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TAX ISSUES ON ELECTRIC COOPERATIVES

ATTY. ELEUTERIO F. DIAO, IV, CPA
NEA HEAD OFFICE, OCTOBER 24, 2018

A series of five green circles of varying sizes are arranged in a vertical line on the left side of the slide. The largest circle is at the top, followed by a smaller one, then a medium-sized one, a very small one, and another medium-sized one at the bottom.A single green circle is located in the bottom right corner of the slide.

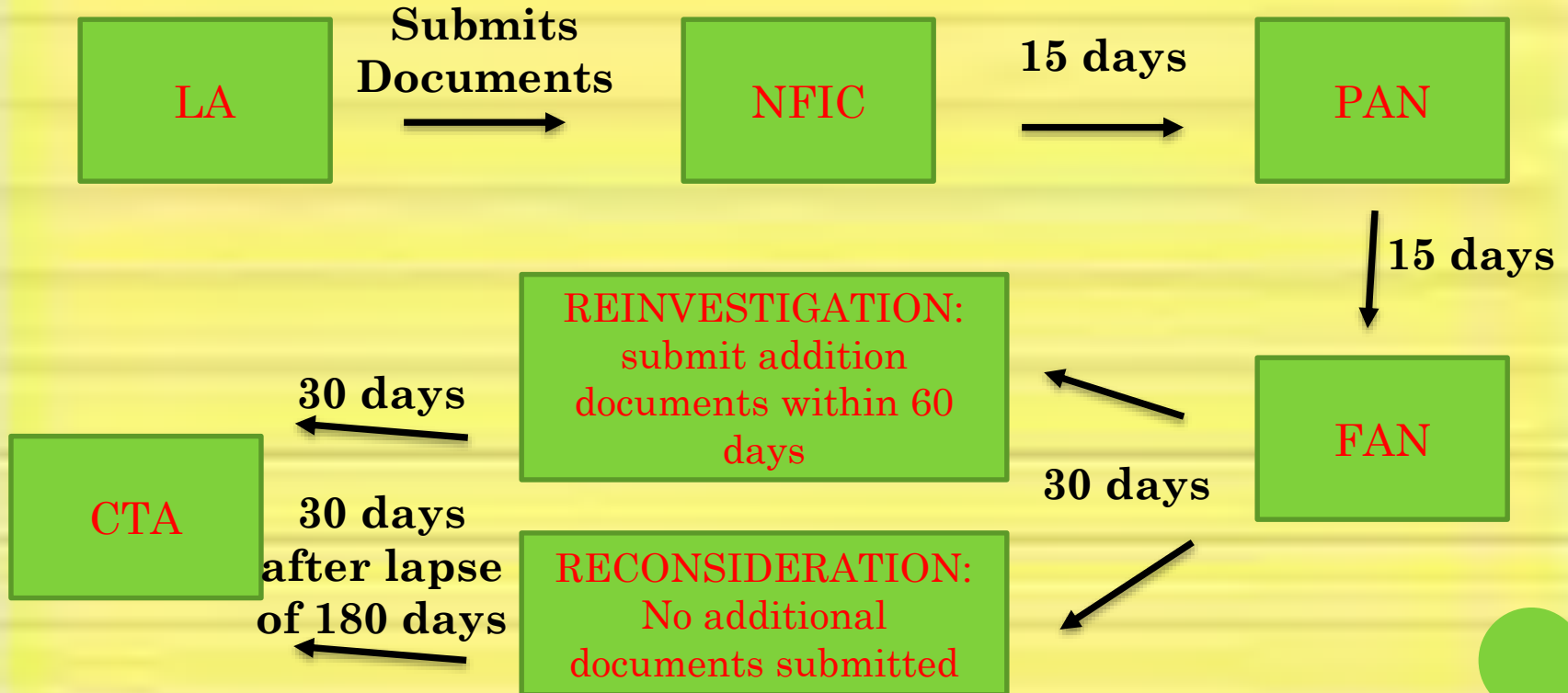
INTRODUCTION

- BIR is tasked to collect P2.039 trillion this year
- BIR perceives that Electric Cooperatives have “cash and other liquid assets”, and large reserves, and are enjoying tax exemption for a long period of time.
- BIR performs audit and investigation based on Revenue Regulation No. 12-99, as amended, titled Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty



INTRODUCTION

- Revenue Regulation 12-99



TAX BEING ASSESSED

- *Value Added Tax*
- Income Tax
- Expanded Withholding Tax
- Withholding Tax on Compensation
- Documentary Stamp Tax



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- *Documentary Stamp Tax*



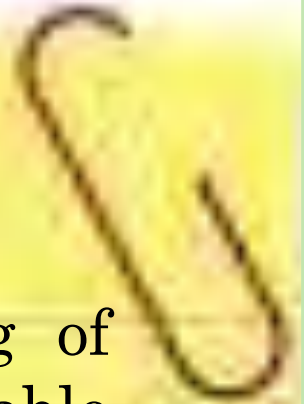
VALUE ADDED TAX

- *Assessment: Undeclared Receipts consisting of Passed-on Cost/RIF Not declared as Vatable Receipts*
- Assessment: Disallowed Input Tax for failure to submit Summary List of Purchases and Input Tax (SLP) or unmatched information on SLP and VAT Returns
- Assessment: Failure to Substantiate Input Tax
- Assessment: Failure to submit Summary List of Sales and Purchases



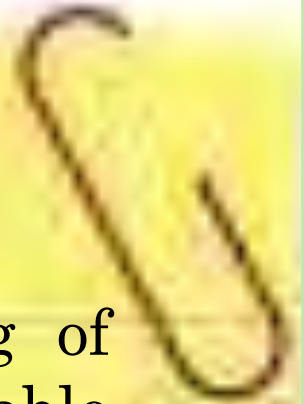
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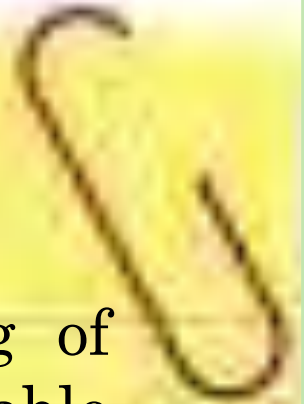
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- *Assessment: Failure to submit Summary List of Sales and Purchases*



VALUE ADDED TAX

- Assessment: Undeclared Receipts consisting of Passed-on Cost/RIF Not declared as Vatable Receipts
- BIR BASIS:
 - Section 105 of the NIRC states that ' Any person who, in the course of trade or business, sells, barter, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to value added tax (VAT) imposed in sections 106 to 108 of this Code xxx;



VALUE ADDED TAX




- BIR BASIS:

- SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. -

(A) Rate and Base of Tax. - There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase "sale or exchange of services" means the performance of all kinds or services in the Philippines for others for a fee, remuneration or consideration Xxxxx:



VALUE ADDED TAX



- BIR BASIS:

- Section 4.108-2 (13) of Revenue Regulation No. 16-2005, as amended

Section 4.108-2. Meaning of “Sale and Exchange of Services”
– The term “sale or exchange of services” means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, whether in kind or in cash, including those performed and rendered by the following:

(13) Sales of electricity by generation, transmission and/or distribution companies;



VALUE ADDED TAX




- BIR BASIS:

Section 4.108-3 (f). Definitions and Specific Rules on Selected Services –

(f) Sale of electricity by generation, transmission and distribution companies shall be subject to 10% (now 12%) VAT on their gross receipts; Xxxxx:

“Gross Receipts” under this Subsection (f) shall refer to the following:

(a) Total Amount Charged by generation companies for the sale of electricity and related ancillary services; and/or



VALUE ADDED TAX

○ BIR BASIS:

(b) Total charged by transmission companies for transmission of electricity and related ancillary services; and/or

(c) Total amount charged by distribution companies and electric cooperatives for distribution and supply of electricity, and related electric services. The universal charge passed on and collected by distribution utilities shall be excluded from the computation of the Gross Receipts;



VALUE ADDED TAX




- EC's PROTEST:

Revenue Memorandum Circular No. 62-2012

“Q26: What is the treatment of the Generation and Other Related Charges including the VAT thereon which are pass through charges of the Distribution Companies and Electric Cooperatives?”

A26: Xxxxxx The VAT shall be remitted by the Distribution Companies and Electric Cooperatives to the Generation Companies, Aggregators, Market Operators, Retail Electricity Suppliers, and other supplier of electricity, together with the payment for generation and transmission services. Xxxxxx



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VALUE ADDED TAX

- EC's PROTEST:

The amount collected by the Distribution Companies and Electric Cooperatives from the end user for such charges, including the VAT thereon, shall not form part of the gross receipts of the Distribution Companies and Electric Cooperatives. The Distribution Companies and Electric Cooperatives shall not claim an input tax on such passed through charges.



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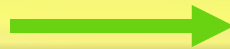
VALUE ADDED TAX

○ BIR ANSWER:

> Electric Cooperatives issues a VAT receipt Official Receipt (OR) to consumers

POWER BILL

Generation Charge
Transmission Charge
System Loss Charge
Distribution Charge
Supply Charge
Metering Charge
Universal Charge
Reinvestment Charge
Other Charge



VAT OFFICIAL RECEIPT

| | |
|---------------------|---------------------|
| Generation Charge | Metering Charge |
| Transmission Charge | Universal Charge |
| System Loss Charge | Reinvestment Charge |
| Distribution Charge | Other Charge |
| Supply Charge | |



VALUE ADDED TAX




○ BIR ANSWER:

> By issuing a VAT official receipt, the amount shown should be declared as a VATABLE gross receipts;

Sec. 4. 113-4. (b) of Revenue Regulation No. 16-2005, as amended. Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipts.

(b) If a VAT registered person issues a VAT invoice or VAT Official Receipt for a VAT-Exempt Transaction, but fails to display prominently on the invoice or receipt the words “VAT Exempt Sales”, the transaction shall become taxable and the issuer shall be liable to pay VAT thereon.



VALUE ADDED TAX

○ BIR ANSWER:

- > Although it is clear that auxiliary services are vat-able, the nature of it is like a “vat exempt” transaction since the EC’s are not paying output tax on the said charges.
- > The Power Suppliers (Gen/Trans Companies) should have issued the appropriate VAT ORs to EC’s consumers since they are the one supposedly remitting the same.
- > By issuing a VAT Registered OR, consumers were able to claim Input Tax but EC’s are not paying Output Tax



VALUE ADDED TAX

○ BIR ANSWER:

Purchase of Power from Generation and Transmission

SUPPLIERS

EC

CONSUMER

OUTPUT TAX

INPUT TAX

Sale of Electricity to Consumers

SUPPLIERS

EC

CONSUMER

OUTPUT TAX

INPUT TAX

Present Arrangement

SUPPLIERS

EC

CONSUMER

OUTPUT TAX

INPUT TAX



VALUE ADDED TAX

○ BIR ANSWER:

> Electric Cooperatives should issue a VAT Official Receipts showing prominently that consumer cannot claim input tax on Generation, Transmission, System Loss, Universal Charge and **Fund**;

POWER BILL

Generation Charge
Transmission Charge
System Loss Charge
Distribution Charge
Supply Charge
Metering Charge
Universal Charge
Reinvestment Charge
Other Charge



VAT OFFICIAL RECEIPT

| | |
|---------------------|---------------------|
| Generation Charge | Metering Charge |
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| Distribution Charge | Other Charge |
| Supply Charge | |

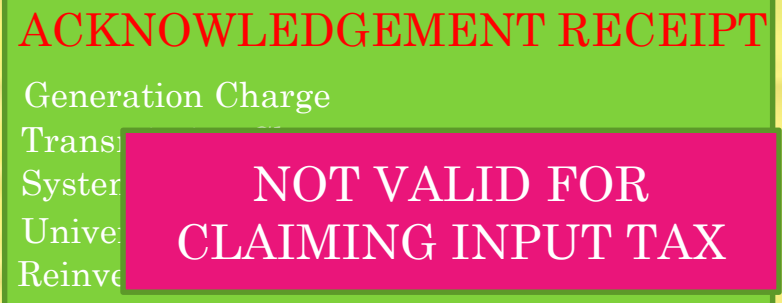
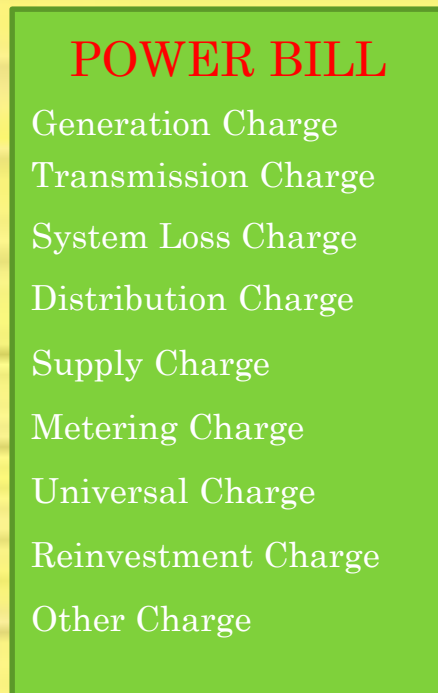
**NOT VALID FOR
CLAIMING INPUT TAX**



VALUE ADDED TAX

○ BIR ANSWER:

> Or BIR explains that if EC's believe that only DSM is part of their gross receipts, below should have been the case:



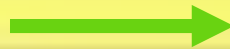
VALUE ADDED TAX

○ BIR ANSWER:

> By issuing an Acknowledgement Receipt, consumers cannot claim Input Tax on said charges, which is only fitting since EC's are not declaring Output Tax

POWER BILL

Generation Charge
Transmission Charge
System Loss Charge
Distribution Charge
Supply Charge
Metering Charge
Universal Charge
Reinvestment Charge
Other Charge



ACKNOWLEDGEMENT RECEIPT

Generation Charge
Transmission Charge
System Loss Charge
Universal Charge
Reinvestment Charge

VAT OFFICIAL RECEIPT

Distribution Charge
Supply Charge
Metering Charge
Other Charge

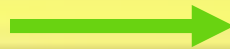
VALUE ADDED TAX

○ BIR ANSWER:

> Consumers can only claim Input Tax on DSM, since only said charges are shown on a VAT OR;

POWER BILL

Generation Charge
Transmission Charge
System Loss Charge
Distribution Charge
Supply Charge
Metering Charge
Universal Charge
Reinvestment Charge
Other Charge



ACKNOWLEDGEMENT RECEIPT

Generation Charge
Transmission Charge
System Loss Charge
Universal Charge
Reinvestment Charge

VAT OFFICIAL RECEIPT

Distribution Charge
Supply Charge
Metering Charge
Other Charge



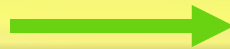
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Generation Charge
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ACKNOWLEDGEMENT RECEIPT

Generation Charge
Transmission Charge
System Loss Charge
Universal Charge
Reinvestment Charge

VAT OFFICIAL RECEIPT

Distribution Charge
Supply Charge
Metering Charge
Other Charge

VALUE ADDED TAX



○ BIR ANSWER:

> BIR then inquires on the VAT on System Loss Charge, Universal Charge and Reinvestment Fund, where are the EC's remitting them since they are also excluded from the computation of Gross Receipts

> BIR then clarifies that based on Section 4.114-1 of RR 16-2005, all VAT payments should be filed and paid with the RDO's Authorized Agent Bank (AAB) or Revenue Collection Officers, and not with any other person/entity.

> If the CTA will rule, it will definitely rule in favour of a Revenue Regulation against a Revenue Memorandum Circular;



VALUE ADDED TAX

- Assessment: Disallowed Input Tax for failure to submit Summary List of Purchases and Input Tax (SLP) or unmatched information on SLP and VAT Returns
- BIR BASIS:

PURCHASES

Summary List of
Purchases

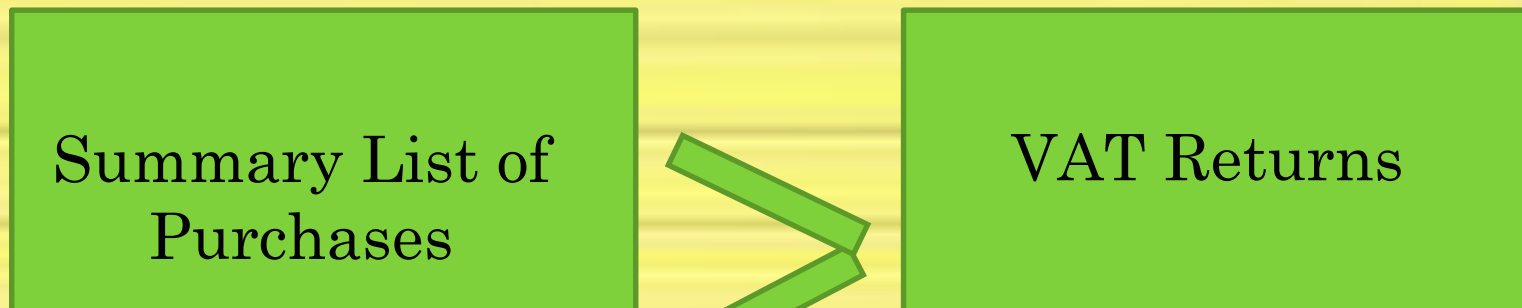
VAT Returns

DISALLOWED INPUT TAX

VALUE ADDED TAX

- Assessment: Disallowed Input Tax for failure to submit Summary List of Purchases and Input Tax (SLP) or unmatched information on SLP and VAT Returns
- BIR BASIS:

PURCHASES



**UNDECLARED RECEIPTS FROM
UNDECLARED PURCHASES**

VALUE ADDED TAX

- **Assessment: Failure to Substantiate Input Tax**

- **BIR BASIS:**

Section 4.110-8 of Revenue Regulation No. 16-2005

Substantiation of Input Tax Credits:

(1) For importation of goods – import entry or other document showing actual payment of VAT on the imported goods;

(2) For domestic purchase of goods and properties – invoice showing the information required under Sec. 113 and 237 of the Tax Code;



VALUE ADDED TAX

- Assessment: Failure to Substantiate Input Tax
 - BIR BASIS:
 - (3) For the purchase of real property – public instrument;
 - (4) For the purchases of services – official receipts showing the information required under Sec 113 and 237 of the Tax Code



VALUE ADDED TAX

- Assessment: Failure to Substantiate Input Tax
 - Some EC's are attaching the wrong source document to substantiate input tax;
 - For purchase of goods – delivery receipts, sales order, official receipts for payment of liability, acknowledgement receipts;
 - For purchase of services – job order, contract of services, acknowledgement receipts;
 - It is clear on the revenue regulation that only sales invoice for purchase of goods and official receipts for purchase of services are **ALLOWED**:



VALUE ADDED TAX

- Assessment: Failure to submit Summary List of Sales and Purchases
 - EC find it hard to comply with SLS because not all consumers have TIN
 - EC find it hard to comply with SLP because not of late issuance of OR by suppliers



INCOME TAX

- Assessment: EC's are not permanently exempt from income tax. Provisions of PD269 is challenged.
- Assessment: EC's Reinvestment Fund is part of gross receipts, hence taxable.
- Assessment: EC's Retirement Benefit Plan is disallowed for not securing prior approval from BIR before claiming expenses.
- Assessment: EC's Expenses disallowed for failure to withhold Expanded Withholding Tax.



INCOME TAX

- Assessment: EC's are not permanently exempt from income tax. Provisions of PD269 is challenged.

Section 39 of PD 269 provides:

- *“Sec.39. Assistance to Cooperatives. Exemption from Taxes, Imports, Duties, Fees; Assistance for the National Power Corporation. Pursuant to the national policy declared in Section 3, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:*
- *Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives **(1) shall be permanently exempt from paying income taxes**, (2) for the period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (1) of all National Government, local government and municipal taxes and fees, including franchise filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b)*




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INCOME TAX

- BIR BASIS:

RMC Memorandum Circular No. 74-2013 in relation to FIRB Resolution No. 24-87 expressly states that “income from their electric service operations and other sources including the interest income from bank deposits and yield or other monetary benefit from bank deposits and yield and other similar arrangements shall remain taxable.



INCOME TAX

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EXPANDED WITHHOLDING TAX



- **Assessment: Deficiency EWT resulting from failure to withhold EWT (e.g. Rental, Professional Fees, 1%/2% on purchase of goods and services)**
 - BIR BASIS: Amount of income payments subject to EWT found in EC's filed financial statements is matched with filed EWT Tax Returns. If the amount on FS exceeds the amount on EWT return, then it is proof of non-withholding
 - BIR then cites provisions in the NIRC
- 

WITHHOLDING COMPENSATION

TAX

ON



- Assessment: Failure to include benefits in tax base
- Assessment: Improper use of bi-monthly withholding tax table
- Assessment: Failure to Submit Alphabet



WITHHOLDING COMPENSATION

TAX

ON



- Assessment: Failure to include benefits in tax base
- *Assessment: Improper use of bi-monthly withholding tax table*
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WITHHOLDING COMPENSATION

TAX

ON



- Assessment: Failure to include benefits in tax base
- Assessment: Improper use of bi-monthly withholding tax table
- *Assessment: Failure to Submit Alphabet*



DOCUMENTARY STAMP TAX



- Assessment: Failure to pay DST on NEA Loans

- BIR BASIS:

Section 2.b of Revenue Regulation No. 09-2000, when one party to the transaction is exempt from tax imposed, the other party who is not exempt shall be the one directly liable for the tax.

- NEA as a government entity is exempt from tax, hence EC's are liable to pay for the tax;





THE END THANK YOU!!!!

