

Tax news

Interpret and integrate



BIR Issuances

Guidelines on the issuance of ATRIGs for imported automobiles released from customs custody

The Bureau of Internal Revenue (BIR) issued the following policies and guidelines on the issuance of Authority to Release Imported Goods (ATRIGs) for imported automobiles:

A. Policy guidelines

Under Revenue Regulations No. (RR) 25-2003, all importations of automobiles, whether for sale or otherwise, shall not be released without payment of ad valorem tax. Furthermore, under the Bureau of Customs (BOC) and BIR Joint

Order, a Certificate of Payment shall be issued only when an ATRIG covering the automobile/vehicle is presented.

In the event that the automobiles covered by the application for ATRIG have already been released from customs custody prior to issuance thereof, no ATRIG shall be allowed to be issued just to complete the documentation of the importation for BOC purposes.

B. Effect of failure to secure ATRIG prior to the release of imported articles

The release of an excisable item without the requisite ATRIG shall be deemed withdrawn from customs custody or imported into the country without the payment or proper payment of the required taxes and, thus, may be detained by any revenue officer in accordance with Section 172 of the National Internal Revenue Code (NIRC), and if warranted, subsequently forfeited, pursuant to Section 268(C) of the NIRC. The person/s responsible for the same shall be held liable for unlawful possession or removal without payment of tax pursuant to Section 263 of the Tax Code, as amended.

C. Issuance of ATRIG for imported automobiles already released from customs custody

Imported automobiles that were already released from customs custody may still be issued ATRIGs until 31 March 2016 subject to the condition that an application for ATRIG has been filed with the Excise LT Regulatory Division (ELTRD) and that the excise tax and value-added tax (VAT) due thereon have been paid within the same period, computed pursuant to the rates provided

for in Section 4 of RR 25-2003 based on the manufacturer's/importer's selling price at the time of importation, including 50% surcharge and 20% interest reckoned from the date of Final Import Entry and Internal Revenue Declaration.

All imported automobiles found to have been released from customs custody after 31 March 2016 without the required ATRIG shall be subject to seizure pursuant to Section 172, 263, and 268(C) of the Tax Code, as amended.

(Revenue Regulations No. 02-2016, March 4, 2016)

Decentralized processing and issuance of Certificate of Internal Revenue Tax Payments

The BIR has decentralized the processing and issuance of certificates of internal revenue tax payments from the Revenue Accounting Division (RAD) to the revenue district offices (RDOs) and divisions under the Large Taxpayers Service. Accordingly, the following revenue offices shall be responsible for receiving and processing applications for certifications on internal revenue tax payments:

Revenue Offices	Taxpayers Covered	Period Covered
Revenue Accounting Division (RAD)	All taxpayers, whether large or non-large, covering payments made through Authorized Agent Banks (AABs) and tax payments made through Revenue Collection Officers outside the jurisdiction of the Regional Finance Divisions	Thru AABs – 1999 and prior years Thru RCOs – 1989 and prior years
Large Taxpayer Document Processing and Quality Assurance Division (LTDPQAD), Large Taxpayer Division (LTD) – Makati and LTD-Cebu	For large taxpayers falling under their respective jurisdiction	2000 and years thereafter or effective date of enlisting as a large taxpayer, as the case may be
Collection Section under the concerned RDOs	For taxpayers falling under the jurisdiction of the concerned RDOs	All collection period not covered in the enumeration above

In addition to the certification fee of P100 and P15 documentary stamp tax (DST) for each certificate/document issued, a processing fee shall be required to be paid by the applicant in accordance with the following rates, upon filing of the application of the request for certification:

No. of Tax Payments	Processing Fee
1 to 12 tax payments	P100.00
13 to 24 tax payments	P200.00
25 to 36 tax payments	P300.00
37 to 48 tax payments	P400.00
49 to 60 tax payments	P500.00

All applications for certification of tax payments that are filed and are pending with the RAD as of 15 February 2016 shall still be processed and the corresponding certifications shall be issued by the same office.

(Revenue Memorandum Order No. 07-2016, February 16, 2016, and Revenue Memorandum Circular No. 25-2016, February 29, 2016)

Effectivity of renegotiated Philippines-Germany Tax Treaty

The renegotiated agreement between the Republic of the Philippines and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital entered into force on 18 December 2015.

The renegotiated Philippines-Germany Tax Treaty shall have effect in respect of taxes covered by the tax treaty, including taxes withheld at source, for any taxable period beginning on or after the first day of January 2016.

(Revenue Memorandum Circular No. 15-2016, February 16, 2016)

AABs to open on 19 March and 2 April, and extend their banking hours up to 5:00 pm from 1 April to 15 April

All AABs are required to receive the tax returns and accept tax payments of taxpayers on 19 March 2016 and 2 April 2016, in lieu of 26 March 2016 and 9 April 2016, which were declared Special Non-Working Day (Black Saturday) and regular holiday (*Araw ng Kagitingan*), respectively.

The banking hours of AABs shall also be extended up to 5:00 pm from 1 April to 15 April 2016.

(Bank Bulletin No. 2016-05, February 10, 2016, and Revenue Memorandum Circular No. 26-2016, March 3, 2016)

Court Decisions

Incidental transaction subject to VAT

Under Section 105 of the Tax Code, VAT is imposed on the sale or transaction entered into by a person in the course of any trade or business, including transactions that are made incidental to the pursuit of a commercial activity.

Citing *CS Garments, Inc. vs. Commissioner of Internal Revenue*, CTA EB Case No. 287, January 14, 2008, the Court of Tax Appeals (CTA) held that based on Section 105 of the Tax Code, a transaction will be characterized as having been entered into by a person in the course of trade or business if it is: (1) regularly conducted; and (2) undertaken in pursuit of a commercial or economic activity. Likewise, transactions that are made incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business.

In the instant case, the taxpayer was assessed for deficiency VAT on the sale of its tools and equipment, which were not subjected to VAT. The taxpayer contends that the disposition of the tools and equipment do not comprise inventory for sale. As such, these dispositions were not in the

taxpayer's ordinary course of trade or business and, hence, not subject to VAT.

The CTA held that the tools and equipment are used by the taxpayer in the conduct of its business and should be subject to VAT. The CTA noted that prior to the sale, the tools and equipment formed part of the taxpayer's assets being used in its business operations. Hence, the taxpayer's sale of tools and equipment is an incidental transaction because they were used in the furtherance of the taxpayer's business. Consequently, the proceeds from the sale shall be subject to VAT under the Tax Code, as amended.

(Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue, CTA Case EB No. 1035 re: CTA Case No. 7830, February 9, 2016)

List of deductible expenses under RR 11-05 is not exclusive

An enterprise registered with the Philippine Economic Zone Authority (PEZA) and engaged in power generation services may claim, in addition to the list of allowable deductions enumerated under RR 11-05, as amended, other expenses considered as direct costs or costs of sales for purposes of computing its tax liability under the 5% gross income tax.

The CTA held that the list under RR 11-05 is not meant to be an all-inclusive list. Hence, a PEZA-registered enterprise is allowed to deduct expenses that are in the nature of direct costs even though the same are not included in the list under RR 11-05.

In determining whether an item of cost or expense is part of direct costs, the direct relation of such item in the rendition of the PEZA-registered services should be determined. If the item of cost or expense can be directly attributed to the PEZA-registered services, then it should be treated as direct cost, which is deductible in arriving at the gross income of a PEZA enterprise subject to 5% preferential tax.

(Commissioner of Internal Revenue vs. East Asia Utilities, CTA EB 1207 re CTA 8179, February 3, 2016)

Sale of scraps by PEZA-registered enterprises subject to 30% RCIT

Under PEZA Memorandum Circular (MC) 2005-032, the sale of production "rejects" and "seconds" from the registered activity of an export enterprise and recovered waste/scrap generated from processing of raw materials and other direct/indirect materials/supplies that have undergone processing, shall be covered by the registered activity of the export enterprise. Thus, any income derived therefrom shall be subject to applicable tax incentive.

In the instant case, a PEZA-registered manufacturing export enterprise sold its production rejects and recovered wastes/scrap, including packaging materials and supplies. It recorded its income derived from the sale of scraps under "other income" and subjected it to 5% preferential tax pursuant to PEZA MC 2005-032.

The CTA held that the sale of scraps by a PEZA-registered enterprise is instead subject to 30% regular corporate income tax (RCIT).

Citing CTA EB No. 25 (*Commissioner of Internal Revenue vs. Nidec Copal Philippines Corporation, October 1, 2007*), the CTA held the even when the sale of scrap is incidental to the taxpayer's

registered activities, the PEZA Rules Implementing RA 7916, which should prevail over PEZA MC 2005-032, expressly provides that such sale shall be subject to regular income tax. Hence, the sale of scrap materials should be subject to 30% RCIT.

(Hoya Glass Disk Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 8115, March 8, 2016)

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