



TMAP TAX UPDATES

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Prepared by:



OFFICERS

RAYMUND S. GALLARDO

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RS Gallardo Law Office

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COURT OF TAX APPEALS DECISIONS

When payments to GPPs subject to EWT

Philippine Securities Settlement Corporation vs CIR, CTA Case No. 9058, 15 August 2018

In order to prove the EWT exemption of payments to GPPs, the taxpayer must provide the Articles of Partnership to prove that they are, in fact, GPPs.

Accruals are not subject to WTC

Philippine Securities Settlement Corporation vs CIR, CTA Case No. 9058, 15 August 2018

Under Section 2.78 of RR No. 2-1998, compensation income accrues upon the receipt of the income. Hence, accrued vacation leaves, retirement benefits and bonuses which are mere accruals and were not paid to the employees are not subject to WTC.

When a loan agreement gives rise to “reasonable needs” for IAET purposes

Fortune Tobacco Corporation vs CIR, CTA Case No. 9105, 15 August 2018

The CTA cancelled a deficiency assessment for IAET on account of a loan agreement. It reasoned thus:

- There was an immediate need to set aside funds for the full repayment of the debt.
- The loan agreement contained a covenant by the taxpayer to maintain certain financial ratios and not to allow equity and current assets to fall below a fixed amount. Non-observance of the covenant is an event of default.
- Section 3 of RR No. 2-2001 includes earnings reserved for compliance with any loan covenant or pre-existing obligation as accumulations for the reasonable needs of the business.

Jurisdiction cannot be waived

Nokia (Philippines), Inc. vs CIR, CTA EB Case No. 1585, 17 August 2018

On 1 March 2013, a taxpayer filed with the BIR an administrative claim for refund of input VAT attributable to zero-rated sales. The taxpayer requested until **17 June 2013** to submit the required documents. On **29 July 2013**, the taxpayer filed with the CTA a judicial claim for refund. On **7 April 2014**, while the judicial claim was still pending with the CTA, the BIR denied the administrative claim.

The CTA denied the judicial claim because it lacked jurisdiction. Since the 120-day period should be counted from **17 July 2013**, the taxpayer should have waited until **15 October 2013** before filing the judicial claim. Therefore, the judicial claim filed on **29 July 2013** was premature.

It was further ruled that the BIR denial of the administrative claim during the pendency of the judicial claim with the CTA is not tantamount to a waiver by the BIR of the defense of prematurity – because jurisdiction cannot be waived.

Effect of merger of rural banks on entitlement to incentive

One Network bank, Inc. vs CIR, CTA Case No. 8826, 22 August 2018

Under Republic Act (RA) No. 7353, rural banks are exempt from all taxes (except income taxes and local taxes) within 5 years from commencement of operations.

In the consolidation of two rural banks and the consequent creation of a new consolidated rural bank, the CTA ruled that the new rural bank is no longer entitled to a fresh 5-year tax exemption period because:

- The 5-year tax exemption periods of the constituent rural banks have already expired. A consolidated corporation possesses all the privileges and immunities (e.g., tax exemptions) of the constituent corporations. However, if the 5-year tax exemption already expired prior to consolidation, there is nothing to be passed on to or possessed by the consolidated corporation.
- RA No. 7353 did not intend to grant indefinite tax exemptions to rural banks.
- RMC No. 66-2012, which disqualifies consolidated rural banks from another 5-year tax exemption period, is germane to the policy of RA No. 7353.

How to prove export sales

Colt Commercial, Inc. vs CIR, CTA Case No. 9270, 31 August 2018

In order for export sales to qualify for VAT zero-rating, the actual shipment of goods from Philippines to a foreign country must be proven through the presentation of export declarations and bills of lading or airway bills.

Sales invoices, schedule and bank certification of inward remittance, and reconciliation of export sales and dollar remittances are considered insufficient to prove actual shipment.

When failure to supply correct and accurate information is not considered willful

People vs. Arceo, CTA Crim. Case No. O-271, 03 September 2018

A taxpayer was criminally charged for her failure to supply correct and accurate information in her annual income tax return, in relation to the ₱20.3m purchase of properties from the Privatization Management Office.

In defense, the accused taxpayer alleged that she relied on her accountant and bookkeeper with respect to accounting rules, that she was neither familiar nor personally involved in the purchase transaction, and that she was only asked by her husband to sign Special Powers of Attorneys and Memorandum of Agreement, without reading the same.

The CTA acquitted the accused, on the ground that her failure to declare ₱20.3m worth of purchases was not willful because:

- The testimony of the accused and her husband showed lack of knowledge of the purchase transaction on the part of the accused.
- The admissions of her husband were convincing.
- The behavior of the accused (as a dutiful wife, obedient and subservient to her husband who dared not ask what the above papers she was being asked to sign were for) stems from the underlying and prevalent culture that the husband is the head of the family and is the provider thereof.
- The doctrine of "willful blindness" does not apply.
- Although the accused may have been negligent, such negligence does not equate to willful and deliberate intent to violate the Tax Code.

How to prove that an entity is an NRFC

Procter & Gamble Asia, Pte Ltd vs CIR, CTA Case No. 7683, 06 September 2018

In order to prove that an entity is an NRFC doing business outside the Philippines, the following, at the minimum, should be produced:

1. SEC Certificate of Non-Registration; **and**
2. Proof of incorporation/registration in a foreign country.

Also, there must be no other indication which would lead to the entity to be classified otherwise.

No DST on the increase of advances due to foreign currency translations

Thunderbird Pilipinas Hotels and Resorts, Inc. vs CIR, CTA Case No. 8612, 06 September 2018

The BIR cannot validly assess deficiency DST on the increase in the Philippine Peso equivalent of foreign currency denominated advances. This is because such increase is not due to additional advances. Instead, it is a result of a mere accounting adjustment to recognize the difference between the exchange rate at the time the advances were actually transacted and the closing rate at the balance sheet date.

BIR ISSUANCES

Amending the rules allowing non-VAT persons to temporarily use VAT ORs/invoices

RR No. 19-2018, published 13 August 2018

Taxpayers who opted to change their registration from VAT to non-VAT as a result of the TRAIN Law are allowed to use their existing VAT ORs/invoices pending the registration of new non-VAT ORs/invoices, subject to the following amended rules:

1. The phrase "Non-VAT registered as of (date of filing an application for update of registration). Not valid for claim of input tax." should be stamped on the face of each and every VAT OR/invoice;
2. These VAT ORs/invoices may be used until the new registered non-VAT ORs/invoices have been printed and received by the taxpayer, or until 31 August 2018, whichever comes first; and
3. Upon receipt of the non-VAT invoices or receipts, the taxpayer should submit, **on the same day**, a new inventory list of, and surrender for cancellation, all unused VAT ORs/invoices.

Implementing guidelines on the imposition of excise tax on sweetened beverages

RR No. 20-2018, published 24 August 2018

The BIR issued regulations implementing Section 47 of the TRAIN law (*Republic Act No. 10963*) which amends Section 150-B of the Tax Code on the excise tax on sweetened beverages. The regulations tackle the following:

1. Excise tax rates and bases with sample computations
2. Persons liable
3. Time, place and manner of filing excise tax return and payment of excise tax
4. Excluded products
5. Transfer of raw materials
6. Transfer or sale of semi-processed goods
7. Consumption within manufacturer's premises
8. Exportation of sweetened beverage
9. Permit to engage in the business of manufacturing or importing sweetened beverages
10. Rules and procedures for tolling, bottling and other subcontracting agreements
11. Administrative requirements
12. Penalties
13. Responsibility of the Food and Drug Administration

Although published only on August 24, 2018, the regulations provide that they took effect on January 1, 2018.

Regulations on the imposition of deficiency and delinquency interest under the TRAIN Law

RR No. 21-2018, published 17 September 2018

The BIR issued regulations implementing Section 75 of the TRAIN Law which amends Section 249 of the Tax Code on interest imposed on unpaid taxes. Unpaid taxes consist of deficiency taxes, delinquent taxes, or taxes paid within an (authorized) extended period.

The regulations provide the following:

- Starting 1 January 2018:
 - a. The rate of interest shall be **12%** which is double the legal interest rate on loans of 6% per BSP Memorandum No. 799, series of 2013.
 - b. There will be no double imposition of interest. This means that deficiency and delinquency interest cannot be simultaneously imposed.
- For taxes or deficiency taxes due before 1 January 2018 and paid after said date:
 - a. These are subject to the simultaneous imposition of deficiency and delinquency interest of 20% from due date up to 31 December 2017.
 - b. These are subject to delinquency interest of 12% from 1 January 2018 up to date of payment.

Forfeited real property of delinquent taxpayer

RMC No. 70-2018, issued 22 August 2018

The BIR has revised BIR Form No. 1306 (Declaration of Forfeiture of Real Property) and the related Affidavit of Consolidation of Title of Absolutely Forfeited Property in Favor of the Republic of the Philippines.

BIR monitoring and validation of sales

RMC No. 72-2018, issued 30 August 2018

In order to effectively monitor and validate the accuracy of sales declarations generated from POS machines, CRMs, SPMs, other sales receipting system software, Receipting/Invoicing of CAS, online sales transactions, and manual invoices/receipts/supplemental commercial documents, the BIR issued RMC No. 72-2018 to reiterate and supplement existing policies, guidelines and procedures.

The RMC covers the following:

- post-evaluation of POS machines, CRMs, SPMs, other sales receipting system software, Receipting/Invoicing of CAS
- inventory of all POS machines/CRM/SPM and other receipting machines/software
- sources of validation and extraction of sales data
- issuance of *subpoena duces tecum*
- reconciliation with Business Intelligence Division sales data
- penalties

New BIR monthly remittance forms for EWT and FWT

RMC No. 73-2018, issued 31 August 2018

Withholding agents should take note of the following BIR forms and deadlines when remitting withholding taxes for the first two months of every calendar quarter:

BIR Form No.	BIR Form Name	Due Date
0619-E	Monthly Remittance form of Creditable Income Taxes Withheld (Expanded)	For Non-eFPS taxpayers: on or before the 10 th day of the following month when withholding was made
0619-F	Monthly Remittance Form of Final Income Taxes Withheld	For eFPS taxpayers: on or before the 15 th day of the following month, depending on the industry grouping as set forth in RR No. 26-2002

As to the filing and remittance of FWT using BIR Form No. 0619-F, taxpayers should use the following tax type codes and ATCs:

Tax Type Code	ATC	Due Date
WB	WMF10	Remittance of Final Income Taxes Withheld in Interest Paid on Deposits and Yield on Deposit Substitutes/Trusts/Etc.
WF	WMF20	Remittance of Final Income Taxes Withheld on Other Final Income Taxes

Taxpayer remitting both types of final withholding taxes should file two (2) separate BIR Form No. 0619-F to cover both remittances.

Mandatory requirement of an LOA

RMC No. 75-2018, issued 05 September 2018

The BIR highlighted the following doctrines enunciated in the Supreme Court decision in *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue* (G.R. No. 222743, 5 April 2017):

- No assessments can be issued and no assessment functions/proceedings can be undertaken without the prior approval and authorization by the CIR or his authorized representative, through an LOA.
- A tax assessment without an LOA violates the taxpayer's right to due process, hence, is void.
- Tax agents (other than the CIR or his duly authorized representative) may not conduct examination methods (e.g., best evidence obtainable rule, inventory-taking, surveillance, etc.) without an LOA.
- An LN is not an authority to conduct an audit or examination leading to the issuance of deficiency tax assessments. Accordingly, after the LN has served its purpose, an LOA should be properly secured before proceeding further.

Registration requirements for Philippine offshore gaming operators and their accredited service providers

RMC No. 78-2018, issued 07 September 2018

The BIR issued guidelines in the registration of persons who will engage in the business of both Philippine-based and foreign-based offshore gaming operations, including their agents and service providers licensed by the PAGCOR. The guidelines include the venue of registration, registration requirements and transfer of registration.

Creation of the Philippine Identification System

RMC No. 79-2018, issued 07 September 2018

The Government enacted the Philippine Identification System Act which establishes a single national identification system. Its objective is to provide a valid proof of identity for all Filipino citizens and resident aliens as means of simplifying public and private transactions.

A card will be issued, referred to as the "PhilID," which shall serve as the official government-issued identification of cardholders in dealing with government agencies, local government units, GOCCs, government financial institutions and all private sector entities.

New, modified and dropped ATCs for EWT and FWT

RMO No. 38-2018, issued 29 August 2018

The BIR has disseminated new, modified and dropped ATCs for EWT and FWT.

Reduction of RPT and condonation of interest in relation to 2017 RPT of IPPs

Office of the President Executive Order No. 60, series of 2018

All RPT liabilities and special levies for 2017 and prior years assessed by LGUs against IPPs with respect to property, machinery, and equipment actually and directly used in the production of electricity under a BOT scheme or similar contracts with GOCCs are reduced to an amount equivalent to the tax due if computed based on an assessment level of 15% of FMV depreciated at 2% per annum.

Any amounts previously paid by IPPs in excess of the reduced amount may be applied against future RPT assessments. Interest on any deficiency RPT are condoned.

GLOSSARY

ATC – Alphanumeric tax code
BIR – Bureau of Internal Revenue
BOT – Build-Operate-Transfer
BSP – Bangko Sentral ng Pilipinas
CAS – Computerized accounting system
CRM – Cash register machine
CTA – Court of Tax Appeals
CIR – Commissioner of Internal Revenue
DST – Documentary stamp tax
eFPS – Electronic Filing and Payment System
EWT – Expanded withholding tax
FMV – Fair market value
FWT – Final withholding tax
GOCC – Government-owned and controlled corporation
GPP – General professional partnership
IAET – Improperly accumulated earnings tax
IPP – Independent power producer
LGU – Local government unit
LN – Letter Notice
LOA – Letter of Authority
NRFC – Non-resident foreign corporation
OR – Official receipt
PAGCOR – Philippine Amusement and Gaming Corporation
POS – Point-of-sale
RMC – Revenue Memorandum Circular
RMO – Revenue Memorandum Order
RPT – Real property tax
RR – Revenue Regulations
SEC – Securities and Exchange Commission
SPM – Special purpose machine
TRAIN – Tax Reform for Acceleration and Inclusion
VAT – Value-added tax
WTC – Withholding tax on compensation

