

Tax brief

July 2016



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Additional qualifications for accredited printers

(Revenue Regulations No. 5- 2016, June 1, 2016)

Note: Pursuant to RMC 69-2016, effectivity is suspended until further notice

Additional policies in the accreditation of printers engaged in the printing services of official receipts, sales invoices and other commercial receipt and/or invoices are newly provided.

Additional requirements: In addition to the qualifications enumerated in Section 3 of RR 15-2012, the applicant printer must comply with the following:

- No record of any pending criminal complaint filed by the BIR for tax evasion and other criminal tax offenses under NIRC.
- Not been tagged as “cannot be located (CBL) Taxpayer” and/or “Inactive” by any BIR tax system

The accreditation shall be valid for 5 years from issuance date of the Certificate of Accreditation. Renewal shall be applied 30 days before the expiration of the validity period. Only principal and supplementary receipts/invoices printed by accredited printers and included in the BIR List of Accredited printers shall be valid for purposes of claiming VAT.

Full shift to eCAR system

(Revenue Memorandum Order No. 22- 2016, June 1, 2016)

Beginning June 1, 2016, manual preparation of Certificates of Authorizing Registration (CAR) and Tax Clearance (TCL2) shall be stopped.

CARs shall now be processed and generated thru the eCAR system. eCARs shall be printed on security papers which include security features and bar codes on its face which can be used by the Land Registration Authority (LRA) for an online verification on its authenticity.

eCARs shall have 1 year validity reckoned from the date of issuance for purposes of presenting the same to the Registry of Deeds (RD). New eCARs shall be issued if eCARs are not presented to the RD within the 1 year period.

Manually issued CARs which have not been submitted to the RD shall be cancelled and replaced with an eCAR. Expired manually issued CARs due for revalidation shall be cancelled and replaced with eCARs.

For lost eCARs which are still valid, the same eCAR shall be reprinted and be issued to the requesting taxpayer.

Certification fee of Php 100 plus Php 15.00 Documentary Stamp Tax shall be charged for

every issuance/reprinting of eCAR.



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Stricter rules on transfer of properties

(Revenue Memorandum Order No. 24 and 25-2016, June 7 and 12, 2016)

Note: This has been recalled and revoked pursuant to RMO 38-2016, July 1, 2016

Stricter rules will be implemented on the processing of Certificates Authorizing Registration (CAR) and Tax Clearance Certificates (TCL) on transfers of properties.

The guidelines cover transfers of real properties, transfer of shares not traded in the stock exchange, transfers of properties subject to estate, donor's or documentary stamp tax, and tax-free exchanges pursuant to Section 40 of the Tax Code involving taxes in excess of P1 million and transactions exempt from capital gains tax (CGT)/Expanded Withholding tax (EWT).

In addition to the supporting documents required upon application for the issuance of CARs and TCLs covering sale/transfer/assignment of properties under RMO 15-2003, the parties (buyer/transferor and seller/transferee) may be subjected to audit/investigation to determine their capacity to hold and/or acquire properties.

The income tax filing of the buyer/seller shall be confirmed from the BIR Integrated Tax System (ITS). If no income tax return has been filed, the buyer/seller shall submit an affidavit why he is not required to file an

income tax return, the sources and amount of income earned. He may also be required to submit other proof of sources of funds such as certificates of creditable and final taxes withheld and loan documents.

If the buyer is determined to have no financial capacity to purchase the property:

1. The transaction shall be deemed a donation, not a sale. Donor's tax shall be imposed instead of CGT, and a duly executed deed of donation shall be required.

2. The buyer/transferee shall be deemed to have undeclared income and deficiency income tax shall be assessed on the amount of consideration for the transfer which cannot be supported by his financial capacity, in case the seller/transferor is a corporation or a stranger to the buyer/transferee.

If the seller is determined to have no financial capacity to acquire/hold the property being sold:

1. The RDO may recommend the issuance of a Letter of Authority.

2. The processing of the CAR/TCL shall nevertheless proceed in accordance with RMO 15-2003.

In case of applications for ruling on tax-free exchanges under Section 40, the Law Division shall forward the case to the National

Investigation Division (NID) for initiation of an audit/investigation.



BIR Issuance

Uniform policies and guidelines on disputed assessments

(Revenue Memorandum Order No. 26- 2016, June 12, 2016)

Note: Pursuant to RMC 69-2016, effectivity is suspended until further notice.

It is a basic policy that opportunities are given to taxpayers who choose to explain objection to an assessment and present necessary documents in support before issuance of FDDA.

Following are the guidelines in handling disputed assessments:

1. Protests against PAN is optional. Whether protested or not, FLD/FAN shall be issued within 15 days from receipt of the PAN. However if upon receipt of PAN, taxpayer accepts and pays the assessment partially or fully, a FLD/FAN shall be issued to formalize the assessment and payment Form 0605 shall be duly prepared, filed and paid to evidence the settlement.

2. If the taxpayer agrees to pay part or all of the amount assessed in the FLD/FAN, the amount accepted should be paid within 30 days from receipt of the FLD/FAN using Form 0605 as evidence of the settlement. An ATCA shall be prepared as evidence of the subsequent cancellation of portion of the assessment, if any. An FDDA shall be issued on the amount not settled.

3. The taxpayer should protest the assessment which he is not willing to pay within 30 days from receipt of FLD/FAN, by filing either:

i. Request for reconsideration if no additional evidence will be submitted

ii. Request for reinvestigation if additional documents will be submitted

A protest shall be considered a request for reinvestigation unless it indicates a request for reinvestigation.

4. In a request for reinvestigation, documents should be submitted within 60 days from the date of filing of protest letter. No additional documents shall be accepted thereafter and the protest shall be evaluated exclusively based on the documents submitted. If no documents or incomplete documents are submitted, the assessment shall become final and executory and a collection letter or other collection remedies shall be enforced.

5. If the taxpayer files an appeal at the CTA after the lapse of the 180 days in case of reconsideration or 60 days from submission of documents in case of reinvestigation, an FDDA shall be issued automatically.

6. If the taxpayer decides to pay the amount in the FDDA, partial or in full, Payment Form 0605 be prepared, filed and the amount paid. Motion for reconsideration with the CIR or appeal to CTA may be filed within 30 days from receipt of FDDA for the unsettled

portion.

7. In a motion for reconsideration, the taxpayer shall manifest that the appeal pertains only to the unsettled amount and copy of the payment form for the settled amount shall be attached. A protest is not available as remedy after issuance of FDDA.

8. For pending motion for reconsideration with the CIR or an appeal at the CTA, the taxpayer still has the option to pay part or all of the disputed amount.



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BIR waives TTRA requirement for interest, dividend and royalties

(Revenue Memorandum Order No. 27-2016, June 23, 2016)

Note: Pursuant to RMC 69-2016, effectivity is suspended until further notice.

The treaty rates on interest, dividend and royalties can now be withheld and remitted without need to file a tax treaty relief application (TTRA).

The withholding agent/Philippine payor, however, has to retain the documents enumerated in the RMO, which are the same documents prescribed for TTRA. Correctness of the rate shall be confirmed during regular BIR audit.

Enhanced withholding forms BIR forms 1601F and 1604CF will be issued to capture relevant information which the BIR can use for risk assessment and selection for audit.

The RMO, on the other hand, clarifies that a ruling must be applied with the BIR ITAD to avail of the 15% preferential rate on dividends under the tax sparing proviso in Sec 28(B)(5) (b) of the Tax Code for dividend recipients who are not residents of treaty countries.

Under this Section, dividends paid to a nonresident shareholder can be subject to a lower rate of 15% if the country of residence of the nonresident foreign corporation allows a credit of 15% against the tax due on Philippine-sourced dividends.

The 15% rate also applies if the said country does not tax foreign-sourced dividends.

Public auction of BIR seized properties

(Revenue Memorandum Order No. 31-2016, June 27, 2016)

BIR employees and their relatives up to the fourth degree of consanguinity or affinity are not allowed to participate in the public auction of properties seized by the BIR from delinquent taxpayers.

Where there is only one bidder in the public auction, that bidder shall be officially declared the winner subject to the prescribed minimum amount of the bid price and posting of the ten percent (10%) bond thereon.

This however does not preclude the Bids and Award Committee-Acquired Assets from requiring a higher number of participating bidders should the need arise, in order to protect the interest of the government.



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Required certifications on the issuance of BIR-ICC/BCC

(Revenue Memorandum Order No. 32-2016, June 29, 2016)

New amendments and additional provisions for the issuance of BIR-ICC/BCC.

The level of compliance of the ICC applicant in the regular and electronic summary lists of sales/purchases/importations, alphabetical lists of employees (BIR Form 1604CF), and payees from whom taxes were withheld (BIR Form 1604E) shall no longer be required to be certified by Regional District Officer or Head Revenue Executive Assistant, and LT programs and compliance group as previously mandated under RMO 1-2015 in the issuance of BIR-ICC/BCC. It was noted that the same are already being certified by the Audit information, Tax Exemption and Incentives Division (AITEID) and the Miscellaneous Monitoring Division (MOMD).

The chief collection division officer's disclosure of the existence of any application for compromise settlement or abatement of penalties shall likewise be submitted. The said disclosure shall indicate the date of filing of the application, tax types covered, return period, amounts of AR/DA, as well as the actual amounts paid and dates of payment of the offer.

Only applicants who have filed their application for compromise settlement or abatement of penalties prior to ICC application shall be qualified. Otherwise, the

ICC/BCC application outrightly denied.

Subsequent denial of application for compromise/abatement shall cause immediate cancellation/revocation of previously issued ICC/BCC.

Offices issuing the Certifications shall indicate the validity period on the face of their respective certificates.

New provisions are also added for purposes of handling of spurious certifications/documents in the application for BIR-ICC/BCC and for ICC holders transferring to a new address.

New daily minimum wage rates in ARMM for private sector

(Revenue Memorandum Circular No. 59-2016, June 2, 2016)

The new minimum wage rates of covered workers in the private sector in ARMM, have been circularized, as follows:

Sector/Industry	Minimum Wage under Wage Order No. ARMM-15	Basic Wage Increase	New Daily Minimum Wage Rate
A. Non-Agriculture (Industrial/ Manufacturing/ Construction/ Commercial/ Mining/ Academe)	Php 250.00/day	Php 15.00/day	Php 265.00/day
B. Agriculture Plantation/ Non-plantation	Php 250.00/day	Php 5.00/day	Php 255.00/day



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Unacceptable bank checks for tax payments

(Revenue Memorandum Circular Nos. 60 and 66-2016, June 1, 2016 and June 22, 2016 respectively)

BIR announced that checks drawn from Sumitomo Mitsui Banking Corporation-Manila Representative Office (SMBC-Manila representative office) are not to be accepted as payment for internal revenue taxes.

Said bank is prohibited by the Bangko Sentral ng Pilipinas (BSP) in view of the cessation of business operations of the said bank in the Philippines.

Note however that Sumitomo Mitsui Banking Corporation - Manila Representative Office is not the same with Sumitomo Mitsui Banking Corporation - Manila Branch. Accordingly, all check transaction conducted by Sumitomo Mitsui Banking Corporation - Manila Branch shall still be valid.

Accounting for netting/offsetting arrangements

(Revenue Memorandum Circular No. 61-2016, June 13, 2016)

Note: Pursuant to RMC 69-2016, effectivity is suspended until further notice.

The Circular prescribes the accounting and recording of transactions involving “netting” or “offsetting” arrangements.

Accrued receivables or payables arising from sale of goods and services shall at all times be recognized at gross for tax purposes, regardless of whether the transactions are actually settled through offsetting or through net settlement of cash flows. Hence, income tax, withholding tax and VAT/percentage tax shall be determined based on the gross amounts.

The Circular provides the following examples when netting and offsetting usually happen.

1. Manufacturer supplying goods to Supermarket is at the same time liable to pay Supermarket a service fee for the display of its products in Supermarket’s premises. Although Manufacturer issues an invoice for full amount, Supermarket pays only net of the service fee. In this case, the service fee should not be treated as a disguised discount.
2. Telecommunication companies, in the normal course of business, have interconnection charges/access fees chargeable to each other. Receivables/payables are settled

based on the net payable computed for either company.

3. Bank has interest payable to a depositor and, at the same time, has interest receivable from a loan to the same depositor. Upon settlement, bank only charges the depositor/debtor an amount net of the interest payable on the deposit.

In all cases, each company should record the gross amount of purchases/payables or sales/receivables, issue official receipts and invoices for the gross amounts and recognize the same for purposes of computing the income tax, VAT or percentage tax, and withholding tax.

The principle of “substance” over form shall be applied and deficiency taxes may be assessed if uncovered.



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Tax treatment of passed-on GRT

(Revenue Memorandum Circular No. 62-2016, June 13, 2016)

Note: Pursuant to RMC 69-2016, effectivity is suspended until further notice.

Clarifications are issued on the proper tax treatment of passed-on Gross Receipts Tax (GRT)

The BIR has previously ruled that banks and non-bank financial intermediaries performing quasi-banking functions may shift to their clients/borrowers the GRT due on transactions covered under Sections 121 and 122 of the NIRC.

The tax implications of passed-on GRT are as follows:

1. Passed-on GRT shall form part of the gross receipts of banks/NBFIs on which the GRT is imposed.
2. The passed-on GRT shall be classified as other fees as prescribed by the implementing rules issued by the BSP. Hence, for banks and NBFIs performing quasi-banking functions, the passed-on GRT shall be subject to the GRT rate of 7% under Sec. 121 of the Tax Code.

To illustrate:

	GRT Base	GRT Rate	GRT due
Interest received	10,000	5%	500.00
Passed-on GRT	500	7%	35.00
Total amount collected from borrower	10,500		535

3. Customers/clients/borrowers can claim passed-on GRT (as other fees) as deductible expense for income tax purposes provided the appropriate tax has been withheld pursuant to RR 2-98 as amended by RR 12-2013.

4. While the passed-on GRT shall be considered as taxable income, the GRT paid/remitted can be a deductible expense for income tax purposes.



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Clarifications re tax-exempt corporations under Section 30 of the NIRC

(Revenue Memorandum Circular No. 64-2016, June 29, 2016)

Note: Pursuant to RMC 69-2016, effectivity is suspended until further notice.

Not all corporations registered as non-stock, non-profit with the Securities and Exchange Commission automatically fall under Section 30 of the NIRC as tax-exempt corporations. There are only 11 kinds of organizations under Section 30.

Corporations registered as non-stock, non-profit must establish factual basis for exemption under Section 30 of the NIRC through either of the following:

- Organizational test - corporation or association's constitutive documents should exclusively limit its primary purpose to those described in Section 30 of the NIRC.
- Operational test - corporation or association's regular activities should be exclusively devoted to the accomplishment of the purposes specified in Section 30 of the NIRC. A corporation or association fails to meet this test if substantial part of its

operation are considered activities conducted for profit.

Furthermore, not all income derived by them are totally exempt from income tax or all taxes for that matter. Section 30 corporations are subject to the applicable internal revenue taxes on income derived from their properties, real or personal, or from any activity conducted for profit regardless of the disposition thereof.

Deadlines for filing returns and tax payments

(Revenue Memorandum Circular No. 65-2016, June 23, 2016)

Note: Pursuant to RMC 69-2016, effectivity is suspended until further notice.

Due dates for filing of return and payment of taxes shall be the exact dates stated in the law or regulations for filing or payment. Electronic returns must be received by the BIR on or before 12 midnight of the due date. However, if deadline falls on a Saturday, Sunday or a holiday, this shall be moved to the next business day. This rule applies in all cases whether for eFPS, eBIR Form, and manual filers.

In case of system downtime and unavailability,

taxpayer shall present the written advice issued by the BIR that the system is down or unavailable.

Failure to file the returns on or before stated deadlines for the payment thereof shall warrant imposition of penalties for failure to file the returns or for late filing whichever is applicable.

Unacceptable bank checks for tax payments

(Revenue Memorandum Circular No. 67-2016, June 20, 2016)

BIR announced that checks drawn from Comsavings Bank with trade name GSIS Family Bank (A Thrift Bank) are not to be accepted as payment for internal revenue taxes.

Said bank is prohibited from doing business in the Philippines by the Bangko Sentral ng Pilipinas (BSP) and has been placed under receivership with PDIC as the designated receiver.



SEC Opinion

contracts of lands, this being considered not forbidden by the constitution.

Land ownership by foreigners

(SEC- OGC Opinion No. 16-15, June 1, 2016)

Under Philippine jurisdiction, the primary test in determining nationality of a corporation is always the place of incorporation test since we adhere to the doctrine that a corporation is a creature of the state whose laws it has been created.

However, other tests such as the control test must be used for purposes of compliance with the provisions of the constitution and of other laws on nationality requirements.

The nationality of the non-stock corporation, in relation to the constitutional provision on land acquisition, is computed on the basis of the nationality of its members and not premised on the membership contribution.

Pursuant to Section 2-A of the Anti-Dummy Law, foreigners should not constitute more than 40% of the members of the BOT. Instances where 60% of Filipino membership requirement is not met, a foundation may resort to increase Filipino membership until requirement is met.

These facts however are not considered basis on allowing aliens to own lands under the Philippine Constitution. They may however be granted temporary rights such as lease



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Cost or expense directly attributable to the rendition of PEZA registered services are direct costs

(Commissioner of Internal Revenue v Lear Automotive Services (Netherlands) B.V. Phil. Branch, CTA EB No. 1346, June 2, 2016)

Royalties paid for the use of an intangible property which is required for the manufacturing of the products of a PEZA registered company is allowable as deduction in computing gross income subject to the 5% tax.

The Court rejected BIR's argument that the allowable deductions for purposes of the 5% tax on gross income are limited to those enumerated under the regulations.

The Court noted that Revenue Regulations 11-2005 revoked the exclusivity of items enumerated as direct costs under RR 2-2005.

Specifically, RR 2-2005 mentions that "cost of sales or direct cost shall consist only of the following cost or expense items". RR 11-2005, on the other hand mentions that "the following direct costs are included in the allowable deductions to arrive at gross income earned".

The Court also noted that even the PEZA Implementing Regulations did not limit, but merely enumerated, the allowable deductions.

The CTA likewise quoted a previous decision which concluded that "it is clear from the amendment made under RR 11-2005 that the list is not meant to be all-inclusive but merely enumerates the expenses that can be considered as direct costs. PEZA-registered enterprises may be allowed to deduct expenses which are in the nature of direct costs even though the same are not included in the list.

The criteria in determining whether the item of cost or expense could be part of direct costs is the direct relation of such item in the rendition of the PEZA-registered services.

The Court also concluded that BIR Ruling DA-147-2005, which confirmed that royalties paid by the company are considered deductions, is binding to the Commissioner of Internal Revenue.

FWT withheld and paid for declared cash dividends greater than available retained earnings can be basis for tax refund or TCC issuance

(Commissioner of Internal Revenue v Carrier Air Conditioning Philippines, Inc. CTA EB No. 1341, June 2, 2016)

The company declared cash dividends and paid the applicable final withholding tax in 2009.

Subsequently it found out that the retained earnings available for dividend declaration was

less than the cash dividends declared.

Hence, in its 2011 declaration, it was decided that the overpaid dividends in 2009 will be deducted.

Thereafter, the company sought for a refund or issuance of TCC and subsequently filed a petition for review before the CTA.

The CTA en Banc sustained the Court in division in favor of a refund on the basis of Section 229 of NIRC 1997 governing refund or erroneously or illegally assessed or collected taxes shall now apply.



CTA Decision

SEC certificates of non-registration to establish fact on non-residency of foreign corporations not sufficient for input VAT refund

(FCF Minerals Corporation v Commissioner of Internal Revenue, CTA Case No. 8789, June 21, 2016)

Every petition for refund representing unutilized input VAT is always partnered with taxpayer's burden to substantiate claim with sufficient evidence and compliance with all the legal requisites for its alleged entitlement. Failure to discharge the said burden is fatal to petitioner's claim. This is in view of the doctrine that taxes are the lifeblood of the nation.

In this present case, petitioner-taxpayer's sales/receipts include small amount subject to 12% VAT and a substantial portion of the input taxes incurred on purchases attributable to its zero-rated sales/receipt.

However, these input taxes were not used against its output taxes in the subsequent periods, thus claim for refund. Critical in this petition is the timeliness of the filing of the claim. Input taxes arising from zero-rated or effectively zero-rated sales may be applied for refund/tax credit of creditable input tax due or paid attributable to such sales within two (2) years from the close of the taxable quarter when the relevant sales were made. Evidently,

petitioner-taxpayer timely filed its claim.

However though critical, timeliness is not the only requisite to comply with for refund purposes. It is also important that taxpayer claiming for refund be proven a VAT-registered entity and engaged in zero-rated/effectively zero-rated sales.

In the case herein, petitioner-taxpayer is shown as a VAT-registered entity. Albeit with that fact, it failed to prove that its clients are non-resident foreign corporations doing business outside the Philippines. SEC certificates of non-registration presented do not prove that such businesses are non-resident foreign corporations.

Petitioner-taxpayer failed to prove its claim, thus denial of petition.



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CTA Decision

Omission of taxpayer's TIN in the CWT certificate not ground for denial of claim for refund

(RCD Realty Marketing Corporation v Commissioner of Internal Revenue, CTA Case No. 8468, June 22, 2016)

The CTA in division, disallowed portion of the application for refund of unutilized creditable withholding taxes because the certificate BIR Form 2307 does not indicate the TIN of the payee-applicant.

The payee-applicant avers that failure of the payors to indicate the payee's TIN in the CWT certificate is an omission that is not attributable to the payee since they did not have a hand in the preparation thereof.

The CTA En Banc cited the Supreme Court decision on the three requirements on entitlement of a corporate taxpayer for refund of excess withholding taxes, as follows:

1. That the claim for refund was filed within the two (2) year reglementary period pursuant to Section 229 of the 1997 NIRC, as amended;
2. That it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income;

3. That the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and income tax withheld therefrom.

In this case, the Court noted that, although the TIN of the payee was not indicated, the CWT certificate clearly shows the information regarding the payor, the payee, the amount paid and the income tax withheld from that amount. This should be considered sufficient compliance with the requirement of the law.

The Court notes that even the state is not exempt from the application of the principle of unjust enrichment. The state must likewise deal with taxpayers with fairness and honesty



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