TMAP TAX UPDATES

NOVEMBER 16, 2018 to DECEMBER 15, 2018

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LAW OFFICE

TOWARDS a MEANINGFUL ADVOCACY for PROGRESS
TAX MANAGEMENT ASSOCIATION OF THE PHILIPPINES 2018

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Transfer of shares, even if considered as a stock loan, come within the concept and context of a "disposition" sufficient for CGT liability to attach.

Commissioner of Internal Revenue vs. Jerry Ocier, G.R. No. 192023, November 21, 2018.

Respondent's admission of transferring 4.9 million shares of BW Resources to Tan, and his further admission of the circumstances surrounding the transfer sufficed to establish the nature of the transaction as a transfer liable for the payment of CGT. That the transfer of shares had been a stock loan and not a sale still come within the concept and context of a *disposition* sufficient for the CGT liability to attach pursuant to Section 24(C) of the NIRC. The term *disposition*, being neither defined nor qualified, is accorded its ordinary meaning, that is, any act of disposing, transferring to the care or possession of another, or parting with, alienation of, or giving up of property. Any difficulty in the net capital gains upon which the respondent's CGT liability was imposed did not constitute sufficient basis for exemption from liability.

Inability to present evidence in chief due to heavy workload and failure to communicate with witnesses are insufficient bases for Motion to Reset Hearing.

Commissioner of Internal Revenue vs. Court of Tax Appeals, Third Division and Wintelecom, Inc., G.R. No. 203403, November 14, 2018.

CIR's failure to appear and present her evidence-in-chief during the scheduled hearing on June 6, 2011 was not the only time she failed to comply with procedural rules and court orders. Records reveal that the petitioner initially filed a series of Motions for Extension of Time to File Answer to Wintelecom's Petition for Review on five (5) separate occasions.

Given the above circumstances, to agree with petitioner's contention that the CTA should not be governed strictly by technicalities would give rise to an unjustifiable precedent in that there would be no end to the proceedings before the CTA. Whenever a party is deemed to have waived its right to present evidence and is subsequently aggrieved by the tax court's decision, he can have the trial set aside in complete disregard of procedural rules and court processes.

The CTA had already extended immense liberality and leniency towards petitioner in allowing her repeated motions for extension and motions for resetting of scheduled hearings. A liberal application of the rules to accommodate the petitioner's purpose, regardless of her evident inexcusable neglect, would clearly pave the way for injustice as it would be rewarding an act of negligence with undeserved tolerance.

The Court does not agree that the petitioner can seek the disregard of our rules on the argument that the State is not bound by the neglect of its agents and officers for the rule on non-estoppel of the government is not designed to perpetrate an injustice.

To be entitled to claim a tax deduction, the taxpayer must competently establish the factual and documentary bases of its claim.

Organizational Change Consultants International Center for Learning, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1679, November 19, 2018.

The requisites for the deductibility of ordinary and necessary trade or business expense, are that: (a) the expenses must be ordinary and necessary; (b) they must have been paid or incurred during the taxable year; (c) they must been paid or incurred in the carrying out of the business of the taxpayer; and (d) they must be supported by receipts, records or other pertinent papers.

Other than the bare allegation that the facilitators fees and consultant fees as business expense is substantiated by the Certificate of Withholding Tax and that the commissioner's fees and professional fees were supported by vouchers, the taxpayer failed to present specific and convincing argument to reconcile and overcome the findings of fact of this Court's Division to merit its modification. While business expenses can be substantiated not only by official receipts but also by adequate records, vouchers alone to support the alleged expenses incurred are insufficient

A taxpayer cannot elevate assailed Resolutions to the Court En Banc by way of appeal.

Securities Transfer Services, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 1633, November 19, 2018.

The only decision or order which is appealable to the Court *En Banc* is that which has resolved the case with finality, and in effect terminates and finally disposes of a case, as it leaves nothing to be done by the court as the case has finally been decided on the merits. The Court takes judicial notice that the docket in CTA Case No. 8961 is still with the Court's Second Division and still at the trial stage for STSI's presentation of evidence on the remaining tax deficiency assessment. Clearly, the case is still pending and has neither been terminated or disposed. The proper procedure that STSI should have taken in this case was to await the final termination of the proceedings before the Court in Division, prior to the filing of the instant petition for review.

Failure to strictly comply with the prerequisite in RMO 1-2000 or RMO 72-2010 is not fatal to the taxpayer's availment of the preferential rate under a tax treaty.

The Secretary of Finance vs. Court of Tax Appeals, Third Division, Egis Road Operations, S.A., CTA EB No. 1668, November 20, 2018.

The application of for a tax treaty relief or a TTRA from the BIR should merely operate to *confirm* the entitlement of the taxpayer to relief. The basis for the entitlement to the preferential rate is not the confirmatory ruling from the BIR but the tax treaty itself. The RP-France Tax Treaty is just one among a number of bilateral agreements which the Philippines has entered into for the avoidance of double taxation. The purpose of these tax treaties is "to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions".

It must be emphasized that RMO 1-2000 and 72-2010 were issued simply "to streamline the processing of the tax treaty relief application in order to improve efficiency and service to the taxpayers." Beyond the stated purposes of these issuances, nothing is explicitly provided or can reasonably be construed therein that authorizes nullifying, reversing or even modifying the provisions of the RP-France Tax Treaty on intercompany dividends.

For sales of power or fuel generated through renewable sources of energy to qualify for VAT zero-rating, the taxpayer must be authorized by the ERC to operate a generation facility at the time the sales were made.

Hedcor Sabangan, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9276, November 20, 2018.

It is clear from Section 1 08(B)(7) of the NIRC of 1997, as implemented by Section 4.108-5(b)(7) of Revenue Regulations (RR) No. 16-05, that to qualify for VAT zero-rating, the taxpayer

must prove, by sufficient evidence, that it is engaged in the sale of power or fuel generated through renewable sources of energy.

Pursuant to Section 4.108-3(f) of RR No. 16-05, for an entity to be considered a generation company, it should be authorized by the Energy Regulatory Commission to operate the generation facility. Specifically, both new and existing generation facilities are required to secure a Certificate of Compliance (COC) from the ERC before it can operate the facilities used for generation of electricity, as provided under Rule 5, Section 4(a) of the Implementing Rules and Regulations of RA No. 9136.

While Hedcor was able to secure a COC from ERC, such COC was issued only on September 29, 2015. Simply put, during the second quarter of TY 2015, petitioner was not yet authorized by the ERC to operate its generation facility. Hence, petitioner is not entitled to VAT zero-rating on its sales for the second quarter of TY 2015.

The SMC shares, its dividends and any income therefrom being government property, they are beyond the scope of the taxing power of Davao City pursuant to Section 133 of the 1991 LGC.

City of Davao and Bella Linda N. Tajili, in her official capacity as Officer-in-Charge City Treasurer's Office of Davao City vs. Te Deum Resources, Inc. CTA EB No. 1636, November 20, 2018.

Section 133 of the LGC of 1991 provides that the exercise of the taxing powers of provinces, cities, municipalities and barangays shall not extend to the levy taxes, fees or charges of any kind on the National Government, its agencies or instrumentalities and local government units.

In the case of *Philippine Coconut Producers Federation, Inc. v. Republic of the Philippines*, the Supreme Court ruled that the CIIF Companies and the CIIF Block of SMC shares are public funds/assets. Te Deum Resources, Inc. (TRDI), being a CIIF Company, is deemed owned by the Government, thus any tax imposed upon TRDI is considered, in effect as a tax on Government. Considering that the subject shares are owned by the government, it follows that the dividends and any income therefrom are also owned by the government. Consequently, the same is not within the power of the City of Davao to tax.

Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits.

Commissioner of Internal Revenue vs. PPI Prime Venture, Inc., CTA EB No. 1666, November 23, 2018.

It is clear from Sections 2.58 (B) and 2.58.3 of Revenue Regulations No. 2-98 which implemented Section 76 of the 1997 NIRC that the taxpayer does not have to prove actual remittance of the taxes to the BIR. It is sufficient that the certificate of creditable tax withheld at source is presented in evidence to prove that taxes were indeed withheld. In *Commissioner of Internal Revenue vs. PNB (G.R. No. 180290, September 29, 2014),* the Supreme Court ruled that it is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove authenticity of the certificates. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.

Donation of property made for the purpose of complying with the legal requirements of the dissolution of the property relations between spouses does not negate the presence of donative intent.

Victor Z. Manlapaz and Maria Czarina Oliveros Manlapaz vs, Commissioner of Internal Revenue, CTA Case No, 9765, November 23, 2018.

Donor's tax is an excise tax imposed on the privilege of transferring property by way of gift *inter vivos*, i.e., during the lifetime of the donor. In the present case, what is being subjected to the payment of donor's tax is the privilege, duly exercised by petitioners, of transferring the subject property to their common child. In *Abella vs. Commissioner of Internal Revenue (G.R. No. 120721, February 23, 2005, 452 SCRA 162, 168),* the Supreme Court held that donative intent is presumed present when one gives a part of one's patrimony to another without consideration. Further, donative intent is not negated when the person donating has other intentions, motives or purposes which do not contradict donative intent.

While it is true that Articles 51 and 102(5) of the Family Code mandate the delivery of the presumptive legitime of the common children upon dissolution of the absolute community regime and the partition of the properties of the spouses, the same do not *ipso jure* cause the transfer of title or ownership over the properties comprising the presumptive legitime from either or both of the spouses to their common children. Petitioners-spouses have actually complied with the foregoing Family Code provisions through the execution of the Deed of Donation over the subject property in favor of their common child.

The submission of the documentary requirements and payment of the amnesty tax is considered full compliance with RA No. 9480 and the taxpayer can immediately enjoy the immunities and privileges enumerated in the law.

Gardens By Sanders, Inc. (GBSI), vs. Commissioner of Internal Revenue, Hon. Kim S. Jacinto-Henares, CTA Case No. 9342, November 27, 2018.

In availing themselves of the benefits of the tax amnesty program, taxpayers must first accomplish the following forms and prepare them for submission: (1) Notice of Availment of Tax Amnesty Form; (2) Tax Amnesty Return Form (BIR Form No. 2116); (3) Statement of Assets, Liabilities and Net worth (SALN) as of December 31, 2005; and (4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617). The taxpayers must then compute the amnesty tax due using as tax base their net worth as of December 31, 2005 as declared in their SALNs. Using the Tax Amnesty Payment Form, the taxpayers must make a complete payment of the computed amount to an authorized agent bank, a collection agent, or a duly authorized treasurer of the city or municipality. Thereafter, the taxpayers must file with the RDO or an authorized agent bank the (1) Notice of Availment of Tax Amnesty Form; (2) Tax Amnesty Return Form (BIR Form No. 2116); (3) SALN; and (4) Tax Amnesty Payment Form. The RDO shall only receive these documents after complete payment is made, as shown in the Tax Amnesty Payment Form.

Petitioner satisfactorily complied with the provisions of the Tax Amnesty Law of 2007. Considering that the completion of these requirements shall be deemed full compliance with the Tax Amnesty Program, petitioner should be immune from the payment of taxes, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.

Judicial claims for input VAT credit/refund should be filed within 30 days from the lapse of the 120-day period when the expiration of such period comes earlier than the receipt of denial letters.

Northwind Power Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9162, December 5, 2018.

A VAT-registered taxpayer whose sale is zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for a refund or the issuance of tax credit certificate of its creditable input tax due or paid attributable to such sales. Upon filing of the administrative claim for refund, the BIR has 120 days from the date of submission of the complete documents in support of the application to either grant or deny the claim. Should the BIR deny fully or partially the claim, the taxpayer has 30 days from the receipt of the decision denying the claim or in case of inaction by the BIR, from the expiration of the 120 days, to file an appeal with the Court of Tax Appeals. In order for said Court to acquire jurisdiction over an appeal on claims for refund, compliance with the 120-day plus 30-day periods is mandatory. Since the expiration of the 120-day period came earlier than the receipt of the denial letters, the taxpayer should have filed its appeal within the 30-day period from the expiration of the 120 days and not from the receipt of the denial.

It is the taxpayer's duty to ensure that the VAT invoices and/or official receipts issued to it are fully compliant with the requirements since these provide the necessary documentary support for its input tax credits.

Robinsons Daiso Diversified Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9149, December 6, 2018.

To ensure proper payment of taxes, the invoicing requirements should be strictly followed since these were designed to create an orderly VAT system without prejudice to both the taxpayer and the government. While the supplier's certification issued to the taxpayer may qualify under Section 34(A)(1)(b) of the NIRC as "other adequate records" which are sufficient to evidence the deductions from gross income, the same does not qualify as sufficient substantiation for input tax under Section 4.113-1(A) of RR 16-2005. Thus, a VAT-registered person shall issue: (1) A VAT invoice for every sale, barter or exchange of goods or properties; and (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. All purchases covered by invoices/receipts other than VAT Invoice/VAT Official Receipt shall not give rise to any input tax.

To qualify as VAT Invoice/VAT Official Receipt, the following must be indicated: (1) A statement that the seller is a VAT-registered person, followed by his TIN; (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax, showing (a) the amount of tax as a separate item; (b) if the sale is exempt from value-added tax, the term 'VAT-exempt sale written or printed prominently; (c) if the sale is subject to zero-percent value-added tax, the term 'zero-rated sale' written or printed prominently; (d) indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale; (3) the date of transaction, quantity, unit cost and description of the goods or properties or nature of the services; and (4) in case of sales of P1000 or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and TIN of the purchaser, customer or client.

Any VAT registered person claiming zero-rated direct export sales must present at least three types of documents. Failure to present proof that non-resident clients of VAT zero-rated services were doing business outside the Philippines shall result in disallowance of refund/tax credit.

Taganito Mining Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9369, December 6, 2018.

Pursuant to the provisions of Section 106(A)(2)(a)(1) of the 1997 NIRC, as amended, in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the same Code and Sections 4.113-1(A)(1), (B)(1), and (2)(c) of RR No. 16-05, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (a) the sales invoices as proof of sale of goods; (b) bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services. The sales invoices supporting the export sales must be registered with the BIR and contain all the required information under the law and regulations, such as the imprinted word "zero-rated" and the taxpayer's TIN-VAT number.

In order for a supply of services to be VAT zero-rated under Section 108(B)(2) of the Code, the following requisites must be met: (a) the services must be other than processing, manufacturing or repacking of goods; (b) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and (c) the recipient of such services is doing business outside the Philippines.

For an entity to be considered a non-resident foreign corporation doing business outside the Philippines, the said entity must be supported at the very least, by the Certification of Non-Registration of Corporation/Partnership duly issued by the SEC and proof of incorporation or registration in a foreign country (e.g. Certificate of Incorporation, Memorandum and Articles of Incorporation, or Certificate of Registration) or any other equivalent document. Failure to present the aforesaid documents results in the disallowance of the reported zero-rated sales/receipts.

Philippine nationals receiving compensation income from ADB are liable to income tax; RMC No. 31-2013 was issued merely to construe the existing provisions of the 1997 NIRC in relation to the various existing treaty obligations of the Philippines.

Edzen Jogie B. Garcia vs. Commissioner of Internal Revenue, CTA EB No. 1674, December 6, 2018.

Senate Resolution No. 6 ratified and confirmed the ADB Charter with reservation of its right to tax the Filipino employees of the ADB. Section 45 of the ADB Headquarters Agreement granted exemption from taxation of the salaries and emoluments paid by the Bank subject to the power of the Government to tax its nationals. The 1997 NIRC, a subsequent legislation, is the law that implements the clear intention of the reservation clauses found in the Senate Resolution No. 6 and Section 45(b) of the ADB Headquarters Agreement. Said law leaves no room for doubt that resident citizens are subject to tax on income derived from all sources within and without the Philippines under its Section 23(A) and Section 24(A)(1)(a), as amended.

When the taxes were paid, the Reservation Clause in Senate Resolution No. 6 and the provisions of Section 23(A) and 24(A)(1)(a) have long been in force and effect. Therefore, RMC No. 31-2013 was issued merely to construe the existing provisions of the NIRC in relation to the various existing treaty obligations of the Philippines. The circular was not issued or intended to impose additional burdens not otherwise found in the law.

Summary List of Purchases cannot support claim for input taxes; it does not prove the purchase of goods and services nor the payment therefor.

Level Up, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9424, December 6, 2018.

The SLP simply provides a summary of the taxpayer's purchase transactions for a given period, detailing the supplier's name, TIN and address, and the amount of purchase and input tax. Under Section 110 of the 1997 NIRC, a creditable input tax should be evidenced by a VAT invoice or official receipt. In relation thereto, Section 113 of the NIRC provides that a VAT is necessary for every sale, barter or exchange of goods or properties, while a VAT official receipt properly pertains to every lease of goods or properties and sale, barter or exchange of services.

There is proper service when the Formal Assessment Notice was received by a person having apparent authority to bind the taxpayer.

M. Tech Products Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9331, December 11, 2018.

The existence of apparent authority may be ascertained through: (a) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or (b) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

Despite being aware of the investigation of its 2010 tax liability and of the alleged unauthorized representation of its internal accountant as early as 2013, the taxpayer still failed to designate an authorized representative to communicate with the BIR regarding its computed tax deficiencies for taxable year 2010. The taxpayer did not object or even act on the alleged unauthorized representation. These can only lead to the logical conclusion that its internal auditor had authority to represent it before the BIR. Thus, having been received by a person having authority to bind the taxpayer, the FAN issued by the BIR against the taxpayer cannot be considered void.

CTA ruling in a previous case that the charitable institution is exempt from payment of income tax for one taxable year, affirmed by the SC in a minute resolution, is not binding precedent in determining the charitable institution's exemption from income tax for another taxable year.

Perpetual Succour Hospital of Cebu, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9166, December 11, 2018.

In case there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. The Former Second Division of the CTA categorically stated in its ruling that "respondent CIR failed to controvert" the evidence presented by petitioner that it is a "non-stock, non-profit, religious and charitable institution". Thus, the judgment thereon cannot be considered as conclusively settled fact or question.

LGU's cannot impose taxes, fees or charges of any kind on items of gain or yield which were levied income tax by the national government against a holding company.

The City of Makati and the City Treasurer of Makati vs. CEMCO Holdings, Inc., CTA EB No. 1661, December 12, 2018.

Section 133(a) of the LGC decrees that save for banks and other financial institutions, LGU's are explicitly proscribed from imposing taxes, fees or charges of any kind, on items of gain or yield which were levied income tax by the national government. The rule is animated by the doctrine of pre-emption or the instance where the national government elects to tax a particular area, impliedly withholding from the local government the delegated power to tax the same field. Therefore, Section 133(a) of the LGC does not allow, and in fact forbids the imposition of Local Business Tax ("LBT") on income realized by entities not classified as a bank or financial institution.

With the parties' admission that CEMCO Holdings does not fall under the classification of a bank or a financial institution, petitioner's imposition of LBT on dividend income realized by

respondent undoubtedly traverses the statutory impediment enshrined under Section 133(a) of the LGC, rendering the issuance of the subject assessment *ultra vires.*

Before taxpayers can be held liable for deficiency tax assessments, they must first be accorded due process, which demands no less than rigid compliance with the law.

People of the Philippines vs. Robert Sia and John Kenneth L. Ocampo, CTA EB Crim. No. 045, December 12, 2018.

Absence of proof of valid service of the subject PAN and FAN, unequivocally renders the said assessment void and of no effect.

There is no showing that the PAN was mailed or received by Roxy or the respondents. The CIR's witness testified that they have no proof of mailing or receipt by the taxpayer or the respondents, as a different office was in charge of mailing. While CIR's counsel stated that they would present another witness to testify on the said matter, none was ever presented. The Court finds that the subject tax assessments are void and of no effect due to the failure of the CIR to comply with due process requirements in the issuance of deficiency tax assessments.

BIR Revenue Memorandum Circular No. 97-2018

RMC No. 97-2018 dated November 7, 2018 publishes the daily minimum wage rates in the National Capital Region pursuant to Wage Order No. NCR – 22 dated October 30, 2018. The new wage rate is effective 15 days after the publication of the wage order in a newspaper of general circulation.

Upon effectivity of the wage order, the new daily minimum wage rates are as follows:

<table>
<tr><td>Sector/Industry</td><td>Basic Wage
Integration of COLA</td><td>Basic Wage
Increase</td><td>New Minimum
Wage Rates</td></tr>
<tr><td>Non-Agriculture</td><td>P512.00</td><td>P25.00</td><td>P537.00</td></tr>
<tr><td>Agriculture (Plantation and Non-Plantation</td><td rowspan="3">P475.00</td><td rowspan="3">P25.00</td><td rowspan="3">P500.00</td></tr>
<tr><td>Retail/Service Establishments employing 15 workers or less</td></tr>
<tr><td>Manufacturing Establishments regularly employing less than 10 workers</td></tr>
</table>

BIR Revenue Regulations No. 23-2018

RR No. 23-2018 dated November 21, 2018 amends Section 4 and 10 of RR No. 17-2011 as amended, implementing RA No. 9505 or the PERA act of 2008.

Section 4(5) of RR 17-2011, as amended, is further amended to require a Contributor to submit of proof of source of funds, instead of income earnings, for the year or to be earned for the year when the PERA contribution was made as one of the requirements for establishing a PERA.

Section 10(B) of RR No. 17-2011, as amended, is hereby renumbered and further amended to include the following instances where the early withdrawal penalty will not be imposed:

(1) Transfer of PERA assets to another Qualified/Eligible PERA Investment Product and/or another administrator within fifteen (15) calendar days from the withdrawal thereof;
(2) Deduction of fees of the administrator, custodian and product provider (subsequent to account opening) from PERA assets, provided that such deduction is made with the consent of the Contributor.

BIR Revenue Memorandum Circular No. 100-2018

RMC No. 100-2018 dated November 23, 2018 circularized the consolidated price of sugar at millsite for the month of October 2018 pursuant to Operations Memoranda Nos. 2018-10-09, 2018-11-01 and 2018-11-02.

While the weekly price of sugar at millsite reflects the comparative prices of sugar between the previous sand current years, the consolidated schedule on the weekly OMs contains only that of the current year for purposes of imposing the 1% expanded withholding tax on sugar prescribed under RR 2-98, as amended by RR 11-2014.

BIR Revenue Regulations No. 24-2018

RR No. 24-2018 dated November 23, 2018 further amends Section 9 of RR 25-2003 prescribing the guidelines and procedure for the processing of request for excise tax exemption of hybrid or purely electric vehicles pursuant to TRAIN law.

Section 9(E) of RR 25-2003 now provides that:

1. Purely electric vehicles shall be exempt from excise tax on automobiles;
2. Hybrid vehicles (HEV) shall be subject to 50% of the applicable excise tax rates on automobiles.
3. Prior to the removal of the automobiles from the manufacturing plant or customs duty, the Commissioner of Internal Revenue (CIR) shall require from the motor vehicle manufacturer/assembler/importer the presentation/submission of the certificate of conformity (COC) issued by the DENR – Environment Management Bureau (EMB) which contains information on the vehicle's model/make and other technical specification/information among others.
4. In case the subject of the application for COS is purely electric vehicle (EV), a certificate of non-coverage (CONC), instead of COC, shall be presented by the manufacturer/assembler/importer stating that the vehicle applied for is an EV and has no tailpipe emission and thus, not covered by the Philippine Clean Air Act.
5. The BIR shall make a determination whether the EV or HEV is exempt from excise tax or subject to 50% excise tax on the basis of COC or CONC issued by the DENR-EMB.

RMC No. 24-2018 is effective starting January 1, 2019 following its complete publication in the Official Gazette or in at least one (1) newspaper of general circulation.

BIR Revenue Memorandum Circular No. 96-2018

RMC No. 96-2018 dated November 26, 2018 amends RMC No. 50-2018 by deleting the provisions on the group health insurance premium paid for by the employers for their employees (Q7/A7) and director's fees (Q34/A34). The BIR explains that the pertinent provisions are deleted because the issues are not part of the TRAIN law – and RMC 50-2018 is a regulation issued to specifically address and clarify provision of the TRAIN law and its subsequent implementing revenue regulations.

In RMC 50-2018, the BIR said that the group health insurance premium paid by the employer for all employees, whether rank and file or managerial/supervisory shall be included as part of other benefits of these employees which are subject to the P90,000 threshold. It also provided that the director's fee received by a director who is also an employee of the same entity shall form part of the compensation subject to withholding tax on compensation; however, if the director is not an employee, the fee shall be subject to creditable withholding tax and applicable business tax.

BIR Revenue Memorandum Circular No. 98-2018

RMC No. 98-2018 dated November 28, 2018 reiterates the mandatory use of eBIR Forms by Identified Taxpayers and the availability of additional filing and payment option through the services of tax software providers.

The BIR finds that despite their call for mandatory use of eBIR Forms thru RR No. 6-2014, may mandated taxpayers continue to file their tax returns manually. Further, to encourage the taxpayers to maximize the use of eBIR Forms, the mandated taxpayers may now choose to file their tax returns and likewise pay their taxes due thru the use of tax filing and/or payment solutions developed by Tax Software Providers (TSPs) and which had been tested and certified by the BIR.

Taxpayers who will avail of the services of certified TSPs are considered compliant with the mandate to use the eBIR Forms.

BIR Revenue Memorandum Circular No. 101-2018

RMC No. 101-2018 dated November 29, 2018 is a notification of the loss of eight (8) sets of unused BIR Form No. 0535 – Taxpayer Information Sheet bearing serial numbers TIS201400239393-TIS201400239400.

The forms were reported as lost by Mr. Gerardo B. Dizon, Revenue Officer I-Assessment, Revenue District Office No. 26, Revenue Region No. 5, Caloocan City and have consequently been cancelled. All official transactions involving the use of said forms are therefore considered as invalid.

BIR Revenue Memorandum Circular No. 103- 2018

RMC No. 103-2018 dated December 3, 2018 is a notification of lost triplicate copy of eleven (11) sets of used and issued BIR Form No. 2313-R – electronic Certificate Authorizing Registration for Transaction Involving Transfer of Real Properties bearing the following serial numbers:

eCR201600231862
eCR201600232023
eCR201600232113
eCR201600321912
eCR201600322865
eCR201600323205
eCR201600322859
eCR201600322857
eCR201600590968
eCR201600643553
eCR201600716419

The forms were reported as lost by Ms. Maricar Eunis V, Bautista, Revenue Officer I-(C), Revenue District Office No. 17A, Revenue Region No. 4, San Fernando, Pampanga. Consequently, the triplicate copy of the eleven (11) sets used/issued eCR should be verified if found.

BIR Revenue Memorandum Circular No. 102-2018

RMC No. 102-2018 dated December 5, 2018 amends the deadline for processing of pending VAT refund/credit claims filed prior to the effectivity of RMC No. 54-2014 from December 14, 2018 to March 29, 2019.

BIR Revenue Memorandum Circular No. 104-2018

RMC No. 104-2018 dated December 5, 2018 is to notify the loss of the following accountable forms:

BIR Form No. 0535 (Taxpayer Information Sheet) with serial numbers TIS201400150251-54; and
BIR Form No. 0423 (Apprehension Slip) with serial number APS200100002934.

The forms were reported as lost by Mr. Haron R. Laingan, Chief Revenue Officer II, Regional Investigation Division, Revenue Region No. 16, Cagayan de Oro City. Consequently, the four (4) duplicate to triplicate copies of the used/issued Taxpayer Information Sheet should be verified if found. On the other hand, the unused/unissued one (1) set of Apprehension Slip is hereby cancelled and all official transactions involving the use thereof are considered as invalid.

BIR Revenue Memorandum Circular No. 99-2018

RMC No. 99-2018 dated December 7, 2018 clarifies certain issues relative to the provisions of RR No. 17-2011, as amended, implementing the Republic Act (RA) No. 9595 or the Personal Equity and Retirement Account (PERA) Act pf 2018.

In this RMC, the BIR clarifies the following pertinent points:

1. Qualified Employer's Contribution to the employee's PERA is not subject to fringe benefit tax since said contribution does not form part of the employer's gross taxable income.
2. The employer who contributes to the employee's PERA is not entitled to 5% tax credit, but the employer may claim the actual amount of its qualified Employer's Contribution as a deduction from its gross income to the extent of the employer's contribution that would complete the maximum allowable PERA contribution of an employee.
3. If the employee withdraws his PERA contribution, there will be no effect on the part of the employer. The employer will not be required to add back or increase its gross income by the PERA contributions it made in favor if its employee who made an early withdrawal of his PERA contributions.
4. A PERA contributor may change PERA Administrator for reasons other than the administrator's revocation of accreditation., and the transfer from one administrator to another shall not be subject to Early Withdrawal Penalty as long as it is made within fifteen (15) calendar days from withdrawal thereof.
5. PERA Contributors are still entitled to substituted filing of their income tax returns provided that they meet the conditions set forth in RMC 1-2013 on Substituted Filing of Income Tax Returns of Qualified Pure Compensation Income Earners.
6. In opening a PERA account, the BIR does not require submission of the TIN and RDO Code of the Contributor's employer. The Contributor, however, is required to have a TIN.
7. The different accounts of a PERA contributor are considered as one PERA account of the PERA contributor.
8. Overseas Filipinos (OFs) are entitled to Tax Credit Certificates (TCCs) which they may use against any national internal revenue tax liabilities but excluding the Contributor's withholding tax liabilities as withholding agent.

9. For OFs, any official document showing that he will earn or has earned income in a foreign country in the year of PERA contribution may be submitted to show proof of continuing status as an OF. He may submit current employment certificate from existing employer, original copy/certified true copy of existing employment contract; valid identification card issued by employer abroad; copy of work permit/visa or re-entry permit; or sworn certification made before a Philippine consul.
10. OFs who do not avail of their tax credit will not be penalized with the 5% early withdrawal penalty. However, the early withdrawal penalty of 20% will still apply.
11. A contributor whose OF status ceases in a given year shall be considered an OF up to the end of the calendar year.
12. PERA transactions are subject to stock transaction tax.

BIR Revenue Memorandum Circular No. 106-2018

RMC No. 106-2018 dated December 7, 2018 publishes the full text of Memorandum Circular No. 53 dated November 12, 2018 directing all government officer, agencies and instrumentalities, including government-owned or -controlled corporations and state universities and colleges, to take an active role in the anti-illegal drugs campaign.

BIR Revenue Memorandum Circular No. 105-2018

RMC No. 105-2018 dated December 17, 2018 clarifies the payment of excise tax on domestic coal pursuant to the provisions of RR No. 1-2018, amending for the purposes TT No. 13-94.

The BIR clarifies that 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. The general rule is that the producer of a product is the one liable for the excise tax thereon. But since the excise tax is attached to the product itself, if the tax is unpaid and possession is transferred to the buyer, the buyer/possessor or the product can be made liable for the excise tax. Section 130 (A)(1) of the NIRC of 1997, as amended provided that “should domestic products be removed from the place of production without the payment of the tax, the owner or person having possession thereof shall be liable for the tax due thereon. Accordingly, for ease of collection and for purposes of control, the producer shall act as collecting agent of the tax due from the first buyer/possessor and remit the same using BIR Form 2200M - Excise Tax Return for Mineral Products to the BIR, reflecting the buyer’s name and the TIN.

In view of the foregoing, the following shall be enforced:

1. In the event that the excise tax on locally produced coal is not paid by the producer of the product, the excise tax due thereon shall be collected from the first buyer/possessor.
2. The excise tax collected from the buyer/possessor shall be reflected separately in the invoice issued by the producer covering the coal sold. This amount collected from the first buyer/possessor shall be payable to the BIR and shall not form part of the selling price of the coal. The excise tax due to the BIR shall be extinguished upon remittance of the same by the producer to the BIR.
3. As a collecting agent of the excise tax due from the first buyer/possessor, the producer shall file via EFPS and remit the excise tax to the BIR using BIR Form 2200 – Excise Tax Return for Mineral Products, as prescribed under RR No. 1-2002, within ten (10) days from the date of such sale, transfer or disposition, together with the submission of relevant documents proving the transfer of disposition.
4. In case of a producer subject to excise tax, such producer shall be subject to all the administrative and reportorial requirements as prescribed under applicable existing rules and regulations.

The excise tax due on domestic coal removed for domestic consumption shall be collected by the producer of the domestic coal from the first buyer/possessor effective January 1, 2018 (effectivity of the TRAIN law). The producer shall remit on or before December 31, 2018 to the BIR the amount of excise tax on domestic coal collected from the first buyer/possessor covering the

period January 1, 2018 to November 30, 2018 using BIR Form 2200 M, without increments (surcharge and interest) if settled within the herein prescribed period. Henceforth, excise tax collected by the producer on domestic coal removed and sold for domestic consumption shall be filed/remitted within 10 days from the date of sale, transfer or disposition.

The BIR also instructs the producer of the domestic coal to provide to the BIR the date on production, volume or removal and sale covering the period January 1, 2018 to November 30, 2018 for the determination of the amount of excise tax to be remitted to the BIR.

BIR Revenue Regulations No. 25-2018

RR No. 25-2018 dated December 21, 2018 implements Section 109 (AA) of the NIRC of 1997, as amended, pursuant to Section 34 of the TRAIN law which provides for VAT exemption on the sale of drugs and medicines prescribed for diabetes, high cholesterol and hypertension starting January 1, 2019.

The VAT exemption shall apply to the sale by manufacturers, distributors, wholesalers and retailers of drugs and medicines. The importation of the above-described drugs and medicines shall be subject to VAT under Section 107.

For this purpose, the BIR shall issue a list of VAT-exempt drugs as identified and published by the Food and Drugs Authority (FDA). Any update, such as registration of new and/or additional drugs and medicines, as well as de-registration of those previously published by the FDA, shall likewise be posted in the BIR website.

The sale of drugs not included in the list shall be subject to VAT. The BIR likewise reminds the issuance of a VAT-exempt invoice for the sale of drugs for the treatment and prevention of diabetes, high-cholesterol and hypertension.