Tax Bulletin

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BIR Issuances

RR No. 10-2021 amends pertinent provisions of Section 10 under RR No. No. 20-2018, relative to the outright exemption granted to the exportation of sweetened beverage products.

RR No. 10-2021 dated 17 June 2021

- Removal of sweetened beverage products intended for export shall be subject to the payment of the excise tax by the manufacturer due on every removal thereof from the place of production.

- After payment of the tax, the manufacturers at its option may file a claim for excise tax credit/refund pursuant to Sections 204 and 229 of the Tax Code, as amended, or may avail of a claim for product replenishment scheme in accordance with the prescribed provisions under Section 6 of RR No. 3-2008 dated January 22, 2008, subject to the following terms and conditions:

    1. A permit per shipment shall be secured from the BIR Office where the manufacturer is registered or required to be registered as an excise taxpayer before the product is removed from the place of production.

    2. The products removed from the place of production shall be directly transported, loaded aboard the international shipping vessel or carrier, and shipped directly to the foreign country of destination without returning to the Philippines.

    3. Proof of exportation such as, but not limited to, the documents enumerated below, shall be submitted within 30 days from the date of actual date of exportation. However, the concerned BIR Office may, upon written request by the taxpayer-exporter, grant a maximum of 30 days as a one-time extension for the submission of such documents for meritorious reasons:

        - Export Entry Declaration duly filed with the Bureau of Customs;
        - Commercial Invoice;
        - Packing list;
        - Bill of Lading;
        - Cargo Manifest, if applicable;
        - Inward bank remittance in foreign currency acceptable to the Bangko Sentral ng Pilipinas
        - Any document showing proof that the products exported actually arrived and were unloaded in the foreign port of destination (e.g., certificate of discharge, import entry declaration duly received by the foreign port of entry); and
        - Other necessary documents as may be reasonably required

    4. The prescribed phrase "EXPORTED FROM THE PHILIPPINES" is printed on each label that is attached/affixed on the primary container in a recognizable and readable manner.

- Failure to submit proof of exportation within the prescribed period shall be construed as non-exportation of the particular articles; and therefore, the same shall be subjected to the corresponding applicable tax, inclusive of penalties. Relative thereto, subsequent issuance of export permits shall not be allowed unless the assessed applicable taxes due on such unliquidated export including the applicable penalties have been paid. For this purpose, proof of payment of the aforesaid assessment shall accompany the subsequent application permit.

- RR No. 10-2021 shall take effect 15 days after publication in the Official Gazette or in any two newspapers of general circulation, whichever comes earlier.

(Editor's note: RR No. 10-2021 was published in Malaya Business Insight *on 18 June 2021.)*

RR No. 11-2021 prescribes the guidelines and procedures for availing of the tax emptions and privileges granted under RA No. 11523, otherwise known as the FIST Act.

RR No. 11-2021 dated 23 June 2021

Among the salient provisions of this RR are as follows:

Particulars	Details
Registration and Tax Compliance of FIST Corporation (FISTC)	
Registration and other tax compliance of a FISTC	▸ A FISTC established and organized pursuant to the provisions of this Act shall comply with the registration requirements as set forth in Section 236 of the Tax Code, as amended. Further, the newly registered FISTC shall comply with the provisions of the Tax Code, as amended, and other applicable tax revenues issuances, particularly on the following: 1. Issuances of registered Sales Invoices (SIs) or Official Receipts (ORs) for every sale of goods or services; 2. Keeping of registered Books of Accounts and other accounting records of business transactions; 3. Withholding of taxes, if applicable; 4. Filing of required tax returns; and 5. Payment of correct taxes due on time. ▸ Entities created under RA No. 9182, as amended, or "The Special Purpose Vehicle (SPV) Act of 2002," are qualified to avail of the privileges and incentives under the Act provided they comply with the requirements and procedures mandated under the Act and its implementing rules and regulations. For this purpose, all reference to FISTC under this RR shall also apply to SPV created and organized under RA 9182, as amended.
Tax Exemptions and Privileges	
Tax Exempt Transactions	(a) Pursuant to Section 15 of Article IV of the Act, only the following transactions shall be covered by the tax exemptions as provided in paragraph (b) hereof: 1. Transfer of a Non-Performing Loan (NPL) by a Financial Institution (FI) to a FISTC; 2. Transfer of Real and Other Properties Acquired (ROPA) by an FI to a FISTC; 3. Dation in payment (*dacion en pago*) of an NPL by a borrower to an FI; 4. Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to an FI; 5. Transfer of an NPL by an FI to an individual; 6. Transfer of a ROPA by an FI to an individual; 7. Transfer of an NPL by a FISTC to a third-party; 8. Transfer of a ROPA by a FISTC to a third-party; 9. Dation in payment (*dacion en pago*) of an NPL, by a borrower to a FISTC or an individual; 10. Dation in payment (*dacion en pago*) of an NPL by a third-party, on behalf of a borrower, to a FISTC or an individual; 11. Transfer of an NPL by an individual to a third-party; and

	12. Transfer of a ROPA by an individual to a third-party. For purposes of the foregoing, the term "individual" refers only to a natural person; while the term "third-party" refers to any person, natural or juridical, unless specifically excluded in Act (e.g., an FI which transferred the Non-Performing Asset (NPA) to the selling FISTC, the parent of the said FI). (b) The transactions enumerated in paragraph (a) above, subject to the conditions set forth in paragraphs (c) and (d) below, shall be exempt from the following taxes: 1. Documentary stamp tax (DST) on any document evidencing the transfer or dation in payment as may be imposed under Title VII of the Tax Code, as amended; 2. Capital gains tax (CGT) imposed on the transfer of lands and/or other assets treated as capital assets as defined under Section 39(A)(1) of the Tax Code, as amended; 3. Creditable withholding income taxes imposed on the transfer of land and/or buildings treated as ordinary assets pursuant to RR No. 2-98, as amended, *Provided*, That this shall not include exemption from income tax under Title II of the Tax Code. The transfer by an FI or by a FISTC of its NPA, which is treated as its ordinary asset, shall continue to be subject to the ordinary corporate income tax (CIT) or minimum corporate income tax (MCIT), as the case may be, under the pertinent provisions of the Tax Code, as amended. In this manner, the FI shall compute the tax gain or loss as the difference between the amount of consideration received from the FISTC and the cost basis of the related NPA, i.e., the unpaid loan amount of the borrower. 4. VAT on the transfer of NPAs as may be imposed under Title IV of the Tax Code, as amended, or gross receipts tax under Title V thereof, whichever is applicable pursuant to existing revenue regulations: *Provided*, That in case of a VAT-exemption and pursuant to Section 110(A)(3) of the Tax Code, the following rules shall apply: (i) if the property being transferred was intended for sale, for conversion into or intended to form part of a finished product for sale, for use as supplies in connection with trade or business, or as supplies in the sale of services, by a VAT-registered person, the input tax which can be directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities; (ii) if the property being transferred is a capital good used in the trade or business of a VAT-registered person, the input tax on the said property shall be allocated as follows: the depreciated book value of the property over its acquisition cost, multiplied by the input tax directly attributed to the said property shall not be allowed as input tax to the transferor's other VATable activities; and (iii) the amount of the unallowable input taxes as determined in paragraphs (i) and (ii) above, if previously debited to "Input Taxes", shall be charged back to the property under the following adjusting entry: Dr. Inventory/Supplies/Asset x x x Cr. Input Taxes x x x (c) The tax exemptions as provided in paragraph (b) hereof shall apply to the transactions listed in paragraph (a) above only if the NPL/ROPA has been issued with a COE by the Appropriate Regulatory Authority.

	(d) The tax exemptions as provided in paragraph (b) hereof shall apply to the transactions listed in paragraph (a) above only if the following particular requirements, where applicable, are complied, to wit: 1. In the case of transactions (a)(1), (a)(2), (a)(5) and (a)(6) above, the transfer must be in the nature of, and approved by the Appropriate Regulatory Authority as, a "true sale", pursuant to the Act and its implementing rules and regulations: *Provided*, That, if the NPL/ROPA is transferred to a FISTC/individual for less than an adequate and full consideration in money's worth, the amount by which the fair market value of the NPL/ROPA exceeded the value of the consideration shall not be considered as a gift under Title III, Chapter 2 of the Tax Code, as amended. 2. In the case of transactions (a)(1) to (a)(6) above, the transaction must have occurred within a period of not more than two years from the date of effectivity of the Act on 18 February 2021, i.e., from 18 February 2021 to 18 February 2023. Thereafter, the tax exemptions provided in paragraph (b) hereof shall no longer apply. 3. In the case of transactions (a)(7), (a)(8), (a)(11) and (a)(12) above, the NPL/ROPA must have been acquired by the FISTC or Individual from an FI within a period of not more than 2 years from the date of effectivity of the Act on 18 February 2021, i.e., from 18 February 2021 to 18 February 2023, in the nature of a "true sale," pursuant to the Act and its implementing rules and regulations (IRR); and that the transactions must have occurred within the period of 5 years from the date of said acquisition. Thereafter, the tax exemptions provided in paragraph (b) hereof shall no longer apply. 4. In the case of transactions (a)(9) and (a)(10) above, the dation in payment must be in settlement of an NPL that has been acquired by the FISTC or Individual from an FI within a period of not more than 2 years from the date of effectivity of the Act on 18 February 2021, i.e., from 18 February 2021 to 18 February 2023, in the nature of a "true sale," pursuant to the Act and its IRR; and that the dation in payment must have occurred within the period of 5 years from the date of said acquisition. 5. In the case of transactions (a)(2) and (a)(6) above, all applicable taxes on the previous transfer of the ROPA to the FI must have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties. 6. In the case of ROPAs acquired by a FISTC from Government Financial Institutions (GFIs) or Government-Owned-or-Controlled-Corporations (GOCCs), which are devoted to socialized or low-cost housing, they shall not be converted to other uses. 7. In the case of dation in payment NPL transactions (a)(3), (a)(4), (a)(9). and (a)(10) above, the tax exemptions provided in paragraph (b) hereof shall apply only to the extent of the value of the property tendered as payment, which is equivalent to the amount of the NPL being paid, inclusive of interests and penalties, if any: *Provided*, That the dation in payment must not be intended to circumvent the intention of the Act, which is to benefit solely the borrower and the FI. The value of the property being transferred as payment is its fair market value (FMV) as determined in accordance with Section 6(E) of the Tax Code, as amended, whereas the consideration for such transfer shall be the value of the NPL including interests and other charges, if any, as stated in the *Deed of Dation*. 8. In the case of transactions (a)(5), (a)(6), (a)(11), and (a)(12) above, the transaction shall be limited to either a single family residential unit ROPA or an empty lot ROPA, or to an NPL secured by a real estate mortgage on said residential unit or empty lot: *Provided*, however, that the tax exemptions provided in paragraph (b) hereof shall apply only to one acquisition of NPA (either NPL or ROPA) by an individual and to the subsequent transfer of the same NPA.

	9. In the case of NPL and ROPA transactions (a)(1), (a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(11), and (a)(12) above, the tax exemptions provided in paragraph (b) hereof shall not apply to the transfer of any property in exchange for such NPL/ROPA, unless the same is exempted under a pertinent provision of an existing law such as paragraph (a) hereof. 10. In the case of transactions (a)(4) and (a)(10) above, the tax exemptions provided in paragraph (b) hereof shall not extend to any transaction or agreement between the borrower and the third-party as a result of the latter paying the former's NPL on its behalf. 11. In the case of transactions (a)(7), (a)(8), (a)(11) and (a)(12) above, if the NPL/ROPA involved is transferred for less than an adequate and full consideration in money's worth, the amount by which the fair market value of the NPL/ROPA exceeded the value of the consideration shall not be considered as a gift under Title III, Chapter 2 of the Tax Code, as amended. 12. In the case of transactions (a)(5) and (a)(6) above, the individual shall submit to the BIR a sworn certification that he has no other prior or pending application for issuance of COE with other FIs. *Please refer to Section 4(e) of the attached RR for the illustrations on the aforementioned tax exemptions.*
Additional tax exemptions for a FISTC	▸ Pursuant to Section 16 of the Act, to encourage the infusion of capital and financial assistance by the FISTC for the purpose of rehabilitating the financial consumer's business, the following additional tax exemptions and privileges shall be enjoyed: 1. The FISTC shall be exempt from income tax on net interest income arising from new loans in excess of existing loans, which are extended to a borrower with NPL that has been acquired by the said FISTC from an FI within a period of not more than 2 years from the date of effectivity of the Act on 18 February 2021, i.e., from 18 February 2021 to 18 February 2023 and which are solely for the purpose of rehabilitating the borrower's business. The term "net interest income" shall mean gross interest income less allowable deductions limited to those costs attributable to the consummation of the new loans attributable thereto; hence, the said allowable deductions shall no longer be allowed as a deduction from the FISTC's other taxable gross income. 2. Any document evidencing the new loans mentioned in paragraph (1) above shall be exempt from DST. 3. Any document evidencing a FISTC's capital infusion to the business of the borrower with an NPL that has been acquired by the said FISTC from an FI within a period of not more than 2 years from the date of effectivity of the Act on 18 February 2021, i.e., from 18 February 2021 to 18 February 2023 shall be exempt from DST. *Provided*, That the above-mentioned tax exemptions shall apply only for a period of not more than 5 years from the date of acquisition of the borrower's NPL by the said FISTC. *Please refer to Section 5 of the attached RR for the illustration on "net interest income".*

Privileges of a FI	▸ Pursuant to Section 17 of the Act, any loss that is incurred by an FI as a result of transferring its NPA to a FISTC/Individual within a period of not more than 2 years from the date of effectivity of the Act on 18 February 18, 2021, i.e., from February 2021 to 18 February 2023, excluding accrued interests and penalties receivable, and which had not been previously offset as deduction from gross income, shall be treated as ordinary loss, and may be carried over as a deduction from its taxable gross income for a period of 5 consecutive taxable years immediately following the year of the transfer that resulted to such loss: Such NOLCO shall be presented in the FI's Notes to the Financial Statements (NFS) separately from the NOLCO incurred for other taxable activities. Failure to comply with the reporting requirement will subject the FI to penalties under Section 24 of the Act, as well as other pertinent laws, rules and regulations. Provided, That the "tax savings" derived by the FI from such loss carry-over shall not be made available for dividend declaration, but shall be retained as a form of capital build-up: Provided, further, That the FI cannot enjoy this privilege if it enters into a merger, consolidation, or combination with another person, unless, as a result of such merger, consolidation or combination, the shareholders of the said FI gains control of at least 75% or more in nominal value of the outstanding issued shares or paid up capital of the surviving/new corporation: Provided, finally, That the FI shall continue to be subject to the MCIT of 2%/1% (from July 1, 2020 to June 30, 2023) of its gross income as of the end of the taxable year pursuant to Sections 27 or 28 of the Tax Code, as amended, whichever is applicable, notwithstanding the above provisions. ▸ For purposes of the foregoing, the term "tax savings" shall mean the excess of the normal income tax due from the FI without the benefit of the loss carry-over under the Act, over and above the normal income tax due after availing the said loss carry-over for a particular taxable year: Provided, however, that, in case the FI is liable for an MCIT despite the benefit of the said loss carry-over, the excess of the MCIT over and above the normal income tax due from the FI after availing the said loss carry-over for a particular taxable year shall no longer be considered as a "tax savings" if the same cannot be credited against the normal income tax for any of the 3 immediately succeeding taxable years: Provided, further, That the "tax savings", if there be any, shall be recognized in the books of accounts of the FI and shall appear on its financial statements (FS). *Please refer to Section 6 of the attached RR for the illustrations on loss carry-over and "tax savings".*
True Sale	▸ All sales or transfers of NPAs from the FIs to a FISTC/Individual which is not in the nature of a "true sale" as provided in the Act and its IRR shall not qualify for any of the tax exemptions granted under the Act.
Investment Unit Instruments (IUIs)	(a) These refer to participation certificates, debt installments or similar instruments issued by a FISTC and subscribed by Permitted Investors as provided in Section 11 of the Act pursuant to an Approved Plan: *Provided*, That these shall not include the instruments to be issued by a FISTC to the selling FIs as full or partial settlement of the NPAs transferred to the said FISTC: *Provided*, further, That these shall not form part of the capital stock of the FISTC. (b) IUIs issued by a FISTC shall not be considered as deposit substitutes and any interest or other monetary benefit derived from IUIs is **not subject to the 20% final income tax** under Secs. 24(B)(1), 25(A)(2), 27(D)(1), and 28(A)(7) of the Tax Code, as amended: Provided, however, That the IUI and any such income derived from IUIs shall be subject to the normal income tax and/or such other applicable taxes (VAT OR GRT), including but not limited to, documentary stamp tax on debt instruments imposed under the Tax Code, as amended, and its implementing regulations.

Procedural Guidelines	
Certificate of Eligibility (COE)	(a) The COE issued by the Appropriate Regulatory Authority serves as sufficient proof of an NPL/ROPA being an NPA within the purview of the Act and its IRR without the need for a prior BIR determination/ruling. If applicable, it also serves as sufficient proof that the sale/transfer from an FI to a FISTC/Individual is in the nature of a "true sale" within the purview of the Act and its IRR without the need of a prior BIR determination/ruling. In case the COE does not contain a statement that the sale/transfer is in the nature of a "true sale" in accordance with Sections 3(k) and 13 of the Act and its IRR, then, the Sworn Certification by the FIs containing such a statement which they filed when they applied for COE with the Appropriate Regulatory Authority shall be submitted to the BIR as an attachment to the COE. (b) A COE from the Appropriate Regulatory Authority is required to be presented to the BIR, aside from the other documentary requirements, for every application or request for issuance of electronic Certificate Authorizing Registration (eCAR) involving the transfer of NPAs. The subject NPAs (NPLs and ROPAs) shall be indicated in the COE, or a separate list of the NPAs be attached to the COE, containing, among others, the following information: the name of the borrower, the name of the FI owning the NPA, the date granted/acquired, manner of acquisition, name of the person from whom the NPA was acquired by the FI, particulars of the NPL/ROPA, and the name of the transferee (if applicable). (c) To ensure the authenticity of the COE, the Appropriate Regulatory Authority shall coordinate with and furnish the Commissioner of the BIR an original duplicate copy thereof, in addition to the complete list of NPAs (NPLs and ROPAs) of every FI which may be submitted by the Appropriate Regulatory Authority or the FI itself. (d) Moreover, while a transfer of an NPA from an FI to a FISTC without COE is allowed, it shall not be entitled to fiscal incentives under the Act.
Transfers of real property located in the Philippines	(a) No registration of any document transferring real property covered by the tax exemptions granted under the Act shall be effected by the Register of Deeds unless the Commissioner or his duly authorized representative has issued an eCAR pursuant to existing revenue issuances, after such transfer has been reported, and that the BIR is satisfied that the same is qualified for tax exemptions pursuant to these Regulations. (b) Within 30 days following the issuance of a COE covering the transfer of real property as mentioned in paragraph (a) above, a CGT Return therefor shall be filed by the transferee with the Revenue District Office (RDO) having jurisdiction over the place where the real property being transferred is located. The return shall be accompanied by either the original or certified true copy of the COE and the following documentary requirements: 1. Sworn Certification by the FIs that the sale/transfer is in the nature of a true sale in accordance with Sections 3(k) and 13 of the Act and its IRR in case of transfer of real property from the FI to a FISTC/Individual (if such statement is not included in the COE); 2. In case the transferee is an Individual, a Sworn Certification by said Individual that he or she has no other prior or pending application for issuance of COE with the other FIs; 3. Taxpayer's identification number (TIN) and certificate of SEC registration (in the case of an FI/FISTC) of both the transferor and transferee; 4. Notarized Deed of Dation/Transfer; 5. Original/Transfer Certificate of title (OCT/TCT), Condominium Certificate of Title (CCT), or any other document showing proof of ownership over the real property tendered as payment for the NPL; 6. Certified true copy of the latest Tax Declaration for land and improvement as of the date of the transaction and/or sworn Declaration of No Improvement by the transferee or Certificate of No Improvement issued by the Assessor; 7. The promissory note/s and/or other loan document/s, in case of dation in payment; 8. Copy of the agreement between the Borrower and the third-party who made the dation in payment on behalf of the former (if applicable); and,

	(c) In case of transfer of real property from a FISTC/Individual to a third party, the presentation of the certified true copy of the COE may be dispensed with and a mere photocopy of such COE suffices provided that the reading of the barcode or similarly electronically readable markings contained in the COE is already in place and operational in the BIR. Upon presentation of the CGT Return, together with the corresponding COE and the documentary requirements as mentioned in the preceding paragraph, the RDO where the property being transferred is located, shall issue the corresponding eCAR for the registration of the real property in favor of the transferee: *Provided*, That, in case the transferor is a FI, the concerned RDO shall see to it that all applicable taxes on the previous transfer to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.
Transfer of shares of stock in a domestic corporation	(a) No sale, exchange, transfer or similar transaction intended to convey ownership of, or title to any share of stock in a domestic corporation, covered by the tax exemptions granted under the Act, shall be registered in the books of the corporation unless the Commissioner or his duly authorized representative has issued an eCAR pursuant to existing revenue issuances, after such transfer has been reported, and that the BIR is satisfied that the same is qualified for tax exemptions pursuant to these Regulations. (b) Within 30 days following the issuance of a COE covering the sale, transfer or other disposition of shares of stock as mentioned in paragraph (a) above, a CGT Return therefor shall be filed by the transferor with the RDO where the taxpayer is registered. The return shall be accompanied by either the original or certified true copy of the COE and the following documentary requirements: 1. Sworn Certification by FIs that the sale/transfer is in the nature of a true sale in accordance with Sections 3(k) and 13 of the Act and its IRR in case of transfer of shares of stock from the FI to a FISTC (if such statement is not included in the COE); 2. Taxpayer's identification number (TIN) and certificate of SEC registration (in the case of an FI/FISTC) of both the transferor and transferee; 3. Notarized Deed of Transfer; 4. Certificate of the shares of stock used to pay the NPL; 5. For listed shares of stocks, certification from Philippine Stock Exchange (PSE) of the price index on the nearest date to the time of the-transfer/latest FMV published in the newspaper at the time of the transaction; 6. For unlisted shares of stocks, latest Audited Financial Statement of the issuing corporation with a computation of the book value per share, prior to the date of transfer, but not earlier than the immediately preceding taxable year; 7. The promissory note/s and/or other loan document/s, in case of dation in payment; and 8. Copy of the agreement between the Borrower and the third-party who made the dation in payment on behalf of the former (if applicable). (c) In case of transfer shares from a FISTC to a third party, the presentation of the certified true copy of the COE may be dispensed with and a mere photocopy of such COE suffices provided that the reading of the barcode or similarly electronically readable markings contained in the COE is already in place and operational in the BIR. (d) Upon presentation of the CGT Return, together with the corresponding COE and the documentary requirements as mentioned in the preceding paragraph, the RDO, shall issue the corresponding eCAR, for the registration of the shares of stocks in favor of the transferee in the books of the corporation: *Provided*, That, in case the transferor is an FI, the concerned RDO shall see to it that all applicable taxes on the previous transfer to the FI have been duly paid when the taxes became due or are paid thereafter but subject to appropriate increments and penalties.

Other exempt transactions and tax privileges	▸ A FISTC claiming any of the tax exemptions and privileges under the Act on other transactions shall upon request provide the appropriate COE to the Commissioner of the BIR or his duly authorized representative for purposes of examining any taxpayer and the assessment of the correct amount of tax. This is in addition to such other documentary requirements as stated above.
Reports to be submitted by a FISTC	▸ The FISTC shall, in addition to the existing requirements under the Tax Code, as amended, and its implementing regulations, for purposes of implementing the provisions of the Act, submit to the BIR as attachments to its Annual Income Tax Return (ITR) the following: 1. List of taxable transactions; 2. List of tax-exempt transactions; and, 3. List of partly tax-exempt and partly taxable transactions.
Abuse of tax exemptions and privileges	▸ Any person, natural or juridical, who benefits from the tax exemptions and privileges herein granted, when such person is not entitled thereto, shall - in addition to the penalties and administrative sanctions provided for in Section 24 of the Act - refund to the government double the amount of the tax exemptions and privileges availed of under the Act, plus interest of 12% per year from the date prescribed for its payment until the full payment thereof: Provided, That this is without prejudice to the applicable penalties under the Tax Code.

Note that these regulations **shall take effect after 15 days following publication in a newspaper of general circulation**.

(Editor's Note: RR No. 11-2021 was published in Malaya Business Insight *on 24 June 2021.)*

RR No. 12-2021 prescribes the Policies and Guidelines on the Utilization of the Tax Payment Certificate Issued by the DTI-BOI Evidencing the Availment of Fiscal Support for the Eligible and Registered Participants of the CARS Program.

RR No. 12-2021 dated 23 June 2021

Particulars	Details
1. **Coverage**	These Regulations shall apply to the Participating Car Makers (PCMs) and Participating Part Makers (PPMs) registered under the CARS Program who applied and were issued TPCs by the DTI-BOI to pay exclusively the following tax obligations, excluding any type of withholding taxes, incurred in the course of their operations: ▸ **Excise Tax;** ▸ **Income Tax; and** ▸ **Value-Added Tax**
2. **General Policies and Guidelines**	▸ The total fiscal support for the CARS Program shall be divided into two categories, namely: 1. **Fixed Investment Support (FIS)** - shall not exceed 40% of the total fiscal support, provided that in case of Parts and Shared Testing Facility, the FIS shall not exceed 40% of the capital expenditure for tooling and equipment to manufacture the parts, including training costs for the start-up operation for the use thereof; and 2. **Production Volume Incentive (PVI)** – shall not exceed 60% of the total fiscal support. ▸ The availment of the fiscal support by the eligible and registered participants shall be evidenced by a TPC, which is non-transferrable. ▸ Eligible and registered participants shall request from DTI-BOI for issuance of TPC before the statutory deadline for the payment of the tax or taxes mentioned in Section 3 hereof sought to be settled. The request shall include details of their FIS and PVI entitlement, and the specific tax liabilities to which the TPC shall be applied. ▸ The TPC to be issued by DTI-BOI shall be in the name of the eligible and registered participants and shall cover their specific tax obligations.

	▸ All TPCs shall have a validity period of only **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 be the date of issuance. ▸ The BIR shall recognize and accept valid TPCs issued by the DTI-BOI as tax payment only upon verification and validation against their records, as well as online validation thru the PCMIA set up by the DTI-BOI. **Participating Car Maker Incentive Account (PCMIA)** – refers to an account created by the DTI-BOI to track the crediting and disbursements for each PCM and its PPMs against the approved fiscal support. All availments of fiscal support. whether for Fixed Investment Support (FIS) or Production Volume Incentive (PVI), will be in the name of the eligible and registered participant.
3. **Procedure for Utilization of TPC**	The amount of the TPC shall be indicated in the tax return as deduction from the tax due. 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 copies of the tax returns, together with the copy/ies of the TPC and the other prescribed attachments, shall be submitted to the Revenue District Office (RDO)/ Large Taxpayers District Office (LTDO)/ LT Documents and Quality Assurance Division (LTDQAD) where the registered participants are duly registered, pursuant to the existing revenue guidelines and procedures. 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**. The BIR shall issue a separate revenue issuance setting forth the specific guidelines and procedures on the utilization of TPC.
4. **No Double Availment of Incentives**	Eligible and registered participants under the CARS Program **shall not be allowed** to register their activity under any other program granting incentives as a condition for TPC availment. **Eligible and Registered Participants** – refer to PCMs, parts makers and shared testing service providers registered under the CARS Program and issued with a Certificate of Registration by the DTI-BOI.
5. **Limitation on Availment of Support**	The grant of support is conditioned on the compliance of the eligible and registered participants with the terms and conditions of its registration. Upon recommendation of the Inter-Agency Committee, the Board may limit the availment of support, as it may deem necessary.
6. **Monitoring and Compliance**	Audited Financial Statements and Income Tax Returns shall be submitted **on or before May 15 of each year or one (1) month from the last day of filing of Income Tax Returns** to the Bureau of Internal Revenue (BIR). The BIR shall submit monthly to the Bureau of Treasury a list of TPCs reported and shall record the TPC transaction amount as part of its revenue collection.

RR No. 13-2021 implements penalty provisions under Sections 76, 77, 78, 79 and 80 of RA No. 10963, also known as the TRAIN Law, amending Sections 254 and 264 of, and adding Sections 264-A, 264-B, and 265-A to the NIRC of 1997, as amended.

RR No. 13-2021 dated 23 June 2021

Among the salient provisions of this RR are as follows:

Violations	Penalty Provisions
Attempt to evade or defeat tax	▸ A fine of not less than P500,000 but not more than P10,000,000 and imprisonment of not less than 6 years but not more than 10 years, shall, upon conviction thereof, be imposed on any person who willfully attempts, in any manner, to evade or defeat any tax imposed under the NIRC or the payment thereof. ▸ The fine and penalty stated herein shall be in addition to other penalties provided for by law. The conviction or acquittal obtained for violation of this Section shall not be a bar to the filing of a civil suit for the collection of taxes.
Violations related to the printing of receipts or invoices	▸ A fine of not less than P500,000 but not more than P10,000,000 and imprisonment of not less than 6 years but not more than 10 years shall be imposed on any person who commits any of the acts enumerated hereunder: 1. Printing of receipts or sales or commercial invoices without an authority from the BIR; or 2. Printing of double or multiple sets of invoices or receipts; or 3. Printing of unnumbered receipts or sales or commercial invoices, not bearing the name, business style, TIN, and business address of the person or entity; or 4. Printing of other fraudulent receipts or sales or commercial invoices.
Failure to transmit sales data	▸ A penalty amounting to 1/10 of 1% of the annual net income as reflected in the taxpayer's audited financial statements for the 2nd year preceding the current taxable year, or P10,000, whichever is higher, shall be imposed, for each day of violation, on any taxpayer required but fails to transmit sales data to the Bureau's electronic sales reporting system under Section 237 -A of the NIRC, as amended. ▸ An additional penalty of permanent closure of the taxpayer shall be imposed should the aggregate number of days of violation exceed 180 days within a taxable year. ▸ The penalty shall not apply if the failure to transmit is due to force majeure or any causes beyond the control of the taxpayer.
Purchase, use, possession, sale or offer to sell, installation, transfer, update, upgrade, keeping or maintaining of sales suppression devices	▸ A fine of not less than P500,000 but not more than P10,000,000, and imprisonment of not less than 2 years but not more than 4 years shall be imposed on any person who shall purchase, use, possess, sell or offer to sell, install, transfer, update, upgrade, keep, or maintain any software or device designed for, or is capable of: 1. suppressing the creation of electronic records of sale transactions that a taxpayer is required to keep under existing tax laws and/or regulations; or 2. modifying, hiding, or deleting electronic records of sales transactions and providing a ready means of access to them. ▸ The maximum penalty provided for in this Section shall apply in case of cumulative suppression of electronic sales record in excess of the amount of P50,000,000 which shall be considered as economic sabotage.

Offenses related to fuel marking

Offenses / Violations	Penalty
(a) Engaging in the sale, trade, delivery, distribution or transportation of unmarked fuel in commercial quantity held for domestic use or merchandise	1st Offense P2,500,000 2nd Offense P5,000,000 3rd Offense P10,000,000 **Third offense is with penalty of revocation of license to engage in any trade or business*
(b) Causing the removal of the official fuel marking agent from marked fuel, and the adulteration or dilution of fuel intended for sale to the domestic market, or the knowing possession, storage, transfer or offer for sale of fuel obtained as a result of such removal, adulteration or dilution.	1st Offense P2,500,000 2nd Offense P5,000,000 3rd Offense P10,000,000 **Third offense is with penalty of revocation of license to engage in any trade or business*
(c) Willfully inserting, placing, adding or attaching, directly or indirectly, through any overt or covert act, whatever quantity of any unmarked fuel, counterfeit additive or chemical in the person, house, effects, inventory, or in the immediate vicinity of an innocent individual for the purpose of implicating, incriminating or imputing the commission of any violation of offenses related to fuel marking.	A fine of P5 Million but not more than P10 Million and imprisonment of not less than 4 years but not more than 8 years.
(d) Making, importing, selling, using or possessing fuel markers without express authority	A fine of P1 Million but not more than P5 Million and imprisonment of not less than 4 years but not more than 8 years
(e) Making, importing, selling, using or possessing counterfeit fuel markers	A fine of P1 Million but not more than P5 Million and imprisonment of not less than 4 years but not more than 8 years
(f) Causing another person or entity to commit any of the two (2) preceding acts in (d) and (e) hereof	A fine of P1 Million but not more than P5 Million and imprisonment of not less than 4 years but not more than 8 years
(g) Causing the sale, distribution, supply or transport of legitimately imported, in-transit, manufactured or procured controlled precursors and essential chemicals, in diluted, mixtures or in concentrated form, to any person or entity penalized in (a), (b), (d), (e) and (f) hereof, including but not limited to, packaging, repackaging, labeling, relabeling or concealment of such transaction through fraud, destruction of documents, fraudulent use of permits, misdeclaration, use of front companies or mail fraud.	P1 Million but not more than P5 Million and imprisonment of not less than 4 years but not more than 8 years

Any person who is authorized, licensed or accredited to conduct fuel tests, who issues false or fraudulent fuel test results knowingly, willfully or through gross negligence, shall suffer the additional penalty of imprisonment ranging from **1 year and 1 day to 2 years and 6 months**. The additional penalties of revocation of the license to practice his profession in case of a practitioner, and the closure of the fuel testing facility, may also be imposed at the instance of the court.

The penalties stated herein for offenses related to fuel marking are in addition to the penalties imposed under Title X of the NIRC, as amended, Section 1401 of RA No. 10863, otherwise known as the *"Customs Modernization and Tariff Act"*, and other relevant laws.

- These Regulations shall take effect on 1 January 2018, the effectivity of the TRAIN Law.

BIR Administrative Requirements

RMC 80-2021 clarifies the suspension of the statute of limitations on assessment and collection of taxes due to the declaration of "quarantine" in Metro Manila, Bulacan, Cavite, Laguna and Rizal (NCR Plus), and other applicable jurisdictions.

RMC No. 80-2021 dated 29 June 29 2021

- The running of the statute of limitations in assessment and collection shall be suspended in areas placed under enhanced community quarantine (ECQ), as stated in RMC No. 52-2021, as well as modified enhanced community quarantine (MECQ).
- With such suspension, the concerned offices of the Bureau shall be provided with additional days for them to issue the Assessment Notices, Warrants of Distraint and/or Levy, as well as Warrants of Garnishment, to enforce collection of deficiency taxes against taxpayers covered by the ECQ and MECQ declaration, which is equivalent to the number of days the particular area was placed under ECQ and MECQ, plus 60 days from its lifting.

RMC No. 81-2021 circularizes the letter dated 17 June 2021 from Rolando Enrique D. Domingo, Director General of FDA, and the copy of the "List of VAT-Exempt Products" consisting of 58 pages.

RMC No. 81-2021 dated 6 July 2021

- The **VAT exemption for the sale or importation** of the following shall take effect on:

  1. Medicines for diabetes, high cholesterol, and hypertension beginning **1 January 2020**;
  2. Medicines for cancer, mental illness, tuberculosis, and kidney diseases beginning **1 January 2021**;
  3. Drugs and vaccines prescribed and directly used for COVID-19 treatment beginning **1 January 2021 until 31 December 2023**; and
  4. Medical devices directly used for COVID-19 treatment beginning **1 January 2021 until 31 December 2023**.

RMC No. 87-2021 prescribes the acceptance of PSA-issued PhilID Card as supporting document for proof of address and valid proof of identification for all transactions or frontline services with the BIR.

RMC No. 87-2021 dated 15 July 2021

- All revenue employees/officials processing BIR frontline services requiring presentation of any valid government-issued ID shall accept/allow the PSA-issued PhilID Card as proof of identification of the taxpayer.
- Presentation of the PhilID alone is sufficient as a valid proof of identification; hence, there is no need to require additional/other government ID to establish the identity of the taxpayer.

This circularizes the lists of withholding agents required to deduct and remit the 1% or 2% CWT for the purchase of goods and services under Revenue Regulations No. 31-2020.

RMC 88-2021 dated 29 June 2021

- Following the issuance of RR 31-2020 which prescribed the new criteria in identifying the Top Withholding Agents (TWAs) of each Revenue District Office, this RMC was issued to circularize the recently published lists of withholding agents for inclusion to and deletion from the existing list of TWAs who are required to deduct and remit the 1% or 2% CWT from the income payments to their suppliers of goods and services, respectively.
- The lists are posted at the BIR website at www.bir.gov.ph and provided with search facility for convenience of all concerned.
- The obligation to deduct and remit to the BIR the 1% or 2% CWT shall continue, commence or cease, as the case may be, effective August 1, 2021.

- Any taxpayer not found in the published list of TWAs is deemed excluded and therefore not required to withhold the 1% or 2% CWT.

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

Bureau of Customs

OCOM Memorandum No. 106-2021 is a clarification issued relative to the sufficient security required for shipments released under tentative assessment.

OCOM Memorandum No. 106-2021 dated 7 July 2021

- Under section 3.9 of the Customs Administrative Order (CAO) No. 02-2020 on Dispute Settlement and Protest, "Release under Tentative Assessment" shall refer to a situation wherein the assessment is disputed and pending review, an importer or consignee may put up a cash bond or any sufficient security equivalent to the duties, taxes and other charges that is disputed before the importer or consignee can obtain the release of said goods.

- Under Section 1507 of the Customs Modernization and Tariff Act (CMTA), the Bureau of Customs (BOC) shall prescribe the form and amount of security required to guarantee the payment of duties and taxes and other obligations and any party required to provide security shall have the option to choose from any form of security prescribed by the BOC.

  The BOC may not require security if it is satisfied that the obligation to the BOC will be fulfilled but shall require and accept a general security from declarants who regularly declare goods at different offices in the customs territory under such terms and conditions as may be determined by the BOC Commissioner.

- Under Standard 5.3 of the Revised Kyoto Convention (RKC), which the Philippines is a signatory to and where the CMTA is patterned after, what is only required is the posting of a **cash bond OR any sufficient security** to secure payment of duties and taxes when required.

- Based on the above premises, the security acceptable to the BOC under the RKC, what is only required by the CMTA as implemented by CAO No. 02-2020 is the posting of a **cash bond OR any sufficient security** to secure the payment of duties and taxes when required.

OCOM Memorandum No. 107-2021 was issued to direct strict compliance with the provisions of CAO No. 02-2020 and OCOM Memorandum No. 110-2020 in resolving cases involving dispute settlement.

OCOM Memorandum No. 107-2021 dated 9 July 2021

- Pursuant to the Repealing Clause of CAO 02-2020, the Central Valuation and Classification Review and Ruling Committee (CVCRRC) constituted under CMO No. 07-2006, and the Valuation and Classification Review Committee (VCRC) constituted under CMO No. 03-2000, are deemed abolished.

- All VCRC cases pending before the Collection Districts shall be resolved pursuant to CAO No. 02-2020 and the OCOM Memorandum No. 110-2020.

- All existing requests and records before the CVCRRC shall be turned over to the Office of the Commissioner on or before 19 July 2021.

CMC No. 131-2021 provides for the List of VAT-exempt products/ medicines under the RA 11534 or the CREATE Act, endorsed by the FDA of the DOH.

CMC No. 131-2021 dated 17 June 2021

- The following are the VAT-exempt products/medicines pursuant to the BIR Revenue Regulations (RR) No. 04-2021:

    1. Medicines for Hypertension;
    2. Medicines for Cancer;
    3. Medicines for Mental Illness;
    4. Medicines for Tuberculosis;
    5. Medicines for Kidney Diseases;
    6. Medicines for Diabetes;
    7. Medicines for High Cholesterol;
    8. Drugs and Vaccines Prescribed and Directly Used for COVID-19 treatment; and
    9. Medical Devices Directly Used for COVID-19 treatment.

CMC No. 139-2021 is issued for information dissemination regarding the FDA Memorandum Circular 2021-0001 entitled "Extension of Validity of LTO and Other Market Authorizations Granted to Veterinary Establishments, Drugs, Biologicals and Products Transfer from the Industry BAI to the FDA."

CMC No. 139-2021 dated 23 June 2021

- Imported veterinary drugs and products (raw materials for drugs/non-medicated products, vaccines and biologics) shall neither require Import or Phytosanitary (SPS) permit prior to entry into the country.

    1. The valid LTO and Certificate of Product Registration (CPR) issued by the BAI shall be attached and presented to the BOC for the release of imported items until 31 December 2021.

    2. After 31 December 2021, all LTOs, CPRs and authorizations issued by the BAI will be deemed invalid.

This memorandum was issued to inform all concerned that the ABMS is ready and available in the E2M System at the MICP starting 7 July 2021.

OCOM Memorandum No.103-2021 dated 1 July 2021

- All Surety Companies and CBW Operators must be accredited in the BOC E2M-Client Profile Registration System (CPRS).

- The submission and approval of bond policies and the creation of a bond account in the E2M ABMS will start on 7 July 2021. There must be coordination with the Value-Added Service Provider (VASP) for the submission of the bond policy.

- All approved GWB bond policies filed in the current year will expire on 31 December 2021. Coordination with the MICP, Chief of Bonds Division, is needed for the application of bond account/policy and the updated bond balance.

- Validation of the approved bond policy and the electronically lodged Warehousing goods declaration in the E2M System is not yet covered.

CMC No. 148-2021 was issued to provide information on the transition to online processing of its frontline services in compliance with stringent physical distancing measures to address COVID-19.

CMC No. 148-2021 dated 7 July 2021

- Coffee Export Clearance (CEC) and Certificate of Exemption (COE) are coffee export documentation services of DTI-Export Marketing Bureau (DTI-EMB) which will be streamlined through digitalization.

- Starting 13 July 2020, EMB shall adopt an electronic submission and approval of CEC and COE.

- The Clearance and Certificate will have a Digital Signature and Timestamp of the processor as a security measure, and these will be emailed to clients in a Portable Document Format (.pdf).

- Document veracity audits may be freely conducted by the respective District in coordination with the Approving Officer.

PEZA Update

PEZA issued a Memorandum addressed to All Zone Administrators, Zone Managers, Chiefs of the Finance Division of the Zones and Officers-in-Charge.

PEZA Memorandum dated 6 July 2021

- PEZA is maintaining its position that RR No. 9-2021 is contrary to the provisions of RA No. 11534 or the CREATE Law which specifically provides for the VAT exemption of registered enterprises under Section 294 of the said law. Further, the said RR rejects the Separate Customs Territory Principle provided under Section 8 of RA No. 7916 or the PEZA Law and the Cross-Border Doctrine fully recognized and established in several Supreme Court decisions. It is by virtue of this legal fiction that a proclaimed economic zone is a separate customs territory and thus, said Doctrine should still be applied in all transactions of registered enterprises as long as the VAT exemption applies only to goods and services directly and exclusively used in the registered activity of the enterprises.

- Nonetheless, absent any injunction from courts or directive from the DOF/BIR that RR No. 9-2021 is deferred, PEZA accordingly has no option but to implement the RR in the economic zones and thereby impose 12% VAT on the transactions of the registered enterprises in its (PEZA) respective offices including but not limited to the following:

    1. Lease rentals;
    2. Utilities; and
    3. All fees prescribed under PEZA MC No. 2000-01 dated 14 November 2000.

(Editor's Note: The implementation of RR No. 9-2021 has been deferred by RR 15-2021, which was published on 29 July 2021.)

Banks and Other Financial Institutions

Open Finance Framework

Circular No. 1122 approves the adoption of the Open Finance Framework, which shall be incorporated as Section 154 of the MORB and Sections 152-Q/149-s/146-P/130-NA29-T/123-cc of the MORNBFI.

BSP Circular No. 1122 dated 17 June 2021

Pursuant to the adoption of the Open Finance Framework, customers shall have better control over their personal and financial data, catalyzing the development of products and services that are responsive to their needs.

The Open Finance Framework encourages:

- consent–driven data portability;
- interoperability; and
- collaborative partnerships among financial institutions and third–party providers (TPPs.

Under the framework, financial institutions and TPPs can leverage on permissioned–access customer financial information to develop bespoke financial products and services for customers. The Open Finance Framework subscribes to the principle that "customers are the owners of personal and transaction data" hence, information shall only be shared with the consent of the customers.

Amendments to Guidelines on Report on Intraday Liquidity of Universal and Commercial Banks (UBs/KBs) and their Subsidiary Banks/Quasi-Banks (QBs)

Circular No. 1123 amends the guidelines on report on Intraday Liquidity of Universal and Commercial Banks and their Subsidiary Banks/Quasi-Banks.

BSP Circular No. 1123 dated 13 July 2021

Following the amendments to the MORB and the MORNBFI on the Report on Intraday Liquidity, the regular submission of the Report on Intraday Liquidity shall be 15 banking days from the end of the reference month. It shall commence with the end-January 2022 month-end report with submission deadline as prescribed under Appendix 7/Q-3.

Guidelines on the Electronic Submission of Consolidated Foreign Exchange Position Report

Under Memorandum No. M-2021-39, UBs and KBs shall no longer submit the CFXPR prescribed under Memorandum No. 2020-089 dated 11 December 2020 to the BSP DSA, starting reference date 1 August 2021.

Memorandum No. M-2021-39 dated on 2 July 2021

The submission guidelines for the CFXNOP are as follows:

- The prescribed Excel File of the Data Entry Template (DET) and Sworn Certification can be downloaded from the BSP website at http://www.bsp.gov.ph/SES/reporting_templates or may be requested directly from BSP-Department of Supervisory Analytics through DSA-ROD1@bsp.gov.ph using the prescribed subject line, [Request] CFXNOP Template.

- The prescribed DET and Sworn Certification shall be electronically submitted within the prescribed deadline to the DSA-CFXPR@bsp.gov.ph using the required format for the subject as illustrated below:

  To: DSA-CFXPR@bsp.gov.ph
  Subject: CFXNOP <Bank Name>, <Reference Period>

  For example:
  To: DSA-CFXPR@bsp.gov.ph
  Subject : CFXNOP ABC Bank, 1 July 2021

  and using the following prescribed file name and file formats:

File	Valid Filename and Format
CFXNOP	CFXNOP.xlsm or CFXNOP.xltm
Sworn Certification	Sworn Certification.pdf

- Pursuant to BSP Memorandum No. M-2017-028 dated 11 September 2017, UBs/KBs or TBs shall use only e-mail addresses officially registered with the DSA in electronically submitting reports. The same registered e-mail addresses shall be used by the DSA in acknowledging the submitted reports and transmitting the corresponding validation results.

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

SEC ISSUANCES

SEC Memorandum Circulars

Amendment to SEC Memorandum Circulars No. 14, Series of 2018, No. 3, Series of 2019, No. 4, Series of 2020 and No. 34, Series of 2021 to Clarify Transitory Provision.

SEC Memorandum Circular No. 8, Series of 2021 dated 8 July 2021

The SEC amended the transitional provisions under SEC Memorandum Circulars No. 14-2018, 3-2019, 4-2020 and 34-2021 on the deferral of the application of the issuances of the Philippine Interpretations Committee (PIC) in relation to Philippine Financial Reporting Standards (PFRS) 15 - Revenue from Contracts with Customers, and the International Financial Reporting Interpretations Committee (IFRIC) Agenda Decision on Over Time Transfer of Constructed Goods (Philippine Accounting Standards (PAS) 23 - Borrowing Cost).

To assist real estate companies to finally adopt the PIC Issuances and IFRIC Agenda Decision and enable them to fully comply with PFRS 15 and revert to full PFRS, the SEC approved the amendment to the transitional provisions in the above Memorandum Circulars which would provide real estate companies the accounting policy option of applying either the full retrospective approach or modified retrospective approach when they apply the provisions of the PIC and IFRIC pronouncements.

In the same meeting, the SEC also approved that the policy option be available to entities that cease availing of the above SEC financial reporting reliefs whether in full or in part.

(Editor's Note: Memorandum was filed with the UP Law Center *on 13 July 2021; Published on* The Manila Times *and* Manila Standard *on 14 July 2021.)*

SEC Contact Center

The SEC published their contact center for any inquiries and other concerns amid COVID-19 pandemic.

SEC Notice dated 21 June 2021

The Commission main, satellite and extension offices continue to operate at limited capacity and implement alternative work arrangements while quarantine measures remain in place due to the COVID-19 pandemic. The public may reach the Commission through the published email addresses and phone numbers for queries and other concerns during office hours.

Compliance with SEC Memorandum Circular no. 19, Series of 2019

The SEC warned FCs and LCs to strictly comply with SEC MC no. 19, Series of 2019 on the Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms.

SEC Notice dated 23 June 2021

The Commission warned FCs and LCs that own/operate/utilize online lending platforms (e.g. mobile applications, websites, etc.) to strictly comply with the Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms under SEC MC no. 19, series of 2019.

The Commission may impose a fine (minimum of not less than twice the basic penalty and maximum of P1,000,000), suspension for 60 days, or revocation of Certificate of Authority to operate, as appropriate.

Extension on Submission of Forms/Notices pursuant to Memorandum Circular no. 28, Series of 2020

The SEC extend deadline for submission of forms/notices pursuant to MC no. 28, s. of 2020 without penalty.

SEC Notice dated 15 July 2021

The Commission extended the deadline for Corporations, Partnerships, and Individuals to comply with SEC Memorandum Circular No. 28, series of 2020, without penalty, until August 31, 2021. MC no. 28, s. 2020 requires covered persons to create and designate an e-mail account address and cellphone number for transactions with the Commission. Required forms/notices pursuant to MC 28, s. 2020 may be submitted online through email platform: MC28_S2020@sec.gov.ph.

Filing of the forms/notices beyond 31 August 2021shall be considered as non-compliant and will be subject to penalty in the amount of P10,000.

CTA Cases

Tax Assessment

iScale Solutions, Inc. vs. Commissioner of Internal Revenue
CTA Case No. 9845 promulgated 30 June 2021

The issuance of a valid formal assessment is a substantive prerequisite for collection of taxes, without which, the alleged deficiency VAT, as stated in the 5-day VAT Compliance Notice, must fail.

Facts:

Company A is engaged in the business of creating, designing, inventing and developing software and other computer applications, and supplying, transferring, assigning, selling and/ or exporting such applications to foreign clients.

The BIR in a regular tax audit against Company A for taxable year 2016 issued an unofficial Preliminary Summary of Tax Deficiencies. During the conduct of the audit, upon discovery that Company A failed to issue official receipts (ORs), the BIR issued a 48 Hour Notice, informing Company A of its alleged failure to comply with VAT registration requirements and failure to issue sales invoices or receipts, and to reflect the correct taxable sales/receipts for 2016.

The Notice further informed Company A that closure of its business could result pursuant to Section 115 of the 1997 Tax Code, as implemented by Revenue Memorandum Order (RMO) No. 3-2009 dated 15 January 2009, otherwise known as Oplan Kandado. There was, however, no Mission Order issued for the conduct of Oplan Kandado against Company A.

As of the time of filing of the Petition for Review with Petition for Writ of Preliminary Prohibitory Injunction by Company A, the BIR has yet to issue a formal and final demand for the payment of tax deficiency for the taxable year 2016 covering all internal revenue taxes.

Issues:

- Was the conduct of Oplan Kandado against Company A procedurally correct?
- Is Company A liable to pay the VAT deficiency?

Ruling:

- No. The issuance of the 48-Hour Notice and 5-Day VAT Compliance Notice violated Company A's right to due process. The BIR's power to collect taxes must yield to the fundamental rule that no person shall be deprived of his/her property without due process of law. The rule is that taxes must be collected reasonably and in accordance with the prescribed procedure.

  In this case, however, the BIR failed to observe the prescribed procedure on the prerequisite conduct and conclusion of a surveillance by certain BIR personnel before the issuance of the Notices. Additionally, no Mission Order was shown to petitioner at the onset of the BIR's supposed overt surveillance. The Commissioner's contention that "RMO No. 3-2009 is a mere guideline and directory in nature" should fail because administrative issuances, such as the said RMO, have the force and effect of law.

  As the BIR did not fully comply with RMO No. 3-2009 in the issuance of the said notices, the 48-Hour Notice dated 9 February 2018 and 5-day VAT Compliance Notice dated 18 March 2018 issued against Company A are null and void. The CIR violated Company A's right to due process when they failed to act in accordance with the prescribed procedure before issuing the subject Notices.

- No. The said Notices did not state the details of the findings of the investigating officers and the computation and legal bases of the alleged deficiency VAT deficiency. Notably, no Preliminary Assessment Notice and Final Assessment Notice were issued in this case. In fact, during the pendency of the case, the tax audit of petitioner pursuant to the LOA issued for taxable year 2016 was still on-going.

  It must be emphasized that the issuance of a valid formal assessment is a substantive prerequisite for collection of taxes. Considering that there are no assessment notices issued yet, the collection of the alleged deficiency VAT as stated in the 5-day VAT Compliance Notice must fail.

Capitol Steel Corporation vs. Commissioner of Internal Revenue
CTA Case No. 9815 promulgated 30 June 2021

Tax collection should be premised on a valid assessment. The absence of due dates on FLD, FDDA, AFDDA, and Assessment Notices attached thereto renders the tax assessments void.

Facts:

On 25 June 2013, Company A received a Letter of Authority dated 18 June 2013 together with the letter-notice dated 20 June 2013 which listed the documents required for submission for audit. Afterwards, it also received a Second Notice for Presentation of Books of Accounts and Other Accounting Records and executed a Waiver of the Defense of Prescription until 31 December 2015.

On 14 June 2015, Company A received a Preliminary Assessment Notice (PAN) finding it liable for deficiency income tax, VAT, EWT, and DST. Company A filed its letter response to the PAN on 30 June 2015. Subsequently, Company A received an undated Formal Letter of Demand (FLD) with Details of Discrepancies and similarly undated Audit Result/Assessment Notices, which, on 30 October 2015, Company A contested with a protest letter filed with the BIR.

On 29 June 2016, Company A received an undated Final Decision on Disputed Assessment (FDDA) and it filed with the BIR a request for reconsideration. An undated AFDDA was subsequently issued on 15 March 2018 recalculating the deficiency tax assessments.

Issue:

Are the subject tax assessments valid?

Ruling:

No. A tax assessment must not only contain a computation of tax liabilities but must also include a demand for the settlement of a tax liability that is definite and fixed. The absence thereof renders the assessment invalid. Here, no date was indicated in the FLD and a perusal of the Audit Result/Assessment Notices attached to the FLD as well as the FDDA and AFDDA shows that the spaces for the due dates were conspicuously left blank. Thus, no proper demand within a specific period was validly made and Company A's obligation for the alleged deficiency taxes may not be deemed to have legally accrued. With these lapses of the BIR, the subject tax assessments hardly fall under the jurisprudential definition of a tax assessment under the Tax Code, considering that they lacked "a due tax liability that is there definitely set and fixed." These actions of the BIR likewise do not purport to be a demand for payment of tax due, which a final assessment notice should supposedly be. Consequently, the tax assessments are void, and thus, bear no valid fruit.

Lepanto Consolidated Mining Company vs. Treasurer Celia T. Bognalen
CTA EB No. 2123 promulgated 24 June 2021

No protest shall be entertained unless the taxpayer first pays the tax where the question deals with the reasonableness or correctness of the assessment.

Facts:

On 31 May 2016, Company L received a letter and Real Property Tax Bills assessing and collecting real property taxes (RPTs) and Special Education Fund (SEF) taxes for its Load Haul Dump (LHD) Equipment and Low Profile Trucks (LPTs) for taxable years 2010-2016.

Company Z filed a petition with the Local Board of Assessment Appeals (LBAA) of Benguet protesting said RPT assessments. LBAA denied the Petition on jurisdictional grounds because of Company Z's failure to first pay under protest the RPT assessments before filing an appeal with their office.

Issue:

Was the petition filed by Company Z before the LBAA valid?

Ruling:

No. Section 252 of the Local Government Code provides that no protest shall be entertained unless the taxpayer first pays the tax.

The main basis of the petition filed by Company Z with the LBAA is its claim that the LHD equipment and LPTs used in its underground mining activities are classified as personal properties, hence are not subject to RPT in accordance with Section 9 of the Local Finance Circular No. 2-09 of the Department of Finance (DOF). Therefore, the petitioner was questioning the reasonableness or correctness of the assessment issued by the LGU rather than its legality.

The Supreme Court made a clarifying distinction between two types of protest against an assessment for RPT issued by LGU as follows, in the first instance, where the question deals with the reasonableness or correctness of the assessment, the taxpayer must first pay under protest the assessed tax as provided under Section 252 (a) of the LGC of 1991. While in the second instance, where the question deals with the legality or validity of assessment, the party may appeal directly to the proper Regional Trial Court (RTC), of which, the decision of the RTC is appealable before the Division of the CTA.

Commissioner of Internal Revenue vs. The Professional Services Inc.
CTA EB No. 2202 promulgated 9 June 2021

It is a well-settled principle that where the BIR had already made an initial assessment for deficiency taxes in a taxable year, and the taxpayer paid the deficiency taxes assessed, the BIR has no valid authority to issue after the 3-year prescriptive period had expired, a second or third assessment for the same taxable year.

Facts:

Respondent herein, Company A is a corporation duly organized and existing under the laws of the Philippines and registered with the Bureau of Internal Revenue (BIR). Pursuant to a second letter of authority dated 13 July 2012, the BIR conducted another audit examination of Company A's accounting records for the taxable period 2007. The BIR later on issued a Preliminary Assessment Notice (PAN) and Formal Letter of Demand (FLD) dated 7 May 2014 and 28 March 2016, respectively, assessing herein respondent for deficiency income tax and VAT for its sale of parcel of land to Company B, way back 2007.

Respondent protested the assessment in a letter dated 27 April 2016. In view of the inaction of herein petitioner, Company A filed a Petition for Review with the CTA division. The main issue resolved in the CTA division was whether prescription has already set in, rendering the assessment invalid. In its defense, the BIR contends that the right of the government has not yet prescribed since there was a deliberate misclassification of sales pertaining to the sale of land classified as a capital asset which should have been classified as ordinary asset. Hence, the ten-year prescriptive period to assess should be applied since there is fraud in the misclassification of the parcel of land. The court ruled in favor of herein respondent ordering the cancellation of the assessment notices, which prompted the BIR to file a Petition for Review with the Court *En Banc*.

Company A also filed an Omnibus Motion to Set Aside Warrant of Distraint and/or Levy, against the implementation thereof. The respondent contends the warrant dated 9 February 2021 is based on a FAN which has already been cancelled and withdrawn through the decision of the court division.

Issues:

- Has the right of the BIR to assess respondent for deficiency income and VAT already prescribed?
- Can the CTA set aside the Warrant of Distraint and/or Levy?

Ruling:

- Yes. Under Section 203 of the NIRC of 1997, as amended, internal revenue taxes shall be assessed within 3 years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall begin after the expiration of such period: Provided, that in case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. Respondent herein filed its Income Tax Return (ITR) for the year 2007 on 15

April 2008, hence the BIR had until 15 April 2011 to assess the company for deficiency income tax. As regards, the VAT returns, Company A files its quarterly VAT returns for the 1st to 4th quarters on 23 April 2007, 20 July 2007, 22 October 2007, and 21 January 2008, respectively. Hence, it had until 25 April 2010, 25 July 2010, 25 October 2010, and 25 January 2011 to assess the respondent for deficiency VAT.

Based on the records, the FAN was issued by the BIR on 17 March 2016 and the same was received by the respondent on 28 March 2016. Hence, the subject assessments were issued beyond the prescriptive period.

Further, upon scrutiny of the case, there is no sufficient evidence to prove fraud or intentional falsity on the part of Company A to warrant the application of a 10-year prescriptive period. Company A had already laid down on the table for the BIR to examine its documents, pursuant to the first LOA. In fact, it did not conceal the sale of the subject real property. Thus, if there was really intent to evade the payment of tax, it would have not reported the sale of the subject property with the BIR.

- Yes. Under the Revised Rules of the CTA, the court authorized by law to suspend the collection of tax, if in its opinion, such collection may jeopardize the interest of the Government and/or taxpayer.

  Here, the Court in Division's decision and resolution as regards the subject assessment were not yet reversed and set aside. Considering that the Court *En Banc's* finding that the subject assessments are void, no tax collection based on such assessment can be pursued by the CIR since a void assessment bears no valid fruit.

Tax Refund/ Credit

Maxima Machineries, Inc. vs. Commissioner of Internal Revenue
CTA Case No. 9453 promulgated 30 June 2021

Claimants must show compliance with all requisites for entitlement to the grant of refund or issuance of a tax credit certificate, and failure to prove every aspect of their case shall result in the denial of the claim.

Facts:

Company A filed for an administrative claim for the issuance of tax credit certificates (TCCs), in the amount of P89,994,022.70, representing excess input value-added tax (VAT) attributable to its VAT zero-rated transactions, covering the 4th quarter of fiscal year (FY) ending 31 March 2014. A Letter of Authority (LOA) was thereafter issued, pursuant to the mandatory audit in cases of VAT refund.

Since the 120-day period to decide on the claim had lapsed without a Decision being issued by the BIR, Company A filed a Petition for Review to the Court of Tax Appeals (CTA).

Issue:

Is Company A entitled to the issuance of the TCC arising from its excess input VAT?

Ruling:

No, Company A failed to show compliance to each and every requisite for the grant of refund or issuance of TCC under the law.

On the zero-rated sale of services, under Section 108 (B) (2), pertaining to sales of services to entities which are not among registered corporations in the Philippines and were paid for in accordance with the rules and regulations of the BSP, Company A failed to show that the transaction qualified as zero-rated, for the following reasons:

- Company A did not provide the SEC Certificate of Non-Registration of the corporation, thus failed to prove that the recipient of services is a corporation doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed.

- Company A failed to present competent evidence that the services rendered should be other than "processing, manufacturing or repacking goods," and that the services were performed in the Philippines.

- Company A failed to present certification or proof of the inward remittance attesting to the fact that the payment was in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP

On sale to entities registered with PEZA, SBMA, CDC, BOI, considering that these are in Ecozones viewed as foreign territories by legal fiction, sales of goods and services by a VAT-registered person in Philippine customs territory to these entities qualify for VAT zero-rating. The sale, however, to certain entities which are without BOI certification to the effect that the said customers are registered manufacturers/ producers whose products are 100% exported for the period of claim should be denied zero-rating.

Additionally, there are sales for which Company A failed to comply with invoicing requirements as having been issued only with charge sales invoices.

Based on the foregoing factual verifications, Company A only had zero-rated sales in the amount of P75,534,773.13 for the 4th quarter of FY 2014. On the other hand, on the input VAT being claimed, only P59,299,666.51 are directly and indirectly attributable to zero-rated sales, which is lower than the net output VAT payable of P162,938,099.42. In other words, the Company still has output VAT payable in the amount of P103,638,432.91. Based on the ICPA report, only the input VAT of P758,489,926.43 were verified as valid input VAT attributable to VATable sales and zero-rated sales, carried over from 2nd quarter of FY2013 up to 3rd quarter of FY 2014, and the same is not enough to cover the output VAT for the same period in the aggregate amount of P776,092,538.96. Thus, verification resulted in Company A's net VAT payable of P17,602,612.53. Company A has failed to prove it has excess input VAT carried over from the previous period.

In claims for refund, it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim. Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed strictly against the person or entity claiming the refund. Thus, an applicant for a claim for tax refund must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements. Strict adherence to the conditions prescribed by law is required of the taxpayer.

Advanced System, Inc. vs. CIR
CTA EB 2246 promulgated 1 July 2021

The taxpayer must file its judicial claim for refund of excess input VAT within a period of 30 days from receipt of CIR's decision or after the expiration of the 120-day period within which the CIR must decide on the claim, whichever is earlier.

Facts:

On 13 March 2014, Company A filed with the BIR an administrative claim for tax credit of excess input tax attributable to zero-rated export sales covering the period 1 April 2012 to 31 March 2013. (On 11 June 2014, RMC No. 54-2014 was issued. Thereafter, on 3 January 2017, RR No. 1-2017 was issued)

On 8 November 2018, Company A received the Letter dated 18 October 2018 (Denial Letter), denying its claim for value-added tax (VAT) credit for the period from 1 April 2012 to 31 March 2013 in the amount of P4, 144,388.14.

Issues:

1. Is Company A deprived of its remedy of appeal without its fault due to the issuance of RMC No. 54-2014?;
2. Are RR No. 1-2017 and the denial letter exceptions to the application of the 120+30-day period?

Ruling:

1. No. RMC No. 54-2014 is explicit that the taxpayer must file its judicial claim within a period of 30)days from receipt of CIR's decision or after the expiration of the 120-day period within which the CIR must decide on the claim, whichever is earlier. Contrary to Company A's posture, its pending administrative claim for refund was not deemed denied by the mere issuance of RMC No. 54-2014. It even reiterated the long-standing rule of the mandatory 120+30-period in the filing of appeals. The pending administrative claim for refund was not deemed denied by the issuance of RMC No. 54-2014. It was 'deemed denied' since the CIR failed to act on its application within the 120-day period.

2. No. RR No. 01-2017 did not create an exception to the 120+30-day mandatory and jurisdictional period. Instead, it was issued "to give effect to the doctrinal rule laid down in Pilipinas Total Gas, Inc. and to afford fair and adequate relief to taxpayers whose claims were 'deemed denied' as a result of the retroactive application of RMC No. 54-2014 by providing that claims of tax refund or credit filed before 11 June 2014 shall continue to be processed administratively. Moreover, RR No. 01-2017 did not and could not amend Section 112 of the Tax Code, as amended. It is an elementary rule that administrative rules and regulations enacted by administrative bodies to implement the law, which they are entrusted to enforce, have the force of law and are entitled to great weight and respect. These implementations of the law, however, must not override, supplant, or modify the law but must remain consistent with the law they intend to implement.

   Lastly, Company A's receipt of CIR's Denial Letter dated 18 October 2018 on 8 November 2018, is a mere superfluous matter since the CIR's inaction after the lapse of the 120-day period is deemed a denial of its administrative claim.

The non-submission of complete documents at the administrative level is not fatal to a claim for refund at the judicial level brought about by the inaction of the CIR.

Merck Sharp & DOHME (I.A.) LLC - Philippine Branch vs. CIR
CTA Case No. 9803 promulgated 25 June 2021

Facts:

On April 25, 2017, Company M filed a letter requesting for the refund of the excess and unused creditable withholding tax (CWT) withheld by its customers during the taxable year 2015 and submitted supporting documents.

Thereafter, on 26 April 2017 Company M filed with the BIR an Application for Tax Credits/Refunds.

On 10 April 2018, due to the inaction of BIR, the instant Petition for Review was filed.

The BIR argued that the claim for tax refund should be denied for Company M's failure to comply with the documentary requirements set forth under RMO No. 53-98 and RR No. 2-06.

Issue:

Is Company M entitled to a refund of unutilized and excess CWT?

Ruling:

Yes, partially.

A taxpayer is entitled to two options to a tax credit or refund which has excess estimated quarterly income taxes paid: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate (TCC) or to claim a cash refund.

In the instant case, Company M opted to be refunded of its excess CWT for TY 2015 and was able to satisfy the essential basic conditions set forth under pertinent provisions of law and existing jurisprudential declarations. The Court disallowed only a portion due to documentary issues and untraceable and unverified portion of the income payments.

The Court also mentioned that Company M's failure to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible. The Court is not precluded from considering Company M's evidence that was not presented in the administrative claim with the BIR. Moreover, a reading of RMO No. 53-98 and RR No. 2-06 would show that nowhere in the said issuances provide that the non-submission of the documents would result in denial of the claim for refund.

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