

TMAP Tax Updates for April 2018
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BIR Issuances

Amendments to withholding tax regulations pursuant to TRAIN Law

The BIR introduced the following amendments to the provisions of RR 2-98 to implement further the provisions of Republic Act No. 10963 or the TRAIN Law. Some of the salient features of RR 11-2018 are as follows:

1. Revised withholding tax rates

Type of Income Payment	Old CWT Rate	New CWT Rate
1. Professional fees, talent fees, etc. for services rendered 2. Professional fees paid to medical practitioners (includes doctors of medicine, doctors of veterinary science, and dentists) by hospitals and clinics or paid directly by health maintenance organizations (HMOs) and/or similar establishments 3. Income payments to certain brokers and agents 4. Commissions of independent and/or exclusive sales representatives and marketing agents of companies	1. Individual – 8% (RMC 1-2018) 2. Non-individual – 10%/15%	1. Individual - a. If the gross income for the current year does not exceed P3 million - 5% b. If the gross income for the current year is more than P3 million - 10% 2. Non-individual – a. If the gross income for the current year does not exceed P720,000 - 10% b. If the gross income for the current year exceeds P720,000 - 15%
Income distribution to the beneficiaries	8% (RMC 01-2018)	15%
Income payments to partners of general professional partnerships	8% (RMC 01-2018)	a. If the gross income for the current year does not exceed P720,000 - 10% b. If the gross income for the current year exceeds P720,000 - 15%

2. Sworn declaration of individual payees with gross receipts/sales not exceeding P3 million

Individual payees whose gross receipts/sales in a taxable year do not exceed P3 million are required to submit a sworn declaration of their gross receipts/sales, together with a copy of Certificate of Registration (COR), to all the income payors/withholding agents not later than January 15 of each year, or at least prior to the initial payment of the professional fees/commissions/talent fees, etc., in order for them to be subject to 5% withholding tax. The 10% withholding tax rate shall be applied in the following cases: (1) the payee failed to provide the income payor/withholding agent of such declaration; or (2) the income payment exceeds P3 million, despite receiving the sworn declaration from the income payee. In the case of individual payees with only one payor, the sworn declaration shall be accomplished and submitted, together with a copy of their COR, to the lone income payor.

3. Sworn declaration of non-individual payees with gross income not exceeding P720,000

If the company or corporation's estimated gross income does not exceed P720,000 during the taxable year, the authorized officer is required to provide all its income payors/withholding agents with a notarized sworn statement to that effect, together with a copy of the COR, not later than January 15 of each year or prior to the initial income payment so that the income payor/withholding agent shall only withhold 10%.

The 15% withholding tax rate shall be applied in the following cases: (1) the payee failed to provide such declaration to the income payor/withholding agent; or (2) the income payment exceeds P720,000, despite receiving the sworn declaration from the income payee. The sworn declaration shall be executed by the president/managing partner of the corporation/company/general professional partnership.

4. Submission of sworn declaration of withholding agents

Income payors/withholding agents shall execute a sworn declaration stating the number of payees who have submitted the income payees' sworn declarations with the accompanying copies of their COR. Such declaration of the income payors/withholding agents shall be submitted, together with the list of payees, to the concerned BIR office where registered on or before January 31 of each year, or 15 days following the month when a new income recipient has submitted the payee's sworn declaration.

5. Exemption from withholding tax for individual payees whose total income is less than P250,000 from lone income payor

An individual seller-income earner/payee may not be subjected to withholding if the source of income comes from a lone income payor and the total income payment is less than P250,000 in a taxable year.

The concerned individual shall execute an Income Payee's Sworn Declaration of gross receipts/sales that shall be submitted to the lone payor. The payee's sworn declaration shall be submitted to the lone income payor of income before the initial payment of income or before January 15 of each year, whichever is applicable.

The income payor/withholding agent shall, in turn, execute its own Income Payor/Withholding Agent's Sworn Declaration stating the number of payees who shall not be subjected to withholding taxes and have duly submitted their income payees' sworn declarations and copies of COR.

Together with the income payor/withholding agent's sworn declaration is the list of payees who shall not be subjected to withholding tax, which shall be submitted by the income payor/withholding agent to the concerned BIR office on or before the last day of January of each year, or on the 15th day of the following month when a new income recipient submitted the payee's sworn declaration to the lone income payor/withholding agent.

The income payor/withholding agent's sworn declaration shall be filed in two copies with the concerned Large Taxpayer Service (LTS)/Revenue Region (RR)/Revenue District Office (RDO) where the income payor/withholding agent is registered and shall be distributed as follows:

1. Original copy for the BIR; and
2. Duplicate copy for lone payor/withholding agent

The duly received income payor/withholding agent's sworn declaration, including the required list, shall serve as proof that the income payments made are not subject to withholding tax.

In the event that the individual payee's cumulative gross receipts in a year exceed P250,000, the income payor/withholding agent shall withhold the prescribed withholding tax based on the amount in excess of P250,000, despite the prior submission of the individual income payee's sworn declaration. On the other hand, if the individual income payee fails to submit an income payee's sworn declaration to the lone income payor/withholding agent, the income payment shall be subject to the applicable withholding tax even though in a taxable year the income payment is P250,000 and below.

Transitory rules

An income recipient/payee subject to withholding tax who wants to be exempt from the prescribed withholding tax rates shall submit on or before 6 April 2018 a duly accomplished "Income Payee's Sworn Declaration of Gross Receipts/Sales", together with a copy of the COR to his/her income payor/withholding agent.

The income payor/withholding agent that received the "Income Payee's Sworn Declaration of Gross Receipts/Sales" and the copy of the payee's COR shall submit on or before 20 April 2018, a duly accomplished "Income Payor/Withholding Agent's Sworn Declaration", together with the List of Payees who have submitted "Income Payee's Sworn Declaration of Gross Receipts/Sales" and copies of CORs.

Any income tax withheld by the income payor/withholding agent in excess of what is prescribed in these regulations shall be refunded to the payee by the said income payor/withholding agent. The income payor/withholding agent shall

reflect the amount refunded as adjustment to the remittable withholding tax due for the first quarter withholding tax return.

The adjusted amount of tax withheld shall also be reflected in the Alphabetical List of Payees to be attached in the said first quarter return. The said list of payees who are subject to refund, either due to the change of rates of withholding or due to the qualification to avail of exemption from withholding tax (e.g., income recipient/payee submitted "Income Payee's Sworn Declaration of Gross Receipts/Sales" and copy of COR), shall likewise be attached in the said return, which shall be filed on or before 30 April 2018.

In case the Certificate of Tax Withheld at Source (BIR Form No. 2307) has already been given to the payee, the same shall be returned by the payee to the payor upon receipt of the amount refunded by the income payor/withholding agent, together with the corrected BIR Form No. 2307, if still applicable. Otherwise, the said certificate to be given to the payee on or before the 20th day after the close of the first quarter must reflect the corrected amount of tax withheld.

In no case shall the income payee use BIR Form No. 2307 twice for the same amount of income payment from the same income payor/withholding agent and for the same period.

6. Withholding tax obligations of Top Withholding Agents

The coverage of withholding tax agents who are required to withhold 1% or 2% from regular suppliers of goods and services, respectively, and casual purchases worth P10,000 or more was expanded to include Medium Taxpayers, and those under the Taxpayer Account Management Program (TAMP), which shall now be classified as Top Withholding Agents.

Under RR 11-2018, the Top Withholding Agents shall include taxpayers classified and duly notified by the Commissioner as any of the following unless previously de-classified as such or have already ceased business operations: (a) a large taxpayer under RR 1-98, as amended; (b) top 20,000 private corporations under RR 6-2009; or (c) top 5,000 individuals under RR 6-2009. It shall also include taxpayers identified and included as Medium Taxpayers, and those under the TAMP.

The top withholding agents by concerned LTS/RR/RDO shall be published in a newspaper of general circulation. It may also be posted in the BIR website. These shall serve as the notice to the top withholding agents.

The obligation to withhold shall commence on the first day of the month following the month of publication.

The existing withholding agents classified as large taxpayers, top 20,000 private corporations, or top 5,000 individuals that have not been delisted prior to these regulations shall remain top withholding agents. The initial and succeeding publications shall include the additional top withholding agents and those that are delisted.

7. Increase in the amount of tax-exempt de minimis benefits

The tax-exempt cap has been revised for the following de minimis benefits:

De minimis benefit	Tax-exempt Threshold	
	Old	New
Medical cash allowance to dependents of employees	P750 per employee per semester, or P125 per month	P1,500 per employee per semester, or P250 per month
Rice subsidy	P1,500 or one sack of 50 kg. rice per month amounting to not more than P1,500	P2,000 or one sack of 50 kg. rice per month amounting to not more than P2,000
Uniform and clothing allowance	P5,000 per annum	P6,000 per annum

8. Income tax treatment of minimum wage earners (MWEs) on receipt of taxable income

Additional compensation such as commissions, honoraria, fringe benefits, benefits in excess of the allowable statutory amount of P90,000, taxable allowances, and other taxable income other than those that are expressly exempt from income tax [i.e., statutory minimum wage (SMW), overtime pay, night shift differential, holiday pay, and hazard pay] given to an MWE by the same employer shall be subject to withholding tax using the withholding tax table.

Likewise, MWEs receiving other income from other sources in addition to compensation income, such as income from other concurrent employers, from the conduct of trade, business, or practice of profession, except income subject to final tax, are subject to income tax only to the extent of income other than the SMW, holiday pay, overtime pay, night shift differential pay, and hazard pay earned during the taxable year.

[Note: Based on Illustration No. 4 of RR 11-2018, in case of receipt of taxable income such as commission, the MWE shall remain exempt on the amount received as SMW, overtime pay, night shift differential, holiday pay, and hazard pay and shall be taxable only on the commission received. This is in accordance with the Supreme Court decision in the case of Soriano et al. vs. Secretary of Finance and Commissioner of Internal Revenue, (G.R. No. 184450, 24 January 2017), which held that MWEs remain exempt but the taxable income they receive other than as MWEs are subject to taxes.]

9. Computation of withholding tax on employees of Area or Regional Headquarters of Multinational Corporations, Regional Operating Headquarters (ROHQs), Offshore Banking Units (OBUs), and Petroleum Contractors and Subcontractors

They should be subject to withholding tax in the manner and at the regular rates of withholding tax on citizens and resident individuals.

10. Substituted filing and submission of BIR Form 2316

Employees qualified for the substituted filing of Income Tax Return (ITR) shall immediately affix their signatures to the Certificate of Compensation Payment and Tax Withheld to signify their intention to avail of the substituted filing of ITR, and return to the employer the duly signed Certificates for the latter's signature.

The employer shall give back the original copy to the employee qualified for substituted filing of ITR, while the duplicate copy shall be submitted by the employer to the concerned BIR office not later than February 28 of the succeeding year, with accompanying Certified List of Employees Qualified for Substituted Filing of ITR reflecting the amount of income payment, the tax due, and tax withheld.

The list shall be stamped "Received" by the concerned BIR office, which shall be tantamount to the substituted filing of ITR by the qualified employees. In the event that the employee will need his/her Certificate (BIR Form No. 2316) stamped "Received", he/she shall request the concerned BIR office to have the Certificate stamped "Received" accompanied by the submission of the employer's certification that he/she was included in the list submitted by such employer to the BIR.

For employees not qualified for substituted filing of ITR, two (original and duplicate) copies of the subject certificate shall be given to the employee to serve as proof of compensation received and tax credit, and the other copy shall be retained by the employer. This shall form part of the employee's ITR to be filed on or before April 15 of the following year.

11. Filing of withholding tax returns and alphabetical lists

Filing of withholding tax returns

The filing of the withholding tax returns (BIR Form No. 1601EQ for creditable withholding tax and Form Nos. 1602 for final tax on interest on bank deposits, 1603 for final tax withheld on fringe benefits, and 1601FQ for all other final withholding taxes) and payment of the taxes withheld at source shall be made not later than the last day of the month following the close of the quarter during which the withholding was made. The quarter shall follow the calendar quarter, e.g., for taxes withheld during the quarter ending March 31, the same shall be remitted by the withholding agent on or before April 30.

Submission of Alphalists

The withholding tax returns filed by withholding agents shall be accompanied by the Quarterly Alphabetical List of Payees (QAP), reflecting the name of income payees, Taxpayer Identification Number (TIN), the amount of income paid segregated per month with total for the quarter (all income payments prescribed as subject to withholding tax under these regulations, whether actually subjected to withholding tax or not subjected due to exemption), and the total amount of taxes withheld, if any.

Monthly remittance of taxes withheld

Withholding agents shall file BIR Monthly Remittance Form (BIR Form No. 0619E and/or 0619F) every 10th day of the following month when the withholding is made, regardless of the amount withheld. For withholding agents using the eFiling and Payment System (eFPS) facility, the due date is on the 15th day of the following month. Withholding agents with zero remittance are still required to use and file the same form.

In the case of sale of shares of stocks not traded through a local stock exchange and sale of real property considered as capital asset, the filing and payment of the tax due thereon shall be made within 30 days after the sale or disposition using BIR Form No. 1707 and 1706, respectively. For sale of real property considered as ordinary asset, the remittance of tax withheld shall be made on or before the 10th day following the month of transaction using BIR Form No. 1606.

Annual Information Return and Annual Alphabetical List of Payees

The withholding agent is required to file with the concerned office of the LTS/RR/RDO where the withholding agent is registered, the following:

1. Annual Information Return of Creditable Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604E) including the corresponding Annual Alphabetical List of Payees - On or before March 1 of the following year in which payments were made
2. Annual Information Return on Final Income Taxes Withheld (BIR Form 1604F) including the corresponding Annual Alphabetical List of Payees - On or before January 31 of the following year in which payments were made

(Revenue Regulations No. 11-2018, 15 March 2018)

Consolidated revenue regulations on estate tax and donor's tax pursuant to TRAIN Law

The BIR issued the following consolidated rules and regulations implementing the estate tax and donor's tax incorporating the TRAIN Law, thereby repealing RR 2-2003, as amended:

1. Estate Tax

Estate tax rate

The net estate of every decedent, whether resident or non-resident of the Philippines, as determined in accordance with the Tax Code, shall be subject to an estate tax at the rate of 6%.

Composition of gross estate

The gross estate of a decedent shall comprise the following properties and interest therein at the time of his/her death, including revocable transfers and transfers for insufficient consideration, etc.:

1. Residents and citizens – all properties, real or personal, tangible or intangible, wherever situated
2. Non-resident aliens – only properties situated in the Philippines provided, that, with respect to intangible personal property, its inclusion in the gross estate is subject to the rule of reciprocity provided for under Section 104 of the Tax Code

The amounts withdrawn from the deposit accounts of a decedent subjected to the 6% final withholding tax imposed under Section 97 of the Tax Code shall be excluded from the gross estate for purposes of computing the estate tax.

Valuation of gross estate

The properties comprising the gross estate shall be valued according to their fair market value as of the time of decedent's death.

Computation of net estate

Items of deduction	Citizen or resident of the Philippines	Non-resident alien in the Philippines
1. Standard deduction	P5,000,000	P500,000
2. Claims against the estate	Allowed provided that the requirements/documents are complied with/submitted accordingly	Pro-rated based on the gross estate within the Philippines over total value of gross estate within and without the Philippines
3. Claims of the deceased against insolvent persons	Allowed	Pro-rated based on the gross estate within the Philippines over total value of gross estate within and without the Philippines
4. Unpaid mortgages, taxes, and casualty losses	Allowed but subject to certain exceptions	Pro-rated based on the gross estate within the Philippines over total value of gross estate within and without the Philippines
5. Property previously taxed	Allowed but subject to the following ratio: a. 100% of the value if the prior decedent died within one year prior to the death of	Same with citizen or resident of the Philippines

	<p>the decedent, or if the property was transferred to him by gift, within the same period prior to his death</p> <p>b. 80% of the value if the prior decedent died more than one year but not more than two years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death</p> <p>c. 60% of the value if the prior decedent died more than two years but not more than three years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death</p> <p>d. 40% of the value if the prior decedent died more than three years but not more than four years prior to the death of the decedent, or if the property was transferred to him by gift within the same period prior to his death; and</p> <p>e. 20% of the value if the prior decedent died more than four years but not more than five years prior to the death of the decedent, or if the property was transferred to him by gift within the same</p>	
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	<p>period prior to his death.</p> <p>These deductions shall be allowed only where a donor's tax or estate tax was finally determined and paid by or on behalf of such donor or the estate of such prior decedent, as the case may be.</p>	
6. Transfers for public use	Allowed	Allowed
7. Family home	Allowed up to the extent of the amount equivalent to the current fair market value of the decedent's family home or P10 million, whichever is lower. If the current fair market value exceeds P10 million, the excess will be subject to estate tax.	Not applicable
8. Amount received by heirs under Republic Act No. 4917	Allowed	Not applicable
9. Net share of the surviving spouse in the conjugal partnership or community property	Allowed	Allowed

Filing of estate tax return

The filing of estate tax return is required regardless of the gross estate's value. However, estate tax returns showing a gross value exceeding P5,000,000 shall be supported by a statement duly certified by a Certified Public Accountant (CPA).

The estate tax return shall be filed within one year from the decedent's death but in meritorious cases, a reasonable extension not exceeding 30 days may be granted by the Commissioner of Internal Revenue (CIR) or any revenue officer authorized by him.

Payment of estate tax return

Generally, the estate tax due shall be paid at the time the return is filed. On the other hand, when the CIR finds that the payment of the estate tax or of any part thereof would impose undue hardship upon the estate or any of the heirs, he

may extend the time for payment of such tax or any part thereof not to exceed five years in case the estate is settled through the courts, or two years in case the estate is settled extrajudicially. If approved, the tax due shall be subject to interest from the statutory due date up to the payment date that is within the extension period.

Payment of the estate tax due may be made in cash installment or partial disposition of estate and application of such proceeds to the estate tax due, both subject to certain terms and conditions.

Transfer of shares, bonds or rights and bank deposits withdrawal

Any share, obligation, bond or right by way of gift inter vivos or mortis causa, legacy or inheritance, cannot be transferred to a new owner unless an electronic Certificate Authorizing Registration (CAR) is issued.

If a bank has knowledge of the death of a person who maintained a bank deposit account alone, or jointly with another, it shall allow the withdrawal from the said deposit account subject to a final withholding tax of 6% of the amount to be withdrawn, which shall only be made within one year from the death of the decedent.

2. Donor's Tax

Donor's tax rate

The donor's tax for each calendar year shall be 6% computed on the basis of the total gifts made from 1 January 2018 in excess of P250,000 exempt gift made during the calendar year.

Valuation of gifts

Gifts made in the form of properties shall be valued at their fair market value at the time of donation.

Filing and payment of donor's tax

The donor's tax return shall be filed within 30 days after the date the gift is made or completed and the tax due thereon shall be paid at the same time that the return is filed.

Notice of donation by a donor engaged in business

In order to be exempt from donor's tax and to claim full deduction of the donation given to duly accredited and qualified-donee institutions, the donor engaged in business shall give a notice of donation on every donation worth at least P50,000 to the RDO that has jurisdiction over his place of business within 30 days after receipt of the qualified donee institution's duly issued Certificate of Donation, which shall be attached to the said Notice of Donation, stating that not more than 30% of the said donation/gifts for the taxable year shall be used by such accredited non-stock, non-profit corporation/NGO institution (qualified-

donee institution) for administration purposes pursuant to the provisions of Section 101(A)(3) and (B)(2) of the Tax Code.

Transfer for less than adequate and full consideration

Where property, other than real property referred to in Section 24(D) of the Tax Code, is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the fair market value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction that is bona fide, at arm's length, and free from any donative intent) will be considered made for an adequate and full consideration in money or money's worth.

Exemption of certain gifts

The following are exempt from donor's tax:

1. Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government
2. Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, accredited non-government organization, trust or philanthropic organization or research institution or organization provided that not more than 30% of said gifts shall be used by such donee for administration purposes

(Revenue Regulations No. 12-2018, 15 March 2018. These regulations are effective beginning 1 January 2018.)

Implementing regulations of VAT provisions of TRAIN Law

The BIR issued the following rules and regulations implementing the VAT provisions of Republic Act No. 10963 or TRAIN Law by amending RR 16-2005 (Consolidated VAT Regulations of 2005), with its salient features as follows:

VAT zero-rated sales of goods and properties

1. The VAT zero rating on the following sales by VAT-registered taxpayers shall be removed upon satisfaction of the following conditions: (a) the successful establishment and implementation of an enhanced VAT refund system that grants and pays refunds of creditable input tax within 90 days from the filing of the VAT refund application with the BIR; and (b) cash refund by 31 December 2019 of all pending VAT refund claims as of 31 December 2017.
 - a. The sale of raw materials or packaging materials to a non-resident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing, or repacking in the Philippines of the said buyer's goods, paid for in acceptable foreign currency, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)

- b. The sale of raw materials or packaging materials to an export-oriented enterprise whose export sales exceed 70% of total annual production
 - c. Transactions considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws
2. Sales to bonded manufacturing warehouses for export-oriented manufacturers, export traders, diplomatic missions, and Philippine Economic Zone Authority (PEZA) are considered export sales under Executive Order No. 226 and other special laws subject to 0% VAT.

Even without actual exportation, the following shall be considered constructively exported subject to 0% VAT: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones; (3) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board of Investments in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (4) sales of locally manufactured, assembled, or repacked products - whether paid for in foreign currency or not - to diplomatic missions and other agencies and/or instrumentalities granted tax immunities.

However, VAT zero-rating on sales to bonded manufacturing warehouse for export-oriented manufacturers, export traders, diplomatic missions, and PEZA shall be removed upon establishment of enhanced refund system and cash refund by 31 December 2019 of all pending VAT refund claims as of 31 December 2017.

3. VAT zero rating on sale of goods, supplies, and equipment to international shipping and international air transport companies

To be subject to 0% VAT, the sale of goods, supplies, equipment, and fuel to persons engaged in international shipping or international air transport operations should be used exclusively for international shipping or air transport operations.

VAT zero-rated sale of services

1. VAT zero rating on sale of service to international shipping and international air transport companies

To be subject to 0% VAT, services rendered to persons engaged in international shipping or air transport operations, including leases of property, shall be exclusively for international shipping or air transport operations.

2. The transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country is a VAT zero-rated transaction.
3. The VAT zero rating on the following sales by VAT-registered taxpayers shall be removed upon satisfaction of the following conditions: (a) the successful establishment and implementation of an enhanced VAT refund system that

grants and pays refunds of creditable input tax within 90 days from the filing of the VAT refund application with the BIR; and (b) cash refund by 31 December 2019 of all pending VAT refund claims as of 31 December 2017.

- a. Processing, manufacturing, or repacking of goods, which are subsequently exported, for other persons doing business outside the Philippines where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP
- b. Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed 70% of the total annual production

VAT-exempt sale of goods and services

1. VAT-free importation of personal belongings of Overseas Filipino Workers (OFWs) or Filipinos settling in the Philippines

The importation of professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effects belonging to persons coming to settle in the Philippines or Filipinos or their families who are considered residents or citizens of other countries, such as OFWs, in quantities and of class suitable to the profession, rank, or position of the person importing said items, for their own use and not for barter or sale, or arriving within a reasonable time, shall be exempt from VAT.

2. Sale of electricity subject to 12% VAT

The sale of electricity, transmission by any entity, including the National Grid Corporation of the Philippines, and distribution companies, including electric cooperatives, shall be subject to 12% VAT.

3. VAT on sale and lease of real properties

Beginning 1 January 2021, the VAT exemption shall only apply to sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, sale of real property utilized for socialized housing as defined by RA 7279, sale of house and lot, and other residential dwellings with selling price of not more than P2,000,000.

Lease of residential units with a monthly rental fee per unit not exceeding P15,000 is VAT exempt. In cases where a lessor has several residential units for lease and some are leased out for a monthly rental fee per unit not exceeding P15,000 while others are leased out for more than P15,000 per unit, his tax liability will be as follows:

- a. The gross receipts from rentals not exceeding P15,000 per month per unit shall be exempt from VAT regardless of the aggregate annual gross receipts. It is also exempt from the 3% percentage tax.
- b. The gross receipts from rentals exceeding P15,000 per month per unit shall be subject to VAT if the aggregate annual gross receipts from said

units only exceeds P3,000,000. Otherwise, the gross receipts will be subject to the 3% tax imposed under Section 116 of the Tax Code.

4. VAT on importation of fuel, goods, and supplies by international shipping and air transport operators

The importation of fuel, goods, and supplies by persons engaged in international shipping or air transport operations shall be used for international shipping or air transport operations to be exempt from VAT.

5. VAT-exempt sale or lease of goods and services to senior citizens and persons with disabilities

The sale or lease of goods and services to senior citizens and persons with disabilities, as provided under RA 9994 (Expanded Senior Citizens Act of 2010) and RA 10754 (An Act Expanding the Benefits and Privileges of Persons with Disability), respectively, shall be exempt from VAT.

6. VAT-exempt transfer of property under Section 40(C)(2) of the Tax Code

The transfer of property pursuant to Section 40(C)(2) of the Tax Code is exempt from VAT.

7. VAT exemption of condominium dues

Association dues, membership fees, and other assessments and charges collected on a purely reimbursement basis by homeowners' associations and condominium corporations established under RA 9904 (Magna Carta for Homeowners and Homeowners' Association) and RA 4726 (The Condominium Act), respectively, are exempt from VAT.

8. VAT-exempt sale of gold to BSP

The sale of gold to BSP shall be exempt from VAT, instead of subject to 0% VAT.

9. Sale of drugs and medicines for diabetes and cholesterol and hypertension shall be VAT exempt starting 1 January 2019.

The sale of drugs and medicines prescribed for diabetes, high cholesterol, and hypertension, as determined by the Department of Health, shall be exempt from VAT beginning 1 January 2019.

10. VAT-exempt threshold increased to P3million

The VAT-exempt threshold on sale or lease of goods or properties or the performance of services has been increased from P1,500,000 (P1,919,500) gross annual sales and/or receipts to P3,000,000.

Phaseout of amortization of input VAT on capital goods

The amortization of input VAT shall only be allowed until 31 December 2021, after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized.

Refund of input tax due to cancellation of VAT registration

For refund purposes, the date of cancellation is the date of issuance of tax clearance by the BIR after full settlement of all tax liabilities relative to cessation of business or change of status of the concerned taxpayer. The filing of the claim for refund in relation to the retirement or cessation of business shall be made only after completion of the mandatory audit of all internal revenue tax liabilities covering the immediately preceding year and the short period return and the issuance of the applicable tax clearance/s by the appropriate RDO having jurisdiction over the taxpayer.

Period to refund or credit input taxes

The BIR has 90 days to grant the refund of creditable input VAT from the date of submission of the official receipts or invoices and other documents in support of the application filed.

The 90-day period to process and decide, pending the establishment of the enhanced VAT Refund System, shall only be up to the date of approval of the Recommendation Report on such application for VAT refund by the Commissioner or his duly authorized representative.

All claims for refund/tax credit certificate filed prior to 1 January 2018 will be governed by the 120-day processing period.

Failure on the part of any official, agent, or employee of the BIR to act on the application within the 90-day period shall be punishable under Section 269 of the Tax Code.

No more monthly VAT returns beginning 1 January 2023

Beginning 1 January 2023, the filing and payment required under the Tax Code shall be done within 25 days following the close of each taxable quarter.

Shift to creditable withholding VAT system on government money payments starting from 1 January 2021

Beginning 1 January 2021, the 5% final withholding VAT system on sales to government will shift to creditable VAT system, except for payments for purchase of goods and services arising from projects funded by the Official Development Assistance (ODA) as defined under RA 8182 (Official Development Assistance Act of 1996), which shall not be subject to the final/creditable withholding taxes.

Cooperatives and self-employed individuals/professionals availing of 8% tax are exempt from payment of 3% percentage tax

Cooperatives and self-employed individuals and professionals availing of the 8% tax on gross sales and/or receipts and other non-operating income whose sales or receipts are exempt from the payment of VAT and who are not VAT-registered persons shall be exempt from the payment of 3% percentage tax (Section 4-116).

Transitory rules

1. An existing VAT-registered taxpayer whose gross sales/receipts in the preceding taxable year did not exceed the VAT threshold of P3,000,000 may continue to be a VAT-registered taxpayer and avail of the "Optional Registration for Value-Added Tax of Exempt Person". Once availed, the taxpayer shall not be entitled to cancel the VAT registration for the next three years.
2. A VAT-registered taxpayer who opted to register as non-VAT as a result of the implementation of the TRAIN Law shall immediately:
 - a. Submit an inventory list of unused invoices and/or receipts as of the date of filing of application for update of registration from VAT to non-VAT, indicating the number of booklets and its corresponding serial numbers
 - b. Surrender the said invoices and/or receipts for cancellation

A number of unused invoices/receipts, as determined by the taxpayer with the approval of the appropriate RDO, may be allowed for use provided the phrase *"Non-VAT registered as of (date of filing an application for update of registration). Not valid for claim of input tax."* shall be stamped on the face of each and every copy thereof, until new registered non-VAT invoices or receipts have been received by the taxpayer. Upon such receipt, the taxpayer shall submit a new inventory list of, and surrender for cancellation, all unused previously-stamped invoices/receipts.

(Revenue Regulations No. 13-2018, 15 March 2018)

Extension of deadline on the submission of sworn declaration of gross sales/receipts and clarification on the coverage of 10% CWT on professional fees of individual taxpayers

The BIR extended the deadline for income recipients/payees to submit their "Income Payee's Sworn Declaration of Gross Receipts/Sales", together with the COR, to income payors/withholding agents for purposes of availing of exemption or 5% creditable withholding tax (CWT) from 6 April 2018 to 20 April 2018.

Likewise, the deadline for the submission by income payors/withholding agents of "Income Payee's Sworn Declaration of Gross Receipts/Sales", together with the List of Payees, to the BIR was extended from 20 April 2018 to 30 April 2018.

The BIR also clarified that 10% CWT on professional, promotional, and talent fees for services rendered by individuals shall also apply to VAT-registered individuals, regardless of the amount of professional, promotional, or talent fees paid to them.

(Revenue Regulations No. 14-2018, 5 April 2018)

Extension of deadline for updating of registration of existing VAT-registered individual taxpayers to non-VAT for purposes of availing of the 8% tax

The BIR extended the deadline for updating the registration of existing VAT-registered individual taxpayers with gross sales/receipts and other non-operating income in the preceding year not exceeding P3,000,000 qualified to avail of the 8% tax from 31 March 2018 to 30 April 2018.

(Revenue Regulations No. 15-2018, 5 April 2018)

Policies, guidelines, and procedures on the implementation of the post evaluation of CRM, POS machines, and other sales receipting system software

The BIR mandated all revenue officers to conduct post evaluation of cash register machines (CRM), point-of-sale (POS) machines, and other sales receipting system software, including the extraction of data from eSales Journal and Z-Reading from all the aforementioned machines/software.

The revenue officers shall conduct the post evaluation pursuant to a mission order (MO), letter to taxpayer addressed to the Head Office and Branches, and revenue special order (RSO). Pursuant thereto, the taxpayers should be wary of the following:

1. Machines used for business operations must be registered with the BIR and must have a Permit to Use (PTU) conspicuously attached to the machines
2. All POS machines being used must generate the corresponding eSales Journal while CRM must have the corresponding journal tapes installed on both rollers, including Sales Book, or its equivalent and capable of generating Z-reading
3. The "Training Mode" or "No Sale Transaction Mode" of the CRM, POS, and other machines being used in business operations should have been disabled

4. All Certificates of Accreditation shall be valid and in effect based on its Date of Issuance with staggered implementation pursuant to RMC 55-2016, to wit:

DATE OF ISSUANCE ON THE CERTIFICATE OF ACCREDITATION	VALID UNTIL
Prior to 31 July 2013	31 July 2018
1 August 2013 to 31 July 2014	31 July 2019
1 August 2014 to 31 July 2015	31 July 2020
1 August 2015 onwards	Five-year validity shall commence

Both primary and/or supplementary receipts/invoices must reflect the corresponding Date of Issuance and Validity Period as provided above.

5. All existing Final PTUs, including Provisional PTUs that were converted on or before 31 July 2015, shall have a validity period of five years effective 1 August 2015 pursuant to RMO No. 30-2015. Hence, no Provisional PTU must be issued after 31 July 2015; otherwise, the same shall be revoked.
6. All receipts/invoices generated from CRM, POS, and other Sales Receipting System Software must be in compliance with the provisions of Section 5 of RR 10-2015 as shown in the Post-Evaluation Guide Form.
7. Registered machines may be withdrawn from use, either by retirement or by sale, upon approval of the application for cancellation of PTU by the concerned LTS/RDO.
8. A taxpayer/user who has been issued a "Permit to Use Sales Machines" shall not have the machine undergo any major repairs, upgrade, change, modification, update, or removed from its specified location, without prior written notice and approval by the concerned LTS/RDO.
9. All taxpayers using CRMs, POS machines, and other sales receipting system software enrolled in the eSales System, with or without sales transaction, are required to submit a monthly sales report per machine pursuant to RMO 12-2012. This shall include a **roving machine**, which is defined as CRMs, POS machines, and other invoice/receipt generating machines controlled and managed by the taxpayer's head office and transferred for use in any of its branches, as the need arises. Prior to the deployment of a roving machine, a taxpayer should have an approved authorization from the concerned LTS/RDO having jurisdiction over the taxpayer's head office and shall likewise inform the RDO where the machine will be used.
10. Taxpayers with more than 999 branches with PTU issued to machines registered as roving machines in accordance with the workaround procedures prescribed under RMO 18-2015 shall have provided the Chief of Office of the LTAD/ELTRD/Large Taxpayer Division (LTD) Cebu/LTD Davao via email or letter with the list of branches that have more than 999 TIN branch codes subject for registration of the machines.

(Revenue Memorandum Order No. 15-2018, 14 March 2018)

Clarification on the basis of CGT and DST in a sales transaction of previously mortgaged real property

The BIR clarified that the basis for computation of capital gains tax (CGT) and DST in sales transaction of previously mortgaged real property as provided under Sections 24(D)(1) and 196 of the Tax Code, respectively, is (a) the gross selling price or the consideration contracted to be paid for such realty, or (b) the fair market value determined in accordance with Section 6(E) of the Tax Code, whichever is higher, and not the mortgage value.

(Revenue Memorandum Circular No. 19-2018, 19 March 2018)

Clarification on the applicable penalties on the filing of amended tax returns

The BIR clarified that the interest penalty of 20% and surcharge of 25% under the Tax Code shall apply to the additional tax due to be paid on the amended returns filed by taxpayers. With regard to the application of compromise penalties, since they are only suggested amounts of the BIR in the settlement of criminal liability and are consensual in nature, the payment of compromise penalties cannot be imposed or exacted on the taxpayer. Thus, in case the taxpayer refuses to pay the suggested compromise penalty, the violation shall be referred to the appropriate BIR office for the filing of a criminal case.

(Revenue Memorandum Circular No. 21-2018, 5 April 2018)

2017 ITR filing guidelines

The BIR issued the following updated guidelines in the filing, receiving, and processing of 2017 ITRs, including the required attachments, due on or before 16 April 2018 (since 15 April 2018 falls on a Sunday).

Manner of filing of ITRs

The following guidelines should be observed by taxpayers who are mandated to use eBIRForms and eFPS under existing issuances, and for those opting to file manually their income tax returns, in filing their income tax return and paying their income tax due.

Manner of filing	Where to file and pay	Required attachments	
A. Returns with payment			
1. Manual filing – The forms are available through the following: (a) RDO – for the BIR official printed forms	<ul style="list-style-type: none">• Authorized Agent Bank (AAB) located within the territorial jurisdiction of the RDO where the taxpayer is registered• In places where there are no AABs, the return shall be filed and the tax	<ul style="list-style-type: none">• AAB• RDO	Upon filing

<p>(b) BIR website – for the downloadable forms printed in A4 size paper</p> <p>(c) Computer-generated income tax return forms printed in A4 size paper from eBIRForms Facility</p>	<p>shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO.</p> <p>Note: All RDOs and AABs are required to accept BIR official printed forms or photocopied or electronic/computer-generated ITRs, in lieu of the officially printed forms, provided that the forms are originally filled out and signed by the taxpayer or his/her/its authorized representative.</p>		
2. eFPS Facility	<ul style="list-style-type: none"> • File and pay directly using eFPS facility for ITRs available thereon • eBIRForms System, for filing of ITRs not available in the eFPS facility and submit and pay using eFPS facility • File the ITRs through the eFPS facility and pay through the PhilPass facility of the BSP, for banks availing of the said payment facility 	Concerned Large Taxpayer Division (LTD)/RDO	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later
3. eBIRForms System	<p>Electronically file using eBIRForms Package and pay to any of the following:</p> <ul style="list-style-type: none"> • AAB located within the territorial jurisdiction of the RDO where the taxpayer is registered 	<ul style="list-style-type: none"> • AAB • RDO 	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later

	<ul style="list-style-type: none"> • In places where there are no AABs, the return shall be filed and the tax shall be paid with the concerned RCO under the jurisdiction of the RDO. • For electronic payment using the following facilities: <ul style="list-style-type: none"> ○ GCash mobile payment ○ Landbank of the Philippines (LBP) Linkbiz Portal, for taxpayers who have ATM account with LBP and/or for holders of Bancnet ATM/debit card ○ DBP Tax Online, for holders of Visa Master/Credit card and/or Bancnet ATM/debit card 	<ul style="list-style-type: none"> • RDO 	
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B. No payment returns

1. eFPS Facility	<ul style="list-style-type: none"> • File and pay directly using eFPS facility for ITRs available thereon • eBIRForms System, for filing of ITRs not available in the eFPS facility 	Concerned LTD/RDO	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later
2. eBIRForms System	Electronically file using eBIRForms Package	RDO	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later

In case of unavailability of both the eFPS and eBIRForms System, through an advisory issued on the BIR's website, the following guidelines shall be strictly observed by the mandated users of these systems:

Type of taxpayers	Where to file and pay	Required attachments	
		Where to submit	When to submit
With payment returns			
Non-LTS-registered taxpayers mandated to use the facilities of eFPS and eBIRForms	<ul style="list-style-type: none">• AAB located within the territorial jurisdiction of the RDO where the taxpayer is registered• In places where there are no AABs, the return shall be filed and the tax shall be paid with the concerned RCO under the jurisdiction of the RDO.• If tax payment will be made through the following electronic facilities:<ul style="list-style-type: none">○ GCash mobile payment○ Landbank of the Philippines (LBP) Linkbiz Portal, for taxpayers who have ATM account with LBP and/or for holders of Bancnet ATM/debit card○ DBP Tax Online, for holders of Visa Master/Credit card and/or Bancnet ATM/debit card <p>The ITR shall be filed with the RDO where the taxpayer is duly registered, together with a copy of documentary proof of payment generated by the</p>	<ul style="list-style-type: none">• AAB• RDO• RDO	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later

	above payment facilities.		
For LTS-registered taxpayers	The ITR shall be filed and the tax due shall be paid with any branch of LBP and DBP nearest to the LTS-registered taxpayer's head office.	Concerned LTS office where the taxpayer is duly registered	Upon filing
With no payment returns			
For both non-LTS and LTS-registered taxpayers	The ITR shall be filed with the LTS office/RDO where the concerned taxpayer is duly registered.	Concerned LTS office where the taxpayer is duly registered	Upon filing

In case of unavailability of only the eFPS facility, all taxpayers mandated to use the facilities of eFPS and eBIRForms shall file their returns through the eBIRForms facility, print the submitted income tax returns in triplicate for purposes of payment of the income tax due through the appropriate payment channels described above.

Finally, should the eFPS and/or eBIRForms system be subsequently available as per advisory posted on the BIR's website, all the mandated users shall re-submit their manually filed returns with the eFPS or eBIRForms system, as the case may be, within five days from the issuance of said advisory. On the other hand, all concerned RDOs retrieving the manually filed returns from the AABs shall ensure that no double encoding/uploading of information of filed returns with the Integrated Tax Returns (ITS) and/or electronic Tax Information System (eTIS) will occur.

Optional manual filing of "No Payment Returns"

The following individuals may file manually "No Payment Returns" with the RDO where they are registered using officially printed forms/photocopied or electronic/computer-generated returns:

- (1) Senior citizen (SC) or Persons with Disabilities (PWDs) filing their own return
- (2) Employees deriving purely compensation income from two or more employers, concurrently or successively, at any time during the taxable year, or from a single employer, the income of whom has been correctly subjected to withholding tax, but whose spouse is not entitled to substituted filing
- (3) Employees qualified for substituted filing under RR 2-98, as amended, but who opted to file for an ITR and are filing for purposes of promotion, loans, scholarship, foreign travel requirements, etc.

Printed copy of e-filed ITRs

Taxpayers who have electronically filed and/or paid ITRs using eBIRForms or eFPS without any attachments required need not submit printed copy of e-filed tax returns to the concerned LTS/RDO.

Required attachments to the ITR

The required attachments and accompanying schedules to the ITR shall be submitted to the LTD/RDO or AABs located within the territorial jurisdiction of the LTD/RDO where the taxpayer is registered.

Taxpayers who electronically filed their ITRs shall also submit a signed copy of the electronically filed ITR with Filing Reference Number (FRN) through the eFPS facility or an email Tax Return Receipt Confirmation and a copy of the electronically filed ITR through eBIRForms facility, together with the required attachments within 15 days from the deadline of filing or the date of electronic filing of the return, whichever comes later.

The Summary Alphalist of Withholding Tax (SAWT) using the Data Entry Module of the BIR shall be emailed to esubmission@bir.gov.ph, if applicable.

Rules on receiving and stamping of ITR

RDOs, LTS, and all AABs shall receive the ITRs by stamping the official receiving seal on the space provided for in three copies of the returns, whether or not the taxpayer is under the jurisdiction of a regional office with the Document Processing Division (DPD).

Any copies of the ITR in excess of three copies shall not be stamped "RECEIVED". However, in the case of corporations and other juridical persons, there shall be stamped "RECEIVED" in at least two extra copies of the audited financial statements (AFS) for filing with the Securities and Exchange Commission (SEC).

The attached AFS to the ITR shall be stamped received only on the page of the Audit Certificate, the Statement of Financial Position, the Statement of Comprehensive Income and/or its equivalent, and the Statement of Management's Responsibility. The other pages of the financial statements and its attachments need not be stamped "RECEIVED".

Optional disclosure of supplemental information

The disclosure of supplemental information under BIR Forms Nos. 1700 and 1701 is optional on the part of individual taxpayers filing ITRs covering and starting with calendar year 2017 due for filing on or before 16 April 2018.

(Revenue Memorandum Circular No. 24-2018, 13 April 2018)

Submission of certificate of nonresident foreign corporation buyers for VAT refund purposes

For VAT refund applications filed from 1 January to 31 March 2018, the certified true copy of the Certificate of Incorporation of the nonresident foreign corporation-buyers of services must be submitted within 30 days from 31 March 2018, or on or before 30 April 2018.

Failure to submit a certified true copy of Certificate of Incorporation on or before 30 April 2018 shall mean non-compliance with submission of complete documents in support of a claim for VAT refund.

(BIR Tax Advisory No. 015294, 27 March 2018)

Release of eBIRForms version 7.0

The BIR released the enhanced eBIRForms version 7.0 (v7.0), which contains the following enhancements:

1. Added BIR Form No. 1601EQ – Quarterly Remittance Return of Creditable Income Taxes Withheld (Expanded)
2. Added BIR Form No. 1601FQ – Quarterly Remittance Return of Final Income Taxes Withheld
3. Frequency of filing of Percentage Tax Return from Monthly to Quarterly (From BIR Form No. 2551M to BIR Form No. 2551Q)
4. Resolved incorrect computation of documentary stamp tax with alphanumeric tax code DS120

The eBIRForms v7.0 may be downloaded in the BIR website.

Availability of BIR Forms 1601EQ and 1601FQ through eBIRForms

The BIR informed taxpayers of the availability of BIR Forms 1601EQ and 1601FQ via eBIRForms v7.0. Pursuant to Section 58(A) of the Tax Code, the quarterly remittances of expanded and final withholding taxes are due on or before the last day of the month following the close of the quarter when the withholding was made.

Likewise, the ATCs and tax rates in the enhanced old form of Quarterly Percentage Tax Return (BIR Form 2551Q) were also made available in v7.0 of the eBIRForms Package.

A separate notice will be issued to eFPS filers/users once the forms are made available in the eFPS facility.

(BIR Tax Advisory No. 015775, 13 April 2018)

Court Decisions

VAT refund supported by out-of-period receipts

In the case of a claim for refund of excess unutilized input VAT attributable to zero-rated sales, the input VAT should be supported by VAT official receipts or invoices dated within the period of claim.

In the instant case, the taxpayer-refund claimant filed a claim for refund of its excess unutilized input VAT attributable to its zero-rated sales supported by VAT official receipts dated outside the period of claim. The taxpayer-refund claimant argued that RMC 42-2003 specifically allows out-of-period claims provided the following requirements are complied with: (a) the VAT invoices/receipts are issued within the taxable year that the claim was made; (b) the VAT invoices/receipts cover transactions for the same taxable year; (c) they have not been claimed in any other quarter of the same or different taxable year; and (d) the invoices/receipts are not claimed in any period ahead of the actual date of the said invoices/receipts.

The CTA cited the decision by the Court of Tax Appeals En Banc in a recent case involving the same parties and issues but covering a different taxable period, where it held that RMCs (such as RMC No. 42-03), as administrative issuances, have the force and effect of law, and benefit from the same presumption of validity and constitutionality enjoyed by statutes. However, according to the CTA En Banc, BIR circulars and rulings cannot prevail over the clear and plain language of the Tax Code. In this regard, Section 110(2) provides that the creditability of the pertinent input VAT against the output VAT as to the purchaser of goods or properties must be made upon consummation of the sale; as to the importer, upon payment of the VAT; and as to the purchaser of services, lease or use of properties, and should not to be made at any other time.

Under Section 114(A) of the Tax Code, the filing of the Quarterly VAT Return, which reports the gross sales or receipts, and the payment of the VAT would come at a later date than the actual crediting of the input VAT since such crediting can be made only upon such filing and payment. However, considering that Section 110(2) of the Tax Code is clear as to when the pertinent input VAT shall be creditable, it should not go beyond the month or quarter during which the input VAT was incurred or paid, as the case may be. Hence, the CTA held that even when RMC No. 42-03 allows out-of-period claims of input VAT, the same cannot be adhered to, because it contravenes Section 110(2) in relation to Section 114(A) of the Tax Code.

(Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA Case No. 8065, 1 March 2018)

Invoicing requirements on claims for VAT refund

Section 113 of the Tax Code provides the invoicing requirements and the information contained in the VAT invoice or VAT official receipt to properly report sales or validly claim VAT from purchases, as the case may be.

In the instant case, a domestic corporation registered with the Board of Investments filed a claim for refund or issuance of a tax credit certificate (TCC) on its unutilized excess input VAT. However, the BIR disallowed a portion of its input VAT being claimed for refund for not being properly substantiated by VAT invoices or receipts as prescribed by the Tax Code and in relation to RR 16-2005, as amended.

The taxpayer argued that the alleged non-compliance pertains to information in the invoices/official receipts issued by its suppliers on its domestic purchase of goods and services. It further countered that it should not be penalized, in the form of disallowance of its claim for refund or credit of input VAT, for the non-compliance of its suppliers on the invoicing requirements required under the law and relevant rules and regulations.

The CTA cited the Microsoft case (G.R. No. 180173, 06 April 2011) wherein the Supreme Court held that the taxpayer claiming a VAT input tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the Tax Code and the BIR's revenue regulations under which such privilege of credit or refund is accorded. Further, in the case of Coral Bay Nickel Corporation, the CTA En Banc held that the taxpayer had the right to request its supplier to issue a compliant receipt/invoice.

Thus, in the case at hand, the CTA held that the taxpayer should have requested its suppliers to issue compliant invoices/receipts or correct its non-compliant invoices/receipts and thereafter check whether the insertions/alterations were properly validated or countersigned by the authorized signatory.

(WNS Global Services Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8574, 26 March 2018)

Offshore services not subject to VAT

Section 229 of the Tax Code allows the recovery from the BIR of the following:

1. Any national internal revenue taxes alleged to have been erroneously or illegally assessed or collected
2. Any penalty claimed to have been collected without authority
3. Any sum alleged to have been excessively or in any manner wrongfully collected

In the instant case, a domestic corporation engaged in the business of providing automation and power products, systems, and services entered into contracts with the National Grid Corporation of the Philippines for certain construction projects in which a portion of the contracts will be made offshore. The taxpayer, however, subjected its gross receipts from offshore activities to 12% VAT; thus,

it requested for a refund for the erroneously paid and remitted VAT to the BIR. The BIR countered the taxpayer's contentions by saying that the services rendered by the latter do not fall within the VAT-exempt transactions under Section 109 of the Tax Code.

The CTA held that a refundable amount of tax may arise not only from tax-exempt entities or transactions, but also from those not covered by provisions of law imposing taxes, which is found in Section 229 of the Tax Code. The CTA also had the chance to define "erroneous or illegal tax" as one levied without statutory authority, or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which in some other similar respect is illegal. Simply put, a tax assessed or collected without legal basis may be refunded.

Thus, considering it was determined that the output VAT paid to the BIR was erroneously remitted, the CTA held that the taxpayer-refund claimant is entitled to claim a refund its erroneously paid tax pursuant to Section 229 of the Tax Code.

(Commissioner of Internal Revenue vs. ABB, Inc., CTA EB No. 1501, 13 March 2018)

Application of the doctrine of apparent authority

In the instant case, the taxpayer is a domestic corporation engaged in the business of providing cable/community antennae television (CATV) systems and networks and multi-media training systems and other related services in the Philippines and other countries, which was assessed local business tax (LBT) deficiency by the City of Makati. The case was already decided by the Regional Trial Court (RTC) which held that the taxpayer's acts and/or inaction effectively clothed the "receiver" with apparent authority to receive documents for and on its behalf, and that it also ratified the previous act of said "receiver" in receiving the Letter of Authority (LOA).

The taxpayer submitted to the CTA that the RTC erred in applying the doctrine of apparent authority because the taxpayer allegedly has never held out to the public, or made any representation to the City of Makati, that the "receiver" was its authorized representative. The City of Makati, on the other hand, argued that the taxpayer did not repudiate the claimed improper service in the transmittal letter. As a result, this has clothed the taxpayer's "receiver" with apparent authority to receive the Notice of Assessment and Final Notice of Assessment on the taxpayer's behalf.

In addition to the arguments of the parties, testimonies were gathered from the "receiver" of the notices and the utility worker of City of Makati who served such notices. Gleaning therefrom, the CTA was perplexed on how the City of Makati assumed the apparent authority to receive the notices by the "receiver" when the latter and the security guard to whom the utility worker spoke with denied that they have the authority to receive such notices.

The CTA consistently ruled that in balancing the scales between (1) the State's power to tax and the right to prosecute perceived transgressors of the law, and

(2) the constitutional rights of a citizen to due process of law and the equal protection of the laws, the scales must tilt in favor of the latter, for a citizen's right is amply protected by the Bill of Rights. Thus, while taxes are the lifeblood of the government, the laws related to its imposition has its limits, and must be exercised reasonably and in accordance with the prescribed procedure.

For the City of Makati's failure to exercise ordinary care and prudence in serving the assessment notices, the taxpayer was deprived of the opportunity to contest the deficiency LBT assessment against it. Hence, the same was void for being in violation of taxpayer's right to due process.

(Destiny Cable, Inc. vs. The City of Makati and Hon. Nelia A. Barlis, in her capacity as City Treasurer, CTA AC No. 182, 14 March 2018)