



# TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES, INC.

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## TMAP TAX UPDATES FOR OCTOBER 2015

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### **BIR ISSUANCES**

#### **Revenue Regulations No. 10-2015 (September 21, 2015)**

This RR provides for the mandatory use of non-thermal paper for all Cash Register Machines (CRM)/Point-of-Sales (POS) Machines and Other Invoice/Receipt Generating Machine/Software for all new business registrants. For existing registered taxpayers, a tiered compliance structure is put in place to allow them to comply over a three (3) year-period (i.e., from September 1, 2016 to July 1, 2018) depending on the date of registration of the subject machines.

The RR also provides for the detailed information that should be printed on the Official Receipts/Sales Invoices/Other Commercial Invoices generated from machines/software under Section 5 thereof. According to the RR, in order to provide ample time in procuring, reconfiguring machines and systems to comply with such Section 5, adjustments shall be undertaken on or before October 1, 2015. (Please see amendment per RR No. 12-2015 below).

#### **Revenue Regulations No. 11-2015 (September 29, 2015)**

This RR enumerates the identification documents which senior citizens may present to avail of the benefits and privileges granted to them under existing rules and regulations. These identification documents are: Senior Citizens' Identification Card (ID) issued by the Office of Senior Citizens Affairs, Philippine passport and Government-issued identification card which reflects on its face, the name, picture, date of birth and nationality of the senior citizen which includes any of the following: Digitized Social Security System ID, Government Service Insurance System ID, Professional Regulation Commission ID, Integrated Bar of the Philippines ID, Unified Multi-Purpose ID and Driver's License. The RR also prescribes that the seller shall keep a record of the identification document, among other items, e.g., gross sales/receipts, dates of transactions etc., in claiming the discount granted as an additional item of deduction by the said seller.



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## **Revenue Regulations No. 12-2015** (September 29, 2015)

This RR amends RR No. 10-2015 as to the deadline for making adjustments on the information that should be printed on the Official Receipts/Sales Invoices/Other Commercial Invoices generated from machines/software under Section 5 of RR No. 10-2015. According to the amendment, in order to provide ample time in procuring, reconfiguring machines and systems to comply with such Section 5, adjustments shall be undertaken on or before October 31, 2015.

## **Revenue Memorandum Circular No. 59-2015** (September 17, 2015)

This RMC circularizes the availability of Update of Exemption of Employees (UEE) (BIR Form No. 2305) Data Entry Module and 2305 Batch File Validation Module used for updating the information on the employee's additional exemption for dependents, change of status and execution of "Waiver to Claim the Additional Exemption".

## **Revenue Memorandum Circular No. 61-2015** (September 29, 2015)

This RMC extends the deadline for submission of inventory list and other supporting requirements under RMC No. 57-2015 to October 31, 2015.

## **Revenue Memorandum Circular No. 64-2015** (October 2, 2015)

This RMC reiterates the information requirements that must be shown on receipts, invoices and/or other commercial invoices generated from CRM/POS/software. Otherwise, a manually pre-printed receipt/invoice with approved Authority to Print must be issued to the purchaser, customer or client based on existing provisions of the BIR. The issuance further provides that complete information is required for a VAT-registered taxpayer to validly claim the input tax credit on its purchases.

## **Revenue Memorandum Circular No. 65-2015** (October 7, 2015)

This RMC circularizes the full text of the "Protocol Amending the Agreement between the Government of the Republic of the Philippines and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion



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with Respect to Taxes on Income”. The amendment pertains to the update of the agreement to reflect internationally agreed standards on tax transparency and exchange of information.

### **Revenue Memorandum Order No. 19 -2015** (September 18, 2015)

This RMO contains the recent Audit Program of the BIR. It prescribes the guidelines and procedures to be observed in the audit/investigation of tax returns to enhance taxpayers’ voluntary compliance by encouraging the correct payment of internal revenue taxes through the enforcement function of the BIR. It recognizes that all taxpayers are generally considered as possible candidates for audits and electronic Letters of Authority shall be issued for the audit or investigation of mandatory cases, priority taxpayers/industries, and other priority audits that may be identified by the Regional Director/Assistant Commissioner, Large Taxpayers Service.

### **Revenue Memorandum Order No. 20 -2015** (September 18, 2015)

This RMO clarifies the procedures on the registration of employees and prescribes the guidelines in the issuances of Taxpayer Identification Number of employees using the eRegistration System.

### **Revenue Memorandum Order No. 21 -2015** (September 18, 2015)

This RMO prescribes uniform guidelines and procedures in handling data/information generated through the data matching process relative to the conversion of Provisional Permit to Use to Final Permit to Use and the one-time submission of inventory list of all Point of Sale/Cash Register Machine/Special Purpose Machine. The issuance also defines the roles and responsibilities of all concerned offices for a more effective monitoring and implementation.

## **BIR RULINGS**

### **BIR Ruling No. 294-2015** (September 7, 2015)

The Department of Agrarian Reform (DAR), as payor in its purchases of goods and services, is constituted as the withholding agent of the government to deduct and



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withhold the appropriate taxes due on such purchases. However, the DAR is not precluded from entering into an agreement with the Procurement Service-Department of Budget and Management (PS-DBM), where the PS-DBM deducts and withholds the taxes due on the purchases made on behalf of DAR. The liability, however, in case of failure to withhold the proper taxes would still fall on DAR, as the principal, and not on PS-DBM, it being only the procurement agent.

### **BIR Ruling No. 303-2015** (September 9, 2015)

Properties donated in favor of a political subdivision of the Government shall be exempt from the payment of the donor's tax under Section 101 (A) (2) of the Tax Code, as amended. However, if the same property acquired by gift is subsequently conveyed by way of sale or exchange, the sale will be subject to corporate income tax on the gain realized, which is determined by deducting from the gross selling price the historical cost or the adjusted basis thereof, as it would be in the hands of the donor pursuant to Section 27 in relation to Section 40 of the Tax Code, as amended, and consequently to the creditable withholding tax under Section 2.57.2 of RR No. 2-98, as amended. If the donee-political subdivision of the Government donates the same property donated to it to a non-exempt donee, then it shall be liable for donor's tax pursuant to Section 98 of the Tax Code, as amended.

### **BIR Ruling No. 312-2015** (September 15, 2015)

Interest income derived by the Land Bank of the Philippines Provident Fund from bank deposits, deposit substitutes, trust funds and/or similar or like agreements/investments remains exempt from the final withholding tax pursuant to Section 60 (B) of the Tax Code, as amended, provided that, no part of the corpus or income of the Fund shall be used for or diverted to purposes other than for the exclusive benefit of its members.

### **BIR Ruling No. 313-2015** (September 15, 2015)

The Subic Bay Metropolitan Authority ("SBMA") is not exempt from all national (and local) taxes, including the 5% tax on gross income imposed on business enterprises doing business within the Subic Special Economic Zone pursuant to the Bases Conversion and Development Act of 1992. There is no specific provision in RA No. 7227, as amended, or the Bases Conversion and Development Act expressly exempting SBMA



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from payment of national taxes. If the Congress intended to exempt it from payment of national taxes, it could have done so in the most and unequivocal terms. Tax exemptions are construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

### **BIR Ruling No. 321-2015** (September 22, 2015)

A Low-Cost Mass Housing Project duly registered with the Board of Investments as a New Developer of Low-Cost Mass Housing Project on a Non-Pioneer Status is granted Income Tax Holiday for a period of four (4) years from the actual start of commercial operation/selling, whichever is earlier, but in no case earlier than the date of registration. It is thus also exempt from Creditable Withholding Tax imposed on income payments received during such period with respect to its registered activity pursuant to Section 57 (B) of the Tax Code, as amended, which provides that withholding tax shall not apply to income payments to persons enjoying exemption from the income tax provided by Republic Act No. 7916 and Omnibus Investment Code of 1987. It is still, however, subject to Value Added Tax and Documentary Stamp Tax on its sales of house and lot units as the exemption is restricted only to those granted under Executive Order No. 226.

### **BIR ITAD Ruling No. 246-15** (September 8, 2015)

The local purchase of a motor vehicle for the official use of the Embassy of Lao People's Democratic Republic is subject to VAT as prescribed under Section 106 and 108 of the Tax Code, as amended. However, applying the principle of reciprocity, it appearing that the Republic of Laos allows similar exemption to the Philippine embassy on its purchase of motor vehicles in Laos, the local sale of the subject vehicle shall be subject to VAT at zero (0%) rate pursuant to Section 106(A)(2)(c) of the NIRC of 1997 as amended.

### **BIR ITAD Ruling No. 276-15** (September 15, 2015)

The donation of a motor vehicle made to or for use of the Roman Catholic of Bishop of Sorsogon, which is a religious corporation, is exempt from payment of donor's tax under Section 101 (A) (3) of the Tax Code, as amended, provided that, not more than 30% of the gifts shall be used by the donee for administration purposes. However, the transfer of motor vehicle is subject to excise tax under RA No. 9224 as implemented by



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RR No. 25-03. Being a non-exempt transferee of the subject motor vehicle, the donee shall be considered the purchaser who shall then be liable for the unpaid excise tax.

### COURT OF TAX APPEALS DECISIONS

**Medicaid Philippines, Inc. v. Commissioner of Internal Revenue** (CTA EB Case No. 1224, September 2, 2015)

An assessment made by the Commissioner of Internal Revenue is not rendered invalid due to the absence of a Letter of Authority (LOA). The issuance of a Letter Notice is sufficient proof of authority of the revenue officer to examine the taxpayer. The Letter Notice issued against a taxpayer may be considered as a notice of audit or investigation in the absence of evident error or clear abuse of discretion. Moreover, an LOA is issued only in cases where the Revenue Officer is to examine the taxpayer's books of accounts. Thus, when there is no examination of taxpayer's books of account, it necessarily follows that there is no need to issue an LOA.

**Philippine Associated Smelting and Refining Corporation v. Commissioner of Customs and the Bureau of Customs** (CTA EB Case No. 1172, September 4, 2015)

A judicial claim for tax refund or credit brought to the Court of Tax Appeals (CTA) is by no means an original action but an appeal by way of a petition for review of the taxpayer's unsuccessful administrative claim. Hence, the taxpayer has to convince the CTA that the quasi-judicial agency a quo should not have denied the claim, and to do so the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA, including whatever was required for the successful prosecution of the administrative claim as the means of demonstrating to the CTA that its administrative claim should have been granted in the first place.

**Sara Lee Kiwi Holdings, LLC. v. Commissioner of Internal Revenue** (CTA 2<sup>nd</sup> Division Case No. 8741, September 4, 2015)

In computing the basis for the capital gains tax on the sale of shares not listed or trade through the local stock exchange, the fair market value of the shares sold should be the book value based on the Audited Financial Statements as of the date nearest to the sale and not on the taxpayer's unaudited Statement of Financial Position.



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**National Irrigation Administration v. Samuel A. Marinay, in his Capacity as Provincial Treasurer of Ifugao, and Estrella S. Aliguyon, in her capacity as Municipal Treasurer of Alfonso Lista, Ifugao** (CTA EB Case No. 1055, September 4, 2015)

When the issues involved in a real property tax assessment are (1) purely factual in nature; or (2) both factual and legal in nature, the jurisdiction over such real property tax assessment is lodged with the Local Board of Assessment Appeals. However, when the issues involved are pure questions of law, jurisdiction is conferred upon the regular courts.

**IP Contact Center Outsourcing, Inc. v. Commissioner Kim S. Jacinto-Henares, Hon. Ricardo B. Espiritu, Revenue District Officer, Revenue District Office No. 50** (CTA 3<sup>rd</sup> Division Case No. 8537, September 10, 2015)

The infirmities in a waiver do not extend BIR's period to assess. A waiver, being void from its inception (i.e., fails to conform to the prescribed format as required under RMO No. 20-90, and specifically does not contain the amount of tax due), does not give rise to a right which the BIR may exercise. It was as if no waiver to extend the period to assess was ever executed.

**Delta Air Lines, Inc. v. Hon. Sec. Cesar v. Purisima and Hon. Com. Kim S. Jacinto-Henares** (CTA EB Case No. 1113, September 10, 2015)

The CTA has the authority to review the rulings or opinions of the Commissioner of Internal Revenue which were issued to interpret the provisions of the Tax Code, as amended, and other laws administered by the BIR as they fall under the phrase "other matters arising under the NIRC or other laws administered by the BIR" pursuant to RA No. 1125 or the Act Creating the CTA and defining its jurisdiction.

The services performed in the Philippines by a VAT-registered person to persons engaged in international shipping or air transport operations, including leases of property for use thereof are generally subject to 0% VAT. However, when the services performed in the Philippines by a VAT-registered person are rendered to common carriers by air and sea relative to their transport of passengers, goods or cargoes from



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one place in the Philippines to another place in the Philippines, the same shall be subject to 12% VAT.

**Commissioner of Internal Revenue v. Waterfront Mactan Casino Hotel, Inc.** (CTA EB Case No. 1060, September 15, 2015)

Sale of services to the Philippine Amusement and Gaming Corporation (PAGCOR), a VAT exempt entity under the PAGCOR Charter, is subject to 0% VAT pursuant to Section 108 (B) (3) of the Tax Code.

**Commissioner of Internal Revenue v. Bank of the Philippine Islands** (CTA EB Case No. 1173, September 16, 2015)

The CTA has jurisdiction over cases praying for the cancellation and withdrawal of the Warrant of Distrainment and/or Levy as it falls under the phrase “other matters arising under the NIRC or other laws administered by the BIR” pursuant to RA No. 1125 or the Act Creating the CTA and defining its jurisdiction.

**Derek Arthur P. Ramsay v. Commissioner of Internal Revenue** (CTA 3<sup>rd</sup> Division Case No. 8456, September 17, 2015)

A taxpayer is denied due process when the taxing authority only sends a Formal Letter of Demand with attached Details of Discrepancies. It must also include an assessment notice. An assessment notice is a notice to the effect that the amount therein stated is due as tax and that the same is due and demandable on a definite date.

**People of the Philippines v. Bienvenido S. Dimson** (CTA EB [Crim] No. 033, September 21, 2015)

In order to be convicted for a criminal violation of Section 255 of the Tax Code, as amended (i.e., Failure to File a Return, Supply Correct and Accurate Information, Pay Tax, Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation), the following requisites must be proven beyond reasonable doubt: (i) the corporate taxpayer is required under the Tax Code, as amended, to pay the tax; (ii) the accused, as the officer/employee responsible for the violation, failed to pay such tax at the time required by law or regulations; and (iii) the failure to pay was willful.





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### **Commissioner of Internal Revenue v. Axia Power Holdings Philippines Corporation** (CTA EB Case No. 1135, September 21, 2015)

Presentation of the succeeding Quarterly Income Tax Returns/Annual Income Tax Return is not indispensable to prove that the taxpayer did not utilize or carry-over its claimed excess creditable withholding tax to the succeeding quarters/year. Also, failure to make an entry in the "Creditable Tax Withheld" column of Schedule 1 of the Annual Income Tax Return is not fatal to the taxpayer's claim for refund.

### **Pilipinas Shell Petroleum Corporation v. Commissioner of Customs** (CTA EB Case No. 1007, September 28, 2015)

Importations of intermediate or raw gasoline materials (e.g., Catalytic Cracked Gasoline and Light Catalytic Cracked Gasoline) used as blending components and not as finished gasoline products intended for domestic sale are subject to excise tax under Sections 129 and 148 of the Tax Code.

### **Commissioner of Internal Revenue v. Mindanao Sanitarium and Hospital, Inc.** (CTA EB Case No. 1147 October 5, 2015)

The elements of a valid assessment are: (i) a computation of tax liabilities; (ii) demand for payment within the prescribed period; and (iii) statement of the legal and factual bases used. A mere request for payment is not a clear and categorical demand for payment sufficient to satisfy the second requisite.

### **SUPREME COURT DECISION**

### **Chevron Philippines Inc., v. Commissioner of Internal Revenue** (G.R. No. 210836, September 1, 2015)

An importer is entitled to the refund or credit of the excise taxes paid by it on importation of petroleum products sold to a tax-exempt entity pursuant to Section 135 (C) of the Tax Code, as amended.