



TAX MANAGEMENT ASSOCIATION
OF THE PHILIPPINES, INC.



TAX & OTHER UPDATES FOR APRIL 2014
(Prepared by Salvador and Associates)

BIR Issuances

Revenue Regulations (RR)

RR No. 2-2014 dated 24 January 2014 prescribes the new Income Tax forms, which will be used for Income Tax Returns (ITRs) covering and starting taxable year ended December 31, 2013 by all taxpayers who are required to file their ITRs under Section 51(A)(1) of the Tax Code and those who are not required to file under Section 51(A)(2) but who opted to do so. The new Income Tax forms are the following:

- a. BIR Form No. 1700 version June 2013 (Annual Income Tax Return for Individuals Earning Purely Compensation Income);
- b. BIR Form No. 1701 version June 2013 (Annual Income Tax Return for Self-Employed Individuals, Estates and Trusts);
- c. BIR Form No. 1702-RT version June 2013 (Annual Income Tax Return for Corporations, Partnerships and Other Non-Individual Taxpayers Subject Only to the REGULAR Income Tax Rate);
- d. BIR Form No. 1702-EX version June 2013 (Annual Income Tax Return for Use Only by Corporations, Partnerships and Other Non-Individual Taxpayers EXEMPT under the Tax Code, as amended, [Sec. 30 and those exempted in Sec. 27(C)] and Other Special Laws, with NO Other Taxable Income); and
- e. BIR Form No. 1702-MX version June 2013 (Annual Income Tax Return for Corporations, Partnerships and Other Non-Individuals with Mixed Income Subject to Multiple Income Tax Rates or with Income Subject to Special/Preferential Rate)

The requirement for entering centavos in the ITR has been eliminated. If the amount of centavos is 49 or less, the centavos shall be dropped, and if the amount is 50 centavos or more, it shall be rounded up to the next peso.

Corporations, partnerships and other non-individuals are mandated to use the itemized deductions in the following cases:

- a. Those exempt under the Tax Code, as amended [Section 30 and those exempted under Section 27(C)] and other special laws, with no other taxable income;
- b. Those with income subject to special/preferential tax rates; and
- c. Those with income subject to income tax rate under Section 27(A) and 28(A)(1) of the Tax Code, as amended, and also with income subject to special/preferential tax rates. Juridical entities whose taxable base is the gross revenue or receipts (e.g., non-resident foreign international carriers) are not entitled to the itemized deductions or to the Optional Standard Deduction (OSD) under Section 34(L) of the Tax Code, as amended.

Individual taxpayers who are not entitled to avail of the OSD and thus use only the itemized deduction method are as follows:

- a. Those exempt under the Tax Code, as amended, and other special laws with no other taxable income (e.g. Barangay Micro Business Enterprise);
- b. Those with income subject to special/preferential tax rates; and
- c. Those with income subject to Income Tax rate under Section 24 of the Tax Code, as amended, and also with income subject to special/preferential tax rates.

Taxpayers who filed using old forms for their 2013 ITRs (manual and/or electronic) must re-file using the new Income Tax forms upon their availability.

RR No. 4-2014 dated 3 March 2014 prescribes the policies and guidelines in the monitoring of service fees of self-employed professionals:

1. Register and pay the Annual Registration Fee with the Revenue District Office/Large Taxpayers District Office having jurisdiction over them.
2. Submit an affidavit indicating the rates, manner of billings and the factors they consider in determining their service fees upon registration and every year thereafter on or before January 31.
3. Register the books of accounts and official appointment books of their practice of profession/occupation/calling before using the same. The official appointment books shall contain only the names of the client and the date/time of the meeting. They are likewise obligated to register their sales invoices and official receipts (VAT or non-VAT) before using them in any transactions.
4. When no professional fees are charged by the professional and paid by client, a BIR-registered receipt, duly acknowledged by the latter, shall be issued showing a discount of 100% as substantiation of the “pro-bono” service.

All existing and registered self-employed professionals at the time these Regulations became effective are required to submit the required affidavit and register its official appointment books within 30 days from date of effectivity of these Regulations. These Regulations shall take effect after 15 days following publication in any newspaper of general circulation. These Regulations were published in Manila Bulletin on 21 March 2014.

**Supreme Court (SC) Resolution
G.R. No. 211772 dated 22 April 2014**

On 8 April 2014, the Integrated Bar of the Philippines challenged the validity of RR 4-2014 and filed with the SC a Petition for Prohibition and Mandamus under Rule 65 with Application for Issuance of Injunctive Writs.

On 22 April 2014, the SC issued a Temporary Restraining Order, effective immediately and continuing until further orders of the SC, enjoining the officers, agents and employees of the Department of Finance and Bureau of Internal Revenue from implementing RR No. 4-2014, but only with respect to lawyers.

Revenue Memorandum Order (RMO)

RMO No. 9-2014 dated 6 February 2014 prescribes guidelines in the processing of requests for rulings with the Law and Legislative Division.

Aside from matters declared as “No Ruling Areas” in Revenue Bulletin (RB) No. 1-2003, as amended by RB No. 2-2003, non-compliance with any of the requirements under the Order may prevent the BIR from issuing an opinion on the request for ruling.

The BIR does not give tax planning advice and does not “approve” tax planning arrangements. The Bureau will also not resolve an issue through a ruling if the matter can be determined through another process (i.e. appeal).

The Law and Legislative Division will not issue a ruling in response to a request in the following instances:

- a. the taxpayer has directed a similar inquiry to another office of the BIR;
- b. the same issue involving the same taxpayer or a related taxpayer is pending in a case in litigation;
- c. The same issue involving the same taxpayer, is subject of a pending investigation, on-going audit, administrative protest, claim for refund or issuance of tax credit certificate, or collection proceeding.

A ruling will not be issued on alternative plans of proposed transactions or on supposed situations.

The required information to be contained in the letter requests for ruling as well as the general documentary requirements that should accompany it are specified in the Order.

A taxpayer ordinarily may rely on a valid ruling received from the Bureau pertaining to the transaction it was applied for. For the ruling to be valid, the taxpayer must fully and accurately describe the transaction in the request. Tax rulings cannot be cited as precedent by other taxpayers, but they can provide useful information on how the BIR may treat a similar transaction.

The BIR ruling can only be used for purposes of internal revenue taxes. No ruling involving local taxes, customs duties or other taxes, fees and charges not within the powers of the BIR to assess and collect shall be issued.

A ruling may be revoked or modified for any number of reasons such as when the facts, as represented, are discovered to be different from what is represented or not in accord with the current views of the Commissioner.

Revenue Memorandum Circular (RMC)

RMC No. 20-2014 dated 27 March 2014 prescribes the guidelines in filing, receiving and processing of Taxable Year 2013 Income Tax Returns (BIR Forms Nos. 1700, 1701, 1702-RT, 1702-EX and 1702-MX, all June 2013 ENCS version) under RR No. 2-2014, which are due for filing on or before April 15, 2014.

All Non-eFPS taxpayers are encouraged to use offline eBIRForms package which can be accessed and downloaded from the BIR website through the "eBIRForms" link. Taxpayers using said package can directly encode date, validate entries (as it can do automatic computations), edit, save, delete, view, print and submit their tax returns.

Taxpayers who are mandated to use the Electronic Filing and Payment System (eFPS), particularly the Large Taxpayers under the jurisdiction of the Large Taxpayers Service and other eFPS users (e.g. Top 20,000 Corporations, Top 5,000 Individuals, Government bidders, etc.) shall use the eFPS facility for the filing and payment of Income Tax Returns (ITRs).

The procedures in the submission of said forms by non-eFPS taxpayers and eFPS taxpayers are specified in the Circular.

The accompanying schedules and attachments (i.e. Financial Statements, Statement of Management Responsibility, BIR Form 2307, etc.) to the said forms may still be filed with the concerned Large Taxpayers Office/Revenue District Office where they are registered within fifteen (15) days after the electronic filing of the return. Together with the said attachments, the taxpayers shall also submit the duly accomplished signed hard copy of the TR with Filing Reference Number.

RMC No. 22-2014 dated 14 March 2014 publishes the full text of Department Order (DO) No. 018-2014 issued by the Secretary of the Department of Finance, which amended DO No. 12-2014 with respect to the rules on the accreditation of importers and customs brokers.

For a complete tax mapping, to minimize duplication of functions and to ensure maximum productivity of the concerned Bureaus, the following rules on the accreditation of importers **and customs brokers** shall apply:

- a. The Bureau of Internal Revenue (BIR), upon filing of an application, shall issue the necessary BIR Importer Clearance Certificate (BIR-ICC) **or Customs Broker Clearance Certificate (BIR-BCC)** in favor of the applicant, subject to the documentary requirements and verification procedures to be determined by the Commissioner of the Internal Revenue. The Commissioner of the Internal Revenue shall issue the necessary rules and regulations for the accreditation procedures and documentary requirements for the issuance of the ICC and **BCC**.

- b. An applicant desiring to register with the Bureau of Customs (BOC) as an importer **or customs broker** must then present the BIR-ICC **or BIR-BCC, as applicable** issued by the BIR to the concerned customs office. The Commissioner of customs shall issue the necessary rules and regulations for (a) the registration of importers **and customs brokers** accredited by the BIR **with a validity period of three years**; and (b) the suspension, revocation or cancellation of the importer's **or custom broker's** custom accreditation in case of violation of customs laws and regulations. The BOC may likewise prescribe rules for the risk profiling and criteria for classification of importers **and customs brokers**.

The Commissioner of Internal Revenue and Customs shall respectively issue their rules and regulations pursuant to this Order within fifteen (15) days from issuance hereof. All importers **and customs brokers** shall be given ninety (90) days from the issuance of the said rules to comply with the same, otherwise the accreditation of said importer **or customs broker** shall be deemed automatically expired upon lapse of said ninety-day period.

RMC No. 28-2014 dated 16 April 2014 waives the penalties for Electronic Filing and Payment System (eFPS) taxpayers for late filing of returns and payment of the Income Tax/es for the taxable year ended December 31, 2013 and quarter ended March 31, 2014. The waiver strictly covers eFPS-registered taxpayers and tax returns filed on April 16, 2014

All eFPS-enrolled taxpayers who have already manually filed their tax returns and paid their Income Tax due for the said taxable periods will not be imposed of penalties, and are advised to refile using eFPS until April 25, 2014.

Court Decisions

Supreme Court (SC)

CIR v. Pilipinas Shell Petroleum Corp., G.R. No. 188497, February 19, 2014

During the periods covering October to December 2001 and January to June 2002, Pilipinas Shell Petroleum Corporation allegedly sold and delivered petroleum products to various international carriers of Philippine or foreign registry, for their use or consumption outside the Philippines. Pilipinas Shell then filed a formal claim for refund or tax credit with the BIR, seeking the recovery of the excise taxes it had paid on its sales and deliveries. There being no action on the part of the BIR, Pilipinas Shell filed a judicial claim before the CTA First Division. Both the CTA First Division and the CTA En Banc ruled in favor of Pilipinas Shell and granted its claim for refund. However, the Supreme Court First Division reversed the Decision of the CTA En Banc on appeal, holding that Pilipinas Shell failed to establish a tax exemption in its favor under Section 135(a) of the Tax Code. Hence, this Motion for Reconsideration.

The Supreme Court First Division held that excise tax exemption under Section 135 (a), Tax Code is conferred on international carriers who purchase Pilipinas Shell's petroleum products, and not on the products themselves. In accordance with international agreement and practice to exempt aviation fuel from excise tax and other impositions, Section 135 (a) prohibits the passing of the excise tax to international carriers who buy petroleum products from local manufacturers or sellers such as Pilipinas Shell. Said international carriers are thus allowed to purchase the petroleum products without the excise tax component, which would otherwise have been added to the cost or price fixed by the local manufacturers or distributors/sellers.

Nonetheless, the Supreme Court granted Pilipinas Shell's claim for refund on the basis of the Philippines' obligations under the Chicago Convention. The Supreme Court noted the need to re-examine the effect of denying the domestic manufacturer's or seller's claim for refund of the excise taxes they already paid on petroleum products sold to international carriers. The unwillingness of major domestic oil companies to shoulder the burden of excise tax may bring about a decline in aviation jet fuel sales to international carriers, or cause local manufacturers and sellers to sell petroleum products to such carriers at high prices. In this regard, the Supreme Court held that the construction of Section 135, Tax Code should give primary

consideration to the Philippines' commitment under international agreements, and therefore found Pilipinas Shell entitled to its claim.

CS Garment Inc. v. CIR, G.R. No. 182399, March 12, 2014

Petitioner CS Garment, Inc., a PEZA-registered corporation engaged in the business of manufacturing garments for sale abroad, was assessed for deficiency taxes for 1998. When the BIR failed to act on its protest, Petitioner filed a judicial protest before the CTA Second Division seeking the cancellation of the BIR's assessment. Both the CTA Second Division and the CTA En Banc found Petitioner liable for the payment of deficiency taxes, thus prompting the Petitioner to file the Present Petition for Review assailing the Decision of the CTA En Banc. However, during the pendency of this case, the Petitioner filed a Manifestation and Motion stating that it had availed itself of the government's tax and amnesty program under the 2007 Amnesty Law (R.A. 9480).

The Supreme Court held as follows:

1. Amnesty taxpayers may immediately enjoy the privileges and immunities under the 2007 Tax Amnesty Law, as soon as they fulfill the suspensive conditions imposed therein. Under the Tax Amnesty Law and Department of Finance Order No. 29-07 (Rules and Regulations to Implement R.A. 9480), the taxpayer's completion of the documentary requirements prescribed therein shall be deemed full compliance with the provisions of the law, and shall entitle the taxpayer to immediately enjoy the immunities and privileges provided thereunder.
2. Taxpayers with pending tax cases are still qualified to avail themselves of the tax amnesty program. In view of Petitioner's availment of the immunities and privileges under the 2007 Amnesty Law during the pendency of the instant case, the Supreme Court ruled in favor of Petitioner and set aside the remaining deficiency tax assessments for 1998.

Court of Tax Appeals

Masin-AES Pte. Ltd. – Philippine Branch vs. CIR, CTA Case No. 8543 dated 10 April 2014

Petitioner entered into a Subordinated Loan Agreement with AES Phil Investment Pte. Ltd.. The said Loan Agreement provides that AES-Phil agreed to grant petitioner a credit facility of US\$147,126,437.00. Each disbursement or drawdown would have a minimum of US\$10,000.00 and would constitute a loan subject to a fixed rate of interest of 8 percent *per annum*. Interest shall be computed every six months beginning from the date of disbursement or drawdown.

Petitioner filed an Application for Relief from Double Taxation on Interest Income with the BIR-ITAD.

The BIR issued a BIR Ruling denying the petitioners claim for relief on interests paid by it to AES Phil. A Formal Letter of Demand was issued by respondent assessing petitioner for Final Withholding Tax on Interest Income. Respondent stated that this was due to the denial of the Tax Treaty Relief Application embodied under the aforesaid BIR Ruling. Thus the interest payment on foreign loans was subject to income tax.

Petitioner filed its protest letter with the BIR, which the BIR denied. Hence petitioner filed a Petition for Review.

The CTA held that the Supreme Court has established that tax treaty should take precedence over administrative issuances. The BIR must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. Bearing in mind the rationale of tax treaties, the period of application for the availment of tax treaty

relief should not operative to divest entitlement to the relief as it would constitute a violation of the duty required by good faith in complying with a tax treaty.

One Network Bank, Inc. (A Rural Bank) vs. CIR, CTA Case No. 8640 dated 11 April 2014

Two domestic banking corporations executed a Plan of Consolidation whereby said corporations shall consolidate, with One Network Bank, Inc. (A Rural Bank), the petitioner, as the name of the consolidated bank. The SEC approved the Plan of Consolidation. As a result, the corporate existence of the constituent corporate ceased to exist and their assets and liabilities were deemed transferred to and vested in the consolidated bank.

Petitioner paid under protest the gross receipts tax (GRT). It filed an administrative claim for refund. Due to respondent's inaction and in order to suspend the two-year prescriptive period, petitioner filed a Petition for Review.

Petitioner argues that it is not liable to pay GRT because it is entitled to the privileges under Section 15 of RA No. 7353 or "The Rural Banks Act of 1992", as amended, which exempts newly formed rural banks from payment of pertinent taxes for a period of 5 years from the date of commencement of operations.

The CTA held that RMC No. 66-2012 issued by respondents proves that *consolidated* rural banks may no longer avail of the tax exemption under RA No. 7353, observing that "certain existing rural banks, after having fully enjoyed the tax exemption under RA 7357, are able to extend their period of tax exemption beyond the prescribed 5-year period through the process of *consolidation*."

Section 18 of RA No. 7353 does not cover situations arising from merger or consolidation of rural banks. Section 18 does not expressly provide for tax exemption in cases of consolidation of rural banks. The law does not go as far as giving a fresh tax exemption to *consolidated* rural banks for another 5 years of operation other than giving incentives on reserve requirement and branching right for a period of 7 years.

If Congress intended to provide such tax exemption, the same would have been easily inserted as part of the incentives enumerated under Section 18 of RA No. 7353. As it stands, the law is silent as to the tax incentive for *consolidated* rural banks, which had it constituent rural banks already enjoying the benefits of the said RA when these were formed for the first time as rural banks.

Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao, CTA Case No. 8683 dated April 22, 2014

Issues:

- (1) Whether or not the suspension of the collection of the subject taxes are warranted under the premises.
- (2) Assuming the Suspension of Collection is justified, whether or not the Court may direct petitioners to deposit less than the amount subject of dispute, taking into consideration the doctrine laid down in CIR vs. Zulueta, G.R. L-1540 dated February 8, 1957.

The Supreme Court held:

- (1) The Court held that petitioners' interest would be prejudiced if collection pending appeal would be allowed and cited Section 11, RA 1125 which empowers the Court to suspend collection by CIR if in its opinion such collection may jeopardize the interest

of the Government and/or the taxpayer. The total amount of income tax and VAT including surcharges and interests exceeds the total net worth of the spouses for the year 2008-2009.

- (2) However, the Court did not allow the deposit of *less* than the amount of the disputed amount. The Court clarified that the doctrine in CIR vs. Avelino (G.R. No. L-9202, November 19, 1956) and CIR v. Zulueta (G.R. No. L-8840, February 8, 1957) of not requiring the filing of a bond is premised upon the employment by the collecting agency of a method of tax collection which is "not sanctioned by law," or the processes observed for such collection "are obviously in violation of the law to the extreme." Thus, the Petitioners were ordered to post a bond.

PNB v. CIR, CTA EB Case No. 859 (CTA Case No. 7760)

Sec. 76 of the 1997 Tax Code is clear that presentation of the quarterly income tax returns is not required to prove a claim for refund of creditable withholding taxes. This was the doctrine confirmed by the Supreme Court in Philam Asset Management, Inc. vs. CIR (G.R. No. 156637/162004, December 14, 2005). It is the duty of the CIR to verify whether or not the taxpayer carried over its excess tax credits to the succeeding year by exercising its power to examine and verify petitioner's claim for tax exemption.

SAL Oppenheim Jr. vs. CIR, CTA EB No. 906 dated March 3, 2014

CTA cited the recent Supreme Court pronouncement in Deutsche Bank Bank AG Manila Branch vs. CIR (G.R. No. 188550, August 19, 2013) which held that the Commissioner cannot subject the availment of incentives under tax treaties to onerous requirements which were not contemplated under international covenants. Failure to file a TTRA, as mandated under RMO No. 1-2000, should not preclude qualified taxpayers from enjoying applicable tax treaty benefits.

The obligation to comply with a tax treaty must take precedence over the objective of RMO No. 1-2000. CTA EB also cited at length the SC ruling that prior application with the BIR becomes moot in refund cases.

CIR v. PENN Philippines, Inc., CTA EB No. 1002 dated February 12, 2014

A Tax Treaty takes precedence over an administrative issuance such as PMO No. 1-2000, citing Deutsche Bank Bank AG Manila Branch vs. CIR (G.R. No. 188550, August 19, 2013). The Supreme Court minute resolution relied on as basis in applying RMO No. 1-2000 cannot be treated as precedent. Only Supreme Court decisions and not minute resolutions are binding judicial precedents.

CTA decisions do not constitute precedents, and do not bind the Supreme Court or the public. CTA decisions are persuasive in nature and are not binding unless affirmed by the Supreme Court. The ruling in Deutsche is binding and must be duly observed.

