

# Background Information on the Taxation of Election-Related Contributions and Expenditures\*

## I. INTRODUCTION

The essence of a democracy is the people's collective will. Democracy is made manifest in the elections, or the mechanism by which the people choose their representatives through voting. Before voting, the people must make informed decisions since they choose those who will be in public office. To make such informed decisions, candidates have to present their platforms and convince the people why they should be voted for.

The Constitution grants its citizens equal access to opportunities for public service.<sup>1</sup> However, the ability to wage a campaign became an unwritten requirement for a person to be a candidate in the election as he/she will incur substantial expenditures during the election period. Campaign spending has to be regulated to ensure equal access to opportunities for public service and because of its revenue earning potential to the government. The candidates have the civic duty of assisting in nation-building, which can be attained by complying with their tax obligations.<sup>2</sup>

This paper discusses the taxation of election-related contributions and expenses for information and reference purposes.

## II. COMMENTS AND OBSERVATIONS

### A. Taxation of contributions

Contribution includes a gift, donation, subscription, loan, advance, or deposit of money or anything of value, or a contract, promise, or agreement to contribute, whether or not legally enforceable, **made for the purpose of influencing the results of the elections** but shall not include services rendered without compensation by

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<sup>1</sup> Section 26, Article II, 1987 Philippine Constitution.

<sup>2</sup> Bureau of Internal Revenue (2009), *Revenue Regulations No. 8-2009* (October 22, 2009), Section 1.

individuals volunteering a portion or all of their time in behalf of a candidate or political party.<sup>3</sup> It shall also include the use of facilities voluntarily donated by other persons, the money value of which can be assessed based on the rates prevailing in the area.<sup>4</sup> It must be noted that while there is a limit on the amount that a candidate or registered political party may spend for an election campaign,<sup>5</sup> there is no limit on the contributions that a candidate may receive.

Generally, donations and contributions are subject to the donor's tax. Sections 98 and 99 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide that there shall be levied, assessed, collected, and paid upon the transfer by any person, resident or nonresident, of the property by gift, a donor's tax at the rate of 6% of total gifts in excess of the P250,000 exempt gift made during the calendar year. The 6% tax rate applies whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. However, Section 99 (B) of the NIRC of 1997, as amended, provides that any contribution in cash or in kind to any candidate, political party, or coalition of parties for campaign purposes shall be governed by the Election Code,<sup>6</sup> as amended. Section 13 of RA 7166<sup>7</sup> states that any contribution in cash or in kind to any candidate, political party, or coalition of parties for campaign purposes, duly reported to the Commission on Election (COMELEC), shall not be subject to the payment of any gift tax.

Contributions and expenditures are considered election-related when given by the donor and spent by a candidate<sup>8</sup> during the campaign period. There are instances, however, that campaign contribution is not fully utilized by a candidate for campaign purposes. While the law and jurisprudence are silent on whether or not the unutilized contributions should be returned to the donor, Revenue Regulations (RR) No. 7-2011<sup>9</sup> clarified the treatment of these excess campaign funds for tax purposes, that is, unutilized/excess campaign funds, or campaign contributions net of the

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<sup>3</sup> Omnibus Election Code of the Philippines, Batas Pambansa (BP) Bilang 881, Section 94(a) (1985).

<sup>4</sup> Ibid.

<sup>5</sup> Under Section 13 of RA 7166, presidential and vice-presidential candidates are allowed to spend ten pesos (P10.00); and three pesos (P3.00) for other candidates for every voter currently registered in the constituency where he/she filed his/her certificate of candidacy. Moreover, a candidate without any political party and without support from any political party may be allowed to spend five pesos (P5.00) for every such voter. For political parties, five pesos (P5.00) for every voter currently registered in the constituency or constituencies where it has official candidates.

<sup>6</sup> Entitled, "Omnibus Election Code of the Philippines", (December 3, 1985).

<sup>7</sup> Entitled, "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes", (November 26, 1991).

<sup>8</sup> Under Section 79 (a) of BP 881 or the Omnibus Election Code of the Philippines, a 'candidate' refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment or coalition of parties.

<sup>9</sup> Entitled, "Policies in the Tax Treatment of Campaign Contributions and Expenditures", (June 14, 2011).

candidate's campaign expenditures, shall be subject to income tax and, as such, must be included in the candidate's taxable income as stated in his/her income tax return (ITR) filed for the subject taxable year.<sup>10</sup>

Revenue Memorandum Circular (RMC) Nos. 38-2018,<sup>11</sup> 31-2019<sup>12</sup>, and 22-2022<sup>13</sup> further clarified that only donations or contributions that have been utilized/spent during the campaign period are exempt from the donor's tax. Donations used before or after the campaign period are subject to the donor's tax and not deductible as political contributions on the part of the donor. This limitation on the donor's tax exemption is deemed reasonable as such contributions help the candidate in his/her election campaign and not for his/her personal expenditure or enrichment.

There may be a question on whether the taxability and non-deductibility of unutilized campaign funds will lead to double taxation. Double taxation exists when the same taxpayer is taxed twice when he should be taxed only once for the same purpose by the same taxing authority within the same jurisdiction during the same taxing period, and the taxes are of the same kind or character.<sup>14</sup> Unutilized/unspent campaign contributions will be subject to the donor's tax on the part of the contributor/donor on the one hand and subject to income tax on the part of the candidate on the other. The imposition of both income tax and donor's tax on the unutilized campaign funds may serve as a safeguard against the scenario where a candidate profits just by participating in the polls.

Another issue that may arise on the taxability of unutilized campaign funds is that there could be confusion as to which donor or contributor the unutilized contribution will pertain to. Since unutilized campaign funds are subject to the donor's tax, it would be difficult to ascertain who will be the donor that is liable for the tax. Cash contributions will most likely be pooled. It would be helpful if unutilized pooled contributions will be apportioned to the contributors or donors to pay the tax thereon or whether there is a system to track which of the donations were utilized. Moreover, determining the specific donor of the unutilized campaign funds is important for verifying whether such donations have been claimed as income tax deductions, whether partially or fully.

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<sup>10</sup> Section 32(B)(3), NIRC of 1997 as amended, the value of property acquired by gift, bequest, devise, or descent is excluded from the gross income and exempt from income tax. This is due to the fact that the same has already been subjected to the donor's tax or estate tax.

<sup>11</sup> Entitled, "Reiteration of the Guidelines in Registration, Updates and Other Tax Compliance Requirements of Candidates, Political Parties/ Party List Groups and Campaign Contributors", (May 3, 2018).

<sup>12</sup> Entitled, "Reiteration of the Tax Compliance Requirements of Candidates, Political Parties/Party List Groups and Campaign Contributors", (March 7, 2019).

<sup>13</sup> Entitled, "Tax Compliance Reminders for the May 09,2022 National and Local Elections", (February 21, 2022).

<sup>14</sup> Nursery Care Corporation vs. Acevedo, G.R. No. 180651. July 30, 2014.

Under Section 34(H)(1) of the NIRC of 1997, as amended, charitable and other contributions are allowed as deductions provided that the contribution or donation is not in excess of 10% in the case of an individual and not in excess of 5% in the case of a corporation, of the taxpayer's taxable income derived from trade, business or profession as computed without the benefit of this deduction. This limitation on the allowable deduction for corporations is reiterated under COMELEC Resolution No. 10772<sup>15</sup>, defining "reasonable donation" as a contribution or donation given by a domestic corporation<sup>16</sup> to any political party, party-list, or a candidate not exceeding 5% of the corporation's taxable income on a taxable year immediately preceding elections from trade, business or profession in accordance to Section 34(H) of RA 8424 (NIRC of 1997).

## B. Taxation of expenditures

Election-related expenditures include the payment or delivery of money of anything of value, or a contract, promise, or agreement to make an expenditure influence the results of the election. It shall also include the use of facilities personally owned by the candidate, the money value of the use of which can be assessed based on the rates prevailing in the area.<sup>17</sup>

RMC 38-2018,<sup>18</sup> which outlined the tax treatment of election-related transactions, which was further reiterated by RMC 31-2019 and RMC 22-2022, provides that income payments made by political candidates and political parties/party-list groups on their purchases of goods and services as campaign expenditures, and income payments made by individuals or juridical persons for the purchases of goods and services intended to be given as campaign contribution to political parties and candidates shall be subject to 5% creditable withholding tax (CWT) pursuant to RR 2-98, as amended by RR 8-2009<sup>19</sup> and

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<sup>15</sup> Entitled, "Rules and Regulations Governing Contributions by Domestic Corporations for Partisan Political Activities in Connection with the May 09, 2022 Automated Synchronized National and Local Elections", (March 16, 2022).

<sup>16</sup> Section 35(i) of RA 11232, or "The Revised Corporation Code of the Philippines", provides that a corporation incorporated under the Philippine laws has the power and capacity to make "reasonable donations" to any political party, party-list, candidate, or for purposes of partisan political activity. The said law limits the prohibition to make such donations to foreign corporations.

<sup>17</sup> Section 94(b), BP 881.

<sup>18</sup> Entitled, "Reiteration of the Guidelines in Registration, Updates and Other Tax Compliance Requirements of Candidates, Political Parties/Party List Groups and Campaign Contributors", (May 03, 2018).

<sup>19</sup> Entitled, "Amending Further Secs. 2.57.2 and 2.57.3 of Revenue Regulations No. 2-98, as Amended, Subjecting to Creditable Withholding Tax the Income Payments Made by Political Parties and Candidates of Local and National Elections of All Their Campaign Expenditures and Income Payments Made by an Individual or Juridical Person Forming Part of Their Campaign Contributions to Candidates of Local and National Elections and to Political Parties", (October 23, 2009).

RR 11-2018.<sup>20</sup> Considered among those covered by the expanded withholding tax, but not limited to payments are for (a) media services, (b) printing jobs, (c) talent/entertainment fees, and (d) rentals of both real and personal property/ies. Likewise, BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) shall be issued upon demand.

The 5% CWT shall be filed and remitted not later than the last day of the month following the close of the quarter during which the withholding was made, using BIR Form No. 1601-EQ through Electronic Filing and Payment System (eFPS)/eBIRForms Package or authorized agent banks (AABs) or revenue collection officers (RCOs) under the jurisdiction of the BIR Office where the withholding agent is registered. As withholding agents, they are also required to submit the Quarterly Alphabetical List of Payees (QAP) (available for download in the “downloadable” section on the BIR website) through the eSubmission facility of the BIR.

The payor/withholding agent, who may be an individual candidate, a political party/party-list group, or any juridical entity, is further required to file the Annual Information Return of Creditable Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form No. 1604-E) as well as the Statement of Contributions and Expenditures duly stamped “Received” by the COMELEC on or before March 1 following the year of election.

Expenses that were not subjected to the 5% CWT as required are not considered utilized campaign funds, and the candidates, political parties/party-list groups are precluded from claiming such expenditures as deductions from their campaign contributions. The full amount corresponding said expense shall be reported as unutilized campaign funds subject to income tax. The disallowance to treat expenses not subjected to the 5% CWT as utilized campaign fund and its non-deductibility are made to ensure compliance to the obligation to withhold taxes whenever payment for the purchase of goods and services is made by the candidate, political party, or campaign contributor.

### C. Registration requirements

All candidates, political parties/party-list groups, and campaign contributors must register with the BIR. RMC 38-2018, RMC 31-2019, and RMC 22-2022 were issued to reiterate the guidelines in registration, update, and other tax compliance requirements of the candidates, political parties/party-list groups, and campaign contributors pursuant to RR 8-2009, as amended, RR No. 7-2011 and other related revenue issuances. The Client Support Section (CSS) of the concerned Revenue District Office (RDO) having jurisdiction over the residence address, head or principal office of the registering candidates, political parties/party-list groups, and campaign contributors shall verify their registration in the BIR’s Integrated Tax System (ITS)/Electronic Tax Information System (eTIS-1). The RDO may secure the

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<sup>20</sup> Entitled, “Amending Certain Provisions of Revenue Regulations No. 2-98, as Amended, to Implement Further Amendments Introduced by Republic Act No. 10963, Otherwise Known as the “Tax Reform for Acceleration and Inclusion (TRAIN)” Law, Relative to Withholding of Income Tax”, (March 15, 2018).

official list of candidates and political party/party list groups from the COMELEC. RMC 38-2018 outlines what the CSS shall do with the registration of candidates, political parties or party list groups, and campaign contributors.<sup>21</sup> The CSS shall register and tag the individual candidates, political parties/party list groups, and campaign contributors depending on whether it has an existing registration or Tax Identification Number (TIN) with the BIR. (See Annex A.)

The registration of individuals in their capacity as candidates shall automatically end 10 days after the deadline for filing the Quarterly Remittance Return of Creditable Income Taxes Withheld (BIR Form No. 1601 EQ). However, the registration of political parties, including party-list groups, shall subsist.

Every candidate and treasurer of the political parties/party list groups shall submit the Statement of Contributions and Expenditures (SOCE) to the COMELEC and RDO having jurisdiction over the candidates/political parties/party list groups within 30 days after the election. Any candidate or political party/party list group, whether winner or loser, who fails to file with the COMELEC the SOCE required under Omnibus Election Code shall be automatically precluded from claiming such expenditures as deductions from the campaign contributions making the entire amount directly subject to income tax.

- a. The prohibition against claiming expenditures as a deduction from campaign contributions and making the entire amount directly subject to income tax upon failure to file the SOCE with the COMELEC as provided in RMC No. 31-2019 should be reviewed for its fairness. It is relevant to note that several tax compliance requirements have to be complied with by the candidate and political party/party-list group even before filing the SOCE. Aside from the registration and invoicing requirements, payments for expenditures are subjected to creditable withholding tax issued to the payee upon payment for such expenditures. Moreover, under Section 14 of RA 7166, failure to file the SOCE with the COMELEC precludes the person elected to public office from entering his office's duties until he has filed the SOCE as required. Also, an administrative fine ranging from P1,000.00 to P30,000.00, at the discretion of the COMELEC, is imposed upon the erring candidate or political party/party-list group.
- b. Since the non-filing of the SOCE is penalized pursuant to RMC 31-2019 and RA 7166, an erring candidate is exposed to several liabilities, which may be too exorbitant because as mentioned earlier, several tax compliance requirements have to be complied with by the candidate and political party/party-list group even before filing the SOCE. After complying with the requirements of registration and payments to the suppliers subjected to 5% CWT, a candidate should not be made to pay income tax thereon for failure to comply with the requirement of submission of the SOCE. This is not to say that the submission of the SOCE is a mere formality that may be dispensed with. The tax authorities

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<sup>21</sup> Bureau of Internal Revenue (2018). *Revenue Memorandum Circular No. 38-2018* (May 03, 2018). par I (1).

should also consider substantial compliance as election and taxation are two different matters.

In addition to the registration requirement, candidates and political parties or party-list groups are required to keep books and other accounting records. These will serve as the basis of entries in their respective SOCE.

Non-VAT Official Receipts (ORs) are also required to be registered by all candidates and political parties or party-list groups. These Non-VAT ORs shall be issued for every contribution received, whether in cash or kind. Contribution received in kind shall be valued at their cash equivalent or fair market value. The original copies of such ORs shall be issued to the contributors/donors, while the duplicate shall be retained by issuing political parties/party lists and candidates.

The registration requirement is necessary for the BIR to monitor election-related transactions to subject them to the proper tax. Failure to register and comply with the requirements of the BIR will be subjected to penalties under the Revised Consolidated Schedule of Compromise Penalties for Violations of the National Internal Revenue Code.<sup>22</sup>

### III. CONCLUSION

There are several policy measures instituted by the BIR to effectively and adequately tax election-related contributions and expenditures, to wit:

- a. The requirement for all candidates, political parties, party-list groups, and campaign contributors to register or update their registration with the BIR;
- b. The requirement for candidates, political parties or party-list groups to keep a book of accounts and other accounting records, which shall be used as bases in the preparation of the SOCE to be submitted to the COMELEC and BIR;
- c. The need to issue a Non-VAT Official Receipt for every contribution received, whether in cash or in kind;
- d. The requirement to be subject to 5% CWT for every income payment made by political candidates and political parties/party-list groups on their purchases of goods and services as campaign expenditures and income payments made by individuals or juridical persons for their purchases of goods and services intended to be given as campaign contribution to political parties and candidates;
- e. The disallowance of expenses not subjected to the 5% CWT as utilized campaign fund and its non-deductibility to the campaign funds of the candidate, political party, or party list group;

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<sup>22</sup> Per Revenue Memorandum Order No. 7-2015 issued on January 22, 2015.

- f. The unutilized campaign fund net of the campaign expenditures shall be subject to income tax and must be included in the candidate's taxable income in the income tax return filed for the subject taxable year;
- g. The limitation on the donor's tax exemption only to utilized contributions or donations that have been utilized or spent during the campaign period as set by the COMELEC; and
- h. The imposition of income tax on the entire campaign contributions for the candidate's failure, whether winning or losing, to file the SOCE as required under the Omnibus Election Code.



**Annex A. REGISTRATION PROCEDURE BY THE CLIENT SUPPORT SECTION (CSS) PER RMC 38-2018**

**For individual candidates, political parties/party list groups, or campaign contributors NOT YET REGISTERED with the BIR [with no existing Taxpayer Identification Number (TIN)]:**

**CSS shall register and tag in the Integrated Tax System (ITS) and electronic Tax Information System (eTIS-1) the following:**

**Candidates:**

	ITS	eTIS-1
a. Taxpayer Type	Professional	Professional – In General
b. Special Code	“Politician”	—
c. Philippine Standard Occupational Classification (PSOC) Code	7511 – General (overall) public service activities	1141 – Senior Officials of political party organizations
d. Tax Type	Expanded Withholding Tax (WE)	Expanded Withholding Tax (WE)
e. Form Type	BIR Form No. 1601EQ- Quarterly Remittance Return of Creditable Income Taxes Withheld	BIR Form No. 1601EQ - Quarterly Remittance Return of Creditable Income Taxes Withheld
f. Alpha Numeric Tax Code (ATC)	WI680 – Individual Income payments made by political parties and candidates of local and national elections on all their purchases of goods and services related to campaign expenditures, and income payments made by individuals or juridical persons for their purchases of goods and services intended to be given as campaign contributions to political parties and candidates	WI680 – Individual Income payments made by political parties and candidates of local and national elections on all their purchases of goods and services related to campaign expenditures, and income payments made by individuals or juridical persons for their purchases of goods and services intended to be given as campaign contributions to political parties and candidates

**Political Parties/Party List Groups:**

	<b>ITS</b>	<b>eTIS-1</b>
a. Taxpayer Type	Non-stock Non-Profit Organizations (NONST)	Non-stock Non-Profit Organizations (NONST)
b. Philippine Standard Industrial Code (PSIC) Code	7511 – General (overall) public service activities	94920 – Activities of political organizations
c. Tax Type	Expanded Withholding Tax (WE)	Expanded Withholding Tax (WE)
d. Form Type	BIR Form No. 1601EQ	BIR Form No. 1601EQ
e. ATC	WC680	WC680

**Campaign Contributors:**

	<b>Form Type</b>
Individual	BIR Form No. 1904
Non-individual	BIR Form No. 1903

**For individual candidates or political parties/party list groups REGISTERED with the BIR (with existing TIN):**

**Candidates and Political Parties/Party List Groups registered as Business Taxpayer****A. Candidates or political party/party list group registered as BRANCH**

	<b>ITS</b>	<b>eTIS-1</b>
a. Taxpayer Type		
a.1 Individual	Professional	Professional–In General
a.2 Non-individual	Non-stock Non-Profit Organizations (NONST)	(NONST)
b. Special Code (Individual only)	“Politician”	—

	ITS	eTIS-1
c. PSIC/PSOC Code		
c.1 Individual	7511 – General (overall) public service activities	1141 – Senior Officials of political party organizations
c.2 Non-individual	7511 – General (overall) public service activities	94920 – Activities of political organizations
d. Tax Type	Expanded Withholding Tax (WE)	WE
e. Form Type	BIR Form No. 1601EQ	BIR Form No. 1601EQ
f. ATC		
f.1 Individual	WI680	WI680
f.2 Non-individual	WC680	WC680

**B. Candidates Registered as Local Employee (LOCAL):**

	ITS	eTIS-1
a. Taxpayer Type	"Professional"	Professional – In General
b. Special Code	"Politician"	-
c. PSOC Code	7511 – General (overall) public service activities	1141 – Senior Officials of political party organizations
d. Tax Type	Expanded Withholding Tax (WE)	Expanded Withholding Tax (WE)
e. Form Type	BIR Form No. 1601EQ	BIR Form No. 1601EQ
f. ATC	WI680	WI680

**C. Candidates Registered Under E.O. 98 and/or One-Time Transaction (ONETT):**

	ITS	eTIS-1
a. Taxpayer Type	Professional	Professional – In General
b. Special Code	"Politician"	-
c. PSOC Code		

	ITS	eTIS-1
	7511 – General (overall) public service activities	1141 – Senior Officials of political party organizations
d. Tax Type	Expanded Withholding Tax (WE)	Expanded Withholding Tax (WE)
e. Form Type	BIR Form No. 1601EQ	BIR Form No. 1601EQ
f. ATC	WI680	WI680

**For the individual candidate, political party/party list group, or campaign contributor is registered with the BIR but not yet uploaded in the ITS nor existing with Old Status in eREG TIN Query:**

The CSS Chief of the concerned RDO shall encode/tag the registration information of the candidate, political party/party list, or campaign contributor by following the preceding guidelines above, whichever is applicable.