200.00 if > P1,000,000
On policies of annuities and pre-need plans	Annuities: P1.00/ P200 premium Pre-need plans: P0.40/ P200 premium
On certificates	P30.00 on each certificate
On warehouse receipts	P30.00 on each certificate exceeding P200
On jai-alai, horse race tickets, lotto or other authorized number games	P0.20/ P1 cost of ticket
On bills of lading or receipts	P2.00 if value of goods > P100 < P1,000, P20,000 if value of goods > P1,000

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On proxies	P30.00 on each proxy
On powers of Attorney	P10.00 on each power of attorney
On leases and other hiring agreements	P6.00 for first P2,000 and P2.00 /P1,00 in excess
On mortgages, pledges and deeds of trust	P40.00 for first P5,000 and P20.00/ P5,000 in excess
On charter parties and similar instruments	P1,000 (addtl P100/mo. In excess of 6 mos) if the registered gross tonnage (RGT) of the ship/vessel < P1,000 P2,000 (addtl P200/mo. In excess of 6 mos) if RGT > P1,000 < P10,000 P3,000 (addtl P300/mo. In excess of 6 mos) if RGT > P10,000

There is no increase in the DST on deed of sale and conveyances of real property. However, donations of real property shall now be subject to DST except in cases of donations exempt from donor's tax.

Revised tax rates on automobiles

(Revenue Regulations No. 5-2018)

Pursuant to the TRAIN Law, below shall be the applicable schedule on automobiles:

Net Manufacturer's price/Importer's Selling Price	Tax Rate
P600,000	4%
>P600,000 to P1,000,000	10%
>P1,000,000 to P4,000,000	20%
>P4,000,000	50%

Effective January 1, 2018

Hybrid vehicles shall be taxed at 50% of the applicable excise tax rates on automobiles prior to the removal of the automobile from the manufacturing plant or customs custody.

Purely electric vehicles and pick-up trucks shall be exempt from excise tax on automobiles.

New rule on deductibility of expenses not subjected to withholding tax

(Revenue Regulations No. 6-2018)

RR 12-2013 has been revoked and the rule on deductibility of expenses upon payment of deficiency withholding tax has been reinstated.

RR 12-2013 promulgated that no deduction will be allowed notwithstanding that the deficiency withholding tax is paid at the time of the audit. This rule is now revoked. RR 6-2018 reinstated the provisions of Section 2.58.5 of RR No. 14-2002, as amended by RR No. 17-2003 which allows the deduction provided the deficiency withholding tax is paid even at the time of audit or reinvestigation.

Pursuant to RR No. 06-2018, deduction from gross income will also be allowed in the following cases where no withholding of tax or incorrect withholding of tax was made:

a. Payee reports the income, pays the tax due, and the withholding agent pays the tax including the interest and surcharges, if applicable, incidental to the failure to withhold the tax.

b. Payee/recipient failed to report income on the due date, but the withholding agent/taxpayer pays the tax, including interest and surcharges, if applicable, incidental to the failure to withhold the tax.

c. Withholding agent erroneously withheld the tax but pays the difference between the correct withholding tax and the amount of tax withheld including interest and surcharges, if applicable, incidental to the error in withholding.

Reinstating the Informal Conference Stage in Tax Assessment

(Revenue Regulations No. 7-2018)

The Informal Conference stage as part of the due process requirement in the issuance of deficiency tax assessment has been reinstated.

Pursuant to Revenue Regulations No. 07-2018, a Notice for Informal Conference must be issued to the taxpayer prior to issuance of Preliminary Assessment Notice. Through the issuance of Notice for Informal Conference, the taxpayer shall be informed in writing of the discrepancy or discrepancies in his payments of internal revenue taxes.

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The “Informal Conference” shall last for not more than 30 days from taxpayer’s receipt of the notice. If the taxpayer is still liable to deficiency taxes and the taxpayer is not amenable to the tax assessment after the “Informal Conference” stage, the BIR shall endorse the case for issuance of deficiency tax assessment within 7 days from conclusion of Informal Conference.

Alphanumeric Tax Code (ATC) for sweetened beverages

(Revenue Memorandum Order No. 1-2018)

To facilitate proper identification of tax collection from sweetened beverages pursuant to RA 10963, the following ATCs are created:

ATC	Description	Tax Rate (/L)	Legal Basis	BIR Form
	1. Using purely caloric and non-caloric sweetener			
XB010	a. Sweetened juice drinks	P6.00	RA 10963	2200-S/0605
XB020	b. Sweetened Tea	P6.00		
XB030	c. Carbonated Beverages	P6.00		
XB040	d. Flavored Water	P6.00		
XB050	e. Energy and Sports Drinks	P6.00		
XB060	f. Powdered drinks not classified as Milk, Juice, Tea and Coffee	P6.00		

XB070	g. Cereal and Grain Beverages	P6.00		
XB080	h. Other non-alcoholic beverages that contain added sugar	P6.00		
XB090	2. Using purely high fructose corn syrup	P12.00		
XB100	3. Using purely coconut sap sugar and purely Steviol glycosides	Exempt		

Guidelines and procedures in implementing RA No. 10963 (Microfinance NGOs Act)

(Revenue Memorandum Order No. 2-2018)

The following policies and guidelines shall be observed in the implementation of RA 10963 otherwise known as Microfinance NGOs Act:

1. Only NGOs whose primary purpose is microfinance shall be entitled to preferential tax treatment of 2% gross receipts tax on income in lieu of all national taxes.

Preferential tax treatment shall be limited only to their microfinance operations catering to the poor and low-income individuals. Specifically, this should only refer to lending activities and insurance commission which are bundled and

forming integral part of the qualified lending activities of the Microfinance NGOs. All other income by the Microfinance NGOs which are not generated from the said activities shall be subject to all applicable taxes.

2. Certificate of Accreditation issued by the Microfinance NGO Regulatory Council (or “Council”) shall be an essential requirement for granting the 2% preferential tax treatment of microfinance NGOs.

3. The word “Microfinance” shall be included in the corporate and trade name of the Microfinance NGO.

4. Duly registered and accredited Microfinance NGOs, and their clients, shall be required to have a TIN.

5. Microfinance NGOs already registered with the BIR shall update their registration using BIR Form No. 1905 to reflect their accreditation as Microfinance NGOs.

6. Every microfinance NGO shall:

- a. Maintain books of accounts and other pertinent records which shall be subjected to periodic examination by revenue enforcement officers of the BIR. In case Microfinance NGO engages in other businesses, it shall maintain separate books of accounts for the same;

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b. Apply for Authority to Print (ATP) receipts/invoices (BIR Form No. 1906). In case Microfinance NGO engages in other businesses, it shall apply for ATP for use of other business.

c. Use BIR Form No. 2551M (Monthly Percentage Tax Return) in filing and paying the 2% preferential tax rate; and

d. Withhold on compensation income to employees, and on payments to individuals or corporations subject to withholding tax at source.

For the detailed procedures on the registration and updating of records with the BIR, and filing and payment of taxes, please refer to the full text of the memorandum order.

Alphanumeric Tax Code (ATC) for excise tax on cosmetic procedures and estate tax on bank withdrawals, and DST

(Revenue Memorandum Order No. 9-2018)

Pursuant to RA No. 10963, the following new ATCs shall be used in the remittance of withholding tax on bank withdrawals and excise tax on cosmetic procedures:

ATC	Description	Tax Rate (/L)	Legal Basis	BIR Form
W1165	Final withholding tax on amounts withdrawn from decedent's deposit account	6%	Sec. 27 of RA No. 10963	1602/2306
W1800 WC800	Final withholding of excise tax on the performance of invasive cosmetic procedures a. Individual b. corporate	5%	Sec. 46 of RA No. 10963	1620-XC

For documentary stamp tax (DST), only the description of the previous ATCs were modified. Previous ATCs shall still apply. Please see full text of the memorandum order for complete list of ATCs for DST.

Revised withholding tax rates for compensation

(Revenue Memorandum Circular No. 1-2018)

The Bureau of Internal Revenue (BIR) has circularized the Revised Withholding Tax Table which should be used in computing the tax to be withheld on every payment of compensation to employees. The Table is effective from January 1, 2018 to December 31, 2022. Under the TRAIN law, there will be revised rates of the individual income tax effective on January 1, 2023.

The revised withholding table takes into consideration the new individual income tax rates in the TRAIN law as well as the repeal of the personal and additional exemptions for purposes of computing the individual income tax.

In the revised withholding tax table, the employees receiving salaries not exceeding the following amounts shall be exempt from withholding tax:

- a. P685 daily wage
- b. P4,808 weekly wage
- c. P10,417 semi-monthly wage
- d. P20,833 monthly wage

However, since the withholding tax table is only for purposes of estimating the tax due, it is possible that some of these employees may still be liable to income tax if they receive additional taxable compensation or bonuses during the year.

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The tax-exempt threshold for 13th month pay and bonuses is now at P90,000. On the other hand, the tax-exempt bracket in the schedule of income tax rates is P250,000.

8% reduced EWT rate for self-employed individuals and professionals

(Revenue Memorandum Circular No. 1-2018)

Expanded Withholding Tax (EWT) rate for self-employed individuals or professionals is reduced to 8%, from 10%/15%, and procedures on the use of the new withholding tax table for compensation income are modified.

The required withholding tax rate on the following income payments to individuals was lowered to 8%, from 10%/15%, regardless of the amount of income payment:

1. Professional fees, talent fees, commissions, etc. for services rendered by individuals
2. Income distribution to beneficiaries of Estates and Trusts
3. Income payment to certain brokers and agents
4. Income payment to partners of GPP
5. Professional fees paid to medical practitioners
6. Commission of independent and/or exclusive sales representatives, and marketing agents of companies

If paid to taxable juridical persons, above income payments remain to be subject to 10%/15% expanded withholding tax rate.

Transitory procedures for FWT monthly and quarterly remittances, and Percentage Taxes

(Revenue Memorandum Circular No. 2-2018)

RMC 2-2018 prescribes the adoption of work around procedures in filing BIR forms/returns since changes in tax rates are not yet reflected and implemented on the eFPS or eBIRForms.

Following the implementation of RA 10963 (TRAIN LAW), increase of several tax rates may result to deficiency tax for tax filing purposes. ATC MC 031- Deficiency Tax shall be used by eFPS filers and eBIRForms users for deficiency tax filing and payment.

To cover deficiency tax, below procedures shall be taken:

I. eFPS Filers

Online filing and payment using BIR Form No. 0605.

II. eBIRForms Users

Online filing using the existing BIR form in the eBIRForms Package. Payment shall be through GCash, LBEPS or BDPTO, or manually via OTC of AABS.

III. Manual Filers

Manual Filers shall use the new tax rates to compute tax due for purposes of filing and payment thereof.

Work around procedures for Documentary Stamp Taxes

(Revenue Memorandum Circular No. 3-2018)

Following the implementation of RA 10963 on the filing of DST returns (BIR Form Nos. 2000 and 2000-OT), BIR issued this circular to prescribe below procedures in DST filing since changes in DST tax rates are not yet reflected and implemented for eFPS, eBIRForms, and Manual Forms Filing.

I. eFPS Filers

Use existing BIR Forms in filling up the required information using the applicable ATC, nature of transaction. Tax rate and tax due will automatically appear hence manually change the tax due computed by the system with the correct amount using the new tax rate.

II. eBIRForms Users

Online filing using the existing BIR form in the eBIRForms Package. This filing will result to deficiency tax hence BIR Form No. 0605 shall be filed to cover the deficiency tax payment. Payment shall be through GCash, LBEPS or BDPTO, or manually via OTC of AABS.

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III. Manual Filers

Manual Filers shall use the new tax rates to compute tax due for purposes of filing and payment thereof.

Transition procedures for excise taxes on cigars, cigarettes, petroleum products, automobiles, invasive cosmetic procedures, sweetened beverages, and mineral products

(Revenue Memorandum Circular No. 4-2018)

Relative to the implementation of the revised tax rates on cigars, cigarettes, petroleum products, automobiles, and mineral products and introduction of new excise tax forms for invasive cosmetic procedures and sweetened beverages, the following BIR forms are being enhanced and introduced.

Enhanced BIR Forms

1. BIR form No. 2200-T (Excise Tax Return for Tobacco Products)
2. BIR form No. 2200-P (Excise Tax Return for Petroleum Products)
3. BIR form No. 2200-AN (Excise Tax Return for Automobiles & Non-essential Products)
4. BIR form No. 2200-M (Excise Tax Return for Mineral Products)

New BIR Forms

1. BIR form No. 2200-S (Excise Tax Return for Sweetened Beverages)

2. BIR form No. 1620-XC (Final Withholding of Excise Tax on Cosmetic Procedures)

a. Enhanced BIR forms

- Since the revised tax rates on the aforementioned are not yet in place, use and fill up the “\$. OTHERS (please specify)” portion of the applicable forms to be filed.

b. New BIR Forms

- Fill-in the applicable BIR form (as pre-printed or downloaded form in BIR website) using the new tax rates then compute the tax due thereon.
- Filing and payment shall be done manually via over-the counter of Authorized Agent Banks (AABs) under the jurisdiction of the RDO where the taxpayer is registered.

Additional mandatory requirements for processing of Electronic Certificate Authorizing Registration (eCAR) of all Economic Zone Developers/ Operators

(Revenue Memorandum Circular No. 9-2018)

RMC 09-2018 is issued to provide the following guidelines in determining the tax treatment of the transfer of property by Economic Zone Developer/Operator to another PEZA entity in relation to processing of eCAR.

1. In addition to the documentary requirements under RMO No. 15-2003, the following additional documentary requirements shall be submitted by all PEZA Ecozone developers/operators:

a. Certified true copy of the latest PEZA Certificate of Registration of the parties to the transaction;

b. Certified true copy of the PEZA registration agreement; and

c. Certified true copy of the PEZA certificate of available tax incentives as of the time of the transaction.

2. No further document shall be required in case of the following transfers:

a. Transfers of property within the Special Economic Zone (SEZ) by an Ecozone developer/operator to a PEZA Economic Zone Facilities Enterprise, PEZA registered buyer, or non-PEZA registered buyer, and

b. Transfers of property outside the SEZ by an Ecozone developer/operator, regardless of whether or not the buyer is PEZA registered.

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BIR rules on timing of withholding on income payment by government

(Revenue Memorandum Circular No. 10-2018)

RMC 10-2018 is issued to clarify conflicts on the guidelines and procedure under the Government Accounting Manual (GAM) and those in the BIR regulations.

Section 4 of RR 12-2001, as amended provides that payor's obligation to deduct and withhold tax arises at the time an income payment is paid or payable or their income payment is accrued or recorded as an expense or asset, whichever is applicable, in the payor's books, whichever comes first.

Recording of an expense or asset for unpaid income, shall likewise oblige the payor to withhold in the last month of return period in which the income is claimed as an expense or amortized for tax purpose.

The Government Accounting Manual (GAM), however, provides an illustrative example whereby "Due to BIR" accounts were recognized only upon payment of the accounts payable to the income payee.

Given the inconsistency of the GAM rules and the BIR regulations on the timing of withholding, the BIR rules on withholding should prevail. For government projects, the obligation to withhold arises at the

time the government agency books construction of PPE as Construction in Progress with appropriate asset classification.

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Quarterly filing of percentage tax return

Under the TRAIN Law (RA No. 10963), the percentage tax return shall be due quarterly within 25 days from the close of the taxable quarter (TQ).

Hence, following the TRAIN Law, filing and payment of percentage tax returns of the following taxpayers should already be on a quarterly basis from the previous monthly filing and remittance:

1. VAT-exempt taxpayers with annual revenues not exceeding P3M;
2. domestic carriers and keepers of garages, international air/shipping carriers;
3. franchisees of gas or water utilities, franchisees of radio and/or TV broadcasting with revenues not exceeding P10M;
4. banks, non-bank financial intermediaries and finance companies, life insurance companies; and
5. agent of foreign insurance companies.

We note that the BIR recently posted an advisory requiring VAT-exempt taxpayers with annual revenues not exceeding P3M (Section 116 of the Tax Code) to pay percentage tax on a quarterly basis using BIR Form No. 2551Q. However, the advisory did not mention the other percentage taxpayers such as the banks. Also, the advisory has been taken down from the BIR's website. Thus, pending BIR's advisory,

it shall be conservative to still follow the old monthly filing and payment deadlines until the BIR issues the implementing rules and regulations on the quarterly filing and payment of the percentage tax returns.

Monthly filing of Expanded/ Creditable and Final Withholding Tax Returns

Under the TRAIN Law (RA No. 10963), the final (BIR Form 1601-F/1602) and creditable withholding tax (BIR Form 1601-E/1606) returns (except for withholding tax on compensation and withholding VAT) shall be due quarterly on or before the last day of the month following the close of the calendar quarter (CQ).

Hence, following the TRAIN Law, filing and payment of expanded and final withholding tax returns should already be on a quarterly basis from the previous monthly filing and remittance.

However, pursuant to the BIR's advisory issued on January 31, 2018 and signed by Commissioner Dulay monthly remittance of taxes withheld is still required for the first two months of the quarter. This shall be done through BIR Form 0605 on or before the 10th day following the month of withholding. The taxes withheld in the third month shall be remitted using BIR Form 1601EQ or the applicable quarterly return.

Tax Type	Covered Period	Form to Use	Alphalist of Pay-ees	Due date for filing & payment	
				Non-EFPS Filers	EFPS Filers
Expanded/ Creditable Withholding Tax (1601E/1606)	1st month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WE	None	10th day of the following month	15th day of the following month
	2nd month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WE	None	10th day of the following month	15th day of the following month
	Calendar Quarter	BIR Form 1601EQ	Yes (to include all income payments for the quarter)	Last day of the month following the close of the quarter	Last day of the month following the close of the quarter
Final Withholding Tax (1601F/1602)	1st month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WF	None	10th day of the following month	15th day of the following month
	2nd month of the quarter	BIR Form 0605 • ATC – MC 200 • Tax Type - WF	None	10th day of the following month	15th day of the following month
	Calendar Quarter	BIR Form 1601FQ/1602Q	Yes for 1601F (to include all income payments for the quarter)	Last day of the month following the close of the quarter	Last day of the month following the close of the quarter

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Regular income tax rates for employees of RHQs, ROHQs, OBUs, and Petroleum Contractors

BIR issued an advisory on the applicable income tax rates to employees of Regional Headquarters (RHQs) and Regional Operating Headquarters (ROHQs) of multinational companies; Offshore Banking Units (OBUs); and Petroleum Service Contractors and Subcontractors. Pursuant to this advisory issued on January 31, 2018 and signed by Commissioner Dulay, all employees of these entities enjoying the preferential tax rate of 15% prior to 2018 are now subject to regular withholding tax on compensation. The withholding tax table as prescribed under Revenue Memorandum Circular No. 1-2018 shall be used.

CTA Decisions



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“Deemed received” status of assessment notices sent through registered mail is not absolute

(Commissioner of Internal Revenue v Next Mobile, Inc., CTA EB No. 1583 re CTA Case No. 8670, January 15, 2018)

Section 3(v), Rule 131 of the Rules of Court prescribes that when a letter was duly directed or mailed, it is presumed that it was received in the regular course of the mail. However, this presumption is merely a disputable presumption. When the party who is supposed to receive said letter denies actual receipt, the presumption is now destroyed. Burden to prove otherwise is now shifted back to the one who claims that it directed and mailed said letter.

In this case, the Post Master of Central Post Office certified that the guard at the taxpayer’s building refused to receive the letter, hence they merely notified the taxpayer to claim the letter from the Post Office. The BIR, however, did not adduce any evidence that the refusal of the alleged guard was indeed unwarranted nor did it present proof that the guard at the respondent’s building has the authority to receive such kind of letter or communication on behalf of the respondent, a corporate entity. In the absence of said authority, the function or responsibility of said guard is only to protect the asset of the corporation and the safety of its employees and officials.

The Court denied BIR’s argument that it is the taxpayer’s responsibility to dispute such presumption of deemed acceptance by providing evidences.

Review of unprotested assessment is not within tax court’s jurisdiction

(Light Rail Transit Authority v Commissioner of Internal Revenue, CTA Case No. 8746, January 17, 2018)

Section 228 of the National Internal Revenue Code of 1997, as amended prescribes that when protesting an assessment, the Commissioner or his duly authorized representative shall notify the taxpayer of his findings regarding proper taxes that should have been assessed.

Taxpayers shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment is void.

Within the period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Assessments may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. All relevant supporting documents shall be submitted within 60 days from filing of the protest.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within 30 days from date of receipt thereof, the assessment shall become final, executory and demandable.

In this case, the taxpayer belatedly filed its protest against the assessment. Thus, the assessment already became final, executory, and unappealable upon the expiration of the 30-day period to protest. Once the case attained finality, the taxpayer is already precluded from disputing the correctness of the assessment.

Consequently, the court is already barred from determining the validity and correctness of the said assessment.

Failure to file a return as a stand-alone element is not enough to prove attempt for tax evasion

(People of the Philippines v Maxima Laxamana Baluyot, CTA Case Nos. O-445, 446, 447, and 448, January 17, 2018)

As prescribed under Section 254 of the NIRC of 1997, as amended, any person who willfully attempts in any manner to evade or defeat any tax imposed under this code or payment thereof shall be penalized for not less than P30,000 but not more than P100,000 and to suffer imprisonment of not less than 2 years but not more than 4.

CTA Decisions



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To sustain a conviction for attempt to evade or defeat tax under the aforesaid provision, the following elements must be established:

1. An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; and
2. Willful attempt to evade or defeat tax filing and payment.

In this present case at bar, it is well established that there is payment of income tax that is less than what is legally due from the accused, and failure to file an income tax return (ITR) for a taxable year. As to the second element, the prosecution failed to prove that there is “willfulness” or deliberate intent on the part of the accused to evade or defeat payment of income taxes. Failure to provide circumstantial evidences to prove the accused’s willful intention shall be enough reason for the court to acquit accused of the charges of evasion.

Royalty income from active business is subject to regular income tax rate; deficiency and delinquency interests can be assessed simultaneously

(Commissioner of Internal Revenue v Iconic Beverages, CTA EB No. 1412 re CTA Case No. 8607, January 30, 2018)

I. Royalty Income

Section 27(D) (1) of the NIRC provides that passive royalty income earned by a domestic corporation shall be subject to 20% final withholding tax. Such 20% final withholding tax can be applied only in case of passive income. Royalty income earned from active pursuits of business are subject to regular income tax.

In the case, the primary business of the taxpayer is manufacturing, buying, selling and dealing in alcoholic and non-alcoholic beverages. However, for the taxable year, its income include only royalty income earned from its trademarks and intellectual property rights. The licensing of the said trademarks and intellectual property rights were the only business activities of the taxpayer for the year. It did not engage in any business activity beyond the licensing out of trademarks and intellectual property rights.

Thus, it was ruled that the primary purpose of the taxpayer is the said licensing out

of trademarks and intellectual property rights. Any income received therefrom is not passive income but an income earned from the taxpayer’s active business subject to regular income tax rate of 30%.

II. Penalty Interest

Deficiency interest is different in nature from delinquency interest. Deficiency interest is imposed upon any tax that is still due and unpaid, while delinquency interest is imposed on failure to pay the amount of tax due on any return required to be filed, or the amount of tax due for which no return is required, or deficiency tax or any surcharge or interest thereon on the due date appearing on the notice and demand by the Commissioner. As such, the two penalty interests can be assessed simultaneously.

In the case, deficiency interest of 20% per annum was computed from the due date of payment of tax until full payment thereof. In addition, delinquency interest of 20% per annum was computed on the unpaid deficiency tax and penalties, including the 20% deficiency interest. The delinquency interest was computed from the due of payment per BIR notice until full payment thereof.

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