# Tax Bulletin

January 2023

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

#SGVforABetterPhilippines

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## BIR Administrative Requirements

RMO No. 56-2022 amends certain provisions of RMO NO. 23-2022, prescribing the standard format in the numbering of deficiency tax assessment notices pursuant to RR No. 12-99, as amended, and RMC No. 3-2022.

**RMO No. 56-2022 dated 28 November 2022**

- RMO No. 23-2022 was issued to standardize the numbering format of deficiency tax assessment notices, which include the Preliminary Assessment Notice (PAN), Formal Letter of Demand/Final Assessment Notice (FLD/FAN) and the Final Decision on Disputed Assessment (FDDA).
- Item No. II.4 of the above RMO is hereby amended to delete the quoted provision hereunder:

  "x x x . . . together with the FAN bearing the amended deficiency tax assessment. However, to effect the issuance of the FDDA/FAN, the protested FAN shall first be cancelled."
- Thus, the issuance of FDDA shall no longer be accompanied by an amended FAN and the manner of issuance of FDDA pursuant to RR No. 12-99, as amended, shall be maintained.
- The hyphen character "-" in the numbering scheme prescribed thereat, separating the Correspondence Type Code (e.g., "P" for PAN), LA Serial Number, Audit Case Number, and Sequence Number shall be replaced with the vertical bar symbol "|". The LA Serial Number shall now include the alpha characters "eLA," as shown below:

| | | | | | | |
|---|---|---|---|---|---|---|
| P | \| | eLA000000000000 | \| | 000000-0000-0000-000000 | \| | 00000 |
| Correspondence Type Code | | LA Serial Number | | Audit Case Number | | Sequence Number |

- Effective 1 January 2023, where the Sequence Number shall reset to start again at "00001," the assignment of this number to a specific assessment notice shall now be based on the count of the correspondence type issued per issuing office. This means that the sequence number in the PAN issued for Case A might be different from the sequence number to be assigned in the succeeding assessment notices such as FLD/FAN or FDDA, if such case reaches this level.

- Offices which are already using the Internal Revenue Integrated System-Case Management System-Audit (IRIS-CMS-A) module may still use the generated correspondences in the said system and send the same "as is" to concerned taxpayer or edit the document reference number reflected therein to indicate the prescribed numbering scheme.

- However, for cases which were created in the Electronic Letter of Authority System (eLAMS), the prescribed numbering scheme must be applied considering that the generation of correspondence is outside of the said system.

- Any assessment notice issued wherein the reference number is not in accordance with the prescribed numbering scheme shall not render the issued tax assessment notice invalid for as long as the basic requisites such as the factual and legal basis, and details of tax assessments have been indicated.

- This RMO shall take effect immediately.

RMO No. 58-2022 provides policies, guidelines and procedures in the processing and monitoring of the ONETT thru the OTS.

**RMO No. 58-2022 dated 16 December 2022**

- The OTS is an in-house developed system which will enable the automated monitoring of taxpayer's transactions classified as ONETT, from the time the taxpayer secured the services of the concerned BIR office for the computation of the tax due or from the time the taxpayer presented the required documents for the issuance of Certificate Authorizing Registration (CAR) of properties covered by ONETT, up to the time of its issuance using the BIR's existing Electronic CAR (eCAR) System.

- This RMO is issued to:

    1. Provide uniform guidelines and procedures in the utilization of the OTS;

    2. Define the duties and responsibilities of the identified revenue officials and personnel on the use of the OTS; and

    3. Prescribe the reporting requirements for the effective monitoring of ONETT applications and other related transactions.

- Please refer to the full RMO for the detailed guidelines and procedures (https://www.bir.gov.ph/images/bir_files/internal_communications_3/2022/Full%20Text/RMO%20No.%2058-2022.pdf)

RMO No. 59-2022 circularizes the guidelines and procedures to be observed in the implementation of Fuel Testing mandated under Section 148-A of the NIRC of 1997, as amended by RA No. 10963, otherwise known as the TRAIN Law.

**RMO No. 59-2022 dated 16 November 2022**

| BIR FIELD INSPECTION UNIT (BFIU) | | GUIDELINES |
|---|---|---|
| Over-all Head | Deputy Commissioner of Internal Revenue (DCIR)/Operation Group | ▸ All random field and confirmatory testing activities must be covered by duly issued Mission Orders (MOs) signed by the Overall Head/Head of the BFIU and shall be conducted together with the authorized officers from the Bureau of Customs (BOC).<br><br>▸ All legal issues shall be referred to the Law & Legislative Division under the Legal Service at the National Office or to the Legal Division of the concerned Revenue Region, whichever is applicable. The resolution of the legal issues shall be prepared and issued within 15 working days from the date of receipt of such referral. |
| Large Taxpayers | | |
| Head | ACIR, Large Taxpayers Service (LTS) | |
| Co-Head | ACIR, Enforcement & Advocacy Services (EAS) | |
| Asst. Head | Head Revenue Executive Assistant (HREA), LTS-Excise | |
| Co. Asst. Head | HREA, EAS | |
| Members | Chief, National Investigation Division (NID) and Representatives | |
| | Chief, Excise LT Field Operations Division (ELTFOD) and Representatives | |
| | Excise LT Audit Division II Representatives (Optional) | |
| | Excise Tax Areas (EXTA) Representative (Optional) | |
| Non-Large Taxpayers | | |
| Head | Concerned Regional Director (RD) | |
| Asst. Head | Concerned Assistant RD | |
| Members | Chief, Regional Investigation Division (RID) and Representatives | |
| | Representatives from Legal Division | |
| | Representatives from Revenue District Office (RDO) (Optional) | |
| | Excise Tax Areas (EXTA) Representatives (Optional) | |

| PROCEDURES | |
|---|---|
| I. Preliminary | ▸ BIR shall acquaint with the business organization on the random field and confirmatory testing, location and other relevant information.<br><br>▸ Prepare the necessary recommendation for the issuance of a MO.<br><br>▸ Brief implementing officers on the acts to be performed.<br><br>▸ Coordinate with the Fuel Marking Service Provider, Fuel Testing Facility, Authorized Officers of BOCs forms part of the Field Inspection Unit, and Other government agencies. |

| PROCEDURES | |
|---|---|
| II. Conduct of Random Field and Confirmatory Testing Activity | ▸ Conduct Field Testing and the Confirmatory Test on gasoline, diesel and kerosene found in the warehouses, storage facilities, depots, storage tanks, tank trucks, vessels barges, gas station and other retail outlets and other properties or equipment.<br><br>▸ The inspection Unit shall serve letter to present the following documents within five days from the receipt of the letter:<br><br>1. Registration of the Branch/ Warehouse/Facility<br>2. Permit to Operate<br>3 Authenticated copy of Lease Contract<br>4. Official Register Books<br>5. BIR Forms<br>6. Inventory Books<br>7. Other documents that may be determined necessary |
| III. Evaluation of the Results | ▸ The BFIU shall submit the results of the random field and confirmatory testing activities, together with the complete supporting documents to the DCIR-Operation Group for evaluation and appropriate action.<br><br>▸ The enforcement actions may consist of any or all of the following:<br><br>1. Inventory stock-taking (requires MO)<br>2. Apprehension/seizure or articles, machinery, apparatus, etc. (requires MO)<br>3. Forfeiture and destruction of seized articles, machinery, apparatus, etc.<br>4. Issuance and serve of an Assessment pursuant to a validly issued Letter of Authority (LOA)<br>5. Filing of civil case and/or criminal case under the Run After Tax Evaders (RATE) Program<br>6. Closure of Business Establishment |

RMC No. 3-2023 prescribes the policies and guidelines on the online registration of BAs using the Online Registration and Update System or ORUS (https://orus.bir.gov.ph) of the BIR. Instead of manual stamping of BAs, a Quick Response (QR) Code shall be generated, which can be validated online. This amends Section 2 of RMC No. 29-2019, which provides guidelines for keeping, maintaining and registration of BAs.

**RMC No. 3-2023 dated 10 January 2023**

The manner of bookkeeping or maintaining of BAs is summarized as follows:

*For New Business Registrants*

| Types of Books of Accounts | Deadline for Registration | Frequency |
|---|---|---|
| 1. Manual Books of Accounts | Before the deadline for filing of the initial quarterly Income Tax return or the annual Income Tax return, whichever comes earlier. | Before the full consumption of the pages of the previously registered books |

*For Existing Business Taxpayers or Subsequent Registration*

| Types of Books of Accounts | Deadline for Registration | Frequency |
|---|---|---|
| 1. Manual Books of Accounts | Before use of the books | Before the full consumption of the pages of the previously registered books |
| 2. Permanently Bound Loose Leaf Books of Accounts | Within 15 days after the end of each taxable year or within days from the closure of business operations, whichever comes earlier, unless extended by the CIR or his duly authorized representative, upon request of the taxpayer before the lapse of the said period. | Annually |
| 3. Computerized Books of Accounts | Within 30 days from the close of each taxable year or within 30 days from the closure of operations, whichever comes earlier, unless extended by the CIR or his duly authorized representative, upon request of the taxpayer before the lapse of the said period. | Annually |

- New sets of manual BAs are not required to be registered every year. However, taxpayers may opt to use new sets of BAs yearly. Hence, new sets of manual BAs shall be registered before its use.
- Upon successful registration, the system shall generate the "QR Stamp", which the taxpayers shall paste on the first page of their manual BAs and permanently bound loose-leaf BAs.
- In the case of computerized BAs, the "QR Stamp" shall be attached to the transmittal letter showing detailed content of the USB flash drive where the BAs and other accounting records are stored/saved.

- The QR Stamp (Annex) shall have the following taxpayer information printed:

    1. TIN;
    2. Registered Name;
    3. Registered Address;
    4. Type of Book (Manual, Loose leaf or Computerized);
    5. Book Registered;
    6. Permit No./Acknowledgement Certificate Control No. (ACCN) – for Loose Leaf or Computerized
    7. PTU/ACCN Date issued - for Loose Leaf or Computerized
    8. Quantity;
    9. Volume No.;
    10. Date Registered;
    11. Date Approved; and
    12. QR Code.

- Upon initial implementation of online registration of BAs through ORUS, taxpayers shall still be allowed to register and stamp their manual books of accounts at the Revenue District Office (RDO)/ Large Taxpayer (LT) Division /Office where the head office or branch is registered.

- The RDO/ LT Division/Office shall announce and inform taxpayers under its jurisdiction that the registration of BAs can be done manually or online.

RMC No. 4-2023 clarifies, by way of illustrations, the base amount to be used in the imposition of a flat rate of 20% applied to the total gross income earned by the PERA in cases of "unqualified early withdrawal."

**RMC No. 4-2023 dated 9 January 2023**

- Pursuant to Section 10 (C) of RR No. 17-2011, the early withdrawal penalty (EWP), composed of the 20% of the gross income earned by the PERA for the entire duration and the 5% tax credit availed, shall be imposed on any early withdrawal not within the circumstances enumerated under Section 10 (B) of the aforesaid regulations. Any loss incurred on PERA sub-accounts shall not be deducted from the gross income earned. Under "unqualified early withdrawal", the withdrawal of a sub-account will result in the automatic termination of all other sub-accounts. Below is an illustration on the computation of EWP and PERA proceeds upon termination of the account:

| PERA Assets | | | | EWP | | | Termination Proceeds |
|---|---|---|---|---|---|---|---|
| Account | Sub-Account | Income Earned | Loss Incurred | 20% Penalty on Income Earned | Tax Credit Granted[(i)] | Total | |
| | A | B | C | D (B x 20%) | E | F (D+E) | G (A + B + C – F) |
| UITF = 100,000 | ABC MM UITF = 20,000 | 5,000 | | 1,000 | 1,000 | 2,000 | 23,000 |
| | DEF Bond UITF = 50,000 | 3,000 | | 600 | 2,500 | 3,100 | 49,900 |
| | GHI Equity UITF = 30,000 | | -2,000[(ii)] | | 1,500 | 1,500 | 26,500 |
| **Total** | **100,000** | **8,000** | **-2,000** | **1,600** | **5,000** | **6,600** | **99,400** |

*(i) In the assumption that the tax credit granted has been utilized already. In case of non-utilization of tax credit, the same shall not form part of the EWP. However, the tax credit granted shall be tagged as invalid and can no longer be used as payment for tax liabilities.*

*(ii) The loss incurred in any sub-account shall not be offset from the gross income of other sub-accounts.*

- It is reiterated that the PERA Administrator shall be responsible for administering, overseeing and maintaining of accounts/sub-accounts of the contributor's PERA; and shall compute and withhold the EWP from the proceeds due to the contributor, consistent with the above provisions, for reporting and remittance to the Bureau pursuant to RR No. 2-2022 and RMC No. 45-2022.

RMC No. 5-2023 provides transitory provisions for the implementation of the quarterly filing of VAT returns starting 1 January 2023 pursuant to Section 114(A) of the National Internal Revenue Code of 1997 (Tax Code), as amended by the TRAIN Law.

**RMC No. 5-2023 dated 3 January 2023**

- VAT registered taxpayers are no longer required to file the Monthly Value-Added Tax Declaration (BIR Form No. 2550M) for transactions starting 1 January 2023 but will instead file the corresponding Quarterly Value-Added Tax Return (BIR Form No. 2550Q) done within 25 days following the close of each taxable quarter when the transaction transpired.

- In order to avoid confusion during the initial implementation thereof, particularly for taxpayers that are under fiscal period of accounting, the following transitory provisions are hereby provided:

| Quarter Ending | Transactions Covering the Month of | | | Filing of 2550Q for the Quarter Ending | | |
|---|---|---|---|---|---|---|
| | December 2022 | January 2023 | February 2023 | December 2022 | January 2023 | February 2023 |
| January 31, 2023 | Required to file 2550M not later than January 20, 2023 | Not applicable | Not required to file 2550M | Not applicable | Required to file 2550Q not later than February 27, 2023* | Not applicable |
| February 28, 2023 | Required to file 2550M not later than January 20, 2023 | Not required to file 2550M | Not applicable | Not applicable | Not applicable | Required to file 2550Q not later than March 27, 2023* |
| March 31, 2023 | Not applicable | Not required to file 2550M | Not required to file 2550M | Required to file 2550Q not later than January 25, 2023 | Not applicable | Not applicable |

*Note: *- Note that the 25th day deadline falls on a Saturday*

RMC No. 154-2022 supersedes the provisions of RMC No. 142-2019 which circularizes the eDST system's balance adjustment facility as an option for recovery of erroneously deducted DST.

**RMC No. 154-2022 dated 15 December 2022**

- The RMC prescribes that for the recovery of erroneously deducted DST from the taxpayer's ledger balance in the eDST system, the balance adjustment facility of the system shall be available only for reasons arising from technical/system errors while the tax-credit/refund remedy provided for under Sections 204(C) and 229 of the 1997 Tax Code, as amended, shall apply for reasons other than purely technical/system errors (i.e., erroneously encoded information details, double/multiple affixtures of DST by the taxpayer on the same documents).

- The following procedures in availing the balance adjustment facility shall be observed:

    1. A written request for adjustment in the taxpayer's ledger balance shall be filed by the taxpayer-user with the Chief, Miscellaneous Operations Monitoring Division (MOMD), Collection Service located at the National Office of this Bureau with all the necessary documentary proofs on the incident/s that gave rise to the erroneous deduction of DST from the taxpayer's ledger balance.

    2. Within 24 hours from receipt of the written request, the MOMD shall check the completeness of the documentary proofs submitted by the taxpayer-user and, if determined complete, shall endorse the taxpayer's request to the Chief, Administrative System Division (ASD) using the data request form (Balance Adjustment Recovery Data Request Form).

    3. The ASD shall validate/verify the request of the taxpayer and the results of such validation/verification shall be indicated in the space provided for under the same data request form. The accomplished data request form shall be returned by the ASD to the MOMD within five days from receipt of the same.

    4. The MOMD shall then forward the data request form to the Assistant Commissioner, Collection Service (ACIR, CS) for review and approval or denial thereof.

    5. Upon receipt of the data request form from the ACIR, CS, the MOMD shall perform the following:

        - The MOMD shall notify the taxpayer-user, in writing or through email, the results of the request for balance adjustment within one working day from receipt of the duly accomplished request form from the ACIR, CS.

        - In case of approval, the Chief, MOMD shall approve the taxpayer-user's request in the "Balance Adjustment Details" facility of the eDST system indicating briefly the reasons for adjustment in the box provided for.

        - In case of denial, the reason/s for the denial of the taxpayer's request shall be clearly stated in the notice to the taxpayer.

        - Should it be determined that the reason for the erroneous deduction of DST from the taxpayer's ledger did not arise from purely technical/system error, the MOMD shall notify the taxpayer-user of the denial of its request and inform the latter that the tax credit/refund remedy provided for under Sections 204(C) and 229 of the 1997 Tax Code, as amended, shall apply on the case.

RMC No. 155-2022 extends the acceptance of manually issued CETI as an attachment to AITR to be filed by RBEs as proof of their entitlement to income tax incentives.

**RMC No. 155-2022 dated 27 December 2022**

- All RBEs enjoying income tax incentives shall be allowed to attach the CETI manually issued by their respective Investment Promotion Agency in their AITR for the taxable year 2022 until such time that a system generated CETI can be issued thru the Fiscal Incentives Registration and Monitoring System being administered by Fiscal Incentives and Review Board.

- The CETI is a requirement for all RBEs in order to avail of the Income Tax Holiday (ITH) or preferential rate granted by law

RMC No. 158-2022 clarifies the effect of non-submission of a cooperative of the TIN of its members within six months from issuance of its CTE pursuant to Item A3 of RMC No. 124-2020 and corresponding penalties to be imposed thereof. The RMC also provides specific circumstances, which constitute "justifiable reasons," which would prevent imposition of penalties on the grounds of failure to submit the TIN of its members within the said period.

**RMC No. 158-2022 dated 27 December 2022**

The TIN of members are required to be supplied in the List of Members during the CTE application pursuant to Section 236 of the NIRC, as amended. However, The BIR permitted the issuance of CTE despite the incomplete or non-submission of TIN of members, provided that within six months from the original issuance of the CTE, the cooperative shall submit the TIN requirement. Otherwise, it shall be subject to the following penalties:

| | Penalty |
|---|---|
| **First Offense** | Php1,000.00 per member without TIN, provided the aggregate amount to be imposed for such failure during a calendar year shall not exceed Php25,000.00 under Section 250 of the NIRC, as amended |
| **Second Offense** | Suspension of CTE until compliance of the required submission of the TIN of its members |
| **Third Offense** | Revocation and prohibition to apply for renewal of CTE for a period of three years from the date of revocation |

- The following circumstances shall be considered as "justifiable reasons" that will prevent the imposition of aforesaid penalties:

  1. The TIN not submitted pertains to inactive members, provided that these inactive members have already been delisted pursuant to Memorandum Circular No. 2022-14 of the Cooperative Development Authority; and

  2. The failure was due to force *majeure* (e.g., state of emergency, state of calamity as declared by the National Government and the concerned Local Government Unit). However, once the "force majeure" ceased to exist, the submission should immediately be done.

- Note that the said "List of Active Members with TIN and Inactive Members" must be submitted to the RDO where the cooperative is registered even prior to the prescribed due date for its submission, which is a year after the CTE issuance to support the failure to complete the TIN of members.

- All cooperatives which have been issued CTE (original application) despite non-submission of the TIN of their ACTIVE members are still required to submit to the RDO concerned the TIN of the said members following the six-month grace period unless the non-submission falls within justifiable reasons as mentioned above.

- Cooperatives that are applying for the renewal of the CTE shall be required to complete and submit the TIN of their active members. It is mandatory that upon renewal of the CTE, all active members have already secured their respective TINs. Otherwise, the cooperatives will not qualify for the renewal of their CTE.

- All cooperatives are mandated to submit the List of Active Members with TIN and Inactive Members pursuant to MC No. 22-14 of the CDA, to the concerned RDO within 30 days from the effectivity of this RMC, otherwise it will be subject to the penalties as herein imposed.

RMC No. 160-2022 announces the availability of the revised Alphalist Format in the BIR Form No. 1604-C (Annual Information Return of Income Taxes Withheld on Compensation) January 2018 ENCS. The revised alphalist format includes information on the utilization of 5% tax credit under the PERA Act of 2008.

**RMC No. 160-2022 dated 27 December 2022**

- The said alphalist format shall serve as an attachment to the BIR Form 1604-C that is required to be filed on or before 31 January of the year following the calendar year in which the compensation payment and other income payments were paid or accrued.

## Banks and Other Financial Institutions

BSP Memorandum No. M-2022-053 re-extends the waiver of *PhilPaSS*$^{plus}$ fees.

**BSP Memorandum No. M-2022-053 dated 16 December 2022**

- BSP approved the re-extension of the waiver of *PhilPaSS*$^{plus}$ fees until the last business day of January 2023.
- The economic relief should redound to the benefit of financial consumers by keeping the fees for the electronic payment services such as InstaPay, PESOnet, and QRPH reasonable.

BSP Memorandum No.M-2022-052 provides for the computation of reserve requirement for 23 December 2022 to 5 January 2023.

**BSP Memorandum No. M-2022-052 dated 22 December 2022**

- In computing the reserve requirement for reference weeks 23 to 29 December 2022 and 30 December 2022 to 5 January 2023, please be guided by the following:

  1. Considered as non-reserve days (proclaimed as regular holiday and additional special (non-working) day, respectively:
     - 30 December 2022, Friday – Rizal Day
     - 2 January 2023, Monday
  2. The reserve position as computed at the close of business 29 December 2022 shall be carried over up to 2 January 2023.
  3. The reserve weeks of 23 to 29 December 2022 and 30 December 2022 to 5 January 2023 shall be considered as a single reserve week for the purpose of determining "abuse" of the privilege of offsetting reserve deficiencies against excess reserve during that reserve week.

BSP Memo No. M-2023-001 circularizes the templates for the Articles of Cooperation and By-Laws pursuant to the Philippine Cooperative Code of 2008 and the MORB.

**BSP Memorandum No. M-2023-001 dated 4 January 2023**

- BSP circularizes the templates for AOC and BL as approved by the Cooperative Development Authority's Board of Directors in coordination with the BSP

  1. The templates aim to ensure that the AOC and BL adopted by the Cooperative Banks meet the minimum requirements of R.A. No. 9520 or The Philippine Cooperative Code of 2008 and the MORB.
  2. Cooperative Banks are not precluded from including additional provisions in its AOC and/or BL, provided that the same are in accordance with the provisions of the existing laws and BSP regulations.
  3. The review of the AOC and/or BL, together with the supporting documents, shall be made on a case-to-case basis, notwithstanding the use of the said templates.

BSP Circular No. 1164 amends the Regulations on Credit Exposure Limits to a Single Borrower and Definition of Capital.

**BSP Circular No. 1164 dated 5 January 2023**

- The Monetary Board approved amendments to Section 362 of MORB on the credit exposure limits to a single borrower.

    1. Net worth shall refer to capital as defined under Sec. 121 on Minimum Required Capital.

    2. Credit risk transfer shall refer to any arrangement that allows the bank to transfer the credit risk associated with its loan or other credit accommodation in accordance with the provisions of this Section.

        - **Credit risk transfer**. The loans and other credit accommodations or portion thereof covered by an effective credit risk transfer arrangement in the form of a guarantee or credit derivative that complies with the minimum operational requirements:

            - Shall be excluded from the total credit commitment of the bank to a borrower in reckoning compliance with the single borrower's limit (SBL).

            - Shall form part of the total credit commitment of the bank to the protection provider (i.e., guarantor in case of guarantees and protection seller in case of credit derivatives) in reckoning compliance with the SBL.

        - A credit risk transfer arrangement shall be considered effective if the following minimum operational requirements are met:

            a. All documentation used for documenting guarantees and credit derivatives must be binding on all parties and legally enforceable in all relevant jurisdictions;

            b. Banks must have conducted sufficient legal review to verify such and undertake further review as necessary to ensure continuing enforceability; and

            c. Compliance with the requirements specific to guarantees and credit derivatives, specifically:

                - For guarantees:

                    i. Must meet the specific operational requirements set out in paragraphs 42 to 44, Part V of Appendix 59 or paragraph 7. Part III of Appendix 62.

                    ii. Must be provided by eligible guarantors enumerated under paragraphs 47 and 49 of Part V of Appendix 59 or paragraph 8, Part III of Appendix 62.

                    iii. In case there is a maturity mismatch between the maturity of the counterparty exposure and the employed credit risk transfer arrangement, the adjustment of the credit protection for the purpose of calculating the SBL is determined using the same approach as provided under paragraphs 50 to 54, Part V of Appendix 59.

- For credit derivatives:

    i. Must meet the specific operational requirements set out in paragraphs 8 to 14, Part VI of Appendix 59.

    ii. Must be provided by eligible protection sellers.

3. The guidelines on credit risk transfer, including its definition, shall take effect on 1 July 2023.

    - Banks shall continue to use the SBL framework as of end-December 2022 during the transition period from 1 January to 30 June 2023.

- The Monetary Board also approved amendments to Section 121 of MORB on the definition of capital:

    1. The term capital shall be synonymous to unimpaired capital and surplus, combined capital accounts, and net worth, and shall refer to the total of the unimpaired paid-in capital, including paid-in surplus, retained earnings and undivided profits.

    2. The following items shall likewise be added to capital:

        - Deposits for stock subscription recognized as equity

        - Other instruments that meet the following criteria:

            a. Must be paid-in;
            b. Must have a minimum maturity of at least five years;
            c. May be callable/redeemable at the initiative of the issuer only after a minimum of 5 years;
            d. Must be subordinated to depositors and general creditors of the bank; and
            e. Must have the ability to be converted to common shares or written off upon the occurrence of a trigger event.

    3. The following items shall likewise be deducted from capital:

        - Treasury stock;

        - Unbooked allowance for probable losses (which includes allowance for credit losses and impairment losses);

        - Total outstanding unsecured credit accommodations, both direct and indirect, to directors, officers, stockholders, and their related interest (DOSRI) granted by the bank proper: X X X;

    4. Other capital adjustments as may be required by BSP.

BSP Circular Letter No. CL-2023-003 publishes the requirement for banks to publish their balance sheet as of 31 December 2022.

**BSP Circular Letter No. CL-2023-003 dated 10 January 2023**

In accordance with Section 175 of the Manual of Regulations for Banks (MORB) and Memorandum No. M-2020-073 dated 25 September 2020, all banks should publish/post its Balance Sheet (Head Office, branches/other offices), together with its Consolidated Balance Sheet (banks and subsidiaries and affiliates), if applicable, as of 31 December 2022.

BSP Circular Letter No. CL-2023-004 publishes the requirement for trust entities and non-bank financial institutions with quasi-banking functions to publish their statement of condition side-by-side with their consolidated statement of condition, if applicable, as of 31 December 2022.

**BSP Circular Letter No. CL-2023-004 dated 10 January 2023**

In accordance with Section 172-Q of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) for quasi-banks and Section 144-N of MORNBFI for trust entities, all non-bank financial institutions with quasi-banking functions and/or trust authority should publish its Statement of Condition (Head Office, branches and other offices) side-by-side with its Consolidated Statement of Condition (parent institution and its subsidiaries and affiliates), if applicable, as of 31 December 2022

- Publication shall be made in a newspaper of general circulation in the city/province where the principal office is located, or absent such, in a newspaper published in Metro Manila or in the nearest city/province within 20 working days from the date of this Circular Letter
- The following shall be submitted in pdf format to fssmail@bsp.gov.ph:

    1. The Statement of Condition and/or Consolidated Statement of Condition, where applicable, within 20 working days from the date of this Circular Letter.

    2. The Statement of Condition and/or Consolidated Statement of Condition, where applicable, as published, together with the publisher's certificate, within five working days from the date of publication.

BSP Circular Letter No. CL-2023-005 publishes the requirement for all trust corporations to publish their balance sheets as of 31 December 2022.

**BSP Circular Letter No. CL-2023-005 dated 10 January 2023**

In accordance with Section 183-T of the MORNBFI and Memorandum No. M-2017-027 dated 11 September 2017, all trust companies should publish its Balance Sheet (Head Office, branches/other offices), as of 31 December 2022.

## Bureau of Customs

**Strict Compliance to Secure STMO Authorization on the Export of Strategic Goods**

AOCG Memorandum No. 446-2022 reminds the public especially those engaged in the export of strategic goods that starting 1 January 2023, securing a prior authorization from the STMO shall be required before engaging in the exportation of said regulated goods. Consequently, no exportation of said goods shall be allowed without such authorization from STMO.

**AOCG Memorandum No. 446-2022 dated 21 December 2022**

- Pursuant to DTI Announcement No. 2022-001 dated August 8, 2022, starting 1 January 2023, the export of strategic goods without duly signed authorization issued by the Department of Trade and Industry – STMO shall no longer be allowed.
- Accordingly, those who fail to comply with the prescribed authorization requirements shall be subject to administrative or criminal penalties under the Strategic Trade Management Act (STMA).
- Strategic goods are products that, for security reasons or due to international agreements, are considered to be of military importance that their export is either prohibited or subject to specific conditions.

**Revocation of OCOM Memorandum No. 43-2022 with Subject: Revocation of Prior IAS Clearance Before Release of Shipments**

OCOM No. 03-2023 reinstates the requirement of securing an IAS clearance prior to release of certain commodities from Customs' premises.

**OCOM No. 03-2023 dated 10 January 2023**

- In 2022, the BOC issued OCOM Memo No. 43-2022, dropping the IAS clearance requirement prior clearance before certain goods are released.

- According to Acting Customs Commissioner, the revocation of OCOM Memo No. 43-2022 aims to protect government revenue.

- Imported commodities covered by the IAS clearance requirement include the following:

    1. Automobiles propelled by gasoline, diesel, electricity, or any other motive power with engine displacement of 2,000 cc and above, including car shipments of the Chamber of Automotive Manufacturers of the Philippines Incorporated (CAMPI) and members of the Association of Vehicle Importers and Distributors (AVID). This category includes all shipments of buses, trucks, cargo vans, jeepneys/jeepney substitutes, single-cab chassis, and special-purpose vehicles;
    2. Processed meat products;
    3. Yarn and Fabric;
    4. Resin;
    5. Iron and steel; and
    6. All other commodities previously required to be referred to IAS for clearance prior to release.

## PEZA

PEZA MC No. 2023-001 provides guidelines on the registration with the BOI of existing RBEs in the IT-BPM Sector under DTI MC No. 22-19.

**PEZA MC No. 2023-001**

Per Resolution No. 033-22 dated 23 December 2022, the Fiscal Incentives Review Board (FIRB) extended the effectivity of FIRB Resolution No. 026-22, which allows existing RBEs in the IT-BPM sector to register with the BOI and adopt up to 100% WFH arrangement without loss of incentives, until 31 January 2023.

The provisions of FIRB Resolution No. 026-22, DTI MC No. 22-19, PEZA MC Nos. 67 and 70 and other appurtenant issuances shall remain in force, as may be applicable. Further, RBEs who have already registered with the BOI may already adopt up to 100% WFH arrangement without loss of incentives upon completion of their registration with the BOI and shall not be required to post bond pursuant to DTI MC 22-19.

RBEs in the IT-BPM sector that will opt to register with the BOI from 1 to 31 January 2023 will not be required to post a bond for all equipment and other assets that will be brought outside the economic or freeport one until they secure the Tax Exemption Indorsement for all their equipment and other assets from the DOF Revenue Office or 31 March 2023, whichever is earlier.

## SEC Filing, Payments and Other Deadlines

**Amendments to SEC Memorandum Circular No. 15, s. 2019 (The 2019 Revision of the GIS) Increasing the Penalties and Imposing Additional Non-Financial Penalties and Providing Further Guidelines for Submission**

SEC Memorandum Circular no. 10 informs all concerned corporations and reporting persons on the Amendments made to SEC Memorandum Circular No. 15, s. 2019 on the Revision of the GIS.

**SEC Memorandum Circular no. 10 dated 19 December 2022**

Section 3 of MC no. 15, S. 2019 is hereby amended as follows:

**Section 3. Disclosure of Beneficial Ownership Information**

To ensure timely access to adequate, accurate and current information on the beneficial ownership and control on SEC-registered corporations by competent authorities, all SEC-registered corporations are required to take reasonable measures to obtain and

hold up-to-date information on their beneficial owners as defined herein and to disclose the same in a timely manner in the GIS. Accordingly, the GIS is hereby revised to include such information.

The following information on the beneficial owner shall be provided, to wit;

a. Complete name which shall include the surname, given name, middle name, and extension name (i.e., Jr, Sr, III, etc.)
b. Specific residential address
c. Date of Birth
d. Nationality
e. Tax Identification Number (TIN) or passport number for foreign individuals who do not have a TIN; and
f. Percentage of ownership, if applicable.

Such information, however, shall be uploaded to the Commission's publicly accessible electronic database. Said information shall, nonetheless, be made accessible or available in a timely manner to competent authorities for law enforcement and other lawful purposes.

Section 7 of Mc. No. 15, S. 2019 is hereby amended to be read as follows:

**Section 7. Updating of Beneficial Ownership Information**

The SEC shall be timely apprised of relevant changes in the submitted beneficial ownership information as they arise. An updated GIS shall be submitted to the SEC within 30 calendar days after such change occurred or became effective.

Section 11 of MC. No. 15, S. 2019 on penalties is also amended. SEC increases the penalties imposed and includes additional non-financial sanctions to make such penalties proportional, effective and dissuasive for non-compliance.

The SEC informs that the pertinent provision of MC No. 15, S. 2019 and the amendments thereto shall remain applicable to Foreign Corporations as well as the increased penalties.

The SEC further informs that all corporations are required to file their annual reportorial requirement through the Commission's Electronic Filing and Submission Tool (eFAST).

The submission of reports Over-the-Counter (OTC) and/or through mail/courier via SENS shall no longer be accepted.

This Memorandum Circular took effect on 1 January 2023 subject to its publication in two national newspapers of general circulation and posting on the Commission's Website.

*(Editor's note: This Circular was published in* Business Mirror *and* Manila Standard *on 21 December 2022.)*

SEC Memorandum Circular no. 11 provides guidelines to investment companies, fund managers and other entities dealing with an investment company to enhance transparency and disclosures and reporting related to sustainability-related products to improve comparability between funds which incorporate ESG into the investment process.

## Rules On Sustainable and Responsible Investment Funds

### SEC Memorandum Circular no. 11 dated 03 January 2023

The SEC promulgates Rules on the applicability thereof as well as minimum requirements to qualify as Sustainable and Responsible Investment (SRI) Fund. The Rules provide for the sustainability considerations, principles, or ESG factors which may be considered by an SRI Fund. Further, the Rules provide for sustainable investment strategies that the SRI Fund may adopt to achieve its objective relating to sustainability or ESG.

The Rules also provide guidance that multiple strategies may be adopted by a single SRI Fund to achieve its investment objective/s. However, an investment company shall not qualify as an SRI Fund if the adoption of negative or exclusionary screening or ESG integration is only for financial returns and not accompanied by any other sustainable investment objective.

On the disclosure requirements, the Rules enumerate the information which must be provided on the Prospectus or Sub-Fund Supplement (in case of umbrella fund) and Product Highlight Sheet of an SRI Fund.

The Rules also provide for the requirements on all information regarding the SRI Fund which will be included in the marketing materials, advertisements, publications, and communications, including website content.

The Rules provide that the SRI Fund and its Fund Manager must regularly assess how the SRI Fund has attained its sustainable investment objective as well as comply with the reportorial requirements.

Furthermore, the uploading of annual and quarterly reports must be made publicly available on a website designated by the SRI fund or its Fund Manager. SEC will also provide a dedicated SEC SRI funds webpage that will upload a list of qualified investment companies or sub-funds that will be updated regularly.

An investment company that intends to include sustainability or ESG factors or considerations in its investment objective and discloses such information in its Registration Statement and other marketing materials, without qualifying as an SRI Fund shall be subject to additional disclosures and additional reportorial requirements.

Lastly, the Rules provide for administrative sanctions on the investment company and/or its Fund Manager in case of violation of the Rules.

This Memorandum Circular took effect immediately after publication in two newspapers of general circulation.

*(Editor's note: This Circular was published in* Business World *and* Manila Bulletin *on 3 January 2023.)*

## Court of Tax Appeals

**Assessment**

**Philippine Geothermal Production Company Inc. vs Commissioner of Internal Revenue**
CTA EB No. 2455 promulgated 9 January 2023

The endorsement from the DOE must be secured by a RE developer before the importation of RE machinery, equipment, materials and parts, as well as before any sale, transfer, or disposition of the capital equipment, machinery or spare parts. In contrast, the said endorsement, however, is not mentioned under Section 15(g) of RA No. 9513,29 or the RE Developer's incentive on VAT-zero rating.

*Facts:*

In March 2017, Company A filed with the BIR its application for tax credits or refund for its unutilized input taxes for all four quarters of taxable year (TY) 2015. After the expiration of the 120-day period within which BIR may decide on Company A's claim, the BIR issued a letter to the Commissioner of the BOC informing the latter about the grant and disallowance of Company A's claim up to a certain amount only.

Unsatisfied with the BIR's action, Company A filed with the Court of Tax Appeals a Petition for Review.

*Issue:*

Is a Certificate of Exemption required from renewable energy companies, such as Company A, for purposes of VAT zero-rating?

*Ruling:*

No.

The BIR argues that Company A should not have been entitled to the partial refund of its claim, asserting that Company A failed to present its DOE Certificate of Endorsement (COE). According to the BIR, the Court of Appeals erred in relying on the BIR's partial grant of refund as indicative of Company A's compliance with all necessary documents; and that the COE is only required if PGPCI wishes to avail of the incentive on duty-free importation of RE machinery, equipment and materials.

For purposes of Value-Added Tax (VAT) zero rating, Section 15(g) of RA No. 951326 and its implementing rules and regulations do not require the submission of a COE from the DOE.

A careful reading of Section 15(g) of RA No. 9513 grants Renewable Energy (RE) Developers, duly certified by the DOE in consultation with the BOI, entitlement to the VAT zero-rating treatment of its sale of fuel or power generated from renewable sources of energy and its purchases of local supply of goods, properties and services related to the development, construction and installation of its power facilities.

Relative to the above provision, the DOE, as the lead agency mandated to implement the provisions of RA 9513,27 issued DOE Circular No. DC2009-05-0008 or the Rules and Regulations Implementing RA No. 9513 (IRR).

Based on the foregoing provisions, in order to avail of the incentives under Section 15(g) of RA No. 9513, among which is VAT-zero rating, a RE Developer must have secured and presented the following documents as prescribed under Section 18(A), (B), and (C), Rule 5, Part III of the IRR of RA 9513, to wit: (1) DOE Certificate of Registration; (2) Certificate of Registration with the BOI; and (3) Certificate of Endorsement by the DOE.

Thus, submission of a COE is not required for purposes of VAT-zero rating, but rather the submission thereof is necessary only when a RE Developer intends to avail of the incentive of exemption from tariff duties from importation of RE machinery, equipment and materials, as provided in Section 15(b) of RA No. 9513.

**Refund/Issuance of a Tax Credit**

**Prime Investment Korea Inc. vs. Commissioner of Internal Revenue**
CTA EB 2483 promulgated 9 January 2023

Only regulatory/license fees received from junket operations is classified as income from "other related operations/services," pursuant to the PAGCOR Charter.

*Facts:*

Company A is a domestic corporation which entered into a Junket Agreement with the PAGCOR in July 2013. Under the Junket Agreement, PAGCOR grants upon Company A the authority to conduct junket gaming operations at the designated junket gaming rooms at PAGCOR's casino. In September 2013, the parties entered into a Supplement to Junket Agreement which granted Company A the authority to offer supplementary services for its junket gaming operations. In June 2016, another Junket Agreement and Supplement to Junket Agreement were entered into between PAGCOR and Company A, to renew these agreements entered into in 2013.

In April 2018, Company A filed with the BIR an administrative claim for refund or issuance of a tax credit certificate, allegedly representing erroneously paid corporate income taxes on e-junket gaming revenues for taxable year 2015.

Claiming inaction on its claim for refund or issuance of a tax credit certificate, Company A filed a Petition for Review with the CTA.

*Issue:*

Was Company A liable for corporate income tax on its revenues from junket gaming operations?

*Ruling:*

No.

In the PAGCOR case promulgated in 2014, the Supreme Court explained that PAGCOR's income may be classified into two: (1) income from gaming operations, which is subject only to 5% franchise tax in lieu of all taxes; and (2) income from other related services, which is subject to corporate income tax pursuant to the PAGCOR Charter.

In another case promulgated in 2016, the Supreme Court clarified that the payment of the 5% franchise tax by PAGCOR and its contractees and licensees exempts them from payment of any other taxes, including corporate income tax for earnings derived from operations conducted under its franchise.

Hence, in summary, the rules are as follows with respect to income derived by PAGCOR or any of its contractees/licensees: (1) Income derived from gaming operations is exempt from corporate income tax as the 5% franchise tax shall be paid in lieu of all taxes; and (2) Income derived from the operation of other related services is subject to corporate income tax as it is not covered by the 5% franchise tax.

Guided by this, the Court of Tax Appeals ruled in the earlier case of Prime Investment Korea Inc. vs Commissioner of Internal Revenue that income from junket gaming operations is classified as income from "other related services" and, thus, subject to corporate income tax.

This ruling, however, did not yet consider RMC No. 32-2022 where the BIR clarified that in RMC No. 33-2013, only regulatory/license fees received from junket operations is classified as income from "other related operations/services."

Perusal of the Junket Agreements shows that it allows Company A to engage in casino gaming operations as PAGCOR's agent – an activity that is exempt from corporate income tax. The Junket Agreements also show that petitioner is actually and directly engaged in the conduct of casino gaming operations at PAGCOR's Casino Filipino-Midas. The Junket Agreement provides that Company A shall shoulder the 5% franchise tax due on the gross winnings on the Junket Gaming Rooms and shall remit the franchise tax to PAGCOR for remittance to the BIR. In exchange for PAGCOR's grant of authority, petitioner shall pay PAGCOR a monthly MGF.

Company A's income from the operation of casino pursuant to the Junket Agreements are not subject to corporate income tax as these are classified as "income derived from gaming operations" pursuant to Section 13(2) of the PAGCOR Charter. Meanwhile, Company A's payment of monthly MGF to PAGCOR forms part of PAGCOR's "income from the operation of other related services" which is subject to corporate income tax pursuant to Section 14(5) of the PAGCOR Charter.



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