



TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.



TAX & OTHER UPDATES FOR FEBRUARY 2014

BIR Issuances

Revenue Regulations No. 2-2014 (January 24, 2014)

- The BIR prescribes the new BIR forms that will be used for income tax returns (ITRs) covering and starting the taxable year ended December 31, 2013.
- There are June 2013 versions of the following Annual ITR forms:
 1. BIR Form No. 1700 for Individuals Earning Purely Compensation Income
 2. BIR Form No. 1701 for Self-Employed Individuals, Estates and Trusts
 3. BIR Form No. 1702-RT for Corporations, Partnerships and Other Non-Individual Taxpayers Subject Only to the REGULAR Income Tax Rate
 4. BIR Form No. 1702-EX version June 2013 for Corporations, Partnerships and Other Non-Individual Taxpayers EXEMPT Under the Tax Code and Other Special Laws, with NO Other Taxable Income and
 5. BIR Form No. 1702-MX version June 2013 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 regulations mandate the use of itemized deductions for corporations, partnerships and other non-individuals, as well as individuals who are not entitled to avail of the OSD, that are:
 1. Exempt under the Tax Code and other special laws, with no other taxable income;
 2. With income subject to special/preferential tax rates; and
 3. With income subject regular income tax rate 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.

Revenue Memorandum Order 8-2014 (January 29, 2014)

- The BIR amends the Revised Guidelines and Procedures in the Issuance and Enforcement of Subpoenas Duces Tecum (SDT) providing that SDT should first be served to the taxpayer's registered address before the same is served to the taxpayer's known address, or simultaneously to the taxpayer's registered address and known address.

Revenue Memorandum Order 9-2014 (February 6, 2014)

- The Order provides guidelines in the processing of requests for rulings with the Law and Legislative Division
- The following are set as “Non-Ruling Areas”:
 1. Matters declared as such in Revenue Bulletin No. 1-2003, as amended by Revenue Bulletin No. 2-2003;
 2. Requests for tax planning advice, approval of tax planning arrangements, or a ruling on a matter that can be determined through an appeal or another process.
 3. Other requests wherein:
 - 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.
- Non-compliance with any of the requirements under this Circular may prevent the BIR from issuing an opinion on the request for ruling.

Revenue Memorandum Circular No. 2-2014 (January 13, 2014)

- The Circular clarifies that in sale of goods or properties, Sales Invoice, in lieu of Official Receipt, shall be required by Government Auditors as evidence of receipt of payment for disbursements where the payee is any business establishment required by the BIR to issue such.

Revenue Memorandum Circular No. 3-2014 (January 6, 2014)

- This modifies BIR Ruling DA (C-133) 431-2008 which held that the transfer of Fort Bonifacio Development Corporation’s (FBDC) real properties to the Bases Conversion and Development Authority (BCDA), in redemption of its preferred shares held by BCDA, is not subject to income tax, VAT, donor’s tax, and DST.
- As to income tax, BCDA (the shareholder) shall be subject to corporate income tax for any gain realized by it on the redemption of shares by FBDC.
- As to VAT, considering that FBDC (the redeeming corporation) is a real estate developer which owns substantial parcels of land, the conveyance by FBDC of its real properties to BCDA in redemption of the preferred shares owned by BCDA is in the nature of a transfer not in the course of business of goods or properties which are originally intended for sale or for use in the course of business, a transaction “deemed sale” which is subject VAT.
- The conveyance of real property is likewise subject to DST.

Revenue Memorandum Circular No. 5-2014 (January 29, 2014)

- The Circular provides the guidelines and instructions for the three modes of submission of the alphabetical list of employees and the list of payees on income payments subject to creditable and final withholding taxes prescribed under RR No. 1-2014, namely:
 - a. As attachment in the Electronic Filing and Payment System (eFPS), to be made available once technical issues are resolved;
 - b. Through Electronic Submission (eSubmission) using BIR's website at esubmission@bir.gov.ph; and
 - c. Through Electronic Mail (email) submission at dedicated BIR email addresses using the data entry module of the BIR.

Revenue Memorandum Circular No. 6-2014 (January 20, 2014)

- This Circular extends the provisional accreditation of printers of manually printed receipts and invoices up to February 28, 2014 in relation to RR No. 15-2012 and RMO No. 13-2013

Revenue Memorandum Circular No. 7-2014 (February 5, 2014)

- This Circular clarifies that marginal income earners (MIE) referred to in RR No. 7-2012 are individuals not deriving compensation from employer-employee relationship but who is self-employed and deriving gross sales or receipts not exceeding P100,000 in any 12-month period and that activities of such MIE should be principally for subsistence or livelihood and shall exclude licensed professionals, consultants, artists, sales agents, and all others whose income have been subjected to withholding tax.
- The minimal documentary requirements are Sworn Statement of Income for the year and NSO Certified or Local Civil Registry Birth Certificate.

Revenue Memorandum Circular No 8-2014 (February 6, 2014)

- Withholding agents shall require all individuals and entities claiming exemption from imposition of taxes on income and, consequently, from withholding taxes, to provide a copy of a valid, current and subsisting tax exemption certificate or ruling before payment of the related income. The tax exemption certificate or ruling must explicitly recognize the grant of tax exemption, as well as the corresponding exemption from imposition of withholding tax.
- Taxpayer's failure to present the said tax exemption certificate or ruling shall subject him to the payment of appropriate withholding taxes due on the transaction while the

withholding agent's failure to withhold notwithstanding the lack of tax exemption certificate or ruling shall cause the imposition of penalties under the NIRC.

Revenue Memorandum Circular No 9-2014 (February 11, 2014)

- The Circular provides that the disclosure of Supplemental Information under BIR Form Nos. 1700 and 1701 shall be optional on the part of the taxpayer for income tax filing covering and starting with calendar year 2013, due for filing on or before April 15, 2014.
- Individual income tax filers using forms No. 1700 and 1701 are however advised that for income tax filing covering and starting with calendar year 2014, the disclosures required under the Supplemental Information portion of the said forms will be mandatory. Thus, the taxpayers are advised to demand from their payors, and properly document their BIR Form No. 2307 and other evidence for final taxes withheld.
- In any returns filed with the BIR, individual taxpayers are given the option to use either (a) their community tax certificate, (b) passport, or (c) driver's license.

DOF Issuances

DOF Department Order No. 11-2014 (February 5, 2014)

- Provides the rules and regulations for the conduct of audit of transaction records of importers and brokers.
- All importer and brokers are required to keep importation records for a period of ten (10) years.
- Instances, among others, when audit of importers (and brokers for validation) shall be undertaken by DOF-FIU:
 - a. When firms are selected by a computer-aided risk management system
 - b. When errors in the import declaration are detected;
 - c. When firms voluntarily request to be audited
- Provides guidelines on post-entry audit process including issuance of Audit Notification Letters, submission of certified copies of records, preparation of audit manual, and resort to the courts.

DOF Department Order No. 12-2014 (February 6, 2014)

- To minimize duplication of functions, the Order sets the rules on the accreditation of importers:
 1. The BIR shall issue the necessary BIR Importer Clearance Certificate (BIR-ICC) in favor of the applicant, upon the latter's compliance with the accreditation procedures and documentary requirements in the rules and regulations to be issued by the CIR.
 2. An applicant desiring to register with the BOC as an importer must then present the BIR-ICC to the concerned customs office. The COC shall issue the necessary rules and regulations for: (a) the registration of importers accredited by BIR without need

for renewal or additional accreditation process; and (b) the suspension, revocation or cancellation of the importer's customs accreditation in case of violation of customs laws and regulations.

Executive Order No. 68-A Amending E. O. 68 (S. 2012) Which Established the Monetization Program Of Outstanding Value-Added Tax Tax Credit Certificates (January 3, 2014)

- The amendment aims to facilitate the implementation of E.O. 68 (S. 2012) by simplifying the terms and processes.
- The monetization program is amended such that all qualified VAT-registered taxpayers shall be given the full cash value of their outstanding VAT TCCs issued as of 31 December 2012, to be verified by BIR or the BOC instead of discounted cash value if collected in advance or full cash value upon a certain maturity date.
- The Order set June 30, 2016 as the deadline for full implementation of the program.

Court Decisions

CBK Power vs. CIR, G.R. Nos. 198729-30, January 15, 2014

- CBK's sales to NPC are effectively subject to zero percent (0%) VAT. The NPC is an entity with a special charter, which categorically exempts it from the payment of any tax, whether direct or indirect, including VAT, thus, services rendered to NPC by a VAT-registered entity are effectively zero-rated.

CIR vs. Mindanao II Geothermal Partnership, G.R. No. 191498, January 15, 2014

- Summary Of Rules On Prescriptive Periods For Claiming Refund Or Credit Of Input Vat
 - A. *Two-Year Prescriptive Period*
 1. It is only the administrative claim that must be filed within the two-year prescriptive period. (Aichi)
 2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (San Roque)
 3. The only other rule is the Atlas ruling, which applied only from 8 June 2007 to 12 September 2008. Atlas states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. (San Roque)

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120- Decision 21 G.R. No. 191498 day period if the Commissioner does not act within the 120-day period.
2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (Aichi and San Roque)
4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. (San Roque)
5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (San Roque)

Deutsche Bank AG Manila Branch vs. CIR, G.R. No. 188550, August 19, 2013

- The Court ruled that RMO 1-2000 requiring that any availment of the tax treaty relief must be preceded by an application with ITAD at least 15 days before the transaction is an additional requirement that would negate the availment of the reliefs provided for under international agreements, which the BIR cannot impose.
- The RP-Germany Tax Treaty does not provide for any pre-requisite for the availment of the benefits under said agreement.
- In refund cases, the underlying principle of prior application with the BIR becomes moot because the very basis of the claim is erroneous or excessive payment arising from non-availment of a tax treaty relief at the first instance. Prior application requirement becomes illogical when the applicant could not have applied for a tax treaty relief within 15 days prior to the payment of its BPRT, precisely because it erroneously paid the BPRT not on the basis of the preferential tax rate under the RP-Germany Tax Treaty, but on the regular rate as prescribed by the NIRC.
- The outright denial of petitioner's claim for a refund, on the sole ground of failure to apply for a tax treaty relief prior to the payment of the BPRT, would likewise defeat the purpose of Section 229.
- The MR filed by the CIR was denied with finality in a Resolution dated October 23, 2013.