



# MAP Tax Bulletin

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**This MAP Tax Bulletin for July 2022 was contributed by Isla Lipana & Co./PwC Philippines.**

## BIR ISSUANCES

### **Exchange of Taxpayer-Specific Rulings** *Revenue Regulations No. 11-2022 (published on 09 July 2022)*

The Secretary of Finance has issued guidelines and procedures for the spontaneous exchange of taxpayer-specific rulings. Said guidelines and procedures provide for the following, among others:

- The International Tax Affairs Division (ITAD), through its Exchange of Information (EOI) Section, is responsible for exchanging taxpayer-specific rulings with the foreign tax authority of the potential exchange jurisdiction.
- Scope
  - a. Rulings related to preferential regimes;
  - b. Cross-border unilateral Advance Pricing Arrangements and any other cross-border unilateral tax rulings;
  - c. Cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country issuing the ruling;

- d. Permanent establishment (PE) rulings; and
- e. Related party conduit rulings.
- Potential exchange jurisdictions dependent on type of ruling
- Past rulings that fall within the above Scope pertain only to PE rulings concerning the presence or absence of a PE of a foreign enterprise in the Philippines that were issued either:
  - a. On or after 01 January 2015 but before 01 September 2017; or
  - b. On or after 01 January 2012 but before 01 January 2015, provided they were still effective as of 01 January 2015.
- The EOI Section of the ITAD is responsible for receiving rulings spontaneously exchanged by treaty partners. If the rulings received will aid tax investigations, the same shall be forwarded to the concerned Revenue District Office.

### **Mutual Agreement Procedure under Tax Treaties** *Revenue Regulations No. 10-2022 (published on 08 July 2021)*

**DISCLAIMER:** The contents of this bulletin are summaries of selected issuances from various government agencies and Court decisions. They are intended for guidance only and as such should not be regarded as a substitute for professional advice.

Double Taxation Agreements have Mutual Agreement Procedure (MAP) articles which allow the competent authorities of the contracting states to resolve disputes arising from differences or difficulties in tax treaty application or interpretation. The MAP gives taxpayers another venue to resolve disputes involving tax treaties.

In this regard, the Secretary of Finance issued guidelines and procedures for requesting MAP assistance. These include the following:

- Typical scenarios requiring MAP assistance
- The MAP Team is composed of the Competent Authority for the Philippines (*i.e.*, BIR) and the Offices under the Competent Authority (*i.e.*, Rulings and MAP Section of the ITAD, Assistance Commissioner for Legal Service and Deputy Commissioner for Legal Group).
- How to initiate a MAP Request
- MAP Process
- Audit Settlement

#### **Admissibility of Sales Documents in Electronic Format**

*Revenue Regulations No. 9-2022 (published on 01 July 2021)*

The Secretary of Finance issued policies and guidelines for the admissibility of electronic sales documents or data in the verification of sales and purchases especially during audit or processing of VAT refund claims, particularly, with respect to these taxpayers:

1. Those engaged in the export of goods and services;
2. Those engaged in electronic commerce;
3. Those under the Large Taxpayers Service; and

4. Those authorized to issue electronic sales invoices/official receipts through the web-based facility of the Electronic Invoicing/Receipting and Sales Reporting System.

#### **Issuance and transmission of e-Receipt/e-Invoices**

*Revenue Regulations No. 8-2022 (published on 01 July 2021)*

The Secretary of Finance issued policies and guidelines to implement Sections 237 and 237-A of the Tax Code and to prescribe requirements for the issuance of electronic receipts/invoices (e-Receipts/e-Invoices) and the electronic reporting of these sales data to the BIR.

The policies and guidelines include the following:

- The following taxpayers are required to issue e-Receipts/e-Invoices, in lieu of manual receipts/invoices:
  1. Those engaged in the export of goods and services;
  2. Those engaged in electronic commerce; and
  3. Those under the Large Taxpayers Service.

The above are also required to register their Computerized Accounting System generating e-Receipts/e-Invoices and/or Cash Register Machines/Point-of-Sales Systems and Certification of Sales Data Transmission System, and to transmit sales data covered by e-Receipts/e-Invoices using their Sales Data Transmission System into the Electronic Invoicing/Receipting System (EIS).

- Covered taxpayers must develop a Sales Data Transmission System based on the Standard Application Programming Interface Guidelines.

- Taxpayers must submit applications for the issuance of Permit to Transmit in order to allow the transmission of sales data to the EIS.
  - The late transmission or non-transmission of sales data to the EIS shall be subject to penalty.
  - Taxpayers not required to issue e-Receipts/e-Invoices and transmit sales data to the EIS but opt to issue the same may comply with Revenue Regulations No. 8-2022.
  - Taxpayers using the EIS shall not be required to submit Summary Lists of Sales. However, the Summary List of Purchases and Importations shall still be required.
  - Invoicing requirements under Section 113(B) of the Tax Code shall still be observed.
- Tax Incentives under the Renewable Energy Act**  
*Revenue Regulations No. 7-2022 (published on 01 July 2021)*
- The Secretary of Finance promulgated regulations regarding the tax incentive provisions of Republic Act of 9513 or the Renewable Energy (RE) Act of 2008. Said regulations provide for the following:
- Required Certifications/Accreditations
    - a. Registration/Accreditation with the Department of Energy (DOE)
    - b. Certification of Endorsement by the DOE
    - c. Registration with the Board of Investments
  - Fiscal incentives
    - a. Income tax holiday (ITH)
      - 1) Existing projects - 7 years from start of commercial operations which is when the Certificate of Compliance was issued by the Energy Regulatory Commission and the RE Project is ready to inject power into the grid.
      - 2) New investment in RE Resources - 7 years from start of commercial operations resulting from new investments
      - 3) Additional investments in the RE Project – Not more than 3 times the period of the initial availment
    - b. Net operating loss carry-over during the first 3 years shall be carried over for the next 7 consecutive taxable years following the year of loss.
    - c. 10% corporate income tax rate after ITH expiration
    - d. Accelerated depreciation, if the RE Project fails to receive an ITH incentive before full operation
    - e. VAT zero rate on the sale of power or fuel and ancillary services generated through renewable sources of energy
    - f. VAT zero rate on the:
      - 1) Purchase of local goods, properties and services needed for the development, construction and installation of plant facilities of RE Developers; and
      - 2) Whole process of exploration and development of RE sources up to its conversion into power, including services performed by contractors and subcontractors.
    - g. Tax exemption of carbon credits
  - Hybrid and co-generation systems
  - Incentives for manufacturers, fabricators and suppliers of locally produced RE equipment and components

- a. VAT-exempt importations of components, parts and materials
  - b. ITH and exemption
  - c. VAT zero rate on purchases from local suppliers of goods, property and services needed in the manufacture or fabrication of RE equipment
- Incentives for farmers engaged in the plantation of biomass resources
  - Tax rebate for purchase of RE components
  - Prohibition against double availment of incentives
  - Annual filing and reportorial requirements

#### **Removing the 5-year validity period of receipts/invoices**

*Revenue Regulations No. 6-2022 (published on 01 July 2021)*

The BIR has removed the 5-year validity period of the Permit to Use (PTU) and/or system-generated receipts/invoices. Therefore, all PTUs issued shall remain valid until and unless revoked by the BIR.

Accordingly, the phrase “THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE” and the phrase “Valid Until” shall be omitted from the bottom portion of system-generated receipts/invoices. Since the Authority to Print (ATP) principal and supplementary receipts/invoices, including its serial numbers and usage, have no expiration, the phrase “THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP.” And “Valid Until (mm/dd/yyyy)” on the manual receipts/invoices shall also be omitted, or disregarded, in the case of unused receipts/invoices.

Existing unused manual receipts/invoices with the above phrases may be issued until fully exhausted.

#### **Template for Sworn Declaration to be issued for VAT zero rating purposes**

*Revenue Memorandum Circular No. 84-2022 (issued on 30 June 2022)*

The BIR has issued the prescribed template for the Sworn Declaration to be executed by the Registered Business Enterprise (RBE) in relation to Q&A No. 36 of RMC No. 24-2022. The Sworn Declaration states that the goods and/or services being purchased shall be used directly and exclusively in the registered project or activity.

In order to avail of the VAT zero rate, the Sworn Declaration should be provided to the RBE’s supplier prior to the sale transaction.

#### **Updating the List of VAT-Exempt Medicines**

*Revenue Memorandum Circular No. 83-2022 (issued on 30 June 2022)*

The Food and Drugs Administration, in its letter dated 18 May 2022, updated the List of VAT-Exempt Medicines Under RA No. 11534 by adding medicines for diabetes, hypertension and mental illness, deleting certain medicines for cancer and kidney diseases, and correcting a medicine for kidney diseases.

Said List is attached to Revenue Memorandum Circular No. 83-2022 which may be viewed at or downloaded from [www.bir.gov.ph](http://www.bir.gov.ph).

#### **Service of Letters of Authority**

*Revenue Memorandum Circular No. 82-2022 (issued on 30 June 2022)*

In light of a Court of Tax Appeals decision invalidating a Letter of Authority because it was served after 30 days from date of issuance, the BIR clarified that such requirement has already been deleted by Revenue Audit Memorandum Order (RAMO) No. 1-2020. Accordingly, the service of an

electronic Letter of Authority (eLA) after the 30-day period shall not constitute an excuse for the taxpayer to refuse its service or question its validity. In other words, an eLA served after the 30-day period is still valid and enforceable; provided, however, that the audit is completed within 180 days for Revenue District Office cases and 240 days for Large Taxpayers cases.

### **Updating the list of TWAs required to deduct the 1% and 2% EWT**

*Revenue Memorandum Circular No. 80-2022  
(issued on 22 June 2022)*

In connection with the lists of Top Withholding Agents (TWAs) published on 16 March 2022, the BIR issued an additional list of withholding agents who, starting 01 July 2022, are either required to deduct and remit the 1% or 2% creditable withholding tax from income payments to their suppliers of goods and services, respectively, or for deletion from the list of TWAs. The lists are posted at [www.bir.gov.ph](http://www.bir.gov.ph).

### **Taxation of educational institutions**

*Revenue Memorandum Circular No. 78-2021  
(issued on 09 June 2022)*

The BIR clarified the different classifications of educational institutions under the Tax Code and their respective income tax treatment, applicable withholding taxes and compliance requirements.

A. Here are the income tax regimes of the various educational institutions:

#### 1. Proprietary educational institutions

##### a. Domestic corporation

- 10%, in general (1% from 01 July 2020 to 30 June 2023). These rates also apply to domestic non-stock, non-profit educational institutions whose net income or assets accrue/inure to or benefit any member or specific person
- 25% or 20% (on the entire taxable income), if gross income from

unrelated trade, business or activity exceeds 50% of total gross income

- b. Individual – income tax rates in Sections 24 and 25 of the Tax Code
- c. Resident foreign corporation – 25%

2. Government educational institutions – Exempt under either their charter or Section 30(l) of the Tax Code

3. Non-stock and non-profit (NSNP) educational institutions

All revenues and assets used actually, directly and exclusively for educational purposes shall be tax-exempt. However, the NSNP educational institution is required to submit its income tax return with a detailed breakdown of expenses.

B. Tax treatment of contributions, gifts or donations to educational institutions

1. These constitute allowable deductions but only up to 10% (individual) or 5% (corporation) of the donor's taxable income.

2. Gifts or donations to NSNP educational institutions are exempt from donor's tax if not more than 30% is used by the donee for administration purposes.

C. Withholding taxes

- An educational institution is a withholding agent as an employer and as an income payor to persons subject to withholding tax.
- NSNP educational institutions are not subject to withholding tax on their revenues and assets used actually, directly and exclusively for educational purposes if they present their certificate of income tax exemption or exemption rulings, and their SEC registrations.

- Income payments to proprietary educational institutions and to NSNPs subject to the 10% income tax are subject to creditable and final withholding taxes not to exceed 10%.
- Income payments to educational institutions organized as sole proprietorships are subject to creditable and final withholding taxes.

#### D. Compliance requirements

Here are the tax returns required to be filed:

Educational Institution	Tax Form
NSNP educational institutions whose assets are all used actually, directly and exclusively for educational purposes	BIR Form No. 1702-EX
NSNP educational institutions whose assets are <b>not</b> used actually, directly and exclusively for educational purposes	BIR Form No. 1702-MX
Proprietary educational institution, in general	BIR Form No. 1702-MX
Proprietary educational institution whose gross revenues from unrelated activities exceeds 50% of total gross revenues	BIR Form No. 1702-RT
Sole proprietorship	BIR Form Nos. 1701 or 1701A

NSNP educational institutions are required to secure a one-time certificate of tax exemption or exemption ruling from the BIR pursuant to existing issuances.