Tax Bulletin

August-September 2021

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BIR Administrative Requirements

RR No. 16-2021 amends the pertinent provisions of RR 2-2006 and 11-2013, as amended by RR 2-2015, more particularly on the manner of submission of copies of BIR Form Nos. 2307 and 2316.

RR No. 16-2021 dated 3 August 2021

RR No. 2-2015	RR No. 16-2021
Section. 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST OF WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (SAWT) BY THE PAYEE/INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT/INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.	**Section. 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST OF WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (SAWT) BY THE PAYEE/INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT/INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.**
A. xxx B. xxx C. xxx D. Returns required to be filed with SAWT and Certificate of Creditable Tax Withheld at Source 1. xxx 2. xxx 3. xxx 4. xxx 5. xxx 6. xxx 7. xxx 8. xxx 9. xxx	A. xxx B. xxx C. xxx D. Returns required to be filed with SAWT and Certificate of Creditable Tax Withheld at Source 1. xxx 2. xxx 3. xxx 4. xxx 5. xxx 6. xxx 7. xxx 8. xxx 9. xxx
Provided, however, that the SAWT shall be submitted through the applicable modes of submission prescribed under RR No. 1-2014, using the data entry and validation module of the BIR. On the other hand, in lieu of the submission of hard copies of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) as an attachment to SAWT, the following procedures shall be strictly observed:	Provided, however, that the SAWT shall be submitted through the applicable modes of submission prescribed under RR No. 1-2014, using the data entry and validation module of the BIR. On the other hand, in lieu of the submission of hard copies of Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) as an attachment to SAWT, the following procedures shall be strictly observed:
1. Scan the original copies of BIR Form No. 2307 through a scanning machine or device; 2. Store the soft copies of BIR Form No. 2307 using the **"PDF" file format with the filenames alphabetically arranged in a Digital Versatile Disk-Recordable (DVD-R). The filename shall contain the following information separated by an underline:** **a. BIR-registered name of the taxpayer-payor;** **b. Taxpayer Identification Number (TIN), including the head office code or branch code of the payor, whichever is applicable; and** **c. Taxable Period.** **Example: Rizal Mfg. Corp._131885220000_09312014);**	1. Scan the original copies of BIR Form No. 2307 through a scanning machine or device; 2. Store the soft copies of BIR Form No. 2307, using the **file format and naming conventions prescribed under the available modes or submission facilities of the BIR; and** *Removed pertinent provision.*

RR No. 2-2015	RR No. 16-2021
3. Label the DVD-R containing the soft copies of the said BIR forms in accordance with the format prescribed in Annex "A" of those Regulations; and 4. Submit the duly accomplished DVR-R to the BIR Office where the taxpayer is duly registered, together with a notarized Certification, using the format in Annex "C" duly signed by the authorized representative of the taxpayer certifying that the soft copies of the said BIR form contained in the DVD-R are the complete and exact copies of the original thereof. E. xxx	3. Submit the soft copies of said BIR Form in accordance with revenue issuances governing the selected modes or submission facilities of the BIR. E. xxx
Section. 2.83. Statements and Return. – xxx xxx xxx However, in cases covered by substituted filing, the employer shall furnish each employee with the original copy of BIR Form No. 2316 and, in lieu of the submission of hard copies of the duplicate original thereof, the following procedures shall be strictly observed: 1. Scan the duplicate original copies of BIR Form No. 2316 through a scanning machine or device; 2. Store the soft copies of BIR Form No. 2316 using the "PDF" file format with the filenames alphabetically arranged in a Digital Versatile Disk-Recordable (DVD-R). The filename shall contain the following information: a. Surname of the employee; b. Taxpayer Identification Number (TIN) of the employee; and c. Taxable Period. Example: Dela Cruz_131885220000_12312014; 3. Label the DVD-R containing the soft copies of the said BIR forms in accordance with the format prescribed Annex "B" of these Regulations; and 4. Submit the duly accomplished DVR-R to the BIR Office where the taxpayer is duly registered not later than February 28 following the close of the calendar year, together with a notarized Certification prepared according to the format in Annex "C" of these Regulations and duly signed by the authorized representative of the taxpayer certifying that the soft copies of the said BIR form contained in the DVD-R are the complete and exact copies of the original thereof. xxx xxx xxx	Section. 2.83. Statements and Return. – xxx xxx xxx However, in cases covered by substituted filing, the employer shall furnish each employee with the original copy of BIR Form No. 2316 and, in lieu of the submission of hard copies of the duplicate original thereof, the following procedures shall be strictly observed: 1. Scan the duplicate original copies of BIR Form No. 2316 through a scanning machine or device; 2. Store the soft copies of BIR Form No. 2316 using the file format and naming conventions prescribed for the available modes or submission facilities of the BIR; and *Removed pertinent provision.* 3. Submit the soft copies of said BIR Form in accordance with revenue issuances governing the selected modes or submission facilities of the BIR. xxx xxx xxx

- The requirements prescribed in the preceding Section of these Regulations **shall apply to all taxpayers whether or not registered with the Large Taxpayer Service (LTS) of the BIR**.

RR No. 18-2021 consolidates the regulations on the affixture of Internal Revenue Stamps on imported and locally manufactured cigarettes, heated tobacco products and vapor products for domestic sale or for export and the use of the Enhanced IRSIS for the ordering, distribution, monitoring, report generation and incorporating the strict supervision of production, release, affixture, inventory and sale of cigarettes.

RR No. 18-2021 dated 10 September 2021

- **Enrollment of Importers and Local Manufacturers with Enhanced IRSIS**

  1. A letter of intent shall be filed with the Chief, Excise LT Field Operations Division (ELTFOD) of the BIR, together with a duly notarized Board Resolution, in case of a juridical entity, or a Special Power of Attorney, in case of sole proprietor.

  2. The taxpayer shall subsequently proceed to the BIR website and access the Enhanced IRSIS icon for purposes of initiating the enrollment process.

- **Ordering of Internal Revenue Stamps Through Enhanced IRSIS**

  1. Each and every order shall be placed only through the stamp ordering module of the Enhanced IRSIS.

  2. All orders submitted on or before 12:00 NN shall be processed within the said working day.

  3. Upon approval by BIR, an email notification shall be received by the authorized user confirming the order with the date of release.

  4. The internal revenue stamps shall be released by APO Production Unit, Inc. (APO) not later than 15 calendar days from the date of approval by the BIR.

- **Prior Payment of Excise Tax on Orders of Internal Revenue Stamps**

  1. Each and every order shall be approved by the BIR, provided, that the excise tax due on the total number ordered has been paid.

  2. The excise tax payment shall be made through the Electronic Filing and Payment System (eFPS) of the BIR. Accordingly, the importer or local manufacturer shall be enrolled with the eFPS.

  3. Non-eFPS taxpayers shall use other mode of filing and payment to be captured through system integration or manual date entry.

  4. In case of eFPS downtime or unavailability, the excise tax return shall be manually filed and payment shall be made through the duly Authorized Agent Banks (AABs) of the BIR where the taxpayers are enrolled.

  5. The manual return should eventually be filed in the eFPS facility on or before the deadline stated in accordance with RMO No. 65-2016.

- **Payment of the Price of Internal Revenue Stamps, Escalation Provisions**

  1. After the approval of the order and prior to its release, the price thereof shall be paid in the amount of P0.20 per piece of internal revenue stamp.

  2. The price shall be paid through the on-line payment facility, over-the-counter, or bills-payment on-line facility of the APO.

  3. APO and the BIR shall jointly approve the adjustment of internal revenue stamps, based on the recommendation of APO and after consultation with all concerned stakeholders. The amendatory revenue regulations for effective implementation of price adjustments shall be issued.

- **Release of Internal Revenue Stamps from APO**

    1. The stamps shall be released and received personally by the authorized representatives of the importer or local manufacturer within 15 calendar days from the scheduled date of release as indicated in the email notification.

    2. Failure to claim from the said period shall authorize APO to charge the taxpayer for reasonable storage fees.

    3. The authorized BIR personnel shall always be present to witness and monitor the actual release by APO to the taxpayer's authorized representatives. Accordingly, the BIR personnel shall attest thereto by affixing his or her signature on the release document.

- **Spoiled Internal Revenue Stamps, Bad Orders, Losses and Replacements thereof**

    1. In cases where the internal revenue stamps already in the possession of the local manufacturer, became spoiled, were damaged or rendered unfit for affixture, the said stamps shall be surrendered to the BIR within 6 months from the date of release by APO.

    2. In case of spoiled stamps and bad orders in the possession of the importers, the same shall be surrendered to the BIR within 10 months immediately after the receipt thereof from APO.

    3. Bad orders or spoiled stamps to be surrendered shall be affixed and properly arranged in rows and columns on the sheet of paper specifically provided by APO.

    4. The replacement of spoiled stamps shall be allowed only upon approval by the BIR using the Enhanced IRSIS, with corresponding payment of the printing cost prevailing at the time when the spoiled stamps were originally ordered subject to top-up if applicable.

    5. For bad orders, the price for printing cost thereof shall no longer be paid by the importer or manufacturer, subject to prior verification by APO upon surrender thereof with corresponding approval from the BIR.

- **Affixture of Stamps**

    1. All importations and removals from the place of production shall be affixed with the internal revenue stamps.

    2. Products manufactured for export irrespective of location shall strictly comply with all existing BIR rules and regulations, terms and conditions for operating in relation to registration of brands, products, labels and posting of export bonds, among others.

- **Product Registration Requirements, Export Compliance and Supervision by Revenue Officers on Premise (ROOP)**

    1. The BIR, through the Excise LT Regulatory Division (ELTRD), shall ensure that all manufacturers, whether domestic or a Special Economic and Freeport Zone-registered Export Enterprise or distributor shall register their brands/variant of products and comply with the labelling and packaging requirements.

2. The existing requirements under RR No. 3-2006 and related issuances shall be complied by all exporters within 30 days from the date of actual removal from the place of production subject to extension for meritorious reasons as approved by the BIR.

3. For taxpayers availing of Product Replenishment, the documentary requirements under RR No. 3-2008 shall be submitted accordingly.

4. For Special Economic and Freeport Zones, the exporter may provide equivalent documents used in their respective zones duly confirmed by the Zone.

5. Submission of the above documents shall warrant the actual shipment of the product to the country of destination.

- **Reporting Requirements**

1. The following reports shall be submitted through the Enhanced IRSIS reporting facilities within the deadlines prescribed:

Type of Report	Deadline of Submission
a. Affixture of Stamps	Within 10 working days from the end of the month of affixture. In the case of imported cigarettes, heated tobacco products and vapor products, date of affixture shall refer to date of release from Customs custody
b. Removal of Cigarettes, Heated Tobacco Products and Vapor Products	Within 15 working days from the date of removal from the finished goods warehouse (A-5), (A-8) and (A-9) for local manufacturers, and/or tax-paid depots, for importers
c. Spoiled, Lost Stamps and Bad Orders Stamps	Within 6 months from the date of release by APO and in case of importer, within 10 months after receipt from APO

- **Monitoring of Stamps, Cigarettes, Heated Tobacco Products and Vapor Products Through Mobile Verification Devices**

1. The BIR, through its authorized representatives, shall conduct on-the-spot surveillance of cigarettes, heated tobacco products and vapor products either in the place of production, storage facilities or in the domestic market, as the case may be, through the use of mobile verification devices issued for the purpose.

2. In case of discrepancies found during the conduct of surveillance, the appropriate excise taxes shall be assessed and collected after verification from all persons who are found liable thereto, inclusive of the appropriate penalties, without prejudice to the confiscation and forfeiture of any untaxed products and the filing of the appropriate criminal case.

- **Destruction of Spoiled, Bad Order and Factory Defected Stamps**

    1. The taxpayer shall apply for destruction of the approved spoiled, bad order and factory defected stamps within 6 months from the date of replacement.

- **Prohibition against Possession and/or Accumulation of Previously Affixed Internal Revenue Stamps or Used/Consumed Packs/Cartons of Products with Affixed Internal Revenue Stamps**

    1. Any person who shall violate the said prohibition and the importer or manufacturer, as buyer-transferee thereof, who shall re-use or affix the previously affixed stamps on packs/cartons of untaxed products or, who shall recycle, reprocess or refill used/consumed packs/cartons of products, shall be jointly and severally liable for the excise tax otherwise due on such packs/cartons of products, without prejudice to the filing of the appropriate criminal actions against them.

- **Transitory Provisions**

    1. All concerned importers and local manufacturers shall enroll with the Enhanced IRSIS and orders for the NEW internal revenue stamps may be submitted for approval not later than 15 calendar days before the effectivity of these Regulations.

    2. No later than 1 October 2021, all locally manufactured packs/cartons of products shall be affixed with the NEW internal revenue stamps.

    3. No importation and subsequent release of such excisable articles shall be allowed unless the NEW internal revenue stamps shall be affixed thereto effective 1 January 2022.

    4. Effective 1 January 2022, all products manufactured in the Philippines and/or imported into the Philippines shall be affixed with the said stamps.

    5. All applications for replacement of spoiled or bad order stamps having Unique Identifier Codes (UIC) generated from the previous system shall be processed manually.

    6. All applications for replacement by reason of factory defects filed prior to 1 March 2021 will be manually processed.

    7. No later than 15 November 2021, all concerned importers and local manufacturers shall comply with the submission of the required monthly reports.

- **Penalties**

    1. Any violation of these Regulations shall be subject to corresponding penalties under the pertinent provisions of the NIRC of 1997, as amended, and applicable regulations issued by the BIR.

- **Effectivity**

    1. These Regulations shall take effect 15 days after the publication thereof in leading newspaper of general circulation.

RMO No. 24-2021 prescribes the creation of ATC for excise taxes on exports of sweetened beverages products paid through BIR Form 0605 (Payment Form).

RMO No. 24-2021 dated 13 August 2021

- To facilitate the proper identification and monitoring of payment for excise tax on exports of sweetened beverages paid through BIR Form 0605 in related to RR No. 10-2021 and in accordance with RR No. 3-2008, the following ATC is hereby created:

ATC	Description	Legal Basis	BIR Form No.
EXB10	Excise tax on export of sweetened beverages products	RR No. 10-2021* RR No. 3-2008**	0605

**RR No. 10-2021 amended pertinent provisions of Section 10 under RR No. 20-2018 relative to the outright exemption granted to the exportation of sweetened beverages products.*

***RR No. 3-2008 amended certain provisions of existing revenue regulations on the granting of outright excise tax exemption on removal of excisable articles intended for export or sale/delivery to International Carriers or to tax-exempt entities/agencies.*

- The RMO shall take effect immediately.

RMC No. 88-2021 circularizes the recently published list of withholding agents for inclusion to and deletion from the existing list of TWAs who are required to deduct and remit 1% or 2% CWT for the purchase of goods and services, respectively.

RMC No. 88-2021 dated 16 July 2021

- The obligation to deduct and remit the 1% and 2% CWT shall continue, commence or cease, as the case may be, effective 1 August 2021. Any taxpayer not found in the published list of TWAs is deemed excluded and therefore not required to deduct and remit the 1% or 2% CWT.

- For purposes of uniformity and in compliance with the policy of ease of doing business, any written request by the taxpayers as a separate documentary proof for being identified as TWAs, despite the publication in the newspaper of general circulation being deemed sufficient, shall be filed with the Revenue District Office and the corresponding Certification issued by its Revenue District Officer where the concerned withholding agent is duly registered.

RMC No. 91-2021 provides the extension on the deadline of filing of returns and payment of the corresponding taxes due thereon, and submission of reports and attachments, falling within the period from 6 August 2021 to 20 August 2021 for taxpayers under ECQ and MECQ.

RMC No. 91-2021 dated 3 August 2021

- The deadline falling from 6 August 2021 to 20 August 2021 are hereby extended for a period of 15 calendar days from 20 August 2021. However, if the ECQ and/or MECQ will be extended, then filing of returns and payment of the corresponding taxes due thereon, and submission of reports and attachments falling within the period shall also be extended by 15 calendar days from the lifting of the ECQ and/or MECQ. Taxpayers during the said period may:

  1. Pay internal revenue taxes at the nearest Authorized Agent Banks (AABs), notwithstanding the RDO jurisdiction;

  2. File and pay the corresponding tax due thereon to the concerned Revenue Collection Officers (RCOs) of the nearest Revenue District Office (RDO), even in areas where there are AABs.

Provided that payment of internal revenue taxes in cash should not exceed P20,000.00, while those for check payment will have no limitation if the same is made with RCO in the district office. Provided further that all checks shall be made payable to Bureau of Internal Revenue (with or without "IFO Name and TIN of the taxpayer" written on the check as previously required) and that the name and branch of the receiving AAB may no longer be indicated therein: and

3. Pay taxes through the following online payment facilities:

    - Landbank of the Philippines (LBP) Link.BizPortal – for taxpayers who have an ATM account with LBP and/or holders of Bancnet ATM/Debit/Prepaid Card and taxpayers utilizing PesoNet facility (depositors of RCBC, Robinsons Bank and Union Bank); or
    - Development Bank of the Philippines (DBP) Tax Online – for holders of Visa/Mastercard, Credit Cards and/or Bancnet ATM/Debit Cards; or
    - Union Bank Online Web and Mobile Payment Facility – for taxpayers who have an account with Union Bank of the Philippines; or
    - Mobile Payment (GCash/PayMaya).

- If the extended deadline falls on a non-working day or a holiday, the same shall be on the next working day.

RMC No. 92-2021 extends the deadline for filing of position papers, replies, protests, documents and other similar letters and correspondences in relation to the ongoing BIR audit investigation and filing of VAT Refund with the VCAD due to the declaration of ECQ and MECQ in the National Capital Region and other areas of the country.

RMC No. 92-2021 dated 9 August 2021

- The deadline for filing of the following papers, letters, and documents falling due on August 6, 2021 and during the ECQ and MECQ period, including extensions thereof, for taxpayers registered with the Revenue District Offices (RDOs) in areas covered by the ECQ and MECQ declaration or for registered taxpayers filing the aforementioned papers, letters, and documents with the appropriate BIR Offices located in areas covered by the ECQ and MECQ declarations is hereby extended as follows:

Letter/Correspondence	Extended Deadline
Position Paper and Supporting Documents in Response to Notice of Discrepancy	30 days from lifting of the ECQ and/or MECQ
Reply and Supporting Documents in Response to the Preliminary Assessment Notice (PAN)	15 days from lifting of the ECQ and/or MECQ
Protest Letter in Response to the Final Assessment Notice/Formal Letter of Demand (FAN/FLD)	30 days from lifting of the ECQ and/or MECQ
Transmittal Letter and Supporting Documents in relation to Request for Reinvestigation	30 days from lifting of the ECQ and/or MECQ
Request for Reconsideration to the Commissioner of Internal Revenue (CIR) on Final Decision on Disputed Assessment (FDDA)	30 days from lifting of the ECQ and/or MECQ
Submission of Documents in Response to Subpoena Duces Tecum	15 days from lifting of the ECQ and/or MECQ
Submission of Documents in relation to First, Second, and Final Notice	10 days from lifting of the ECQ and/or MECQ
Other Similar Letters and Correspondences	30 days from lifting of the ECQ and/or MECQ
Filing of VAT Refund with VCAD	30 days from lifting of the ECQ and/or MECQ

- Moreover, face to face meetings of BIR officials and employees with taxpayers and/or their authorized representatives in the areas covered by the ECQ and MECQ declarations are deferred and rescheduled until the lifting of ECQ and/or MECQ.

- In case of any future declarations of ECQ and/or MECQ by the government on any area/s of the country, thereby restricting movement in the said area/s, the deadline of submission of the aforementioned papers, letters, and documents falling within the ECQ and/or MECQ period shall likewise be extended, following the extended deadlines identified above. Furthermore, face to face meetings of BIR officials and employees with taxpayers shall likewise be deferred and rescheduled until the lifting of any future declarations of ECQ and/or MECQ.

RMC No. 93-2021 suspends the running of the statute of limitations on assessment and collection of taxes pursuant to Section 223 of the NIRC of 1997, as amended, due to the declaration of ECQ and MECQ in the National Capital Region and other areas of the country.

RMC No. 93-2021 dated 9 August 2021

- Pursuant to Section 223 of the National Internal Revenue Code of 1997, as amended, which provides that: "The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for 60 days thereafter -xxx-" vis-a-vis the definition of "quarantine" under RR No. 11-2020, as amended by RR No. 12-2020, the running of the statute of limitations for assessment and collection of deficiency taxes is suspended in the affected jurisdictions while ECQ and/or MECQ is in effect, including any extension/s thereof, and for 60 days thereafter. The suspension of the running of the Statute of Limitations shall apply with respect to the issuance and service of assessment notices, warrants and enforcement, and/or collection of deficiency taxes.

- In case of any future declarations of ECQ and/or MECQ by the government on any area/s of the country, thereby restricting movement in the said area/s and effectively barring the service of assessment notices, personally or by substituted service, and Warrants of Distraint and or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes, the running of the statute of limitations for assessment and collection of deficiency taxes shall likewise be suspended in the affected jurisdictions while ECQ and/or MECQ is in effect, and for 60 days thereafter.

- This Circular shall apply nationwide on areas placed under ECQ and MECQ.

RMC No. 96-2021 consolidates the weekly issuance of the OM, more particularly OM Nos. 39-2021, 40-2021, and 43-2021 for the month of June, circularizing the weekly Price of Sugar at Millsite issued by the SRA pursuant to RR No. 13-2015.

RMC No. 96-2021 dated 30 July 2021

- The RMC provides that while the SRA-issued weekly Price of Sugar at Millsite reflects the comparative prices of sugar between the previous and current years, the consolidated schedule on the said weekly OMs contain only that of the current year for purposes of imposing the 1% expanded withholding tax on sugar.

Other BIR Issuances

RR No. 14-2021 suspends certain provisions of RR No. 5-2021 pending passage of appropriate legislation to ease the burden of taxation among proprietary schools during the COVID-19 pandemic.

RR No. 14-2021 dated 26 July 2021

- The implementation of the following provisions of RR No. 5-2021 are suspended pending passage of such appropriate legislation to ease the burden of taxation among proprietary educational institutions, especially during this time of COVID-19 pandemic, and taking into account the pending Bills in Congress seeking to amend Section 27 (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, to finally clarify the income taxation of schools:

  i. Section 2 (C), on the definition of Proprietary Educational Institutions, insofar as it includes therein the phrase, "**which are non-profit**"

  ii. Section 2 (E), on the definition of Non-Profit, insofar as it applies to "**Proprietary Educational Institutions,**" and,

  iii. Section 3 (B), which provides an illustration on the tax treatment of Proprietary Educational Institutions that are non-profit.

- This Regulation shall take effect immediately and all other revenue issuances inconsistent with this are hereby modified or amended accordingly.

RR No. 15-2021 defers the implementation of RR No. 9-2021, which amended RR No. 16-2005, to implement the imposition of 12% VAT on transactions previously taxed at zero rate under Section 106(A)(2)(a), subparagraphs (3), (4) and (5), and Section 108(B), subparagraphs (1) and (5) of the Tax Code.

RR No. 15-2021 dated 21 July 2021

- In light of the continuing COVID-19 pandemic and its impact on the export industry, the implementation of RR No. 9-2021 dated 9 June 2021 is **hereby deferred until the issuance of an amendatory revenue regulations**.

- This Regulation **shall take effect immediately**.

RR No. 17-2021 implements the extension of the Estate Tax Amnesty provided for in the Act by amending certain provisions of RR No. 6-2019, particularly on the period of its availment.

RR No. 17-2021 dated 26 July 2021

Sections 9, 12, and 13 of RR No. 6-2019 are hereby amended as follows:

Provisions under RR No. 6-2019	Amendments under RR No. 17-2021
Section. 9. Time and Place of Filing Estate Tax Amnesty Return (BIR Form 2118-EA) and Payment of Estate Tax Due. – For purposes of these Regulations, the Estate Tax Amnesty Return (ETAR) (BIR Form No. 2118-EA) (Annex B) shall be filed by the executor or administrator, legal heirs, tran0sferees or beneficiaries within two (2) years from the effectivity of these Regulations with the RDO having jurisdiction over the last residence of the decedent. In case of a non-resident decedent, with executor or administrator in the Philippines, the **return** shall be filed with the RDO where such executor/administrator is registered or if not yet registered, at the executor/ administrator's legal residence. In case of a non-resident decedent with no executor or administrator in the Philippines, the return shall be filed with RDO No. 39- South Quezon City. The foregoing provisions notwithstanding, the Commissioner of Internal Revenue may exercise his power to allow a different venue/place for the filing of tax returns.	**Section. 9. Time and Place of Filing Estate Tax Amnesty Return (BIR Form 2118-EA) and Payment of Estate Tax Due. –** For purposes of these Regulations, the Estate Tax Amnesty Return (ETAR) (BIR Form No. 2118-EA) (Annex B) shall be filed by the executor or administrator, legal heirs, transferees or beneficiaries, **who wish to avail of the Estate Tax Amnesty not later than June 14, 2023** with the RDO having jurisdiction over the last residence of the decedent. In case of a non-resident decedent, with executor or administrator in the Philippines, the **ETAR** shall be filed with the RDO where such executor/ administrator is registered or if not yet registered, at the executor/administrator's legal residence. In case of a non-resident decedent with no executor or administrator in the Philippines, the return shall be filed with RDO No. 39- South Quezon City. The foregoing provisions notwithstanding, the Commissioner of Internal Revenue may exercise his power to allow a different venue/place for the filing of tax returns.

Provisions under RR No. 6-2019	Amendments under RR No. 17-2021
The duly accomplished and sworn ETAR, **and** Acceptance Payment Form (APF) (BIR Form No. 0621-EA) (Annex C), **together with the** complete documents as enumerated in the ETAR, shall be presented to the concerned RDO **for endorsement of the APF prior to the payment of the estate amnesty tax with the AABs or RCOs**. However, only the duly endorsed APF shall be presented to and received by the AAB or RCO.	The duly accomplished and sworn ETAR, **together with the** Acceptance Payment Form (APF) (BIR Form No. 0621-EA) (Annex C), **and** complete documents as enumerated in the ETAR, shall be presented to the concerned RDO. **Within five (5) working days from the receipt of documents, the concerned RDO shall either endorse the APF for payment of the estate amnesty tax with the Authorized Agent Banks (AABs) or Revenue Collection Officers (RCOs) or shall notify the taxpayer of any deficiency in the application**. Only the duly endorsed APF shall be presented to and received by the AAB or RCO.
No pertinent provision.	**Proof of settlement of the estate, whether judicial or extra-judicial, need not accompany the ETAR if it is not yet available at the time of its filing, but no electronic Certificate Authorizing Registration (eCAR) shall be issued unless such proof is presented and submitted to the concerned RDO.**
After payment the duly accomplished and sworn ETAR and APF with proof of payment, together with the complete documentary requirements shall be immediately submitted to the RDO in triplicate copies. Failure to submit the same **within the two (2)-year period from the effectivity of these Regulations** is tantamount to non-availment of the Estate Tax Amnesty and any payment made may be applied against the total regular estate tax due inclusive of penalties.	After payment of the duly accomplished and sworn ETAR and APF with proof of payment, together with the complete documentary requirements shall be immediately submitted to the RDO in triplicate copies. Failure to submit the same **until June 14, 2023** is tantamount to non-availment of the Estate Tax Amnesty and any payment made may be applied against the total regular estate tax due inclusive of penalties.
Section. 12. Issuance of Certificate of Availment. – The Certificate of Availment of the Estate Tax Amnesty (Annex D) shall be issued by the concerned RDO within fifteen (15) calendar days from the receipt of the application for estate tax amnesty, together with duly validated APF and complete documentary requirements enumerated in BIR Form No. 2118-EA.	**Section. 12. Issuance of Certificate of Availment. –** The Certificate of Availment of the Estate Tax Amnesty (Annex D) shall be issued by the concerned RDO within fifteen (15) calendar days from the receipt of the application for estate tax amnesty, together with duly validated APF **or proof of payment** and complete documentary requirements enumerated in **revised** BIR Form No. 2118-EA.
Section. 13. Issuance of electronic Certificate Authorizing Registration (eCAR). – One (1) eCAR shall be issued per real property including the improvements, if any, covered by Original Certificate of Title/Transfer Certificate of Title/ Condominium Certificate of Title or Tax Declaration for untitled properties. For personal properties included in the estate, a separate eCAR shall be issued.	**Section. 13. Issuance of electronic Certificate Authorizing Registration (eCAR). – Until such time that the eCAR system is capable of generating one (1) eCAR for all properties covered by a single transaction**, one (1) eCAR shall be issued per real property including the improvements, if any, covered by Original Certificate of Title/Transfer Certificate of Title/ Condominium Certificate of Title or Tax Declaration for untitled properties. For personal properties included in the estate, a separate eCAR shall be issued.
No pertinent provision.	**The eCAR shall only be used upon submission of the proof of estate settlement [e.g., Extra-Judicial Settlement of Estate (EJS), Copy of Court Order]. In the event that these documents include properties not indicated in the ETAR filed, the particular properties shall likewise be excluded from the eCAR, unless additional estate tax amnesty payment shall be made if the submission is within the amnesty period. Otherwise, the additional estate tax to be paid for the additional properties indicated in the EJS or Court Order shall be subject to applicable estate tax rate including interest and penalties.**

Except for the amendments made in Section 2 hereof, the provisions of existing revenue issuances to implement and to clarify the Estate Tax Amnesty under RA No. 11213 shall continue to apply to the extension of the period of its availment under the present RA No. 11569. Thus, all reference to RA No. 11213 on those revenue issuances shall also apply to RA No. 11569.

These regulations shall **take effect within 15 days from date of its publication in the newspaper of general circulation or Official Gazette**.

(Editor's Note: RR No. 17-2021 was published in The Philippine Star *on 4 August 2021.)*

RMC No. 90-2021 provides for the specific Guidelines and Procedures on the Utilization of TPC Issued Under the CARS Program.

RMC No. 90-2021 dated on 9 July 2021

- What is a Tax Payment Certificate (TPC)?

  TPC refers to a non-transferrable certificate, which shall be used to defray the tax and duty obligations of the ERPs to the National Government. *(Item 2.4 of DOF-DBM-BOI Joint Administrative Order No. 01-2015).*

- Who shall request for the issuance of TPC and from what office shall it be requested?

  The ERPs shall request from DTI-BOI for the issuance of TPC based on the statutory deadlines for payment of tax and/or duty. *(Item 6.3 of DOF-DBM-BOI Joint Administrative Order No. 01-2015).*

- What internal revenue taxes shall be paid by the ERPs using the TPC?

  The TPC shall only be applied against the excise tax, income tax and value-added tax (VAT) liabilities incurred in the course of the ERPs' operations and shall not include any type of withholding taxes of the ERPs. (Item 2.4 under the Definition of Terms of DOF-DBM-BOI Joint Administrative Order No. 01-2015).

- How will the ERPs accomplish the tax return using the TPC?

  The amount of the TPC shall be indicated in the tax return as deductions from the tax due of the ERPs. Specifically, indicate the phrase *TPC No. (control or serial number)* and its corresponding amount in the boxes provided for in the line item of the tax return which states the phrase *Other Tax Credits/Payments (specify)* located immediately after the line item stating *Tax Due*.

  In case the amount of TPC exceeds the tax due, net of the creditable taxes, the excess shall not be considered or treated as a refundable amount. *(Par 2, Section 5 of Revenue Regulations No. 12-2021).*

- Where will the tax return be filed and the corresponding tax be paid?

  The accomplished tax return shall be filed using the electronic Filing and Payment System (eFPS) or eBIRForms Package, as the case may be. In case the tax due is more than the amount of the TPC, the tax still due shall be paid using the available modes of payment of the BIR.

  The printed hard copy of the duly-filed tax returns, together with the BIR copy of the TPC and other prescribed attachments, shall be submitted to the Revenue District Office (RDO), Large Taxpayer Division Office (LTDO), or LT Documents Processing and Quality Assurance Division (LTDPQAD) of the Large Taxpayer Service, where the ERPs are duly registered, pursuant to existing revenue guidelines and procedures.

  The ERPs' copy of the TPC shall be retained by them. The BIR copy of the TPC shall be used for recording purposes in the collection books of the BIR.

- What is the validity period of TPC?

  A TPC shall have a validity period of 30 days counted from date of issue and can only be used once. The date indicated on the face of the TPC shall be presumed to the be the date of issuance. *(Item 6.4 of DOF-DBM-BOI Joint Administrative Order No. 01-2015).*

In the event that a TPC is not presented or utilized for tax payment to the BIR, the ERPs should immediately surrender and return the original copy of the TPC to DTI-BOI for reinstatement in the PCMIA (i.e., Participating Car Maker Incentive Account): Provided, That the surrender thereof is made within the validity period of the TPC, otherwise the same shall be forfeited in favor of the government. *(Item 6.7 of DOF-DBM-BOI Joint Administrative Order No. 01-2015).*

- How shall the BIR validate the TPC, which was attached by the ERPs to their tax return?

  The Collection Section of the RDO and LTDO, as well as the LTDPQAD, where the ERPs are duly registered, can view and validate the TPCs thru an online facility of the DTI-BOI. *(Item 4.2.4 and 6.8 of DOF-DBM-BOI Joint Administrative Order No. 01-2015).*

  The DTI-BOI shall inform the Assistant Commissioner (ACIR), Collection Service of the BIR of any additional Eligible and Registered Participant. The ACIR, Collection Service, on the other hand, shall inform the DTI-BOI of the name(s) of the revenue officer(s) who shall be duly authorized to access the online facility. The Head of said Offices shall assign a revenue officer who is authorized to access the online facility and validate the TPCs.

- How shall the amount of TPC be recorded by the BIR as part of its revenue collection?

  The BIR copy of the TPC shall be transmitted by the RDO, LTDO, or LTDPQAD, as the case may be, on Tuesday of every week to the Revenue Accounting Division (RAD) which shall record the amount of the TPC in the collection books pursuant to existing procedures.

  The RAD shall prepare a monthly report (Annex "A") of revenue collection from TPCs for transmittal to the Bureau of Treasury not later than ten (10) days after every calendar month.

RMC No. 94-2021 clarifies the computation of Donor's Tax in case the heir waves/renounces his share from the specific property forming part of the estate of the decedent.

RMC No. 94-2021 dated 10 August 2021

- General renunciation of an heir on his share from the inheritance is not subject to Donor's Tax. However, there are instances where in the settlement of the estate of the decedent, instead of all the heirs receiving their respective shares in all the properties of the decedent, the heirs will agree among themselves for a specific property that each one of them will receive. In this scenario, there will definitely be an heir who will receive a share lower or higher than the value of what should have been his rightful share in all the properties of the decedent. In this case, there is actually a partial renunciation of inheritance since the heir is waiving his share to only identified properties but not to the entire properties of the decedent. Hence, donor's tax shall be imposed on the value forgone as a result of such waiver/renunciation.

- Note that this Circular shall take effect immediately.

RMC No. 97-2021 clarifies the tax obligations of all social media influencers, individual or corporation, with the end goal of raising revenues from their undeclared income and at the same time, reminding them of their obligations under the law and of the possible consequences of their failure to pay taxes.

RMC No. 97-2021 dated 16 August 2021

- The term social media influencers referred to in the Circular includes all taxpayers, individuals or corporations, receiving income, in cash or in kind, from any social media sites and platforms (e.g., YouTube, Facebook, Instagram, Twitter, TikTok, Reddit, Snapchat) in exchange for services performed as bloggers, video bloggers or *vloggers* or as an influencer, in general, and from any other activities performed on such social media sites and platforms.

- Unless exempted pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, and other existing laws, social media influencers shall be liable to income tax and Percentage or Value-Added Tax.

- Social media influencers other than corporations and partnerships are classified for tax purposes as self-employed individuals or persons engaged in trade or business as sole proprietors, and therefore, their income is generally considered business income.

- Social media influencers derive their income from the following sources:

    1. YouTube Partner Program;
    2. Sponsored social and blog posts;
    3. Display advertising;
    4. Becoming a brand representative/ambassador;
    5. Affiliate marketing;
    6. Co-creating product lines;
    7. Promoting own products;
    8. Photo and video sales;
    9. Digital courses, subscriptions, e-books; and
    10. Podcasts and webinars.

- To constitute gains or profits from the conduct of trade or business, the payments must be received by a social media influencer in consideration for services rendered or to be rendered, irrespective of the manner or form of payment. Therefore, if a social media influencer receives free products in exchange for the promotion thereof on his/her/it YouTube channel or other social media accounts, he/she/it must declare the fair market value of such products as income.

- Except for certain passive income derived from sources within the Philippines, capital gains from the sale of shares not traded in the stock exchange and from the sale of real property classified as capital assets, the Income Tax shall be imposed on the taxable income of resident citizens, aliens, partnerships, domestic and resident foreign corporations doing business as a social media influencer and shall be based on the schedular tax rates under Section 24 (A) (2) (a) of the NIRC or on the corporate income tax rate under Sections 27 and 28 thereof, depending on the type of taxpayer.

- Income treated as royalties in another country, including payments under the YouTube Partner Program, shall likewise be included in the computation of the gross income of the social media influencer and shall be subjected to the schedular or corporate tax rates.

- For resident aliens, any income derived from Philippine-based contents shall generally be taxable. Thus, the burden of proof that the income was derived from sources without the Philippines lies upon the resident alien. Absent such proof, the income will be assumed to have been derived from sources within the Philippines.

- Besides Income Tax, social media influencers are also liable for business tax, which may either be Percentage Tax or VAT. Self-employed individuals whose gross sales or gross receipts and other non-operating income do not exceed the VAT threshold of Php 3,000,000.00 shall have the option to avail of the 8% tax on gross sales or gross receipts and other non-operating income in excess of P250,000 in lieu of the graduated income tax rates under Section 24 (A) (2) (a) and Percentage Tax under Section 116 of the NIRC.

- Mixed income earners or those who are earning both compensation income and income from business and/or profession shall be taxable under Section 24 (A) (2) (a) for all income earned from compensation and income earned from business or practice of profession, which may be taxed at the same graduated rates or 8% Income Tax based on gross sales or gross receipts, provided that the total gross sales and/or gross receipts and other non-operating income do not exceed the VAT threshold as discussed in the preceding paragraph. However, if the total gross sales and/or gross receipts and other non-operating income exceed the VAT Threshold, the graduated rates under Section 24 (A) (2) (a) shall apply and they shall likewise be liable for VAT.

- In the case of YouTubers for instance, the common business expenses that may be deducted from their gross income include, but not limited to, the following:

    1. Filming expenses (e.g., cameras, smartphones, microphone and other filming equipment);
    2. Computer equipment;
    3. Subscription and software licensing fees;
    4. Internet and communication expenses;
    5. Home office expenses (e.g., proportionate rent and utilities expenses);
    6. Office supplies;
    7. Business expenses (e.g., travel or transportation expenses related to YouTube business, payment to an independent contractor or company for video editing, costume designer, advertising and marketing costs, cost of contests and giveaway prizes);
    8. Depreciation expense; and
    9. Bank charges and shipping fees.

- In lieu of the itemized deductions, the taxpayer may elect Optional Standard Deduction (OSD) or a standard deduction not exceeding 40% of gross sales/ receipts in the case of individual taxpayers, or 40% of its gross income in the case of corporations. No substantiation is required for the OSD. To be entitled to OSD, however, the taxpayer must signify in the return the intention to elect OSD; otherwise, he/she/it shall be considered as having availed of the itemized deductions.

- The social media influencers should always refer to the Certificate of Registration duly issued by the appropriate RDO for the tax returns that must be filed and the deadline for payment of taxes.

- Social Media influencers shall withhold required creditable/expanded withholding tax, final tax on compensation of employees, and other withholding taxes, if applicable. They are obliged to remit the same to the Bureau at the time or times required, and issue to the concerned payees the necessary Certificates of Tax Withheld.

- Social Media influencers who willfully attempts to evade the payment of tax or willfully fails to make a return, to supply accurate and correct information or to pay tax shall, in addition to the payment of taxes and corresponding penalties, be liable criminally liable under Sections 254 (Attempt to Evade or Defeat Tax) and 255 (Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation), in relation to Section 248 (B) of the NIRC.

- It must be emphasized that the BIR also has the power to obtain information from foreign tax authorities pursuant to the Exchange of Information (EOI) provision of the relevant tax treaties. The BIR has the means to verify their income as it is clothed with a special power to obtain information from its treaty partners. The BIR may safely rely on the data provided by its treaty partners to establish the influencer's tax liability.

- The social media influencers are, therefore, advised to voluntary and truthfully declare their income and pay their corresponding taxes without waiting for a formal investigation to be conducted by the BIR to avoid being liable for tax evasion and for the civil penalty of 50% of the tax or of the deficiency tax.

- In order to avoid the risks of double taxation, a social media influencer receiving income from a non-resident person residing in a country with which the Philippines has a tax treaty must inform the latter that he/she/it is a resident of the Philippines, and is, therefore, entitled to claim treaty benefits provided under the relevant tax treaty.

- Where the non-resident requires the presentation of proof of residency, the influencer must obtain a Tax Residency Certificate (TRC) from the International Tax Affairs Division (ITAD) of the BIR and submit the same to the former. The influencer shall exert all efforts to obtain treaty benefits in the state of source.

- If the influencer did not avail of the treaty benefits and was, in fact, subjected to regular tax in the state of source, he/she/it shall not be allowed to claim foreign tax credits in excess of the appropriate amount of tax that is supposed to be paid in the source state had the income recipient invoked the provision/s of the treaty and proved his/her/its residency in the Philippines. A more detailed discussion on this can be found in Section 5 of RMO No. 43-2020.

- If, on the other hand, the influencer is denied treaty benefits despite being able to prove entitlement thereto, he/she/it must file an application for Mutual Agreement Procedure (MAP) with ITAD following the guidelines and procedures set out in the pertinent revenue issuance for MAP assistance.

- Early this year, Google LLC, the owner of YouTube, informed the public that any payments from YouTube through any other agreement between the content creator and YouTube (e.g., through the YouTube Partner Program) will be treated as royalties starting 1 June 2021 and that Chapter 3 of the United States (US) Internal Revenue Code requires Google to collect tax information, withhold taxes, and report to the US tax authority when a creator on YouTube earns royalty revenue from viewers in the US. Creators outside the US were thus advised to submit tax information to Google LLC.

- For the purpose of fixing the withholding tax rate to be applied on all income payments from YouTube, social media influencers residing in the Philippines are advised to submit their tax information to Google to be eligible to claim treaty benefits under the tax treaty between the Philippines and the US.

- To enhance tax compliance and eventually, increase tax revenues, concerned BIR offices are advised to conduct a full-blown tax investigation against social media influencers residing and/or registered within their respective jurisdictions. For monitoring purposes, the investigating office shall provide the EOI Section a feedback on the usefulness of the information provided by a treaty partner within thirty (30) days from the termination of the investigation.

- This Circular shall take effect immediately.

RMC 99-2021 clarifies the issues relative to the Value-Added Tax (VAT) exemption of certain medicines and other medicinal devices for COVID-19 under Sections 109(1)(AA) and 109(1)(BB)(ii) of the National Internal Revenue Code (NIRC) of 1997 (Tax Code), as amended by the TRAIN Law, 11467 and the CREATE Act.

RMC 99-2021 issued on 1 September 2021

- The VAT exemption of medicines for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, kidney diseases, drugs and vaccines prescribed and directly used for COVID-19 treatment, and medical devices directly used for COVID-19 treatment shall take effect on the date of publication by the Food and Drug Administration (FDA) of the consolidated list of VAT-Exempt Products, which was on 17 June 2021.

- Item No. 2 of the General Guidelines of Joint Administrative Order No. 2-2018, or the Implementing Guidelines on the VAT Exemption of the Sale of Drugs Prescribed for Diabetes, High Cholesterol and Hypertension Under RA No. 8424, as Amended by RA No. 10963, provides that, "the sale of drugs not included in the 'List of VAT-exempt diabetes, high-cholesterol and hypertension drugs' published by the FDA shall not be exempt from VAT."

- Moreover, Section 2 of RR No. 4-2021, amending Section 4.109-1 of RR No. 16-2005, as amended, provides that, "the exemption from VAT under this subsection shall only apply to the sale or importation by the manufacturers, distributors, wholesalers and retailer of drugs and medicines included in the 'list of approved drugs and medicines' issued by the Department of Health for this purpose."

- Hence, only the medicines and medical devices for COVID with the corresponding dosage strength, and dosage form and route of administration included in the consolidated list of VAT-Exempt Products submitted by the FDA to the BIR shall be considered as exempt from VAT.

- The consolidated list of VAT-Exempt Products, which includes the previously-circularized lists through RMC Nos. 4-2019, 62-2020, and 101-2020, provided by FDA to BIR and circularized through RMC No. 81-2021 is now the controlling list insofar as the VAT exemption of items under Sections 109(1)(AA) and 109(1)(BB)(ii) of the Tax Code, as amended, is concerned. The consolidated list was intended to update the previous lists for ease of reference and for use by all stakeholders concerned. Therefore, this consolidated list should only be the list that will be used as a reference in checking whether a certain medicine or medical device is exempt from VAT or not.

- The treatment of unutilized input VAT on the now VAT-exempt on-hand inventories is found in Item No. 2, Section 3 (Transitory Provisions) of RR No. 4-2021 which reads:

  "2. The taxpayer shall treat the resulting excess taxes paid due to the inclusion in the items exempt from VAT or adjustment in percentage tax rates, as the case may be, in the following manner:

Unutilized VAT paid on local purchases and importation under subsections 4.109- 1(B)(aa)(ii) and 4.109-1(B)(bb) hereof from their specified effectivity under RA No. 11534 on January 1, 2021 until the effectivity of these Regulations may be carried-over to the succeeding taxable quarter/s or be charged as part of cost, pursuant to Section 110 of the Tax Code. Input VAT which are directly attributable to goods now classified as VAT-exempt may be allowed as part of cost. For input VAT that cannot be attributed to goods now classified as VAT-exempt, only a ratable portion thereof shall he charged to cost."

- Taxpayers concerned are, thus, advised to follow and observe the illustrations provided for in said Item on the treatment of this unutilized input VAT. The unutilized VAT paid on local purchases and importation of items under subsections 4.109-1(B)(aa)(ii) and 4.109-1(B)(bb) of RR No. 4-2021, from their specified effectivity under the law (RA No. 11534) on 1 January 2021 until the effectivity of the said RR on those items, which should be on the date when the FDA published the consolidated list of VAT-Exempt Products on 17 June 2021, may be carried-over to the succeeding taxable quarter/s or be charged as part of cost pursuant to Section 110 of the Tax Code of 1997, as amended. A tax refund may be allowed only in cases where there is a change of status from VAT to Non-VAT registration under Sec. 112(B) of the Tax Code of 1997, as amended.

- RR No. 4-2021 is not to be confused with RR No. 18-2020 as the latter was anchored under RA Nos. 10963 and 11467, while the former was issued to implement the provisions of the CREATE Act.

- The phrase "provided that the input tax on the imported items have not been reported as input tax credit in the monthly and/or quarterly VAT returns", found in Section 3 (Transitory Provisions) of RR No. 18-2020 was included to ensure that the imported items have not been reported and claimed as input tax credit in the monthly and quarterly VAT returns pursuant to Section 110 of the Tax Code of 1997, as amended, for purposes of computing the VAT payable. However, the taxpayer may be allowed to reflect the said importation as part of the "Purchases not Qualified for Input Tax" row of the monthly and quarterly VAT returns to properly show the amount of purchases for a certain period.

- When the VAT on the imported drugs or medicines has been claimed as input tax credit in the monthly and quarterly VAT returns, it cannot be allowed for refund under Section 204(C) of the Tax Code. RR No. 18-2020 is clear that when said VAT is claimed as input VAT credit and consequently allocated to either VATable, zero-rated, or exempt sales, this only means that there was already a utilization of input tax. Hence, claiming it again under Section 204 is no longer permissible as this is already tantamount to claiming the alleged erroneously paid VAT twice. Pursuant to Sec. 4.110-4 of RR No. 16-2005, as amended, input tax attributable to VAT-exempt sales shall not be allowed as credit against output VAT but should be treated as part of cost or expense.

RMC No. 100-2021 amends RMC Nos. 55-2014, 66-2014, and 78-2014 to transfer the requirement for certification from the FDA to the BAI.

RMC No. 100-2021 dated 14 September 2021

- This RMC is issued to align the issuance of the certification with the proper regulatory agency that has the mandate to penalize sellers and importers of livestock and poultry feeds or ingredients used in the manufacture of finished feeds that resort to misdeclaration in order to be exempt from the payment of VAT under Section 109 (1) (B) of the National Internal Revenue Code of 1997, as amended.

- The requirement to provide the certification was initially lodged with the FDA, in order to help ensure that only the sale or importation of livestock and poultry feeds or ingredients used in the manufacture of finished feeds that were unfit for human consumption were exempt from VAT.
- Those that were fit for human consumption shall be subject to VAT.
- The FDA, however, has no legal mandate to penalize importers on their misdeclaration of feed ingredients, such as palm oil, as animal feed ingredient, although it was also distributed for human consumption, in order to avoid the imposition of VAT.
- Republic Act (RA) No. 9711 mandates the FDA to ensure the safety, efficacy, and quality of health products which include food and drugs, but not animal feeds. The BAI, in contrast, is specifically mandated to regulate and control the manufacturing, importation, labelling, advertising and sale of livestock and poultry feeds, pursuant to RA No. 1556.
- This RMC amends RMC Nos. 55-2014, 66-2014, and 78-2014 to transfer the issuance of the required certification that the livestock or poultry feeds or ingredients used in the manufacture of finished feeds are unfit for human consumption, from the FDA to the BAI.
- This RMC shall take effect immediately.

Banks and Other Financial Institutions

Amendments to the foreign exchange regulations

Circular No. 1124 amends Manual of Regulations on Foreign Exchange Transactions (FX Manual), issued under Circular No. 645 dated 13 February 2009, as amended.

Circular No. 1124 dated 10 August 2021

Circular No. 1124 amends the rules on foreign exchange transactions, current account transactions, financial account transactions, foreign exchange forwards and swaps and open foreign exchange position of banks, and the general provisions. The circular may be accessed at https://www.bsp.gov.ph/Lists/Download Section/Attachments/130/1124.pdf

Revised Guidelines on the Imposition of Monetary Penalties

Circular No. 1125 provides for the revised guidelines on the imposition of monetary penalties on Bangko Sentral ng Pilipinas (BSP)-Supervised Financial Institutions, and/or their directors/trustees, officers and/or employees for violations of banking and other applicable laws with sanctions falling under Section 37 of Republic Act No. 7653 (The New Central Bank Act), as amended.

Circular No. 1125 dated 20 August 2021

This Circular applies to BSFIs (bank or quasi-bank), their directors and/or officers and/or employees **except** those instances where specific monetary penalties have been provided under applicable laws or other Bangko Sentral rules and regulations, including reporting violations (i.e., erroneous/delayed and unsubmitted regulatory reports) for which specific monetary penalties are provided under the regulations.

Pursuant to Section 37 of R.A. No. 7653, as amended, banks. and/or their directors, officers and/or employees may be imposed a maximum monetary penalty of P1 million for each transactional violation or 100 thousand per calendar day for violations of a continuing nature. In case profit is gained or loss is avoided as a result of the violation, the Bangko Sentral may also impose a fine of no more than three times the profit gained or loss avoided.

The Bangko Sentral takes into consideration the attendant circumstances of each case, such as the nature and gravity of the violation or irregularity and the size of the financial institution. including other aggravating and mitigating factors. Further. in accordance with sec. 002/002-Q/002-S/002-P/001-N/002-T, the Bangko Sentral may impose monetary penalties, singly or in combination with non-monetary sanctions, if appropriate.

Adoption of the Principles for Financial Market Infrastructures (PFMI)

Circular No. 1126 provides for the adoption of the PFMI pursuant to Circular No. 1089 dated 07 July 2020 or the PSOF, and RA No. 11127 or the NPSA, and the related amendments to the MORPS.

Circular No. 1126 dated 14 September 2021

- Why should the designated payments systems (DPS) adopt these principles?

    1. These standards help the National Payment System (NPS) reinforce the initiative of ensuring that NPS continues to become more safe, efficient, and reliable.

- In case involving non-payment system financial market infrastructures (FMIs) and cross-border payment systems, is the adoption of PFMI possible?

    1. It is possible, given that adoption of the PFMI may be subject to cooperative arrangements (Sec. 9 of the National Payment System Act) with other regulatory authorities.

- What are the relevant principles under PFMI?

    1. The Principles are classified into 8 broad categories:

        - ***General organization*** - Principles under this category provide guidance on how the DPS shall generally be organized to establish a strong foundation for the comprehensive management of risks in the DPS. This covers principles on legal basis, governance, and risk management framework.

        - ***Credit and liquidity risk management*** - Principles under this category provide standards to support a high degree of confidence that the DPS will be able to operate and serve as a source of financial stability even under stressful conditions.

        - ***Settlement*** - Principles under this category require the DPS to address issues on settlement risk and finality of DPS transactions.

        - ***Default management*** - This principle requires the adoption of appropriate policies, rules, and procedures in the DPS to manage default of participant/s.

        - ***General business risk and operational risk management*** - Principles under this category are designed to: (1) protect participants and the financial system from the risk that a DPS could suddenly cease operations as a result of business losses unrelated to participant defaults; and (2) strengthen the requirements on operational reliability and resilience.

        - ***Access*** - Principles under this category address management of risks posed by alternative access arrangements and the need for fair and open access to the DPS.

- ***Efficiency*** - Principles under this category enable the DPS to be efficient and effective in meeting the requirements of its participants and the market it serves.

- ***Transparency*** - Principles under this category require that relevant information shall be provided to the participants of the DPS, the authorities, and the public to enable informed and sound decision making as well as foster confidence in the market it serves.

- Adoption by DPS.

1. The adoption of the applicable principles by the DPS shall depend on whether it is designated as a systemically important payment system (SIPS) or prominently important payment system (PIPS).

- What are the expectations needed to be met by Critical Service Providers (CSP) such as information technology and message providers given that the operational reliability of DPS may be dependent on CSP's performance?

    1. ***Risk identification and management*** - A CSP is expected to identify and manage relevant operational and financial risks to its critical services and ensure that its risk management processes are effective.

    2. ***Information Security*** - A CSP is expected to implement and maintain appropriate policies and procedures, and devote sufficient resources to ensure the confidentiality and integrity of information and the availability of its critical services in order to fulfill the terms of its relationship with the Operator of a Designated Payment System (ODPS) or the DPS.

    3. ***Reliability and resilience*** - A CSP is expected to implement appropriate policies and procedures and devote sufficient resources to ensure that its critical services are available, reliable, and resilient. Its business continuity management and disaster recovery plans should therefore support the timely resumptions of its critical services in the event of an outage so that the service provided fulfills the terms of its agreement with the ODPS/DPS.

    4. ***Technology planning*** - The CSP is expected to have in place robust methods to plan for the entire lifecycle of the use of technologies and the selection of technological standards.

    5. ***Communication with users*** - A CSP is expected to be transparent to its users and provide them sufficient information to enable users to understand clearly their roles and responsibilities in managing risks related to their use of a CSP.

        The contracting party, the DPS or the ODPS, shall be responsible for ensuring that the CSP meets the above-cited expectations and that operations of the CSP shall be held to the same standards as if the services were provided by the DPS or ODPS itself. The BSP, however, is not precluded from directly engaging with and exercising its oversight function over the CSP in accordance with the PSOF.

- What assessment shall be done by BSP for this relevant circular?

    1. The BSP shall adopt the PFMI assessment methodology (AM) to evaluate the observance of the relevant principles by a DPS as well as identify possible risks and induce changes in the NPS. In performing the PFMI assessment, the BSP shall utilize the pertinent AM's rating scale as laid out in Appendix 2.

Advisory on Modus Operandi (MO) of Organized Crime Groups (OCG) through Auto Loans

Memorandum No. M-2021-047 reminds BSFIs strengthen customer identification, verification, monitoring and controls.

Memorandum No. M-2021-047 dated 26 August 2021

In connection with the public warnings issued by the PNP Highway Patrol Group (PNP-HPG) regarding the modus operandi conducted by Organized Crime Group (OCG) referred to as Carnapping Syndicates, all BSFIs should **strictly observe and strengthen** the implementation of the requirements pursuant to the Anti-Money Laundering Regulations provided in the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) particularly on the following matters:

- Customer identification and verification procedures as part of their **Customer Due Diligence (CDD)**
- Customer monitoring policies especially their transactions
- Suspicious transaction reporting
- Continuous AML training program, including controls relating to partner/ accredited car dealers

These syndicates are able to carry out their scheme by acquiring high-end motor vehicles (MV) through auto loans under *fictitious identities*. The mortgaged MVs are subsequently sold to the public using fake conduction stickers and plate numbers. Other reported typologies of carnapping syndicates include the rent-tangay, rent-sangla, and assume balance schemes, among others (refer to Annex A of the memorandum).

BSFIs are also reminded to file suspicious transaction reports, when warranted.

Mandatory Posting of Fit Notes and Coins Holdings and/or Requirements in the Cash Service Alliance (CSA) System

Memorandum No. M-2021-048 directs the posting of all fit notes and coins intended to be deposited or withdrawn.

Memorandum No. M-2021-048 dated 3 September 2021

- Effective 06 September 2021, all banks are required to post in the CSA System all fit notes and coins intended to be deposited to or withdrawn from the Bangko Sentral GMRO or Bangko Sentral ROB on the next banking day, pursuant to the Revised Cash Service Alliance (CSA) General Guidelines (Annex A), stating among others that "CSA transactions shall take precedence over direct deposit to or withdrawal from the Bangko Sentral CD (now GMRO) or Bangko Sentral ROB".

- Mandatory posting of fit notes and coins in the CSA System aims to **maximize** *utilization of fit banknotes and coins* by AABs through CSA. As stipulated under items h and I of Section V of the CSA General Guidelines, in case fit currency holdings posted in the CSA portal were not confirmed as CSA transactions, the Source Bank may:

    1. Deposit the fit currency to the Bangko Sentral GMRO or Bangko Sentral ROB on the next banking day; or

    2. Include them in the fit currency holdings to be reposted in the CSA System on the next banking day.

- In case of **unconfirmed currency** requirement posted in the CSA System, the Client Bank may:

    1. Proceed with the regular withdrawal of currency requirements from the Bangko Sentral GMRO or Bangko Sentral ROB on the next banking day; or

    2. Include them in the currency requirements to be reposted in the CSA System on the next banking day.
    The CSA staff shall assist in the matching of transactions until 30 September 2021 to ensure full utilization of the CSA system in accordance with the Revised CSA General Guidelines.

Guidelines on the Electronic Submission of the Report on Borrowings of BSP Personnel

Memorandum No. M-2021-049 provides guidelines on the electronic submission of the report on BSP Personnel borrowings.

Memorandum No. M-2021-049 dated 3 September 2021

Pursuant to Circular Letter Nos. CL-2007-0501 dated 04 October 2007 and CL-2007-059, all banks and Non-Banks with Quasi-Banking Functions (NBQBs) shall report to the **Department of Supervisory Analytics (DSA)**, the names of BSP personnel who obtained loans from them.

The following guidelines are therefore set by this memorandum:

- Submission.

    1. All Banks and NBQBs shall use the prescribed Report on Borrowings of BSP Personnel (RBBP) Data Entry Template (DET) which can be downloaded from www.bsp.gov.ph/ses/reporting_templates.

    2. The DET shall be submitted electronically to the Bangko Sentral on a quarterly basis within 15 banking days after end of reference quarter beginning with the quarter ending 30 September 2021.

    3. The DET shall be transmitted to the prescribed e-mail address: **dsareports@bsp.gov.ph** using the following prescribed format as subject:

        RBBP<space>Name of Bank/NBQB, <space>Reference period in dd Month Name YYYY

        For Example,

        To: dsareports@bsp.gov.ph
        Subject: RBBP ABC Bank, 30 September 2021

and using the following prescribed file name and file format:

File	File Name	File Format
Data Entry Template	Borrowings	.xls

4. Banks and NBQBs shall only use e-mail addresses ***officially registered*** with the DSA in electronically submitting reports in accordance with **BSP Memorandum No. M-2017-028** dated 11 September 2017. The same registered e-mail addresses shall be used by the DSA in acknowledging the submitted reports.

5. Hard copy submission shall not be accepted. Covered Banks and NBQBs that are unable to transmit electronically may submit the prescribed report in any portable storage device (e.g., USB flashdrive) through messengerial or postal services within the prescribed deadline addressed to:

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

- Important Reminders.

1. Report submissions that do **not** conform to the above prescribed guidelines shall not be accepted and will be considered **non-compliant** with the BSP reporting requirements as prescribed under **Section 171** of the Manual of Regulations for Banks and **Section 172-Q** of the Manual of Regulations for Non-Bank Financial Institutions. Moreover, only files prescribed by the BSP for the report shall be accepted as compliant with the existing reportorial requirements subject to validation and applicable penalties for delayed, erroneous, and/or unsubmitted reporting.

2. As part of the initial electronic submission, the submitted report as of **30 September 202**1 should reflect all the borrowings of the BSP personnel **outstanding** as of report date.

3. Starting reference cut-off **30 September 2021**, the report should only contain loans granted to BSP personnel during the reference quarter.

4. If nothing to report for the quarter, covered Banks and NBQBs **shall still submit** the report stating, "None to Report", within the prescribed deadline.

Advisory on Regulated and Prohibited Import/Export Commodities under the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended.

This Memorandum advises that banks should comply with all requirements on trade transactions upon FX sale.

Memorandum No. M-2021-050 dated 4 September 2021

- Relative to the issuance of Circular No. 1124 dated 10 August 20211 on the amendments to foreign exchange (FX) regulations, banks are expected to implement their "Know Your Customer" policy and conduct due diligence to ensure that all FX transactions are compliant with all applicable laws, rules and regulations.

- While the list of regulated and prohibited import/export commodities under Section 5.1 of the FX Manual, as amended, only includes those under the purview of the Bangko Sentral ng Pilipinas (BSP), banks shall ensure that all relevant requirements on trade transactions [e.g., permits/clearances from the respective trade regulatory government agencies (TRGAs)] are complied with upon FX sale.

  For this purpose, banks may refer to the Philippine National Trade Repository's (PNTR) website (https://www.pntr.gov.ph) and/or coordinate with the relevant TRGAs regarding the requirements, if any, on trade transactions involving commodities that are not under the BSP's purview.

Board of Investments Updates

Amendments to the General Policies and Specific Guidelines to Implement the 2020 Investment Priorities Plan

BOI Memorandum Circular No. 2021-05 provides for the Amendments to the General Policies and Specific Guidelines to Implement the 2020 IPP.

BOI Memorandum Circular No. 2021-05 dated 22 July 2021

- BOI lifted the locational restriction on certain IT-BPM activities under Memorandum No. 50, Approving the 2020 IPP and General Policies and Specific Guidelines, thereby **deleting** the following footnotes:

2020 IPP (Memorandum Order No. 50 s. of 2020)	2020 IPP Specific Guidelines
Footnote #3 to Service Exports: Contact centers and non-voice business processing activities that will be located in Metro Manila may no longer qualify for incentives availment with the Board of Investments under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, starting year 2023, unless and earlier period is provided pursuant to the transition provisions under the 2nd tax reform package on the rationalization of incentives, which Congress may subsequently enact.	*Footnote #6 to Service Exports:* Contact centers and non-voice business processing activities that will be located in Metro Manila may no longer qualify for incentives availment with the Board of Investments under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended, by year 2023 or until such time that a law on incentives rationalization or modernization, as applicable is enacted, whichever is earlier.

- Item III, No. 7(1) of the Specific Guidelines on Tourism under the 2020 IPP and Specific Guidelines and/or the transitional Strategic Investment Priority Plan (SIPP) is amended as follows:

From	To
Tourism (R.A. No. 9593) This covers tourism enterprises that are ***outside the tourism enterprise zones (TEZs)*** and are engaged in the following: a. Tourist transport services whether for land, sea, and air transport for tourist use; b. Establishment and operation of: ▸ Accommodation establishments: hotel, resort, apartment hotel / serviced residences, guest accommodation, eco-lodge and homestay; ▸ Convention and exhibition facilities or "meetings, incentives, conventions and exhibition" (MICE) facilities; ▸ Amusement parks; ▸ Adventure and eco-tourism facilities; ▸ Sports facilities and recreational centers; ▸ Theme parks; ▸ Health and wellness facilities such as but not limited to spas; ▸ Farm tourism; and ▸ Tourism training centers and institutes c. Development of retirement villages; d. Restoration/ preservation and operation of historical shrines, landmarks and structures.	**Tourism (R.A. No. 9593)** ***This covers tourism enterprises that are engaged in the following:*** a. Tourist transport services whether for land, sea and air transport for tourist use; b. Establishment and operation of: ▸ Accommodation establishments: hotel, resort, apartment hotel / serviced residences, guest accommodation, eco-lodge and homestay; ▸ Convention and exhibition facilities or "meetings, incentives, conventions and exhibition" (MICE) facilities; ▸ Amusement parks; ▸ Adventure and eco-tourism facilities; ▸ Sports facilities and recreational centers; ▸ Theme parks; ▸ Health and wellness facilities such as but not limited to spas; ▸ Health and wellness facilities such as but not limited to spas; ▸ Farm tourism; and ▸ Tourism training centers and institutes c. Development of retirement villages; d. Restoration/ preservation and operation of historical shrines, landmarks and structures.

Bureau of Customs

Importations of Various Capital Equipment of Existing Board of Investments (BOI) Registered Business Enterprise Revenue Collection and Monitoring Group (RCMG)

RCMG Memo No. 02-2021 provides for the basis of the release of importations of various capital equipment of existing BOI-registered business enterprise.

RCMG Memo No. 02-2021 dated 2 August 2021

- Considering that the implementing rules and regulations (IRR) of the CREATE Act has already been issued, the BOI can proceed with the issuance of the Certificate of Authority to Import (CAI) capital equipment for importations of existing BOI-registered enterprises whose entitlement of the duty exemption have been extended.

- The BOI-registered entities should submit to the Bureau of Customs (BOC) their CAI as proof of exemption.

Rules and Regulations Implementing CAO No. 3-2020 on the Disposition of Forfeited and Abandoned Goods through Condemnation

CMO No. 24-2021 provides for a mechanism to expedite the disposition and release of shipments for condemnation.

CMO No. 24-2021 dated 5 August 2021

- Goods subject to condemnation are: (1) restricted goods which are highly dangerous to be kept or handled; (2) goods absolutely prohibited; (3) goods prohibited by law to be released; (4) goods that have no commercial value; and (5) goods that are injurious to public health.

- Modes of condemnation are:

    1. Rendering;
    2. Crushing;
    3. Thermal Decomposition;
    4. Breaking;
    5. Shredding;
    6. Pyrolysis;
    7. Dumping; and
    8. Any other method deemed appropriate.

- The Condemnation Committee shall be composed by the (1) Chairman who is the Chief, Auction and Cargo Disposal Division (ACDD); (2) Vice Chairman who is the Chief, Law Division or equivalent unit; and (3) Members which are representatives from the Office of the District Collector, from the Customs Intelligence and Investigation Service (CIIS) and Enforcement and Security Service (ESS).

- The functions of the Condemnation Committee are to:

    1. Approve/disapprove the recommendation of the ACDD or its equivalent;
    2. Issue the Order of Condemnation for the approval of the District Collector based on the Detailed Plan of Condemnation prepared by the ACDD or its equivalent;
    3. Impose, administer and/or recommend the imposition of administrative and/or other sanctions as may be appropriate; and
    4. Perform other related functions as may be directed by the District Collector.

- Applications for accreditation of service contractors shall be evaluated by the Accreditation Committee. In selecting the service contractor, the following guidelines shall be observed:

    1. Only service contractors with sufficient facility/equipment/machineries to perform the required mode of condemnation will be considered;
    2. Capability to safekeep the emptied container/s;
    3. Track record/reputation; and
    4. For containerized cargoes, contractors nominated by the Association of International Shipping Lines (AISL) Inc. shall be given priority.

- The validity of the Certificate of Accreditation signed by the District Collector and issued to the service contractor shall be 3 years from the date of accreditation unless revoked.

- The following are the responsibilities of the Accredited Service Contractors:

    1. Post annual performance bond in the form of surety;
    2. Ensure that the goods are condemned in accordance with the Detailed Plan of Condemnation;
    3. Submit a completion report to the ACDD within 5 days from termination of the condemnation proceedings;
    4. Ensure that the goods for condemnation are withdrawn within the period as provided in the Order;
    5. Return the empty container to the shipping line;
    6. Comply with other conditions as may be imposed by the Condemnation Committee.

- This Order shall take effect 15 days after its posting in the official website of the BOC.

Implementation of the Automated Routing and Monitoring System (ARMS) for Goods Declaration

CMO No. 25-2021 provides for the integration of the automated assignment of goods declarations into the E2M system. It also provides for clear and defined procedures in the automated random assignment of consumption goods declaration and a mechanism for brokers and importers to have updates on the status of goods declarations.

CMO No. 25-2021 dated 10 August 2021

- The CMO shall apply to all good declarations lodged in BOC's E2M System and processed by the Formal Entry Division (FED) or equivalent units.

- Upon lodgment of goods declaration, the ARMS shall randomly assign the same to a COO III and COO V at the port of discharge.

- Existing regulations on the online filing of goods declaration through the Customs Client Portal System (CCPS) and its supporting documents shall still be in full force and effect.

- Importers may check the status of their goods declaration online using their mobile phones, or personal computers through the CCPS.

- The ARMS shall initially be implemented in the Port of Manila (POM) and the Manila International Container Port (MICP). Once deployment of the system is already finalized, the Management Information and Systems Technology Group (MISTG) in coordination with the Assessment and Operations Coordinating Group (AOCG), shall announce its roll-out to other ports.

- Failure on the part of any Customs Officer to performs its responsibilities under this CMO shall be subject to administrative sanctions.

- This Order shall take effect on 25 August 2021.

Implementation of the Authorized Economic Operator (AEO) Online Portal System

CMO No. 26-2021 provides for the guidelines for the application, processing, and approval of application for AEO accreditation using the AEO Online Portal System.

CMO No. 26-2021 dated 10 August 2021

- The AEO Online Portal System is a web portal that caters to the electronic submission and review of applications submitted for accreditation to the AEO Program.

- The AEO Portal can be assessed by logging-in at hhttps://aeo.customs.gov.ph using any desktop or mobile device with internet access.

- General information on the AEO Program such as accreditation, process, benefits, and other relevant information shall be made available in the AEO Portal.
- AEO Help Desk - It shall be made available in the CCPS.
- The AEO Portal shall be reviewed every 3 years and amended/updated as necessary.
- The CMO shall take effect immediately.

E-Tracc Exports Implementation for Economic Zones

This memorandum directs all offices concerned to ensure that all containers processed as Export Transaction adheres to the guidelines pursuant to the implementation of CMO No. 04-2020 which provides for the Establishment of an E-TRACC System and Accreditation of a Service Provider.

AOCG Memorandum No. 493-2021

- The Memo provides for the specific guidelines under Section 10 of CMO No. 04-2020:

    1. The declarant shall file an Export Declaration (E-SAD) through the e2M System.
    2. The declarant shall pay the trip per container using the E-TRACC Booking System.
    3. The Customs Operations Officer (COO) V from the Export Division shall check the trip booking before the approval of the E-SAD.
    4. The Electronic Customs Seal shall be affixed.
    5. The Export Examiner or authorized Customs Officer shall check details of the container and truck against the trip enrollment on the E-TRACC mobile application, and if tallies, proceed to the Request for Start Trip Authorization.
    6. The Export Examiner or authorized Customs Officer shall take visual evidence of the container and transmit to Piers and Inspection Division (PID) or authorized office for the approval of the Start Trip.
    7. PID or equivalent office provides approval of the Start Trip Authorization.
    8. E-TRACC System Trip Monitoring - the PID or equivalent office shall monitor authorized trips and alarms.
    9. Container Cargo Control Division (CCCD) or equivalent office provides the approval for the end trip authorization of export cargo, comparison of visual evidence and removal of customs seal.

- Schedule of implementation for all containers coming from the following economic zones to the POM and MICP to be sealed with Electronic Customs Seal are as follows:

    1. 20 September 2021
        - Light and Industry Science Park I
        - Light and Industry Science Park II
        - Laguna International Industrial Park
        - Carmelray Industrial Park II
        - Calamba Premiere International Park
    2. 4 October 2021
        - Cavite Economic Zone I
    3. 8 October 2021
        - Laguna Technopark, Inc.
    4. 2 November 2021
        - Cavite Economic Zone II

- Customs exports SAD shall not be approved by the BOC Export Examiner or customs officer without the required E-TRACC booking as prescribed.

Reiteration on the Collection of Internal Revenue Stamps (IRS) Tax under the TRAIN Law

This memorandum was issued to reiterate the strict compliance on the collection of IRS Tax in accordance with the provisions of TRAIN Law and BIR RR No. 4-2018 implementing the DST Rate Adjustment.

OCOM Memorandum No. 128-2021 dated 18 August 2021

- Section 61 of the TRAIN Law amended Section 188 of the NIRC of 1997 increasing the DST rate on certificates from P15.00 to P30.00.

Clarification on Customs Memorandum Circular No. 54-2014 with Subject: Matrix Appropriate Requirements on the Release of Products under Food and Drug Administration (FDA)

CMC No. 182-2021 clarifies the optional issuance of Food/Export Commodity Clearance.

CMC No. 182-2021 dated 1 September 2021

- A clarification was given on the optional issuance of Food/Export Commodity Clearance, the same being subject to the requirements of the country of destination. Thus, issuance is not mandatory on the part of manufacturers/ traders of processed food products intended for export to secure the authorization from the FDA if the same is not required by the importing country.

- FDA notifies that it is updating its Matrix of Appropriate Requirements on the Release of Products under its jurisdiction to be consistent with the current regulations. A copy of the updated Matrix once issued will be provided to the BOC.

DAO No. 21-04- in the Matter of the Application for General Safeguard Measures on the Importation of Motor Vehicles (Passenger Cars and Light Commercial Vehicles) from various countries (AHTN 2017 headings 87.03 and 87.04)

CMO No. 28-2021 circularizes DTI's decision dismissing the petition for general safeguard measures on the shipments of motor vehicles (passenger cars and light commercial vehicles) falling under AHTN 2017 Headings 87.03 and 87.04.

CMO No. 28-2021 dated 18 August 2021

- The Tariff Commission (TC) terminated its formal investigation and recommended not to impose definitive general safeguard measures about the investigation.

- All cash bonds that have been imposed and previously collected as provisional safeguard measure on the shipment of motor vehicles (passenger cars and light commercial vehicles) which entered or were withdrawn from warehouses in the Philippines for consumption from 1 February 2021, should be immediately returned to the concerned importer/s upon compliance with the applicable customs laws, rules, and regulations.

- For ease of processing of the refund, once the Ports order or recommend the return of the cash bonds, the same should be transmitted to the Office of the Commissioner for review and confirmation with the following documents:

  - Statement of Refund duly signed by the District Collector
  - SAD/IEIRD
  - Proof of Payment
  - BCOR Processing Fee
  - Certificate of No Outstanding Obligation
  - Recommendation/Order from the Port
  - Endorsement to Financial Management Office (FMO)
  - Certification from the FMO that the cash bond was deposited to a Trust Fund or to the Account of the BOC, whichever is applicable, and the details pertinent thereto.

- All District and Sub-Port Collectors, and all others concerned are hereby directed to confirm the dissemination of this Order within 5 days from receipt thereof for records purposes.

- The Order shall take effect immediately,

(Editor's Note: A copy of CMO No. 28-2021 was transmitted to the UP-Law Center on 20 August 2021)

Electronic Advance Ruling System (e-ARS) for Valuation and Rules of Origin

CMO No. 32-2021 provides an electronic procedure in the implementation of CAO No. 03-2016 (e-ARS for Valuation and Rules of Origin) and encourages an electronic application for advance ruling on valuation and rules of origin in line with the BOC's thrust to re-engineer its systems and processes towards trade facilitation.

CMO No. 32-2021 dated 10 September 2021

- The requesting person shall access the website: https://ars.customs.gov.ph and select the type of application either for valuation or rules of origin. Thereafter, the e-ARS will then request for payment verification of the AR fee (P1,500.00). Once payment is verified, the requesting person shall accomplish the mandatory/required fields of the application form and upload supporting documents in PDF format. A ticket number will be generated for the application and the status will be SUBMITTED.

- The application will be then evaluated by the assigned Technical Support Team (TST)'s pool of Advance Ruling for Valuation (ARV)/Advance Ruling for Rules of Origin (ARROO) officers.

- Once evaluation is complete, the application will be endorsed to the AR TST's senior officer for review; the application will undergo several approvals, depending on the type of application, until it is duly approved and signed by the Commissioner.

- In case of denial of the application, the Requesting Person may file a motion for reconsideration (MR) with the Commissioner within 15 calendar days from the receipt of the ruling or decision. If denied by the Commissioner, the Requesting Person may appeal to the Court of Tax Appeals (CTA) within 30 calendar days from the receipt of the denial of the MR.

PEZA Issuances

PEZA MC No. 2021-047 prescribes the mandatory use of PEZA EARS.

PEZA MC No. 2021-047 dated 31 August 2021

Section 3, Rule 6 of the IRR of the CREATE Act provides that:

> "***SECTION 3. Method of filing; Fees. – Application for registration shall be filed electronically through a system prescribed by the FIRB, or through the system of an IPA:*** Provided, that the IPA system is interoperable with and can be linked to the FIRB system: Provided, further, That in the event that the FIRB or IPA system is unavailable, such application may be filed manually, accomplished in two (2) copies and sworn before a notary public, or in any manner prescribed by the concerned IPA. The applicable fees shall be determined by the IPA concerned."

In view of the foregoing, **applications for registration with PEZA as an Ecozone Enterprise through the PEZA EARS**, which is available in the PEZA website, **SHALL NOW BE MANDATORY**. In addition, applications for registration should include the basic documentary requirements provided under Section 4, Rule 6 of the CREATE IRR.

This is also to remind all applicants to submit realistic/rational projections for the project or activity-level information as these will form part of the applicants' commitments once the PEZA Board of Directors approve the application for registration, subject to further review by the FIRB. Further, these commitments shall be one of the bases for the issuance of the Certificate of Entitlement to Tax Incentives (CETI), as provided in the CREATE IRR.

PEZA will no longer accept requests for amendments on project or activity-level information once the project/activity is approved by the PEZA Board as this is prohibited under the CREATE Law. Should there be a need for amendment, the applicants need to cancel the application without prejudice to its re-filing.

Section 1, Rule 22 of the IRR of the CREATE Law penalizes misrepresentation of information for the purpose of availing of incentives such as cancellation of registration, suspension of incentive benefits and/or refund of incentives enjoyed by the enterprise, including interest and penalties.

All other transactions or applications, particularly for the Letters of Authority (LOAs) under the Operations Group enumerated in the PEZA Citizens Charter, should be addressed to the Director General *(also available in the website)* and shall be accepted through emails at odgcbp@peza.gov.ph while PEZA is still finalizing the system for the electronic LOA (e-LOA) applications.

This Circular shall take effect on 15 September 2021.

PEZA MC No. 2021-049 supplemented FIRB Resolution No. 19021 extending the WFH Arrangement for IT-BPM registered enterprises until 31 March 2022 with 90% total workforce threshold.

PEZA MC No. 2021-049 dated 6 September 2021

The Fiscal Incentives Review Board (FIRB) under Resolution No. 19-21 dated 02 August 2021, approved the extension of the WFH Arrangement for Information Technology – Business Process Management (IT-BPM) registered enterprises until 31 March 2022, as a temporary measure under Rule 23 of R.A. No. 11534 of the CREATE IRR.

However, instead of revenue, the resolution states that the threshold to engage in WFH operations shall now apply to the total workforce under the following conditions:

- The WFH arrangement is extended without adverse effect on the incentives registered enterprises until 31 March 2022.
- From 13 September to 31 December 2021, the total number of employees under WFH arrangement shall not exceed 90%. For PEZA-registered IT Enterprises, this shall be on a per site/location basis.
- Beginning 1 January 2022, the total number of employees under WFH arrangement shall not exceed 75%.
- Should the State of Calamity under Presidential Proclamation No. 1021 be extended beyond 1 January 2022, the threshold shall be maintained at 90% until 31 March 2022.

- Revenue from export shall be maintained and there shall be no reduction of workforce despite majority of employees under WFH Arrangement.

In view of the foregoing, PEZA MC No. 2021-004 dated 8 January 2021 is hereby extended until 31 March 2022 to align with the resolution of the FIRB. Registered enterprises shall continue to comply with the conditions/requirements under MC No. 2021-004 in addition to the conditions imposed under FIRB Resolution No. 19-21 dated 2 August 2021.

PEZA MC No. 2021-051 set the guidelines to monitor the compliance with the conditions prescribed under FIRB Resolution No. 19-21 on the Work from Home Arrangement for Registered Business Enterprises (RBES) in the IT-BPM Sector.

PEZA MC No. 2021-051 dated 10 September 2021

In addition to the conditions set forth in PEZA MC No. 2021-049, Ecozone IT Enterprises shall submit to the PEZA Zone Managers/Office the following:

Requirements	Due Date
1. List of equipment and other assets brought out of the economic or freeport zones with the following details: a. Quantity of laptops, desktops, or other assets. b. Acquisition cost and book value; and c. Amount of bond paid to cover 150% of the amount of taxes and duties (if imported) and VAT (if locally sourced).	30 September 2021
2. Total number of employees and the number of employees under the WFH arrangement	30 September 2021
3. Certification that the export requirement and number of employees will be maintained	30 September 2021
4. A report on the following: a. Additional equipment and other assets brought out of the economic or freeport zones as mentioned in Item (1); and b. The total number of employees and the number of employees under the WFH arrangement.	Within five (5) days after the end of each month

Non-compliance with the conditions may result in the suspension, withdrawal, or cancellation of tax incentives of the ecozone IT enterprises.

Moreover, PEZA is also directed to report to the FIRB within five (5) days from the knowledge of any violation of these conditions by an ecozone enterprise.

SEC Issuances

SEC Notices and Administrative Requirements

SEC Notice provides the requirements to participate in the GS Repo Market.

SEC Notice dated 5 August 2021

This covers all Government Securities Eligible DEALERS (GSEDs). The requirements to participate in the GS Repo Market are as follows:

- To file with Markets and Securities Regulation Department (MSRD) an application to participate in the GS Repo market:

    1. Submit a completed and signed advanced copy of the Application Form (which is attached to the SEC Notice) via email to:

        - msrd_covid19@sec.gov.ph;
        - mrgarcia@sec.gov.ph;and
        - gclagonoy@sec.gov.ph.

    2. Submit the physical copy of the completed and signed Application Form to the SEC- MSRD, Ground Floor, Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City, c/o Ms. Melanie Garcia and/or Ms. Gretchen Lagonoy.

    3. Once approved, the applicant will receive a copy of the approved application form via email with the approved physical copy to follow.

- To register with the Bureau of Treasury (BTr) and BIR to qualify the Repo transactions for documentary stamp tax exemption under Section 4 of BIR Revenue Memorandum Circular No. 95-2017 (which is attached to the SEC Notice):

    1. Submit a copy of the approved Application Form and two (2) copies each of the Global Master Repurchase Agreements (GMRAs) which the applicant has executed with each of its counterparties to:

        Scripless Securities Registration Division
        Bureau of Treasury
        Ayuntamiento Building
        corner Cabildo and Aduana Sts.,
        Intramuros Manila
        Attention: Mr. Erwin D. Sta. Ana, Deputy Treasurer
        Ms. Floresita v. Tuazon

    2. Send advance copies of these documents to:

        ssrd_@treasury.gov.ph;
        fvtuazon@treasury.gov.ph;
        cc: msrd_covid19@sec.gov.ph;
        mrgarcia@sec.gov.ph; and
        gclagonoy@sec.gov.ph.

(Editor's Note: The SEC Notice was posted on the SEC Website *on 5 August 2021)*

SEC Notice provides a summary of AMLC Regulatory Issuance No. 5, Series of 2021, on the Guidance for De-listing and Unfreezing Procedures to assist covered persons, government entities, and the public on the implementation of the target financial sanctions (TFS).

SEC Notice dated 30 July 2021

The guidance includes the following:

- Delisting procedures as outlined by the United Nations (UN) Security Council Committee;
- Situations where the AMLC can issue unfreezing orders;
- Modes of communicating designations and delisting from the relevant UN Sanctions Lists of covered persons, government entities, and the public;
- Modes of communicating the issuance of an unfreezing order to covered persons, government entities, and the public;
- AMLC's function to assist in the verification of whether a person or entity is a designated person or entity;
- Procedures on lifting TFS, involving false positive identification;
- Procedures on how an innocent third-party may apply for relief for frozen funds and other assets;
- Procedures on how to apply for authorized expenses and permissible transactions with designees; and
- Guidance to covered persons, government entities, and the public on what to do if they are holding funds and other assets of a designee if delisting from the UN Sanctions List is made and/or an unfreezing order is issued by the AMLC.

Further, the guidance includes templates/forms for requesting verification assistance from the AMLC; an application form for authorization to make assets or financial services available to a designated individual or entity; and an authorization form to make assets or financial services available to a designated individual or entity.

(Editor's Note: The SEC Notice was posted on the SEC Website *on 30 July 2021)*

SEC provided following replies to the FAQs as a guide in complying with the requirements of the Commission on Beneficial Ownership.

SEC Notice dated 17 September 2021

Question	Answer
1. Who are required to disclose beneficial ownership information?	All SEC registered corporations, foreign and domestic stock and non-stock corporations, required to submit the GIS are required to disclose their beneficial ownership information.
2. Where can we find the rules and regulations of the SEC on Beneficial ownership?	Circulars issued by the SEC on beneficial ownership of a corporation: ▸ SEC Memorandum Circular No. 15, Series of 2019 (Revision of the GIS for Domestic Corporations to Include Beneficial Ownership Information); ▸ SEC Memorandum Circular No. 30, Series of 2020 (Revision of the GIS for Foreign Corporations to Include Beneficial Ownership Information); and ▸ SEC Memorandum Circular No. 01, Series of 2021 (BO Transparency Guidelines).

Question	Answer
3. What is the purpose of requiring the disclosure of beneficial ownership information?	▸ Implement the policy embodied in the RCC that corporations shall be organized only for lawful purpose; ▸ Prevent the use of corporations for money laundering and terrorist financing and other illicit purposes; ▸ To be compliant with best practices and international standards on anti-money laundering and combating the financing of terrorism (AML/CFT); and ▸ Ensure that the country is not considered a high-risk jurisdiction that would subject the Philippines to countermeasures detrimental to its economy and the welfare of Overseas Filipino Workers.
4. What is beneficial ownership information?	Specific information regarding a beneficial owner which includes the following: a. Complete name which shall include surname, given name, middle name and name extension; b. Specific residential address; c. Date of birth; d. Nationality; e. TIN or passport No. for foreign nationals with no TIN; f. Percentage of ownership, if applicable.
5. Where do we disclose beneficial ownership information?	It should be disclosed in the GIS. It must also be kept and maintained at the principal office of the corporation.
6. Who is a beneficial owner of a corporation?	The natural person who: (1) ultimately owns or controls the corporation; or (2) exercises ultimate effective control over the corporation.
7. Is there a difference between a legal owner and a beneficial owner?	Yes. A legal owner is a juridical or natural person who under the law has legal title while a beneficial owner is the natural person who actually or ultimately owns or controls the corporation or exercises ultimate effective control even if on paper he does not have any legal title or does not appear as the legal owner.
8. May a corporation be declared as a beneficial owner of another corporation?	No. Juridical persons such as a corporation cannot be considered as a beneficial owner. By definition, beneficial owners refer to natural persons only.

Question	Answer
9. How do we identify a beneficial owner?	▸ Through ownership interest. The natural person who ultimately has controlling ownership interest (at least 25% of the voting shares, capital or voting rights) in the corporation, directly or indirectly or through a chain of ownership. ▸ Through other means. The natural person exercising control of the corporation through other means. ▸ Through position of control in the company. The natural person composing the Board of Directors or Trustees or any similar body and/or the senior managing official of the corporation.
10. When is ownership direct or indirect or through a chain of ownership?	Ownership is direct if the natural person himself owns the shares constituting not less than 25% of the voting capital/shares of the reporting corporation. It is indirect or through a chain of ownership if it is based on the percentage (%) share in the voting shares or capital of the reporting corporation held by a natural person through a chain or through layers of corporate ownership. Thus, if a natural person owns 100% of the shares of A corporation that owns 25% of the shares of the reporting corporation, such a person should be disclosed as a beneficial owner since he/she indirectly owns at least 25% of the shares or capital of the reporting corporation.
11. What are the situations or arrangements indicating beneficial ownership required to be disclosed?	A. Owning, directly or indirectly or through a chain of ownership, at least 25% of the voting rights, voting shares or capital of the reporting corporation. B. Exercising control over the reporting corporation, alone or together with others, through any contract, understanding, relationship, intermediary or tiered entity. C. Having the ability to elect a majority of the board of directors/trustees, or any similar body, of the corporation. D. Having the ability to exert a dominant influence over the management or policies of the corporation.

Question	Answer
	E. The directions, instructions or wishes in conducting the affairs of the corporation are carried out by majority of the members of the board of directors of such corporation who are accustomed or under an obligation to act in accordance with such person's directions, instructions or wishes. F. Acting as stewards of the properties of corporations, where such properties are under the care or administration of said natural person(s). G. Actually owning or controlling the corporation through nominee shareholders or nominee directors acting for or on behalf of such natural persons. H. Owning or controlling or exercising ultimate effective control over the corporation through other means not falling under any of the foregoing categories. I. Exercising control through positions held within a corporation.
12. How are these different situations disclosed?	Specify the letter indicating the situation applicable to a certain beneficial owner in the space provided for in the Beneficial Ownership Declaration page of the GIS.
13. Who are considered as the person or persons in control of the company by virtue of their positions therein?	▸ Members of the Board of Directors/ Trustees or any similar body; and/or ▸ Senior Managing Official such as the President, CEO, COO, CFO, among others. These persons are responsible for strategic decisions that fundamentally affect the business practices or general direction of the corporation or exercising executive control over the daily or regular affairs of the corporation.
14. When should you indicate a member of the Board and/ or the senior managing official of the company as a beneficial owner?	If despite diligent efforts, the company is unable to identify the natural person who directly or indirectly owns at least 25% of the voting shares, voting rights or capital of the corporation, or through other means, the reporting corporation may disclose as its beneficial owner a member(s) of the Board and/or the senior managing official.

Question	Answer
15. When should the corporation's beneficial ownership information be reported?	▸ It must be annually disclosed in the GIS and therefore within 30 calendar days from date of the stockholders' or members' actual annual membership meeting. ▸ However, the SEC shall be timely apprised of relevant changes in the submitted beneficial ownership information as they arise. ▸ An updated GIS shall be submitted to the SEC within 7 working days after such change occurred or became effective. ▸ For corporations with multiple layers of corporate stockholders, an updated GIS shall be submitted within the same seven-day period. In case it fails to do so, it shall submit within 30 working days from the time such change occurred or became effective with an explanation for the failure to submit the same within the prescribed period.
16. May a corporation submit a Beneficial Ownership Declaration page without a named beneficial owner?	No. In exceptional cases where no natural person is identifiable who ultimately owns or exerts control over the corporation, a corporation may consider the natural persons composing the Board or any similar body and/or the senior managing official of the corporation to be the beneficial owner(s). The corporation must be able to show that it has exhausted all other means of identifying the beneficial owner. This is subject to verification and strict monitoring by the Commission.
17. Do the Directors or Trustees and Officers of the corporation have any obligation in relation to the identification of beneficial owner(s) and disclosure of beneficial ownership information to the SEC?	Yes. The Directors or Trustees and Officers of the corporation shall exercise the due diligence required in ensuring that the requirement to disclose its beneficial owners in the GIS is complied with. Reasonable measures are undertaken to obtain and hold updated beneficial ownership information and to ensure that such information is timely disclosed in the GIS. - adoption of written procedures for obtaining, updating and recording beneficial ownership information and - timely disclosing the same in the GIS submitted to the Commission. Further, Board and Senior Management oversight in ensuring that such procedures are observed shall likewise be required as part of the due diligence measures.

Question	Answer
18. What are the penalties for failure to disclose beneficial ownership information to the SEC?	▸ The corporation and its Directors or Trustees and Officers may be imposed with fines for failure to disclose its beneficial ownership information in the GIS. ▸ This is without prejudice to the imposition of other applicable penalties as provided for under the RCC, SRC and other rules and regulations of the SEC.
19. Who may have access to beneficial ownership information?	Only competent authorities such as law enforcement agencies for law enforcement and other lawful purpose
20. Is this information also available to the general public?	No. Such information is not publicly accessible. A request for beneficial ownership information will have to be coursed through competent authorities or a court of competent jurisdiction.

- Email for inquiries on Beneficial Ownership: eipd-amld@sec.gov.ph.

SEC Notice on Re-accreditation, Submission of Annual Reports under MNRC Memorandum Circular No. 2, Series of 2020 and Prudential Relief Measures afforded by MNRC Memorandum Circular No. 1, Series of 2021.

SEC Notice dated 01 September 2021

- The Microfinance NGO Regulatory Council (MNRC) has recognized the financial losses accredited MF-NGOs may have incurred during calendar year 2020 due to the COVID-19. Memorandum Circular No. 1 Series of 2021 detailed the prudential relief measures such as the relaxation of the P1 million minimum fund balance requirement, the minimum 50% rating in financial performance indicators, and the minimum 60% weighted average rating for all performance indicators. MNRC MC 1 - 2021 allows for the relaxation or waiver of some accreditation requirements under the Microfinance NGOs Act, its IRR, and applicable MNRC issuances.

- MNRC notifies accredited Microfinance NGOs of the following re-accreditation requirements:

  1. In light of the expiration of the MNRC Certificates of Accreditation secured on or before 31 March 2019, MF-NGOs who have secured accreditation for the period 2019 to 2022 and are seeking re-accreditation are reminded to timely file their applications on or before 31 January 2022.

     New guidelines on the MNRC accreditation requirements and processes for the period 2022 to 2025 shall be issued by the Council.

  2. All MNRC-accredited MF-NGOs are REMINDED to submit their annual reports on or before the above-stated deadlines under Item 3 of MNRC MC 2 - 2020, as amended by MNRC MC 1 - 2021.

SEC Notice provides AMLC 2021 Sanctions Guidelines: Targeted Financial Sanctions Related to Terrorism, Terrorism Financing and Proliferation Financing.

SEC Notice dated 07 September 2021

The AMLC issued the 2021 Sanctions Guidelines and the following AMLC regulatory issuances (ARI) relative to the amendments to certain provisions of the 2018 IRR of the AMLA, as amended, Targeted Financial Sanctions (TFS) related to Proliferation of Weapons of Mass Destruction (WMD) and Proliferation Financing (PF), and amendments to certain provisions of ARI No. 4, series of 2020.

1. The Anti-Money Laundering Council issued the 2021 Sanctions Guidelines, incorporating amendments brought about by the enactment of R. A. No. 11479 or the Anti-Terrorism Act of 2020: and R. A. No. 11521 or An Act Further Strengthening the Anti-Money Laundering Law, amending for the Purpose R. A. No. 9160, otherwise known as the Anti-Money Laundering Act of 2001, as amended.

The guidelines now cover targeted financial sanctions related to terrorism, terrorism financing, and proliferation financing, including remedies and relevant links to the appropriate United Nations Security Council Sanctions Committee.

Two chapters have been added to the guidelines, namely: Chapter 9 (Request for De-listing from Anti-Terrorism Council Designations) and Chapter 10 (Targeted Financial Sanctions related to Proliferation Financing).

2. ARI A, B, and C No. 1, Series of 2021 – Amendments to Certain Provisions of the 2018 IRR of the AMLA, as amended.

    - Inclusion to the list of covered persons of real estate developers and brokers as well as the offshore gaming operators and their service providers.

    - Inclusion in the list of unlawful activities the violations of Section 19 (A)(3) of R.A. No. 10697 or "Strategic Trade Management Act," in relation to the proliferation WMD and its financing and Section 254 of Tax Code; and

    - The additional authority of the AMLC to apply for the issuance of a search and seizure order or a *subpoena ad testificandum* and/or *subpoena duces tecum* with any competent court, in the conduct of its investigation; and to implement TFS in relation to the proliferation of WMD and its financing, including ex parte freeze.

3. TFS related to Proliferation of WMD and PF

    All covered persons should implement TFS relating to proliferation of WMD and its financing against all funds and assets that are owned or controlled, directly or indirectly, including those derived or generated therefrom by individuals or entities designated and listed under United Nations Security Council (UNSC) Resolution Nos. 1718 (2006) (concerning the Democratic People's Republic of Korea) and 2231 (2015) (concerning the Islamic Republic of Iran) and their successor resolutions under the UNSC Consolidated List.

    The AMLC issued the TFS related to proliferation of WMD and PF directing CPs to:

    - Incorporate UNSC Resolution Nos. 1718 (2005) and 2231 (2015), and their successor resolutions in their Customer Due Diligence/Risk Profiling policies and procedures.

    - Freeze the properties or funds of designated persons or entities or those whose identities match with all the information in the Consolidated List (Target Match); and freeze or put on hold (for a period not exceeding 36 hours) property or funds owned or controlled by persons or entities whose identity matches most, but not all, of the identifier information in said list (Potential Target Match);

    - Submit a return to the AMLC within 24 hours from effecting the TFS.

- Prohibit from dealing with properties or funds of designated persons or entities.
- File suspicious transaction report (STR) for attempted transactions or dealings.
- Immediately inform the AMLC of any temporary freeze or hold against a potential target match in addition to the filing of an STR; and
- Permit addition to the accounts frozen of interest or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the TFS, provided that any such interest, other earnings and payments continue to be frozen.

4. ARI No. 2 dated 31 January 2021 – Amendments to certain provisions of ARI No. 4, Series of 2020, also known as "Freeze Order for Potential Target Matches under the UNSC Consolidated Lists (Targeted Financial Sanctions) This amends ARI No. 4, specifically incorporating provisions relating to the implementation of TFS for PF, such as the legal basis of TFS related to terrorism and terrorist financing, list of AMLC resolutions/freeze orders (FOs) to implement TFS, directive and coverage of the FOs, who needs to comply with the TFS, and filing of detailed return before the AMLC.

   It also provides new chapters to cover administrative remedies (Chapter 5), authorized dealings and exemptions (Chapter 6), TFS related to PF (Chapter 7), and sanctions (Chapter 8).

SEC Notice on extension on submission of forms/notices pursuant to Memorandum Circular No. 28, Series of 2020.

SEC Notice dated 08 September 2021

- The SEC has extended the deadline for Corporations, Partnerships, and Individuals under the jurisdiction and supervision of the Commission to comply with SEC Memorandum Circular No. 28, series of 2020, without penalty, until 11 November 2021.
- Forms/notices of the MC 28, s. 2020 may be filed online through the email platform MC28_S2020@sec.gov.ph.
- Filing of the forms/notices beyond 11 November 2021 shall be considered as non-compliant and will be subject to penalty in the amount of P10,000.00.

SEC Notice on transition of applications for registration of partnerships and licensing of foreign corporations from CRS to SEC ESPARC.

SEC Notice dated 14 September 2021

- Application for registration of partnerships and licensing for foreign corporations shall now be processed and approved for payment in the SEC eSPARC.
- The SEC eSPARC may be accessed at https://secwebapps.sec.gov.ph/application.

1. All pending applications starting with the company name reservation and those applications in the preform and in-form status in the CRS, including those filed but not yet been approved for payment must re-apply in the SEC eSPARC.

2. Applications that comply status in the CRS may continue with the registration application by re-applying through SEC eSPARC.

3. Applicants whose applications have been approved for payment in the CRS and have been provided with a Payment Assessment Form (PAF) should proceed in paying the registration fees. The proof of payment, together with the signed and authenticated/notarized copies of the registration documents, should be submitted to the selected processing office for the issuance of the Certificate of Incorporation.

4. Applicants that have already paid their registration fees but cannot upload the proof of payment in the CRS should submit the proof of payment, together with the signed and authenticated/notarized copies of the registration documents, to the selected processing office for the issuance of the Certificate of Incorporation.

5. Applicants that have already uploaded the proof of payment in the CRS but have not yet been issued a Certificate of Incorporation should submit the proof of payment, together with the signed and authenticated/notarized copies of the registration documents, to the selected processing office for the issuance of the Certificate of Incorporation.

SEC OGC-Opinion

SEC OGC-Opinion 21-10 dated 21 September 2021

SEC OGC-Opinion 21-10 states that (1) redeemable shares may be repurchased by the corporation from holders of such shares upon expiration of a fixed period, regardless of existence of unrestricted retained earnings; (2) interim financial statements shall be submitted in relation to the proposed decrease authorized capital stock; and (3) redeemed shares are considered retired and can no longer be reissued.

Facts:

M Inc. has an authorized capital stock of P135 Million divided into 25 Million Common Shares and 110 Million Preferred Shares, both with par value of P1 per share. It intends to redeem all 110 Million Preferred Shares it has issued, which will be retired. It will subsequently apply for a decrease in its authorized capital stock.

As of December 31, 2019, the Audited Financial Statements reflect a retained earning deficit of P79,345,843. M Inc. will have sufficient assets to cover its debts even after redemption. The proposed redemption will not cause insolvency or result in the inability to meet its debts as they mature.

Due to inadequate cash, M Inc. plans to raise funds either through disposal of assets or receive advances from shareholder to fund the planned redemption.

Issues:

1. Can M Inc. redeem the preferred shares at par value even without unrestricted retained earnings and without violating existing laws as well as the trust fund doctrine?

2. Are the interim Financial Statements sufficient proof to provide interim balances after infusion of cash?

3. Can the redeemed shares be retired even as the Articles of Incorporation are silent on the nature of the "reissuable" nature?

Rulings:

1. Yes. While the general rule is that there must be unrestricted retained earnings before a corporation can redeem, repurchase or reacquire its own shares under Sec. 40 of the Revised Corporation Code, such rule admits an exception. Sec. 8 of the RCC provides that redeemable shares may be purchased by the corporation from the holders of such shares upon the expiration of a fixed period, regardless of the existence of unrestricted retained earnings in the books of the corporation.

   M Inc. may purchase its redeemable shares from the holders upon the expiration of a fixed period, as provided in its articles of incorporation and certificates of stock representing the said shares, regardless of the existence of unrestricted retained earnings in its books, considering that after such redemption, there will still be sufficient assets in the Company's books to cover debts and liabilities inclusive of the capital stock.

2. The SEC's Company Registration and Monitoring Department (CRMD) will require the submission of an interim FS in relation to the proposed decrease in authorized capital stock. It is recommended that the interim FS be audited. Audited FS can provide reasonable basis for obtaining high level of assurance that the FS are not materially misstated.

3. Yes. Once its shares are redeemed, these shall be considered retired and may no longer be reissued. To eliminate the treasury shares, M Inc. must file an application for decrease of authorized capital stock with the SEC and comply with Sec. 37 of the RCC, including the requirement that such decrease will not prejudice the rights of corporate creditors.

SEC Memorandum Circular

SEC MC No. 9 provides the Rules on Authorization of an Investment Company as a Qualifying CIS and Recognition of a Foreign CIS Under the ASEAN CIS Framework.

SEC MC No. 9 Series of 2021 dated 18 August 2021

Among the salient provisions of this Notice are as follows:

Particulars	Details
I. Coverage	a. Investment Companies and Fund Managers that intend to participate in the Framework for Cross-Border Offering of ASEAN Collective Investment Schemes (ASEAN CIS Framework) and offer for sale the shares of Investment Companies cross-border; and b. Foreign Collective Investment Schemes Operators of Member Jurisdictions that will offer for sale foreign CIS in the Philippines under the ASEAN CIS Framework.

Particulars	Details
II. Requirements for Authorization of Investment Companies as Qualifying CIS	An Investment Company and its Fund Manager may offer the shares in other Member Jurisdictions under the ASEAN CIS Framework only if: 1) The Investment Company is incorporated under the laws of the Philippines and authorized under the Investment Company Act (ICA) and Securities Regulation Code (SRC) to issue shares to the public; 2) The Investment Company has been assessed by the Commission as suitable to be a Qualifying CIS, the parties involved such as the Fund Manager and the proposed cross-border offering is fully compliant with the SRC, ICA, and their respective Implementing Rules and Regulations (IRR) as well as the provisions of the Standards of Qualifying CIS and any amendments thereto. a. An Application to the Commission for Authorization of an Investment Company as a Qualifying CIS must be made by the Investment Company or its Fund Manager, if authorized by the Board of Directors of the investment company by submitting a duly notarized and completed SEC Form –Qualifying CIS. b. The authorization of an Investment Company as a Qualifying CIS shall be subject to a fee of P10,000.00 plus Legal Research Fee, provided all other filing fees covered by SEC ICA Form 7-A and SEC Form 12-1-ICA have been previously paid covering the securities to be concurrently offered in the Philippines and in Member Jurisdictions. c. The Commission will review and assess the application for authorization of an investment company as a Qualifying CIS within (21) business days from submission of complete documents. d. If the Commission is satisfied that the Fund Manager and Investment Company meet the applicable requirements stated in this Circular, Standards of Qualifying CIS, the ICA, SRC, and their respective IRRs, the Commission will issue a letter stating that: i. The investment company has been approved by the Commission for public offer in the Philippines; and ii. It has no objections to such investment company being deemed as a Qualifying CIS pursuant to the Standards of Qualifying CIS.

Particulars	Details
III. Additional Requirements for Investment Companies offering cross-border	1. Demonstrate compliance with both domestic regulations and Standards of Qualifying CIS, if the two sets of requirements differ on a particular provision, the stricter requirement would govern and such fact must be highlighted in the Prospectus of the Fund. 2. In case of cross-border offerings, the roles and responsibilities of the following: ▸ Board of Directors of Investment Company (Qualifying CIS), ▸ Fund Manager (CIS Operator), ▸ Custodian, ▸ Independent Oversight Entity and ▸ other entities or persons dealing with the Investment Company shall also be governed by the Standards of Qualifying CIS or any amendments thereto. 3. The shares of the Qualifying CIS must be concurrently offered in the Philippines and in Member Jurisdictions. 4. The existing provisions under Rule 12.1 of the ICA-IRR as well as applicable provisions of the SRC shall apply to the reportorial requirements of the investment company that will participate in the Framework.
IV. Recognition of Foreign Collective Investment Schemes to be offered in the Philippines	A. Requirements for Recognition of a Foreign CIS 1) Constituted in a Member Jurisdiction and is permitted to be offered to the public of that Member Jurisdiction. 2) Not subject to any suspension or revocation order by the Home Regulator. 3) Has been assessed by the Home Regulator as suitable to be a Qualifying CIS. 4) Has been recognized by the Commission and permitted to be offered in the Philippines subject to the requirements provided under these Rules and any of its amendments. 5) The units will be concurrently offered in the Philippines and in the jurisdiction in which the foreign CIS is constituted and primarily regulated. 6) The foreign CIS, the CIS Operator and the trustee/ fund supervisor satisfy the requirements of the Standards of Qualifying CIS and the amendments thereto as well as the requirements under these Rules relative to the recognition of foreign CIS. 7) Its Offering Document complies with the disclosure requirements of the Commission.

Particulars	Details
	8) A local representative and distributor in the Philippines must be appointed in relation to each foreign CIS that is to be offered, marketed, and distributed in the Philippines. B. The CIS Operator must appoint a local representative in the Philippines in relation to each foreign CIS that is to be offered, marketed, and distributed in the Philippines. The CIS Operator may appoint a mutual fund distributor, fund manager or securities broker as its local representative. The local representative shall represent and act on behalf of the foreign CIS and its CIS Operator for all matters relating to that foreign CIS. If the position of the local representative becomes vacant, the offering of the foreign fund must immediately cease, and such fact must be immediately reported to the Commission within 7 business days from the occurrence of the event. The CIS Operator must appoint a new local representative within 30 calendar days from the date of the vacancy, or any such period as may be allowed by the Commission. The CIS operator must immediately notify the Commission of such appointment. C. The CIS Operator must appoint one or more local distributors for the purpose of offering, marketing, or distributing a foreign fund that is to be offered in the Philippines under the ASEAN CIS Framework. Responsibilities of the local distributor ▸ to offer, market or distribute the foreign CIS in the Philippines ▸ to keep a register of investors that will be readily available to the Commission. ▸ ensure compliance with the Suitability Rule under Rule 5.2.4 of the ICA-IRR. ▸ ensure compliance with the Suitability Rule under Rule 5.2.4 of the ICA-IRR. D. Application for Approval or Recognition for the sale or offering of units of a foreign CIS in the Philippines E. Payment of Filing Fee F. Offering Document/Prospectus of foreign CIS 1) The offering document of a foreign CIS must comply with the relevant disclosure requirements provided under these Rules and other applicable disclosures under Rule 4.2 of the ICA-IRR or any of its amendments. 2) The prospectus submitted to the Commission should not contain false or misleading information.

Particulars	Details
	3) The CIS Operator must prepare and submit to the Commission upon filing the application either: a. the latest version of the offering document/ prospectus; or b. another offering document/prospectus (in addition to the original offering document/ prospectus approved by Home Regulator) which complies with the disclosure requirements under these Rules and any other applicable Philippine laws or regulations. G. Grounds for Rejection of Application for Recognition/ Suspension or Revocation of Approval of a Foreign CIS for public offer in the Philippines a. Submission of false or misleading information to either the Home Regulator or the Commission. b. Misrepresented to or have defrauded investors. c. Breach of any obligations or provisions in the constitutive documents that are applicable to them. d. Non-compliance with any resolution passed by investors; or e. Violation of any laws, regulations, Standards of Qualifying CIS, or administrative provisions imposed in the Home Jurisdiction or in the Philippines. H. Reportorial Requirements for foreign CIS 1. Updated Prospectus to be submitted within 15 calendar days from the time it was updated and/or approved by the Home Regulator or after lodgment with the Home Regulator (whichever is applicable) 2. Annual Reports and Interim Reports must be submitted in the same manner and within the same period that it is required to be filed with the Home Regulator 3. A current report on SEC Form 17-C 3. A current report on SEC Form 17-C 4. A monthly report within the same period that it is required to be submitted to the Home Regulator. If not required in the Home Jurisdiction, within 30 days from effectivity of the Order recognizing the Qualifying CIS, and within the first 10 days of every month thereafter, the CIS Operator or authorized representative shall submit to the Commission a Monthly Issuance and Redemption Report of units. I. Penalties for violations of foreign CIS The applicable provisions of the SRC, ICA, and their IRRs on civil and/or criminal liabilities shall apply in case of any violation relative to the offering of the foreign CIS in the Philippines.
IV. Effectivity	These rules shall take effect immediately after publication in twonewspapers of general circulation in the Philippines.

(Editor's Note: The SEC MC was filed with the UP-Law Center on 17 August 2021 and published in the Philippine Star *and* Manila Bulletin *on 18 August 2021)*

CTA Cases

Refund/Issuance of Tax Credit

Commissioner of Internal Revenue vs. Maersk Global Service Centres (Philippines) LTD.
CTA EB No. 2260 promulgated 29 July 2021

Section 112 of the NIRC of 1997, as amended, merely requires a claimant to establish that: (i) it is engaged in zero-rated sales of good or services; and, (ii) it paid input VAT that are attributable to zero-rated sales. In other words, the claimant must prove that it made a purchase of taxable goods or services for which it paid the input VAT, and subsequently, engaged in the sale of goods or services subject to VAT, albeit at zero rate.

Facts:

Company A is a foreign corporation licensed to do business in the Philippines as a Regional Operating Headquarters (ROHQ). On 22 March 2016, Company A filed with the Commissioner of Internal Revenue (CIR), an application for VAT refund of its unutilized and excess creditable input VAT attributable to its zero-rated sales for taxable year 2014 in the total amount of P34,088,112.64. The CIR denied Company A's claim for tax refund stating that Company A is not entitled thereto citing Sec 108 (b)(2) of the Tax Code and that the company was not able to prove its claim for such entitlement for lack of competent/sufficient evidence. It further stated that Company A failed to prove that its input VAT is directly attributable to its alleged zero-rated sales. However, the Court in Division declared that Company A sufficiently proved its entitlement to the tax refund.

Issue:

Is Company A entitled to the refund of input VAT on its zero-rated sale?

Ruling:

Yes. The Court *En Banc* affirmed the Court in Division's decision that the excess valid input VAT is entirely attributable to Company A's zero-rated sales for taxable year 2014. Clearly, Company A was able to sufficiently prove that the input VAT, subject of this claim, has not been applied against any output tax for the succeeding quarters of taxable year 2015. Further, Company A was able to prove that:

1. It is VAT-registered;
2. The claim for tax refund was filed within the prescriptive periods both in the administrative and judicial levels;
3. there were zero-rated or effectively zero-rated sales;
4. input taxes were incurred or paid;
5. such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. the input taxes were not applied against any output VAT liability.

Considering the foregoing, the Court *En Banc* declared that Company A's entitlement to the Tax Credit Certificate representing the excess and unutilized input VAT attributable to zero-rated sales was sufficiently established. To support this proposition, the CTA further explained that Section 112 (A) of the Tax Code, as amended, merely states that the creditable input VAT should be "attributable" to zero-rated or effectively zero-rated sales and that there is nothing in the aforesaid Section which requires that the input VAT should be "directly" attributable to zero-rated or effectively zero-rated sales. Although the words "directly" and "attributed" are found in the Section, the Court *En Banc* finds their use to refer to situations where the creditable input VAT cannot be "directly and entirely attributed" to any transaction, in which case a proportionate allocation has to be done on the basis of volume of sales.

Procter & Gamble Distributing (Philippines), Inc. vs. Commissioner of Internal Revenue (CIR)
CTA Case No. 9946 promulgated 22 July 2021

The Certificates of Creditable Tax Withheld at Source issued by the withholding agents are prima facie proof of actual payment by the payee to the government itself through said agents.

Moreover, it is not enough that the related income earned or received be declared as part of the gross income. There must be proof that it is made in the same period with the claiming of the related tax credit.

Facts:

Company P filed an administrative claim on 31 May 2018 and judicial claim on 11 October 2018 for the tax refund of its excess and unutilized creditable withholding taxes ("CWTs") for fiscal year ("FY") 1 July 2015 to 30 June 2016 ("FY 2016"), as shown on its Annual Income Tax Return ("ITR") filed on 14 October 2016.

Company P presented CWT certificates which includes certificates dated 29 June 2015 to September 27, 2015. In addition, Company P also has income recorded in its General Ledger ("GL") supported with sales invoices dated within FY 2015, declared in the FY 2015 Annual ITR, but for which the related CWT certificates were issued by the payors in FY 2016. Moreover, there were also cancellation of sales transactions but to which no evidence was presented to show that such sales were not previously subjected to CWT or that the related CWT was also reversed.

Issue:

Is Company P entitled to refund of its excess and unutilized creditable withholding taxes ("CWT")?

Ruling:

Yes, partially.

The requisites for a corporate taxpayer to be entitled to a refund or issuance of tax credit certificate involving withholding taxes are the following: (1) The claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the National Internal Revenue Code (NIRC); (2) The fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and income tax withheld from that amount and; (3) It is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income.

For the first requisite, Company P complied accordingly since it validly filed both its administrative and judicial claims within the two-year prescriptive period from the filing of its Annual ITR.

For the second requisite, the Supreme Court affirmed that a Certificate of Creditable Tax Withheld at Source is competent proof to establish the fact that taxes are withheld, and that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Thus, the amount which was supported with CWT certificates dated outside the period subject for refund are disallowed.

For the third requisite, the income payment must form part of the taxpayer's gross income within the period of claim. Section 2.58.3(A) of RR No. 2-98 provides that the amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received. Thus, the income declared in the FY 2015 Annual ITR and the corresponding CWT of the sales cancelled were disallowed.

Therefore, Company P was only entitled to the portion of CWT which have validly complied with the above-mentioned requisites.

SGV | Building a better working world

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

Our insights and quality services help empower businesses and the economy, while simultaneously nurturing our people and strengthening our communities. Working across assurance, tax, strategy and transactions, and consulting services, SGV teams ask better questions to find new answers for the complex issues facing our world today.

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