

Tax Bulletin

March 2021

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Highlights

BIR Administrative Requirements

- ▶ Revenue Memorandum Order (RMO) 8-2021 provides new policies and procedure in the issuance of the Notice of Denial (NOD) of Application for Compromise Settlement cases by the concerned regional offices as well as the issuance of Authority to Cancel Assessment (ATCA) and Certificate of Approval for applications duly approved by the National Evaluation Board (NEB). **(Page 7)**
- ▶ RMO 9-2021 prescribes the simplified guidelines and procedures on the use of Computerized Accounting System (CAS), Computerized Books of Accounts (CBA), and/or its Components, including Electronic Storage System (ESS), Middleware and other similar systems. **(Page 8)**
- ▶ Revenue Memorandum Circular (RMC) No. 22-2021 circularizes the reportorial requirements on the exemption from Documentary Stamp Tax (DST) relief for qualified loans pursuant to RR No. 24- 2020 dated 14 September 2020. **(Page 11)**
- ▶ RMC No. 29-2021 provides the polices and guidelines for the use of electronic Signature (e-Signature) on certain BIR Forms/Certificates. **(Page 12)**

Other BIR Issuances

- ▶ RMC No. 21-2021 circularizes Joint Circular No. 001-2021 which prescribes the Implementing Guidelines for Field Testing Under the Fuel Marking Program pursuant to Republic Act (RA) No. 10963 (Tax Reform for Acceleration and Inclusion [TRAIN] Law). **(Page 14)**
- ▶ RMC No. 23-2021 implements the CY2021 Priority Programs and Projects of the BIR. **(Page 14)**
- ▶ RMC No. 24-2021 circularizes the Nationwide Implementation of Online Applications for the Tax Clearance for Bidding Purposes and Tax Compliance Verification Certificate (eTCBP/TCVC). **(Page 15)**
- ▶ RMC No. 25-2021 circularizes the additional Personal Equity Retirement Account (PERA) Unit Investment Trust Fund (UITF) duly approved by the Bangko Sentral ng Pilipinas (BSP). **(Page 15)**
- ▶ RMC No. 27-2021 circularizes the availability of the revised BIR Form No. 2200-AN (Excise Tax Return for Automobiles and Non-Essential Goods) January 2018 (ENCS)]. **(Page 15)**
- ▶ RMC No. 28-2021 circularizes the availability of the revised BIR Form No. 2200-P (Excise Tax Return for Petroleum Products) January 2020 (ENCS)]. **(Page 16)**
- ▶ RMC No. 31-2021 circularizes the updated list of accredited microfinance non-government organizations (NGOs). **(Page 17)**

- ▶ RMC No. 33-2021 was issued to announce the availability of the Offline eBIRForms Package Version 7.8. (Page 17)
- ▶ RMC No. 34-2021 was issued to prescribe the newly revised BIR Excise Tax Forms. (Page 18)
- ▶ RMC No. 35-2021 prescribes the newly revised BIR Form 1601-FQ (Quarterly Remittance Return of Final Taxes Withheld) September 2020 (ENCS). The revision was brought about by the inclusion of additional countries having tax treaties with the Philippines. These are Mexico, Qatar, Sri Lanka and Turkey. (Page 19)
- ▶ RMC No. 36-2021 prescribes the changes and guidelines following the shift from final to a creditable system on the VAT withholding on sales to government or any of its political subdivisions, instrumentalities or agencies, including government-owned or –controlled corporations (GOCCs) effective January 2021. (Page 20)

Banks and Other Financial Institutions

Rationalization of Prudential Reporting Requirements

- ▶ Circular No. 1110 publishes Resolution No. 174 dated 11 February 2021, amending selected Appendices and other relevant Sections of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial institutions (MORNBFI) as part of the report rationalization initiative of the BSP. (Page 21)

Guidelines in Re-registration of Virtual Currency Exchanges

- ▶ M-2021-013 provides guidelines on re-registration of Virtual Currency Exchanges (VCEs). (Page 23)

Frequently Asked Questions on the Report on LIBOR-Related Exposures (RLRE) to All Banks under Memorandum No. M-2020-083 dated 17 November 2020

- ▶ The memorandum provides additional guidance and clarifications relative to the requirement for the submission of the RLRE issued under Memorandum No. M-2020-083 dated 17 November 2020. (Page 23)

Anti-Money Laundering Council (AMLC) Resolution No. TF-35, Series of 2021

- ▶ CL-2021-18 informs the public that the earlier freeze order against the Taliban and Al Qaeda has been replaced by AMLC Resolution No. TF-35. (Page 27)

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

- ▶ Circular Letter No. CL-2021-21 inform all BSFIs of the updated statements of the FATF issued on 25 February 2021 on high-risk jurisdictions subject to a call for action and jurisdictions under increased monitoring. (Page 27)

Bureau of Customs

Implementation of the Automated Bonds Management System (ABMS) for Transit Bond

- ▶ OCOM Memo No. 34-2021 provides guidelines on the implementation of the ABMS for Transit Bond. (Page 28)

Mandatory Submission of Office Email Addresses and Action Officer

- ▶ OCOM Memo No. 35-2021 mandates that all groups/divisions/service units/offices of the BOC within the central office to submit their office email addresses and the names of respective employees handling the office email. (Page 28)

Use of the Staging Bond Policy in the Filing of Goods Declaration for Goods Discharged Directly into PEZA Zones

- ▶ OCOM Memo No. 44-2021 provides guidelines on the use of the staging bond policy in the filing of goods declaration for goods discharged directly into PEZA zones. (Page 29)

Augmentation of Customs PEZA Personnel for the Purpose of Immediately Tagging the Arrivals of the Shipment

- ▶ AOCG Memo No. 117-2021 mandates customs PEZA personnel to ensure the immediate tagging of all shipments arriving in their jurisdiction. (Page 29)

Imposition of Definitive General Safeguard Duty on Imported Cement from Covered Countries Pursuant to DAO 21-02

- ▶ Customs Memorandum Order (CMO) No. 11-2021 provides guidelines for the importers of cement who are excluded from the imposition of definitive general safeguard duty pursuant to Department of Trade and Industry (DTI) Administrative Order 21-02 dated 3 March 2021. (Page 29)

Board of Investments

- ▶ The BOI Announcement posted on 23 February 2021 provides that SIRV/ Foreign Nationals are now required to file Travel Pass early prior to foreign travel. (Page 29)

PEZA

- ▶ PEZA Memorandum Circular (MC) No. 2021-19 provides for temporary suspension of travel into the Philippines of foreign nationals. (Page 30)
- ▶ PEZA Memorandum Circular (MC) No. 2021-17 provides for the latest advisory regarding the requirements in requesting PEZA endorsements for Travel Ban Exemption. (Page 30)
- ▶ PEZA Memorandum Circular (MC) No. 2021-13 provides for advisory on Issuance of PEZA Travel Pass for Departing 47 (a) (2) visa holders effective 01 March 2021. (Page 31)

SEC Filing, Payments and Other Deadlines

Schedule and Procedure for the Filing of Annual Financial Statements, General Information Sheet and Other Covered Reports

- ▶ SEC Memorandum Circular No. 3 provides guidelines on the 2021 filing of Annual Financial Statements, General Information Sheet and other covered reports, and on the use of the Online Submission Tool for the filing of these reports. (Page 31)

Online Submission of Beneficial Ownership Declaration Form

- ▶ The SEC issued guidance on the procedure for the online submission of the Beneficial Ownership Transparency Declaration Form. (Page 35)

Additional Contact Details for Queries on Online Submission of Reports

- ▶ The SEC provided additional contact details for queries regarding the online submission of reports. (Page 39)

Alternative Mode for Distributing and Providing Copies of the Notice of Meeting, Information Statement and Other Documents in Connection with the Holding of Annual Stockholder's Meeting for 2021 for all Publicly Listed Companies and Other Companies with Registered Securities under the MSRD's Supervision

- ▶ The SEC provided alternative modes of distributing and providing copies of the Notice of Meeting, Information Statement and Other Documents in Connection with the Holding of Annual Stockholders' Meetings for 2021 for all publicly listed companies and other companies with registered securities under the supervision of the Markets and Securities Regulation Department of the SEC. (Page 39)

Other SEC Updates

- ▶ SEC-OGC Opinion No. 21-02 dated 16 February 2021 provides that a corporation which establishes, operates, maintains and/or manages a commercial radio and television broadcasting station, though engaged in public service, is considered as a mass media entity subject to stricter rules and limitations under the Constitution. (Page 40)
- ▶ SEC-OGC Opinion No. 21-03 dated 18 February 2021 provides a corporation can validly report in its GIS changes in nominee shareholders pursuant to a validly executed Deed of Trust and Assignment and should report any election of a new director. (Page 41)

Supreme Court Cases

Deduction from gross income subject to 5% income tax of PEZA-registered companies not exclusive.

- ▶ The enumeration in Revenue Regulations No. 11-2005 of costs and expenses that may be deducted to compute the gross income subject to 5% income tax of PEZA-registered companies is not exclusive. Thus, costs and expenses directly related to the PEZA-registered activity that are not administrative, marketing, selling, or operating expenses, shall be allowed as deduction from gross income. (Page 41)

CTA Cases

Procedure on Tax Assessment

- ▶ If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. (Page 42)
- ▶ If no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 of the LGC applies. (Page 43)
- ▶ An assessment is invalid if the BIR fails to observe a valid service and, based on jurisprudential pronouncement, when the taxpayer denies having received the assessment notices, it is incumbent upon the BIR to prove the actual receipt thereof by the taxpayer concerned. (Page 44)
- ▶ Any reassignment/transfer of cases to another RO(s), and the revalidation of the Letter of Authority (LOA) which has already expired, shall require the issuance of a new LOA, with the corresponding notation thereto, including the previous LOA number and date of issue of said LOAs. (Page 45)
- ▶ There is no law which requires a taxpayer to wait for the BIR to issue an acknowledgement that said taxpayer's address has been changed in its records in order to give effect to the transfer to a new office. Failure to strictly comply with the notice requirements prescribed under Section 228 of the Tax Code and Revenue Regulations No. 12-99, as amended, is tantamount to denial of due process. (Page 46)
- ▶ A Demand Letter is not the decision appealable to the Court of Tax Appeals (CTA) but the Final Decision on Disputed Assessment (FDDA) that the BIR has issued against the taxpayer. (Page 47)
- ▶ Under the National Internal Revenue Code of 1997, as amended (Tax Code), a foreign corporation is negatively defined as one which is not domestic. As such, a party who claims a corporation to be foreign must prove it to be such foreign corporation, not a domestic corporation. A Certification of Non-Registration of Company from the SEC would have shown that a certain corporation is not registered as a corporation in the Philippines. Thus, for Company A's failure to submit such certification with respect to the foreign corporation, the Court *En Banc* cannot ascertain if the entity is indeed not a domestic corporation. The omission on Company A's part is fatal to its claim that the entity is a foreign corporation that is taxable only for its income from sources within the Philippines. (Page 48)
- ▶ It is a well-settled rule that TVN is not a LOA and that absence of a LOA is tantamount to a denial of a taxpayer's right to due process. Such absence is an incurable defect that renders a tax assessment *void ab initio*. (Page 49)

Refund/issuance of Tax Credit

- ▶ When filing a petition for review before the CTA for a refund claim, the action must be based on the BIR's denial of the refund/tax credit claim and not due to its inaction. It is imperative that the petition specifically assails the basis for the denial of its administrative claim and its lack of justification in law. (Page 50)

- ▶ Under Section 112(A) of the Tax Code, as amended by RA 9337, a taxpayer has 2 years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid or attributable to such sales. From the date of filing of the administrative claim, the taxpayer has 30 days within which to submit the documentary requirements to support his claim, unless given further extension by the CIR. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A). Upon taxpayer's filing of complete documents to support his claim, the CIR has 120 days within which to decide the claim for tax credit or refund. The taxpayer must then file an appeal within 30 days from the lapse of the 120-day period. **(Page 51)**
- ▶ In order to qualify for VAT zero rating, the sales to a non-resident foreign corporation (NRFC) doing business outside the Philippines must be supported at the very least by both Securities and Exchange Commission Certification of Non-Registration and proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Association). **(Page 52)**

Violation of Tax Code

- ▶ There is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Tax Code. For one to be convicted for the offense of willful failure to supply correct and accurate information, it necessitates the concurrence of the following elements, to wit: (1) The accused is a person required under the Tax Code or rules and regulations to supply correct and accurate information; (2) The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and (3) Such failure to supply correct and accurate information is willful. **(Page 53)**

BIR Administrative Requirements

RMO 8-2021 provides new policies and procedure in the issuance of the NOD of Application for Compromise Settlement cases by the concerned regional offices as well as the issuance of ATCA and Certificate of Approval for applications duly approved by the NEB.

RMO 8-2021 dated 17 February 2021

- ▶ All NOD on applications for compromise settlement that resulted from the deliberations conducted by the Regional Evaluation Board, which involves basic deficiency tax of 500,000.00 and below, shall be signed by the concerned Regional Director while NOD cases involving more than 500,000.00 basic tax shall be signed by the Commissioner of Internal Revenue.
- ▶ All CA on applications for compromise settlement duly approved by the NEB, including cases subject to Judicial Compromise Agreement (JCA), shall be signed by the Assistant Commissioner of the Collection Service, except those involving large taxpayers' cases, which shall be signed by the Assistant Commissioner of the Large Taxpayers Service. The duly signed CA, together with the entire docket of the case, shall then be transmitted back to the concerned office having jurisdiction thereto. The concerned office shall prepare the corresponding Notice of Lifting on the issued Warrants and Notices, if applicable, and update the office records of the liability of the taxpayer in the General Control Ledger (GCL).

- ▶ All ATCA on applications for compromise settlement duly approved by the NEB shall be signed by the concerned Regional Director or the Assistant Commissioner where the case originated. All applications for compromise settlement with NOD for signature of the Commissioner that were already transmitted to and pending with the office of the Accounts Receivable Monitoring Division before the effectivity of this Order shall be acted upon by that office.

RMO 9-2021 prescribes the simplified guidelines and procedures on the use of CAS, CBA, and/or its Components, including ESS, Middleware and other similar systems.

RMO 9-2021 dated 19 February 2021

- ▶ The order shall be applicable for any of the following:
 1. All Large Taxpayers (LTs) who are mandated to maintain or use CAS pursuant to RR 9-2009;
 2. All Non-Large Taxpayers (Non-LTs) engaged in business who opted to use CAS, CPA and components of CAS or CBA; and
 3. Taxpayers engaged in business who shall use ESS, Middleware and other similar systems.
- ▶ All taxpayers who intend to use CAS, CBA, and/or its Components, including ESS, Middleware and other similar systems (collectively referred to as "System") shall inform and register with the Revenue District Office (RDO)/LT Office where it is registered of its intention to use such system by submitting the requirements stated on the Checklist of Documentary Requirements (CDR) (Annex A). However, it is mandatory that the system to be adopted shall strictly comply with the Standard Functional and Technical Requirements set under Annex B of the Order.
- ▶ All documents pertaining to the applications for the Registration of "System", shall be submitted manually or via electronic mail (e-mail). The Sworn Statement (attached to the RMO as Annex C) with the Summary of System Description, Commercial Invoices/Receipts/Document Description, Forms/Records and Reports Specification (Annex C-1) and the accomplished Standard Functional and Technical Requirements (Annex B) shall be submitted to the RDO/LT Office where the Head Office (HO) of taxpayer is registered, except under the following circumstances:
 1. Branch Office of the taxpayer adopts "System" ahead of its Head Office (HO). In such case, the application for registration shall be filed at the RDO where the Branch Office is registered with a Certification from the RDO where the HO is registered that it has yet to use the system/software. In the event that the HO shall subsequently adopt the same "System," which was previously adopted by the Branch Office and duly registered with the RDO where the branch was registered, new registration documents shall be submitted by the HO to its RDO and a new Acknowledgement Certificate (AC - Annex D) shall be issued to the Head Office. The Annex of the AC shall indicate all the branches that are using the said system/software.
 2. Branch Office of the taxpayer adopts a "System" from other branches and its HO. In such case, the application for registration shall be filed at the RDO where the Branch Office is registered and a separate AC for the Branch Office shall be subsequently issued.

- ▶ The concerned RDO/LT Office shall issue an AC (attached in the RMO as Annex D), upon receipt of the complete documentary requirements prescribed herein. The AC shall be issued within three working days from receipt of complete documentary requirements. The AC shall be valid unless revoked by the BIR upon discovery of its non-compliance with the provisions of this Order and other related revenue issuances during the conduct of post-evaluation.
- ▶ Affiliated companies, sister companies, franchisees, closely held corporations, other similar companies related to a parent company shall register the "System" to be used with the RDOs/LT Office where the aforesaid companies are registered. This requirement shall be applicable regardless of whether these companies are sharing servers and using exactly the same "System" previously registered and used by the parent company or other related companies.
- ▶ No system demonstration nor pre-evaluation shall be conducted as a condition for the Registration of "System." However, the RDO may clarify certain features indicated on the Sworn Statement and may request for an amendment of the Sworn Statement should there be items that needs to be included or clarified in such Sworn Statement.
- ▶ Taxpayers who will avail the services of Tax Service Providers (TSPs) or third-party software providers for the use of a system/software must register such system with the BIR prior to the effectivity of their contract with the TSPs or third-party software providers. A Joint Sworn Statement (Annex E) with attached Summary of System Description, Commercial Invoices/Receipts/ Document Description, Forms/Records and Reports Specification (Annex C-1) shall be executed by both parties, i.e., the taxpayer and the TSP or third-party software provider in such cases. Both parties must also include in their Joint Sworn Statement that the system/software has no facility that may suppress sales/income and/or other technical scheme that may affect the correctness of the sales for purposes of taxation.
- ▶ Taxpayers who availed of the services of TSPs shall be required to keep and maintain all accounting records and other relevant financial data for a mandatory period of 10 years, pursuant to the provisions of RR No. 5-2014, in their principal place of business and should be made available to the BIR during audit and other enforcement activities that will be conducted by the authorized Revenue Officer of the BIR. In case of termination/expiration of contract, the taxpayer who availed of the services of a TSP shall notify the RDO having jurisdiction over their place of business prior to the expiration/ termination of contract with the developer/provider. Such termination/ expiration of contract shall automatically cancel the registration of "System."
- ▶ Taxpayers with applications for Accreditation of Cash Register Machines (CRMs)/ Point-of-Sale (POS) System (bundled or software only) and other sales receipting system/software that will be linked to a duly registered "System," shall be processed following the provisions on the accreditation and subsequent registration of the CRMs/POS Machines and other sales receipting system/software based on existing revenue issuances.

- ▶ It should be noted that the registration of the CRMs/POS Machines and other sales receipting system/software shall be different from the registration of "System." Hence, salient details of the CRMs/POS Machines and other sales receipting system/software that will be linked to any "System" must be declared by the taxpayer in the Annexes of the Sworn Statement at the time of the registration of such System, to wit:
 1. POS Server/Machine Details, i.e., Brand, Model, and/or Serial Number; Software Details, i.e., Software Name and Version Number with Release Number if applicable; Machine Identification Number (MIN) and Permit to Use (PTU) Number; and
 2. Terminal Details - Machine Details, i.e., Brand, Model and/or Serial Number.

- ▶ Taxpayer must submit an update of registration following the provisions of filing a new application in case of major system enhancement such as, but not limited to, any of the following:
 1. Change in the functionalities of the system, particularly on enhancements that will have a direct effect on the financial aspect of the system that includes modified computations and other financial-related issues that were considered;
 2. Additional or Removal of modules or sub-modules within the system that will have a direct impact on the financial aspect of the system;
 3. Change in the system/software Version or Release Number that will have enhancements on the financial aspect of the system; and
 4. All other enhancements that will be deemed as a major system enhancement based on the recommendation of the technical evaluators of the BIR.

- ▶ In case a taxpayer is found to have used an enhanced/upgraded "System" without informing BIR prior to the use of such enhanced "System," the taxpayer shall be subjected to applicable penalties under existing revenue issuances. In case of any minor system enhancement, e.g., user interface modification, bug fixes, performance improvements, etc., the taxpayer must submit a written notification to the RDO/LT Office where it is registered, stating the specific minor enhancements on the system.

- ▶ Taxpayers with a duly registered "System," without system-generated principal and/or supplementary receipts/invoices, should apply for an Authority to Print (ATP) such receipts/ invoices based on existing revenue issuances. On the other hand, taxpayers applying for registration of their "Systems" that will use system-generated supplementary receipts/invoices but with manual BIR-approved principal receipts/invoices (with ATP), shall likewise be declared in the Sworn Statement and in its Annexes.

- ▶ In case of systems downtime, taxpayers with a duly registered "System," who are using computer-generated principal and/or supplementary receipts/ invoices with a system/software/application that has no redundancy or automatic switchover, shall be allowed to issue manual principal and/or supplementary receipts/invoices. However, manually pre-printed and pre-numbered principal and/or supplementary receipts/invoices with approved ATP reserved or set aside for use during systems downtime should not exceed one thousand (1,000) sets at a time.

- ▶ It should be noted that system-generated principal and/or supplementary receipts/invoices must comply with the mandatory information required under Section 5 of RR No. 10-2015, as amended by RR No. 16-2018, except for the following which are applicable only to CRM/POS Machine:
 1. Machine Identification Number (MIN);
 2. Serial Number of the CRM/POS Machine; and
 3. Accreditation Details of the CRM/POS Supplier.
- ▶ The taxpayers (Large and Non-Large) shall use books of accounts depending on its business requirements. However, these books of accounts/subsidiary accounting records must comply with the bookkeeping requirements and information prescribed under RR No. 9-2009.
- ▶ Soft copy of the Computerized Books of Accounts and Other Accounting Records shall be registered with the RDO/LT Office where the HO/Branch is registered within 30 calendar days from the close of the taxable year. It shall be in Standard Audit File (SAF) in compliance with RR No. 16-2006, as amended, and shall be saved in a Universal Serial Bus (USB) Drive or other electronic storage device, properly labeled with the name of the taxpayer and the taxable year. A transmittal letter showing the detailed content of the USB Drive label, i.e., File Name, Type and Size, must be prepared and submitted by the taxpayer and the same must be duly stamped registered and signed at the RDO/LT Office having jurisdiction over the Head Office and/or Branch Office/s. Should the taxpayer register an unaudited Books of Accounts and Other Accounting Records, the Auditor's Adjustments shall be submitted in soft copy.
- ▶ Further, electronically archived information in the books of accounts and other accounting records/documents must be retained pursuant to existing revenue issuances.
- ▶ All taxpayers with pending applications for PTU CAS, CBA, and/or its Components, which were filed with the National Accreditation Board (NAB) and are pending with NAB as of 23 February 2020 shall be processed under RMC No.10- 2020. All applications filed thereafter shall be processed following the provisions stated in this Order.
- ▶ Further, those taxpayers with duly approved PTU as of the effectivity of this Order shall remain valid unless the issued PTU has been revoked/expired or the system has been enhanced without complying with the requirements in Section V (8) of this Order.

RMC No. 22-2021 circularizes the reportorial requirements on the exemption from DST relief for qualified loans pursuant to RR No. 24- 2020 dated 14 September 2020.

RMC No. 22-2021 dated 18 February 2021

- ▶ RR No. 24-2020 implements Section 4(uu) of RA No. 11494, otherwise known as the "Bayanihan to Recover as One Act" on the exemption from DST of loans extended or credits restructured granted by covered institutions for loans falling due, or any part thereof, on or before 31 December 2020.
- ▶ Covered institutions, including but not limited to banks, quasi-banks, financing companies, lending companies, real estate developers, insurance companies providing life insurance policies, pre-need companies, entities providing in-house financing for goods and properties purchased, asset and liabilities

management companies and other financial institutions, public and private, including the Government Service Insurance System (GSIS), the SSS and Home Development Mutual Fund (Pag-IBIG Fund) shall submit in hard and soft copy, a summary of listing of all pre-existing loans, pledges and other instruments as of 15 September 2020 (effectivity of RA No. 11494) which were granted extension of payment and/or maturity periods based on the following format:

Borrower	Type of Instrument	Date of Loan Agreement/ Promissory Note Pledges	Document Reference Number	Due Date		Amount of Loan / Pledge	Amount of DST exemption
				Original	Extended		
1							
2							

The summary listing shall be submitted, in soft and hard copy, to the Revenue District Office/Large Taxpayers Service/Large Taxpayers District Office where the taxpayer is registered within 60 days from 31 December 2020. Within 15 days from the date of the receipt, the concerned Revenue District Office/Large Taxpayers Service/Large Taxpayers District Office shall submit a soft copy to the BIR National Office, through the Audit Information, Tax Exemption and Incentives Division (AITIED). The hard copy of the above summary listing shall be made under oath as to the completeness, truth and accuracy thereof by a duly authorized officer or representative of the taxpayer, and subject to post audit/verification by the BIR whether the summary list pertains to loans only.

In case of failure to submit the summary listing required on the date prescribed therefor, there shall, upon notice and demand by the Commissioner, be paid by the covered institution, the additional DST that should have been imposed on the instrument under the Tax Code, as amended, plus administrative penalties incident to such failure.

RMC No. 29-2021 provides the polices and guidelines for the use of e-Signature on certain BIR Forms/ Certificates.

RMC No. 29-2021 dated 25 January 2021

Among the salient provisions of this RMC are as follows:

Particulars	Details
I. Legal Basis	<p>The use of e-Signature has long been recognized under RA No. 8792, otherwise known as the "Electronic Commerce Act of 2000". Section 5 [e] of said law defines e-Signature as follows:</p> <p><i>"(e) Electronic Signature refers to any distinctive mark, characteristic ard/or sound in electronic form, representing the identity of a person and attached to or logically associated with the electronic data message or electronic document or any methodology or procedures employed or adopted by a person and executed or adopted by such person with the intention of authenticating or approving an electronic data message or electronic document."</i></p> <p>Further, Section 8 of RA No. 8792 accords legal recognition to e-Signature. It reads:</p> <p><i>"Section 8. Legal Recognition of Electronic Signatures. - An electronic signature on the electronic document shall be equivalent to the signature of a person on a written document if that signature is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document, existed under which -</i></p> <ul style="list-style-type: none"> <i>(a) A method is used to identify the party sought to be bound and to indicate said party's access to the electronic document necessary for his consent or approval through the electronic signature,</i> <i>(b) Said method is reliable and appropriate for the purpose for which the electronic document or electronic data message was generated or communicated, in the light of all circumstances, including any relevant agreement,</i> <i>(c) It is necessary for the party sought to be bound, in order to proceed further with the transaction, to have executed or provided the electronic signature, and</i> <i>(d) The other party is authorized and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same."</i>

Particulars	Details
<p>II. Definition of Terms</p>	<ul style="list-style-type: none"> ▶ e-Signature - refers to any distinctive mark, characteristic and/or sound in electronic form, representing the identity of a person and attached to or logically associated with the form/certificate or any methodology or procedures employed or adopted by a person and executed or adopted by such person with the intention of authenticating or approving an electronic data message or electronic document. For purposes of this Circular, an e-Signature includes digital signature and other methods of electronic signature. ▶ Digital Signature - refers to an electronic signature consisting of a transformation of an electronic or an electronic data message using an asymmetric or public cryptosystem such that a person having the initial untransformed electronic and the signer's public key can accurately determine: <ol style="list-style-type: none"> 1. whether the transformation was created using the private key that corresponds to the signer's public key; and 2. whether the initial electronic document had been altered after transformation was made. ▶ Electronic Document - refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic documents. For purposes of this Circular, the term "electronic document" may be used interchangeably with electronic data message. ▶ Forms/Certificates - refer to any of the following BIR Forms/Certificates where the use of e-Signature shall be allowed: <ol style="list-style-type: none"> 1. 2304 - Certificate of Income Payment Not Subject to Withholding Tax (Excluding Compensation income) 2. 2306 - Certificate of Final Tax Withheld at Source 3. 2307 - Certificate of Creditable Tax Withheld at Source 4. 2316 - Certificate of Compensation Payment/Tax Withheld
<p>III. Policies and Guidelines</p>	<ul style="list-style-type: none"> ▶ The withholding agents or duly authorized representatives of the withholding agents who issue the BIR Form/Certificate in Section 3.4 of this Circular have the option to use an e-Signature, aside from the manual signature, on such BIR Forms/Certificates. The e-Signature serves as the functional equivalent of his/her manual signature on said Form/Certificate. ▶ In case the withholding agent opts to use an e-Signature, approval of the BIR is no longer necessary. ▶ The Form/Certificate to be issued or affixed with e-Signature, should be the exact replica or copy of the latest version officially printed by the BIR. In case the BIR makes revision or changes in the Form/Certificate (e.g. change in version date, size, etc.), such revised Form/Certificate shall be used. ▶ The Form/Certificate shall also contain the manual signature/e-Signature of the payee in order to be valid and binding. The e-Signature serves as the functional equivalent of his/her manual signature on said Form/Certificate. ▶ The e-Signature made herein gives rise to the following presumptions: (1) the e-Signature is that of the person to whom it correlates, (2) the e-Signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein, and, (3) the methods or processes utilized to affix or verify the e-Signature operated without error or fault. ▶ In case of falsity or any misrepresentations contained in the issued Form/Certificate, those responsible therefor shall be held criminally, civilly and administratively liable pursuant to the provisions of the Tax Code of 1997, as amended, the Revised Penal Code and other applicable laws. Under Section 253 of the Tax Code of 1997 as amended, in the case of associations, partnerships or corporations, the penalty shall be imposed on the partner, president, general manager, treasurer, officer-in-charge, and employees responsible for the violation. ▶ The withholding agent shall make sure that the Form/Certificate with e-Signature shall only be issued once. In case of re-issuance or the payee requested for another copy of the Form/Certificate after giving the original copy, the re-issued Form/Certificate should contain a "RE-PRINT" watermark in Cambria font and font size of 144, sample of which hereto attached as Annex "A." This is to avoid double take up of tax credits, especially with BIR Form No. 2307.

Other BIR Issuances

RMC No. 21-2021 circularizes Joint Circular No. 001-2021 which prescribes the Implementing Guidelines for Field Testing Under the Fuel Marking Program pursuant to RA No. 10963 (TRAIN Law).

This RMC implements the CY2021 Priority Programs and Projects of the BIR.

RMC No. 21-2021 dated 16 February 2021

- ▶ Pursuant to the provisions of Section 244 of the Tax Code, as amended, and Section 1800 of the Customs Modernization and Tariff Act (CMTA), in relation to Sections 148-A, 151, 157, 171, 172 and 265-A of the TRAIN Law, the Joint Circular is promulgated to provide supplemental guidelines on the conduct of Random Field and Confirmatory Testing on gasoline, diesel and kerosene found in warehouses, storage tanks, gas stations and other retail outlets, and in such other properties or equipment, including mechanisms of transportation, of persons engaged in the sale, delivery, trading, transportation, distribution, or importation of fuel for domestic market.

RMC No. 23-2021 dated 26 January 2021

- ▶ Due to the adverse effect brought about by COVID-19, the government is implementing the CY2021 Priority Programs and Projects of the BIR to be able to generate the needed revenues to accelerate the recovery and to bolster the resiliency of the Philippine economy.
- ▶ The Priority Programs listed below shall likewise contribute for the achievement of the BIR's collection target.

A. Enforcement Program

1. Run After Tax Evaders (RATE) Program
2. Oplan Kandado
3. Broadening of the Tax Base
4. Intensified Audit and Investigations

B. Tax Compliance Monitoring Program

1. Tax Education Campaign/Public Awareness Programs/Consultation/Information Dissemination
2. Innovating TP experience and BIR Service Process
 - ▶ Automation of Withholding Tax BIR Form 2307 and Issuance of Withholding Tax Certificate
 - ▶ Streamlining of Creditable Withholding Tax (EWT) rates
 - ▶ Re-architecture and Enhancement of the Electronic Documentary Stamp (eDST) System
 - ▶ Online Registration and Update System (ORUS)
 - ▶ TIN Verifier Mobile Application
 - ▶ Integrated contact center solution and chatbot
3. Development of eFiling System
4. eAppointment
5. Information and Communications Technology (ICT) Solutions for Improved Taxpayers Services - Availment of Commercial Data Center

C. Enhancement of Administration and Support Services Program

1. Budget Utilization Rate
2. Effective recruitment, capacity development, career advancement, succession planning and retention strategies
3. Aligning Policies to a BIR Digital Workplace
 - ▶ BIR Integrity Management Program
 - ▶ Taxpayer Segmentation
4. Enabling the Digital Backbone of BIR
 - ▶ Optimization/Implementation of Internal Revenue Integrated System (IRIS)
 - ▶ Cloud Computing Provisioning of all DX System-Driven Projects

RMC No. 24-2021 circularizes the Nationwide Implementation of Online Application for eTCBP/TCVC.

RMC No. 24-2021 dated 29 January 2021

- ▶ The BIR circularized the availability of an online application for taxpayers to secure a Tax Clearance for Bidding Purposes and Tax Compliance Verification Certificate.
- ▶ The TCBP and TCVC applications shall be electronically filed through the BIR centralized email addresses: etcvc@bir.gov.ph and etcbp@bir.gov.ph.

RMC No. 25-2021 circularizes the additional PERA UITF duly approved by the BSP.

RMC No. 25-2021 dated 24 February 2021

- ▶ Under Rule 11 of the Rules and Regulations Implementing Republic Act No. 9505, otherwise known as the PERA Act 2008, and Section 9 of RR No. 17-2011, all income earned from the investments and re-investments of PERA assets in PERA investment products shall be exempt from income taxes provided the said PERA investment products have been duly accredited by the concerned Regulatory Authority.
- ▶ It is emphasized, however, that only income earned from the investments and re-investments of PERA assets in duly accredited/approved PERA investment products shall be exempt from income Taxes. Moreover, income from investments and re-investments of PERA assets in government securities is likewise exempt from income taxes under the above provisions.
- ▶ To supplement the list contained in RMC No. 131-2016 dated 13 December 2016 and RMC No. 30-2017 dated 12 April 2017, below is an additional PERA UITF/investment product duly approved/accredited by the BSP, as confirmed by the latter in its letter dated 22 January 2021:

Name of Bank	Name of Fund	Sub-Type	Detailed Type of Fund	Denomination	Date of Approval of BSP
Philippine National Bank	PNB PERA Bond Fund	Bond	Medium Term PERA Bond Fund	Philippine Peso	21 January 2021

RMC No. 27-2021 circularizes the availability of the revised BIR Form No. 2200-AN January 2018 (ENCS).

RMC No. 27-2021 dated 26 February 2021

- ▶ The revised manual return is already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Excise Tax Return section. However, the form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms); thus, eFPS/eBIRForms filers shall continue to use the BIR Form No. 2200-AN in eFPS and in Offline eBIRForms Package v7.8 in filing and paying the excise tax due. Once the return becomes available in the eFPS and in the Offline eBIRForms Package, a separate revenue issuance shall be released to announce its availability.

- ▶ Manual filers shall download the PDF version of the form, print the form and completely fill out the applicable fields, otherwise penalties under Sec. 250 of the Tax Code, as amended, shall be imposed. Payment of the tax due thereon, if any, shall be made thru:

1. Manual Payment -

- ▶ Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Large Taxpayers Service (LTS)/Revenue District Office (RDO) where the taxpayer (Head Office of the business establishment) is registered; or
- ▶ In places where there are no AABs, the return shall be filed and the tax due shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer (Head Office of the business establishment) is registered using MRCOS facility.

2. Online Payment -

- ▶ Thru Mobile Payment (GCash/PayMaya);
- ▶ Landbank of the Philippines (LBP) Link.Biz Portal, for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card;
- ▶ DBP Tax Online, for holders of VISA/Master Credit Card and/or Bancnet ATM/Debit Card;
- ▶ Union Bank Online Web and Mobile Payment Facility - for taxpayers who have account with Union Bank; or
- ▶ PESONet through LBP Link.Biz Portal - for taxpayers who have account with RCBC and Robinsons Bank.

RMC No. 28-2021 circularizes the availability of the revised BIR Form No. 2200-P January 2020 (ENCS).

RMC No. 28-2021 dated 26 February 2021

- ▶ The revised manual return is already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Excise Tax Return section. However, the form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms); thus, eFPS/eBIRForms filers shall continue to use the BIR Form No. 2200-P in eFPS and in Offline eBIRForms Package v7.8 in filing and paying the excise tax due. Once the return becomes available in the eFPS and in the Offline eBIRForms Package, a separate revenue issuance shall be released to announce its availability.
- ▶ Manual filers shall download the PDF version of the form, print the form and completely fill out the applicable fields, otherwise penalties under Sec. 250 of the Tax Code, as amended, shall be imposed. Payment of the tax due thereon, if any, shall be made thru:

1. Manual Payment -

- ▶ Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Large Taxpayers Service (LTS)/Revenue District Office (RDO) where the taxpayer (Head Office of the business establishment) is registered; or

- ▶ In places where there are no AABs, the return shall be filed and the tax due shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer (Head Office of the business establishment) is registered using MRCOS facility.

2. Online Payment -

- ▶ Thru Mobile Payment (GCash/PayMaya);
- ▶ Landbank of the Philippines (LBP) Link.Biz Portal, for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card;
- ▶ DBP Tax Online, for holders of VISA/Master Credit Card and/or Bancnet ATM/Debit Card;
- ▶ Union Bank Online Web and Mobile Payment Facility - for taxpayers who have account with Union Bank; or
- ▶ PESONet through LBP Link.Biz Portal - for taxpayers who have account with RCBC and Robinsons Bank.

RMC No. 31-2021 circularizes the updated list of accredited microfinance NGOs.

RMC No. 31-2021 dated 2 March 2021

- ▶ The "Updated List of Microfinance NGOs Accredited by the Microfinance NGO Regulatory Council (MNRC) as of January 2021" was published as part of the RMC.
- ▶ Under the Implementing Rules and Regulations of RA No. 10693, otherwise known as the "Microfinance NGOs Act," a Certificate of Accreditation shall be valid for a period of 3 years from the date of issuance, unless earlier revoked by the MNRC.

RMC No. 33-2021 was issued to announce the availability of the Offline eBIRForms Package Version 7.8.

RMC No. 33-2021 dated 2 March 2021

- ▶ The new Offline eBIRForms Package, which is downloadable from www.bir.gov.ph and www.knowyourtaxes.ph, now includes the January 2018 version of the following forms:

BIR Form No.	Description
1800	Donor's Tax Return
1801	Estate Tax Return
2000-OT	Documentary Stamp Tax Declaration/Return (One-Time Transactions)

- ▶ The BIR Form No. 1800 shall be filed within 30 days after the donation is made.
- ▶ The BIR Form No. 1801 shall be filed within 1 year from the decedent's death.
- ▶ The BIR Form No. 2000 - OT shall be filed and the tax paid within 5 days after the close of the month when the taxable document was made, signed, issued, accepted or transferred.

- ▶ Payments of the taxes due thereon, if any, shall be made thru:
 1. Manual Payment - Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Revenue District Office (RDO) having jurisdiction, as follows:

BIR Form No.	Place of Filing
1800	over the domicile of the donor at the time of the donation or if there is no legal residence in the Philippines, with the Office of the Commissioner, (Revenue District Office No. 39, South Quezon City)
1801	over the domicile of the decedent at the time of death or if the decedent has no legal residence in the Philippines, with the Office of the Commissioner (Revenue District Office No. 39, South Quezon City).
2000-OT	where the seller/transferor/donor is required to be registered or where the property is located in case of sale of real property

In places where there are no AABs, the return shall be filed and the tax due shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO using MRCOS facility.

2. Online Payment -

- ▶ Thru Mobile Payment (GCash/PayMaya);
- ▶ Landbank of the Philippines (LBP) Link.Biz Portal, for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card;
- ▶ DBP Tax Online, for holders of VISA/Master Credit Card and/or Bancnet ATM Debit Card;
- ▶ Union Bank Online Web and Mobile Payment Facility - for taxpayers who have account with Union Bank; or
- ▶ PESONet through LBP Link.Biz Portal - for taxpayers who have account with RCBC and Robinsons Bank.

RMC No. 34-2021 was issued to prescribe the newly revised BIR Excise Tax Forms.

RMC No. 34-2021 dated 2 March 2021

RMC No. 34-2021 was issued to prescribe the newly revised BIR Excise Tax Forms, to wit:

BIR Form No.	Form Name	Legal Basis/Reason for Revision
BIR Form No. 2200-A (Annex "A")	Excise Tax Return for Alcohol Products January 2020 (ENCS)	Republic Act Nos. 10351 and 11467
BIR Form No. 2200-T (Annex "B")	Excise Tax Return for Tobacco, Heated Tobacco and Vapor Products January 2020 (ENCS)	Republic Act Nos. 11346 and 11467

- ▶ The revised manual returns are already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Excise Tax Return section.

- ▶ However, the forms are not yet available in the eFPS and eBIRForms. Thus, eFPS/eBIRForms filers shall continue to use the BIR Form Nos. 2200-A and 2200-T in eFPS and in Offline eBIRForms Package v7.8 in filing and paying the excise tax due. Once the returns become available in the eFPS and in the Offline eBIRForms Package, a separate revenue issuance shall be released to announce its availability.

Manual filers shall download the PDF version of the applicable form, print the form and completely fill out the applicable fields, otherwise penalties under Section 250 of the Tax Code, as amended, shall be imposed. Payment of the tax due thereon, if any, shall be made thru:

1. Manual Payment -

- ▶ Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Large Taxpayers Service (LTS)/Revenue District Office (RDO) where the taxpayer (Head Office of the business establishment) is registered; or
- ▶ In places where there are no AABs, the return shall be filed and the tax due shall be paid with the concerned Revenue Collection Officer (RCO) under the jurisdiction of the RDO where the taxpayer (Head Office of the business establishment) is registered using MRCOS facility.

2. Online Payment -

- ▶ Thru Mobile Payment (GCash/PayMaya);
- ▶ Landbank of the Philippines (LBP) Link.Biz Portal, for taxpayers who have ATM account with LBP and/or holders of Bancnet ATM/Debit Card;
- ▶ DBP Tax Online, for holders of VISA/Master Credit Card and/or Bancnet ATM/Debit Card;
- ▶ Union Bank Online Web and Mobile Payment Facility - for taxpayers who have account with Union Bank; or
- ▶ PESONet through LBP Link.Biz Portal - for taxpayers who have account with RCBC and Robinsons Bank.

RMC No. 35-2021 prescribes the newly revised BIR Form 1601-FQ September 2020 (ENCS). The revision was brought about by the inclusion of additional countries having tax treaties with the Philippines. These are Mexico, Qatar, Sri Lanka and Turkey.

RMC No. 35-2021 dated 2 March 2021

The revised manual return is available in the BIR website under the BIR Forms-Payment/Remittance Forms Section, but not available in the eFPS and the eBIR Forms.

- ▶ Thus, eFPS filers shall use the enhanced BIR Form No. 1601-FQ January 2018 (ENCS). This already contained the countries mentioned above.
- ▶ eBIR Forms filers shall use the manual return in filing and remitting taxes due thereon in cases when taxpayer shall avail the tax treaty/ies with the newly added country/ies.
- ▶ Manual filers shall download the PDF version of the form, print the form and completely fill out the applicable fields; otherwise, penalties under Sec. 250 of the Tax Code, as amended, shall be imposed. Payment of the tax due thereon shall be made manually or online, through the facilities enumerated in the RMC.

RMC No. 36-2021 prescribes the changes and guidelines following the shift from final to a creditable system on the VAT withholding on sales to government or any of its political subdivisions, instrumentalities or agencies, including GOCCs effective January 2021.

RMC No. 36-2021 dated 2 March 2021

The changes and guidelines are as follows:

- ▶ Monthly and Quarterly VAT Returns (BIR Form Nos. 2550M and 2550Q).

Until a new version of the forms have been developed and prescribed for use, the following changes/adjustments shall be effected to the Monthly and Quarterly VAT Returns (BIR Form Nos. 2550M and 2550Q), in relation to VAT withholding:

BIR FORM NO.	LINE/SCHEDULE AFFECTED	DESCRIPTION	REMARKS
2550M (v. February 2007)	20B	Input tax on sale to Govt. closed to expense (Sch. 4)	Not to be filled out/To be deactivated from the eFPS
	23C	VAT withheld on Sales to Government (Sch. 8)	Where the creditable VAT withheld will be reflected
	Schedule 4	Input Tax Attributable to Sale to Government	Not to be filled out/To be deactivated from the eFPS
	Schedule 8	VAT withheld on Sales to Government	Where the details of the creditable VAT withheld will be reflected

BIR FORM NO.	LINE/ SCHEDULE AFFECTED	DESCRIPTION	REMARKS
2550Q (v. February 2007)	23B	Input tax on sale to Govt. closed to expense (Sch. 4)	Not to be filled out/To be deactivated from the eFPS
	26D	VAT withheld on Sales to Government (Sch. 8)	Where the creditable VAT withheld will be reflected
	Schedule 4	Input Tax Attributable to Sale to Government	Not to be filled out/To be deactivated from the eFPS
	Schedule 8	VAT withheld on Sales to Government	Where the details of the creditable VAT withheld will be reflected

- ▶ Filing and Payment. –
 1. The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs who are required to withhold creditable VAT shall use the *“Monthly Remittance Return of Value-Added Tax Withheld”* (BIR Form No. 1600-VT) for filing and remittance of the amount withheld.
 2. However, for those using the eFPS, they shall still use BIR Form No. 1600 due to unavailability of BIR Form No. 1600-VT.
- ▶ Proof of Withholding. –
 1. The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs who are required to withhold creditable VAT shall issue the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) using Alphanumeric Tax Code (ATC) No. WV010 for purchases of goods or WV020 for purchases of services.
 2. Thus, the Certificate of Final Tax Withheld at Source (BIR Form No. 2306) shall no longer be issued for this purpose.
 3. The BIR Form No. 2307 shall be used as proof by VAT taxpayers in claiming for VAT credit in their monthly and quarterly VAT declarations.
 4. Erroneous use of the same (i.e., reflected as tax credit in the quarterly and annual Income Tax Return) shall result in disallowance of the withheld amount and forfeiture of the same in favor of the Government.
- ▶ All BIR rulings or issuances inconsistent with the RMC are considered amended, modified or revoked accordingly.

Banks and Other Financial Institutions

Rationalization of Prudential Reporting Requirements

Circular No. 1110 dated 17 March 2021

Section 2 of the said Circular provides that Appendix 7 of the MORB and Appendices Q-3, S-2 and N-1 of the MORNBF1 are hereby amended by deleting said selected reports. Appendix 7 of the MORB is also amended by inserting a new certification report, which is codified as Appendix 142 of the MORB. All references to deleted reports listed in Annex A of this Circular and embodied in various sections of the MORB and MORNBF1 are likewise deleted.

Circular No. 1110 publishes Resolution No. 174 dated 11 February 2021, amending selected Appendices and other relevant Sections of the MORB and MORNBF1 as part of the report rationalization initiative of the BSP.

Below is a summary of the reports listed in Annex A:

REPORTS FOR DELETION

	Relevant Appendix	Category	Form No.	MOR Ref	Report Title	Frequency
1	Appendix 7	A-3	DCB I/II Form 5 (BSP-7-16-07-A)	Sections 345 and 413 (MORB)	Daily Report on Compliance with Aggregate Ceiling on Direct/Indirect Credit Accommodations to Directors/Officers/Stockholders (DOSRI), Secured and Unsecured Loans	Weekly
2	Appendix 7	A-3	DCB I/II Form 5A (BSP-7-16-07-B)	Sections 344 and 413 (MORB)	Daily Report on Compliance with Ceiling on Outstanding Unsecured Direct and Indirect Credit Accommodations to Directors/Officers/Stockholders (DOSRI)	Weekly
3	Appendix 7	A-3	SES I/VI Form 5A.1 (BSP-716-07B.1)	Sections 344 and 413 (MORB)	Daily Report on Compliance with Individual Ceilings on Direct/Indirect Credit Accommodations to DOSRI, secured and unsecured loans together with a certification by authorized signatories that no one has exceeded the prescribed individual ceilings	Weekly
4	Appendix 7	A-3	DCB I/II Form 5B (BSP-7-16-13) (For U/KBs)	Sections 346 and 413 (MORB)	Consolidated Report on Compliance With Aggregate Ceiling on Credit Accommodations to DOSRI	Semestral
5	Appendix 7	A-3	DCB I/II Form 5B TB Form 8 (For TBs)	Sections 346 and 413 (MORB)	Consolidated Report on Compliance With Aggregate Ceiling on Direct Credit Accommodations to DOSRI	Quarterly
6	Appendix 7	A-3	DCB I/II Form 5B TB Form 9 (For TBs)	Sections 346 and 413 (MORB)	Consolidated Report on Compliance With Individual Ceiling on Direct Credit Accommodations to DOSRI	Semestral
7	Appendix 7	A-3	DCB I/II Form 5B RB/COB Form 4B (For RBs/CBs)	Sections 346 and 413 (MORB)	Consolidated Report on Compliance with Individual Ceiling on Direct Credit Accommodations to DOSRI 1 - Compliance with Individual Ceiling on Credit Accommodations to DOSRI	Quarterly
8	Appendix 7	A-3	DCB I/II Form 5B RB/COB Form 4B (For RBs/CBs)	Sections 346 and 413 (MORB)	Consolidated Report on the Compliance with Aggregate Ceiling on Credit Accommodations to DOSRI Schedules: 1 - Secured and Unsecured DOSRI Loans	Quarterly
9	Appendix 7	B	Unnumbered	Section 276 (MORB)	Certification of Compliance with Section 55.4 of R.A. No. 8791 (prohibits banks from employing casual, non-regular personnel)	Semestral Annually
10	Appendices Q-3, S-2, N-1	B	BSP-7-26-15 (IH only)	Section 172-Q Section 4192Q (MORNBF1)	Report on Underwriting Activities	Quarterly
11	Appendices Q-3, S-2, N-1	B	SEC Form	MAB dated 09.02.05	General Information Sheet	Annually upon occurrence of Stockholders' Meeting or if changes occur
12	Appendix 7	A-2	Unnumbered	Section 418 - MORB (As amended by M-020 dated 04.22.14, Cir No.890 dated 11.02.15. Cir. No. 963 dated 06.27.17 and M-028 dated 09.11.17)	Report on Peso-Denominated Common Trust Fund and Other Similarly Managed Funds (CTF) (for U/KBs)	Weekly

REPORT FOR INCLUSION

	Relevant Appendix	Category	Form No.	MOR Ref	Report Title	Frequency
1	Appendix 7	A-3	Unnumbered	Section 346	Certification on Loans and Other Credit Accommodations to Directors, Officers, Stockholders and their Related Interests/Subsidiaries/Affiliates	Semestral

M-2021-013 provides guidelines on re-registration of VCEs.

Guidelines in Re-registration of Virtual Currency Exchanges

Memorandum No. M-2021-013 dated 18 February 2021

All Virtual Asset Service Providers (VASPs) shall observe the following re-registration guidelines, pursuant to Circular No. 1108 dated 26 January 2021 on the requirements for the issuance of Certificate of Authority (COA):

Submission Procedures

- ▶ A letter of intent (LOI) shall be submitted within three months from the effectivity date of Circular No. 1108 or not later than 16 May 2021.
- ▶ Subject BSFIs shall submit an accomplished gap assessment template.
- ▶ Email submissions should be sent to trisd@bsp.gov.ph using the following prescribed format as subject: <**Submission Date**>_VASP<space>LOI_<**Name of BSFI**>, as illustrated below:

To: trisd@bsp.gov.ph

Subject: DDMMYYYY (e.g. 31012021)_VASP LOI_<Name of BSFI>

Important Reminders

- ▶ Entities involved in the conduct of one or more of the following activities: exchange between VAs and fiat currencies or one or more forms of VAs; transfer of VAs; and safekeeping and/or administration of VAs or instruments enabling control over VAs, fall within the definition of VASP as provided under Circular No. 1108 and are required to secure a COA from the BSP.
- ▶ All BSFIs are reminded to engage only with duly authorized and licensed institutions. Following the Financial Action Tax Force (FATF) guidance, BSFIs are advised that, at a minimum, a VASP should be licensed /registered in the country where they were created or in the jurisdiction where their business is located in cases where they are a natural person. Meanwhile, businesses engaged in initial coin offering (ICO) are within the regulatory purview of the Securities and Exchange Commission (SEC).
- ▶ Queries regarding VASPs and their related regulations may be sent via email to: trisd@bsp.gov.ph

Frequently Asked Questions on the Report on LIBOR-Related Exposures (RLRE) to All Banks under Memorandum No. M-2020-083 dated 17 November 2020

Memorandum No. M-2021-014 dated 4 March 2021

The memorandum shall cover all Universal and Commercial Banks and their Subsidiary Banks.

The RLRE is intended to aid the BSP and banks in monitoring the progress of banks in transitioning away from LIBOR. To address various concerns related to the report, the BSP is posing the following responses to frequently asked questions for guidance. FAQs appear below:

- ▶ Are all BSFIs required to submit the RLRE?

Only universal and commercial banks and their subsidiary banks operating in the Philippines are required to submit the RLRE.

The memorandum provides additional guidance and clarifications relative to the requirement for the submission of the RLRE issued under Memorandum No. M-2020-083 dated 17 November 2020.

However, in accordance with the requirement for reporting on a solo basis, the exposures of overseas branches and other offices of covered banks shall be consolidated in the report submitted by the head office.

- ▶ Which reference rates does the report focus on?

The first sheet of the data entry template centers on exposures to LIBOR, which is a widely-used benchmark for short-term interest rates in five currencies, calculated by the Intercontinental Exchange from estimates submitted by leading banks in London.

The second sheet centers on exposures to the Philippine Interbank Reference Rate or "PHIREF." PHIREF is the implied PHP interest rate derived from done deals in the interbank foreign exchange (FX) swap market, used as the benchmark for the reset value for the PHP floating leg of an interest rate swap. It is LIBOR-related because the rate is computed using USD LIBOR. As such, PHIREF in its current iteration will also be discontinued when USD LIBOR ceases.

- ▶ What transactions are covered by the report?

The report covers all derivatives transactions, as well as all assets and liabilities that are interest-bearing or are revalued/marked-to-market for purposes of reporting in the Financial Reporting Package (FRP). Outstanding derivatives transactions and interest-bearing or revalued assets or liabilities that are not identified as specific product types in the template shall be reported in the rows pertaining to "Others."

Assets and liabilities that do not meet either of the above criterion, such as fixed assets and accrued interest receivable/payable, need not be included in the report.

- ▶ What details shall be specified for exposures classified under *Others*? How will these details be provided?

The bank shall provide information on the breakdown of the amount and number of contracts reported in the *Others* rows in footnotes below the table.

- ▶ Which contracts qualify for reporting under *contracts referencing LIBOR/PHIREF* in Columns C to F, and H to K of both sheets?

A contract is said to reference LIBOR/PHIREF if the bank uses the said benchmark to price or value the transaction. As such, if the benchmark is used by the bank to mark-to-market or discount the cash flows of an existing contract, the contract will be reported according to the relevant maturity date in Columns C to E, and H to J. It will likewise be included in the totals reported in Columns F and K.

- ▶ Which contracts qualify for reporting under *all outstanding contracts* in Columns G and L of both sheets?

The balances in Column G and numbers in Column L shall cover all existing contracts for a given product type (e.g., all cross-currency swaps bought or sold, all corporate loans, and all deposits), regardless of currency, reference rate or booking unit.

This means that the contracts included in Column G in the LIBOR Exposures sheet shall be the same contracts included in Column G of the PHIREF Exposures sheet. However, the balances shall be reported in USD million equivalent in the LIBOR Exposures sheet and in PHP million equivalent in the PHIREF Exposures sheet. Moreover, the content of Column L, which refers to the "number of all outstanding contracts," should be the same across both sheets for a given product.

Information on all outstanding contracts is being required to aid in quantifying outstanding LIBOR/PHIREF exposures as a portion of total derivative exposures, assets and liabilities on the individual bank level and on the aggregate. As such, even if a bank has no outstanding LIBOR and PHIREF exposures in a given period, the bank is expected to report the relevant amount and number of all its outstanding contracts for each product type under Columns G and L in both sheets.

- ▶ Are the balances in Column G expected to tally with those reported in the FRP?

Total assets and total liabilities are not expected to match the FRP balances due to exclusions (e.g., fixed assets, accrued interest payable/receivable).

- ▶ What exchange rates shall be used to convert non-USD exposures to USD for reporting in the LIBOR Exposures sheet and to convert non-PHP exposures to PHP for reporting in the PHIREF Exposures sheet?

The amount of non-USD contracts shall be converted to USD millions for reporting in Column G of the LIBOR Exposures sheet and the amount of non-PHP contracts shall be converted to PHP millions for reporting in Column G of the PHIREF Exposures sheet using the Philippine Dealing System Peso/US Dollar closing rate and the New York US Dollar/ Third Currencies closing rate for the given reference date. These are the same rates used in computing USD and PHP equivalents for reporting in the FRP.

- ▶ What shall be reported in the of *which, with fallback* rows of the LIBOR Exposures sheet?

The notional amount and number of contracts with fallback language shall be separately identified in the of *which, with fallback* rows of the LIBOR Exposures sheet. Fallback language refers to provisions in written contracts/agreements that set forth the process through which a viable replacement rate can be identified and applied if the contracted reference rate is unavailable. The data reported shall cover the contracts that are currently referenced to LIBOR but have suitable documented fallback provisions.

Contracts reported in an of *which, with fallback* row are expected to be a subset of the contracts referencing LIBOR reported in the preceding row.

- ▶ How will *Number of Contracts* be counted?

The number of contracts refers to the number of unique transactions, each subject to a single set of terms, including the reference rate. For instance, loan contracts may be reported according to the number of promissory notes, while deposits may be reported according to the number of deposit accounts. For holdings of bonds and bonds payable, the number of contracts may reflect the number of unique International Securities Identification Numbers or ISINs.

- ▶ The headers in Columns C to G require exposures to be reported in *Notional Amount*. What does this mean for different types of products?

Transactions shall be reported similarly to their reporting in the FRP. Derivatives shall be reported in notional amount. Loans shall be reported at amortized cost, gross of allowances. Investments in securities shall be reported at amortized cost or fair value, depending on classification.

- ▶ How will the following items be reflected in the report?

1. Holdings of securities

Holdings of medium- to long-term securities, or those with tenors of more than one year, shall be reported under *Bonds and Notes*, regardless of classification (i.e., whether these are in the trading book or the banking book). However, Treasury bills and short-term commercial papers may be reported under *Short-Term Instruments*.

2. Due from BSP

Due from BSP balances shall be reported under *Other Assets*.

3. Due from Head Office

Items under the Due from Head Office account shall be reported under *Other Assets*, apart from lending to the head office and other branches with tenors of one year or less, which shall be reported under *Short-Term Instruments*.

4. Due to Head Office

Items under the Due to Head Office account shall be reported under *Other Liabilities*, apart from borrowings from the head office and other branches, which shall be reported under *Bills Payable*.

5. Interbank borrowings

Borrowings from other banks shall be reported under *Bills Payable*.

6. FX spot transactions

Spot transactions that are components of derivatives (e.g., the spot leg of a swap) shall be reported under *OTC Derivatives – Others*. Simple FX spot transactions that are not components of derivatives need not be reported, with the view that these are not referenced to LIBOR, PHIREF or any other interest rate benchmark.

- ▶ Is the reporting of deposits limited to time deposit accounts?

All interest-bearing deposit accounts, including current and savings accounts, shall be covered in the report.

- ▶ In which tenor bucket shall deposits without stated maturity be reported?

Non-maturity accounts referencing LIBOR/PHIREF shall generally be reported in the earliest tenor bucket.

Anti-Money Laundering Council (AMLC) Resolution No. TF-35, Series of 2021

CL-2021-18 informs the public that the earlier freeze order against the Taliban and Al Qaeda has been replaced by AMLC Resolution No. TF-35.

Circular Letter No. CL-2021-18 dated 1 March 2021

The Circular Letter shall cover all BSP Supervised Financial Institutions (BSFIs).

The AMLC in its Resolution No. TF-35, Series of 2021, issued the Sanctions Freeze Order and:

- ▶ Directed all covered persons (CPs) and relevant government agencies to freeze without delay any funds and other assets that are owned or controlled, directly or indirectly, including funds and assets derived or generated therefrom, by the designated individuals, groups, undertaking and entities included in the United Nations Security Council (UNSC) list; and
- ▶ Reminds all CPs and the public that any person who:
 1. Deals directly or indirectly, in any way and by any means, with any property or funds that he knows or has reasonable ground to believe is owned or controlled by a designated person, organization, association, or funds owned or controlled, directly or indirectly, by a designated person, association, or group of person; or
 2. Makes available any property or funds, or financial services or other related services to a designated person, organization, association, or group of person, will be criminally charged for dealing with a designated person or entity under Section 8 of the TFPSA.

Financial Action Task Force (FATF) Publications on High-Risk and Other Monitored Jurisdictions - February 2021

The Circular Letter informs BSFIs of high-risk jurisdictions and calls for increased monitoring.

Circular Letter No. CL-2021-21 dated 11 March 2021

High-risk jurisdictions subject to increased monitoring are:

- ▶ High Risk Jurisdictions Subject to a Call for Action - The FATF has paused the review process for Democratic People's Republic of Korea (DPRK) and Iran since February 2020, given that they are already subject to the FATF's call for countermeasures. In this regard, the FATF advised countries to refer to its previous statement adopted in February 2020. While the statements may not reflect the most recent status of DPRK and Iran's AML/CFT regimes, the FATF's call for action on these high-risk jurisdictions remains in effect.
- ▶ On DPRK - the FATF remains concerned by DPRK's failure to address the significant deficiencies in AML/CFT regime and serious money laundering, terrorist financing and proliferation financing (ML/TF/PF) risks. The FATF has serious concerns with the threat posed by the DPRK's illicit activities related to the proliferation of weapons of mass destruction (WMDs) and its financing. The FATF urges all jurisdictions and FIs to apply effective countermeasures, and targeted financial sanctions (TFS) in accordance with applicable United Nations Security Council (UNSC) Resolutions.

- ▶ On Iran - In February 2020, the FATF noted that Iran has not completed its action plan to address its strategic deficiencies. Iran will remain on the FATF statement of high-risk jurisdictions until the full action plan has been completed. Given Iran's failure to enact the Palermo and Terrorist Financing Conventions in line with the FATF Standards, the FATF fully lifts the suspension of countermeasures and calls on its members and urges all jurisdictions to apply effective countermeasures against Iran.

BSFIs should take necessary actions required under AMLC's issuances on TFS in case of funds or property, including related accounts, of the designated individuals and entities referred to in all applicable UNSC and AMLC Resolutions.

- ▶ Jurisdictions under Increased Monitoring - In October 2020, the FATF has recommenced its work to identify new countries with strategic jurisdictions and has issued updated list of countries under increased monitoring. FATF welcomes the progress made by these countries in combating ML/TF despite the challenges posed by COVID-19.

BSFIs are likewise directed to regularly refer to FATF's website for the latest statements and consider the same in their risk analysis and mitigation strategies.

Bureau of Customs

Implementation of the Automated Bonds Management System (ABMS) for Transit Bond

OCOM Memo No. 34-2021 provides guidelines on the implementation of the ABMS for Transit Bond.

OCOM Memo No. 34-2021 dated 15 February 2021

- ▶ All electronically lodged Transit goods declaration must have an approved bond policy in the E2M-ABMS starting March 01, 2021. Only the approved bond policy can be used on the Terms of Payment (TOP) upon filing of the Transit Single Administrative Document (TSAD) in the E2M system.
- ▶ Approved transit bond policy can be applied to multiple electronically lodged Transit goods declaration as long as the bond policy has sufficient funds or available balance.
- ▶ The authorized Customs Officer shall tag all Transit shipments as Arrived in the E2M system. Once the tagging is done, the E2M -ABMS will automatically revert the amount to the original balance.

Mandatory Submission of Office Email Addresses and Action Officer

OCOM Memo No. 35-2021 mandates that all groups/divisions/service units/offices of the BOC within the central office to submit their office email addresses and the names of respective employees handling the office email.

OCOM Memo No. 35-2021 dated 18 February 2021

- ▶ All groups/divisions/service units/offices of the BOC within the central office are mandated to submit their office email addresses and the names of respective employees handling the office email to the Public Information Assistance Division on or before 12 March 2021.
- ▶ The information shall be used for faster communication and to efficiently address BOC-related inquiries, requests, and/or complaints.

Use of Staging Bond Policy in the Filing of Goods Declaration for Goods Discharged Directly into PEZA Zones

OCOM Memo No. 44-2021 provides guidelines on the use of staging bond policy in the filing of goods declaration for goods discharged directly into PEZA zones.

OCOM Memo No. 44-2021 dated 26 February 2021

- ▶ This covers shipments of PEZA-registered enterprises discharged directly through their own private wharves or piers located in their PEZA Zone.
- ▶ A staging (dummy) Bond Policy/Account shall be required for PEZA-registered enterprises which shall be created to be kept and monitored by the Bonds Division or equivalent unit of the Port concerned.
- ▶ The staging Bond Policy/Account shall expire 13 January of the following year.

Augmentation of Customs PEZA Personnel for the Purpose of Immediately Tagging the Arrivals of Shipments

AOCG Memo No. 117-2021 mandates customs PEZA personnel to ensure the immediate tagging of all shipments arriving in their jurisdiction.

AOCG Memo No. 117-2021 dated 8 March 2021

- ▶ The implementation of the Automated Bonds Management System (ABMS) is highly dependent on the timely tagging of all shipments covered by General Transportation and Surety Bond (GTSB) arriving in PEZA.
- ▶ Customs personnel assigned in PEZA Offices should ensure the immediate tagging of all shipments arriving in their jurisdiction.

Imposition of Definitive General Safeguard Duty on Imported Cement from Covered Countries Pursuant to DAO 21-02

CMO No. 11-2021 provides guidelines for the importers of cement who are excluded from the imposition of definitive general safeguard duty pursuant to DTI Administrative Order 21-02 dated 3 March 2021.

Customs Memorandum Order No. 11-2021 issued on 15 March 2021

- ▶ DTI Administrative Order 21-02¹ dated 3 March 2021 provides the list of countries excluded from the imposition of the definitive safeguard duty on imported cement.
- ▶ Importers of cement originating from the countries excluded from the imposition of the definitive safeguard duty shall submit a Certificate of Country of Origin (CO) issued by the authorized agency/office in the country of manufacture subject to affixation of Apostille to the document or authenticated by the Philippine Embassy/Consulate general, as applicable.

(Editor's Note: CMO No. 11-2021 shall take effect immediately)

Board of Investments

SIRV/Foreign Nationals now required to file Travel Pass early prior to foreign travel.

BOI Announcement dated 23 February 2021

- ▶ The BOI issued the notice in view of the IATF for the Management of Emerging and Re-emerging Infectious Diseases Resolution No. 99-A dated 11 February 2021, instructing all departing foreign nationals who were issued visas under the Philippine Immigration Act have to secure a Travel Pass from their issuing agencies.

¹ DTI DAO 21-02 shall take effect upon issuance of CMO No. 11-2021

- ▶ Holders of Special Investor's Resident Visa (SIRV) and Employment of Foreign Nationals under 47(a)(2) visa issued by the BOI are now required to file an application for Travel Pass at least five working days prior to any planned travel outside the Philippines.
- ▶ The Travel Pass application form may be secured from the Incentives Administration Service of the Agency or downloaded from the BOI website.
- ▶ For returning visa holders (coming from abroad), the BOI clarified that within three days of arrival in the country, they have to email copies of their passport bio-page, visa sticker and latest Philippine Immigration arrival stamp to incentives@boi.gov.ph.
- ▶ The notice is effective on 1 March 2021.

PEZA

Temporary Suspension of Travel into the Philippines of Foreign Nationals.

PEZA MC No. 2021-19 dated 17 March 2021

- ▶ Pursuant to Memorandum Circular No. 5 dated 16 March 2021 from the IAET - National Task Force Against COVID 19, the entry of foreign nationals, among others, will be temporarily suspended beginning 20 March 2021 until 19 April 2021.
- ▶ PEZA will continue to receive and process applications/requests for Travel Ban Exemptions for Endorsement to and further evaluation/appropriate action of the Department of Foreign Affairs - Office of the Consular Affairs (DFA-OCA).

Latest Advisory Regarding the Requirements for Requesting PEZA Endorsements for Travel Ban Exemption.

PEZA MC No. 2021-17 dated 8 March 2021

- ▶ Per latest DFA advisory, starting 08 March 2021, the following requirements must be submitted for processing of the PEZA Endorsement for the issuance of a Travel Ban Exemption:
 1. Company's letter-request for PEZA Endorsement, duly signed by its highest responsible official
 2. Attachments:
 - ▶ Clear copy of the Foreign National's passport's Biopage;
 - ▶ Complete and duly-accomplish DFA-OCA Excel Form stating the Foreign National's information details; and
 - ▶ Proof of employment.

The letter-request with the abovementioned attachments must be emailed to odgcbp@peza.gov.ph, with email subject : *REQUEST FOR TBE ENDORSEMENT / (COMPANY NAME)*

- ▶ Flight arrangements must be finalized only after the foreign nationals received their exemption documents from DFA.

Advisory on Issuance of PEZA Travel Pass for Departing 47 (a) (2) visa holders effective 1 March 2021.

- ▶ PEZA-registered companies shall inform PEZA, through the Foreign Nationals Unit (PEZA-FNU) through email address at fnu@peza.gov.ph, regarding the arrival of their foreign nationals, and their respective dependents, if any, within 72 hours from entry to the Philippines, for monitoring purposes. Failure to report shall affect future requests for endorsements from said company.

PEZA MC No. 2021-13 dated 18 February 2021

- ▶ All departing foreign nationals, who are issued visas pursuant to the Philippine Immigration Act of 1940, as amended, and other special laws governing the visa-issuing agencies, including the DOJ-issued 47 (a) (2) visa for the foreign nationals of PEZA-registered enterprises are required to present a Travel Pass to the immigration counters as part of the documentary requirements upon their departure, effective 01 March 2021.
- ▶ PEZA will process and issue a PEZA Travel Pass for PEZA-registered enterprises' foreign nationals-47 (a) (2) visa holders who are about to leave the Philippines.
- ▶ Upon return to the Philippines, if any, PEZA-registered companies shall inform PEZA about the arrival of their foreign nationals, and their respective dependent/s if any, within 3 days from entry to the Philippines, by sending electronic copies of the foreign national's passport biopage, visa sticker and latest Philippine Immigration arrival stamp to the PEZA-FNU email address at fnu@peza.gov.ph for monitoring purposes. Failure to report shall affect future processing of similar requests.

SEC Filing, Payments and Other Deadlines

Schedule and Procedure for the Filing of Annual Financial Statements, General Information Sheet and Other Covered Reports

SEC Memorandum Circular No. 3, Series of 2021 dated 9 March 2021

This issuance promulgates the guidelines on the 2021 filing of the Annual Financial Statements, General Information Sheet and other covered reports, and on the use of the Online Submission Tool (OST) for the filing of said reports.

- ▶ All corporations registered with SEC must enroll in the OST in order to access and submit reports through the OST, except as otherwise provided. Enrollment process commenced on 15 March 2021.
- ▶ The following reports shall be submitted and accepted through the OST:
 1. Audited Financial Statements ("AFS");
 2. General Information Sheet ("GIS");
 3. Sworn Statement for Foundation ("SSF");
 4. General Form for Financial Statements ("GFFS");
 5. Special Form for Financial Statements ("SFFS") including Investment Houses and Underwriters of Securities, Investment Companies and Publicly-held Companies, Brokers/Dealers in Securities, Financing Companies, and Lending Companies;
 6. Affidavit of Non-Operation ("ANO"); and
 7. Affidavit of Non-Holding of Annual Meeting ("ANHAM").

The SEC issued guidelines on the 2021 filing of Annual Financial Statements, General Information Sheet and other covered reports, and on the use of the Online Submission Tool for the filing of these reports.

- ▶ The following procedures shall be observed for the use of OST:
 1. Accomplish the application form online through <https://cifss.cifss-ost.sec.gov.ph/>;
 2. Attach the following documents:
 - ▶ Board Resolution embodied in a Secretary's Certificate authorizing the Company's representative to file reports on behalf of the Corporation
 - ▶ Report required under SEC Memorandum Circular No. 28, Series of 2020
 3. Upload the application form and the attachments;
 4. Wait for the email approving the application and providing the access key (User ID and Password) to file reports through the OST; and
 5. If the application is pending approval, wait for a notification through registered email for compliance with additional requirements, if any.
- ▶ The OST will prompt the filer on the required file format of the report to be filed.
 1. The GIS must be submitted in 2 formats:
 - ▶ Multi-page PDF with Text Layer of the accomplished but unsigned form; and
 - ▶ Multi-page PDF High Resolution Scan (at least 100x100 dpi) of the document with Signatories Page and Notarization Page.
 2. The following reports must be submitted in the prescribed format:

Annual Financial Statements	PDF (Multi Page PDF High Resolution Scan (at least 100x100 dpi) of the document with the Signatories Page and the Notarization Page)
Sworn Statement for Foundation	PDF (Multi Page PDF High Resolution Scan (at least 100x100 dpi) of the document with the Signatories Page and the Notarization Page)
General Form for Financial Statements	Excel
Special Form for Financial Statements, including IHFS, PHFS, BDFS, LCFS, FCFS, LCIF, and FCIF	Excel
Affidavit of Non-Operation attached to AFS and GIS	PDF
Affidavit of Non-Holding of Annual Meeting attached to GIS	PDF

- ▶ Filers will receive an automatic reply for the initial acceptance of the reports for review by the SEC Electronic Records Management Division relating to the quality of the image. Once the reports have passed the quality assurance, a Quick Response (“QR”) Code will be issued.
- ▶ The following other requirements for Audited Financial Statements should also be complied:
 1. The Audited Financial Statements, other than the consolidated financial statements, shall be stamped “received” by the BIR or its authorized banks, unless the BIR allows an alternative proof of submission or proof of receipt.
 2. The basic components of the AFS, as prescribed under Revised SRC Rule 68, as amended, shall also be submitted.
 3. The threshold for the AFS as stated in the General Financial Reporting Requirements, as stated in the Revised SRC Rule 68, dated 19 August 2019 shall be considered in filing the AFS.

Corporations which do not meet the threshold as aforementioned, may submit their AFS accompanied by a duly notarized Treasurer’s or Chief Financial Officer Certification only.

4. A One Person Corporation shall submit its AFS audited by an independent certified public accountant. If the total assets or total liabilities of the corporation are less than P 600,000.00, the financial statements shall be certified under oath by the corporation’s treasurer and president.
 5. Regulated entities must comply with all the required documents on AFS submission, pursuant to the Revised SRC Rule 68, dated 19 August 2019.
- ▶ In case filers cannot enroll and submit reports through the OST, kiosks shall be provided in SEC offices and other areas, as may be designated by SEC for technical assistance on the use of the OST.

The SEC Main Office and all SEC Extension Offices and Satellite Offices may accept reports over the counter provided that filers present the Notice from OST that problems have been encountered during the process of enrollment and/or submission.

- ▶ Scanned copies of the printed or hard copies of the Reports with wet signature and proper notarization other than AFS, GIS, SSF, GFFS, SFFS like IHFS, PHFS, BDFS, LCFS, FCFS, LCIF, and FCIF, ANO and ANHAM, shall be filed in Portable Document Format (PDF) through email at ictdsubmission@sec.gov.ph.

Reports that require the payment of filing fees are still needed to be filed and sent via email to the SEC’s respective Operating Departments.

- ▶ The following are the deadlines for the submission of reports:
 1. For the initial implementation of the OST, all stock corporations are required to enroll with the system starting 15 March 2021 to 15 December 2021. Non-stock corporations are given the option whether they will either enroll and submit their reports through OST, proceed to the SEC Kiosk, or submit their reports over the counter.

By 2022, all corporations, whether stock or non-stock, shall be required to enroll and submit their reports through the OST.

2. All corporations shall submit their GIS within 30 calendar days after the date of Annual Meeting or Actual Meeting.
3. All stock corporations with fiscal year ending 31 December, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, shall enroll and file their AFS through OST depending on the last numerical digit of their SEC registration or license number in accordance with the following schedule:

June 1-30: 1
July 1-31: 2
August 1-31: 3&4
September 1-30: 5&6
October 1-31: 7&8
November 1-30: 9&0

All stock corporations may enroll and submit their reports through OST even prior to their respective coding schedule.

For stock corporations unable to enroll and file their AFS through OST based on the above coding schedule, they are still mandated to enroll and file through OST since the filing of reports done over the counter shall not be accepted.

4. The above filing schedule shall not apply to the following corporations:
 - ▶ *Those corporations whose fiscal year ends on a date other than 31 December.* These entities shall file their AFS within 120 calendar days from the end of their fiscal year.

For a Broker Dealer whose fiscal year ends on 31 December, SEC Form 52 AR shall be filed with the SEC depending on the last numerical digit of its registration number. A Broker Dealer whose fiscal year ends on a date other than 31 December shall file SEC Form 52 AR, 110 calendar days after the close of such fiscal year.
 - ▶ *Those whose securities are listed in the Philippine Stock Exchange ("PSE") and are registered but not listed in PSE, except those companies which filed SEC Form 17 EX, and those Public Companies covered under Sec 17.2 of the SRC.*

These entities shall continue to observe the due date of filing of their respective AFS (within 105 calendar days after the end of the fiscal year), as an attachment to their Annual Reports (SEC Form 17 A), in accordance with the Implementing Rules and Regulations of the SRC and the Revised SRC Rule 68.
 - ▶ *Corporations whose AFS are being audited by the Commission on Audit (COA), provided, that the following documents are attached to their AFS:*
 - a. An Affidavit signed by the President and Treasurer (or Chief Finance Officer, where applicable), attesting to the fact that the company has timely provided COA with the financial statements and supporting documents and that the audit of COA has just been concluded; and

b. A letter from COA confirming the information provided in the above Affidavit.

- ▶ All corporations that will file their reports through the OST but whose applications for enrollment are still for validation by the CRMD, shall receive a notification on how to proceed with their application.
- ▶ The OST shall be open 24 hours, but submissions shall only be accepted from Mondays to Fridays. Submissions made outside of the OST's operating hours shall be considered filed on the next working day.
- ▶ The reckoning date of receipt of reports is the date the compliant report was initially submitted to the OST. A report which was reverted or rejected is considered not filed or not received. A notification will be sent to the filer, stating the reason for the report's rejection in the remarks box.
- ▶ For inquiries/concerns/clarifications on the OST the following contact details may be reached:
 - a. Enrollment Process in OST
0975 223 3958
0926 628 9813
 - b. Submission Process in OST
0906 620 2298
0906 404 2252
 - c. Emails for OST inquiry:
inquiry_ost1@sec.gov.ph
inquiry_ost2@sec.gov.ph

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Online Submission of Beneficial Ownership Declaration Form

SEC Notice dated 16 March 2021

The SEC issued guidance on the procedure for the online submission of the Beneficial Ownership Transparency Declaration (BOTD) Form as follows:

The SEC issued guidance on the procedure for the online submission of the Beneficial Ownership Transparency Declaration Form

Step 1	<p>Download the applicable BOTD Form through this link:</p> <p>For Declarants under Section 6 of SEC MC No. 1, Series of 2021 (For incorporators of newly-registered corporations or those with Certificate of Registration issued on or after 29 January 2021): https://www.sec.gov.ph/2021botd_sec6_form_v3/</p> <p>For Declarants under Section 7 of SEC MC No. 1, Series of 2021 (For nominees of existing corporations): https://www.sec.gov.ph/2021botd_sec7_form_v3/</p>
Step 2	<p>Download the Consent Agreement Form through this link: https://www.sec.gov.ph/2021bod_consentagreementform/</p>
Step 3	<p>Fill up the downloaded forms and save the files as PDF.</p>
Step 4	<p>Upload the accomplished forms together with the valid government-issued ID by following the instructions provided through this link: https://forms.gle/Y1MvBYBjxXkDvA4V7</p>

The SEC also provided an online link to the Frequently Asked Questions on SEC Memorandum Circular No. 1, Series of 2021 (BO Transparency Guidelines).

Question	Answer
1. Who are required to make the disclosures under MC 1, Series of 2021?	The incorporators/directors/trustees/shareholders of stock and non-stock corporations applying for registration, and nominee directors/trustees/shareholders of existing stock and non-stock corporations.
2. Are foreign corporations required to make the disclosures under MC 1, Series of 2021?	The nominee directors/trustees/shareholders of the corporation are directly required to make the disclosures. Since foreign corporations are organized in accordance with the laws of their country of incorporation, their directors /trustees/ stockholders /incorporators are not subject to the relevant disclosure requirement.
3. Are all incorporators, directors/trustees, and shareholders of corporations applying for registration required to disclose under Section 6 of MC 1, Series of 2021?	<p>Yes. The following are required to disclose under Section 6 of MC 1, Series of 2021:</p> <ul style="list-style-type: none"> ▶ Incorporators of corporations that apply for registration on or after the effective date of the Circular (29 January 2021) are required to disclose their nominators/principals and the person(s) on whose behalf the registration of the corporation was applied for. ▶ Nominee directors/trustees and nominee shareholders of such corporations are also required to disclose their principals. ▶ If the directors/trustees/ shareholders/ incorporators of such corporations are not nominees and the corporation were not applied for on behalf of another person, this fact must also be disclosed.
4. What are required to be submitted under Section 6 of MC 1, Series of 2021?	<ul style="list-style-type: none"> ▶ BOTD Form and Consent Agreement Form for: <ul style="list-style-type: none"> 1. incorporators who registered the corporation for or on behalf of another person or persons; and 2. nominee incorporators, nominee directors/trustees, and nominee shareholders. ▶ Declaration and Consent Agreement Form for: <ul style="list-style-type: none"> 1. incorporators who are not acting as such for and on behalf of another person; and 2. those who are not nominee incorporators/ nominee applicants/ nominee directors/ nominee shareholders.

Question	Answer
5. Are all directors/trustees and shareholders of existing corporations required to disclose under Section 7 of MC 1, Series of 2021?	No. Only nominee directors/trustees and nominee shareholders/subscribers, (not the non-nominee directors/trustees and shareholders) of existing corporations are required to disclose.
6. What are required to be submitted under Section 7 of MC 1, Series of 2021?	The BOTD Form and Consent Agreement Form are required to be submitted by nominee directors/ trustees and nominee shareholders.
7. Are Sections 6 and 7 of MC 1, Series of 2021 applicable only to natural persons?	The nominee directors/trustees/shareholders / incorporators refer to natural persons. The nominator or principal may be a natural person or juridical entity.
8. Do we need to submit the BOTD Form even if we already submitted the General Information Sheet ("GIS") with Beneficial Ownership Declaration with it?	<p>Yes. This is a requirement for those acting as nominee directors, trustees, and shareholders which is different from what is required to be disclosed in the GIS.</p> <p>Further, the natural person referred to in the Beneficial Ownership Declaration Page of the GIS refers to natural persons who own or control the corporation through nominee directors/ shareholders. Under MC 1, Series of 2021, the person to be disclosed need not be the natural person who owns or controls the corporation. It is enough that the person disclosed is the principal or nominator (who may either be a natural person or a juridical entity or a trust) on whose behalf the nominee director/shareholder appears or acts as director or shareholder.</p>
9. Should the nominees/ declarants personally fill out and submit the BOTD Form or can another person fill it out and/or submit it on their behalf?	<p>The declarants may be assisted by any person in filling out and submitting the BOTD Forms (which should indicate the personal email address of the declarant, among others), provided that the Consent Agreement Form is signed by the nominee/declarant himself/herself and a valid ID of the nominee/declarant is also uploaded.</p> <p>By signing the Consent Agreement Form, it is understood that the declarant has reviewed and has full knowledge of the facts disclosed in the BOTD Form.</p>
10. May the Corporate Secretary of a certain company fill out and/or submit the BOTD Forms on behalf of all the nominees/declarants of such company?	The Corporate Secretary may assist the declarants in filing out and/or submitting the BOTD Forms using the company email addresses submitted to the SEC pursuant to SEC Memorandum Circular No. 28, Series of 2020 (<i>Creation and/or Designation of Company's Official E-mail Account Address and Cellphone Number</i>).

Question	Answer
<p>11. When is the deadline for the submission of the BOTD Forms?</p>	<p>The deadline for the submission of the accomplished BOTD Forms is as follows:</p> <p>Disclosures Under Section 6:</p> <ul style="list-style-type: none"> ▶ For corporations whose certificates of incorporation were issued on or after effective date of the Circular (29 January 2021) but before 23 February 2021, submission of the required forms must be made on or before 31 March 2021. ▶ For corporations whose certificates of incorporation were issued on or after 23 February 2021, submission shall be made within 30 days from issuance of such certificates. <p>Disclosures Under Section 7:</p> <ul style="list-style-type: none"> ▶ For those already nominees of existing corporations, submission shall be made on or before 31 March 2021. ▶ All others, submission shall be made within 30 days from the date they became or started acting as nominees
<p>12. Are we required to submit the hard copies of the BOTD Forms and Consent Agreement Form to SEC?</p>	<p>No. Compliance with Sections 6 and 7 of the Circular is fully online.</p>
<p>13. If there is no nominee incorporator/ director/ trustee/ shareholder, who will sign the Consent Agreement Form?</p>	<p>Under MC 1, Series of 2021, it is the declarant who signs the Consent Agreement Form.</p> <p>Non-nominees of corporations incorporated on or after 29 January 2021 are required to declare such fact pursuant to Section 6 and said declarant shall sign the Consent Agreement Form.</p> <p>Non-nominees of existing corporations need not submit anything pursuant to Section 7 of the Circular.</p>
<p>14. Is a nominee/alternate nominee of a One Person Corporation covered under this Circular considering that he/she is not holding any shares in the Corporation?</p>	<p>The nominee in a One Person Corporation is not the nominee referred to under MC 1, Series of 2021, unless the nominee acts for and on behalf of another person as a director/trustee or shareholder of the corporation.</p>

Question	Answer
15. Are the directors of Covered Persons under the AMLA, as amended, still required to comply given the exemption under Section 9 of MC 1, Series of 2021?	Nominee directors of covered persons are included. It is only when the nominee arrangement is related to the products and services that they offer that the exemption applies.
16. The form requires the disclosure of the date when one assumed the role of or became a nominee director / trustee/ shareholder of your nominator/ principal. Should this be required also of those who have been nominees of an existing corporation?	If the nominee director/trustee/shareholder has been a nominee long before the date of effectivity of MC 1, Series of 2021, it is enough to state that the nominee has been a nominee even prior to the effectivity of the circular, without indicating the exact date. Only those who became nominees on or after the effective date of the circular are required to indicate the date of their assuming the role of or becoming a nominee.

(Editor's Note: The SEC has extended the deadline to file the mandatory declarations under Sections 6 and 7 of SEC MC 1, Series of 2021, to 31 May 2021 through a Notice dated 25 March 2021.)

Additional Contact Details for Queries on Online Submission of Reports

The SEC provided additional contact details for queries regarding the online submission of reports.

SEC Notice dated 16 March 2021

Due to the surge of phone inquiries following the launch of the SEC Online Submission Tool (OST) for annual financial statements, General Information Sheet and other covered reports, the SEC encourages the public to send queries through email at the following addresses, aside from calling the mobile phone numbers dedicated for OST-related concerns:

inquiry_ost1@sec.gov.ph
inquiry_ost2@sec.gov.ph

The SEC also requests that other queries be addressed to the relevant departments through the SEC Contact Center phone numbers and email addresses.

Alternative Mode for Distributing and Providing Copies of the Notice of Meeting, Information Statement and Other Documents in Connection with the Holding of Annual Stockholder's Meeting for 2021 for all Publicly Listed Companies and Other Companies with Registered Securities under the MSRD's Supervision

SEC Notice dated 16 March 2021

Due to the constant and continuing threats of community infections due to COVID-19, Publicly Listed Companies (PLCs) have an alternative mode to comply with the existing requirements in the conduct of their 2021 ASM.

The SEC provided alternative modes of distributing and providing copies of the Notice of Meeting, Information Statement and Other Documents in Connection with the Holding of Annual Stockholders' Meetings for 2021 for all publicly listed companies and other companies with registered securities under the supervision of the Markets and Securities Regulation Department of the SEC.

Concerned companies that would hold its ASM for 2021 are allowed to notify their stockholders through publication of the Notice of Meeting informing the shareholders of the:

- ▶ Date, time and place of meeting and other information as may be required; and
- ▶ The availability of an electronic copy of the Information Statement and Management Report and SEC Form 17A and other pertinent documents, in the Company's website; and in PSE Edge.

The Notice of the Meeting shall be published in the business section of two newspaper of general circulation, in print and online format, for two consecutive days, with the last publication of the Notice of Meeting (print and on-line) made no later than 21 days prior to the scheduled ASM.

In case the PLC will hold its ASM through teleconferencing, video conferencing and other remote or electronic means of communication, additional information shall be included in the Notice of Meeting as required by SEC Memorandum Circular No. 6, Series of 2020.

(Editor's Note: The title of the Notice indicates that "Concerned Companies" refer to PLCs and other companies with registered securities under the Markets and Securities Regulation Department of the SEC.)

SEC OPINIONS

SEC-OGC Opinion No. 21-02 dated 16 February 2021

Facts:

M Co. is interested in investing in an entity engaged in establishing, operating, maintaining, and/or managing commercial radio and television broadcasting stations. While commercial radio and television broadcasting stations help to deliver information to the public, they do not produce the message disseminated, nor do they dictate what the message will state.

Issue:

Are radio and television broadcasting stations considered entities engaged in "public service," engaged in "mass media" activities, and covered by the nationality rules governing mass media?

Ruling:

Yes. The constitutional provision on mass media is intended to prevent the use of such facilities by aliens to influence public opinion to the detriment of the nation.

A corporation which establishes, operates, maintains and/or manages a commercial radio and television broadcasting station is a mass media entity. By maintaining and operating a commercial radio and television broadcasting station, the corporation will essentially be engaged in activities which are performed by mass media entities such as disseminating information, messages, signals and all forms of written, oral, and visual communications to the public which will, or may have an influence on the standards, ideals, aims and opinion of the public.

A corporation which establishes, operates, maintains and/or manages a commercial radio and television broadcasting station, though engaged in public service, is considered as a mass media entity subject to stricter rules and limitations under the Constitution.

The operation and maintenance of radio and television broadcasting stations can also be considered "public service." However, even if such activities can be considered as a public service, such are also "mass media" activities, thus governed by a stricter rule under the Constitution and must be 100% Filipino-owned.

SEC-OGC Opinion No. 21-03 dated 18 February 2021

A corporation can validly report in its GIS changes in nominee shareholders pursuant to a validly executed Deed of Trust and Assignment and should report any election of a new director.

Facts:

S Inc. is a wholly owned subsidiary of a corporation established under the laws of Singapore. It has five nominee shareholders who also constitute the Board of Directors. One nominee shareholder/director is no longer connected with S Inc. and the company intends to appoint a new shareholder/director.

Issue:

Can S Inc. execute a Deed of Trust and Assignment or Deed of Absolute Sale to effect the change?

Ruling:

A shareholder may transfer one qualifying share to nominee shareholders for purposes of qualifying them to become members of the Board of Directors, without giving them the beneficial ownership of the shares. This can be governed by a duly executed Deed of Trust and Assignment where the beneficial interest in such shares will remain with the assignor while the assignee will hold only the legal title to the stock.

The change in or designation of nominee shareholders pursuant to a duly executed Deed of Trust and Assignment can be validly reported in the GIS of the corporation. Further, the election of such nominee shareholder as a nominee director needs to be reported to the SEC through the corporation's GIS since it involves a material change in the Board's composition.

Supreme Court Cases

Commissioner of Internal Revenue vs. East Asia Utilities Corporation

Supreme Court (Second Division) G.R. No. 225266, promulgated 16 November 2020

Facts:

East Asia Utilities Corporation (East Asia) is registered with the Philippine Economic Zone Authority (PEZA) as an ECOZONE Utilities Enterprise and is entitled to a tax incentive of 5% income tax on its gross income (5% GIT) in lieu of all national and local taxes.

The BIR assessed East Asia deficiency income tax for calendar year 2006, where it disallowed East Asia's costs and expenses which it claimed in determining the 5% GIT due. The BIR argued that the enumeration of allowable expenses for purposes of computing the 5% GIT under Revenue Regulations (RR) No. 11-2005 is exclusive. Upon appeal, the Court of Tax Appeals reduced the assessment on the ground that the amendment of RR No. 2-2005 (implementing Section 24 of the PEZA Law on the 5% GIT) by RR No. 11-2005 rendered the enumeration of deductible costs for 5% GIT purposes as no longer exclusive.

The enumeration in Revenue Regulations No. 11-2005 of costs and expenses that may be deducted to compute the gross income subject to 5% income tax of PEZA-registered companies is not exclusive. Thus, costs and expenses directly related to the PEZA-registered activity that are not administrative, marketing, selling, or operating expenses, shall be allowed as deduction from gross income.

Issue:

Is the enumeration of deductible costs for 5% GIT purposes under RR No. 11-2005 exclusive?

Ruling:

No, the enumeration is not exclusive.

RR No. 2-2005 enumerated the allowable costs to be deducted to determine the 5% GIT, where it provided the following: *“the cost of sales or direct costs shall consist only of the following cost or expense items xxx.”* By using the phrase “shall consist only of,” RR No. 2-2005 restricted the allowable deductions to compute the 5% GIT.

Subsequently, the BIR issued RR No. 11-2005 to amend RR No. 2-2005 which removed the exclusivity of costs or expenses that may be claimed as deduction for 5% GIT purposes. RR No. 11-2005 provides: *“For purposes of computing the total five percent (5%) tax rate imposed, the following direct costs are included in the allowable deductions to arrive at gross income earned for specific types of enterprises.”* Under RR No. 11-2005, the enumeration of allowable deductions was only made to illustrate the nature or type of expenses that may be deducted from a PEZA-registered entity’s gross income to compute the 5% GIT.

The BIR should not have issued RR No. 11-2005 and deleted the phrase “shall consist only of the following cost or expense item” and changed it to “the following direct costs are included in the allowable deductions” if it did not intend to remove the restriction on the expenses that may be deducted. The deletion of the restrictive word is also consistent with Section 24 of the PEZA Law which provides that costs and expenses directly related to the PEZA-registered activity that are not administrative, marketing, selling, or operating expenses, shall be allowed as deduction from gross income.

Court of Tax Appeals

Assessment

Snowy Owl Energy Inc. vs. Commissioner of Internal Revenue

CTA Case No. 9618 promulgated 13 March 2021

Facts:

On 13 January 2017, the BIR issued a Final Letter of Demand (FLD) with Assessment Notice. On 13 February 2017, Company A filed a protest to the FLD and on 12 April 2017, Company A submitted additional supporting documents. On 18 May 2017, Company A received the decision denying its protest and on 19 June 2017, the Petition for Review was filed before the CTA. The remaining issue that was raised is the deficiency FWT on payments for subconsultant fees to an NRFC based in Hong Kong. In the CTA, the CIR contends that the protest to the FLD and the Petition for Review were both filed out of time. On the substantive issue, Company A argues that the subconsultant fees is not subject to FWT since the services were performed by the NRFC in Hong Kong.

If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Issue:

1. Were the Protest to the FLD and Petition for Review filed on time?
2. Are the subconsultant fees subject to FWT?

Ruling:

1. Yes.

Counting 30 days from 13 January 2017 and 18 May 2017, respectively, the deadline to file the protest would have been on 12 February 2017 and 17 June 2017, respectively, for the appeal to this Court. It is noteworthy, however that the last day or the 30th day for filing of the protest and the Petition for Review both fell on weekends. Therefore, Company A had until the next business day within which to file them. Section 1 of Rule 22 of the Rules of Court if the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

2. No.

Company A sufficiently established that the payee is an NRFC as evidenced by its Certificate of Non-Registration of Company issued by the SEC. Company A also proved that the NRFC's services were performed in Hong Kong in accordance with their Agreement. The consularized Notarized Letter of Work Performed issued by the NRFC also confirmed that the services it rendered to Company A in 2013 were all desktop review of calculations and drawings and were not actually performed in the Philippines. Pursuant to Section 42(C)(3) of the Tax Code, compensation for labor or personal services performed without the Philippines shall be treated as income from sources without the Philippines. Indubitably, the payments made in exchange for the services rendered in Hong Kong are income derived from sources outside of the Philippines, thus not subject to IT and consequently to FWT.

International Container Terminal Services, Inc. vs. The City of Manila

CTA EB No. 277 promulgated 10 March 2021

Facts:

In G.R. No. 185622, the Supreme Court rendered a Decision directing the CTA *en banc* to proceed with the resolution of the merits of CTA EB No. 277 which previously denied Company A's claim for a refund of erroneously and/or illegally paid taxes for succeeding periods of the 3rd quarter of taxable year (TY) 1999. In the said Decision, the Supreme Court found for Company A and laid down guidelines for the CTA *en banc* to decide on the merits.

Issue:

Is Company A entitled to a refund of illegally and/or erroneously paid local business tax?

If no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 of the LGC applies.

Ruling:

Yes.

The Supreme Court, in the subject Decision, ruled that the applicable provision in determining the propriety of such claims is Section 196 of the Local Government Code, considering that no notice of assessment was issued for these periods. On this note, the Supreme Court laid several distinctive guidelines in determining the amount of tax refund to be granted. First, the Supreme Court ruled that there is no need to comply with the requisite of a prior administrative claim of refund as it would be a futile effort, considering that respondents would just deny the same. Second, the judicial case for refund should have been filed within two years from the payment of the tax or from the date when the taxpayer is entitled to a refund or credit. Moreover, the Supreme Court declared that Company A became entitled to a refund or credit only when the invalidity of Section 21 (A) was judicially pronounced and became final and executory on 2 July 2007. Following these guidelines, petitioner is fully entitled to its claim for refund of erroneously and/or illegally paid taxes for the periods succeeding the third (3rd) quarter of TY 1999.

Ecotechnovations, Inc. vs. Commissioner of Internal Revenue

CTA Case No. 9701 promulgated 03 March 2021

Facts:

The Bureau of Internal Revenue (BIR) assessed Company A for deficiency income and value-added taxes, in connection with the sale of parcels of land for taxable year 2012. The BIR issued a Preliminary Assessment Notice (PAN), against which Company A filed a protest letter.

Company A received a letter from the BIR acknowledging receipt of the reply to the PAN and informing Company A that it had issued the Formal Letter of Demand (FLD) and Final Assessment Notice (FAN). Company A filed a Formal Protest stating that it did not receive the FLD/FAN and requested for reinvestigation of the alleged deficiency taxes banking on the same findings stated in the PAN.

The BIR informed Company A that the assessment became final and executory due to Company A's failure to file a formal protest.

Issue:

Whether or not the assessment became final and executory due to Company A's failure to file a protest.

Ruling:

No, the assessment is invalid due to the BIR's failure to observe a valid substituted service and failure to prove that Company A actually received the FLD/FAN.

As provided under the rules, substituted service may be availed only when it is shown that personal service is not practicable. Section 3.1.6. of Revenue Regulations (RR) No. 12-99 further provides that if the party is not present at the registered address, substituted service may be done by leaving the assessment notices with the "party's clerk" or "person having charge of the office," and if no such person is present, to bring a barangay official and 2 disinterested witnesses that may personally observe and attest to such absence and that these facts shall be contained in the bottom of the notices bearing the names, official position and signatures of the witnesses.

An assessment is invalid if the BIR fails to observe a valid service and, based on jurisprudential pronouncement, when the taxpayer denies having received the assessment notices, it is incumbent upon the BIR to prove the actual receipt thereof by the taxpayer concerned.

The Affidavit of Service merely states that the notices were served to a certain person (who turned out to be a Security Guard), without indication of the position and without showing that the person is Company A's clerk or person having charge of Company A's office. Additionally, only the names and signatures of the barangay officials were indicated in the notices, without showing their official positions as required under the rules.

Based on jurisprudential pronouncement, if the taxpayer denies having received the assessment notices, it is incumbent upon the BIR to prove the receipt thereof by the taxpayer concerned.

Exclusive Networks-PH Inc., formerly Transition Systems Phils. Pte Ltd Inc. vs. Commissioner of Internal Revenue (CIR)

CTA Case No. 9689 promulgated 23 February 2021

Any reassignment/transfer of cases to another RO(s), and the revalidation of a Letter of Authority (LOA) which has already expired, shall require the issuance of a new LOA, with the corresponding notation thereto, including the previous LOA number and date of issue of said LOAs.

Facts:

On 3 November 2014, Company E received a copy of Letter of Authority (LOA) dated 30 October 2014 authorizing the Revenue Officer (RO) and Group Supervisor (GS) to examine books of accounts and accounting documents and records of Company E covering the period from 1 January 2013 to 31 December 2013.

Subsequently, the case was transferred to another RO and GS on 6 April 2016 by virtue of Memorandum of Assignment (MOA) signed by the Revenue District Officer.

Thereafter, Company E received a Formal Letter of Demand together with Details of Discrepancies and Assessment Notices dated 23 January 2017 for deficiency Income Tax (IT) and Value-Added Tax (VAT) for TY 2013.

Issue:

Was the assessment issued against Company E valid?

Ruling:

No.

The Court of Tax Appeals ruled that any tax assessment issued without new LOA in case of reassignment/transfer of cases to another Revenue Officer is a violation of the taxpayer's right to due process and therefore void. The authorized Revenue Officer must be clothed with authority, through LOA, to conduct the audit or investigation of the taxpayer. In the absence of such grant of authority through a LOA, the RO cannot conduct the audit of taxpayer's books of accounts and other accounting records. Corollary, the MOA subsequently issued is neither tantamount to a LOA nor a supplement thereto, as to validly give the new set of RO and GS the same kind of authority vested in the LOA.

Moreover, only the following officials are properly conferred with authority to permit the examination of taxpayers for deficiency taxes: (1) CIR; (2) Regional Directors; (3) Commissioners; (4) Assistant Commissioner/Head Revenue Executive Assistants (for Large Taxpayers); and, (5) Other officials but only upon prior authorization by the CIR himself. Consequently, since the MOA was issued only by a Revenue District Officer who is not authorized to approve the examination of the taxpayer's books, the same cannot properly confer authority upon the persons named therein to conduct the audit. Furthermore, the LOA issued by the Revenue Regional Director cannot be subsequently modified or amended through a MOA signed by a subordinate official such as, in this case, the Revenue District Officer.

EHS Lens Philippines (formerly Hoya Lens Manufacturing Philippines, Inc.) Inc. vs. Commissioner of Internal Revenue (CIR)

CTA Case No. 9924 promulgated 23 February 2021

There is no law which requires a taxpayer to wait for the BIR to issue an acknowledgement that said taxpayer's address has been changed in its records in order to give effect to the transfer to a new office.

Failure to strictly comply with the notice requirements prescribed under Section 228 of the Tax Code and Revenue Regulations No. 12-99, as amended, is tantamount to denial of due process.

Facts:

On 30 June 2015, Company A received the Letter of Authority (LOA) dated 25 June 2015 from RDO No. 54-B covering the period 1 April 2013 to 31 March 2014. The address of petitioner indicated in the said LOA is at Gateway Business Park, General Trias, Cavite. In response to the same LOA, Company A submitted to the BIR certain documents on 29 July 2015.

In a letter dated 8 October 2015, Company A informed RDO No. 54-B that it will transfer its operations and principal address to Tanauan City, Batangas. Attached therein were BIR Form No. 1905 and other documentary requirements relative to the change of address, which were received by BIR RDO No. 54-B on 14 December 2015.

On 6 September 2017, RDO No. 54-B issued an Assessment Notice against Company A.

Subsequently, an Indorsement dated 22 November 2017 was issued by RDO No. 54-B approving the request for the transfer of registration to RDO No. 59 - Lipa City. A new certificate of registration was issued by BIR RDO No. 59 in favor of Company A indicating its registration date of 4 December 2017 as transferred in from RDO 54-A.

On 12 July 2018, Company A received, via its new address the Preliminary Collection Letter (PCL) for taxes assessed in connection with Assessment Notice issued on 6 September 2017.

On 9 August 2018, Company A received the Final Notice Before Seizure (FNBS) dated July 13, 2018, informing Company A of its last opportunity to pay the tax liabilities.

Issue:

Was the assessment issued against Company A valid?

Ruling:

No.

Prior to the issuance of the Assessment Notice, Company A had already informed RDO No. 54-B of its intention to transfer its operations and principal address. Under Section 236 of the Tax Code, in case a registered person decides to transfer his place of business or his head office or branches, it shall be his duty to update his registration status by filing an application for registration information update in the form prescribed. This was manifested via the letter and its submission of BIR Form No. 1905 on 8 October 2015. Such being the case, the Court saw no valid reason for the BIR to have used the former business address of Company A in issuing the assessment against the latter, since the CIR had been informed earlier of the office transfer.

Even granting that there is no issue as to Company's A address, the subject tax assessment may still not be considered valid. As part of the due process requirements in the issuance of tax assessments, the concerned taxpayer must be informed in writing of the law and the facts upon which the assessment was made, and that the same taxpayer be given the opportunity to respond and contest the assessment. Being part of the due process requirements, these things must be accomplished before collection of the pertinent tax. In this case, the BIR failed to show that the PAN and FLD /FAN or Assessment Notice were released, mailed, sent or served to Company A prior to the issuance of the PCL and FNBS. As these due process requirements were not shown to have been fulfilled by the BIR, the subject PAN, FAN/FLD and the Assessment Notice were null and void.

B. Nevalga Enterprises Corp. By: Benito B. Nevalga vs. Bureau of Internal Revenue

CTA EB Case No. 2171 (CTA Case No. 10159) promulgated 19 February 2021

A Demand Letter is not the decision appealable to the CTA but the Final Decision on Disputed Assessment ("FDDA") that the BIR has issued against the taxpayer.

Facts:

Company B received a copy of the PAN dated 14 February 2014 for taxable year 2006. Subsequently, on 20 July 2016, Company B allegedly received a copy of the undated FDDA. On 2 August 2016, Company D filed its Motion for Reconsideration ("MR") of the FDDA. After more than three years or on 16 August 2019, Company B received from the BIR a letter dated 25 June 2019 ("Demand Letter"). Claiming that it is entitled to file an appeal with the CTA within 15 days from receipt of the Demand Letter, Company B filed a petition for review. The Third Division dismissed the petition for being filed out of time.

Issue:

Is the petition of Company B lodged with the CTA filed on time?

Ruling:

No. On July 2016, Company B received the undated FDDA which was issued and signed by the Commissioner denying Company B's administrative protest. The FDDA indicates that the assessment issued against Company B has already become final and demandable since Company B's Protest against the Formal Letter of Demand (FLD) did not conform to the prescribed procedure in failing to state the facts, the applicable laws, rules and regulation, or jurisprudence on which the protest is based.

Pursuant to the rules laid out in Revenue Regulations (RR) No. 12 - 99, as amended by RR No. 18 - 2013, the proper remedy for Company B was to file a Petition for Review before the CTA within 30 days from receipt of the FDDA, or until 19 August. However, instead of appealing to the CTA, Company B opted to file an MR with the BIR's Commissioner on 2 August 2016. Per RR No. 12 - 99, as amended by RR 18 - 2013, Company B's resort to file an MR with the BIR's Commissioner did not toll the running of the 30-day period to appeal before the CTA. Evidently, Company B erroneously thought it could still file an appeal within 15 days (instead of the 30 days as provided in the law and rules) from receipt of the Demand Letter and failed to realize that it had long lost its remedy of appeal when it opted to file an MR with BIR's Commissioner and awaited the latter's resolution thereon. To be clear, a Demand Letter is not appealable to the CTA; instead, the FDDA issued by the BIR should have been the basis of the appeal.

Commissioner of Internal Revenue vs. NCR Cebu Development Center, Inc.

CTA EB No. 2150 (CTA Case No. 9255) promulgated 10 February 2021

Under the National Internal Revenue Code of 1997, as amended (Tax Code), a foreign corporation is negatively defined as one which is not domestic. As such, a party who claims a corporation to be foreign must prove it to be such foreign corporation, not a domestic corporation. A Certification of Non-Registration of Company from the SEC would have shown that a certain corporation is not registered as a corporation in the Philippines. Thus, for Company A's failure to submit such certification with respect to the foreign corporation, the Court *En Banc* cannot ascertain if the entity is indeed not a domestic corporation. The omission on Company A's part is fatal to its claim that the entity is a foreign corporation that is taxable only for its income from sources within the Philippines.

Facts:

Company A was assessed for deficiency Final Withholding Tax (FWT) and withholding tax VAT (WVAT) on its income payments to its NRFC affiliates.

Company A was able to show that all the payees are NRFCs not engaged in business in the Philippines, as evidenced by the twin requirements of SEC Certifications of Non-Registration of Company as well as Certificates of Registration, except for NCR Beijing (where the SEC Certification submitted by respondent pertained to NCR Beijing Sales and Marketing).

Company A presented Certifications on Offshore Services executed by the authorized representatives of Company A's foreign affiliates where it was commonly stated that "no physical work was conducted in the Philippines, as all the services rendered by the Corporation or its employees and representatives, as summarized in Appendix A attached hereto, were performed outside the Philippines and are not effectively connected to a permanent establishment in the Philippines."

Moreover, the Debit Notes uniformly stated that the "services were rendered within the country location of the servicing NCR entities."

Issue:

Is Company A liable for deficiency FWT and WVAT on the service fees?

Ruling:

Company A is partially liable for FWT on the service fees.

Compensation for services performed in the Philippines is treated as income from sources within the Philippines, while those performed outside of it are considered income from sources outside the Philippines.

A foreign corporation is taxable only on its income from the services it performed within the Philippines, and not for income from services performed outside the Philippines.

In this case, Company A sufficiently proved that the recipients of its payment of service fees are foreign corporations whose services were performed outside the Philippines.

Company A was able to establish that the recipient of its payment of service fees, except for NCR Beijing, were foreign corporations, as evidenced by their respective SEC Certifications of Non-Registration of Company. Thus, these foreign affiliates shall be taxable only on their income from sources within the Philippines.

In addition, Company A was also able to demonstrate that the services performed by such foreign corporations were performed outside the Philippines, as shown by the Certifications on Offshore Services stating that no physical work was conducted in the Philippines, as all the services rendered were performed outside the Philippines and are not effectively connected to a permanent establishment in the Philippines. The fact that the services were performed outside the Philippines was further corroborated by the pertinent Debit Notes where it was also provided that services were rendered within the country location of the servicing entities.

In NCR Beijing's case, however, Company A failed to prove that the former is a foreign corporation as it did not submit the pertinent SEC Certification of Non-Registration which could have shown that the said corporation is not registered in the Philippines.

Under the Tax Code, a foreign corporation is negatively defined as one which is not domestic. As such, a party who claims a corporation to be foreign and not domestic must prove it to be such.

A Certification of Non-Registration of Company from the SEC would have shown that a certain corporation is not registered as a corporation in the Philippines. Thus, due to Company A's failure to submit such certification for NCR Beijing, the Court *En Banc* could not ascertain if NCR Beijing was indeed not a domestic corporation. The omission on Company A's part is fatal to its claim that NCR Beijing is a foreign corporation that is taxable only for its income from sources within the Philippines.

While Company A was able to produce the foreign registration document of NCR Beijing, such could not dispel the possibility that the latter is registered in the Philippines. Hence, it was imperative for respondent to produce such document inasmuch as it was able to do so for its other foreign affiliates.

However, while the CTA *En Banc* found it proper to uphold the assessment for FWT (relative to the payment of service fees to NCR Beijing), it did not rule in the same manner with respect to the WVAT.

For WVAT purposes, it is imperative that the service is rendered in the Philippines before the transaction may be subject to WVAT. Since the respondent was able to prove that the services were rendered by NCR Beijing outside the Philippines, as evidenced by the Certifications on Offshore Services and Debit Notes, the same was not subject to WVAT.

Commissioner of Internal Revenue vs. Penta Technology, Inc.

CTA EB No. 2046 (CTA Case No. 9258) promulgated on 09 February 2021

Facts:

On 17 July 2008, the Regional Director (RD) of the Bureau of Internal Revenue (BIR), without a LOA, issued a Tax Verification Number (TVC) authorizing a Revenue Officer (RO) of Revenue District Office (RDO) No. 49 to examine and audit Company A. The TVC covers Company A's internal revenue taxes for taxable year (TY) 2007.

The case subsequently reached the Court of Tax Appeals (CTA) where the Commissioner of Internal Revenue (CIR) challenged the belated filing of the protest letter of Company A and argued that this renders the Final Assessment Notice (FAN) final and unappealable. The case was elevated to the CTA *En Banc*, on the ground that the CTA division erred in assuming jurisdiction, notwithstanding the late filing of the protest letter.

Issue:

Was the assessment of the CIR against Company A valid?

It is a well-settled rule that TVN is not a LOA and that absence of a LOA is tantamount to a denial of a taxpayer's right to due process. Such absence is an incurable defect that renders a tax assessment *void ab initio*.

Ruling:

No. The assessment is invalid since the audit examination was conducted without an LOA. An LOA is the authority given to the appropriate RO assigned to perform assessment functions. It empowers or enables said RO to examine the books of accounts and other accounting records of a taxpayer for the purpose of collecting the correct amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives, as provided under Sec. 6 of the Tax Code.

Here, it is undisputed fact that the petitioner did not issue an LOA prior to pursuing an audit investigation of Company A. Considering the circumstance of the case at bar, Company A's failure to timely file the protest to the FAN did not make valid the otherwise void assessment. Company A's arguments, though deserving of scant consideration, cannot overshadow the nullity of petitioner's action of pursuing an assessment of Company A through a mere TVN.

Refund/issuance of Tax Credit

EDC Burgos Wind Power Corporation vs. Commissioner of Internal Revenue

CTA Case No. 9446 promulgated 12 March 2021

Facts:

Company A filed with the BIR an application for Tax Credits/Refunds of its excess and unutilized input VAT for the period covering 1 January to 30 June 2014 (1st and 2nd quarters of 2014) attributable to VAT zero-rated sales of wind energy.

The BIR denied the administrative claim for refund thus, Company A filed the instant Petition for Review with the CTA. The BIR argued that Company A's application must be denied for failure to substantiate its claim for refund, among others.

Issue:

Is Company A entitled to the refund or issuance of a tax credit certificate representing its unutilized input VAT for the 1st and 2nd quarters of CY 2014 attributable to its zero-rated sales of power generated from renewable sources of energy?

Ruling:

No. In this case, the CTA ruled that Company A failed to show that the BIR should not have denied its administrative claim. A judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. As in every appeal or petition for review, a petitioner should convince the appellate court that the quasi-judicial agency *quo* did not have any reasons to deny its claim. It is necessary for a petitioner to show that not only are they entitled under substantive law to his claim for refund or tax credit, but also that they satisfied all the documentary and evidentiary requirements for an administrative claim.

Company A presented its case as if its administrative claim was never acted upon or that there was no decision for the CTA to review. Company A presented its case as if it was an original action, despite the fact the BIR had explicitly denied its administrative claim. It did not specifically assail the reason or basis why its administrative claim was denied in the first place and it never argued or proved that the said reason or basis was not justified in law.

When filing a petition for review before the CTA for a refund claim, the action must be based on the BIR's denial of the refund/tax credit claim and not due to its inaction. It is imperative that the petition specifically assails the basis for the denial of its administrative claim and its lack of justification in law.

Having failed to show that the BIR should not have denied its administrative claim, the appeal was denied. Nevertheless, even if the CTA had ignored the ruling in the *Pilipinas Total Gas vs. CIR* case, the judicial claim would still be unmeritorious.

To qualify for VAT zero-rating in the sale of power generated through renewable sources of energy, such as wind, the seller must secure the following:

- a. Certificate of Registration issued by the Department of Energy (DOE);
- b. Certificate of Registration issued by the Board of Investments (BOI);
- c. Certificate of Endorsements issued by the DOE; and
- d. Certificate of Compliance (COC) issued by the Energy Regulations Commissions (ERC), secured before actual Commercial Operations by the generation company.

Company A's Certificate of Endorsements issued by the DOE was issued on 11 November 2014 which is outside the period of claims (1st and 2nd quarters of CY 2014). Moreover, while Company A was able to secure a COC from the ERC in its favor, the same was issued on 13 April 2015, or after the commencement of its commercial operation on 11 November 2014.

Actions for tax refund or credit are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.

Thermaprime Drilling Corporation vs. Commissioner of Internal Revenue

CTA EB No. 2155 promulgated 02 March 2021

Facts:

Company A is a domestic corporation duly registered with the BIR as a VAT Zero Rated taxpayer per RA 9513 - the Renewable Energy Act of 2008. On 24 September 2013, it filed with the BIR an application for tax credits/refund of input VAT for the 3rd and 4th quarters of 2011, attaching therewith the VAT returns for the corresponding period.

On 28 February 2014, Company A received an LOA for the examination of its books of accounts for VAT for the period 1 January to 31 December of 2011 pursuant to Mandatory Audit - Claim for Refund. A First Notice was subsequently issued on 24 February 2014 requesting presentation/production of accounting books. On 18 March 2014, Company A submitted a letter to the BIR requesting for a list of documents required to process and review its refund application. The BIR furnished a Request for Presentation of Records containing the list of documents and Company A submitted documents on 31 March 2014.

On 21 April 2014, Company A received a Second and Final Request for Presentation of Records stating that it still had not yet presented the needed records for examination. Company A then submitted additional documents in support of its refund application on 23 April 2014.

Due to the inaction of the BIR, Company A filed a Petition for Review before the CTA on 22 September 2014.

Under Section 112(A) of the Tax Code, as amended by RA 9337, a taxpayer has two years, after the close of the taxable quarter when the sales were made, to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid or attributable to such sales. From the date of filing of the administrative claim, the taxpayer has 30 days within which to submit the documentary requirements to support his claim, unless given further extension by the CIR. In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A). Upon taxpayer's filing of complete documents to support his claim, the CIR has 120 days within which to decide the claim for tax credit or refund. The taxpayer must then file an appeal within 30 days from the lapse of the 120-day period.

Issue:

Was the judicial claim filed within the prescribed period?

Ruling:

No. The claim pertains to the 3rd and 4th quarters of 2011, which closed on 30 September 2011 and 31 December 2011, respectively. Company A had until 30 September 2013 and 31 December 2013, respectively, or two years after the close of the taxable quarters when sales were made, to submit all pertinent supporting documents to the BIR. The submission of documents on 22 April 2014 was already beyond the two-year period, thus, cannot be considered in the counting of the 120-day period. Before the administrative claim is barred by prescription, the taxpayer must be able to submit his complete documents in support of the application filed.

As the claim was filed on 24 September 2013, Company A should have submitted the documentary requirements sufficient to support its claim within 30 days from such date, unless given further extension by the CIR. Company A already attached in its application the VAT returns for the 3rd and 4th quarters of 2011 and no longer submitted additional documents within the 120-day period from the submission of its administrative claim. Should the taxpayer decide to submit only certain documents, or should it fail or opt not to submit any document at all in support of its application under Section 11, the 120-day period should be reckoned from the date of filing of the application. Counting 120 days from 24 September 2013, the BIR had until 22 January 2014 within which to act on Company A's administrative claim.

When the 120-day period lapses and there is inaction on the part of the BIR, taxpayers must no longer wait for it to come up with a decision thereafter. The BIR's inaction is the decision itself. It is already a denial of the refund claim. Thus, the taxpayer must file an appeal within 30 days from the lapse of the 120-day waiting period.

MTI Advanced Test Development Corporation vs. Commissioner of Internal Revenue (CIR)

CTA Case No. 9690 promulgated 23 February 2021

Facts:

Company M filed its application for refund of its unutilized input VAT directly attributable to its zero-rated sales covering the period of 1 July 2015 to 30 September 2015 (2nd Quarter) and 1 January 2016 to 31 March 2016 (4th Quarter).

Due to inaction from the BIR, Company M filed the instant Petition for Review on 22 September 2017.

Issue:

Is Company M entitled to refund of its unutilized input VAT?

In order to qualify for VAT zero rating, the sales to an NRFC doing business outside the Philippines must be supported at the very least by both Securities and Exchange Commission Certification of Non-Registration and proof of incorporation or registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Association).

Ruling:

Yes, partially.

To qualify for VAT zero-rating under Section 108 (B)(2) of the tax code, the following requisites must be satisfied: (1) the service rendered must be other than "processing, manufacturing, or repacking of goods; (2) the payment for such service be in acceptable foreign currency accounted for in accordance with BSP rules and regulations; and (3) the service- recipient must be doing business outside the Philippines.

Company M's sales of services met the first two requisites. As to the third requisite, however, since Company M was not able to show the SEC Certificate of Non-Registration for one of its customers, the Court ruled that the sale to that customer did not qualify for VAT zero rating. Thus, only the amount of sales attributable to the customer with both the SEC Certificate of Non-Registration and proof of incorporation/ registration in a foreign country (e.g., Certificate of Incorporation, Memorandum of Association, and Articles of Association) was considered zero-rated.

Company M was only entitled to the portion of the duly substantiated input VAT attributable to sales which qualified for VAT zero-rating.

Violation of Tax Code

People of the Philippines vs. Alexander R. Garcia

CTA Crim. Case Nos. 0-572, 0-573, & 0-610 promulgated 15 February 2021

Facts:

Mr. A is a dentist by profession. He filed his Annual Income Tax Return ("ITR") with attached Financial Statements for Taxable Years ("TY") 2011, 2012, and 2013.

An investigation against Mr. A was prompted by a National Investigation Division ("NID") Memo Assignment issued by the Chief of the NID of the BIR, directing certain BIR examiners to conduct a thorough preliminary investigation on the alleged schemes of tax evasion being perpetrated by the Mr. A to ascertain the veracity of the information.

Thereafter, an LOA was issued against Mr. A to examine his books of accounts and other accounting records, for all internal revenue taxes, including documentary stamp tax and other taxes (miscellaneous tax), for the period from 1 January 2011 to 31 December 2013, pursuant to the R.A.T.E. Program.

The CIR wrote a letter to the Secretary of Justice referring the Joint Complaint-Affidavit executed by the BIR examiners for preliminary investigation and the filing of appropriate information in court, if evidence so warrants.

Subsequently, the state prosecutor issued a Resolution finding probable cause and recommending the filing of criminal information against the accused.

There is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Tax Code.

For one to be convicted for the offense of willful failure to supply correct and accurate information, it necessitates the concurrence of the following elements, to wit: (1) The accused is a person required under the Tax Code or rules and regulations to supply correct and accurate information; (2) The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and (3) Such failure to supply correct and accurate information is willful.

Issue:

1. Whether Mr. A was deprived of this constitutional right to due process by filing a criminal action prior to the issuance of the PAN and FAN/FLD.
2. Whether Mr. A is guilty.

Ruling:

1. No.

In enforcing the collection of unpaid taxes, Section 205, in relation to Section 222(a), both under the Tax Code, provides for two remedies. One is through summary administrative remedies (i.e., distraint and/or levy) and the other is through judicial remedies (i.e., filing of criminal or civil action against the erring taxpayer).

If the BIR opted to enforce collection through summary administrative remedies, it must first comply with the due process requirements laid down in Section 228 of the Tax Code in issuing assessment notices. Non-compliance therewith is tantamount to the denial of taxpayer's right to due process and, thus, effectively voiding the assessment/s issued against the latter. But if the BIR decided to enforce the collection of unpaid tax through judicial action, particularly through the filing of a criminal charge before the Department of Justice (DOJ), an assessment is not necessary.

Moreover, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Tax Code of 1997, as held by the Court in *Ungab vs. Cusi, Jr.*, G.R. Nos. L-41919-24, May 30, 1980, to wit:

"What is involved here is not the collection of taxes where the assessment of the Commissioner of Internal Revenue may be reviewed by the Court of Tax Appeals, but a criminal prosecution for violations of the Tax Code which is within the cognizance of courts of first instance. While there can be no civil action to enforce collection before the assessment procedures provided in the Code have been followed, there is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Code."

2. Yes.

For one to be convicted for the offense of willful failure to supply correct and accurate information, it necessitates the concurrence of the following elements, to wit:

1. The accused is a person required under the Tax Code or rules and regulations to supply correct and accurate information;
2. The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and
3. Such failure to supply correct and accurate information is willful.

Under Sections 24 and 51 of the Tax Code, a resident citizen who is engaged in the practice of a profession within the Philippines is obligated to file an income tax return on his income from all sources, regardless of the amount of his gross income.

In this case, it is undisputed that Mr. A is a dentist by profession and is operating a dental clinic. Thus, Mr. A is duty bound to declare his income from all sources, including, but not limited to the income derived from his dental clinic. As such, Mr. A is a person required under the Tax Code to supply correct and accurate information about all his income earned in every taxable year. Correspondingly, the first element for the commission of the subject offense was established in this case.

Moreover, records show that the concerned ROs resorted to third-party information when they conducted their preliminary investigation against Mr. A. This was done by sending Access Letters to certain banks for them to issue certifications as to the amount of income payments that they made, and taxes withheld by them on a quarterly basis, on the account of Mr. A for the concerned taxable years.

There is a huge disparity between the Service Income/Receipts per ITR/FS declared in Mr. A's ITRs vis-a-vis the income payments reflected in the said Certifications. Thus, there is a manifest showing that the accused had underdeclared his income for the subject taxable years.

On the third element, the term "willful" is defined in Black's Law Dictionary as one "done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose to either to disobey or to disregard the law."

The element of willful failure to supply correct and accurate information must be fully established as a positive act or state of mind; it cannot be presumed nor attributed to mere inadvertent or negligent acts.

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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.