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# TMAP TAX UPDATES

MAY 16 TO JUNE 15, 2019

Prepared by:



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## SUPREME COURT DECISIONS

### ***Tax exemption of non-stock, non-profit educational institutions***

*La Sallian Educational Innovators Foundation (De La Salle University – College of St. Benilde) Inc. vs. CIR, G.R. No. 202792, 27 February 2019*

An educational institution shall be entitled to tax exemption if:

1. It falls under the classification of non-stock, non-profit educational institutions, and
2. The income it seeks to be exempted is used actually, directly and exclusively for educational purposes.

It will not be considered profit-driven simply because it generates profit. In this relation, the Constitution does not require that exempt revenues must be earned from educational activities or activities related to the purposes of an educational institution. All revenues shall be exempt as long as the same are used actually, directly and exclusively for educational purposes.

### ***The BIR cannot create additional exceptions from the tax amnesty coverage***

*CIR vs. Transfield Philippines, G.R. No. 211449, 16 January 2019*

In 2007, RA No. 9480 was enacted granting a tax amnesty for unpaid taxes during taxable year 2005 and prior years. Section 8 thereof specifies the persons and cases which are not covered by the tax amnesty.

However, RMC No. 19-2008 included “Delinquent Accounts / Accounts Receivable considered as assets of the BIR/Government, including self-assessed tax” as additional exceptions from coverage.

The Supreme Court held that the CIR cannot insert exceptions where there are none under the law. Although a tax amnesty is interpreted strictly against the taxpayer, the rule-making powers of the BIR cannot be extended to expand the requirements under the law, or include matters not encompassed by the law.

## COURT OF TAX APPEALS DECISIONS

### ***Granting of cash refund in consideration of dissolution during judicial proceedings***

*CE Luzon Geothermal Power Company, Inc. vs. CIR, CTA Case No. 7180 & 7279, 16 May 2019*

During the pendency of the judicial claim for refund or issuance of tax credit certificate for unutilized input VAT, the closure and dissolution of the taxpayer was approved by the BIR and the SEC. Citing the BIR-approved closure, the CTA ordered a cash refund based on legal and equitable grounds.

### ***When the CTA has no jurisdiction***

*CIR vs. Duty Free Philippines Corporation, CTA EB No. 1833, 13 June 2019*

If the disputing parties are all public entities, the case shall be governed by Presidential Decree No. 242 where the dispute shall be administratively settled or adjudicated by the Secretary of Justice, the Solicitor General, or the General Corporate Counsel, depending on the issues and government agencies involved. Accordingly, the Court of Tax Appeals has no jurisdiction over such case.

## ***Deductibility of input VAT for purposes of computing income taxes***

*CIR vs. Maersk Global Service Centres (Philippines) Ltd., CTA EB No. 1786, 13 June 2019*

Input VAT pertaining to a claim for refund or issuance of tax credit certificate (TCC) of input VAT attributable to zero-rated sales that was denied by the DOF may be deducted from gross income as a loss, not as bad debts expense.

## **BUREAU OF INTERNAL REVENUE**

### ***Amending the definition of ‘top withholding agents’***

*Revenue Regulations No. 7-2019, published 14 June 2019*

RR No. 7-2019 amended the definition of top withholding agents (TWAs) under Section 2.57.2(I) of RR No. 2-1998 (*Consolidated Withholding Tax Regulations*) to refer to “those taxpayers whose gross sales/receipts or gross purchases or claimed deductible itemized expenses, as the case may be, amounted to TWELVE MILLION PESOS (PHP 12,000,000.00) during the preceding taxable year.”

However, taxpayers classified as TWAs prior to the effectivity of RR No. 7-2019 shall remain as such until failure to satisfy the above criterion and publication as delisted from the existing list of TWAs. RR No. 7-2019 became effective after fifteen (15) days following its publication in a newspaper of general circulation.

### ***Issuing the implementing rules and regulations of the estate tax amnesty***

*Revenue Regulations No. 6-2019, 31 May 2019*

The BIR issued rules and regulations implementing the estate tax amnesty under the Tax Amnesty Act<sup>1</sup>. Said regulations touch on the following:

- Coverage
- Amnesty rate
- Composition and valuation of gross estate
- Deductions from gross estate
- Deadline for availment
- Estate tax amnesty return
- Place of filing
- Estate with properties subject to taxable donations and/or sales
- Issuance of certificate of availment and eCAR

### ***Implementing the ninety (90)-day period to process VAT refund/credit claims***

*Revenue Memorandum Order No. 25-2019, 16 May 2019*

The BIR issued policies and procedures to implement the 90-day period to process and grant claims for VAT refund/credit pursuant to Section 112 of the Tax Code. The policies and procedures refer to the following:

- Receipt of claims for VAT refund/credit
- Processing and verification of claims
- Processing of payment for approved refund claims
- Penalty for non-observance of the prescribed time frame

### ***Fuel Marking Program Funds***

*Revenue Memorandum Circular No. 62-2019, 13 June 2019*

The BIR circularized DOF-DBM-COA Joint Circular No. 001-2018 entitled "*Rules and Regulations Implementing Section 148-A, Subsection (h) Chapter V of the Tax Code on the use of Fuel Marking Program Funds.*"

### ***Tax exemptions of the sale of gold to the BSP and to accredited traders***

*Revenue Memorandum Circular No. 61-2019, issued 11 June 2019*

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<sup>1</sup> Republic Act No. 11213.

The BIR circularized RA No. 11256 which amends Sections 32(B)(7) and 151 of the Tax Code. Based on the amendments, the sale of gold to the BSP by registered small-scale miners and by accredited traders, and the sale of gold by registered small-scale miners to accredited traders for eventual sale to the BSP are exempt from income tax and excise tax.

### ***DST exemption of transfer of real property between PEZA entities***

*Revenue Memorandum Circular No. 60-2019, issued 7 June 2019*

Transfer of real property from an Ecozone developer/operator registered with the PEZA to another PEZA entity is exempt from documentary stamp tax (DST) if the transfer is directly pursuant to their registered activities.

For purposes of issuing the electronic Certificate Authorizing Registration, the following shall be required from the parties to support the DST exemption:

1. Certified true copy of the latest PEZA Certificates of Registration of the Ecozone developer/operator and the parties to the transaction;
2. Certified true copy of PEZA Registration Agreements; and
3. Certified true copy of the following:
  - a. PEZA Form No. 00-00-01 – Certification on Entitlement to 5% Gross Income Tax
  - b. PEZA Form No. 00-03-00 – Certification on Available Incentives

### ***Submission of a tax incentive report by the CDA to the BIR***

*(Revenue Memorandum Circular No. 59-2019, issued 7 June 2019)*

The BIR published the full text of Joint Administrative Order No. 1-2019 (Rules and Regulations Implementing Section 3 of Republic Act No. 10963) which relates to Section 5(b) of the Tax Code regarding the submission by the Cooperative Development Authority (CDA) of a tax incentive report to the BIR.

The Joint Administrative Order provides the:

- Compliance requirements for registered cooperatives which include the submission of an Annual Tax Incentives Report to the CDA;
- Incentives monitoring mechanisms; and
- Penalties for non-compliance.

### ***Clarifying the cut-off date and other issues regarding the tax amnesty on delinquencies***

*Revenue Memorandum Circular No. 57-2019, 31 May 2019*

The BIR addressed frequently-asked questions regarding the tax amnesty on delinquencies as implemented by RR No. 4-2019. Among others, the following were clarified:

- All persons with delinquent internal revenue tax liabilities covering taxable year 2017 and prior years on or before 24 April 2019 may avail the amnesty.
- Taxpayers may avail the amnesty with respect to:
  - assessment notices pertaining to penalties only (i.e., without basic taxes assessed) as long as said assessment notices became final and executory on or before 24 April 2019;
  - tax liabilities which became final and executory on or before 24 April 2019 and are covered by compromise settlement applications that are denied by the NEB or REB during the one-year availment period of the tax amnesty;
  - penalties of delinquent tax liabilities as of 24 April 2019 that were applied for abatement but denied by the CIR;
  - delinquent accounts subject of on-going collection enforcement proceedings such as warrants of garnishment, notices of tax lien (NTL) or notices of tax levy (NOL), etc.;
  - tax liabilities under a FAN that was protested but the taxpayer was not able to submit the required documents within sixty (60) days from the date of filing of the protest; and

- tax liabilities under a FAN that was protested but the taxpayer withdrew said protest on or before 24 April 2019.
- The following cases are not covered by the tax amnesty:
  - Any tax liabilities under on-going tax investigations are not yet delinquent accounts, hence, are not covered by the tax amnesty.
  - The tax amnesty cannot be availed with respect to pending criminal charges as of 24 April 2019 pertaining to “failure to obey summons”, if the legal complaint has no assessment of basic tax.
  - Open stop-filer cases
  - If the FAN was protested and the FDDA was issued on or before 24 April 2019 but such FDDA was received after 24 April 2019, the deficiency tax assessments are not considered delinquent accounts.
- Tax liabilities that were not included in the Certificate of Delinquencies / Tax Liabilities issued by the BIR will remain outstanding tax liabilities until fully settled.
- A registered NTL or NOL shall be lifted or cancelled based on the tax amnesty availed and upon issuance of a Lifting Order.
- The 100% amnesty tax rate applies to a final and executory judgment by the court pertaining to unremitted withholding taxes.
- The tax amnesty may be availed of at once, or per taxable year or tax type.
- The amnesty tax cannot be paid on installment.
- In order to lift a notice of levy or a warrant, there should be a Notice of Issuance of Authority to Cancel Assessment and a Lifting Order.
- A pending criminal case is not automatically terminated upon availment of the tax amnesty. A motion to terminate or dismiss should be filed citing the tax amnesty availment as basis.
- If a final and executory FAN relates to a pending criminal case, the amnesty tax rate shall be sixty percent (60%).
- RR No. 4-2019 provides that the PAN, NIC or equivalent document shall be sufficient to support the amount of unremitted withholding taxes. Such ‘equivalent document’ refers to the following documents issued on or before 24 April 2019:
  - Letter to the withholding agent demanding remittance of (1) the unremitted amount based on withholding tax returns filed, or (2) the tax withheld based on COA reports; or
  - PCL demanding payment of tax withheld per returns filed.
- Estate tax liabilities may qualify for tax amnesty on delinquencies if they are:
  - Delinquent accounts
  - Subject of criminal cases with the DOJ
  - Subject of court judgments that have become final and executory on or before 24 April 2019
- Availment of tax amnesty is fully complied with upon completion of the enumerated steps which includes the filing/submission of the Tax Amnesty Return.
- A delinquent taxpayer whose property has been auctioned and sold may still redeem the auctioned property within one (1) year from the date of registration of the Certificate of Sale with the Registry of Deeds.

### ***Reckoning date for deadline of DST on original issuance of shares***

*Revenue Memorandum Circular No. 56-2019, 29 May 2019*

New corporations are required to file the DST due on their original issue of shares within five (5) days after the close of the month of the date of SEC registration as reflected in the Certificate of Incorporation / Certificate of Recording / License to Do Business in the Philippines.

### ***Clarifying what “Business Style” refers for purposes of invoicing requirements***

*Revenue Memorandum Circular No. 55-2019, 22 May 2019*

For purposes of complying with the requirements for official receipts and invoices, “Business Style” refers to the business name registered with the concerned regulatory body (e.g., SEC or DTI) used by the taxpayer other than its registered name or company name.

## **Revised donor's tax and estate tax returns**

*Revenue Memorandum Circular No. 54-2019, 21 May 2019*

The BIR issued the revised donor's tax return (BIR Form No. 1800) and estate tax return (BIR Form No. 1801). Although the manual returns are already available at [www.bir.gov.ph](http://www.bir.gov.ph) under BIR Forms – Transfer Tax Return, they are not yet available in the eBIRForms. Accordingly, manual and eBIRForms filers should download the PDF version of the form, print and then complete the same.

Manual payment may be made with an AAB or with the concerned RCO. On the other hand, online payment may be made through GCash Mobile Payment, LBP Linkbiz Portal or DBP Tax Online. "No payment" returns shall be filed with the appropriate RDO.

## **GLOSSARY**

AAB – Authorized Agent Bank  
BIR – Bureau of Internal Revenue  
CIR – Commissioner of Internal Revenue  
COA – Commission on Audit  
CTA – Court of Tax Appeals  
DBM – Department of Budget and Management  
DBP – Development Bank of the Philippines  
DOF – Department of Finance  
DOJ – Department of Justice  
DST – Documentary Stamp Tax  
DTI – Department of Trade and Industry  
eCAR – Electronic Certificate Authorizing Registration  
FAN – Final Assessment Notice  
FDDA – Final Decision on Disputed Assessment  
LBP – Landbank of the Philippines  
NEB – National Evaluation Board  
NIC – Notice of Informal Conference  
PAN – Preliminary Assessment Notice  
PCL – Preliminary Collection Letter  
PDF – Portable Document Format  
PEZA – Philippine Economic Zone Authority  
RA – Republic Act  
RCO – Revenue Collection Officer  
RDO – Revenue District Officer  
REB – Regional Evaluation Board  
RMC – Revenue Memorandum Circular  
RR – Revenue Regulations  
SEC – Securities and Exchange Commission  
VAT – Value-Added Tax



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