



TMAP TAX UPDATES

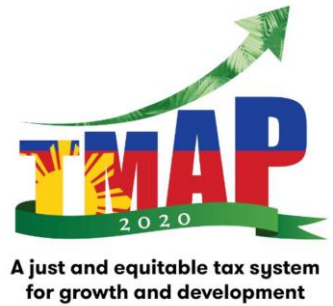
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COURT OF TAX APPEALS DECISIONS

Noncompliance with the rules on the service of LOA renders the assessment void

AC Corporation vs Commissioner of Internal Revenue

CTA Case No. 8485

January 06, 2020

The Letter of Authority (LOA) is the authority given to the appropriate revenue officer assigned to perform assessment functions. It commences the audit process and informs the taxpayer that it is under audit for possible deficiency tax assessment. Under Revenue Memorandum Order (RMO) No. 43-90, "An LOA must be served or presented to the taxpayer within 30 days from its issue date; otherwise it becomes null and void".

In the case herein, the LOA was served on the same date it was issued. However, it was established to have been received by a security guard who is not a duly authorized representative of the taxpayer. An LOA shall be received only by the taxpayer himself or any duly authorized representative of the taxpayer. Hence, for failure of the BIR to serve the LOA to the taxpayer within the 30-day period, the LOA has become void.

It was also noted that the examiner who conducted the examination and who recommended the issuance of the Preliminary Assessment Notice (PAN) was not the Revenue Officer indicated in the LOA. The Revenue Officer was only authorized through a Memorandum of Assignment. Hence, the service and receipt of the LOA cannot legally bind the taxpayer, and the assessment was considered null and void.

FLD and FAN without definite due dates for payment are void

Commissioner of Internal Revenue vs San Miguel Foods Inc.

CTA EB No. 1880 re Case No. 9046

January 07, 2020

An assessment notice, to be valid, must indicate a fixed and definite period within which a taxpayer must pay the tax deficiency.

In this case, the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN) failed to demand payment of taxes within a specific period. The FLD only requested the respondent-taxpayer to pay its deficiency tax liabilities using BIR Form 0605. No specific period or due date on when the payment should be made was indicated in the FAN.

Since the FLD and FAN lack the required due date for payment, the assessment was considered null and void.

Revocation of rulings cannot be retrospective in nature except in cases of deliberate misstatement of facts, different facts, or act of bad faith

Meridien East Realty & Development Corporation vs Commissioner of Internal Revenue

CTA Case No. 9130

January 07, 2020

Section 246 of the NIRC, as amended, provides that a revocation, modification or reversal of rulings or circulars issued by the Bureau of Internal Revenue (BIR) should not be given retroactive effect, except in cases when (1) the taxpayer deliberately misstates or omits material facts from the documents required by the BIR, (2) the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or (3) the taxpayer acted in bad faith.

In this case, the BIR issued an assessment for taxable year 2010 by retroactively applying RMC 20-2010 which revoked BIR Ruling DA-245-05. In the ruling, the BIR confirmed that the transfer of the condominium project under a build-to-own concept pursuant to a Co-Development and Construction Management Agreement is tax exempt, there being no sale transaction. However, in 2010, the said ruling was revoked and considered null and void by the BIR.

There is no sufficient evidence of the existence of any of the exceptions enumerated in Section 246 for the revocation under RMC 20-2010 to have a retroactive effect. Hence, the BIR assessment on the basis of a retroactive application of the revocation of a BIR ruling was considered null and void.

Assessment where amount of tax liability is indefinite is void

Alphaland Makati Place vs Commissioner of Internal Revenue

CTA Case No. 9609

January 15, 2020

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. An assessment does not only include a computation of tax liabilities; it also includes a demand for payment within a period prescribed. Its main purpose is to determine the amount that a taxpayer is liable to pay.

In the context of the NIRC, an assessment is a written notice and demand made by the BIR on the taxpayer for the settlement of a tax liability that is there definitely set and fixed. The amount due as tax and a demand for payment thereof must be indicated in the notice.

In this case, the FLD states that the interest will still be adjusted if paid beyond the period given. Although the disputed notice provides for the computation of the liability, the amount or adjustment, remains indefinite, since the amount assessed is still subject to modification or adjustment depending on the date of payment.

Accordingly, the assessment was considered null and void.

REVENUE REGULATIONS

Employees to file own registration information update

Revenue Regulations No. 01-2020

January 09, 2020

Application for any change in the registration information (BIR Form 1905) shall be filed by the employee in the RDO where the employee is registered. Copy of the BIR Form 1905, as stamped received by the RDO, shall be submitted by the employee to its current employer. The employer shall then make the necessary adjustments on the withholding tax of the employee based on the new information.

Previously, under RR 11-2018, an employee is required to furnish BIR Form 1905 to his employer and the employer transmits the same to the BIR. RR 1-2020 amends RR 11-2018 which amended RR 2-1998, the withholding tax regulations.

With this amendment, the procedures in updating registration information of employees are now aligned with the procedures provided under RMO 37-2019.

Tax exemption of Bangko Sentral ng Pilipinas

Revenue Regulations No. 02-2020

January 15, 2020

The tax exemption privileges of the Bangko Sentral ng Pilipinas (BSP) under The New Central Bank Act of 2019 (RA 11211) is in effect as implemented by RR 2-2020.

The BSP shall be exempt from all national internal revenue taxes on income derived from its governmental functions, specifically:

- a. Income from its activities or transactions in the exercise of its supervision over bank operations and its regulatory and examination power over non-bank financial institutions performing quasi-banking functions, money service businesses, credit granting businesses and payment system operators; and
- b. Income in pursuit of its primary objective to maintain price stability conducive to a balanced and sustainable growth of the economy, and the promotion and maintenance of monetary and financial stability and the convertibility of peso.

All other income not included in the list above shall be considered as proprietary income, hence, subject to all applicable national internal revenue taxes.

The law became effective on March 21, 2019. This RR becomes effective beginning Jan 31, 2020.

REVENUE MEMORANDUM CIRCULAR

New list of additional and delisted top withholding agents

*Revenue Memorandum Circular No. 136-2019,
December 18, 2019*

The BIR published the list of additional and delisted Top Withholding Agents last December 16, 2019. The list is based on the amended criteria in determining the Top Withholding Agents (TWAs) under RR 7-2019.

Pursuant to RR No. 7-2019, the publication of the list shall serve as the “notice” to the TWAs to deduct and remit to the BIR the 1% and 2% creditable withholding tax (CWT) from regular suppliers of goods and services, respectively.

For those in the December 16 publication, the obligation to withhold shall continue, commence or cease, as the case may be, beginning January 1, 2020.

Taxpayers that cannot be found in any of the lists of existing and additional TWAs published in October 2018, March 2019 and December 2019 are deemed to have been excluded and therefore, are not required to deduct and remit the 1% or 2% CWT on purchases of goods and services from regular suppliers.

The published lists can be accessed in the BIR website.

Tax incentives under the Farmers and Fisherfolk Enterprise Development Program Act

*Revenue Memorandum Circular No. 138-2019
December 18, 2019*

RMC 138-2019 circularizes the implementing rules and regulations (IRR) of RA 11321 entitled “an Act Instituting the Farmers and Fisherfolk Enterprise Development Program of the Department of Agriculture” issued through Administrative Circular No. 8, series of 2019, by the DA. Under the RA, also known as the “Sagip Saka Act”, the following tax incentives can be availed under the Farmers and Fisherfolk Enterprise Development Program:

- Gifts and donations of real and personal properties to the Program beneficiaries shall be exempt from donor's tax;
- The LGUs shall exempt from real property tax the structures, buildings, and warehouses utilized for the storage of farm inputs and outputs whose assessed value does not exceed P3,000,000.00; and

- Exemptions from income tax for farmer and the fisherfolk cooperatives and enterprises registering as barangay micro-business enterprises pursuant to the Barangay Micro-Business Enterprises (BMBEs) Act of 2002.

Availability of enhanced BIR Forms 1601-EQ and new 1602Q

Revenue Memorandum Circular No. 139-2019

December 18, 2019

The BIR issued new BIR Form 1602Q and enhanced BIR Form 1601-EQ, in relation to the implementation of the TRAIN Law (RA 10963).

The newly issued BIR Form 1602Q (Quarterly Remittance Return of Final Taxes Withheld on Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/Etc.) shall be used by banks and other institutions in remitting their quarterly final taxes withheld on interest paid on deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements.

The BIR Form 1601-EQ (Quarterly Remittance Return of Creditable Income Taxes Withheld -Expanded) was revised due to some changes in the rate of creditable withholding tax on MERALCO payments and interest income on all other debt instruments not within the coverage of deposit substitutes (i.e. from 32%/20% to 15%).

The new/enhanced returns are already available manually and can be downloaded from the BIR website. However, this are not yet available in the Electronic BIR Form (eBIRForm) and Electronic Filing and Payment System (eFPS). Thus, eFPS/eBIRForms filers shall use the existing version of BIR Forms 1601-EQ and 1602 in the eFPS, and existing version of BIR Form No. 1602Q in the Offline eBIRForms Package v7.5 in filing and remitting taxes due thereon.

Rules on the execution of waivers of the defense of prescription

Revenue Memorandum Circular No. 141-2019

December 20, 2019

The BIR reiterated the following revised rules on the proper execution of the waiver of defense of prescription:

- The waiver is a unilateral and voluntary undertaking and binding on the taxpayer immediately upon execution. It need not specify the type and amount of taxes to be assessed. It need not be notarized to be valid.
- Delegation of authority to a representative of the taxpayer is no longer required to be in writing and notarized. A taxpayer cannot seek to invalidate his waiver by contesting the authority of his own representative.
- It is the duty of the taxpayer to submit his waiver to the authorized BIR officials, which include the RDO or Group Supervisor as designated in the LOA or MOA. The date of acceptance by the BIR officer is no longer required to be indicated for the waiver to be valid.
- There is no strict format prescribed for the waiver. Any format may be utilized by a taxpayer. The format will not affect its validity.
- The burden of ensuring that the waiver is validly executed is the responsibility of the taxpayer. Hence, taxpayers must ensure that the waivers they execute are valid.

Recovering erroneously deducted DST through eDST System

Revenue Memorandum Circular No. 142-2019

December 27, 2019

Taxpayers now have an additional option to recover the erroneously deducted amount of DST from their respective ledger balances in the eDST system as a result of erroneous encoding of information by the taxpayer-user, or multiple affixture/printing of stamps due to taxpayer-user's error or a system error.

Aside from filing a claim for refund, the taxpayer-user may file a request for adjustment to the taxpayer's ledger balance in the eDST System, provided that the following conditions are satisfied:

- a. Revised BIR Form 2000 filed with the BIR is properly accomplished, more particularly on the tax computations for the eDST System (Part II.A and Schedule 1); and
- b. The erroneously deducted amount from the taxpayer's ledger account in the eDST system has not been declared in Schedule 1 of the said return.

Below are the guidelines and procedures in filing for the adjustment:

1. Request for adjustment in the taxpayer's ledger balance shall be filed in writing by the taxpayer-user to the Chief, Miscellaneous Operations Monitoring Division (MOMD), Collection Service located in the NO. All relevant documentary proofs on the incident shall likewise be submitted.
2. The MOMD shall conduct a preliminary evaluation of the request. The request for verification and investigation adjustment shall be transmitted by MOMD to the concerned revenue offices within 5 working days from the receipt of taxpayer's written request.
3. The head of the concerned RDO/ LTS division shall issue a MOA authorizing the revenue officers to conduct verification of the request.

Results of the verification and corresponding recommendation for approval or denial shall be transmitted to the Chief, MOMD, within 30 working days from receipt of the request for verification.

4. The recommendation- approved or denied, as evaluated by the MOMD, shall be endorsed to the Assistant Commissioner, Collection Service for final approval.

The Taxpayer shall be notified, in writing or through email, of the decision on its request for adjustment within 5 working days from receipt of the written recommendation of the concerned RDO or LTS division.

The reasons for the denial of the taxpayer's request shall be clearly stated in the notice to the taxpayer. In case it was determined by the BIR that a request for refund should have been filed instead, the same should be categorically stated in the notice of denial. In case the taxpayer's request does not arise from a system error and there is a need for a further verification at the taxpayer's side, the same shall also be communicated to the taxpayer.

Updates on the inclusion of taxpayers as top withholding agents

Revenue Memorandum Circular No. 143-2019

December 27, 2019

RMC 143-2019 clarifies issues pertaining to the inclusion of taxpayers as top withholding agents (TWAs) who are required to withhold 1% and 2% on purchases of goods and services, respectively.

The following taxpayers shall be excluded from the list of TWAs:

1. Taxpayers which are included in the lists of TWAs published last October 2018, March 2019 and December 2019 but who failed to satisfy the criteria set under RR No. 07-2019 (i.e., gross sales/ receipts, gross purchases, or claimed deductible itemized expenses amounted to Php12M during the preceding taxable year), and;
2. Taxpayers which, despite having met the criteria, were excluded pursuant to OM No. 20-2019, as follows:
 - a. National government agencies, government-owned or controlled corporations, state universities and colleges, and local government units;

- b. Taxpayers who were included as TWA because of one-time transactions (i.e. estate and donor's tax);
- c. Individual taxpayers deriving income on commission basis such as but not limited to insurance agent and real estate broker, subject to verification of their duly filed 2018 Quarterly Income Tax Returns in order to determine the regularity of their transactions. Accordingly, if the Php12M criteria has been satisfied only in one taxable quarter, the taxpayer shall not be qualified as TWA; and
- d. Taxpayers who are exempt from payment of income taxes with no proprietary activities (i.e foundations, non-stock, non-profit and tax exempt educational institutions, religious and charitable institutions, etc.).

Their liability to withhold the 1% and 2% creditable withholding tax shall cease immediately.

Submission of Sworn Declaration of inventory by all gasoline stations

Revenue Memorandum Circular No. 02-2020

January 03, 2020

All gasoline stations are required to submit a sworn declaration of inventory of diesel, gasoline and kerosene as of December 31, 2019 identified per branch, specifying the volume and product description, among others. The report should also state whether the inventory has been marked or not.

The sworn declaration statement of inventory should be submitted to the Revenue District Office/Large Taxpayers Division where the principal place of business is registered on or before January 31, 2020 (as extended pursuant to RMC 6-2020, January 23, 2020).

The BIR template of the report can be accessed from the BIR website.

Availability of revised BIR Form No. 1702-Q

Revenue Memorandum Circular No. 03-2020

January 03, 2020

To implement the provisions of the TRAIN Law (RA 10963), a newly revised quarterly income tax return for corporations, partnerships and other non-individual taxpayers (BIR Form No. 1702Q - January 2018 (ENCS)), is now available.

The revised return is already available manually and can be downloaded from the BIR website. However, this is not yet available in the Electronic BIR Form (eBIRForm) and Electronic Filing and Payment System (EFPS). Thus, eBIRForms/EFPS filers shall use the existing version of BIR Forms 1702-Q Q in the EFPS and Offline eBIRForms Package v7.5 in filing and paying the income tax due thereon.

DOF OPINIONS

Transfer of land and common areas from a mortgagee-bank to the condominium corporation is tax-exempt

DOF Opinion No. 17-2019

December 18, 2019

The BIR, in its BIR Ruling 296-2014, ruled that the transfer of land and common areas of the mortgagee bank to the condominium corporation, is not tax-exempt and should be subject to 6% capital gains tax. The BIR concluded that said transfer is not covered by RMO 18-2009 since the transfer is not similar to the facts provided under the RMO. In the RMO, the transfer cited was from a real property developer, not a mortgagee bank, to the condominium corporation.

However, based on its review, the Department of Finance (DOF) reversed the BIR ruling.

RMO 18-2009 only dispenses the necessity of securing a ruling from the BIR as a requisite for the issuance of the CAR on the conveyance of land and common areas from the real property developer to the condominium corporation for purposes of holding title to and managing and maintaining the land and the common areas for the benefit of the condominium unit owners.

However, the RMO also provides that the taxpayer may still secure a prior ruling from the BIR to confirm the tax-exempt status of such transfer. RA No. 4726, which provides for the exemption, does not require that the transfer of land and common areas must be from the original real estate developer. r. A mortgagee bank can be considered as the real estate developer as the bank is considered successor in the rights and interest having foreclosed the properties from the owner-developer. Hence, the transfer of land and common areas from the bank to the condominium corporation was considered tax-exempt.

Tax incentives granted to inventors do not extend to the company manufacturing or selling the invention

DOF Opinion No. 18-2019

December 18, 2019

The BIR Ruling 505-2019 provides that exemption privileges pertaining to the invention shall only be availed by the inventor and is extendable to the legal heir or assignee upon the death of the inventor. In other words, the tax exemption is for the inventor and not for any other entity that commercially produces and distributes the invented product. Hence, any income received by the company from such production/distribution/marketing is subject to the payment of appropriate taxes.

A stockholder of a corporation being a separate and distinct entity is entitled to different rights and obligations arising from their respective transaction. Tax-exemption enjoyed by a stockholder who may happen to be the inventor of an invention enjoyed by his company cannot be enjoyed by the said corporation.

In the herein opinion, the DOF agreed and affirmed BIR's ruling stating that the purpose of Section 6 of the RA 7459 is to exempt the income derived by the inventor from the technologies and invention. To say that the tax exemption is attached to the technology or invention itself regardless of whoever produces, manufactures, and/or markets the same, would create an absurd result wherein it would allow anyone to claim the tax exemption privilege by alleging that it acts as the producer, manufacturer, and/or marketer of the technology or product.

SEC OPINIONS

Incorporators are not required to be Philippine residents

SEC-OGC Opinion No. 19.59

December 18, 2019

Incorporators of a corporation are not required to be residents of the Philippines. The Revised Corporation Code (RCC), which took effect last February 23, 2019, already omitted the residency requirement of incorporators of corporations. Only the treasurer and the corporate secretary are required to be residents of the Philippines.