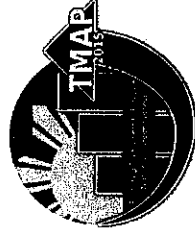




**TAX MANAGEMENT ASSOCIATION
OF THE PHILIPPINES, INC.**



TAX UPDATES FOR JUNE 2015

(Prepared by Punongbayan & Araullo)

BIR Issuances

Clarifications on submission of the scanned copies of Forms 2307 and 2316
(Revenue Memorandum Circular No. 24-2015, May 6, 2015)

This RMC clarifies the pertinent provisions of RR No. 2-2015 which requires the submission of scanned copies of the Certificate of Creditable Tax Withheld At Source (BIR Form No. 2307) and the Certificate of Compensation Payment/Tax Withheld (BIR Form No. 2316) to the concerned BIR office in lieu of hard copies.

Coverage. The requirement covers only taxpayers registered with the Large Taxpayers Service (LTS). The option is open for non-LTS taxpayers but the option shall be irrevocable.

Effectivity. The effectivity falls on March 21, 2015. However, for initial implementation and to give ample time to comply with the technical requirements:

- a. For quarterly income tax returns (ITRs) with deadline on April 30, 2015: taxpayers can submit BIR Form 2307 either in hard or scanned copies.
- b. For filings with deadlines falling beyond April 30, 2015: taxpayers must submit BIR Form 2307 in scanned copies.

Copies. The withholding agent has the option to issue only one BIR Form 2307 to cover more than one income payment to the same taxpayer even if subject to different rates. Taxpayers are still required to retain the hard copy of the said forms for validation during audit. If needed, taxpayers may request for a certified true copy of the scanned forms provided that they pay the certification fee and the corresponding Documentary Stamp Tax.

Signatories. The authorized signatories for the notarized certification and the DVD-R containing the soft copies of the BIR forms are:

- a. For corporate entities - any of the principal officers designated through a Board Resolution and sworn to by such officer and by the corporate treasurer or assistant treasurer.
- b. For individual taxpayers - the attorney-in-fact as evidenced by a notarized Special Power of Attorney issued for the purpose by the individual taxpayer.

Technical specifications

- a. if several certificates were issued to the same taxpayer in the same taxable period, these should be separately saved and the file named using this format:

Bonifacio Mfg. Corp_131885880000_09312014_1
Bonifacio Mfg. Corp_131885880000_09312014_2
Bonifacio Mfg. Corp_131885880000_09312014_3
- b. The printing of the logo of the BIR or of the taxpayer on the label of the DVD-R is not mandatory.
- c. There is no prescribed paper size for printing these forms provided that all information required must be captured clearly.
- d. The taxpayer may use any device available (flatbed scanner, camera, etc.) in capturing the images of the BIR forms provided that the images are saved in "PDF" formats in the DVD-R.
- e. For purposes of readability, the minimum resolution for the images should be 200 dots-per-inch set to black and white.
- f. The DVD-R should be single-sided and single-layered.

Penalties. Failure to comply with the requirements of RR No. 2-2015 shall be punishable with the penalty specified under Section 250 of the NIRC of 1997 and the compromise penalties specified under RMO No. 7-2015.

MOA between DOF, DOJ, BIR and LRA for implementation of taxes on real property transfers(Revenue Memorandum Circular No. 29-2015, May 19, 2015)

A Memorandum of Agreement (MOA) has been executed between the Department of Finance (DOF), the Department of Justice (DOJ), the Bureau of Internal Revenue (BIR) and the Land Registration Authority (LRA) in order to improving their services to taxpayers to encourage the timely collection and administration of taxes on transfers of real properties.

Under the MOA, the agencies have agreed to set up the necessary infrastructure that would link the agencies to enable BIR to verify all real property transfers against BIR clearances and to check if such transfers have BIR clearances.

The DOJ and DOF shall oversee the overall compliance to the provisions in the agreement their respective agencies.

The BIR shall continue to issue Certificates Authorizing Registration (CAR), to make the reports on the CARs issued and to receive and match the electronic report t the New Number generated for the newly-issued TCT/CCT/OCT. It shall also provide trainings to its concerned personnel to ensure the effective implementation of a comprehensive information campaign.

Under the MOA, the LRA shall provide the necessary information relating to all real property transfers and shall ensure the implementation and stable operation of the automated verification of the CARs presented to the Registries of Deeds through the LTCP and shall provide monthly reports on the new TCT/CCT/OCT to the BIR. In addition, the LRA shall collect an IT Service Fee in the amount of one hundred fifty pesos (Php 150.00) exclusive of VAT per CAR submitted.

Each agency shall be responsible for taking disciplinary action against personnel violating the provisions of the agreement.

It is emphasized that the agencies are obliged to keep confidential the information given under the agreement and shall be used solely for the intended purposes.

July 31 deadline for conversion of provisional permits to use CRM/POS machines
(Revenue Memorandum Circular No. 30-2015, June 8, 2015)

Revenue District Offices (RDOs) have been ordered to stop the issuance of Provisional Permit to Use PTU CRMs/POS/ other sales machines/ receipting software to prospective/new users. This is in response to reports that significant number of applicants have abused the three-month validity period of the provisional permits and failed to convert the said provisional permits to Final PTU are clearly reflected.

Hence, no shall Revenue District Offices (RDOs) shall no long approve/accept applications for PTUs until the Electronic Accreditation and Registration (eAccReg) system has been modified accordingly.

All Revenue District Offices and offices under the Large Taxpayer Service (LTS) are directed to ensure that there is proper conduct of the necessary evaluation procedures on all existing provisional PTUs and to ensure the conversion of the same to Final PTU on or before July 31, 2015. Otherwise, the same shall be revoked.

Taxpayers are encouraged to acquire BIR-accredited CRMs/POS/ other sales machines/ receipting software listed in the BIR website.

All existing Final PTUs and provisional PTUs converted before July 31, 2015, as well as new accreditations for CRM/POS machines shall be valid for five years effective August 1, 2015.

Availability of eBIRForms Package Version 5.0
(Revenue Memorandum Circular No. 31-2015, June 8, 2015)

BIR announces the availability of eBIRForms Package Version 5.0 for all 36 tax returns which can be downloadable from any of the following sites:

- a. www.knowyourtaxes.ph;
- b. www.dof.gov.ph;
- c. Dropbox using this link: <http://goo.gl/UCr8XS>
- d. www.bir.gov.ph

These tax returns may be filed through the following procedures:

1. Download, install, and run "eBIRForms Package Version 5.0";
2. Fill out the form by directly encoding data in the tax return file;
3. After filling out the form, click the VALIDATE button. If there are changes to be made, click the EDIT button. Always click the VALIDATE button for every changes made before proceeding to the next step;
4. Click SUBMIT:
 - a. If successful, the user will be redirected to the eBIRForms home page where you will find further instructions.
 - b. If unsuccessful, the user may use the alternative mode of electronic submission by clicking the FINAL COPY button. An email confirmation will then be received by the taxpayer.

For those who are not yet enrolled to the eBIRForms System, it is required to fully and unconditionally agree to the Terms of Service Agreement (TOSA).

eFPS filers may also fill use the package offline for BIR Form Nos. 1700, 1701, 1702-RT, 1702-EX, 1702-MX, 2200A and 2200T and may submit the same without the need to click on the FINAL COPY button. As per RMO 20-2015, tax payments can be made through Authorized Agent Banks (AAB), Collection Officers, Online Payment through a select number of AABs or GCash (up to P10,000.00).

Taxpayers who were mandated to efile but have already filed manually are still hereby required to electronically file their Income Tax Returns on or before June 15, 2015.

Inter-agency MOA for Ease of Doing Business
(Revenue Memorandum Circular No. 32-2015, June 8, 2015)

An inter-agency Memorandum of Understanding has been signed between the following agencies to support the implementation of programs and projects of the Ease of Doing Business of the World Bank International Finance Corporation.

- a. Department Of Finance (DOF)
- b. Department of Trade and Industry (DTI)
- c. Department of Interior and Local Government (DILG)
- d. Local Government of Quezon City (QC-LGU)
- e. Bureau of Internal Revenue (BIR)
- f. Securities and Exchange Commission (SEC),
- g. Social Security System (SSS)
- h. Philippine Health Insurance Corporation (PhilHealth)
- i. Home Development Mutual Fund (Pag-IBIG Fund)
- j. National Competitiveness Council (NCC)

The Ease Doing Business Survey (DBS) of the IFC measures and tracks changes in business regulations across 10 indicators, namely: starting a business; dealing with construction permits; getting electricity; registering property; getting credit; protecting investors; paying taxes; trading across borders; enforcing contracts; and resolving insolvency.

The inter-agency Task Force on Ease of Doing Business (EODB Task Force) composed of the above-enumerated agencies was created under Administrative Order No. 38, s. 2013 (AO 38) to ensure the Implementation of the *Gameplan for Competitiveness* which aims to improve the ranking of the Philippines in DBS by reducing the number of procedures in Starting a Business from 16 steps to a target of 6 steps and the length of time to complete such registration from 34 days to a target of 8 days. This recognizes the importance of business regulation as a driving force of competitiveness and the need to implement coherent economic policies in the context of a rapidly changing global economy;

Under the MOA, the agencies commit to do the following:

- a. Establish networks and linkages among themselves for the exchange of data, reports or information;
- b. Meet regularly to identify and resolve problem areas;
- c. Periodically discuss the issues and challenges in EODB, share successful practices and develop recommendations for their replication and institutionalization;
- d. Undertake the following projects and activities in accordance with Administrative Order 38:
 - i. Review and develop policies, programs, and guidelines to ensure the proper implementation of the *Gameplan for Competitiveness*;

- ii. Recommend to the President the issuance of the appropriate measures to promote transparency and efficiency in business practices;
- iii. Implement various EODB reform initiatives aimed at improving the ranking of the Philippines in all 10 indicators and the overall Philippine ranking in the IFC DBS;
- iv. Coordinate with the appropriate agencies for the inclusion of the targets set by the EODB Task Force in the performance targets of the concerned departments and agencies in their respective performance-based incentive systems;
- v. Organize the necessary EODB teams to ensure the effective and efficient implementation of the *Gameplan for Competitiveness*;
- vi. Monitor and evaluate the proper implementation of programs and policies; and,
- vii. Perform such other functions as may be necessary or as may be directed by the President for the successful implementation of AO 38.

Use of Quality Management Manual for ISO certification
(*Revenue Memorandum Order No. 11-2015, June 19, 2015*)

All concerned BIR district offices that will undergo the ISO 9001:2008 Certification are directed to use this Quality Management Manual annexed in the RMO for the implementation of a uniform, consistent and standardized Business Registration Processes within their respective offices.

ISO 9001:2008 is a standard designed to specify requirements for a Quality Management System where the Bureau aims to enhance customer satisfaction through the effective application of the system, including processes for continual business improvement. The manual contains the basic policies, objectives and guidelines set by the Bureau with regard to different aspects of business registration to deliver quality services and to improve internal and external stakeholders' satisfaction.

10th Foreign Investment Negative List
(*Executive Order No. 184, May 29, 2015*)

The Foreign Investment Negative List (FINL) enumerates the investment areas and activities which shall be reserved to Philippine nationals pursuant to Republic Act (RA) No. 7042, as amended by RA 8179. Amendments to List A may be any time to reflect changes instituted in specific laws.

Under the 10th FINL promulgated by the President, the list of professions where practice is reserved to Philippine nationals is now limited to pharmacy, radiologic and x-ray technology, criminology, forestry and law.

However, practice of the deleted professions by foreign nationals in the Philippines will be allowed only if Filipinos are also reciprocally allowed to practice these professions in their home countries. The professions deleted from the FINL include engineering, medicine, accountancy, architecture, customs brokerage, geology, interior design, real estate service and several others.

SEC Circulars

Use of corporate names

(SEC Memorandum Circular No. 5, s. of 2015)

SEC Memorandum Circular No. 21, series of 2013, providing guidelines on the use of corporate and partnership names has been amended, as follows:

1. "Investment/s" can only be used by entities organized as investment house or investment company.
2. "Capital" can only be used by entities organized as investment house, investment company or holding company.

CTA Decisions

Willful failure to pay DST is Tax Evasion

(Edmundo T. Ongsiako, Jr. & H. Tambunting Pawnshop, Inc., vs. People of the Philippines, CTA EB Crim. No.031, May 26, 2015)

A DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto. Pledge is among the privileges the exercise of which is subject to DST. Indeed, there is no law specifically and expressly exempting pledges entered into by pawnshops from the payment of DST. Section 199 of the 1997 Tax Code enumerated certain documents which are not subject to stamp tax; but a pawnshop ticket is not one of them.

An accused cannot take the law into his own hands by out rightly refusing to recognize a DST assessment based on the sole ground that it was his strong belief that he or the corporation he represents is not liable to pay the same. Under our tax laws, a taxpayer who believes that a tax had been erroneously or illegally assessed is mandated to take appropriate administrative and judicial measures to assail or seek the nullification of the same, otherwise, the assessment remains valid.

The term "willful" in tax crime statutes means a voluntary, intentional violation of a known legal duty and bad faith or bad purpose need not be shown. The accused in this case, as the duly authorized officer of a corporation required to pay DST, repeatedly failed to pay its deficiency DST at the time required by law or rules and regulations or upon demand by the Commissioner of Internal Revenue or any of the authorized representatives. Failure to pay a final and executory assessment is willful.

Thus, the accused was found guilty beyond reasonable doubt for violating Section 255 in relation to Sections 253 (d) and 256 of the 1997 NIRC, as amended.

CTA admitted a BOI Certification not formally offered

(Filinera Resources Corporation vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 8528& 5876, May 25, 2015)
For purposes of zero-rating, the taxpayer must comply with the following requisites in order for its sales to be considered zero-rated: 1) the taxpayer seller must be VAT-registered; 2) the buyer must be registered with the Board of Investments (BOI) as manufacturer/producer; and 3) the buyer's products must be 100% exported as shown by a certification issued by the BOI.

Pursuant to such requirements, the taxpayer presented supplemental evidence – a BOI Certification stating that Philippine Gold Processing and Refining Corporation (PGPRC or the “buyer”) exported 100% of its total sales volume for the period covering the taxpayer’s claim for zero-rating. The BOI Certificate also stated that it was being issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled “Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales”.

The amended CTA decision admitted the BOI Certification* and granted the taxpayer’s claim for refund or tax credit of excess input VAT arising from its zero-rated sales.

Note: In CTA Case No. 8610 issued on March 6, 2015, the CTA ruled that although the taxpayer attached to its Petition for Review a copy of the certification from BOI confirming that it exported 100% of its products, the taxpayer failed to formally offer the same as part of its evidence and hence, denied the claim for refund.

Sale of former military land, not taxable
(Bases Conversion and Development Authority vs. CIR, CTA Case No. 8598, May 28, 2015)

Bases Conversion and Development Authority (BCDA) is not an exempt corporation. Nowhere in Section 27(C) of the 1997 Tax Code as amended by RA Nos. 9337 and 10026 where respondent is listed as exempt from corporate income tax. The express mention of the GOCCs exempted from payment of corporate income tax includes all others. Not being excluded, BCDA must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim *exceptio firmit regulam in casibus non exceptis* (the express mention of the exceptions operates to exclude other exceptions).

However, while BCDA is not entitled to exemption from income tax, the proceeds from the sale 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”.**

To tax the proceeds of the sale would be to tax an appropriation made by law, a power that the Commissioner of Internal Revenue does not have. The sale is in the nature of an obligation imposed by law in order to fulfill a public purpose.

Moreover, BCDA is not required to declare the sale of the lots as part of its gross income since the sale is an exercise of governmental functions and therefore, excluded from gross income and exempted from withholding tax. 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, and not to a claim for refund of erroneously remitted tax, which the withholding agents should not have withheld and remitted to the BIR in the first place.

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.

the life of its franchise which will result in a lower tax between (a) the basic corporate income tax based on the annual net taxable income or (b) a franchise tax of 2% of gross revenues. Either option excludes the payment of other taxes and dues imposed or collected by the national or local government.

As regards the exemption for importation of commissary supplies, such as cigarettes, liquor and wine, for its international flight consumption, the taxpayer failed to prove to comply with the requirements needed to prove such exemption. These 3 requisites are:

1. It paid its corporate income tax and VAT liabilities for the subject period of importation;
2. The imported articles, supplies or materials are intended to be used in its transport and non-transport operations and other activities incidental thereto; and
3. The imported articles, supplies or materials are not locally available in reasonable quantity, quality or price.

The taxpayer did not comply with the third requisite as it compared the prices of its imported wines and liquors with the quotation of a single supplier known in the business. It also did not compare the price of its imported cigarettes against the price in the local market and merely assumed that local prices of the same products would be more expensive.

The taxpayer also failed to make comprehensive study on the availability, quantity and price of the subject imported wines or alcoholic drinks and cigarettes in the local market as to justify importation of the said items. Hence, failure to comply with all the three requisites, the taxpayer cannot be granted the said exemption.

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