



Tax *brief*

October 2020





BIR ISSUANCES

RR No. 21-2020	Voluntary Assessment and Payment Program (VAPP) for taxable year 2018
RR No. 22-2020 & RMC No. 102-2020	Notice of Discrepancy to replace Notice of Informal Conference in tax assessment
RR No. 23-2020	Repeal of tax on shares of stock sold or exchanged through IPO
RR No. 24-2020	DST exemption of loan term extensions and credit restructuring pursuant to relief for loans falling due on or before December 31, 2020
RR No. 25-2020	NOLCO from 2020 and 2021 can be carried over for the next 5 years
RMC No. 92-2020	Deadline for registering online businesses without penalties, further extended to September 30, 2020
RMC No. 94-2020	Guidelines for the collection and disbursement of fuel marking fees
RMC No. 96-2020	Reiteration of the alternative modes of issuance of receipts/ invoices during MECQ period
RMC No. 97-2020	Policy for the use of BIR Form 0605 for Excise Tax purposes
RMC No. 98-2020	Further extensions on the deadline of submission of BIR Form 1709 and supporting documents
RMC No. 101-2020	Addendum to the list of VAT-exempt drugs/ medicines for diabetes, high-cholesterol and hypertension
RMC No. 103-2020	Registration of Overseas Filipino for purposes of opening a bank account in availing PERA

SEC ISSUANCES

SEC MC No. 25 s 2020	Guidelines in filing complaints for violation of the right to inspect and reproduce corporate records
SEC MC No. 26 s 2020	Institutional risk assessment required under AMLA

CTA DECISIONS

CTA Case No. 9161	Manual LOAs issued from March 01, 2010 should be retrieved and replaced with eLAs
CTA EB No. 2121	Formal written notice of change in address is not required if BIR is already aware of the taxpayer's new address

BIR Issuances



- > BIR Issuances
- > SEC Issuances
- > CTA Decisions

Voluntary Assessment and Payment Program (VAPP) for taxable year 2018

(Revenue Regulations No. 21-2020 published on September 05, 2020)

To collect additional tax revenues which will fund the government's expenditures during the pandemic, the BIR is implementing VAPP for taxable year 2018. Under the program, qualified taxpayers may voluntarily pay additional taxes for the covered period, with or without an audit/investigation, and be entitled to certain privileges.

Covered taxes	All internal revenue taxes, including taxes on one-time transactions (ONETT), as well as ONETT-related creditable withholding tax (CWT) and documentary stamp tax (DST).
Covered period	<ul style="list-style-type: none"> • Calendar year ending December 31, 2018 • Fiscal years ending July 2018 to June 2019

Covered taxpayers	<p>Any taxpayer (individual and juridical entities, including estates and trust) who erroneously paid or failed to pay the covered taxes for the covered periods due to inadvertence or otherwise, except the following taxpayers:</p> <ol style="list-style-type: none"> a. Those taxpayers who have already been issued a Final Assessment Notice (FAN) that have become final and executory, on or before September 21, 2020; b. Persons under investigation as a result of verified information filed by a Tax Informer, with respect to the deficiency taxes that may be due out of such verified information; c. Those with cases involving tax fraud filed and pending in the Department of Justice or in the courts; and d. Those with pending cases involving tax evasion and other criminal offenses under Chapter II of Title X of the NIRC of 1997, as amended. 						
Voluntary Tax	<p>The following are the amounts to be paid in cash when availing of VAPP:</p> <p>A. Income Tax (IT), Value-Added Tax (VAT), Percentage Tax (PT), Excise Tax (ET), and DST other than DST on ONETT</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Increase/Decrease in the Total Taxes Due from 2017 to 2018</th> <th style="width: 30%;">Amount of Voluntary Tax (whichever is higher)</th> <th style="width: 40%;">Minimum Amount</th> </tr> </thead> <tbody> <tr> <td>Net increase of not more than 10%</td> <td>3% of 2018 gross sales OR 7% of 2018 taxable net income</td> <td>Individuals, estates and trusts - P75K</td> </tr> </tbody> </table>	Increase/Decrease in the Total Taxes Due from 2017 to 2018	Amount of Voluntary Tax (whichever is higher)	Minimum Amount	Net increase of not more than 10%	3% of 2018 gross sales OR 7% of 2018 taxable net income	Individuals, estates and trusts - P75K
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Net increase of not more than 10%	3% of 2018 gross sales OR 7% of 2018 taxable net income	Individuals, estates and trusts - P75K					

BIR Issuances



- > BIR Issuances
- > SEC Issuances
- > CTA Decisions

Increase/ Decrease in the Total Taxes Due from 2017 to 2018	Amount of Voluntary Tax (whichever is higher)	Minimum Amount										
Net increase of more than 10% up to 30%	2% of 2018 gross sales OR 6% of 2018 taxable net income	Corporations - <table border="1"> <thead> <tr> <th>Subscribed Capital</th> <th>Minimum Amount</th> </tr> </thead> <tbody> <tr> <td>> P50M</td> <td>P1M</td> </tr> <tr> <td>> P20M - P50M</td> <td>P500K</td> </tr> <tr> <td>> P5M - P20M</td> <td>P250K</td> </tr> <tr> <td>< P5M</td> <td>P100K</td> </tr> </tbody> </table>	Subscribed Capital	Minimum Amount	> P50M	P1M	> P20M - P50M	P500K	> P5M - P20M	P250K	< P5M	P100K
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> P50M	P1M											
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< P5M	P100K											
Net increase of more than 30%	1% of 2018 gross sales OR 5% of 2018 taxable net income											
Net decrease of not more than 10%	4% of 2018 gross sales OR 8% of 2018 taxable net income	Other juridical Entities (e.g. cooperatives, foundations, general professional partnerships) - P75K										
Net decrease of more than 10%	5% of 2018 gross sales OR 9% of 2018 taxable net income											

- Total taxes due refer to the sum of all tax due per tax return and net VAT payable before deducting any creditable withholding tax, quarterly payment or advance payment. This also includes deficiency basic taxes already paid for the taxable year 2018, if any.
- Gross sales and taxable net income shall be based on the duly filed Annual Income Tax Return for taxable year 2018 and fiscal year 2018, ending on the last day of July 2018 to June 2019.
- Taxpayers who failed to file tax returns and/or pay their taxes for the taxable year 2018 can apply for VAPP provided that the unfiled tax returns shall first be filed and/or unpaid taxes plus corresponding penalties for late filing and payment shall first be paid by the taxpayer.

	<p>B. Final Withholding Taxes (on Compensation, Fringe Benefits, etc.) and Creditable Withholding Taxes (CWT) other than CWT on ONETT - five percent (5%) of the total basic withholding tax remittance for the taxable year 2018.</p> <p>C. Taxes on ONETT such as Estate Tax, Donor's Tax, CGT, ONETT-related CWT and DST - basic tax due of the unfiled tax return/unpaid tax due plus 5%</p>
Documentary Requirements	<p>A. Mandatory requirements</p> <p>a. Duly accomplished Application Form (BIR Form No. 2119) - in duplicate</p> <p>b. Payment Form (BIR Form No. 0622) with proof of payment - in triplicate</p> <p>B. Additional requirements - see full text of RR 21-2020 for the list.</p>
Mode of filing/ payment	<ul style="list-style-type: none"> • Filing - personal or through courier service • Payment - in cash to any BIR Authorized Agent Bank (AAB) or Revenue Collection Officer (RCO) under the LT Office/RDO having jurisdiction over the taxpayer, except for ONETT involving the sale of property which must be filed/paid with AABs/RCOs under the RDO covering the location of the property.
Benefits of Availing VAPP	<ul style="list-style-type: none"> • The taxpayer is exempted from BIR audit for 2018 and for the tax types covered by the availment. • In case on-going audit, the audit will be suspended while the availment is under evaluation. The audit shall resume if availment has been found to be invalid. While the letter of authority and assessment notices will be withdrawn and canceled if the availment is determined to be valid.
Proof of availment	A Certificate of Availment shall be issued by the concerned LT Office/RDO within three (3) working days from approval of the application.

BIR Issuances



> BIR Issuances

> SEC Issuances

> CTA Decisions

<p>Invalid, deficient or defective availment</p>	<ul style="list-style-type: none"> • Non-submission or submission of erroneous/incomplete/falsified information concerning the VAPP shall not entitle the taxpayer to avail of the non-audit privilege. • The taxpayer's availment shall be rendered invalid and he will be subject to audit or investigation in either of the following instances: <ul style="list-style-type: none"> - When there is strong evidence or findings of under-declaration of sales, receipts or income or overstatement of deductions by more than 30% based on a written report of the appropriate revenue official stating the facts with supporting documents - When there is verifiable information that the taxpayer has withheld but failed to remit withholding taxes. • In case the availment is found to be invalid, deficient or defective, voluntary payment already made may be applied against any deficiency tax liability for the taxable year 2018, in case of audit/investigation.
<p>Taxpayer's right to refund</p>	<p>Availment of VAPP shall waive the taxpayer's right to claim refund.</p>
<p>Effectivity</p>	<p>The VAPP regulations are effective on September 21, 2020.</p>

Notice of Discrepancy to replace Notice of Informal Conference in tax assessments

(Revenue Regulations No. 22-2020 and Revenue Memorandum Circular No. 102-2020 issued on September 16, 2020 and September 22-2020, respectively)

The Notice of Discrepancy, which replaces the Notice of Informal Conference, will be issued to the taxpayer if he is found to be liable for deficiency taxes during investigation conducted by a revenue officer.

A Notice of Discrepancy is not yet a deficiency tax assessment. It only aims to fully afford the taxpayer with an opportunity to present and explain his side on the discrepancies found.

Based on the prescribed template for the Notice of Discrepancy, the taxpayer must be able to present and explain its side on the discrepancies noted by the BIR within 5 days from receipt of the notice. Should the taxpayer need more time to present documents, he may submit such documents after the discussion but within 30 days from receipt of the Notice of Discrepancy.

The discussion of discrepancies shall not extend beyond 30 days from the receipt of the notice. Within 10 days from the conclusion of the discussion of discrepancies, the investigating office shall endorse the case for review and approval for issuance of a Preliminary Assessment Notice if the taxpayer is still found to be liable for deficiency taxes.

A revised template of the Notice of Discrepancy was issued pursuant to RMC No. 102-2020.

BIR Issuances



> BIR Issuances

> SEC Issuances

> CTA Decisions

Repeal of Tax on Shares of Stock sold or exchanged through IPO

(Revenue Regulations No. 23-2020 published on October 02, 2020)

Section 6 of Bayanihan to Recover as One Act (Republic Act No. 11494) or Bayanihan II repealed Section 127 (B) of the Tax Code, as amended. Hence, every sale, barter, exchange or other disposition of shares of stocks in closely held corporations through IPO shall no longer be subject to tax imposed by said section upon effectivity of the Bayanihan II on September 15, 2020.

DST exemption of loan term extensions and credit restructuring pursuant to relief for loans falling due on or before December 31, 2020

(Revenue Regulations No. 24-2020 published on October 02, 2020)

Section 4 (uu) of Bayanihan II directs lenders to implement a one-time sixty (60)-day grace period for the payment of all existing, current and outstanding loans falling due, or any part thereof, on or before December 31, 2020.

The extensions of the maturity periods pursuant to the above relief shall be exempt from documentary stamp tax (DST). The DST exemption shall also apply on credit restructuring, micro-lending including those obtained from pawnshops, and extensions thereof, made on or before December 31, 2020.

Interbank loans and bank borrowings with maturity period of at least seven (7) days are not covered by the DST exemption.

NOLCO from 2020 and 2021 can be carried over for the next 5 years

(Revenue Regulations No. 25-2020 published on October 02, 2020)

Pursuant to Section 4 (bbbb) of Bayanihan II and as implemented under RR No. 25-2020, the net operating loss of a business or enterprise incurred for the taxable years 2020 and 2021 can be carried over as a deduction from gross income for the next five (5) consecutive taxable years following the year of such loss. Ordinarily, NOLCO can be carried over as deduction from gross income for the next three (3) consecutive years only.

For corporate taxpayers who are on fiscal year accounting period, taxable year 2020 and 2021 shall include all those corporations with fiscal years ending on or before June 30, 2021, and June 30, 2022, respectively.

The NOLCO shall be separately shown in the taxpayer's income tax return while the unused NOLCO shall be presented in the notes to financial statements in detail. The NOLCO for the taxable years 2020 and 2021 shall be presented in the notes to financial statements separately from the NOLCO for other taxable years. Failure to comply with the reporting requirement will disqualify the taxpayer from claiming the NOLCO.

Deadline for registering online businesses further extended to September 30, 2020

(Revenue Memorandum Circular No. 92-2020 published on September 01, 2020)

Under RMC No. 60-2020, all persons doing business and earning income in any manner or form, specifically those into digital transactions through the use of any electronic platforms and media, and other digital means, have been allowed to register their businesses and pay taxes on past transactions without penalty. From the previous extended deadline of August 31, 2020, such sellers are now given until September 30, 2020 to register and pay taxes without penalty.

BIR Issuances



- > BIR Issuances
- > SEC Issuances
- > CTA Decisions

Guidelines for the collection of fuel marking fees

(Revenue Memorandum Circular No. 94-2020 published on September 04, 2020)

Pursuant to Section 12 of the NIRC, as amended, BIR shall collect the fuel marking fees at the same time as the internal revenue taxes on petroleum products subject to Fuel Marking are collected. For this purpose, filer or declarant shall use the Fuel Marking Fee Form or BIR Form No. 0623 for payment of Fuel Marking Fee. The fuel marking fee should be paid before the marking of the fuel, hence, prepayment is authorized.

In consideration of the biofuel requirements, a volume percentage allowance shall be added to the Declared Volume of the petroleum product to be marked. Thus, fuel marking fees (FMF) shall be computed as follows:

- **For Gasoline:** FMF= Declared Volume x 110% x Php 0.06884 (VAT inclusive)
- **For Diesel:** FMF= Declared Volume x 102% x Php 0.06884 (VAT inclusive)
- **For Kerosene:** FMF= Declared Volume x Php 0.06884 (VAT inclusive)

See Annex A of RMC No. 94-2020 for the full copy of the Implementing Guidelines for the Collection and Disbursement of Fuel Marking Fees Pursuant to DOF-DBM-COA Permanent Committee Joint Circular 001.2018.

Reiteration of the alternative modes of issuance of receipts/ invoices during MECQ period

(Revenue Memorandum Circular No. 96-2020 issued on September 07, 2020)

Under RMC No. 47-2020, as amended by RMC 59-2020, taxpayers located in areas covered under MECQ are allowed to adopt prescribed workaround procedures on the issuance of receipts/invoices to be able to continue its business operations.

Taxpayers, who opted to adopt the workaround procedures during the period of MECQ last August 04 - 18, 2020, are reminded to submit the required Summary of Temporary Receipts/ Invoices Issued to their respective RDOs within 90 days from the date of the lifting of MECQ, among other requirements.

Policy for the use of BIR Form 0605 for excise tax purposes

(Revenue Memorandum Circular No. 97-2020 issued on September 09, 2020)

To properly monitor and reconcile the record of excise taxpayers, the use of BIR Form No. 0605 for excise tax purposes shall now be limited to the following payments:

1. Payment on export products pursuant to product replenishment scheme under RR 3-2008;

2. Payment for excise tax on non-essential services for excisable cosmetic procedures until such time that BIR Form No. 2200-C will be available for use; and
3. Payment for deficiency excise tax.

Further extensions on the deadline of submission of BIR Form 1709 and supporting documents

(Revenue Memorandum Circular No. 98-2020 issued on September 15, 2020)

Due to the continuing effects of COVID-19 pandemic, the submission of BIR Form 1709 and its required supporting documents as attachments to the Annual Income tax Return shall be extended as follows:

Annual Income Tax Return	Extended Deadline
For Fiscal Year Ending March 31, 2020 and April 30, 2020	December 29, 2020
For Fiscal Year Ending May 31, 2020 and June 30, 2020	January 31, 2021
For Fiscal Year Ending July 31, 2020 and August 31, 2020	March 01, 2021
For Fiscal Year Ending September 30, 2020 and October 31, 2020	March 31, 2021
For Fiscal Year ending November 30, 2020 and Calendar Year Ending December 31, 2020	April 30, 2021

BIR Issuances



> BIR Issuances

> SEC Issuances

> CTA Decisions

Addendum to the list of VAT-exempt drugs/ medicines for diabetes, high-cholesterol and hypertension

(Revenue Memorandum Circular No. 101-2020 issued on September 25, 2020)

RMC 98-2020 is issued to supplement RMC 62-2020, which published the initial list of VAT-exempt drugs for hypertension, diabetes, and high cholesterol.

RMC 98-2020 is issued to supplement RMC 62-2020, which published the initial list of VAT-exempt drugs for hypertension, diabetes, and high cholesterol.

https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2020%20RMCs/RMC%20No.%20101-2020%20Addendum%20to%20the%20List%20of%20VAT-Exempt%20Drugs%20for%20Hypertension%20Diabetes%20and%20High%20Cholesterol.pdf

Registration of Overseas Filipino for purposes of opening a bank account in availing PERA

(Revenue Memorandum Circular No. 103-2020 issued on September 29, 2020)

Overseas Filipinos who do not have Tax Identification Numbers (TIN) can secure the TIN required before they can open bank accounts and become eligible to invest in Personal Equity and Retirement Account (PERA), though the following manners:

1. Through authorized representative

Overseas Filipinos may secure their TIN manually, through their authorized representative by submission of the required documentary requirements specified under of RMC No. 57 - 2020. The application for TIN shall be filed at Revenue District Office (RDO) No. 39 - South Quezon City.

2. Via e-mail application by the taxpayer himself

Overseas Filipinos may personally submit application for TIN thru email at **rdo_39css@bir.gov.ph** by submitting the scanned copies of the following documentary requirements:

- a. Duly accomplished and signed BIR Form No. 1904
- b. Passport (Bio page, including date of exit/departure stamp, if applicable)
- c. In lieu of Special Power of Attorney, as proof of absence in the country and account opening with banks, Overseas Employment Certificate (OEC) issued by the Philippine Overseas Employment Administration (POEA); or any official document showing that he will earn or has earned income in a foreign country in the year of PERA Contribution;
- d. In case of legitimate spouse of the Overseas Filipino, the marriage certificate shall be submitted in addition to items (a) to (c) mentioned above.

Overseas Filipinos shall not be issued any TIN Card. For applications filed manually, the BIR Form No. 1904 duly stamped received indicating the TIN issued shall serve as proof of registration. On the other hand, for applications filed through email, the acknowledgment receipt/reply to the email is sufficient proof of receipt of such application.

SEC Issuances



> BIR Issuances

> SEC Issuances

> CTA Decisions

Guidelines in filing complaints for violation of the right to inspect and reproduce corporate records

(SEC Memorandum Circular No. 25 series of 2020, issued on September 09, 2020)

An aggrieved party whose right to inspect and/or reproduce corporate records was violated may file a report, in the form of a verified complaint, with the Company Registration and Monitoring Department (CRMD), or any of the extension offices of the Securities and Exchange Commission (SEC). A filing fee of Php 10,130, inclusive of Legal Research Fee (LRF) and DST, shall be paid.

The following shall constitute a violation of the right to inspect and/or reproduce corporate records:

- a. Outright refusal to allow the director, trustee, stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative
- b. Failure to take, within a reasonable amount of time, the necessary steps that would allow the director, trustee, stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative
- c. Failure to give the director, trustee, stockholder, or member a reasonable amount of time to inspect any of the corporate records in person, or by a representative

d. Outright refusal to allow the director, trustee, stockholder, or member of the corporation to reproduce any of the corporate records in person, or by a representative, at his/her own expense

e. Failure to take, within a reasonable amount of time, the necessary steps that would allow the director, trustee, stockholder, or member of the corporation to reproduce any of the corporate records in person, or by a representative, at his/her own expense; or

f. Failure to give the director, trustee, stockholder, or member a reasonable amount of time to reproduce any

See full text of the SEC memorandum circular for the required contents of the Verified Complaint, the required due process in evaluating the verified complain, possible administrative sanctions, and imposition thereof.

Institutional risk assessment required under AMLA

(SEC Memorandum Circular No. 26 series of 2020, issued on September 25, 2020)

All SEC covered persons shall conduct an institutional risk assessment as mandated by the Anti-Money Laundering Act (AMLA).

Institutional risk assessment is a comprehensive exercise to identify, assess and understand a covered person's money laundering/terrorist financing (ML/TF) threats, vulnerabilities, and the

consequential risks, with a view to mitigate illicit flow of funds and transactions.

In conducting risk assessments, covered persons should consider quantitative and qualitative information obtained from relevant internal and external sources to identify, manage, and mitigate these risks. This may include the National Risk Assessment (NRA) published by the AMLC, the Sectoral Risk Assessment conducted by the Commission, crime statistics, typologies, risk indicators, red flags, guidance and advisories issued by inter-governmental organizations, national competent authorities and the Financial Action Task Force (FATF), and AML/CFT mutual evaluation and follow-up reports by the FATF or associated assessment bodies.

In identifying and assessing indicators of ML/TF risk to which they are exposed, covered persons should consider a range of factors which include:

- a. The nature, diversity and complexity of its business, products, and target markets;
- b. The proportion of customers identified as high risk;
- c. The jurisdictions in which the covered person is operating or otherwise exposed to, either through its own activities or the activities of customers, especially jurisdictions with greater vulnerability due to contextual and other risk factors such as the prevalence of crime, corruption, or financing of terrorism, the general level and quality of the jurisdiction's prosecutorial and law enforcement efforts related to AML/CFT, the regulatory and supervisory regime and controls and transparency of beneficial ownership;

SEC Issuances



> BIR Issuances

> SEC Issuances

> CTA Decisions

- d. The distribution channels through which the covered person distributes its products, including the extent to which the securities provider deals directly with the customer and the extent to which it relies (or is allowed to rely) on third parties to conduct customer due diligence (CDD) or other AML/CFT obligations, the complexity of the transaction chain (e.g. layers of distribution and sub-distribution, type of distributors such as independent financial advisors, investment advisors) and the settlement systems used between operators in the payment chain, the use of technology and the extent to which intermediation networks are used;
- e. The internal and external (such as audits carried out by independent third parties, where applicable) control functions and regulatory findings; and
- f. The expected volume and size of its transactions, considering the usual activity of the covered person and the profile of its customers.

An AML/CFT Risk Rating System (ARRS) shall be adopted by SEC in the conduct of its on-site examinations of covered persons.

See full text of the memorandum circular for the list of factors that may be considered as indicator of higher risks - country/geographic risk, customer/investor risk, product/service/transaction risk, distribution channel risk, and details of the adoption of ARRS.

CTA Decisions



> BIR Issuances

> SEC Issuances

> CTA Decisions

Manual LOAs issued from March 01, 2010 shall be retrieved and replaced with eLAs

(Robinsons Toys, Inc. vs Commissioner of Internal Revenue, CTA Case No. 9161, September 02, 2020)

A Letter of Authority (LOA) is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer (RO) to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax.

Pursuant to RMC No. 61-2010, all LOAs, whether manual or electronic, issued from March 1, 2010 covering cases for 2009 and other taxable years shall be retrieved and replaced with the new eLA form (BIR Form No. 1966). All revenue officers ordered to conduct investigation/ audit through manually issued LOAs prior to July 1, 2010 should continue the conduct of audit/investigation, subject to the retrieval and replacement of LOA.

In this case, there is no showing that the subject LOA, which was issued after March 1, 2010, has been retrieved and replaced by an eLA. Clearly, the ROs named in the LOA, and any other BIR personnel, were not authorized through an eLOA to proceed with the BIR's tax audit. Without a valid LOA, the subject tax assessment is void.

Formal written notice of change in address is not required if BIR is already aware of the taxpayer's new address

(Commissioner of Internal Revenue vs Unisphere International, Inc., CTA EB No. 2121 re CTA Case No. 8782, September 23, 2020)

In this case, the BIR argued that the taxpayer failed to formally inform or notify them of the taxpayer's change of address. However, the court finds that despite the absence of a formal written notice of taxpayer's change of address, the BIR became aware of taxpayer's new address as shown by several documents in its records. Although, the BIR is already aware of the taxpayer's new address, the Final Assessment Notice was still mailed to the taxpayer's old address. Hence, there is no valid service of the FAN.

The Supreme Court also ruled the same in the case of Commissioner of Internal Revenue vs BASF Coating & Inks Phils., Inc. providing that prior knowledge of the BIR of taxpayer's new address requires no further notification from the latter.

Highlight on P&A Grant Thornton services

Tax Advocacy

We actively participate in consultation and public hearings conducted by the Bureau of Internal Revenue on proposed tax rules and regulations, serving as a bridge between our clients and the BIR. Our advocacy work focuses on clarifying the interpretation of laws and regulations, suggesting measures to increasingly ease tax compliance, and protecting taxpayer's rights.

Tax seminars and training

We offer seminars and training on tax-related developments and special issues of interest to taxpayers. Upon request, we provide customized in-house tax training – designed jointly by P&A Grant Thornton and the client – that directly addresses the specific issues of the client's industry and the training needs of its personnel.

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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