

SALIENT FEATURES OF REVENUE REGULATIONS NO. 2-99, OTHERWISE KNOWN AS THE "ECONOMIC RECOVERY ASSISTANCE PAYMENT (ERAP) PROGRAM", GRANTING IMMUNITY FROM AUDIT AND INVESTIGATION OF...

BIR REVENUE MEMORANDUM CIRCULAR NO. 17-99, March 11, 1999

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To clarify the issues relating to the grant of immunity from audit and investigation of income tax, VAT and percentage tax returns under the ERAP Program as implemented by Revenue Regulations No. 2-99 (RR 2-99), hereunder are some of the basic questions and answers:

Q-1:

Who may avail of the benefits under RR 2-99?

A-1:

Any person, natural or juridical, may avail of the privileges granted under RR 2-99.

Q-2:

What kind of taxes are covered by RR 2-99?

A-2:

This program is limited to income tax, VAT and percentage taxes. It will not cover liability for all forms of withholding taxes as well as other internal revenue taxes such as transfer tax, excise tax, documentary stamp tax, etc.

Q-3:

When is the deadline for the payment of the tax under RR 2-99?

A-3:

For all income tax returns covering taxable year 1998, the last day for the filing of which is not yet due as of the effectivity of RR 2-99 (example: calendar year 1998 income tax return, deadline for the payment of the additional tax under RR 2-99 shall be the same as the deadline for the filing of said returns. It shall be noted that income tax returns are required by law to be filed on or before the fifteenth day of the fourth month following the close of the taxable year.

In the case of a VAT or percentage tax returns, the deadline for the payment of the additional tax prescribed under RR 2-99 shall be June 30, 1999.

Provided, that, all 1998 tax returns whether already filed, or due for filing before the effectivity of RR 2-99 but not yet filed as of such date, are still covered by the program if the taxpayer pays the additional tax or files the appropriate return on or before June 30, 1999, without prejudice to the imposition of penalties for late filing provided under the NIRC.

Q-4:

What is the taxable period covered by RR 2-99?

A-4:

For income tax purposes, RR 2-99 covers taxable year 1998, whether a calendar year or a fiscal year. Provided, that, any fiscal year ending July 31, 1998 up to June 30, 1999 are covered by the term "taxable year 1998".

For VAT and percentage taxes, all quarters of the entire calendar year 1998.

Q-5:

What are the procedures for the availment of the privileges under RR 2-99?

A-5:

A taxpayer, who wants to avail of the privileges under RR 2-99 in connection with the filing of his 1998 income tax return, must comply with the following procedures, viz:

1.

Say, the income tax due from the taxpayer for calendar year 1997 is P25,000,000 and the income tax due for calendar year 1998 is P20,000,000. In this case, the taxpayer shall pay an additional tax of P10,000,000 in order to meet the minimum payment required which is equivalent to 120% of the tax paid for taxable year 1997 ($P25,000,000 \times 120\%$) or a total of P30,000,000 for his 1998 income tax returns.

2.

The taxpayer shall file his/its 1998 income tax return and pay the tax, including the additional tax, through the Authorized Agent Bank (AAB) located within the jurisdiction of his/its home Revenue District Office (RDO). In

cases where there are no AABs, the return shall be filed and the tax shall be paid through the duly authorized Collection Officer of his/its Home RDO.

3.

Accomplish BIR Form No. 2103 or the Immunity From Audit Availment Form (IAAF) in duplicate and attach therewith the following documents:

(a) Photocopy of the taxpayer's 1997 income tax return duly stamped received by the AAB or the duly authorized Revenue Collection Officer and Official Receipt evidencing payment;

(b) Photocopy of the taxpayer's 1998 income tax return duly stamped received by the AAB or the duly authorized Revenue Collection Officer and Official Receipt evidencing payment;

4.

File in duplicate the duly accomplished BIR Form No. 2103 together with the required attachments, with his/its Home RDO.

After approval of the application, a "CERTIFICATE OF IMMUNITY FROM AUDIT" covering the tax return(s) corresponding to his availment shall be issued to the taxpayer.

5.

The same procedures shall apply with respect to VAT and percentage tax returns for the year 1998 covered by the taxpayer's application for the privileges under RR 2-99.

Q-6: May the taxpayer be allowed to pay the tax under RR 2-99 on installment? If yes, what are the conditions?

A-6:

Yes, provided that the additional tax required for the availment is at least P5,000,000. If the additional tax amounts to P5,000,000 but not more than P10,000,000 the same may be paid in two (2) equal monthly installments.

Example: Assume, that the income tax due per 1998 income tax return of a corporation is P20,000,000. The income tax due from the said corporation for the prior year 1997 was P25,000,000. In this case, the total tax payment for the 1998 return to qualify must at least be P30,000,000 or 20% more of the tax paid in 1997. Hence, this results to an additional tax for 1998 of P10,000,000 (minimum payment required of P30,000,000 minus tax due of P20,000,000). Since the tax of P20,000,000 is due for payment by April 15, 1999, it shall be paid at the same time the return is filed. The additional tax of P10,000,000 may be paid in two (2) equal installments. The first 50% thereof (P5,000,000) shall be paid together with the tax due of P20,000,000 upon filing of the income tax return. The balance of P5,000,000 shall be paid on or before May 15, 1999.

If the additional tax required under RR 2-99 is more than P10,000,000, the taxpayer may be allowed to pay the same in three (3) equal monthly installments.

If the taxpayer desires to pay the additional tax in four (4) or more equal monthly installments, prior approval of the Commissioner or the Regional Director having jurisdiction over the taxpayer shall first be secured.

If the income tax due from the taxpayer for taxable year 1998 is equivalent to 120% or more of the tax paid in the prior year 1997, he will not be required to pay any additional tax, but shall, nevertheless, qualify for the privileges under RR 2-99. In this case, however, the entire amount of tax due per return shall be paid at the time the return is filed.

Q-7:

May creditable withholding taxes (example: expanded withholding taxes) be used in payment of the income tax due on return filed under RR 2-99?

A-7:

Yes, but limited only to creditable taxes withheld from income forming part of gross income reported in the 1998 income tax returns.

Q-8:

Are deficiency taxes paid or assessed upon investigation of 1997 returns included in computing the 20% increase for the purpose of availing of the privileges under RR 2-99?

A-8:

Yes, but only the basic deficiency tax paid or assessed as of February 22, 1999 will be added to the tax paid per 1997 return to establish the basis for computing the 20% additional tax. Moreover, the assessments to be included in the computation are limited to those that have become final, executory and demandable as of February 22,

1999.

Q-9: Is the 20% additional payment under RR 2-99 a deductible expense for income tax purposes?

A-9: (a) The additional payment for income tax purposes is not a deductible item under Section 34(C)(1)(a), NIRC of 1997 for purposes of computing taxable income.

(b) The additional payment for percentage tax purposes is allowable deduction from gross income under Section 34(C), NIRC of 1997.

(c) The additional payment for VAT purposes is not allowed as a deduction from gross income. Under the VAT system, the taxpayer reports his sales or revenues net of the 10% VAT so that allowing it as a deduction would constitute double deduction from gross income.

Q-10:

If the deadline for payment of the ERAP tax for income tax purposes is April 15 (for calendar year basis), and the deadline for payment for VAT and percentage tax purposes is June 30, when should the corresponding IAAF be filed?

A-10:

The IAAF should be filed as soon as possible, following the payment of the additional taxes. Moreover, the taxpayer shall consolidate his application for Income and VAT/percentage tax into one IAAF.

Q-11:

May a corporation which has been dissolved as of the year 1998 and which is in the process of liquidation avail of RR 2-99 vis-a-vis its tax returns filed for the year 1998?

A-11:

No. Under the law, such corporation may not be dissolved and liquidated unless a tax clearance is issued by the BIR showing that it has duly paid all its internal revenue taxes. Such tax clearance may not be issued unless such corporation's accounting records has been examined to determine whether or not it has fully paid its internal revenue taxes.

Q-12:

Where shall large taxpayers file their application for availment for immunity under the ERAP program?

A-12:

Large taxpayers shall file their application for availment of immunity with the RDO having jurisdiction over their principal place of business. They shall, however, continue to file their returns and pay their taxes with the designated agent banks under RR 1-98.

Q-13: May a taxpayer who did not file any tax return for 1998 and the prior year 1997 avail of the immunity from audit under RR 2-99?

A-13:

No. The taxpayer must file or should have filed his/its income tax return, VAT returns and/or percentage tax returns for the taxable year 1998 and the prior year 1997 in order to avail of the benefits under RR 2-99.

Q-14:

Suppose the taxpayer is claiming for the refund of his excess creditable withholding taxes or excess quarterly income taxes. If such taxpayer availed of the privileges under RR 2-99, will such claim for refund be granted by the BIR even without investigation of such taxpayer's refundable return?

A-14:

No. Even if the taxpayer availed of the privileges under RR 2-99, in case such taxpayer is claiming for refund of excess creditable withholding taxes or excess quarterly income taxes vis-a-vis the said income tax return filed, no refund or tax credit certificate shall be issued unless the taxpayer's tax return, and corresponding accounting records, have been duly audited and examined by the BIR and it has been established that the claimant is in fact entitled to such refund or credit. This is consistent with the decision of the Supreme Court in the case *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue and Court of Appeals*, GR No. 103379, November 23, 1993.

Q-15:

If the taxpayer availed of the privileges under RR 2-99 for income tax purposes only, will his VAT and percentage tax return enjoy immunity from audit and investigation?

A-15:

No. The immunity from audit and investigation of 1998 tax returns under RR 2-99 is on a per tax type basis. Hence, if the taxpayer availed only for income tax purposes, his VAT or percentage tax returns for the year 1998 shall not enjoy immunity from audit and investigation.

Q-16:

Professional partnership for the practice of a common profession is exempt from income tax, VAT and percentage tax. May such partnership avail of the privileges granted under RR 2-99? If not, how may the partners of such partnership avail of the said privileges?

A-16:

No. A professional partnership for the practice of a common profession, being devoid of tax personality, can not avail of the privileges under RR 2-99. However, for income tax purposes, the income of the partnership shall be directly taxable to the partners in their individual capacity. Accordingly, the person who may avail of the privileges under RR 2-99 shall be the individual partners rather than the partnership itself.

Q-17: Are government owned and controlled corporations qualified to avail of the privileges under RR 2-99?

A-17: Yes, government owned and controlled corporations are qualified to avail of the privileges under RR 2-99.

Q-18:

Suppose the taxpayer incurred a net loss in the year 1997, how may such taxpayer avail of the privileges under RR 2-99 with respect to his income tax return for the year 1998?

A-18:

1. In the case of an individual, he shall pay for the year 1998, an amount equivalent to at least one-half ($\frac{1}{2}$) of one percent (1%) of his gross sales/receipts.

2. In the case of a corporation, it shall pay at least two percent (2%) of its 1998 gross sales/receipts.

Q-19:

How do we determine the total tax to be paid in order to qualify for the ERAP Program, if a taxpayer is subject to MCIT for taxable year 1998?

A-19:

The excess MCIT shall be paid on top of the minimum payment required under RR 2-99 to qualify for immunity. If after increasing the 1997 normal tax by 20%, the resultant amount effectively exceeds the MCIT, then there will be no more excess MCIT to be carried forward to the next three succeeding years. For instance, corporations A and B have the following schedule of tax liabilities:

Corp. A Corp. B

1997 Income Tax Payment 75,000 100,000

MCIT (2% of Gross Income) 78,000 130,000

Normal Tax @ 34% 59,000 110,000

To compute payment to qualify: 1997 Income Tax Payment 75,000 100,000

x 120% x 120%

ERAP Requirement 90,000 120,000

Add: Excess MCIT

MCIT 78,000 130,000

Less: Normal tax (adjusted) 90,000 _____ 0 120,000 _____ 10,000

Payment to qualify 90,000 130,000

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In Corporation A, the ERAP requirement of 120% of 1997 tax payment already exceeded the MCIT, thus leaving no excess MCIT to be carried over to the next three succeeding taxable years. However, in Corporation B, the ERAP requirement as computed is lower by P10,000 as compared to the MCIT, in which case, the ERAP requirement shall be paid on top of the excess MCIT, in order to qualify for immunity.

Q-20: What is meant by "gross sales or receipts" for purposes of the availment?

A-20:

The term "gross sales or receipts" shall refer to the pertinent items of income includible in the income tax returns for purposes of determining the normal income tax liability of taxpayers, individual or corporate, pursuant to the composition of income as prescribed under Section 32 (A) of the Tax Code.

For sale of goods, "gross sales or receipts" shall mean the sale of goods net of sales discounts and sales returns and allowances.

For sale of services, the term "gross sales or receipts" refers to gross revenue derived from sale of services. It pertains to the compensation for services rendered or to be rendered which forms part of the income returnable for income tax purposes pursuant to Section 32(A) of the Tax Code.

The composition of the gross sales or receipts of a particular taxpayer who wants to avail of the benefits under RR 2-99 will depend on the accounting method employed by the taxpayer; i.e. for accrual basis taxpayer, it will include both cash sales and account sales; for cash basis taxpayer, it includes cash sales.

Q-21:

If the corporation enjoys income tax holiday for the first semester of 1997 but becomes taxable in the second, what will be the basis of the tax to be paid in the 1998 returns to qualify for immunity from audit and investigation?

A-21:

The basis for the tax on the 1998 return shall be the total tax payment for 1997 income tax return. Since the return is indivisible for the entire taxable year, income attributable to the first semester shall not be treated as a separate no-payment return. Therefore, the minimum amount payable per 1998 income tax return shall be 120% of the tax paid for the entire taxable year 1997.

Q-22:

Assuming the 1997 VAT returns are all no payment returns, and value added taxes were paid only for certain quarters in 1998. What procedure shall be followed so that the taxpayer's 1998 VAT returns may qualify under the ERAP Program?

A-22:

To qualify for immunity, the taxpayer shall pay an amount equivalent to one hundred twenty percent (120%) of the output taxes for all the taxable quarters of the preceding year 1997, computed as follows:

Example:

Output tax for 1st quarter 1997 - P300,000.00

Output tax for 2nd quarter 1997- P400,000.00

Output tax for 3rd quarter 1997 - P200,000.00

Output tax for 4th quarter 1997 - P500,000.00

TOTAL P1,400,000.00

120% thereof P1,680,000.00

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In this case, the taxpayer must have paid at least an amount equivalent to P1,680,000.00 as output taxes for all the taxable quarters of 1998. Thus, if the output taxes per his 1998 VAT returns filed is below P1,680,000.00, he shall pay the additional amount in order to avail of the immunity from audit of his 1998 VAT returns filed.

Illustration:

120% of output taxes for all quarters of 1997 P1,680,000.00

Less: Output taxes for all quarter of 1998 P1,400,000.00

**ADDITIONAL PAYMENT REQUIRED TO
QUALIFY FOR IMMUNITY P280,000.00**

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Q-23:

Supposing that VAT or percentage taxes were paid in 1997, but not in all quarters comprising the taxable year, what will be the basis of the additional payment to qualify for immunity? Can the taxpayer qualify for immunity for the entire year of 1998?

A-23:

Yes, the taxpayer can qualify for immunity for the entire year of 1998 notwithstanding the non-payment in certain quarterly returns in 1997, provided the taxpayer pays for 1998 at least 120% of the total tax paid for the whole year of 1997. In fine, the availment for immunity from audit shall be on an annual basis, and not on a quarterly basis.

Q-24:

Can VAT taxpayers whose input taxes exceed their respective output taxes in all quarterly returns of 1997 and 1998 avail of the immunity?

A-24:

Yes. The 1997 returns are considered as no-payment returns. In which case, the taxpayer shall pay ½ of 1% (for individuals) or 2% (for corporations) of their gross sales or receipts for 1998 to qualify for immunity from VAT investigation. This is apart from their availment of the program for income tax purposes.

Q-25:

Can 1998 VAT/percentage tax returns bearing no-payments be amended to show payments in order to qualify, if the 1997 returns showed no payment?

A-25:

No. The prohibition to amend 1997 VAT/percentage tax returns for purposes of qualifying for immunity from 1998 audit extends to the 1998 VAT/percentage tax returns for the same reasons.

Q-26:

Can a taxpayer who is in a tax loss position in 1997 amend his/its 1997 return and pay a minimum income tax due based on the amended return? If yes, will the BIR allow that the additional tax to be paid to qualify in 1998 be 20% of the income tax paid in 1997 (based on the amended return) and not ½ of 1% or 2% of 1998 gross sales/receipts?

A-26:

No. While amendment of a tax return is a matter of right of every taxpayer, the income, VAT and percentage tax returns filed for taxable year 1997 where no tax per return was paid, cannot be amended to reflect a payable amount per return for purposes of availing of the privilege granted under RR 2-99.

Q-27:

Can taxpayers who paid taxes on returns (income, VAT and percentage) filed for 1997 amend said returns and avail of the ERAP Program for their 1998 returns?

A-27:

As intimated in A-26, amendment is a matter of right but for purposes of the program we have to safeguard the integrity of the availment. Accordingly, if a tax was paid on the 1997 return and the taxpayer amends it to reflect a higher tax than what was originally paid, he can avail of the immunity for his 1998 returns by paying the minimum amount based on the 1997 amended return. On the contrary, amendment of a 1997 return reflecting a reduced amount of tax due per return will not qualify the taxpayer to avail of the ERAP Program.

Q-28:

Are corporations taxed under a special law and not by the NIRC covered by the ERAP Program?

A-28:

No. Corporations taxed under special law i.e. PEZA-registered enterprises, CDA-registered enterprises, SBMA-registered enterprises, etc., are not covered by the tax system provided under the NIRC. The 5% Tax Rate can not be considered as income, VAT, nor percentage tax in nature because it is a tax imposed in lieu of all taxes, both national and local. Since the RR 2-99 covers only income, VAT, and percentage taxes under the NIRC, the PEZA-registered enterprises etc., cannot avail of the incentives under RR 2-99.

Q-29:

What about taxpayers enjoying a preferential tax treatment under the Tax Code?

A-29:

Yes. They can avail of the ERAP Program. These taxpayers, i.e. hospitals and educational institutions, offshore banking units, etc., are subject to income taxes under the NIRC. They can be entitled to the immunity from audit and investigation upon qualifying with the requirements stated in RR 2-99.

Any provision of any revenue issuance inconsistent with the provisions of this Circular shall be deemed revoked, amended or modified accordingly.

All revenue personnel are enjoined to give this Circular as wide publicity as possible.

Adopted: 11 March 1999

(SGD.) BEETHOVEN L. RUALO
Commissioner of Internal Revenue

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