Tax Bulletin

April 2022

In everything we do, we nurture leaders
and enable businesses for a better Philippines.

#SGVforABetterPhilippines

SGV
Building a better working world

Table of contents

VI. Court of Tax Appeals Cases	
Assessment	
To avail of the 10-year extraordinary period of assessment under Section 222(a) of the Tax Code as amended, the BIR should show that there is a finding of fraud, and the facts upon which the fraud is based is duly communicated to the taxpayer.	**34**
A holding company does not become a non-bank financial intermediary by its mere receipt of dividends or interest income from investments. As discussed, there is no indication in this case that the holding company is doing business as a bank or other financial institution. Consequently, it cannot be treated as such and be assessed for Local Business Tax (LBT) on its dividends and interest income derived from passive investments.	**35**
Refund/Issuance of Tax Credit	
Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.	**37**

BIR Administrative Requirements

RR No. 3-2022 amends Section 27(B) of the NIRC, as contained in RA No. 11635, on the income taxation of proprietary educational institutions and hospitals which are non-profit.

RR No. 3-2022 dated on 7 April 2022

- The following words or phrases, when used in these Regulations, shall have the following meaning:

  1. **Proprietary Educational Institutions** - refer to any private schools maintained and administered by private individuals or groups, with an issued permit to operate from the Department of Education (DepEd) or the Commission on Higher Education (CHED) or the Technical Education and Skills Development Authority (TESDA), as the case may be, in accordance with existing laws and regulations.

     The most common organizational structure of educational institutions registered with Securities and Exchange Commission (SEC) under Section 27(B) of the NIRC, as amended, are:

     - **Stock Corporations** are those which have capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends, or allotments of the surplus profits on the basis of the shares held; characterized as organized for profit to be enjoyed by stockholders; profits are declared and they are distributed to stockholders; composed of stockholders (also called shareholders or share owners); and governed by a Board of Directors (BOD).

     - **Non-stock Corporations** are those organized not as a stock corporation; characterized generally, as organized for purposes other than profit; income earned are not so distributed but used to further its own purposes; composed of members; and governed by what is generally called a Board of Trustees (BOT).

  2. **Hospitals Which are Non-Profit** - refer to any private hospitals, which are non-profit for the purpose of these Regulations, maintained and administered by private individuals or groups.

3. **Non-Stock, Non-Profit Educational Institutions** are those institutions mentioned in the first paragraph of Section 4(3), Article XIV of the 1987 Constitution and Section 30 (H) of the NIRC, as amended, whose revenues and assets that are used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties.

4. **Non-profit** - as used in the definition of Proprietary Hospitals and Non-Stock, Non-Profit Educational Institutions, means that no net income or asset accrues to or benefits any member or specific person, with all the net income or assets devoted to the institution's purposes and all its activities conducted not for profit.

   For purposes of these Regulations, the grant of per diems such as transportation allowance in attendance of meetings, compensation and/or endowments for services rendered, or any other similar emoluments to the Board of Trustees, officers, employees, or any members of the above-mentioned institutions shall not be prohibited and shall not necessarily be considered a private inurement that would negate the status of the institutions as non-profit; Provided, that such per diems, compensation or emoluments are subject to proper liquidation or reimbursement procedures, and commensurate to the functions and services rendered. In such a case, the same shall be considered as legitimate and reasonable expenses incurred in furtherance of the duties and responsibilities of the trustees, officers, employees, members, or any persons, and ultimately, the objectives of the organization.

   The reasonableness of the expense shall be determined by the BIR on a case-to-case basis.

5. **Unrelated Trade, Business or Other Activity** means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institutions or hospitals of its primary purpose of function.

- The following institutions shall be covered by the preferential 10%corporate income tax rate; Provided, that beginning 1 July 2020 until 30 June 2023, the rate of 1% shall apply, as imposed under Section 27 (B) of the NIRC, as amended:

  1. Proprietary Educational Institutions;
  2. Hospitals which are non-profit; and,
  3. Non-Stock, Non-Profit Educational Institutions whose net income or assets accrue/inure to or benefit any member or specific person.

  After 30 June 2023, the rate shall revert to the preferential corporate income tax rate of 10%.

- The 25% regular corporate income tax rate prescribed under Section 27(A) of the NIRC, as amended, shall be imposed on the entire taxable income of the institutions mentioned in Section 3 hereof, if their gross income from unrelated trade, business or other activity, as defined herein, exceeds 50% of the total gross income they derived from all sources. Moreover, a non-stock, non-profit educational institution, not falling under Section 3 of these Regulations, shall be subject to the rate of 25% regular corporate income tax on the portion of its revenues or assets not used actually, directly, and exclusively for educational purposes, as provided in Section 27(A) of the NIRC, as amended.

RMO No. 17-2022 prescribes the policies and procedures in the issuance of tax credit certificate arising from the PERA and its utilization using the ePERA system.

RMO No. 17-2022 issued on 17 March 2022

- The ePERA system shall manage the proper administrative reporting of PERA transactions involving contributions, income, withdrawals and/or terminations using simplified and uniform formats for a coordinated monitoring of tax privileges and incentives granted to qualified PERA contributions under Report Compliance Module.

- The annual reports on PERA Contributions, as well as PERA Distributions/ Early Withdrawals/Terminations shall be the cumulative result of the 1st to 4th quarterly reports submitted.

- The ePERA system which is connected to the PERASys shall use an application programming interface (API) to facilitate the validation of the TIN of a qualified contributor as reflected in the quarterly reports being submitted by the PERA Administrator.

- Late submission and non-submission of required reports shall be subject to penalty imposition. However, payment of penalty shall not exonerate the PERA Administrator from complying with the submission of the required reports.

- The compromise penalties under the existing revenue issuances shall be imposed for each and every case of non-submission or late submission of required reports during a taxable year by PERA Administrator. For this purpose, failure to supply any of the required reports shall constitute a single act of omission.

- The received application in batch for PERA-TCC using BIR Form 2338 and BIR Form 1942 submitted by the PERA Administrator within 60 days from the close of the calendar year through the PERASys, shall be processed by the PERA Processing Office using ePERA System's Tax Credit Application Module and endorsed to the Commissioner or his authorized representative for approval.

  Once the batch application for issuance of PERA-TCC is approved, the approved PERA-TCC for the year can now be viewed at the Tax Credit Certificate Module-PERASys and shall be readily available for generation and dissemination to the qualified contributor using the Utilization Request Module-PERASys.

- The approved PERA-TCC for the year shall be viewed at the Alphalist of PERA Contributors of ePERA system for reporting to the top management.

- Upon written request of the PERA Contributor, the PERA-TCC shall either be printed by the PERA Administrator and issued physically to the contributor or to his/her authorized representative using the Utilization Request Module – PERASys, or sent in PDF file to the official email of the contributor, for the latter to print. Once it is printed, the PERA-TCC shall be tagged as ISSUED at the PERASys and ePERA system.

- The PERA-TCC can be issued in full or partial amount, depending on the written request of its utilization by the contributor.

- In cases of employers who contribute a share to the account of their qualified employee, only the latter can request for the issuance of PERA-TCC. On the other hand, the employers may obtain from the PERA Administrator the Certificate of Aggregate Amount of Qualified PERA Contribution (BIR Form No. 2338) for their employees with regard to their share on the qualified contributions. The employers may claim as a deduction from gross income their share, but only to the extent of the employer's contribution that would complete the maximum allowable PERA contribution of an employee.

- The PERA-TCC shall be used for the payment of income tax liabilities of qualified employee and self-employed contributors, while for qualified overseas Filipino contributor, the PERA-TCC can be used in the payment of any internal revenue taxes.

- The PERA-TCC shall be attached to the applicable tax returns and presented to the concerned RDO prior to the filing of return and payment of any corresponding taxes, to be validated at the ePERA system.

- The Collection Section of the concerned RDO shall scan the QR code of the PERA-TCC or access the ePERA System to validate the authenticity of the PERA-TCC presented and tag it as CLAIMED in the Utilization Module-ePERA system.

- In the case of an employee contributor, the PERA-TCC shall be submitted to the employer for the latter to apply the gross amount of the PERA-TCC in the annual year-end adjustments for computing the net withholding tax due of the contributor-employee.

- The submitted PERA-TCC of the employee/s shall be kept by the employer for future audits to be conducted by authorized BIR personnel. Further, the applicable details of the certificate shall be indicated in the column provided for the purpose in the prescribed Annual Alphabetical List of Employees, including the certificate of compensation payment/tax withheld for compensation payment with or without tax withheld (BIR FORM 2316) of the employee-contributor.

- A PERA-TCC shall only be printed once. However, upon the written request of the contributor, for meritorious reasons, it can be re-printed and cancelled. Both request for re-printing and cancellation of PERA-TCC shall undergo the same approval process. In the case of approved request for cancellation, the amount of PERA-TCC will revert back to the PERA-TCC balance available for utilization.

- Each PERA-TCC utilization is automatically deducted from the tax credit balance once the concerned RDO tagged the particular PERA-TCC issued as CLAIMED.

- A report ledger per PERA-TCC is available for reference in the ePERA system. Each year's balance is stored separately and are not summed up as one tax credit balance.

- Review and monitoring of remittance of penalties imposed on early withdrawal/distribution/termination of PERA contributions shall be based on the quarterly reports of PERA Administrators.

- A qualified contributor who uses a spurious PERA-TCC shall be liable to pay the amount utilized with 50% penalty for fraud and 12% interest per annum, without prejudice to the filing of appropriate criminal charges.

- The pertinent provisions of RMO No. 42-2016, RMO 28-2017, RMO 11-2020 and all other revenue issuances and/or portions thereof that are inconsistent herewith are repealed, amended or modified accordingly.

RMO No. 18-2022 was issued to modify the ATC of selected revenue sources under the TRAIN Law.

RMO No. 18-2022 issued on 30 March 2022

In order to facilitate the proper identification and monitoring of tax collection from Capital Gains Tax (CGT) BIR Form Nos. 1707 (CGT Return for Onerous Transfer of Shares of Stocks Not Traded Through the Local Stock Exchange) and 1707 – A (Annual CGT Return for Onerous Transfer of Shares of Stock Not Traded Through the Local Stock Exchange), below are the modified ATCs:

EXISTING (per ATC Handbook)					MODIFIED/ NEW
ATC	Description	Tax Rate	BIR Form No.	Legal Basis	Tax Rate
II030	On Capital Gains – From Sale of Shares of Stock not Traded in the Local Stock Exchange (Individual)	5% 10%	1707/1707-A	R.A. No. 10963	15%
IC110	On Capital Gains – From Sale of Shares of Stock not Traded in the Local Stock Exchange (Domestic Corporation)	5% 10%	1707/1707-A	R.A. No. 10963	15%
IC110	On Capital Gains – From Sale of Shares of Stock not Traded in the Local Stock Exchange (Foreign Corporation)	5% 10%	1707/1707-A	R.A. No. 11534/ RR No. 2-2021	15%

RMO No. 19-2022 was issued to create the ATCs for POGOs pursuant to Republic Act No. 11590.

RMO No. 19-2022 issued on 30 March 2022

In order to facilitate the proper identification of remittances for Gaming Tax and Final Withholding Tax on Salaries of foreign nationals employed by POGO offshore gaming licenses and its accredited service providers, below are the ATCs created:

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
PT 320	Gaming Tax	5%	RA 11590/ Sec. 125-A of the NIRC	2553
WI 740	Final Withholding Tax on Foreign Nationals Employed by POGO entities	25%	RA 11590/ Sec. 25 (G) of the NIRC	0619 F 1601 FQ

RMO No. 22-2022 amends certain provisions of RMO No. 9-2022 to provide additional procedures and guidelines as well as include specific platform/s that are allowed to be used in the conduct of formal investigations/hearings for administrative cases.

RMO No. 22-2022 issued on 4 April 2022

- Item III of RMO No. 9-2022 shall be amended and read as follows:

III. COVERAGE AND DIGITAL PLATFORM USED

1. APPLICABILITY OF VIDEO CONFERENCE HEARINGS

   - The Personnel Adjudication Division (PAD) may order motu proprio the conduct of a video conference hearing in the following instances:

     a. Acts of God, such as typhoons, floods, earthquakes, or other unforeseen events, and human-induced events, such as fires, strikes, lockdowns, those which limit physical access to the venue of hearings, and other instances posing threats to the security and safety thereof;

     b. Periods of public emergencies officially declared by the concerned agency of the government;

     c. The inability or difficulty of a litigant, witness or counsel to physically appear in hearings due to security risks in his or her transport in going to and from the venue of hearings, real and apparent danger to his or her life, security or safety, serious health concerns, vulnerability of the witness due to age, physical condition, disability, or the fact that he or she is a victim of a sexual offense or domestic violence; and

     d. When, based on the sound judgment of the assigned Hearing Officer, there are compelling reasons that justify the resort to videoconferencing.

2. VIDEOCONFERENCING INITIATED BY MOTION

   - The respondent or his/her counsel, or the prosecutor may, by motion, request that the proceedings be conducted through the said alternative mode, stating therein the following:

     a. Grounds being invoked by the movant;
     b. Evidence to support such grounds;
     c. Expected location of the respondent;
     d. Names of witnesses to be presented and their expected location; and
     e. E-mail addresses of the concerned parties, their counsel, and the witnesses to be presented.

     And a statement that the movant and the intended witnesses are technically ready to participate in the videoconferencing.

     The motion shall be filed through e-mail and/or personally with the PAD, serving a copy on the adverse litigant by the same means, at least 10 calendar days before the scheduled hearing dates.

- The respondent-movant, or the prosecutor shall file, through e-mail and/or personally, its comment or opposition to the motion within five calendar days from receipt of the motion.

  With or without the comment of the respondent-movant or prosecutor, the assigned Hearing Officer shall resolve the motion within five calendar days before the scheduled video conference hearing by issuing an order that will be served through e-mail containing the following matters:

  a. The date, time and log-in credentials of the platform to be used;
  b. The names of the witnesses to be presented;
  c. The expected location of each participant;
  d. The software or platform to be used for the videoconferencing;
  e. The e-mail addresses of the participants as reflected in the case docket, to be used for the purpose of the videoconferencing, with notice that said e-mail addresses are deemed valid unless the concerned participants inform the court of any changes thereto at least three calendar days before the scheduled video conference hearing;
  f. That all details and information used to gain access to the proceedings shall be treated with strict confidentiality, as any unauthorized sharing of said details without proper authority shall be dealt with accordingly based on the Data Privacy Act; and
  g. Such other matters as may be necessary to define the parameters of the videoconferencing. The order, aside from the date, time and log-in credentials, shall likewise include the link of the video conference hearing if served through e-mail.

- The participants shall notify the Hearing Officer through e-mail, confirming and acknowledging receipt of the order.

3. PLATFORM

   Formal investigation/hearing via video conference shall only use the officially provided Zoom, or MS Teams application, or any such licensed video conferencing application as officially authorized by the BIR Information Systems Group to host such hearings. The Hearing Officer shall also utilize, as electronic means, the official e-mail accounts or authorized BIR webmails.

- Item V - PRELIMINARY NOTICE OF HOLDING HEARINGS is hereby amended as follows:

V. SUBPOENA AND NOTICE OF HEARING

1. The assigned Hearing Officer shall host the hearings held via the officially provided Zoom, or MS Teams application, or any such licensed video conferencing application as officially authorized by the BIR Information Systems Group.

2. If resort to video conference hearing was based on the initiative and sound judgment of the assigned Hearing Officer, the subpoena and notice of hearing, aside from the date, time and venue of hearing, shall also state the official e-mail account or authorized BIR webmail for communication purposes, and log-in credentials of the platform to be used. The respondent or prosecutor shall be required to provide the assigned Hearing Officer of the pertinent information needed such as, but not limited to, the names of the participants with corresponding email addresses, including their witnesses.

3. Although the hearings shall not be conducted via videoconferencing, the subpoena and notice of hearing shall expressly state, that the participants and their witnesses may resort to such alternative modes and allow them to appear from remote locations using the authorized platforms, where issues of safety and health protocols are involved or when travel or movement is restricted by reason of official guidelines issued by the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF-EID), including those instances covered under Item III (A).

4. Proof of receipt of notification email/s shall be properly recorded and included in the case docket. Item VI shall be "CONDUCT OF HEARINGS".

- Item VII shall be "PRESENTATION OF EVIDENCE" and read as follows:

  VII. PRESENTATION OF EVIDENCE

  1. Documentary evidence, including attachments thereto, affidavits and other relevant pieces of evidence, unless already part of the records of the case, shall be filed and served at least three calendar days prior to the scheduled videoconferencing. During the video hearing conference, the presiding Hearing Officer may direct a respondent or his/her counsel, or the prosecutor to share documentary evidence on-screen for purposes of marking, authenticating and presenting. Should the exhibition, examination or viewing of the documentary evidence be rendered impossible, insufficient or difficult by the limitations of the platform or for some other compelling reasons, in-court hearings may instead be ordered by the assigned Hearing Officer for the purpose of presenting or completing the testimony of a witness.

- Item VIII shall be read as:

  VIII. TECHNICAL SUPPORT

  1. x x x.
  2. x x x.
  3. Hearing Officers of PAD are advised to familiarize themselves of the videoconference procedures using the officially provided Zoom, or MS Teams application, or any such licensed video conferencing application as officially authorized by the BIR Information Systems Group, and enlist the support of Network Management and Technical Support Division (NMTSD) in the conduct of actual demonstrations.
  4. In the event that network issues or similar problems occur, the NMTSD shall be notified for technical assistance.

- Item VII shall be amended and read as:

  IX. RECORDING OF HEARINGS

  1. The proceedings shall be recorded by the Hearing Officer using the officially provided Zoom, or MS Teams application, or any such licensed video conferencing application as officially authorized by the BIR Information Systems Group. The Hearing Officer shall likewise save a copy of these video recordings in a storage drive for filing purposes which shall form part of the records of the case."
  2. x x x
  3. x x x
  4. x x x

RMC No. 27-2022 circularizes the recently published lists of withholding agents, in connection with the newly prescribed criteria under Revenue Regulations No. 31-2020, for inclusion in the existing List of TWAs.

RMC No. 27-2022 dated 8 March 2022

- These TWAs are required to deduct and remit either the 1% or 2% creditable withholding tax (CWT) from the income payments to their suppliers of goods and services, respectively.
- Individual written notices duly signed by the Revenue District Officer will be served to the BIR-registered addresses of the additional TWAs.
- The obligation to deduct and remit to the BIR the 1% and 2% CWT for these additional TWAs shall commence effective **1 April 2022**.
- Any taxpayer not included in the published list of TWAs is not required to deduct and remit the 1% or 2% CWT.
- The said lists are posted at the BIR's website (www.bir.gov.ph).

RMC No. 28-2022 provides guidelines to BIR officers and RBEs as regards the submission CETI (formerly Certificate Entitlement to ITH) under the CREATE Act.

RMC No. 28-2022 dated 10 February 2022

- Under Section 3, Rule 8 of the Implementing Rules and Regulations (IRR) of the CREATE Act, all RBEs shall apply for a CETI with their concerned Investment Promotion Agency (IPA) prior to the filing of Annual Income Tax Return (AITR). The CETI shall then be attached to the AITR filed with the BIR as provided by Section 4, Rule 8 of the said IRR.
- The CETI is a requirement for all RBEs to avail of the ITH or preferential rate granted by the CREATE Law. This repeals the provisions of RMC No. 14-2012, which required the submission of the Certificate for Entitlement to ITH, within 30 days from filing of the RBE's AITR.
- Further clarification was provided in RMC No. 37-2022 dated 6 April 2022.

RMC No. 32-2022 clarifies the franchise tax, income tax and VAT due from PAGCOR, its Licensees and Contractees based on current laws and recent jurisprudence.

RMC No. 32-2022 dated 29 March 2022

Tax Treatment of PAGCOR

- Presidential Decree (PD) No. 1869, as amended, classified PAGCOR's income into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13 (2) (a) thereof (income from gaming operations); and (2) income from its operation of necessary and related services under Section 14 (5) thereof (income from other related services).

- In PAGCOR vs. BIR, et al, the Supreme Court (SC) held that PAGCOR's income from its gaming operations shall be subject to the 5% franchise tax while its income from other related services shall be subject to the corporate income tax rate provided in the NIRC. The Court ruled as follows:

  "[PAGCOR's] Income from earning operations is subject only to 5% franchise tax under PD No. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to PD No. 1869, as amended, as well as RA No. 9337. xxx "

- Accordingly, PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools are, in lieu of all taxes, subject to the 5% franchise tax pursuant to PD No. 1869, as amended. This includes, among others:

  1. Income from its casino operations;
  2. Income from dollar pit operations;
  3. Income from bingo operations, including all variations thereof; and
  4. Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agent's commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.

- It is noteworthy to mention that Section 13 (2) (a) of PD No. 1869, as amended, clearly gives PAGCOR a blanket exemption to taxes on its income from its operations conducted under its Franchise (income from gaming operations) with no distinction on whether the taxes are direct or indirect, like VAT.

- On the other hand, income from "other related operations/services" shall be subject to corporate income tax, VAT and other applicable taxes under the National Internal Revenue Code (NIRC), as amended. This includes, among others, but is not limited to:

  1. Regulatory/license fees from licensed private casinos;
  2. Regulatory/license fees from private bingo operations, including all variations thereof;
  3. Regulatory/license fees from private internet casino gaming, internet sports betting and private mobile gaming operations;
  4. Regulatory/license fees from private poker operations;
  5. Regulatory/license fees from private junket operations;
  6. Regulatory/license fees from SM demo units;
  7. Regulatory/license fees from all other electronic derivatives of brick and mortar
  8. Income from other necessary and related services, shows and entertainment.

- PAGCOR's other income that are not connected with the foregoing operations are likewise subject to corporate income tax, VAT and other applicable taxes under the NIRC, as amended.

- PAGCOR is constituted as a withholding agent for the government as regards the compensation given to its employees subject to withholding tax on compensation, and for payments made to individuals or corporations subject to the withholding taxes at source as required under Chapter XIII and Section 57 of the NIRC, as amended.

- PAGCOR must also collect a qualifying fee from players and remit the same in accordance with EO No. 48, s. 1993, RR No. 06-93 and RMO No. 14-93. Particularly, pursuant to Section 6 of RR No. 06-93, PAGCOR shall issue a check, payable to the Bureau of Treasury and to the credit of the account of the BIR, equivalent to the amount of collections for a particular week. This check, together with the necessary supporting documents prescribed by the BIR, shall be issued to the Bureau of Treasury not later than Tuesday following each week. The Bureau of Treasury shall then prepare monthly the corresponding Journal voucher and any other necessary document in favor of the BIR for the latter to record the amount of collections in its book of accounts.

Tax Treatment of PAGCOR's Licensees

- PD No. 1869, as amended, expressly provides that the payment of the 5% franchise tax of PAGCOR inures to the benefit of its Contractees and Licensees (Bloomberry Resorts and Hotels, Inc., v. BIR) viz:

  "SEC. 13. - Exemptions:

  (2) Income and other taxes -

  (b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency (ies), or individuals) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

  The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision ***shall be free of any tax****."*

- Hence, following the ruling in Bloomberry, like PAGCOR, its Contractees and Licensees shall be exempt from the payment of corporate income tax realized from the operation of casinos upon payment of the 5% franchise tax since the law is clear that said exemption inures and extends to their benefit. For VAT purposes, however, the ruling of the Court in CIR v. Acesite (Philippines) Hotel Corporation, as further clarified by the Court in the recent case of Thunderbird Pilipinas Hotel & Resorts, Inc. v. CIR, is instructive. There, the Court clarified that PAGCOR, pursuant to its Charter, is also exempt from indirect tax, like VAT, on its gaming operations. The tax exemption of PAGCOR extends only to those individuals or entities that have contracted with PAGCOR (PAGCOR Contractees and not Licensees) in connection with PAGCOR's gaming operations. This is to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR.

- Thus, pursuant to Acesite and Thunderbird rulings, for PAGCOR Licensees, their revenues from gaming operations, involving sale of goods and/or services in the course of trade or business, are generally subject to VAT. In the event, however, that they have also contracted with PAGCOR in connection with the latter's gaming operations, then, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to zero percent (0%) VAT pursuant to Sections 106 (A) (2) (b) and 108 (B) (3) of the NIRC of 1997, as amended.

- On the other hand, the income realized by PAGCOR's Licensees from "other related services/operations" shall be subject to the regular corporate income tax, VAT and other applicable taxes under the NIRC, as amended.

Tax Treatment of PAGCOR's Licensees Located in Ecozones/Freeports

- For Licensees that are located in Ecozones/Freeports, their income realized from other related services/operations shall be subject to the tax regime applicable to said Licensees, that is, 5% Gross Income Tax (GIT) or Income Tax Holiday (ITH), as the case may be, provided that said other related services/operations are covered by their registered activity with the concerned Investment Promotion Agency (IPA). If they are under 5% GIT, then they are exempt from regular corporate income tax and VAT. On the other hand, if they are under ITH, then they are also exempt from the regular corporate income tax. They are, however, subject to VAT. On their income realized from related services/operations which are not covered with their registered activity or activities with the concerned IPA, the same shall be subject to the regular corporate income tax, VAT and other applicable taxes under the NIRC. Their income from gaming operations, however, shall not be subject to the GIT, ITH or corporate income tax but remains subject to the 5% Franchise Tax in accordance with P.D. No. 1869, as amended, and the aforecited jurisprudence.

- For VAT purposes, Licensees' revenues from gaming operations, involving sale of goods and/or services in the course of trade or business, are generally subject to VAT. If, however, they have also contracted with PAGCOR in connection with the latter's gaming operations, then, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to 0% VAT pursuant to Sections 106 (A) (2) (b) and 108 (B) (3) of the NIRC of 1997, as amended.

Tax Treatment of PAGCOR's Contractees

- The revenues of PAGCOR Contractees derived from its contract with PAGCOR in connection with the latter's gaming operations shall be exempt from the regular corporate income tax upon payment of the 5% Franchise Tax in accordance with PD No. 1869, as amended, and the aforecited jurisprudence. However, the goods they provided and/or services performed to PAGCOR in relation to such gaming operations are subject to 0% VAT pursuant to Sections 106(A) (2) (b) and 108(B) (3) of the NIRC of 1997, as amended.

- PAGCOR's Contractees whose income consists of non-gaming revenues or income from other related services are subject to the regular corporate income tax, VAT and other applicable taxes under the NIRC of 1997, as amended.

Remittance of the 5% Franchise Tax

- The license/regulatory fees paid by Licensees to PAGCOR is different and distinct from the 5% franchise tax payable to the BIR. The license fee is being paid to PAGCOR by virtue of the license to establish and operate a casino and does not include the franchise tax mandated to be paid to the government under Section 13(2) (a) of PD No. 1869, as amended. Such franchise tax is payable directly to the BIR, specifically to the concerned Revenue District Office (RDO) where the Licensee is registered. The Licensee shall remit the franchise tax to the BIR using BIR Form 2553 indicating the Alphanumeric Tax Code (ATC) OT 010.

- All other Circulars and/or portions thereof that are inconsistent with this RMC are repealed, modified or amended accordingly. This Circular also takes effect immediately.

RMC No. 36-2022 prescribes the uniform template for VAT 0% Certification issued by IPAs in relation to Q&A No. 34 of RMC No. 24-2022.

RMC No. 36-2022 dated 6 April 2022

- Q&A No. 34 of RMC No. 24-2022 provides that the concerned IPA shall issue annually a VAT 0% certification to registered export enterprises (REEs) which shall indicate certain required information.
- Attached to the RMC, as **Template I (with Annex A)**, is the format of VAT 0% Certification to be issued to REEs which are registered under RA No. 11534, otherwise known as the CREATE Act. Likewise, attached, as **Template 2 (with Annex A)**, is the format of VAT Zero Percent (0%) Certification to be issued to existing REEs prior to the CREATE Act.
- All IPAs shall be required to provide the BIR a master list of all REEs which have been issued a VAT 0% Certification for counterchecking purposes. The aforementioned master list shall be submitted to the Assistant Commissioner, Assessment Service, Attention: The Chief, Audit Information, Tax Exemption and Incentives Division and email the same to: aiteid_ies@bir.gov.ph.

RMC No. 37-2022 provides clarificatory guidelines on the submission of Certificate of Entitlement to Tax Incentives pursuant to RMC No. 28-2022.

RMC No. 37-2022 dated 6 April 2022

- All registered business enterprises (RBEs) enjoying tax incentives under the transitory provisions in Section 311 of Title XIII of Republic Act No. 11534, otherwise known as the CREATE Act, and all business enterprises registered under the said law shall apply for a Certificate of Entitlement to Tax Incentives (CETI) with their respective IPA through the Fiscal Incentives Registration and Monitoring System (FIRMS) prior to the filing of the Annual Income Tax Return (AITR).
- RBEs already issued with a CETI in a template/format previously prescribed by the IPA, such as, certificate of entitlement to income tax holiday, certificate of available incentives, certificate of registration and tax exemption, or any similar certificate, as proof of the RBE's entitlement to fiscal incentives, shall be allowed to attach the same in their AITR for taxable year 2021, in lieu of the Fiscal Incentives Review Board (FIRB) – prescribed CETI.

RMC No. 38-2022 provides clarification on the transitory provision for the non-income related tax incentives granted to RBEs under IPAs.

RMC No. 38-2022 dated 6 April 2022

- All RBEs enjoying tax incentives under the transitory provisions in Section 311 of Title XIII of Republic Act No. 11534, otherwise known as the CREATE Act, and all business enterprises registered under the said law shall apply for a CETI with their respective IPA through the FIRMS prior to the filing of the AITR.
- RBEs already issued with a CETI in a template/format previously prescribed by the IPA, such as, certificate of entitlement to income tax holiday, certificate of available incentives, certificate of registration and tax exemption, or any similar certificate, as proof of the RBE's entitlement to fiscal incentives, shall be allowed to attach the same in their AITR for taxable year 2021, in lieu of the FIRB.
- All existing RBEs prior to CREATE that will continue to avail of our existing income tax incentives, may continue to enjoy the VAT zero-rating on local purchases that are **directly attributable and exclusively used in the registered project or activity** until the expiration of the transitory period, as follows:

    1. For RBEs which are granted only an ITH – until the remaining period of the ITH.

2. For RBEs which are granted an ITH **and/or** 5% tax on gross income earned – until the expiration of the 10 year limit.

- The extent for the availment of VAT zero-rating on local purchases is anchored on the transitory period stated above. Thus, if the income tax incentive of an RBE has already expired prior to CREATE, then the VAT zero-rating on local purchases could no longer be availed.

RMC No. 39-2022 prescribes the manner of payment of penalty relative to violations incurred by RBEs under the IT-BPM sector on the conditions prescribed regarding Work-From-Home arrangement.

RMC No. 39-2022 issued on 6 April 2022

- It was prescribed in RMC No. 23-2022 that for the month the RBE committed a violation, it shall be liable for the payment of the regular Income Tax of either 25% or 20%, whichever is applicable. It was also mentioned in the said Circular that for RBEs with no current transactions subject to regular Income Tax, they can voluntarily pay the penalty by indicating the taxable income under the column "regular" of BIR Form No. 1702-MX, while for RBEs that have existing transactions subject to the regular Income Tax, the voluntary payment of penalty shall use BIR Form No. 0605.

- Since the use of BIR Form No. 1702-MX for RBEs with no transactions subject to regular Income Tax would create confusion and difficulty in accomplishing the said form, the Circular mandates the uniform manner of payment of the said penalty using BIR Form No. 0605 by choosing the radio button pertaining to 'Others' under 'Voluntary Payment' and by indicating in the field provided the phrase "Penalty pursuant to FIRB Res. No. 19-2021". The tax type code shall still be "IT" and the ATC to be indicated is "MC 200."

- RBEs shall continue to file their AITR using BIR Form No. 1702-EX for those with ITH incentive and BIR Form No. 1702- MX for those enjoying Gross Income Tax (GIT) incentive or those with mixed transactions. However, they are mandatorily required to complete the required information pertaining to allowable deductions pursuant to existing tax laws and regulations (i.e., Part VI-Schedule I for BIR Form No. 1702-EX and Part IV-Schedule 5 for BIR Form No. 1702-MX).

- RBEs shall compute the penalty in the manner presented in the Circular, and the same shall be paid within 30 days after the due date prescribed for the payment of Income Tax. If the same is paid beyond the said period, administrative penalties shall be imposed considering that the penalty pertains to 'Income Tax.'

RMC No. 40-2022 provides clarifications and guidelines on the use of eAFS System.

RMC No. 40-2022 issued on 6 April 2022

- The submission of eFiled AITR and its attachments to eAFS is applicable to any taxable year and all succeeding fiscal and/or taxable years. The existing procedures on the submission of filed AITR and its attachments to eAFS system shall be observed.

- Likewise, the use of Electronic Signature applies to all tax returns, attachments and documents required to submit AITR and returns.

RMC No. 24-2022 clarifies that the deadline for filing of AITR for Calendar Year 2021 as well as the payment of the corresponding taxes due thereon is on 18 April 2022, since 15 April 2022falls on a non-working holiday. However, tentative AITR may be filed on or before 18 April 2022. The return may be amended on or before 16 May 2022, without imposition of interest, surcharge and penalties. Provided that, a taxpayer whose amended returns will result in overpayment of taxes paid can opt to carry over the overpaid tax as credit against the tax due for the same tax type in the succeeding period or file for refund. It also clarified the manner of filing and payment for taxpayers who are mandated to use eBIRForms/eFPS under the existing issuances.

RMC No. 24-2022 issued on 7 April 2022

- FILING FOR CALENDAR YEAR 2021 AITR

  1. eBIRForms - For taxpayers required to use or voluntarily opt to use the eBIRForms, file the tax returns thru eBIRForms System.

  2. Electronic Filing and Payment System (eFPS) - For taxpayers required to use or voluntarily opt to enroll in the eFPS Facility, file the return electronically. However, in case that the newly created tax returns are not yet available in the eFPS Facility but already available in the eBIRForms System, taxpayers shall file the said return using the eBIRForms System.

- PAYMENT FOR CALENDAR YEAR 2021 AITR

  The corresponding taxes due thereon shall be paid through any of the following payment facilities:

  1. Manually thru Authorized Agent Banks (AABs) and Revenue Collection Officers (RCOs) notwithstanding the Revenue District Office (RDO) jurisdiction.

  2. Electronic payment (ePAY) facilities (please refer to the attached RMC for the details)

  3. For taxpayers mandated to use eFPS, the filing of BIR Form No. 1702RT with or without payment shall be made through eFPS. Likewise, the filing of BIR Form Nos. 1702EX and 1702MX with or without payment shall be made through eBIRForms System and payment shall be made through eFPS using BIR Form No. 0605. Tax type code to be used is income tax (IT) and the Alphanumeric Tax Code (ATC) is MC 200.

- For the newly created tax returns are not yet available in the eFPS Facility, the filing of the returns shall be through eBIRForms System.

- For non-eFPS taxpayers, "No payment" CY2021 AITR shall be filed electronically through eBIRForms Facility.

- The submission of the required attachments such as, but not limited to BIR Form No. 1709, as applicable, and the Audited Financial Statements, etc., to the electronically filed/amended AITR for Calendar Year 2021 pursuant to the pertinent issuances shall be made on or before May 31, 2022 to the Revenue District Office (RDO)/Large Taxpayers Service (LTS) /Large Taxpayers District Office (LTDO) where the taxpayer is registered or electronically through the Electronic Audited Financial Statements (eAFS) System of the BIR.

RMC No. 43-2022 prescribes guidelines on the non-imposition of surcharge on amended tax returns.

RMC No. 43-2022 dated on 8 April 2022

- Under Section 248 (A) of the Tax Code, as amended, in addition to the tax required to be paid, a penalty equivalent to 25% of the amount due shall be imposed in the following cases:

  1. Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

2. Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

3. Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessments; or

4. Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of the tax due for which no return is required to be filed, on or before the date prescribed for its payment.

- In RMC No. 54-2018, when an additional tax is due per amended tax return, the 25% surcharge shall be imposed based on the additional tax to be paid, while in RMC No. 46-99 it is stated that no 25% surcharge shall be imposed in computing for the deficiency tax assessment as a result of tax audit. It appears that in this policy, a taxpayer is unduly penalized for amending tax returns to pay the correct tax due but is unintentionally rewarded if unremitted taxes or correct tax due is paid only during tax audit, which therefore discourages taxpayers to amend their tax returns to voluntarily pay the correct tax due.

- For a better understanding and to reconcile the above RMCs, **25% surcharge shall not be imposed to an amendment of a tax return** if the taxpayer was able to file the initial tax return on or before the prescribed due date for its filing. On the other hand, the **25% surcharge shall be imposed on a tax deficiency found during audit** if the particular tax return being audited was found to have been filed beyond the prescribed period or due date.

- Please refer to the RMC for the illustrations.

RMC No. 44-2022 prescribes the guidelines in the filing of annual ITRs and payment of tax due thereon for taxable year 2021.

RMC No. 44-2022 dated 12 April 2022

- The RMC, through its accompanying annex, provides the filing and payment instructions with respect to the annual ITRs for taxable year 2021 for manual, eBIRForms, and Electronic Filing and Payment System (eFPS) filers.

- The RMC also informs eFPS users/filers that BIR Form No. 1702-RT (Annual Income Tax Return for Corporation, Partnership and other Non-Individual Taxpayer subject only to REGULAR Income Tax Rate) January 2018 (ENCS) is now available in the eFPS.

RMC No. 45-2022 provides the revised requirements on the manner of remittance of penalties of 5% and 20% of early withdrawal of qualified contribution under the PERA Act of 2008.

RMC No. 45-2022 dated 12 April 2022

- This RMC is being issued pursuant to the provisions of Section 5 of RR No. 2-2022, amending the pertinent provisions of RR No. 10-2016, as further amended by RR No. 6-2021, more particularly, the manner of remittance of penalties of 5% and 20% for early withdrawal of qualified contributions.

- The said penalties shall be remitted by the PERA Administrator through the online filing and payment facilities of the BIR on or before the last day of the month following the close of the calendar quarter during which the deduction was made.

- The Payment Form (BIR Form No. 0605) shall be duly accomplished under the name of the PERA Administrator by providing all the prescribed information, more particularly under "line item no. 17" of the said form, by filling up an "X" mark in the box provided for "Others", as well as the phrase "PERA Early Withdrawal Penalty" in the separate box provided for "Specify".

- The amount of penalties shall be based on the aggregate respective totals of the 5% and 20% penalties as reflected in the Quarterly Report on PERA Distributions/Early Withdrawals/Terminations. The documentary proofs of payment (i.e., duly filed BIR Form No. 0605, Filing Reference Number, Confirmation/ Acknowledgement Receipt, etc.) shall be submitted to the PERA Processing Office - Audit Information Tax Exemption and Incentives Division, thru its official email address at aiteid_mos@bir.gov.ph, within 5 days from the date of payment of the penalties.

Banks and Other Financial Institutions

Guidelines for Reporting Islamic Banking and Finance Transactions/Agreements

CL No. 2022-1139 provides guidelines for reporting Islamic banking and finance transactions and agreements.

CL No.-2022-1139 dated 23 March 2022

The Monetary Board approved the following guidelines for reporting Islamic Banking and Finance Transactions/Agreements:

- The following terms shall apply in relation to Islamic banking:

    1. *Effective profit rate* – the rate that exactly discounts the estimated future cash payments or receipts through the expected life of the financial asset (including Islamic financing and investment instruments) or financial liability or when appropriate, a shorter period to arrive at the net carrying amount of the financial asset or financial liability.

    2. *Riba* - generally refers to the receipt and payment of interest imposed/ charged on various types of lending and borrowing and in the exchange of currencies on forward basis.

    3. *Savings account* - an account reflecting the total deposits at an Islamic bank which normally require the presentation of passbooks or in lieu thereof, such other legally acceptable documents approved by the BSP for deposit or withdrawal of money and compliant with Shari'ah principles.

    4. *Time deposit account* - an account reflecting the total deposits at an Islamic bank which are issued for a specific period or term and compliant with Shari'ah principles.

- Guidelines on segregation of funds, books and records and accounting treatment for prudential reporting to provide clarity on the reporting treatment of Islamic banking and finance transaction.

- Islamic Banks and conventional banks with Islamic Banking Units shall prepare prudential reports to the BSP using the existing templates of the Financial Reporting Package (FRP) for Banks as prescribed under Section 172 and Appendix 81, and in accordance with the submission guidelines provided for UBs under Appendix 7 of the MORB.

Amendments to Regulations on Information Technology Risk Management

CL No. 2022-1140 amends regulations on Information Technology Risk Management.

CL No. 2022-1140 dated 24 March 2022

The Monetary Board incorporated requirements on the adoption of robust fraud management systems and reinforced consumer education and awareness programs to the MORB and MORNBFI. These amendments aim to strengthen cybersecurity posture and minimize losses arising from fraud and cybercriminal activities.

- BFSIs should adopt aggressive security posture such as implementing automated and real-time fraud monitoring and detection systems to identify and block suspicious or fraudulent online transactions. The expected sophistication and capabilities of BSFIs' fraud monitoring systems (FMS) should be commensurate to the risks associated with their digital financial and payment platforms. As fraud and cyber threats evolve, the FMS should be constantly calibrated to be able to process surges in transactions, collectively analyze customer profiles/behavior, and detect new fraud patterns.

- As an integral part of their customer onboarding process, BSFIs shall ensure that their clients have undertaken a pre-requisite consumer education course/ program on the safe and secure use of electronic payment and financial services (EPFS), including the associated risks. BSFIs should also maintain and continuously evaluate its consumer awareness program.

- The BSP may deploy enforcement actions to promote adherence to the requirements in this Circular and ensure timely implementation of preventive and/or corrective measures as needed.

Amendments to the Regulations on the Internal Audit Function of a Trust Corporation

CL No. 2022-1141 amends the regulations in the internal audit function of a trust corporation.

CL No. 2022-1141 dated 29 March 2022

The Monetary Board allows the internal audit function of a trust corporation (TC) belonging to a group structure to be covered by the group internal audit unit.

- *Permanency of the internal audit function* - A TC shall have a permanent internal audit function. If the TC belongs to a group structure, the internal audit function shall be established either in the TC or centrally by the immediate or ultimate parent bank/NBFI. In any case, the ultimate responsibility for the conduct of an effective internal audit for the TC shall reside in its board of directors.

- *Internal audit function in group structures* - A TC with an immediate or ultimate parent bank/NBFI that is under the supervision of an appropriate regulatory authority, as applicable, may have its internal audit activities performed by the group internal audit function without being subject to the outsourcing framework set forth in the MORNBFI.

  Internal audit arrangements with parties external to the TC that do not meet the conditions shall be treated as outsourced activities.

- *Outsourcing of internal audit activities* - A TC may outsource internal audit activities covering all areas of its operations in accordance with existing BSP regulations on outsourcing; Provided that the internal audit activities shall not be outsourced to the TC's own external auditor/audit firm nor to an internal audit service provider that was previously engaged by the TC in the same area intended to be covered by the internal audit activity that will be outsourced without a one-year "cooling off" period.

Amendments to the Guidelines on the Computation of Minimum Required Capital and Risk-Based Capital Adequacy Ratio

CL No. 2022-1142 amends the guidelines on the computation of minimum required capital and risk-based CAR.

CL No. 2022-1142 dated 29 March 2022

The Monetary Board amended the guidelines on the computation of the minimum required capital and the risk-based capital adequacy ratio in the MORB and other related regulations.

Under the amendment, total outstanding unsecured credit accommodations, both direct and indirect, to DOSRI granted by the bank proper may be deducted from capital provided that in the case of government-owned or controlled banks, the adjustment shall not include the unsecured peso-denominated credit accommodations to the Philippine National Government.

Recommended Control Measures Against Cyber Fraud and Attacks on Retail Electronic Payments and Financial Services

Memorandum No. M-2022-015 recommends control measures against cyber fraud and attacks on retail electronic payments and financial services.

Memorandum No. M-2022-015 dated 22 March 2022

BSFIs should conduct continuing risk assessment of its product features, business rules and application controls, and implement appropriate enhancements and mitigation, as necessary. To ensure consistent and industry-wide approach in countering aggressive phishing campaigns, BSFIs are advised to adopt the following supplementary control measures:

- Removal of clickable links in emails or SMS sent to retail customers followed by an information campaign that the BSFI will no longer be sending clickable links.
- Customer notification through existing mobile or email registered with the BSFI whenever there is a request to change a customer's mobile number, email address, or account credentials.
- After the conduct of a thorough risk analysis and assessment, the implementation of the following controls:

    1. Mandatory fund transfer transaction notification to customers through SMS and/or email for transactions exceeding a predefined amount;
    2. Holding period or delay before activation of a new soft token on a mobile device; and
    3. Cooling-off period before the implementation of requests for key account changes such as those for the mobile number and email address

- Personalized SMS/Email OTP messages for device registration, fund transfer, and profile update, among others.

- Restriction to any BSFI officer or representative from manually obtaining or inquiring about critical authentication information such as customer password and/or one-time password/pin (PIN).

- Creation of dedicated and well-resourced customer assistance teams that deal with feedback on potential fraud cases on a priority basis.

- Conduct of regular customer education campaigns against online scam and phishing schemes with mechanisms to monitor their effectiveness and relevance.

- Adoption of strong fraud surveillance mechanisms to ensure prompt responses in dealing with the growing threat of online scams.

Application Programming Interface (API) Security Control Recommendations

Memorandum No. M-2022-016 recommends good practices for API management.

Memorandum No. M-2022-016 dated 22 March 2022

BSFIs are strongly advised to implement the following good practices for API management to aid in strengthening controls on API and interconnections:

- Ensure strong authentication and authorization mechanisms through in-depth evaluation of API architecture and security standards.
- Encrypt sensitive API payload data using industry-accepted encryption standards and versions.
- Ensure that only necessary data/information are contained in API responses.
- Perform validation, filtering, and sanitization of all client-provided data and other data originating from integrated and partner systems.
- Ensure that system and audit logs capture failed attempts, denied access, input validation failures, or any failures in security policy checks.
- Regularly update API inventory, purpose, and documentation to appropriately manage deprecated API versions and unintentional endpoint exposure.
- Conduct regular assessments, hardening, and patching of all API servers.
- Conduct regular security tests using API and business logic exploits such as but not limited to SQL injection, replay attacks, and logic bypass.
- Enforce thresholds and rate-limiting API calls to prevent distributed denial-of-service (DDoS) attacks.

Reminder to Verify the Authenticity of Electronically Issued Bangko Sentral ng Pilipinas (BSP) Documents for Foreign Exchange (FX) Transactions under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended

Memorandum No. M-2022-017 reminds AABs and AAB forex corporations to verify with the BSP the authenticity of electronic documents relative to FX sales.

Memorandum No. M-2022-017 dated 25 March 2022

All AABs/AAB forex corporations are hereby reminded to verify with the BSP-International Operations Department (IOD) via electronic mail the authenticity of the copy of the electronically issued document sent by the FX purchaser prior to FX sale, indicating therein the BSRD No./Reference No., date issued, borrower/investor, creditor/investee, and amount/shares registered/approved (as applicable).

Guidelines on the Submission of the Comprehensive Credit and Equity Exposures (COCREE) Report through the BSP Financial Institution (FI) Portal

Memorandum No. M-2022-018 provides guidelines on the submission of the COCREE Report through the FI Portal.

Memorandum No. M-2022-018 dated 28 March 2022

The following guidelines shall be observed for the submission of the COCREE Report through the Financial Institution (FI) Portal:

- Effective immediately, all COCREE Reports, whether for purposes of pilot testing or upon live implementation, shall only be submitted through the BSP Financial Institution (FI) Portal. The FI Portal can be accessed at https://fiportal.bsp.gov.ph.
- Pilot testing shall continue up to May 2022 while the live implementation beginning with reporting period 31 March 2022 shall be on 6 June 2022.
- The COCREE Report shall be encrypted when submitting to the BSP. To facilitate the encryption process, the accomplished Encryption Management Form in PDF as duly signed by the authorized official of the BSP-Supervised Financial Institution (BSFI) shall be emailed to cocree@bsp.gov.ph, following the prescribed e-mail subject format of [COCREE-EMF] .
- Guidelines on the registration of authorized officers of the BSFI allowed to access the FI Portal shall continue to be observed. Such authorized officers allowed to access the FI Portal need not be the same representatives designated in the EMF referred in item no. 3. Discretion is accorded to the BSFI to duly designate the responsible officers.

Re-extension of the Waiver of Fees on fund transfers through the PhilPaSS

Memorandum No. M-2022-019 extends the waiver of fees on fund transfers through PhilPaSS.

Memorandum No. M-2022-019 dated 30 March 2022

Until the last business day of December 2022, the waiver of fees on fund transfers which are settled through the Philippine Payment and Settlement System Plus is extended. The BSP enjoins the participants to extend the benefits of this relief measure to the financial consumers by ensuring that the fees for electronic payments services, such as InstaPay, PESONet, and QRPh, are reasonable.

Extension of Temporary Measures Implemented in the Bangko Sentral ng Pilipinas' Rediscounting Facility

Memorandum No. M-2022-02 extends temporary measures implemented in BSP's rediscounting facility.

Memorandum No. M-2022-02 dated 31 March 2022

The Monetary Board approved the final extension of the temporary measures implemented in the BSP rediscounting facility until 30 June 2022, as follows:

- Reduction of the term spread on Peso rediscounting loans to zero, thereby equating the Peso rediscount rate to the BSP's Overnight Lending Rate, regardless of maturity (i.e., 1 to 180 days); and
- Reduction of the term spread on rediscounting loans under the Exporters' Dollar and Yen Rediscount Facility (EDYRF), thereby reducing the applicable United States Dollar (USD) and Japanese Yen (JPY) rediscount rates to the 90-day London Interbank Offered Rates, or in their absence, an applicable benchmark rate, plus risk premium, regardless of maturity (i.e., 1 to 360 days).

As of 25 March 2022, the BSP observed that banks have more than adequate liquidity to meet their requirements given that there have been no availments of the rediscounting facility. The BSP will ensure that its policy instruments remain appropriately calibrated to ensure sustainable and non-inflationary economic growth, in keeping with our price and financial stability mandates.

Bureau of Customs

Rules and Regulations in the Implementation of the ATA System in the Philippines

CAO No. 02-2022 implements the ATA Carnet System in the Philippines in accordance with the 1990 WCO Convention on Temporary Admission (Istanbul Convention).

CAO No. 02-2022 dated 18 March 2022

- This CAO covers the importation or exportation of conditionally duty and tax-free goods which are included in the Annexes to the Istanbul Convention and acceded to by the Philippines using ATA Carnets.
- ATA Carnet refers to the Temporary Admission Papers used for temporary admission of goods, excluding means of transport. It also refers to a system allowing the free movement of goods across frontiers and their temporary admission into a customs territory with relief from duties and taxes.
- **Temporary Admission** refers to a customs procedure under which certain goods (including means of transport) can be brought into a customs territory conditionally relieved from payment of import duties and taxes and without application of import prohibitions or restrictions of economic character.
- The date of implementation of the ATA Carnet System is **17 April 2022**, subject to full compliance by the National Issuing and Guaranteeing Association (NIGA) of its duties and responsibilities under the Istanbul Convention.

    1. Territorial application of the ATA Carnets shall be the territory of the Philippines.
    2. ATA Carnets are not accepted for:
        - Postal traffic; and
        - Customs transit.
    3. ATA Carnets are accepted for hand-carried goods and unaccompanied goods.
    4. Replacement Carnets will be accepted in accordance with Article 14 in Annex A of the Istanbul Convention.
    5. All customs offices are authorized to handle ATA Carnets during operation hours.
    6. The BOC shall impose regularization fees under certain conditions.

- The BOC shall appoint only one NIGA to act as guarantor and issue the ATA Carnet.

    1. The NIGA should be affiliated to an International Organization who administers the Guaranteeing Chain.
    2. The NIGA shall not issue an ATA Carnet with a validity period of more than 1 year from the date of issuance.

3. The particulars of an ATA Carnet inserted by the NIGA may only be altered with its approval.

4. Once an ATA Carnet has been issued, no extra item shall be added to the list of goods enumerated on the reverse of the front cover of the carnet, or any continuation sheets appended thereto (General List).

- The period fixed for the re-exportation of goods (including means of transport) imported under cover of ATA Carnet shall not in any case exceed the period of validity of those papers.

- The NIGA shall undertake to pay to the BOC the amount of the import duties and taxes and any other sums, excluding additional security required by other government regulatory agencies, payable in the event of non-compliance with the conditions of Temporary Admission, in respect of goods (including means of transport) imported into the country using an ATA Carnet issued by a corresponding issuing association. The NIGA shall be liable jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums.

- The liability of the NIGA shall not exceed the amount of the import duties and taxes by more than 10%.

- The NIGA shall have a period of 6 months from the date of the claim made by the BOC for the sums referred in this CAO in which to furnish proof of re-exportation. If such proof is not furnished within the time allowed, the NIGA shall pay such sums. The payment shall be regarded as final after a period of 3 months from the date of the payment.

- Evidence of re-exportation of goods (including means of transport) imported using ATA Carnet shall be provided by the re-exportation counterfoil completed and stamped by an authorized BOC Customs officer.

- When the BOC has unconditionally discharged ATA Carnet in respect of certain goods (including means of transport), it can no longer claim from the NIGA payment of the sums in respect of these goods (including means of transport). A claim may nevertheless still be made against the NIGA if it is subsequently discovered that the discharge of the papers was obtained improperly or fraudulently, or that there had been a breach of the conditions of Temporary Admission.

- In case of the destruction, loss, or theft of the ATA Carnet while the goods (including means of transport) to which they refer are in the country, the BOC shall, at the request of the NIGA and subject to such conditions as the BOC may prescribe, accept replacement papers, the validity of which expires on the same date as that of the original ATA Carnet which they replace.

- Importation of goods enumerated under this CAO shall be granted Temporary Admission subject to the following conditions:

    1. The goods (including means of transport) must be imported for a specific purpose;

    2. The goods must be intended for re-exportation within the minimum period specified under the Istanbul Convention; and

    3. The goods shall not undergo any change except normal depreciation due to the use made of them.

- The BOC shall accept, in lieu of the Single Administrative Document or Informal Declaration and Entry (BOC Form No. 177), a validly issued ATA Carnet as a Goods Declaration for goods temporarily imported into the country and covered under this CAO.

- Where it is expected that the Temporary Admission operation will exceed the validity of the ATA Carnet because of the inability of the holder to re-export the goods within such period, the association which issued the papers may issue replacement papers.

- In case the goods cannot be re-exported as a result of a seizure, other than a seizure made at the suit of a private person, the requirement of re-exportation shall be suspended.

- In the event of fraud, contravention or abuse, the BOC shall, notwithstanding the provisions of this CAO, be free to take proceedings against persons using the ATA Carnet, for the recovery of the import duties and taxes and other sums payable, and also for the imposition of any penalties to which such persons have rendered themselves liable. The NIGA shall assist the BOC.

- The ATA Carnet or parts thereof which have been issued or are intended to be issued in the Philippines, into which they are imported, and which are sent to the NIGA by a guaranteeing association, an international organization, or customs authorities of another contracting party, shall be admitted free of import duties and taxes, and free of any import prohibitions or restrictions. Corresponding facilities shall be granted at exportation.

- The following goods which are otherwise covered by the Istanbul Convention are **not accepted** by the Philippines:

    1. ATA Carnet for postal traffic;
    2. Packing and Articles (including vehicles) which, by nature, are unsuitable for any purpose other than advertising of specific articles or publicity for a specific purpose;
    3. While scientific and pedagogic material was accepted, submission of customs documents shall be required;
    4. Tourist publicity materials;
    5. Goods imported as frontier traffic;
    6. Means of transport; and
    7. Animals for transhumance or grazing or for performance of work or transport.

- In general, the following goods are **eligible** for Temporary Admission:

    1. Goods for display or use at exhibitions, fairs, meetings or similar events;
    2. Professional equipment;
    3. Containers, pallets, packings, samples and other goods imported in connection with a commercial operation;
    4. Goods imported in connection with a manufacturing operation;
    5. Goods imported for educational, scientific or cultural purposes;
    6. Travelers' personal effects and goods imported for sports purposes;
    7. Goods imported for humanitarian purposes; and
    8. Animals.

- Temporary Admission is terminated under the following circumstances:

    1. Re-exportation;
    2. Goods are converted for use by the locator in a freezone or free port;
    3. Goods are cleared for consumption;
    4. Goods (including means of transport) have been seriously damaged by accident or force majeure; and
    5. At the request of the person concerned in accordance with the prescribed guidelines, rules and regulations.

(Editor's Note: ATA Carnet System in the Philippines took effect on 17 April 2022, 3 months after the date of deposit of the Instrument of Accession in Belgium, i.e., 17 January 2022)

Revised Guidelines for the Accreditation of Importers and Custom Brokers (Addendum to CMO No. 31-2019 Entitled Amendment to CMO No. 05-2018)

CMO No. 08-2022 is an addendum to CMO No. 31-2019 Entitled Amendment to CMO No. 05-2018, which is the Revised Guidelines for Accreditation of Importers and Custom Brokers.

CMO No. 08-2022 dated 18 March 2022

- The CMO provides the documentary requirements for the accreditation of importers and custom brokers.
- For a **new importer**, the following documents must be submitted:

    1. Duly notarized accomplished Application Form and signed by owner (for Sole Proprietorship), Responsible Officer (for Corporation), Chairman (for Cooperative) and authorized partner (for Partnership);

    2. Bureau of Customs Official Receipt (BCOR) evidencing payment of processing fee (Php 1,000);

    3. Corporate Secretary Certificate (Corporation)/ Affidavit (Sole Proprietorship)/ Partnership Resolution (Partnership)/ BOD Resolution (Cooperative) designating its authorized signatories in the import entries;

    4. 2 valid government issued IDs (with picture) of Applicant, President and Responsible Officers (i.e., passport, UMID, SSS ID, Driver's License, Alien Certificate of Registration and Alien Employment Permit for aliens);

    5. NBI Clearance of Applicant (issued within 3 months prior to the application)

    6. Photocopy of DTI Registration or SEC Registration/Articles of Partnership and Latest General Information Sheet, or Cooperative Development Authority Registration and latest Cooperative Annual Progress Report, whichever is applicable;

    7. Personal Profile of Applicant, President and Responsible Officers;

    8. Company Profile with GEOTAGGED PHOTOS of the office with proper and permanent signage and GEOTAGGED PHOTOS of warehouse/storage area;

        ***Note: Geotagged photos** are images that have undergone the process of adding geographical information to various media in the form of metadata. The metadate usually consists of coordinates like latitude and longitude, but may even include bearing, altitude and distance, and place names (CMO No. 37-2021)*

9. Proof of Lawful Occupancy of Office Address and Warehouse (i.e., Update Lease Contract under the name of the Corporation or Proprietor, Affidavit of Consent from the owner of the Title of the Property under his/her name in case the property is used for free, Certification from the Lessor or Owner allowing the sharing of office in case of Sublease);

10. Printed CPRS of the Company and updated notification of "STORED" status;

11. BIR Certificate of Registration (Form No. 2303);

12. Income Tax Returns (ITR) for the past 3 years duly received by the BIR, if applicable;

13. Valid Mayor's Permit as certified by the Bureau of Permits and Licensing Office;

14. Proof of Financial Capacity to Import Goods (Bank Certificate or other forms of financial certification) (Top 1000 Taxpayers and under SGL companies are exempted); and

15. Endorsement from the District Collector, if applicable.

- The following documents must be submitted for the **renewal of an importer's application**:

  1. Duly accomplished and notarized Application Form for Renewal;
  2. Updated General Information Sheet (Corporation)/DTI (Sole Proprietor)/ Articles of Partnership/Certificate of Compliance (Cooperative);
  3. Bureau of Customs Official Receipt (BCOR) evidencing payment of the processing fee (Php 1,000.00)
  4. If there are updates/changes in Company Information, necessary supporting documents must be submitted;
  5. If there is no change in material information previously declared and submitted, a duly accomplished and notarized Affidavit of No Change in Company Information (i.e., Business Name, Business Ownership, Office Address, Warehouse/Storage address, Responsible Officers, Line of Business, Contact Numbers, Email Address, Importable Items, and Designated Signatories in the Import Entry) using prescribed form (Annex A);
  6. Updated Printed CPRS of the company and updated notification of the "STORED" status;
  7. Latest Income Tax Return (ITR);
  8. Valid Mayor's Permit (certified true copy of the BPLO);
  9. Proof of Financial Capacity to import goods (Bank Certificate or other forms of financial certification) (Top 1000 Taxpayers and under SGL Companies are exempted); and
  10. GEOTAGGED Photo of the Applicant's office address, and warehouse/ storage facility if applicable.

- The CMO took effect immediately.

(Editor's Note: CMO No. 08-22 was filed with the UP Law Center – Office of the National Administrative Register (ONAR) on 18 March 2022)

CMO No. 09-2022 supplements CMO No. 53-2010 and CMO No. 27-2009 in the PMS and implements CAO No. 01-2019 and CAO No. 09-2020 in relation to Section 427 of RA No. 10863, otherwise known as the CMTA.

Guidelines in the Implementation of the Liquidation and Billing System and Post-Entry Modification of SAD by the Liquidation and Billing Division (LBD) or Equivalent Unit

CMO No. 09-2022 dated 24 March 2022:

- The order covers Goods Declaration for Consumption lodged through the E2M customs system of the BOC.

    1. **Post Entry Modification of SAD (PMS)** - refers to a process used when it is necessary to change the data in the SAD where the shipment is already released from the BOC in order to reflect additional duties, taxes, and other charges to be paid by the importer as a result of PRA.

    2. **Post Release Adjustment (PRA)** - refers to the process in the liquidation of the goods declaration giving rise to the findings of discrepancies in the duties and taxes due to an adjustment in the insurance and freight charges, foreign exchange rates, changes on the classification of the goods, and other factors resulting in the re-appraisal of the goods.

- The following are the pre-requisites for the PMS of Goods Declaration for Consumption to be effected:

    1. The goods declaration was lodged, processed and finally assessed in the E2M customs system;
    2. The assessed duties and taxes were paid, and the goods were released from the BOC;
    3. The initiatory Notice of Discrepancy from the LBD is made within 15 days from the payment of duties and taxes after review and readjustment of the assessed duties, taxes, and other charges;
    4. The amount of deficiency in the duties, taxes, and other charges must be the amount reflected in the Notice of Deficiency or Final Demand Letter; and
    5. The importer has agreed to settle the amount due based on reconciliation of records and other documents with the LBD or equivalent unit.

- The following shall be exempted from the review of the LBD within 15 days from the payment of duties and taxes:

    1. Shipments subject to protest and dispute settlement resolution;
    2. Adjustments arising from statement of errors in conformity with Section 912 of the CMTA; or
    3. Goods declaration subject to audit by the Post Clearance Audit Group (PCAG).

- The original hard copies of the Goods Declaration and supporting documents shall be submitted to the Customer Care Center (CCC) within 48 hours from on-line filing of the Goods Declaration following the procedures under existing regulations.

- The Chief, LBD or duly authorized officer shall assign the Goods Declaration to assessors to conduct post validation, review of the correctness of value, classification, and computation of duties, taxes, and other charges. The assessor shall review the breakdown computation. If there is no discrepancy, he shall submit this to the LBD Chief. In case of discrepancy findings, the assessor can input the correct values.

- The LBD Chief shall review the computation for the additional fees done by the assessors and may revise it or assign it back to the assessor to recompute. If the computation is fully ascertained, the Chief, LBD shall create a **Notice of Discrepancy** which will contain the summary of fees to be paid with the name of the consignee. The initiatory Notice of Discrepancy shall be sent through registered mails or personal service.

- If the consignee did not answer after 15 days from receipt of the Notice of Discrepancy, the Chief, LBD shall issue a **Final Demand Letter** which shall contain a summary of the fees to be paid and the expected consequence if the demand remains unheeded. Failure to answer the Final Demand Letter shall result in the Goods Declaration to be tagged as "**Delinquent**".

- The importer shall answer the Notice of Discrepancy or Final Demand Letter by opening a new ticket in the Customer Care Portal System (CCPS) to communicate its answer or explanation, or its willingness to pay the additional duties, taxes, and other charges, as indicated in the Notice of Discrepancy/Final Demand Letter.

- The COO IV shall request the importer to submit additional documents to support its contention or in case of PMS, inform the importer that PMS shall be made of the goods declaration subject of the Notice of Discrepancy/ Final Demand Letter. If the justification or explanation is without merit, the importers shall be notified of the amount stated in the Notice of Discrepancy/ Final Demand Letter. The status of the Goods Declaration shall be tagged as "**Delinquent**" if the importer refuses to pay the amount and recommend further action to the District Collector to collect the same. On the other hand, if the importer settles the obligation, Goods Declarations shall be tagged as "**Paid**." If the consignee was able to justify the accuracy of the declaration submitted to the Assessment Division, it shall be tagged as "**Cancelled.**"

- Upon receipt of the letter from the importer indicating its willingness to pay the duties, taxes, and other charges, the LBD shall properly accomplish the Post Entry Modification Form (PEMF) for approval of the District Collector. After such approval, the assigned LBD Assessor shall perform the PMS to reflect the changes to be made.

- The LBD shall prepare the Order of Payment and forward the same to the importer through the CCPS. The importer settles the amount due immediately (i.e., Cash or Manager's Check) thru in-house bank using the E2M to reflect the payment in the system. Upon payment, the importer shall upload the copy of the BOC Official Receipt (BCOR) in the CCPS as proof of payment.

- The goods declaration is deemed liquidated, and LBD shall issue a corresponding Clearance Certificate which shall be transmitted to the importer concerned through the CCPS.

- CMO No. 09-22 took effect 5 days after the posting in the official website of the BOC.

(Editor's Note: CMO No. 09-22 was filed with the UP Law Center – ONAR on 28 March 2022.)

PEZA UPDATES

PEZA MC NO. 2022-018 contains denial by FIRB of the proposal of PEZA to implement a temporary measure under Rule 23 of CREATE ACT IRR relative to the end of WFH arrangement on 31 March 2022.

PEZA MC NO. 2022-018 dated 10 March 2022

Denial by the FIRB on the proposal of PEZA to implement a temporary measure under Rule 23 of the CREATE Act IRR. Relative to its letter to PEZA dated 7 March 2022, FIRB argued that the request is "not consistent with the economic strategy of the government of reopening the economy gradually and safely". Moreover, IT/BPO enterprises are reminded to comply with the existing provisions of FIRB Resolution No. 19-21 to avoid the imposition of penalties.

Accordingly, WFH Arrangement shall cease on 31 March 2022. Nevertheless, PEZA will file its reconsideration on the denial by the FIRB but this will not suspend the termination of the WFH Arrangement on the scheduled date.

All PEZA RBEs are directed to follow the stipulations in the circular to avoid any penalties from the FIRB.

SEC Notices

The SEC Notice dated 17 March 2022 informs all concerned on the system upgrade and implementation of new modules in the eSPARC.

SEC Notice dated 17 March 2022

New modules in the SEC eSPARC include:

- Facility for applicants to upload scanned copies of signed and authenticated/ notarized copies of registration documents prior to payment.
- Facility for applicants to upload scanned copies of proof of over-the-counter payments at Land Bank of the Philippines (LBP) or SEC Cashier at Baguio Extension Office and Bacolod Extension Office.
- Issuance of digital Certificate of Incorporation (COI) upon successful confirmation of payment.

All applications filed and pre-approved through the eSPARC Regular Processing will be notified to upload and submit scanned copies of signed and authenticated/ notarized copies of Articles of Incorporation or Partnership, By-Laws, and other registration documents starting 21 March 2022, except for partnerships, lending companies, financing companies and foreign corporations.

After review, the system will send an email notification for payment which can be made online through the Electronic System for Payment to SEC (eSPAYSEC) or over the counter at the SEC Cashier or selected LBP branches. Once confirmed, an email notification will be sent containing the link to download the digital COI and the link to continue the registration process with the Bureau of Internal Revenue, Social Security System, Pag-IBIG, PhilHealth and other government agencies via the Central Business Portal.

The original COI shall be released upon presentation and submission of the digital COI and any proof of payment of the required fees together with four (4) sets of the originally signed and notarized/authenticated/apostilled hard copies presented anytime within a period of **sixty (60) calendar days from the date stated in the digital COI**.

The new modules are applied only to SEC Regular Processing and that the processing of applications filed through SEC One-day Submission and E-registration of Companies (OneSEC) remains the same.

The SEC Notice dated 30 March 2022 requires the submission of reports through the eFAST.

SEC Notice dated 30 March 2022

Effective 1 April 2022, all corporations (stock and non-stock) shall be required to submit their annual reportorial requirements through eFAST, previously called the Online Submission Tool. Reports that are not yet available in the eFAST shall be submitted to ictdsubmission@sec.gov.ph.

Over-the-counter submission through appointment and through mail shall no longer be accommodated. All reports submitted online shall be accepted only upon approval of the enrollment in the eFAST.

The SEC Notice dated 7 April 2022 advises the public on the closure of SEC Satellite Offices within the National Capital Region until further notice.

SEC Notice dated 7 April 2022

All SEC Satellite Offices within the National Capital Region – located in Ali Mall Cubao, SM City North Edsa, Robinsons Galleria, SM Manila, and SM Mall of Asia – remain closed until further notice.

The SEC also continues to observe a "Zero Face-to-Face Transaction Policy" at its main office located within the PICC Complex in Pasay City, and former headquarters along EDSA in Mandaluyong City.

The Commission shall accept and process all applications for company registrations, submissions of reportorial requirements, and other transactions through its online portals, email, courier, and other remote means.

For queries and other concerns, the public may contact the concerned departments or offices at the phone numbers and email addresses provided in the SEC Contact Center posted at www.sec.gov.ph/contact-us/.

Court of Tax Appeals Cases

Assessment

Commissioner of Internal Revenue v. United Church of Christ in the Philippines
CTA EB Case No. 2346 (CTA Case No. 9134), promulgated 15 March 2022

To avail of the 10-year extraordinary period of assessment under Section 222(a) of the Tax Code as amended, the BIR should show that there is a finding of fraud, and the facts upon which the fraud is based is duly communicated to the taxpayer.

Facts:

On 14 April 2011, Company U filed its income tax return for taxable year 2010 with the BIR and amended it on 12 September 2011. On 4 December 2012, Company U received a Letter of Authority (LOA) dated 5 November 2012, authorizing a Revenue Officer to review its books and records for all internal revenue taxes for taxable year 2010.

On 7 November 2014, Company U received the Final Letter of Demand (FLD) with attached audit results, requiring it to pay deficiency income tax for taxable year 2010.

Due to the inaction of the BIR, Company U filed a Petition for Review before the CTA.

The BIR argues that the 10-year prescriptive period should be applied since Company U made it appear in its 2010 AITR that it is a tax-exempt institution by indicating on its return the phrase "TENTATIVE EXEMPT ORGANIZATION," when it is not a tax-exempt institution but subject to the 10% preferential tax rate. The intention to evade payment of tax due is apparent from the details of its return which indicated the amount of "Php.00."

The BIR further argued that even assuming the return was not fraudulent, it argued that the return was false since there was deviation from the truth when Company U was declared as an exempt entity in its ITR when it was not, as clearly shown in its Certificate of Registration.

Issue:

Has the period to assess for deficiency taxes against Company U already prescribed?

Ruling:

Yes, the period to assess has prescribed.

The three-year prescriptive period for assessment provided in Section 203 of the Tax Code applies, which states that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and that in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

In the instant case, Company U filed its amended income tax return for taxable year 2010 on 12 September 2011. Counting the three-year prescriptive period from 12 September 2011, the BIR had until 12 September 2014 to assess deficiency income taxes for taxable year 2010. The FLD/FAN was issued only on 15 October 2014 and received by Company U on 7 November 2014. Clearly then, the assessment was issued beyond the three-year prescriptive period.

To avail of the 10-year period of assessment under Section 222(a), the BIR should show that the facts upon which the fraud is based is communicated to the taxpayer. Fraud is never presumed; it must be proved by clear and convincing evidence. Nothing in the FLD/FAN would give notice that Company U is being assessed under the 10-year prescriptive period due to findings of fraud.

Lastly, the very meaning of a deficiency assessment is that there was an error or omission on the part of the taxpayer in the preparation of its return. But each and every error does not mean fraud and should not result in the operation of the 10-year prescriptive period.

City of Makati and Jesusa E. Cuneta in her capacity as incumbent Makati City Treasurer vs. Casop Atlas, Corp.
CTA EB No. 2328, promulgated 30 March 2022

A holding company does not become a non-bank financial intermediary by its mere receipt of dividends or interest income from investments. As discussed, there is no indication in this case that the holding company is doing business as a bank or other financial institution. Consequently, it cannot be treated as such and be assessed for LBT on its dividends and interest income derived from passive investments.

Facts:

Pursuant to Letter of Authority, City of Makati's revenue officer Person M examined Company C's books of accounts and other accounting records for taxable years 2011 to 2012 in accordance with Section 171 of the Local Government Code.

Company C received a copy of the Notice of Assessment, demanding payment of PhP6,597,600.25, representing deficiency LBT, fees, and charges for taxable period 2011 to 2012, inclusive of interest and penalties. The assessment was based on the "Gross Sales" figures of PhP2,101,274,606.00 from Company C's Audited Financial Statements which had been submitted by Company C to the City of Makati. The PhP2,101,274,606.00 "Gross Sales" consisted of: (1) gain of Php2,043,686,400.00 from Company C's sale of its shares of stock in Company CC to Company A; and (2) foreign exchange gain in the amount of PhP57,505,226.00.

Company C filed with the City of Makati a written protest contesting the assessment and requesting its cancellation, in accordance with Section 195 of the Local Government Code (LGC). Company C argued that (a) it is not a holding company as defined in the Revised Makati Revenue Code (RMRC); (b) that the LGC prohibits local governments from imposing income tax except when imposed on banks and other financial institutions; and (c) that it is neither a bank nor a financial institution.

City of Makati argued that Company C classified itself as a holding company in its business permits and license. Allegedly, as a holding company, Company C was properly taxed under the RMRC. On the other hand, Company C said that its declaration in its application for business permit should not be binding since the RMRC, which governs taxation of persons and businesses in the City of Makati, provides the criteria for whether a company is a holding company for LBT purposes.

Issue:

Is the assessment against Company C valid?

Ruling:

No. The claim of City of Makati that since Company C admitted under oath that it is a "holding company" when it sought its Business Permit and License, it is bound to pay the LBT for a "holding company" due under the RMRC is wrong.

Before a company can be classified as a "holding company" under the RMRC, two requisites must first be complied with. First, the company should be a controlling company that has one or more subsidiaries. Second, the company should confine its activities primarily to the management of its subsidiaries.

As Company C only owned 7.73% of the total outstanding shares of Company CC prior to the same being sold to Company A, the resulting capital gains of which is the subject of the present LBT assessment, Company C is not a controlling company which manages a subsidiary. Company C is a mere minority shareholder in Company CC without sufficient power to manage and control the same. Thus, despite the admissions that Company C made in its application for Business Permit and License before the City of Makati that it is a holding company, Company C still does not qualify as a "holding company" as defined under the RMRC.

Even assuming that Company C qualifies within the definition of a "holding company" under the RMRC, it still cannot be subjected to LBT on its capital gains from the sale of its shares of stock in CCC and on its foreign exchange gains. Such assessment is invalid.

LBT are taxes levied for the privilege of doing business within the territorial jurisdiction of an LGU. It can only be imposed on the gross receipts derived by a taxpayer from the pursuit of its primary business activity.

As a "holding company," Company C's main business is simply to hold shares to influence the policies of its subsidiaries. It is neither an active investor nor a dealer in securities. Any income or gain that it derives from the buying and selling of its securities are merely incidental to its main business. Consequently, it is not subject to LBT. Accordingly, the LBT assessment on the capital gains earned by Company C on the sale of its shares of stock in CCC and its foreign exchange gains is invalid.

A holding company does not become a non-bank financial intermediary by its mere receipt of dividends or interest income from investments. As discussed, there is no indication in this case that the holding company is doing business as a bank or other financial institution. Consequently, it cannot be treated as such and be assessed for LBT on its dividends and interest income derived from passive investments.

Refund/Issuance of Tax Credit

Commissioner of Internal Revenue v. S & Woo Construction Philippines, Inc.
CTA Case No. 2420 promulgated 22 March 2022

Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.

Facts:

Company A filed with the BIR an application requesting for the refund and/or issuance of a tax credit certificate, representing its alleged excess/unutilized input VAT for the first quarter of CY 2016. Subsequently, Company A filed with the BIR another application requesting for the refund and/or issuance of a tax credit certificate, representing its alleged excess/unutilized input VAT for the fourth quarter of CY 2015. Company A then filed the instant Petition for Review. CIR filed his Answer, interposing the defense, among others, that in order to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production.

Issue:

Is the claim for refund valid?

Ruling:

Yes. A textual analysis of Section 112(A) of the Tax Code, as amended, readily debunks the CIR's position. Nowhere in the said provision does it require that the input VAT subject of a claim for refund be directly attributable to zero-rated sales. The law merely states that the creditable input VAT should be attributable to zero-rated or effectively zero-rated sales. The use of the phrase "directly attributable" strictly relates to a situation involving taxpayers having both zero-rated or effectively zero-rated sale as well as taxable or exempt sale of goods, properties or services and the creditable input VAT cannot be directly attributed to any of such transactions. In such cases, the input taxes shall be allocated proportionately on the basis of the volume of sales.

SGV | Building a better working world

SGV is the largest professional services firm in the Philippines. In everything we do, we nurture leaders and enable businesses for a better Philippines. This Purpose is our aspirational reason for being that ignites positive change and inclusive growth.

Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. Working across assurance, tax, strategy and transactions, and consulting services, SGV teams ask better questions to find new answers for the complex issues facing our world today.

SGV & Co. maintains offices in Makati, Clark, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Allenierey Allan V. Exclamador via e-mail at allenierey.v.exclamador@ph.ey.com or at telephone number (632) 8894-8398.

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.