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TAX DIGEST

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REVENUE REGULATIONS

SUBMISSION OF SAWT, MAP COPIES NOW IN DVD-R

Amendments, issued on March 5, 2015, relevant to provisions in Revenue Regulation (RR) Nos. 2-2006 and 11-2013 requiring taxpayers registered with the Large Taxpayers Service (LTS) and those non-LTS taxpayers duly registered under the Revenue District Office (RDO) who opt to comply with these Regulations shall submit Bureau of Internal Revenue (BIR) Forms No. 2307 and 2316 in a Digital Versatile Disk-Recordable (DVD-R).

The Summary Alphalist of Withholding Agents of Income Payments Subjected to Creditable Withholding Taxes (SAWT) shall be submitted through the applicable modes of submission prescribed under RR No. 1-2014 using the data entry and validation module of the BIR. On the other hand, when submitting to BIR the hard copies of BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) as an attachment to SAWT, scanned copies of it in DVD-R together with a notarized Certification will be submitted following the procedures in the Regulations.

In cases covered by substituted filing, the employer shall furnish each employee with the original copy of BIR Form No. 2316 and in lieu with the submission of hard copies of the duplicate original thereof, scanned copies of the same shall be submitted to the BIR in DVD-R together with a notarized Certification stating that the soft copies are the exact and complete copies of the original. The procedures specified in the Regulation shall be strictly followed.

The requirements indicated in the Regulation shall be strictly observed by all taxpayers registered with the Large Taxpayers Service (LTS). However, any non-LTS taxpayer duly registered under the Revenue District Office (RDO) may at its/his/her option comply with the said requirements provided that the taxpayer will not be allowed to submit in hard copies after the said taxpayer opted to adopt the requirements prescribed by these Regulations.

Revenue Regulations No. 2-2015

TAX EXCLUSION ON 13TH MONTH, OTHER BENEFITS INCREASED

On March 9, 2015, BIR issued Revenue Regulations (RR) No. 3-2015 which implements the provisions contained in Republic Act (RA) No. 10653 approved on February 12, 2015 which amends the pertinent provisions of RR 2-98 on the filling of 13th month pay and other benefits excluded from taxable gross income.

RA 10653 provides for the adjustment in the 13th month pay and other benefits ceiling excluded from the computation of gross income which increased from P30, 000 to P82, 000. It is also stated in the Act that every three (3) years after the effectivity of the said Act, the President of the Philippines shall adjust the amount therein to its present value using the Consumer Price Index (CPI), as published by the National Statistics Office (NSO).

These regulations refer to 13th month pay and other benefits paid and accrued starting January 1, 2015. It does not encompass other compensation received through employer-employee relationship.

Revenue Regulations No. 3-2015

eBIRFORMS MANDATORY FOR NON-eFPS FILERS

On March 17, the Bureau of Internal Revenue (BIR) issued Revenue Regulation (RR) No. 5-2015 to amend RR No. 6-2014 and to impose penalties for failure to file returns under the electronic systems of the BIR by taxpayers who are mandatorily covered by the Electronic Filing and Payment System (eFPS) and Electronic BIR Forms (eBIRForms) facility.

As mandated by previous issuances, the following are mandatorily required by existing revenue regulations to use eFPS:

- Large taxpayers;
- Corporations with paid-up capital of P10 million and above;

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- Top 20,000 corporations;
- Top 5,000 individuals;
- Corporations with complete computerized systems;
- All government bidders pursuant to Executive Order No. 398 as implemented by RR 3-2005; and
- Enterprises registered with PEZA, BOI, various zone authorities covered under RA No. 9400, Cagayan Special Economic Zone Authority, Export Development Council, Tourism Infrastructure and Enterprise Zone Authority, and PHIVIDEC Industrial Authority.

Likewise, the following non-eFPS filers are mandatorily covered by eBIRForms facility:

- Accredited Tax Agents/Practitioners and all its client-taxpayers;
- Accredited Printers of Principal and Supplementary Receipts/Invoices;
- One-Time Transaction (ONETT) Taxpayers;
- Those who shall file a "No Payment" return;
- Government-Owned and Controlled Corporations;
- Local Government Units, except barangays; and
- Cooperatives registered with National Electrification Administration and Local Water Utilities Administration

If previously non-eFPS filers were given an option to whether file their returns manually through Offline eBIRForms or to submit them electronically through the Online eBIRForms system, now through the amendment contained in RR No. 5-2015, non-eFPS filers mentioned above are obliged to use the eBIRForms facility in electronically submitting and filing all their returns.

To enrol with the online eBIRForms system, taxpayers may go to the BIR website (www.bir.gov.ph), then click "eServices" and then "eBIRForms", for more detailed guidelines you may refer Revenue Memorandum Order No. 24-2013 for a thorough guide in signing up for the online eBIRForms.

It is to be noted that failure to comply with the use of eFPS or eBIRForms, a penalty will be imposed amounting to P1, 000 per tax return. There will also be an additional civil penalty of 25% of the tax due to be paid for filing a return in a manner not in compliance with existing regulations which is tantamount to wrong venue filing pursuant to Section 248(A) (2) of the NIRC of 1997, as amended.

Revenue Regulations No. 5-2015

REVENUE MEMORANDUM CIRCULARS

Letter of Instruction No. 1479, Series of 1985 Revoked

On January 22, 2015, Revenue Memorandum Circular (RMC) No. 5-2015 published the full text of Administrative Order No. 45 which revokes the Letter of Instruction No. 1479, Series of 1985.

The Letter of Instruction No. 1479 prohibits the use and importation of airline tickets issued outside the Philippines for international air transportation of passengers originating in the Philippines but due to technological advancements as well as changes in related laws, it rendered the prohibition obsolete and inconsistent with the promotion and facilitation of travel.

Revenue Memorandum Circular No. 5-2015

REVENUE MEMORANDUM CIRCULARS

IPPs' Real Property Taxes, Interest, Penalties Reduced, Condoned

Revenue Memorandum Circular (RMC) No. 6-2015, released on January 22, 2015, published the full text of Executive Order (EO) No. 173 concerning the reduction and condonation of real property taxes and interest/penalties assessed on the power generation facilities of Independent Power Producers (IPPs) under Build-Operate-Transfer contracts with Government-Owned and/or -Controlled Corporations (GOCCs).

The President orders that all liabilities for real property tax on property, machinery and equipment actually and directly used by IPPs for the production of electricity under Build-Operate-Transfer contracts with GOCCs, assessed by Local Government Units (LGUs) and other entities authorized to impose real property tax, for all years up to 2014, be reduced to an amount equivalent to the tax due if computed based on an assessment level of 15% of the fair market value of said property, machinery and equipment depreciated at the rate of two percent (2%) per annum less any amounts already paid. Moreover, all fines, penalties and interest on such deficiency real property tax liabilities are condoned and the IPPs are relieved from payment thereof.

The payment of such real property taxes by the IPPs not only threatens the financial stability of GOCCs, since some of the liabilities have been contractually assumed by them, but also the government's fiscal consolidation efforts and the stability of energy prices. It may also trigger further cross-defaults and significant economic losses across all sectors.

Revenue Memorandum Circular No. 6-2015

Reiteration of the Tax Treatment of Interest Income from Long-Term Deposits, Investments Certificates

On March 6, 2015, Revenue Memorandum Circular (RMC) No. 7-2015 which reiterates the tax treatment of interest income derived from long-term deposit or investments certificates as described in Revenue Regulations No. 14-2012 and clarified in RMC Nos. 77-2012 and 81-2012, was issued by the Bureau of Internal Revenue.

It states that interest income from long-term deposits or investment certificates as defined in Section 22(FF) of the National Internal Revenue Code (NIRC) of 1997, as amended, are subject to tax unless the requisites under Sections 24 (B)(1) and 25(A)(2) NIRC of 1997, as amended, are complied with.

The following are the requisites in order for the interest income from long-term deposit or investment are exempted from income tax:

1. The depositor or investor is an individual citizen (resident or non-resident) or resident alien or non-resident alien engaged in trade or business in the Philippines;
2. The long-term deposits or investment certificates should be under the name of the individual and not under the name of the corporation or the bank or the trust department/unit of the bank;
3. The long-term deposits or investments must be in the form of savings, common or individual trust funds, deposit substitutes, investment management accounts and other investments evidenced by certificates in such form prescribed by the Bangko Sentral ng Pilipinas (BSP);
4. The long-term deposits or investments must be issued banks only and not by other entities or individuals;
5. The long-term deposits or investments must have a maturity period of not less than five (5) years;
6. The long-term deposits or investments must be in denominations of Ten Thousand Pesos (P10,000) and other denominations as may be prescribed by the BSP;
7. The long-term deposits or investments should not be terminated by the original investor before the fifth (5th) year, otherwise they shall be subjected to the graduated rates of 5%, 12%, or 20% on interest income earnings; and
8. Except those specifically exempted by law or regulations from trading, foreign exchange gain shall not be covered by income tax exemption.

REVENUE MEMORANDUM CIRCULARS

For interest income derived by individuals investing in common or individual trust funds or investment management accounts to be exempt from income tax, the following additional conditions/characteristics must all be present:

1. The investment of the individual investor in the common or individual trust fund or investment management account must be actually held/managed by the bank for the named individual at least five (5) years without interruption. The term "bank" referred to herein banks duly licensed as such by BSP;
2. The underlying investments of the common or individual trust account or investment management accounts must comply with the requirements of Section 22(FF) of the NIRC of 1997, as amended, as well as the requirements mentioned above;
3. The common or individual trust account or investment management account must hold on to such underlying investment in continuous and uninterrupted period of at least five (5) years.

Revenue Memorandum Circular No. 7-2015

Filing of ITR of Employees of LT Employer Now Accepted in All RDOs

Revenue Memorandum Circular (RMC) No. 10-2015 issued on March 24, 2015, directs all Revenue District Offices (RDOs) to accept/receive Bureau of Internal Revenue (BIR) Form No. 1700 filed by employees belonging to an employer identified as a large taxpayer (LT).

The Income Tax Return (ITR) with no tax payment shall be manually filed using eBIRForms, in triplicate copies, with the RDO where the LT employer is physically situated or located. On the other hand, ITR with payment shall be filed/paid in any Authorized Agent Banks (AAB) or Revenue Collection Officers (RCOs), Special Collection Officers (SCOs) and other authorized Collection Officers (COs) within the concerned RDO.

However, new employees of LT employers who are registered following Revenue Regulations (RR) No. 7-2012 and using eTIS1, shall file their no payment ITR with the concerned Large Taxpayer Office or pay in any AABs of LT.

Revenue Memorandum Circular No. 10-2015

Clarifies RR No. 6-2014 on tax practitioners/agents mandated to use the eBIRForms

REVENUE MEMORANDUM CIRCULAR NO. 11-2015 issued on March 30, 2015 clarifies Revenue Regulations (RR) No. 6-2014 on tax practitioners/agents mandated to use the Electronic Bureau of Internal Revenue Forms (eBIRForms).

Under Section 4 (1) of RR No. 6-2014, the term *"client-taxpayers"* shall mean 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 in their behalf are not covered by the said revenue issuance. The linking module of authorization by the client-taxpayer to his/her tax agent/practitioner is available online via eBIRForms.

It shall be noted, however, that the taxpayer may cancel anytime his/her authorization prior to the termination of their client-agent relationship.

Tax agents/practitioners should encourage their client-taxpayers to use the electronic filing and payment facilities of the BIR via eBIRForms and Electronic Filing and Payment System.

Revenue Memorandum Circular No. 11-2015

Clarifies the filing of "No Payment Return" in relation to RR Nos. 6-2014 and 5-2015 mandating the use of eBIRForms

REVENUE MEMORANDUM CIRCULAR NO. 12-2015 issued on March 30, 2015 clarifies the filing of "No Payment Returns" in relation to Revenue Regulations (RR) Nos. 6-2014 and 52015, which mandates the use of the Electronic Bureau of Internal Revenue Forms (eBIRForms).

The following taxpayers may file manually "No Payment Returns" to the Revenue District Office where they are

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registered using officially printed forms/photocopied or electronic/computer-generated returns:

a. Senior Citizens or Persons with Disabilities filing their own return;
b. Employees deriving purely compensation income and the Income Tax of which has been withheld correctly showing tax due is equal to the tax withheld, whether single or multiple employers (with two or more employers concurrently and successively at anytime during the taxable year);
c. Employees qualified for substituted filing under RR No. 2-98 Section 2.83.4, as amended, but opted to file an Income Tax Return and are filing for purposes of promotion (PNP/AFP), loans, scholarship, foreign travel requirements, etc.

It is further clarified that all business taxpayers with "No Payment Returns," mandated to use eBIRForms/Electronic Filing and Payment System (eFPS) must electronically file return.

Revenue Memorandum Circular No. 12-2015

Further amends RMC No. 57-2011, as amended by RMC Nos. 21-2013 and 9-2014, entitled "Revised Form Nos. 1700, 1701 and 1702"

The amendment consists mainly in making the disclosure of Supplemental Information under BIR Form Nos. 1700 and 1701 optional on the part of the taxpayer for Income Tax filing covering and starting with calendar year 2014, due for filing **on or before April 15, 2015.**

Individual Income Tax Filers using BIR Form Nos. 1700 and 1701 are, however, advised that for Income Tax filing covering and starting with Calendar Year 2015, the disclosures required under the Supplemental Information portion of the said forms will be mandatory. Thus, the taxpayers are advised to demand from their payors, and properly document their BIR Form No. 2307 and other pieces of evidence for final taxes withheld. Likewise, said taxpayers should properly receipt and book their tax-exempt income.

Revenue Memorandum Circular No. 13-2015

COURT DECISION

RMO 20-90 Non-compliant 'Waiver', Invalid

The Supreme Court (SC), in its decision to the case of Commissioner of Internal Revenue (CIR) vs. The Stanley Works Sales (Phils.), Incorporated (Stanley) dated December 3, 2014 docketed as G.R. No. 187589, proclaimed that a "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Revenue Code" should not be construed as a waiver of the right to invoke the defense of prescription. The waiver is just an agreement between the taxpayer and the BIR to extend the period to date certain, within which the latter could still assess or collect taxes due.

In order for a waiver to become valid, the BIR must ensure compliance with the requirements of RMO 20-90, as they have the burden of securing the right of the government to assess and collect tax deficiencies. Failure to comply with the requirements of the said memorandum will render the waiver defective and therefore invalid. The following are the requisites for a valid waiver:

1. The waiver must be in the proper form prescribed by the RMO 20-90 subsequently revised by RDAO No. 05-01. The phrase "but not after____19__" which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up;
2. The waiver must be signed by the taxpayer himself or his duly authorized representative;
3. The waiver must be duly notarized;
4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. Date of acceptance should be indicated;
5. Execution and acceptance by the taxpayer and BIR respectively, must be within the period of prescription, and,
6. The waiver must be executed in three copies, the original copy to be attached to the docket, the second copy for the taxpayer and the third for the Office accepting the waiver.

It has been emphasized also in the same decision that a waiver is not a unilateral act of the taxpayer but is a bilateral agreement between two parties to extend the period to a date certain. Hence, the BIR must act on it either by conforming to or by disagreeing with the extension. The waiver does not imply that the taxpayer relinquishes the right to invoke prescription unequivocally. The right of the BIR to assess or collect will prescribe after the stated extended period in the waiver unless a subsequent agreement has been executed.

SC also tackles whether a taxpayer is estopped from questioning the validity of the waiver and raising the prescription issue when it agreed to the audit during the period specified in the waiver. It was upheld in the decision that the doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes because the BIR must strictly followed the procedures in executing a waiver.

It is however worth mentioning that executing a waiver is beneficial not only to the tax authorities but also to the taxpayers. It will extend the prescriptive period thereby giving taxpayers enough time to gather supporting documents and refute issued findings for tax deficiency. If the taxpayer refuses to execute a waiver, the tax authorities will have no other recourse but to issue a formal assessment notice before the expiration of the prescriptive period. The taxpayer will therefore lose its opportunity to resolve its tax investigation on administrative level.

OPINION

Interest Expense Limitation

The tax season is fast approaching. Businesses, corporations and individuals, are already preparing their Financial Statements and Income Tax Returns (ITR) to be submitted to different regulatory agencies of the government. In the preparation of the annual ITR, one of the areas often confused about is the deductibility of interest expense.

Interest expense is defined to be the cost of borrowing or using another party's money in the conduct of trade or business. Borrowing funds to support the business operation is a normal thing thus, the cost of borrowing can be construed as an ordinary business expense. Section 34(A)(1) of the National Internal Revenue Code (NIRC) states that there shall be allowed as deduction from gross income all the ordinary and necessary expenses paid or incurred during the taxable year in the conduct of the trade or business. However, under Section 34(B)(1) of the NIRC (as amended by RA No. 9337), the taxpayer's otherwise allowable deduction for interest expense should be reduced by 33% of the interest income subjected to final tax. But what is the rationale behind the limitation?

The limitation on interest expense was added to the taxation law to address the issue on tax arbitrage scheme. Tax arbitrage is the practice of profiting from differences between the way transactions are treated for tax purposes. For example, in 2014, Company A borrowed money from a bank amounting to P100,000 with 5% annual interest then immediately deposited in the local depository bank the proceeds from the loan which earns a 5% annual interest resulting to P5,000 interest expense and P5,000 interest income, respectively.

Assuming, the limitation is not yet in place, the interest income from a deposit is subject to 20% Final Withholding Tax which means, the Company will only pays P1,000 (P5,000 x 20%) tax on the interest earned while the interest expense will give a 30% tax benefit amounting P1,500 (P5,000 x 30%). Combining the effect of the lower final tax and higher tax deductibility would result to a net benefit of P500 or around 33% (P500/P1,500) of the interest expense.

RMC 31-2009, BIR publishes a BSP memorandum which reiterated the provision of Revenue Regulation No. 13-2000, that the limitation shall apply regardless of whether or not a tax arbitrage scheme was entered into by the taxpayer or regardless of the date when the interest bearing loan and the date when the investment was made, as long as during the taxable year, there is an interest expense incurred on one side and an interest income earned on the other side, which interest income had been subjected to final withholding tax.

Now that we already know the explanation behind the 33% interest expense limitation, a question now arises. How about if the interest income was generated from a Foreign Currency Deposits (FCD) which has been subjected to 7.5% final withholding tax, do we need to recompute the limitation or just continue using the stated 33% interest expense limitation?

If we are going to recompute the interest expense limitation based on the rationale explained above, the 33% of interest income non-deductible interest expense would go as high as 75% [(30%-7.5%)/30%] which means, 75% of the interest income from a FCD will become non-deductible. In just one looking, it seems that this will not create any tax exposures on the part of the taxpayers as it is more favorable to the Bureau of Internal Revenue (BIR), however, a huge amount of tax benefit will be forgone by the taxpayers specially for those who's earning millions of interest from FCD like banks and other financing companies.

Again, I'd like to reiterate what the Code stated - "the taxpayer's otherwise allowable deduction for interest expense should be reduced by 33%."

It reminds me of the hornbook doctrine used in one of the SC decisions which says *"if the language of the law is clear, explicit and unequivocal, it admits no room for interpretation but merely application. A statute clear and unambiguous on its face need not be interpreted; stated otherwise, the rule is that only statutes with an ambiguous or doubtful meaning may be the subject of statutory construction."*

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