



TMAP TAX UPDATES

DEC 16, 2018 TO JAN 15, 2019

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COURT OF TAX APPEALS DECISIONS

FAN issued via email is not valid; Failure to submit additional supporting documents within the 60-day period shall not invalidate the administrative protest

Commissioner of Internal Revenue vs Freelifie Philippines Distribution, Inc.- Philippine Branch

CTA EB No. 1714 re CTA Case No. 8838

January 04, 2019

Section 3.1.4 of RR 12-99 provides that the FLD and assessment notice shall be sent to the taxpayer only by registered mail or by personal delivery. Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Within 60 days from filing of the protest, all relevant supporting documents shall be submitted.

In this case, the FLD and assessment notices were issued to the taxpayer through electronic mail, contrary to the required mode of service provided under RR 12-99. The Company protested the assessment on time. However, it failed to submit additional supporting documents within the 60 day period.

Since the FLD and assessment notices were not served through registered mail or by personal delivery, it is clear that the BIR failed to comply with due process requirement in the issuance of the subject FLD and assessment notices. Moreover, since the Company have submitted supporting documents when it filed its protest letter, the administrative protest cannot be nullified for failure to submit additional supporting documents. As such, the assessment is considered null and void.

FAN without definite due date for payment is void

South Luzon Tollway Corporation vs Commissioner of Internal Revenue

CTA Case No. 9272

January 14, 2019

A fixed and definite period or a date certain within which petitioner must pay the assessed deficiency tax liabilities is not a mere formality but a substantive requirement. The absence of such requirement violates taxpayer's right to due process of law, and renders the assessment void. This substantive requirement was categorically and expressly declared by the Supreme Court (SC) in a previous decision.

In this case, the Formal Letter of Demand (FLD) does not indicate a payment due date. The BIR argues that an assessment is valid as long as it states the fact, the law, the rules and regulations or jurisprudence on which it was based; that it remains to be valid irrespective of an additional requirement on the fixed and definitive date to pay.

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

Alkalyte is a product of distillation hence subject to excise tax

Petron Corporation vs Commissioner of Internal Revenue

CTA Case Nos. 8914 & 8981

December 18, 2018

Section 148 (e) of the NIRC of 1997 states that naptha, regular gasoline, and other similar products of distillation as well as the by-products of processing of naptha are subject to excise tax as soon as they are produced.

Petitioner argues that alkalyte is not a product of distillation as contemplated under Section 148 (e). Petitioner further asserts that alkalyte is not in any way similar to naptha or regular gasoline.

However, upon cross examination of petitioner's witnesses, the court concluded that although alkalyte is formed through a different process, the raw materials in producing it are formed through distillation. It has become obvious that alkalyte first undergoes the process of distillation, because it cannot come into existence without its raw materials, olefins, and isobutane. Since it can be considered as a product of distillation similar to naptha, alkalyte is subject to excise tax, prusuant to Section 148 (e) of the NIRC of 1997, as amended.

REVENUE REGULATIONS

VAT-exempt sale of drugs and medicines prescribed for diabetes, high-cholesterol and hypertension

Revenue Regulations No. 25-2018
December 27, 2018

Under the Tax Reform for Acceleration and Inclusion Law (TRAIN Law), the sale of drugs and medicines prescribed for diabetes, high cholesterol and hypertension shall be exempt from VAT beginning January 1, 2019.

As implemented by RR No. 25-2018, the exemption from VAT shall apply to the sale by manufacturers, distributors, wholesalers and retailers of drugs and medicines prescribed for the treatment and/or prevention of the aforementioned illnesses. Importation of the said medicines shall be subject to 12% VAT.

The Food and Drug Authority (FDA) shall issue the "List of VAT-exempt Diabetes, High-Cholesterol and Hypertension Drugs" which shall be posted in the BIR website. Any registration of new and/or additional drugs and medicines, as well as de-registration of those previously published shall likewise be posted. Sale of drugs not included in the list published by the FDA shall be subject to VAT.

The word "VAT-EXEMPT" shall appear in the invoice issued for the VAT-exempt sale of drugs/medicines.

Violations of the provisions of the revenue regulations shall be subject to a fine of not more than One Thousand Pesos (P1,000) or suffer imprisonment of not more than six (6) months, or both, in addition to the tax required to be paid, if any.

90-day processing of claim for VAT refund

Revenue Regulations No. 26-2018
December 27, 2018

Under the TRAIN Law, refund of creditable input taxes shall be processed within ninety (90) days.

Previously under RR No. 13-2018, the 90-day period shall commence from the date of submission of the documents in support of the application up to the date of approval of Recommendation Report on the application by the Commissioner or his authorized representative.

Under RR No. 26-2018, the 90-day period shall now be up to the release of the payment of the VAT refund. In the event that the 90-day period has lapsed without having the refund released to the taxpayer-claimant, the VAT refund claim may still continue to be processed administratively.

REVENUE MEMORANDUM CIRCULAR

List of VAT-exempt Diabetes, High-Cholesterol and Hypertension Drugs

Revenue Memorandum Circular No. 03-2019 and 04-2019

January 10, 2019, January 15, 2019

The BIR published the DOF, DOH, BIR, and FDA's Joint Administrative Order (JAO) No. 2-2018 entitled "Implementing Guidelines on the Value Added Tax (VAT) Exemption of the sale of drugs prescribed for Diabetes, High-Cholesterol and Hypertension".

In addition to the list of drugs that the DOH is monitoring through the Electronic Drug Price Monitoring System (EDPMS), all drugs included in the VAT exemption list should also be reported by all manufacturers, distributors and retailers in the EDPMS.

All manufacturers, distributors and retailers shall likewise submit to the DOH a sworn statements containing the wholesale price, suggested retail price and actual price of such drugs/medicines prior to and after the effectivity of the guidelines.

For the list of VAT-exempt drugs prescribed for diabetes, high cholesterol, and hypertension, please see below links on the list.

https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/Full%20text%202019/Diabetes.pdf

https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/Full%20text%202019/High-Cholesterol.pdf

https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/Full%20text%202019/Hypertension.pdf

Excise tax on domestic coal products for domestic consumption

Revenue Memorandum Circular No. 105-2018

December 19, 2018

Under the TRAIN Law, all domestic or imported coal and coke shall be subject to excise tax of P50/metric ton effective January 1, 2018, P100/metric ton effective January 1, 2019, and P150/metric ton effective January 1, 2020.

Such excise tax on coal is a tax levied on the product, rather than on the performance, carrying on or the exercise of an activity, such as mining of coal. Thus, generally, the producers of the coal are liable for the excise tax due thereon. However, in case the excise tax is unpaid and possession is transferred to the buyer, the buyer/possessor of the product can be made liable for the excise tax. The producer shall collect from the first buyer/possessor the excise tax due to be remitted to the BIR using BIR Form 2200-M within ten (10) days from the date of such sale, transfer or disposition. Excise taxes on domestic coal collected from the first buyer/possessor covering the period January 1, 2018 to November 30, 2018 can be remitted to the BIR on or before December 31, 2018 without surcharge and interests.

Fast Lane for all One-Time Transactions (ONETT) Involving Simple Transaction

Revenue Memorandum Circular No. 107-2018

December 28, 2018

Pursuant to RMC No. 43-2018, there shall be a fast lane that caters to individuals or corporations filing Capital Gains Tax or Donor's Tax Returns with only one (1) Deed of Sale/Exchange/Donation involving one to three properties. Electronic Certificate Authorizing Registration (eCAR) shall be released within three (3) working days upon submission of complete documents.

Previously, all payment of the CGT or donor's tax due should be made with the Authorized Agent Bank (AAB) with the Certificate of Payment from the Bank to be submitted to the BIR.

Through RMC No. 107-2018, the BIR now requires that payments be made to the Revenue Collection Officer (RCO) in order to avail of the fast lane. Payments amounting to twenty-thousand pesos (P20,000.00) shall be paid in cash while payments above twenty-thousand pesos (P20,000.00) shall be made through Manager's Check or Cashier's Check.

REVENUE MEMORANDUM ORDER

New, dropped, and modified ATCs for Microfinance NGOs, DST, Excise Tax on exports, and Compensation Income

Revenue Memorandum Order Nos. 3, 4, and 5-2019

January 15, 2019

To facilitate the proper identification and monitoring of tax collections pursuant to RA 10963 (TRAIN Law), below ATCs are created and/ or modified:

A. Microfinance NGOs and Documentary Stamp Tax

ATC	Description	Tax Rate	Legal Basis	BIR Form
<i>Newly Created ATCs</i>				
IC210	Preferential tax rate on Microfinance NGOs	2%	Sec. 20 of RA 10963 (RR 3-17)	1702Q 1702MX
DO102 DO125	Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificate of Stock a. In case of stock with par value b. In case of stock without par value	P1.50/ P200.00 50% of DST paid on original issue	Sec. 52 of RA 10963	2000-OT
DO122	Deeds of Sale, Conveyances, and Donation of Real Property	P15.00/P1,000	Sec. 69 of RA 10963	2000-OT
<i>Dropped ATCs</i>				
PT118	Preferential tax rate on Microfinance NGOs	2%	Sec. 20 of RA 10963 (RR 3-17)	1702Q 1702MX
DO102 DO125	Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificate of Stock a. In case of stock with par value b. In case of stock without par value	P1.50/ P200.00	Sec. 52 of RA 10963	2000-OT

		50% of DST paid on original issue		
DO122	Deeds of Sale, Conveyances, and Donation of Real Property	P15.00/P1,000	Sec. 69 of RA 10963	2000-OT

B. Excise Taxes on Exports

ATC	Description	Legal Basis	BIR Form No.
EXA10	Excise Tax on Export of Alcohol	RR 3-2008	0605
EXT10	Excise Tax on Export of Tobacco Products		
EXP10	Excise Tax on Export of Petroleum		
EXM10	Excise Tax on Export of Coal and Coke		
EXG10	Excise Tax on Export of Automobiles and Non-Essentials		

C. Compensation Income

Existing (per ATC Handbook)					Modified/ New
ATC	Description	Tax Rate	BIR Form	Legal Basis	BIR Form
II010	Compensation Income	Graduated	1701 1701Q	RA 10963 RR 11-18	1700 1701 1701Q
	Income payments subject to FWT		1600 1601E 1601F 2307		1706 2307
WI450	1. Capital gains tax on sale/ exchange or other disposition of real property-individual	6%		RR 17-03 Sec. 2.57.1(A)(6)	
	2. Capital gains tax on sale/ exchange or other disposition of land and building-corporate	6%		RR 17-03 Sec. 2.57.1(A)(6)	

Guidelines, Policies and Procedures in the Reaccreditation of Printers of Principal/Supplementary Receipts/Invoices

Revenue Memorandum Order No. 6-2019

January 15, 2019

The accreditation of printers of principal and/or supplementary receipts and invoices is valid for five (5) years from the date of issuance of the Certificate of Accreditation. Compliant accredited printers should apply for renewal of accreditation within thirty (30) days prior to the expiration of the validity period. Once renewed, a new accreditation number shall be assigned. Such new accreditation number shall then be used in printing of receipts/invoices from the date of issuance of Certificate of Accreditation. An ocular inspection to verify existence, compliance, and accuracy of the information provided in the application shall be done within 30 days from the date of reaccreditation.

Failure to renew accreditation prior to the expiration of accreditation shall follow the same procedure as a new applicant. Printers with expired accreditation are not authorized shall be prohibited from printing receipts/invoices. Receipts/invoices printed by such printers shall be considered unauthorized and therefore, should not be used by taxpayers.

Pursuant to TRAIN Law, printing of receipts/invoices without valid accreditation shall be imposed a penalty of not less than P500,000 but not more than P10M, and imprisonment of 6 to 10 years.

SEC ISSUANCES

Filing of Annual Financial Statements and General Information Sheet

SEC Memorandum Circular No. 1 series of 2019

January 11, 2019

To maintain an organized and orderly filing of AFS and GIS, the Commission, pursuant to its authority under the Corporation Code and Securities and Regulation Code adopt the following measures in the filing of annual reports.

AFS of Companies whose fiscal year ends on December 31, 2018:

1. All corporations including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations shall file their AFS depending on the last numerical digit of their SEC registration or license number in accordance with the following schedule:

April 22, 23, 24, 25, 26	: 1 and 2
April 29, 30, May 2 & 3	: 3 and 4
May 6, 7, 8, 9, 10	: 5 and 6
May 20, 21, 22, 23, 24	: 7 and 8
May 27, 28, 29, 30, 31	: 9 and 10

All SEC satellite offices and extension offices in Cebu, Iloilo and Davao shall be governed also by the above coding schedule in 2019. However, any corporation may file on or before its respective filing dates.

2. The above filing schedule shall **not apply** to the following corporations:
 - (a) Those whose **fiscal year ends on a date other than December 31, 2018**. These entities shall file their AFS **within 120 calendar days** from the end of their fiscal year;
 - (b) Those whose securities are **listed on the Philippine Stock Exchange (PSE) and those whose securities are registered but not listed in PSE and Public Companies**. These entities shall continue

to observe the due date of filing of their AFS (within 105 calendar days after the end of fiscal year) as **attachment to their Annual Reports (SEC Form 17-A)**, in accordance with the Implementing Rules and Regulations of the Securities Regulation Code;

(c) Those whose AFS are being audited by the Commission on Audit (COA) provided that the following documents are attached to their AFS:

(i) An Affidavit signed by the President and the Treasurer (or Chief Finance Officer, where applicable) attesting to the fact that the company timely provided COA with the financial statements and supporting documents and that the audit of COA has just been concluded; and

(ii) A letter from COA confirming the information provided in the above Affidavit.

3. All corporations may file their AFS regardless of the last numerical digit of their registration or license number on or before the first day stated in the coding schedule in paragraph 1 pertaining to said digit;
4. **Late filings or filing after respective due dates** shall be accepted **starting June 3, 2019** and shall be subject to the **prescribed penalties** which shall be computed from the date of the last day of filing schedule stated in paragraph 1;
5. The AFS, other than the consolidated financial statements, shall have the **stamped "received" by the Bureau of Internal Revenue (BIR) or its authorized banks**, unless the BIR allows an alternative proof of submissions for its authorized banks (e.g. bank slips);
6. The basic components of the AFS as prescribed under SRC Rule 68, as amended, shall be submitted by filers. **Failure to comply with any of the formal requirements under said Rule** including the prescribed qualifications for independent auditors and/or any material deficiency or misstatement that may be found upon evaluation of the specific contents thereof, **shall be considered a sufficient ground for the imposition of penalties by SEC**. The acceptance and receipt by the Commission of the financial statements shall be without prejudice to such penalties.

Filing of GIS

All corporations shall file their GIS within 30 calendar days from:

(a) Stock Corporations - date of actual annual stockholders' meeting

(b) Non-Stock Corporations - date of actual annual members' meeting

(c) Foreign Corporations - anniversary date of the issuance of the SEC License.

All corporations may directly file their AFS and GIS in **SEC Head Office, PICC Building, all Satellite Offices (Ali Mall-Cubao Quezon City, SM Manila, SM North EDSA, Robinson's Galleria, Muntinlupa City Hall and SM Mall of Asia) and Extension Offices (Cebu, Davao and Iloilo)** applying the SEC issued number coding schedule for AFS.

All filers of AFS and GIS, regardless of the number of reports to be filed with the SEC, complying with the circularized SEC-issued number coding schedule (for AFS only) may choose to avail of any of the following options -- **SEC Express Nationwide Submission** or **any courier/regular mail**.

Grandfather rule is a supplement to the control test Nationality requirement of the third telco

SEC-OGC Opinion No. 18-24

December 20, 2018

Philippines acknowledges two tests to determine the nationality of a corporation- Control test and Grandfather rule, respectively. Under the control test, a corporation which is at least 60% Filipino-owned is already considered Filipino. There is no need to further trace the ownership of the 60% (or more) Filipino stockholdings of an investing

corporation. The grandfather rule, on the other hand, provides that the nationality of the stockholders is material or critical in determining the nationality of a corporation or its compliance with laws on permissible foreign investments.

It is to be noted however that the application of the grandfather rule is only necessary when the 60-40 Filipino-foreign equity ownership is in “doubt”. “Doubt” refers to various indicia that the “beneficial ownership” and “control” of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders. Should there be no reason to believe that there is non-compliance with the provisions of the Constitution on the nationality restriction, application of the grandfather rule is not necessary.

In the herein opinion, it can be noted that based on the bidding agreement, and using the two-tiered test of SEC-MC No 8, the control test and the grandfather rule, the proposed ownership structure of Mislattel complies with the 60-40% nationality requirement for operators of public utilities.

OTHER UPDATES

The proposed tax amnesty act

Three types of tax amnesties are being offered which cover taxes due in 2017 and all prior years. The general tax amnesty applies to all national internal revenue taxes including those payable to the Bureau of Customs (BOC), which have remained unpaid, including those covered by tax assessments which have not become final and executory. The estate tax amnesty covers the estate of decedents who died on or before December 31, 2017, including estate or donor's taxes arising from transfers of the estate from all previous decedents or donors to the latest heirs or beneficiaries. The tax amnesty on delinquencies applies to taxes due under assessments which have become final and executory, criminal cases filed in court, and unremitted withholding taxes.

Upon payment of the amnesty tax and submission of the required documents, the taxpayer is granted immunity from the payment of taxes and penalties, as well as from related civil, criminal and administrative cases and penalties arising from the failure to pay any tax covered by the amnesty. The corresponding books of account and records cannot be examined by the BIR except to verify claims for tax refund, tax incentives or tax exemptions.

See tables on the next pages for the summary of the proposed tax amnesty:

Type of Amnesty	Coverage	Exclusion	Immunities and Privileges	Amnesty Tax	Filing	Availment Period										
General Tax Amnesty	All national internal revenue taxes including VAT and excise taxes collected by BOC for taxable year 2017 and prior years	<div>1. Taxes actually withheld but not remitted to the BIR</div> <div>2. Final and executory tax cases</div> <div>3. Delinquencies and assessments that have become final and executory</div> <div>4. Taxpayers with pending cases involving:<div><div>- Cases falling under the jurisdiction of PCGG;</div><div>- Unexplained or unlawfully acquired wealth</div><div>- Violations of AMLA</div><div>- Tax evasion and other criminal offenses under Chapter II of Title X of the NIRC, as amended;</div><div>- Felonies of frauds, illegal exactions and transactions, and malversation of public funds</div></div></div>	<div>1. Payment of covered taxes as well as from all appurtenant civil, criminal and administrative cases and penalties</div> <div>2. Any information or data obtained from the Tax Amnesty Return and appurtenant documents shall be confidential and non-admissible as evidence in any prosecution/ investigation</div> <div>3. Examination of books and other records</div>	<div>- 2% of Total Assets; OR</div> <div>- 5% on Net Worth subject to the following minimum payments:</div> <div><div><div>Individuals and Other Juridical Entities (e.g. cooperatives, foundations) – P75k</div><div>Corporations:</div><table><tr><th>Subscribed Capital</th><th>Min. Amount</th></tr><tr><td>> P50M</td><td>P1M</td></tr><tr><td>> P20M to P50M</td><td>P500k</td></tr><tr><td>P5M to P20M</td><td>P250k</td></tr><tr><td>< P5M</td><td>P100k</td></tr></table></div></div> <div>Valuation of Assets:</div> <div><div>Real properties<div><div>- acquisition cost if purchased;</div><div>- Zonal value or FMV if inherited or donated</div></div></div><div>(No specific rule on valuation of buildings subject to depreciation)</div><div>Personal properties<div><div>- acquisition cost less accumulated depreciation;</div><div>- FMV if inherited or donated</div></div></div><div>Foreign currency denominated assets – converted to Php using forex rate on the date of STA or SALN</div></div>	Subscribed Capital	Min. Amount	> P50M	P1M	> P20M to P50M	P500k	P5M to P20M	P250k	< P5M	P100k	Sworn General Tax Amnesty Return and Notarized Statement of Assets, or Notarized Statement of Assets, Liabilities and Net Worth, to be filed in the appropriate BIR Office (RDO/LT) where the taxpayer is registered	Within one (1) year from the effectivity of the Implementing Rules and Regulations
Subscribed Capital	Min. Amount															
> P50M	P1M															
> P20M to P50M	P500k															
P5M to P20M	P250k															
< P5M	P100k															

Type of Amnesty	Coverage	Exclusion	Immunities and Privileges	Amnesty Tax	Filing	Availment Period
Estate Tax Amnesty	All estate of decedents who died or before December 31, 2017	<ol style="list-style-type: none"> 1. Final and executory tax cases 2. Properties involved in pending court cases: <ul style="list-style-type: none"> – Cases falling under the jurisdiction of PCGG; – Unexplained or unlawfully acquired wealth – Violations of AMLA – Tax evasion and other criminal offenses under Chapter II of Title X of the NIRC, as amended; – Felonies of frauds, illegal exactions and transactions, and malversation of public funds 	The estate shall be immune from payment of estate taxes as well as from all appurtenant civil, criminal and administrative cases and penalties.	<p>6% of the net undeclared estate computed using the rules applicable at the time of death</p> <p>Estates with allowable deductions higher than the gross estate can still avail of the tax amnesty upon payment of minimum estate amnesty tax of P5,000.</p>	<p>Sworn Estate Tax Amnesty Return to be filed in the RDO of the last residence of the decedent, or RDO No. 39 in case of</p> <p>Non-resident decedent: RDO 39 or as indicated in IRR</p>	Within two (2) years from the effectivity of the Implementing Rules and Regulations

Type of Amnesty	Coverage	Exclusion	Immunities and Privileges	Amnesty Tax	Filing	Availment Period
Tax Amnesty on Delinquencies	All national internal revenue taxes including VAT and excise taxes collected by BOC for taxable year 2017 and prior years	<i>Not applicable</i>	<p>1. Taxes due on those who avail shall be considered settled and the criminal case and corresponding civil or administrative case shall be terminated.</p> <p>2. The taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as from all appurtenant civil, criminal and administrative cases and penalties.</p>	<p>40% of the basic tax assessed for delinquencies and assessments which have become final and executory</p> <p>50% of the basic tax assessed for tax cases subject of final and executory judgment by the courts</p> <p>60% of the basic tax assessed for pending criminal cases with criminal information filed with the Department of Justice or the courts for tax evasion and other criminal offenses</p> <p>100% of the basic tax assessed for withholding agents who withheld taxes but failed to remit the same to the BIR</p>	<p>Sworn Tax Amnesty on Delinquencies Return, and a Certification of Delinquency to be filed in the appropriate BIR Office, which has jurisdiction over the residence or the principal place of business of the taxpayer.</p> <p>Payment of the amnesty tax shall be made at the time the return is filed.</p>	Within one (1) year from the effectivity of the Implementing Rules and Regulations

<https://www.grantthornton.com.ph/newsroom/technical-alerts/tax-alert/2019/the-proposed-tax-amnesty-act/>

