

Tax Credit for the 20% Senior Citizens Discount

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Agrarian Reform Bonds for Payment of Taxes

E-payment of Taxes Using TSAC/TSDM

New Process for First and Last Importations

Editorial **In Tax** Issue 05



Our Valued Clients,

The tax authorities have implemented new policies supplementing collection efforts, while the Courts have promulgated notable jurisprudence as follows:

- The fact that a taxpayer suffered a net loss for the taxable year does not preclude it from availing of its statutory right to a tax credit for the 20% sales discounts it granted to qualified senior citizens.

The BIR has released issuances clarifying the following:

- The tax treatment of profits on microfinance activities derived by non-governmental organizations and cooperatives;
- The taxability of insurance companies for minimum corporate income tax, business tax, and documentary stamp tax purposes; and
- The tax treatment of director's fees for income tax and business tax purposes.

On the other hand, the Bureau of Customs has issued the following directives:

- Reduction of tariffs on petroleum products covered by EO No. 691 to 1%;
- Instruction to District Collectors and Law Divisions concerned to immediately furnish notices, orders, decisions, and resolutions to all affected parties in adversarial proceedings such as seizure cases or Valuation and Classification Review Committee cases;
- New process for applications for First and Last shipments for seafreight importations at the Port of Manila and the Manila International Container Port; and
- New rules on shipment examinations.

Please do not hesitate to call KPMG Manabat Sanagustin & Co. for any clarification or advice.

Warm regards,

A handwritten signature in black ink, appearing to read 'E. P. Bonoan', written over a light blue horizontal line.

EMMANUEL P. BONOAN

Chief Operating Officer
Vice Chairman, Tax & Corporate Services

In Tax

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Supreme Court



Proper Party to Claim Excise Tax Refund

The proper party to seek a refund of an indirect tax is the statutory taxpayer, the person on whom the tax is imposed by law and who paid the same even if he shifts the burden thereof to another. In case of a refund of excise taxes on petroleum products, it is the manufacturer or producer which is entitled to claim a refund. Even if the manufacturer or producer passed the burden of the tax to the purchaser, the additional amount billed for jet fuel is not a tax but part of the price which the purchaser had to pay. *[Silkair (Singapore) Pte. Ltd. vs. CIR, G.R. No. 173594, promulgated 6 February 2008]*

Tax Credit for the 20% Senior Citizens' Discount

The fact that the taxpayer did not pay any tax since it suffered a net loss for that taxable year does not preclude it from availing of its statutory right to a tax credit for the 20% sales discounts it granted to qualified senior citizens. *(Cagayan Valley Drug Corporation vs. CIR, G.R. No. 151413, promulgated 13 February 2008)*

Bureau of Internal Revenue



Tax Treatment of Profits on NGO Microfinance Activities

Revenue Regulations (RR) No. 14-2007 clarifies the tax treatment of profits on microfinance activities derived by Non-governmental Organizations (NGOs) and cooperatives.

- **NGOs:**

All NGOs falling under the enumeration of Section 30 of the Tax Code of 1997, as amended, are exempt from income taxes, in respect of income received by them as such.

However, their income from microfinance activities which are not in respect of their registered activities, regardless of the disposition thereof, shall be subject to tax under the same Tax Code.

- **Cooperatives:**

Consistent with RR No. 20-2001, the following is the tax treatment of credit cooperatives' transactions related to microfinance activities:

1. Duly registered credit cooperatives dealing with members only shall be exempt from taxes for which they are directly liable (income tax from operation, VAT, 3% percentage tax, DST, Annual Registration);
2. Duly registered cooperatives dealing/transacting with both members and nonmembers with accumulated reserves and undivided net savings of not more than Ten Million Pesos shall be

exempt from taxes for which they are directly liable (similar to credit cooperative in number 1) and;

3. Duly registered credit cooperatives dealing/transacting with both members and nonmembers with accumulated reserves and undivided net savings of more than Ten Million Pesos shall be exempt from income tax for 10 years from date of registration with the Cooperative Development Authority, VAT, and 3% percentatge tax but subject to all other internal revenue taxes.

Notwithstanding the above, all income of cooperatives (which undertake microfinance activities) in addition to their registered purpose shall be subject to appropriate taxes under the Tax Code of 1997, as amended, whether these are dealing purely with members or both members and non-members. (*Revenue Regulations No. 14-2007, 11 December 2007*)

Tax Exemption from Excise Tax on Removal of Excisable Articles

RR No. 3-2008 amended certain provisions of the previous issuances which granted outright tax exemption from excise tax on removal of excisable articles intended for export or sale/delivery to international carriers or tax-exempt entities/agencies.

Subject to the subsequent filing of a claim for excise tax credit/refund or product replenishment, all manufacturers of articles subject to excise tax shall now pay the excise tax that is otherwise due on every removal thereof from the place of production that is intended for exportation or sale/delivery to international carriers or to tax-exempt entities/agencies.

In case of sale/delivery to embassies, legates such as the Office of the Papal Nuncio, or international organizations (i.e., ADB, IRRI, UN's various organizations such as WHO, UNICEF, etc.), the excisable articles may be removed from the place of production of the manufacturer without payment of the excise tax under specified conditions. (*Revenue Regulations No. 3-2008, 22 January 2008*)

Accrediting Entities for Charitable Organizations and Donee Institutions

Government agencies that were appropriately designated under Executive Order (EO) No. 671, circularized under Revenue Memorandum Circular (RMC) No. 88-2007, as the entities that will certify and accredit charitable organizations as donee institutions relative to the deductibility and exemption from donor's tax of contributions or gifts, are advised to comply with RR No. 13-98, the regulations implementing the provision on deductibility of contributions or gifts actually paid or made to

accredited donee institutions in computing taxable income. (*Revenue Memorandum Circular No. 14-2008, 22 January 2008*)

Persons Liable to Tax Imposed on Sale of Listed and Traded Shares

This RMC clarifies the persons liable to tax imposed on sale of shares of stock listed and traded through the local stock exchange or through Initial Public Offering (IPO). For the sale of shares of stocks listed and traded through the local stock exchange, it is the duty of the stock broker to file the return (BIR Form 2552) and pay the tax due within 5 banking days from the date of collection.

For the sale of shares of stocks through IPO, the persons liable will depend on whether it is a primary offering or secondary offering. In case of primary offering, the issuing corporation is primarily liable to pay the tax within 30 days from date of sale. For secondary offering, on the other hand, the seller is liable to pay the tax in the same time and manner following the procedures observed by a stock broker.

As defined by the Philippine Stock Exchange, primary offering is the original sale made to the investing public by the applicant company of its own securities, while secondary offering is an offer for sale made to the investing public by the existing shareholders of their securities which were already issued. (*Revenue Memorandum Circular No. 21-2008, 29 February 2008*)

Agrarian Reform Bonds for Payment of Taxes

The Circular reiterated the full Text of EO No. 659, entitled "Improving the Negotiability and Acceptability of Agrarian Reform Bonds".

The portion of the 10-year Agrarian Reform (AR) Bond that has matured or will mature within the given year in which the tax liability shall be paid or for such percentage of the outstanding balance of the AR Bonds held by the landowner/taxpayer and/or successors-in-interest or assignees shall be accepted as payment for tariff and duties and the following internal revenue tax liabilities, except withholding tax for non-withholding or non-remittance of taxes withheld:

1. Income taxes;
2. Capital gains tax due from individual taxpayers;
3. Estate tax;
4. Donor's tax;
5. VAT;
6. Excise tax;

7. Other percentage taxes;
8. Deficiency tax assessment arising from tax investigations;
9. Surcharge, interest and penalties arising from late filing of returns and/or payment of taxes; and
10. Tax arrearages and penalties.

(Revenue Memorandum Circular No. 27-2008, 29 January 2008)

E-payment of Taxes Using TSAC/TSDM

The Circular provides for the interim procedures in the handling of Tax Subsidy Availment Certificate (TSAC) and Tax Subsidy Debit Memo (TSDM) to be used in the payment of internal revenue taxes through the Electronic Filing and Payment System (EFPS).

RR No. 31-2003 provides that TSAC may be used by manufacturers, producers or suppliers as payment of their VAT liability on their sales to the Armed Forces of the Philippines Commissary and Exchange Service (AFPCES) and by suppliers/local refiners on excise tax liabilities on petroleum products purchased exclusively for AFPCES. On the other hand, RR No. 17-2005 prescribes the use of Tax Subsidy Debit Memo (TSDM) to evidence the amount of tax payment actually made by the primary contractors, consultants, subcontractors, suppliers, sub-subcontractors and sub-suppliers, using the subsidy in connection with the Subic-Clark-Tarlac Expressway Project.

While the handling of TSAC and TSDM payment is not yet available in the EFPS pending enhancement of its capabilities, the taxpayer shall, for the meantime, e-file the pertinent tax return and may either e-pay using TSAC/TSDM payments only or e-pay with cash and TSAC/TSDM payments. *(Revenue Memorandum Circular No. 28-2008, 14 September 2007)*



Taxability of Insurance Companies

The BIR also clarified that investment income realized from the investment of premiums earned is considered exempt from further imposition of business tax since the premiums had already been subjected to 5% premium tax. On the other hand, investment income realized from the investments of funds solicited and pooled from policyholders to invest in various marketable securities, instruments, and other financial products is considered as income earned from performing a quasi-banking function; thus, subject to the gross receipts tax under Section 121 of the Tax Code.

The BIR issuance reiterates that life insurance policies is subject to DST at the rate of P0.50 per P200 of the premium collected under Section 183 of the Tax Code, as amended; while the certificates issued are subject to DST under Section 188. In the case of health and accident insurance coverage, the DST shall be subject to P0.50 per P4.00 under Section 185 of the Tax Code, as amended.

For a non-life insurance company, business tax is generally subject to the VAT, of which gross receipts include the total premiums collected whether such premiums are paid in money, notes, credits or any substitute money. This includes premiums from a health and accident insurance contract underwritten by the non-life insurance companies. In the case of DST, insurance policies issued by non-life insurance companies are subject to DST under Section 184 of the Tax Code, as amended, regardless of the fact that policies may have become ineffective due to non-payment of the premiums. By way of an exception, health and accident insurance policies by non-life insurance companies are subject to DST under Section 185 of the same Code. Note, however, that Section 184 and 185 of the Tax Code, as amended, impose the same DST rate of P0.50 per P4.00 of the premium charged. (*Revenue Memorandum Circular No. 30-2008, 01 April 2008*)

The BIR issued a circular attempting to clarify the taxability of insurance companies for the purposes of minimum corporate income tax (MCIT), business tax, and documentary stamp tax (DST).

Gross revenues of life and non-life insurance companies for the purpose of computing the 2% MCIT shall include direct premium and reinsurance assumed (net of returns/cancellations); miscellaneous income; investment income not subject to final tax; released reserve; and, all other items treated as gross income under Section 32 of the said Tax Code, as amended.

On the other hand, the business tax (i.e., whether premium tax, VAT or gross receipts tax) to be imposed on a life insurance company will depend on the nature of the activity pursued in producing such type of income. In the case of direct writing premiums, these insurance activities are subject to the 5% premium tax, including re-insurance fees, reinstatement fees, renewal fees as well as penalties paid to the life insurance company which are incidental to or in connection with the insurance policy contracts. However, management fees, rental income or other income by a life insurance company, which can be pursued independently of the insurance business activity, are not subject to the 5% premium tax, but to VAT or percentage tax.

Income Tax and VAT on Directors' Fees

This RMC provides for the tax treatment of directors' fees for income tax and business tax purposes.

Directors' fees are taxable, for income tax purposes, as compensation income when the recipient director is an employee of the corporation

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which pays the same. Being embraced within the term "compensation income," the directors' fees are subject to the withholding tax on wages imposed under Section 79, in relation to Section 29(A) of the Tax Code, as amended.

However, if these fees are paid to a director who is not an employee of the corporation paying such fees, such fees are not treated as compensation income because of the absence of employer-employee relationship, but rather, the same should fall under "Gross income derived from the conduct of trade or business or exercise of a profession" subject to 10% creditable withholding tax if his gross income does not exceed P720,000 or 15% if his gross income exceeds P720,000 pursuant to RR No. 30-2003. **Moreover, directors under this classification shall be liable to pay the 12% VAT on their gross receipts, or the 3% percentage tax should they fail to meet the VAT threshold.** (Revenue Memorandum Circular No. 34-2008, 15 April 2008)

Criteria for BIR Accreditation of AABs

The criteria for bank accreditation of Authorized Agent Banks (AABs) of the Bureau of Internal Revenue (BIR) have been modified. Only those banks which have complied with the following criteria shall be authorized to collect internal revenue taxes:

1. The bank is a commercial or a universal bank;
2. The bank should be able to meet the financial ratios required by the Bangko Sentral ng Pilipinas (BSP) and maintain these ratios during the term of the Memorandum of Agreement (MOA);
3. The bank should have the infrastructure required by the BIR; and
4. The bank shall have been in profitable operations for the immediately preceding 3 years.

Incentives granted to AABs shall be in the form of float periods. Generally, the Over-the-Counter (OTC) float period shall be 6, 8, or 10 days while the corresponding float period for EFPS shall be half of the float period for OTC transactions. The grant of float period shall bar the collection of any other fees on top of the tax payments from the taxpayer. (Revenue Memorandum Order No. 11-2008, 04 February 2008).

Bureau of Customs



Due Process in Customs Cases Emphasized

To better comply with the mandate and requirement of due process of law, District Collectors and Law Divisions concerned have been instructed to immediately furnish notices, orders, decisions, and resolutions to all affected parties in adversarial proceedings such as seizure cases or Valuation and Classification Review Committee (VCRC) cases. Affected parties in such proceedings include, but would not be limited to, government prosecutors, apprehending units, claimants, and intervenors. *(Customs Memorandum Order 12-2008, 28 February 2008)*

New Process for First and Last Importations

All applications for First and Last shipments for seafreight importations at the Port of Manila (PoM) and the Manila International Container Port (MICP) will no longer be coursed through the Office of the Commissioner. Instead, these shall be sent to the Deputy Commissioner for the Management Information Services Technical Group (MISTG) for his recommendation. Furthermore, First and Last Importations will be treated as alerted shipments which will be subject to 100% physical examination. This will allow for a more effective monitoring of the said shipments' compliance with the more detailed description requirements mandated under Customs Administrative Order 8-2007. *(Customs Memorandum Order 13-2008, 14-2008, and Customs Memorandum Order 15-2008; all dated 05 March 2008)*

New Rules on Shipment Examinations

The rules have been promulgated for the conduct of examinations on shipments. Under these new rules, the x-ray system will be more extensively used. Physical examinations of truck mounted shipments selected for the red lane will be discontinued except for agricultural products requiring quarantine clearance. PEZA bound shipments will also no longer be subject to physical examination. However those found to have suspicious x-ray images would be routed for 100% physical examination. *(Customs Memorandum Order 17-2008, 27 March 2008)*

Oil Tariffs at 1%

Tariffs on petroleum products covered by EO No. 691 have been reduced to 1% following a certification issued by the Department of Energy that the trigger prices of US\$ 91.70/barrel (for Dubai Crude) and US\$ 113.00/barrel (for diesel) have been breached. The 1% rate took effect on 01 April 2008. *(Customs Memorandum Order 18-2008, 27 March 2008)*

New Collection District Created

The Port of Aparri has been designated as Collection District XV along with its subports of entry such as: Irene, Cagayan; Curimao, Ilocos Norte; and Laoag International Airport. These ports were transferred from Collection District I which still retains the Port of San Fernando, La Union and the following subports: Baguio-PEZA (Camp John Hay); Salomague, Ilocos Sur; and Sual, Pangasinan. *(Customs Administrative Order 2-2008, 14 March 2008)*

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