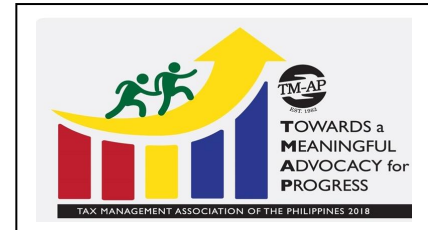




TMAP TAX UPDATES

OCTOBER 16 TO NOVEMBER 15, 2021

Prepared by:



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SUPREME COURT DECISION

When a protest letter is considered void

Commissioner of Internal Revenue vs. Court of Tax Appeals – Third Division and Citysuper, Incorporated, promulgated 10 May 2021

Under Section 228 of the Tax Code, an assessment issued by the Bureau of Internal Revenue (BIR) may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of said assessment in such form and manner as may be prescribed by implementing rules and regulations. In this regard, Revenue Regulations No. 18-2013 requires the taxpayer to state the following for its protest to be valid:

1. The nature of the protest, whether it is a request for reconsideration or reinvestigation;
2. Date of assessment notice; and
3. Applicable law, rules and regulations, or jurisprudence on which the protest is based.

Accordingly, the Supreme Court ruled that a protest letter against a Final Assessment Notice (FAN) was void because:

- The protest letter itself did not state the date of the FAN. The attachment of copies of the audit results/assessment notices to the protest letter was considered as non-compliant with the requirement.
- The protest letter did not state the applicable law, rules and regulations, or jurisprudence on which the protest was based.
- Although taxpayer stated that it was “in the process of compiling the necessary documentation to support its (sic) protest to said assessments, and will be requiring additional time to accomplish this”, the failure to explicitly state whether the protest was a request for reconsideration or reinvestigation meant that the BIR had no way of knowing if it should monitor the 60-day period for submission of supporting documents.

COURT OF TAX APPEALS DECISION

Refund of excise taxes on imported alcohol products

Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, promulgated 21 October 2021

For alcohol products imported by an airline company to be exempt from excise taxes, such alcohol products should not be locally available in reasonable quantity, quality or price.

To prove that alcohol products imported in 2013 and 2014 were not locally available in reasonable quantity, quality or price, an airline company which was requesting a refund of excise taxes presented the Judicial Affidavit of the In-flight Materials Purchasing Division manager who testified that it was cheaper to import based on a comparison between the cost of imported liquor and the local prices in the respective price lists of Absolute Sales Corporation, Future Trade International, Inc. and Revenue Memorandum Circular (RMC) No. 90-2012.

However, the Court of Tax Appeals (CTA) found said testimony and price lists insufficient to prove that the imported alcohol products were not locally available in reasonable quantity, quality or price. In this regard, the CTA explained that:

- The price list of Absolute Sales Corporation does not contain price quotations of the alcohol products specifically imported.
- The price list in RMC No. 90-2012 was based on a 2010 price survey, hence, was not comparable with 2013 and 2014 importations. Further, said price list does not include any of the listed alcohol products specifically imported.
- The airline company did not present proof showing that the absence of price quotations in the price lists was due to non-availability of the alcohol products in the local market.
- Only the price list of Future Trade International, Inc. established local prices of the alcohol products specifically imported. However, without corroborating evidence to prove that said price list adequately represents the local market prices or that Future Trade International, Inc. is the exclusive distributor of the subject alcohol products, it could not be determined if the imported alcohol products are not locally available at reasonable prices.

BUREAU OF INTERNAL REVENUE

Implementing the Sagip Saka Act

Revenue Regulations No. 19-2021, published 10 November 2021

Republic Act (RA) No. 11321, otherwise known as the *Sagip Saka Act*, was enacted in 2018 in order to achieve sustainable modern agriculture and food security. It created and strengthened the Farmers and Fisherfolk Enterprise Development Program (the "Program") which shall make use of science-based technologies in the identification and prioritization of agricultural and fishery products.

The Bureau of Internal Revenue recently issued regulations to implement the provisions of the *Sagip Saka Act* regarding the income tax exemption of and donor's tax exemption of donations made to Accredited Farmers and Fisherfolk Enterprises.

The implementing regulations provide for the following:

1. Income tax exemption

- This exemption applies to income directly arising from the operations of the enterprise.
- The Accredited Farmers and Fisherfolk Enterprise must be registered as a Barangay Micro-Business Enterprise (BMBE).
- This exemption shall apply only if and during the period which the enterprise is registered as a BMBE issued with Certificate of Authority by the Department of Trade and Industry.
- For the cooperative and enterprise to avail of the exemption, the following criteria must be present:
 - a. The accredited business entity or enterprise must be among the intended beneficiaries enumerated in Section 5 of the Implementing Rules and Regulations of RA No. 11321; and
 - b. Total assets, including those arising from loans but excluding land on which the office, plant and equipment are situated, should not be more than PHP3m.

2. Donor's tax exemption

Donations of real and personal properties to an Accredited Farmers and Fisherfolk Enterprise shall be exempt from donor's tax subject to the following conditions:

- a. The donee is an Accredited Farmers and Fisherfolk Enterprise as certified by the Department of Agriculture (DA).
- b. The donee is among the proponent groups or beneficiaries of the Program as certified by the DA Regional Sagip-Saka Program Management Committee (SS-PMC).
- c. The donation is for the accomplishment of the Program.
- d. The application for exemption shall be filed with the Law and Legislative Division in the BIR National Office and shall comply with Revenue Memorandum Order No. 9-2014 with the following requirements:
 - Original or certified true copy (CTC) of the above DA certification;
 - Original or CTC of the above SS-PMC certification;
 - Taxpayer identification number of the donor and donee;
 - Original or CTC of the notarized Deed of Donation; and
 - Original or CTC of the title and tax declaration of real property or CTC of proof of receipt if personal property.

The donation shall be deductible only if the rules of deductibility under Section 34(H) of the Tax Code and its regulations are complied with.

(Revenue Regulations No. 19-2021, published 10 November 2021)

Clarifying importations that no longer require ATRIG issuance

Revenue Memorandum Circular No. 112-2021, issued 10 November 2021

In light of concerns raised by revenue officials and stakeholders, the Bureau of Internal Revenue has clarified that the issuance of an Authority to Release Imported Goods (ATRIG) is no longer necessary for the importation of perishable agricultural food products such as unprocessed vegetables, fruits and nuts which are VAT-exempt under Section 109(1)(A) of the Tax Code.

However, until further notice, the appropriate ATRIG shall still be secured from the Bureau of Internal Revenue with respect to the following articles:

1. Feed and feed ingredient;
2. Fertilizers; and
3. Articles subject to excise tax as well as on raw materials, apparatus or mechanical contrivances, and equipment specially used for the manufacture thereof.

Advisory on availability of the eBIRForms Package Version 7.9.2

Revenue Memorandum Circular No. 111-2021, issued 21 October 2021

Electronic BIR Forms (eBIRForms) Package Version 7.9.2 is already available for download from www.bir.gov.ph. This latest package includes the January 2018 version of the following tax returns:

BIR Form No.	Name
2552	Percentage Tax Return for Transactions Involving Shares of Stock Listed and Traded Through the Local Stock Exchange or Through Initial and/or Secondary Public Offering
1600-VT	Monthly Remittance Return or Value-Added Tax Withheld
1600-PT	Monthly Remittance Return of Other Percentage Taxes Withheld
1707	Capital Gains Tax Return for Onerous Transfer of Shares of Stocks Not Traded Through the Local Stock Exchange
2200-C	Excise Tax Return for Cosmetic Products

It also contains bug fixes for BIR Form Nos. 1702-MXv2018 and 1702-MXv2018C.

Clarifying the utilization of Tax Payment Certificates issued under the CARS Program

Revenue Memorandum Circular No. 108-2021, issued 19 October 2021

Following the earlier issuance of Revenue Regulations No. 12-2021 and Revenue Memorandum Circular (RMC) No. 90-2021 regarding the guidelines and procedures for the utilization of the Tax Payment Certificate (TPC) under the Comprehensive Automotive Resurgence Strategy (CARS) Program, Eligible and Registered Participants (ERPs), the Bureau of Internal Revenue issued the following additional clarifications:

- A TPC cannot be used as advance payment or deposit for excise taxes due. It also cannot be used as payment for deficiency tax liabilities.
- A TPC cannot be used for payment of quarterly income taxes due and monthly value-added taxes (VAT) due. It can only be used to pay income taxes payable under the annual income tax return and VAT payable under the quarterly VAT return.
- Receipt of the TPC is not taxable.
- The TPC details must be indicated under "Details of Payment" located in the lower portion of the tax return, under the item "Others" or "Others (specify)" where corresponding boxes are provided for payment details.
- Aside from the TPC, a Detailed Schedule of Removals of Automobiles shall be attached to the excise tax return (BIR Form No. 2200-AN) as a breakdown of Part V, Schedule 1A.
- Authorized BIR personnel in the concerned Revenue District Office shall authenticate the TPC only after receipt of its hard copy, together with the tax return and other required attachments.
- The utilization of TPC as payment of taxes due shall stop the running of the TPC's validity period.
- If the TPC is found to be spurious, the ERP shall be liable to the amount of taxes due and penalties for failure to pay the tax, without prejudice to the filing criminal and civil actions.
- The detailed procedures for using the DTI-BOI Online Facility System are laid out in Annex "B" of RMC No. 108-2021.

Tax compliance of social media influencers and online merchants

Revenue Memorandum Order No. 29-2021, issued 29 October 2021

The Commissioner of Internal Revenue has directed all Revenue District Officers, and Large Taxpayer Divisions/Audit Divisions to monitor and verify the tax compliance of online merchants, social media influencers and other businesses operating through digital or online platforms.

Furthermore, a Special Task Force shall be created in each Revenue Region and in the Large Taxpayer Service to perform the following:

- Gather and collate all relevant information and create a database of all online sellers, online lessors and social media influencers, including the properties being leased out;
- Determine those who are registered and not registered with the Bureau of Internal Revenue; and
- Submit Monthly Accomplishment Reports.

Voluntary declarations made by the covered taxpayers shall be verified through the exchange of information mechanism under tax treaties. Letters of Authority may be issued in case discrepancies or inconsistencies are found during verification.

Procedures in handling and resolving taxpayer concerns and complaints

Revenue Memorandum Order No. 28-2021, issued 26 October 2021

The Bureau of Internal Revenue (BIR) amended Revenue Memorandum Order No. 22-2020 as regards the policies, guidelines and procedures in the handling of taxpayer concerns and complaints received by the following:

1. 8888 Citizen's Complaint Center;
2. Presidential Complaint Center;
3. BIR eComplaint System;
4. Contact Center ng Bayan;
5. Anti-Red Tape Authority (ARTA); and
6. Other feedback mechanisms.

The policies and guidelines include the following:

- Concerns or complaints shall be acknowledged within the same day or within the next business day, if the same were received on a weekend or holiday. The concern or complaint shall be categorized and then forwarded to the concerned BIR office. The monitoring office shall be copy-furnished.
- Concerns or complaints against the BIR may be system related or non-system related. They include allegations of misdemeanor, graft and corruption, extortion and non-compliance with the Citizen's Charter and ARTA requirements such as non-observance of the "No Noon-Break" Policy, unavailability of Signatory or Officer-of-the-Day and inaction.
- Concerns and complaints may also be directed towards business establishments, Authorized Agent Banks and other private entities. These may include non-issuance of official receipts or sales invoices and unlawful pursuit of business.
- Concerns also include commendations, suggestions, requests for assistance and inquiries.
- Anonymous complaint or denunciation
 - ✓ If there is no contact information that <sic> does not identify the office and/or personnel being complained, it shall be deemed closed.
 - ✓ If there are verifiable leads, it shall be forwarded to the concerned office.
 - ✓ It shall be recorded and included in the quarterly report to be submitted to the monitoring office and the Management Committee.
- BIR offices shall provide a designated electronic mail account for citizen concerns or complaints.
- The concerned BIR office is responsible for taking concrete and specific action on the concern or complaint and for responding directly to the complainant within 24 hours for ARTA and within 72 hours for the other venues.
- Monitoring offices shall identify the problem and undertake necessary action such as investigation, disciplinary action or policy formulation.



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TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES 2018