



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

**TAX UPDATES FOR THE MONTH OF JUNE**

By

*Punongbayan and Araullo*

**COURT OF TAX APPEALS DECISIONS**

**Commissioner of Internal Revenue vs. RCD Realty Marketing Corporation**

**CTA EB No. 1136**

**01 June 2016**

In this claim for refund of excess/unutilized creditable withholding taxes (CWT), the BIR argues, among others, that the presentation of taxpayer's Quarterly Income Tax Return is vital and the proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of the payors and withholding agents are required.

The Court of Tax Appeals (CTA) En Banc ruled that the taxpayer was able to establish its entitlement to the refund of its excess/unutilized creditable withholding taxes by complying with the following requisites:

1. The claim for refund was filed within the two-year prescriptive period as provided under Section 204 (C) in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended;
2. The fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
3. The income upon which the taxes were withheld was included in the return of the recipient.

**Crescent Park 6-3 Property Holdings, Inc. vs. Commissioner of Internal Revenue**  
**CTA EB Case No. 8058**  
**02 June 2016**

Under Section 112 (A) of the NIRC, the claimant of the refund or issuance of tax credit certificate (TCC) must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the authority to print (ATP) is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund.

While it is not a requirement that the ATP be reflected or indicated in the invoice or receipt to substantiate a claim for refund or issuance of TCC, absence of such authority at the time the receipts or invoices were issued is fatal for the claim.

**Liquigaz Philippines Corporation vs. Commissioner of Internal Revenue (CTA EB Case No. 1117)**  
**Commissioner of Internal Revenue vs. Liquigaz Philippines, Corporation (CTA EB Case No. 1119)**  
**03 June 2016**

Since the Commissioner of Internal Revenue (CIR) knows the tax records of all taxpayers, the CIR can validly issue a tax assessment on the basis of such tax records and the law, even without going to the taxpayer's place of business or office.

Deficiency interest must be imposed not just on deficiency income tax but also deficiency value-added tax (VAT), expanded withholding tax (EWT) and withholding tax on compensation (WTC).

Deficiency interest on any deficiency tax shall be assessed from the date prescribed for its payment until the full payment thereof, while the assessment of delinquency interest that is imposed upon the failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from the due date appearing in the notice and demand of the CIR until the amount is fully paid. Thus, interests, both deficiency and delinquency interests, shall be assessed until full payment thereof.

**The City of Makati vs. The Municipality of Bakun and Luzon Hyrdo Corporation**  
**CTA EB Case No. 1179**  
**08 June 2016**

To be considered as a branch office or sales office for purposes of imposition and collection of local business taxes, it is not enough that the branch or sales office conducts operations of the business as an extension of the principal office, the branch or sales office shall likewise record the sale or transaction and the tax thereon shall accrue and shall be paid to the municipality where such branch or sales office is located pursuant to Article 243 (b) of the Administrative Code No. 270 in relation to Section 150 (a) (b) (d) of the Local Government Code (LGC). The local government of Makati City failed to controvert that invoices or records of all sales to NPC are not handled by the Makati City office nor does it operate any aspect of the business or primary purposes of the Company as provided in taxpayer's Articles of Incorporation.

**Commissioner of Internal Revenue vs. Lear Automotive Services (Netherlands) B.V.  
Philippine Branch  
CTA EB Case No. 1346  
02 June 2016**

Any item of cost or expense which is directly attributable to the rendition of the Philippine Economic Zone Authority (PEZA) registered services shall be treated as direct cost. Thus, the taxpayer's royalty payments should be considered as an allowable deduction for purposes of computing the 5% tax on gross income.

**PETNET Inc. vs. Commissioner of Internal Revenue  
CTA Case No. 9113  
14 June 2016**

In this refund claim, the 120-day period for the CIR to act on taxpayer's claim ended on April 18, 2014. Hence, the 30-day period to appeal ended on May 18, 2014. The taxpayer only filed its Petition for Review with the CTA on August 12, 2015 since it received the BIR letter denying the administrative claim for refund on July 13, 2015.

The CTA ruled that it is in the taxpayer's interest that the BIR decide the claims expediently, and the NIRC precisely provides a period for the BIR's action: 120 days. The law ensures that taxpayers are not prejudiced by any inaction on the part of the BIR: it provides that inaction for 120 days on the administrative claim for refund is equivalent to a denial. This gives recourse to the Court within 30 days, reckoned from a point of time determined by law.

Compliance with the 120+30 day period is both mandatory and jurisdictional. Taxpayer's failure to observe the same warrants the dismissal of its petition.

**REVENUE REGULATIONS**

**Revenue Regulations No. 5-2016  
01 June 2016**

**Amending Section 3 of Revenue Regulations No. 15-2012 Providing for Additional Criteria in the Accreditation of Printers engaged in Printing Services of Official Receipts, Sales Invoices and Other Commercial Receipts and/or Invoices**

In addition to the requirements for RR 15-2012, the applicant Printer must comply to the following in order to qualify for BIR accreditation:

1. He has no record of any pending criminal complaint filed by the BIR for tax evasion and other criminal offenses under the NIRC, whether filed in court or in the Department of Justice (DOJ) or subject of final and executory judgment by court; and
2. He has not been tagged in any BIR tax system as "Cannot Be Located (CBL) Taxpayer" and/or "Inactive".

Accreditation shall be valid for five (5) years from the date of issuance of the Certificate of Accreditation. Printer shall apply for renewal of accreditation within thirty (30) days prior to the expiration of the validity period.

Only principal and supplementary receipts/invoices printed by a printer that was accorded official accreditation and consequently included in the BIR List of Accredited Printers shall be valid for purposes of claiming VAT; otherwise, such receipts/invoices shall be deemed spurious, thus shall not serve a valid claim for input tax by the buyer of goods and/or services.

## **REVENUE MEMORANDUM ORDERS**

**Revenue Memorandum Order Nos. 24 and 25-2016  
7 June 2016 and 12 June 2016, respectively**

### **Prescribing the Investigation of Parties in Transaction Involving the Transfer/Assignment/Sale of Properties**

The transactions covered are, but not limited to, those subject to:

1. Final Capital Gains Tax (CGT) on sale of real properties considered as capital assets;
2. CGT on sale, transfer or assignment of stocks not traded in the stock exchange;
3. Expanded Withholding Tax (EWT) on the sale of real properties considered as ordinary assets;
4. Donor's Tax;
5. Estate Tax;
6. Other taxes including Documentary Stamp Tax (DST) related to the sale/transfer of properties; and
7. Those covered by tax-free transfer under Section 40 of the NIRC.

If it is determined that the seller/transferor has no capacity to acquire the property he/she is selling/assigning/transferring and/or the buyer/transferee has no capacity to acquire the property, an electronic Letter of Authority (eLA) may be issued for approval by the Regional Director in accordance with existing rules and regulations.

The following guidelines are prescribed for:

1. One-Time Transactions (ONETT)

The ONETT Team shall in all cases verify with the Integrated Tax System that the parties regularly files return and report income sufficient to establish financial capacity. If the buyer/transferee is proven to have no financial capacity to acquire the property, the transaction is not a sale but a donation and donor's tax should be imposed and not capital gains tax, and a duly executed Deed of Donation shall be required.

However, if the seller/transferor/assignor is a corporation or is a stranger to the buyer/transferee, and it is proven that the buyer/transferee/assignee does not have any financial capacity to purchase the property, it shall be presumed that the buyer/transferee/assignee have earned income that he/she/it did not declare and taxes due thereon were not paid. In addition to any tax due on the sale/transfer/assignment, income taxes shall be assessed against the buyer/transferee/assignee on

the amount of the consideration for which buyer/transferee/assignee cannot show profit that he/she/it has the financial capacity for, on the taxable year when the sale/transfer/assignment of the property occurred.

The ONETT may also recommend the issuance of eLA. However, the processing and issuance of CAR and TCLs shall proceed notwithstanding the impending audit or investigation.

## 2. Applications for BIR ruling/certification on tax-free exchange transactions

If the BIR Law Division determines that the transferor/assignor does not have the capacity to acquire the property, the application/docket shall be forwarded to the National Investigation Division (NID) for investigation. The conduct of an audit/investigation shall not affect the processing of the BIR ruling/certification and issuance of CARs and TCLs on the transfer of the property for shares of stock.

The foregoing shall be mandatory on sale/transfer/assignment of stocks not traded in the Stocks Exchange and other ONETT transactions involving tax payments of at least One Million (P1,000,000.00) and transactions exempted from CGT/EWT (e.g., tax-free exchange under Section 40 (C)(2) of the NIRC).

## **Revenue Memorandum Order No. 26-2016**

**13 June 2016**

### **Policies and Guidelines in Handling Disputed Assessments**

A taxpayer is given opportunity to object to an assessment and present necessary documents before a Final Assessment Notice (FAN) is issued. Protest against Preliminary Assessment Notice (PAN) is optional. Formal Letter of Demand (FLD)/FAN shall be issued fifteen (15) days from taxpayer's receipt of the PAN, whether the same was protested or not.

If the taxpayer accepts and pays the assessment per PAN either partially or fully, an FLD/FAN shall be issued to formalize the assessment, and Payment Form 0605 shall be prepared, filed and paid to evidence the settlement of the assessment or portion thereof.

Within thirty (30) days from receipt of the FLD/FAN, the taxpayer shall either: 1) accept the assessment and pay fully or partially; or 2) protest the assessment fully or partially. Protest may be through a request for reconsideration (if the taxpayer is not going to submit any other additional evidence or document) or request for reinvestigation on the basis of newly discovered evidence (if the taxpayer intends to present or submit additional evidence or documents).

If the taxpayer accepts and pays the assessment per FLD/FAN in full, Payment Form 0605 shall be prepared, filed and paid to evidence the settlement of the assessment. If he settles/pays only in part, and protest the remaining portion, Payment Form 0605 shall be prepared for the accepted portion while a Final Decision on Disputed Assessment (FDDA) shall be issued for the unsettled/unresolved portion. An Authority to Cancel Assessment (ATCA) shall be issued for the resolved portion evidencing the cancellation of the assessment.

In case of request for reinvestigation, all the relevant supporting documents shall be submitted within sixty (60) days from the date of the filing of the protest. No further document shall be accepted after the expiration of said period. Failure to submit documents within the 60 days period shall render the assessment final and executory. Collection remedies (e.g., issuance of collection letter, garnishment, warrant and levy) shall be issued against taxpayer.

All protest shall be considered a request for reconsideration unless said protest clearly indicates that the same is for reinvestigation. A request for reinvestigation shall be available in a protest to a FLD/FAN only and not an available remedy after issuance of an FDDA.

An FDDA shall be issued automatically in case of: (1) inaction by the Commissioner's duly authorized representative within 180 days counted from the filing of a request for reconsideration; 2) lapse of the 60 days period to submit documents in request for reinvestigation; (3) taxpayer's appeal to the CTA within 30 days after expiration of the 180 days period.

If the taxpayer accepts and pays the assessment per FDDA partially or fully, Payment Form 0605 shall be prepared, filed and paid for the amount accepted. In case of FDDA issued by the Commissioner's duly authorized representative, the taxpayer shall within thirty (30) days from receipt thereof file a motion for reconsideration with the Commissioner of Internal Revenue (CIR) or appeal to the CTA. The taxpayer shall manifest that the appeal to the CTA pertains only to the unsettled/unaccepted portion of the FDDA attaching a copy of the duly filed and paid Payment Form 0605.

Appeal to the CIR or CTA of the FDDA shall not preclude the taxpayer for voluntarily settling the assessment, partially or fully. The taxpayer shall manifest to the CTA the fact of the payment and file a motion for dismissal with prejudice as to the assessment or portions settled attaching a copy of the duly filed and paid Payment Form 0605.

An assessment shall become final and demandable due to, among others, the following grounds:

1. Failure to file a valid protest within thirty (30) days from receipt of the FLD/FAN;
2. Failure to submit all relevant documents within sixty (60) days from filing of a request for reinvestigation;
3. Failure to appeal to the CIR or CTA within thirty (30) days from the receipt of the FDDA issued by the CIR's duly authorized representative;
4. Failure to appeal to the CTA within thirty (30) days from receipt of FDDA issued by the CIR;
5. Failure to timely file a motion for reconsideration or new trial before the CTA Division or failure to appeal to the CTA En Banc and Supreme Court based on existing Rules of Procedure; or
6. Failure to receive any assessment notices because it was served in the address indicated in the BIR's registration database and the taxpayer transferred to a new address or closed/ceased operations without updating/transferring/cancelling its BIR Registration (as the case maybe), through the accomplishment and filing of BIR Form No. 1905.

All the other periods provided under RR No. 18-2013 are still effective.

**Revenue Memorandum Order No. 27-2016**  
**23 June 2016**

Treaty rate on interest, dividend and royalties shall be applied without need to file TTRA. Withholding agent, however, has to retain the documents prescribed in the RMO. Correctness of the rate shall be determined during regular BIR audit. The information in the withholding forms will also be used by the BIR for risk assessment and selection for audit.

Enhanced BIR forms 1601F and 1604CF will be issued for this purpose

The RMO, on the other hand, clarifies that a ruling must be applied to avail of the 15% preferential rate on dividends under the tax sparing proviso in Sec 28(B)(5)(b) of the Tax Code.

## **REVENUE MEMORANDUM CIRCULARS**

### **Revenue Memorandum Circular No. 54-2016 17 May 2016**

Circularizes the Guidelines Governing the Issuance of Certificate of Compliance (COC), in lieu of Certificate of Good Standing, pursuant to Cooperative Development Authority (CDA) Memorandum Circular (MC) No. 2015-08, Series of 2015.

A COC shall be issued once a year and can be used, among others, to avail of the incentives and privileges set forth by the CDA-BIR Joint Rules and Regulation Implementing Articles 60 and 61 of Republic Act (RA) 9520 in relation to RA 8424.

A COC will be issued upon compliance with and submission of the following documents:

1. Letter request duly signed by the Chairperson or any authorized representative of the requesting cooperative;
2. Proof of compliance that all required reports for the preceding fiscal year had been submitted, or complete copies of such reports; and
3. Copy of Minutes of Meeting of the General Assembly.

A newly registered cooperative shall be exempted from complying with the foregoing requirements and shall be issued with the COC upon payment of certification fee of Php100.00.

Any of the following shall be a ground for the non-issuance of a COC:

1. Non-submission of required documents;
2. Failure to encode Cooperative Annual Progress Report (CAPR) through web-based CAPRIS and to submit the printed form generated by the system;
3. Willful failure to comply with the mandatory trainings for officers;
4. Non-settlement of fines and/or penalty/ies for late or non-submission of mandatory reports;
5. The cooperative has been declared dissolved.

Any existing dispute on the legitimacy of leadership as evidenced by a compliant filed with the CDA shall be a ground for suspension or non-release of a COC.

Requests for the issuance of a COC shall be made on or before April 30 of the current year with 1 year validity.

**Revenue Memorandum Circular No. 55-2016**

**03 May 2016**

Clarifies the five (5) year validity period of certificate of Accreditation issued to Developers/Dealers/Supplier-Vendors/Pseudo-Suppliers of cash register Machines (CRM)/Point-of-Sale (POS) Machines and other sales machines/receipting software.

The Accreditation Number and the Date of Accreditation (Date Issued:”mm/dd/yyyy” and Valid Until: “mm/dd/yyyy”) of the accredited supplier are required to be printed at the bottom portion of the Official Receipt (OR), Sales Invoice (SI) or Other Commercial Invoices (CI) pursuant to Section 5 of Revenue Regulations No. 10-2015.

All Certificate of Accreditation that were issued prior to the issuance of the Revenue Memorandum Circular (RMC) No. 30-2015 and RMC No. 68-2015 shall still be valid and in effect based on its “Date of Issuance” with staggered implementation, to wit:

Date of Issuance on the Certificate of Accreditation	Valid Until
Prior to July 31, 2013	July 31, 2018
August 1, 2013 to July 31, 2014	July 31, 2019
August 1, 2014 to July 31, 2015	July 31, 2020
August 1, 2015 onwards	Five-year validity period shall commence

Both primary and supplementary invoices/receipts must reflect the corresponding Date of Issuance and Validity Period provided above. All Certificate of Accreditation that will expire on the prescribed period shall apply for renewal of accreditation within sixty (60) days prior to the expiration of the validity period as provided under RMC No. 68-2015.

**Revenue Memorandum Circular No. 61-2016**

**13 June 2016**

**Prescribing Policies and Guidelines for Accounting and Recording Transactions Involving “Netting” or “Offsetting”**

Accrued receivables or payables arising from sale of goods and services shall at all times be recognized at gross for tax purposes, regardless of whether the transactions are actually settled through offsetting or through net settlement of cash flows. Hence, income tax, withholding tax and VAT/percentage tax shall be determined based on the gross amounts.

The following are instances when netting and offsetting usually happen:

1. Manufacturer supplying goods to Supermarket is at the same time liable to pay Supermarket a service fee for the display of its products in Supermarket’s premises. Although Manufacturer issues an invoice for full amount, Supermarket pays only net of the service fee. In this case, the service fee should not be treated as a disguised discount.



2. Telecommunication companies, in the normal course of business, have interconnection charges/access fees chargeable to each other. Receivables/payables are settled based on the net payable computed for either company.
3. Bank has interest payable to a depositor and, at the same time, has interest receivable from a loan to the same depositor. Upon settlement, bank only charges the depositor/debtor an amount net of the interest payable on the deposit.

In all cases, each company should record the gross amount of purchases/payables or sales/receivables, issue official receipts and invoices for the gross amounts and recognize the same for purposes of computing the income tax, VAT or percentage tax, and withholding tax.

The principle of “substance” over form shall be applied and deficiency taxes may be assessed if uncovered.

**Revenue Memorandum Circular No. 62-2016**  
**13 June 2016**

**Clarification on Proper Tax Treatment of Passed-on Gross Receipts Tax**

All banks, non-bank financial intermediaries performing quasi-banking functions, financing companies and other financial intermediaries not performing quasi-banking functions doing business in the Philippines are directly liable to Gross Receipts Tax (GRT) under Sections 121 and 122 of the NIRC.

The “passed-on” GRT should form part of the tax base which the GRT is based for gross receipts tax purposes, based on the definition of “gross receipts”, that is based on “actual or constructive receipt” of income. Since banks, non-bank financial intermediaries, financing companies and other financial intermediaries not performing quasi-banking functions doing business in the Philippines are directly liable for GRT on gross receipts derived by them from business operations, the “passed-on” GRT shall be considered as receipt of gross income specified under Section 32 (A) of the NIRC.

The classification of “passed-on” GRT as other fees and charges is consistent with the implementing rules issued by the Bangko Sentral ng Pilipinas (BSP) through BSP Circular No. 370 (Updated Rules Implementing the Truth in Lending Act to Enhance Loan Transaction Transparency) dated 20 July 2011.

Banks and non-bank financial intermediaries can claim the GRT paid as a deductible expense for income tax purposes pursuant to Section 34 (C) of the NIRC subject to the actual remittance of the GRT as provided under Section 128 of the NIRC.

**Revenue Memorandum Circular No. 65-2015**  
**23 June 2016**

**Clarification on Proper Due Dates for Filing of Returns and Payment of Taxes for the Purpose of Imposition of Penalties for Late Filing and/or Late Payment**

A. For taxpayers under the Electronic Filing and Payment System (eFPS)

The due date of filing of return and the payment of taxes shall be the exact dates stated in the law or regulations for filing or payment. If the deadline falls on a Saturday, Sunday or a holiday, the appropriate deadline for the electronic filing and payment shall fall on the next business day. Transmission of electronic returns and electronic payment must be completed/made on and actually received by the BIR on or before 12 midnight of the defined statutory or regulatory due date for the filing and payment of the relevant return.

In case of dispute, the taxpayer shall present the BIR written advice that its electronic system for filing and payment of taxes is down or unavailable, which shall be issued by the BIR everytime its electronic system for filing and payment of taxes is down or unavailable.

Failure to file the returns and/or pay the taxes on or before the deadline stated in the said written advice shall warrant the imposition of penalties for failure to file returns and/or pay the taxes, or for late filing/late payment whichever is applicable.

B. For taxpayers under the Online eBIR Form System

The due date of filing of return shall be the exact dates stated in the law or regulations for filing of said return. If the deadline falls on a Saturday, Sunday or a holiday, the appropriate deadline for the electronic filing shall fall on the next business day. Transmission of electronic returns must be completed/made on and actually received by the BIR on or before 12 midnight of the specified due date.

In case of dispute, the taxpayer shall present the BIR written advice that its Online eBIR Forms System is down or unavailable, which shall be issued by the BIR everytime its Online eBIR Forms System is down or unavailable. Failure to file the returns on or before the dealine stated in the said written advice shall warrant the imposition of penalties for failure to file the returns or for late filing whichever is applicable.

The due date for the payment of taxes due for the returns filed under the Online eBIR Forms System shall be made on the specified payment deadline. If the deadline falls on a Saturday, Sunday or a holiday, the appropriate deadline for the payment thereof shall fall on the next business day, or on the same deadline for the filing of the returns under the Online eBIR Forms System.

C. For taxpayers who are Manual Filers or are using the Offline eBIR Forms Package

Manual filers are required to file and pay on or before the due date stated in the law or regulation for filing returns and/or payment of taxes due thereon. If such due date falls on a Saturday, Sunday or a holiday, the acts of filing and payment shall be done on the next business day.

**SECURITIES AND EXCHANGE COMMISSION**

**SEC-OGC No. 16-12**  
**24 May 2016**

Non-stock non-profit corporation for charitable and knowledge sharing activities and not engaged in any nationalized or partly nationalized activities in the Philippines is entitled to have alien trustees in its board, and a foreigner as its president/chairman.

In any instance that the non-stock non-profit corporation starts to wholly or partly engaged in a nationalized activity (e.g., land ownership), foreigners within the company should not comprise more than 40% of its membership. Consequently, the corporation can elect foreign trustees in proportion to their allowable participation in the membership of the corporation. However, it cannot have a foreigner as president/chairman of the board.

**SEC-OGC Opinion No. 16-15**  
**01 June 2016**

The nationality of non-stock corporation, in relation to the constitutional provision on land acquisition, is computed on the basis of the nationality of its members and not premised on the membership contribution. The extent of voting power of the members should also be taken into consideration, not only the number of members. This is because it is the power to vote that determines control in a corporation.

While aliens cannot own lands under the Philippine Constitution, they may, however, be granted temporary rights such as lease contracts of lands. Presidential Decree No. 471 has fixed the maximum period for leases of private lands to such aliens or alien-owned corporations, associations, or entities not qualified to acquire private lands in the Philippines to twenty-five (25) years, renewable for another 25 years upon mutual agreement of both the lessor and lessee.