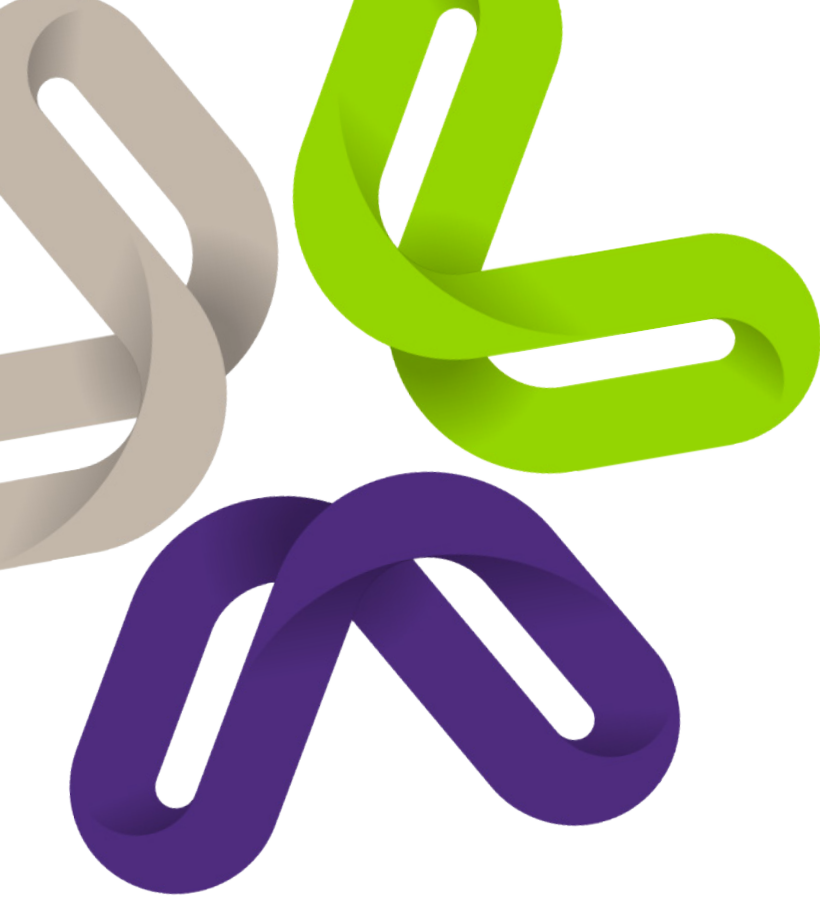




# **Tax brief**

*July 2018*





#### **CTA DECISIONS**

CTA EB No. 1476  
CTA EB No. 1569  
CTA EB No. 1562  
CTA EB No. 1559  
CTA Case No. 8904  
CTA Case No. 8423

Non-Receipt of the PAN and FAN/FLD Renders the Assessment Void  
Assessment without valid Letter of Authority is Void  
Late filing of petition bars a court to decide on a case  
Mere assertion cannot give rise to the presumption of falsity of returns  
When the law is clear, no explanation is required  
TRAIN Law should be applied prospectively

#### **BIR ISSUANCES**

RMC 37-2018  
and 44-2018  
RMC 50-2018  
RMC 48-2018  
RMO 26-2018  
RMC 54-2018  
BIR Advisory

New daily minimum wage rates in Region XII and Region IV-A  
  
FAQs on RR No. 8-2018 and RR No. 11-2018  
Processing Time for Issuance of eCAR  
Publication of Top Withholding Agents  
Penalties and interest on the filing of amended return  
Refiling and/or amending of 1st Quarter BIR Forms 1601EQ/1601FQ by eFPS users

# CTA Decisions



- > CTA Decisions
- > BIR Issuances
- > Highlight on P&A Grant Thornton services

## **Non-Receipt of the PAN and FAN/FLD Renders the Assessment Void**

*(Commissioner of Internal Revenue vs AA Commercial, CTA EB No. 1476, June 11, 2018)*

Section 228 of the NIRC of 1997 requires that the taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. Due process requires that the Preliminary Assessment Notice (PAN) and Final Assessment Notice (FAN)/ Formal Letter of Demand (FLD) must be received by the taxpayer. Mere issuance of the PAN and FAN/FLD shall not constitute receipt of the assessment notices.

In this case, the BIR sent thru registered mail the PAN and FAN. However, the BIR failed to prove that indeed the PAN and FAN were received by the Company. Instead, based on the Philippine Postal Corporation's records, the mail was returned to the sender on the reason that the Company already moved out of the office address indicated in the PAN/FAN. The Company knew of the assessment only when it received the BIR's Preliminary Collection Notice.

Since the PAN and FAN were not actually received by the Company, the assessment was considered null and void for lack of due process.

## **Assessment without valid Letter of Authority is Void**

*(Nikken Philippines, Inc. vs Commissioner of Internal Revenue, CTA EB No. 1569, June 7, 2018)*

The Letter of Authority (LOA) is the proof that the person/s named therein is/are authorized to conduct the necessary investigation/audit. Absent the necessary issuance of LOA specifically naming the person to whom the case will be re-assigned, there is no authority to conduct the investigation/audit. An audit conducted by an examiner without an authority is considered null and void.

In this case, the audit/investigation was done by the revenue officer (RO) and group supervisor (GS) pursuant to a Memorandum of Referral signed by the Revenue District Officer, instead of the Revenue Regional Director as required under Section 13 of the NIRC. No LOA was offered in evidence showing that the RO and GS's authority to examine the books of accounts and other accounting records of the Company or to continue any investigation against the Company.

Since the RO and GS acted without authority when they conducted the audit, the assessment is null and void.

## **Late filing of petition bars a court to decide on a case**

*(Solid-One Mills, Phils., Inc. vs Commissioner of Internal Revenue, CTA EB No. 1562, June 1, 2018)*

Pursuant to Section 11 of RA 1125, as amended by RA 9282, any party adversely affected by a decision, ruling or inaction of the CIR may file and appeal with the CTA within 30 days after the receipt of such decision or ruling.

Relative to this, before the Court En Banc may give consideration to the issues raised by a petitioner, it is mandatory for it to first determine whether it may validly decide on the merits of the case by determining whether it has jurisdiction therefor. In this present case, records reveal that petitioner received a letter which categorically stated that the assessment had already become final and executory. Considering that this letter constitutes a final decision, petitioner had 30 days to file its petition for review. However, petitioner failed to do so. Since the petition was belatedly filed, the CTA did not acquire jurisdiction over the case and has no power to decide upon the issues presented.

# CTA Decisions



- > CTA Decisions
- > BIR Issuances
- > Highlight on P&A Grant Thornton services

## **Mere assertion cannot give rise to the presumption of falsity of returns**

*(Commissioner of Internal Revenue vs. Ludo & Luym Corporation, CTA EB No. 1559, June 8, 2018)*

The 10-year prescriptive applies in case of fraud or false return. There is a prima facie evidence of a false return if there is a substantial underdeclaration of taxable sales, receipt or income. The failure to report sales, receipt or income in an amount exceeding 30% of what is declared in the returns constitute substantial underdeclaration.

In this case, there is no showing that the Company has substantially underdeclared its sales, receipt or income. The presumption of falsity of returns merely arise since a 50% surcharge was previously imposed by the BIR Commissioner against the Company.

Since there was no under declaration of sales by more than 30%, there can be no presumption of false return. Thus, the 10-year prescriptive period cannot be applied.

## **When the law is clear, no explanation is required**

*(Splash Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8904, June*

*11, 2018)*

Section 6 of RA No. 7459 clearly states that any income derived from the sale of the patented products shall be exempt from the payment of income taxes for a period of 10 years from the date of the product's first sale on a commercial scale, subject to the rules and regulations of the Department of Finance. This is to promote, encourage, develop and accelerate commercialization of technologies developed by local researchers.

The technologies, their manufacture or sale, shall also be exempt from payment of license, permit fees, customs duties and charges on imports.

In this case, the BIR alleged that the income tax exemption privilege is for the benefit of the inventor and not for the benefit of the company (herein petitioner) commercializing the invention. However, the law is clear that it exempts the income on the inventions from taxes. Hence, regardless if it is the Company who is earning the income from the invention, such income shall still be exempt from income tax.

## **TRAIN Law should be applied prospectively**

*(Batangas Electric Cooperative 1 (BATELEC 1) vs. Commissioner of Internal Revenue, CTA Case No. 8423, June 1, 2018)*

Prior to the TRAIN Law amendment, Section 249 (B) and (C)(3) of the NIRC of 1997, as amended, provides that the deficiency interest on any deficiency tax shall be assessed from the date prescribed for its payment until the full payment thereof, while the assessment of the delinquency interest that is imposed upon failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from 'the due date appearing in the notice and demand of the Commissioner until the amount is fully paid. However, under the TRAIN Law, there shall be no case that the deficiency and the delinquency interest prescribed under Subsections (B) and (C) of Section 249 of the 1997 NIRC be imposed simultaneously.

Thus, in this case, the Cooperative is seeking to clarify if indeed the delinquency and deficiency interests it was assessed and accordingly, paid is valid.

The TRAIN Law provides that it shall take effect on January 1, 2018. Also, the TRAIN Law is not a curative law as the tax code provisions imposing deficiency and delinquency interests was not previously declared invalid by the Supreme Court. Thus, the rule on non-imposition of deficiency and delinquency interests simultaneously cannot be applied retroactively.

# BIR Issuances



- > CTA Decisions
- > BIR Issuances
- > Highlight on P&A Grant Thornton services

## New daily minimum wage rates in Region XII and Region IV-A

(Revenue Memorandum Circular Nos. 37-2018 and 44-2018, May 23, 2018 and June 5, 2018)

Pursuant to recently issued wage orders, below are the new minimum wage rates in Region XII and Region IV-A: Region XII (Wage Order No. RB XII-20)

Sector/Industry	Previous Minimum Wage Rates	Increase	New Minimum Wage Rates
Non-Agriculture	P 295.00	P 16.00	P 311.00
Agriculture/ Retail/ Service Establishment	P 272.00	P 18.00	P 290.00

Region IV-A (Wage Order No. RB IVA-18)

Covered Areas	Adjustment	New minimum wage rate
Areas currently receiving P 378.50	P 21.50	P 400.00
Areas currently receiving P 356.50 and P 302.50	P 14.00 to P 16.50	P 317.00 to P 373.00
Areas currently receiving P 283.00	P 20.00	P 303.00

Under the current rules, minimum wage earners are exempt from the payment of income tax on their statutory minimum wage rates, holiday pay, overtime pay, night shift differential and hazard pay. They shall be subject to income tax only on their other taxable income.

## FAQs on RR No. 8-2018 and RR No. 11-2018

(Revenue Memorandum Circular No. 50-2018, June 8, 2018)

Below are the significant updates on the implementation and clarifications on RR No. 08-2018 and RR No. 11-2018:

### Withholding tax rates (Self-employed taxpayers)

Individuals who render services that are within those mentioned under “professional fees, talent fees, etc. for services rendered” of RR 8-2018 shall be subjected to 5%/10% withholding tax rate. Withholding tax rates for service providers/ suppliers of service that are not identified as professional services under RR No. 8-2018 shall be subject to 2% withholding tax.

### Premium Payments on Group Health Insurance for Employees

Pursuant to RMC No. 50-2018, the premi-

um on health card paid by the employer for all employees, whether rank and file or managerial/supervisory, under a group insurance shall be included as part of other benefits of these employees which are subject to the P90,000 threshold. Individual premiums paid for employees holding managerial or supervisory functions shall be subject to fringe benefits tax.

Previous rulings by the BIR provides that premium payments made by employers for the benefit of its eligible employees (managerial and rank-and-file) are not subject to withholding tax on compensation nor to fringe benefits tax pursuant to Sec. 33 (c) of the 1997 NIRC.

### Due dates for BIR 0619E/0619F

For EFPS filers, deadline for the monthly remittance of creditable and final withholding tax (BIR Forms 0619E and 0619F) shall follow the EFPS staggered filing deadlines depending on the grouping of the taxpayer.

### Excess over “de minimis” benefits

The benefits given in excess of the maximum amount allowed as “de minimis” benefits shall be included as part of other benefits subject to the P90,000 ceiling. Any amount in excess of the P90,000 shall be subject to income tax, and consequently to the withholding tax on compensation.

# BIR Issuances



- > CTA Decisions
- > BIR Issuances
- > Highlight on P&A Grant Thornton services

Previously, RMC No. 20-2011 clarified that excess over “de minimis” benefits thresholds shall be subject to fringe benefit tax if received by a managerial or supervisory employee.

## Director’s Fees

Fees paid to a director who is not an employee of the income payor shall be subject to creditable withholding tax prescribed for professionals, and shall be subject also to the applicable business tax. Thus, director’s fees are now subject to either percentage tax or value added tax depending on the amount of gross receipts during the year.

## **Processing Time for Issuance of eCAR**

*(Revenue Memorandum Circular No. 48-2018, June 6, 2018)*

Electronic Certificate Authorizing Registration (eCAR) for sale/ exchange/ donation of real properties shall be processed within the below prescribed period:

Transactions	Processing Time from the Submission of Complete Documentary Requirements (working days)

<b>Individual Taxpayer/ Corporation with One (1) Deed of Sale/Exchange/ Donation:</b>	
a. One (1) to Three (3) properties	3 days
b. Four (4) to Ten (10) properties	5 days
c. Eleven (11) to Fifty (50) properties	10 days
d. More than Fifty (50) properties	20 days
<b>Real Estate Developer – One (1) Deed of Sale/Exchange involving Multiple Properties:</b>	
a. One (1) to Ten (10) properties	5 days
b. Eleven (11) to Fifty (50) properties	10 days
c. More than Fifty (50) properties	20 days

## **Publication of Top Withholding Agents**

*(Revenue Memorandum Order, No. 26-2018, June 5, 2018)*

Under RR No. 11-2018, the top withholding agents, who are required to withhold 1% on purchases of goods and 2% on purchases of services, shall be published in newspaper of general circulation and in the BIR website. This shall serve as their “notice” as top withholding agents. The

obligation to withhold starts on the first day of the month following the month of publication.

Pursuant to RMO No. 26-2018, below shall be the publication dates and corresponding effectivity date of withholding on purchases of goods and services by the top withholding agents:

Publication	Effective Date of Withholding
June 15	July 1
December 15	January 1

## **Penalties and interest on the filing of amended return**

*(Revenue Memorandum Circular No. 54-2018, June 21, 2018)*

Under Revenue Memorandum Circular (RMC) No. 21-2018, failure to file any return and pay the tax due thereon on the prescribed date or failure to pay the full or part of the amount of tax shown on any return, shall be subject also to 25% surcharge in addition to interest and compromise penalty.

As clarified in RMC No. 54-2018, the interest rate shall be 12% beginning January 1, 2018.

Payment of compromise penalties per



- > CTA Decisions
- > BIR Issuances
- > Highlight on P&A Grant Thornton services

# BIR Issuances

revised Schedule of Compromise Penalties under Revenue Memorandum Order (RMO) No. 7-2015 is optional only on the taxpayer, and may not therefore be imposed or exacted on the taxpayer. In the event that a taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred to the appropriate office for criminal action.

## **Refiling and/or amending of 1st Quarter BIR Forms 1601EQ/1601FQ by eFPS users**

*(BIR Advisory)*

eFPS users who filed the Quarterly Remittance Returns of CWT and FWT (BIR Forms 1601EQ and 1601FQ, respectively) prior to April 26, 2018 and May 3, 2018, and who have encountered below issues are advised to re-file and/or amend their 1st Quarter Remittance Return of Creditable Income Taxes Withheld (BIR Form 1601EQ) and Final Income Taxes Withheld (1601FQ):

- No value in the files of tax returns/ inability to view anything in the tax returns
- Printed copy of the tax return does not reflect the name of the taxpayer

# 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.

If you would like to know more about our services

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We welcome your suggestions and feedback so that the Tax brief may be made even more useful to you. Please get in touch with us if you have any comments and if it would help you to have the full text of the materials in the Tax brief.

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