

ECONOMIC RECOVERY ASSISTANCE PAYMENT (ERAP) PROGRAM GRANTING IMMUNITY FROM AUDIT AND INVESTIGATION OF INCOME TAX, VAT AND PERCENTAGE TAX RETURNS FOR THE TAXABLE YEAR 1998 PURSUA...

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SECTION 1. Objectives

1.1 This Order is issued to:

- 1.1.1 Prescribe uniform guidelines and procedures in the implementation of Revenue Regulations No. 2-99 on the availment of immunity from audit and investigation of income tax, VAT and percentage tax returns filed by certain taxpayers for taxable year 1998;
- 1.1.2 Prescribe reporting procedures and guidelines in the processing of applications for immunity from audit under the said regulations;
- 1.1.3 Define the roles and responsibilities of all offices involved in its implementation.

SECTION 2. Scope

2.1 The immunity from audit and investigation shall apply only to Taxable Year 1998 on the following taxes:

- 2.1.1 Income Tax;
- 2.1.2 Value Added Tax; and
- 2.1.3 Percentage Tax

2.2 The following are NOT covered by the immunity from audit:

- 2.2.1 Withholding Tax Returns whether in the nature of income, VAT, or percentage tax returns;
- 2.2.2 All internal revenue taxes other than income tax, VAT and percentage taxes, i.e., estate and donor's taxes, excise taxes and documentary stamp taxes;
- 2.2.3 Verification to obtain information relevant to the tax liability of another person pursuant to Section 5(b) of the Tax Code, as amended;
- 2.2.4 Verification to obtain information pursuant to request of a Competent Authority under the Exchange of Information Article of tax treaties entered into by the Philippines with other countries;
- 2.2.5 Where the taxpayer requests for a refund or credit of any taxes paid;

2.3 The term "Taxable Year 1998" shall include any Fiscal Year ending July 31, 1998 up to Fiscal Year ending June 30, 1999.

SECTION 3. Condition for the Privilege of Immunity from Audit and Investigation

3.1 In order to avail of the immunity from audit and investigation for 1998 tax returns, the taxpayer shall pay or

shall have paid at least TWENTY PERCENT (20%) more than the tax paid in 1997 for income tax, VAT and/or percentage taxes, including basic deficiency taxes paid (in cases already audited).

Example 1 —

Income Tax for the calendar year 1997:

Income tax due per return

P1,000

Less: Creditable Withholding Tax 300

Tax paid (and receipted) P700

The 20% shall be based on the income tax due per return of P1,000.00. Thus, for 1998, income tax payment must be at least P1,200 ($P1,000 \times 120\%$) "normal income tax" to qualify for immunity from audit and investigation.

Assuming that the corporation is liable for Minimum Corporate Income Tax (MCIT) in the amount of P2,000 in filing its calendar year 1998 final adjustment income tax return, the total amount due shall be P2,200 computed as follows:

Additional tax ($P1,000 \times 20\%$)

P200

Add: MCIT 2,000

Total amount due P2,200

Example 2 —

VAT payments:

If, for the 1st quarter return of 1997, VAT payments net of input taxes is P10,000, computed in the VAT Returns as follows:

Output Tax Due

P50,000

Less: Input Tax 40,000

VAT paid per return P10,000

Then, the 1st quarter return of 1998, net of input taxes, must be at least P12,000 ($P10,000 \times 120\%$) to qualify.

3.2 Provided however, that, where the tax payment for 1998 for either the income, VAT or percentage tax does not exceed that of 1997 by 20% or more, the taxpayer shall be accorded immunity from audit and investigation only with respect to that tax return which complies with the 20% requirement. In such a case, the return which fails to comply with the said requirement shall still be subject to audit and investigation. For example, a taxpayer made the following payments:

Type of Tax 1997 1998 % of increase

Normal Income Tax 100,000 125,000 25%

VAT 100,000 105,000 5%

Percentage 100,000 115,000 15%

In the above illustration, his VAT and Percentage Tax Returns shall not qualify for immunity from audit and investigation because the increase in his tax payment did not meet the 20% requirement herein prescribed. Hence, only his 1998 income tax return qualifies for immunity from audit and investigation.

3.3 In computing the 20% increase, deficiency payments for 1997 incomes, VAT and/or percentage taxes shall be included in the computation of the 20% for purposes of the availment of this privilege. Provided, however, that with respect to deficiency tax payments, only the basic tax shall be included in the computation. Interest, surcharges and other penalties shall not be included.

Illustration:

Taxable Year 1997

Income Tax Paid P100,000

Deficiency Tax Payment 27,500

(basic tax only)

Total Payment in 1997 P127,500

Taxable Year 1998

To qualify for immunity from audit and investigation, the 1998 tax payment must be at least P153,000 computed as follows:

Total Payment for 1997 P127,500

Increase in payment

(P127,500 x 20%) 25,500

Total Payment to qualify P153,000

Illustration (Value-Added Tax/Percentage Tax):

Taxable Year 1997

Tax Paid per 1997

First Quarter Return P100,000

Deficiency Tax Payment

(basic tax only) 50,000

Total Payment in 1997

First Quarter Return P150,000

Taxable Year 1998

To qualify for immunity from audit and investigation, the tax payment in the 1998 First Quarter Return must be at least P180,000 computed as follows:

Total Payment in the

First Quarter of 1997 P150,000

Increase in payment

(P150,000 x 20%) 30,000

Total Payment to qualify P180,000

Every quarter for taxable year 1998 must comply with the minimum payment requirement as illustrated above to qualify the taxpayer for the immunity for all taxable quarters of taxable year 1998.

3.4 In case no tax was paid per the taxpayer's return for the year 1997, his 1998 tax return may qualify for immunity from audit and investigation, provided, such taxpayer complies with the following conditions:

3.4.1 For income tax purposes, the taxpayer shall pay an amount equivalent to one-half of one percent ($\frac{1}{2}$ of 1%) based on his gross sales or receipts during the taxable year 1998 (in case of individuals) or 2% (in case of corporations);

3.4.2 For VAT and/or percentage tax purposes, since the quarterly VAT and/or percentage tax returns have already been filed as of January 25, 1999, covering the prior year 1998, the taxpayer may qualify for immunity from audit and investigation of the said returns, provided such taxpayer pays an additional amount of 20% based on the VAT and/or percentage tax paid per the said quarterly returns filed.

Illustration:

Taxable Year 1998 Amount Paid per Return

First Quarter P10,000

Second Quarter -0-

Third Quarter -0-

Fourth Quarter 20,000

Total Tax Paid for the Year P30,000

To qualify for immunity from audit and investigation of the VAT/percentage tax returns filed for 1998, the taxpayer must pay an additional amount equivalent to 20% of the taxes paid per said quarterly returns. Since no tax has been paid per second and third quarterly returns, these returns shall not qualify for availment of the immunity from audit and investigation.

3.5 All income, VAT and percentage tax returns filed for taxable year 1997 where no tax per return was paid, can not be amended to reflect a payable amount per return for purposes of availing of the privilege granted under RR No. 2-99 by complying with the conditions laid down in Section 3, paragraphs 3.1 to 3.3 of this Order. In fine, to qualify for immunity from audit and investigation, the conditions provided for under Section 3, paragraph 3.4 must be strictly followed.

SECTION 4. Payment of Additional Taxes to Comply with 20% Requirement. —

4.1 Taxpayers whose 1998 tax returns already filed as of the effectivity date of these regulations but who want to avail of the immunity from audit and investigation herein granted, may still avail of the privilege by paying additional tax(es) to cover for the 20% requirement not later than June 30, 1999 (e.g., VAT return for the 4th quarter 1998 already filed last January 25, 1999; Final adjustment income tax return for the fiscal year ended September 30, 1998 which was already filed as of January 15, 1999; etc.).

4.2 Taxpayers whose 1998 tax returns to be filed on or after the effectivity date of these regulations shall pay the additional tax(es) herein required at the same time such return is filed.

4.3 If the additional tax herein required to be paid amounts from Five Million Pesos (P5,000,000) to Ten Million Pesos (P10,000,000), the same may be paid in two (2) equal installments. The first installment shall be paid at the time the return is filed, and the second installment within one (1) month thereafter. If such additional tax is more than Ten Million Pesos, the same may be paid in three (3) equal monthly installments. Provided, however, that prior approval of the Commissioner or of the Regional Director concerned shall be secured for the installment payment of the additional tax(es) in excess of three installments. Provided, finally, that the Regional Director may only approve installment payments not exceeding four (4) equal installments.

SECTION 5. Mechanics for Availment. —

5.1 If a taxpayer had complied with the 20% requirement, he shall signify his intention to avail of the immunity from audit and investigation by filing the IMMUNITY FROM AUDIT AVAILMENT FORM (IAAF under Annex A[*] - BIR Form No. 2103), in duplicate, with the following attachments:

For Income Tax

- Income Tax Returns filed for the years 1997 and 1998;
- In case of deficiency tax paid for 1997, copy of the Authority to Accept Payment (ATAP)/payment form evidencing payment thereof.

For VAT and/or Percentage Tax Return

- VAT and/or percentage tax returns filed for the year being availed of and that of the immediately preceding year;
- In case of deficiency tax payments, copy of the ATAP/payment form duly paid or any other proof of payment.

5.2 For those paying additional taxes to comply with the 20% requirement, BIR Payment Form (BIR Form No. 0605) evidencing payment thereof shall also be attached to IAAF.

5.3 The IAAF shall be filed with the Revenue District Office having jurisdiction over the taxpayer's principal place of business.

5.4 Upon verification of the correctness of the taxpayer's availment of immunity from audit and investigation, he shall be issued with CERTIFICATE OF IMMUNITY FROM AUDIT (CIA under Annex B hereof) for the taxes covered by the immunity.

SECTION 6. Processing by the BIR

6.1 Upon receipt of the IAAF required under Section 5.1 hereof, the Revenue District Officer (RDO) shall pre-audit the papers to verify if the conditions and requirements of this RMO are complied with.

If IAAF is found to be correct and complete, the RDO will assign an IAAF File Number which shall serve as the Document Locator Number. The numbering shall follow the format: first 3 digits with the RDO number, the next digits representing the taxes covered (I for income, V for VAT and P for percentage tax) and the last for the numerical number to be assigned:

For example: RDO 49

Taxes Applied for: Income and VAT

IAAF File No. shall be: 049-IV-0001

For taxpayers making additional payments to comply with the 20% requirement, an ATAP/Payment Form (BIR Form No. 0605) shall likewise be issued by the RDO. Upon payment thereof, a copy shall be attached to the IAAF.

If defects and omissions are noted in the application, these shall be communicated immediately to the taxpayer concerned. If the IAAF and attachments is found to be in order, the RDO shall release the duplicate copy of the IAAF to the taxpayer.

6.2 The original copy of the IAAF together with all attachments shall then be forwarded to the Assessment Division in their respective regions every 15th and 30th day of the month.

The Assessment Division, in coordination with the RDO or the Revenue Data Center, shall locate all copies of the income, VAT and/or percentage tax returns of taxpayers availing of the immunity and shall transmit the same together with the IAAF to the Regional Director every 5th and 20th day of each month.

If the Assessment Division finds the IAAF to be in order, it shall prepare four (4) copies of the Certificate of Immunity from Audit (CIA) found in Annex B, to be attached to the IAAF, and forwarded to the Regional Director for his/her approval and signature.

6.3 The Regional Director shall then make a Summary Report of availments and the corresponding additional collection using Report Form on Annex C, and submit the same to the office of the Deputy Commissioner for Operations every 10th and 25th day of each month.

The Certificate of Immunity from Audit (CIA), as prepared in quadruplicate, shall then be issued as follows:

Original - Taxpayer

Duplicate - Commissioner of Internal Revenue

Triplicate - Secretary of Finance

Quadruplicate - Filed with the docket of the case

A Control Number shall be assigned to each CIA following this series: the first two digits for the Revenue Region number, the next 3 digit for the district number, the next for the taxes covered (I for income, V for VAT and P for percentage tax) and the last for the numerical number assigned.

For Example: RR 8, Makati

RDO 049

Taxes Covered: Income and VAT

Control No. is: 08-049-IV-001

The IAAF and the returns shall likewise be bundled and together with a copy of the Report Form, shall be forwarded to the administrative divisions in their respective regions for safekeeping.

6.4 The Deputy Commissioner for Operations shall summarize all reports from the Regional Offices and submit an update report of the project to the Commissioner (copy furnished to Management and Planning Service) as often as required by the Commissioner until this project is completed.

6.5 Availments where the additional payment is on an installment basis shall be forwarded by the RDO to the Collection Division in their respective regions for monitoring and collection of installments due. It is only upon full payment of the additional tax that Collection Division shall submit the IAAF together with all attachments to the Assessment Division. The RDO shall likewise be informed. Failure to pay in full the installments due shall invalidate the application for availment. The Certificate of Immunity from Audit referred to in Section 6.2 hereof shall only be issued after all the installments shall have been fully paid.

6.6 No Letter of Authority (LA) shall be issued by any investigating unit in the National Office or in the Regional Offices to any taxpayer who has availed of this privilege. Likewise, no LA shall be issued for any taxpayer who elects to pay in installment the additional payments prescribed under Revenue Regulations No. 2-99.

SECTION 7. Effectivity

This Order shall take effect immediately and shall be given the widest publicity possible.

Adopted: 09 Feb. 1999

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

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