Tax Bulletin

February 2023

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and enable businesses for a better Philippines.

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BIR Administrative Requirements

RR No. 1-2023 prescribes the guidelines for the tax privileges granted to establishments giving the 10% discount on their sale of goods identified in the Act to Solo Parents, and the VAT exemption on the sale of goods identified in the Act to Solo Parents by VAT-registered taxpayers.

RR No. 1-2023 dated 17 January 2023

- The following guidelines shall apply to the granting of the 10% discount and VAT exemption herein mentioned:

  1. Solo parents that meet all of the following conditions **shall qualify for the 10% discount and VAT exemption**:

     - Solo Parent has a child/children (as defined in RA No. 11861) with the age of six years or under; and
     - Solo Parent is earning less than Php 250,000.00 annually.

  2. The 10% discount and VAT exemption shall apply to a qualified Solo Parent's purchase of the following goods identified in the Act from **drug stores, pharmacies, grocery stores, and similar establishments**, and subject to the guidelines that shall be issued by the Department of Health (DOH), in coordination with the Food and Drug Administration (FDA), PhilHealth, and the Department of Interior and Local Government (DILG):

     - Baby's milk;
     - Food supplements and Micronutrient supplements;
     - Sanitary diapers;
     - Medicines;
     - Vaccines; and
     - Other medical supplements.

- To avail of the 10% discount and VAT exemption on qualified purchases, the Solo Parent shall present his/her Solo Parent Identification Card (SPIC) and Solo Parent Booklet. The **SPIC should show that the Solo Parent is entitled to the 10% discount and VAT exemption** by indicating that the Solo Parent is earning less, than Php 250,000.00 annually, and the dorsal side of the SPIC indicates the name/s, birth date/s, and relation to the solo parent of the qualified children and/or dependents with the age of six years or under.

- The grant of the discount is only for the purchase of goods identified in the Act for **THE EXCLUSIVE USE AND ENJOYMENT OR AVAILMENT OF THE SOLO PARENT'S CHILD OR CHILDREN WITH THE AGE OF SIX YEARS OR UNDER**.

- PRESCRIBED MEDICINE, VACCINE, AND OTHER MEDICAL SUPPLEMENTS - The 10% discount and VAT exemption shall apply to the purchase of **generic or branded medicines, vaccines, and medical supplements**, which are medically prescribed by an attending physician for the prevention and treatment of diseases, illness, or injury whose prescription is in the name of the Solo Parent's child/children with the age of six years or under; and subject to the guidelines that shall be issued by the DOH.

- BABY'S MILK; FOOD SUPPLEMENTS AND MICRONUTRIENT SUPPLEMENTS; AND SANITARY DIAPERS - The 10% discount and VAT exemption shall apply to the purchase of **generic or branded baby's milk food supplements, micronutrient supplements, and sanitary diapers**, for the Solo Parent's child/children with the age of six years or under and subject to the guidelines that shall be issued by the DOH.

- All establishments supplying any of the goods identified in the Act and as referred to in Section 3 of these Regulations **may claim the discounts granted to Solo Parents as a tax deduction** based on the cost of goods sold.

- The 10% discount granted by the seller of goods identified in the Act shall be treated as an **ordinary and necessary expense deductible from the gross income of the seller** falling under the category of itemized deductions, and can only be claimed if the seller does not opt for the Optional Standard Deduction during the taxable quarter/year. The claim of the discount granted under the Act as an additional item of deduction from the gross income of the seller is subject to additional certain conditions set forth under the RR.

- The sale of goods identified in the Act and under Section 3 of these Regulations to a qualified Solo Parent who has a child with the age of six years or under and is earning less than Php 250,000.00 annually **shall be exempt from VAT**.

- The sale of goods identified in the Act to a Solo Parent must follow the invoicing requirements prescribed under Revenue Regulations (RR) No. 16-2005, as amended. If the seller uses a Point-of-Sale Machine or a Cash Register Machine in lieu of the regular sales invoice, the **machine tape must properly segregate the exempt sales from the taxable sales**.

- The input tax attributable to the exempt sale **shall not be allowed as an input tax credit and must be closed to the cost or expense account** by the seller.

RMO No. 6-2023 provides the updated and Consolidated Policies, Guidelines and Procedures for the BIR Audit Program in accordance with the automated selection of taxpayers for issuance of eLAs whose transactions were identified as risk areas based on prescribed law, rules and regulations, filed tax returns and other tax information available.

RMO No. 6-2023 dated 1 December 2022

Mandatory Cases	*Priority Audit Cases*
1. **TO BE COVERED BY ELAs** 1.1 Claims for tax credit/refund of the following tax types a. Excise Tax; or b. Income tax (except income tax claims of Job Order personnel), including final and creditable income tax withheld 1.2 Request or Tax Clearance of taxpayers whose gross sales/ receipts for the immediate preceding year exceeds Php 3,000,000.00 or whose gross assets upon retirement exceeds Php 8,000,000.00 a. Due to death of taxpayer; or b. Taxpayers retiring from business; or c. Taxpayers undergoing merger/consolidation/split-up/spin-off and other types of corporate reorganizations	These are cases which have been electronically selected by the IRIS-Audit Module based on prescribed selection criteria pursuant to identified risks that need immediate action. The prescribed selection criteria shall make use of information from filed tax returns and other pertinent tax information available in the BIR Systems and the selection code for these are already embedded into the said module. Also covered under this category are audit cases that shall be handled by the VAT Audit Section (VATAS) and Office Audit Section (OAS) of the Assessment Divisions (AD), and Large Taxpayers VAT Audit Unit (LTVAU) under the Large Taxpayers Service (LTS). The execution of the "Run Audit Program" in the IRIS-Audit module, including the submission of the list of taxpayers to be audited, shall be the responsibility of the Assistant Commissioner of the Assessment Service (ACIR-AS) and ACIR-LTS for non-large taxpayers and large taxpayers, respectively.

Mandatory Cases	*Priority Audit Cases*
1.3 Cases returned to the Investigation Officer (IO) where the original Group Supervisor (GS)/Revenue Officer (RO) who conducted the audit is no longer available due to transfer of work assignment or separation from service a. For reinvestigation; or b. For compliance of review findings, which resulted in deficiency tax or additional deficiency tax 1.4 Cases referred by other IO due to taxpayer's transfer of business registration, where taxpayer agreed to have the audit continued by the new IO, provided the covered period is not yet prescribing. 1.5 One-Time Transactions (ONETT) a. Cases which review findings resulted in a deficiency tax; or b. Real property transactions with findings in the Electronic Certificate Authorizing Registration (eCAR) System 1.6 Policy cases/industry issues under the directive of the Commissioner 2. **TO BE COVERED BY TAX VERIFICATION NOTICES** 2.1 Persons requesting for Tax Clearance whose gross sales for the immediately preceding year is Php 1,000,000.00 but not exceeding Php 3,000,000.00 but not exceeding Php 8,000,000.00 a. Due to death of the taxpayer; or b. Taxpayers retiring from business; or c. Taxpayers undergoing merger/consolidation/split-up/spin-off and other types of corporate re-organization. 2.2 Claims of Value Added Tax (VAT) Refund; 2.3 Income Tax Refund of Job-Order personnel; and 2.4 Claims for refund/tax credit arising from erroneous payment of taxes, including double payment of taxes due to system error/ glitch.	Priority audit case can also be manually selected by the concerned Regional Director (RD) / ACIR – LTS but this has to be approved by the Commissioner of Internal Revenue (CIR). The selection code for these cases shall b "PCIR

PROCEDURES RELEVANT TO TAXPAYERS	
A. Issuance of eLA/TVN	▸ The Revenue District Officers (RDOs)/Chiefs, Assessment Division and their concerned Regional Directors (RDs) for regional cases, Chiefs, Large Taxpayers Divisions (LTDs)/Large Taxpayers Audit Divisions (LTADs) and Assistant Commissioner-Large Taxpayers Service (ACIR-LTS) for LT cases, are equally responsible for ensuring that only tax returns of taxpayers registered within their jurisdiction, except tax returns related to One-Time Transaction (ONETT), and those that match the selection criteria based on taxpayer's non-compliance risks, are subjected for issuance of eLAs. ▸ The Case Management System – Audit (CMS-A) of IRIS shall be used in the creation, assignment, approval, issuance, printing and cancellation of eLAs, as well as in updating the status of the same. Existing audit cases being handled by Ros which were originally issued and printed using the Electronic Letter of Authority Monitoring System (eLAMS) shall stil be managed and updated using the said system. ▸ The "create manual case" of IRIS-CMS-A shall be used in the creation of mandatory cases, manually-selected priority audit cases with prior approval of the CIR under III.B hereof, and cases under the functional jurisdiction of the National Investigation Division. ▸ For manually selected priority audit cases, prior approval of the CIR must be secured. The request for issuance of eLA shall be submitted by the concerned RD to the Deputy Commissioner-Operation Group (DCIR-OG) for regional cases, or by the Chiefs of LT Audi Divisions to ACIR-LTS for LT cases. The DCIR-OG/ACIR-LTS shall subsequently recommend the approval of such issuance of eLA, if warranted. ▸ The simultaneous investigation of all liabilities of a taxpayer shall be followed. One eLA/TVN shall be issued for each taxable year to include all internal revenue tax liabilities of the taxpayer, except when a specific tax type had been previously examined. In this case, such tax type for a specific period shall be excluded from the covered tax types for audit. ▸ Notwithstanding the policy above, the audit/verification of tax liabilities of taxpayers requesting for tax clearance, and tax refund, shall be covered only by an eLA/TVN, whichever is applicable, that will cover the audit/verification for the immediately preceding year and the short period tax returns prior to cessation/retirement of business. While, in case of a tax refund, the eLA/TVN shall cover the taxable period indicated in the application and encoded into the IRIS-Tax Credit and Refund (TCR) module. For income tax refund, however, the audit shall be per taxable year since the request for refund is being signified at the time of filing of the Annual Income Tax Return. ▸ Discrepancy Notices (DNs) deployed by the Audit Information Tax Exemption and Incentives Division (AITIED) and discrepancies or audit/review findings that need further verification arising from taxpayers with filed claims for VAT refund/credit referred by the VAT Credit Audit Division (VCAD) or Tax Audit Review Division (TARD) should be evaluated by the concerned RDO/LTD/LTAD to determine any tax implications. If the subject taxpayer is already the subject of an existing eLA, the DN or any information arising from the audit/review findings should be consolidated with the existing eLA/audit case. If not, the RDO/LTD/LTAD may select the particular taxpayer for issuance of eLA, if necessary. ▸ If an eLA has been issued under the VAT Audit Program (VAP) and subsequently, the taxpayer becomes a candidtate for regular audit in the RDO/LTD/LTAD based on the selection criteria under this Order for the same taxable year, the request for eLA for regular audit shall not include the VAT liability already covered by the VAT audit. ▸ For ONETT case docket which resulted in a deficiency tax, the coverage of the eLA shall be limited to audit/investigation of the particular ONETT only and audit /investigation shall be conducted by the IO which issued the electronic Certificate Authorizing Registration (eCAR).

PROCEDURES RELEVANT TO TAXPAYERS	
B. Assignment of Cases	▸ All audit cases shall be electronically assigned to an RO/GS by the IRIS-CMS-A module after the taxpayer had been automatically selected by the IRIS-Audit module, except for mandatory cases and priority audit cases with prior approval of the Commissioner of Internal Revenue which shall be done manually. ▸ Except for eLAs issued under the RATE Program of the National Office or Regional Office, and those issued to task forces, only ROs under the Assessment Group shall be authorized to conduct audit and investigation of tax cases, whether in a principal or assisting capacity. The same RO or lead RO shall not be assigned in the current year with the same taxpayers who have been examined for the prior year, except when there is only, at most, four ROs in one district/IO. ▸ All audit cases shall be electronically assigned to an RO/GS by the IRIS-CMS-A module after the taxpayer had been automatically selected by the IRIS-Audit module, except for mandatory cases and priority audit cases with prior approval of the Commissioner of Internal Revenue which shall be done manually. Returned audit cases by the reviewing office for compliance of review findings shall only be assigned to another RO if the previous RO who handled the case cannot act on it due to the circumstance stated above, at the time the case docket was returned. An Electronic Memorandum of Assignment (eMOA) with a system-generated number shall be issue through the IRIS/eLAMS in the assignment of these returned audit cases. However, if the review observation shall result in a deficiency tax or additional deficiency tax not covered by the previous report, a replacement eLA shall be issued if the audit case is assigned to a different RO, which shall be issued if the audit case is assigned to a different RO, which shall be under mandatory case Item III.A.1.3.b thereof. ▸ All audit cases shall be electronically assigned to an RO/GS by the IRIS-CMS-A module after the taxpayer had been automatically selected by the IRIS-Audit module, except for mandatory cases and priority audit cases with prior approval of the Commissioner of Internal Revenue which shall be done manually. Audit cases whose tax assessments have been validly protested and returned to IO for re-investigation shall likewise be assigned to another RO if the previous RO is no longer with the IO, thru the Issuance of a replacement eLA which shall be under the mandatory case above Item III.A.1.3.a mentioned.
C. Conduct of Audit and Submission of Reports of Investigation	▸ This part of the RMO provides instruction for the ROs. For reference please refer to the link: RMO No. 6-2023.pdf (bir.gov.ph)
D. Review of Audit Reports and Issuance of Termination Letter	▸ The reviewing offices, AD in the regional offices or concerned Office of the HREA, shall review reports/dockets within the prescribed number of calendar days stated under this RMO. Please refer to the link above for reference. ▸ A Termination Letter (TL), on all case dockets with no findings/discrepancy or paid cases shall be issued by the reviewing office after the approval of audit reports by the RD/ACIR-LTS. For eLA/TVN issued pursuant to Item III.A.1.2 and III.A.2.1 hereof whichever is applicable, the concerned RDO/Chief LTD/LTAD shall issue a Tax Clearance and eCAR to the taxpayer within three days from date of issuance of TL. ▸ A random revalida of audit cases may be conducted by the Office of the Commissioner of Internal Revenue (OCIR) and/or the Office designated by the CIR.
E. Handling of Protests Against Tax Assessments	▸ All letters of protest, request for reinvestigation/ reconsideration and similar correspondences shall be received by the Office of the concerned RD/ACIR-LTS who signed the PAN/FAN/FLD and shall be referred to the AD in the Regional Office or concerned Office of the HREA of the LTS in the National Office, as the case may be, for proper recording and resolution of protest. ▸ The detailed procedures in the handling and resolution of protests shall be covered by the separated revenue issuance.

PROCEDURES RELEVANT TO TAXPAYERS	
F. Monitoring of Cases	▸ This provides the policy for monitoring of case inventory of the Investigating Office of the BIR. For reference, please click on the link: RMO No. 6-2023.pdf (bir.gov.ph)
G. Issuance of Replacement of eLA	▸ Issuance of replacement eLAs, if warranted, shall be made in either IRIS-CMS-A or eLAMS, where the eLA has been originally issued and printed. ▸ A replacement eLA shall be done in the following instances: a. The original RO named in the eLA cannot continue the audit/investigation due to the RO's transfer to another office, retirement or resignation, authorized leave such as maternity leave, prolonged absence/unauthorized leave, or other reasons; provided the statutory period to assess, pursuant to Section 203 of the 1997 Tax Code, as amended has not yet prescribed for the taxable period. b. In case the taxpayer has transferred its business registration, where the eLA/TVN have been served and the audit of which has already started prior to the effective date of transfer, the continuation of audit shall be conducted by the new RDO having jurisdiction over the taxpayer's new registration. However, the transfer of audit case shall not be allowed if the case is with the assigned RO for more than 120 days or the case is a prescribing case. c. The audit reports have been returned by the reviewing office to the investigating office and the observation has tax consequence that will need amendment of audit reports/ deficiency tax assessments and the original RO is no longer the IO. d. In case of request for re-investigation of the taxpayer and the original RO is no longer with the IO at the time the audit case docket is referred for re-investigation. ▸ If both the RO and GS are still assigned in the IO, no replacement eLA shall be issued. An eMOA is sufficient document in referring back the audit case to them for audit trail purposes only. In case only the RO is with the IO, the original GS need not affix the signature in the revised audit report to be submitted by the original RO. ▸ No replacement eLA shall also be issued if the original RO has been promoted as GS. The audit report shall be rendered in his capacity as the original RO, without the need of the signature of the previous GS. ▸ Whenever a replacement eLA is issued, the head of the IO shall send a letter stating the details of the original eLA, such as SN eLA No./LOA No. and date of issuance to inform the taxpayer of the cancellation of the old eLA and the continuance of audit/investigation or conduct of re-investigation under the replacement eLA.
H. Administrative Sanctions	▸ The concerned head of the IOs under the regional offices shall report to the Regional Director, while head of IOs under the EAS and LTS, shall report to the ACIR, Internal Affairs Service, any RO under his supervision, with prescribed and long overdue tax cases that are still un-submitted despite several call up letters/reminders issued. A statement of all the facts and other documents must be submitted together with his report. ▸ Any violations of the policies herein provided by any RO or Official shall be a ground for the imposition of appropriate administrative sanctions/penalties.

RMC No. 6-2023 circularizes the National Privacy Commission Advisory Opinions upholding the authority of the BIR, in its tax enforcement, assessment and collection functions, to obtain personal and sensitive information from any person pursuant to the Data Privacy Act of 2012, in relation to Section 5(B) of the 1997 Tax Code, as amended.

RMC No. 6-2023 dated 16 January 2023

- The following annexes are the National Privacy Commission (NPC) Advisory Opinions upholding the authority of the BIR to obtain personal and sensitive personal information from any person, including from any office or officer of the national and local governments, government agencies and instrumentalities and government-owned or controlled corporations pursuant to Section 4(e) of the Republic Act No. 10173, or the Data Privacy Act of 2012:

  1. Annex A – NPC Advisory Opinion No. 2021-045 dated 29 December 2021
  2. Annex B – NPC Advisory Opinion No. 2021-028 dated 16 July 2021
  3. Annex C – NPC Advisory Opinion No. 2020-015 dated 24 February 2020

- In preparing "access to records letter" to taxpayers and/or third parties involving personal and sensitive personal information, all internal revenue officials/ employees concerned are directed to include as legal bases Section 4(e) of the Data Privacy Act of 2012, aside from Section 5(B) of the 1997 Tax Code, as amended.

RMC No. 7-2023 clarifies the RPS Assessment being issued by the BIR.

RMC No. 7-2023 dated 10 January 2023

- RPS refers to the BIR's information system which processes tax returns filed by the taxpayers. This system detects:

  1. A tax return which was filed late but no corresponding penalties were paid; or
  2. A tax return filed with declared tax due but no corresponding payment was detected; or
  3. A tax return filed with tax due but the payment detected was only partial.

  Once the system detects any of the above scenarios, it will generate "RPS Assessment".

- The contents of "RPS Assessment" are not tax assessments arising from the conduct of audit/investigation on taxpayer's books of accounts and other relevant records. These are tax payables based on taxpayer's own declaration as reflected in the tax returns filed. The moment the taxpayer failed to pay the declared tax payable in the tax return within the prescribed due date, the BIR considers it already as "delinquent account" pursuant to Revenue Memorandum Order No. 11-2014.

- To effect collection, the BIR can both enforce civil and criminal actions as provided under Section 205 of the Tax Code, as amended.

- The sending of "RPS Assessment" should not be likened to and is not an Assessment Notice arising from audit where taxpayer has the chance to contest or protest.

- Considering that no books of accounts and accounting records of taxpayer are to be examined or subjected to audit, the issuance of Letter of Authority shall not be required. "RPS Assessment" is a collection letter and sending of which is part of the civil/administrative remedies of the BIR.

RMC No. 8-2023 amends Section 2 of RMC No. 57-2015 and prescribes the format for submission of Inventory List and other reporting requirements.

RMC No. 8-2023 dated 20 January 2023

- RMC No. 8-2023 requires the taxpayers to submit soft copies of annual inventory lists, schedules/lists using the prescribed format by RMC No. 57-2015. Submission of hard copies of the same is no longer required.
- The soft copies of the inventory list including other applicable schedules shall be stored/saved in Digital Versatile Disk-Recordable (DVD-R) or Universal Storage Bus (USB) Flash drive.

RMC No. 9-2023 circularizes the following revised BIR Forms version January 2018 in accordance with the TRAIN Law.

RMC No. 9-2023 dated 26 January 2023

These forms are already available in the BIR website (www.bir.gov.ph)

BIR Form No.	Description	Section
1606	Withholding Tax Remittance Return [For Onerous Transfer of Real Property Other Than Capital Asset (Including Taxable and Exempt)]	Payment/Remittance Forms
1706	Capital Gains Tax Return (For Onerous Transfer of Real Property Classified as Capital Asset-both Taxable and Exempt)	Income Tax Return

- The forms are not available in the Electronic Bureau of Internal Revenue Forms (eBIRForms).
- Manual and eBIRForm filers shall download and print the PDF version of the forms and fill out completely all the applicable fields, otherwise, the filers shall be subjected to penalties under Section 250 of the Tax Code, as amended.
- Payment of tax due shall be made thru the following:

Mode of Payment	
Manual Payment	▸ Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Revenue District Office (RDO) where the property being transferred is located. ▸ If no AABs, return shall be filed and the tax due shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO using Mobile Revenue Collection Officer System (MRCOS) facility.
Online Payment	▸ Landbank of the Philippines (LBP) Link. Biz Portal – for taxpayers who have ATM account with LBP and/or holders of Bancnet. ▸ ATM/Debit Card/Prepaid Card of taxpayer utilizing Philippine Clearing House Corporation (PCHC) PayGate or PESONet facility [depositors of Rizal Commercial Banking Corporation (RCBC), Robinsons Bank, Union Bank, Bank of the Philippine Islands (BPI), Philippine Savings Bank (PSBank) and Asia United Bank; ▸ Development Bank of the Philippines' (DBP) PayTax Online – for holders of VISA/MasterCard Credit Card and/or Bancnet ATM/ Debit Card; or ▸ Union Bank of the Philippines (UBP) Online/The Portal – for taxpayers who has an account with UBP or Instapay using UPAY Facility for individual non-account holder of Union Bank.

- For "No Payment Return", taxpayer shall file the return with the RDO having jurisdiction over the place where the property being transferred is located.

RMC No. 10-2023 encourages the use of the eONETT System by sellers habitually engaged in the sale of real properties.

RMC No. 10-2023 dated 26 January 2023

- Sellers habitually engaged in the sale of real estate properties like real estate developers with voluminous ONETT transactions are hereby urged to use the eONETT System in securing OCS/eCAR relative to sale/transfer of real properties. Likewise, they are also encouraged to pay electronically thru the available ePayment channels of the Bureau.

- The eONETT System is a web-based system wherein the taxpayers will be able to transact their ONETT online anytime and anywhere, provided there is an internet connection. It aims to reduce manual filing of returns and payment of taxes and to provide a more convenient way for taxpayers to file their applications in securing ONETT Computation Sheet (OCS) and/or Electronic Certificate Authorizing Registration (eCAR).

RMC No. 12-2023 announces the implementation of online application for registration information updates and other online facilities for registration-related transactions through the ORUS starting 23 January 2023.

RMC No. 12-2023 dated 27 January 2023

- The updating of the following registration information is available online through ORUS:

Features	Application Details
Registration Information Update	▸ Availment of 8% Income Tax Return Option ▸ Submission of Application for Change in Accounting Period ▸ Registration/Addition of Tax Incentive ▸ Change/Update of Contact Type ▸ Change/Update of Contact Person/Authorized Representative ▸ Change/Update of Stockholders/Members/Partners
Secondary Registration	▸ Registration of Permit to Use (PTU) Loose-leaf ▸ System Registration of Computerized Accounting System (CAS)
Other Online Facility	▸ Submission of Application for Closure or De-registration of Business ▸ Submission of Application for TIN Cancellation

- Taxpayers who already have an existing ORUS account may access and avail the online registration updates and other functionalities by logging-in to the system while taxpayers who do not have an ORUS account and opted to use the said online registration-related facilities are required to enroll or create an account in ORUS following the guidelines prescribed under RMC No. 122-2022.

RMC No. 15-2023 publishes the full text of Memorandum Circular No. 2023-001 for the clarification on the coverage of logistics services as "activities in support to exporters" under the 2022 SIPP.

RMC No. 15-2023 dated 2 February 2023

- Based on the definition of export enterprises under Sec. 293. (E) of the CREATE Act, the listing in the SIPP for logistic services as one of the activities in support of exporters shall cover the Ecozone Logistics Service Enterprises or ELSEs type 3 or "combination of both", as follows:

  1. Establishment of a warehouse storage facility; and

2. Importation or procurement from local sources and/or from other PEZA registered enterprises of goods for resale, or for packing/covering (including marking, labelling), cutting or altering to customers' specification, mounting and/or packaging into kits or marketable lots thereof for subsequent sale, transfer or disposition for export.

- Further, such integrated ELSEs shall be considered as export enterprises; Provided, that they render at least 70% of their output/services to another registered export enterprise.

RMC No. 17-2023 publishes the FIRB Advisory No. 002-2023 informing the availability of the templates for the CETI covering the Projects registered under RA No. 11534 or the CREATE Act ("CREATE Projects"), Projects registered prior to the effectivity of the CREATE Act ("Pre-CREATE Projects) and Projects registered under RA No. 9513 or the Renewable Energy Act of 2008 ("Renewable Energy Projects").

RMC No. 17-2023 dated 6 February 2023

- All Investment Promotion Agencies (IPAs) are mandated to use the updated templates beginning 1 March 2023. CETIs already issued on or before 28 February 2023 using the previous templates circulated last 23 March 2022 shall remain valid for the corresponding fiscal or calendar year, unless canceled, suspended, or withdrawn by the IPA or the FIRB, after due process.

RMC No. 18-2023 publishes the full text of FIRB AO No. 001-2023 prescribing the supplemental guidelines to operationalize FIRB Resolution No. 026-22, as further extended by FIRB Resolution No. 033-22.

RMC No. 18-2023 dated 6 February 2023

- FIRB AO No. 001-2023 prescribes the supplemental guidelines to facilitate and allow a seamless and orderly operationalization of registration of existing Registered Business Enterprises (RBEs) in the Information Technology - Business Process Management (IT-BPM) sector with the Board of Investments (BOI) for purposes of adopting up to 100% work-from-home (WFH) arrangements as prescribed under FIRB Resolution No. 026-22, DTI MC No. 22-19, and FIRB Resolution No. 033-22.

- The registration with BOI shall only be available to the following RBEs in the IT-BPM sector:

  1. Those availing of the transitory provisions under Section 311 of the National Internal Revenue Code (NIRC) of 1997, as amended by the CREATE Act; or

  2. Those registered with approved Incentives under the CREATE Act on or before 14 September 2022.

- RBEs in the IT-BPM sector shall have until 31 January 2023 to exercise the option to register with the BOI. For this purpose, they shall file their request with the concerned investment promotion agency (IPA using the prescribed Request to Register with BOI Form (Annex A of DTI MC No. 22-19). The registration with BOI shall be on a per project or activity basis and not per enterprise.

- IT-BPM RBEs that are eligible to register with BOI under (a) and (b) above but have decided to not exercise their option by 31 January 2023, and all RBEs registered with the concerned IPAs starting 15 September 2022 onwards shall not be allowed to register with the BOI under FIRB Resolutions 026-22 and 033-22 and shall be covered by the Section 309 of the NIRC of 1997, as amended.

- RBEs of the IT-BPM sector refer only to those providing services in line with the transitional Strategic Investment Priority Plan (SIPP).

- The RBEs registered with the BOI pursuant to FIRB Resolutions 026-22 and 033-22 and DTI MC No. 22-19 shall be allowed to adopt up to 100% WFH arrangements without adversely affecting the enjoyment of their fiscal and non-fiscal incentives upon issuance of the BOI Certificate of Registration (BOI-COR) on the date indicated therein.

- The covered RBEs shall be allowed to avail of all their remaining fiscal and non-fiscal incentives and the registration with BOI shall not adversely affect their existing fiscal and non-fiscal incentives.

- The BOI shall issue a separate COR for each registered project or activity duly endorsed by the concerned IPA upon payment of the applicable fee, provided that the covered RBE may already adopt 100% WFH arrangement from the date indicated in the official receipt representing the payment of the applicable fee in the amount of Php 2,250, pending the issuance of the BOI-COR.

- The BOI-COR shall state, among others, the registered project or activity of the covered RBE, the remaining fiscal incentives, and all necessary information as required in Rule 7, Section 2 of the CREATE Act Implementing Rules and Regulations (IRR), as amended.

- For ease of cross-referencing, the BOI-COR shall include an annotation stating, among others, the following:

    1. Reference to FIRB Resolution No. 026-22, as extended by Resolution No. 033-22;

    2. Registration No. of COR issued by the concerned IPA and date of its issuance

    3. Date of Registration of the RBE with BOI, which shall indicate the date indicated in the OR

    4. The unique control number indicated in the original COR issued by the concerned IPA, if applicable.

- The covered RBE must, likewise, submit to the concerned IPA the original COR issued by the said concerned IPA for annotation of the above-mentioned information.

- The covered RBE must comply with the terms and conditions of both CORs to avail of its fiscal and non-fiscal incentives.

- The IPAs, BIR and BOC shall use and refer to the (1) BOI-COR as the basis for the entitlement to the remaining fiscal and non-fiscal incentives of the covered RBE as stated therein and (2) original COR issued by the concerned IPA as the basis for the entitlement to non-fiscal incentives as stated therein and its corresponding Terms and Conditions or Registration Agreement and/or Supplemental Agreement.

- Covered RBEs that have been issued a BOI-COR shall apply for a CETI before filing the Income Tax Return (ITR) with the concerned IPA.

- Once the concerned IPA has verified the covered RBE's entitlement to tax incentives, it shall issue the CETI in favor of the covered RBE. The CETI shall then be attached to the ITR of the RBE for purposes of filing with the BIR.

- The CETI issued by the concerned IPA shall be considered valid and sufficient proof of compliance with the terms and conditions indicated in the BOI-COR and the RBE's entitlement to tax incentives.

- Once the Certificate of Authority to Import (CAI) is fully implemented, the covered RBE shall apply for a CAI with the concerned IPA. If issued, the concerned IPA shall provide viewing access to the concerned BOC Office with regard to the corresponding CAI. In all cases, any action on the application for a CAI shall be communicated by the concerned IPA to the covered RBE.

- The CAI issued by the concerned IPA shall be valid and be considered by the BIR and BOC as proof of entitlement to tax and/or duty-free importation, notwithstanding the BOI-COR. The CAI, or the related admission permit or import permit, or any other equivalent document issued by the concerned IPA while the CAI is being rolled out, shall be used for importations.

- For existing capital equipment or other assets that are used in the registered project or activity of the covered RBE, which were imported on or before 31 January , 2023, these shall be covered by a Tax Exemption Indorsement (TEI) issued by the Department of Finance's Revenue Office (DOF-RO).

- The VAT zero-rating certification shall be applied with the concerned IPA following BIR RMC No. 36-2022. For counterchecking purposes, the BIR shall rely on the master list and VAT zero rate indorsement of covered RBEs, which the concerned IPA shall submit to the BIR.

- All general and specific terms and conditions imposed upon the registration of the project and availment of incentives, must, nevertheless be complied with by the covered RBE, with the exception of exclusively conducting or operating the registered project or activity within the geographical boundaries of the economic zone or freeport zone being administered by the concerned IPA.

- The monitoring of the covered RBE's compliance with the terms and conditions of their registration, reportorial requirements, and other compliance requirements under the CREATE Act and its IRR, as amended, and other applicable laws, rules, and regulations shall remain with the concerned IPA.

- Covered RBEs currently availing of the 5% tax on gross income earned (GIE) or special corporate income tax (SCIT) incentive, in lieu of all national and local taxes, shall be allowed to avail of the same continuously.

- Existing rules on the allocation of the 5% SCIT among the National Government, Local Government Unites (LGUs), and the IPAs under special laws governing the latter shall be observed.

- For covered RBEs governed by special laws, which do not provide an allocation, the 5% GIE or SCIT based on the gross income shall be paid and remitted as follows:

    1. 3% to the National Government, to be remitted to the BIR using the electronic system for filing and payment of taxes; and

    2. 2% to be directly remitted by the covered RBE to the treasurer's office of the municipality or city where the covered RBE is located.

- No part of the GIE or SCIT shall be remitted to the LGU where an employee under a WFH arrangement is located unless the LGU where an employee under WFH arrangement is located is the same as that where the covered RBE is located.

- As proof of entitlement to import VAT and/or customs duties exemption and to facilitate the free movement of capital equipment and other assets within and outside the economic zones and freeport zones, the covered RBE shall secure a TEI from the DOF-RO.

- Existing goods will be covered by a blanket TEI per project, covering existing goods that were imported as of 31 January 2023. While for importations starting 1 February 2023, these shall be processed per project per shipment.

- Once the TEI has been secured for existing equipment and other assets, no bond requirement, in whatever form, shall be imposed for the transfer or movement of equipment and other assets, such as laptops, desktops, and other equipment, outside the economic zones or freeport zones. *Provided,* that the amount of equipment of the covered RBE outside the economic zone or freeport zone shall not exceed the number of its employees under a WFH arrangement. Upon approval of the concerned IPA, additional laptops/other equipment may be allowed if reasonably needed to perform the registered project or activity.

- For new capital equipment and other assets that will be imported per project starting 1 February 2023, such assets must be covered by a TEI, as issued by the DOF-RO. *Provided,* further, that the covered RBE shall, within 30 days from the issuance of BOI-COR, submit a report to the concerned IPA containing the following:

    1. List of all equipment and other assets permanently situated inside the economic or freeport zones, and those assets brought out of the economic or freeport zones, including the quantity of laptops, desktops, furniture and fixtures, and other assets, whether local or imported;

    2. Acquisition cost, book value, and year of acquisition of the equipment and/or other assets; and

    3. Total number of employees and number of employees under WFH arrangement.

- From 1 January 2023 until 31 March 2023, the covered RBEs shall be authorized to move the related capital equipment and other assets outside the economic zones and/or freeport zones through a provisional goods declaration, as supported by a notarized undertaking that the related TEI will be secured, in lieu of posting any type of bond and during the pendency of the TEI.

- However, from 1 February 2023 until 31 March 2023, only covered RBEs registered with the BOI, as evidenced by the related BOI-COR or the corresponding Official Receipt representing the payment of the applicable fee, will be authorized to move their existing capital equipment and other assets within and outside the economic zones and/or freeport zones through a provisional goods declaration, as supported by a notarized undertaking that the related TEI will be secured, in lieu of posting any type of bond and during the pendency of the TEI. *Provided,* that only the capital equipment and other assets related to the registered IT-BPM project or activity that has been registered with the BOI shall be allowed to avail of the transition period.

- During the transition period, the covered RBEs shall secure the related TEI covering their existing capital equipment and other assets that were imported as of 31 January 2023.

- In summary, below are the timelines and the supporting documents that will authorize the free movement of goods of covered RBEs within and outside the economic zones and/or freeport zones:

Date of importation of capital equipment and other assets	Applicability of the TEI	Covered period	Surety bond requirement	Documentary proof of authority to move the goods while TEI is still pending
Imported on or before 31 January 2023 (i.e., assets deemed as "existing")	TEI must be secured for all imported goods that availed of VAT exemption and/or customs duty exemption. The TEI pertaining to existing goods will be secured on a per project basis.	1 January 2023 to 31 January 2023	No requirement (bond-free transition period)	BOI-COR or BOI Official Receipt (only if available) and the provisional goods declaration, together with the notarized undertaking, in lieu of posting any type of bond.
		1 February 2023 to 31 March 2023		BOI-COR or BOI Official Receipt and the provisional goods declaration, together with the notarized undertaking, in lieu of posting any type of bond.
		1 April 2023 onwards	Surety bond is needed as the transition period has already lapsed.	BOI-COR or BOI Official Receipt and duly filed and approved surety bond. The subject goods can be released through a provisional goods declaration, subject to the BOC's existing rules and regulations.
Imported as of 1 February 2023 (i.e., assets deemed as "new")	TEI must be secured for all imported goods that availed of VAT exemption and/or customs duty exemption. The TEI pertaining to new goods will be secured on a ***per shipment per project basis***.	1 February 2023 onwards	No requirement (i.e., goods shall remain with the concerned BOC Office and shall not be released while the TEI is still pending)	No alternative document. The duly processed TEI, Statement of Settlement of Duties and Taxes (SSDT) and consumption entry are all required prior to the release of the goods.

- In essence, all imported goods of the covered RBE that were granted exemptions covering import VAT and/or customs duties will all be covered by a duly processed TEI, statement of settlement of duties and taxes, and duly processed consumption entry.

- For purposes of determining the bondable amount, the amount of customs duties and/or VAT shall be based on the net book value of imported assets that have availed of the corresponding exemption on customs duties and/or VAT. If the net book value is zero, the valuation methods will take precedence.

- Regarding the movement of locally purchased capital equipment and other assets that were subjected to VAT zero-rating, the IPA-issued VAT zero-rating certificate should suffice as proof of its VAT incentive, in accordance with existing BIR rules and regulations.

- The remaining period of fiscal and non-fiscal incentives of covered RBEs shall be availed from the concerned IPA. After the expiration of the fiscal incentives, the covered RBE shall not be allowed to register anew the same project or activity to avail of fiscal incentives unless there is a new project or activity or a qualified expansion project under the SIPP.

- Employees under WFH arrangements shall not be made liable to pay Local Business Taxes, Mayor's or Business Permit Fees, and Occupational Permit Fees by the LGU where they render service in a WFH arrangement pursuant to Department of Finance Local Finance Circular No. 001-2022 or the Guidelines on the Imposition of Local Business Tax, Fees, and Charges to Service Contractors.

- Valuation methods of the BOC for the sale, transfer, donation, or disposal of the related assets of the covered RBE, whether local or imported

    1. Sale or transfer of equipment and other assets made to other non-privileged persons or entities shall be subject to the payment of duties and/or taxes based on the following:

        - Net book value; or
        - Depreciated value using the straight-line depreciation method, with depreciation capped at 10% per year, but in no case shall it exceed 90%. Effectively, this assumes that the related equipment and other assets have a residual value of 10%, once fully depreciated.

    The value to be used shall be whichever is higher between A and B.

    2. Transfer of equipment and other assets by way of donation to non-privileged persons or entities shall be subject to the payment of duties and/or taxes based on the following:

        - Net book value; or
        - Depreciated value using the straight-line depreciation method, with depreciation capped at 10% per year, but in no case shall it exceed 90%. Effectively, this assumes that the related equipment and other assets have a residual value of 10%, once fully depreciated.

    The value to be used shall be whichever is higher between A and B.

    3. If the asset shall be destroyed or incinerated, the reference values per BOC Memorandum dated 7 April 2017, numbered 2017-04-012, shall be used for the BOC's valuation.

    In all three cases above, the imposition of customs duties and/or import VAT shall be applied to all imported goods, which have been initially exempted from customs duties and/or VAT, per original importation.

    For locally purchased assets, which were initially brought into the economic zone or freeport by availing of VAT zero-rating, the related VAT shall be imposed upon its sale, transfer, donation, or disposal.

- The receiving BOC Office shall check the completeness of the documentary requirements.

- The receiving BOC Office shall only be allowed to process and approve applications with sufficient supporting documents. In case of insufficient supporting documents, import VAT and/or customs duties shall be assessed, as applicable.

- Beginning 1 January 2023, only covered RBEs that have successfully registered with the BOI on or before 31 January 2023, as evidenced by the BOI-COR or the BOI Official Receipt representing the applicable fee, shall be allowed to implement 100% WFH from 1 January to 31 January 2023. Notably, RBEs who did not register with the BOI shall not be allowed to implement any WFH arrangement starting 1 January 2023.

RMC No. 20-2023 clarifies the provision of Section 5 of RMC No. 63-2022 pertaining to the correct tax base in computing the Excise Tax on the importation of automobiles for resale pursuant to Section 149 of the Tax Code of 1997, as amended.

RMC No. 20-2023 dated 8 February 2023

- Section 5 of RMC No. 63-2022 states:

  "Based on the above provisions, there are three (3) primary taxable bases in applying the Excise Tax rates for automobiles, namely:

  1. Declared manufacturer's or importer's selling price, net of Excise and Value-Added Taxes;
  2. Based on the 80% actual dealer's price, net of Excise and Value-Added Taxes; and
  3. Based on the total cost of importation and expenses divided by 90%."

- The Circular clarifies that the third taxable base provided in number 3 above shall only apply in cases where the net importer's selling price is lower than the cost of importation and expenses as defined in the said RMC.

Banks and Other Financial Institutions

Amendments to the Ceiling on Interest or Finance Charges for Credit Card Receivables

Circular No. 1165 amends the ceiling on interest or finance charges for credit card receivables.

Circular No. 1165 issued on 19 January 2023

The Monetary Board (MB), in its Resolution No. 55 dated 13 January 2023, approved the following amendments to the Manual of Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) on the ceiling on interest or finance charges for credit card receivables.

Section 1. Section 312 of the MORB is hereby amended to read, as follows:

CREDIT CARD OPERATIONS

Method of computing and imposition of interest or finance charges. Banks shall impose an interest or finance charge on all credit card transactions not to exceed an annual interest rate of 36% except credit card installment loans which shall be subject to monthly add-on rate not exceeding 1%: Provided that in the case of credit card cash advances, aside from the foregoing applicable maximum interest rate caps, no other charge or fee shall be imposed or collected apart from the processing fee in the maximum amount of Php200.00 per transaction; Such maximum processing fee and interest rates or finance charges shall be subject to review by the Bangko Sentral ng Pilipinas (BSP) every six months.

Section 2. Section 101-CC of the MORNBFI is hereby amended to read, as follows:

CREDIT CARD OPERATIONS; GENERAL POLICY

Method of computing and imposition of interest or finance changes. Credit card issuers shall impose an interest or finance charge on all credit card transactions not to exceed an annual interest rate of 36% except credit card installment loans which shall be subject to monthly add-on rate not exceeding 1%: Provided, That in the case of credit card cash advances, aside from the foregoing applicable maximum interest rate caps, no other charge or fee shall be imposed or collected apart from the processing fee in the maximum amount of Php200.00 per transaction; Such maximum processing fee and interest rates or finance charges shall be subject to review by the BSP every six months.

Section 3. This Circular shall take effect 15 days following its publication either in the Official Gazette or in any newspaper of general circulation in the Philippines.

Circular No. 1166 amends the regulations on e-money and electronic money issuers.

Amendments to the Regulations on Electronic Money (E-money) and the operations of Electronic Money Issuers (EMI) in the Philippines (Reuploaded with Appendices)

Circular No. 1166 issued on 7 February 2023

Governance. The following guidelines shall govern the issuance and operations of E-money:

- Minimum Systems and Controls. Prior to issuance of E-money, BSFIs shall ensure that the following are in place:

    1. Sound and prudent management, administrative and accounting procedures and adequate internal control mechanisms;
    2. Properly designed computer systems which are thoroughly and independently tested prior to implementation;
    3. Appropriate security policies and measures intended to safeguard the integrity, authenticity, and confidentiality of data and operating processes;
    4. Robust selection criteria and due diligence process in accrediting E-money agents and merchant/business partners and criteria for periodic performance review;
    5. Fraud risk management system that is commensurate to the risks associated with particular EMI classification or specific EMI activities;
    6. Adequate business continuity and disaster recovery plan; and
    7. Effective audit function to provide periodic review of the security control environment and critical systems.

- E-money shall only be issued and redeemed at face value. It shall not be purchased at a discount wherein the E-money credited to the customer's account balance is higher than the amount of fiat money used to purchase it. The issuance and operations of E-money denominated in foreign currency shall be subject to existing foreign exchange rules and regulations. Moreover, E money is not considered a deposit. It shall not earn interest and other similar incentives convertible to cash that may be construed as earning of interest. BSFIs may offer promotional incentives that are not based on the outstanding balance of the e-wallet to encourage greater usage and attract new users.

- Consumer Protection. BSFIs are required to strictly adhere to BSP regulations on Financial Consumer protection as prescribed under Part Ten. BSFIs shall adhere to the expectations provided under this regulation covering the following core principles:

    1. Disclosure and transparency of E-money transactions;
    2. Protection of client information;
    3. Fair treatment of E-money customers;
    4. Effective recourse in place for handling complaints and redress mechanisms; and
    5. Protection of E-money Consumer Assets against Fraud and Misuse.

Capital Requirements. The term capital shall be as defined under Section 121. The required capital for EMI-Banks shall be the higher of: (a) the required minimum capitalization for banks depending on bank category or (b) the required minimum capitalization based on EMI category as follows:

EMI Category	Required Capital
Large Scale EMI-Bank	Php 200,000,000
Small Scale EMI-Bank	Php 100,000,000

Review of aggregated transactions shall be done 12 months after the commencement of EMI operations and quarterly assessment henceforth shall be done by the appropriate supervising department of the BSP to assess the volume/value of EMI transactions. Consequently, an EMI Bank shall be classified as Large scale if the 12-month average value of aggregated inflow and outflow transactions is equal to or greater than Php 25.0 billion. Once classified as large scale, the EMI-Bank will no longer be classified as small scale unless approved by the BSP. EMI-Banks are expected to comply with the Php 200 million capital requirement within one year from date of reclassification.

Registration with the AMLC. In line with the authority of the BSP to check compliance of BSFIs with RA No. 9160, as amended, or the Anti-Money Laundering Act (AMLA), RA No. 10168 or the Terrorism Financing Prevention and Suppression Act (TFPSA), their respective IRR, and other AMLC and BSP issuances, BSFIs shall also secure a Certificate of Registration with the AMLC pursuant to the 2021 AMLC Registration and Reporting Guidelines.

Amendments to the Rediscount/Lending Rates for United States Dollar and Japanese Yen

Circular No. 1167 amends rediscount/lending rates for USD and Japanese Yen.

Circular No. 1167 issued on 7 February 2023.

The Monetary Board (MB), in its Resolution No.106 dated 23 January 2023, approved the amendments to Section 282 the Manual of Regulations of Banks (MORB) on Rediscount/Lending Rates pertaining to the United States (Us) dollar Japanese yen rediscount rates and the schedule of publication of applicable rediscount rates.

Section 1. Section 282 of the MORB. as amended by Circular No. 1132 dated 14 December 2021, on "Rediscount/Lending rates" is hereby amended to read, as follows:

REDISCOUNTING AVAILMENTS

US Dollar Japanese Yen Rediscount Rates

The US dollar and Japanese yen rediscount rates shall be the applicable benchmark rate plus an appropriate spread depending on the term of the loan as may be determined by the BSP. The spread between these two rates may also vary to reflect movements in the market interest rates and to achieve monetary policy objectives. Banks eligible to apply in the BSP's foreign currency rediscounting window may avail of the 1-90 days, 91-180 days, and/or 181-360 days term facility, subject to applicable rediscount rates.

The rediscount rates shall be posted monthly on the BSP's website on the seventh calendar day of the month or on the next banking day if the seventh calendar day of the month falls on a non-banking day. In case of a change in the BSP's policy rates, the resulting rediscount rates shall be posted on the BSP's website one banking day following the said change in the BSP's policy rate.

Section 2. All references to dollar and yen in Section 282 of the MORB shall be changed to US dollar and Japanese yen, respectively.

Section 3. This Circular shall take effect immediately after its publication in the Official Gazette or in a newspaper of general circulation.

Anti-Money Laundering Council (AMLC) Resolution Nos. TF-63 and TF-64, Series of 2023

Circular Letter CL-2023-009 disseminates AMLC resolutions directing the issuance of a Sanctions Freeze Order to take effect immediately.

Circular Letter CL-2023-009 issued on 3 February 2023

This is to disseminate the AMLC Resolution Nos. TF-631 and TF-642 , both dated 25 January 2023 (copies attached), directing the issuance of a Sanctions Freeze Order (SFO) to take effect immediately against certain designated individuals and organization, pursuant to their designation as terrorists under the Anti-Terrorism Council (ATC) Resolution Nos. 35 and 36, and the freezing without delay of the following property or funds, including related accounts: (a) property or funds that are owned or controlled by the subject of designation, and is not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat; (b) property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the subject of designation; (c) property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subject of designation; and (d) property or funds of persons and entities acting on behalf or at the direction of the subject of designation.

BSFIs are reminded to submit to the AMLC: (a) a written return, pursuant to, and containing the details required under, Rule 16.c of the Implementing Rules and Regulations of RA No. 10168, otherwise known as the Terrorism Financing Prevention and Suppression Act of 2012 (TFPSA); and (b) Suspicious Transaction Report on all previous transactions of the subject of designations within five days from the effectivity of the SFO.

Any person, whether natural or juridical, including covered persons, among others, who (a) deals directly or indirectly, in any way and by any means, with any property or fund that he knows or has reasonable ground to believe is owned or controlled by the designated individuals or organization, including funds derived or generated from property or funds owned or controlled, directly or indirectly, by such designated individuals or organization; or (b) makes available any property or funds, or financial services or other related services to the said designated individuals or organization, shall be prosecuted to the fullest extent of the law pursuant to the TFPSA.

Resumption of the Collection of Settlement Fees and Other Charges for the Use of the Peso Real Time Gross Settlement (RTGS) System

Memorandum No. M-2023-002 shall resume collecting settlement fees for use of RTGS System.

Memorandum No. M-2023-002 issued on 7 January 2023

Pursuant to Section 619 of the Peso RTGS Rules, particularly on Settlement Fees and Other Charges, the BSP shall resume the collection of RTGS fees and charges in accordance with the following guidelines:

1. The amounts to be collected shall be based on the pricing structure shown in Annex A.

2. The RTGS fees and charges shall be debited from the main settlement accounts of the participants at the end of each business day'

3. The settlement fees and related charges shall be reflected in the end-of-day (EOD) camt.053 Statement Message. All other charges, such as those pertaining to the smart card kits issued to the participants. shall be shown in the statements of account that are electronically sent to the participants prior to the start of each business day.

4. A beneficiary participant may return a payment for free using the Payment Return message (pacs.004) until the end of the following business day (T + 1). Payments returned beyond T + 1 shall be done through the Customer Payment Message (pacs.008) or the F1 to F1 Payment Message (pacs.009), as applicable. These payment messages are subject to fees.

5. The participants can generate their billing statements through TMS/x by clicking the Reports Menu and choosing the Central System Reports option.

6. The participants shall check promptly the accuracy of their billing statements. Any exception noted by the participants shall be submitted to the BSP via email at rtgs@bsp.gov.ph not later than T+1. The "Subject" of the email message shall be in the following format: PhilPaSS^{plus} Billing - Noted Exceptions - FI Name.

The guidelines stated above shall take effect on 1 February 2023.

Guidelines on the Submission of Monthly Reports on the Sale/Transfer and Investment Transactions of BSFIs under RA No. 11523 otherwise known as the "Financial Institutions Strategic Transfer (FIST) Act"

Memorandum No. M-2023-003 provides guidelines on the submission of monthly reports on the sale/transfer and investment transactions of BSFIs.

Memorandum No. M-2023-003 issued on 14 February 2023

Pursuant to Circular No. 1117 dated 27 May 2021, as amended under Circular No. 1147 dated 10 June 2022, the following are the submission guidelines that shall be observed beginning report as of end-January 2023:

- **Submission Guidelines**

    1. All BSFIs that availed of the tax exemptions and incentives/privileges under the FIST Act shall use the FIST Monthly Data Entry Template (DET) and its corresponding Control Proof list (CP), which can be downloaded from www.bsp.gov.ph/ses/reporting_templates or directly requested from BSP-Department of Supervisory Analytics (DSA) through DSAReports@bsp.gov.ph. In requesting the said files, covered BSFIs shall follow the prescribed format as the subject, [REQUEST] FIST Monthly Template.

    2. All covered BSFIs shall submit the Monthly Report DET and CP on the Sale/Transfer and Investment Transactions of BSFIs under the FIST Act through the FIST@bsp.gov.ph, copy furnished the appropriate supervising department of the BSP, using the following prescribed format for the subject:

        First Monthly <BSFI Name>, <Reference Period in DD Month CCYY>

        For example,

        To: FIST@BSP.gov.ph
        Subject: FIST Monthly Bank ABC, 31 January 2023

        And using the prescribed file naming convention, as illustrated below:

File	File name Reference period (MMDDYY)	File Format
1. Monthly Report	FIST Monthly_Reference Period	.xls
2. Control Prooflist	FIST Monthly CP_ Reference Period	.pdf

3. The report shall be considered a Category B report and shall be submitted within 20 business days after end of reference month.

4. BSFIs that availed of the tax exemptions and incentives/privileges under the FIST Act shall submit the required prudential report within the prescribed timeline following the reference month of the transaction.

5. BSFIs shall submit the prudential report as long as the BSFIs have outstanding balance related to the FIST transaction (i.e., Deferred Charges) or there are new sale/transfer transactions under the FIST for the reporting month.
6. All covered BSFIs shall only use e-mail addresses officially registered with the DSA in electronically submitting reports in accordance with BSP Memoranda Nos. M-2017-028 dated 11 September 2017, M- 2017- 014 and 2017-015 both dated 31 March 2017 and M-2017-006 and M-2017-007 both dated 22 February 2017. The same registered e-mail address/es shall be used by the DSA in acknowledging the submitted reports.

7. All covered BSFIs that are unable to transmit electronically may submit the DET and CP in any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

   The Director
   Department of Supervisory Analytics (DSA)
   Bangko Sentral ng Pilipinas
   11th Floor, Multi-Storey Building
   BSP Complex, A. Mabini Street, Malate
   1004 Manila

- Important Reminders

  1. The following may result in an erroneous or failed submission:

     - Failure to use an officially registered e-mail address;
     - Failure to use the prescribed subject line or reporting date;
     - Failure to use the correct templates;
     - Transmitting to the wrong e-mail address; and
     - Failure to use the prescribed file names and file format.

Bureau of Customs

Realignment of the X-RAY Inspection Project (XIP) from Intelligence Group to the Office of the Commissioner

CMO 01-2023 transfers the control and supervision of the XIP Office to the Office of the BOC Commissioner.

CMO No. 01-2023 dated 17 January 2023

- The supervision and control of the XIP office has been transferred from the Deputy Commissioner, Intelligence Group, to the Office of the Commissioner, to increase transparency in the customs operations and to fully assist the Bureau of Customs (BOC) in its aim to modernize the XIP and its processes under the Customs Modernization Project.

Implementation of DTI Department Administrative Order (DAO) No. 22-13 S. 2022 on the Imposition of Definitive General Safeguard Measures on Imported High-Density Polyethylene (HDPE) Pellets and Granules from Various Countries (AHTN Code 3901.20.00)

CMO No. 02-2023 orders the implementation of DTI DAO No. 22-13 series of 2022, which imposes definitive general safeguard measures on imported High-Density Polyethylene (HDPE) pellets and granules under AHTN 2017 (Code 3901.20.00) from various countries.

CMO No. 02-2023 dated 11 January 2023

- Imposition of definitive general safeguard duty in the amount of Php 1,338.00/MT for the first year, Php 1,271.00/MT for the second year and Php 1,208.00/MT for the third year of the implementation period, subject to the regular review by the DTI.
- Imports originating from developing countries shall not be subject to the definitive general safeguard measure, as listed in Annex A covered by Rule 8.8 of the Implementing Rules and Regulations of RA No. 8800.
- The following products shall be excluded from the imposition of the general safeguard duty:

    1. PE wax (AHTN 2017 subheading 3404.90.90);
    2. Ethylene acrylic acid copolymer (AHTN 2017 subheading 3906.90.99);
    3. PP (AHTN 2017 subheadings 3902.10.30, 3902.10.40, and 3902.10.90);
    4. LDPE (AHTN 2017 subheadings 3901.10.19 and 3901.10.99);
    5. PET resin (AHTN 2017 subheading 3907.61.00);
    6. Imported HDPE grades specially made for use in the manufacture of wire and cable jackets or coatings;
    7. HPDE used in rotational molding process application that are generally in powder form with particle size of 500 microns or below;
    8. A melt index of 4.0g/10 min, and a density of 0.93-0.94g/cm^3

- Importers of HDPE originating from a country that is exempt from safeguard duty and those not covered by preferential tariffs shall submit a Certificate of Country Origin (CO) issued by authorized agency/office in the source country of manufacture subject to affixation of "Apostille" to the document or authenticated by the Philippine Embassy/Consulate General, as applicable.
- The application of the definitive general safeguard measure shall be monitored and reviewed in accordance with Sections 15 and 16 of RA No. 8800.

Full Implementation of the CBW Automated Inventory Management System (AIMS) and Imposition of Penalties for Non-Compliant CBWs

AOCG Memo No. 40-2023 fully implements the Customs Bonded Warehouse-Automated Inventory Management System (CBW-AIMS) and imposed penalty for non-compliance.

AOCG Memorandum No. 40-2023 dated 18 January 18 2023

- Pursuant to Memorandum Order No. 20-2021 on the full implementation of the Customs Bonded Warehouse-Automated Inventory Management System (CBW-AIMS), all Collection Districts and offices concerned are directed to ensure that all CBWs and accredited members of Customs Common Bonded Warehouse (CCBW) have registered with AIMS and submitted all the necessary data.
- Those who did not comply shall be subject to suspension of their Client Profile Registration System (CPRS) as Warehouse Operator.

Clearance is not Required from DENR-EMB for the Importation of Granulated Blast Furnace Slag to be used as Raw Material in Cement Manufacturing

AOCG Memo No. 48-2023 clarifies that Importation Clearance from the DENR-EMB is no longer required for the importation of GBFS for use as raw materials in cement manufacturing.

AOCG Memorandum No. 48-2023 dated 20 January 2023

- This concerns the letter reply of EMB-DENR which discussed that the importation of Granulated Blast Furnace Slag is no longer covered by the permitting requirements of RA 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990) since GBFS is already a product that had undergone preprocessing from the State of Export as based on the submitted process flow/description to suit with the declared usage.

- In such case, an Importer Clearance is no longer necessary to be secured, without prejudice in complying with the requirements of other government agencies regulating GBFS.

Commodity Classification Requirement Prior to Registration

DTI Announcement No. 2023-001 reminds all industry stakeholders to properly classify their items, software, or technology under the NSGL prior to registration with the with the STMO.

Department of Trade and Industry (DTI) Announcement No. 2023-001 dated 26 January 2023

- Under DTI Memorandum Circular No. 21-10, all industry stakeholders shall properly classify their item, software, or technology under the NSGL before applying for registration with the STMO.

- A Commodity Classification determines whether an item, software or technology satisfies the control conditions in the NSGL. A specific NSGL code is assigned to a particular item, software, or technology, which shall be submitted to the STMO during the application for registration pursuant to the process provided.

- However, industry stakeholders that determined that their commodities are not listed in the NSGL do not need to register with the STMO.

SEC Filing, Payments and Other Deadlines

Receiving of CRMD Documents, Releasing of CRMD approved Applications and Stamping of STB/MB

The SEC Notice informs the public that effective 1 February 2023 certain CRMD transactions will be conducted exclusively at the SEC Robinsons Galleria Satellite Office.

SEC Notice dated 25 January 2023

The following CRMD transactions will be conducted exclusively at the SEC Robinsons Galleria Satellite Office:

- Receiving of physical copies of signed and notarized/authenticated approved CRMD applications and supplemental documents with proof of payment;

- Releasing of Certificates of Incorporation/Amendment/Confirmation of Payment and other approved CRMD applications, through presentment of original copy of proof of payment and appointment letter;

- Releasing of Orders, such as but not limited to the Petitions to Lift Order of Suspension/Revocation and/or Correction through presentment of original copy of proof of payment and appointment letter; and

- Registration of Stocks and Transfer/Membership Book.

Receiving of documentary requirements will be over-the-counter at the SEC Robinsons Galleria Satellite Office or sent through the company's courier of choice, addressed to the CRMD Receiving Section, 5th Floor, The SEC Headquarters, 7907 Makati Avenue, Salcedo Village, Bel-Air, 1209 Makati City, Metro Manila.

Furthermore, all payments starting 01 February 2023 will be through accepted Espaysec or at any either the https://espaysec.sec.gov.ph/payment-portal/home or Land Bank of the Philippines Branch Nationwide.

"No Appointment, No Release" Policy of CRMD approved application

The SEC Notice informs the public that effective 1 February 2023, the "No appointment, No release" policy will be implemented in the releasing of CRMD approved Certificates/ Orders/Certifications.

SEC Notice dated 25 January 2023

When claiming the approved Certificates/Orders/Certifications, CMRD transacting public will be required to present the appointment letter and the original proof of payment.

Salient Features of SEC Memorandum Circular no. 10, Series of 2022

The SEC Notice warns all corporations that it will strictly implement its guidelines under SEC Memorandum Circular 15, S. 2019, SEC Memorandum Circular 30, S. 2020, and SEC Memorandum Circular No. 10, S. 2022.

SEC Notice dated 09 February 2023

To avoid being imposed with heavy fines and penalties, all reporting corporations are directed to:

- Register in the e-FAST platform.
- Submit the annual reportorial requirements such as the General Information Sheet and the Annual Financial Statement on or before the required filing date.
- Provide correct beneficial ownership information in the Beneficial Ownership Declaration Page of the GIS. (Do not leave the Beneficial Ownership Declaration Page blank)

The SEC reiterates the increase in penalties and additional non-financial penalties for non-disclosure and false disclosure of beneficial ownership information.

Board of Investments

Memorandum Circular No. 2023 – 001 clarifies the Coverage of Logistic Services as "Activities in Support to Exporters" under the 2022 SIPP.

Memorandum Circular No. 2023 – 001 dated 31 January 2023

Based on the definition of export enterprises under Sec. 293. (E) of the CREATE Act, the listing in the SIPP for logistic services as one of the activities in support of exporters shall cover the Ecozone Logistics Service Enterprises (ELSEs) type 3 or "combination of both", as follows:

- Establishment of a warehouse storage facility; and
- Importation or procurement from local sources and/or from other PEZA registered enterprises of goods for resale, or for packing/covering (including marking, labelling), cutting or altering to customers' specification, mounting and/ or packaging into kits or marketable lots thereof for subsequent sale, transfer or disposition for export.

Further, such integrated ELSEs shall be considered as export enterprises; Provided, that they render at least 70% of their output/services to another registered export enterprise.

PEZA

PEZA Memorandum Circular No. 2023-004 provides that the FIRB has issued the supplemental guidelines on the registration with the Board of Investments BOI of RBEs in the IT-BPM sector.

PEZA Memorandum Circular No. 2023-004 dated 17 January 2023

This includes among others:

- Issuance of the BOI Certificate of Registration
- Application for Certificate of Entitlement to Income Tax Incentives (CETI)
- Certificate of Authority to Import (CAI)
- Value-Added Tax (VAT) Zero-Rating Certification which the concerned IPA shall continue to issue
- Movement of Capital Equipment and Other Assets within and outside the Economic Zones and/or Freeport Zones with timelines and step-by-step procedure on securing a Tax Exemption Indorsement (TEI)

IT-BPM RBEs that are eligible to register with BOI but have decided to not exercise their option by 31 January 2023, and all RBEs registered with the concerned IPAs starting 15 September 2022 onwards shall not be allowed to register with the BOI under FIRB Resolutions 026-22 and 033-22 and shall be covered by the Section 309 of the NIRC of 1997, as amended.

Beginning 1 January 2023, only covered RBEs that have successfully registered with the BOI on or before 31 January 2023, as evidenced by the BOI-COR or the BOI Official Receipt representing the applicable fee, shall be allowed to implement 100% WFH from 1 January to 31 January 2023. Notably, RBEs who did not register with the BOI shall not be allowed to implement any WFH arrangement starting 1 January 2023.

Court of Tax Appeals

Assessment

Adelc Trading / Ryan Dominique Tanjutco vs. Commissioner of Internal Revenue
En Banc 2469, promulgated on 2 February 2023

Filing of a motion for reconsideration is not an available remedy in seizure proceedings.

Facts:

A alleges that he is the consignee of a 1x40' container shipment bearing Container Van No. TEXU706966. The shipment contains one unit Rolls Royce motor vehicle (hereinafter referred to as "Subject Shipment"). The Subject Shipment arrived at the Port of Davao (POD) on 23 July 2012.

On 17 September 2012, the District Collector-POD issued a Warrant of Seizure and Detention against the Subject Shipment for violation of Executive Order No. 156 (EO 156) in relation to Section 105 (No Dollar Importation of Personally Owned Used Vehicle) of the Tariff and Customs Code of the Philippines (TCCP).

A hearing was conducted where A presented his Authority to Import dated 11 July 2012, which was issued by the Department of Trade and Industry-Bureau of Import Services. Later, A submitted a letter to the District Collector-POD offering to pay the settlement value and fine, if any, of the Subject Shipment.

Then Acting District Collector-POD issued a Decision accepting A's settlement offer and ordering the release of the Subject Shipment upon payment of the settlement value.

The 2012 Decision was then forwarded to the CIR for his review pursuant to Section 2307 of the TCCP. Thereafter, the CIR issued the 2016 Decision reversing the 2012 Decision and ordering the forfeiture of the Subject Shipment. A avers that he received a copy of the 2016 Decision via e-mail.

Subsequently, A filed his Motion for Reconsideration, which was denied by the CIR.

Unknown to A that CIR already issued the 2017 Order, he filed a Letter for Reconsideration to the CIR, which the CIR denied. The CIR treated it as A's second Motion for Reconsideration (hereinafter referred to as 2019 Decision). Aggrieved, A filed the instant Petition for Review with the CTA, assailing the 2019 Decision of the CIR.

Issue:

Whether the forfeiture of the Subject Shipment was valid?

Ruling:

A is reckoning the counting of the period to appeal with the CTA from 6 June 2019, the date of receipt of the BIR's 28 May 2019 Resolution, which resolved the Letter for Reconsideration dated 8 January 2018, filed by A assailing the BIR's 26 August 2016 Decision. It must be noted that as of 8 January 2018, A has not yet received the physical copy of the 26 August 2016 Decision but rather the copy received through electronic mail on 28 February 2017. Verily, the 26 August 2016 Decision referred by A in its Letter for Reconsideration dated 8 January 2018 pertains to the decision it received by electronic mail on 28 February 2017.

A disavows the receipt of the 26 August 2016 Decision on 28 February 2017 through electronic mail. Yet, at the same time, it proffers that the counting of the reglementary period to file an appeal is from its physical receipt of the BIR's 28 May 2019 Resolution. This 28 May 2019 Resolution resolved A's Letter of Reconsideration assailing the 26 August 2016 Decision, the very same decision the electronic receipt of which it rejects.

Further, the filing of a motion for reconsideration is not an available remedy in seizure proceedings. Even assuming that a motion for reconsideration was available to A under the TCCP and the CMTA and even assuming A's assertion that the reckoning of the 30-day period to appeal with the CTA is from 6 June 2019, the date it received the BIR's 28 May 2019 Resolution, the CTA Division has already ruled that the appeal was filed out of time in its Resolution dated 31 January 2020.

Refund/ Issuance of a Tax Credit

CIR vs. Henryville Inc.
En Banc 2531, promulgated 1 February 2023

RMO No. 19-2007 could not be any clearer in mandating that all amounts of compromise penalties incident to violations must be itemized in a separate assessment notice/demand letter.

Facts:

Company A is an owner and operator of several quick service restaurants throughout the Philippines.

Company A received a copy of Mission Order No. 00096203 ordering Revenue Officers (ROs) A, B, C, D and Group Supervisor (GS) E to (1) apprehend violators of revenue laws and regulations; and (2) check Company A's compliance on new invoicing requirements, validation of permit to use cash register machines (CRM)/point of sales (POS) verification of registration and bookkeeping requirements.

Thereafter, the BIR issued BIR Form No. 0605, directing Company A to pay penalties for the following alleged violations: (a) No Books of Accounts; (b) No Official Receipts; (c) No Back-End Sales Report; and (d) Unaccounted POS.

On 30 May 2014, Company A paid the penalties in order not to hamper the operations of its quick serve restaurants.

Company A administratively filed a Request for Refund dated 2 May 2016, and an Application for Tax Credits/Refunds (BIR Form No. 1914) on 3 May 2016, seeking the refund of the alleged erroneously collected penalties. Company A also filed the instant Petition for Review on 27 May 2016.

Issue:

Was Company A entitled to its claim for refund?

Ruling:

Yes.

Under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, a taxpayer is allowed to file a claim for refund to recover from the BIR the following: (a) any national internal revenue taxes alleged to have been erroneously or illegally assessed or collected; (b) any penalty claimed to have been collected without authority; and (c) any sum alleged to have been excessively or in any manner wrongfully collected.

The compromise penalties which are the subject of Company A's judicial claim for refund may either fall under the second category or the third category.

The guidelines for the collection of compromise penalties are laid down in Section 6 of RR No. 12-99. As stated in Section 6 of RR No. 12-99, the extra-judicial settlement of a taxpayer's criminal liability and the amount of the suggested compromise penalty shall conform to the schedule of compromise penalties provided under Revenue Memorandum Order (RMO) No. 1-90 or any revision thereof. Considering that the BIR's investigation was conducted in the year 2014, the applicable BIR issuance is RMO No. 19-2007.

RMO No. 19-2007 could not be any clearer in mandating that all amounts of compromise penalties incident to violations must be itemized in a separate assessment notice/demand letter. In the present case, a careful scrutiny of the records show that the BIR did not issue any separate assessment notice/demand letter after his investigation of Company A's alleged violations. Instead, the BIR immediately proceeded to issue BIR Form No. 0605 (Payment Form) with no itemized amounts of compromise penalties relative to its violations.

Considering that the pertinent provisions of RMO No. 19-2007 were not strictly observed by the BIR in assessing Company A for the compromise penalties, the compromise penalties were illegally collected, and Company A's payment thereof was erroneous.

Supreme Court Cases

Aces Philippines Cellular Satellite Corporation Vs. Commissioner of Internal Revenue
Supreme Court (*En Banc*) G.R. No. 226680, promulgated on 30 January 2023

Satellite airtime fees paid as consideration for satellite communications time used by telecommunications companies in the Philippines are considered as Philippine-sourced income which is subject to tax in the Philippines.

Facts:

Philippine Long Distance Telephone Company (PLDT) entered into two agreements with PT Asia Cellular Satellite (Aces Indonesia). The Gateway Agreement allowed Aces Indonesia to supply PLDT the equipment, software, data, and documentation necessary for the construction and operation of gateways in the Philippines. On the other hand, the airtime Purchase Agreement allowed Aces Indonesia to sell satellite communications time (Aces Services) to PLDT, which, in turn, shall become the exclusive provider/distributor thereof to Philippine subscribers.

The provision of these services depended upon the "Aces System," which consisted of satellites, terminals, and gateways. The satellite, located in outer space, has the capacity to receive, switch, amplify, and transmit radio signals from and to terminals and gateways located in various geographical jurisdictions within its coverage.

The original parties to the airtime Purchase Agreement transferred their rights and obligations under the contract to third parties: (a) Aces Indonesia transferred in favor of Aces International Limited, a company incorporated in Bermuda (Aces Bermuda); and (b) PLDT transferred to its subsidiary, Aces Philippines Cellular Satellite Corporation (Aces Philippines).

Aces Philippines was subjected to a tax audit by the Bureau of Internal Revenue (BIR) for taxable year 2006. The BIR found that Aces Philippines paid Aces Bermuda satellite airtime fees amounting to Php199,312,169.00 in 2006 but did not withhold the proper amount of tax. According to the BIR, these satellite airtime fees are income payments to a non-resident foreign corporation (NRFC) that are subject to 35% FWT.

Aces Philippines protested the findings, but the BIR issued the Final Decision on Disputed Assessment, which upheld the assessment. Aces Philippines elevated the case before the Court of Tax Appeals which affirmed the decision of the BIR.

Aces Philippines now argues that the income paid to Aces Bermuda was sourced outside the Philippines for the following reasons: *first,* the act of transmission, which takes place in outer space, is the activity that produces the income for Aces Bermuda. *Second,* Aces Bermuda does not have machinery, equipment and/or computers, or employees in the Philippines through which calls would reach and be received within the Philippines.

Issue:

Are the satellite airtime fee payments to Aces Bermuda, in consideration for services rendered using the Aces System, is considered as an income from sources within the Philippines and therefore subject to final withholding tax?

Ruling:

Yes, satellite airtime fee payments to Aces Bermuda, in consideration for services rendered using the Aces System, are considered as an income from sources within the Philippines and therefore should be subject to final withholding tax in the Philippines.

The income-generating activity takes place, not during the act of transmission, but only upon the gateway's receipt of the call as routed by the satellite. The fulfillment of Aces Bermuda's undertaking requires the satellite to have transmitted/routed the call and a gateway to have received the call as routed by the satellite. At the point of transmission, Aces Philippines has not been given access to the Aces System yet. It is only when the call is actually routed to its gateway that Aces Philippines is able to connect its local subscriber to the intended recipient of the call. In this sense, the gateway's receipt of the call signifies completion/delivery of Aces Bermuda's service.

The satellite airtime fees accrue only when the satellite airtime is delivered to Aces Philippines (i.e., upon the gateway's receipt of the routed call) and is utilized by the Philippine subscriber for a voice or data call. The accrual of fees payable to Aces Bermuda signifies the inflow of economic benefits.

Thus, the income-generating activity (i.e., accrual of satellite airtime fee payments and completion of the principal undertaking) coincides with the receipt of the routed call by gateways located within Philippine territory. Although the gateways are legally owned by Aces Philippines, Aces Bermuda has sufficient economic/beneficial interest and is dependent on these Philippine properties which contributes to the income's Philippine situs.

Moreover, the main asset is situated in outer space cannot be determinative of the income source and the situs thereof. At this point, it is clear that: (a) Aces Bermuda's income attaches to property operated and maintained in the Philippines, and (b) making Aces Services available to Philippine subscribers, albeit through its local service provider, is an endeavor that requires the intervention of the Philippine government. In the court's view, it is only fair that the income be subjected to Philippine taxation as a way of compensating the government for the protection it accords Aces Bermuda's arrangements, operations and related transactions in the Philippines.

Chevron Holdings, Inc. vs. Commissioner of Internal Revenue
Supreme Court (*En Banc*) G.R. 215159, promulgated on 5 July 2022

Proof of "excess" input tax after offsetting it from output tax is not essential to the entitlement to refund under Sec. 112(A) of the Tax Code.

Facts:

Chevron Holdings, Inc. (Chevron Holdings) is licensed to do business in the Philippines as a Regional Operating Headquarters (ROHQ) that provides services to its affiliates, subsidiaries, or branches in the Asia-Pacific, North American, and African regions.

During the taxable year 2006, Chevron Holdings rendered services to its affiliates in the Philippines and abroad. The services rendered to foreign affiliates were subjected to zero percent (0%) VAT rate, while those rendered in the Philippines were subjected to 12% VAT rate. It also incurred input taxes on purchases of goods and services concerning these services which were allocated proportionately between VAT-able sales and zero-rated sales.

In 2008, Chevron Holdings filed an administrative claim for refund or issuance of a tax credit certificate on the unutilized input VAT attributable to the VAT zero-rated sale of services to its foreign affiliates.

The Court of Tax Appeals (CTA) ruled that only a portion of the VAT zero-rated sales to non-resident foreign affiliates are qualified for VAT zero-rating since some foreign affiliates were not supported with both: (1) SEC Certificate of Non-Registration; and (2) Certificate or Article of foreign incorporation/association or printed screenshots of the US SEC website showing the state/province/county where the entity was organized. The CTA also held that VAT official receipts issued to foreign affiliates must have the corresponding foreign currency inward remittances, which the company failed to show.

As for the input taxes, the CTA held that only a portion are valid since some are not supported with VAT invoices or receipts and/or failed to comply with the invoicing requirements under the Tax Code. The CTA also held that the input tax carry-over for the first quarter cannot be validly applied against the taxpayer's output tax for the year 2006 for failure to present VAT invoices/receipts to prove the existence of such input tax carry over.

Issues:

1. Are the disallowed sales to Chevron Holdings Inc.'s non-resident foreign affiliates qualified for VAT zero rating?

2. Is Chevron Holdings Inc. required to substantiate its excess input tax carried over from previous quarters to be entitled to refund or credit of unutilized input taxes arising from zero-rated sales?

3. Did the CTA properly charge against Chevron Holdings Inc.'s output tax liabilities the validated input taxes and only when there existed excess input taxes?

Ruling:

1. No, Chevron Holdings Inc. failed to prove that the disallowed services rendered to its non-resident foreign affiliates qualify for VAT zero-rating.

   Here, Chevron Holdings failed to prove that the recipient of its services is either (i) a person engaged in business conducted outside the Philippines; or (ii) a non-resident person not engaged in a business which is outside the Philippines when the services are performed. Not all of its foreign clients were supported by both the SEC Certificate of Non-Registration and the Certificates or Articles of Association or Incorporation or similar documents.

   Chevron Holdings also only presented bank reports which were mere online applications and VAT zero-rated receipts, instead of a Certificate of Inward Remittance, which proves the fact of payment in acceptable foreign in accordance with BSP rules.

2. No, Chevron Holdings is not required to substantiate its excess input tax carried over from a previous quarter to be entitled to a refund of unused or unutilized input VAT from zero-rated sales.

   Section 112(A) of the Tax Code merely requires that the input tax claimed for refund or for issuance of tax credit certificate "has not been applied against the output tax." The taxpayer only needs to prove non-application or non-charging of the input VAT claimed for refund or tax credit.

   There is nothing in the law and rules that mandate the taxpayer to deduct the input tax attributable to zero-rated sales from the output tax on VAT-able sales before allowing the excess input tax for refund or issuance of a tax credit certificate.

3. No, it was erroneous for the CTA to charge the validated and substantiated input taxes [not directly attributable to any activity] against Chevron Holdings' output taxes first and use the resultant amount as the basis for computing the allowable amount for refund.

   The refundable input VAT is computed by getting the percentage of valid zero-rated sales over total reported sales (taxable, zero-rated, and exempt) multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.

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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.