

TMAP TAX UPDATES

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COURT OF TAX APPEALS DECISIONS

When “retirement pay” is deemed as tax-exempt separation pay

Commissioner of Internal Revenue vs. Ma. Jethra B. Pascual, CTA EB No. 2400, promulgated 05 May 2022

After an employee was terminated due to redundancy, she was given separation pay of 1.5 months per year of service, and “retirement pay” that was calculated based on the employer’s retirement plan rules.

Considering that the employee was just 46 years old at the time of termination, the employer did not treat the “retirement pay” as tax-exempt since Section 32(B)(6)(a) of the Tax Code requires the employee to be at least 50 years old at the time of retirement. As a result, the employer subjected the “retirement pay” to withholding taxes on compensation (WTC) amounting to ₱7.9m and remitted the same to the BIR.

Subsequently, the employee filed with the BIR a claim for refund of the WTC withheld from her “retirement pay” on the ground that the same constituted separation pay due to redundancy and therefore, was exempt from income tax/WTC under Section 32(B)(6)(b) of the Tax Code which provides that any amount received by an employee terminated for any cause beyond his/her control shall be excluded from taxable income.

Since the claim was not acted upon by the BIR, the employee elevated the case to the Court of Tax Appeals (CTA). According to the BIR, the employee was not entitled to refund because the latter already admitted during direct examination before the CTA that she received her “retirement pay” in addition to separation pay.

The CTA granted the WTC refund. It found that based on the employer’s retirement plan, employees are entitled to involuntary separation benefits and that the subject benefit that accrued to the employee under the retirement plan was a consequence of separation due to redundancy.

It cited the case of *Mateo vs. Coca-Cola Bottlers Phils., Inc.* (G.R. No. 226064) where the Supreme Court ruled that the fact that separation pay was computed in accordance with the formula for computing retirement pay does not convert the character of the separation pay into a retirement benefit. Applying this rule, the CTA held that despite the erroneous designation of the benefit as “retirement pay”, the same is not taxable since it was received as a consequence of redundancy, not retirement. The CTA noted that BIR was focused too heavily on the benefit’s designation as “retirement pay” that it ignored the ultimate reason why such benefit was awarded to the employee in the first place.

When the LOA coverage does not match the taxpayer’s taxable year

Sofgen Holdings Limited – Philippine Branch vs. Commissioner of Internal Revenue, CTA Case No. 9691, promulgated 21 April 2022

The BIR issued a Letter of Authority (LOA) that covered the period 1 April 2015 to 31 March 2016. The taxpayer argued that said LOA is void since the taxpayer follows the calendar year as its taxable year.

According to the Court of Tax Appeals, the taxpayer was correct. One of the requirements of a valid LOA is that it should cover a taxable period not exceeding one taxable year. Since the subject LOA is for the period 1 April 2015 to 31 March 2016, it actually covers two taxable years of the taxpayer, namely, taxable year 1 January 2015 to 31 December 2015 and taxable year 1 January 2016 to 31 December 2016. Therefore, the LOA is void.

BUREAU OF INTERNAL REVENUE

Taxable base for excise taxes on automobiles

Revenue Memorandum Circular No. 63-2022, issued 28 April 2022

The BIR clarified the proper taxable base in the computation of excise tax for automobiles in the Manufacturer’s/Assembler’s or Importer’s Sworn Statement pursuant to Sections 4 and 5 of Revenue Regulations No. 25-2003. For this purpose, several scenarios were provided in the RMC to illustrate the required procedure in determining the tax base for excise tax and value-added tax computations.

Online registration via Central Business Portal

Revenue Memorandum Circular No. 61-2022, issued 28 April 2022

The BIR announced the expansion of the Central Business Portal (CBP) in the processing of business registrations in relation to RMC No. 15-2021. Hence, new business taxpayers organized as single proprietors, corporations or partnerships can already process their BIR registration online through the CBP.

The CBP is an online platform that attempts to streamline and integrate the business registration processes of various government agencies such as the SEC, DTI, BIR, SSS, PhilHealth, HDMF or Pag-IBIG Fund and selected local government units in Metro Manila. It was developed pursuant to the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 in order to establish a central system to receive applications and capture data.

The following guidelines shall be observed by CBP applicants:

1. They may opt to pay the annual registration fee (ARF) and loose documentary stamp tax either electronically or manually;
2. Those who pay online may immediately print on A4 size paper (through the CBP) their electronic Certificates of Registration (COR) with Quick Response (QR) Code;
3. The electronic COR shall have the same purpose as the signed hard copy and shall be posted together with the duly validated proof of payment of the ARF in the principal place of business;
4. Taxpayers who pay manually shall complete their business registration with the Revenue District Office (RDO) by presenting the printed copy of certain CBP-generated documents together with the Checklist of Requirements;
5. All taxpayers who registered through the CBP shall immediately proceed to the RDO indicated in the electronic COR in order to complete registration and purchase BIR Printed Receipts/Invoices or secure an Authority to Print receipts/invoices;
6. They shall register books of accounts on or before the deadline for filing of the initial quarterly income tax return (ITR) or annual ITR, whichever comes earlier; and
7. Any correction on the required tax returns or tax types on the electronic COR shall require updates to be filed with the concerned RDO.

Data Sharing Agreement between the BIR and the PSA

Revenue Memorandum Circular No. 53-2022, issued 22 April 2022

The BIR published the Data Sharing Agreement between the BIR and the Philippine Statistics Authority (PSA). Said Agreement aims to ensure secure and efficient data sharing pursuant to Republic Act No. 10173 and National Privacy Commission Circular No. 16-02.

Significantly, the Agreement allows the BIR to request from the PSA information such as dates or birth and/or death of a specific individual and the identities, addresses and respective dates of birth and/or death of the latter's legal heirs.

Clarifying the filing and payment of franchise tax by PAGCOR licensees

Revenue Memorandum Circular No. 52-2022, issued 22 April 2022

Last March, the BIR issued RMC No. 32-2022 regarding the tax treatment of PAGCOR, its licensees and its contractees. Among others, the RMC No. 32-2022 clarified that the 5% franchise tax is directly payable by the licensee to the Revenue District Office where it is registered and shall be remitted using BIR Form No. 2553, indicating therein the Alphanumeric Tax Code (ATC) OT 010.

In this regard, the BIR further clarified that said BIR Form No. 2553 shall be filed and the corresponding franchise tax shall be paid within 25 days after the end of each taxable quarter.

Amending certain Q&A in RMC No. 24-2022

Revenue Memorandum Circular No. 49-2022, issued 20 April 2022

In light of taxpayer requests subsequent to the deferment of RR No. 9-2021 pursuant to RR No. 15-2021, the BIR amended some of the answers in the Question and Answer (Q&A) items in RMC No. 24-2022. Here are the amended Q&As:

1. Q&A No. 10

Transactions that have been considered by the seller as VAT zero-rated for the period 1 July 2021 to 9 December 2021 shall remain VAT zero-rated. However, for those affected taxpayers that have declared their transactions as subject to VAT, the options laid down in Q&A No. 8 and 9 of RMC No. 24-2022 may be followed.

2. Q&A No. 17

Entitlements of registered non-export locators (prior to CREATE Act) or domestic market enterprises (DMEs) located in Ecozones and Freeport Zones differ depending on whether they were registered before or during the effectivity of the CREATE Act.

In this light, the following rules shall apply to DMEs' sales of goods and services:

- a. If the seller was registered prior to the CREATE Act
 - 1) If the non-export locator is under the 5% gross income tax (GIT) regime, it is a VAT-exempt entity. Hence, its sales within the Ecozones or Freeport Zones and in the customs territory are VAT-exempt to the extent of the registered activity. Meanwhile, input VAT passed on by VAT-registered suppliers shall form part of costs of expenses.
 - 2) If the non-export locator is under the income tax holiday (ITH) regime, sales to registered export enterprises are subject to the VAT zero-rate if the goods and services are directly and exclusively used in the registered project or activity of the latter.
 - 3) If the non-export locator is under the ITH regime, sales to non-export locators or DMEs located inside Ecozones and Freeport Zones as well as to enterprises in the customs territory are subject to VAT.
- b. If the seller was registered during the effectivity of the CREATE Act
 - 1) Sales to registered export enterprises are subject to the VAT zero-rate if the goods and services are directly and exclusively used in the registered project or activity.
 - 2) Sales to DMEs within the Ecozones and Freeport Zones as well as to enterprises in the customs territory are subject to VAT

3. Q&A No. 31

Registered export enterprises whose sales are generated only from their registered activity and have shifted from the ITH to the 5% GIT or special corporate income tax (SCIT) regimes shall, within 2 months from the expiration of their ITH, change their registration status from VAT to non-VAT.

Likewise, registered export enterprises enjoying the 5% GIT but are still VAT-registered at the time the CREATE Act took effect shall, within 2 months from the effectivity of RMC No. 49-2022, change their registration from VAT to non-VAT.

However, taxpayer with activities other than those registered with the Investment Promotion Agency that are subject to 12% or 0% VAT shall remain VAT-registered.

4. Q&A No. 33

Prior BIR approval needs to be secured by local suppliers of registered enterprises for their sales to be accorded VAT zero-rating. However, for sales transactions that are qualified for zero-rating but without an approved application for VAT zero-rating, prior application may not be required until 9 March 2022 or the effectivity of RMC No. 24-2022, subject to the three documentary requirements in Q&A No. 37.

Renewal of Certificate of Tax Exemption of cooperatives

Revenue Memorandum Circular No. 48-2022, issued 20 April 2022

Pursuant to Section 232 (Keeping of Books of Accounts) of the Tax Code, as amended by Section 71 of the TRAIN Law, a cooperative registered with the Cooperative Development Authority whose annual gross sales, earnings or receipts do not exceed the threshold of ₱3m, shall not be required to submit audited financial statements for purposes of renewing its Certificate of Tax Exemption.

Deadline of submission of attachments to the 2021 annual ITR

Revenue Memorandum Circular No. 46-2022, issued 18 April 2022

The BIR clarified that the deadline for submission of attachments to the 2021 annual income tax return (ITR) is on or before 31 May 2022, whether the electronically filed annual ITR is an original or an amended return. The attachments shall be submitted either manually to the concerned Revenue District Office (RDO) or Large Taxpayers Division, or electronically through the Electronic Audited Financial Statements (eAFS) System.

Manual filers of the 2021 annual ITR shall file and pay the corresponding tax manually to any Authorized Agent Bank or to the Revenue Collection Officers of any RDO on or before 18 April 2022. eBIRForms and eFPS filers shall follow the guidelines set forth in RMC No. 44-2022.

Application for revalidation of tax credit certificates

Revenue Memorandum Order No. 26-2022, issued 29 April 2022

The BIR has issued its policies, guidelines and procedures in applications for revalidation of tax credit certificates (TCCs). The policies include the following:

- All applications for TCC revalidation shall be filed with the Miscellaneous Operations Monitoring Division under the Collection Service of the National Office.
- All applications shall be submitted any time before the expiration of the validity period of the original TCC.
- The revalidation shall be accomplished through the issuance of a new TCC reflecting the unutilized amount.
- No revalidated TCC shall be issued unless the concerned offices have certified that the holder has no outstanding tax liability, *i.e.*, a final and executory assessment.
- Issued TCCs that remain unutilized after 5 years from date of issue shall be considered invalid unless an application for revalidation was timely filed.
- Any outstanding tax liability or valid open stop filer cases shall be settled with the concerned Revenue District Office within 2 years from the date of application for TCC revalidation. Otherwise, the application shall be denied.