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Tax news
Interpret and integrate

BIR Issuances

Penalties for failure to file tax returns using eFPS and eBIRForms

Taxpayers required to file their tax returns using the electronic filing and payment system (eFPS) or electronic Bureau of Internal Revenue (BIR) Forms (eBIRForms) who failed to do so shall be subject to a penalty of P1,000 per return.

In addition to the P1,000 penalty, the BIR shall collect 25% surcharge of the tax due to be paid for filing in the wrong venue as provided under Section 248(A)(2) of the Tax Code.
Non-compliant taxpayers shall also be included in the list of taxpayers for priority audit by the BIR.

(Revenue Regulations No. 5-2015, March 17, 2015)

Imposition of advance VAT on raw and refined sugar

Refined sugar and raw sugar shall be subject to 12% advance value-added tax (VAT), which shall be paid by the owner/seller before the sugar is withdrawn from any sugar refinery/mill.

For VAT purposes, the BIR defined “raw sugar” as sugar whose sucrose content by weight in dry state corresponds to a polarimeter reading of less than 99.5 degrees, while “raw cane sugar” refers to sugar produced by simple process of conversion of sugar cane without need for any mechanical or similar device such as muscovado.

The BIR clarified that the centrifugal process of producing sugar is not in itself a simple process. Hence, any type of sugar produced therefrom is not exempt from VAT such as raw sugar and refined sugar.

(Revenue Regulations No. 4-2015, March 13, 2015)

Guidelines for P82,000 tax-exempt 13th month pay and other benefits

The increase of the total amount of exclusion to P82,000 for 13th month pay and other benefits pursuant to Republic Act No. (RA) 10653 applies to the 13th month pay and other benefits as defined under Section 2.78.1(B)(11) of Revenue Regulations No. (RR) 2-98, as amended, which are paid or accrued beginning January 1, 2015.

Under Section 2.78.1(B)(11) of RR 2-98, as amended, the 13th month pay refers to the monetary benefit equivalent to the mandatory one month basic salary of officials and employees in both the private and public sectors. On the other hand, the term "other benefits" covers the Christmas bonus, productivity incentives, loyalty award, gift in cash or in kind, and other benefits of similar nature actually received by officials and employees of both government and private offices.

The P82,000 tax-exempt ceiling shall cover the 13th month pay and other benefits and in no case shall apply to other compensation received by employees, such as basic salary and other allowances. It shall also not apply to self-employed individuals and income generated from business.

All employers shall ensure the correct computation and application of the increase in the threshold amount of 13th month pay and other benefits in the year-end adjustments and the same shall be clearly indicated in the Certificate of Compensation/Tax Withheld (BIR Form 2316) to be issued to the employees.

(Revenue Regulations No. 3-2015, March 13, 2015)

Mandatory submission of BIR Form 2307 and 2316 in DVD-R for large taxpayers

The BIR has dispensed with the requirement for taxpayers under the jurisdiction of the Large Taxpayers Service (LTS) to submit the hard copy of BIR Form 2307 as attachment to Summary of Alphalist of Withholding Agents Subjected to Creditable Withholding Taxes (SAWT), and duplicate original copy of BIR Form 2316, which must be submitted by employers not later than February 28 following the close of the calendar year.

In lieu of the hard copies, large taxpayers must submit to the BIR both BIR Forms No. 2307 and 2316 on a DVD-R. The DVD-R shall contain the soft copies in PDF file format with the filenames arranged alphabetically.

For purposes of arranging alphabetically BIR Form 2307 in DVD-R, the filename shall contain the following information separated by an underline: (a) BIR-registered name of the taxpayer-payor; (b) Taxpayer Identification Number (TIN), including the head office code or branch code of the payor, whichever is applicable; and (c) taxable period. In the case of BIR Form 2316, the filename shall contain the following information: (a) surname of the employee; TIN of the employee; and taxable period.

The DVD-R must also be properly labelled following the prescribed format of the BIR. A notarized certification stating that the soft copies of BIR Forms No. 2307 and 2316 are complete and exact copies of the original must be submitted together with the duly-accomplished DVD-R.

Non-large taxpayers may opt to submit their BIR Form 2307 and 2316 on DVD-R. Once option is availed then it becomes irrevocable.

(Note: RR 2-2015 was published on March 6, 2015, and thus, it became effective after fifteen days from its publication, i.e., on March 21, 2015).

(Revenue Regulations No. 2-2015, March 5, 2015)

Guidelines on filing of ITR of LT employees

Employees of Large Taxpayers (LT) not qualified for substituted filing who are required to file an income tax return (ITR, or BIR Form 1700) as well as those qualified for substituted filing who opted to file for an ITR

should file their ITR in accordance with the following procedures:

1. Employees of LT registered with the Revenue District Office (RDO) where the LT is physically located/situated

    a. No payment return – The ITR (BIR Form 1700) of employees employed by LT should be filed manually using eBIRForms, in triplicate copies, with the RDO where the LT employer is physically situated/located.

    b. ITR with payment – The ITR with payment shall be filed/paid in any Authorized Agent Bank (AAB)/Revenue Collection Officers (RCOs), Special Collecting Officers (SCOs), and other authorized Collection Officers (COs) with the concerned RDO.

    For the taxpayers' convenience, they are encouraged to avail of the e-filing and/or e-payment facility under the eFPS.

2. New employees of LT registered where the LT employer is registered following RR 7-2012 and using eTIS1 should file their no payment ITR with the concerned LT office or pay in AABs (ITR with payment) of LT.

(Revenue Memorandum Circular No. 10-2015, March 24, 2015)

Definition of "client-taxpayers" mandated to use eBIRForms
Under Section 4 of RR 6-2015, select non-eFPS filers such as accredited tax agents and all their client-taxpayers were mandated to use the electronic BIR Forms (eBIRForms).

The term "client-taxpayers" shall refer to those taxpayers who are otherwise authorizing their tax agents/practitioners to file on their behalf. Thus, client-taxpayers whose tax agents/practitioners only sign the audit certificate but have no authority to file the returns on their behalf are not covered by the requirement to use eBIRForms under RR 6-2014.

(Revenue Memorandum Circular 11-2015, March 30, 2015)

Clarification on filing of no payment returns
The BIR has issued the following clarifications on the use of eBIRForms by taxpayers who shall file a "no payment" return.

1. The following taxpayers may file manually their "no payment returns" to the RDO where they are registered using officially printed forms/photocopied or electronic/computer-generated returns:

    a. Senior Citizens (SC) or Persons with Disabilities (PWD) filing for their own return

    b. Employees deriving purely compensation income from two or more employers, concurrently or successively, whose tax due equals tax withheld.

    c. Employees qualified for substituted filing but who opted to file for an ITR and are filing for purposes of promotion (Philippine National Police/Armed Forces of the Philippines), loans, scholarship, foreign travel requirements, etc.

    The above taxpayers, however, are encouraged to use the offline eBIRForms for ease and convenience. They are also encouraged to file their returns electronically to avoid the long lines on or before the tax filing deadline.

2. All business taxpayers with no payment returns who are mandated to use eBIRForms/ eFPS must electronically file their return.

(Revenue Memorandum Circular No. 12-2015, March 30, 2015)

Deferment of ITR disclosure

The disclosure requirement under the supplemental portion of BIR Forms 1700 and 1701 remains optional for individual taxpayers who are required to file their income tax returns on or before April 15, 2015.

The disclosure requirement, however, shall become mandatory for income tax filing covering and starting calendar year 2015 for which a return is required to be filed in 2016. Thus, the BIR advised individual taxpayers filing their income tax returns starting calendar year 2015 to demand from their payors and properly document their BIR Form 2306 and other pieces of evidence for final taxes withheld. Moreover, they are advised to properly receipt and book their tax-exempt income.

(Revenue Memorandum Circular No. 13-2015, March 31, 2015)

Revised schedule of compromise penalties

The BIR has issued the revised consolidated schedule of compromise penalties applicable to violations of the provisions of the Tax Code, replacing the schedule of compromise penalties prescribed under Revenue Memorandum Order No. (RMO) 19-2007.

The salient features of the revised schedule of compromise penalties are as follows:

1. Increase in the minimum amount of compromise penalty from P200 to P1,000

2. Imposition of compromise penalty for failure to submit the Summary Lists of Sales and Purchases/Importation (SLSP/I), and Annual Alphalist of Payees and/or Employees Subjected to Withholding Taxes (Annual Alphalists)

    a. A compromise penalty of P1,000 shall be imposed for each failure to submit the SLSP/I and Annual Alphalists provided that the aggregate amount of penalties should not exceed P25,000 during a calendar year. Failure to supply the required information for each buyer or seller of goods and services shall constitute a single punishable act or omission.

    b. The following shall be considered willful failure or neglect to file or submit the required *complete* SLSP/I or Annual Alphalists, which is tantamount to fraud that cannot be compromised.

        1. Failure to submit SLSP/I at least two times in a taxable year
        2. Failure to submit for at least two consecutive years Annual Alphalists of Payees from whom taxes were withheld
        3. Submission not in the prescribed format
        4. Submission of falsified information

        Complete Summary Lists refers to the set of Summary Lists of Sales (SLS) and Summary Lists of Purchases (SLP). In the case of those with importations, completeness shall include not only SLS and SLP, but also the Summary Lists of Importations (SLI). Failure to submit the full/complete lists shall be counted as one violation. On the other hand, the submission of erroneous lists shall be considered an act of non-submission.

3. Subsequent offenses (second or third offense, as the case may be) for the following violations shall be considered willful failure and shall not be subject to compromise:

    a. Failure of the printer to submit the required quarterly report
    b. Failure or refusal to issue receipts or commercial invoices
    c. Issuance of receipts with missing information on the amount of transaction

d. Issuance of receipts that do not reflect and/or contain the required information
e. Duplicate copy of invoice is blank but original copy is detached from the booklet and cannot be accounted for
f. Use of unregistered receipts or cash registered machines
g. Use of receipts or invoices without authority to print
h. Unlawful possession of cigarette paper in bobbins or rolls, cigarette tipping paper or cigarette filter tips
i. Unlawful use of denatured alcohol
j. Unlawful recovery or attempt to recover by distillation or other process any denatured alcohol, or knowingly disposing of alcohol so recovered or distilled
k. Shipment or removal of liquor or tobacco products under false name or brand or an imitation of any existing name or brand
l. Unlawful possession of locally manufactured articles subject to excise tax without payment of the tax
m. Unlawful removal of untaxed articles subject to excise tax from the place of production

4. In addition to the payment of compromise penalty, the following untaxed articles shall be subject to forfeiture:

    a. Unlawful possession of cigarette paper in bobbins or rolls, cigarette tipping paper or cigarette filter tips
    b. Unlawful use of denatured alcohol
    c. Unlawful recovery or attempt to recover by distillation or other process any denatured alcohol, or knowingly disposing of alcohol so recovered or distilled
    d. Shipment or removal of liquor or tobacco products under false name or brand or an imitation of any existing name or brand
    e. Unlawful possession of locally manufactured articles subject to excise tax without payment of the tax
    f. Unlawful removal of untaxed articles subject to excise tax from the place of production.

(Revenue Memorandum Order No. 7-2015, March 23, 2015)

Court Decisions

Substantiation of input tax credits

Under Section 113 of the Tax Code, a VAT-registered taxpayer must issue a VAT invoice for every sale, barter, or exchange of goods or properties, while a VAT official receipt should be issued for every lease of goods or properties and for every sale, barter, or exchange of services. The VAT official receipt as proof of sale of services cannot be interchanged with sales invoices that are used for the sale of goods.

In order to prove its zero-rated sales, the taxpayer-refund claimant submitted the sales invoices, transfer slips, and credit memos it issued for the services it rendered to its clients registered with the Philippine Economic Zone Authority (PEZA). The Supreme Court (SC) held that the evidence submitted by the taxpayer -- i.e. sales invoices, transfer slips, credit memos, cargo manifests, and credit notes -- to prove its zero-rated sales were not sufficient to entitle the taxpayer to a refund of its excess input tax or to the issuance of a tax credit certificate.

The SC ruled that the taxpayer's sales, being sales of services, should properly be supported by VAT official receipts only. According to the SC, Section 113 of the Tax Code does not provide for any other document that can be used as an alternative to, or in lieu of the official receipt in case of sale of services.

[Nippon Express (Philippines) Corp. v. Commissioner of Internal Revenue, G.R.185666, February 4, 2015]

A tax return is considered a false return even with less than 30% underdeclaration

Under Section 203 of the Tax Code, the BIR is given three years from the filing of a tax return to assess a taxpayer. However, as an

exception to the general rule, Section 222 of the Tax Code provides that in the case of a false or fraudulent return with intent to evade tax or failure to file a return, the taxpayer may be assessed within 10 years after the discovery of the falsity, fraud, or omission. On what constitutes a false return, the SC held in the Aznar Case (G.R. No. L-20569, August 23, 1974) that a return is considered a false return if there is a deviation from truth, whether intentional or not.

In the instant case, the taxpayer was assessed, among others, for deficiency VAT due to its alleged undeclared gross receipts. The assessment was issued beyond three years from the filing of the VAT return but within the 10-year period prescribed in the case of non-filing, or filing of false or fraudulent return.

The taxpayer contends that the 10-year period under Section 222 of the Tax Code should not apply since the amount of the alleged underdeclaration constitutes 5.32% of the gross receipts declared per VAT return. The taxpayer cited Section 248(b) of the Tax Code, which provides that in order to constitute false or fraudulent return, the amount of sales, receipts, or income that the taxpayer failed to report should exceed 30% of that declared per return.

The Court of Tax Appeals (CTA) held that any deviation from the truth shall render a return filed by a taxpayer as false even though the underdeclaration does not amount to 30% of the gross sales, receipts, or income. The CTA explained that Section 248(b) of the Tax Code cited by the taxpayer speaks of false or fraudulent return willfully made, and the imposition of the penalty of 50% of the tax or deficiency tax. It states that a substantial declaration, which means 30% of the taxable sales, receipts, or income was not reported and more than 30% of the deductions exceeded the actual deductions, shall constitute prima facie evidence of a false or fraudulent return. However, it noted that nowhere is it stated under Section 248(b) of the Tax Code that in the event that the underdeclaration or overstatement in a return is below 30%, the taxpayer will not be liable for filing a false return.

The CTA thus maintained that for as long as there is deviation from the truth, without need of considering the percentage of underdeclaration or overstatement, a taxpayer can still be considered as having filed a false return, following the doctrine laid down in the Aznar case, which states that any deviation from the truth or fact, whether intentional or not, renders the return filed as false.

(Next Mobile, Inc. v. Commissioner of Internal Revenue, CTA EB No. 1059 re CTA Case No. 7970, March 16, 2015)

50% disallowance rule on unsubstantiated expenses

In the absence of accounting records or other documents necessary for the proper determination of the taxpayer's internal revenue tax liability, Section 6 (B) of the Tax Code requires that the assessment of the tax be determined based on the "Best Evidence Obtainable".

Under Section 2.4(c) of Revenue Memorandum Circular (RMC) 23-2000, which prescribes the procedures on the assessment of deficiency internal revenue taxes based on the "Best Evidence Obtainable" under Section 6(B) of the Tax Code, in case there is showing that the expenses have been incurred by the taxpayer but the exact amount of such expenses cannot be ascertained due to absence of documentary evidence, the BIR can make an estimate of the deduction that may be allowable in computing the taxpayer's taxable income, and the disallowance of 50% of the taxpayer's claimed deduction is valid.

In the instant case, while the taxpayer was able to submit the various official receipts to support its deductions for operating expenses and taxes and licenses, the same were denied admission by the CTA for the taxpayer's failure to present the original copies for comparison.

Hence, considering that the taxpayer's claimed deductions were not adequately supported by documentary evidence, the CTA upheld the disallowance of the operating expenses as well as taxes and licenses claimed by the taxpayer. However, since the taxpayer actually incurred the expenses, the CTA deemed it proper to apply the 50% rule of approximation provided under Sections 2.3 and 2.4(c) of RMC 23-2000. Thus, in computing the taxable income of the taxpayer, the taxpayer may only deduct 50% of the total amount it claimed for operating expenses, including taxes and licenses.

(Jumbo East Realty Inc. v. Commissioner of Internal Revenue, CTA Case No. 8380, March 16, 2015)

Validity of LAs covering audit of "unverified prior years"

Under Section 6(A) of the Tax Code, the Commissioner of Internal Revenue (CIR) is granted the authority to examine and to make an assessment to determine the correct amount of tax due from a taxpayer. In relation to this, Section 13 of the Tax Code provides that a Letter of Authority (LA) is the authority given to the appropriate revenue officer enabling him to examine the books of account and other accounting records of a taxpayer for purposes of collecting the correct amount of tax.

In the instant case, the taxpayer was issued an LA that authorized the conduct of examination of the taxpayer's books of account and accounting records for taxable year 2005 to "unverified prior years". In ruling that the LA issued by the BIR is invalid, the CTA cited the case of CIR v. Sony Philippines, Inc. (G.R. 178697, November 17, 2010) where the SC upheld the invalidity of the phrase "unverified prior years" in LAs because it violates Section C of RMO 43-90, which prohibits the issuance of LAs covering audit of "unverified prior years". The SC held that the CIR, acting through its revenue officers, went beyond the scope of its authority when it issued the LA covering the "unverified prior years".

The CTA maintained that a deficiency assessment issued without valid authority is a nullity. Hence, considering that the LA covers taxable year 2005 to "unverified prior years", which is prohibited, the CTA cancelled the deficiency tax assessments issued against the taxpayer.

(People of the Philippines v. Edwin T. So, Raymond R. Lee, Techpoint Computer Corporation, CTA EB Crim. No. 028, March 6, 2015)

Simultaneous imposition of deficiency and delinquency interest

Under Section 249(B) of the Tax Code, the 20% deficiency interest shall be assessed and collected on the unpaid tax from the date prescribed from the payment of the tax until the deficiency is fully paid. On the other hand, Section 249(C)(3) of the Tax Code provides that a delinquency interest of 20% shall be assessed and collected in case of failure to pay: (i) the amount of tax due on any return required to be filed, (ii) the amount of tax due for which no return is required, or (iii) deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner.

The CTA further held that double interests are allowed by law and equity. According to the CTA, Section 249 of the Tax Code does not only allow but prescribes the simultaneous imposition of both deficiency interest and delinquency interest. In its decision, the CTA cited various cases

decided by the SC including, among others, the case of First Lepanto Taisho Insurance Corporation v. CIR (G.R. 197117, April 10, 2013), where the SC held that the imposition of delinquency interest under Section 249 (c) (3) of the Tax Code to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of 20% per annum, which interest shall be assessed and collected from the date prescribed for its payment until full payment is made.

(Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue, CTA EB 1035 re CTA Case No. 7839, March 11, 2015)

Refund of undeclared input taxes

The refund of undeclared input taxes of a VAT-registered taxpayer is in the nature of a claim for refund of input taxes, not output taxes, which is governed by Section 112(C) of the Tax Code. Hence, unless there are excess input taxes that are attributable to zero-rated or effectively zero-rated sales, or the VAT-registered taxpayer is cancelling its registration due to retirement from or cessation of business or due to changes in or cessation of status, it may not claim for refund of its input taxes pursuant to Section 112(C) of the Tax Code.

In the instant case, the taxpayer-refund claimant sought refund of its alleged erroneously paid output VAT based on the difference between the amounts shown in its VAT return and what the taxpayer alleges it should be if all its input taxes were credited and considered in the computation of its net VAT payable. The alleged erroneous overpayment of VAT was due to the taxpayer's failure to claim some of the input taxes it incurred from its purchases, which were recorded in its books of accounts but not reported in its quarterly VAT returns.

Also, considering that the BIR already issued a letter of authority to the taxpayer, the latter was unable to amend its VAT return to include its undeclared input taxes. Hence, it filed instead a claim for refund to recover its alleged overpayment.

In its claim for refund, the taxpayer anchored its refund claim on the provisions of Section 204(C) of the Tax Code, which allows taxpayers to claim credit or refund of erroneously or illegally assessed or collected taxes. The taxpayer contends that its claim for refund is in the nature of refund of erroneously paid output VAT, and not input VAT. However, contrary to the claim of the taxpayer, the CTA En Banc held that what the taxpayer is really claiming for tax refund/credit is its undeclared input VAT. Hence, Section 112 of the Tax Code should be the proper basis for its claim for refund, not Section 204(C), which applies to erroneously or illegally assessed taxes.

Under Section 112 of the Tax Code, the CTA En Banc explained that there are two instances when excess input taxes may be claimed for refund, to wit: (a) when they are attributable to zero-rated or effectively zero-rated sales; and (b) upon cancellation of VAT registration due to retirement from or cessation of business. Applying Section 112 of the Tax Code, the CTA En Banc held that the taxpayer does not qualify for tax refund or credit since its claim for refund or credit of its undeclared input taxes does not fall under any of the instances provided by law.

(Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, CTA EB 1100, March 10, 2015)

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