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DU-BALADAD AND ASSOCIATES

INSIGHTS

APRIL 2018

A monthly digest of significant tax-related court decisions and regulatory issuances (includes BIR, SEC, BSP and various government agencies)

Second Issue, Series of 2018

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CEO MESSAGE

I am delighted to share with you the good news that Du-Baladad and Associates (BDB Law) has been named the "**Philippines Tax Dispute & Litigation Firm of the Year**" and "**Asia Tax Policy Firm for 2018"** by the prestigious International Tax Review (ITR) during the **Asia Tax Awards 2018** held in Singapore, last May 3, 2018.

We share these successes with you. Without your continued trust and support to BDB Law, receiving these awards would not have been possible.

Benedicta Du-Baladad
Managing Partner and CEO

HIGHLIGHTS for APRIL 2018

Significant Supreme Court Decision

- The irrevocability rule applies only to the option of carry-over. If the taxpayer opts to carry over excess creditable tax after electing refund or issuance of TCC, the carry-over option is irrevocable. The taxpayer cannot revert to its original choice of refund or issuance of TCC. (*University Physicians Services, Inc. – Management, Inc. v. Commissioner of Internal Revenue, G.R. No. 205955, 7 March 2018*)

Significant Court of Tax Appeals Decisions

- Property transferred as liquidating dividends is not subject to Capital Gains Tax. (*Commissioner of Internal Revenue v. Premium Leisure Corp., CTA EB No. 1702, April 25, 2018).*

- Failure to serve the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) renders the assessment void for violation of due process. A waiver that does not indicate the BIR's date of receipt is void. (*Yusen Logistics Center, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9109, April 26, 2018).*

- Disputes between government agencies fall within the initial jurisdiction of the DOJ not with the CTA. *(Philippine Mining Development Corporation v. CIR, et al., CTA Case No. 9292, 06 April 2018).*

- The non-resident foreign corporation that is the recipient of services must also not be doing business in the Philippines in order for the services to qualify for VAT zero-rating. The consistent payment of royalties to the said non-resident foreign corporation is proof that the said corporation is doing business in the Philippines. *(Amadeus Marketing Philippines, Inc. v. CIR, CTA EB 1532, 05 April 2018).*

- Unutilized input VAT eventually deducted for refund could not possibly be applied for future VAT liability. *(Colt Commercial, Inc. v. CIR, CTA Case No. 9270, April 3, 2018).*

- RMO No. 46-06 only applies to Letter Notices generated as a result of the RELIEF system and not to Letter Notices as a result of the Tax Reconciliation System (TRS). (*Macintel, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9252, April 17, 2018*).

- A waiver of the defense of prescription must be signed by a duly authorized representative of the taxpayer. (*Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue, CTA Case No. 8970, April 17, 2018*).

- A collection letter issued after receipt of the protest to the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) is considered a denial of the protest. (*Grandworth Resources Corporation v. Commissioner of Internal Revenue, CTA Case No. 8765, April 17, 2018*).

- The *in pari delicto* doctrine on waivers of defense of prescription only applies if both the BIR and the taxpayer are at fault. *(Tektite Insurance Brokers, Inc. v. CIR, CTA Case 8903, April 12, 2018).*

BIR Issuances

- **RR 14-2018, March 28, 2018 -** This revenue regulation amends further RR 11-2018 which introduced some changes in the withholding tax rates on income payments prescribed under RR 02-98, as amended. The amendment pertained, in particular, to the withholding tax rate to be imposed on the professional fees of VAT-registered individual professionals.

- **RMO 19-2018, April 25, 2018 -** This revenue regulation simplifies the processing of registration of new registrants of business with the adoption and implementation of the "Single Window" approach. Further, to facilitate processing of new registrants' registration through the assistance of their authorized representatives, this revenue regulation mandated proper authorizations from them to show proofs of authority of their representatives to transact.

- **Revenue Memorandum Circular No. 21-2018 -** Circularizes Memorandum No. 16-2018, which imposes 25% surcharge and 20% interest per annum on taxes that were paid through amended tax returns. This means that should the taxpayer amend its tax return, and as a result thereof, pay additional taxes, the aforementioned penalties shall apply to the additional taxes paid.

SEC Issuances

- **From 2012 onwards, corporations that have no commercial operations are still required to file Audited Financial Statements (AFS) to the SEC. (***CLA-RO Merchandising Corporation v. Company Registration and Monitoring Department, SEC En Banc Case No. 04-15-371)*

BSP Issuances

- **Circular No. 1000 -** Requires BSP-supervised financial institutions to participate in an Automated Clearing House (ACH) for instant retail payments.

Article Written

- **Revisiting the Irrevocability Rule, Business Mirror: Tax Law for Business, April 26, 2018 –** The article revisits the irrevocability rule in light of the Supreme Court's landmark ruling in *University Physicians Services, Inc. v. Commissioner of Internal Revenue (G.R. No. 205955, March 7, 2018)* where the Court held that the rule applies only to the option to carryover and not the option to claim for refund or issuance of tax credit certificate.

COURT ISSUANCES

I
Significant Supreme Court Decisions

The irrevocability rule applies only to the option of carry-over. If the taxpayer opts to carry over excess creditable tax after electing refund or issuance of TCC, the carry-over option is irrevocable. The taxpayer cannot revert to its original choice of refund or issuance of TCC.

The taxpayer initially opted to be refunded of its excess creditable tax for 2006 through the issuance of a tax credit certificate. The taxpayer subsequently indicated in its 2007 ITR that it carried over the 2006 excess creditable tax and applied the same against income tax due for 2007. The taxpayer filed with the BIR a claim for refund and/or issuance of a TCC for the alleged excess credit for 2006. This was later elevated to the Court of Tax Appeals (CTA). Both CTA Division and CTA *En Banc* ruled that the taxpayer effectively exercised the carry-over option when it included the excess tax credit for 2006 in the original ITR for 2007. The taxpayer contended that the option to be refunded through the issuance of a TCC is irrevocable. Thus, when it indicated in its annual ITR for 2006 the option "*To be issued a Tax Credit Certificate*," such choice precluded the other option to carry over.

The SC disagreed and ruled against the taxpayer. The irrevocability rule is limited only to the option of carry-over. There is nothing in the law which prevents the taxpayer who originally opted for a refund or TCC to shift to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, if the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule. Here, the taxpayer is barred from recovering its excess creditable tax for 2006 through refund or TCC since it constructively chose the option of carry-over when, despite its initial option to refund, it subsequently indicated in its 2007 ITR that it carried over the 2006 excess creditable tax and applied the same against income tax due for 2007. (*University Physicians Services, Inc. – Management, Inc. v. Commissioner of Internal Revenue, G.R. No. 205955, 7 March 2018*)

Note: It is now clear that a claim for refund is revocable. The taxpayer may still opt to carry-over its excess tax credits after it has initially chosen to tick the refund option. But what if a taxpayer who filed a claim for refund with the CTA and was denied by the court, can he still choose to carry-over the amount being refunded?

II
Significant Court of Tax Appeals Decisions

Documents found in the ICPA Report and duly identified in the Judicial Affidavit of the ICPA may be admitted in evidence even if it was not properly offered during trial.

The CTA, in its original decision, denied the claim of the taxpayer for failure to show the VAT return where the input VAT being claimed was deducted from the pool of unutilized input tax as it was not formally offered in evidence by the taxpayer. The taxpayer filed a Motion for Reconsideration, stating that the said VAT return was part of the ICPA Report, was identified by the ICPA in his Judicial Affidavit, and thus falls under the exception to the rule that only formally offered pieces of evidence shall be considered. The CTA agreed with the taxpayer and allowed the VAT refund claim as the same was duly proven to have been deducted from the taxpayer's available input VAT. (*Colt Commercial, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9205, April 20, 2015).*

Note: For this exception to apply, the document that was not offered in evidence must have been: a) properly identified; and b) can be found in the records of the case.

Property transferred, as liquidating dividends is not subject to Capital Gains Tax.

The taxpayer, after receiving property as a form of liquidating dividends, was required to pay Capital Gains Tax prior to registration of the property received. The taxpayer then paid the same under protest, and eventually filed a claim for refund. The CTA Division ruled in favour of the taxpayer, stating that liquidating dividends form part of the regular income of the taxpayer, and is reported as such. The CTA En Banc upheld the ruling of the CTA Division, emphasizing that under the tax code, liquidating dividends form part of regular taxable income, and is not equivalent to a sale of capital asset. *(Commissioner of Internal Revenue v. Premium Leisure Corp., CTA EB No. 1702, April 25, 2018).*

Failure to serve the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) renders the assessment void for violation of due process. A waiver that does not indicate the BIR's date of receipt is void.

After holding an informal conference, the taxpayer was found to have several alleged deficiency taxes. The BIR issued a Preliminary Assessment Notice (PAN) to that effect. The taxpayer eventually received a warrant of distraint from the BIR, and questioned the validity of the same. The CTA took jurisdiction over the case, and ruled in favour of the taxpayer. The CTA found that the BIR failed to prove that it was able to send the FLD/FAN to the taxpayer, after the taxpayer denied receipt of the same. The CTA also invalidated the waiver executed by the taxpayer and BIR, as the waiver failed to indicate the date of receipt of the BIR. *(Yusen Logistics Center, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9109, April 26, 2018).*

Note: On April 4, 2016, the BIR issued RMO 14-2016. It prescribes new guidelines on waivers of defense of prescription. The date of acceptance of the signed waiver by the BIR is no longer required. The said RMO only considers two material dates: 1) the date of the execution of the waiver by the taxpayer or its authorized representative; and 2) the expiry date of the period the taxpayer waives the statute of limitations.

Disputes between government agencies fall within the initial jurisdiction of the DOJ not with the CTA.

The CTA ruled that it has no jurisdiction over the issue on tax assessment raised by Petitioner, PMDC, considering that it is a GOCC. The dispute will then be between two government agencies since the Respondent Commissioner represents the BIR. Applying the PSALM case, the issue was threshed out by the CTA for lack of jurisdiction and ordered the parties to submit the same to the proper forum (DOJ) for resolution. *(Philippine Mining Development Corporation v. CIR, et al., CTA Case No. 9292, 06 April 2018)*

Note: This new rule avoids the futile scenario where the government sues itself and worse, collect from itself.

The non-resident foreign corporation that is the recipient of services must also not be doing business in the Philippines in order for the services to qualify for VAT zero-rating. The consistent payment of royalties to the said non-resident foreign corporation is proof that the said corporation is doing business in the Philippines.

In order for a sale of service transaction to be subject to the 0% VAT rate, it is required that the services were "rendered to a person engaged in business outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed". The CTA reiterated its previous ruling applying a plethora of jurisprudence that in order for the sales to be treated as zero-rated, it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation". Accordingly, the terms of the Distribution Agreement and the payment of

royalties by Petitioner treated Amadeus IT as "doing business in the Philippines as ground to deny Petitioner's claim for refund. *(Amadeus Marketing Philippines, Inc. v. CIR, CTA EB 1532, 05 April 2018).*

Note: This is a dangerous precedent with the advent of technology. According to the CTA, a non-resident foreign corporation that earns royalty from its software products can be considered as doing business in the Philippines and is thus subject to the regular income tax rate of 30% and VAT of 12%.

To prove guilt for failure to file an income tax return and tax evasion, prosecution must prove that accused "willfully" fails to make or file a return.

Two informations were filed against the accused, Mahusay, for failure to file an income tax return for the TY 2009 and 2010 and for tax evasion. The prosecution, however, failed to prove that accused willfully, by knowledge and voluntariness, that it intended not to file an income tax return and consequently evade payment of tax. The CTA denied admission of Commission on Audit Reports on Salaries, Allowances and Other Personnel Benefits (COA ROSA) to prove accused's tax liability because the same are unverified and unauthenticated documents to be given probative value. As such, accused was acquitted. *(People v. Mahusay, CTA Crim Case No. O-424 and O-426)*

Unutilized input VAT eventually deducted for refund could not possibly be applied for future VAT liability.

The taxpayer claims for the refund of its unutilized input VAT attributable to its zero rated sales for taxable year 2013. The BIR argues that Petitioner is not entitled to such refund because the subject of the claim was applied against its output tax by carrying it over to the succeeding quarters. The CTA ruled that although the claimed input VAT was carried over by the taxpayer in its succeeding quarterly VAT returns, the same remained unutilized until it was deducted as VAT Refund/TCC claimed in its quarterly VAT return for the second quarter of 2015. As such, there is no possibility that the present claim would be applied for future output VAT liability. *(Colt Commercial, Inc. v. CIR, CTA Case No. 9270, April 3, 2018).*

Note: In the present rule, one of the documents that must be submitted in an administrative claim for VAT refund, is the VAT return, that shows the deduction of the amount being claimed from the available unutilized input tax. In other words, prior to filing an administrative claim for refund, the amount being claimed should have already been deducted from the unutilized input tax.

Importations are excluded in the definition of "locally available supply", for the purpose of determining tax exemption on imported supplies under the charter of Philippine Airlines.

The taxpayer sought for the refund of specific taxes paid for its importation of aviation turbo jet fuel or Jet A-1 for its domestic operations, pursuant to PD 1590. Initially, the court denied the Petition due to failure to prove that there was no locally available supply in reasonable quantity, quality and price, a requisite for such exemption. The court ruled that the term "locally available" means the supply is available regardless if the same is imported or domestic. The court ruled that imported fuel must also be considered to determine availability. The taxpayer contends otherwise, arguing that the plain meaning of "locally available supply" refers only to domestically produced products and excludes importation. In its amended decision, the court ruled that importations are excluded in determining locally available fuel. The tax privilege withdrawn by LOI 1483 is the tax exemption on locally produced supplies and does not include the exemption on imported goods. Thus, PAL is allowed to claim a tax refund on the excise taxes imposed on its importations. *(Philippine Airlines, Inc. v. CIR, CTA Case Nos. 7152, 7155, 7235, 7247, 7305, 7454, 7518; April 3, 2018).*

A claim for refund of erroneously paid VAT must be filed under Sec. 229 of the NIRC of 1997, as amended, and not under Sec. 112 of the same code.

The taxpayer erroneously subjected its interest payments to a financial institution to VAT. In light of the erroneous treatment, it filed a claim for refund of the VAT it paid under Sec. 112 of the NIRC. The CTA denied the petition, stating that the taxpayer availed of the wrong remedy. The taxpayer should have filed for a refund under Sec. 229 for erroneously paid taxes. Further, the VAT on interest income is not a zero-rated transaction which will entitle the taxpayer to input VAT refund. Thus, there is no legal basis to grant its claim for refund. (*Batino Realty Corporation v. Commissioner of Internal Revenue, CTA Case No. 9542, April 18, 2018*).

RMO No. 46-06 only applies to Letter Notices generated as a result of the RELIEF system and not to Letter Notices as a result of the Tax Reconciliation System (TRS).

The taxpayer contests the assessment done by the BIR as a result of third party information under the Tax Reconciliation System (TRS). The taxpayer contends that the BIR did not follow the rules under RMO 46-06. The CTA ruled against the taxpayer, reasoning that the said issuance governs the rules for the use of the RELIEF system of the BIR. However, the instant case deals with an assessment as a result of the TRS, which is covered by a different set of rules. Thus, the taxpayer's position cannot be sustained. (*Macintel, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9252, April 17, 2018*)

Note: There are 3 kinds of systems used by the BIR: a) Tax Reconciliation System; b) Tax Relief System; c) Relief on Customs

A waiver of the defense of prescription must be signed by a duly authorized representative of the taxpayer.

The taxpayer was assessed with several deficiency taxes. Upon reaching the CTA, the taxpayer raised, among others, that the right to assess it has already prescribed. It also argued that the waiver of the defense of prescription it executed was void, since the signatory thereon was not duly authorized to sign on the taxpayer's behalf. The CTA ruled in favour of the taxpayer, finding that the Revenue Officer who conducted the audit admitted that he was not aware if the one who signed the waiver in behalf of the taxpayer was duly authorized. (*Lepanto Consolidated Mining Company v. Commissioner of Internal Revenue, CTA Case No. 8970, April 17, 2018*).

Note: This ruling may not be consistent with the Next Mobile Supreme Court decision, since it is the taxpayer's responsibility to ensure that the signatory of the waiver is duly authorized. It is quite unusual for the Court not to apply the *pari delicto* doctrine found in the Next Mobile case.

A collection letter issued after receipt of the protest to the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) is considered a denial of the protest.

The taxpayer, after protesting the FLD/FAN received a preliminary collection letter (PCL) from the BIR. Subsequently, it received a warrant of distraint/levy (WDL). It questioned the same before the Court of Tax Appeals (CTA). The CTA dismissed the case for lack of jurisdiction. The CTA ruled that the taxpayer should have filed its Petition for Review questioning the FLD/FAN thirty (30) days from its receipt of the collection letter. The Court ruled that since the collection letter directly demanded the payment of the alleged deficiencies found in the FLD/FAN, then it is equivalent to a denial of the protest to the FLD/FAN. Having filed the Petition after the receipt of the WDL, the taxpayer's right to question the assessment has already prescribed. (*Grandworth Resources Corporation v. Commissioner of Internal Revenue, CTA Case No. 8765, April 17, 2018*).

Note: When a taxpayer receives a PCL after it files its protest to a FAN, he should file an appeal to the CTA within 30 days after receipt of the PCL.

Final invoices bearing dates later than the dates of shipment does not remove the fact that the sales and actual shipment of goods had actually transpired.

CIR (Petitioner) is assailing the CTA Division's Decision which partially granted Respondent's refund of its unutilized excess input VAT attributable to its zero-rated sales for the first quarter of 2012. CIR posits, among others, that the Court should not have considered as valid all the final invoices bearing dates later than the dates of sale of Respondent's products. However, the CTA *En Banc* held that the shipment date in the Bills of Lading and Provisional Invoices is the date of sale. The Final Invoices bearing dates later than the date of shipment does not remove the fact that the sales and actual shipment of goods from the Philippines to a foreign country had actually transpired during the period of claim. (*Commissioner of Internal Revenue v. Philex Mining Corporation*, CTA EB o. 1525, CTA Case No. 8808, April 2, 2018).

The *in pari delicto* doctrine on waivers of defense of prescription only applies if both the BIR and the taxpayer are at fault.

In the Next Mobile case, the validity of the defective waivers were upheld by the Supreme Court based on a categorical finding that both parties are *in pari delicto* in causing the deficiencies of the subject waivers. It further emphasized that a taxpayer who voluntarily executed the waivers could not insist on their invalidity by raising the very same defects it caused.

On the other hand, in the PDI case, the Supreme Court upheld the ruling of the First Division of the Court of Tax Appeals (CTA) which pronounced that the three waivers did not extend the BIR's period to assess. But a plain reading of the factual circumstances in the PDI case reveals that the defects in the waivers were attributed solely to the BIR. The BIR failed to provide the office accepting the First and Second Waivers with their respective third copies. As to the Third Waiver, aside from not being executed in three copies, the revenue official who accepted the Third Waiver was not authorized to execute the same. Thus, the BIR in the said case is solely at fault. Evidently, in the PDl case, facts and circumstances that show an equal fault on the part of the taxpayer are absent, which could have otherwise justified a finding of "in pari delicto."

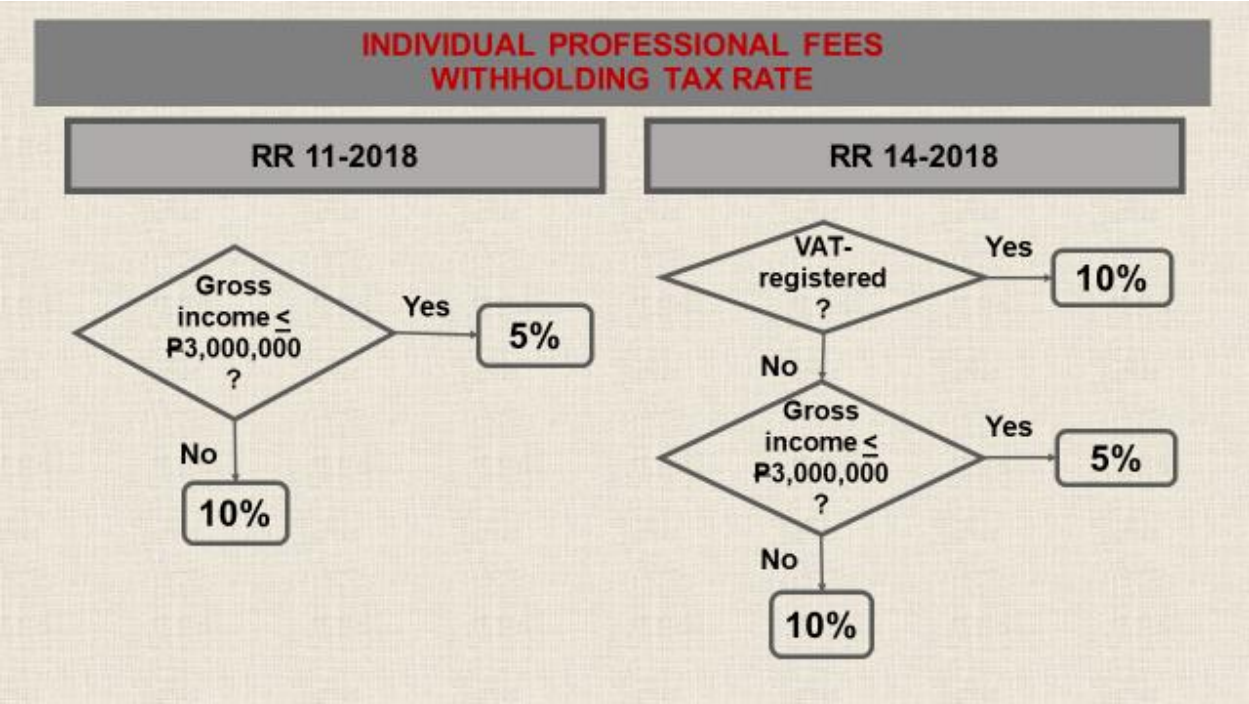
In the present case, the taxpayer is not faultless as it supplied the defective proof of identity before the notary public and voluntarily signed the waiver. *(Tektite Insurance Brokers, Inc. v. CIR, CTA Case 8903, April 12, 2018).*

Note: The CTA has distinguished the Next Mobile and the PDI cases. If the fault in the defect of the waiver is caused solely by the BIR, then the PDI case will apply.

BIR Issuances

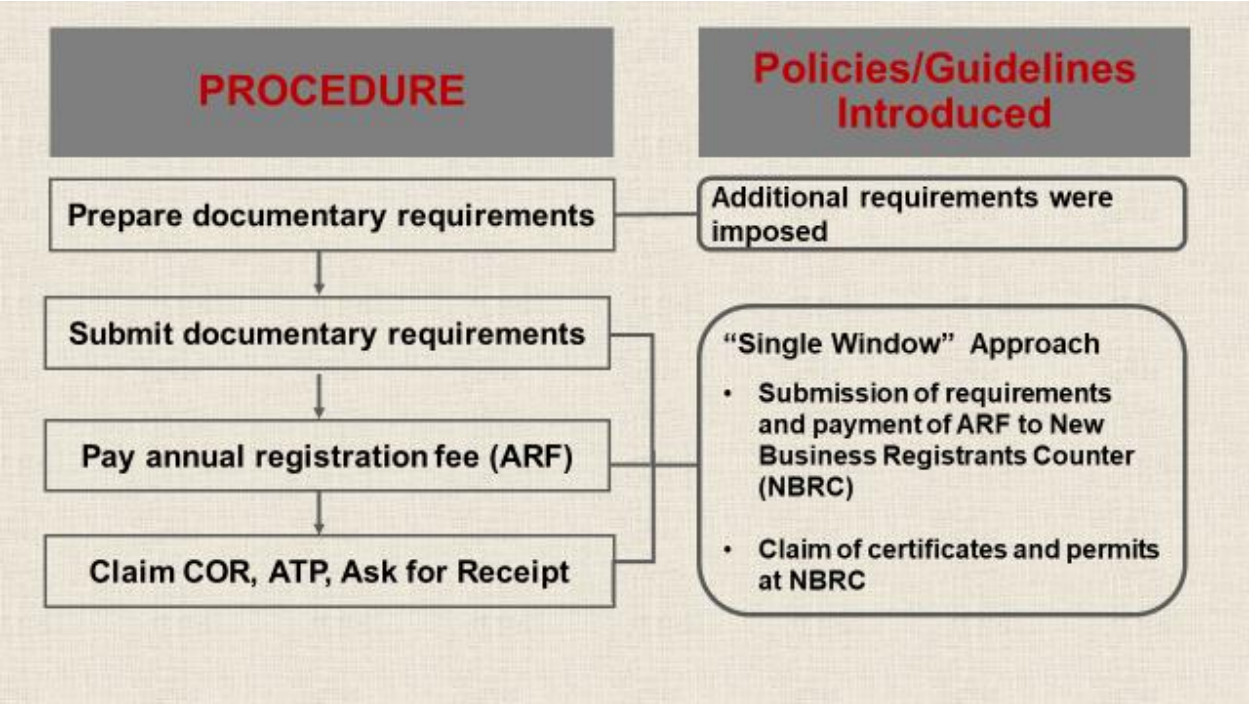
RR 14-2018, March 28, 2018

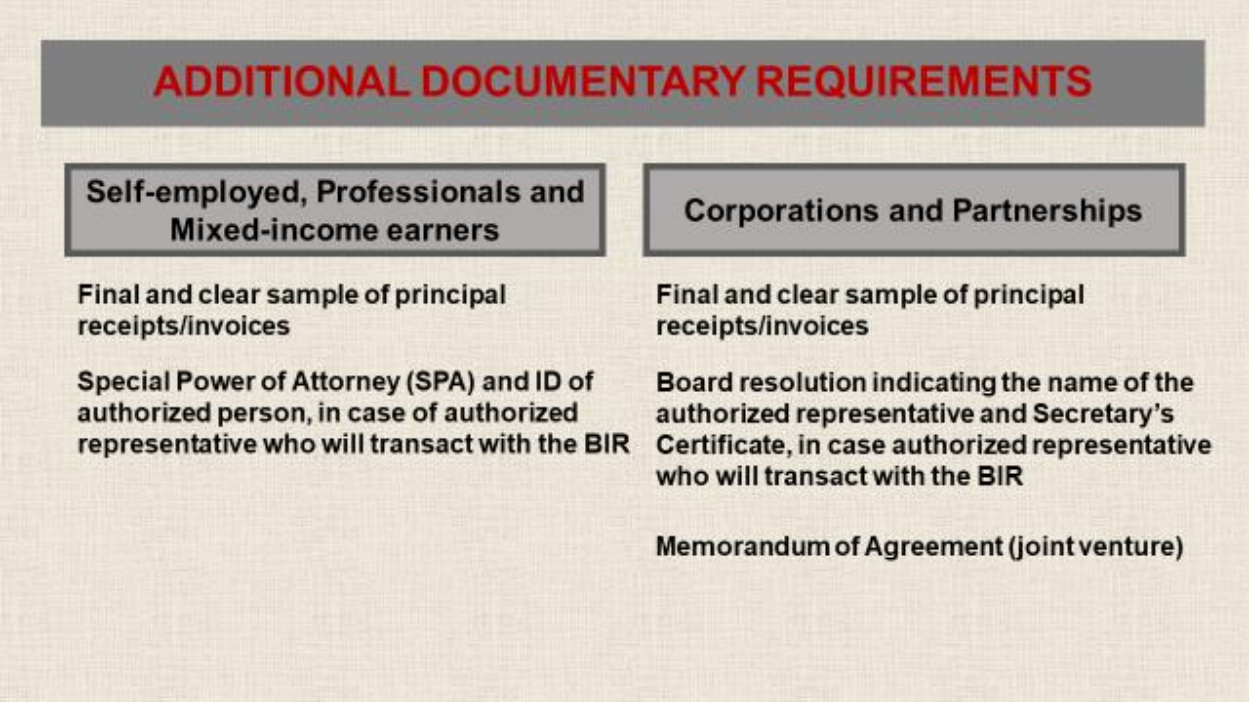
This revenue regulation amends further RR 11-2018 which introduced some changes in the withholding tax rates on income payments prescribed under RR 02-98, as amended. The amendment pertained, in particular, to the withholding tax rate to be imposed on the professional fees of VAT-registered individual professionals.

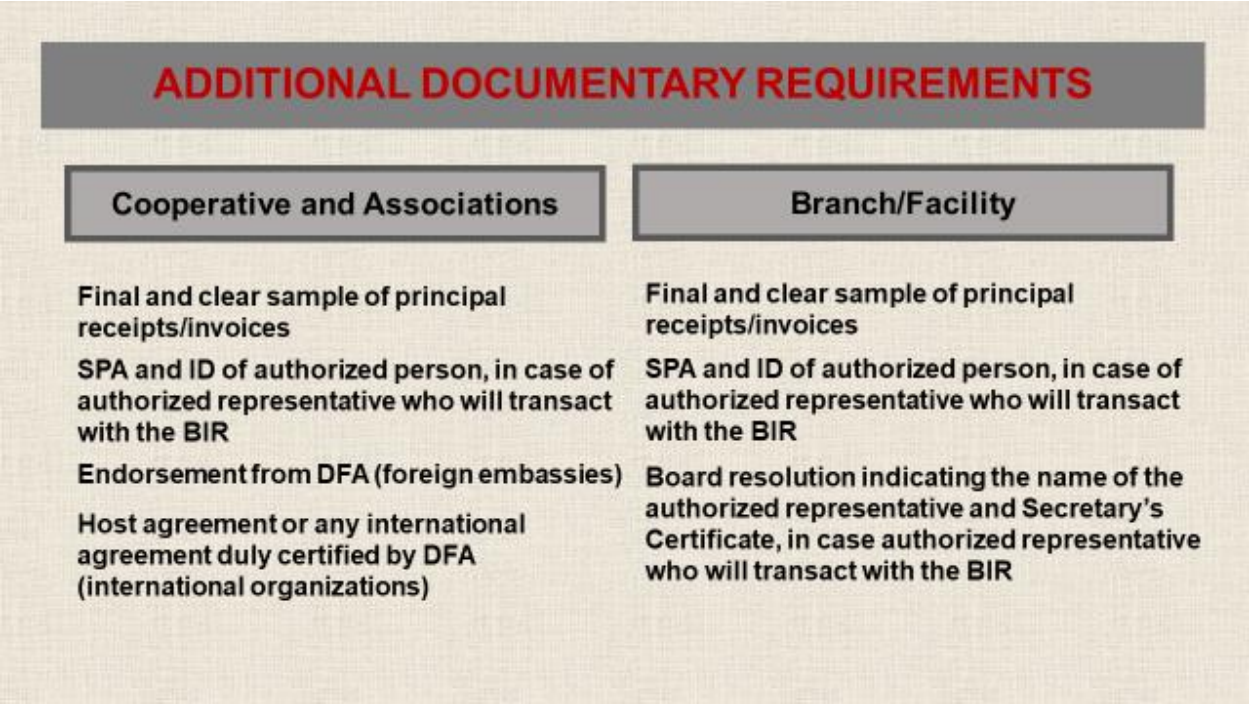


RMO 19-2018, April 25, 2018

This revenue regulation simplifies the processing of registration of new registrants of business with the adoption and implementation of the "Single Window" approach. Further, to facilitate processing of new registrants' registration through the assistance of their authorized representatives, this revenue regulation mandated proper authorizations from them to show proofs of authority of their representatives to transact.







Revenue Memorandum Circular No. 21-2018

This is based on Memorandum No. 16-2018, which imposes 25% surcharge and 20% interest per annum on taxes that were paid through amended tax returns. This means that should the taxpayer amend its tax return, and as a result thereof, pay additional taxes, the aforementioned penalties shall apply to the additional taxes paid.

SEC Issuances

From 2012 onwards, corporations that have no commercial operations are still required to file Audited Financial Statements (AFS) to the SEC.

CLA-RO Merchandising Corporation has ceased commercial operations in 2005. The SEC is requiring the corporation to file its Audited Financial Statements (AFS) for the years 2006 to 2017. The corporation argued that since it has ceased commercial operations, it does not need to file an AFS. The SEC En Banc ruled that for the years 2006 to 2011, under the prevailing rules in the said period, corporations that ceased commercial operations need not file its AFS, provided that it files an affidavit stating the fact of stopping from commercial operations and the reason behind the same. However, the SEC promulgated new rules on February 2012, exempting only the filing of Income Statements when businesses cease commercial operations. Thus, from year 2012 onwards, the corporation is required to file its AFS. (*CLA-RO Merchandising Corporation v. Company Registration and Monitoring Department, SEC En Banc Case No. 04-15-371).*

BSP Issuances

Circular No. 1000

Requires BSP-supervised financial institutions to participate in an Automated Clearing House (ACH) for instant retail payments.

Instant retail payments are defined as an electronic payment in which the transmission of the payment message and the availability of the final funds occur in real time, or near real time.

For the settlement of instant payments, the minimum requirements are:

1) Demand Deposit Account (DDA) maintained with the BSP;
2) Prefunding of the DDA in such amount that is sufficient to settle its net clearing obligation;
3) Thresholds for the Clearing Switch Operators (CSO) that will notify the institutions of the need to place additional funds.

DDAs form part of the bank's reserves against deposit and deposit substitute liabilities

Memorandum No. M-2018-016

Guidelines for the quarterly submission of the Inventory of Bank Network (IBN) Report:

1) Submission of the updated Data Entry Template (DET) of the IBN Report, together with the scanned copy of the control proof list (CP) in PDF format, is through email.
2) The files may also be submitted through mail, by saving the files in a CD or any portable storage device, provided the same is sent within the prescribed deadline.
3) Only officially registered email addresses of banks shall be recognized.
4) Failure to follow the prescribed procedures is deemed a non-submission.

Article Written

Lifted from Business Mirror: Tax Law for Business, April 26, 2018

Revisiting the Irrevocability Rule

By: Pierre Martin D. Reyes

More often than not, the sum of the quarterly tax payments made by a corporation during the taxable year is more than the total tax due on the entire taxable income of that year. In simpler terms, corporations have overpaid their income tax liability as adjusted at the close of the taxable year. This is mostly due to the excess withholding taxes on income payments.

In such case, our Tax Code provides the corporate taxpayer with two options. First, the corporation can be credited or refunded with the excess amount paid. This would involve filing a claim for refund or issuance of a tax credit certificate (TCC). Second and last, the corporation can carry over such overpayment to the succeeding taxable quarters. The overpayment shall be applied as tax credit against income-tax due.

It is settled in jurisprudence that once the option to carry over the excess and apply the excess quarterly income tax payments against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a

TCC shall be allowed. The unutilized tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income-tax liabilities in the succeeding taxable years until fully utilized.

Notably, nowhere in its decisions has the Supreme Court (SC) ruled on whether the irrevocability rule also applies to the option to claim refund or issuance of TCC, that is, not until its most recent landmark ruling in the case of *University Physicians Services, Inc.–Management Inc.* v. *Commissioner of Internal Revenue* (GR 205955, March 7, 2018).

In the said case, the taxpayer filed its annual income-tax return (ITR) for the year ended December 31, 2006, reflecting an income-tax overpayment. In the said ITR, the taxpayer elected the option "T*o be issued a tax credit certificate*." Thereafter, the taxpayer filed an annual ITR for the short period fiscal year ended March 31, 2007. The said ITR reflected the income-tax overpayment from the previous period as "*prior year's excess credit*." On the same day, the taxpayer amended the annual ITR to remove the excess credit for 2006. Petitioner later filed with the Bureau of Internal Revenue a claim for refund and/or issuance of a TCC for the alleged excess credit for 2006. The claim was later elevated to the Court of Tax Appeals (CTA). Both CTA Division and CTA *En Banc* ruled that the taxpayer effectively exercised the carryover option when it included the excess tax credit for 2006 in the original ITR for 2007.

Before the SC, the taxpayer contended that the option to be refunded through the issuance of a TCC is, likewise, irrevocable. Following this novel theory, it argued that when it indicated in its annual ITR for 2006 the option "*To be issued a tax credit certificate*," such choice precluded the other option to carry over. The SC disagreed and ruled against the taxpayer.

According to the SC, the irrevocability rule is limited only to the option of carryover. The Court held that there is nothing in the law, which prevents the taxpayer who originally opted for a refund or TCC to shift to the carryover of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, if the taxpayer decides to shift its option to carryover, it may no longer revert to its original choice due to the irrevocability rule. The SC also clarified that when it declared in its previous decisions the words "the options are alternative" or "the choice of one precludes the other," the Court meant that the taxpayer cannot avail of both refund and carryover at the same time. The SC did not lay down any doctrinal rule that the option of refund or TCC is irrevocable.

Applying this landmark doctrine, the SC ruled that the taxpayer in the said case is barred from recovering its excess creditable tax for 2006 through refund or TCC. The taxpayer constructively chose the option of carryover when, despite its initial option to refund, it subsequently indicated in its 2007 ITR that it carried over the 2006 excess creditable tax and applied the same against income-tax due for 2007. The taxpayer can no longer revert to its initial choice. The SC held, however, that the taxpayer remains entitled to the benefit of carryover and may apply the 2006 excess credit in succeeding taxable years until fully exhausted.

In view of the SC's ruling in the University Physicians Services case, the rules can now be summarized as follows:

Once a taxpayer chooses the option to carry over, such option shall be considered irrevocable. It can no longer opt for a refund or issuance of TCC;

If the taxpayer elected refund or issuance of TCC, such option is revocable. The taxpayer is free to change its choice and opt for carryover; and

If the taxpayer opts to carry over such excess creditable tax after electing refund or issuance of TCC, the carryover option is, likewise, irrevocable. The taxpayer cannot revert to its original choice of refund or issuance of TCC.

These rules should serve as a guide to taxpayers as they determine their course of action on their excess tax credits and as they now evaluate the propriety of past actions taken in this regard.

BDB Law's "Tax Law for Business" appears in the opinion section of Business Mirror every Thursday.

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If you have any comments or questions concerning the contents of this issue of Insights, you may contact any of our experts.