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Revenue Regulations (Rev. Regs.)

Rev. Regs. No. 2-2023 dated April 13, 2023

Prescribes the use of constructive affixture of Documentary Stamp as proof of payment of Documentary Stamp Tax for Certificates issued by Government Agencies or Instrumentalities

(Published in Manila Times on April 19, 2023)

All government agencies or instrumentalities are now prescribed to use the constructive affixture of a documentary stamp on the certificates they issue which are subject to documentary stamp tax (DST), in lieu of loose documentary stamps.

These government agencies or instrumentalities shall be agents of the Commissioner of Internal Revenue (CIR) for the collection and remittance of such DST to the Bureau of Internal Revenue (BIR).

For every issuance of a certificate, the government agencies or instrumentalities shall collect from their applicants the corresponding amount of DST due thereon which shall be indicated as one of the items in the government official receipt. The said receipt shall be attached to the taxable certificate as proof of payment of the tax. The phrase "DOCUMENTARY STAMP TAX PAID", including the serial number, and date of the government official receipt shall likewise be stamped or printed in a clear and readable manner which shall be located conspicuously on the face of the taxable certificate.

The collected DST shall be remitted monthly by filing the DST Declaration/Return (BIR Form No. 2000) and paying the tax through the available payment facilities of the BIR on or before the fifth (5th) day of the following month.

Rev. Regs. No. 3-2023 dated April 20, 2023

Amending Certain Provisions of Revenue Regulations (RR) No. 16-2005, as Amended by RR No. 21-2021, to implement Sections 294 (E) and 295 (D), Title XIII of the National Internal Revenue Code of 1997, as Amended by R.A. No. 11534 (CREATE Act), and Sections 5, Rule 2 and Section 5, Rule 18 of the CREATE Act Implementing Rules and Regulations, as Amended.

(Published in Manila Times on April 28, 2023)

Services which are not considered as "directly and exclusive used" in the registered project or activity of a registered export enterprise

Rev. Regs. No. 21-2021 implemented Sections 294 (E) and 295 (D), Republic Act (R.A.) No. 11534, whereby sales of services performed in the Philippines by a VAT-registered person to a registered export enterprise (REE), to be used directly and exclusively in its registered project or activity shall be subject to zero percent (0%) VAT Rate for a maximum period of seventeen (17) years from the date of registration.

Rev. Regs. No. 3-2023 prescribes that the local purchases of goods and services relating to the following services shall not be considered "directly and exclusively used" in the registered project or activity of a registered export enterprise:

1. janitorial services;
2. security services;
3. financial services;
4. consultancy services;
5. marketing and promotion; and
6. services rendered for administrative operations such as Human Resources, legal, and accounting.

VAT Zero-rating Certification issued by the concerned Investment Promotion Agency

The presumption that the foregoing services are not "directly and exclusively used" in the registered project or activity of an REE is not conclusive. The REE may prove, with supporting evidence, to the concerned Investment Promotion Agency (IPA) that any of the local purchases of goods and services relating to the above-listed services are indeed directly and exclusively used in its registered project or activity.

If the purchased goods are used in both the registered project or activity and administrative operations, the registered export enterprise shall adopt a method to best allocate the same. If a proper allocation could not be determined, the purchase of such goods or services shall be subject to twelve percent (12%) VAT.

The VAT zero-rating on local purchases of goods or services shall be availed of on the basis of the VAT zero-rating certification issued by the concerned IPA. Despite the issuance of the VAT zero-rating certification by the concerned IPA, the respective local purchases of goods or services may still be subjected to post audit/investigation/verification by the BIR that such goods or services are indeed directly and exclusively used by the REE in its registered project or activity.

Local suppliers of goods or services of REEs shall no longer be required to apply for approval of VAT zero-rating. All applications with accompanying VAT zero-rating certification issued by the concerned IPA which have been received but have not yet been acted upon by the BIR shall be accorded VAT zero-rating treatment from the date of filing of the application with the concerned IPA. Similarly, such VAT zero-rating treatment is still subject to the conduct of post audit by the BIR.

HMO Plans acquired by Registered Export Enterprises are subject to Zero Percent (0%) VAT

Finally, Rev. Regs. No. 3-2023 codifies BIR Ruling No. VAT-419-2022 where the Commissioner of Internal Revenue ruled that Health Maintenance Organization (HMO) plans acquired by REEs for their employees who are directly and exclusively involved in the operations of their registered projects or activities and forming part of their compensation package shall be considered as "directly and exclusively used" in the registered project or activity of a registered export enterprise subject to the conditions provided under the existing laws, rules, and regulations regarding the availment thereof.

Revenue Memorandum Circulars (RMC)

RMC No. 42-2023 dated April 4, 2023

Publishes the February 21, 2023 letter from the Food and Drug Administration of the DOH endorsing updates to the List of VAT-Exempt Products under RA No. 10963 (TRAIN Law) and RA No. 11534 (CREATE Act)

The List of VAT-Exempt Medicines under the TRAIN Law and CREATE Act has been updated to include certain medicines for cancer, diabetes, kidney disease, mental illness, and tuberculosis, and corrects medicines for high cholesterol and hypertension. The complete list may be accessed through https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2023%20RMCs/RMC%20No.%2042-2023%20Annex%20A.pdf.

As stated in RMC No. 99-2021 issued last September 1, 2021, the effectivity of the VAT exemption of the covered medicines and medical devices under the CREATE Act shall be on the date of publication by the FDA of the updates to the said list.

RMC No. 43-2023 dated April 14, 2023

Further Clarifying Certain Policies on the Filing of Appeals Against Final Decisions on Disputed Assessments (FDDA) pursuant to Revenue Regulations No. 12-99, as amended

In case of filing of an appeal against a Final Decision on Disputed Assessment (FDDA), the taxpayer shall furnish a copy of the said appeal to the following offices:

Type of Case	Copy Furnish
Regional Cases	Chief of the Assessment Division
Taxpayers under the jurisdiction of the Large Taxpayers Service (LTS)	Concerned Head Revenue Executive Assistants (HREA)
Taxpayers investigated by the National Investigation Division under the Enforcement and Advocacy Service (EAS)	Concerned HREA

RMC No. 44-2023 dated April 14, 2023

Prescribes supplemental guidelines in the filing of Annual Income Tax Returns and payment of taxes due thereon for Taxable Year 2022

This RMC provides the supplemental guidelines for the filing of Annual Income Tax Returns (AITRs) and payment of taxes due thereon for Taxable Year 2022 using eBIRForms Package/Electronic Filing and Payment System (eFPS) and the submission of its attachments.

Taxpayers who are manual filers of AITRs and those mandated to use Offline eBlRForms Package/eFPS under existing revenue issuances shall file their AITR and pay the corresponding tax due thereon in accordance with the guidelines provided by the BIR.

RMC No. 45-2023 dated April 19, 2023

Publishing the Full Text of Fiscal Review Board (FIRB) Advisory No. 004-2023 Clarifying the Issues Covering the Transfer of Registration with the Board of Investments (BOI) of Registered Business Enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) Sector

This RMC circulates the clarifications on questions received covering the supplemental guidelines on the registration of Registered Business Enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) Sector.

The Fiscal Incentives Review Board (FIRB) clarifies RBEs in the IT-BPM sector must first register with the Board of Investments (BOI) in order to avail of work-from-home (WFH) arrangements. It is further clarified that mere amendments to the BOI Certificate of Registration is not enough to avail of WFH arrangements as a new registration would be necessary. The penalty for implementing WFH arrangements without the necessary registration shall be based on 100% or the entirety of the regular corporate income tax for the month/s of non-compliance and not merely on the percentage of non-compliance.

With respect to the availment of incentives and registration with the BOI, the FIRB clarifies that in case the BOI-COR has not yet been issued despite having issued the BOI official receipt for registration, the BIR and Bureau of Customs (BOC) shall accept the BOI-issued official receipt as proof that the BOI-COR will be secured by the

company for purposes of availing of fiscal incentives. Furthermore, the registration to implement WFH arrangements by IT-BPM RBEs located in economic zones or freeport zones is an additional registration on top of the IT-BPM's existing registration with its concerned IPA. In this regard, when filing returns, the company should use the following syntax as recommended by the FIRB: "[concerned IPA]-BOI". For instance, if the concerned IPA is PEZA, the IPA field in the tax return will be filled-out as "PEZA-BOI".

The FIRB also clarifies that, if the IT-BPM RBE allows permanent WFH arrangement for employees, the corresponding share of the existing recipient-LGU shall not change provided that there is no change in the IT-BPM RBE's registered address or registered location.

The distinction between the tax exemption indorsement (TEI) and the Certificate of Registration and Tax Exemption (CRTE) is also discussed. The TEI is issued as proof of VAT and/or customs duty exemption of imported goods. In contrast, the CRTE is issued by the IPA as proof of the registration of the RBE with the IPA and the available fiscal incentives.

It is clarified that where duties and taxes have been paid for imported laptops used for WFH arrangements, the TEI will no longer apply since the BOC has already assessed the laptops and the IT-BPM RBE has paid the related taxes and duties.

It is also important to note that blanket TEIs are secured on a per-project basis; thus, each project must secure a blanket TEI. Furthermore, TEIs do not cover locally purchased goods as these are designed to serve as proof of VAT and/or duty exemption of importations.

For purposes of determining the reasonableness of the volume of assets brought out of the economic zone or freeport zone, employees under a hybrid work arrangement are counted as under a WFH arrangement.

RMC No. 46-2023 dated April 19, 2023

Publishes the full text of Fiscal Incentives Review Board Advisory No. 006-2023 regarding clarifications on the supplemental guidelines on the registration with the Board of Investments (BOI) of Registered Business Enterprises (RBEs) in the Information Technology — Business Process Management (IT-BPM) Sector

This RMC publishes the full text of FIRB Advisory No. 006-2023 which provides clarifications on the Supplemental Guidelines on the Registration of Registered Business Enterprises (RBEs) in the IT-BPM Sector. The full text of FIRB Advisory No. 006-2023 may be accessed through https://www.bir.gov.ph/images/bir_files/internal_communications_2/RMCs/2023%20RMCs/RMC%20No.%2046-2023%20Attachment.pdf .

Pertinently, the FIRB clarifies that locally purchased goods used for WFH arrangements, which were subject to VAT zero-rating, should be supported by the related VAT zero-rating certificate issued by the concerned IPAs. Given the need to balance government control procedures and the ease of doing business, risk-based validation should be applied whenever possible.

Court of Tax Appeals Decisions

A. CTA *En Banc* Cases

Municipal (Now City) Government of Taguig v. Veterans Federation of the Philippines, C.T.A. EB Case No. 2522 (C.T.A. AC No. 212), April 18, 2023

In this case, Veterans Federation of the Philippines (VFP), a government instrumentality, leased several of its properties to taxable entities. The City Government of Taguig contended that VFP is not exempt from the payment of real property tax and that VFP cannot pass liability to pay real property tax (RPT) to its lessees.

The CTA reiterated that the VFP, as a government instrumentality, is exempt from the payment of local RPT as it is not a taxable entity under Section 133(o) of the Local Government Code.

Following the Beneficial Use Doctrine, when a non-taxable property owner leases its property to a taxable entity, the taxable entity, as the beneficial user of the property, is liable to pay the RPT. During the lease, the non-taxable entity retains its exemption, however, the tax exemption on the property is lifted and the liability to pay falls on the beneficial user or possessor. Thus, VFP is exempt from the payment of RPT and is not liable to pay RPT.

IBEX Philippines, Inc. v. Commissioner of Internal Revenue, C.T.A. EB Case No. 2533 (C.T.A. Case No. 9802), April 18, 2023

The CTA in this case dismissed IBEX Philippines, Inc.'s (IBEX) claim for refund or issuance of a tax credit certificate (TCC) of its unutilized excess input value-added tax (VAT) attributable to its zero-rated sales. It is required upon the taxpayer to present proof that its services, made in favor of international clientele, were rendered within the Philippines in order to avail of VAT zero-rating under Section 108(B)(2) of the NIRC. Here IBEX presented its VAT returns, official receipts and certificate of inward remittance, and its purchases and expenses as proof. However, the CTA held that said evidence is insufficient to prove that IBEX rendered services to its international client within the Philippines.

The CTA noted that VAT returns are insufficient proof because returns are self-assessments of the taxpayer. It is within the taxpayer's duty to produce further evidence to support the truthfulness of its own declarations.

As to the client's remittance into the Philippines of its payment to IBEX, the same is not competent evidence to prove where the service was performed, because the "source of income" relates only to the property, activity, or service that produced the income.

B. CTA Division Cases

Reitoh Cold Storage, Inc. v. Bureau of Internal Revenue, C.T.A. Case No. 10420, April 19, 2023

In this case, the 22 petitioners applied for the Tax Amnesty granted under Republic Act No. 11213 ("TAA"), but the BIR failed to act upon or denied their applications. Here, the petitioners argued that it is the ministerial duty of the BIR to issue a Certificate of Tax Delinquencies/Tax Liabilities (CTD) and Acceptance Payment Form (APF) in their favor, and for the BIR to issue a Notice of Issuance of Authority to Cancel Assessment (NIATCA) after petitioners have filed their TARs and APFs and paid their amnesty taxes. However, the CTA denied their application for amnesty for lack of qualification, aside from being time-barred and moot.

Here, the CTA noted that the issuance of CTDs, APFs, and NIATCAs is a discretionary function of the BIR, not a ministerial one. The BIR's authority under the TAA includes determining who is qualified to avail of the tax amnesty under the TAA. To qualify for tax amnesty, petitioners' withholding tax liabilities must be delinquent or have attained finality as of April 24, 2019. More importantly, petitioners must have been issued a Final Assessment Notice /Formal Letter of Demand or Final Decision on Disputed Assessment that has become final and executory as of April 24, 2019. The BIR is duty-bound to determine the factual circumstances of the taxpayer's tax liability before the issuance of CTDs, APFs, and NIATCAs.

The Teleempire, Incorporated, as represented by its President, Ma. Victoria Arlette A. Feliciano v. Commissioner of Internal Revenue and the Regional Director of Revenue Region No. 4, City of San Fernando, Pampanga, C.T.A. Case Nos. 9968 (Decision), April 25, 2023

International Exchange Bank v. Commissioner of Internal Revenue described DST as one ". . . levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. It is an excise upon the privilege, opportunity of facility offered at exchanges for the transaction of the business."

In this case, petitioner claims that the date of execution of its Lease Agreement with SBMA was the date of its registration as an SBMA enterprise and the lease transaction is therefore not subject to DST. The Court ruled that the local and national tax exemptions in Section 12 (c) of RA No. 7227 kicks in only upon SBMA's issuance of a COR or CRTE to a business enterprise within the SSEZ. Given that SBMA issued the CRTE to petitioner on April 26, 2016, the latter may only be considered as a business enterprise within the SSEZ, exempt from national and local taxes in the SSEZ, as of said date. Ergo, the lease transaction, evidenced by the Lease Agreement executed by and between petitioner and SBMA on February 26, 2016, or prior to issuance of said CRTE on April 26, 2016, is subject to DST.

Goldxtreme Trading Co. v. Commissioner of Internal Revenue, C.T.A. Case No. 10129 (Resolution), April 12, 2023

In this case, the CIR issued a *Second Letter of Authority* ("Second LOA") authorizing a new set of Revenue Officers (RO) to examine petitioner's records. However, petitioner was only informed of the

Second LOA upon the filing of its *Reply to PAN*. The CIR claimed that the Second LOA was previously served through registered mail. An FLD/FAN was subsequently issued.

The Court ruled that the assessment is void due to improper service of the Second LOA to petitioner based on the following reasons:

First, petitioner was informed and provided with a copy of the Second LOA only when it filed its *Reply to PAN* sixty-nine (69) days after the Second LOA was issued. Second, the Second LOA that was served by registered mail was not received by GTC. Third, the Second LOA was not served at the registered address of petitioner and was received by a certain Ms. Luningning De Guzman who is neither an employee nor an authorized representative of GTC, and therefore had no authority to receive the same. Fourth, the Second LOA was delivered personally to petitioner beyond the 30-day period provided under Revenue Audit Memorandum Order ("RAMO") No. 1-2000 which requires that a LOA must be served or presented to the taxpayer within thirty (30) days from the date of issuance.

As stated in the assailed Decision, issuing a LOA before examination and assessment is a requirement of due process. It is not a mere formality or technicality. Accordingly, unless authorized by the CIR or his duly authorized representative through a LOA, an examination of the taxpayer cannot ordinarily be undertaken. There must be a grant of authority before any revenue officer can conduct an examination or assessment. Without such authority, the assessment or examination is a nullity.

Further, the assessment was rendered void for failure of the CIR to send a Notice of Informal Conference. RR No. 12-1999, as amended, required the BIR to issue a notice and conduct an informal conference as a due process requirement in issuing a deficiency tax assessment. This requirement was removed by RR No. 18-2013, issued on 28 November 2013, and restored by RR No. 7-2018 issued on 22 January 2018.

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