

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. 18-99, March 15, 1999

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To clarify further 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 (RR2-99), hereunder are additional basic questions and answers.

Q-1:

Can taxpayers beginning operations in 1998 qualify for immunity from audit as contemplated under the ERAP Program?

A-1:

Taxpayers beginning business operations in 1998 would not have any basis for comparison since they have not filed any tax return in 1997. Therefore, these taxpayers can not qualify for immunity from audit under the ERAP Program.

Q-2:

When is the deadline for the 20% or more additional tax required for availment of immunity under the ERAP Program for corporations with fiscal year ending November 30, 1998?

A-2:

Corporations with fiscal year ending November 30, 1998 shall be allowed to pay the 20% or more additional tax on or before April 15, 1999 to afford them the opportunity to avail of immunity under the ERAP Program.

Q-3:

In the event that a taxpayer's 1998 regular operations would result in the payment of taxes that already exceed the taxes in 1997 by 120% or more, is the taxpayer automatically qualified for immunity from audit?

A-3:

No. The taxpayer is still required to file an application for immunity from Audit using the BIR Form 2103. Upon approval of BIR Form 2103, a Certificate of Immunity from Audit (CIA) shall be issued to him. The duty of the Revenue District Officer/Large Taxpayer's Division to pre-audit the return is limited to the verification of the

information on the face of the returns that the minimum tax requirement is duly complied with in accordance with the Regulations.

Q-4: Are taxpayers availing of the ERAP Program required to amend their 1998 Financial Statements to conform with the 20% or more additional tax?

A-4: No. The amendment of Financial Statements to conform with the 20% or more additional tax is not mandatory.

Q-5:

Where shall large taxpayers pay for the 20% or more additional tax and file for their application for immunity under the ERAP Program?

A-5:

Large taxpayers shall pay for the 20% or more additional tax with the Authorized Agent Banks (AABs) located at the Large Taxpayers Division in conformity with the policy laid down in RR1-98. They shall file for their application for immunity at the Large Taxpayers Division. The Large Taxpayers Division shall process the applications and prepare the corresponding CIAs under the procedures prescribed by Sections 6.1 and 6.2 of RMO 10-99 and forward the same to the Office of the Commissioner for approval.

Q-6:

In the event that the taxpayer's 1998 income tax is lower than the 20% or more additional tax as compared with his 1997 income tax, what form shall he use for the required payment to qualify for immunity?

A-6:

If a taxpayer has not yet filed his income tax return for 1998, he can incorporate the 20% or more additional income tax as a separate item in his 1998 income tax return or opt to pay the additional tax using his 1998 ITR for his regular operations and the Payment Form (BIR Form 0605) for the additional tax.

If a taxpayer has already filed his 1998 income tax return he can pay for the additional tax using the Payment Form (BIR Form 0605).

Q-7:

In the event that the taxpayer's 1998 VAT (Output Tax) or Percentage Tax is lower than the 20% or more additional tax as compared with his 1997 VAT (Output Tax) or Percentage Tax, what form shall he use for the required payment to qualify for immunity?

A-7:

He can make the additional payment using the Payment Form (BIR Form 0605).

Q-8:

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

A-8:

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 1998: 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 78,000 130,000

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

Payment to qualify 90,000 130,000

In Corporation A, the ERAP requirement of 120% of the 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.

The voluntary payment of the 20% or more additional tax requirement under RR 2-99 to qualify for the immunity from audit (20% or more of 1997 tax payment) shall be used as the basis for computing the excess MCIT credits which may be carried over to the next three (3) succeeding taxable years. Thus, in the example given, Corporation B shall carry forward P10,000 as excess MCIT credit, which is the difference of the MCIT of P130,000 over the adjusted normal tax of P120,000.

Q-9: What are the suggested accounting journal entries to record the additional payment for income tax, value added tax and percentage tax?

A-9: The suggested journal entries are as follows:

Retained Earnings

xxx

Cash

xxx

To record the additional payment under RR 2-99 for the 1998 income tax immunity from audit.

Retained Earnings

xxx

Cash

xxx

To record the additional payment under RR 2-99 for the 1998 VAT immunity from audit.

Taxes & Licenses (Percentage Tax)

xxx

Cash

xxx

To record the additional payment under RR 2-99 for the 1998 Percentage Tax immunity from audit to be deductible against the 1999 gross income.

Q-10:

How can an individual taxpayer avail of immunity under the ERAP Program for income tax purposes if the individual taxpayer is engaged in business or employed for only two taxable quarters in 1997 but was engaged in business or employed for the entire calendar year of 1998?

A-10:

In order to avail of immunity under the ERAP Program, the comparison of tax payments shall be on a per tax-type basis for the entire taxable year. In this example, there is no basis for comparison of taxes paid for the entire taxable year in 1997 with the entire taxable year in 1998. Accordingly, the individual taxpayer shall have to pay at least $\frac{1}{2}$ of 1% of his 1998 gross sales/receipts to qualify for immunity under the ERAP Program.

Q-11:

What is the basis for the application of the 20% or more additional tax requirement for immunity from audit for 1998 VAT quarterly returns?

A-11:

In order to avail of the immunity from audit and investigation for 1998 VAT quarterly returns, the taxpayer shall pay or shall have paid TWENTY PERCENT or more than the tax paid in 1997 (Sec. 2.1 of RR2-99). For purposes of the ERAP Program, the term 'Value Added Tax paid' shall mean the total output tax or the value added tax before input tax for the entire calendar year.

Q-12:

If all of the taxpayer's 1997 VAT quarterly returns did not result in any VAT payable, and VAT payable was due only for certain quarters in 1998, how will the taxpayer's 1998 VAT quarterly returns qualify for immunity under the ERAP Program?

A-12:

To qualify for immunity, the taxpayer shall have to pay an amount equivalent to one hundred twenty percent (120%) of the output taxes for all the taxable VAT quarters of 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 had at least an amount equivalent to P1,680,000.00 as output taxes for all the VAT taxable quarters of 1998. Thus, if the output taxes per his 1998 VAT quarterly returns filed is below P1,680,000.00, he shall have to pay the additional amount in order to avail of the immunity from audit for his 1998 VAT quarterly returns filed.

Illustration:

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

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

ADDITIONAL PAYMENT REQUIRED TO

QUALIFY FOR IMMUNITY P280,000.00

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It must be noted that in determining the taxpayer's qualification under the ERAP Program, input taxes are not taken into account.

Q-13:

If VAT were paid in only some of the taxable quarters in 1997, can the taxpayer qualify for immunity for the entire year of 1998? What will be the basis of the additional payment to qualify for immunity?

A-13:

Yes, the taxpayer can qualify for immunity for the entire year of 1998 if he shall pay at least 120% or more of the total tax paid for the whole year of 1997 in 1998. For ERAP Program purposes, total tax paid for VAT immunity refers to total output tax for the entire calendar year. In fine, the availment of immunity from audit shall be on an annual basis, and not on a quarterly basis.

Q-14:

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

A-14:

Yes. If the all of the 1997 VAT quarterly returns reflect output tax due, the taxpayer may qualify for immunity by paying 20% or more of the 1997 output taxes of the four taxable quarters. However, if there are no output taxes, as in the case of zero-rated VAT exporters, the 1997 VAT quarterly returns are considered as no-payment returns. In which case, the taxpayer shall pay 1/2 of 1% (for individuals) or 2% (for corporations) of their 1998 gross sales or receipts to qualify for immunity from VAT investigation under the ERAP Program. This is apart from their availment of the program for income tax purposes.

Q-15:

What will be the coverage of the immunity from audit under the ERAP Program for the 1998 VAT quarterly returns?

A-15:

The coverage of the immunity from audit under the ERAP Program for 1998 VAT quarterly returns of corporations whether on a fiscal or calendar year shall be the period covering January 01, 1998 to December 31, 1998. In fine, the program covers only VAT returns and Percentage Tax Returns for the Calendar Year 1998.

Q-16:

If an individual taxpayer paid 3% percentage tax in all quarters of 1997, and having qualified for VAT, paid 10% VAT in all quarters in 1998, how can he qualify for ERAP immunity for VAT in 1998?

A-16:

Since no VAT quarterly returns were filed in 1997, the taxpayer does not have a basis for comparison upon which to compute for the 20% or more additional tax in 1998 over the 1997 VAT. As such, his 1997 returns shall be considered as no payment returns. He shall have to pay at least one-half of one percent (1/2 of 1%) of his 1998 Gross sales/receipts on or before June 30, 1998 using BIR Form 0605.

Q-17:

If a taxpayer paid percentage taxes for all of the taxable quarters in 1997 and for the first taxable quarter of 1998 and then becomes liable for VAT beginning the second quarter of 1998, how can he avail of the immunity under the ERAP Program for his 1998 VAT quarterly returns?

A-17:

Since availment of immunity under the ERAP Program is on per-tax-type basis, there is no basis of comparison on an annual basis for the percentage taxes paid in 1997 with the percentage and VAT taxes paid in 1998. In this case, the returns filed for 1997 shall have to be considered as no payment returns and the taxpayer shall have to

pay at least $\frac{1}{2}$ of 1% (individuals) or 2% (corporations) of gross sales/receipts as the case may be to avail of immunity under the ERAP Program. This rule applies irrespective of the dominant tax paid in 1997 and 1998.

Q-18:

If a taxpayer paid VAT for all taxable quarters in 1997 and for the first taxable quarter of 1998 and then becomes liable for percentage taxes instead beginning the second taxable quarter of 1998, how can he avail of the percentage tax immunity for his 1998 quarterly percentage tax returns?

A-18: Same answer as in Q17 above.

Q-19:

How can a business combination (merger or consolidation) filing returns in 1998, avail of the ERAP Program when the parties have separate tax personalities in 1997?

A-19:

For income tax purposes, the total taxes paid by the parties in 1997 prior to the merger or consolidation is considered as the tax paid by the new entity for taxable year 1997.

For VAT purposes, the combined output taxes of the parties concerned for all taxable quarters in 1997 prior to the merger or consolidation is considered as the tax paid by the new entity for taxable year 1997.

For percentage tax purposes, the total percentage taxes paid by the parties for all taxable quarters in 1997 prior to the business combination is considered as the tax paid by the new entity for taxable year 1997.

Q-20:

Since the output tax is the basis of availment for VAT immunity under the ERAP Program, will the input taxes claimed as credit against output taxes per VAT quarterly returns filed in the calendar year 1998 still be available as input tax credits for succeeding VAT quarters in 1999?

A-20:

No, the input taxes which were already utilized against output taxes for the 1998 quarterly VAT returns are no longer available for credit for the taxable quarters in 1999. For example if the following figures are available in the 1998 VAT quarterly returns, viz:

Total output Taxes for the four quarters

P1,000,000.00

Total Creditable Input Taxes for the four quarters P1,200,000.00

Excess Creditable Input Tax in 1998 P200,000.00

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In this example, only P200,000.00 shall be carried over to the 1st Quarter of 1999 as excess creditable input tax. This means that deductions of input taxes against output tax on returns already filed will not be disturbed by the availment of VAT immunity under the ERAP Program. The 20% or more additional payment based on the comparison of output taxes for the entire calendar year of 1997 and 1998 required to qualify for VAT immunity under the ERAP Program is separate and distinct from the regular VAT payments made per quarterly VAT returns filed in 1997 and 1998.

Q-21:

If a taxpayer liable for VAT started business only in the last quarter of 1997 and paid VAT for the last quarter of 1997 and for the entire calendar year of 1998, what will be the basis of the 20% or more additional tax to be paid under the ERAP Program?

A-21:

Since we cannot compare output taxes for only one quarter vis-a-vis output taxes for four quarters, the taxpayer in this case shall be considered to have filed a no-payment return for 1997 and accordingly, shall have to pay at least ½ of 1% (individuals) or 2% (corporations) of 1998 gross sales/receipts, to qualify for the immunity under the ERAP Program.

Q-22:

If in 1997, he paid percentage taxes for the first half of the calendar year and having qualified for VAT, paid VAT for the remaining period of 1997 and for the entire calendar year of 1998, how can a taxpayer avail of the immunity under the ERAP Program?

A-22:

Since the comparison of tax payments is on a per tax-type basis, we cannot compare VAT with Percentage Taxes. Accordingly, the taxpayer shall be considered to have filed no-payment returns in 1997 and shall have to pay at least ½ of 1% (individuals) or 2% (corporations) of 1998 gross sales/receipts, to qualify for the immunity under the ERAP Program. For ERAP Program purposes, total VAT paid is total output tax for the entire calendar year.

Q-23:

How can a taxpayer avail of immunity under the ERAP Program, if he is subject to VAT for the first two quarters of 1997 and to percentage taxes for the remaining period but paid percentage taxes for the entire calendar year of 1998?

A-23:

Same answer as in Q#22 above.

This Circular supplements RMO No. 10-99 and RMC No. 17-99. Any provision thereof, if inconsistent herewith, is hereby considered amended, modified, or revoked accordingly.

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

Adopted: 15 March 1999

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

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