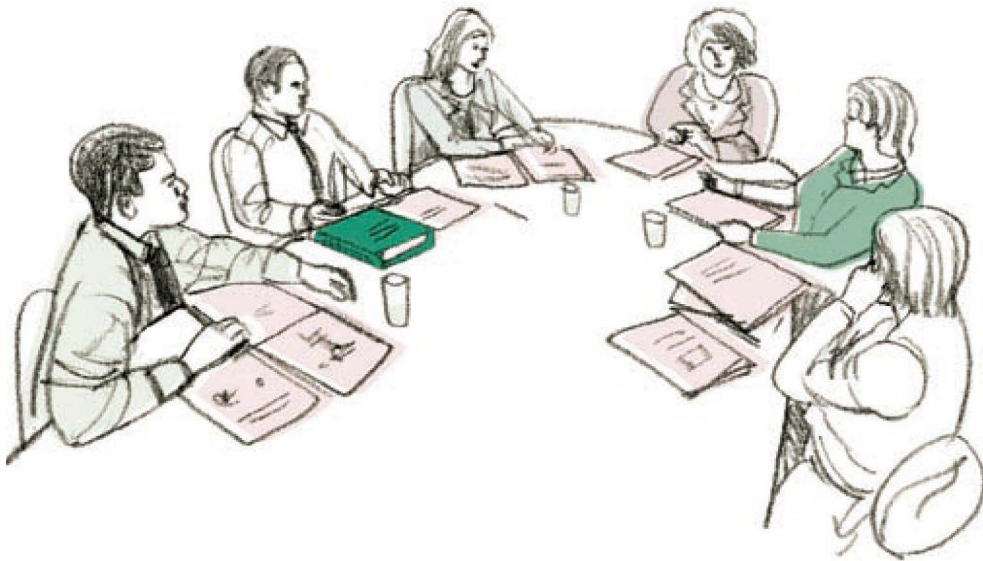


Tax brief

February 2015



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BIR Issuances

Additional de minimis benefit

The list of tax-exempt de minimis benefits has been expanded, amending Revenue Regulations No. (RR) 02-1998 (Withholding Tax Regulations) and RR 03-1998 (Fringe Benefits Tax Regulations) to include the two items below, provided that the total annual monetary value received from both combined do not exceed P10,000 per employee per taxable year:

- a) benefits received by an employee by virtue of a collective bargaining agreement (CBA)
- b) productivity incentive schemes

The productivity incentives that can be tax-exempt under this regulation is in addition to the bonuses and productivity incentives that can be exempt within the P30,000 threshold under Section (B)(7)(e) of the Tax Code.

(BIR Revenue Regulation No. 01-2015, January 5, 2015)

Reduced requirements for issuances of BIR ICC/BCC

Amendments have been issued to expedite the issuance of the Bureau of Internal Revenue's (BIR) Importer's Clearance Certificate (ICC) and Broker's Clearance Certificate (BCC) relative to the accreditation of importers and customs brokers, respectively.

The following requirements have been waived:

1. certified copy of the Certificate of Registration issued by the BIR
2. certified true copy of the Securities and Exchange Commission (SEC) Registration and Articles of Incorporation

However, the clearances and certifications should be attached upon filing of the application form with the following BIR offices: Regional District Office (RDO); Legal; Collection and Accounts Receivable Monitoring Divisions; and the Audit Information, Tax Exemption and Incentives Division (AITEID).

For applicants who have been issued provisional ICC/BCC, the above certifications/clearances should be submitted at least a month prior to the expiration of the six-month validity of the provisional ICC/BCC.

Offices issuing the certifications/clearances are required to observe timelines in the processing of the certifications reckoned from receipt of the application, as follows:

- a. RDO/LTD/Concerned HREA of LTS –10 working days from receipt of the application
- b. Regional Legal Division – three working days from receipt of the application
- c. Regional Collection Division – three working days from receipt of the application
- d. ARMD – three working days from receipt of the application for Tax Delinquency Verification
- e. AITEID/MOMD – five working days from receipt of the application

(BIR Revenue Memorandum Order No. 01-2015, January 7, 2015)

BIR Issuances

Allocation of 2015 BIR collection goal by implementing office

The Department of Finance (DOF) has set the overall calendar year (CY) 2015 collection goal of the BIR at P1.7 trillion – up 18% from last year's P1.5 trillion target. The CY 2015 collection goal is based on the CY 2015 Medium Term Revenue Program as of December 6, 2014.

The preliminary target for BIR operations was allocated to all major implementing offices, which are the total regional and Large Taxpayers Service taking into account the CY 2014 estimated percentage share to total collections net of special taxes, non-recurring collections, and collections from enlisted/delisted taxpayers as of January 1, 2015.

The total goal allocation, by major tax type, was distributed proportionately among the implementing offices based on their share to total estimated CY 2014 collections. The monthly collection goals were also based on the monthly trends for CY 2014.

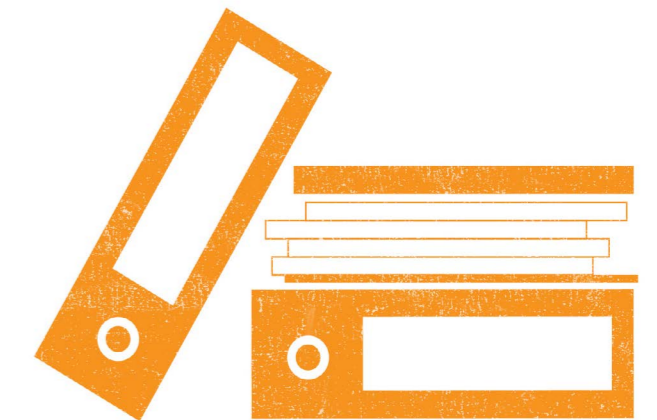
(BIR Revenue Memorandum Order No. 2-2015,)

PEZA importers exempt from the BIR ICC requirement

DOF Order No. 107-2014 has exempted all duly registered locators of the Philippine Economic Zone Authority (PEZA) Special Economic Zones from the requirements of Department Order No. (DO) 12-2014, as amended by DO 18-2014. The locators shall now be eligible for accreditation as importers with the Bureau of Customs Account Manager (BOC-AMO) without the need to secure an ICC or a Customs BCC from the BIR. However, the BOC may still require them to submit documents and information before accreditation is granted.

Nonetheless, PEZA locators that will import goods into the Philippines will have to comply with the documentary requirements provided in the relevant rules of procedure of customs. Failure to do so will subject them to sanctions and penalties.

(BIR Revenue Memorandum Circular No. 4-2015, dated January 5, 2015)



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Prescriptive period for refund of indirect taxes passed on to PEZA enterprises

A PEZA-registered entity is qualified to apply for refund of passed-on customs duties from the purchase of petroleum products. Customs duties are a form of indirect tax. Since the PEZA Law (Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995) grants PEZA-registered entities an exemption from both direct and indirect taxes, a PEZA enterprise may claim a tax refund when the economic burden of tax is shifted to it.

In such case, neither the prescriptive periods nor procedural requirements provided under Section 2313 of the Tariff and Customs Code of the Philippines (TCCP) could bar a claim for refund of duly registered enterprise. The prescriptive periods under the TCCP and other revenue laws are inapplicable on claims for refund of passed-on customs duties arising from purchases of supplies brought into the ecozone and used, directly or indirectly, by a duly-registered PEZA enterprise.

The Civil Code provisions on solutio indebiti [Article 1145 (2)] find application in this case: the claim for refund must be commenced within six years from date of payment.

(Commissioner of Customs & Bureau of Customs v. DOLE Phil. Inc., CTA EB Case No. 1142, January 5, 2015)

Under-declaration of purchase shall not result in deficiency income tax and VAT

The three elements for the imposition of income tax are: (1) there must be gain or profit, (2) such gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax. Income tax is assessed on income received from any property, activity or service. Such being the case, the imposition or assessment of income tax does not happen when there is an undeclared purchase, but only when there was an income, and such income was received or realized by the taxpayer.

Furthermore, it must be emphasized that for income tax purposes, a taxpayer is free to deduct from its gross income a lesser amount, or not claim any deduction at all. What the income tax law prohibits is the claiming of deduction beyond the amount authorized therein. Hence, even granting that there is an undeclared purchase, the same is not prohibited by law. A taxpayer can exercise its discretion on whether or not it will declare a lesser amount of deductions or none at all.

In the same vein, no deficiency value-added tax (VAT) assessment should arise from under-declared purchase. Note that VAT is imposed on the seller of the goods, pursuant to Section 105 of the 19997 Tax Code. VAT is assessed on the gross selling price or gross value in money of the goods or properties sold and is to be paid by the seller or transferor.

Court Decisions

Thus, what is critical to be shown in the imposition or assessment of VAT in the sale of goods or properties is that the taxpayer is paid or ought to be paid in an amount of money or its equivalent, in consideration of such sale, and not when said taxpayer purchases or disburses an amount of money to purchase goods or properties. Simply put, the VAT is imposed when one sells, not when one purchases.

(Commissioner of Internal Revenue v. Agrinulture Inc., CTA EB No. 1054, January 13, 2015)

What constitutes “relevant supporting documents” attached to a protest

The term “relevant supporting documents” should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents; but it cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

(Staedtler (Philippines), Inc. v. CIR, CTA Case No. 8431, First Division, January 20, 2015)



Highlight on P&A services

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Eleanor Roque
Division Head
Tax Advisory and Compliance
T + 63 2 988 2288 loc. 550
F + 63 2 886 5506
E Lea.Roque@ph.gt.com



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Lina Figueroa
Principal, Tax Advisory and Compliance Division
T +632 988-2288 ext. 520
F +632 886-5506
E Lina.Figueroa@ph.gt.com



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