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**TMAP Position Paper**  
**Revenue Regulations No. 1-2014**  
**Amendment of Rules on on the Submission of**  
**Alphabetical List of Employees/Payees of Income Payments**

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*Background*

Prior to Revenue Regulations (“RR”) No. 1-2014, under RR No. 10-2008 which amended RR No. 2-98, the alphabetical list of employees and list of payees and income payments subject to creditable and final withholding taxes which are attached as an integral part of the Annual Information Returns (BIR Form No. 1604CF/ 1604E) and Monthly Remittance Returns (BIR Form No. 1601C etc.) may be submitted by withholding agents (1) manually; (2) in softcopies contained in 3.5-inch floppy diskettes/CD; or (3) via email at [esubmission@bir.gov.ph](mailto:esubmission@bir.gov.ph). As an exception, taxpayers who have ten (10) or more employees or income payees are however required to submit the lists in 3.5-inch floppy diskettes/CD or email using the CSV data file format, together with the manually prepared alphabetical list. Also, taxpayers were previously allowed to submit the list in excel file or through their own extract program according to technical specifications required by the BIR, provided that they use a validation module which could be downloaded from the BIR website.

However, with the promulgation of RR No. 1-2014 last December 17, 2013, Section 2.83.3 of RR 2-98 now reads:

**Section 2.83.3. Requirement for list of payees** – All withholding agents shall, regardless of the number of employees and payees, whether the employees/payees are exempt or not, submit an alphabetical list of employees and list of payees on income payments subject to creditable and final withholding taxes which are required to be attached as integral part of the Annual Information Returns (BIR Form No. 1604CF/1604E) and Monthly Remittance Returns (BIR Form No. 1601C, etc.), under the following modes:

- (1) As attachment in the Electronic Filing and Payment System (eFPS);
- (2) Through Electronic Submission using the BIR’s website address at [esubmission@bir.gov.ph](mailto:esubmission@bir.gov.ph); and
- (3) Through Electronic Mail (email) at dedicated BIR addresses **using the prescribed CSV data file format**, the details of which shall be issued in a separate revenue issuance.

In cases where any withholding agent does not have its own internet facility or unavailability of commercial establishments with internet connection within the location of the withholding agent, the alphalist prescribed herein may be electronically mailed (e-mail) thru the e-lounge facility of the nearest revenue district office or revenue region of the BIR.

The submission of the herein prescribed alphalist where the income payments and taxes withheld are lumped into one single amount (e.g. “Various employees”, “Various payees”, “PCD nominees”, “Others”, etc.) shall not be allowed. The submission thereof, including any **alphalist that that does not conform with the prescribed format** thereby resulting to the unsuccessful uploading into the BIR system shall be deemed not as received and shall not qualify as a deductible expense for income tax purposes.

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x x x Emphases supplied.<sup>1</sup>

**1. The disallowance of deductions is not a valid exercise of the BIR's quasi-legislative powers.**

TMAP submits that the amendatory provision introduced by RR No. 1-2014, which disallows deductions from the gross income of withholding agents for non-compliance with the prescribed alphalist format, is not a valid exercise of its quasi-legislative powers.

To be valid, an administrative rule or regulation must conform, not contradict, the provisions of the enabling law.<sup>2</sup> Hence, to determine whether the provisions of Revenue Regulations are valid, a scrutiny of the enabling laws is imperative. An implementing rule or regulation cannot modify, expand, or subtract from the law it is intended to implement. Any rule that is not consistent with the statute itself is null and void.<sup>3</sup>

In issuing RR No. 1-2014, the BIR, an administrative agency, extended, expanded and modified the National Internal Revenue Code, as amended, beyond its terms.

Section 34 (A) (1) of the NIRC provides certain requirements in order that business expenses may be allowed as deductions from gross income. As interpreted by several Supreme Court cases, expenses, to be deductible, must be:

1. ordinary and necessary;
2. substantiated with official receipts or any other adequate records;
3. reasonable in amount;
4. withheld with tax and paid to the BIR, if the taxpayer is required to do so;
5. not contrary to law, morals, public order, and public policy; and
6. incurred or paid and deducted within the taxable year.<sup>4</sup>

To clarify, in accordance with Secs. 57 and 58 of the Code, and as elucidated by Section 2.5.3 of RR 2-98, as amended by RR No. 11-2013, any income payment deductible under the Tax Code shall be allowed as a deduction from gross income only if it is shown that the income tax required to be withheld has been paid to the BIR.

TMAP herein submits that the requirement of submitting the alphalist in a certain computer file format under pain of disallowance of deductions goes beyond the implementation of the statutes on deductions and withholding taxes. Regardless of form and manner, and so long as the above enumerated requisites are complied with, expenses are generally allowed as deductions from the gross business income if the corresponding

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<sup>1</sup> Revenue Regulations No. 1-2014, Section 2.

<sup>2</sup> Fort Bonifacio Development Corporation vs. CIR, G.R. No. 158885, October 2, 2009

<sup>3</sup> *Supra* at note 6.

<sup>4</sup> Valencia, *citing* Section 34 (A) (1) (a) (i) of the National Internal Revenue Code, *supra* at p. 373.

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withholding tax has been deducted and remitted to the BIR.<sup>5</sup> Hence, submission of the details of withholding in a certain computer format is an additional requirement that is not intended by the legislature. There is no nexus between the software, process, procedure or format used by the taxpayer in reporting the details of his expenses and the amount of taxes he has withheld vis-à-vis the fact that he actually and properly withheld taxes and incurred expenses related thereto.

**2. The penalty of disallowance of expense violates the due process principle, considering that only administrative penalties are provided under the Tax Code.**

Although non-conformity with the prescribed format may be said to be an omission that causes great inconvenience to the BIR in its enforcement and collection of taxes, sanctioning the same by disqualifying the taxpayer from claiming deductions is too oppressive and confiscatory a penalty.

The NIRC, as amended, only prescribes administrative penalties for failure to comply with reportorial requirements, to wit:

“SECTION 250. Failure to File Certain Information Returns.

In the case of each failure to file an information return, statement or list, or keep any record, or supply any information required by this Code or by the Commissioner on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall, upon notice and demand by the Commissioner, be paid by the person failing to file, keep or supply the same, One thousand pesos (P1,000) for each such failure: Provided, however, That the aggregate amount to be imposed for all such failures during a calendar year shall not exceed Twenty-five thousand pesos (P25,000).”

“SECTION 255. Failure to file return, supply correct and accurate information, pay tax, withhold and remit tax and refund excess taxes withheld on compensation.

Any person required under this Code or by regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or regulations shall, in addition to other penalties provided by law, upon conviction thereof, be fined of not less than Ten thousand pesos (P10,000) and imprisonment of not less than one (1) year but not more than ten (10) years.”

To disallow expenses for failure to conform with a particular format of the reportorial requirement renders the tax measure oppressive and confiscatory. When a tax measure is oppressive and confiscatory, such could be considered as being violative of the due process principle.<sup>6</sup>

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<sup>5</sup> *Id.*, at p. 374.

<sup>6</sup> Aban, *supra* at p. 68.

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Due process is violated by the provision insofar as it summarily disqualifies as deductible expense for income tax purposes on the basis merely of form. The first clause of Section 1 of Article III of the 1987 Constitution states that “[n]o person shall be deprived of ... *property without due process of law...*” Verily, disallowance of deductions which have in fact satisfied all statutory requirements ultimately results in deprivation of property, since the taxpayer will be taxed on a net taxable income that is higher than what he has actually earned. Despite the fact that deductions are a matter of legislative grace, this rule of interpretation is subject to the paramount constitutional right to due process. Hence, consistent with the tenets of due process, instead of the penalty of disallowance of expense as deductions, only administrative penalties should be imposed for failure to submit the alphalist in the prescribed format.

Moreover, the new regulation is vague as to what it considers as a “*non-submission in the prescribed format resulting in the unsuccessful uploading*” of the alphalist to the BIR System. It does not qualify as to the possibility that certain risks associated with the system may intervene in the whole process. To put it more bluntly, the regulations effectively added another requirement for deductibility of expenses, i.e., computer savvy or encoding accuracy and expertise.

It also does not qualify whether the non-submission in the prescribed format be a mere oversight or a deliberate violation of the instructions on how to create CSV data file formats, and imposes the same severe penalty of disqualification from claiming deductions on both types of omissions. This would lead to absurd situations. For example, a taxpayer who has diligently withheld on his payments and has paid the wages and salaries of his employees will be disqualified from claiming even a single centavo of deduction, just because he possesses inadequate computer know-how, or merely because one of his employees made the mistake of leaving in creating the CSV file resulting in an error in uploading with the BIR, or just because the CSV file containing the alphalist inadvertently gets corrupted by a computer virus such that it no longer appears as a CSV file when received by the BIR.

No matter how simple the CSV data file format system is, it is still a process that is vulnerable to certain risks which may be beyond the control of the taxpayer. The rights of the taxpayer to the correct imposition of taxes through the just determination of their deductible expenses should not be made subject to a procedure or a mechanical system but to substantive requirements. Otherwise, taxpayers will be deprived of their property without due process of law.

**3. The penalty of non-deductibility of expense on the part of the withholding agent, which merely acts as collecting agent of the tax authority, is an undue additional burden of compliance.**

Withholding agents are persons having the receipt, custody, control and disposal of the gain, profits, and income subject to tax. Hence, withholding agents serve not only as agents of taxpayers; they are also agents of the tax authorities. In fact, the government’s cost in

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collecting taxes is reduced with the designation of withholding tax agents. Moreso, these withholding agents help the government improve its cash flow with the advance collection of taxes.

Thus, imposing upon withholding agents the penalty of disallowance of deductions for their simple failure to follow the prescribed format, aside from the usual compliance costs, is an undue additional burden on their part that may obstruct, instead of expedite, the collection of taxes.

#### **4. The requirement for mandatory electronic submission is discriminatory given the state of internet accessibility in the country.**

Despite the increasing access of the public to the internet, internet penetration rate in the country was only 36% as of end-2012, according to the National Statistics Coordination Board (NSCB). Hence, access to the internet generally remains a concern for a sizeable number of Filipino taxpayers. Even with the establishment of BIR Kiosks, the same is insufficient to level the playing field, especially for small and micro business operators that have less capitalization and hence, less likely to have easy access to the internet.

Thus, TMAP believes that mandatory electronic submission of the alphalist, even for small and micro business enterprises and those with less than ten (10) employees that were previously allowed to do manual filing, is discriminatory. It is, therefore, recommended that manual submission as a mode of filing the alphalist should be retained and electronic submission should only be mandatory for taxpayers who have availed of the eFPS or the electronic filing of tax returns.

In addition, the inefficiency and unnecessary burden on taxpayers brought forth by the mandatory electronic procedures are further reflected in Revenue Memorandum Circular (RMC) No. 5-2014 dated January 29, 2104. Said RMC, which aims to clarify the provisions of RR No. 1-2014, provides that, except for those registered under the eFPS, all other taxpayers, are still required to print in hard copies the acknowledgement/confirmation by the BIR of the receipt of the emailed alphalist as documentary proof of filing/submission of the alphalist, and this is to be submitted together with the hard copy of the Annual Information Returns. This only shows that, even with the mandatory electronic submission of alphalist reports, most tax filing procedures continue to be manual in nature. Thus, not only is this requirement redundant, this also defeats the very purpose of electronic processing of taxpayers' data, which is to expedite and make accurate the whole data submission and collection process.