

TMAP POSITION PAPER ON RR 2-2014 (New Income Tax Forms)

The **TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES (TMAP)** respectfully submits to the Ways and Means Committee of the House of Representatives its position paper on the BIR Revenue Regulations (RR) No. 2-2014, which prescribes the new ITR forms to be used for calendar year 2013 and to be filed this April 15, 2014.

I. MANDATORY ITEMIZED DEDUCTIONS

Section 5 of RR 2-2014 prescribes Mandatory Itemized Deductions, which effectively results to the disallowance of the use of the Optional Standard Deduction (OSD), for the following taxpayers:

- Corporations, partnerships and other non-individuals:
 1. Those exempt under the Tax Code [Section 30 and those exempted under Section 27 (C)] and other special laws, with no other taxable income;
 2. Those with income subject to special/preferential tax rates; and
 3. Those with income subject to income tax rate under Section 27 (A), and 28 (A) (1) of the Tax Code, and also with income subject to special/preferential tax rates.
- Individual taxpayers:
 1. Who are exempt under the Tax Code and other special laws with no other taxable income [e.g., Barangay Micro Business Enterprise (BMBE)];
 2. Individual taxpayers with income subject to special/preferential tax rates; and
 3. Individual taxpayers with income subject to income tax rate under Section 24 of the Tax Code, and also with income subject to special/preferential tax rates;

However, Section 34(L) of the Tax Code explicitly allows OSD as a deduction for those subject to regular income tax under the Tax Code.

“SEC. 34. Deductions from Gross Income. - Except for taxpayers earning compensation income arising from personal services rendered under an employer-employee relationship where no deductions shall be allowed under this Section other than under subsection (M) hereof, in computing taxable income subject to income tax under Sections 24 (A); 25 (A); 26; 27 (A), (B) and (C); and 28 (A) (1), there shall be allowed the following deductions from gross income: x x x”

Based on the foregoing, the following taxpayers subject to regular income tax are entitled to choose the OSD method in computing their net taxable income:

- 1) Individual resident citizen or individual resident alien;

- 2) Non-resident alien engaged in trade or business;
- 3) Members of GPPs;
- 4) Domestic corporations;
- 5) Proprietary educational institutions and hospitals;
- 6) Government-owned or controlled-corporations, agencies or instrumentalities; and
- 7) Resident foreign corporations.

Only those taxpayers earning compensation income under an employee-employer relationship are not allowed to avail of OSD and other items of deduction from Gross Income (with the exception of certain allowed personal exemptions/deductions).

With this, there appears to be no legal basis for mandating the use of itemized deductions for those taxpayers enumerated under Section 5 of RR 2-2014. While the use of OSD has no actual tax implications for those with income exempt from tax or subject to special/preferential tax rates, this would have grave implications for those with mixed income – i.e., with portion of income subject to regular income tax and another portion subject to exemption or special/preferential tax rates.

Note that taxpayers subject to mixed income should separately record and compute their net taxable income with resulting income tax payable based on their different activities. For example, a taxpayer with BOI-registered activities subject to Income Tax Holiday and other activities subject to regular income tax will have to maintain separate books of accounts and separately compute for income taxes. This difference in tax regime, however, should not prevent the taxpayer from opting for OSD in computing its regular income tax on its non-BOI registered activities, as legally provided under Section 34(L) of the Tax Code.

II. REQUIRED INFORMATION DISCLOSURES IN THE NEW ITR FORMS

The following additional information is required to be provided by Corporate taxpayers in the new ITR forms:

- Name, tax identification number (TIN) and accreditation of external auditor/accredited tax agent
- Details of Sales/Revenues/Receipts/Fees, Cost of Sales, Other Taxable Income Not Subjected to Final Tax, Ordinary and Special Allowable Itemized Deductions
- Balance Sheet accounts (Assets, Liabilities and Equity)
- Registered name, TIN, capital contributions and percentage of ownership of top 20 stockholders, partners or members

- Supplemental information about Gross Income/Receipts Subjected to Final Withholding, Sale/Exchange of Real Properties, Sale/Exchange of Shares of Stock, Other Income Subjected to Final Tax
- Details of Gross Income/Receipts Exempt from Income Tax

Meanwhile, the same supplemental information disclosure about Gross Income/Receipts subject to Final Tax and was included in the ITR forms of individuals (BIR Forms 1700 and 1701).

Please note that the BIR recently issued Revenue Memorandum Circular (RMC) No. 9-2014, which made it optional on the part of individual taxpayers to submit these disclosures for calendar year 2013. The same option was not given to corporate taxpayers, which may either file BIR Forms 1702-RT, 1702-EX or 1702-MX for calendar year 2013.

For calendar year 2014, however, individual taxpayers are already mandated to provide the disclosure under the Supplemental information portion. With that, individual taxpayers are also required to demand from payors their certificates of final withholding tax, plus issue receipts and record their tax-exempt income.

- **On the Supplemental Information requirements**

TMAP would like to reiterate its joint position together with the Philippine Chamber of Commerce and Industry (PCCI), the Management Association of the Philippines (MAP), the Employers Confederation of the Philippines (ECOP), the Philippine Exporters Confederation Inc. (PHILEXPORT), and the Financial Executives Institute of the Philippines (FINEX), on RMC No. 40-2011, which originally required the Supplemental Information Return. A joint position paper was signed and submitted by these organizations with the BIR sometime in November 2011, asking for the withdrawal of RMC 40-2011. *(Note: RMC 57-2011 was later issued to defer the implementation of disclosure requirements. It is this same RMC that RMC 9-2014 now seeks to amend.)*

Under said joint position paper, opposition to the mandatory requirement to provide Supplemental Information was mainly due to lack of legal basis, aside from concerns on privacy, the Bank Secrecy Law and administrative difficulties. The paper also noted the redundancy of such requirement, considering that the same information could be found in the withholding tax agent's alphalist submissions to the BIR.

For your reference, we'd like to quote the following pertinent arguments stated in the joint position paper:

“We respectfully oppose RMC 40-2011 for the following reasons:

a) The requirement of RMC 40-2011 to file income tax returns with SIR contravenes the provisions of Section 51 (A) of the Tax Code, particularly:

“(2) The following individuals shall not be required to file an income tax return:

(b) An individual with respect to pure compensation income, xxx x x the income tax on which has been correctly withheld xxxxx;

(c) An individual whose sole income has been subjected to final withholding tax xxxxx;”

Based on the above provisions, it is clear that an individual whose compensation income has been correctly subjected to withholding tax regardless of amount or whose sole income has been subjected to final withholding tax is not required to file income tax return. On the contrary, RMC 40-2011 requires such individuals with a certain level of income or of final withholding tax to file income tax return with supplemental information return.

“(3) The foregoing notwithstanding, any individual not required to file an income tax return may nevertheless be required to file an information return pursuant to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner.”

Considering the foregoing provisions, the supplemental information return imposed by RMC 40-2011, which circular was approved solely by the Commissioner of Internal Revenue, is not a valid requirement since it is not based on any rules and regulations prescribed by the Secretary of Finance.

In brief, RMC 40 -2011 has no legal basis and in fact, it is even contrary to all the aforecited provisions of the Tax Code.

b) Moreover, it will be recalled that this new reporting requirement mirrors practically the disclosure requirement in the Annual Information Return under Revenue Regulations (RR) 2 – 2011. Said RR was subsequently withdrawn (RR 6 – 2011) in view of the serious criticisms raised by various sectors including several legislators. The main opposition put forward was that the disclosure requirement was a violation of the individual’s right to privacy and the Bank Secrecy Deposit Law. Another argument against said requirement is that the needed information is already available in the BIR and/or can be culled from the reports submitted by the income payors or from the tax returns already filed by the taxpayers themselves with the BIR, e.g., capital gains tax returns.

In short, the SIR is a redundant requirement which imposes additional burden to taxpayers but, which will not necessarily add to the tax collections of the BIR. Moreover, erroneous declarations in the SIR could expose the taxpayer to penalties of perjury as in any tax return submission to the BIR.

c) Lastly, while on surface, the reporting requirement seems easy to comply with, in reality, it is difficult to implement, considering the nature and details of information required to be reported. For instance, getting such detailed

information from the banks will take time given the number of bank customers and the volume of transactions involved. Gathering and summarizing all the required details on the other passive income items is also a tedious process.

It is to be noted that one of the attractions for choosing investments with tax free or net of tax yields is the exemption from the hassle of accounting for and reporting of income received from said investments. The requirement to account for and report such income negates that advantage.

In view of all the foregoing grounds, we respectfully request that RMC 40 – 2011 be withdrawn.”

- **On New ITR Disclosure Requirements for Corporations**

Aside from the Supplemental Information that was previously required under RMC 40-2011, there are additional information requirements in the corporate ITRs:

- Name, tax identification number (TIN) and accreditation of external auditor/accredited tax agent
- Details of Sales/Revenues/Receipts/Fees, Cost of Sales, Other Taxable Income Not Subjected to Final Tax, Ordinary and Special Allowable Itemized Deductions (Note: These were already required to be disclosed as part of the Notes to the Audited Financial Statements)
- Balance Sheet accounts (i.e., Assets, Liabilities and Equity)
- Registered name, TIN, capital contributions and percentage of ownership of top 20 stockholders, partners or members

TMAP finds these additional requirements to be redundant with submission of the Audited Financial Statements (AFS) and Notes, which are already required to be attached to the ITR and submitted to the BIR.

Just like the arguments posed on the SIR, it imposes additional and unnecessary burden to corporate taxpayers, which will not necessarily result to additional tax collections for the BIR. Moreover, erroneous declarations in the SIR (i.e., wrong encoding of balance sheet amounts or capital contributions by stockholders, even with an attached AFS) could expose the taxpayer to the same penalties of perjury, being part of the income tax return.

In view of all these issues, TMAP hereby recommends the the withdrawal of Section 5 of RR No. 2-2014 and the exclusion of supplemental information requirement from the ITR forms. A deferment of the use of the new ITR forms may also be warranted to address the issues noted and to give sufficient time to educate the taxpayers.

Moving forward, the BIR should also consider simplifying the new ITR forms, especially for self-employed individual taxpayers who have to fill-out 11 pages of forms, excluding 6 additional pages for those with multiple tax regimes. TMAP believes that the simplification of tax returns is a necessary step towards greater compliance among taxpayers.