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Tax news
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BIR Issuances

Tax payments through credit cards

The Bureau of Internal Revenue (BIR) has issued the following policies and guidelines on the adoption of credit/debit/prepaid card payments as additional mode of payment for internal revenue taxes.

1. The payment of taxes by credit/debit/prepaid card shall be voluntary or optional on the part of the taxpayer. Hence, the taxpayer shall bear the convenience fee and other fees being charged by banks and/or credit card companies for the use of the payment facility. The fees, including the "Merchant Discount Rate" (MDRJ), shall not be deducted from any amount of tax due to the BIR.

2. The authority to accept tax payments, through credit/debit/prepaid cards, and act as acquirers (authorized agent bank that accepts tax payments on behalf of the BIR) shall be limited to Authorized Agent Banks (AABs) only.

3. The BIR shall have neither responsibility nor liability on any issues concerning the taxpayer-cardholder and the card issuer, including, but not limited, to, "charge back", erroneous posting or charging, nonpayment of the taxpayer-cardholder to the issuer, and other issues.

4. In case the taxpayer-cardholder made erroneous tax payment transactions through this prescribed payment mode, the same shall not give rise to any automatic ‘charge back’ to the taxpayer-cardholder’s account. In meritorious cases, the taxpayer shall apply for refund/tax credit with the BIR in accordance with existing revenue issuances.

5. Only Philippine-issued credit/debit/prepaid cards under the name of the taxpayer-cardholder are allowed to be used in payment of tax liabilities.

6. The payment of taxes through credit/debit/prepaid card shall be deemed made on the date and time appearing on the system-generated payment confirmation receipt issued to the taxpayer-cardholder by the AAB-Acquirer.

7. The taxpayer is not relieved of, and has a continuing liability for, such taxes until the payment is actually received by the BIR.

(Revenue Regulations No. 03-2016, March 23, 2016)

Extension of deadline for the issuance of ATRIG for imported automobiles
The BIR has extended the deadline for the issuance of Authority to Release Imported Goods (ATRIGs) – from 31 March 2016 to 30 April 2016 – on imported automobiles that were already released from customs custody.

Under Revenue Regulations No. (RR) 02-2016, ATRIGs for imported automobiles that were already released from customs custody may still be issued subject to the condition that an application for ATRIG has already been filed with the Excise LT Regulatory Division (ELTRD) and that the excise and value-added tax (VAT) due thereon were paid within the same period.

(Revenue Regulations No. 04-2016, April 5, 2016)

Effectivity of Philippines-Turkey Tax Treaty
The agreement between the Republic of the Philippines and the Republic of Turkey for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital entered into force on 11 January 2016.

The Philippines-Turkey Tax Treaty 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 Agreement 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 Agreement entered into force.

(Revenue Memorandum Circular No. 31-2016, March 16, 2016)

Effectivity of protocol amending the Philippines-New Zealand Tax Treaty
The protocol amending the tax treaty between the Republic of the Philippines and the Government of New Zealand entered into force on 2 October 2008. The provisions of the Protocol Agreement shall have effect in respect of taxes covered by the protocol, including taxes withheld at source for any taxable period beginning on or after the first day of January 2009.

(Revenue Memorandum Circular No. 32-2016, March 17, 2016)

Release of eBIRForm Package Version 6.0

The BIR has released eBIRForms Package Version 6.0, which introduced the following modifications to the earlier version:

1. One-click submission of tax returns
2. Reduced package size for easier downloading

The eBIRForms Package Version 6.0 can be downloaded from the following sites: (a) www.knowyourtaxes.ph; (b) www.dof.gov.ph; (c) Dropbox using this link: http://goo.gl/UCr8XS; and (c) www.bir.gov.ph

Procedures in filing tax returns

When filing tax returns, taxpayers should follow these steps:

Step 1. Download, install, and run eBIRForms Package Version 6.0.

Step 2. Create a profile by providing a valid Taxpayer Identification Number (TIN), Revenue District Office (RDO) Code, line of business, registered name, registered address, ZIP Code, telephone number, and active email address.

Step 3. Choose from the list of BIR Forms then click FILL UP. Re-enter the TIN and email address to confirm that the provided information are correct.

Step 4. Accomplish the selected tax return then click the VALIDATE button. If there are changes to be made, click the EDIT button. Make sure to click the VALIDATE button after every change made.

Step 5. Click SUBMIT/FINAL COPY button.

5.1 If the taxpayer is enrolled and activated in Electronic Filing and Payment System (eFPS), he shall be redirected to the eFPS login page and shall enter his username and password then follow the steps in eFPS.

5.2 If the taxpayer is an eBIRForms user, he shall be required to fully and unconditionally agree to the Terms of Service Agreement (TOSA) by clicking AGREE. The taxpayer will then receive a system-generated confirmation email.

eFPS taxpayers filing annual income tax returns and excise tax returns should prepare their tax returns using the offline package and submit to eFPS by clicking the SUBMIT/FINAL COPY button. eFPS taxpayers filing other tax returns shall use the online eFPS. The payment shall be made online through the eFPS facility by clicking the PROCEED TO PAYMENT button. Non-eFPS taxpayers using eBIRForms shall print their tax return and pay their tax due through AABs, Revenue Collection Officers (RCOs), or GCash.

Filing of attachments to the income tax returns
The accompanying schedules and required attachments (i.e., financial statements, statement of management responsibility, and BIR Form 2307) shall be manually filed within 15 days after the electronic filing of the return to the concerned Large Taxpayer (LT) Office/RDO where they are registered. Taxpayers should also submit the duly signed printed e-filed return and printed system-generated confirmation receipt. The Summary Alphalist of Withholding Tax (SAW) shall be emailed to esubmission@big.gov.ph.

(Revenue Memorandum Circular No. 35-2016, March 21, 2016)

ITR disclosure requirement optional for 2016
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 15 April 2016.

The disclosure requirement, however, shall become mandatory for income tax filing covering and starting calendar year 2016 for which a return is required to be filed in 2017. Individual taxpayers are advised to demand from their payors, and properly document, their BIR Form 2307 and other pieces of evidence for final taxes withheld. However, individual taxpayers, especially those engaged in business, should properly receipt and book all their income, whether these are subject to final withholding tax or are tax-exempt.

(Revenue Memorandum Circular No. 41-2016, April 4, 2016)

Court Decision

BIR Form 1606 to establish proof of withholding
In case of refund of excess or unapplied creditable withholding tax (CWT), the taxpayer must prove that: (a) the claim for refund was filed within the two-year prescriptive period; (b) the fact of withholding can be established by a copy of a statement duly issued by the withholding agent to the payee; and (3) the income upon which the taxes were withheld are included in the return of the recipient.

In the instant case, the taxpayer-refund claimant filed for refund of its unutilized CWT. To prove the fact of withholding of the excess CWT being claimed for refund, the taxpayer-refund claimant presented BIR Form 1606, which it filed relative to the sale of its real and other properties acquired (ROPA).

The Court of Tax Appeals (CTA) En Banc held that BIR Form 1606, which contains the "very same key information that would be obtained from BIR Form No. 2307", suffices to prove the fact of withholding. According to the CTA En Banc, BIR Form No. 2307's probative value is to establish only the fact of withholding of the claimed CWT.

The CTA En Banc noted that BIR Form No. 1606 is a withholding tax remittance return required by law to be filed by the buyer in triplicate copies for the transfer of title to the buyer. The form supports the certification (BIR Form No. 2307) issued by the withholding agent/buyer attesting to the fact of withholding. Hence, considering that BIR Form No. 1606 contains the same key information that could be gathered from BIR Form No. 2307, the CTA held that it necessarily follows that BIR Form No. 1606 can likewise prove the fact of withholding.

(Philippine Bank of Communications v. Commissioner of Internal Revenue, CTA EB Case Nos. 1194 and 1199 re CTA Case No. 8460, March 21, 2016)

Proof of actual remittance not required for CWT refunds
To be entitled to refund of unutilized CWT, there are three conditions that must be established by the taxpayer-refund claimant, to wit: (a) the claim is filed with the Commissioner of Internal Revenue (CIR) within the two-year period from the date of payment of tax; (b) the fact of withholding must be established by a copy of a statement duly issued by the withholding agent to the payee; (c) it is shown on the return of the recipient that the income payment received was declared as part of the gross income.

In establishing the fact of withholding of the tax, the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by withholding agents are prima facie proof of actual payment of CWT by the payee-taxpayer to the government, with no further need to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

The CTA held that the fact of withholding is sufficiently established by BIR Form 2307, which is issued by the payor primarily to attest to the amount of taxes withheld from the income payments received by the payee. It noted that the figures appearing in the CWT certificates should be taken at face value since these documents are executed under the penalties of perjury. The CTA maintained that there is no need to present proof of actual remittance of income taxes since nowhere is it stated in the law or in any rules that any information concerning actual remittance is required in a claim for refund of excess CWT.

(Ayala Corporation v. Commissioner of Internal Revenue, CTA Case No. 8629, March 11, 2016)

Cash disbursement vouchers and journal vouchers evidencing intercompany advances subject to DST

Cash and journal vouchers evidencing intercompany advances are subject to documentary stamp tax (DST) under Section 179 of the 1997 National Internal Revenue Code (NIRC) as implemented by RR 13-04.

In the instant case, the BIR assessed the taxpayer for deficiency DST on its intercompany advances, which are evidenced by cash disbursement vouchers and journal vouchers. The taxpayer contended that the cash or journal vouchers evidencing intercompany loans or advances should not be subject to DST since they are not debt instruments as defined under Section 179 of the 1997 NIRC and Section 5 of RR 13-04.

The taxpayer argued that based on the enumeration of documents in Section 5 of RR 13-04, a debt instrument must not only represent "borrowing and lending transactions," but must also be originally issued by the debtor in favor of the creditor as a source or proof of the creditor's right to claim against the debtor.

The taxpayer further argued that the Filinvest case [Commissioner of Internal Revenue v. Filinvest Development Corporation (G.R. Nos. 163653 and 167687, July 19, 2011)], which subjects instructional letters as well as journal and cash vouchers evidencing advances to affiliates to DST, does not apply to it because the case interprets the old Section 180 of the Tax Code and Section 6 of RR 09-94, whereas the intercompany advances in the instant case were made in 2008 and are governed by the present Section 179 of the 1997 NIRC, which was implemented by RR 13-04.

The CTA held that as explained in Section 5 of RR 13-04, Section 179 of the 1997 NIRC is the same as the previous Section 180, but now covers all instruments representing borrowing and lending transactions previously under Sections 174 and 176. Considering that Section 179 was a mere reproduction of previous Sections 174, 176, and 180, the interpretation by the Supreme Court (SC) in Filinvest case of Section 180 can be used in interpreting Section 179 of the 1997 NIRC.

The SC anchored its ruling in the Filinvest case on the second paragraph of Section 6 of RR 09-94 subjecting to DST credit facilities with no formal loan agreement, which, according to the taxpayer, is absent in RR 13-04. The CTA held that the repealing clause of RR 13-04 provides that "(a)ll existing rules and regulations or parts thereof, which are inconsistent with the provisions of these regulations, are hereby repealed, amended or modified accordingly." Considering that Section 6 of RR 09-94 is consistent with Section 5 of RR 13-04, the CTA held that the latter cannot be deemed to have repealed the former.

With regard to petitioner's argument that it cannot issue a debt instrument to its head office because being a branch office, it does not have a separate legal personality from its head office, the CTA maintained that for purposes of imposing the DST, the general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines does not apply in the instant case. It held that the cash advances and intercompany trade payables and receivables, which were booked under "due to/from accounts", are well within the purview of "debt instruments" under Section 179 of the 1997 NIRC.

(E.E. Black Ltd. – Philippine Branch v. Commissioner of Internal Revenue, CTA Case No. 8719, March 8, 2016)

Application of Deutsche Bank case on assessment cases

A taxpayer must not be denied the right to avail of tax treaty relief due to its failure to submit an application for tax treaty relief to the BIR International Tax Affairs Division (ITAD) pursuant to the SC decision in the case of Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue (GR No. 188550, August 19, 2013).

In the instant case, the taxpayer was assessed for deficiency tax on gross Philippine billings (GPB), which it subjected to a lower rate of 1.5% pursuant to the provisions of the Philippines-Germany Tax Treaty.

The BIR argued that the taxpayer should instead apply the 2.5% rate since it failed to submit an application for tax treaty relief to the BIR ITAD. Citing the cases of Deutsche Bank and CBK (GR 193407-08, January 14, 2015) contended that the obligation on the part of the Philippines to comply with a tax treaty must take precedence over the objective of Revenue Memorandum Order No. (RMO) 1-2000 (now RMO 72-2010), and a tax treaty relief application should merely operate to confirm the entitlement of the taxpayer to tax treaty relief.

In its decision, the CTA cited the case of Deutsche Bank where the SC declared that the application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the tax treaty relief. It further cited the SC, which explained that the laws and issuances must ensure that the reliefs granted under tax treaties are accorded to the parties entitled thereto, but the

BIR must not impose additional requirements that would negate the availment of the relief provided for under international agreements.

On the basis of the decision of SC in the Deutsche Bank case, the CTA held that the BIR's denial of the taxpayer's availment of the special tax rate of 1.5% on its GPB under the Philippines-Germany Tax Treaty for failure to file a tax treaty relief application is without basis. However, the CTA held that since the taxpayer failed to file a tax treaty relief application, it shall carefully scrutinize the evidence presented to determine whether the taxpayer is indeed entitled to the special tax rate on GPB.

(Lufthansa German Airlines –Philippine Branch v. Commissioner of Internal Revenue, CTA Case No. 8601, March 21, 2016)

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