

# Tax Bulletin

January 2022

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and enable businesses for a better Philippines.

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RR 22-2021 was issued to implement and execute relief, recovery and rehabilitation work for taxpayers within the Jurisdiction of Revenue Regions and District Offices of the Bureau of Internal Revenue (BIR) that were adversely affected by Typhoon Odette, by extending the deadline for (1) the filing of tax returns and the payment of taxes due including submission of certain documents; (2) the filing of application for tax refund including claim for VAT refund; (3) the processing of VAT refund; and (4) the statutory period for the issuance of Assessment Notices and Warrants of Distraints and Levy.

## **BIR Administrative Requirements**

### **RR No. 22-2021 issued on 24 December 2021**

- ▶ The list of Revenue Region and District Offices covered, and the list of the Tax returns and submissions subject to extension under this regulation can be accessed via: RR No. 22-2021.pdf (bir.gov.ph)

RMC No. 125-2021 informs the taxpayers that electronically filed ONETT may now be paid through any of the following OPF.

**RMC No. 125-2021 issued on 16 December 2021**

OPF	Taxpayers who can pay thru the OPF
Land Bank of the Philippines' (LBP) Link.Biz Portal	Taxpayers who have an ATM account with LBP and/or for holders of Bancnet ATM/Debit/Prepaid Cards  Taxpayers utilizing PesoNet facility (depositors of RCBC, Robinsons Bank and Union Bank)
Development Bank of the Philippines' (DBP) Pay Tax Online	Holders of Visa/Mastercard Credit Cards and/or Bancnet ATM/Debit Cards
Union Bank Online Web and Mobile Payment Facility	Taxpayers who have an account with Union Bank of the Philippines

RMC 126-21 informs taxpayers and others concerned of the availability of InstaPay via UPAY facility of the UBP for the payment of internal revenue taxes.

**RMC No. 126-2021 issued on 21 December 2021**

- ▶ To pay taxes using InstaPay via UPAY, taxpayers shall access the BIR Website ([www.bir.gov.ph](http://www.bir.gov.ph)) and click the ePay icon.
- ▶ The list of ePayment facilities icons will be displayed - click UPAY (Instapay) under the Unionbank icon.
- ▶ Click the instructional video link for the steps on how to pay taxes via UPAY.
- ▶ Taxpayers are required to file their corresponding tax returns using the electronic filing facilities of eBIRForms System.

RMC No. 128-2021 provides the work-around procedures for the filing of returns and payment of offshore gaming tax.

**RMC No. 128-2021 dated 28 December 2021**

- ▶ While the proper BIR Tax Form to be used for the filing of the gaming tax returns is not yet available, the Offshore Gaming Licensees (OGLs) shall utilize BIR Form 2553 - Return of Percentage Tax Payable Under Special Laws for the filing of Gaming Tax Returns available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms) System (downloadable from the BIR website). Gaming taxes shall be directly remitted to the Bureau of Internal Revenue (BIR) not later than the 20<sup>th</sup> day following the end of each month.
- ▶ The following procedures shall be observed by all concerned OGLs in the filing of returns and payment of taxes due thereon:
  1. Filing of returns
    - ▶ Accomplish BIR Form 2553;
    - ▶ Choose ATC OT 12 as the Alphanumeric Tax Code (ATC) and put five percent (5%) in the tax rate column;

- ▶ File thru eFPS or eBIRForms or accomplish the downloadable Form from the BIR Website and file thru their respective Authorized Agent Bank (AAB) or file in the usual manner in remitting their own internal revenue taxes due.

2. Payment shall be made through the following:

- ▶ AABs under the jurisdiction of the concerned Revenue District Office (RDO) where the taxpayer is registered.
- ▶ Electronic payment thru eFPS or thru the following online facilities:
  - a. Land Bank of the Philippines (LBP) Link.Biz.Portal - for taxpayers who have an ATM account with LBP and/or for holders of Bancnet ATM/Debit/Prepaid Cards and taxpayers utilizing PesoNet facility (depositors of RCBC, Robinsons Bank, Union Bank, BPI and PSBank);
  - b. Development Bank of the Philippines (DBP) Pay Tax Online - for holders of Visa/Mastercard Credit Cards and/or Bancnet ATM/Debit Cards;
  - c. Union Bank Online Web and Mobile Payment Facility - for taxpayers who have an account with Union Bank of the Philippines.

3. Updating of Registration Information. In connection with the above, all OGLs, including Interactive Gaming Licensees (IGL), shall register and/or update with the BIR RDO having jurisdiction over their place of business their registration information to include but not limited to:

- ▶ Local address of the OGL and/or address of its Local Gaming Agent, if applicable;
  - ▶ Philippine Standard Industrial Classification (PSIC) Code to reflect their appropriate line of business (whether additional or new); and
  - ▶ Registration of required form types in the filing of Gaming Tax (BIR Form No. 2553), Income Tax (BIR Form No. 1702) and other applicable form types for the other taxes the OGLs are required to register.
- ▶ The OGL shall use the appropriate ATC in the preparation of their tax returns/forms, particularly, in the Gaming Tax returns and the Final Withholding Tax returns/forms for the gross income of foreign nationals employed. The OGLs shall also replace their BIR Certificate of Registration (COR) to reflect the updated information in their registration.

RMC No. 2-2022 publishes the full text of letter from Undersecretary Charade B. Mercado-Grande of the DOH endorsing updates to the "List of VAT-Exempt Drugs and Vaccines Prescribed and Directly Used for COVID-19 Treatment" under the CREATE Act.

**RMC No. 2-2022 dated 10 January 2022**

In the letter dated 21 December 2021, it was clarified that if the salt form of the medicines under the COVID-19 VAT Exempt List is not specified, it signifies that all the salt forms of the particular drug is covered by the VAT exemption.

RMC No. 3-2022 clarifies the preparation of assessment notices for compromise penalty(ies) pursuant to the provisions under RMO No. 7-2015 and RR No. 12-99, as amended by RR No. 18-2013, in the issuance of a deficiency tax assessment.

#### **RMC No. 3-2022 dated on 14 January 2022**

RMC No. 3-2022 provides:

- ▶ Compromise penalties are amounts collected in lieu of criminal prosecution for violations committed by the taxpayer, where payment is based on a compromise agreement validly entered into between the taxpayer and the Commissioner of Internal Revenue.
- ▶ Item No. III.4 of the aforesaid RMO laid down that:

"Although all amounts of compromise penalties incident to violations shall be itemized in the assessment notice and/or demand letter, the same should not form part of the assessment notice that reflects deficiency basic tax, surcharge and interest but should appear in a separate assessment notice/demand letter as the amount suggested to the taxpayer to pay in lieu of criminal prosecution."
- ▶ Notwithstanding the foregoing, it has been observed that there are times when the assessment notice for deficiency basic tax(es) and civil penalties also includes the compromise penalty(ies).
- ▶ Hence, for uniformity in the preparation of assessment notices, the prescribed formats under RR No. 18-2013, such as Preliminary Assessment Notice and Formal Letter of Demand, shall now be composed of Part I and Part II where:
  1. Part I - shall pertain to deficiency basic tax(es) and civil penalties,
  2. Part II - shall pertain to the assessed compromise penalty(ies) relative to violations uncovered during the conduct of an audit. Part II of the applicable notices are prescribed in the Circular as Annexes A and B, with sample item of violations to the Tax Code, as amended:

Annex A - Preliminary Assessment Notice (Part II)  
Annex B.1 - Formal Letter of Demand (Part II)  
Annex B.2 - Final Assessment Notice
- ▶ Likewise, the preparation of BIR Form No. 0605-Payment Form for the settlement/ payment of the deficiency basic tax and civil penalties in "Part I" of the assessment notices and BIR Form No. 0605 for compromise penalty(ies) in Part II (Annex C) shall be done separately.

RMC No. 5-2022 publishes the full text of the Letter from the FDA endorsing the updates to the list of VAT-exempt products under Republic Act Nos. 10963 and 11534.

#### **RMC No. 5-2022 dated 15 October 2021**

RMC No. 5-2022 publishes the letter dated 4 October 2021 from Dr. Rolando Enrique D. Domingo, Director General of the FDA, and the copy of the "Corrigendum to the List of Medicines for Kidney Diseases."

This circular updates and supplements RMC No. 81-2021 which published the consolidated list of VAT-exempt products and has become the controlling list insofar as the VAT exemption of items under Section 109(1)(AA) and 109(1)(BB)(ii) of the Tax Code of 1997, as amended, is concerned.



RMC No. 6-2022 clarifies the DST imposed under Section 175 of the 1997 Tax Code, as amended, on the transfer of shares of stocks.

#### **RMC No. 6-2022 dated 23 November 2021**

In RMC No. 6-2022, the BIR quoted the provisions under Section 175 of the 1997 Tax Code, as amended, since it has come to its attention that there are still taxpayers who are unaware of the imposition and collection of DST, particularly on the transaction described below:

**“SEC. 175. Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Shares or Certificates of Stock.** - On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of shares or certificates of stock in any association, company or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money, or for the future transfer of any stock, there shall be collected a documentary stamp tax of one peso and fifty centavos (PhP 1.50) on each two hundred pesos (PhP 200), or fractional part thereof, of the par value of such stock: Provided, That only one tax shall be collected on each sale or transfer of stock from one person to another, regardless of whether or not a certificate of stock is issued, indorsed, or delivered in pursuance of such sale or transfer: and Provided, further, That in the case of stock without par value, the amount of the documentary stamp tax herein prescribed shall be equivalent to fifty percent (50%) of the documentary stamp tax paid upon the original issue of said stock.”

- ▶ The BIR also clarified that DST is levied on the exercise by a person of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through execution of specific instruments and that it is in the nature of an excise tax.
- ▶ The BIR emphasized that the following transfers of shares of stock shall also be subject to DST under Section 175 of the 1997 Tax Code, as amended:
  1. Transfer pursuant to a Deed of Donation
  2. Transfer pursuant to a Will of the Decedent as approved by the probate court in Judicial Settlement of Estate; and
  3. While the transfer of shares of stocks from the decedent's estate to the heirs thru intestate succession (without a Will) is not subject to DST under Section 175 of the 1997 Tax Code, as amended, as ownership of such shares is transferred to the heirs via succession by operation of law, it would be different if, in case of a Judicial Settlement of Estate as approved by the probate court or an Extra-Judicial Settlement of Estate (both without a Will), the heir/s specifically waive/s or renounce/s his or her share over the inheritance (i.e., shares of stocks left by the decedent), then, in such a situation, the renounced/waived shares of stock to be transferred to another heir/s shall also be subject to DST pursuant to Section 175 of the 1997 Tax Code, as amended, and in this case, the rules set forth in RMC No. 94-2021 shall apply.

RMO No. 3-2022 provides for the creation of the ATC for Revenue Source under RA No. 9505, otherwise known as the PERA Act of 2008.

#### **RMO No. 3-2022 dated 27 September 2021**

- ▶ To facilitate the proper identification and monitoring of remittances of Final Income Taxes Withheld pursuant to the implementation of RA No. 9505, the following ATC is hereby created:

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
WI730	Total income earned from the time of its opening to its withdrawal under the PERA Act of 2008	20%	RA No. 9505 / RR No. 6-2021	1601-FQ

### **Banks and Other Financial Institutions**

#### **Ceiling/s on Interest Rates and Other Fees Charged by Lending Companies (LCs), Financing Companies (FCs), and their Online Lending Platforms (OLPs)**

Circular No. 1133, s. 2021 provides ceiling/s on interest rates and other fees that could be charged by LCs and FCs.

#### **Circular No. 1133, s. 2021 dated 22 December 2021**

**Loans covered by the ceilings.** This policy intends to cover short term, small value, and high-cost consumer credit targeting primarily the low-income borrowers.

Applicable ceiling/s on interest rates and other fees for specific loans offered by LCs, FCs, and their OLPs. As this policy aims to provide relief to the unbanked and underserved segment of the population, which are the most vulnerable amid the pandemic.

- ▶ A nominal interest rate ceiling equivalent to 6 percent per month (~0.2 percent per day).
- ▶ An effective interest rate ceiling equivalent to 15 percent per month (~0.5 percent per day), which shall include the nominal interest rate along with all other applicable fees and charges.
- ▶ A cap on penalties for late payment or non-payment at 5 percent per month on outstanding scheduled amount due.
- ▶ A total cost cap of 100 percent of total amount borrowed (applying to all interest, other fees and charges, and penalties) regardless of time the loan has been outstanding.

#### **Amendments to the Relevant Regulations on Foreign Currency Deposit System - Phase 2**

Circular No. 1134, s. 2021 promotes effective risk management in banks by relaxing and streamlining the requirements of foreign currency denominated transactions.

#### **Circular No. 1134, s. 2021 dated 28 December 2021**

- ▶ Section 101 (2) (i) provides that Commercial Banks (KBs) of the MORB may accept foreign currency deposits as provided under R.A. No. 6426 or the Foreign Currency Deposit Act of the Philippines, as amended, and as allowed under existing regulations.
- ▶ Section 101 (3) (h) provides that Thrift Banks (TBs) may accept foreign currency deposit as provided under R.A. No. 6426, as amended, and as allowed under existing regulations.

- ▶ Section 101 (6) provides that IBs shall have such powers as shall be necessary to carry out the business of a bank in accordance with Shari'ah principles. IBs may accept foreign currency deposits as provided under R.A. No. 6426, as amended, and as allowed under existing regulations.
- ▶ Section 101 (7) provides that a digital bank may accept foreign currency deposits, as provided under RA. No. 6426, as amended, and as allowed under existing regulations.
- ▶ Section 111 of the MORB, is amended to provide the Type of Licensing, as follows:

Type of License of Permissible Activities. The type of license attached to permissible activities of the Bangko Sentral - supervised financial institutions (BSFIs) shall be as follows:

Type of License	Permissible Activity	Related Sections
A	xxx	xxx
	FCDU operation of Rural Bank (RB)/Coop Bank	Part IV Chapter III Section 71 of the FX Manual
B	xxx	xxx
C	xxx	xxx
	EFCDU operation of Universal/Commercial Bank (U/KB) and Islamic Bank (IB)	Part IV. Chapter III Section 71 of the FX Manual
	FCDU operation of Thrift Bank (TB) and Digital Bank	

- ▶ Section 71 of the Manual of Regulations on Foreign Exchange Transaction (FX Manual) is amended to include that Digital Banks, and RB/Coop banks may be authorized to operate an FCDU.

A bank seeking to operate an FCDU or EFCDU shall submit the prescribed and signed documents to the appropriate supervising department of the BSP.

- ▶ Section 72 of the FX Manual includes the following Authorized Transactions:
  - Engage in foreign currency stand-alone derivatives referencing currency pairs not including the Philippine peso, as specifically allowed under Section 613 of the MORB and other existing regulations;
  - Engage in securities lending activities as lender: *Provided*, that it shall comply with SEC regulations on securities lending transactions and/or with the guidelines of the organized market in which the deal is transacted; The foreign currency denominated debt securities lent or used as collateral by the borrowing bank in securities lending and borrowing transactions shall be considered as eligible asset cover for the 100% cover requirement.
  - Engage in repurchase agreements subject to the following conditions:
    - The borrowings shall only be from FCDUs/EFCDUs, non-resident financial institutions and OBUs;
    - The maximum term of the repurchase agreements shall be one year;

- 3) The borrowings shall be booked under Bills Payable" and included in the computation of the total FCDU/EFCDU liabilities, subject to the mandatory 100 percent asset cover; and
  - 4) The foreign currency-denominated debt securities sold or used as additional collateral in repurchase agreements shall be considered as eligible asset cover for the 100% cover requirement.
- i. Purchase foreign currency denominated debt securities under resale agreements from other banks' FCDU/EFCDU, etc. are, subject to the following conditions:
    - 1) That the maximum term of the resale agreements shall be one year; and
    - 2) That such debt securities purchased under resale agreements shall be classified as Loans and Receivables Arising from Repurchase Agreements/Certificates of Assignment/Participation with Recourse and Securities Lending and Borrowing Transactions.
  - j. Issue capital instruments subject to the requirements under existing regulations;
  - k. Except RBS/Coop Banks, engage in USD-denominated repurchase agreements (R/P) with the BSP as provided under Section 601 of the MORB.

The Monetary Board may at its discretion impose the sanctions for violations of the provisions on the terms and conditions of the USD-denominated R/P agreement with the BSP under section 601 of the MORB to a bank and/or its director/s, officer/s, or employees found to be responsible for violation of Item "1(k)" of this Section.

- ▶ Section 72 (2) provides the transactions to which a UB/KB which is authorized to operate under the expanded foreign currency deposit system in any acceptable foreign currency. Provided, that:
  1. The foreign correspondent bank shall deposit sufficient foreign exchange with the EFCDU issuing the letter of credit to cover all drawings [paragraph 2 (h) (3)];
  2. Debt securities purchased under resale agreements shall be classified as Loans and Receivables Arising from Repurchase Agreements, Certificates of Assignment/Participation with Recourse, and Securities Lending and Borrowing Transactions [paragraph 2 (m)]; and
  3. The Monetary Board may at its discretion impose any or all of the sanctions for violations of the provisions on the terms and conditions of the USD-denominated R/P agreement with the BSP under Section 601 of the MORB to a bank and/or its director/s, officer/s, or employees found to be responsible for violation of Item "2(o)" of this Section. [paragraph 2 (o)]
- ▶ Section 72 (3) provides that the foreign currency funds of the bank's FCDU/EFCDU may be lent to the bank's RBU: *Provided*, that no interest shall be charged on the lending; *Provided, further*, that the loan shall be for a period of one year or less, in the case of FCDU; while EFCDU will be allowed to lend to RBU for more than one year.

- ▶ Section 73, paragraph 1: For banks authorized to operate an FCDU, provides that loans to RBU must comply with the conditions under Section 72.
- ▶ Section 73, paragraph 4: A bank should have a risk management framework commensurate with the size, nature, complexity and risk profile of its foreign currency denominated positions and foreign exchange (FX) activities.
- ▶ Section 73, paragraph 5: The Due from Other Banks – Non-resident (DFOB-Non-Resident) account representing cover for foreign currency liabilities of FCDU/EFCDU shall be kept separate and distinct from the DFOB – Non-Resident account for the regular banking unit (RBU).
- ▶ Section 82. Taxes. The foreign currency denominated transactions shall be subject to tax treatment pursuant to the provisions of the National Internal Revenue Code, as amended and its Implementing Rules and Regulations.
- ▶ Section 84. Accounting. AABs shall maintain a separate accounting - for FCDU/EFCDU transactions covered by these rules that will enable preparation of the FCDU/EFCDU Balance Sheet and Income Statement, as well as reports for risk management and tax purposes.

#### **Authority of the Insurance Commissioner to Appoint a Conservator, Receiver or Liquidator of Insurance Companies**

Memorandum No. M-2021-068 reiterates that the Insurance Commissioner has the authority to appoint a conservator, receiver or liquidator of the assets and liabilities of insurance companies.

##### **Memorandum No. M-2021-068 dated 20 December 2021**

The Insurance Commissioner has the authority to appoint a Conservator, Receiver or Liquidator to take charge of, among others, the assets and liabilities of insurance companies, pursuant to the provisions of Sections 255 and 256 of RA No. 10607, otherwise known as the Amended Insurance Code and the authority of the Insurance Commission in cases of conservatorship and proceedings upon insolvency of pre-need companies pursuant to Sections 49 to 52 of RA No. 9829, otherwise known as the Pre-need Code of the Philippines.

#### **Compliance with the BSP Financial Consumer Protection Framework**

Memorandum No. M-2021-069 requires banks to comply with the BSP Financial Consumer Protection Framework because of the accelerated digitalization and emergence of new threat actors and escalation of existing risk exposures.

##### **Memorandum No. M-2021-069 dated 22 December 2021**

The BSP reminds all BSFIs to comply with the provisions of BSP Circular No. 1048 dated 06 September 2019 on the Financial Consumer Protection Framework. In this respect, the BSP reiterates the need to uphold the "Fair Treatment" principle whereby BSFIs are required to observe fair and equitable terms and conditions, among other things, specifically, that "Terms and conditions are not unfair in that there is significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer."

BSFIs are likewise expected to have in place a Consumer Protection Risk Management System and Consumer Assistance Mechanism that ensure systematic application of the Consumer Protection Standards of Conduct provided under Circular No. 1048.

## **Guidelines on the Submission of the Comprehensive Credit and Equity Exposures (COCREE) Report**

Memorandum No. M-2021-070 provides guidelines on the submission of COCREE Report.

### **Memorandum No. M-2021-070 dated 22 December 2021**

The COCREE Report shall be submitted monthly. Its live submission beginning with reporting period 31 March 2022 shall be in accordance with the prescribed schedule.

The COCREE Report and its corresponding Control Prooflist (CP) shall be electronically submitted through the Financial Institution (FI) Portal. The technology platform prescribed for the COCREE Report is the Extensible Markup Language (XML).

The COCREE Report and its CP shall be submitted through the FI Portal using the prescribed file naming convention and file extension/format, as illustrated below:

File	File Name	File extension/Format
COCREE Report	COCREE_YYYYMM_<Bank acronym>_<file no.>of<total no. of files>.xml	XML
Control Prooflist	COCREE_YYYYMM_<Bank acronym>_Control Prooflist.pdf	pdf

Report submissions that do not conform to the above prescribed procedures shall not be accepted and shall be considered non-compliant with the BSP reporting requirements as prescribed under Section 171 of the MORB and Section 172-Q of the MORNBF. Only the file format prescribed by the BSP for the COCREE Report shall be accepted as compliant with the existing reportorial requirements of the BSP subject to validation and applicable penalties for erroneous, delayed and/ or unsubmitted reporting.

## **Moratorium on the increase in Transfer Fee for InstaPay and PESONet Transactions**

Memorandum No. M-2021-071 circularizes the moratorium on the increase in transfer fees for InstaPay and PESONet transactions effective immediately.

### **Memorandum No. M-2021-071 dated 28 December 2021.**

PESONet and InstaPay participants are directed, from date of this memorandum, to maintain the transfer fees for person-to-person fund transfers via InstaPay and PESONet. The BSP-supervised financial institutions (BSFIS) shall continue to disclose their fees, including the waiver and reduction in fees, pursuant to Memorandum No. M-2018-013 dated 28 March 2018 on the Disclosure of fees on Electronic Payments pursuant to Circular No. 980. A relevant transfer fee that is currently waived may only be restored up to the amount of fee reported to the BSP prior to the waiver. For InstaPay and PESONet BSFI- participants that do not currently impose transfer fees, to submit for prior BSP approval, any fee to be imposed on its customers for initiating fund transfers via InstaPay and PESONet. For BSFIs which have yet to offer InstaPay and PESONet, the initial fees shall be reported to the BSPs Payment System Oversight Department (PSOD) at least 60 days prior to the date of planned implementation.

## **Extension of Temporary Measures implemented in the Bangko Sentral ng Pilipinas' Rediscounting Facility**

Memorandum No. M-2021-072 extends the temporary measures on rediscounting facility.

### **Memorandum No. M-2021-072 dated 28 December 2021**

The Monetary Board (MB), in its Resolution No. 1779 dated 23 December 2021, approved the extension of the temporary measures implemented in the BSP's rediscounting facility until 31 March 2022, subject to further extensions as may be approved by the MB, as follows:

- ▶ Reduction of the term spread on Peso rediscounting loans to zero, thereby equating the Peso rediscount rate to the BSP's Overnight Lending Rate, regardless of maturity (i.e., 1 to 180 days);
- ▶ Reduction of the term spread on rediscounting loans under the Exporters Dollar and Yen Rediscount Facility (EDYRF), thereby reducing the applicable United States Dollar (USD) and Japanese Yen (JPY) rediscount rates to the 90-day London Interbank Offered Rates, or in their absence, an applicable benchmark rate, such as the Secured overnight Financing Rate, plus risk premium, regardless of maturity (i.e., 1 to 360 days); and
- ▶ Acceptance for rediscounting with the BSP under the EDYRF of the USD- and JPY-denominated credit instruments related to enterprises allowed to operate during the enhanced community quarantine of Luzon, as provided in the Department of Trade and Industry Memorandum Circular No. 20-08, except for loans to banks and capital markets; *Provided, that*, these credits are booked under the regular banking unit of the rediscounting bank and are compliant with the requirements on Eligible papers and collaterals under Section 282 of the Manual of Regulations for Banks; *Provided, further*, that the said USD- and JPY-denominated credits pertain only to those end-user borrowers operating during the enhanced community quarantine.

## **Re-extension of the Waiver of Fees on Fund Transfers through the PhilPaSSplus**

Memorandum No. M-2021-073 extends the waiver of fees on fund transfers settled through PhilPaSSplus until the last business day of March 2022.

### **Memorandum No. M-2021-073 dated 30 December 2021**

The BSP enjoins the participants in the PESO real-time gross settlement (RTGS) payment system to extend the benefits of this relief measure to the financial consumers by ensuring that the fees for electronic payment services, such as InstaPay, PESONet, and QRPh, are reasonable.

## **Possible Proliferation of Digital Vote-Buying/Vote-Selling Schemes**

Memorandum No. M-2021-074 calls for the adoption of enhanced surveillance and monitoring measures to prevent the misuse of the financial system as a conduit for this illegal activity.

### **Memorandum No. M-2021-074 dated 31 December 2021**

To mitigate the heightened risk of the possible use/misuse of digital channels (i.e., online banking, mobile wallet applications) in vote- buying/selling activities, BSFIs should institute necessary enhancements and/or remedial measures to ensure that appropriate customer onboarding processes and effective fraud management system (FMS) are in place, and ongoing account and transaction monitoring capabilities are commensurate to respond against the said fraudulent activities. At the minimum, BSFIs should consider the following possible scenarios in calibrating their FMS and account and transaction monitoring rules/parameters:

- ▶ Concentration and/or significant number of account registrations in the area or locality where vote-buying/selling is identified to be rampant;

- ▶ Large cash transactions during election period;
- ▶ Unusual transaction flows between accounts, including the velocity and frequency of transactions (i.e., many-to-one, one-to-many); or
- ▶ Unusual volume and/or value in cash in/cash out channels (agents).

**Advisory on the Proper Application of the Risk-Based Approach on Filipinos Following the Inclusion of the Philippines in the Financial Action Task Force (FATF) List of Jurisdictions under Increased Monitoring or the Grey List**

**Memorandum No. M-2021-075 dated 31 December 2021**

The FATF statement clarifies that the FATF does not call for the application of enhanced due diligence (EDD) measures to be applied to those jurisdictions included in the grey list but only encourages its members and all jurisdictions to take into account the information presented in the FATF website in their risk analysis.

The NACC Advisory likewise emphasized that Section 8.1, Rule 19 of the 2018 Implementing Rules and Regulations (IRR) of the AMLA, as amended, does not apply to Philippine covered persons and foreign covered persons conducting business in the Philippines. Covered persons should not apply EDD, or any form of countermeasure against Filipino businesses or nationals *by reason only of jurisdictional/country risks arising from the grey list*. Therefore, **Filipino businesses or nationals should not be considered as high risk based solely on the inclusion of the Philippines in the FATF's list of "Jurisdiction Under Increased Monitoring."**

Government agencies and covered persons, including BSFIs, are also enjoined to provide assistance to the Anti-Money Laundering Council (AMLC) by reporting incidents of de-risking, changes in correspondent banking relationships, EDD or special measures imposed on Philippine-related accounts, or imposition of any countermeasures, as a result of the inclusion of the Philippines in the FATF Grey List.

**Supplemental Report to the Financial Reporting Package (FRP) on Modified and Restructured Loans**

**Memorandum No. M-2022-001 dated 11 January 2022**

The supplemental report to the FRP on modified and restructured loans shall be considered a Category A-1 primary report and shall be submitted on both solo and consolidated bases. The 1<sup>st</sup> submission of the supplemental report shall cover the reporting periods as of: (i) 30 September 2021, to establish baseline information on modified and restructured loans before applying the provisions of BSP-Memorandum No. M-2021-056, and (ii) 31 December 2021.

The submission of the supplement report to the FRP shall be subject to the provisions of Section 171/172-Q (Sanctions on reports for non-compliance with the reporting standards) of the Manual of Regulations for Banks/Non-Bank Financial Institutions.

Memorandum No. M-2021-075 disseminates the attached Advisory of the NACC on the application of the risk-based approach on Filipinos after the inclusion of the Philippines in the FATF List of Jurisdiction Under Increased Monitoring or the Grey List.

The MB, in its Resolution No. 28 dated 06 January 2022, approved the submission of a supplemental report to the FRP by BSFIs to cover the details of modified and restructured loans following the issuance of BSP Memorandum No. M-2021-056 dated 21 October 2021.



## **Supplemental Capital Adequacy Ratio (CAR) Report on the Temporary Regulatory Relief on the Capital Treatment of Provisioning Requirements under Philippine Financial Reporting Standards (PFRS) 9**

The MB, in its Resolution No. 29 dated 6 January 2022, approved the submission of a Supplemental CAR Report by covered BSFIs that will avail of the temporary regulatory relief on the capital treatment of provisioning requirements under PFRS 9 pursuant to BSP Memorandum No. M-2021-055 dated 19 October 2021.

### **Memorandum No. M-2022-002 dated 11 January 2022**

The Supplemental CAR Report shall be considered a Category A report and shall be submitted on both solo and consolidated bases starting from the quarter-end reporting period subsequent to the date of notification to the BSP of the BSFI's availment of the capital relief. It shall be submitted electronically to the Department of Supervisory Analytics following the timeline of the CAR reports (i.e., within 15 banking days after end of reference quarter for solo basis and 30 banking days after end of reference quarter for consolidated basis) during the BSFI's period of availment of the capital relief measure.)

The BSFI shall report the actual CAR, without application of the capital relief measure under BSP Memorandum No. M-2021-055, in its CAR report while the application of the capital relief measure shall be disclosed in the Supplemental CAR Report. The adjusted CAR amounts and ratios, after applying the capital relief measure under BSP Memorandum No. M-2021-055, shall be used for purposes of monitoring effectiveness of the capital relief measure and for supervisory assessment purposes, including the crafting of the supervisory plan and deployment of supervisory actions on the BSFI.

## **Frequently Asked Questions (FAQs) on the Framework for Basic Deposit Accounts**

To provide additional guidance and clarifications on the implementation of Circular No. 992 dated 01 February 2018, or the Framework for BDAs, the BSP issued FAQs covering the following major points in implementing Circular No. 992.

### **Memorandum No. M-2022-003 dated 12 January 2022**

#### **► Modes of BDA Offering**

##### **1. *Are banks mandated or required to offer BDAs?***

Banks are not required but highly encouraged to offer BDAs. Under Circular No. 992, a BDA is given zero reserve requirement which aims to incentivize banks to offer the product.

In addition, temporary relief measures were granted to banks offering BDAs under Memorandum No. M-2021-065 dated 23 November 2021:

- Relaxation of presentation of identification cards for the year 2022, subject to conditions;
- Waiver of Bangko Sentral fees related to the application of Advanced Electronic Payment and Financial Services for the year 2022; and
- Reduction in the Annual Supervisory Fees of banks for the years 2022 and 2023 through reduction in the bank's Average Assessable Assets by the average amount of BDA maintained by the bank in the preceding year.

2. ***Is the BDA limited to individual depositors? Can it be offered to entities or corporations?***

The features of the BDA are designed to address the barriers to account ownership and serve the needs of individual depositors. It is not intended to be offered to entities or associations as a whole, but may cater instead to the needs of their individual members.

3. ***Can banks offer the account through automated teller machines (ATMs) or passbooks?***

Banks may offer the account using any type of channel. It may be through passbook, ATM, online/mobile banking, or any other channel deemed by the bank appropriate to serve the target customers.

4. ***Are banks allowed to collect fees for the issuance of a debit or ATM card and/or passbook?***

The BDA requires a minimal opening deposit capped at Php100 to ensure its affordability for the low-income clients. While banks are not precluded from collecting fees for the issuance of a debit or ATM card, such fees should be reasonable and shall not materially affect the affordability of the BDA so as not to deter the unbanked from opening a BDA. Banks should also exercise transparency and full disclosure on costs with the depositors.

5. ***Is there a limit to the number of transactions in the account?***

The framework does not specify any limits to the number of transactions for the BDA Banks can define such as they deem fit to their risk assessment.

6. ***Can salary/payroll accounts be converted to BDAs?***

The framework gives banks the flexibility in designing and offering the account provided that the minimum key features are met. Salary/payroll account or other types of deposit account may be packaged as or converted to a BDA as long as it meets all the minimum key features of the BDA, particularly the balance limit of Php50,000.

7. ***Are banks required to have BDA policies?***

The Circular specifies that banks shall adopt clearly-defined written policies, procedures and controls to ensure due diligence and compliance with applicable rules and regulations.

► **Application of the Maximum Balance Limit**

8. ***What is the maximum deposit balance of BDAs?***

The maximum balance is set at Php50,000 to allow banks to ensure that accounts remain low-value, which can be considered in their risk assessment.

9. ***What should be the basis for the determination of maximum balance?***

Banks may utilize, at a minimum, the average daily balance of BDA as basis for determining compliance with the Php50,000 maximum limit. Banks, however, may impose more stringent requirements on the determination of the maximum limit, e.g., daily transaction limit, real time balance or end-of-day balance, if it deems that this is warranted based on its target market and risk profile.

► **Consequence of Deposit Limit Breach**

10. ***Can banks implement automatic transaction rejection to meet the maximum deposit balance?***

Banks may consider implementing automatic transaction rejections to meet the set limit provided that the depositors are well-informed of the consequences of breaching the deposit limit, prior to the opening of the BDA, and such transaction rejection shall be clearly communicated with the depositor at the point of transaction.

11. ***Are banks required to implement automatic conversion of BDA to regular deposit account once the depositor exceeded the allowable maximum balance?***

Circular No. 992 provides that the BDA that surpasses the P50,000 maximum balance should be converted by banks to regular deposit account. However, the Circular does not require the automatic conversion to regular account at the point of breach. Banks may thus incorporate in their internal policy the conversion process of BDA to regular account, including the timeframe for conversion.

Banks are also expected to communicate clearly to their BDA clients the options that are available to them if their BDA balance breaches P50,000. Such options may include:

- Retaining the BDA and observing the transaction limit;
- Converting to regular deposit account and closing the BDA; and
- Maintaining both BDA and regular deposit account.

► **Ownership of Multiple Accounts**

12. ***Is there a limit to the number of BDAs that may be offered by banks per depositor?***

A client should only have one BDA in a bank. The client, however, may have the option of availing of the bank's other deposit products that best meet his/her evolving needs as a depositor. Such option should also be set forth in the BDA policies of the bank.

13. *Should a BDA depositor still be allowed to maintain the BDA after opening a regular deposit account?*

A bank may allow its existing BDA client to maintain the BDA even after having opened a regular deposit account in the bank (as discussed in question #11). This will enable the client to continue benefiting from key BDA features (e.g., higher interest rates per annum, no maintaining balance and dormancy charges, and the user-friendly digital app interfaces offered for BDAs).

14. *Should a regular deposit account holder be allowed to open a BDA?*

An existing regular deposit client of the bank may be allowed to open a BDA, especially if he/she is already having difficulty in meeting the required maintaining balance of the existing account or wants to enjoy the benefits of the BDA. The client, however, may choose to maintain the regular deposit account, if he/she can still do so.

► **Implementation of Simplified Know-your-Customer (KYC) Requirements**

15. *Should banks be required to expand its list of acceptable identification documents (IDs) given that the Circular categorically require application of simplified KYC for BDA?*

Banks shall strictly follow simplified KYC for BDA customer onboarding by offering a wide list of acceptable official or valid ID.

The Philippine Identification (PhilID) card issued by the Philippine Statistics Authority (PSA) under the Philippine Identification System (PhilSys) is considered an official document to establish and verify the identity of a customer.

Circular No. 992 allows the conduct of technology-aided or electronic KYC (e-KYC), provided that the bank has measures in place to mitigate the money laundering/terrorist financing risks. Banks that allow digital onboarding but with limited acceptable IDs should offer alternative KYC process for clients with non-primary IDs that cannot be processed through the e-KYC solution.

## **Bureau of Customs**

### **Imposition of Provisional Anti-Dumping Duties Pursuant to DTI DAO 21-07 (Series of 2021) on ordinary Portland Cement Types 1 (AHTN 2523.29.90) and Blended Cement Type 1P (AHTN 2523.90.00) Imported from Vietnam**

#### **CMO No. 38-2021**

- Provisional anti-dumping duties in the form of cash bond are imposed for four (4) months from the date of effectivity of DAO 21-07 on importations of Type 1 and Type 1P cement originating from Vietnam.

CMO No. 38-2021 complies with DAO No. 21-07 issued last 29 November 2021 imposing provisional anti-dumping duties for Ordinary Portland Cement Type 1 (AHTN 2523.29.90) and Blended Type 1P (AHTN 2523.90.00) imported from Vietnam.

- ▶ Where the DTI's preliminary finding is in the affirmative, the DTI Secretary is mandated to immediately issue, through the Secretary of Finance, a written instruction to the Commissioner of Customs to impose within three (3) days from receipt of instructions a cash bond equal to the provisionally estimated anti-dumping duty but not greater than the provisionally estimated margin of dumping in addition to any other duties, taxes and charges imposed by law on like articles.

*(Editor's Note: CMO No. 38-2021 is yet to be published)*

### **Imposition of Definitive General Safeguard Duty on Imported Cement from Covered Countries for the Third Year Pursuant to DAO No. 19-13 (Series of 2019)**

CMO No. 39-2021 imposes the previously determined definitive safeguard duty of P200/MT or P8.00/40kg bag under DTI DAO No. 19-13 for the third and last year of implementation of the safeguard duty on imported cement, classified under AHTN Codes 2523.29.90 and 25.23.90.00 from covered countries starting October 22, 2021.

#### **CMO No. 39-2021**

- ▶ Importers of cement originating from the countries excluded from the imposition of the definitive safeguard duty shall submit a Certificate of Origin (CO) issued by the authorized agency/office in the country of manufacture subject to the affixation of "Apostille" to the document or authenticated by the Philippine Embassy/Consulate general, as applicable.
- ▶ All other provisions of DAO-19-13 shall remain in force and effect, except as expressly modified under DA 20-08 (as implemented under CMO No. 29-2020) and DAO 21-02 (as implemented under CMO No. 11-2021).

*(Editor's Note: CMO No. 39-2021 is yet to be published)*

### **Non-requirement of Environmental Management Bureau- Department of Environmental and Natural Resources (EMB-DENR) clearance for the Importation of Used and Refurbished Biomedical Equipment**

CMC No. 05-2022 This memorandum includes the matters pertaining to the issuance of a clearance for used and refurbished biomedical equipment.

#### **CMC No. 05-2022**

- ▶ Securing an import clearance for the importation for used and refurbished biomedical equipment is not required. The importation of the aforesaid equipment is not regulated by Republic Act 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990), specifically Chapter 10 of DENR Administrative order (DAO) No. 2013-22: Revised Procedures and Standards for the Management of Hazardous Wastes (Revising DAO 200-03).
- ▶ However, it does not preclude compliance with the requirements of other government agencies that has a mandate or jurisdiction regulating the same.
- ▶ In case of misdeclaration, entry of the shipment to the country shall be denied and the Importer and Exporter shall be liable to re-export such equipment to the Country of Export.

*(Editor's Note: CMC No. 05-2022 is yet to be published)*

**Implementation of Republic Act. No. 11467 or the “Act Amending Section 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265 and 288-A and Adding a New Section 290-A to Republic Act No. 8428, as Amended, otherwise known as the National Internal Revenue Code of 1997**

MISTG No. 01-2022 informs all concerned of the updating of Excise Tax rates of the following products under Republic Act. No. 11467 that has been implemented in the E2M system effective January 04, 2022.

**MISTG No. 01-2022**

**Alcohol, Heated Tobacco and Vapor Products**

Description	Classification	2022
Fermented Liquors Specific Tax	All HS codes under heading 2203; 2206.0010, 2206.00.20, 2206/00/41, 2206.00.49, 2206.00.91, 2206.00.99	Php 39.00/Liter Php 39.00/Liter
Distilled Spirits Ad Valorem Tax Specific Tax	All HS codes under heading 2208	22% of NRP Php 52.00/PL (Proof Liter)
Wine Specific Tax	All HS codes under heading 2204 and 2205	Php 56.20/liter
Heated Tobacco Products	2403.99.90	Php 30/pack of twenty (20) units or packaging combinations of not more than twenty (20) units
Nicotine Salt or Salt Nicotine (Salt Nicotine Vape)	*3824.99.99 (Tariff Specification - 1002)	Php 47.00/ml
Conventional “Freebase” or “Classic” Nicotines	*3842.99.99	Php 55.00/10 ml or a fraction thereof
*Goods not intended for nicotine must use AICODE 10001		

- Ad Valorem Tax for distilled Spirits is computed manually since it depends on the Net Retail Price (NRP).

**Updated Excise Tax Rates on Cigarette products Pursuant to Republic Act No. 11346**

MISTG No. 02-2022 informs all concerned of the updating of Excise Tax rates of Cigarettes that has been implemented in the E2M system Effective 4 January 2022.

**MISTG No. 02-2022**

Description	Classification	Tax Rate
Cigarettes packed by hand	2402.20.10 2402.20.20	Php 55.00 per Pack
Cigarettes packed by machine	2402.20.90 2402.90.20	Php 55.00 per Pack

The Bureau of Investment (BOI) issued several memorandum circulars to amend certain provisions of the 2020 Investment Priorities Plan General Policies and Specific Guidelines.

## Bureau of Investment (BOI) Issuances

### BOI Memorandum Circular Nos. 2021-007, 2021-008 and 2021-009

- ▶ **BOI MC No. 2021-007** dated **22 September 2021** - Amendments to the 2020 Investment Priorities Plan General Policies and Specific Guidelines for Creative Industries / Knowledge-Based Services to clarify that Hyperscalers are covered under IT Services
- ▶ **BOI MC No. 2021-008** dated **19 October 2021** - Amendments to the 2020 Investment Priorities Plan General Policies and Specific Guidelines for Telecommunications to clarify the intent of the "New Players" Definition
- ▶ **BOI MC No. 2021-009** dated **25 November 2021** - Amendments to the 2020 Investment Priorities Plan (IPP), its General Policies and Specific Guidelines

The amendments cover general policies, definition of terms and specific guidelines, among others.

## PEZA Issuance

### Submission of Financial Statements and Income Tax Returns thru the Annual Compliance Management System

PEZA MC No. 2021-074 circularizes the Online Submission of Financial Statements and Income Tax Returns thru the Annual Compliance Management System.

#### PEZA MC NO. 2021-074 dated 15 December 2021

Announcing the launch of the PEZA Annual Compliance Management System (ACMS). ACMS is an in-house online platform to be utilized by registered business enterprises (RBEs) in their submission of basic information captured in the Financial Statements (FS) and Income Tax Returns (ITR) and uploading in the system the scanned copies of FS and ITR including attachments in PDF file format.

All PEZA RBEs are directed to register using the online system effective on 3 January 2022. Submission of FS and ITR beginning Fiscal Year 2021 are to be submitted strictly via the ACMS platform. Hard copies or PDF files submitted via email will no longer be accepted.

## SEC Issuances

### SEC Memorandum Circulars

#### SEC MC No. 13, Series of 2021 dated 31 December 2021

SEC MC No. 13, Series of 2021 mandates the submission of the ACGR by public companies and registered issuers and provides guidelines for the submission to facilitate the disclosure of public companies' and registered issuers' compliance or non-compliance with the Code of Corporate Governance.

The ACGR shall be submitted on or before 30 June of the following year for every year that the company qualifies as a public company or registered issuer. The Memorandum also provides penalties for late and non-submission as well as incomplete or incorrect information. General instructions for answering the ACGR are indicated in the SEC Form-ACGR attached to the Memorandum.

Public Companies and Registered Issuers listed in the Philippine Stock Exchange are excluded from the coverage of the Memorandum.

The SEC implements a new online system called the MC 28 Submission Portal.

## SEC NOTICES

### SEC Notice dated 7 January 2022

Starting 17 January 2022, compliance in the filing of the required e-mail address and cellphone number under SEC Memorandum Circular No. 28, Series of 2020 must be submitted using the said portal.

## Court of Appeals Cases

### Refund/Issuance of Tax Credit

#### Lepanto Consolidated Mining Company vs. CIR

CTA Case No. 10079 promulgated 16 December 2021

Section 2 of RR 1-17 shows that claims filed prior to Revenue Memorandum Circular No. 54-14 were merely ordered to be continuously processed administratively but not judicially. It did not whatsoever create an exception to the mandatory and jurisdictional 120+30 day period, which was put into place by law and affirmed by jurisprudence. A mere regulation cannot create an exception not provided by the law it seeks to implement. Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement.

#### Facts:

Company A alleges that it filed before the CIR, administrative claims for issuance of tax credit certificates for its excess and unutilized input VAT on account of zero-rated sales, which was collectively denied by the respondent. Respondent denied Company A's claims for input VAT refund allegedly due to excess deductions over the amount applied for as tax refund/credit, wherein a Petition for Review was filed. Company A claims that the Court in Division erred when it dismissed the Petition for Review for lack of jurisdiction purportedly due to it being filed out of time. Company A argued that the deadline for the filing of the Petition for Review should have been reckoned from the receipt of the Denial Letter as RR 1-17 provides that the result of tax credit claims covered by the said issuance shall be communicated in writing by the concerned official.

#### Issue:

Is Company A entitled for a tax refund?

#### Ruling:

No. Company A argues that there can be no deemed denial for those administrative claims for input VAT refund processed under RR 1-17, such as Company A's administrative claim, because RR 1-17 specifically contemplates a written decision. Consequently, for petitioner, the Court in Division erred in holding that its administrative claim had already been deemed denied. This is misplaced.

Section 2 of RR 1-17 shows that claims filed prior to Revenue Memorandum Circular No. 54-14 were merely ordered to be continuously processed administratively but not judicially. It did not whatsoever create an exception to the mandatory and jurisdictional 120+30 day period, which was put into place by law and affirmed by jurisprudence. A mere regulation cannot create an exception not provided by the law it seeks to implement. Implementing rules and regulations may not enlarge, alter or restrict the provisions of the law they seek to implement.

RR 1-17 was only issued to restart the processing of administrative claims for input VAT refund which were deemed denied due to the erroneous application of RMC 54-14. However, this is solely confined to the BIR level and does not extend to the judicial level.



**CIR vs. Tullet Prebon Inc.**

CTA Case No. 2372 promulgated 16 December 2021

Proof of actual remittance of tax is not an indispensable requirement for a claim for refund or tax credit of excess CWT.

**Facts:**

Company A filed an administrative claim for refund for its excess and unutilized creditable withholding tax with the BIR. Due to the CIR's failure to resolve the administrative claim for refund, Company A filed a Petition for Review before the CTA. In its answer, the CIR argued that Company A failed to present evidence to prove actual remittance of the CWT to the BIR, said proof of actual remittance being indispensable in a claim for refund of CWT. Company A counter-argued that there is no law, jurisprudence or administrative regulation that requires proof of actual remittance of tax before any claim for refund of excess CWT could be had. Company A maintains that non-submission of the documentary requirements prescribed under RMO NO. 53-98 and RR No. 2-2006 is not fatal to a claim for refund or tax credit as these regulations merely enumerate the documents that the BIR requires from taxpayers when making an audit and not to support a claim for refund of overpaid or erroneously collected taxes, and to help promote a better business environment and secure government revenues, respectively.

**Issue:**

Is the non-submission of documentary requirements fatal to a claim for refund or tax credit?

**Ruling:**

No. Proof of actual remittance of tax is not an indispensable requirement for a claim for refund or tax credit of excess CWT. Also, the Supreme Court stated in several cases, "proof of actual remittance is not a condition to claim for a refund of unutilized tax credits." From the foregoing, it is clear that there is no requirement on the part of Company A to prove that it has remitted the tax. The fact of withholding was sufficiently established by Company A upon presentation of the relevant BIR Forms No. 2307.

## SGV | Building a better working world

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

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