



P&A
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Tax brief

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New Withholding Rules on payments of professional, talent and commission fees to self-employed individuals

(Revenue Regulations No. 10-2018, March 15, 2018)

Professional fees, talent fees, and consultancy fees payable to individual payees are now subject to 5%/10% withholding tax (8% under RMC No. 01-2018, and 10%/15% prior to this). Fees received by an individual from a lone income payor amounting to not exceeding P250,000 may not be subject to withholding tax. If the recipient of such income is an employee of the payor, the payment shall be considered supplemental compensation subject to withholding tax on compensation.

Those payable to non-individual payees remain to be subject to 10%/15% withholding tax.

Commissions payable to brokers, agents, independent/exclusive sales representatives and marketing agents of companies are now subject to the same rates and rules applicable to professional fees. Previously, commissions are subject to 10% withholding tax only.

Below are the guidelines in determining the applicable withholding tax rate on the above income payments.

Payee	Gross Income	Withholding Tax Rate	Conditions
Individual	< P250k	0%	<ul style="list-style-type: none"> • Source of income is only one payor. If more than one income payor, income payment shall be subject to 5% withholding tax even if gross receipts shall not exceed P250,000 during the year. • Payee must submit to the income payor an Income Payee's Sworn Declaration of Gross Receipts/Sales, together with BIR Certificate of Registration (COR) on or before January 15 or prior to initial payment of income during the year (April 6, 2018 for the transitory period). <p>Failure to comply with the above conditions shall subject the income payment to either 5% or 10% withholding tax.</p> <p>In case cumulative gross receipts exceeds P250,000 after submission of Sworn Declaration, income payor shall withhold 5% or 10% in excess of P250,000.</p>
	< P3M	5%	<ul style="list-style-type: none"> • Payee must submit to the income payor a Sworn Declaration of Gross Receipts/Sales, together with COR, on or before January 15 of the current year, or prior to initial payment of income during the current year <p>Failure to comply with the above conditions shall subject the income payment to 10% withholding tax.</p>
	> P3M	10%	<ul style="list-style-type: none"> • Income recipient does not submit to the income payor his Sworn Declaration of Gross Receipts/Sales, regardless of his projected gross receipts/sales • Income payments exceeds P3M during the year despite submission of sworn declaration

Payee	Gross Income	Withholding Tax Rate	Conditions
Non-individual (Corporate)	< P720k	10%	<ul style="list-style-type: none"> • Payee must submit to the payor an Income Payee's Sworn Declaration of Gross Receipts/Sales stating that gross income shall not exceed P720,000 during the year, together with a copy of COR, on or before January 15, or prior to initial payment of income during the current year <p>Sworn declaration shall be executed by the president/managing partner.</p>
	< P720k	15%	<ul style="list-style-type: none"> • Failure by the income payor to submit his Sworn Declaration of Gross Receipts/Sales • Income payments exceeds P720k during the year despite submission of sworn declaration

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The sworn declaration of gross receipts/sales by the income payee is no longer required to be received by the BIR. However, the income payor/withholding agent shall submit to the BIR the following documents:

a) Income Payor/Withholding Agent's Sworn Declaration on individual payees not subjected to withholding tax or subjected to 5% withholding tax, and non-individual payees subjected to 10% withholding tax; and

b) List of Individual Payees. The withholding agent shall submit the above documents to the BIR on or before January 31 of each year, or 15 days following the month when a new income payee has submitted sworn declaration of gross receipts/sales.

Transitory provisions

For the transitory period, the above documents shall be submitted to the BIR on or before April 20, 2018.

ny income taxes withheld in excess of what is prescribed in the regulation shall be refunded by the withholding agent to the payee. The amount refunded shall be reflected in the first quarter withholding tax return as adjustment to the remittable withholding tax due. The adjusted amount of tax withheld shall also be reflected in the Alphabetical List of Payees to be at-

tached in the first quarter return. The said list of payees, who are subject to refund, shall likewise be attached in the return which shall be filed on or before April 30, 2018. The corresponding Certificate of Tax Withheld at Source (BIR Form No. 2307) shall be returned and replaced by a new BIR Form 2307 upon refund of the excess withholding tax.

Updated Rules on the Filing and Payment of Withholding Tax (Revenue Regulations No. 11-2018, March 15, 2018)

New BIR Forms 0619E and 0619F were prescribed for the monthly remittance of withholding taxes. We have updated the schedule we issued earlier to incorporate these changes, as follows:

Updated Rules on the Filing and Payment of Withholding Tax

(Revenue Regulations No. 11-2018, March 15, 2018)

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Tax Type	Covered Period	Form to Use	Due date for filing & Payment	
			Non-EFPS Filers	EFPS Filers
Expanded/Creditable Withholding Tax	1st month of the quarter	BIR Form No. 0619E	10th day of the following month	15th day of the following month
	2nd month of the quarter	BIR Form No. 0619E	10th day of the following month	15th day of the following month
	Calendar Quarter	BIR Form No. 1601EQ	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	1st month of the quarter	BIR Form No. 0619F	10th day of the following month	15th day of the following month
	2nd month of the quarter	BIR Form No. 0619F	10th day of the following month	15th day of the following month
	Calendar Quarter	BIR Form No. 160 2/ 1601FQ	Last day of the month following the close of the quarter	Last day of the month following the close of the quarter
Fringe Benefit Tax	Calendar Quarter	BIR Form No. 1603	Last day of the month following the close of the quarter	
Withholding tax on sale of real property other than capital asset	Monthly	BIR Form No. 1606	10th day of the following month	



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BIR Issuances

- Withholding agents with zero remittance are still required to file BIR Form Nos. 0619E and 0619F for the month.
- Quarterly Alphabetical List of Payees (QAP) containing the following information shall be filed on a quarterly basis:

- Name of Income Payees
- Taxpayer Identification Number (TIN)
- Amount of income payment segregated per month with a total for the quarter
- Income payment subjected to withholding tax
- Income payment exempt from withholding tax
- Amount of taxes withheld

New Rules on Withholding Agents for Purchases of Services and Goods

(Revenue Regulations No. 11-2018, March 15, 2018)

Under RR No. 11-2018, a new classification of withholding agents is created, top withholding agents, who are required to withhold 1% on purchases of goods and 2% on purchases of services:

a. Taxpayers classified and duly notified by the Commissioner as such

- Large taxpayers
- Top 20,000 corporations
- Top 5000 individuals

b. Identified Medium Taxpayers and those under Taxpayer Account Management Program (TAMP)

Additional top withholding agents shall be published in newspapers or 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.

New rate and compliance requirement for estate taxation

(Revenue Regulations No. 12-2018, March 15, 2018)

The net estate of every decedent, whether resident or non-resident Filipino, shall be subject to an estate tax of 6%. Composition of the gross estate differs from a Filipino resident citizen to that of a non-resident alien. Resident citizens are taxed on all of its properties, real or personal, tangible or intangible, wherever situated. Non-resident aliens are only taxed on its properties situated in the Philippines. Reciprocity rule applies to resident-alien’s intangible properties.

Amounts withdrawn from deposit accounts of decedents subjected to 6% FWT shall be excluded from the gross estate for purposes of computing estate tax.

An increased amount of P5,000,000 stan-

dard deductions from previous P2,500,000 shall be allowed as deduction without need of substantiation for the benefit of the decedent. A P500,000 standard deductions from a non-resident alien’s estate is also allowed as deduction. Deductions of Family home is now amounting to P10,000,000 from previous P1,000,000.

Notice of death are now not required for submission within 2 months from decedent’s death. However, an estate tax return (BIR Form 1801) on all transfers, including registered/registrable properties, now regardless of amount shall be filed. Estate tax transferred showing a gross value exceeding P5,000,000 shall be supported with a statement duly certified by a CPA. Deadline of filing shall be within 1 year from decedent’s death.

Installment payment within 2 years for estate tax due is now allowed. Provided, that available cash is insufficient to pay total estate tax due. Frequency, deadline, and amount of each installment shall be indicated in the estate tax return, subject to the approval of the BIR. Request for extension of time, installment payment and partial disposition of estate shall be filed with the RDO where the estate is required to secure its TIN and file its estate tax return.

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New donor's tax rate

(Revenue Regulations No. 12-2018, March 15, 2018)

Donations shall be subject to a new flat rate of 6% annually. Donor's tax due shall be computed on the basis of the total gift's in excess of P250,000 exempt gift made during the calendar year.

Dowries on account of marriage amounting to P10,000 are now not considered exempt for donor's tax purposes.

Any person making a donation (whether direct or indirect), unless exempt, is required, for every donation, to accomplish a donor's tax return in duplicate with the name of the donee. Transfer of property other than capital asset for less than FMV are deemed donation and shall be included in computing the amount of gifts made during the calendar year.

New ATC for EWT/Final WT

(Revenue Memorandum Order No. 14-2018, March 14, 2018)

BIR issued new ATCs for the remittance of Expanded/ Creditable (EWT) and Final Withholding Tax (FWT) pursuant to the implementation of the TRAIN Law.

ATC	Description	Legal Basis	BIR Forms	
			As per RMO 14-18	Previous return
WME10	Remittance of Creditable Income Taxes Withheld (Expanded)	RA 10963 Sec. 6 of the NIRC	0619-E	0605 (ATC: MC200)
WMF10	Remittance of Final Income Taxes Withheld 1. On interest paid on Deposit and Yield on Deposit Substitutes/Trusts/etc. 2. On other Final Income Taxes	RA 10963 Sec. 6 of the NIRC	0619-F	0605 (ATC: MC200)
WMF20			0619-F	0605 (ATC: MC200)

As per above, RMO No. 14-2018 also introduces new BIR forms for the remittance of withholding taxes. However, copies of the said new BIR forms are not yet available. Hence, the existing BIR Form No. 0605 shall still be used in the remittance of expanded/creditable and final withholding taxes until new BIR forms are issued. Existing ATC of MC200 per BIR Form 0605 shall still be used.

Please also continue monitoring the BIR website for issuances and advisories on this matter. We shall issue a new tax alert once the BIR announced the availability of the new remittance forms for expanded/creditable and final withholding tax.



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BIR RULINGS

Honoraria and allowances are subject to withholding tax on compensation

(BIR Ruling No 494-18, March 14, 2018)

Honoraria and allowances are given to persons rendering election service granted by the Commission. Such amounts shall be paid within 15 days from the date of election.

As well settled, income in broad sense, means all wealth which flows into the taxpayer other than mere return of capital. Hence, it is without argument that “honoraria” and “allowances”, no matter how negligible the amount, are wealth that flow into the hands of the recipient which shall be subject to income tax, consequently, to withholding tax on compensation.

SEC OPINIONS



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Stockholder's advances to a corporation may be converted into APIC to cover corporation's deficiency

(SEC-OGC Opinion No. 18-03, March 19, 2018)

Securities and Exchange Commission has adopted the policy allowing corporations, at their option, to apply for the Commission's approval of the creation of APIC, subject to the payment of the filing fee applicable for such application. The application for the approval of the creation of APIC is at the option of the corporation and is not mandatory.

However, the application of the APIC that is already reflected as such in the audited financial statements to wipe out the capital deficit of the corporation, as such in this query, requires the approval of the Commission upon filing of a request for equity restructuring and upon payment of the corresponding filing fee.

Full payment determines ownership of a property in a contract to sell

(SEC-OGC Opinion No. 18-03, March 19, 2018)

A contract to sell agreement provides that the seller will convey unto the buyer full and absolute title to a property/ unit upon payment of the total purchase price and

full compliance of any other obligation. The court held that those who have not fully paid the purchase price of the units are not owners of their units, and consequently, are not members of the corporation.

Applying the aforstated to this present query, since full payment has yet to be furnished by the purchaser of the private unit, the title of the unit remains with the developer until full purchase price of the units have been paid. Said purchasers are likewise not members of the corporation.

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Certificate of availment is not proof that an application for compromise has been approved

(Archipelago Motor Corp v Commissioner of Internal Revenue, CTA EB No. 1258, March 1, 2018)

In this case, petitioner contends that the Certificate of Availment is sufficient proof that the assessment subject of the instant case has been fully satisfied by the acceptance of the offer for compromise settlement of the Bureau of Internal Revenue (BIR), invoking Revenue Delegation Authority Order (RDAO) No. 6-2007; and that as the said Certificate confirms the settlement of the disputed assessment.

A careful reading of the foregoing, BIR issuance would reveal that what is being delegated under RDAO No. 6-2007 is “the signing of Termination Letter or the Letter of Denial/Notice of Disqualification” in connection with the approval or disapproval of an application of a tax compromise. As a corollary, it must be emphasized that said RDAO does not state, in any way, that a “Certificate of Availment” issued by the named delegate is included in the term “Termination Letter”. Thus, the subject Certificate of Availment cannot be considered as falling under the delegated authority covered by RDAO No. 6-2007. Neither is the same RDAO explicit that a “Certificate of Availment” is proof that an application for compromise has been approved by the NEB.

15-day period on PAN stage to run from taxpayer’s receipt thereof

(Commissioner of Internal Revenue v Linde Philippines, Inc., CTA Case No. 8724, March 7, 2018)

For the FAN to be compliant with the due process requirement, the taxpayer must be granted fifteen (15) days from receipt of the PAN to file its response thereon.

Only after the lapse of the fifteen (15)-day period without any action on the part of the taxpayer would petitioner be legally allowed to issue a FAN. Simply stated, petitioner’s right to issue a FAN begins when the period to respond on the PAN ends.

A summa contrario with petitioner’s posture, the fifteen (15)-day period to take action on the PAN starts to run not from its issuance by petitioner, but from the taxpayer’s receipt thereof. While there is no denying that petitioner issued the PAN on December 6, 2012, 14 respondent received it only on January 2, 2013. 15 Counting fifteen (15) days from the receipt of the PAN, respondent had until January 17, 2013 to refute petitioner’s findings as contained in the PAN. However, petitioner prematurely issued the undated FAN on December 27, 2012, 16 or six (6) days before respondent received the PAN resulting in the denial of sufficient opportunity for respondent to present its position or defense against the assessment indicated in the PAN.

Intragroup service agreement does not constitute sufficient proof that company’s clients are NRFC

(Deutsche Knowledge Services PTE, LTD v Commissioner of Internal Revenue, CTA Case No. 8065, March 21, 2018)

In this present case, petitioner avers that IntraGroup Service Agreements (IG-SA) with its foreign clients and foreign business registration documents proved the locations and addresses of petitioner’s clients.

The Court finds that while IG-SAs state the nature of the services rendered by petitioner to its clients, the same do not establish that the said clients are engaged in business outside the Philippines. They do not constitute sufficient proof that petitioner’s clients are non-resident foreign corporations doing business outside the Philippines.

Official receipts required for zero-rated transactions

(Deutsche Knowledge Services PTE, LTD v Commissioner of Internal Revenue, CTA Case No. 8065, March 21, 2018)

Petitioner argues that the Tax Code does not require the issuance of official receipts before a transaction may be considered zero-rated.

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The Court finds petitioner's arguments bereft of merit. Section 113(A) and (B) of the NIRC of 1997, as amended, states the invoicing requirements for VAT taxpayers and the information that shall be indicated therein. The aforestated provisions of Section 113(A)(1) and (2) explicitly require that the sale of goods or properties must be supported by VAT invoice while the sale of services must be supported by VAT official receipt (OR).

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Olivier D. Aznar

Partner

Tax Advisory and Compliance

T +63 2 988 2288 ext. 500

D +63(2) 988 2215

E Vier.Aznar@ph.gt.com



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Lina Figueroa

Principal, Tax Advisory and Compliance Division

T +632 988-2288 ext. 520

E Lina.Figueroa@ph.gt.com



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