Tax Bulletin

April 2023

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BIR Administrative Requirements

RMO No. 10-2023 prescribes the supplemental guidelines on the application for eATRIG by importers of sweetened beverages through the Philippine NSW System in relation to RMO No. 14-2014.

RMO No. 10-2023 dated 27 February 2023

- RMO No. 10-2023 implements the use of electronic system thru the linkage with the Philippine NSW (https://www.nsw.gov.ph) and provide the revised procedures on the filing of applications, processing of such applications and issuances of eATRIGs.
- The RMO likewise mentions that all eATRIG shall be filed through NSW and details/information pertaining to the applications shall be lodged using the Other Special Law or International Agreement (OSLA) field.
- The RMO requires certain documents to be submitted to Excise LT Regulatory Division (Room 102 of the BIR National Office Building).
- Once the eATRIG is approved, it can be accessed through the system by authorized users and importers.

RMC No. 31-2023 further clarifies imported goods that will no longer require the issuance of ATRIG by the BIR prior to release by the BOC.

RMC NO. 31-2023 dated 16 March 2023

- RMC No. 31-2023 clarifies that ATRIG shall no longer be secured from the BIR for the release of imported ingredients necessary for the manufacture of fertilizers and finished feeds.
- The certificate secured from the Bureau of Animal Industry (BAI) or from other concerned regulatory government agency, which is competent to certify that the ingredients being imported are "not fit for human consumption or the goods being imported cannot be used for the production of food for human consumption", shall be directly presented to the BOC to effect the release of the imported goods.
- The certifying government agencies are held responsible to conduct their own validation of the declared goods to be released from the BOC and to submit to the BIR the list of importers that secured the said certification for tax audit purposes.

RMC No. 32-2023 provides for the guidelines in the filing of AITR for CY 2022, as well as the payment of corresponding taxes due thereon, until 17 April 2023.

RMC No. 32-2023 dated 3 March 2023

Electronic Filing and Payment System (EFPS)

- Taxpayers may file the AITR for CY 2022 and pay the taxes due to any Authorized Agent Banks (AABs) and Revenue Collection Officers (RCOs), notwithstanding the Revenue District Office (RDO) jurisdiction, without imposition of penalties for wrong venue filing.
- The taxpayers mandated to use the Electronic Filing and Payment System (eFPS) shall file the AITR electronically and pay the taxes due through the eFPS-AABs where they are enrolled. However, the said taxpayers shall use the eBIRForms in the filing of the AITR in cases that filing cannot be made through the eFPS due to certain reasons as enumerated in the RMC.
- The tax returns filed through the eBIRForms shall no longer be required to be filed through eFPS.

eBIR Forms

- For electronically filed returns through the eBIRForms, payment of the taxes due may be made through any AABs or to any RCOs of the RDO through the Electronic Payment (ePayment) Gateways.

- "No Payment AITRs" shall be filed electronically through the eBIRForms. However, certain taxpayers may manually file their "No Payment AITRs" with the RDO in three copies using the electronic or computer-generated returns or photocopied returns in its original format and in Legal/Folio size bond paper.

Manual Filing

- Taxpayers who will manually file AITR and pay taxes thereon through RCOs of the RDO may pay in cash up to Php20,000.00 only or in check regardless of the amount. Provided that, the check shall be made payable to "Bureau of Internal Revenue."

Attachments to the AITR

- **Without Attachment** – Printed copy of the e-filed tax returns need not be submitted to the office under Large Taxpayer Service (LTS)/RDO. The generated Filing Reference Number (FRN) from eFPS or the email confirmation from eBIRForms will serve as the proof of filing of returns.

- **With Attachments** – For electronically filed AITRs, taxpayers may submit their attachments to the Bureau's Electronic Audited Financial Statement (eAFS) System or the LTS/RDO where the taxpayer is registered within 15 days from the date of the tax filing deadline. Only the attachments will be stamped received by the LTS/RDO, the printed copy of AITR need not be stamped "Received."

RMC No. 33-2023 clarifies the issuance and enforcement of SDT.

RMC No. 33-2023 dated 17 March 2023

- The BIR clarified that the issuance and enforcement of SDT as prescribed under RMO No. 10-2013, as amended by RMO No. 8-2014, shall also apply in the monitoring and verification of taxpayers' compliance with relevant tax laws, as authorized under Section 5 of the Tax Code, as amended.

- The guidelines and procedures set forth in RMO No. 10-2013, as amended, shall also apply in the examination of any book, paper, record, or other data which may be relevant or material in evaluating tax compliance of taxpayers who is liable for tax or required to file a tax return.

- The following guidelines may be utilized by Head of the Revenue District Office/ Large Taxpayers Audit Division/Large Taxpayers District Office/National Investigation Division/Regional Investigation Division concerned or any other officers duly delegated by the Commissioner to aid in monitoring and verifying the tax compliance of taxpayers:

    1. For registered taxpayers, their tax compliance may be evaluated through the examination of the following documents, to wit:

        - Payment of annual registration fee (ARF)
        - Issuance of sales invoices or official receipts
        - Keeping of books of accounts
        - Timely filing of requisite tax returns and the payment of taxes due thereon

- Withholding of tax on income payments subject to withholding and the timely remittance of tax withheld
- Filing of required information returns, such as the summary list of sales/purchases (SLSP), annual alphalist of payees, etc. on or before the due dates prescribed by law or existing revenue issuances, whenever applicable
- Other data which may be relevant or material in making such inquiry

2. For unregistered taxpayers, the concerned office shall notify them to register and pay voluntarily any unpaid taxes due on past transactions. In case of failure to register and/or pay the tax obligations, the concerned office shall endorse the case to the Regional Investigation Division or National Investigation Division for the conduct of preliminary investigation in preparation for the filing of a Run After Tax Evaders (RATE) case and/or for other tax enforcement actions, as may be warranted.

- The procedures for the issuance and enforcement of SDTs must still be strictly observed by all concerned in compelling taxpayers to submit or otherwise present the required books, records, and documents.

RMC No. 35-2023 clarifies the application of the 18-month transitory period in RA No. 11900 or the "Vaporized Nicotine and Non-Nicotine Product Regulation Act" as reiterated in its IRR and RR No. 14-2022.

RMC No. 35-2023 dated 13 March 2023

- It clarifies that the 18-month transitory period applies only to the requirements of Product Standards and Product Registration. The rest of the executory provisions of the law, or the other requirements, are effective immediately.

- Effectively, the requirements set forth in RA No. 11900, its IRR and RR No. 14-2022 other than Product Standards and Product Registration shall be effective immediately, are as follows:

1. Registration with the BIR of the business as manufacturer or importer of vaporized nicotine and non-nicotine products and novel tobacco products, including registration of online sellers or distributors;

2. Registration with the BIR of brand and variants of vaporized nicotine and non-nicotine products and novel tobacco products;

3. E-marketplaces, e-commerce platforms, selling facilities embedded in social media websites/applications, and/or other similar platforms shall only allow DTI and BIR duly registered distributors, merchants or retailers of vaporized nicotine and non-nicotine products, their devices, and novel tobacco products to sell in their website or platform;

4. For duly registered distributors, merchants and retailers of vaporized nicotine and non-nicotine products, their devices, and novel tobacco products selling on their own websites and/or selling platforms, the required government certificates and approval shall be posted conspicuously at the landing page of their websites and/or selling platforms; and

5. Duly registered distributors, merchants or retailers of vaporized nicotine and non-nicotine products, their devices, and novel tobacco products shall conspicuously post in their brick-and-mortar stores the required government certificates and approvals of the products.

- Non-compliance with the requirements and the rest of the requirements in RA No. 11900, its IRR and RR No. 14-2022 shall warrant the imposition of corresponding penalties.

RMC No. 36-2023 announces the availability and implementation of registration-related online transactions, functions and features in the BIR ORUS starting 17 March 2023.

RMC No. 36-2023 dated 20 March 2023

- The following registration-related online transactions, functions and features are already available and implemented in the BIR ORUS starting 17 March 2023:

    1. Online Payment (e-Payment) of Annual Registration Fee (RF) for New Business Registrants
    2. Online Inquiry of RF Payment for BIR Internal Users
    3. Application for Cancellation of Permit to Use (PTU) Loose-leaf and Acknowledgement Certificate (AC) of Computerized Accounting System (CAS)
    4. Online Verification of Taxpayer Identification Number (TIN)
    5. BIR Registered Business Search Facility

- Taxpayers who already have an existing ORUS account may avail the additional online transactions, functions and features by logging-in to the system by accessing it through the BIR website (www.bir.gov.ph) under the eServices icon or thru https://orus.bir.gov.ph.

- Taxpayers who do not have an ORUS account and opted to use the said online registration facility of the BIR are required to enroll or create an account in ORUS following the guidelines prescribed under RMC No. 122-2022.

RMC No. 42-2023 publishes the full text of the 21 February 2023 Letter for inclusion of certain medicines to the published List of VAT-Exempt Medicines Under the CREATE Act.

RMC No. 42-2023 dated 4 April 2023

- The Letter (Annex A) from Dr. Samuel A. Zacate, Director General of the Food and Drug Administration (FDA), provides for the inclusion of certain medicines for cancer, diabetes, kidney disease, mental illness, and tuberculosis and correction for medicines for high cholesterol and hypertension to the published List of VAT-Exempt Medicines under RA No. 11534 or the CREATE Act.

- As clarified under Q&A No. 1 of RMC No. 99-2021, the effectivity of the VAT exemption of the covered medicines and medical devices under the CREATE Act shall be on the date of publication by the FDA of the updates to the said list.

RMC No. 43-2023 further clarifies certain policies on the filing of appeal against FDDA pursuant to RR No. 12-99, as amended.

RMC No. 43-2023 dated March 6, 2023

- In case of filing of an appeal against the FDDA, the taxpayer shall furnish a copy of the said appeal to the Chief of the Assessment Division for regional cases, or the concerned Head Revenue Executive Assistant, in the case of taxpayers under the jurisdiction of the Large Taxpayers Service or investigated by the National Investigation Division under the Enforcement and Advocacy Service, within five days from date of filing with the Office of the Commissioner of Internal Revenue or the Court of Tax Appeals.

Banks and Other Financial Institutions

Rules of Procedure for the Consumer Assistance Mechanism, Mediation and Adjudication of Cases in the BSP

BSP Circular No. 1169 provides the rules of procedure for consumer assistance.

BSP Circular No. 1169 dated 24 March 2023

- The Monetary Board approved the Rules of Procedure for the Consumer Assistance Mechanism (CAM), Mediation and Adjudication of Cases in the BSP pursuant to Section 6(E) and (F) of Republic Act No. 11765 or the "Financial Products and Services Consumer Protection Act" (FCPA).

- Consumer Assistance Mechanism (CAM)

    1. **Bangko Sentral-Supervised Institution (BSI's) Financial Consumer Protection Assistance Mechanism (FCPAM)** is a first-level recourse mechanism for financial consumers who are dissatisfied with a financial product or service. Complainants are required to report their concern to the BSI involved through such BSI's FCPAM.

    2. **BSP-CAM** is a second-level recourse mechanism for financial consumers who have reported their concerns to the BSI involved, through such BSI's FCPAM, and are not satisfied with how the BSI handled their concerns on the latter's conduct, products and services, or whose concerns were not acted upon by the BSI's FCPAM within a reasonable period. The BSP-CAM is primarily facilitative in nature and is aimed at clarifying financial consumer issues by allowing the parties to communicate with each other through the BSP.

    3. BSP-CAM is a condition precedent to both mediation and adjudication. The Complainant has the option to proceed either to mediation or adjudication after resort to BSP-CAM and subject to compliance with the requirements of these Rules.

    4. CAM shall apply to concerns relating to financial products and services of BSIs and/or violations of the FCPA.

    5. Complaints filed with the BSP must contain Information and supporting documents showing that the Complainant has previously availed the BSI's FCPAM.

- BSP-CAM Process

    1. **Filing**. Financial consumers may avail of the BSP-CAM by submitting their complaint in the required format to the CPMCO either personally or through the BSP Online Buddy (BOB) Chatbot, postal mail, courier, electronic mail or through other electronic means. Financial consumers may also file their complaints with the nearest BSP Regional Offices or Branches, which will assist them in filing their complaints through the BSP-CAM.

    2. **Acknowledgement and Directive to Answer**. The BSP shall acknowledge the complaints from financial consumers or referred to it.

        - In the addition, BSP's acknowledgement may include a request for additional details or relevant documents to support the claim.

- The BSI shall provide its Answer directly to the Complainant within 15 days from receipt of the directive issued by the CPMCO. The BSI shall simultaneously furnish the Consumer Protection and Market Conduct Office (CPMO) a copy of the Answer addressing the concerns of the Complainant within the said period.

3. **Reply and Rejoinder**. Within 30 days from the date of the receipt of the BSI's Answer, the Complaint may file a Reply with the CPMO.

    - Upon receipt of the Reply, CPMCO shall direct the BSI to provide its rejoinder to the Complainant withing 10 days from receipt of the CPMCO's directive. The BSI shall simultaneously furnish CPMCO with a copy of its Rejoinder.

    - The Complainant may file a second Reply within 10 days from the date of the receipt of the BSI's Rejoinder to the first Reply.

4. **Escalation to Mediation and/or Adjudication**. CPMCO shall offer the conduct of mediation to Complainant and request the Complainant's consent to the same.

    - The Complainant has five days within which to give consent. Should the Complainant consent to the conduct of mediation, CPMCO shall refer the matter to CCRO. In the absence of a response from the Complainant within said period, the BSP-CAM shall be terminated.

    - For money claims, CPMCO shall include in its final communication to the Complainant the requirements and applicable Rules for Adjudication.

5. **Withdrawal of the Complaint**. The CPMCO shall terminate the BSP-CAM upon receipt of the notice of voluntary withdrawal of the complaint from the Complainant or his duly authorized representative.

- **Mediation**

1. Mediation is an intervention by which the BSP, through its duly authorized mediation officers, facilitates communication and negotiation between the parties, and assists them in reaching a mutually acceptable settlement. It is voluntary in nature and a strictly confidential process. By voluntarily participating in the mediation proceedings, the parties have the intention of discussing their differences using a collaborative method and agree in good faith to fully cooperate in fair, sincere and meaningful settlement discussions.

2. Mediation shall apply to concerns relating to the financial products and services of BSIs and/or violations of the provisions of the FCPA.

3. Mediation may be commenced upon referral by the CPMCO of the financial consumer complaint to the CCRO or by initiation of the parties upon termination of the BSP-CAM.

4. The mediation period shall be for a period of 30 days, which period shall be reckoned from the date of the initial mediation conference.

5. Termination of mediation:

    - In a successful mediation, the parties shall execute a signed Settlement Agreement which should be attested by the Mediator, thereafter the Mediator shall issue a Notice of Termination of Mediation.

- In a failure of mediation (parties are unable to settle their dispute), the Mediator shall declare a failure of mediation and terminate the proceedings by issuing a Notice of Termination of Mediation.

- The failure of any of the parties to appear in two consecutive scheduled mediation sessions despite due notice and without any valid reason, shall be a ground for the termination of the mediation proceedings. The Mediator shall issue the corresponding Notice of Termination of Mediation.

6. The Settlement Agreement signed by the parties and attested by the Mediator shall be final and executory unless an action for nullification of the settlement has been filed before the proper court.

- **Adjudication**

1. The rules on adjudication shall govern the procedure in actions filed before the CCRO for financial consumer complaints arising from, or in connection with, financial transactions that are purely civil in nature, and the claim or relief prayed for is solely for payment or reimbursement of a sum of money not exceeding Php10,000,000 in total exclusive of legal interest, attorney's fees and costs of suit. Except as to the amount of actual claim, legal interest, attorney's fees and costs of suit, no other form of damages shall be recoverable.

    - Complaints where the claim or relief prayed for exceeds Php10,000,000 in total exclusive of legal interest, attorney's fees and costs of suit shall be dismissed unless the Complainant waives the principal claim exceeding Php10,000,000.

2. Complaints where BSI directors, trustees, officers, and employees are impleaded as party respondents shall be dismissed as far as the BSI directors, trustees, officers, and employees are concerned. In such cases, CCRO shall proceed to adjudicate the complaint against the Respondent BSI.

3. In cases falling under the concurrent jurisdiction of the BSP, Cooperative Development Authority (CDA), Insurance Commission (IC), and/or Securities and Exchange Commission (SEC), BSP shall dismiss the complaint if CDA, IC, or SEC has already acquired or assumed jurisdiction over the subject matter of the Formal Complaint. If in BSP's determination the financial product or service which is subject of the Formal Complaint is primarily or substantially regulated by another financial regulator, the BSP shall dismiss the Formal Complaint and refer the same to the financial regulator having jurisdiction over the financial product or service.

4. The proceedings before the BSP shall be summary and non-litigious in nature.

    - The technical rules of procedure obtaining in the courts of law shall not apply.

    - The Adjudicator may avail all reasonable means to ascertain the facts of the controversy. In the exercise of adjudicatory powers, the Adjudicator shall have the power to issue subpoena duces tecum and summon witnesses to appear In the proceedings and when appropriate, order the examination, search, seizure and production of all documents, books of accounts, and records, whether physical or digital, of any entity or person under investigation as may be necessary for the proper disposition of cases.

5. The Adjudicator shall render a decision within 60 days from the issuance of the order submitting the case for resolution.

- **Finality of the Decision or Order and Execution**

  1. A party may move for a reconsideration of a decision or order of the Adjudicator within 10 days from receipt thereof. A second motion for reconsideration shall not be allowed, and the filing thereof shall not toll the running of the period to flee the appropriate judicial remedy under the law.

     - A reconsideration may be based on any of the following grounds: (a) evidence is insufficient to justify the decision or final order, or (b) decision or final order is contrary to law.

  2. The decision shall be final and executory after the lapse of 10 days from receipt thereof by the parties unless a motion for reconsideration Is filed. The decision or resolution on the motion for reconsideration is not appealable to the Governor or to the Monetary Board.

  3. The Adjudicator shall issue a Writ of Execution directing the Sheriff to enforce the decision or order.

- The Rules shall take effect on 1 May 2023, and it shall apply to all complaints filed after its effectivity provided that the cause or causes of action subject of the complaint accrued after the effectivity of the FCPA.

Amendments to Section 921/921Q of the Manual of Regulations for Banks (MORB)/Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on Customer Due Diligence, including Guidelines on Electronic Know-Your-Customer

BSP Circular No. 1170 amends the rules on customer due diligence.

BSP Circular No. 1170 dated 30 March 2023

- The Monetary Board approved amendments on existing rules on how banks and non-banks conduct customer due diligence (CDD) including guidelines on electronic Know-Your-Customer (e-KYC) using digital identity (ID) system.

- The amendments include the following:

  1. A risk-based approach shall be undertaken in conducting CDD. A covered person shall maintain a system that will ensure the conduct of CDD. Where a covered person is unable to comply with the relevant CDD measures, considering risk-based approach, it shall (a) not open the account, commence business relations, or perform the transaction; or (b) terminate the business relationship; but in both cases, it shall consider filing a suspicious transaction report in relation to the customer.

  2. New individual customers should provide name and/or PhilSys Card Number (PCN) or the PhilSys Number (PSN) derivative as part of minimum information/information required for customer identification.

  3. Covered persons should adopt risk management measures (e.g., setting up transaction limit, monitoring of transactions) with respect to how the customer may use the business relationship prior to verification.

  4. Covered persons shall comply with the required digitization of customer records.

5. Covered persons may use different methods to conduct customer identification and verification, including e-KYC or the process of electronically verifying the credentials of a customer.

    - When employing e-KYC using digital ID system, the covered person should ensure that it is anchored on, among others, robust, effective, and reliable information and communication technology architecture. Where the tiering is based on, among others, levels of access and authentication assurance levels, it shall adopt a tiered or risk-based e-KYC policies and procedures.

    - A covered person may rely on another entity in the conduct of customer identification and verification, using a digital ID system. However, the relying covered person has ultimate responsibility for the customer identification/verification process, and effective authentication.

    - The covered person shall ensure that its conduct of e-KYC complies with relevant user consent and data sharing and protection/privacy laws, rules and regulations for data processing, storage and management.

    - Covered persons with existing e-KYC, using a digital ID system, at the time of the effectivity of this Circular are given one (1) year to comply with the prescribed e-KYC requirements. For covered persons without existing e-KYC and intend to adopt the same, they shall ensure strict compliance prior to implementation of the system.

Amendments to Foreign Exchange Regulations

BSP Circular No. 1171 amends the rules on forex regulations.

BSP Circular No. 1171 dated 29 March 2023

The Monetary Board approved the following amendments to the provisions of the Manual of Regulations on Foreign Exchange Transactions (FX Manual, issued under Circular No. 645 dated 13 February 2009, as amended):

- For BSP-issued documents in electronic form, AABs/AAB forex corps shall verify with the BSP, through the IOD, the authenticity of said documents submitted by the client prior to FX sale/deposit of funds to a peso deposit account of non-resident, as applicable.

- Applications for approval/registration of foreign currency loans/borrowings, inward investments and other FX transactions filed with the BSP-IOD shall be free of charge, unless otherwise indicated under the FX Manual.

- Applications for BSP approval/registration of loans shall be filed through the BSP's online system and shall be free of charge.

- Private sector foreign loans/borrowings that are not publicly guaranteed obtained without the requisite BSP approval may be registered with the BSP to allow servicing using FX resources of AABs/AAB forex corps.

- For conversion of registered foreign loans/borrowings to equity, the BSRD shall be surrendered to the BSP-IOD for purposes of registration of the investments as provided under Appendix 10.C.

- For new/additional investment/s of a non-resident investor, all applications for registration of inward investments (Annex W) under Section 36.1 shall be filed with the BSP within one year from applicable reckoning date under Appendix 10.A.

- Submission of reports to the appropriate BSP department shall be effected by sending these via electronic means. The date when the report was sent electronically shall be considered as the date of filing.

- Certain Appendices/Annexes to the FX Manual has been revised/deleted.

Single Reserve Week from 31 March 2023 to 13 April 2023 and the Corresponding Computation for the Single Reserve Week

BSP Memorandum No. M-2023-007 provides guidelines in computing the reserve requirement from 31 March to 13 April.

BSP Memorandum No. M-2023-007 dated 22 March 2023

- The BSP has issued guidelines in computing the reserve requirement for reference weeks 31 March 2023 to 6 April 2023 and 7 April 2023 to 13 April 2023.

- The following dates are proclaimed as regular holidays and considered as non-reserve days:

    1. 6 April 2023 – Maundy Thursday
    2. 7 April 2023 – Good Friday
    3. 10 April 2023 – (Monday nearest to 9 April 2023, Araw ng Kagitingan)

- The reserve position as computed at the close of business of 5 April 2023 is carried over up to 10 April 2023.

- The reserve weeks 31 March 2023 to 6 April 2023 and 7 April 2023 to 13 April 2023 shall be considered as a single reserve week for the purpose of determining "abuse" of the privilege of offsetting reserve deficiencies against excess reserve during that reserve week.

Collection of the Annual Supervision Fee (ASF) for the Year 2023 for Pawnshops and Money Service Businesses (MSBs)

BSP Memorandum No. M-2023-008 provides guidelines for the computation and collection of the 2023 annual supervision fee of pawnshops and MSBs.

BSP Memorandum No. M-2023-008 dated 20 March 2023

- The BSP issued the following guidelines for the computation and collection of the 2023 Annual Supervision Fee of Pawnshops and MSBs as follows:

    1. Pawnshops: The ASF is computed based on the number of Pawnshop offices as at the end of December of the immediately preceding year multiplied by Php500.00 in accordance with Section 702-P of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI)-P Regulations.

    2. MSBs: The ASF is computed based on the MSB type in accordance with the regulation on payment of annual service fee under Section 901-N of the MORNBFI-N Regulations. The MSB type as at the end of December of the immediately preceding year shall be used as basis for purposes of determine the amount of ASF.

    3. Pawnshops with MSB registration shall pay the ASF applicable for both pawnshop and MSB.

- The BSP's Department of Supervisory Analytics (DSA) shall send billing notices to all Pawnshops and MSBs for their ASF due for 2023.

Collection of the Annual Supervision Fee (ASF) for the Year 2023 for Banks and Non-Banks with Quasi-Banking Functions (NBQBs)

BSP Memorandum No. M-2023-009 provides guidelines for the computation and collection of the 2023 annual supervision fee of banks and non-bank quasi-banks.

BSP Memorandum No. M-2023-009 dated 24 March 2023

1. The BSP issued the following guidelines for the computation and collection of the 2023 Annual Supervision Fee of Banks and NBQBs as follows:

    1. The ASF is based on the Average Assessable Asset (AAA) of the preceding year multiplied by the applicable assessment rates approved by the Monetary Board as follows:

Type of Financial Institution	Applicable Rate
Universal/Commercial Banks	1/28 of 1%
Digital Banks	1/28 of 1%
Thrift Banks	1/28 of 1%
Rural/Cooperative Banks	1/40 of 1%
NBQBs	1/28 of 1%

    2. The AAA of the preceding year is derived from the reports submitted by the Bank/NBQB to the BSP in compliance with the standards and requirements prescribed under existing regulations.

    3. The 2023 ASF shall be reduced by deducing the average amount of basic deposit account (BDA) maintained by the bank in the preceding year from the Banks' AAA.

        - The average amount of BDA maintained in the preceding year will computed based on the bank's BDA balance as of quarter-end reporting period and adjusted by multiplier of 5.

        - In case of a merger and consolidation, the assets of the covered institutions prior to the merger and consolidation as well as the assets of the newly formed institution shall considered in determining the AAA.

        - In case of upgrading and downgrading, the assets from one bank category to another shall likewise be considered in determining the AAA.

    - The BSP's Department of Supervisory Analytics (DSA) shall send billing notices to all Bank/NBQBs for their ASF due for 2023.

Collection of the Annual Supervision Fees (ASF) for the Year 2023 for Non-Stock Savings and Loans Associations (NSSLAs) and Trust Corporation (TCs)

BSP Memorandum No. M-2023-010 provides guidelines for the computation and collection of the 2023 annual supervision fee of loan associations and trust corporations.

BSP Memorandum No. M-2023-010 dated 24 March 2023

- The BSP issued the following guidelines for the computation and collection of the 2023 Annual Supervision Fee of NSSLAs and TCs as follows:

    1. NSSLAs: The prescribed rate is 1/65 or 1% of its Average Assessable Assets (AAA) for the immediately preceding year or the maximum amount of ASF per AAA range, whichever is lower, but shall not exceed the maximum amount provided below:

Total AAA of NSSLAs	Maximum Amount of Annual Fees
> Php 1.0 billion	Php 500,000.00
> Php 750.0 million - Php 1.0 billion	Php 400,000.00
> Php 500.0 million – Php 750.0 million	Php 200,000.00
> Php 250.0 million – Php 500.0 million	Php 100,000.00
> Php 100.0 million – Php 250.0 million	Php 50,000.00
Up to Php 100.0 million	Php 10,000.00

Provided that the minimum amount of annual fees of the NSSLAs with AAA of up to Php100 million shall be Php10,000.

2. TCs: The prescribed rate is 0.01% of its average monthly balance of assets under management (AUM) for the first three years of the trust corporation's operations and 0.02% of the average monthly balance of the AUM on the 4th year and onwards.

    - Securities held under custodianship shall be exempt from annual fees.

    - The AAA of the preceding year/average monthly balance of the AUM is derived from the Financial Reporting Package for NSSLAs and TCs.

- The BSP's Department of Supervisory Analytics (DSA) shall send billing notices to all NSSLA/TCs for their ASF due for 2023.

Guidelines on the Submission of the Revised Basel 1.5 Capital Adequacy Ratio (CAR) Report through the BSP Financial Institution Portal (FI Portal)

BSP Memorandum No. M-2023-012 provides guidelines on the submission of the CAR report through the portal.

BSP Memorandum No. M-2023-012 dated 5 April 2023

- The BSP issued the following guidelines on the Risk-Based Capital Adequacy Framework for Stand-Alone Thrift Banks (TBs), Rural Banks (RBs) and Cooperative Banks (Coop Banks) which took effect on 01 January 2023, particularly on Risk-Based Minimum Capital Rations (Part I) and Qualifying Capital (Part II):

    1. All Stand-Alone TBs, RBs, and Coop Banks shall use the revised Basel CAR Report Date Entry Template (DET) and Control Proof list (CP) which may be downloaded from www.bsp.gov.ph/ses/reporting_templates or may be requested from the BSP-Department of Supervisory Analytics through dsareports@bsp.gov.ph.

    2. All covered banks shall submit the CAR Report (Solo and Consolidated bases) using the revised DET and CP through FI portal within 15 banking days from the end of reference quarter for SOLO reports and withing 30 banking days from end of reference quarter for CONSO reports.

    3. Hard copy submissions shall not be accepted. In cases of business disruptions that affect the connectivity between the BSP and the bank, covered banks may save the DET and CP in any portable storage device (e.g. USB flash drive) and transmit the same through messengerial or postal services within the prescribed deadline.

Report submissions should continue to comply with existing BSP reporting standards. Only files prescribed by the BSP for the report shall be accepted and validated, subject to applicable sanctions for reporting violations as provided under Section 171 of the Manual of Regulations for Banks.

SEC Filing, Payments and Other Deadlines

Extension of Deadline of Amnesty Applications

SEC Memorandum Circular No. 6 extends filing of the deadline of amnesty applications to 30 June 2023 from 30 April 2023 under SEC MC 2, Series of 2023.

SEC Memorandum Circular No. 6 dated 25 April 2023

The SEC extends the deadline of amnesty applications to 30 June 2023 provided that the following conditions are met:

- Eligible corporations shall comply with the complete and correct set of requirements indicated in Sec. 3 of MC No. 2 within 90 days from the date of payment; and
- The extension shall automatically be applied without the need for a request from covered corporations.

Pursuant to MC 2, covered domestic corporations and foreign corporations are required to submit the following documents upon lodging of the amnesty application:

1. Latest due FS or undertaking to submit FS within 45 calendar days from the issuance of confirmation of payment. This has been extended to 90 days under the new issuance;
2. Latest due Amended FS, if any;
3. Latest due GIS;
4. Latest due Amended GIS, if any; and
5. Proof of compliance with MC No. 28.

Non-compliance with Item 1 shall be construed as a waiver to proceed with the amnesty process and any payment made to the SEC shall be forfeited in its favor.

The updated scale of fines and penalties for non-filing and late filing of the Audited Financial Statements for the latest and prior years, non-filing and late filing of the General Information Sheet for the latest and prior years, and noncompliance with the reportorial requirements under SEC MC 28, Series of 2020, particularly on the creation and/or designation of an e-mail address and cellular phone number of corporations for transaction of business with the SEC.

PEZA

FIRB Advisory 006-2023 clarifies the issues on transfer of registration with the BOI.

FIRB Advisory 006-2023 dated 5 April 2023

Fiscal Incentives Review Board (FIRB) Advisory No. 004-2023 was issued to clarify the issues covering the transfer of registration with the Board of Investments (BOI) of Registered Business Enterprises (RBEs) in the Information Technology – Business Process Management (IT-BPM) Sector. This is in view of the issuance of the FIRB Administrative Order No. 001-2023 prescribing the supplemental guidelines to operationalize FIRB Resolution Nos. 026-22 and 033-22 dated 14 September 2022 and 23 December 2022, respectively.

Discussed in the advisory, among others, are: (1) the policies and guidelines on the movement of capital equipment and other assets within and outside the economic zones and/or Freeport zones and, (2) concerns on expansion projects under PEZA.

Among the salient clarifications of the FIRB Advisory are summarized below:

Question	Clarification
Q1: Are all assets of the IT-BPM RBE covered by these regulations?	A1: **No**. Only the capital equipment and other assets related to IT-BPM project or activity registered with the BOI and are to be used to implement work-from-home (WFH) arrangements shall be covered by these regulations.
Q2: What shall be the coverage of the tax exemption indorsement (TEI) to be secured from the Department of Finance-Revenue Office (DOF-RO)?	A2: Based on Section E of FIRB AO No. 001-2023, as amended by FIRB AO 003-2023, **only assets intended to be moved out of or currently outside the economic zones and/or freeport for WFH arrangements shall be required to secure TEI**. Kindly note that existing goods will be covered by a blanket TEI per project, covering existing goods that were imported as of 31 January 2023. For new importations starting 1 February 2023, the TEI shall be processed per project per shipment.
Q3: If a foreign-supplied intangible asset/software will not pass through the BOC/any port (e.g., purely internet-based), will the TEI no longer be required?	A3: **Yes**. The TEI will no longer be required. The TEI only covers goods that are physically imported and processed by the BOC as imports.
Q4: If the intangible asset/software is a component of a tangible/physical asset (e.g., part of equipment or machinery), will the related TEI be secured?	A4: **Yes**. The TEI must be secured. As the intangible asset/software forms part of the imported asset, the cost of such intangible asset/software will be embedded in the purchase price of the tangible/physical asset will be processed by the BOC.
Q5: Can IT-BPM RBEs implement WFH arrangements while still processing the blanket TEI?	A5: **Yes**, WFH arrangements are already permitted upon registration with the BOI. However, during the pendency of the issuance of the TEI, the movement of goods from the economic zones and/or freeport zones, in order to operationalize the WFH arrangements, shall only be allowed upon successfully securing a **provisional goods declaration (PGD)** and submitting a notarized undertaking
Q6: What is the duration of the bond-free period for existing assets?	A6: As provided by FIRB Resolution No. 33-2022, and as extended by FIRB Resolution No. 012-23, the **bond-free transition period shall run from 1 January 2023 to 30 June 2023**.
Q7: What is the recourse of IT-BPM RBEs if they are still securing the TEI for existing assets by the end of the bond-free transition period?	A7: After the bond-free transition period, the goods **may still be allowed** to be moved outside the economic zone or freeport zone provided that a PGD has been secured and the specific and sufficient surety bond has been posted, as approved by the BOC. However, in no case shall the TEI of existing assets currently outside the economic or freeport zone be secured later than one (1) year from the issuance of FIRB AO No. 003-2023 or the end of the bond-free transitory period, whichever comes later.
Q15: Do IT-BPM RBEs need to secure staging Bill of Lading (BL)/dummy BL if all WFH assets to be moved outside the economic zone or freeport zone are locally purchased equipment?	A15: The staging BL/dummy BL is a requirement to process the TEI for imported existing goods. If the WFH assets to be moved outside the economic or freeport zone are **locally purchased** equipment, then the staging BL/dummy BL does **not** need to be secured
Q17: Is the staging BL/dummy BL only required for existing assets?	A17: Yes, the staging BL/dummy BL is only required to secure the blanket TEI for existing assets. New importations starting 1 February 2023 shall be covered by an actual signed and dated Import BL/Air Waybill. **Please refer to Annex A of FIRB AO No. 001-2023 for the distinction between requirements for existing assets and new importations starting 1 February 2023.**

Question	Clarification
Q18: What is the process for new importations starting 1 February 2023?	A18: As amended by FIRB AO No. 003-2022, new importations of ITBPM RBEs shall undergo the existing/status quo clearance procedures and documentary requirements of their concerned IPA in order to release the goods from BOC custody. The additional step of securing a TEI from the DOF-RO will only arise when the IT-BPM RBE requests for the movement of goods from the economic zone or freeport zone.
Q21: Is submission of invoices and receipts mandatory in order to prove that local purchases are entitled to VAT incentives?	A21: In general, locally purchased goods used for WFH arrangements, which were subject to VAT zero-rating, should be supported by the related **VAT zero-rating certificate** issued by the concerned IPAs. Given the need to balance government control procedures and the ease of doing business, risk-based validation should be applied whenever possible.
Q26: Is an extension office (i.e., activity on the same building but on a different floor) considered as another project that needs to be registered for tax incentives?	A26: If the operations at the additional floor would entail an increase in production capacity, either through the installation of new IT equipment or the hiring of additional personnel, then the extension office is an **expansion project** that may be registered for incentives separately. Kindly note that a qualified expansion project shall, be subject to a separate application and approval process, as aligned under existing rules and regulations. If the extension office is intended only for rearranging the office premises, the concerned RBE shall secure a **Letter of Authority** (LOA) from PEZA for the additional area of operations. In this instance, there will be no additional incentives granted to the RBE, and the incentives for the extension office shall be co-terminus with the incentives of the existing project.
Q27: Are transferee IT-BPM RBEs registered with PEZA and BOI still required to maintain an office inside the economic and/or freeport zone?	A27: Based on PEZA Memorandum Circular No. 2022-067, the transferee RBEs are **still required to maintain an office inside PEZA-registered IT Centers/Buildings**. Failure to comply shall result in the cancellation of its registration with PEZA as an IT Enterprise and subsequently, its registration with BOI.
Q28: Can IT-BPM RBEs implementing WFH arrangements reduce their office space inside the economic and/or freeport zone? To what extent is the reduction allowed?	A28: Based on PEZA Memorandum Circular No. 2022-067, PEZA Rules and Regulations shall still apply to the operations of the transferee RBEs, including the related applications for office space reduction, among others. While there is no specific area or reduction rate indicated, the reduced office space must remain compliant with the required occupant density under the National Building Code of the Philippines (NBCP) and other existing rules and regulations of the concerned IPA, as applicable.
Q29: What's the process if the PEZA-registered RBE transfers its operations to a new location?	A29: Based on PEZA Memorandum Circular No. 2022-067, PEZA Rules and Regulations shall still apply to the operations of the transferee, including the transferred operations. The corresponding application for the transfer shall still be processed under PEZA. Once the appropriate letter of authority has been issued and the PEZA Certificate of Registration (COR) of the transferee has been amended to reflect the new location, the IT-BPM RBE shall request for the endorsement of PEZA, for submission to the BOI, covering the changes in the registration.

Question	Clarification
Q30: What IPA should be indicated in the Application for Registration Information Update (BIR Form No. 1905) in order to update the IT-BPM RBE's BIR COR?	A30: Kindly note that IT-BPM transferees are required to **update their BIR COR**. The IPA to be indicated is the new IPA followed by the old IPA, separated by a forward slash (e.g., BOI/PEZA or BOI/CDC). This is also the IPA that will be indicated in the Income Tax Return (ITR). For RBEs with multiple registered activities under multiple IPAs, additional sheets of BIR Form No. 1905 should be accomplished (as many as necessary). The RBE shall inform the BIR Revenue Officer of the fact that there are multiple registered activities under multiple IPAs to be updated. The registration update may also be done using the Online Registration and Update System (ORUS) of the BIR (https://orus.bir.gov.ph/).

Court of Tax Appeals

Assessment

PET Plans, Inc. vs. Commissioner of Internal Revenue
CTA Case No. 10002, promulgated 23 March 2023

While it is true that such a substantial under-declaration of sales, receipts, or income results in a presumption of falsity or fraud, such presumption can be overcome by evidence to the contrary. Indeed, in order to escape from the application of the longer 10-year prescriptive period the taxpayer is bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns.

Facts:

Company A is engaged in the marketing and selling of securities, such as educational plans, pension plans, life plans and others.

On 5 July 2006, a Letter of Authority (LOA) was issued for the examination of Company A's books of accounts and other accounting records for CY 2005.

On 3 December 2008, Company A received a Notice of Informal Conference (NIC).

On 22 January 2009, Company A received an undated Preliminary Assessment Notice (PAN).

Due to the alleged failure of Company A to respond to the PAN within the 15-day period, the ROs recommended the issuance of a Formal Letter of Demand/ Final Assessment Notice (FLD/FAN) against Company A. An undated FLD/ FAN was received by Company A on 23 June 2009. On 8 July 2009, Company A filed its Protest to the FLD/ FAN.

On 25 March 2013, Company A received the FDDA.

Company A filed on 24 April 2013, with the Office of the Commissioner of Internal Revenue (CIR) an Appeal questioning the FDDA. The appeal was eventually denied, for which reason, Company A filed an appeal with the Court of Tax Appeals (CTA).

Among Company A's allegations is that the assessment notices were issued beyond the three-year period to assess, and that the 10-year prescriptive period under Sections 203 and 222 of the Tax Code, as amended, is not applicable to them.

Issue:

Was the FLD/FAN issued beyond the prescriptive period?

Ruling:

Yes. Company A was able to overturn the presumption that it filed false returns. Accordingly, the three-year prescriptive period to issue tax assessment applies to them.

Under Section 203 of the Tax Code, as amended, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return. In a case where the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

As an exception, Section 222 (a) of the Tax Code, as amended, provides a 10-year prescriptive period to assess deficiency taxes in cases where a taxpayer fails to file a return, files a false return, or files a fraudulent return.

In this case, the BIR applied the 10-year prescriptive period on its position that Company A made a substantial under-declaration in its VAT return, that is, Company A allegedly failed to report sales, receipt or income in an amount more than 30% of that declared in the VAT return. The BIR claimed that the substantial under-declaration of sales, receipt or income in Company A's VAT returns is prima facie evidence that said tax return is false.

While it is true that such a substantial under declaration of sales, receipts, or income results in a presumption of falsity or fraud, such presumption can be overcome by evidence to the contrary. Indeed, in order to escape from the application of the longer 10-year prescriptive period the taxpayer is bound to refute the presumption of the falsity of the return and to prove that it had filed accurate returns.

The VAT assessment made by the BIR against Company A was computed on the basis of comparing Company's taxable receipts per audit vis-à-vis Company A's taxable receipts per quarterly VAT returns. This was the basis of the BIR in claiming that the 10-year prescriptive period is applicable to Company A, hence, the assessment notices are valid.

Company A was able to prove otherwise.

To begin with, trust fund contributions are funds set-up by pre-need companies to be used to pay the benefits of the plan holders as provided in the pre-need plan. It is not disputed that said Trust Fund contributions are deducted from taxable receipts for being VAT exempt. This is clear from BIR Ruling DA-027-06, where respondent opined that pre-need plans are subject to VAT based on the gross receipts from premiums or payments received from plan holders, net of actual Trust Fund contribution.

Hence, trust fund contributions are exempted from VAT as Sec, 108 of the Tax Code, as amended, merely imposes VAT on the gross receipts derived from the sale or exchange of services. Trust fund contributions are not received by Company A as payment for its pre-need services but are received only for management by Company A, from which the pre-need benefits of the plan holders will be obtained from. Accordingly, all trust fund contributions received by Company A, being VAT exempt, should be deducted from its gross receipts subject to VAT.

In coming up with the VAT assessment, the BIR did not consider the total actual contribution to the trust fund for the year in audit. The amount of actual contribution to the trust fund are VAT exempt. The amount of actual contribution to the trust fund have been penciled in twice in Company A's audited financial statements – first, as contributions to investments in trust fund under the heading "Cash Flows from Investing Activities", and second, as additional contributions during the year under the heading "Equity". This amount, which the BIR failed to consider, are actual contributions to the trust fund during the year. The amount that was only considered by the BIR only

represented the subsequent deposit to the trust fund prompted by the requirements of the SEC due to variance. Such amount was actually penciled in as subsequent deposits under Company A's Actuarial Reserve Liabilities account. Using the total amount of actual contributions to the trust fund, the alleged under-declaration of more than 30% to support the application of the 10-year prescriptive period to assess Company A, has no basis.

Computing the three-year period within which to assess Company A, it can be shown that the VAT, EWT and WTC assessments issued against Company are not valid since the FLD/ FAN was issued beyond the 3-year prescriptive period.

Refund/Issuance of a Tax Credit

St. Gerrard Construction Gen. Contractor and Development Corporation vs. Bureau of Internal Revenue
CTA Case No. 10427, promulgated 5 April 2023

For the purpose of the coverage of withholding taxes by the provisions of the tax amnesty under RA No. 11213, the delinquency must arise "from non-withholding of tax", or the withholding tax liabilities must arise from the withholding agent's "failure to remit withheld taxes". The non-withholding of tax must be covered by an Assessment Notice that has become final and executory. In the case of failure to remit withheld taxes, there must be a showing that the withholding agent was able to withhold the tax but was unable to remit the same to the BIR.

Facts:

On 28 July 2018, Company B received a LOA.

On 1 October 2019, Company B sent the BIR a Request for Penalty Assessment for taxable year 2017.

On 4 October 2019, Company B sent a follow-up letter to the BIR on its Request for Penalty Assessment for taxable year 2017.

The BIR, then, sent to Company B another LOA to replace the prior LOA for 2017.

On 8 October 2019, Company B received BIR's letter-reply to the Request for Penalty Assessment stating that Company B's request and Follow-Up Notice be suspended in the meantime, pending the conclusion of the tax investigation.

On 15 October 2019, Company B sent the BIR a Final Notice Before Suits reiterating in the letter that Notice for Informal Conference must be issued within 180 days from the issuance of the original LOA.

On 25 October 2019, Company B received BIR's Supplemental Letter informing Company B that it is allowed to pay the deficiency withholding tax on compensation, inclusive of surcharge, interest and compromise penalty.

On 14 November 2019, Company B applied for Tax Amnesty by requesting the release of the Certificate of Tax Delinquencies (CTD), along with the payment of document stamps and certification fee. Company B also requested BIR to sign its Acceptance Payment Form (APF) or BIR Form 621DA, with its notarized Tax Amnesty Return (TAR) attached thereto.

On 25 November 2019, Company B sent its Formal Demand to Sign APF and Formal Demand to Sign CTD to BIR.

On 29 November 2019, Company B sent its Last Opportunity Before Suits (CTD) and Final Notice Before Suits (APF) to BIR.

On 9 December 2019, Company B received BIR's Denial Letter for Request for CTD-Release and Request for APF Signature, citing Q7 and A 7 of RMC No. 57-2019 as its basis for the denial.

On 10 December 2019, Company B sent its CTD and APF to remind BIR of its legal duty to release Company B's CTD and signed APF.

In January 2020, Company B received BIR's reply letter referring to its request for CTD, stating that based on BIR's records, Company B has no delinquent account.

On 6 February 2020, Company B paid the 100% of the basic withholding tax.

On 12 February 2020, Company B submitted its Compliance Letter for RA 11213 to BIR, attaching thereto its BIR Form 621DA (APF) with AAB-validated deposit slip for tax amnesty payment and notarized BIR Form 2118DA (TAR).

On 6 March 2020, Company B received BIR's reply letter saying that Company B's Compliance to RA 11213 application has been forwarded to the Legal Division.

On 13 March 2020, Company B sent BIR a Request for ARTA obedience, particularly that all pending applications are deemed approved if a government office or agency fails to approve/ disapprove within the prescribed processing time, pursuant to RA No 11032.

Sometime in June 2020, Company B received BIR's reply letter stating that in order to avail of the Tax Amnesty, it is necessary that the Company B's case be considered delinquent account.

Sometime in July 2020, Company B received BIR's reply letter encouraging Company B to submit claim or request in a clear, categorical and comprehensive manner, supported with relevant laws, rules and regulations.

On 22 July 2020, Company B received from BIR an undated Notice of Informal Conference, for taxable year 2017, with details of discrepancies on Income Tax, Value Added Tax, Documentary stamp tax, Withholding tax on Compensation and Compromise Penalty.

Despite receiving the required documents in support of Company B's amnesty application in line with the provisions of RR 4-2019, Section 5, as well as numerous follow-up letters of their request for the signature and release of the CTD and APF, BIR either denied or ignored Company B's requests.

Issue:

Was Company B entitled to avail of the Tax Amnesty Program under RA No. 11213?

Ruling:

No.

The Tax Amnesty on Delinquencies covers all national internal revenue taxes, such as income tax, withholding tax, VAT, and DST. The same may be availed of: (1) by filing with the appropriate office of the BIR a sworn Tax Amnesty on Delinquencies Return accompanied by a Certification of Delinquency, within a period of one (1) year from the effectivity of the Implementing Rules and Regulations of RA No. 11213; and (2) by paying 40% of the basic tax assessed, in case of delinquencies and assessments, which have become final and executory, and 100% of the basic tax assessed, in case of withholding tax agents who withheld taxes but failed to remit the same to the BIR.

Upon compliance with all the conditions set forth in RA No. 11213 and payment of the pertinent amnesty tax, the tax delinquency of the availing taxpayer shall be considered settled; and the taxpayer shall be immune from all suits or actions, including the payment of said delinquency or assessment, as well as additions thereto, and from all appurtenant civil, criminal, and administrative cases, and penalties under the Tax Code, as amended.

Based on Section 17 of RA No. 11213, it is clear that the instances that the Tax Amnesty on Delinquencies may be availed of include: "(d)delinquencies and assessments, which have become final and executory"; and "(w)withholding tax agents who withheld taxes but failed to remit the same to the Bureau of Internal Revenue."

For the present claim for refund to prosper, Company B must not only establish that it has timely flied its refund claim, but it must also likewise prove that the subject FWT paid fall under the above-stated definition of "erroneous or illegal tax".

Hence, for the purpose of the coverage of withholding taxes by the provisions of the tax amnesty under RA No. 11213, the delinquency must arise "from non-withholding of tax", or the withholding tax liabilities must arise from the withholding agent's "failure to remit withheld taxes". In other words, in the case of the former, the same must be covered by an Assessment Notice that has become final and executory. In the case of the latter, there must be a showing that the withholding agent was able to withhold the tax but was unable to remit the same to the BIR.

In this case, there is no allegation or proof that an Assessment Notice was previously issued against Company B for non-withholding of tax, much less, that the same had become final and executory, as required by RA No. 11213 or the Tax Amnesty Act.

What is clear based on Company B's narration of facts is that when it filed its Acceptance Payment Form (BIR Form 0621-DA) dated 11 November 2019, and declared a tax amnesty amount, it just received a LOA from the BIR on 8 July 2018. Therefore, the investigation for all internal revenue taxes for CY 2017 began only in 2018, with the issuance of the LOA, and was still ongoing even in 2019, at the time of the tax amnesty availment.

On 22 July 2020, several months after the availment of the tax amnesty in 2019 and the receipt of the letters from respondent notifying Company B that it could not qualify under the Tax Amnesty Act, Company B finally received an undated NIC. Because the BIR had yet to issue any Assessment Notice against Company B, no Assessment Notice could have had become final and executory against it and, thus, no tax could have had been due from it.

Finally, there is also no showing that Company B withheld taxes and had failed to remit the same, as required by the Tax Amnesty Act. Although Company B claimed that it had "unremitted" withholding taxes and, thus, qualified to avail of the tax amnesty, no evidence was presented that it initially withheld the taxes on the compensation of its employees, and that such withheld taxes remained unremitted until the payment of the tax amnesty amount.

Treaties are transformed into municipal or domestic laws after undergoing the constitutional process of having the same concurred in by at least two-thirds of the members of the Senate.

Seizure/ Forfeiture

Commissioner of Customs vs. Sta. Rosa Farm Products Corporation
CTA EB No. 2542, promulgated on 10 March 2023

Facts:

On several dates in May 2018, three shipments of bags of rice, consigned to Company C, arrived at the Manila International Container Port (MICP).

On 4 June 2018, Company C asked the National Food Authority (NFA) for its assistance and approval allowing the former to process the release of the shipments as these were seized.

On 13 June 2018, various customs officers in MICP issued Reports of Seizure against the subject shipments for alleged lack of NFA Import Permits prior to importation.

Company C, then, appealed to Commissioner of Customs on the said seizure of the subject shipment, through the letter dated 14 June 2018.

On 13 July 2018, the District Collector, MICP, issued the Consolidated Order directing the forfeiture of the subject shipments in favor of the government.

On 17 July 2018, the subject shipments were sold at public auction.

In his Decision dated 16 August 2018, Commissioner of Customs affirmed the Consolidated Order dated 13 July 2018, of the District Collector, MICP. Commissioner of Customs ruled that the subject rice shipments require Import Permit from the NFA; and that forfeiture of the subject shipments of rice is proper.

Issue:

Was the forfeiture of the subject shipments proper on the basis that the shipments required Import Permit from NFA?

Ruling:

No. There is no need for Company C to secure Import Permits from the NFA for the subject shipments.

Treaties are transformed into municipal or domestic laws after undergoing the constitutional
process of having the same concurred in by at least two-thirds of the members of the Senate.

In this case, the World Trade Organization (WTO) Agreement, including the Multilateral Trade Agreements attached thereto, was concurred in by the Senate through Resolution No. 97. Consequently, the said Agreements became "a part of the law of the land" or were transformed into municipal or domestic laws.

Pursuant to the WTO Agreement, WTO member countries like the Philippines are prohibited from imposing Quantity Restrictions (QRs) on imported products. However, a Special Treatment was accorded to certain licensing as a matter of exception to the rule. The Philippines applied for and was allowed to enjoy Special Treatment for the years 1995 to 2005, or for 10 years, and a further extension of seven years until 30 June 2012. Before the expiration of the Special Treatment on 30 June 2012, the Philippines requested for another extension, which was granted on 24 July 2014, through the Decision on Waiver Relating to Special Treatment for Rice of the Philippines, wherein the above-stated Special Treatment was extended until 30 June 2017.

Thus, on the basis of the provisions of the WTO Agreement, beginning 1 July 2017, since the Philippines' Special Treatment for rice has already expired, the prohibition from imposing QRs on imported rice has already taken effect. As a consequence, there was no need for Company C to secure a prior Import Permit from the NFA to import rice, beginning on the said date.

Contrary to the invocation of the Commissioner of Customs, the Court cannot readily apply, in this case, the provisions of the Memorandum Circular No. A0-2017-08-002 dated 4 August 2017, of the NFA, specifically as regards the requirement of prior issuance of an import permit for the importation of rice. This must be so because the NFA issuance is specific, i.e., it refers only to the importation of 805,200 metric tons of white rice under the MAV country specific quota and the MA V omnibus origins for the year 2017. The NFA's Memorandum Circular No. A0-2017-08-002 dated 4 August 2017, governs only the "in-quota" importations of rice, and does not cover "out-quota" importations thereof or importations of rice outside the MAV prescribed/ extended under the above-stated EO. 23

There being no law or regulation pertaining to the "out-quota" importation of rice, the latter may be freely imported into the Philippines without need for import permits.

In this case, the subject importations of Company C have been identified by the NFA as "out-quota", in its letter dated 27 July 2018, there is no need for the latter to issue import permits therefor under Memorandum Circular No. A0-2017-08-002 dated 4 August 2017.

The Memorandum of Agreement dated 3 December 2010, between NFA and the BOC, requiring that import Authority must be obtained for every imported shipment of rice is also not applicable. Such requirement was made during the period wherein the Special Treatment for Rice was still effective; and thus, the same requirement should only apply for the extended period, i.e., until 20 June 2017. A contrary interpretation would be violative of the pertinent provisions of WTO Agreement.

Since at the time of the subject importation of rice in May 2018, it was legal for Company C to import rice without need of Import Permits from the NFA, there is no valid basis to support the seizure and forfeiture proceedings, as well as the public auction, which were conducted by the BOC.

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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.