Tax Bulletin

July 2022

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The purpose of international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. Hence, the application of the provisions of the Tax Code, as amended, must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries. The obligation to comply with a tax treaty must then take precedence over the objective of RMO No. 1-2000.	**40**
Section 148 (e) of the Tax Code, as amended, does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. The absence of any qualification in the statutory provision inevitably leads to the conclusion that as long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation" that is subject to excise tax.	**42**
An opinion of an ICPA (Independent Certified Public Accountant) is not conclusively binding upon the Courts. The taxpayer must substantiate its claim with the proper evidence, such as invoicing or receipts in the correct form prescribed by law such as indicating Zero-Rated on the invoice or receipt for Zero-Rated Sales.	**43**

BIR Administrative Requirements

RR No. 5-2022 implements the Estate Tax Exemption under RA No. 11597.

RR No. 5-2022 dated 20 June 2022

- All transfers, by way of succession or donation mortis causa, made by a veteran of his/her shares of stock, common or preferred, with the Veterans Bank shall not be subject to estate tax, provided that the same was made in favor of the veteran's widow, orphan or compulsory heir as determined by existing laws.

- For purposes of availing the estate tax exemption, the term "veteran or veterans" shall include primarily any person or persons who served in the regularly constituted air, land, or naval services or arms, or in such non-regularly organized military units in the Philippines during World War II, and whose services with such units are duly recognized by the Republic of the Philippines or by the government of the United States of America, and those veterans referred to under RA No. 6948, as amended. The term also includes the widow, orphan or compulsory heir of a deceased veteran, as determined by existing laws.

- An Electronic Certificate Authorizing Registration (eCAR)/ Tax Clearance Certificate (TCC) must be secured with the Revenue District Office (RDO) where the estate of the decedent is registered before any transfer of share/s is registered in the books of the Veteran's Bank.

- These Regulations shall take effect fifteen days after publication in the Official Gazette or in a newspaper of general circulation, whichever comes first.

RR No. 6-2022 removes the five year Validity Period on Receipts/Invoices.

RR No. 6-2022 dated 30 June 2022

- The scope of this regulation shall cover taxpayers pursuant to Section 244 of the Tax Code, as amended:

    1. ATP Official Receipts (ORs), Sales Invoices (SIs) and Other Commercial Invoices (CIs) based on Revenue Memorandum Order (RMO) No. (12-2013);

2. Registration of Computerized Accounting System (CAS)/Component of CAS based on Revenue Memorandum Circular (RMC) No. 10-2020, RMC No. 5-2021 and RMO No. 9-2021; and

3. Permit to Use (PTU) Cash Register Machines (CRMs) and Point-of-Sale (POS) machines based on RR No. 11-2004 and RMO No. 10-2005.

- The 5-year validity period of the PTU and/or system-generated receipts/invoices based on the abovementioned revenue issuances is hereby removed.

- The phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE PERMIT TO USE" as previously required under RR No. 10-2015 as amended by RR No.16-2018, and the phrase "Valid Until" required on RMC No. 107-2019 shall be OMITTED at the bottom portion of the system-generated receipts/invoices;

- ATP principal and supplementary receipts/invoices inclusive of its serial numbers and its usage shall also have no expiration, thus, the phrase "THIS INVOICE/RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF THE ATP." and the phrase "Valid Until (mm/dd/yyyy) on the manual receipts/invoices previously required on RMO No. 12-2013 shall also be OMITTED (or DISREGARDED for unused receipts/invoices).

- This regulation likewise provides for the following transitory provisions:

  1. For Manual Receipts/Invoices with ATP

     The validity date and the phrase as mentioned under Section 3(3) of these regulations printed on the unused manual principal and supplementary receipts/invoices shall be disregarded and the same may still be issued until fully exhausted. Further, the subsequent printing of manual receipts/invoices upon the effectivity of these Regulations must not reflect the phrase (under Section 3(3) of these Regulations) and shall no longer adopt the 5-year validity.

  2. For Receipts/Invoices Generated from CAS, Component of CAS with PTU or AC

     All system-generated receipts/invoices that were issued with the aforementioned phrases previously required under RR No. 10-2015 as amended by RR No. 16-2018 and RMO No. 9-2021 and RMC No. 107-2019 based on the previously approved system/software with corresponding PTU/AC shall be disregarded; however, the said system/software generating such receipts/invoices must be reconfigured to omit the said phrases.

  3. For Receipts/Invoices Generated from CRMs and POS machines with PTU

     All system-generated receipts/invoices that were issued with the aforementioned phrases previously required under RR No. 10-2015 as amended by RR No. 16-2018, and RMC No. 107-2019, based on the previously approved CRMs and POS machines with corresponding PTU shall be disregarded; however, the said system/software generating such receipts/invoices must be reconfigured to omit the said phrases.

RR No. 7-2022 implements the tax incentives under the Renewable Energy Act of 2008 and the policies and guidelines for the availment thereof.

RR No. 7-2022 dated 22 June 2022

- Renewable Energy (RE) Developers and manufacturers, fabricators, and suppliers of locally-produced RE equipment shall secure the certifications / accreditations listed below before any incentive provided by the Act may be availed of:

    1. Registration/Accreditation with the Department of Energy (DOE) through the Renewable Energy Management Bureau (REMB). The following certifications shall be secured and submitted to the BIR:

        - DOE Certificate of Registration
        - DOE Certificate of Accreditation

    2. Certificate of Endorsement by the DOE shall be secured prior to first year of availment of the 10% corporate income tax rate incentive;

    3. Registration with the Board of Investments (BOI); and

    4. Certificate of Income Tax Holiday (ITH) Entitlement (CE).

- The following provisions shall govern the tax incentives and treatments on the DOE-certified existing and new RE developers of RE facilities in consultation with BOI, including hybrid systems, in proportion to and to the extent of the RE component, for both power and non-power applications:

Incentive	Particulars
Income Tax Holiday (ITH)	The duly-registered RE Developer shall be exempt from income taxes levied by the National Government for the period as follows: (1) Existing RE Projects - Shall be entitled to ITH for seven years from start of commercial operations which is when the RE Project has been issued a Certificate of Compliance (COC) by the ERC under RA No. 9136 (Electric Power Industry Reform Act of 2001 or the EPIRA) and is ready to inject power to the grid. All RE Developers that acquire, operate and/or administer existing RE facilities that were or have been in commercial operations for more than seven years, upon the effectivity of the Act, shall not be entitled to ITH, except for any additional investment in RE resources. (2) New investment in RE Resources - Shall be entitled to ITH for seven years from the start of commercial operations resulting from new investments. RE Developers undertaking discovery and development of new RE resources distinct from their registered operations may qualify as new projects, subject to the setting up of separate books of accounts to be registered and approved by the BIR office where the RE developer is required to be registered. In such cases, a fresh package of ITH from the start of commercial operations shall apply. (3) Additional investments in the RE Project - Availment of ITH for additional investments in RE project shall not be more than three times the period of the initial availment by the existing or new RE Project or covering new or additional investments. The ITH for additional investments in an existing RE project shall be applied only to the income attributable to the additional investment. Additional investment may cover investments for improvements, modernization, or rehabilitation duly registered with the DOE, which may or may not result in increased capacity. Subject to the issuance of appropriate guidelines by the DOE and/or the BOI, the DOE and the BOI shall issue a certification as to the amount or percentage of additional income generated by the additional investment in an existing project to be attached to the annual Income Tax Return (ITR) to be filed with the BIR.

Incentive	Particulars
Net Operating Loss Carry-Over (NOLCO)	The NOLCO of the RE Developer during the first three years from the start of commercial operation shall be carried over as a deduction from gross income for the next seven consecutive taxable years immediately following the year of such loss, subject to the following conditions: (1) The NOLCO had not been previously offset as a deduction from gross income; and (2) The loss should be a result from the operation and not from the availment of incentives provided for in the Act. Other than the express provisions cited above specifically for persons engaged in RE, the guidelines and procedures set forth in RR No. 14-2001 shall be strictly followed in the availment of the NOLCO.
Corporate Tax Rate	After availment of the ITH, all registered RE Developers shall pay a corporate tax of 10% on their net taxable income as defined in the National Internal Revenue Code (NIRC) of 1997, as amended: Provided, That the RE Developers shall pass on the savings to the end-users in the form of lower power rates. All RE Developers that acquire, operate, and/or administer existing RE facilities that have been in commercial operation for more than seven years, upon the effectivity of the Act, shall pay a corporate tax rate of 10% on their net taxable income, upon registration with the DOE. For purposes of the availment of this incentive, the RE developer shall submit to the BIR the following: (1) Copy of the Certificate of Endorsement issued by the DOE prior to the first year of its availment of the 10% corporate income tax rate; (2) Valid and subsisting renewable energy service/operating contract and the corresponding Certificate of Registration; and (3) In addition, the RE Developer shall attach to its ITR, a Sworn Undertaking stating that for the year of its availment of the 10% corporate income tax rate incentive, it has not been found to have breached its obligations under the Renewable Energy Service/Operating Contract and that it shall pass on the savings derived from this incentive in the form of lower power rates. In the years succeeding its initial availment of the 10% corporate income tax rate incentive, following the effectivity of these Regulations, the RE Developer shall attach to the ITR, in addition to the above requirements, proof of submission to the DOE and ERC of the Report, supported by technical and financial documents, as required in Section 1(E) of DOE Department Circular No. DC2021 -12-0042. To further prove that the RE Developer has, during the previous year, passed on the savings derived from this incentive to the end-users in the form of lower power rates, the RE Developer shall submit to the BIR the rates approved by the ERC.

Incentive	Particulars
Accelerated Depreciation	If an RE project fails to receive an ITH before full operation, the RE developer may apply for accelerated depreciation in its tax books and be taxed on the basis of the same. If an RE Developer applies for accelerated depreciation, the project or its expansions shall no longer be eligible to avail of the ITH. Plant, machinery and equipment that are reasonably needed and actually used for the exploration, development and utilization of RE Resources may be depreciated using a rate not exceeding twice the rate which would have been used had the annual allowance been computed. Any of the following methods of accelerated depreciation may be adopted: (1) Declining balance method; and (2) Sum-of-the years digit method. The RE developer shall inform the BIR, through the Revenue District Office (RDO) where it is registered, that it is availing of the accelerated depreciation instead of the ITH.
Zero Percent Value-Added Tax Rate	The sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels, shall be subject to zero percent (0%) value-added tax (VAT) pursuant to the NIRC of 1997, as amended; Provided, that ancillary services generated through renewable sources of energy shall also be subject to 0% VAT. On the other hand, the purchase by an RE Developer of local goods, properties, and services needed for the development, construction, and installation of the plant facilities of RE Developers; and the whole process of exploration and development of RE sources up to its conversion into power, including, but not limited to, the services performed by subcontractors and/or contractors shall also subject to zero percent (0%) VAT. Accordingly, local suppliers/sellers of goods, properties, and services of duly-registered RE developers should not pass on the 12% VAT on the latter's purchases of goods, properties and services that will be used for the development, construction and installation of their power plant facilities. This includes the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors. The local suppliers of goods, properties, and services shall require from the RE Developer a copy of the latter's BOI Registration and DOE Registration for purposes of availing the zero percent (0%) VAT incentive.
Tax Exemption of Carbon Credits	All proceeds from the sale of carbon emission credits shall be exempt from any and all taxes

- All manufacturers, fabricators, and suppliers of locally produced RE equipment and components duly recognized and accredited by the DOE and upon registration with the BOI, shall be entitled to the privileges set forth below on their sale of RE equipment to RE Developers:

    1. Value-Added Tax (VAT)-free Importation of Components, Parts, and Materials
    2. Income Tax Holiday and Exemption
    3. Zero-Rated Value-Added Tax Transaction

- All individuals and entities engaged in the plantation of crops and trees used as Biomass Resources shall be exempt from payment of VAT on all types of agricultural inputs, equipment, and machinery within 10 years from the effectivity of the Act, subject to the certification by the DOE and to certain conditions.

- Purchasers of RE equipment for residential, industrial or community use shall be entitled to a rebate equivalent to the VAT passed on to the said purchasers. The rebate shall only be available to purchasers who are not VAT-registered and shall be in the form of a tax credit from the income tax liability of the purchasers during the year of purchase. Any unutilized rebate or tax credit shall be forfeited.

- Unless otherwise provided by law, the registration/accreditation to avail of incentives under this Act shall disqualify the availment of other tax and non-tax incentives under the National Internal Revenue Code, as amended by RA No. 11534, otherwise known as CREATE Act.

RR No. 8-2022 prescribes policies and guidelines for the implementation of Section 237 and 237-A of the Tax Code, as amended by the TRAIN Law, and to prescribe requirements on the issuance of electronic receipts/invoices (hereby know as e-Receipts/e-Invoices) in lieu of the manual receipts or sales/commercial invoices and on the electronic reporting of these sales data to the BIR through the use of the EIS.

RR No. 8-2022 dated 30 June 2022

- COVERAGE

    1. The following taxpayers are mandated to issue electronic receipts or sales/commercial invoices under Sec. 237 of the Tax Code, as amended, to wit:

        - Taxpayers engaged in the export of goods and services;
        - Taxpayers engaged in electronic commerce (e-commerce); and
        - Taxpayers under the Large Taxpayers Service (LTS).

    2. Relative thereto, Section 237-A of the Tax Code, as amended, required the abovementioned taxpayers, except for the taxpayers engaged in e-commerce, to electronically report or transmit their sales data to the Bureau through the use of their Sales Data Transmission System.

    3. On the other hand, taxpayers who are not covered by the mandate may issue electronic receipts or sales/commercial invoices in lieu of manual receipts/invoices.

- ELECTRONIC INVOICING/RECEIPTING SYSTEM (EIS)

    1. The Bureau, as mandated, established an Electronic Invoicing/Receipting System (EIS) capable of storing and processing the data required to be transmitted by covered taxpayers using their Sales Data Transmission System.

    2. In compliance with the relevant provisions of the TRAIN Law, these Regulations hereby direct the taxpayers under Section 2 to comply with the following:

        - Issuance of e-Receipts/e-Invoices to their customers/buyers, in lieu of manual receipts/invoices;

- Registration of their Computerized Accounting System (CAS) generating e-receipts/e-invoices and/or Cash Register Machines (CRM)/Point-of-Sales Systems and Certification of Sales Data Transmission System; and

- Transmission of the sales data covered by the e-receipts/e-invoices using their Sales Data Transmission System into the EIS of the Bureau.

- POLICIES AND GUIDELINES

  1. All taxpayers mandated to adhere to these Regulations shall follow the policies and guidelines provided herein. A separate issuance shall be provided for the details and specific requirements.

     - All covered taxpayers required to issue e-Receipts/e-Invoices and transmit sales data electronically under Section 2 of these Regulations are required to develop a Sales Data Transmission System based on the Standard Application Programming Interface (API) Guidelines.

     - Prior to the actual transmission of sales data to the EIS, enrollment of taxpayers shall be necessary for security purposes.

     - The developed Sales Data Transmission System shall be certified by BIR through the EIS. Taxpayers are required to submit applications for the EIS Certification or "EIS CERT" subject to online verification if compliant with the BIR requirements. Upon approval of the application, an "EIS CERT" shall be issued to the taxpayer.

     - The taxpayer shall also submit an application for the issuance of Permit to Transmit (also known as "PTT") in order to allow the transmission of sales data to the EIS.

     - Taxpayers shall apply for EIS CERT and PTT regardless of the role of or arrangement with the software provider.

     - Sales reporting shall be done immediately for transactions on the day following the issuance of the PTT.

     - Transmission of sales data shall be done real time or near real time provided that it should be done within three calendar days from the date of the transaction. Scanned copy nor image of the e-Receipts/e-Invoices are not required to be transmitted to the EIS.

     - The encrypted sales data to be transmitted to EIS shall be in Java Script Object Notation (JSON) File Format.

     - Only authorized taxpayers are allowed to access the EIS.

     - A corresponding penalty shall be imposed for the delayed or late or non-transmission of sales data to EIS.

     - Taxpayers who are not mandated to issue e-Receipts/e-Invoices and/or not mandated to transmit sales data to EIS may continue to use manual receipts/invoices or issue CAS/POS-generated receipts/invoices based on existing revenue issuances. However, taxpayers who will opt to issue e-Receipts/e-Invoices and transmit sales data to EIS may comply with the provisions of these Regulations.

- Taxpayers using the EIS shall not be required to submit Summary List of Sales (SLS), however, Summary List of Purchases and Importations must still be submitted.

- OTHER POLICIES RELATIVE TO ISSUANCE OF RECEIPTS OR INVOICES

  1. The following are policies on issuance of receipts or invoices in relation to the implementation of Sections 237 and 237A of the NIRC of 1997, as amended:

     - All persons subject to an internal revenue tax shall, at the point of each sale and transfer of merchandise or for services rendered valued at One Hundred Pesos (Php100) or more, issue duly registered receipts or sale or commercial invoices, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service.

     - The receipts/sales or commercial invoices to be used must be serially numbered and shall show, among other things, the name, business style, Taxpayer Identification Number (TIN) including the branch code, if applicable, business address of Head Office or Branch, whichever is applicable, and such other information as required.

     - No manual or electronic receipts or sales or commercial invoices shall be used unless authorized through an Authority to Print (ATP), Permit to Use (PTU), Acknowledgment Certificate or Authority to Generate (ATC) respectively, duly issued by the BIR pursuant to existing rules and regulations.

     - The invoicing requirements under Section tr3 (B) of the Tax Code of 1997, as amended, relative to the information to be indicated on the VAT invoice/receipt shall still be complied with.

     - Only those receipts/invoices generated from the following shall be considered valid for tax purposes, to wit:

       a. Duly registered CAS pursuant to the provisions of Revenue Memorandum Order (RMO) No. 9-2021 and other related revenue issuances with approved serial numbers; and/or

       b. Duly accredited and registered CRM/POS with Machine Identification Number (MIN) and approved maximum number of digits on serial numbers to be used.

- All existing rules and regulations or parts thereof, which are inconsistent with the provisions of these Regulations are hereby repealed, amended, or modified accordingly.

- These Regulations shall take effect immediately after publication in a newspaper of general circulation.

RR No. 9-2022 prescribes policies and guidelines for the admissibility of sales documents in electronic format in relation to the implementation of Section 237, Issuance of Receipts or Sales or Commercial Invoices, and 237-A, Electronic Sales Reporting System, of the Tax Code, as amended by the TRAIN Law.

RR No. 9-2022 dated 23 June 2022

Among the salient provisions of this RR are as follows:

Sections	Details
SECTION 1. SCOPE	Pursuant to Sections 244 and 245 of the Tax Code, as amended, these Regulations are hereby promulgated to provide policies and guidelines for the admissibility of electronic sales documents or data, particularly in the verification of sales and purchases of taxpayers especially during audit or processing of VAT refund claims, in relation to Section 237 and 237-4 of the NIRC of 1997, as amended by the TRAIN Law, particularly with the following taxpayer groups: 1. Taxpayers engaged in the export of goods and services; 2. Taxpayers engaged in electronic commerce (e-commerce); and 3. Taxpayers under the Large Taxpayers Service (LTS). These Regulations also cover taxpayers that are not included in the above group of taxpayers but have been authorized by the Bureau to issue electronic SIs/ORs through the web-based facility of the EIS.
SECTION 2. POLICIES AND GUIDELINES	All taxpayers covered by these Regulations shall follow the policies and guidelines provided herein. A separate issuance shall be provided for the details and specific requirements hereof. 1. At the time of tax audit or investigation or verification of the taxpayer, pursuant to Section 5(A) of the Tax Code, as amended, the sales and purchases data that will be generated and verified through the EIS, in lieu of hard copies, are admissible, provided, these comply with the information/data requirements under existing revenue issuances and the minimum information required under Section 113 of the same Tax Code. The requirement for the prominently stamping of the term "zero-rated sales" on the face of the receipt or invoices is no longer necessary inasmuch as a separate reporting to EIS is required for each sales classification, particularly VATable, zero-rated and exempt. 2. Taxpayers duly-authorized to use the EIS, whether through the web-based format or through Application Programming Interface (API) transmission of sales data, shall not be required to submit printed copies of invoices or receipts issued for their sales. 3. Printed Invoices/Receipts for purchases from suppliers using the web-based issuance in the EIS, or through Sales Data Transmission System, will no longer be required to be submitted. However, only purchases data that are validated in the EIS shall be allowed for purposes of claiming input VAT under Section 110 of the Tax Code, as amended, or for claiming deductible expenses for purposes of income tax under Section 34(A)(1)(b) of the same Tax Code. Receipts and invoices presented or claimed by the buyer as purchases that are not reported in the EIS by the supplier shall be construed as unreported sales and shall be subject to further investigation.

Sections	Details
	4. The original form or digital copies, whichever is applicable, must be retained in accordance with Sections 235 and 237 of the Tax Code, as amended, in order for the taxpayer to provide the same upon demand for verification and validation of the sales and purchases data generated through the EIS or submitted electronic forms of invoices or receipts. 5. Subject to the approval of the Commissioner of Internal Revenue or his authorized representative, taxpayers may be required to present or submit hard copies of the receipts or invoices or allowed access to the computerized system under the following instances: a. Missing or vague details in the invoices or receipts that were transmitted to the EIS, for which the investigating Revenue Officer needs further clarification; b. Information in the invoices and receipts that are not included in the data required to be transmitted to the EIS; c. Validation of export sales data during verification of VAT refund claims for unutilized input VAT attributable to zero-rated sales by taxpayer-claimants under Section 112(A) of the Tax Code, as amended; d. Taxpayer is under tax fraud investigation; e. Skipped or missing series in the invoices or receipts issued; and/or f. Other instances as may be determined by the Commissioner of Internal Revenue. In this regard, the volume of the sales documents required to be submitted or presented may be a representative sample of the total sales or purchases as may be determined by the revenue officer of the Bureau. 6. Revenue officers are not precluded from accessing the respective CAS or POS/CRM machines of the taxpayer under the EIS to validate whether the sales data transmitted to the EIS matches the sales recorded in their electronic systems as required under RR No. 9-2009. 7. Refusal of the taxpayer to allow the revenue officers assigned to access the CAS pursuant to Section 7 of RR No. 9-2009 shall give authority to the revenue officers to employ alternative means in the verification of the records of the taxpayer or may result in possible disallowances or assessments. Pursuant to Section 12 of the same RR, any violation of the provisions of RR No. 9-2009 may result in prosecution of the taxpayer by the Bureau of Internal Revenue. Upon conviction, the taxpayer shall be held liable for the penalties provided under Section 255 of the NIRC, in addition to any other penalties otherwise payable. This may also result in the revocation of the Acknowledgement Certificate or Permit to Use CAS of the taxpayer, upon the recommendation of the revenue officer. 8. Sales and purchases not covered by these Regulations shall be in compliance with the existing policies and procedures for the manual verification of sales and purchases.

These regulations shall take effect immediately after publication in a newspaper of general circulation.

This was published in the Manila Times on 1 July 2022.

RR No. 10-2022 issued on 29 June 2022 prescribes the guidelines and procedures to be followed by taxpayers in requesting for MAP assistance from the Philippine Competent Authority to resolve disputes arising from taxation not in accordance with the provisions of the relevant DTA.

RR No. 10-2022 dated 29 June 2022

- The Regulations enumerate some typical examples of taxation that are not in accordance with a tax convention that would necessitate a MAP assistance.

- To implement the MAP article, the Commissioner of Internal Revenue (CIR) is designated as the Competent Authority for the Philippines (Philippine CA). Where it is not possible for the CIR to deal directly with MAP cases, he/she shall delegate his/her functions and powers to other competent officials of the BIR via a Revenue Delegated Authority Order (RDAO).

- The Rulings and MAP Section of the International Tax Affairs Division (ITAD) (hereinafter referred to as the "MAP Office") shall commence the analysis and resolution of MAP cases. The recommendation of the MAP Office shall be reviewed by the Chief of ITAD. The proposed resolution or action of the ITAD on the MAP cases shall be subject to review by the Assistant Commissioner for Legal Service, the Deputy Commissioner for Legal Group and finally, by the Competent Authority or his/her authorized representative. In the interest of time, the Competent Authority may introduce streamlining procedures, considering the inventory of MAP cases and the number of handling officers.

- A taxpayer may, prior to making a formal request for MAP assistance, request for a pre-filing consultation following the procedures outlined in these Regulations. To request for MAP assistance, a taxpayer must submit a request in writing, which must be signed by the taxpayer or its/his/her authorized representative. The request should contain and include the information and documentation as specified in Subsection 3 of these Regulations and should be submitted to the following address:

Office Address:	International Tax Affairs Division Room 811. BIR National Office Building BIR Road, Diliman, 1100 Quezon City
Email address:	map_itad@bir.gov.ph

- Where the MAP request has been mistakenly submitted to another office of the BIR, the receiving office shall immediately forward the same to ITAD without delay and shall notify the taxpayer of such fact. For a MAP request to be considered valid under the DTA, it should contain the following information:

    1. Identity of the taxpayer(s) to which the MAP relates (name, address, taxpayer identification number, contact details and the relationship between the concerned taxpayers, if applicable);

    2. The tax convention article(s) that the taxpayer asserts is (are) not being correctly applied, and the taxpayer's interpretation of the application of the article;

    3. Relevant facts of the case, the taxation years or period involved, and the amounts involved (in both the local currency and foreign currency);

    4. The name of the foreign tax administration involved and, if possible, identification of the regional or local tax administration office that has made, or is proposing to make, the adjustment;

    5. Analysis of the issue(s) involved, including its interpretation of the application of the specific treaty provision(s);

6. Whether the MAP request was also submitted to the competent authority of the other Contracting Party, together with the date of such submission, the name and the designation of the person or the office to which the MAP request was submitted;

7. Whether the issue(s) involved were previously dealt with;

8. A statement indicating whether the taxpayer has filed a notice of objection, notice of appeal, refund claim, or comparable document in either of the relevant jurisdictions;

9. A schedule of the time limitations in each jurisdiction (domestic as well as tax convention time limits) in respect of the years for which relief is sought (in cases of multiple taxpayers, a schedule for each); and

10. A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in 'its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

- A certified true copy of the following documents, if relevant, shall be attached to the MAP request:

1. Final Assessment Notice, rulings duly issued by the competent officials of the BIR or any equivalent document which contains the action that results in double taxation;

2. Copies of tax assessments, audits conducted by the foreign tax authority leading to the incorrect application of the tax treaty provision;

3. Audited Financial Statements and Income Tax Return duly filed with the BIR together with the latter's attachments (e.g., BIR Form No. 1709), transfer pricing documentation, advance ruling, advance pricing arrangement (APA);

4. Decisions of a competent court or tax tribunal on a similar case involving the same factual and legal issues;

5. A copy of any other request for MAP assistance and the associated documents filed, or to be filed, with the competent authority of the other contracting state, including copies of correspondence from the other tax administration. copies of briefs, objections, etc., submitted in response to the action or proposed action of another tax administration (if applicable, translated copies are helpful and where documentation is voluminous, a description of the documentation may be acceptable);

6. A copy of the complaint or appeal filed in court or with the tax authorities, if any;

7. A copy of any settlement or agreement reached with the other jurisdiction which may affect the MAP process;

8. Proof of payment of tax resulting from the transfer pricing adjustment made in the foreign country; and

9. Duly authenticated (consularized or apostilled) Special Power of Attorney authorizing the taxpayer's representative to file the request for MAP assistance and to do such other acts leading to the resolution of the MAP case.

- If the attachments are in a foreign language, the MAP Office will require the taxpayer to submit an English translation thereof. Subject to the provision of the relevant DTA, the MAP request may be presented to the following:

    1. Competent authority of the Contracting State of which he is a resident;
    2. Competent authority of the Contracting State of which he is a citizen; or,
    3. If the case falls under the Non-Discrimination article of the DTA to the Contracting State of which the taxpayer is a national.

- Generally, the DTAs require that the MAP request be presented to the competent authority of the Contracting State of which he is a resident. In the case of the Philippines, however, where the MAP request relates to attribution of profits and transfer pricing adjustments, taxpayers are strongly encouraged to ensure that the associated enterprise in the other contracting state also contacts its Competent Authority. To facilitate the expeditious resolution of a MAP case, the taxpayer should submit all supporting documents promptly and simultaneously to both Competent Authorities. If the taxpayer is intending to submit the same MAP request to the other competent authority, the two requests should be submitted at the same time.

- The MAP request must be submitted within the time limit specified in the applicable DTA. Depending on the provision of the DTA, the MAP request may be presented to the relevant competent authority within two or three years from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA. The taxpayers should always consult the relevant DTA at an early stage to ensure that they submit a request for MAP assistance within the specified time limit.

- In cases where the DTAs do not provide a time limit, the MAP request must be submitted to the relevant competent authority within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA. The filing period shall be reckoned from the date of receipt of the Final Assessment Notice or of a ruling denying the claim for treaty benefit, or any equivalent document which contains the action that results in double taxation.

- A MAP request may be filed manually with the competent authority or his/her authorized representatives, or electronically via an encrypted mail. Where voluminous documents are attached to such a request, the documents shall be sent to the designated address via registered mail or a courier.

- Fees associated with the negotiation of bilateral or multilateral APAs or with the hiring of independent experts or mediators shall be shouldered by the party initiating the MAP request. In all other cases, no fees shall be charged by the competent authority for the resolution of MAP cases. The details of the following steps in the MAP Process are specified in the Regulations:

    1. Preliminary Assessment
    2. Analysis of a MAP Case
    3. Consultations between the MAP Team and other offices of the BIR
    4. Consultations between the Competent Authorities
    5. Negotiation of Bilateral or Multilateral APAs
    6. Authority of the MAP Team
    7. Resolution of a MAP Case
    8. Competent Authority Agreement
    9. Timely implementation of MAP Agreements
    10. Competent Authority Agreement has not been reached

11. Interaction with Domestic Remedies
    - Judicial or other administrative appeals versus MAP
    - Court decisions cannot be overruled through MAP
    - Effect of decisions rendered by foreign courts
    - Suspension of tax collection
12. Withdrawal of a MAP Case
13. Appropriate Transfer Pricing Adjustment under the DTAs

- Audit settlements reached between the tax authority and the taxpayers do not preclude access to MAP. If a MAP request has been initiated after such audit settlement, the Philippine competent authority should independently consider whether such settlement would result in taxation not in accordance with the provisions of the Convention. The competent authority must ensure that taxpayers entitled to treaty benefits are not subjected to taxation by either of the Contracting Parties which is not in accordance with the provisions of the DTAs.

- The information provided and documents submitted in support of the MAP request shall be treated with utmost confidentiality pursuant to Section 270 of the Tax Code, as amended. Any exchange of information between the competent authorities shall be carried out in accordance with the provisions of the relevant DTA. Information exchanged pursuant to the effective DTAs of the Philippines is confidential and shall only be used and disclosed in accordance with the provisions of the relevant DTA.

RR No. 11-2022 prescribes the guidelines and procedures for the spontaneous exchange of taxpayer specific rulings.

RR No. 11-2022 dated 30 June 2022

- Spontaneous exchange of relevant information on taxpayer-specific rulings (the transparency framework) provides tax administrations with access to timely information on rulings that have been granted to a foreign related party or a permanent establishment (PE) of their resident taxpayer, which can be used in conducting risk assessments. The absence of such information exchange could give rise to base erosion and profit shifting (BEPS) concerns.

- The spontaneous exchange of rulings covers certain past rulings as well as future rulings, pursuant to pre-defined periods. The exchanges are made pursuant to international exchange of information agreements, such as Double Taxation Agreements (DTAs), Tax Information Exchange Agreements (TIEAs) or the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), which provide for the legal conditions under which the exchanges take place, including the need to ensure taxpayer confidentiality. The information must be exchanged with all potential exchange jurisdictions, including the country of residence of the immediate parent company and ultimate parent company.

- In the Philippines, the legal basis for such exchange can be found in the EOI provision of its DTAs, which mandates the competent authorities of the contracting states to exchange such information as is necessary for carrying out the provisions thereof or of the domestic laws of the Contracting States concerning the taxes to which the DTA applies. The EOI provision includes all types of exchanges, be it upon request, automatic or spontaneous.

- The International Tax Affairs Division (ITAD) of the Bureau of Internal Revenue (BIR), through its EOI Section, shall be responsible for exchanging the taxpayer specific rulings to the foreign tax authority of the potential exchange jurisdictions on or before the prescribed deadline.

- The rulings within the scope of the transparency framework include the following:

    1. Rulings related to a preferential regime;

    2. Cross-border unilateral Advance Pricing Arrangements (APAs) and any other cross-border unilateral tax ruling (such as an Advance Tax Ruling) covering transfer pricing or the application of transfer pricing principles;

    3. Cross-border rulings giving a unilateral downward adjustment to the taxpayer's taxable profits in the country giving the ruling;

    4. PE rulings; and

    5. Related party conduit rulings.

- The Philippines shall use the template designed by the Forum on Harmful Tax Practices (FHTP) and the Inclusive Framework on BEPS (Annex A). Revisions of the template shall always be adopted by the Philippines so long as it is practical and not burdensome on the part of the tax administration.

- **Potential Exchange Jurisdictions**

Type of Ruling	Potential Exchange Jurisdiction
Rulings related to certain preferential regimes	1. The countries of residence of all related parties (a 25% threshold would apply), with which the taxpayer enters into a transaction for which a preferential treatment is granted or which gives rise to income from related parties benefiting from a preferential treatment (this rule also applies in a PE context); and 2. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Unilateral APAs or other cross-border unilateral rulings in respect of transfer pricing	1. The countries of residence of all related parties with whom the taxpayer enters into transactions that are covered by the APA or cross-border unilateral tax ruling; and 2. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
Rulings providing for a downward adjustment of taxable profits	1. The countries of residence of all related parties with whom the taxpayer enters into transactions covered by the ruling. 2. The residence country of (a) the ultimate parent company and (b) the immediate parent company.
PE rulings	1. The residence country of the head office, or the country of the PE, as the case may be; and 2. The residence country of (a) the ultimate parent company and (b) the immediate parent company.

Type of Ruling	Potential Exchange Jurisdiction
Related party conduit rulings	1. The country of residence of any related party making payments to the conduit (directly or indirectly); 2. The country of residence of the ultimate beneficial owner (which in most cases will be the ultimate parent company) of payments made to the conduit; and 3. To the extent not already covered by (2). the residence country of (a) the ultimate parent company and (b) the immediate parent company.

- Upon the effectivity of this Regulations, the EOI Section of ITAD shall ensure that the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the following timelines:

    1. For past rulings, as soon as possible after identifying the potential exchange jurisdictions; and

    2. For future rulings, as soon as possible and no later than three months after the issuance thereof.

- It shall likewise ensure that subsequent requests by another jurisdiction for a copy of the taxpayer specific ruling is responded to, or a status update is provided, within 90 days upon receipt of such request.

- Rulings may either be exchanged via the following modes of exchange:

    1. Registered mail; or
    2. Encrypted electronic mail (email).

- The EOI Section shall always ensure that rulings and information provided via email are password-protected. Moreover, in choosing the mode of exchange, the EOI Section shall consider the policy of its treaty partners.

- For the Philippines, past rulings that fall within the scope of the transparency framework pertain only to PE rulings or rulings concerning the existence or absence of a PE of a foreign enterprise in the Philippines that were issued either:

    1. On or after 1 January 2015 but before 1 September 2017; or

    2. On or alter 1 January 2012 but before 1 January 2015, provided they were still in effect as of 1 January 2015.

- Future rulings refer to rulings issued after such periods.

Past rulings

- If the past ruling does not contain sufficient information to enable identification of all the relevant countries with which the information needs to be exchanged, the Rulings and MAP Section must apply the *"best efforts"* approach to identify them. This includes the following:

    1. Checking of information included in the file supporting the tax treaty relief application (the ruling file), BIR Form No. 1709. any relevant transfer pricing documentation, if available;

2. Obtaining information from the domestic withholding agent, foreign taxpayer or its representative in the Philippines, the Securities and Exchange Commission or other possible information holders; and

3. Any other manner leading to the determination of the needed information.

- All requests for information related to exchange of past rulings shall be signed by the Assistant Commissioner for Legal Service (ACIR-LS).

Future rulings

- The offices responsible for the issuance of the taxpayer specific rulings mentioned under the Other Rulings section shall take the necessary measures to ensure that all potential exchange jurisdictions are identified swiftly for all future rulings. This may require the amendment of the ruling process, if necessary, the amendment of the B1R Forms that must be submitted by the taxpayer when requesting for a confirmatory ruling, and the inclusion of transfer pricing documentation as part of the documentary requirements, among others.

- Nothing shall prevent the Bureau, however, from requesting other relevant documents from the domestic and foreign taxpayers to obtain information on the potential exchange jurisdictions, in addition to the usual documents that must accompany every request for confirmatory ruling pursuant to existing revenue issuances. All requests for information related to exchange of future rulings shall be signed by the respective heads of offices.

Rulings Originating from the ITAD

- The classification of future rulings originating from the ITAD that are subject to the spontaneous exchange of rulings, and the identification of, and gathering of information on the potential exchange jurisdictions shall be the responsibility of the Rulings and MAP Section of ITAD.

- After classifying the rulings to be exchanged and identifying the potential exchange jurisdictions, the Rulings and MAP Section shall immediately transmit the ruling file to the EOI Section.

Other Rulings

- The office that issued taxpayer specific rulings other than those originating from ITAD shall be responsible for ensuring that that all potential exchange jurisdictions are identified swiftly for all future rulings.

- For the purpose of exchanging rulings, coordination between that office and ITAD shall always be made. The ruling file, with a summary of the potential exchange jurisdictions, shall be transmitted to the EOI Section of ITAD in a secure manner within thirty (30) days from its issuance.

Review and Supervision Mechanism

- The Chief of ITAD shall initially review and supervise the implementation framework to ensure that all relevant information on the identification of rulings and potential exchange jurisdictions is captured adequately.

- The final review shall be done by the ACIR-LS who shall also sign all documents related to the spontaneous exchange of rulings to the relevant foreign tax authority.

Receipts of Spontaneous Exchange of Rulings from Foreign Tax Jurisdiction

- The EOI Section of ITAD shall be responsible for receiving rulings spontaneously exchanged by its treaty partners. If it is established, upon evaluation, that the ruling will aid the tax examiners in their tax investigation, a copy thereof shall be immediately forwarded to the Revenue District Office (RDO) having jurisdiction of the domestic taxpayer.

- For monitoring purposes, the RDO shall always provide the EOI Section feedback on the usefulness of the information provided by the foreign tax jurisdiction within 30 days from the termination of the tax investigation.

Confidentiality

- In the spontaneous exchange of tax rulings, the EOI Section shall be guided by the confidentiality rules contained in the EOI provision of the DTAs, Section 270 of the National Internal Revenue Code of 1997, as amended, Republic Act No. 10173, otherwise known as the Data Privacy Act of 2012, and of existing revenue issuances.

Repealing Clause

- All existing revenue issuances or portions thereof inconsistent herewith are hereby revoked and/or amended accordingly.

This Regulations shall take effect after 15 days following its publication in a newspaper of general circulation. This was published in Business World on 8 July 2022.

RMC No. 84-2022 clarifies that the deletion of the 30-day period to serve the eLA shall in no case be an excuse for the concerned RO to delay its service nor for a taxpayer to refuse its service or to question its validity, in case the same is served beyond the 30-day period. Hence, an eLA that remains unserved upon the effectivity of this Circular or that has been served beyond the 30-day period from the date of its issuance shall still be considered valid and enforceable, provided that the 180-day/240-day period to complete the audit process has not yet expired.

RMC 82-2022 dated 28 June 2022

RMC No. 84-2022 issued on June 30, 2022 prescribes the template of Sworn Declaration executed by the duly RBE stating that the goods and/or services being purchased shall be used directly and exclusively in the registered project or activity.

RMC 84-2022 dated 30 June 2022

- The sworn declaration shall be provided to the RBE's supplier prior to the sale transaction to avail of the VAT zero-rate incentives.

Banks and Other Financial Institutions

Guidelines on the Submission of the Supplemental Report to the Financial Reporting Package (FRP) on Islamic Banking

Memorandum No. M-2022-032 Series of 2022 provides the submission guidelines on the supplemental report to the FRP on Islamic Banking that shall be observed as of end-June 2022.

Memorandum No. M-2022-032 Series of 2022 issued on 20 July 2022

The guidelines are:

- **Submission Guidelines**

    1. All Islamic Banks and Conventional Banks with Islamic Banking Units shall use the Supplemental Report to the FRP on Islamic Banking Data Entry Template (DET) and its corresponding Control Proof list (CP) which can be downloaded from www.bsp.gov.ph/ses/reporting_templates or directly requested from BSP-Department of Supervisory Analytics (DSA) through DSAReports@bsp.gov.ph. In requesting the said files, covered BSP Supervised Financial Institutions (BSFIs) shall follow the prescribed format as the subject, [REQUEST] FRP_SIB Template.

2. All covered banks shall submit the solo and consolidated Supplemental Reports to FRP DET and CP through the DSAReports@bsp.gov.ph within 15 banking days after end of reference month for solo basis and 30 banking days after end of reference quarter for consolidated basis.

   All covered banks shall apply the prescribed format for the subject:

   FRP_SIB<space>Bank Name,<space><Reference Period>

   For example,

   To : DSAReports@bsp.gov.ph

   Subject : FRP_SIB ABC Bank, 30 June 2022

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

File	File Name	File Format
DET	FRP_SIB-basis	Xls
CP	FRP_SIB-basis-CP	Pdf

3. For 30 June to 31 August 2022 reports, these shall be due for submission on or before 21 October 2022. Subsequent submission beginning 30 September 2022 shall follow the deadlines prescribed under item number 2 above.

4. All covered banks shall only use e-mail addresses officially registered with the DSA in electronically submitting reports in accordance with BSP Memorandum No. M-2017-028 dated 11 September 2017. The same registered e-mail address/es shall be used by the DSA in acknowledging the submitted reports.

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

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

6. Queries regarding the Supplemental Reports to the FRP on Islamic Banking, its related regulations and guidelines shall be sent via e-mail to DSAReports@bsp.gov.ph following the prescribed format as the subject, [INQUIRY] FRP_SIB

- **Important Reminders**

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

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

2. Starting reporting period 31 March 2024, report submissions that do not conform with the prescribed procedures shall not be accepted and will be considered non-compliant with the existing reportorial requirements subject to applicable penalties for late and/or erroneous submission.

Updated Comprehensive Credit and Equity Exposures (COCREE) Report Package

Memorandum No. M-2022-033 Series of 2022 disseminates the updated COCREE Report Package to all universal/commercial banks and their thrift bank/non-bank financial institution with quasi-banking functions/trust corporation subsidiaries, and digital banks.

Memorandum No. M-2022-033 Series of 2022 issued on 5 August 2022

Pursuant to Circular No. 1131 dated 13 December 2021, and in line with Memorandum Nos. M-2021-070 dated 22 December 2021, M-2022-018 dated 28 March 2022, and M-2022-027 dated 26 May 2022, the following shall be observed in the implementation of the COCREE Report:

- The XML Schema Definition (XSD) and other relevant materials of the COCREE Report have been updated to consider the comments gathered during the pilot test of the XML-COCREE. The updated COCREE Report Package (CRP) containing the latest XSD and the following Annexes enumerated below can be downloaded from the BSP Template Portal (www.bsp.gov.ph/SES/reporting_templates), or requested from the Credit Reporting System Unit (CRSU) through cocree@bsp.gov.ph:

  1. Data Dictionary;
  2. Line-Item Instructions;
  3. Control Proof list;
  4. Validation User Guide;
  5. Frequently Asked Questions; and
  6. FI Portal COCREE Module User Guide

- The updated CRP shall take effect on COCREE's live implementation beginning with reporting period 30 June 2022 which is due for submission on 16 September 2022 pursuant to the prescribed submission deadlines under Memorandum No. M-2022-027. Records submitted during the pilot phase are primarily for testing purposes only and cannot be considered as live submission.

- The COCREE Report shall continue to be submitted via the BSP Financial Institutions (FI) Portal1 in accordance with the guidelines and encryption requirements prescribed under Memorandum No. M-2022-018. Quarterly submission of the Report on CREDEX2 shall continue as prescribed until otherwise advised by the Bangko Sentral.

Queries on the submission guidelines and other concerns related to COCREE can be referred to the Credit Reporting System Unit (CRSU) at 5306-2721, 5306-3128 and cocree@bsp.gov.ph.

Guidelines on the Computation and Payment of Rebates, Refunds and Incentives (RRI) for Unfit Banknote Deposits Under BSP Circular No. 1106

Memorandum No. M-2022-034 Series of 2022 disseminates to all agent banks the guidelines on the computation and payment of rebates, refunds and incentives.

Memorandum No. M-2022-034 Series of 2022 issued on 8 August 2022

Pursuant to BSP circular No.]106 dated 23 December 2020, the following guidelines shall be observed in the computation and payment of RRIs for unfit banknote deposits of banks to the BSP:

- RRIs to be applied on new and fit banknote withdrawals shall be based on the distribution of unfit banknote deposits per denomination using the following rates per bundle:

DENOMINATION	Rebate/Refund Rates per Bundle of Proportioned Unit Deposits (in PHP)		Incentive Rates per Bundle of Excess Unfit Banknote Deposits over Withdrawals (in PHP)
	NEW	FIT	
1000 - Peso	160	100	50
500 – Peso	60	30	15
200 – Peso	40	28	14
100 – Peso	20	14	7
50 – Peso	10	7	3.5
20 – Peso	4	3	1.5

- Rebates and Refunds may only be applied to the service fees on withdrawals for the current year provided that the bank has unfit banknote deposits with the BSP on the same year.

- Incentives for the excess bundles of unfit banknote deposits over withdrawals may be applied to the service fees on withdrawals in the current year and the succeeding two years. Any balance on incentives after the said period can no longer be utilized.

- Likewise, any excess service fees on withdrawals over incentives by the end of the year shall be carried over to the next two succeeding years and any balance can no longer be recovered after the said period.

- The total RRIs shall be applied to the total service fees on banknote withdrawals, regardless of the denomination.

- The application of RRIs on withdrawal service fees shall be on a First In, First Out (FIFO) basis, wherein the balances of incentives or service fees carried over from previous years that will expire first, shall be utilized first.

- Payments of RRIs shall not be greater than the total amount of service fees charged on withdrawals, including carry-overs.

- A Statement of Rebates Refund and Incentives shall be issued to the banks prior to payment. Any concerns or clarifications may be raised by the banks within five working days from the receipt thereof.

- The BSP Regional Offices and Branches (ROBs) shall pay the RRIs through direct credit to the respective Demand Deposit Account (DDA) of banks with a corresponding issuance of credit advice evidencing payment every first quarter of the succeeding year8.

These guidelines shall take effect immediately and shall cover the banks' banknote withdrawals and unfit banknote deposits since the implementation of the BSP Circular No.1106 dated 23 December 2020 as follows:

- 13 January 2021 for banks being serviced by the BSP Greater Manila Regional Office; and 01 June 2021 for banks being serviced by other BSP ROBs.

Modified Approach in the Grant of VASP Licenses

Memorandum No. M-2022-035 Series of 2022 provides a modified approach in the grant of new VASP licenses.

Memorandum No. M-2022-035 Series of 2022 issued on 10 August 2022

The Bangko Sentral aims to strike a balance between promoting innovation in the financial sector and ensuring that associated risks remain within manageable levels. In this light, the Bangko Sentral recognizes that as VAs offer opportunities to promote greater access to financial services at reduced costs, they also pose varied risks that may undermine financial stability.

In this regard, the regular application window for new VASP licenses shall be closed for three years, starting 01 September 2022, subject to re-assessment based on market developments.

Applications that have completed/passed Stage 2 of the licensing process on or before 31 August 2022 will be processed and assessed for completeness and sufficiency of documentation/information submitted, as well as compliance with the licensing criteria to operate as a VASP based on Stage 3 requirements. Applications with incomplete requirements as of 31 August 2022 will be returned and tagged as *"closed."* The Bangko Sentral will no longer process these applications further.

Meanwhile, existing BSFIs who wish to expand operations by offering VASP services, including non-custodial VASPs who wish to offer safekeeping and/or custodial services, may still apply for a VASP license provided that they have a Supervisory Assessment Framework (SAFr) composite rating of at least *"stable."* Due consideration shall be given to the BSFI's risk management systems including its client suitability assessment and onboarding processes, as well as financial consumer education and awareness programs in the evaluation of its application.

Guidelines on the Electronic Submission of Report of Selected Branch Accounts through the BSP Financial Institution (FI) Portal

Memorandum No. M-2022-036 Series of 2022 provides guidelines on the electronic submission of selected branch account reports through the BSP FI Portal.

Memorandum No. M-2022-036 Series of 2022 issued on August 10, 2022

Pursuant to RA No. 11054, also known as the *Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao* and the Philippine Statistics Authority (PSA) Board Resolution No. 13, Series of 2021 – *"Approving and Adopting the Third Quarter 2021 Philippine Standard Geographic Code (PSGC) Updates to Include the Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) and Correct the Names of 37 Barangays"*, all banks shall observe the following guidelines in the electronic submission of Report of Selected Branch Accounts beginning 30 June 2022 report:

Submission Guidelines

1. All Banks shall use the prescribed Report of Selected Branch Accounts Data Entry Template (DET), Branch list files, and Control Proof list (CP), which can be downloaded from www.bsp.gov.ph/SES/reporting_templates or may directly be requested from the BSP-Department of Supervisory Analytics through dsareports@bsp.gov.ph. In requesting the said template, banks shall use the prescribed subject line format as follows: [REQUEST] Report of Selected Branch Accounts Template.

2. For the semester ending 30 June 2022, all Banks shall submit the Report of Selected Branch Accounts through the FI Portal on or before 31 August 2022. Subsequent reports will be due for submission within 20 banking days after end of reference quarter.

3. The DET and CP shall be submitted through the FI Portal using the prescribed file naming convention and file extension/format, as identified below:

File	File Name	File Extension/Format
Data Entry Template	BRIS	xls
Control Proof list	Control Proof list	pdf

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

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

5. Report submissions should continue to comply with existing BSP reporting standards. It likewise follows that only files prescribed by the BSP for the report shall be accepted, and validated, subject to applicable penalties for reporting violations.

Guidelines on the Electronic Submission of DDA Reconciliation Statement Report through the BSP Financial Institution Portal (FI Portal)

Memorandum No. M-2022-37 provides guidelines on Electronic Submission of DDA Reconciliation Statement Report through the BSP FI Portal.

Memorandum No. M-2022-037 Series of 2022 issued on August 10, 2022

Pursuant to Circular No. 1135 dated 21 January 2022 on the Guidelines on the Settlement of Electronic Payments Under the National Retail Payment System (NRPS) Framework, all banks/quasi-banks shall observe the following guidelines in the electronic submission of the DDA Reconciliation Statement beginning 30 June 2022 report:

Submission Guidelines

1. All Banks and NBQBs shall use the prescribed DDA Reconciliation Statement Data Entry Template (DET) and Control Proof list (CP), which can be downloaded from www.bsp.gov.ph/SES/reporting_templates or may directly be requested from BSP-Department of Supervisory Analytics through dsareports@bsp.gov.ph. In requesting the said template, covered institutions shall use the prescribed subject line format as follows: [REQUEST] DDA Reconciliation Statement Template.

2. For semester ending 30 June 2022, all Banks and NBQBs shall submit the DDA Reconciliation Statement report through the FI Portal on or before 31 August 2022. Subsequent reports will be due for submission within fifteen (15) banking days from the end of reference semester.

3. The DET and CP shall be submitted through the FI Portal using the prescribed file naming convention and file extension/format, as identified below:

File	File Name	File Extension/Format
DET	DDA	xls
Control Proof list	DDA-Control Proof list	pdf

4. Banks and NBQBs that are unable to transmit electronically can submit the DET and CP in any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline addressed to:

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

5. Report submissions should continue to comply with existing BSP reporting standards. It likewise follows that only files prescribed by the BSP for the report shall be accepted, and validated, subject to applicable penalties for reporting violations.

Bureau of Customs

Implementing Guidelines in the Integration of Ethe lectronic to Mobile System and the Electronic Tracking of Containerized Cargo System

CMO No. 17-2022 covers the integration process of the E-TRACC and the E2M systems and its general guidelines.

CMO No. 17-2022 dated 16 June 2022

- Electronic Customs Seal shall be required for the following cargo movement as provided for in Section 4.1:

  1. Transfer of Cargo to a container yard/container freight station (CY/CFS) or other Customs Facilities and Warehouses (CFWs);

  2. Transit Cargo Bound to Free Zones, Inland Customs Office, Depots or Terminals;

  3. Transit to Customs Bonded Warehouses (CBWs);

  4. Export of Cargo from Free Zones, Inland Customs Office, Depots or Terminals and CBWs to Port of Loading; and

  5. Transfer of Shipments Subject to Further Verification and/or Monitoring.

- The E-TRACC booking system is applicable to the following models of declaration: Consumption, Export, Warehousing and Transit.

- The goods declarations for consumption under the following models of declaration are exempted from the E-TRACC booking system, unless otherwise directed by the BOC Commissioner: Consumption [formal entry for Home Use via Electronic Data Interchange System (EDI) Super Green Lane], Consumption (formal entry delivered duty paid), Informal entry (express shipment low value, dutiable) and Informal entry.

- A broker shall lodge the import or export declaration in the E2M through the chosen VASP.

Accreditation of Importers

CAO No. 07-2022 covers all importers in relation to their importation, movement, and clearance of goods with the BOC to simplify the accreditation procedures and implement an accreditation information system making full use of ICT.

CAO No. 07-2022 dated 5 July 2022

- All applicants shall register with the BOC's Client Profile Registration System (CPRS). They shall disclose therein the responsible officers of the importer, declarants of the importer as well as other material information.
- The declarant of the importer, other than a registered and licensed customs broker, shall be registered with the CPRS and authorized to act as such for only one Importer.
- The accreditation of the following Importers shall be governed by this CAO:
    1. Other government agencies or instrumentalities;
    2. Foreign embassies, consulates, legations, agencies of other foreign governments;
    3. International organizations with diplomatic status and recognized by the Philippine government including foreign workers and consultants; or
    4. Foreign officials and employees of foreign embassies, legates, consular officers and other representatives of foreign governments.
- The following Importers shall be subject to a separate guideline which shall be issued by the BOC for their accreditation, registration, or monitoring:
    1. Non-regular Importers;
    2. Importers of postal items;
    3. Importers of goods cleared exclusively through informal entry process, unless allowed by the BOC's automated system;
    4. Registered business enterprises/locators of free zones; and
    5. Other importers as may be determined by the Commissioner.
- A new applicant shall file the application by opening a ticket in the Customer Care Portal System and upload the required documents in the portal. The order provides for list of documents needed to be submitted in hard copies by the new applicants to the Accounts Management Office (AMO) or its equivalent office.
- The Importer may file the application for renewal not earlier than 30 calendar days prior to the expiration of the accreditation. However, an application for renewal shall not be less than 7 working days prior to the expiration of the accreditation, otherwise it shall be considered as late filing of application subject to penalties.
- An on-site inspection shall be conducted to validate the information contained in the application. The authorized officers shall act on the application within 7 working days from receipt of complete documentary requirements.

- The BOC Commissioner or its authorized BOC official may approve or disapprove the application. A Certificate of Registration shall be issued to approved applications. On the other hand, a written explanation shall be issued explaining fully the grounds of the denial of the application. The BOC may also defer the action of the application if the Importer has an outstanding obligation or unpaid account until the same has been settled.

- The following are grounds for denial of application:

    1. Non-submission of justification or additional document as required during evaluation process;

    2. Misrepresentation or Material Information; or

    3. Submission of false information or document.

- A Third-Party Importer shall maintain a record of the contract with the consignee or beneficial owner of the goods such as but not limited to, bill of lading, invoice, or packing list which shall clearly indicate that the importation is for the account of another party. The Third Party Imported and consignees are treated equally as the true importers or consignees.

- The Importer shall be responsible for the accuracy of the goods declaration and for the payment of all duties, taxes and other charges due on the imported goods including fines and surcharges. The importer shall likewise be responsible in the payment of deficiencies in duties and taxes, including fines, resulting from the conduct of post clearance audit.

- For purposes of post clearance audit, the accredited importer is required to keep its records in its principal place of business for a period of 3 years from the date of final payment of duties and taxes.

- A list of violation and its corresponding penalties is provided in the CAO which shall be imposed without prejudice to criminal or other actions that may be initiated by the BOC against the Importer. The order vests upon the BOC or its officials to blacklist or bar the importer, responsible officers in case of partnerships, corporations, or cooperatives from transaction with the BOC in case of conviction of a crime involving moral turpitude.

- Importers are required to attend to seminar/webinar/training and other fora on matters related to duties and responsibilities as accredited importer for a total of 8 hours within 3 months after the approval of its application for accreditation. Failure to attend the required seminar may result in the suspension of its accreditation subject to due notice.

- A suspended, cancelled or revoked accreditation shall not be able to lodge or process the goods declaration in the BOC's automated system. The suspension or revocation of the Importer's Accreditation may be lifted upon the approval of the BOC Commissioner or its duly authorized representatives. An importer whose accreditation has been suspended may request the Commissioner for the continuous processing of all its shipments which are still in transit or arrived at the ports prior to the suspension.

- The applicant may file a Motion for Reconsideration within 10 days from receipt of notice of disapproval issued directly by the BOC Commissioner. In cases of disapproval by an authorized BOC official, an appeal may be filed before the BOC Commissioner within 15 days from receipt of notice of disapproval.

- In case of suspension, revocation or blacklisting, the importer may file a Motion for Reconsideration with the Commissioner within 15 calendar days from receipt of the decision of suspension or revocation of the accreditation or blacklisting of an Importer.

(Editor's Note: CAO No. 07-2022 was published in The Manila Times *on 19 August 2022)*

Amendment to the Rules on Cross-Border Transfer of Local and Foreign Currencies

CMC No. 89-2022 provides for the requirements and instructions in relation to the changes to the Rules on Cross-Border Transfer of Local and Foreign Currencies.

CMC No. 89-2022 dated 5 July 2022

- The amendments to the Rules on Cross-Border Transfer of Local and Foreign Currencies provide the following changes:

  - Enhancement of the Currencies Declaration Form (CDF) which now requires any person bringing into or taking out of the Philippines legal tender Philippines notes and coins, checks, money order or other bills of exchange in excess of Php 50,000.00 and foreign currencies or other foreign currency-denominated bearer monetary instruments in excess of USD10,000.00 or its equivalent to declare the whole amount under oath;

  - Allowance of stakeholders to accomplish the CDF online; and

  - Clarification of the allowable purposes for cross-border transfer of local currency in excess of the peso limit.

Implementation of the Electronic Zone Transfer System (E-ZTS) for the Inter-Zone Transfer of Goods Between PEZA-Registered Enterprises (PREs)

CMO No. 19-2022 provides the guidelines on the implementation of the e-ZTS for the transfer of goods from an EEE or an ELSE to another EEE or ELSE located in a different PEZA Zone.

CMO No. 19-2022 dated 5 July 2022

- It directs all EEE/ELSE locators desiring to transfer their goods to other EEE/ELSE, to post a General Transportation Surety Bond (GTSB), which shall be valid for a 1-year period.

- It provides for the procedure for the filing and approval of the GTSB:

- The originating PRE is required to apply for the transfer of goods to the receiving PRE using the Electronic Zone Transfer Document (e-ZTD) of the e-ZTS. Said goods must be physically segregated or immediately located to the carrying truck where it can be examined by the BOC.

- The BOC Officer shall monitor the e-ZTS screen display unit for submitted e-ZTDs and determine whether or not to physically examine the goods.

- The BOC Officers shall be responsible for checking that the goods transferred arrive safely at the partner locator premises and are duly received thereat.

Rules and Regulations on the Establishment, Supervision, Operation and Control of Customs Facilities and Warehouses (CFWs) pursuant to CAO No. 9-2019

CMO No. 18-2022 provides guidelines on the establishment, operation, supervision, and control of all types of CFWs, including those located outside of the customs zones.

CMO No. 18-2022 dated 8 July 2022

- The Collection District, subject to the approval of the BOC Commissioner, shall designate and establish CFWs for the storage of the imported goods or for other special purposes.
- All CFWs including their expansion, extensions and additional facilities shall be considered as part of customs premises subject to the supervision and control of the Collection District which shall impose conditions as may be deemed necessary for the protection of government revenue and of the goods stored.
- The BOC shall be responsible for the issuance of an Authority to Operate a CFW, including the imposition of different sets of requirements for the establishment, maintenance, and operation, setting forth the rights and obligations of operators, and the penalties and sanctions for violation of rules.
- Operators of terminal facilities with existing contracts granted by the Philippine Ports Authority and other port authorities shall be authorized to operate as a CFW, provided that they comply with the additional requirements and conditions as may be imposed.
- Only authorized CFW operators shall be allowed to handle, and store imported goods that are immediately discharged from arriving aircrafts, vessels or other means of operational transport.
- For Off-Dock CFWs catering to shipments transferred from multiple ports of discharge, separate authority shall be secured from different Collection Districts where shipments were respectively discharged.
- The Authority to Operate a CFW shall be non-transferrable.
- This CMO provides a list of general requirements in the operation of the CFW.
- This CMO also provides the procedure for application for the issuance of Authority to Operate an Off-Dock or Off-Terminal CFW, including documentary and security requirements.
- The Authority to Operate an off-dock or off-terminal CFW shall be valid for 3 years counted from the date of approval of the application for establishment.
- The Certificate of Authority may be amended on the following grounds:

    1. Change of company name;
    2. Change of the name of street or building number without actual change of the physical location of the CFW;
    3. Submission of a new lease contract covering the CFW for a period; and
    4. Such other changes which did not substantially alter the conditions specified in the existing Authority to Operate CFW.

- The off-dock or off-terminal CFW operator shall file application for renewal at least 90 days before the expiration of the Authority to Operate.

- The District Collector shall cause the suspension or closure of any CFW:

    1. Discontinuance requested by the CFW operator or when conditions warrant pursuant to Section 807, Chapter 2, Title VIII of the CMTA;

    2. Operator knowingly facilitates or assists in the commission of smuggling and other illegal activities of CFW;

    3. Pilferage of goods stored in the facility;

    4. Failure to account for goods stored;

    5. Being inactive for continuous period of at least 1 year;

    6. Failure to submit the required documents for renewal;

    7. Violation of customs laws, rules, and regulations; and

    8. Other practice or violation of law which negates the intended purpose for which the CFW was established.

- The determination of closure or suspension of any CFW is a summary proceeding.

- Closure or suspension of the CFW shall be effective upon the issuance of an order by the District Collector.

- The decision ordering the closure or suspension of a CFW may be appealed to the BOC Commissioner through the Legal Service within 15 working days from receipt of the decision.

Strict Implementation of the CBW-Automated Inventory Management System (AIMS)

Assessment and Operations Coordinating Group (AOCG) Memorandum No. 229-2022 is pursuant to the full implementation of CMO No. 20-2021 and AOCG Memo No. 199-2022.

AOCG Memorandum No. 229-2022 dated July 14, 2022

AOCG Memorandum No. 229-2022 is pursuant to the full implementation of CMO No. 20-2021 and AOCG Memo No. 199-2022, all Collection Districts and offices concerned are hereby directed to ensure that the concerned BOC personnel must adhere to the following:

- The Customs Operations Officer III (COO III) of the Warehousing Assessment Division (WAD) or equivalent unit shall process only the Warehousing Goods Declaration Single Administrative Document (WSAD) if the following requirements are met:

    1. Customs Bonded Warehouse (CBW) or Common Customs Bonded Warehouse (CCBW) Accredited Member is registered in the AIMS for Customs Bonded Warehouses with uploaded product, bill of materials/formula of manufacture, and initial inventory (if applicable);

    2. The E2M Model of Declaration used in the goods declaration is appropriate; and

    3. The WSAD is properly itemized as to the number of items in the commercial invoice.

- The BOC Warehouseman shall ensure that no stripping of container van shall be done unless the Goods Declaration for Warehousing of the bonded goods has been filed, processed by BOC, and tagged paid in the E2M System.

- The CBW Exporter or CCBW-Accredited Member should ensure that the Export Declaration (ED) during lodgment is itemized in accordance with the assigned product codes of finished goods in the AIMS.

Board of Investment

BOI MC NO. 2022-002 provides the approval of the list of cities and municipalities classified as areas contiguous and adjacent to the National Capital Region (NRC), based on the overall score of the cities and municipalities on the Cities and Municipalities Competitive Index (CMCI) in connection to Section 296 of Republic Act (RA) No. 11534, otherwise known as the CREATE Act, which provides that the period of availment of incentives will be based on the location of the registered project and industry priorities as determined in the Strategic Investment Priority Plan (SIPP).

BOI MC NO. 2022-002 dated 27 May 2022

The expanded coverage areas are as follows:

Bulacan	Cavite	Laguna	Rizal
Meycauyan City San Jose Del Monte City	Bacoor Dasmarinas Imus	Binan Cabuyao Calamba San Pedro Santa Rosa	Antipolo Cainta Taytay

BOI MC NO. 2022-003 provides BOI approved amendments on the Specific Guidelines of Export Activities under the 2020 IPP also known as the transitional Strategic Investment Priority Plan (SIPP) specifically on export activities to include the following activities in support of exporters:

BOI MC NO. 2022-003 dated 01 June 2022

- Logistic services
- Development and operation of economic zones; and
- Industrial parks and building for exporters

BOI MC NO. 2022-004 provides BOI issued policy on the liberalization of the certification based on internationally-recognized standards requirements for energy projects.

BOI MC NO. 2022-004 dated 02 June 2022

In line with this, the requirement to obtain applicable certifications such as an ISO certificate or similar certifications shall no longer be applicable to BOI-registered energy projects regardless of date of registration. Provided, however, that the corresponding Certificates of Compliance from the Energy Regulatory Commission (ERC) is duly issued consistent with various operating procedures that an energy project is obliged to comply.

PEZA

PEZA MC NO. 2022 – 041 extends the deadline for submission of the AITR and ABR for RBEs and IPAs to 15 July 2022 and 15 August 2022, respectively without the imposition of penalty prescribed under Section 308 of the National Internal Revenue Code, as amended.

PEZA MC NO. 2022 – 041 dated 27 June 2022

This is in consideration of the novelty of ABR requirement and voluminous documents necessary to be secured by RBEs and IPAs in order to complete the reportorial requirements as mandated under Section 305 of the CREATE Act.

SEC Filing, Payments and Other Deadlines

The SEC Notice answered frequently asked questions regarding SEC M.C. No. 3, s. 2022 which implemented the BSP Circular on ceiling/s on interest rates and other fees charged by Lending Companies, Financing Companies, and their Online Lending Platforms.

SEC Notice dated 20 June 2022

To help facilitate the enforcement of SEC MC No. 3, Series of 2022, which provides for the implementation of BSP Circular No. 1133, s 2021 on interest rates and other fees charged by Lending Companies, Financing Companies, and their Online Lending Platforms, the SEC issued answers to common questions around the following:

- An overview of BSP Circular No. 1133, s 2021 in relation to SEC M.C. No. 3, s. 2022;
- The coverage of SEC M.C. No. 3, s. 2022;
- The imposition of the cap on interest rates and fees/charges;
- Penalties imposed for violation of SEC M.C. No. 3, s. 2022;
- Submission of the Business Plan (SEC Form BP-FCLC);
- Structured/Renewed loans and advanced payment; and
- Effective interest rate.

Supreme Court Decisions

A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

Bureau of Internal Revenue vs. Samuel B. Cagang, Supreme Court (Second Division) G.R. No. 230104, promulgated 16 March 2022.

Facts:

CEDCO, Inc. (CEDCO) received a Preliminary Assessment Notice (PAN) for the following taxes for taxable years 2000 and 2001: (a) income tax; (b) Value-Added Tax (VAT); (c) expanded withholding tax; and (d) withholding tax on compensation. Subsequently, CEDCO availed of the tax amnesty under RA No. 9480. In a collection letter dated 24 June 2008, the BIR directed CEDCO to pay its tax liabilities based on a Final Decision on Disputed Assessment (FDDA) issued in response to CEDCO's protest.

Issue:

Is CEDCO is entitled to avail of the tax amnesty program under RA No. 9480?

Ruling:

Yes, CEDCO is entitled to avail of the tax amnesty program for its income tax and VAT liabilities, but not with respect to its withholding tax liabilities. Pursuant to Section 6 of RA No. 9480, those who availed themselves of the benefits of the law became immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the Tax Code arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. However, RA No. 9480 shall not extend to withholding agents with respect to their withholding tax liabilities.

Thus, CEDCO is not qualified to avail of the tax amnesty with respect to its withholding tax liabilities. CEDCO had been assessed by the BIR for its failure to withhold taxes and to remit the same to the government, as shown by the FDDA. As such, while there was no pending case yet against CEDCO, it is nevertheless disqualified from availing of the tax amnesty for its withholding tax liabilities.

The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. Hence, the tax amnesty under RA No. 9480 does not extend to CEDCO with respect to its existing withholding tax liabilities, as explicitly provided in the said law.

Commissioner of Internal Revenue vs. Philippine Bank of Communications
Supreme Court (Second Division) G.R. No. 211348, promulgated on 5 July 2022

The only requirement for a judicial claim of tax credit/refund to be maintained is that a prior administrative claim for credit/refund has been filed, regardless of the completeness of documents submitted to the BIR.

The two-year prescriptive period for the filing of both an administrative claim and judicial claim for tax credit/refund should be reckoned from the date of filing of the adjusted final tax return.

The amount of tax credit/refund of CWT claimed must not only be supported by the required BIR Form 2307 but must also correspond with the income included in the claimant's tax return.

Facts:

On 16 April 2007, Philippine Bank of Communications (PBCOM) filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) for year 2006. Subsequently, PBCOM filed an amended ITR showing a net loss of Php 903,582,307 and Php 24,716,655 creditable tax withheld (CWT) for the fourth quarter of 2006. PBCOM indicated in its ITR that it will apply for the issuance of a Tax Credit Certificate (TCC) for its unutilized CWT for year 2006 in the amount of Php 24,716,655.

Two years later or on 3 April 2009, PBCOM filed with the BIR its letter requesting the issuance of a TCC for its excess/unutilized CWT in 2006. PBCOM also filed an action with the Court of Tax Appeals (CTA) on 15 April 2009 for the issuance of a TCC and alleging inaction of the Commissioner of Internal Revenue (CIR). In its answer, CIR argued that PBCOM's claim for issuance of a TCC is in the nature of a refund and is subject to administrative examination by the BIR and that PBCOM failed to comply with the requirements under existing regulations and court decisions.

Issues:

1. Is the judicial claim of PBCOM for issuance of a TCC premature due to its failure to submit the required documents under the regulations in its administrative claim with the BIR?

2. Is PBCOM entitled to a tax credit/refund of its CWT?

Ruling:

1. No, the failure of PBCOM to comply with the requirements of its administrative claim for CWT refund/credit does not preclude its judicial claim. The CTA's decision in the claim for tax refund/credit litigated before the CTA should be solely based on the evidence presented before it, notwithstanding any pieces of evidence that may have been submitted (or not submitted) to the CIR. Thus, what is vital in the determination of a judicial claim is the evidence presented before the CTA regardless of the body of evidence found in the administrative claim.

   Under Section 229 of the Tax Code, the only requirement for a judicial claim of tax credit/refund to be maintained is that a claim for refund or credit has been filed before the CIR. There is no mention in the law that the claim before the CIR should be acted upon first before a judicial claim may be filed. Unlike administrative claims for input tax refund/credit before the CIR, there is no such period of action required in administrative claims for CWT refund/credit before the CIR.

2. PBCOM is entitled to a tax credit/refund in the amount of Php 4,624,554.63.

   The requisites for claiming a tax credit or a refund of CWT are as follows:

   - The claim must be filed with the CIR within the two-year period from the date of payment of the tax;
   - It must be shown on the return that the income received was declared as part of the gross income; and
   - The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld.

On the first item, the Supreme Court ruled that both of PBCOM's administrative claim and judicial claim were filed within the two-year prescriptive period. The Supreme Court clarified that the two-year prescriptive period in filing a claim for tax credit/refund actually begins to run on the date of the filing of the adjusted final tax return because this is when the taxpayer would know whether there is still a tax due, or a refund can be claimed based on the adjusted and audited figures.

On the second and third items, the Supreme Court ruled that in determining the CWT amount to be credited, the same must not only be supported by the required BIR Form but it must also correspond with the income included in the tax return of the claimant, upon which the taxes were withheld. Thus, PBCOM is only entitled to a tax refund/credit of Php 4,624,554.63 representing the amount of CWT supported by BIR Forms 2307 and corresponding to income payments recorded in PBCOM's General Ledger and Annual ITR for the taxable year 2006.

Court of Tax Appeals

Assessment

Commissioner of Internal Revenue v. Tektite Insurance Brokers, Inc.
CTA EB No. 2443 (CTA Case#9184) promulgated 20 June 2022

Tax assessments issued in violation of the due process rights of a taxpayer are null and void. While the government has an interest in the swift collection of taxes, the Bureau of Internal Revenue and its officers and agents cannot be overreaching in their efforts, but must perform their duties in accordance with law, with their own rules of procedure, and always with regard to the basic tenents of due process.

Facts:

Company A is a corporation duly organized and existing under the laws of the Philippines. It is primarily engaged to carry on the business of insurance brokers, among others and it was authorized by the Insurance Commission as a non-life insurance broker from 1 July 2010 to 30 June 2011 and 1 January 2016 to 31 December 2018.

On 14 November 2012, the CIR issued a Letter Notice (LN) with Details of Taxpayer's Suppliers' Records and Details of Taxpayers Customers' Records, which Company A, received on 15 November 2012. Due to alleged inaction of Company A on the said LN, CIR issued a Follow-up Letter on February 10, 2014, which was received by Company A on 11 February 2014.

On 15 January 2013, CIR issued a Letter of Authority (LOA) authorizing revenue officers to examine Company A's books of accounts and other accounting records for all internal revenue taxes covering the period of 1 January 2011 to 31 December 2011, which Company A received on 16 January 2013. Further, the CIR also released a First Request for Presentation of Records on even date.

On 8 February 2013, a Second and Final Notice was issued. Consequently, Company A transmitted its books of accounts for TY 2011 on several dates.

On 18 December 2014, CIR issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, assessing Company A for deficiency income tax, VAT, and EWT, inclusive of increments, in the respective amounts of Php 6,799,457.38, Php 2,669,177.15, and Php 30,404.38; and Company A received them on 13 January 2015.

On 9 January 2015, Company A received a Formal Letter of Demand (FLD) with attached Details of Discrepancies and Assessment Notices (FAN), assessing it for alleged deficiency income tax, VAT, and EWT.

Company A protested the FLD/FAN on 9 February 2015 by requesting for a reinvestigation.

On 18 March 2015, Company A was informed that its protest/request for reinvestigation was granted, thus, its tax case was forwarded to Revenue District Office (RDO) No. 43-A-Pasig City. Subsequently, Company A submitted its supporting documents for the protest/request for reinvestigation on 10 April 2015.

On 6 May 2015, CIR requested Company A to submit relevant supporting documents. Company A then complied by submitting supporting documents on 11 May 2015.

As CIR did not act on the protest, Company A filed a Petition for Review with the CTA on 6 November 2015, seeking for the cancellation of the deficiency income, VAT, and EWT assessments.

On 25 June 2020, the CTA in Division rendered the assailed decision granting Company A's Petition for Review. The CIR then filed a "Motion for Reconsideration (Decision dated 25 June 2020)."

On 27, 2021, the CTA in Division issued the assailed Resolution denying the CIR's "Motion for Reconsideration (Decision dated 25, 2020)" for lack of Merit.

On 23 February 2021, the CIR filed a "Motion for Extension of Time to File Petition for Review with Notice of Change of Address before the CTA *En Banc*.

The CIR filed the present "Petition for Review" before the CTA *En Banc* on 9 March 2021.

Issue:

Is the assessment against Company A valid?

Ruling:

No, the assessment is not valid.

The CTA nullified the tax assessment issued to Company A citing lapses made in the procedure for the assessment.

The CTA affirmed an earlier decision by its Third Division voiding the tax assessment for deficiency income tax, value-added tax, and expanded withholding tax for the year ending in 2011 against Company A.

In nullifying the assessment, the CTA noted that Company A had been deprived of due process as it was not provided an opportunity to contest the assessment before the issuance of the FLD.

The CTA noted that revenue officials issued the FLD or FAN on 9 January 2015, which is the same date or five days prior to Company A's receipt of PAN on 13 January 2015. This makes the issuance of the FAN/FLD as premature, as it deprives Company A the opportunity to be heard on the PAN. Considered to be a complete violation of the due process in issuing tax assessments.

The issuance of PAN is considered an important part of due process as it gives both the taxpayer and CIR the opportunity to settle the case at the earliest possible time, without the need for the issuance of a FAN. The CTA further emphasized the procedural due process, for CIR to not only issue a PAN ahead of the FAN/FLD but must actually consider the taxpayer's position on the proposed assessment in the PAN.

The CTA has, in several cases, declared void any assessments that failed to strictly comply with the due process requirements set forth in Section 228 of the Tax Code and Revenue Regulations No. 12-99.

In another case, the CTA held that identifying the authorized Revenue Officers in the Letter of Authority (LOA) is a jurisdictional requirement of a valid audit or investigation by the Bureau of Internal Revenue, and therefore of a valid assessment. The CTA held that the Court cannot consider a Memorandum of Assignment (MOA) as an equivalent of LOA. Thus, the CTA held in the said case that the authority of Revenue Officer (RO) from a MOA signed by a Revenue District Officer is defective. As such, the audit examination of taxpayer's books and other accounting records, and any assessments arising from unauthorized examination is void.

Thus, in view of the violation of Company A's right to procedural due process, the FAN/FLD issued prematurely, rendered the said assessment void, canceled and set aside.

Commission of Internal Revenue v.s. Morning Star Milling Corporation,
CTA EB No. 2419 (CTA Case No. 9294) promulgated 21 June 2022

A FLD/FAN containing substantially the same content as the PAN evidently shows that the BIR is merely reiterating the same findings as initially stated in the PAN, without giving any reason for rejecting the refutations, explanations, and consideration of the taxpayer's Request for Clarification resulting to a violation of due process.

FDDA must contain sufficient explanation or information as to how the figures reflected in the assessments were arrived at.

Facts:

Company M received a LOA dated 4 January 2005, from the BIR Large Taxpayer's Services for the taxable year 2003. Thereafter, a subsequent LOA dated 3 February 2005, was issued, this time pertaining to the taxable year 2002.

On 11 April 2007, Company M received a copy of BIR's undated PAN assessing for deficiency income tax, among others, totaling to Php 109,200,012.34 for taxable year 2003.

Company M then filed a letter on 20 April 2007, requesting for a 30-day extension in addition to the 15-day period (27 April 2007) to file its protest to the PAN. Consequently, on 25 May 2007, Company M filed its reply to the PAN.

The BIR however immediately issued a FLD on 31 May 2007, (6 days after the PAN reply).

Company M then sent a letter dated 10 July 2007, raising to the BIR (1) that it has not yet received the BIR's response to the PAN reply filed by on May 25, 2007, (2) that it received an unreadable photocopy of the FAN, and (3) that it reserves the right to answer the FAN after receiving the copy thereof, as well as the schedule of expenses.

In response to Company M's letter, the BIR issued the FDDA in the amount of Php 25,076,377.60.

Aggrieved, the taxpayer Company M filed for judicial relief with the CTA in Division, the latter agreeing with the taxpayer and cancelling the assessment. The Motion for Reconsideration filed by the BIR was likewise denied, with the BIR now coming in as petitioner in the present case before the CTA *En Banc*.

Issue:

Did the BIR violate the taxpayer's right to due process by issuing the deficiency tax assessment without considering the taxpayer's explanations?

Ruling:

Yes. The BIR's tax assessment is void for being violative of the right to due process.

The assessments contained in the FLD/FAN dated 31 May 2007, were the same as those stated in the undated PAN. The only differences noted between the FLD/FAN from the PAN, as correctly pointed out by the CTA in Division were that (1) assessment numbers were indicated and (2) the amounts of interest were adjusted. The basic tax due remained the same.

It is evident that the BIR merely reiterated the same findings as stated in the PAN, without giving any reason for rejecting the refutations, explanations, as well as consideration of respondent's Request for Clarification as indicated in the latter's reply to the PAN.

Furthermore, the FDDA dated 10 May 2012, as well as the Decision dated 7 January 2016, are both bereft of any sufficient explanation or information as to how the figures reflected in the assessments were arrived at. Neither do they contain any reason for rejecting respondent's contention or request for clarification in its Reply to PAN dated 25 May 2007.

Company M was, thus, left unaware on how the BIR appreciated the explanations or defenses it raised against the undated PAN, in clear violation of its right to administrative due process, thereby rendering the subject assessments void.

Commissioner of Internal Revenue vs. Kuwait Airways Corporation
CTA EB No. 2525 promulgated 16 June 2022

The purpose of international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. Hence, the application of the provisions of the Tax Code, as amended, must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries. The obligation to comply with a tax treaty must then take precedence over the objective of RMO No. 1-2000.

Facts:

Company A is a foreign corporation formed and organized under the laws of Kuwait and a resident thereof. It was authorized by the SEC to establish a branch office in the Philippines to engage in air transport services.

Company A filed an Application for Relief from Double Taxation on Shipping and Air Transport (BIR Form No. 0901-T) with the BIR's ITAD in relation to its availment of the preferential tax rate of 1 ½%.

Company A filed its Quarterly Income Tax Returns (Quarterly ITRs or BIR Form No. 1702Q) for the first three quarters of the FY ending 31 March 2016, and its Annual Income Tax Return (Annual ITR or BIR Form No. 1702-MX) for the same FY.

In response to Company A's application for tax treaty relief, the Commissioner of Internal Revenue (CIR) issued BIR Ruling No. ITAD 034-17 dated 6 November 2017. Company A is subject to income tax of 1 ½% on its Gross Philippine Billings (GPBs) earned beginning 1 January, under par. 2(b), Article 8 of the Philippines-Kuwait Tax Treaty.

Company A subsequently filed with the BIR its Amended Annual ITR for the FY ending 31 March 2016, applying the 1 ½% preferential income tax rate and showing an overpayment of Php 12,158,469. Then, Company A filed its administrative claim for the issuance of TCC in its favor, given its alleged overpaid income tax for the FY ending 31 March 2016.

Due to CIR's inaction, Company A filed a Petition for Review, which was initially raffled to the CTA First Division. The case was then transferred to the CTA Second Division. CIR filed his answer, raising his special and affirmative defenses. The following day, CIR submitted the BIR Records through registered mail.

The CTA in Division issued the Pre-Trial Order, approving and adopting the said JSFI and terminating the pre-trial. The trial of the case then ensued. During the trial, Company A presented testimonial and documentary evidence.

Thereafter, the CTA in Division rendered the assailed Decision in favor of the Company A.

Accordingly, CIR was ordered to issue a tax credit certificate in favor of Company A, in the reduced amount of Php 11,973,834. 71, representing the latter's overpaid income taxes for FY ended 31 March 2016.

CIR then filed a Motion for Partial Reconsideration on the assailed Decision but was denied per Resolution dated 30 September 2021. Undaunted, on 27 October 2021, the CIR filed the instant Petition for Review.

Issue:

Is Company A entitled to its claim for refund?

Ruling:

Yes.

Under Section 28 (A) (3) of the Tax Code, international carriers (air transport and shipping) doing business in the Philippines are subject to income tax on their GPB at the rate of 2 ½%. Likewise, international carriers may avail of a preferential rate or exemption on their GPB on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory, or on the basis of reciprocity where the home country of these carriers exempt Philippine carriers from income tax doing business in the former's territories.

Under Article 8 of Philippines-Kuwait tax treaty, international carriers of Kuwait doing business in the Philippines are subject to income tax on their GBP at the rate of 1 ½%, or the lowest rate imposed on the GPB of international carriers of a third country (the so called "most-favored-nation treatment").

The purpose of these international agreements is to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions. Hence, the application of the provisions of the Tax Code, must be subject to the provisions of tax treaties entered into by the Philippines with foreign countries.

Clearly, Company A is entitled to avail of the use of the preferential tax rate of 1 ½% on its GBPs beginning 1 January 2014, under the Philippine-Kuwait Tax Treaty, and as confirmed by the CIR himself when he signed and issued the BIR Ruling No. ITAD 034-17.

Administrative and judicial claims must be filed within the two-year period. The administrative claim must be filed before the judicial claim. While the law provides that the two years is counted from the date of payment of the tax, jurisprudence, however, clarified that the two-year prescriptive period to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return.

Company A filed its Annual ITR for the FY ended 31 March 2016, and paid the corresponding income tax on **14 July 2016**, based on the special tax rate of 2 ½%. Company A filed with the BIR an Amended Annual ITR for the FY ending 31 March 2016, applying the 1 ½% preferential income tax rate and showing an overpayment as prescribed and based on the BIR Ruling No. ITAD 034-17 dated 6 November 2017, confirming its entitlement to the said 1 ½ % preferential rate.

Considering the foregoing, the two-year period shall be reckoned from the date of payment of the tax regardless of any supervening cause that may arise after payment such as the issuance of the said BIR Ruling and the filing of Amended Annual ITR. Thus, Company A had two years from **14 July 2016, or until 14 July 2018**, to file its administrative and judicial claims.

Hence, the administrative claim filed on 16 May 2018, and the judicial claim filed on 11 July 2018, were within the two-year prescriptive period under Section 229 of the Tax Code.

Based on the evidence on record and the oft-repeated arguments of the parties, Company A was able to establish its entitlement to the claimed TCC. Thus, the issuance of a TCC in its favor is proper.

The CTA noted that some of the Certificates were either dated prior to the year of the claim, or not under the registered name of Company A as payee. Thus, a portion of withheld taxes was disallowed and deducted from Company A's refundable amount.

Company A is entitled to the issuance of a TCC in the reduced amount, representing its overpaid income tax for FY ended 31 March 2016.

Petron Corporation v. Commissioner of Internal Revenue
CTA EB Case No. 2425 promulgated 21 June 2022

Section 148 (e) of the Tax Code, as amended, does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. The absence of any qualification in the statutory provision inevitably leads to the conclusion that as long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation" that is subject to excise tax.

Facts:

During the period from April to September 2015, petitioner made various alkylate importations, which were all subjected to excise taxes. The petitioner paid the excise taxes thereon. On 31 March 2017, 30 May 2017, and 28 July 2017, the petitioner filed separate applications for tax credit or refund, seeking the recovery or refund of excise tax paid on three separate importations of alkylate, in the total amount of Php 21,769,940, Php 22,197,558, and Php 21,234,960, respectively. On 6 April 2017, 2 June 2017, and 8 August 2017, the petitioner filed separate Petitions for Review corresponding to each application for tax credit or refund before the CTA in Division, praying for the refund or issuance of a tax credit certificate in the same amounts. Petitioner's request for refund is grounded on the absence of alkylate from the list of excisable articles under Sections 148 (e) and (f) of the Tax Code, as amended, because alkylates are not produced by distillation but by alkylation.

Issue:

Is the importation of alkylates subject to excise tax?

Ruling:

Yes, alkylates are considered as a product of distillation hence subject to excise tax. Based on Sections 129 and 148 (e) of the Tax Code, as amended, excise tax shall apply to naphtha, regular gasoline and other similar products of distillation, as soon as they come into existence. The petitioner's expert witness confirmed that isobutane, a raw material in the production of alkylate, is a product of distillation. It is evident, therefore, that while alkylate is not directly produced through the process of distillation, one of its raw materials is a product of distillation.

Clearly, alkylate first passes through the process of distillation as the same cannot come into existence without its raw material isobutane. In other words, while it is true that alkylation, not distillation, is required to produce alkylate, it is without doubt that isobutane - one of the raw materials of alkylate, is a product of distillation. Simply put, there can be no alkylate without isobutane, which is a product of distillation.

Section 148 (e) of the Tax Code, as amended, does not qualify whether the items subject to excise tax is a primary or secondary product of distillation. The absence of any qualification in the statutory provision inevitably leads to the conclusion that as long as the process of distillation is employed, whether directly or indirectly, the resulting product thereon may fall within the ambit of "other similar products of distillation" that is subject to excise tax.

Nippon Express Philippines Corporation., vs. Hon. Caesar Dulay as Commission of Internal Revenue
CTA EB No. 2442 (CTA Case No. 9873) promulgated 23 June 2022

An opinion of an ICPA is not conclusively binding upon the Courts. The taxpayer must substantiate its claim with the proper evidence such as invoicing or receipts in the correct form prescribed by law such as indicating Zero-Rated on the invoice or receipt for Zero-Rated Sales.

Facts:

Company N filed for its Tax Credits/Refund amounting to Php 120,869,099.12 for its allegedly unutilized or excess input-VAT.

Company N's claim for refund was denied three times – first by the BIR Large Taxpayer Services on 28 May 2018, second by the Court of Tax Appeals (CTA) in Division on 27 July 2020, and third a denial of the motion for reconsideration filed with the CTA in Division on 5 February 2021.

Company N then filed for the Petition for Review with the CTA *En Banc*.

Issue:

1. Is the present petition filed within the period provided for by law?
2. May the factual findings of the CTA in Division be disturbed?
3. Is the CTA bound to accept the opinion of the ICPA?
4. Is Company N entitled to refund or an issuance of a Tax Credit Certificate in the amount of Php 120,869,099.12 representing its unutilized input tax credit for the CY 2016?

Ruling:

1. Yes. The petition was filed within the period prescribed by law.

   A party adversely affected by a decision of the CTA in Division on a motion for reconsideration or new trial may appeal to the CTA by filing before it a Petition for Review within 15 days from receipt of the decision adverse.

In this case, Company N filed a Motion for Reconsideration (MR) on 20 January 2021, of which the denial of the MR was only received on 5 February 2021. Thus, Company N had up until 20 February 2021 to file its Petition for Review. By reason that 20 February 2021 fell on a Saturday, it naturally followed that the deadline is moved to the next working day, or on 22 February 2021. Company N then filed its Petition for Review on 22 February 2021. Thus, the Petition for Review was timely filed.

2. No. The factual findings of the CTA in Division are not to be disturbed without showing of grave abuse of discretion considering that the members of the Division are in the best position to analyze the documents presented by the parties.

3. No. The CTA is not bound by the report and opinion of an ICPA considering that his/ her findings are still subject to the verification and validation by the CTA.

   In this case, the Php 82,887,514.85 refund recommendation by the ICPA was only based on his/ her audit of the supporting sales invoice and/or official receipts. Records show, however, that no official receipts nor sales invoices were presented by Company N to the CTA.

4. No. Company N is not entitled to its claim for refund.

   The CTA in Division found that Company N failed to substantiate its alleged Zero-Rated Sales with Zero-Rated Official Receipts issued to its client as required under Section 113 (B) (2) (c) of the Tax Code, which states that the term "Zero-Rated Sale" shall be written or printed prominently on the receipts.

   Company N failed to comply with the invoicing or receipt requirement in addition to failing to adduce evidence that the CTA in Division erred or acted with grave abuse of discretion.

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.