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Tax brief

January 2015

Member firm of Grant Thornton International Ltd

BIR Issuances

Circularizing revised payment form covered by a letter notice

The Bureau of Internal Revenue (BIR) issued the revised payment form covered by a letter notice (BIR Form No. 0611-A) October 2014 ENCS. The revised form shall be used for payment of deficiency taxes of taxpayers who were issued a letter notice (LN) based on the Reconciliation of Listings for Enforcement (RELIEF) System, Bureau of Customs Data Program and Tax Reconciliation System (TRS). The form was enhanced to be optical character recognition ready and for easy scanning and capturing of date in the form.

(Revenue Memorandum Circular Order No. 88-2014, December 3, 2014)

Withholding tax on REIT and locally produced raw sugar

A new subparagraph (Z) was added under Section 2.57.2 of Revenue Regulations No. (RR) 2-98 to implement the preferential 1% withholding tax on income payments to Real Estate Investment Trusts (REIT) pursuant to the incentive provisions of Republic Act No. (RA) 9856, otherwise known as "The Real Estate Investment Trust Act of 2009", as implemented by RR 13-2011.

A new subparagraph (AA) was also added to provide a separate classification for the 1% creditable withholding tax (CWT) on locally produced raw sugar, which used to be imposed as part of the 1% CWT on agricultural suppliers under subparagraph (S). The new subparagraph covers proprietors or operators of sugar mills/refineries on their mill share, and direct buyers of Quedans or Molasses Storage Certificates from the sugar planters on locally produced raw sugar and molasses as withholding agents. The section also provides for the applicable base price of P1,000 per 50 kg bag for sugar mill operators and P4,000 per metric ton for direct buyers, subject to adjustment when deemed necessary by the Commissioner of Internal Revenue (CIR), upon consultation with the Administrator of the Sugar Regulatory Administration (SRA).

The Regional Director, through the recommendation of the Revenue District Officer, who has jurisdiction over the physical location of the sugar mills/refineries, shall issue the authorization allowing the release of locally produced raw sugar/molasses to the proprietors or operators. This is for purposes of allowing the transfer/withdrawal of their mill share, or to the buyers of Quedans or Molasses Storage Certificates on the locally produced raw sugar or molasses, for further processing into a refined sugar, consumption or other purposes subject to presentation of copies of proofs of payment of the creditable withholding tax due thereon (i.e., duly validated Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) [BIR Form No. 1601-E] and Bank Payment/Deposit Slip/Revenue Official.

Since sugar planters have been removed from the classification of agricultural suppliers, the exemption of marginal income earners from withholding tax, therefore, will not extend to sugar planters.

Likewise, sugar cane has been deleted from the enumeration of agricultural products under the subparagraph covering the withholding by top twenty thousand corporations. Hence, the exemption threshold for cumulative purchases of up to P300,000 will not be applicable for purposes of withholding taxes on raw sugar.

(Revenue Regulations No. 11-2014, December 5, 2014)

BIR Issuances

Prescribed format of a Certificate of Donation

Under RR 13-98, donors are required to submit a Certificate of Donation (BIR Form No. 2322) to the BIR when claiming tax deductions for donations and contributions to accredited non-stock, non-profit corporation or non-government organizations (NGOs). Revenue Memorandum Circular No. (RMC) 89-2014 clarified that the information required in Section 8 of RR 13-98 shall be stated in a Certificate of Donation (BIR Form No. 2322) following the format prescribed by the BIR. BIR Form 2322 consists of two parts:

Donee certification

The first page is a certification by the donee indicating the date when the donation was received. The properties donated must be described and the certification must be signed by an authorized representative of the donee organization.

Donor's statement of values

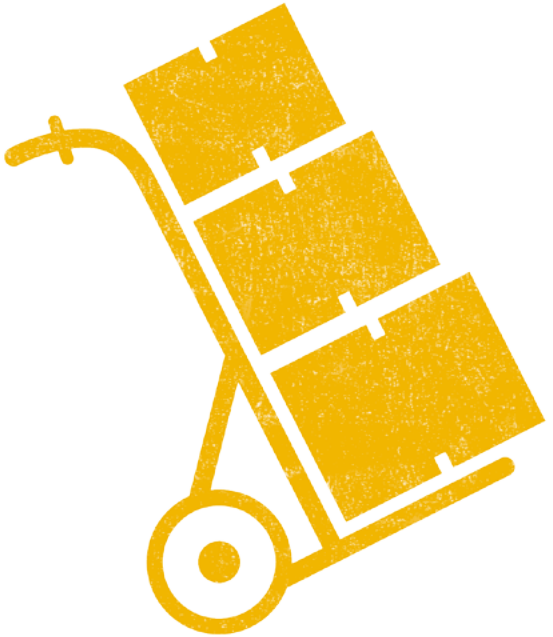
The second page of the BIR form contains a statement which provides descriptions, acquisition costs and net book values of the properties donated as reflected in the financial statements of the donor. A copy of the deed of sale or bill of sale must be attached as proof of the acquisition cost of the properties. This statement must be signed by the donor or an authorized representative.

(Revenue Memorandum Circular No. 86-2014, December 5, 2014)

eFPS filing mandated for TAMP taxpayers and accredited importers

Taxpayer Account Management Program (TAMP) taxpayers and accredited importers and prospective importers required to secure the BIR-ICC and BIR-BCC are mandated to make use of the electronic filing and payment system (eFPS) facility when filing their returns and paying their taxes. Section 3 of RR 9-2001 has been amended to include them in the list. TAMP taxpayers are taxpayers, whether individual or juridical entities, that have been identified and notified by the Revenue District Office (RDO) based on selection criteria pursuant to existing revenue issuances.

(Revenue Regulation No. 10-2014, December 10, 2014)



BIR Issuances

Transition rules on the implementation of the increase in excise tax rates on locally manufactured cigarettes

In transition to the implementation of the increase in excise tax rates on locally manufactured cigarettes effective January 1, 2015, in relation to the new internal revenue stamps prescribed under RR 7-2014, as amended, the BIR issued the following guidelines:

- All local cigarette manufacturers shall compute and pay the differential increase between the current and the new tax rates according to the tax classification of their cigarette products, based on the number of internal revenue stamps being held in their possession as of December 31, 2014, whether or not actually affixed to the packs of cigarettes. The total excise taxes shall be paid to the BIR not later than the last working day of December 2014.

- For purposes of validating the total excise tax paid, a physical inventory of all internal revenue stamps held in possession by all cigarette manufacturers as of December 31, 2014 shall be conducted by the authorized representatives of the BIR.

- In case of discrepancy between the actual payment and results of the physical inventory, the deficiency excise tax shall be accordingly assessed and collected upon demand.

Subsequently, the database of Internal Revenue Stamp Integrated System (IRSIS) shall be updated by the concerned local manufacturer of cigarette products according to the new tax rates with respect to the internal revenue stamps previously issued to, and paid under the current tax rates according to the price classifications of cigarettes.

(Revenue Memorandum Circular No. 89-2014, December 31, 2014)

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Strict compliance with the requirements for claiming tax exemption

Under the franchise of the Philippine Airlines (PAL), as amended, the payment of basic corporate income tax or the franchise tax (now the value-added tax) is in lieu of all other taxes, which include the excise tax on its importation of cigarettes, liquor and wine. However, the exemption only applies if the following requisites are complied with:

- The imported liquors, wines and cigarettes must be commissary and catering supplies.
- The imported liquors, wines and cigarettes are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto.
- The imported liquors, wines and cigarettes are not locally available in reasonable quantity, quality, or price.

The Court of Tax Appeals (CTA) noted that PAL failed to conduct the requisite comprehensive study on the availability, quantity, and price of the subject imported wines or alcohol drinks and cigarettes in the local market, which would help justify the importation of the said items. The taxpayer only inquired from Philippine Wine Merchant and Duty Free Philippines in complete disregard of other suppliers of the same imported items. The alleged inquiry could not even approximate substantial compliance with the legal requirement on the matter.

Without any study or at least solid information on the non-availability in the local market in terms of quantity, quality, and price of the subject imported cigarettes, the petitioner cannot possibly claim compliance with the third requirement to justify exemption from payment of excise tax.

A statute granting tax exemption is strictly construed against the person or entity claiming the exemption for it is a derogation of the sovereign authority. Therefore, strict compliance with the requirements to claim exemption should be strictly enforced.

(Philippine Airlines v. CIR and Commissioner of Customs, CTA Case No. 8130, Third Division, December 1, 2014)

Sale of generation assets of generation companies is subject to VAT

The enactment of RA 9337 on July 1, 2005 placed the electric power industry under the value-added tax (VAT) system. Particularly, the amended provisions mandated that the sale of electricity by generation, transmission and distribution companies shall be subject to VAT on the basis of Sections 106 and 108 of the Tax Code, as amended. Since the taxpayer's income from its main business activity is classified as VATable, it follows that its incidental income shall likewise be subject to VAT.

Section 106 imposes VAT on "all kinds of goods and properties" sold in the Philippines. The term "goods and properties" has an all-encompassing meaning to include the sale of the generation assets of the taxpayer. Therefore, the sale of the Masinloc Plant, Ambuklao/Binga and the collection from the Pantabangan sales fall under that umbrella and should be deemed subject to VAT unless some provision of law expressly exempt it.

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RR 16-2005 was amended by RR 4-2007 to be in harmony with the amendments of RA 9337 and made the sale of real properties not primarily held for sale or for lease but used in business subject to VAT.

(Power Sector Assets and Liabilities Corporation v. CIR, CTA Case No. 8475, December 02, 2014)

Disputable presumption of received notices through registered mail

Section 228 of the Tax Code requires that the taxpayer must be afforded due process of law in assessing tax liability. A valid assessment is a substantive prerequisite to tax collection. Due process dictates that proper sending and actual receipt by taxpayer of the assessment notice.

When a letter or document is sent by registered mail, it is presumed that it was received in the regular course of mail. The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with the postage prepaid; and (b) that it was mailed.

However, even if a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still a disputable presumption, and a direct denial of the receipt thereof shifts the burden upon the party favoured by the presumption to prove that the mailed letter was indeed received by the addressee.

In this case, the taxpayer directly denied that he received the preliminary assessment notice (PAN) and the final letter of demand (FLD) with the assessment notices. With such denial, the burden of proof shifts to the BIR to prove that the aforesaid documents were actually received by the taxpayer.

Upon review of the records, the BIR failed to present evidence that would show that the taxpayer actually received the PAN, FLD and the assessment notices. The failure of the BIR to prove receipt of such notices and letters by the taxpayer leads to the conclusion that no assessment was issued.

(Kenneth C. Pundanera v. CIR, CTA Case No. 8333, December 2, 2014)

Failure to submit documents shall not automatically render the assessment as final and executory

In the present case, the BIR considered the tax assessment final, executory and demandable because of the taxpayer's failure to submit the required documents for assessment within 60 days from filing its protest.

The CTA ruled against this defense stating that the petitioner's submission of protest without supporting documents does not invalidate the filing of the protest. The lack of documentation will only matter when the BIR evaluates the merits of the said protests, but should not automatically result in the deficiency assessment becoming final and executory.

(Phil Foods Properties, Inc. v. CIR, CTA Case No. 8185, Third Division, December 3, 2014)

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Exception to strict interpretation of the law

The general rule is that tax collection cannot be suspended. In case of non-redemption foreclosure sale, capital gains tax (CGT) and documentary stamp tax (DST) should be paid within 30 days and five days, respectively, after the lapse of the redemption period. Consequently, any penalties and surcharges that may be imposed should, likewise, be counted from said redemption period.

However, the peculiar circumstances of the case warrant special consideration. The taxpayer attempted to pay the CGT and DST after the expiration of the redemption period but was told by the receiving clerk of the RDO that the certificates of final sale are required before payment of CGT and DST. However, when the certificates of final sale were issued and the taxpayer paid the taxes, it was additionally charged interest and penalties. Given the circumstances, the CTA approved the taxpayer's application for refund of the interest and penalties charged on the CGT and DST.

While procedural rules must be followed, special cases merit exemption to relieve a litigant of an injustice not commensurate to the degree of his thoughtlessness in noncompliance with the procedure prescribed by law.

The government should not use technicalities to hold on to money that does not belong to it. Only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment. The BIR should thus refund or issue a tax credit certificate (TCC) to the taxpayer representing erroneously paid surcharges on the CGT and real property tax (RPT) for the sale of real properties.

(George T. Olivo and Cash World Lending Inc. v. CIR, CTA Case No. 8755, December 15, 2014)

Appeal on RPT assessments

Sections 226 to 231 of the Local Government Code (LGC) specify the administrative remedies available to a real property owner who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property. Under said provision, the taxpayer must first pay the RPT assessment before filing a written protest with the treasurer concerned. The protest must then be filed within 30 days from payment of the RPT. From the receipt of the protest, the treasurer has 60 days to decide the same. Upon denial of the protest or the lapse of the 60-day period, the taxpayer is afforded the remedy of filing an appeal with the Local Board of Assessment Appeals (LBAA). If the taxpayer is not satisfied with the decision of the LBAA, he can appeal the decision to the Central Board of Assessment Appeals (CBAA) within 30 days after the receipt of the decision.

In the present case, the taxpayer filed an appeal directly with the Regional Trial Court (RTC) for the denial of cancellation of RPT assessment, invoking Section 195 of the LGC. The Municipal Assessor and Treasurer contested the appeal stating that it is under the jurisdiction of LBAA (not the RTC) and as provided under Section 226 to 231, the

Court Decisions

RPT under protest should have been paid as a condition precedent to its appeal.

Considering that the LBAA has jurisdiction to rule on the correctness of the subject assessment, the RTC cannot decide on the case. Likewise, since the taxpayer failed to pay the RPT under protest and appeal before the LBAA within the mandated period, the RPT assessments have become final and collectible.

(Lepanto Consolidated Mining Company v. Marieta A. Bondad, in her capacity as Municipal Treasurer, and Joel D. Tingbaoen, in his capacity as Municipal Assessor, of the Municipality of Mankayan, Benguet, CTA EB Case No. 1092, December 16, 2014)

Appeals from RPT assessments should be made to the LBAA within 60 days

In claiming that its real properties were erroneously and excessively assessed, the taxpayer is in effect questioning the validity of the assessments made by the City Assessor. Under Section 226 of the LGC, a dissatisfied owner or person having legal interest in the property has only 60 days from receipt of the notice of assessment within which to appeal or to question before the LBAA the assailed assessment. Failure to do so will render the assessment of the local assessor final, executory and demandable. It will also preclude the taxpayer from questioning the correctness of the assessment, or from invoking any defense that would reopen the question of its liability on the merits.

In this case, the taxpayer filed its appeal with the LBAA beyond the 60-day reglementary period, rendering the assessment final, executor and demandable.

(Bay Resources Development Corporation v. LBAA and Local Treasurer of Paranaque, CTA EB Case No. 1036, December 16, 2014)

Deficiency taxes not subject to set off against refundable taxes

Taxes cannot be subject to set-off or compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between tax and debt. Debts are due to the government in its corporate capacity, while taxes are due to the government in its sovereign capacity.

A person cannot refuse to pay tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.

(Bay Resources Development Corporation v. LBAA and Local Treasurer of Paranaque, CTA EB Case No. 1036, December 16, 2014)

VAT Zero-rating of services to nonresident clients

Under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, the following requisites must be met in order for the supply of services to be VAT zero-rated:

1. services of a VAT-registered person must not involve processing, manufacturing or repacking of goods
2. payment for such services must be in acceptable foreign currency and accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations
3. recipient of such services is doing business outside the Philippines

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In addition, to be considered as a nonresident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both the Securities and Exchange Commission (SEC) certificate of non-registration of the corporation and the articles of foreign incorporation. Hence, only the clients of taxpayers who can present these documents may be considered as nonresident foreign corporations doing business outside the Philippines and may then qualify for VAT zero-rating.

(Deutsche Knowledge Services, Pte Ltd. v. CIR, CTA Case No. 7808, December 16, 2014)

Apportionment of input VAT refund for unreported zero-rated sales

Pursuant to Section 114 (A), in relation to Section 108 of the 1997 Tax Code, a taxpayer should report all its zero-rated sale of services in the period the payments were received.

In case a taxpayer fails to report some of its zero-rated sales in the appropriate period when such sales were made, only the amount of input VAT claimed during the period proportionate to the zero-rated sales reported in the VAT return during the period may be allowed for refund. The input VAT proportionate to the amount of zero-rated sales not reported during the period (i.e., reported in the succeeding period) will be disallowed.

There is no plausible reason why a taxpayer should be entitled to a refund of the substantiated input VAT without allocating its reported zero-rated sales to sales per official receipts because the substantiated input VAT covers the entire zero-rated sales, both reported and unreported sales for the quarter. In disallowing a portion of a taxpayer's zero-rated sales, it essentially follows that a portion of the claim for refund of input VAT attributable to such zero-rated sales should also be disallowed by the CTA. Otherwise, it would be to disregard the substantiation of the taxpayer's zero-rated sales thereby negating its effect on the amount of unutilized input VAT claimed for refund.

(Northwind Power Development Corporation v. CIR, CTA EB Nos. 1037 & 1042, December 16, 2014)

Refunding of amortized input VAT from capital goods

Section 110 (A) of the 1997 Tax Code is clear that if the aggregate acquisition cost of the capital goods, excluding the VAT component, exceeds one million pesos in a calendar month, the input tax on capital goods shall be spread over 60 months or the estimated useful life of the capital goods, whichever is shorter. Since there is no provision for exemption, a company generating 100% export or VAT zero-rated sales is not exempt from the requirement to spread the input VAT.

Hence, even if the taxpayer is subjected to zero-rated tax on all its sales, it can only claim refund based on its "creditable input tax" attributable to the zero-rated sale during the period. In case of input taxes on capital goods, such refundable input tax refers only to the portion amortized during the period of claim.

This rule will not prevent the taxpayer from refunding the rest of the amortized input taxes beyond the two-year prescription period. The spreading over of the input VAT does not run counter to the provisions of Section 112(A) of the 1997 Tax Code because the spreading over merely delays the crediting of the input tax and not the filing of the claim. The taxpayer is

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not deprived of his privilege to credit the input tax as long as it filed its claim within two years from the close of the taxable quarter when the sales were made. To emphasize, the reckoning period for the claim is two years from the end of the quarter when the pertinent sale or transactions were made regardless of when the input VAT was paid.

(Taganito Mining Corporation v. CIR, CTA EB Case Nos. 935 & 936, December 16, 2014; and CIR v. Northwind Power Development Corporation, CTA EB Nos. 1037 & 1042, December 16, 2014)

Proving that income on which CWT refund is sought is declared in the ITR

A taxpayer claiming for a tax credit or refund of CWT must prove that it was shown in the income tax return (ITR) that the income received was declared as part of the gross income and the fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.

Although the taxpayer submitted documents like General Ledger, Trial Balance, Audited Financial Statements for 2007, 2008 and 2009, Annual Income Tax Returns for 2007 and 2008, Quarterly Income Tax Returns for 2007 and 2008, schedules and other supporting documents, the court noted that it failed to present detailed General Ledger, reconciliation schedules or any other document whereby the court can trace the discrepancy and can determine with certainty that the all income payments related to the claimed CWT formed part of its taxable gross income in its annual ITR.

Tax refunds partake of the nature of tax exemptions and are thus construed strictissimi juris against the person or entity claiming the exemption. The burden in claiming tax refund rests upon the taxpayer. In this case, petitioner failed to discharge the necessary burden of proof.

(United Coconut Planters Bank v. CIR, CTA EB No. 1017, December 16, 2014)

Refund of erroneously withheld tax

Proceeds from the sale land of the former military camp are tax exempt pursuant to RA 7227 otherwise known as the Bases Conversion and Development Act of 1992, as amended by RA 7917, which provides that the proceeds of the sale of portion of camps located in Metro Manila "shall not be diminished and therefore, exempt from all forms of taxes and fees".

The sale is therefore also exempt from withholding tax.

Since Bases Conversion and Development Authority (BCDA) has been erroneously subjected to withholding tax on its sale of land formerly forming part of Fort Bonifacio, BCDA applied for refund of the tax withheld.

The BIR argued that, in a claim for refund of CWT, the taxpayer must prove that the income from which taxes were withheld was included as part of the gross income. BIR states that the certificates of CWT, payment forms and deposit slips are not sufficient to justify its refund claim. The BIR further argues the taxpayer is required to choose an option to refund or for issuance of tax credit certificate in its annual income tax return pursuant to Section 76 of the 1997 Tax Code. Since BCDA opted to carry over its unutilized creditable withholding tax, said carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the 1997 Tax Code. BIR concludes that BCDA is already barred from claiming the refund.

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The CTA En Banc ruled that, since the BCDA is claiming for a refund of erroneously withheld tax on an income exempt from tax (which the withholding agents should not have withheld and remitted to the BIR in the first place), the requirements under Section 76 of the Tax Code should not apply. BCDA is not required to declare the sale of the lots as part of its gross income. Compliance with this requirement is vital only for refund of excessive income tax payments or excess creditable withholding tax sanctioned under Section 76 of the NIRC.

It is a truism that tax refunds are in the nature of tax exemptions and are to be construed in strictissimi juris against the taxpayer and liberally in favor of the taxing authority. However, the rule on strict interpretation of tax exemption does not justify a denial of a claim for refund where the taxpayer has sufficiently proven the factual and legal basis for its exemption and the fact of payment to the taxing authorities.

(Bases Conversion and Development Authority v. CIR, CTA EB No. 1123, December 16, 2014)

Refund of excess income tax credits upon cessation of business

Under Section 76 of the 1997 Tax Code, a corporation's excess income tax credit or overpaid income tax in a given year may either be refunded (in the form of cash or TCCs) or carried over and applied against the income tax liabilities of the succeeding taxable years. Once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall then be allowed.

In exercising its option, the corporation is mandated to signify in its annual ITR (by marking the box provided in an appropriate BIR Form) its intention either to carry over the excess credit or to claim a refund; the remedies are in the alternative and the choice of one precludes the other.

However, in the event of cessation of business, a taxpayer may opt to claim for refund/TCC even if it had previously chosen or exercised the irrevocable option to carry-over since there is no more opportunity for it to utilize such excess credits. However, in order to be exempted from the irrevocability rule, the taxpayer must prove that it has indeed permanently ceased its business operations. A dissolving corporation must abide by the requirements as stated in Sections 52(C) and 235(e) of the 1997 Tax Code, as amended, viz., (1) secure a Certificate of Tax Clearance from the BIR, and (2) to secure a Certificate of Dissolution from the Securities and Exchange Commissioner (SEC).

(NEC Logistics Phil., Inc., v. CIR, CTA Case No. 8533, December 18, 2014)

SEC Issuance

Schedule of AFS filing with SEC

The schedule of filing of annual financial statements (AFS) and general information sheet (GIS) in 2015 by companies whose fiscal year ends on December 31, 2014, is as follows:

Filing date	Last digit of SEC registration/license
April 13-17	"1" , "2"
April 20-24	"3" , "4"
April 27-30	"5" , "6"
May 4-8	"7" , "8"
May 11-15	"9" , "0"

Prior to April 13, 2015, all corporations may file their AFS regardless of the last numerical digit of their registration or license number. Late filings shall be accepted starting May 18, 2015 but shall be subject to the prescribed penalties.

The above schedule shall not apply to corporations whose fiscal year ends on a date other than December 31, 2014. These entities should file instead their AFS within 120 calendar days from the end of their fiscal year.

For companies whose securities are listed on the Philippine Stock Exchange (PSE), they should observe the due date of filing of their AFS as attachment to their Annual Reports (SEC Form 17-A).

The schedule also does not apply to those whose AFS are being audited by the Commission on Audit (COA) subject to certain requirements.

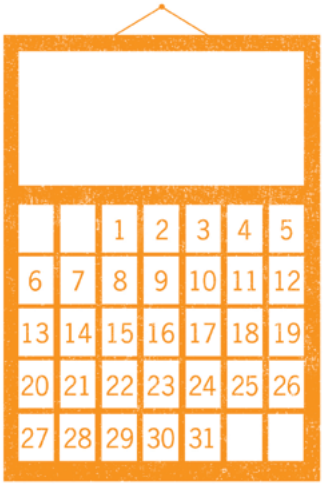
Those filing for five or less corporations may file either at the SEC head office or at the Ali Mall Satellite office. Those filing for more than five corporations may file with the SEC head office.

All filers, regardless of the number of reports to be filed at SEC following the number coding schedule, may also file their AFS through courier service subject to compliance with the procedures prescribed in the circular.

The SEC Memorandum also reminds the AFS filers that SEC will not accept AFS other than consolidated financial statements, unless stamped "Received" by the Bureau of Internal Revenue or authorized banks, and unless the BIR allows an alternative proof of submission for its authorized banks.

Failure to comply with any formal requirements under SRC Rule 68, shall be considered a sufficient ground for the imposition of penalties by SEC. The acceptance of the AFS, however, shall be without prejudice to such penalties.

(SEC Memorandum Circular No. 23, Series of 2014, December 9, 2014)



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