Tax Bulletin

March 2022

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and enable businesses for a better Philippines.

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Assessment	
Basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.	**42**
Revenue Regulation No. 21-18 is clear and admits no exception: for deficiency tax liabilities falling due prior to the effectivity of TRAIN Law but remaining unpaid after the said date, the taxpayer is still liable to pay both deficiency and delinquency interests at the rate of 20% on its unpaid tax liabilities until 31 December 2017. The lower rate of 12% and the prohibition on the double imposition of interests shall only take effect starting 1 January 2018. Moreover, mere delay in the payment of any deficiency taxes justifies the immediate imposition of the 25% surcharge under Section 248 of the Tax Code.	**43**
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BIR Administrative Requirements

RMO 13-2022 amends the provisions of RMO No. 56-2019 and RMO No. 36-2016 on the Initial Recording of Internal Revenue Tax Collections Thru Authorized Agent Banks, and on the Preparation of BIR Form No. 12.09 for Taxes Collected by Revenue Collection Officers respectively.

RMO 13-2022 issued on 20 January 2022

- The details of the General Policies and Guidelines including the Procedure can be fully accessed via: Policies, Guidelines, and Procedures

RMO 14-2022 amends the provisions of RMO No. 40-2020 regarding the revised Guidelines and Procedures in the processing of clearances in the National Office and Regional/District Offices.

RMO 14-2022 issued on 17 February 2022

- By way of background RMO No. 40-2020 was issued in order to fast track the issuance of clearances to employees who will retire/separate from the service or ordered transferred to another BIR office.
- The amendment pertains to the issuing offices of the Certificate of Cleared Accountabilities (CCA) which will serve as attachments to the Clearance:

National Office Clearance (Form 0029/0048/0047)	Regional Office Clearance (Form 0030/0049)	District Office Clearance Form (Form 0046)
Accountable Forms Division	Assessment Division	Administrative Section
General Services Division	Collection Division	Assessment Section
Property Division	Legal Division	Client Support Section
Revenue Accounting Division	Regional Investigation Division	Collection Section
Internal Investigation Division	Regional Cooperative	Compliance Section

National Office Clearance (Form 0029/0048/0047)	Regional Office Clearance (Form 0030/0049)	District Office Clearance Form (Form 0046)
Personnel Adjudication Division		
Data Warehousing and Systems Operations Division ("DWSOD")		
Network Management and Technical Support Division ("NMTSD")		
Records Management Division		
Training Delivery Division		
Training Management Division		
BIR MPC		
BIREA/BIRMAG		
BIRSALA		

NOTE: Revenue Data Centers (RDC) will no longer issue CCA for Regional Office employees. All CCA signifying revocation for system access will be issued by the NMTSD and DWSOD of the National Office.

- The said RMO likewise provides certain amendments to the guidelines and procedures governing the turnover of property/office records, processing of clearance, and roles and responsibilities.

- This RMO also provides for the following:

    1. An updated checklist of requirements for clearance for purposes of retirement/separation/transfer to other government or transfer to other BIR offices;

    2. Checklist of requirements for CCA issuance of various offices in the BIR National Office; and

    3. Checklist for offices tasked to issue CCA for purposes of final/supplemental clearance.

RMC No. 19-2022 provides clarification and guidance on Section 8 of RR No. 5-2021 on the tax-free exchanges of properties under Section 40(C)(2) of the Tax Code, as amended by the CREATE Act.

RMC No. 19-2022 dated 4 February 2022

- The RMC provides clarification and guidance to the RDO, other internal revenue officers and others concerned on Section 8 of RR No. 5-2021, particularly on the mandate to issue Certificate Authorizing Registration (CAR) sans a prior BIR confirmation or tax ruling on the tax-free exchanges of properties, while at the same time ensuring that the proper taxes due to the government on their subsequent sale or disposition are protected and collected thru the establishment and proper monitoring of their correct substituted basis.

- **Coverage** – Under Section 40(C)(2) of the 1997 Tax Code, as amended by CREATE, the following transactions are covered by the tax-free exchanges of properties:

    1. Reorganization – which shall mean any of the following instances:

        - A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or

        - The acquisition by one (1) corporation, in exchange solely for all or a part of its voting stock, or in exchange solely for all or part of the voting stock of a corporation which is in control of the acquiring corporation, of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation, whether or not such acquiring corporation had control immediately before the acquisition; or

        - The acquisition by one (1) corporation, in exchange solely for all or a part of its voting stock or in exchange solely for all or part of the voting stock of a corporation which is in control of the acquiring corporation, of substantially all of the properties of another corporation. In determining whether the exchange is solely for stock, the assumption by the acquiring corporation of a liability of the others shall be disregarded; or

        - A recapitalization, which shall mean an arrangement whereby the stock and bonds of a corporation are readjusted as to amount, income, or priority or an agreement of all stockholders and creditors to change and increase or decrease the capitalization or debts of the corporation or both; or

        - A reincorporation, which shall mean the formation of the same corporate business with the same assets and the same stockholders surviving under a new charter.

    2. Transfer to a controlled corporation – which means transfer of property to a corporation by a person, alone or together with others, not exceeding four persons, in exchange for stock or unit of participation in such a corporation of which, as a result of such exchange, the transferor or transferors, collectively, gains or maintains control of said corporation: Provided, that stocks issued for services shall not be considered as issued in return for property.

        The term *"control"*, when used in a tax free-exchange of properties, shall mean ownership of stocks in a corporation after the transfer of property possessing at least 51% of the total voting power of all classes of stocks entitled to vote, provided that the collective and not the individual ownership of all classes of stocks entitled to vote of the transferor or transferors shall be used in determining the presence of control.

- **Tax treatment** – The transfers of properties in exchange for shares of stocks made pursuant to Section 40(C)(2) of the 1997 Tax Code, as amended, shall be exempt from the following taxes:

    1. Capital Gains Tax (CGT);
    2. Creditable Withholding Tax (CWT);
    3. Income Tax (IT);

4. Donor's Tax (DT);
5. Value-Added Tax (VAT); and
6. Documentary Stamp Tax (DST) on conveyances of real properties and shares of stocks

However, the original issuance of shares in exchange for the properties transferred shall be subject to the DST under Section 174 of the 1997 Tax Code, as amended.

- **Venue for the issuance of CAR** - For purposes of the issuance of the CAR for the transferred properties pursuant to the tax-free reorganization/exchange, the parties to the transaction shall submit the documentary requirements to the RDO having jurisdiction over the place where the property is located, in case of a real property, or in case of shares of stock, the RDO where the issuing corporation is registered.

  In case the transaction involves transfer of multiple real properties and/or shares of stocks situated in various locations covered by different RDOs, the CAR shall be processed with the RDO having jurisdiction over the place where the transferee corporation is registered.

  The CAR should specify, among others, that the transaction involved is a tax-free exchange under Section 40(C)(2) of the Tax Code of 1997, as amended by the CREATE Act, the date of transaction, and the substituted basis of the properties subject therefor.

- **Post-transaction audit** – Following issuance of the corresponding CAR on the transactions falling under Section 40(C)(2) of the Tax Code, as amended by the CREATE Act, the concerned RDO shall conduct a post-audit of said transactions pursuant to existing revenue issuances on tax audit and assessment, to determine the taxability thereof.

  If after audit, the transaction is found to be not entitled to the tax deferment treatment under Section 40(C)(2) of the Tax Code, as amended by the CREATE Act, the transaction shall be subject to the applicable taxes, plus interest, penalty and surcharge. However, the result of the audit shall not invalidate the CAR previously issued for the transfer of the properties.

  The parties to the transaction are duty bound to prove compliance with the conditions laid down by the law and the requirements set forth under existing revenue issuances in the availment of the tax exemption.

- **Option to request for legal opinion/ruling** – The taxpayer is not precluded from requesting a ruling/legal opinion with the Law and Legislative Division (LLD) of the National Office in order to clarify legal issue/s that may affect the transactions made pursuant to Section 40(C)(2) of the 1997 Tax Code, as amended, including the taxability of such transaction.

  The LLD shall evaluate whether or not the request involves question/s of law that would merit the issuance of a ruling. Otherwise, it shall endorse the request to the concerned RDO for appropriate action.

RMC No. 20-2022 provides guidance on the filing for requests for confirmation, tax treaty relief applications and tax sparing applications.

RMC No. 20-2022 dated on 17 February 2022

- Taxpayers who were already issued a Certificate of Entitlement to Treaty Benefits (COEs), the tenor thereof allows the ruling to be applied to subsequent or future income payments, shall no longer file a Request for Confirmation (RFC) or Tax Treaty Relief Application (TTRA) every time an income of similar nature is paid to the same non-resident. In applying the confirmed treaty benefit to future income payments, the income payor or withholding agent shall always be guided by the requisites mentioned in the COE. Thus, if the COE mentions tax residency as a requisite for continuous enjoyment of treaty benefit, the income payor must require the non-resident to submit first a Tax Residency Certificate (TRC) for such relevant year before making any payment.

- The foregoing shall also apply to the Certificate of Entitlement to the Reduced Dividend Rate issued by the BIR for tax sparing applications.

- A new RFC, TTRA or tax sparing application shall only be filed if any of the requisites mentioned in the certificate is absent.

- Among the salient provisions of this RMC are as follows:

Sections	Details
III. **Documents to be Submitted during Audit**	During a tax audit, the income payor shall **submit or present a copy of the duly issued COE and proof of satisfaction of the requisites** cited therein. The tax auditor, on the other hand, shall **ensure the authenticity of the submitted documents**. In case of doubt, the tax auditor may seek the assistance of ITAD.
IV. **Regular Filing of RFCs and TTRAs for Certain Types of Income**	For business profits, income from services (dependent or independent), capital gains, income derived by teachers, and such other income from non-recurring transactions, the **RFCs or TTRAs shall still be filed** following the procedures and requirements laid down in RMO No. 14-2021, as amended by RMC No. 77-2021. As regards the **annual updating** that is required for long-term contract of services, the taxpayer shall only submit the following: 1. TRC of the non-resident for the relevant year; 2. Sworn Certification stating the following: i. services provided by the foreign enterprise ii. place of performance of such services iii. individuals who rendered the services on behalf of the foreign enterprise, their positions/designations and professional background iv. duration of stay in the Philippines of said individuals (Annex "A"); 3. Certified true copy of their passports or a Certification duly issued by the Bureau of Immigration stating their dates of arrival in, and departure from, the Philippines; 4. Certificate of Completion of the project duly signed by the income recipient and duly accepted by the domestic income payor, if applicable; 5. Invoice(s) duly issued by the income recipient in accordance with the invoicing requirements of the country of residence, if applicable; and 6. Bank documents/certificate of deposit/telegraphic transfer/telex/money transfer evidencing the payment/remittance of income, if applicable.

RMC 21-2022 prescribes the guidelines in the claim of Input VAT on purchases or importation of capital goods, pursuant to Section 110 of the National Internal Revenue Code of 1997 (Tax Code), as amended by the TRAIN Law.

RMC No. 21-2022 dated 9 December 2021

- Per Section 110 of the Tax Code, "the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction is allowed under this Code shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One Million Pesos (1,000,000.00); Provided, however, That if the estimated life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period; Provided, further, That the amortization of the input VAT shall only be allowed until 31 December 2021 after which taxpayers with unutilized input VAT on capital goods purchased or imported shall be allowed to apply the same as scheduled until fully utilized: Provided, finally, That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee."

- The following work-around procedures and guidelines are prescribed in the meantime that the BIR Form Nos. 2550Q and 2550M pertaining to Quarterly VAT Declaration and Monthly VAT Declaration, respectively, are undergoing revisions to effect the aforesaid provisions:

BIR Form No.	Affected Fields	Description	Remarks
2550M (v. February 2007)	Schedule 3(A)	Purchases/ Importation of Capital Goods (Aggregate Amount Exceeds Php 1 Million)	Instead of the actual useful life in terms of months, place number "1" under columns "E" and "F" and encode the input tax claimed from purchase/s of capital goods exceeding Php1M in Column "G"
2550Q (v. February 2007)	Schedule 3(A)	Purchases/ Importation of Capital Goods (Aggregate Amount Exceeds Php 1 Million)	Instead of the actual useful life in terms of months, place number "1" under columns "E" and "F" and encode the input tax claimed from purchase/s of capital goods exceeding Php1M in Column "G"

- Under EFPS and eBIRForms, the balance of input tax to be carried to the succeeding period is computed automatically by these systems. Hence, for purposes of implementing the provisions in the Tax Code of 1997, as amended, that effective 1 January 2022, all input tax on purchases of capital goods shall already be allowed upon purchase/payment, and shall no longer be deferred, the taxpayer shall indicate Roman numeral "I" as the estimated useful and recognized useful life and encode the total input taxes claimed from purchase/s of capital goods exceeding Php1M under Column "G" in order to show a nil amount of "Balance of Input Tax to be Carried to Next Period" under Column "H" of the monthly and quarterly VAT returns.

- Moreover, taxpayers with unutilized input VAT on capital goods purchased or imported prior to 1 January 2022 shall be allowed to amortize the same as scheduled until fully utilized. Hence, Schedule 3(B) shall still be filled out. However, if the depreciable capital good is sold/transferred within the period of five years or prior to the exhaustion of the amortizable input tax thereon, the entire unamortized input tax on the capital goods sold/transferred can be claimed as input tax credit during the month/quarter when the sale or transfer was made.

RMC 23-2022 provides guidelines on the suspension of the income tax incentives granted to RBEs for violating the WFH threshold as prescribed by the FIRB.

RMC No. 23-2022 dated 9 March 2022

- The FIRB, a government agency that oversees the administration and grant of tax incentives by the Investment Promotion Agencies (IPAs) pursuant to Section 297 of the RA No. 11534, otherwise known as the CREATE Act, has issued FIRB Resolution Nos. 19-21 and 23-21 which allows RBEs of the Information Technology – Business Process Management (IT-BPM) sector to continue implementing WFH arrangements without adversely affecting their fiscal incentives until 31 March 2022 subject to all of the following conditions:

    1. The number of employees under a WFH arrangement shall not exceed 90% of the total workforce of the RBE; Provided, that beginning 1 January 2022, the ceiling shall be reduced to 75% for the remainder of the period; Provided further, that if the State of Calamity due to COVID-19 is extended to any date beyond 1 January 2022, the ceiling shall be maintained at 90% until 31 March 2022;

    2. The number of computer laptops/other equipment of the RBE outside the ecozone should not exceed the number of its employees who are under WFH arrangement;

    3. Bonds shall be posted for all equipment (e.g., computer desktops and laptops) deployed by the RBE to their employees' homes, to ensure payment of taxes and duties if any such equipment is not returned to the site of the RBE after the WFH arrangement;

    4. Revenues from export as required shall be maintained regardless of the allowed ratio of employees who will work from home. Provided, that the current number of employees shall not be reduced regardless if the majority of their employees are working from home; and

    5. The RBE shall comply with the reportorial requirements and site inspection, as may be required by the FIRB or IPA.

- This RMC shall cover all RBEs in the IT-BPM sector who opted to continue implementing WFH arrangements amidst COVID-19 pandemic.

- The non-compliance with all the conditions prescribed under FIRB Resolution Nos. 19-21 and 23-21 shall be meted with suspension of the income tax incentive on the revenue corresponding to the months of non-compliance. Hence, RBE shall pay the income tax using the regular rate of either 25% or 20% based on the taxable net income corresponding to the months the RBE is non-compliant.

- For RBEs with no existing transactions subject to the regular income tax rate, BIR Form 1702-MX shall be used for the voluntary payment of the income tax due on the months with reported violation.

- However, for RBEs which have existing transactions subject to regular income tax rates, the voluntary payment shall be made through BIR Form 0605 and bank-validated copy of which shall be attached in AITR to be filed.

- In both cases, the computation of the income tax due shall be:

Net taxable income* for the year /12 months	Php xxxx.xx
Multiply by the applicable rate of either 25% or 20%	X %
Income Tax Due	Php xxxx.xx

**Computed based on existing policies which is net of allowable deduction*

- In the absence of voluntary payments by RBEs or the voluntary payments made are not sufficient, the RBE shall be subjected to an audit pursuant to a Letter of Authority (LOA).

- For uniform understanding of the term "total workforce," this RMC likewise clarifies that it shall refer to the total employees that are directly or indirectly engaged in the registered project or activity of the RBE, but excludes third-party contractors, if any, such as service contractors rendering janitorial or security services and other similar services.

- The FIRB shall endorse the monthly reports (Annex A) submitted by IPAs regarding violations committed by concerned RBEs to the BIR, addressed to the Assessment Service, Attention: Audit Information, Tax Exemption and Incentives Division or thru email: aiteid_ies@bir.gov.ph.

- This RMC shall take effect immediately until 31 March 2022 pursuant to FIRB Resolution No. 19-2021.

RMC No. 24-2022, which was issued on 9 March 2022, clarifies the transitory provisions under RR No. 21-2021 implementing the amendments to the VAT zero rating provisions under Sections 106 and 108 of the National Internal Revenue Code (Tax Code), in relation to Sections 294(E) and 295(D) of the CREATE Act and its IRR.

RMC No. 24-2022 dated 23 February 2022

- This RMC shall take effect immediately.

- Before the effectivity of the CREATE Act (Before 11 April 2021), ecozones and freeport zones, by legal fiction, were regarded as foreign territories under RMC No. 74-99 and RMC No. 7-2007. Thus, following the "cross border doctrine", the sale of goods and services by a VAT-registered seller to registered enterprises in these economic and freeport zones were treated as constructive export subject to 0% VAT.

- After the effectivity of the CREATE Act (Beginning 11 April 2021), the "cross border doctrine" as applied to Ecozones or Freeport zones has been rendered ineffectual and inoperative for VAT purposes. Only those goods and services that are directly and exclusively used in the registered project or activity of RBEs qualify as 0% VAT local purchases and those effectively zero-rated sales shall only apply to sales of goods and services rendered to persons or entities who have direct and indirect tax-exemption granted pursuant to special laws or international agreements to which the Philippines is a signatory.

- For business enterprises duly registered with the concerned Investment Promotion Agencies (IPAs) under the CREATE Act, said law is applicable with respect to the availment of tax incentives 5% Gross Income Earned or Special Corporate Income Tax (SCIT), VAT exemption on importation and VAT zero-rating on local purchases of goods and services.

- Business enterprises registered prior to the effectivity of the CREATE Act shall continue to enjoy the VAT exemptions and VAT zero-rating on local purchases of goods and services. This is however subject to the CREATE IRR, which provides that VAT-exemption on importation, and VAT zero-rating on local purchases shall only apply to goods and services **directly attributable to and exclusively used** in the registered project or activity of the export enterprises during the period of registration of the said registered project or activity of the export enterprises until the expiration of the transitory period.

- Direct and exclusive use in the registered project or activity refers to raw materials, supplies, equipment, goods, packaging materials, services, including provision of basic infrastructure, utilities, and maintenance, repair and overhaul of equipment, and other expenditures directly attributable to the registered project or activity without which the registered project or activity cannot be carried out. This excludes those used for administrative purposes (legal, accounting, and such other similar services).

- RBEs which are categorized as Domestic Market Enterprises (DMEs) are not entitled to VAT zero-rating on local purchases.

- Incentives of non-RBE exporters shall be limited only to VAT at 0% on its direct export sale of goods or services.

This RMC also clarifies the issues pertaining to the effectivity and VAT treatment of transactions by RBEs, particularly the registered export enterprises:

Transaction Date	VAT Treatment
1. Sales during the effectivity of RR No. 9-2021 (27 June 2021 to 30 June 2021)	▸ Seller should declare the same as subject to 12% VAT. ▸ **If purchaser is engaged in zero-rated activities**- Recover through VAT refund pursuant to Section 112(A) of the Tax Code, as amended. ▸ **If the purchaser is not a VAT-registered taxpayer**- Claim as part of the cost of sales or expenses.
2. Sales where the VAT has already been billed and/or collected during the effectivity of RR No. 9-2021 (1 July 2021 to 27 July 2021)	▸ Seller/purchaser may retain the transaction as subject to VAT. (Same options as above) ▸ Revert the transaction from VATable to zero-rated ▸ **Seller, if already declared in the VAT return**- Amend the return filed after reimbursing the VAT paid by the buyer that is a registered export enterprise, provided that no Letter of Authority (LOA) has been issued. The adjustment to sales shall only be to the extent of the reimbursed VAT. The resulting overpayment due to unutilized input tax credits, if any, may be recovered through VAT refund. ▸ Seller shall retrieve the VAT sales invoice/official receipt (SI/OR) originally issued to the registered export enterprise buyer for cancellation and replacement with a zero-rated SI/OR. ▸ Seller shall prepare a list of VAT SI/OR cancelled, together with the corresponding zero-rated SI/OR replacement subject to validation of the BIR.
3. Sales covered from the issuance of RR No. 15-2021 up to the effectivity of RR No. 21-2021 that have been declared as VAT zero-rated (1 July 2021 to 10 December 2021)	▸ Non-retroactivity rule will apply. Thus, sales regarded by the seller as subject to VAT at 0% shall remain VAT zero-rated. ▸ Taxpayers that declared their transactions to qualified registered export enterprises and domestic market enterprises (DMEs) within the ecozones and freeport zones as subject to VAT, may follow the options laid down in Q&A No. 7 and 8 of the RMC (options in Nos. 1 and 2 above)

Treatment on the Sale of VAT registered suppliers to registered export enterprises

Sales Transactions	VAT Treatment
1. VAT registered seller to registered export enterprises enjoying fiscal incentives	▸ **VAT at 0%**- Only applies to goods and/ or services directly and exclusively used in the registered project or activity of said registered export enterprise, for a maximum period of 17 years from the date of registration, unless otherwise extended under the Strategic Investment Priority Plan (SIPP)
2. VAT registered seller to DMEs	▸ **VAT at 12%**
3. VAT registered to DMEs under the 5% GIT or SCIT	▸ **VAT Exempt**- VAT passed on to it by its VAT-registered local suppliers shall form part of its cost or expenses
4. VAT registered seller to the following service enterprises: ▸ Customs brokerage; ▸ Trucking services; ▸ Forwarding services; ▸ Janitorial services; ▸ Security services; ▸ Insurance; ▸ Banking and other financial services; ▸ Consumers' cooperatives; ▸ Credit unions; ▸ Consultancy services; ▸ Retail enterprises; ▸ Restaurants; and ▸ Such other similar services as may be determined by the Fiscal Incentives Review Board (FIRB).	▸ **VAT at 12%**
5. Registered export enterprise/DME to another registered export enterprise	▸ **VAT at 0%**- If the seller is VAT-registered while enjoying ITH provided that goods and services are directly and exclusively used in purchaser's registered project or activity. ▸ **VAT-exempt**- If the seller is enjoying the 5% Gross Income Earned incentive, the sale of goods and services (manufactured, assembled or processed product or IT/ BPO services) will form part of the final export product or export service of the purchaser, of at least 70% of its total production or output
6. VAT-registered Non-RBE Exporter to registered export enterprise	▸ Above rules shall apply

VAT treatment on the sale, transfer, or disposition of the imported capital equipment, raw materials, spare parts, or accessories

Transaction	VAT Treatment
1. Purchaser is a registered export enterprise, regardless of location	▸ **VAT at 0%**- Capital equipment, raw materials, spare parts, or accessories shall be directly and exclusively used in the registered project or activity of the registered export enterprise.
2. Seller is non-registered export enterprise or a domestic market enterprise, regardless of location and is under the following regimes:	▸ **VAT Exempt**- If under Special Corporate Income Tax (5% GIT) ▸ **VAT at 12%- Based on net book value** of the capital equipment, raw materials, spare parts, or accessories, except when purchase is a registered export enterprise
3. Sales to enterprises covered by special laws (renewable energy developers under the Renewable Energy Act of 2008, International Rice Research Institute (IRRI), Asian Development Bank (ADB), etc.)	▸ **VAT at 0%**
4. The imported capital equipment, raw materials, spare parts, and accessories will be used for a non-registered project or activity	▸ Subject to VAT on importation
5. For partial utilization in a non-registered project or activity	▸ VAT on a specific capital equipment, raw materials, spare parts, or accessories shall be paid in proportion to its utilization for the non-registered project or activity

Treatment on Existing Export Enterprises Registered Prior to CREATE Act

Transaction	VAT Treatment
1. Sales to existing registered export enterprises located inside Ecozones or Freeport zones 2. Sales by VAT-registered sellers to export enterprises registered with BOI and IPAs other than PEZA or Freeports	▸ **VAT at 0%** until the expiration of the transitory period or the remaining period of their incentives- Applies only to goods and/or services directly and exclusively used in the registered project or activity of a registered export enterprise.
3. Sales to existing registered non-export enterprises located inside the Ecozones or Freeport Zones	▸ **VAT at 12%**
4. Sales by existing registered non-export enterprises located in Ecozones and Freeport Zones	▸ **VAT exempt**- DMEs under 5% GIT or SCIT if registered as VAT-exempt ▸ VAT passed on by VAT-registered suppliers shall from part of the costs/expenses
5. Sale of goods or services to non-resident foreign buyers by non-RBEs, not enjoying incentives, but were delivered or rendered to export-oriented companies in the Philippines	▸ **VAT at 12%**
6. Sale of processing, manufacturing or repacking services by PEZA RBEs entitled to 5% GIT or SCIT to persons doing business outside the Philippines, to which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP	▸ **VAT exempt**
7. The sale of raw materials or packaging materials by a PEZA RBE to a non-resident buyer for delivery to a resident local export-oriented enterprise, to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP	▸ **VAT Exempt**- If PEZA RBE is entitled to 5% GIT or SCIT.

Transaction	VAT Treatment
8. Transactions of a registered export enterprise with multiple incentives regime	▸ VAT treatment until the expiration of its incentives ▸ VAT exempt- Sales under 5% GIT or SCIT ▸ VAT at 0%- Sales under ITH
9. A registered export enterprise that has already completed its ITH and already under the 5% GIT or SCIT regime but remained as a VAT-registered entity	▸ Change its registration status from a VAT-registered entity to Non-VAT within two (2) months from the expiration of its incentives
10. Registered export enterprises enjoying GIT or SCIT regime but are still VAT-registered at the time the CREATE Act took effect	

Application for VAT Zero-Rating

- All approved applications and applications for VAT zero-rating that were suspended due to the effectivity of RR No. 9-2021 shall remain effective as if RR No. 9-2021 was not implemented should the taxpayers involved in the transaction opt to revert the same as VAT zero-rated, except for the four-day period covering 27June 2021 to 30June 2021. Note that VAT zero-rating will only apply to goods and/or services directly and exclusively used in the registered project or activity of a registered export enterprise.

- Prior approval from the BIR must be secured by the local suppliers of goods/ services of registered export enterprises in order for their sales to be accorded VAT zero-rating, as provided for under the CREATE Act. Absence of prior approval will result in the disallowance of the VAT zero-rated sale of the supplier.

- IPA concerned shall issue an annual VAT zero-rating certification only to registered export enterprises. The certificate shall indicate the following:

    1. Registered export activity (i.e., manufacturing, IT, BPOs)
    2. Tax incentives entitlement under terms and conditions;
    3. Validity period; and
    4. Applicable goods and services (i.e., raw materials, equipment, services, and so on)

- All IPAs are required to submit to the BIR an endorsement and list of RBEs for purposes of VAT zero-rating.

- Prior to the transaction, the registered export enterprise buyers shall provide its suppliers a copy of the BIR Certificate of Registration (BIR Form No. 2303, Certificate of Registration and VAT Certification) issued by the concerned IPA.

- Processing of applications on VAT zero-rating shall be governed by RMO No. 7-2006. The following attachments must be included in the applications:

    1. Certificate of Registration and VAT Certification issued by a concerned IPA as submitted to them by their registered export enterprise buyers;

2. Sworn affidavit executed by the registered export enterprise-buyer, stating that the goods and/or services bought are directly and exclusively used for the production of goods and/or completion of services to be exported or for utilities and other similar costs, the percentage of allocation to directly and exclusively used for the production of goods and/or completion of services to be exported; and

3. Other documents to corroborate entitlement to VAT zero-rating such as but not limited to duly certified copies of purchase order, job order or service agreement, sales invoices and/or official receipts, delivery receipts, or similar documents to prove existence and legitimacy of the transaction.

VAT Refund by Local Suppliers; Recovery of VAT Passed on to Registered Export Enterprises

- In addition to the documentary requirements provided under existing revenue issuances, the supplier-applicant of the RBE-buyer shall be required to submit upon filing of the claim for VAT credit or refund the approved application for VAT zero-rating.

- No VAT shall be passed on to the registered export enterprise on its purchases of goods and services directly and exclusively used in the registered project or activity.

- Should the local supplier inadvertently pass on VAT to the registered export enterprise, the buyer may contest the same and/or resolve with the supplier the reimbursement of VAT paid, if any. In this case, the previously issued SI/OR to the registered export enterprise having VAT imposed must be surrendered/returned to the local supplier for cancellation and replacement.

- VAT paid or incurred for purchases not directly and exclusively used in the registered project or activity of the registered export enterprise are not allowed for VAT refund. However, the following may be done:

    1. If VAT registered and enjoying ITH - Claim the passed-on VAT as input tax credit and apply against future output VAT liabilities (Section 110 of the Tax Code, as amended);

    2. If no sales subject to VAT - Accumulate the input tax credits and claim as VAT refund upon expiration of VAT registration (Section 112(B) of the Tax Code, as amended, and implemented in Section 4.112-1 (b) of RR No. 13-2018); or

    3. If non-VAT registered - Charge to cost or expense account

RMC No. 25-2022 clarifies the taxability of e-Sabong operations as regulated by PAGCOR.

RMC No. 25-2022 11 dated March 2022

- The Gaming Income from e-Sabong Operation by an e-Sabong Operator shall be subject to a 5% franchise tax, which shall be in lieu of all internal revenue taxes except VAT or percentage tax, depending on the threshold.

- In the event that the e-Sabong Operator has contracted with PAGCOR for the provision of goods and services in connection with PAGCOR's gaming operations, then such provision of goods and services to PAGCOR is subject to VAT at 0%.

- The 5% franchise tax due from the e-Sabong Operator shall be separate and distinct from the 5% franchise tax due from PAGCOR arising from the licensing and regulatory fees that PAGCOR receives from the e-Sabong Operator.

- The Service Income from e-Sabong Operation by an e-Sabong Operator shall be subject to regular income tax, value-added tax or percentage tax depending on the threshold, withholding tax and other taxes, as may be deemed appropriate.

- Other Income from e-Sabong by an e-Sabong Operator, or the income or earnings realized by the e-Sabong Operator from all other activities whose authorization does not derive from the e-Sabong license issued by PAGCOR shall be subject to regular income tax, value-added tax or percentage tax depending on the threshold, withholding tax and other taxes, as may be deemed appropriate.

- Commission Income received by a Third-Party e-Sabong Master Agent/Agent shall be subject to regular income tax, value-added tax or percentage tax depending on the threshold, withholding tax and other taxes, as may be deemed appropriate.

    1. The e-Sabong Operator shall withhold and remit the corresponding creditable withholding taxes (5%/10% for individual payees and 10%/15% for non-individual payees) due for the account of the Master Agent/ Agent.

- Income received by the Cockpit Owner/Operator for the use of the cockpit arenas/venues from the e-Sabong Operator shall be subject to regular income tax, value-added tax or percentage tax, depending on the threshold, withholding tax and other taxes, as may be deemed appropriate.

    1. The e-Sabong Operator shall withhold and remit the corresponding 5% creditable withholding taxes due for the account of the Cockpit Owner/ Operator.

- Income received by a Third Party OCBS Host from the OCBS shall be subject to regular income tax, value-added tax or percentage tax, depending on the threshold, withholding tax and other taxes, as may be deemed appropriate.

    1. The e-Sabong Operator shall withhold and remit the corresponding 2% creditable withholding taxes due for the account of the Third Party OCBS Host.

- Income received by a Third-Party Game Cock Owner from the e-Sabong Operator in relation to the e-Sabong operation shall be subject to regular income tax, value-added tax or percentage tax, depending on the threshold, withholding tax and other taxes, as may be deemed appropriate.

    1. The e-Sabong Operator shall withhold and remit the corresponding 2% creditable withholding taxes due for the account of the Third-Party Game Cock Owner.

- Other income derived or received by any person/s or entity/ies in relation to the operation/s of e-Sabong not included in the above-mentioned enumeration shall be subject to appropriate taxes, including but not limited to final withholding taxes and the like, under the National Internal Revenue Code of 1997, as amended.

Banks and Other Financial Institutions

Amendments to Regulations on Outsourcing and IT Risk Management

Circular No. 1137 amends regulations on outsourcing and IT Risk Management.

Circular No. 1137 dated 18 February 18 2022

The Monetary Board, in its Resolution No. 190 dated 10 February 2022, approved the amendments to Sections 112, Appendices 78 and 103 of the Manual of Regulations for Banks (MORB) and Sections 111-Q/113-S/112-P/102-N/112-T and Appendices Q-36/Q-65 of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).

112 MANAGEMENT CONTRACTS AND OUTSOURCING

Definition - Banks shall assess whether an outsourcing arrangement is material or non-material to the business. An outsourcing arrangement shall be considered material if a business disruption of an outsourced activity, service delivery failure and/or data/security breach will result in significant impact to the bank's operations, financial condition, reputation, customers, and compliance with laws, rules and regulations.

Prohibition against outsourcing of inherent risk banking functions. No bank shall outsource inherent banking functions such as:

1. Taking of deposits from the public;
2. Granting of loans and extension of other credit exposures;
3. Managing of risk exposures; and
4. General management.

Regulatory Reporting Standards for Operators of Payment System (OPS)

Circular No. 1138 provides regulatory reporting guidelines and sanctions for non-compliance.

Circular No. 1138 dated 1 March 2022

The Monetary Board, in its Resolution No. 196 dated 10 February 2022 approved the following regulatory reporting guidelines for OPS.

Section I. The following Sections are hereby created in the Manual of Regulations for Payment Systems (MORPS):

Section 401. Reporting Governance Framework for Operators of Payment System (OPS) The Bangko Sentral recognizes that relevant, complete accurate, and timely reports are necessary for the effective oversight of the National Payment system. The Board and senior management shall be responsible for respectively adopting policies on and implementing an effective reporting system that generates accurate, complete, and timely reports to the Bangko Sentral.

Sanctions for Non-compliance with Reporting Standards

Monetary Penalties

The applicable monetary penalty shall be based on a prescribed fine for each occurrence (in case of Erroneous reports) or for each day (in case of Delayed reports) shown in the Table below. The penalties will accumulate until such time that the report has been determined compliant with the prescribed reporting standards.

Prescribed fines for reporting violations.

OPS	Primary Reports	Secondary Reports
OPS that are banks		
Universal/Commercial Banks (U/KBs)	Php 3,000.00	Php 600.00
Thrift Banks (TBs)	1,500.00	300.00
Rural Banks/Coop Banks (RCBs)	450.00	150.00
Non-banks OPS	300.00	60.00

For the purpose of this regulation, a non-bank OPS shall include non-bank electronic money issuers (EMI-NBFI), clearing switch operators, and other non-BSFIs that are registered with the Bangko Sentral as such.

Primary reports are those which shall be required of ODPS such as, but not limited to periodic surveillance reports which shall be due for daily, monthly or quarterly submission to the Bangko Sentral. Meanwhile, *Secondary Reports* are those that shall be required of non-designated OPS such as semi-annual payment services report. Secondary reports shall also include Annual Reports which shall be submitted by all OPS.

For *Erroneous Reports*, the penalty shall be computed by multiplying the prescribed fine by the number of times the subject report was submitted before being considered compliant.

For *Delayed Reports*, the penalty shall be computed by multiplying the prescribed fine by the number of calendar days delayed.

For *Erroneous and Delayed Reports*, the penalty shall be based on the sum of the penalty for being Erroneous and the penalty for being Delayed.

For *Unsubmitted Reports*, the penalty shall be based on the amounts to be prescribed in the oversight intervention and enforcement policy for all OPS which shall be the subject of a separate issuance.

Non-monetary Sanctions

In addition to the monetary penalties that may be imposed based on the preceding Subsection, the following non-monetary sanctions shall likewise be imposed for Unsubmitted Reports:

- First Offense: warning on the Chief Executive Officer (CEO) and the board of directors;
- Second Offense: reprimand on the CEO and the board;
- Third Offense: suspension of the CEO for at least one (1) month but not more than one year, depending on the nature and gravity of the violation or irregularity;
- Further Offense/s: Possible disqualification of the CEO and/or the members of the board.

This Circular shall take effect 15 calendar days from its publication either in the Official Gazette or in a newspaper of general circulation.

Anti-Money Laundering Council (AMLC) Resolution No. TF-50, Series of 2022

Circular Letter CL-2022-021 directs the issuance of Sanctions Freeze Order.

Circular Letter CL-2022-021 dated 7 March 2022

The Circular Letter aims to disseminate the AMLC Resolution No. TF-501 directing the issuance of Sanctions Freeze Orders (SFO) to take effect immediately against certain identified organizations of the Communist Party of the Philippines - New People's Army - National Democratic Front (NDF), also known as the National Democratic Front of the Philippines (NDFP), pursuant to their designation as terrorists by the Anti-Terrorism Council (ATC) and the freezing without delay of the following property or funds, including related accounts:

- Property or funds that are owned or controlled by the subject of designation, and is not limited to those that are directly related or can be tied to a particular terrorist act, plot, or threat;
- Property or funds that are wholly or jointly owned or controlled, directly or indirectly, by the subject of designation;
- Property or funds derived or generated from funds or other assets owned or controlled, directly or indirectly, by the subject of designation; and
- Property or funds of persons and entities acting on behalf or at the direction of the subject of designation.

BSFIs are reminded to submit to the AMLC:

- A written return, pursuant to applicable laws and regulations; and
- Suspicious transaction report on all previous transactions of the subjects of designation within five days from effectivity of the SFO.

Any person whether natural or juridical, shall be prosecuted to the fullest extent of the law pursuant to TFPSA, who:

- Deals directly or indirectly, in any way and by any means, with any property or fund he knows or has reasonable ground to believe is owned or controlled by the subject of designation, including funds derived or generated from property or funds owned or controlled, directly or indirectly, by those subjects of designation; or
- Makes available any property or funds, or financial services or other related services to the subject of designation.

Anti-Money Laundering Council (AMLC) Advisory dated 1 March 2022 on the Updated List of Uncooperative Covered Persons

Circular Letter CL-2022-022 disseminates the updated list of uncooperative covered persons dated 1 March 2022.

Circular Letter CL-2022-022 dated 7 March 2022

The following are considered uncooperative covered persons:

- MG Universal Link Limited (MG Universal)
- Inner Strong Limited (Inner Strong)
- Smarc Group International Limited (Smarc)
- New Wave Infotech Ltd.

The advisory mentioned that various covered persons failed or refused to cooperate with the AMLC in the conduct of its compliance checking. Thus, the AMLC resolved to revoke the registration of those covered persons.

The AMLC advises the public to be cautious and to observe appropriate protocols in dealing with the identified uncooperative covered persons.

Disqualification from Registration with the BSP of Entities Operating as MSBs Without Prior BSP Registration

Circular Letter CL-2022-024 lists entities disqualified from registering with the BSP.

Circular Letter CL-2022-024 dated 8 March 2022

The Monetary Board, in its Resolution No. 1746 dated 16 December 2021, approved the disqualification of the below listed entities and any sole proprietorship owned and/or controlled by their respective owners/operators from registering with the BSP, and/or obtaining a license with the BSP to engage in any activity that is authorized or supervised by the BSP, for operating as MSBs without prior BSP registration.

Entity's Name	Location	Owner/Operator/Contact Person
MER'S BUSINESS CENTER	Hugh-Han Commercial Building, Prk. 4A, Barangay San Francisco, Panabo City	Reynaldo Abing Camingawan
PAY BILLS PAYMENT AND REMITTANCE CENTER AND/OR INFINITY PAYB	Blk 28 Lot 5 Rosewood Village, Niog II, City of Bacoor	Angel Tambor Doinog, Jr.

Financial Action Task Force (FATF) Publications on High-Risk and Other Monitored Jurisdictions

Circular Letter CL-2022-026 provides information on high risk jurisdictions.

Circular Letter CL-2022-026 dated 15 March 2022

This is to inform all BSFIs of the updated statements of the FATF on high-risk jurisdictions subject to a call for action and jurisdictions under increased monitoring.

High-Risk Jurisdictions subject to a Call for Action

- On Democratic People's Republic of Korea (DPRK) – The FATF reaffirms its 25 February 2011 call on its members and urges all jurisdictions to advise their financial institutions (FIs) in their respective jurisdictions to give special attention to business relationships and transactions, directly or indirectly, with the DPRK, including DPRK companies, FIs, and those acting on their behalf. In addition to enhanced scrutiny of these business relationships and transactions, the FATF urges all jurisdictions to apply effective countermeasures and targeted financial sanctions (TFS) in accordance with applicable United Nations Security Council (UNSC) Resolutions. BSFIs are likewise directed to terminate correspondent relationships with DPRK banks, where required by relevant UNSC Resolutions.

- On Iran – The FATF fully lifts the suspension of counter-measures and calls on its members and urges all jurisdictions to apply effective countermeasures against Iran.

In addition, BSFIs should take necessary actions (such as immediate freezing and filing of returns) required under relevant issuances5 on TFS in case of funds or property, including related accounts, of the designated individuals and entities referred to in all applicable UNSC and AMLC Resolutions.

Jurisdictions under Increased Monitoring

These countries are actively working with the FATF and have committed to resolve swiftly the identified strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing within agreed timelines and are subject to increased monitoring:

- Albania;
- Barbados;
- Burkina Faso;
- Cambodia;
- Cayman Islands;
- Haiti;
- Jamaica;
- Jordan;
- Mali;
- Malta;
- Morocco;
- Myanmar;
- Nicaragua;
- Pakistan;
- Panama;
- Philippines;
- Senegal;
- South Sudan;
- Syria;
- Turkey;
- Uganda;
- United Arab Emirates; and
- Yemen

The FATF does not call for the application of EDD measures to be applied to these jurisdictions but encourages its members and all jurisdictions to consider the information presented in their risk analysis.

Collection of the Annual Supervisory Fees (ASF) for the Year 2022 for all Banks and Non-Banks with Quasi Banking Functions (NBQBs)

Memorandum No. M-2022-011 provides the computation of Annual Supervisory Fees for Banks and NBQBs.

Memorandum No. M-2022-011 dated 2 March 2022

Computation of ASF

The Computation of ASF for 2022 is based on the Average Assessable Assets (AAA) of the preceding year multiplied by the applicable assessment rates approved by the Monetary Board as follows:

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

In case of a merger or consolidation, the assets of the covered institutions prior to the merger or consolidation as well as the assets of the newly formed institution shall be considered in determining the AAA. In case of upgrading or downgrading, the assets from one bank category to another shall likewise be considered in determining the AAA.

The collection of the 2022 ASF also takes into consideration events after the collection of the 2021 ASF that would warrant a re-computation. In such cases, the resulting over or under-payment of the 2021 ASF shall be deducted/added to the 2022 ASF.

Notification of Amount due for 2022 and Mode of Payment
The BSP Department of Supervisory Analytics (DSA) shall send a billing notice in April 2022 to the Bank/NBQB for its ASF payment indicating, among others, the computation of the ASF due, the period covered by the ASF and the specific date when the ASF will be debited from the Bank's/NBQB's Demand Deposit Account (DDA) with the BSP.

The BSP will not accept checks as mode of ASF payment.

Exceptions Noted on Billing Notice of 2022 ASF
Upon receipt of the BSP Notice of ASF billing, a Bank/NBQB is encouraged to check the accuracy of the billing and to submit any of the noted exceptions therein not later than 10 working days before the specified date of collection/debit to DDA as indicated in the billing notice. Any exceptions noted, together with supporting documents, shall be e-mailed with the following format:

For Example,
To: dsa-srog@bsp.gov.ph
Subject: ASF 2022-Noted Exceptions <BSFI Name>

Any exceptions received after the cut-off date or any exceptions not duly substantiated with documents before the cut-off date will be evaluated and considered in the computation of the ASF for the immediately succeeding year.

Collection of the Annual Supervisory Fees (ASF) for the Year 2022 for all non-stock savings and loans associations (NSSLAs) and Trust Corporations (TCs)

Memorandum No. M-2022-012 provides the computation of the ASF for NSSLAs and trust TCs.

Memorandum No. M-2022-012 dated 2 March 2022

Computation of ASF for 2022

NSSLAs

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

Total AAA of NSSLA	Maximum Amount of Annual Fees
> Php 1.0 billion	Php 500,000.00
> Php 750.0 million - P1.0 billion	Php 400,000.00
> Php 500.0 million - P750.0 million	Php 200,000.00
> Php 250.0 million - P500.0 million	Php 100,000.00
> Php 100.0 million - P250.0 million	Php 50,000.00
Up to Php 100.0 million	Php 10,000.00

Provided, that the minimum amount of annual fees of NSSLAs with AAA of up to Php 100.0 million shall be Php 10,000.00.

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

Securities held under custodianship shall be exempt from annual fees.

Notification of Amount Due for 2022 and Mode of Payment

The BSP Department of Supervisory Analytics (DSA) shall send a billing notice on April 2022 to the NSSLA/TC for its ASF payment indicating, among others, the computation of the ASF due, the period covered by the ASF and the specific date when the ASF becomes due payable to the BSP.

The BSP will accept payments through other payment channels for which instructions thereof shall be sent together with the billing notice.

Exceptions Noted on Billing Notice of 2022 ASF

Upon receipt of the BSP Notice of ASF billing, an NSSLA/TC is encouraged to check the accuracy of the billing and to submit any of the noted exceptions therein not later than 10 working days before the specified date of collection as indicated in the billing notice. Any exceptions noted, together with supporting documents, shall be e-mailed with the following format:

For Example,
To: dsa-srog@bsp.gov.ph
Subject: ASF 2022 Noted Exceptions

Guidelines on the Designation of the PDDTS and PVP as Systemically Important Payment Systems (SIPS)

Memorandum No. M-2022-013 provides guidelines on the designation of the PDDTS and PVP.

Memorandum No. M-2022-013 dated 2 March 2022

As participants of the DPS, subject recipients are expected to contribute towards observance by the PDDTS and PvP of the Principles for Financial Market Infrastructures' (PFMI) relevant to SIPS. Given their respective roles in the PDDTS and PvP, the subject recipients shall, at a minimum, comply with the following guidelines:

- Participate in BSP surveys to assess safety, efficiency, and reliability of the payment system, including the performance of service by the operator of the designated payment system (ODPS);
- Submit reports and/or information as required or requested by the BSP to facilitate evaluation of the PDDTS, the PvP and/or the national payment system;
- Make available during regular onsite examination/assessment conducted by the BSP, with prior written notification to the participants concerned, relevant documents and information to evaluate the activities related to the payment system;

- Provide necessary information as requested by the Governing Body or the ODPS to facilitate compliance with reporting requirements under relevant laws and regulations;
- Ensure that the PDDTS and/or PvP rules and policies they agree to are aligned with the principles relevant to SIPS;
- Adhere to the rules, standards and requirements promulgated by the BSP and fulfill their respective roles to ensure safety. efficiency. and reliability of the PDDTS and PvP, including participation in exercises or activities, such as testing conducted by the ODPS; and
- Comply with BSP policy issuances primarily directed at all participants of a payment system or specific to their role in the PDDTS and PvP.

Amendment to Memorandum M-2021-034 on the Guidelines for Obtaining a Certificate of Eligibility (COE) under Republic Act (R.A.) No. 11523, otherwise known as the Financial Institutions Strategic Transfer (FIST) Act

Memorandum No. M-2022-014 amends Memorandum M-2021-034 on the Guidelines for Obtaining a COE under the FIST Act.

Memorandum No. M-2022-014 dated 9 March 2022

All BSFIs shall observe the following guidelines on the submission of application for obtaining a Certificate of Eligibility (COE):

- The prescribed subject format on the submission of the application for obtaining a COE shall include the five-digit reference number which corresponds to the application number of the COE as illustrated below:

  FIST COE <Reference number> <BSFI Name>, <Reference Period in DD Month CCYY>
- The Reference Number is the sequential BSFI assigned number for the submitted application. The BSFI shall use the said Reference Number in inquiring the status of its application.
- The Reference Period shall always refer to the reference period of the Final Master List.
- All other provisions of Memorandum No. M-2021-034 not mentioned above shall remain in effect.

Bureau of Customs

Endorsement of the Updates to the List of VAT Exempt Products under Republic Act Nos. 10963 and 11534

CMC No. 24-2022 provides the list of VAT-exempt drugs for hypertension, cancer, mental illnesses, tuberculosis, kidney diseases, diabetes and high cholesterol.

CMC 24-2022 dated 16 February 2022

- These updates include several changes, including the delisting of 24 and the addition of 34 entries.

Extension of the Transitory Period and Provision of Interim Guidelines for the Implementation of FDA Circular No. 2020-025 through the Issuance of FDA

CMC No. 41-2022 provides the transitory period for the full implementation of FDA Circular No. 2020-025, which provides the guidelines for the licensing and registration of Household/ Urban Hazardous Substances (HUHS) establishments and products, respectively, have been extended until 31 December 2023 by virtue of FDA Circular No. 2021-011-A.

CMC No. 41-2022 dated 2 March 2022:

- The two-year extension shall not apply to the HUHS establishments but shall only be applicable to HUHS product registration wherein companies are allowed to continue with the manufacture, importation, exportation, distribution, sale, offer for sale, transfer, promotion, advertisement, and/or sponsorship of their HUHS products not yet registered with FDA as long as they manage to secure a License to Operate (LTO) as HUHS establishments.

- The HUHS industry must present the following documents to the BOC, for the purpose of clearing the shipments containing HUHS products:

    1. Valid License to Operate (LTO) as HUHS Distributor-Importer;

    2. Copy of FDA Circular No. 2021-011-1 (in lieu of an FDA-issued valid Certificate of Product Registration)

Revised Rules and Regulations on the Establishment, Supervision, Operation and Control of Customs Bonded Warehouses (CBWs)

CMO No. 03-2022 provides the revised procedures for the establishment of CBWs and its operations, namely management, ICT, and more monitoring and supervisory procedures.

CMO No. 03-2022 dated 3 March 2022:

- The following are the sections within the CMO that require full compliance of the CBWs:

    1. Administrative Provisions
        - General Considerations
        - Provisions Specific to Common CBW and its Accredited Members

    2. Procedures for Application for the Issuance of Authority to Operate a CBW
        - Application for Authority to Operate a CBW
        - Documentary Requirements
        - Evaluation of the Application
        - Application for Membership to a CCBW

    3. Application for Renewal of Authority to operate a CBW
        - Jurisdiction and Time Period for Filing Application for Renewal
        - People who may File Application for Renewal
        - Requirements for Renewal
        - Evaluation of the Application for Renewal of License to Operate a CBW

    4. Appeal Mechanism
        - Rejection of the Application by the District Collector
        - Denial of Application by the Commissioner

    5. Certificate of Authority to Operate
        - Validity of Authority to Operate
        - Amendment of Certificate of Authority

    6. Assignment of Warehouse Number
        - CBWs with Authority to Operate
        - Extension warehouses
        - Accredited members

7. Post-Approval Requirements
   - Requirements Prior to Operation
   - Requirements During Operation
   - Duties and Responsibilities of CBW Operators

8. Application for Structural Changes or Additional Facilities within the CBW/ Extension Warehouse/Relocation
   - Application for Structural Changes or Additional Facilities within the CBW
   - Application for Extension Warehouse
   - Application for Relocation
   - Annual Warehousing Supervision Fee and Other Charges

9. Lodgement, Filing, and Processing of Goods Declaration for the Transfer of Goods to CBWs
   - Transfers to CBW through Direct Filing of WSAD
   - Transfer of Goods to CBW through Transit

10. Withdrawal of Bonded Goods
    - Withdrawal of Raw Materials for Production
    - Withdrawal of Goods for Transfer to Sub-Contractor
    - Withdrawal of Bonded Raw Materials for Transfer from CCBW to Accredited Member
    - Withdrawal for Sale of Semi-finished/Finished Products between Accredited Members Belonging to the same Customs Common Bonded Manufacturing Warehouse
    - Withdrawal for Sale of Semi-finished/Finished Products from MCBW or Accredited Member of CCBW to Other MCBW or Free Zone Locator
    - Withdrawal for Sale of Finished Products of a MCBW or Accredited Members to Accredited Client-Exporter
    - Withdrawal for Sale of Bonded Goods from ICBWs to its Accredited Client End-User

11. Direct Exportation of Bonded Goods
    - Requirement of CBW Notice prior to Withdrawal of Finished Goods
    - Examination of Finished Goods and Signing of Documents
    - Lodgement and Filing of Export Declaration-Single Administrative Document

12. Indirect Export of Bonded Goods

13. Disposition of Wastages, Rejects, and By-Products
    - By Consumption
    - By Re-exportation
    - By Condemnation

14. Liquidation of Material, Entries, and Cancellation of Bonds
    - Documentary Requirements to Liquidate Warehousing Entries
    - Period to Liquidate
    - Procedures

15. Abandonment of Bonded Goods

16. Temporary Cessation of Operations of CBW

17. Suspension and Closure of CBW

18. Inspection of CBW and Inventory of Bonded Goods

19. Audit of CBWs by PCAG

20. Monitoring, Supervision, and Coordination of CBW Activity

The Annex A of this issuance also provides for the Application Form to operate a Custom Bonded Warehouse, while Application for Renewal is in Annex D. The Inspection Report on Compliance is within Annex C.

(Editor's Note: CMO No. 03-2022 was published in The Manila Times *on 20 April 2022)*

Amendment to MISTG Memorandum No. 07-2020 on Ad Valorem Tax on Automobiles

MISTG Memo No. 04-2022 provides the addition of MSP field in the SAD to automate the computation of AVT which will be implemented on 15 March 2022.

MISTG Memo No. 04-2022 dated 7 March 2022:

- The table below will still be the basis for the tax of Ad Valorem as per BIR Revenue Regulation No. 5-2018.

Net Manufacturer's Price/Importer's Selling Price	Tax Rate
Up to Php 600,000.00	4%
Over Php 600,000.00 to Php 1,000,000.00	10%
Over Php 1,000,000.00 to Php 4,000,000.00	20%
Over Php 4,000,000.00	50%

(Editor's Note: Not yet published)

Addendum to CMO No. 41-2015 with Subject "Revised Rates to be Charged by Off-Dock and Off-Terminal CFW Operators and Compliance with CMO No. 32-2015

CMO No. 07-2022 is issued to provide additional guidelines and revisions to CMO No. 41-2015 amending CMO No. 32-2015. It covers shipments delivered to the Off-dock and Off-terminal CFW Operators.

CMO No. 07-2022 dated 30 March 2022

- The BOC permits the Off-dock and Off-terminal CFW operators to collect the following incidental or pass-on charges incurred by Off-dock and Off-terminal CFW Operators:

Type of Charge	Source of Charge
1. Return of Empty Container	Truck operators
2. Control fees	Shipping lines
3. Parking fees	Shipping lines
4. Detention, demurrage or storage charges on empty and loaded containers	Shipping lines/ Terminal operators
5. Electronic tracking of containerized cargo (E-TRACC) System cargo	ETRACC service provider
6. X-ray fees	X-ray service provider, if applicable
7. Terminal Appointment Booking System (TABS)	Terminal operators
8. Container Maintenance Fees	Shipping lines
9. Warehouse Inventory System Fees	Accredited service providers

- Numbers 4 to 6 in CMO No. 41-2015 shall be numbered as Numbers 5-7, respectively.

(Editor's Note: Not yet published)

PEZA Updates

Endorsement of the Investment Promotion Agency (IPA) under BIR RR No. 21-2021

PEZA MC 2022-11 Clarifies the endorsement of the IPA under BIR RR No. 21-2021, which provides that the VAT zero-rating on local purchases shall be granted upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR.

PEZA MC 2022-11

Pursuant to RR 21-2021, PEZA received numerous requests from registered business enterprises (RBEs) for an endorsement that specific goods or services are used exclusively and directly in the registered activity of the RBEs and thus, entitled to the VAT zero-rating incentive. Moreover, certain suppliers of these RBEs demand the said endorsement from PEZA to qualify for VAT zero-rating.MC 2022-11 emphasized that:

- The endorsement referred to in the RR is the endorsement of the IPA to the BIR of the list of RBEs entitled to the VAT zero-rating incentive (i.e., VAT Zero Rating Certificate). As it is, the supplier of an RBE has no legal basis to compel RBEs to present PEZA endorsement other than the VAT Zero Rating Certificate. The VAT Zero Rating Certificate annually issued by PEZA to qualified and compliant enterprises should be sufficient to confirm its entitlement and enjoyment of incentive.

- It is the RBE which should initially determine whether a purchase of goods and services is covered by the VAT zero-rating incentive. Also, it is the RBE which should ensure and justify that these goods and services are used directly and exclusively in the registered business activity or project pursuant to RR 21-2021.

Denial by the Fiscal Incentives Review Board (FIRB) of the proposal of PEZA to implement a temporary measure under Rule 23 of the CREATE Act IRR

PEZA MC No. 2022-018 Informs all concerned regarding the denial by the FIRB of the proposal of PEZA to implement a temporary measure under Rule 23 of the CREATE Act IRR.

PEZA MC No. 2022-018

The FIRB in its letter to PEZA dated 7 March 2022, denied the proposal of the PEZA Board of Directors to implement a temporary measure under Rule 23 of the CREATE Act IRR on the grounds that the request is "not consistent with the economic strategy of the government of reopening the economy gradually and safely." Moreover, IT/BPO enterprises are reminded to comply with the existing provisions of FIRB Resolution No. 19-21 to avoid the imposition of penalties.

In this regard, the FIRB-approved WFH Arrangement shall now cease on 31 March 2022.

However, PEZA will still file its reconsideration on the denial by the FIRB but this will not suspend the termination of the WFH Arrangement on the scheduled date.

Please be guided by the following stipulations to avoid any penalties from the FIRB:

- On 1 April, 2022, all registered IT/BPO enterprises shall conduct their registered activities/projects onsite *(i.e., employees of the enterprises are physically present inside the IT Centers/Buildings undertaking the registered activity of the IT/BPO Enterprise)* or within the territorial boundaries of the PEZA-registered IT Centers/Buildings or Parks;

- Beginning 1 April 2022, Sec. 309 of the CREATE Law shall apply which states that *"qualified registered project or activity under an Investment Promotion Agency (IPA) administering an economic zone or Freeport shall be exclusively operated within the geographical boundaries of the zone or Freeport being administered by the IPA in which the project or activity is registered: xxx"*;

- Section 2, Rule 22 of the CREATE IRR provides that any violation of the provisions of the Act including other related revenue regulations, orders or issuances by the government shall result in *revocation or suspension of the incentives* granted by the IPA or business closure of registered business enterprises;

- No WFH Arrangement in whatever form (hybrid, staggered, temporary or by phase RTO) shall be authorized by PEZA;

- IT/BPO are reminded to submit their monthly reports until **31 March 2022** for the WFH Arrangement to the Information Technology Sector – Report Compliance System (ITS-RCS);

- FIRB Resolution NO 23-21 provides as penalty the suspension of income tax incentives applied on the revenue corresponding to the month/s of non-compliance or violation of conditions under Resolution No. 19-21; and

- To implement the said resolution, BIR issued Revenue Memorandum Circular (RMC) No. 23-2022, which provides for the *procedure and computation of the income tax due corresponding to the months of non-compliance*. IT/BPO Enterprises are expected to make voluntary payments. In the absence of voluntary payments, they shall be subjected to an audit pursuant to a Letter of Authority (LOA) by the BIR.

SEC Issuances

Implementation of BSP Circular No. 1133 Series of 2021 on the Ceiling/s on Interest Rates and Other Fees Charged by Lending Companies, Financing Companies, and their Online Lending Platforms

SEC MC No. 3 adopts implementing rules and regulations to implement BSP Circular No. 1133 on the ceiling/s on interest rates charged by Lending Companies, Financing Companies and their Online Platforms.

SEC Memorandum Circular No. 3 dated 27 January 2022

The SEC provides for the rules to implement BSP Circular No. 1133, Series of 2022.

- Scope

    1. Circular shall apply to unsecured, general-purpose loans, whether obtained through online or traditional offline distribution channels, offered by Lending Companies (LCs), Financial Companies (FCs), and their Online Lending Platforms (OLPs), which does not exceed Php 10,000 and loan tenor of up to four months that are entered into, restructured, or renewed beginning 3 March 2022.

- Ceilings on Interest rates on specific loans

	Ceiling
1. **Nominal Interest Rate** – contractual rate or price paid for the use of money	6% per month (~0.2% per day)
2. **Effective Interest Rate (EIR)** - total nominal interest paid plus other fees and charges (i.e., processing fees, service fees, notarial fees, handling fees and verification fees, among others), excluding penalties and late payment fees	15% per month (~0.5 % per day)
3. **Penalties for late payments or non-payment**	5% per month on outstanding amount due
4. **Total cost cap** - all interest, other fees and charges and penalties, regardless of the time the loan has been outstanding	100% of total amount borrowed

- Requirements:

  1. **Impact Evaluation Report** - submitted on or before 15 January every year beginning 2023 by all FCs and LCs, whether or not offering loans covered by the ceiling.

  2. **Business Plan** – All LCs and FCs should indicate the company's loan products and services as well as the applicable pricing parameters. Business Plans must be submitted on or before 5 May 2022 in pdf with text layer to cgfd_md@sec.gov.ph with the subject line: (CGFD_*Complete Name of the Company_Type of Document_Date Submitted*). Business plan submitted shall supersede initial Business Plan or Plan of Operation in the Company Information Sheet submitted prior to the issuance of the Certificate of Authority of the LC or LC.

     - In case of amendments to the Business Plan, changes therein must be underlined. Prior approval by the SEC must be secured before material changes can be implemented.

     - For LCs and FCs that will be incorporated after 3 March 2022, Business Plans shall be submitted within 60 days from the date of issuance of their Certificate of Authority (CA) to Operate as a Financing/Lending Company.

- Non-compliance with the Circular shall subject FCs and LCs to sanctions such as fines, suspension or revocation of Certificate of Authority to Operate, or suspension or revocation of company's primary registration.

Disqualification of Direction, Trustees, and Officers of corporations and the Guidelines on the Procedure for their Removal

SEC MC No. 4 promulgates the disqualifications of directors, trustees, and officers of corporations, and the guidelines on the procedure for their removal.

SEC MC No. 4 dated 2 March 2022

The SEC promulgates the disqualification of Directors, Trustees, and Officers of Corporations and the guidelines on the procedure for their removal pursuant to Sections 26 and 27 of the Revised Corporation Code of the Philippines.

- In addition to the disqualifications under Section 26 of the RCC, the SEC imposed the following disqualifications of directors, trustees and officers:

    1. Within tenure, the director, trustee, or officer was convicted by final judgment:

        - Of an offense punishable by imprisonment for a period exceeding six years;
        - For violating the Revised Corporation Code (RCC);
        - For violating the Securities Regulation Code (SRC);

    2. Within tenure, the director, trustee, or officer was found administratively liable, by final judgment, for any offense involving fraudulent acts punishable under the RCC, SRC and other laws, rules or regulations enforced or implemented by the SEC;

    3. Within tenure, the director, trustee, or officer was convicted or found administratively liable by a foreign court or equivalent foreign regulatory authority for acts, violations, or misconduct similar to those enumerated in paragraph (a) and (b) of Section 26 of the RCC;

    4. Within five years prior to the election or appointment, or within the tenure, the director, trustee, or officer, was found administratively liable, by final judgment, for refusal to allow the inspection and/or reproduction of corporate records.

- The Company Registration and Monitoring Department (CRMD) of the SEC shall have original jurisdiction to hear and decide on independent administrative actions that are based on disqualifications enumerated in Sec. 7 of the Memorandum Circular. Extension Offices may exercise authority over independent administrative actions for removal of directors, trustees, and/or officers of corporations within their respective geographical jurisdiction.

- Rules and procedure for an independent administrative action is discussed in the Memorandum Circular.

- Independent administrative action for removal may be commenced upon:

    1. ***Motu proprio* issuance of Formal Charge** by the CRMD or the Extension Offices;
    2. **Filing of a Verified Complaint** by a party-in-interest.

- The Memorandum Circular shall take effect immediately upon its publication in two newspapers of general circulation.

(Editor's Note: SEC MC No. 4 was published in The Manila Bulletin *and* BusinessWorld *on 4 March 2022)*

Guidelines on Corporate Dissolution under Section 134, 136 and 138 of the Revised Corporation Code

SEC MC No. 5 promulgates the guidelines on corporate dissolution.

SEC MC No. 5 dated 8 March 2022

The SEC promulgates Guidelines on Corporate Dissolution to standardize the procedure on corporate dissolution under the CRMD and the SEC Extension Offices.

- Voluntary dissolution where no creditors are affected under Section 134 of the RCC shall be commenced by filing, with CRMD or SEC Extension Office, a **verified request for dissolution** signed by the corporation's duly authorized representative with the details required by the Memorandum stated therein. Supporting documents shall also be attached to the request. Request for dissolution may be withdrawn through a request in writing, duly verified by any incorporator, director, trustee, shareholder, or member, and signed by the majority of the directors or trustees, and stockholders owning or controlling at least majority of the outstanding capital stock or majority of the members who voted for the dissolution of the corporation.

- Voluntary dissolution by Shortening the Corporate term under Sec. 136 of the RCC may be affected by amending the articles of incorporation to shorten the corporate term pursuant to the RCC. The Memorandum Circular provides for the documentary requirements to be submitted to the CRMD or SEC Extension Office upon approval of the application for amendment. Upon expiration of the shortened term, corporation shall be deemed dissolved without any further proceedings, subject to provisions on liquidation.

- An entity can propose an expiration date less than one year from the SEC approval or one year or more from such approval. If the dissolution period is less than a year, the applicant has to submit, among others, a tax clearance certificate from the BIR. If the shortened term is a date that is more than one year from the SEC's approval, the SEC can process the application for shortening of the corporate term without waiting for the BIR tax clearance.

- A Corporation may be involuntarily dissolved under Section 138 of the RCC or Section 6(i) of Presidential Decree 902-A by the Commission *motu proprio*, or upon filing of a verified complaint by any interested party based on the grounds enumerated in Sections 1 and 2, Part C of Memorandum Circular No. 05 of 2022.

- The Memorandum Circular shall take effect immediately after its publication.

(Editor's Note: SEC MC No. 5 was published in Manila Standard *and* Business Mirror *on 9 March 2022)*

Alternative Mode for Distributing and Providing Copies of Notice of Meeting, Information Statement, and other Documents in Connection with the Holding of Annual Stockholders' Meetings

SEC Notice dated 16 February 2022 provides for an alternative mode of complying with the existing requirements in the conduct of 2022 annual stockholders' meetings given the continuing threat of COVID-19 community transmission.

SEC Notice dated 16 February 2022

Companies are allowed to notify their stockholders on their Annual Stockholders' Meetings (ASM) via an alternative mode, by publication of the Notice of Meeting in the business sections of two newspapers of general circulation, in print and online format, for two consecutive days. It is required that the last publication of the notice of meeting shall be made no later than 21 days prior to the scheduled ASM.

Notice of meeting shall contain the date, time, place of meeting and other required information under the RCC, issuances of the SEC or By-Laws of the Corporation, and availability of an electronic copy of the Information Statement and Management Report and SEC For 17A and other pertinent documents on the Company's website and PSE Edge.

Guidelines on the Physical Submission of Pleadings and Case-related Documents filed through the Office of the General Counsel's Official E-mail During the Period of State of National Emergency Due to COVID-19 Pandemic

SEC Notice dated 8 March 2022 provides the guidelines on the physical submission of pleadings and case-related documents filed through the Office of the General Counsel's official e-mail during the period of State of National Emergency due to COVID-19 pandemic.

SEC Notice dated 8 March 2022

The Office of the General Counsel (OGC) adopts and implements these Interim Guidelines for the limited manual operations of the Office of the General Counsel during the period of State of National Emergency due to COVID-19 pandemic.

- OGC has three modes of filing, such as a) Manual; b) Registered Mail or Private Courier; and c) Electronic Filing through email to ogc_picc@sec.gov.ph.
- Cut-off time for receiving of physical documents shall be exactly 3:00 p.m. E-mails received beyond 3:00 PM will be processed on the next business day.
- Detailed instructions for requests for Certified True Copy or Plain Copy of Documents Related to cases, legal opinion, filing of petition and appeals, filing responsive pleadings and other documents are discussed in the Notice.
- Revised Guidelines shall take effect on 8 March 2022 and shall continue to be in effect unless modified or recalled by the Office

Submission of Reports Through the Electronic Filing and Submission Tool

SEC Notice dated 30 March 2022 requires all corporations to submit annual reportorial requirements through the eFAST.

SEC Notice dated 30 March 2022

Effective 1 April 2022, all corporations are required to submit their annual reportorial requirements through the eFAST. Reports not yet available in the eFast shall be submitted to ictdsubmission@sec.gov.ph.

All reports submitted online shall be accepted only upon approval of the enrollment in the eFAST.

Over-the-Counter submission through appointment or through mail will not be accommodated.

Court of Tax Appeal Cases

Refund / Issuance of Tax Credit

Matex International Inc. vs. Commission of Internal Revenue
CTA Case No. 10180 promulgated 15 February 2022

Any error committed by the taxpayer in the determination of the appropriate tax base, specifically the total amount of dividends to be, or have been, distributed to its shareholders, does not automatically translate to or result in an "erroneous or illegal tax," as jurisprudentially defined.

Facts:

Company M filed a claim for refund or credit of an alleged erroneous final withholding tax (FWT) on the excess distribution of cash dividends to its shareholders. Company M argued that it declared dividends in excess of its unrestricted retained earnings to which it withheld FWT. Thus, to correct the said alleged mistake, a subsequent board resolution was issued to correct the number of dividends. The adjustment resulted in alleged overpayment of dividends.

Issue:

Is Company M entitled to the refund of the alleged erroneous payment of FWT?

Ruling:

No. In this case, the CTA noted that the supposed distribution of the subject dividends was not founded upon Company M's net income for any year. Neither is there any indication that it is based on any audited financial statement.

Considering that the said declaration of dividends is not shown to be founded upon Company M's net income for any particular year, the CTA cannot ascertain whether the same are excessive. Moreover, Company M has not clearly identified the amount of unrestricted retained earnings it had, prior to the payment of the dividends. Thus, CTA cannot then determine whether there were indeed excess taxes remitted.

Any error committed by taxpayer in the determination of the appropriate tax base does not automatically translate to an "erroneous or illegal tax," as jurisprudentially defined. The taxpayer must prove that the collected or paid FWTs are indeed erroneous or illegal.

Lapanday Foods Corporation vs. Commissioner of Internal Revenue
CTA EB Case No. 2360 (CTA Case No. 9966) promulgated 21 February 2022

One of the conditions for a successful judicial claim for refund or credit under the VAT system (prior to the TRAIN Law) is compliance with the 120+30 day mandatory and jurisdictional periods. Otherwise, it will be outside the jurisdiction of the CTA.

Facts:

Company M filed for an application for VAT refund of its excess/unutilized VAT from zero rated sales that was denied by the BIR. The case was elevated to the CTA.

One of the contentions of Company M is that the mandatory and jurisdictional nature of the 120+30 day period upheld in various Supreme Court decisions does not apply in cases where the Commissioner of Internal Revenue (CIR) issues a decision on the VAT refund after the 120-day period.

Issue:

Is Company M correct in saying that the mandatory and jurisdictional nature of the 120+30 day period upheld in various Supreme Court decisions does not apply in cases where CIR issues a decision on the VAT refund after the 120-day period.

Ruling:

No. Contrary to Company M's argument, one of the conditions for a successful judicial claim for refund or credit under the VAT system is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such claim to prosper.

Citing the case of Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) vs. CIR, the CTA held that it was emphasized that the 30-day period (to appeal to the CTA) commences after the receipt of the BIR's decision or ruling or after the expiration of the 120-day period, **whichever is sooner**. In other words, a judicial claim filed in a period less than or beyond the said 120+30-day period, is outside the jurisdiction of the CTA.

Note: This may no longer be relevant with the amendments introduced by the TRAIN Law.

Pilipinas Kyohritsu Inc. vs. Commission of Internal Revenue
CTA EB Case No. 2395 (CTA Case No. 9706) promulgated 22 February 2022

Claims of Input VAT need not be directly attributable to zero-rated sales since the Tax Code allows allocation.

Handwritten details/information inserted in loose-leaf or computerized accounting receipt/ invoices, or different handwriting of details in documents with signature raise doubts as to the veracity of the details.

Facts:

Company P filed for an administrative claim for VAT refund. Due to the inaction of the CIR, Company P filed the petition for review with the CTA. CTA Second division promulgated the assailed decision in favor of Company P. The BIR appealed the CTA division's decision before the CTA *En Banc*.

A portion of the export sales of services made to Company P's service recipient was also excluded by the BIR for failure to prove that the non-resident service recipient is a non-resident foreign corporation doing business outside the Philippines. The CTA division held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported **at the very least by both (1) SEC certificate of non-registration** and **(2) certificate of foreign incorporation**.

One of the arguments of the BIR is that, to be creditable, the input VAT must come from purchases of goods that form part of the finished product of the taxpayer, or it must be directly used in the chain of production. After determining which input taxes are creditable, the law requires a second evaluation to determine which creditable input VAT are attributable, that is, connection between the purchases and the finished product is concrete and not imaginary or remote.

Issue:

A.) Should there be direct attributability of the purchases of input VAT to the finished product whose sales are zero-rated before the same may be claimed for refund?

B.) Did the CTA division properly disallow the receipts/invoices with handwritten details/information?

Ruling:

A.) No. Section 112 (A) of the Tax Code, as amended, allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of its sales. The law does not require that the input tax be directly attributable to Company P's zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfied the requirement of the law.

B.) Yes. There is nothing in the Tax Code, as amended, which states that handwritten details or information on receipts and invoices would make the said receipts invoices non-compliant with the requirements. Nonetheless, doubt exists as to the veracity of the details on the computerized receipts/invoices which were inserted manually by writing.

Handwritten details/information inserted in receipts/invoices must only be made by authorized signatories. In the case at hand, handwritten TIN and/ or address were inserted in loose-leaf or computerized accounting invoice/ receipt. Considering that that the invoice/ receipt is already computerized, any subsequent insertion therein would raise a doubt as to the completeness of the said invoice/receipt, as well as to loose-leaf invoice/receipt. The same goes with invoice/receipt with mixed handwritten and printed details in documents not identified as either with loose-leaf or CAS permit, and different handwriting of details in documents with signature - only authorized signatories should insert details/information in the invoice/receipt.

Euroversal Properties, Inc. vs. Commissioner of Internal Revenue
CTA EB Case No. 2393 (CTA Case No. 9869) promulgated 1 March 2022

A taxpayer is bereft of any cause of action against the CIR since the taxpayer was not the one who remitted the CGT. Also, the two-year prescription provided under Sections 204 and 229 of the Tax Code, as amended, had already lapsed.

Facts:

Company A, through a Contract to Sell (subject contract), sold 11 parcels of land (subject properties) with an aggregate area of 156,371 square meters. The subject properties were sold to Company B for Php 245,000,000.00, subject to a 30% down payment of the purchase price.

The corresponding CGT on the transaction was paid.

As Company A alleged, various issues arose from the sale of the subject properties to Company B. The latter incurred substantial additional expenses that eventually led to its failure to pay the balance of the agreed purchase price. As a result, Company B caused the annotation of two adverse claims on six titles. Subsequently, Company A and Company B entered into a Compromise Agreement to close the case filed by Company A for the cancellation of the adverse claims before the Regional Trial Court (RTC), which was approved by the latter on 12 July 2016.

Under the Compromise Agreement that the RTC approved and adopted as its judgment, Company A agreed to pay Company B. On the other hand, Company B agreed to cause the cancellation of the annotation of adverse claims and notice of lis pendens on the corresponding titles of the subject properties. The parties also agreed to rescind their previous contract.

On 3 July 2018, Company A filed its administrative claim for refund of the amount, representing the CGT paid on the sale, and on 6 July 2018 filed a Petition for Review before the CTA.

On 3 August 2020, the CTA denied the Petition for Review and ruled that the two-year prescription provided under Sections 204 and 229 of the Tax Code, as amended, had already lapsed.

Company A argues that the running of the two-year prescriptive period should be reckoned from the payment of the CGT. It maintains that the period should have been tacked from the rescission of the subject contract with Company B on 8 July 2015 since it was only then that the right to the refund claimed could be ascertained.

Company A filed a motion for reconsideration before the Court *En Banc*.

Issue:

Is Company A entitled to its claim for refund?

Ruling:

No. Company A is not entitled to the refund of CGT.

Although the seller is the statutory taxpayer of the CGT in transactions involving real property, RR No. 17-2003 allows the buyer to withhold the same from the seller.

The records show that Company B advanced the CGT payment under the withholding tax system upon its partial payment for the subject properties. When the parties subsequently agreed to rescind their agreement, Company A agreed to pay back

the amount of Php 150,000,000.00 to Company B while Company B committed to cause the cancellation of its adverse claims on six of Company A's properties. Neither the Compromise Agreement nor Company A's allegations indicate that the amount paid by Company A to Company B also covered the CGT (that Company B paid in advance). Moreover, the records and evidence tend to show that Company B paid the CGT out of its own pocket and that Company A incurred no expenses in relation to the CGT's payment (given that the contract's rescission restored the parties to their previous situation prior to the contract's perfection).

Even assuming for the sake of argument that Company A has a cause of action to file the present case against CIR, the same would nevertheless be considered filed out of time. The two-year prescription period in this case should be counted from the CGT's payment on 5 July 2013. Any administrative and judicial claim for refund of the CGT should have been filed on or before on 5 July 2015. Since Company A only filed its administrative and judicial claims for refund on 3 July 2018 and 6 July 2018, respectively, its present claim is already barred regardless of any erroneous payment.

Furthermore, even assuming that Company A's claim for refund has not yet prescribed, the CGT payment was not erroneously paid. Since the down payment on the property exceeded 25% of its value, it was only proper that full payment of the CGT be made pursuant to Section 49 (B) in relation to the afore-cited provisions of RR No. 17-2003.

The Court also emphasized that Section 229 of the Tax Code, as amended, provides that the two-year prescription period applies "regardless of any supervening cause that may arise after payment." Therefore, the subsequent rescission of the contract between Company A and Company B does not affect the validity of the CGT payment made. In any event, considerations of equity are also lost on Company A since as explained earlier, it was Company B and not Company A who paid the CGT subject of the present claim for refund.

Alert Orders are written orders issued by customs officers as authorized by the Commissioner on the basis of derogatory information regarding possible noncompliance with this Act. An Alert Order will result in the suspension of the processing of the goods declaration and the conduct of physical or non-intrusive inspection of the goods within 48 hours from the issuance of the order. Within 48 hours or, in the case of perishable goods, within 24 hours from inspection, the alerting officer shall recommend the continuance of processing of goods in case of a negative finding, or issuance of a warrant of seizure and detention if a discrepancy between the declaration and actual goods is found. The Bureau's information system shall immediately reflect the imposition or lifting of an alert order.

Violations

SL Harbor Bulk Terminal Corporation vs Commissioner of Customs
CTA Case No. 9551 promulgated 24 February 2022

Facts:

Company A operates a storage tank in Limay, Bataan. On 15 December 2016, a vessel arrived at the Port in Limay, Bataan carrying 44,000 Metric Tons (MT) of imported IFO from Singapore. After the conduct of port entry formalities, the port authority allowed the discharge of the shipment into Company A's storage tanks which lasted until 17 December 2016. On 16 December 2017, District Collector Premediles issued the *Writ of Seizure and Detention* (WSD) against Company A. Company A filed a Motion to Lift the WSD before the Hearing Officer of the Bureau of Customs (BOC) Legal Service, Port of Limay, Bataan.

Then District Collector promulgated a Decision and seized the 44,000 MT of imported IFO. Company A then filed a Notice of Appeal to the CIR elevating the decision rendered by the said District Collector but since the prescriptive period to decide had already lapsed and no decision was issued, Company A filed a Petition for Review.

Issue:

Was Company A's right to due process violated by not issuing an Alert Order (AO)?

Ruling:

Yes. An Alert Order is necessary prior to the issuance of Writ of Seizure and Detention (WSD). An Alert Order may be issued only after lodgement of the goods declaration and prior to the release of goods from customs custody. Under no circumstances shall the suspension of the processing of goods declaration be allowed except through an Alert Order issued by an authorized customs officer.

In the instant case, it is Company A's right to due process, that was violated by the Commissioner of Customs' agents and representative in the issuance of WSD without issuing first the required AO. Thus, the WSD is null and void.

Since the WSD is null and void due to the non-issuance of the required AO, the subsequent actions of the Commissioner of Customs, the District Collector and his representatives, are also null and void.

Assessment

Commissioner of Internal Revenue vs. Robinsons True Serve Hardware Philippines Inc.
CTA EB No. 2293 (CTA Case No. 9418) promulgated 1 March 2022

Basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.

Facts

Company A received a Letter of Authority (LOA) authorizing the examination of its books of accounts and other accounting records for taxable year (TY) 2010 by the CIR.

Thereafter, Company A executed a Waiver of the Defense of Prescriptions under the Statutes of Limitations, and CIR accepted the same on the same date.

Subsequently, Company A received a copy of the Preliminary Assessment Notice (PAN) showing deficiency tax assessments, inclusive of increments, for TY 2010. Company A disputed the PAN through a letter, which was received by the CIR on the same date.

Thereafter, Company A received a copy of the Formal Letter of Demand (FLD) with Audit Result/Assessment Notices, inclusive of increments representing alleged deficiency taxes for TY 2010. Company A protested the FLD through a letter filed with the BIR. Company A subsequently filed with the BIR another letter, submitting additional supporting documents and schedules to support its position.

Subsequently, Company A received a copy of the Final Decision on Disputed Assessment (FDDA) signed by the Assistant Commissioner of the BIR Large Taxpayers Service, assessing the Company for deficiency IT, VAT, EWT, and DST.

Consequently, Company A filed a motion or request for reconsideration of the FDDA. However, the same was denied.

Then, Company A filed a Petition for Review with the Court of Tax Appeals (Division). After the trial, the 2nd Division of the CTA granted Company A's petition cancelling and setting aside the deficiency tax assessment of the CIR.

The Court in Division ruled that the subject tax assessment is void due to lack of definite amount of tax liabilities which Company A must settle. This is on the ground that the FLD states that the interest will be adjusted if paid beyond the date specified therein, hence, the amount of tax liability remains indefinite, since the said tax assessments are still subject to modification or adjustment, depending on the date of payment. The Court in Division also noted that the FDDA issued by the CIR is void for failure to state the facts, the applicable law, rules and regulations, or jurisprudence on which it was based.

The CIR filed a motion for reconsideration on the above decision, however, the same is denied. The CIR filed a Petition for Review with the CTA *En Banc* arguing that the Court in Division erred in ruling that the FLD and FAN are void because of its failure to demand payment for a specified period of time.

Issue:

Were the FLD and FAN void due to lack of definiteness of the amount of tax liability being assessed because of the statement "the interest will still be adjusted if paid beyond the date specified therein"?

Ruling:

No. The assessment notices attached to the FLD and FDDA contained due dates, which are 14 November 2014 and 30 March 2016, respectively. With those due dates, together with the computation of tax liability up to the said due dates, then there is a definite amount of tax liability. Thus, even with the statement that the interest shall still be adjusted if paid beyond the due date provided, there is no indefiniteness, since it is only the interest that shall be adjusted.

The Court reiterated that the basic deficiency tax liability remains the same regardless of when the taxpayer chooses to pay the assessment. The interest, and only the interest, may be adjusted if the taxpayer pays before or after the due date. What is important is that there is a due date contained in the FLD/FDDA/assessment notice.

Thus, the subject assessments are valid since they contain a definite due date and a definite tax liability.

RR No. 21-18 is clear and admits no exception: for deficiency tax liabilities falling due prior to the effectivity of the TRAIN Law but remaining unpaid after the said date, the taxpayer is still liable to pay both deficiency and delinquency interests at the rate of 20% on its unpaid tax liabilities until 31 December 2017. The lower rate of 12% and the prohibition on the double imposition of interests shall only take effect starting 1 January 2018. Moreover, mere delay in the payment of any deficiency taxes justifies the immediate imposition of the 25% surcharge under Section 248 of the Tax Code.

Solid Video Corporation vs. Commissioner of Internal Revenue
CTA EB No. 2195 (CTA Case No. 9051) promulgated 01 March 2022

Facts:

Company A received LOA No. 048-2011-00000445, dated 24 October 2011. The LOA authorized the Revenue Officer and Group Supervisor of RDO No. 48-West Makati to examine Company A's books of accounts and other accounting records for all internal revenue taxes for calendar year 2010.

Then, Company A received a PAN and thereafter, received the FAN with attached Details of Discrepancies. In the FAN, the BIR affirmed Company A's tax liability in the PAN.

Aggrieved, Company A filed its administrative protest to the FAN.

Thereafter, Company A received the FDDA denying Company A's protest.

Company A filed a Petition for Review before the Court in Division which was partially granted.

Subsequently, Company A posted its Motion for Partial Reconsideration and asked for reconsideration of the imposition of deficiency and delinquency interests and surcharge.

Finding merit in Company A's Motion for Partial Reconsideration, the Court in Division issued an Amended Decision, lowering the Company's total deficiency tax liabilities.

Company A argues that subjecting its tax liabilities to both delinquency and deficiency interests is penal, grossly excessive, unconscionable, and contrary to the mandates of the Tax Code and Revenue Memorandum Circular No. 46-99.

Company A also objects to the imposition of the 25% surcharge on its deficiency tax assessments. It contends that the FDDA did not impose this penalty and, thus, concludes that the Court in Division is also not empowered to charge the same. It states that requiring it to pay the surcharge constitutes a violation of its rights to due process.

On the other hand, the BIR contends that the imposition of both delinquency and deficiency interests prior to 1 January 2018 is sanctioned under the Tax Code and RR No. 21-18, which the Courts are duty-bound to implement.

The BIR also points out that the Court in Division is correct in imposing the 25% surcharge, citing as basis Section 248 of the Tax Code which states that a taxpayer who failed to settle its deficiency taxes on time is legally liable to pay the said penalty. Since Company A failed to pay the deficiency income tax and VAT within the stated due date on the FDDA, then it follows that it is liable for the 25% surcharge.

Issues:

1. Did the Court in Division correctly impose deficiency and delinquency interests on Company A's unpaid tax liabilities until 31 December 2017?

2. Did the Court in Division correctly impose 25% surcharge on Company A's unpaid tax liabilities?

Ruling:

1. Yes. the Court in Division is correct in its computation of Company A's interest.

   Clearly, the FDDA provides for the deadline or the period until when Company A is supposed to pay its deficiency tax liability, which, in this case, is 15 May 2015. Consequently, during the said date, the law in effect was Section 249 of the Tax Code, which states that there shall be assessed and collected on any unpaid amount of tax, interest at the rate of 20% per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid. The same Section provides that any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof. In addition, Section 249 C of the Tax Code provides that in case of failure to pay, a deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there

shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

The Court also cited as basis the interpretation made by the Supreme Court in the latter's ruling in Takenaka Corporation Philippine Branch v. CIR where the Supreme Court held that the imposition of deficiency interest and delinquency interest is simultaneous, pursuant to Section 249 (A) (B) (C) of the Tax Code, as amended. The Court emphasized that the simultaneous imposition of deficiency and delinquency interests is allowed under Section 249 of the Tax Code, considering that these interests serve different purposes. Deficiency interest is imposed on deficiency taxes due from the date prescribed for its payment until full payment thereof, while delinquency interest is imposed on any deficiency tax or any surcharge or interest thereon from its due date, appearing in the notice and demand of the taxpayer, until the deficiency amount is fully paid.

Moreover, the Court clarified that RR No. 21-18 is clear and admits no exception: for deficiency tax liabilities falling due prior to the effectivity of TRAIN Law but remained unpaid after the said date, the taxpayer is still liable to pay both deficiency and delinquency interests at the rate of 20% on its unpaid tax liabilities until 31 December 2017. The lower rate of 12% and the prohibition on the double imposition of interests shall only take effect starting 1 January 2018.

2. Yes. Section 248 of the Tax Code, as amended, provides that there shall be imposed, in addition to the tax required to be paid, a penalty equivalent to 25% of the amount due in case of failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment. The Court clarified that the Tax Code did not require the inclusion of the 25% surcharge in the assessment before the imposition could be considered valid. Moreover, the Court cited Commissioner of Internal Revenue v. South Premiere Power Corp. where the Supreme Court ruled that the mere delay in the payment of any deficiency taxes justifies the immediate imposition of the 25% surcharge.

Seizure/Forfeiture

Rose Marie G. Clemente vs. Republic of the Philippines
CTA EB No. 2288, promulgated on 2 March 2022

Violation of Section 2505 in relation to Section 2530 (l) (2) of the Tariff and Customs Code of the Philippines, involving failure to declare baggage with dutiable articles, constitutes fraud.

Facts:

Customs Intelligence & Investigation Service/Intelligence Group (CIIS/IG) informed the Bureau of Customs Flight Supervisor that an operation would be conducted against an incoming passenger on board Flight DG7833. The CIIS/IG later identified the passenger to be Person C, who would allegedly bring into the Philippines pieces of jewelry from Hong Kong.

CIIS/IG positively identified Person C, who was then waiting for her luggage at the carousel area. After picking up her checked-in luggage, Person C immediately proceeded to the customs area, passing through the Green Lane without submitting an accomplished Customs Declaration Form. This prompted Customs Examiner to ask Person C if she had anything to declare. Person C did not reply and walked towards the exit area but was stopped by BOC Flight Supervisor on duty.

Person C's luggage was examined in her presence. The Customs Examiner found inside Person C's carry-on luggage 259 pieces of jewelry, consisting of 116 pieces of earrings, 18 pieces of bracelets, 55 pieces of rings, 30 pieces of pendants, and 40 pieces of necklaces. For Person C's failure to inform the customs officers that she had high-value jewelry in her luggage and for her failure to offer any plausible explanation why, said pieces of jewelry were confiscated for violation of Section 2505 in relation to Section 2530 (l) (2), 30 of the Tariff and Customs Code of the Philippines (TCCP).

Issue:

Is Person C liable for violation of Section 2505 in relation to Section 2530 (l) (2), 30 of the TCCP?

Ruling:

Yes. Fraud on the part of Person C was sufficiently established by the factual findings of the Court in Division.

Section 2505 in relation to Section 2530 (l) (2) of the Tariff and Customs Code of the Philippines categorically imposes an obligation upon the passenger to declare, upon arrival in the Philippines, any dutiable article found in his/her baggage. Failure to declare to the customs official will subject the article to seizure unless it is established to the satisfaction of the Collector that such failure to mention or declare the dutiable article is without fraud.

From its thorough evaluation of facts, the Court in Division determined that fraud could be inferred from the attendant circumstances in the present case. In particular, Person C, upon arrival, immediately proceeded to the customs area passing through the Green Lane without submitting an accomplished Customs Declaration Form despite visible notice requiring its submission at the NAIA arrival area.

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

The deadlines and timelines mentioned in this Tax Bulletin are pursuant to our understanding of the existing administrative issuances of the BIR as of the date of writing. These may be subject to change in light of the recently passed Bayanihan 2, which also authorizes the President to move statutory deadlines and timelines for the submission and payment of taxes, fees, and other charges required by law, among others.