



## Tax News

### Interpret & Integrate

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## BIR Issuances

### Use of non-thermal paper for all CRMs and POS machines and other invoice/receipt generating machine/software

All taxpayers using cash register machines/point-of-sales (CRM/POS) machines and other invoice/receipt generating machine/software have the option to use the type of paper depending on their business requirements, subject to the retention and preservation of accounting records as mandated by the Commissioner of Internal Revenue (CIR).

The buyer/customer who needs proof of payment to be able to claim for expense for income tax purposes and input value-added tax (VAT) for VAT purposes may return the issued tape receipt to the seller and request for issuance of a manual invoice/receipt.

The sales generated from CRM/POS machines where tape receipts issued were replaced by manual invoice/receipt shall be deducted from the sales to be reported in the e-sales system of the BIR. This deduction shall be reflected as an adjustment in the CRM sales book/back-end report.

The returned tape receipt shall be attached to the duplicate copy of the manually issued invoice/receipt and shall be the basis for adjusting the sales. However, the sales that were replaced with

manual invoice/receipt shall still be included but separately indicated in the Summary List of Sales (SLS) required to be submitted by VAT-registered taxpayers.

*(Revenue Regulations No. 16-2018, 25 May 2018)*

### **Revised policies and procedures on the processing of TCCs for cash conversion**

The Bureau of Internal Revenue (BIR) issued the following revised guidelines, policies, and procedures, among others, in the processing of request for conversion of Tax Credit Certificate (TCC) into cash refund:

1. All requests for cash conversion shall be filed with the office that originally processed/investigated the claim for issuance of TCC, except in the following cases:
  - a. Claims filed with the Revenue District Offices (RDOs) but were subjected to further review and approval by the concerned offices/officials in the National Office, which shall be filed with the Tax Audit and Review Division (TARD)
  - b. Revalidated TCCs, which shall be filed with the Miscellaneous Operations Monitoring Division (MOMD) of the Collection Service (CS) for revalidated TCCs
2. The designated revenue officials shall recommend the approval/disapproval of the requests for cash conversion of TCCs.
3. The original copy of the TCC must be surrendered to the concerned processing office as part of the supporting documents for cash conversion.
4. No cash conversion shall be allowed for TCCs issued under the following cases:
  - a. TCC issued as a result of the availment of incentives granted pursuant to special laws for which no actual payment was made
  - b. Previously transferred or assigned TCCs prior to Revenue Regulations No. (RR) 14-2011
5. TCCs issued that remain unutilized five years from date of issue, unless revalidated before the end of the fifth year, shall not be allowed to be converted into cash.
6. All pending applications for conversion into cash refund of TCCs filed prior to the issuance of this Revenue Memorandum Order (RMO) shall be processed in accordance with the guidelines, policies, and procedures prescribed in this RMO.

Please refer to RMO 19-2018 for further guidance and the documents required for the processing and approval of requests for conversion of TCC into cash refund.

*(Revenue Memorandum Order No. 20-2018, 3 May 2018)*

### **How to avail of 8% income tax rate option for self-employed individuals and professionals**

The BIR issued the following policies, guidelines, and procedures in availing of the 8% income tax rate option for individuals earning from self-employment/business and/or practice of profession relative to the implementation of Republic Act (RA) No. 10963, otherwise known as Tax Reform for Acceleration and Inclusion (TRAIN) Act.

#### *Scope of 8% income tax rate option*

The following individual taxpayers are qualified to avail of the 8% income tax rate option:

- a. Individuals (single proprietor, professional, or mixed-income earner) earning from self-employment and/or practice of profession
- b. Taxpayers whose gross sales/receipts and other non-operating income did not exceed the P3,000,000 VAT threshold during the taxable year
- c. Taxpayers registered and subject only to percentage tax under Section 116 of the National Internal Revenue Code of 1997, as amended (Tax Code), or taxpayers exempt from VAT or other percentage taxes
- d. Must have signified their intention to elect the 8% income tax rate through any of the enumerations of the RMO as listed below

On the other hand, the 8% income tax rate option is not available to the following individual taxpayers and, correspondingly, shall be taxed based on the graduated income tax rates prescribed under Section 24 (A)(2)(a) of the Tax Code:

- a. Purely compensation income earners
- b. VAT-registered taxpayers, regardless of the amount of gross sales or receipts and other non-operating income
- c. Taxpayers exempt from VAT or other percentage taxes whose gross sales/receipts and other non-operating income exceed the P3,000,000 VAT threshold during the taxable year
- d. Taxpayers who are subject to Other Percentage Taxes under Title V of the Tax Code, except those subject under Section 116 of the same Title
- e. Partners of a General Professional Partnership (GPP)
- f. Individuals enjoying income tax exemption

An individual person who is exempted from income tax, such as those registered as Barangay Micro Business Enterprises (BMBEs), is bound to the choice that it made to avail itself of the privilege under RA 9178 for the entire period of its registration with the BIR pursuant to Department Order No. 17-04. The BMBE cannot avail of both the BMBE status (exempted from income tax, but liable to other internal revenue tax) and the 8% income tax rate option (in lieu of the graduated income tax rates and percentage tax) at the same time, since taxpayers are not allowed to avail of double or multiple tax exemption under different laws, unless specifically provided by law.

#### *Election of the 8% income tax rate option*

At the beginning of each taxable year, all individuals shall be subjected to graduated income tax rates as provided under Section 24 (A)(2)(a) of the Tax Code. For self-employed individuals who opted to avail of the 8% income tax rate, this rate is effective only for the current taxable year when the election was made. These individuals shall be automatically subjected to the graduated income tax rates at the beginning of the succeeding taxable years. Thus, the availment of the 8% income tax rate option is required to be signified and selected every taxable year, if the taxpayer wishes to be covered by such income tax rate.

Self-employed individuals shall signify the intention to elect the 8% income tax rate in filing any of the following:

1. New Business Registrant
  - a. Upon registration using BIR Form 1901 (Application for Registration for Self-Employed and Mixed-Income Individuals, Estates/Trusts) and/or 1701Q (Quarterly Income Tax Return for Individuals, Estates, and Trusts)
  - b. On the initial quarter return (BIR Form 2551Q [Quarterly Percentage Tax Return] and/or 1701Q) of the taxable year after the commencement of a new business/practice of profession
  
2. Existing Individual Business Taxpayers
  - a. Filing of BIR Form 1905 (Application for Registration Information Update) at the beginning of the taxable year, to end-date the form type of quarterly percentage tax, provided that an option to avail of the 8% income tax rate shall be selected in filing the initial quarterly income tax return for income tax purposes
  - b. 1<sup>st</sup> Quarterly Percentage Tax Return
  - c. 1<sup>st</sup> Quarterly Income Tax Return

Otherwise, the graduated income tax rates shall apply.

Once elected, the income tax rate option shall be irrevocable, and no amendment of option shall be made for the taxable year it has been made.

#### *Requirements for individuals availing of the 8% income tax rate*

A self-employed individual who is qualified and who availed of the 8% income tax rate option is:

- a. Required to file the Quarterly Income Tax Return, unless exempted by any revenue issuances
- b. Required to file the Annual Income Tax Return [Financial Statement (FS) is not required to be attached]
- c. Not required to file the Quarterly Percentage Tax Return
- d. Required to signify the intention to avail of the 8% income tax rate every taxable year
- e. Required to maintain books of accounts and issue receipts/invoices

A taxpayer shall automatically be subjected to graduated income tax rates, liable to VAT prospectively, and is required to attach an audited FS in filing the annual income tax return, if the gross annual sales and/or receipts exceed the amount of P3,000,000 anytime during the current taxable year when the option was made. The taxpayer shall immediately update his/her registration within the month following the month s/he exceeded the VAT threshold to reflect the change in tax profile from non-VAT to a VAT taxpayer. Percentage tax shall be imposed from the beginning of the year until taxpayer is liable to VAT.

#### *Tax base in imposing the applicable individual income tax rate*

The taxable income for individuals earning income from self-employment/practice of profession shall be based on:

- a. The net taxable income, if taxpayer opted to be taxed at graduated rates or has failed to signify the 8% income tax rate option
- b. The gross sales/receipts and other non-operating income in excess of P250,000, if the 8% income tax rate is availed by self-employed individuals earning income from purely self-employment and/or practice of profession. However, in the case of a mixed-income earner, the taxable income is based on the gross sales/receipts and other non-operating income without the P250,000 deduction, if the option availed is the 8% income tax rate, since it is already incorporated in the first tier of the graduated income tax rates applicable to compensation income.

(Note: For a mixed-income earner, the excess of the P250,000 over the actual taxable compensation income is not deductible)

against the taxable income from business/practice of profession under the 8% income tax rate option.)

#### *Registration information update of individual taxpayers*

1. A non-VAT individual taxpayer who availed of the 8% income tax rate and subsequently exceeded the P3,000,000 threshold during the taxable year shall be liable to pay income tax under the graduated income tax rates. The income tax shall be computed under the graduated income tax rates and shall be allowed a tax credit for the previous quarter/s income tax payment/s under the 8% income tax rate option. The taxpayer shall be required to update their registration immediately within the month following the month they exceeded the VAT threshold. The taxpayer shall automatically be liable to VAT prospectively starting the first day of the month following the month when the threshold is breached. The taxpayer shall pay the required percentage tax covering the sales/receipts and other non-operating income, from the beginning of the taxable year or commencement of business/practice of profession until the time the taxpayer becomes liable to VAT.
2. A VAT-registered person whose gross sales and/or receipts for three consecutive years did not exceed the amount of P3,000,000 may update their registration from VAT to non-VAT in order to qualify and avail of the 8% income tax rate option, on or before the first quarter of a taxable year, following rules and regulations on registrations, updates, verification, and the inventory and cancellation of VAT invoices/receipts.

#### *Transitory Provision*

Pending the enhancement of the Electronic Tax Information System - Taxpayer Registration System, RDOs under Revenue Region No. 8 – Makati City shall use the Integrated Tax System for registration and updates of individuals availing of the 8% income tax rate option under Section III(B) of the RMO.

*(Revenue Memorandum Order No. 23-2018, 21 May 2018)*

#### **Guidelines for monitoring, identifying, and including taxpayers in the list of Top Withholding Agents**

The BIR issued the following guidelines in identifying and classifying taxpayers as Top Withholding Agents (TWAs):

1. TWAs shall include the following:
  - a. Existing top taxpayers that were classified and duly notified by the Commissioner of Internal Revenue (CIR) as any of the following unless previously de-classified as such or had already ceased business operations:

- A large taxpayer under RR 1-98, as amended
  - Top 20,000 private corporations under RR 6-2009
  - Top 5,000 individual taxpayers under RR 6-2009
- b. Taxpayers newly identified and included as Medium Taxpayers, and those under the Taxpayer Account Management Program (TAMP)
1. The existing top taxpayers as mentioned above shall still be included in the initial publication of TWAs, in addition to the taxpayers identified as Medium Taxpayers and those under the TAMP, if they were not previously classified as either top 20,000 private corporations or top 5,000 individual taxpayers.
  2. On a semestral basis, not later than every April 30 and October 31 of each calendar year, the concerned RDOs, through their concerned Regional Directors, shall submit to the ACIR, Collection Service, Attention: Chief, Miscellaneous Operations Monitoring Division (MOMD), a list of taxpayers recommended for inclusion in, or deletion from, the TWAs list, if any.
  3. Based on the said semestral lists recommended by the regional offices, the Chief, MOMD shall consolidate and evaluate all the recommended lists and submit the same to the ACIR, Collection Service not later than every May 31 and November 31 of each calendar year, for subsequent approval by the CIR.
  4. The ACIR, Collection Service, through the Chief, MOMD, shall be responsible for the publication of the CIR-approved list of TWAs and the regular semestral lists of TWAs for inclusion or deletion in a newspaper of general circulation not later than every June 15 and December 15 of each calendar year with the complete names of taxpayers and RDOs/LTS Divisions where they are duly registered, as well as for the posting of the same in the BIR website and issuance of a Revenue Memorandum Circular (RMC).
  5. While the publication of the CIR-approved list is sufficient notice to the concerned TWAs pursuant to the provisions of RR 11-2018, the concerned RDOs may prepare and personally serve individual written notices of inclusion/deletion to the concerned TWAs under their respective jurisdictions. The obligation of the concerned TWAs to withhold the 1% and 2% creditable withholding taxes on goods and services, respectively, shall commence on the first day of the month following the month of publication (i.e., July 1 and January 1, respectively, of each calendar year).
  6. A complete and updated list of TWAs shall be maintained in the BIR's website. The ACIR, Collection Service, through the Chief, MOMD, shall ensure that the said list is immediately updated simultaneous to the semestral publication of newly included/deleted TWAs.
  7. The MOMD shall maintain a master list of TWAs.

### *Transitory provisions*

1. All taxpayers who are classified as large taxpayers, top 20,000 private corporations, or top 5,000 individuals that have not been delisted prior to the effectivity of RR 11-2018 shall remain TWAs.
2. On or before 30 June 2018, a list of taxpayers qualified as TWAs shall be submitted, in soft and hard copies, by the concerned revenue offices to the ACIR, Collection Service, Attention: Chief, MOMD.
3. The Chief, MOMD shall consolidate and sort the validated and updated lists of top 20,000 private corporations, top 5,000 corporations, TAMP taxpayers, as well as the Medium Taxpayers, which were already previously submitted to the MOMD.
4. The Chief, MOMD shall submit three lists of TWAs, composed of: 1) List of Existing TWAs; 2) List of Additional TWAs; and 3) List of TWAs for Deletion, to the ACIR, Collection Service for subsequent approval by the CIR on or before 31 August 2018.
5. The CIR-approved lists of TWAs shall be published in a newspaper of general circulation and posted in the BIR's website. The same shall also be disseminated through the issuance of an RMC.

*(Revenue Memorandum Order No. 26-2018, 5 June 2018)*

### **Amended documentary requirements for new business registrants**

The BIR amended the documentary requirements of new business registrants in line with the Data Privacy Act of 2012 and in compliance with the Ease of Doing Business, as follows:

1. Removal of books of accounts in securing Certificate of Registration (COR) and Authority to Print (ATP). Books of accounts shall instead be registered within 30 calendar days from the date of business registration.
2. The following shall be required in case the taxpayer assigns an authorized representative to transact with the BIR on the taxpayer's behalf:
  - a. For individual
    - Special Power of Attorney (SPA), and
    - Identification card (ID) of the authorized person
  - b. For non-individual
    - Board Resolution indicating the name of the authorized representative,
    - Secretary's Certificate, and
    - ID of the authorized person

*(Revenue Memorandum Circular No. 30-2018, 3 May 2018)*

## Availability of the newly revised BIR Form No. 1701Q

The BIR issued the revised BIR Form 1701Q (Quarterly Income Tax Return) January 2018 (ENCS) pursuant to the implementation of the TRAIN Law.

### 1. Manual and eBIRForms filers

The newly revised BIR Form No. 1701Q [*refers to the new BIR Form No. 1701Q (Quarterly Income Tax Return) as revised due to the implementation of the TRAIN Law with revision date of January 2018 (ENCS)*] is available under the BIR Forms-Income Tax Return section of the BIR website ([www.bir.gov.ph](http://www.bir.gov.ph)). Thus, taxpayers may download the PDF format of BIR Form 1701Q, print it, then fill out the applicable items/fields.

In case a taxpayer paid the income tax due for the first quarter using the old return, the taxpayer still needs to file the newly revised BIR Form 1701Q and mark the return as an amended return. This is to determine whether or not the taxpayer is availing of the 8% income tax rate based on the gross sales/receipts and other non-operating income in lieu of graduated rates under Section 24(A)(2)(a) and percentage tax under Section 116 of the National Internal Revenue Code of 1997, as amended (Tax Code). The payment/s made shall be reflected in item no. 59 (Tax Paid in Return Previously Filed, if this is an Amended Return) of the newly revised BIR Form 1701Q.

### 2. Electronic Filing and Payment System (eFPS) filers

The newly revised BIR Form 1701Q is not yet available for eFPS filers.

### Workaround procedures

#### 1. Manual and eBIRForms filers

If the computation resulted in a payable, manual filers shall pay the tax due thereon per manner of payment below. Penalties shall apply if payment is made after the due date. If the result is no payment/overpayment, taxpayers are mandated to follow the existing procedure for "No Payment Return", which is to file through the use of eBIRForms.

#### 2. eFPS filers

eFPS filers shall use the newly revised return in the Offline eBIRForms Package v7.1 to file the quarterly income tax return for the first quarter of 2018.

In case an eFPS filer paid the income tax due for the first quarter using the old return, the taxpayer still needs to file the newly revised BIR Form 1701Q and mark the return as an amended return. This is to determine whether or not the taxpayer is availing of the 8% income tax rate based on the gross sales/receipts and other non-operating income in lieu of graduated rates under Section 24(A)(2)(a) and percentage tax under Section 116 of the National Internal Revenue Code of 1997, as amended (Tax Code). The payment/s made shall be reflected in item no. 59 (Tax Paid in Return Previously Filed, if this is an Amended Return) of the newly revised BIR Form 1701Q.

If the computation resulted in a payable, manual filers shall pay the tax due thereon per manner of payment below. Penalties shall apply if payment is made after the due date.

### Manner of payment

Payment of the percentage tax due for manual and eBIRForms filers shall be made through:

- a. Manual payment
  - 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 shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO.
- b. Online payment
  - 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

A taxpayer shall signify their intention to elect the 8% income tax rate either by updating their registration using BIR Form 1905 or by checking/clicking item no. 13 in BIR Form No. 2551Q or item no. 16 in BIR Form No. 1701Q. Such election/option shall be irrevocable for the taxable year.

*(Revenue Memorandum Circular No. 32-2018, 9 May 2018)*

### **Renegotiated tax treaty between Thailand and the Philippines**

*The Renegotiated Convention between the Government of the Republic of the Philippines and the Government of the Republic of Thailand for the Avoidance of Double Taxation and the Prevention*

*of Fiscal Evasion with Respect to Taxes on Income* entered into force on 5 March 2018.

Paragraph 2, Article 28 (Entry into Force) of the Convention provides that it shall have effect in respect of taxes withheld at source on income paid to non-residents on or after the first day of January in the calendar year following that in which the Convention entered into force, and in respect of other taxes on income, in any taxable year beginning on or after the first day of January in the calendar year following that in which the Convention entered into force. Accordingly, the Renegotiated Convention shall have effect on income that arises in the Philippines beginning 1 January 2019.

*(Revenue Memorandum Circular No. 33-2018, 17 May 2018)*

### **Effectivity of Philippines-Sri Lanka Double Taxation Agreement**

*The Convention between the Government of the Republic of the Philippines and the Government of the Democratic Socialist Republic of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* entered into force on 14 March 2018.

Paragraph 2, Article 29 (Entry into Force) of the Convention provides that it shall have effect in respect of tax withheld at source on amounts paid to non-residents on or after the first day of January in the calendar year following that in which the Convention entered into force, and in respect of other taxes on income, for taxable year beginning on or after the first day of January in the calendar year following that in which the Convention entered into force. Accordingly, the Convention shall have effect on income that arises in the Philippines beginning 1 January 2019.

*(Revenue Memorandum Circular No. 34-2018, 17 May 2018)*

### **Extension of validity of Certificate of Accreditation of CRMs/POS machines and/or other sales machine/receipting software**

The BIR issued RMC 36-2018 to amend the provisions under RMC 55-2016 to further extend the validity period of all Certificates of Accreditation that were issued by all developers/dealers/suppliers/vendors/pseudo-suppliers of CRM, POS machines, and/or other Sales Machines/Receipting Software. Valid Certificates of Accreditation issued on or before 31 July 2015 shall be valid until 31 July 2020. On the other hand, all Certificates of Accreditation issued on 1 August 2015 onwards shall follow the five-year validity period based on the actual date of issuance.

*(Revenue Memorandum Circular No. 36-2018, 21 May 2018)*

### **VAT on goods disposed of or existing as of the date of change in or cessation of status of a person as a VAT-registered taxpayer**

The BIR clarified that goods or properties originally intended for sale or use in business, including capital goods, disposed of as of the date of change of status of a taxpayer from VAT to non-VAT are subject to VAT imposed under Section 106(A) of the Tax Code. Thus, taxpayers who changed their status from VAT to non-VAT are required to file the quarterly VAT return covering the period when the change of status transpired and pay the corresponding VAT due on the inventories existing as of the date of change of status.

*(Revenue Memorandum Circular No. 39-2018, 24 May 2018)*

### **Suspends the use of the UEE Data Entry Module in the filing of BIR Form 2305 and 2305 Batch File Validation Module**

In line with the repeal of personal and additional exemptions for an individual taxpayer, taxpayers with dependents are no longer required to update their additional exemptions by filing BIR Form 2305 (Certificate of Update of Exemption and of Employer's and Employee's Information). Thus, the BIR suspended the use of Update of Exemption of Employees (UEE)/Batch File Validation Modules and the submission of report pursuant to RMC 59-2015. Change of civil status and employee's information shall now be done manually using BIR Form 1905.

*(Revenue Memorandum Circular No. 42-2018, 25 May 2018)*

### **Creation of fast lane for all ONETT involving simple transaction**

All One-Time Transaction (ONETT) Teams are directed to create a fast lane that will cater to individuals or corporations filing Capital Gains Tax or Donor's Tax Returns with only one Deed of Sale/Exchange/Donation involving one to three properties. To comply with the provisions of RA 9485, otherwise known as the "Anti-Red Tape Act of 2007", these transactions shall be processed and the corresponding eCARs (Electronic Certificate Authorizing Registration) released within three working days upon submission of complete documentary requirements.

*(Revenue Memorandum Circular No. 43-2018, 28 May 2018)*

### **Processing time of ONETT for the issuance of eCAR**

The ONETTs, particularly sale/exchange/donation and its corresponding processing time for eCAR issuance, are provided as follows:

<b>Transactions</b>	<b>Processing Time from the Submission of Complete Documentary Requirements (working days)</b>
Individual Taxpayer/Corporation with one Deed of Sale/Exchange/Donation:	
a. One to three properties	3 days
b. Four to 10 properties	5 days
c. 11 to 50 properties	10 days
d. More than 50 properties	20 days
Real Estate Developer - One Deed of Sale/Exchange involving Multiple Properties:	
a. One to 10 properties	5 days
b. 11 to 50 properties	10 days
c. More than 50 properties	20 days

*(Revenue Memorandum Circular No. 48-2018, 6 June 2018)*

### **Clarification on regulations implementing the income tax provisions of TRAIN Law**

The BIR issued the following clarifications on the provisions of RRs 8-2018 and 11-2018 implementing the income tax provisions of RA 10963 or the TRAIN Law.

#### *Tax treatment of de minimis in excess of prescribed threshold*

- The benefits given in excess of the maximum amount allowed as de minimis benefits shall be included as part of "other benefits", which is subject to the P90,000 ceiling. Any amount in excess of the P90,000 shall be subject to income tax, and consequently, to withholding tax on compensation.

#### *Incentives given to employees*

- In general, any incentive given to employees shall form part of the compensation subject to income tax, unless specifically exempted under a special law or unless the incentives are in the nature of the previously enumerated de minimis benefits.

#### *Premium on health card*

- Premium on health card paid by the employer for all employees, whether rank-and-file or managerial/supervisory, under a group insurance shall be included as part of "other benefits," which are subject to P90,000 threshold.
- Individual premiums (not part of group insurance) paid for selected employees holding managerial or supervisory functions are considered fringe benefits subject to fringe benefits tax.

*Receipt of other income of an MWE*

- The minimum wage employee (MWE) is exempt when it comes to their statutory minimum wage (SWM), holiday pay, overtime pay, hazard pay, and night shift differential pay. Income other than these will be taxable, which is computed by deducting the nontaxable/exempt portion and other deductions from gross compensation income. The resulting taxable income shall be multiplied to the applicable tax rate under the graduated rates.

*Presentation of compensation exempt from tax under the TRAIN Law in BIR Form 1601C*

- Compensation exempt from tax under the TRAIN Law shall be part of nontaxable compensation in BIR Form 1601C. There is also no need to segregate the same from the schedule of MWEs since their compensation is nontaxable.

*Failure to signify election of 8% tax*

- An individual taxpayer who qualifies for the 8% income tax rate but who fails to signify their intention to avail of the same will be subject to graduated income tax rates.
- Election of 8% income tax rate for existing taxpayers shall be made by filing BIR Form 1905 (Application for Registration Update), 1<sup>st</sup> Quarterly Percentage Tax Return, and/or 1<sup>st</sup> Quarterly Income Tax Return.
- Election of 8% income tax rate for new taxpayers shall be made by filing BIR Form 1901 (Application for Registration) or initial Quarterly Percentage/Income Tax Return.

*Treatment of returnable deposits or deposits held in trust*

- Generally, all deposits received are included in the definition of gross receipts under Section 2(g) of RR 8-2018. However, returnable deposits or deposits held in trust recorded as liabilities are excluded.

*Annex B-2 submitted to payor after deadline of 20 April 2018*

- The payee's excess tax withheld, if any, prior to the approval of RR 11-2018, shall not be refunded by the

income payor. The payee's executed sworn declaration shall be applied by the withholding agent on all income payments after receipt of such declaration.

- Annex B-2 of RR 11-2018 pertains to Income Payee's Sworn Declaration of Gross Receipts/Sales (For Self-Employed and/or Engaged in the Practice of Profession with Lone Income Payor).

*Treatment of remitted withholding taxes using old BIR Forms 1601E and 1601F and BIR Form 0605 for the first two months of the quarter*

- The payments shall be deducted from the taxes due to be remitted for the entire quarter.

*Filing of withholding tax returns of eFPS taxpayers*

- eFPS taxpayers shall follow the staggered filing of withholding tax returns based on industry grouping.

*(Revenue Memorandum Circular No. 50-2018, 8 June 2018)*

### **Amending the deadline for the processing of pending VAT refund/credit claims filed prior to the effectivity of RMC 54-2014**

The prescribed deadline in item no. VI.A.1 of RMC 17-2018 was moved from 30 June 2018 to 14 December 2018 for the processing, review, and approval of all pending VAT claims filed prior to the effectivity of RMC 54-2014.

*(Revenue Memorandum Circular No. 53-2018, 21 June 2018)*

### **Clarification on the deficiency interest rate to be used for amended tax returns**

In relation to RMC 21-2018, the BIR clarified that beginning 1 January 2018, the effectivity date of the TRAIN Law, the interest rate shall be 12% per annum, until a new interest rate shall be prescribed by the Bangko Sentral ng Pilipinas (BSP). Thus, in an amendment of a return where an additional tax is due per amended return, 25% surcharge, 12% interest, and compromise penalty shall be imposed based on the additional tax to be paid.

*(Revenue Memorandum Circular No. 54-2018, 21 June 2018)*

## **BIR Tax Advisory**

### **Refiling of BIR Forms 1601EQ and 1601FQ**

The BIR issued a tax advisory instructing taxpayers using eFPS to refile and/or amend BIR Forms 1601EQ [Quarterly Remittance Return of Creditable Income Taxes Withheld (Expanded)] and

1601FQ (Quarterly Remittance Return of Final Income Taxes Withheld) that were filed prior to 26 April 2018 and 3 May 2018 due to the following technical concerns:

- 26 April 2018 – No value in the fields of said tax returns or inability to view anything in the tax returns using the eFPS' Tax Return Inquiry Module
- 3 May 2018 – The printed copy of the tax return does not reflect the name of the taxpayer.

*(BIR Advisory No. 017052, 29 May 2018)*

## **Court of Tax Appeals Decisions**

### **Sale of services to customs territory within the 30% threshold not subject to 12% VAT**

Section 3 (Q9/A9) of RMC 50-2007 provides the tax treatment for a sale of service or lease of properties (machineries and equipment) by Freeport Zone-registered enterprises to a customer or lessee from the customs territory. It states that sale of service shall be exempt from VAT if the service is performed or rendered within the Freeport Zone. Lease of properties is likewise exempt from VAT if the property is located within the Freeport Zone. However, if the properties (machineries and equipment) leased by the Freeport Zone-registered enterprise is located outside of the Freeport Zone, payments to such enterprise will be considered royalties and are subject to the final withholding VAT of 12%.

In the instant case, a domestic corporation, registered as a Clark Special Economic Zone (CSEZ) enterprise engaged in the operation and maintenance of water and sewerage system in CSEZ, was assessed by the BIR for deficiency VAT.

The BIR argued that its sale of services within the customs territory, i.e., outside the Clark Freeport Zone Area, is subject to 12% VAT. The BIR cited Section 2 of RMC 50-2007 explaining the adherence of the Philippine VAT Law to the cross-border doctrine, which means that VAT shall be imposed to form part of the cost of goods destined for consumption outside the territorial border of the Philippine taxing authority. Thus, actual export of goods and services from the Philippines to a foreign country must be free of VAT. Conversely, those goods destined for use or consumption and services to be rendered within the Philippines shall be subject to the 12% VAT.

The taxpayer argued that it is entitled to the tax incentives granted to CSEZ-registered enterprises, particularly the preferential tax rate of 5% in lieu of all national and local taxes

until it breaches the 30% threshold on its sales within the customs territory.

Considering that there is no distinction as to the tax treatment of sale of service under Q9/A9 of RMC 50-2007, the Court of Tax Appeals (CTA) correlated it to Q7/A7 of the same RMC. It states that Freeport Zone-registered enterprises may generate income from sources within the customs territory of up to 30% of its total income from all sources; provided that should a Freeport Zone-registered enterprise's income from sources within the customs territory exceed 30% of its total income from all sources, then it shall be subject to the income tax laws of the Customs Territory.

Upon review of the taxpayer's annual income tax return (ITR) and audited financial statements (AFS), it was found that its sales to customs territory over its total revenue did not breach the 30% threshold. Thus, the CTA ruled that it is entitled to enjoy the 5% special tax regime in lieu of national and local taxes, including VAT, so long as its sales within the customs territory do not exceed the aforesaid 30% threshold, thereby cancelling the VAT deficiency assessment.

*(Clark Water Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9286, 3 May 2018)*

### **Passive income of holding companies not subject to LBT**

Under Section 133(A) of the Local Government Code (LGC), the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of income tax such as the tax imposed on interest, dividends, and capital gains on sale of shares, which assume the nature of an income tax, except when levied on banks and other financial institutions.

A holding company that generated income from passive investments, such as dividends and interest income, was assessed for deficiency local business tax (LBT) by virtue of its investment and money placements in a domestic corporation and because its Articles of Incorporation is broad enough to catch all the descriptive functions of a non-bank financial intermediary as provided under Section 41 01 Q.1 of the Manual of Regulations for Non-Bank Financial Institutions issued by the BSP. Hence, according to the local government unit (LGU), it should be considered a financial institution subject to LBT.

According to the CTA En Banc, while Section 131(e)2 of the LGC defines the term "banks and other financial institutions," it does not define what is a non-bank financial intermediary. Thus, the CTA resorted to the provisions of other applicable laws (i.e., Section 22(W) of the Tax Code, RR 9-2004, Section 2-D(c) of RA 337, as amended by Presidential Decree No. 71, and Manual of

Regulations for Non-Bank Financial Institutions issued by the BSP) summarized as follows:

1. The person or entity is authorized by the BSP to perform quasi-banking activities.
2. The principal functions of the said person or entity "include the lending, investing or placement of funds or evidences of indebtedness or equity deposited to them, acquired by them, or otherwise coursed through them, either for their own account or for the account of others."
3. The person or entity must perform any of the following functions on a regular and recurring, not on an isolated basis:
  - a. Receive funds from one group of persons, irrespective of number, through traditional deposits, or issuance of debt or equity securities; and make available/lend these funds to another person or entity, and in the process acquire debt or equity securities;
  - b. Use principally the funds received for acquiring various types of debt or equity securities;
  - c. Borrow against, or lend on, or buy or sell debt or equity securities;
  - d. Hold assets consisting principally of debt or equity securities such as promissory notes, bills of exchange, mortgages, stocks, bonds, and commercial papers; and
  - e. Realize regular income in the nature of, but need not be limited to, interest, discounts, capital gains, underwriting fees, guarantees, fees, commissions, and service fees, principally from transactions in debt or equity securities or by being an intermediary between suppliers and users of funds.

The CTA En Banc likewise cited Securities and Exchange Commission, Office of the General Counsel (SEC-OGC) Opinion No. 11-15 dated 10 February 2011, wherein it defined holding company as "a corporation organized to hold the stock of another or other corporations. Its essential feature is that it holds stock."

Considering that there is nothing on record that shows that the holding company can be categorized as a financial intermediary or that it has engaged in the activities defined and enumerated above, the LBT assessment has no factual basis.

With regard to the LGU's claim that the proviso at the end of the holding company's purpose clause (i.e., "provided however that the Corporation shall not act as an investment company or a securities broker and/or dealer nor exercise the functions of a trust corporation") is intended to conceal or mislead, or exempt the holding company from obtaining the necessary secondary license, such contention is not supported by evidence.

*(Te Deum Resources, Inc. vs. City of Davao and Hon. Rodrigo S. Riola, in his capacity as the City Treasurer of Davao City, CTA EB No. 1692, 8 May 2018)*

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