Punongbayan & Araullo

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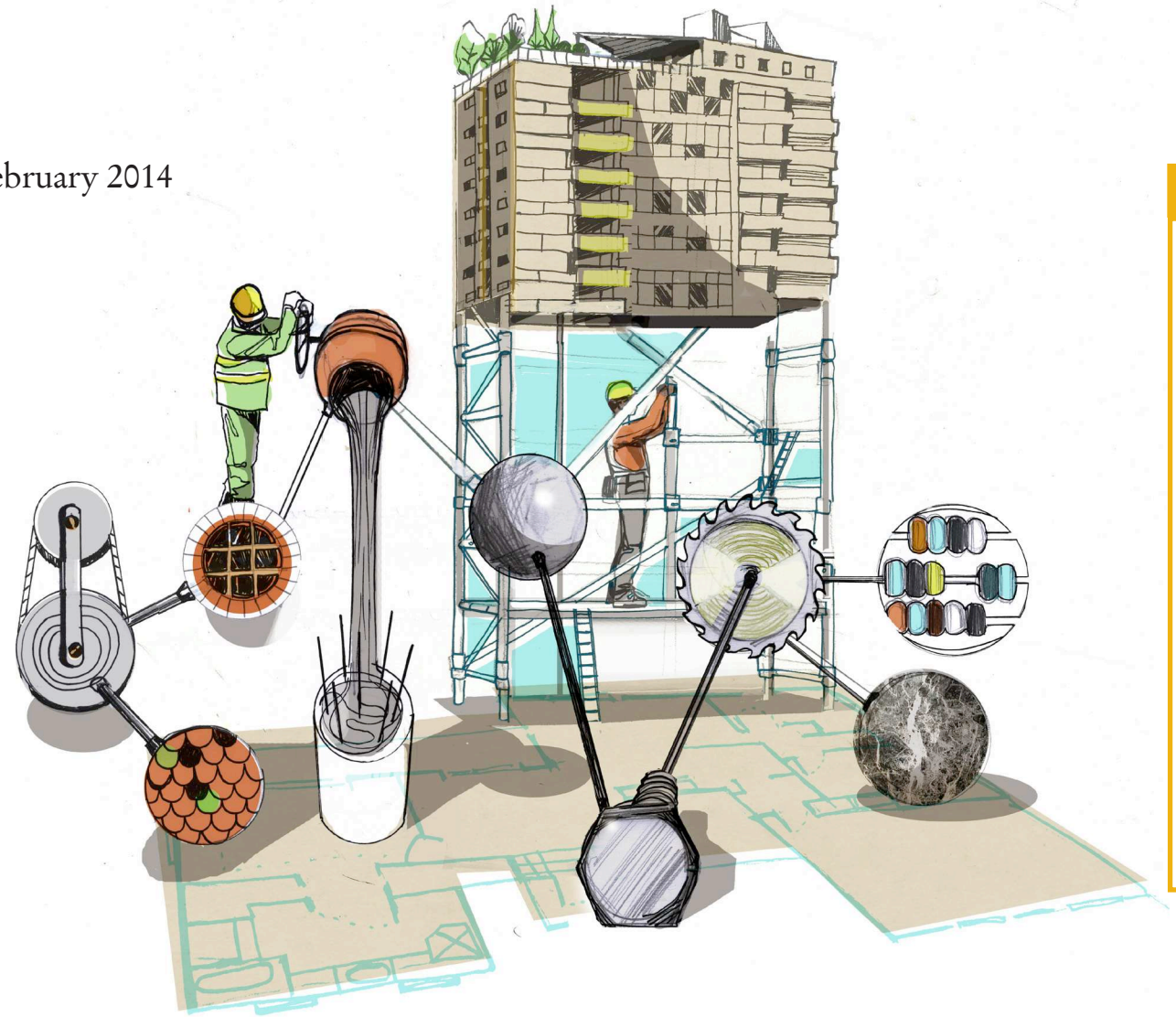
Tax brief

February 2014



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Mandatory electronic submission of alphalists

All withholding agents, regardless of the number of employees and payees and whether the employees/ payees are exempt or not, are now required to submit their alphabetical list of employees and list of payees on income payments subject to creditable and final withholding taxes (alphalists) under the following modes:

1. Attachment in the electronic filing and payment system (eFPS)

2. Electronic submission using the Bureau of Internal Revenue's (BIR) website (esubmission@bir.gov.ph)

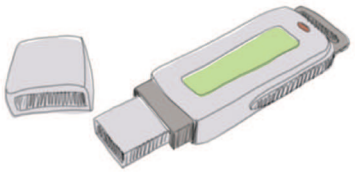
3. Electronic mail (e-mail) at dedicated BIR address using the prescribed CSV data file format.

In case the withholding agent does not have its own internet facility or does not have internet access within its location, it may file its alphabetical lists through e-mail using the e-lounge facility of the nearest revenue district office or revenue region of the BIR.

The submission of alphalists where the income payments and taxes withheld are lumped into one single amount (e.g., "various employees", "various payees", "PCD nominees", "Others", etc.) is no longer allowed. Such alphalists, including any alphalist that does not conform to the prescribed format thereby resulting in the unsuccessful uploading to the BIR system, shall be deemed not received and shall disqualify the deductibility of the expense for income tax purposes.

The alphalists refer to those alphalists that are required to be attached as an integral part of the Annual Information Returns (BIR Form No. 1604CF/1604E) and Monthly Remittance Returns (BIR Form No. 1601C, etc.).

(Revenue Regulations No. 1-2014, January 10, 2014)



BIR Issuances

New ITR forms

The BIR has prescribed the following new BIR forms, which should be used by taxpayers in filing their income tax return (ITR) starting taxable year ended December 31, 2013.

A. Individual taxpayers

1. BIR Form No. 1700 version June 2013 - Annual ITR for individuals earning purely compensation income

2. BIR Form No. 1701 version June 2013 - Annual ITR for self-employed individuals, estates and trusts

B. Corporations

1. BIR Form No. 1702-RT version June 2013 - Annual ITR for corporations, partnerships and other non-individual taxpayers subject only to the regular income tax

2. BIR Form No. 1702-EX version June 2013 - Annual ITR for use only by corporations, partnerships and other non-individual taxpayers EXEMPT under the Tax Code, as amended and other special laws

3. BIR Form No. 1702-MX version June 2013 - Annual ITR for corporations, partnerships, and other non-individuals with mixed income subject to multiple income tax rates or with income subject to special/preferential tax rate

Taxpayers who have filed ITRs using the old BIR Forms for year ending December 31, 2013 (manual or electronic) must re-file their tax returns using the new BIR Forms.

Rule on rounding-off ITR figures

The amounts reported in the ITR should be rounded off to the nearest peso. The requirement for entering centavos in the ITR has been eliminated. If the amount of centavos is 49 or less, drop down the centavos (e.g., P100.49 = P100.00). If the amount is 50 centavos or more, round up to the next peso (e.g., P100.50 = P101.00).

Rule on the use of optional standard deduction (OSD)

A. The following corporations, partnerships and other non-individuals may not avail of the OSD and are mandated to use the itemized deductions:

1. Those exempt under the Tax Code [Section 30 and those exempted under Section 27(C)] and other special laws, with no other taxable income

2. Those with income subject to special/preferential tax rates

3. Those with income subject to regular income tax rate under Section 27(A) and 28(A)(1) of the Tax Code, as amended, and to special /preferential tax rates

Juridical entities whose taxable base is gross revenue or receipts (e.g., non-resident foreign international carriers) are not entitled to the itemized deductions or to the OSD under Section 34(L) of the Tax Code, as amended.

BIR Issuances

B. The following individual taxpayers are not entitled to avail of the OSD and should thus use only the itemized deduction method:

1. Those exempt under the Tax Code, as amended, and other special laws with no other taxable income [e.g., Barangay Micro Business Enterprise (BMBE)]

2. Those with income subject to special/preferential tax rates

3. Those with income subject to income tax rate under Section 24 of the Tax Code, as amended, and also with income subject to special/preferential tax rates

(Revenue Regulations No. 02-2014, February 3, 2014)

Clarification on the mode of submission of alphalists

The BIR has issued clarifications on the prescribed mode of submission of alphalists under Revenue Regulations No. (RR) 1-2014.

Highlights of the clarifications are as follows:

a. On the mode of submission of alphalists

Only the following modes of submission of the alphalists may be used by withholding agents in submitting their alphabetical list of employees and list of payees:

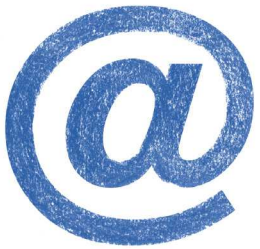
1. Attachment in the electronic filing and payment system (eFPS)

2. Electronic submission using the BIR's website (esubmission@bir.gov.ph)

3. E-mail at dedicated BIR address using the prescribed CSV data file format.

For eFPS taxpayers and IAF-enrolled users
eFPS taxpayers and users of the Inter-Active Forms (IAFs) system may only submit their alphalists through eSubmission. However, once the attachment facility of eFPS is already available, eFPS taxpayers may opt to use either the eSubmission or the attachment facility of the eFPS in submitting their alpahlists.

For non-eFPS and non-IAF users
For taxpayers who are non-eFPS users or non-IAF users, they may avail of the eSubmission facility or e-mail submission of their alphalists. The BIR, however, prefers that these taxpayers use the eSubmission facility for the convenience of both the taxpayer and the BIR.



BIR Issuances

b. On the alphalists covered by the different modes of submission under RR 2-2014

The prescribed modes of submission of alphalists covers the alphabetical list of employees and list of payees, which are required to be attached as an integral part of the Annual Information Returns (BIR Form No. 1604CF/1604E). It also covers the Monthly Alphalist of Payees (MAP) and the Summary Alphalist of Withholding Taxes (SAWT). However, it does not cover the monthly remittance return for compensation (BIR Form 1601C) where the monthly list of recipients of compensation is not required to be attached to the return.

c. On proof of submission of alphalists

Taxpayers submitting their alphalist through eSubmission or e-mail shall receive an e-mail message on the status of their submission. The taxpayer should print the computer screen displaying the BIR's acknowledgment/ confirmation of receipt of the emailed alphalist. The printed copy of the computer screen display of the acknowledgment/ confirmation of the BIR's receipt of the alphalist shall serve as documentary proof of filing/ submission of the alphalist, in lieu of hard or physical copy, which shall be attached to the hard or physical copy of the annual information return upon filing with the Revenue District Office (RDO).

d. On actions required to be undertaken by taxpayer whose alphalist failed the validation process

In case the alphalist submitted by the taxpayer failed the BIR validation process, the reasons for the failure shall be indicated in the email message to be received by the taxpayer. The taxpayer should immediately address these reasons and re-submit, through eSubmission or email, as the case may be, the corrected and completely filled-up alphalist to the concerned RDO, within five days from receipt of the message. If the RDO has actually sent the message to the email address of the taxpayer, such message is deemed received and read by the taxpayer.

e. On the requirement to attach proof of submission of alphalist to the tax return

Non-eFPS taxpayers who are required to prepare and submit the hard or physical copy of their ITRs (quarterly and final returns), VAT declarations (BIR Forms 2550M and 2550Q) and percentage tax returns (BIR Forms 255 and 2551Q) shall attach to their tax return the printed copy of the computer screen display of the acknowledgment/confirmation of the BIR's receipt of the monthly alphalist, and submit the same to the Authorized Agent Bank (AAB) or RDO where they are duly registered, as the case may be.

BIR Issuances

f. On the penalty for failure to successfully upload the alphalist

In case a taxpayer unsuccessfully uploads his alphalist, which is considered not received by the BIR, he shall be liable to pay P10,000 plus imprisonment of not less than one year but not more than 10 years, or in lieu of imprisonment, pay the compromise penalty based on gross annual sales under Revenue Memorandum Order No. (RMO) 19-2007.

In case the BIR, after conducting the validation process, duly informed the taxpayer of his non-compliance with requirements in the submission of alphalist (Q12 of the Circular) and required the re-submission of a correct alphalist, a separate penalty shall be imposed against the taxpayer for each incorrectly accomplished and submitted alphalist.

If the taxpayer failed to file the alphalist or failed to address the issues and re-submit his complete and corrected alphalists after the validation process, the taxpayer cannot claim the expenses arising from the alphalist for income tax purposes.

Where the taxpayer is able to successfully upload his alphalist to the BIR's data warehouse but fails to enter some transactions that should have been entered in the previously submitted alphalist, the taxpayer is required not only to re-file/re-submit the missing information but also to re-file/re-submit the complete and corrected alphalist to the BIR.

For the specific procedures/ steps in the submission of alphalists, the e-mail addresses of the different BIR offices where taxpayers may submit their alphalist through e-mail, and other clarifications of the BIR, please see Revenue Memorandum Circular No. (RMC) 5-2014.

(Revenue Memorandum Circular No. 05-2014, January 29, 2014)

Court Decisions

30-day appeal period applies to inaction of CIR on VAT refund cases

Under Section 112(D) of the Tax Code, the Commissioner of Internal Revenue (CIR) shall grant a refund or issue the tax credit certificate for creditable input taxes within 120 days from the date of submission of complete documents. In case of full or partial denial of the claim for tax refund or tax credit or failure on the part of the CIR to act on the application, the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal the decision or the unacted claim with the Court of Tax Appeals (CTA).

The Supreme Court (SC) held that the 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. It held that the 30-day period to appeal is both mandatory and jurisdictional, contrary to the contention that it is only directory and permissive as indicated by the use of the word "may" in Section 112(D) of the Tax Code. The SC cited the case of CIR v. San Roque Power Corporation, GR 187485, February 12, 2013, where it held that the Tax Code did not make the 120+30 day periods optional just because the law uses the word "may". It explained that the word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.

(Commissioner of Internal Revenue v. Mindanao Geothermal Partnership, GR 191498, January 15, 2014)

Prescription as defense against assessment

Under Section 203 of the Tax Code, the BIR has three years from the date of filing of the return or from the last day prescribed by law for the filing of the return – whichever comes first – to assess a taxpayer for internal revenue taxes. Otherwise, the assessment shall not be considered valid.

If not raised in the trial court, the defense of prescription cannot be considered on appeal, the general rule being that the appellate court is not authorized to consider and resolve any question not properly raised in the lower court. However, if the facts demonstrating the lapse of the prescriptive period are sufficiently and satisfactorily apparent on the record, the court has the authority to dismiss an action on ground of prescription *(Dino v. Court of Appeals, GR 113564, June 29, 2001)*.

In the instant case, the taxpayer was issued deficiency value-added tax (VAT) assessments for taxable year 2006. At the time the BIR issued the Final Assessment Notice (FAN), the prescriptive period had already lapsed for the first and third quarters considering the dates the taxpayer filed its quarterly VAT returns for taxable year 2006. The taxpayer did not raise the issue on prescription when it protested the FAN at the administrative level. It raised the issue for the first time on its appeal with the CTA.

Court Decisions

The CTA held that even if the defense of prescription was raised for the first time on appeal, the court has the authority and discretion to dismiss an action on the ground of prescription when it is apparent on the record that the assessment has already prescribed or has been time-barred. Hence, since the FAN was issued beyond the three-year prescriptive period under Section 203 of the Tax Code, the assessment issued against the taxpayer was cancelled by the CTA.

(Commissioner of Internal Revenue v. First Sumiden Realty, Inc., CTA EB No. 975 re CTA Case No. 8151, January 7, 2014)

Refund of undeclared input VAT

Due to inadvertence, input taxes on purchase of services on credit incurred by a VAT-registered taxpayer were not declared in its quarterly VAT return, resulting in payment of higher output tax than it otherwise should not have paid. Considering that the taxpayer already received a letter of assessment, it could no longer amend its VAT return for the subject quarter to include the undeclared input taxes.

To refund its alleged erroneously paid VAT, the taxpayer filed a claim for refund of its overpaid output tax. The CTA held that in filing for tax refund, the taxpayer is simply applying its input tax credit against the output VAT, i.e., it is merely availing of the creditable input tax mechanism under Section 110 of the Tax Code. Hence, it should be entitled to claim refund of its erroneously paid output VAT subject to verification of its output taxes and input taxes during the pertinent quarter/s.

However, for failure to properly substantiate its input taxes, the taxpayer -- even with the alleged undeclared input tax -- would still not have an overpayment of output tax that may be the subject of a claim for refund on the ground of erroneous overpayment. Hence, the CTA denied the claim for refund of the taxpayer.

(Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8183, January 17, 2014)

Court Decisions

Tax consequences of issuance of erroneous VAT invoice or official receipts

Pursuant to Republic Act No. 7916 (PEZA Law), an enterprise registered with the Philippine Economic Zone Authority (PEZA) under 5% preferential tax rate is entitled to exemption from national and local taxes, including VAT. Being exempt from VAT, a PEZA-registered enterprise may not register as a VAT taxpayer.

However, when a PEZA-registered enterprise opts to be registered as a VAT taxpayer, it is mandated to issue a VAT invoice or official receipt for every sale, barter, exchange of goods, properties or services, and these documents should contain the information required to be contained in the VAT official receipt or VAT invoice for its transactions. Thus, in case of VAT-exempt sales transactions, Section 113(B)(2)(b) in relation to Section 113(D)(2) of the Tax Code requires that the term "VAT-exempt sale" shall be written or printed prominently on the VAT invoice or official receipt. Otherwise, the issuer shall be liable to pay VAT.

In the lease of its factory to another PEZA-registered enterprise, a PEZA-registered ecozone facilities enterprise as lessor issued VAT official receipts without the words "VAT-exempt sale" written or printed on it. The CTA held that although the lease by a PEZA ecozone facilities enterprise of its factory to another PEZA-registered enterprise is considered an "Intra Ecozone Enterprise Sale of Service" that is exempt from VAT under Section 5(4a) of RMC 74-99, the VAT official receipt issued by the PEZA-registered ecozone facilities enterprise as VAT-registered taxpayer should have contained the words "VAT-exempt sale" in order to be considered a VAT-exempt transaction.

Due to the taxpayer's failure to indicate or display the words "VAT-exempt sale" on its VAT official receipts, the transaction shall become taxable and as such, the PEZA-registered ecozone facilities enterprise shall be liable to pay for deficiency VAT, including penalties.

(Commissioner of Internal Revenue v. First Sumiden Realty, Inc., CTA EB No. 975 re: CTA Case No. 8151, January 7, 2014)

Court Decisions

Refund of erroneously paid 5% tax of PEZA-registered enterprise

While still under income tax holiday (ITH), a PEZA-registered enterprise is exempt from payment of income tax in connection with its PEZA-registered activities. Once the ITH expires, the taxpayer shall enjoy the 5% preferential tax rate on gross income, which shall be in lieu of all national and local taxes. Thus, in case the PEZA enterprise under ITH mistakenly pays the 5% preferential tax rate on its gross income, it is entitled to a refund of its erroneously paid tax.

To claim for refund of its erroneously paid income tax, the taxpayer must file both its administrative and judicial claim for refund within two years from the payment of tax pursuant to Section 204(C) of the Tax Code. Moreover, it must be established that the taxpayer's income relating to the subject tax refund was actually earned or received by it in relation to the conduct of its registered business activities; the tax incentive enjoyed by PEZA enterprises under the PEZA Law covers income gained or received by it in relation to the conduct of its registered activities.

The CTA noted that while the taxpayer was able to establish that it filed its claim for refund on time, it was not able to prove that all of its reported revenues on which a 5% gross income tax was paid were actually derived from its PEZA-registered business activities. Hence, only those that were verified to have been earned from the taxpayer's registered activities and subjected to 5% preferential tax were allowed to be refunded by the CTA.

(Sutherland Global Services Philippines v. Commissioner of Internal Revenue, CTA Case No. 8180, January 13, 2014)

Highlight on P&A services

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We provide comprehensive transfer pricing solutions suited to the needs of the client. We handle transfer pricing audit defense on behalf of the client, and conduct transfer pricing risk assessment, planning and benchmark analysis. We can assist a company in selecting the appropriate transfer pricing method, and defending transfer pricing policies with the tax authorities.

If you would like to know more about our transfer pricing services, please contact:

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We welcome your suggestions and feedback so that the Tax Brief may be made even more useful to you. Please get in touch with us if you have any comments and if it would help you to have the full text of the materials in the Tax Brief.

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