Tax Bulletin

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Highlights

BIR Issuances

- Revenue Memorandum Order (RMO) No. 23-2019 prescribes the policies, guidelines and procedures in processing applications for Tax Amnesty on Delinquencies pursuant to Republic Act (RA) No. 11213, the "Tax Amnesty Act". **(Page 3)**

- Revenue Memorandum Circular (RMC) No. 54-2019 circularizes the availability of the revised Donor's Tax Return (BIR Form No. 1800) and Estate Tax Return (BIR Form No. 1801). **(Page 5)**

- RMC No. 55-2019 clarifies the meaning of "Business Style," which must be indicated on official receipts and invoices. **(Page 5)**

BOC updates

- Customs Memorandum Order (CMO) No. 20-2019 revokes CMO No. 44-2009 in relation to the Client Profile Registration System (CPRS) Registration of Once-A-Year Importers (Previously First and Last Importation Scheme). **(Page 5)**

- Memorandum Order No. 2019-05-025 implements the National Valuation Verification System (NVVS). **(Page 6)**

- CMO No. 27-2019 shortens the period of lodgement of goods declaration and payment of duties and taxes from 15 days to 7 days. **(Page 6)**

Court Decisions

- Over-remitted Expanded Withholding Tax (EWT) for a taxable period cannot be offset or credited against the EWT due in succeeding taxable periods. **(Page 7)**

- The non-recognition of gain on an exchange transaction rests upon the confluence of two conditions, namely (a) there must be a legal merger/consolidation, or transfer of all or substantially all of the properties of a corporation in exchange for stock in another corporation, and (b) such business restructuring or reorganization must be for a *bona fide* business purpose. **(Page 8)**

- To comply with VAT invoicing requirements, the amount of tax should be shown as a separate item on the invoice or receipt. **(Page 9)**

- What is appealable to the Court of Tax Appeals (CTA) is the "decision" of the Commissioner of Internal Revenue (CIR) on the taxpayer's protest against the assessment, and not the assessment itself.

  Where a taxpayer questions an assessment and asks the CIR to reconsider or cancel it because he believes he is not liable, the assessment becomes a "disputed assessment" on which the CIR must decide. The taxpayer can appeal to the CTA only upon receipt of the CIR's decision on the disputed assessment. **(Page 10)**

BIR Issuances

RMO No. 23-2019 prescribes the policies, guidelines and procedures in processing applications for Tax Amnesty on Delinquencies pursuant to RA No. 11213, the "Tax Amnesty Act".

RMO No. 23-2019 issued on 9 May 2019

- The Certificate of Tax Delinquencies/Tax Liabilities (CTD) issued to taxpayers shall be based on the list of Accounts Receivables/Delinquent Accounts (ARs/DAs) prepared by the Accounts Receivable Monitoring Division (ARMD) in the National Office.
- The list of ARs/DAs is limited to the tax liabilities of taxpayers under their respective jurisdictions and shall not include those tax liabilities arising from the taxpayer's own declaration.
- The CTD shall be issued by the following concerned offices within 5 days from receipt of the request/application:

Classification	Issuing Office
▸ Large Taxpayers	▸ Large Taxpayers Division (Cebu or Davao)/LTCED - On delinquent tax cases, including delinquent withholding tax (WT) liabilities arising from non-withholding of tax and those with pending or denied application for compromise settlement; ▸ Litigation or Prosecution Division of the National Office which handled the case – for tax cases subject of final and executory judgement by the courts; ▸ Prosecution Division of the National Office – for tax liabilities covered by pending criminal cases filed with the Department of Justice (DOJ)/Prosecutor's Office/Courts.
▸ Non-Large Taxpayers	▸ Regional District Office (RDO) where the taxpayer-applicant is registered - on delinquent tax cases, including delinquent WT liabilities arising from non-withholding of tax and those with pending or denied application for compromise settlement; ▸ Litigation or Prosecution Division of the National Office which handled the case – for tax cases subject of final and executory judgement by the courts; ▸ Prosecution Division of the National Office – for tax liabilities covered by pending criminal cases filed with the DOJ/Prosecutor's Office/Courts.

- For tax liabilities not indicated in the issued CTD, but known to the taxpayer as delinquent accounts, an amended CTD may be issued upon the request of the taxpayer and submission of a copy of the Final Assessment Notice (FAN)/ Final Letter of Demand (FLD) / Final Decision on Disputed Assessment (FDDA), together with a "Sworn Declaration of No Protest Filed / Withdrawal of Protest."
- Only a duly endorsed Acceptance Payment Form (APF) shall be received for payment of the tax amnesty amount by the Authorized Agent Banks (AABs) or the Revenue Collection Officers (RCOs).
- Tax Amnesty payments of large taxpayers shall be made only at designated AAB Branches.

- The following are the documentary requirements to avail of the Tax Amnesty on Delinquencies:

    1. Tax Amnesty Return (TAR) (BIR Form No. 2118-DA);

    2. APF (BIR Form No. 0621 – DA), which must be either duly validated by the AABs, or duly stamped "received", with the accompanying bank deposit slip duly validated by the concerned AABs, or accompanied by a Revenue Official Receipt (ROR) issued by the RCOs;

    3. Certificate of Tax Delinquencies / Tax Liabilities issued by the concerned BIR office; and

    4. For WT liabilities arising from failure of the withholding agent to remit the tax withheld, a copy of the assessment found in either the FAN/FDDA, PAN, Notice of Informal Conference or equivalent document.

- The TAR and other documentary requirements shall be filed with the following BIR offices:

Classification	Place of Filing
Non-Large Taxpayers	RDO where applicant-taxpayer is registered
Large Taxpayers – Cebu or Davao	Large Taxpayers Division (LTD) where applicant-taxpayer is registered
Large Taxpayers – Excise and Regular	Large Taxpayers Collection Enforcement Division (LTCED)

- No Authority To Cancel Assessment (ATCA) shall be issued for cases covered by pending criminal cases with the DOJ/Prosecutor's Office or the court/s if the tax liabilities are not covered by a FAN/FLD/FDDA.

- The ATCA shall be issued per taxable year, regardless of the number of tax types involved.

- Lifting orders on the issued Warrant of Distraint and/or Levy (WDL), Warrant of Garnishment (WG), Notice of Tax Lien (NTL), Notice of Tax Levy (NOL), or Notice of Encumbrance (NOE), shall be prepared and issued based on the approved ATCA, provided the tax liabilities covered by these warrants and notices are included in the taxpayer's availment of the Tax Amnesty.

- For tax liabilities covered by TAR, which will require the issuance of Electronic Certificate Authorizing Registration (eCAR) to transfer property ownership, the eCAR shall be prepared in accordance with existing policies after the issuance of the ATCA.

RMC No. 54-2019 circularizes the availability of revised Donor's Tax Return (BIR Form No. 1800) and Estate Tax Return (BIR Form No. 1801).

RMC No. 54-2019 issued on 21 May 2019

- This circular prescribes the use of the following BIR forms, which are already available at the BIR website (www.bir.gov.ph):

  1. BIR Form No. 1800 – Donor's Tax Return
  2. BIR Form No. 1801 – Estate Tax Return

- Manual and Electronic BIR Form (eBIRForm) filers shall use the revised forms.
- Payment of the taxes due shall be made manually or online.
- The taxpayer shall file the "No Payment Return" at the RDO where the donor or decedent was domiciled at the time of donation or death, or if the donor or decedent has no legal residence in the Philippines, at the Office of the Commissioner at RDO No. 39, South Quezon City.

RMC No. 55-2019 clarifies the meaning of "Business Style," which must be indicated on official receipts and invoices.

RMC No. 55-2019 issued on 22 May 2019

The phrase "Business Style" refers to the business name registered with the concerned regulatory body used by the taxpayer other than its registered name or company name.

BOC Updates

CMO No. 20-2019 revokes CMO No. 44-2009 in relation to the CPRS Registration of Once-A-Year Importers (Previously First and Last Importation Scheme).

CMO No. 20-2019 dated 25 April 2019

- All importers, including Once-A-Year Importers, shall apply for accreditation directly with the Accounts Management Office (AMO);
- The following are the guidelines for accreditation:

  1. The AMO shall set the accreditation procedure, the amount of fees payable, and the documentary requirements for individual, company, corporation, partnership or cooperative;
  2. Duly registered/accredited Once-A-Year Importers are given the option to use their existing registration/accreditation until expiration or apply for accreditation as a regular importer with the AMO under existing CMOs;
  3. The AMO shall create and maintain a Compliance Monitoring Database of the accredited individual, company, corporation, partnership or cooperative and their shipments; and
  4. All shipments must contain the description of the goods and shall be subjected to 100% physical examination.

(Editor's Note: CMO No. 20-2019 was received by the UP Law Center *on 3 May 2019)*

Memorandum Order No. 2019-05-025 implements the NVVS.

Memorandum No. 2019-05-025 dated 24 May 2019

- The National Valuation Verification System (NVVS) shall be fully utilized by all Customs Examiners and Principal Appraisers as an online tool to ascertain the truth or accuracy of any statement, document, or declaration presented for customs valuation purposes.
- The Imports and Assessment Service (IAS) shall ensure that NVVS values are updated regularly and reflected in the system.
- All Customs Examiners and Principal Appraisers shall refer all entries processed at the Formal Entry Division (FED) to the NVVS to verify the truthfulness or accuracy of the customs declaration.

(Editor's Note: Memorandum No. 2019-05-025 was signed by the Commissioner of Customs on 27 May 2019)

CMO No. 27-2019 shortens the period of lodgement of goods declaration and payment of duties and taxes from 15 days to 7 days.

CMO No. 27-2019 dated 3 June 2019

- The 15-day period prescribed under Section 407 of the Customs Modernization and Tariff Act (CMTA) of 2016 to lodge the goods declaration is shortened to 7 days from the date of discharge of the last package from the vessel or aircraft.
- The correct date should be inputted in the "DISCHARGE OF LAST PACKAGE" field of the Electronic-to-Mobile (E2M) system of the BOC. The Chief of Bay Service, Piers and Inspection Division (PID) or its equivalent units shall implement and closely monitor this activity to avoid undue abandonment of shipments in the system.
- Where the declarant does not have all the information or supporting documents to complete the goods declaration, the lodging of provisional goods declaration may be allowed in accordance with Section 403 of the CMTA. In this connection, the E2M system will be adjusted to cover payment of duties and taxes.
- In the implementation of this CMO, certain shipments may be tagged "abandoned" by the updated E2M system.
- The District Collectors are directed to immediately examine the goods, when necessary, after the goods declaration has been lodged, and assess the goods.
- Payment of duties and taxes may be made immediately upon receipt of the assessment.
- The CMO shall take effect on 15 June 2019.

(Editor's Note: CMO 27-2019 was received by the UP Law Center *on 7 June 2019)*

Court Decisions

New Coast Hotel, Inc. vs. CIR
CTA (*En Banc)* Case No. 1758 promulgated 15 April 2019

Over-remitted EWT for a taxable period cannot be offset or credited against the EWT due in succeeding taxable periods.

Facts:

Petitioner New Coast Hotel, Inc. (NCHI) filed a claim for refund of over-remitted expanded withholding tax (EWT) for July 2012. It indicated its intention to refund the over remittance of P340,769.16 by marking the "To be refunded" box. In its EWT return for August 2012, however, NCHI applied the over-remitted amount in July as credit for its EWT due of P577,147.73 and paid the balance of P236,378.57.

Respondent CIR assessed NCHI for underpayment of tax in August 2012. It ruled that offsetting of EWT is not allowed and ordered the payment of the total assessed amount.

NCHI requested for the cancellation of the deficiency assessment but pending the resolution by the BIR, paid the deficiency EWT for August amounting to P592,273.32, inclusive of surcharge, interest, and compromise penalty.

The BIR denied the claim for refund of the alleged erroneous payment of P592,273.32 for lack of legal basis. This prompted NCHI to file a Petition for Review with the CTA.

The CTA Third Division, likewise, denied the petition for lack of merit. NCHI filed a Petition for Review at the CTA *En Banc*.

Issue:

Is NCHI entitled to the refund of over-remitted EWT?

Ruling:

No. Sections 204(C) and 229 of the NIRC expressly provide that in case of erroneously and illegally assessed or collected tax, the taxpayer has only 2 options, i.e. (1) refund, or (2) issuance of a tax credit certificate. The right of taxpayers to claim a refund or TCC does not entitle them to credit or offset with other tax liabilities.

Citing the Supreme Court's decision in *Philex Mining Corporation vs. CIR, G.R. No. 125704, promulgated 28 August 1998*, the CTA held that taxes cannot be subject to compensation since the government and the taxpayer are not creditors and debtors of each other. There can be no offsetting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected.

The over-remitted EWT for July cannot be used to offset or be treated as an advance payment to the succeeding month's EWT for which the taxpayer may be held liable. When it offset the July erroneous payment for August, NCHI availed of a remedy, which is not sanctioned by law.

The non-recognition of gain on an exchange transaction rests upon the confluence of two conditions, namely (a) there must be a legal merger/ consolidation, or transfer of all or substantially all of the properties of a corporation in exchange for stock in another corporation, and (b) such business restructuring or reorganization must be for a *bona fide* business purpose.

CIR vs. Premium Tobacco Redrying & Fluecuring Corporation
CTA (*En Banc*) Case No. 1755 promulgated 22 April 2019

Facts:

Petitioner CIR assessed Respondent Premium Tobacco Redrying & Fluecuring Corporation (PTRFC) for various deficiency taxes for 2009 on account of its *de facto* merger with Fortune Tobacco Corporation (FTC). PTRFC previously transferred to FTC more than 80% of its total assets and some of its liabilities in exchange for FTC shares and additional paid-in capital (APIC) duly recorded in FTC's books of accounts.

PTRFC filed a request for ruling with the BIR Law Division to confirm that its transfer of total assets and a portion of its liabilities in exchange for FTC's shares of capital stock and APIC is a *de facto* merger under Section 40(C)(2) in relation to Section 40(C)(6)(b) of the NIRC, as amended.

Upon receipt of the Formal Letter of Demand/Final Assessment Notice for deficiency income tax, VAT, and DST, PTRFC protested on the ground of prescription. Due to the BIR's inaction, PTRFC filed a Petition for Review at the CTA.

The CTA First Division ruled in favor of PTRFC and held that the transfer of assets is not subject to taxes. The BIR filed a Petition for Review with the CTA *En Banc*.

Issues:

1. Is PTFRC liable for deficiency income tax?

2. Is PTFRC liable for deficiency VAT?

3. Is a prior BIR ruling required?

Rulings:

1. No. Section 40(C)(1) of the NIRC, as amended, prescribes the general rule that any gain derived from exchange of property shall be subject to income tax. However, paragraph (a) of the same provision specifically requires that gains shall not be recognized when a corporation exchanges its property for shares of stock of another corporation pursuant to a plan of merger or consolidation.

   The non-recognition of gain on an exchange transaction rests upon the confluence of 2 conditions, namely (a) there must be a legal merger/ consolidation, or transfer of all or substantially all of the properties of a corporation for stock of another corporation, and (b) such business restructuring or reorganization must be for a bona fide business purpose. The CTA *En Banc* held that PTRFC met these requisites.

   The CTA *En Banc* noted that in case the parties subsequently sell or dispose the shares of stock and/or property they received, the BIR's right to assess taxes thereon will, then, accrue.

2. No. PTFRC's transfer of bulk of its net assets in favor of FTC in exchange for the latter's shares of stock and APIC is not a transaction subject to VAT since net assets were merely transmuted into shareholdings at FTC. There being no sale of assets by PTRFC, the BIR may not impose VAT on such transfer of assets.

3. No. Revenue Regulations 18-2001 does not validly require a prior BIR confirmation before PTFRC's transaction with FTC may be considered tax-exempt. Such tax issuance does not mandate a tax certification or ruling, confirming the exchange as being exempt from tax as a prerequisite for the enjoyment of the benefit conferred under Section 40(C)(2). It merely serves as a guide for the BIR to track the basis of a property and/or shares of stock received through an exchange transaction.

Maersk Global Services Centres (Philippines), Ltd. vs. CIR
CTA (*En Banc*) Case No. 1804 promulgated 29 April 2019

To comply with VAT invoicing requirements, the amount of tax should be shown as a separate item on the invoice or receipt.

If only the total amount is indicated, the buyer cannot ascertain whether the transaction is subject to 12% VAT, exempt, or zero-rated as the transactions are not properly segregated.

Facts:

Petitioner Maersk Global Services Centres (Philippines), Ltd. filed for a claim for refund of unutilized input VAT attributable to its zero-rated sales for 2013 with the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center on 4 November 2014.

To stop the tolling of the prescriptive period, Maersk filed the judicial claim through a Petition for Review at the CTA on 23 March 2015.

The CTA Third Division partially granted the application on the basis that Maersk was able to prove that it is a VAT-registered entity, and that its sale of services to a non-resident foreign affiliate qualifies for VAT zero-rating pursuant to Section 108 (B)(4) of the NIRC.

However, upon scrutiny of the official receipts (ORs) that Maersk submitted, the CTA found that while ORs issued from July to December 2013 indicate the terms "VATable sales," "VAT-exempt sales," "zero-rated sales" and "VAT amount", the spaces provided for the amounts of each of these items were left blank. Only the amount of sale is indicated in the "total amount" portion.

The former CTA Third Division denied the Motions for Reconsideration of Maersk and the BIR. Aggrieved, both parties filed a Petition for Review with the CTA *En Banc*.

Issue:

Did Maersk comply with the VAT invoicing requirements?

Ruling:

No. The CTA *En Banc* sustained the ruling of the CTA Third Division that the ORs are not compliant with the invoicing requirements under Section 113 of the NIRC, as amended. To be considered sufficient, the amount of tax should be shown as a separate item on the invoice or receipt.

It held that since only the total amount is indicated on the OR, the buyer cannot ascertain whether the transaction is subject to 12% VAT, exempt, or zero-rated as the transactions are not properly segregated.

What is appealable to the CTA is the "decision" of the CIR on the taxpayer's protest against the assessment, and not the assessment itself.

Where a taxpayer questions an assessment and asks the CIR to reconsider or cancel it because he believes he is not liable, the assessment becomes a "disputed assessment" on which the CIR must decide. The taxpayer can appeal to the CTA only upon receipt of the CIR's decision on the disputed assessment.

Commissioner of Internal Revenue (CIR) vs. V.Y. Domingo Jewellers, Inc.
Supreme Court (Third Division) G.R. No. 221780, promulgated 25 March 2019

Facts:

The BIR issued a Preliminary Assessment Notice (PAN) to V.Y. Domingo (VYD) for deficiency income tax and value-added tax for taxable year 2006.

VYD timely filed a Request for Re-evaluation/Re-investigation and Reconsideration and requested a "thorough re-evaluation and re-investigation to verify the accuracy of the computation as well as the accounts included in the PAN."

VYD, then, received a Preliminary Collection Letter (PCL) whereby the BIR informed VYD of the existence of two Assessment Notices both dated 18 November 2010, for collection of its tax liabilities. The BIR, through the PCL, invited VYD to the BIR's office within ten days if it wanted to know the details and/or settle the assessment.

Upon request, VYD received copies of the Assessment Notices and, then, filed a Petition for Review with the Court of Tax Appeals (CTA), asking that the Assessment Notices and the PCL be declared null and void for being issued beyond the prescriptive period to assess and collect taxes.

The Commissioner of Internal Revenue (CIR) asked to dismiss the case as it is neither the assessment nor the formal letter of demand, which is appealable to the CTA, but the CIR's decision on a disputed assessment. Claiming that VYD's petition was anchored on its receipt of the PCL, which VYD treated as a denial of its Request for Re-evaluation/Re-investigation and Reconsideration, the CIR argued that there was no disputed assessment to speak of, and that the CTA had no jurisdiction to entertain the Petition for Review.

While the CTA Division dismissed the case, the CTA *En Banc*, on appeal, ruled in favor of VYD and asked the CTA Division to give the CIR full opportunity to present her evidence.

The CTA *En Banc* ruled that the Tax Code and the regulations are silent on the procedure to follow if the taxpayer did not receive the FAN and, instead, receives a PCL. Hence, VYD cannot be faulted for not filing a protest with the BIR before appealing to the CTA. The language of the PCL shows that the CIR is demanding payment from VYD, implying that the assessment has become final.

Issue:

Does the CTA have jurisdiction to rule on a deficiency tax assessment of the CIR without a protest from the taxpayer?

Ruling:

No. The CTA does not have jurisdiction.

A protesting taxpayer, like VYD, has only three options to dispute an assessment as follows:

a. If the protest is wholly or partially denied by the CIR or his authorized representative, the taxpayer may appeal to the CTA within 30 days from receipt of the denial;

b. If the protest is wholly or partially denied by the CIR's authorized representative, the taxpayer may appeal to the CIR within 30 days from receipt of the denial; or

c. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

None of these situations is present in this case.

Instead of filing a protest with the BIR within 30 days from its receipt of the requested copies of the Assessment Notices, VYD elected to file a petition for review before the CTA, as it argued that the issuance of the PCL and the alleged finality of the terms used for demanding payment in the PCL proved that its Request for Re-Evaluation/Re-investigation and Reconsideration had been denied by the CIR.

VYD could not disregard the procedure required by law in protesting tax assessments and act prematurely by filing a petition for review before the courts.

What is appealable to the CTA is the "decision" of the CIR on the taxpayer's protest against the assessment, and not the assessment itself. Where a taxpayer questions an assessment and asks the CIR to reconsider or cancel it because he believes he is not liable, the assessment becomes a "disputed assessment" which the CIR must decide. The taxpayer can appeal to the CTA only upon receipt of the CIR's decision on the disputed assessment.

The Tax Code requires a taxpayer to exhaust administrative remedies by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment. Exhaustion of administrative remedies is required prior to resorting to the CTA precisely to give the Commissioner the opportunity to "re-examine its findings and conclusions" and to decide the issues raised within his or her competence.

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