Tax Bulletin

May 2022

In everything we do, we nurture leaders
and enable businesses for a better Philippines.

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BIR Administrative Requirements

RMO No. 23-2022 prescribes the format in numbering of Deficiency Tax Assessment Notices Pursuant to RR No.12-99, as amended by RMC No. 3-2022, which includes PAN, FLD/ FAN and FDDA.

RMO No. 23-2022 dated on 7 March 2022 and issued on 27 April 2022

- The BIR assessment notices for deficiency basic tax, surcharge, and interest (Part I) prescribed in RR No. 12-99, as amended and assessment notices for compromise penalties (Part II) prescribed in RMC No. 3-2022 along with the Details of Discrepancies (DOD) attached thereto shall be issued in triplicate to be distributed as follows:

  Original – Taxpayer's copy,
  Duplicate – To be attached to the docket of the case, and
  Triplicate – File copy of the approving office.

- The numbering shall be based on the following:

  1. For PAN it shall be based on a uniform system containing 43 characters using the following format:

P	-	000000000000	-	000000-000-0000-000000	-	00000
		LA Serial No.		Audit Case no.		Sequence No.

2. FLD/FAN shall likewise use the same combination from the originating PAN. However, "P" shall be replaced with "F" to distinguish it from the PAN.

   a. For FLD:

F	-	000000000000	-	000000-000-0000-000000	-	00000
		LA Serial No.		Audit Case no.		Sequence No.

   b. For FAN which is documented in the FAN (BIR Form No. 0401), it shall include the code corresponding to the tax type being assessed:

F	-	00	000000000000	-	000000-000-0000-000000	-	00000
		Tax Type Code	LA Serial No.		Audit Case no.		Sequence No.

3. The same combination from the originating PAN shall be used in numbering the FDDA except that "P" shall be replaced with "D" following the format below:

D	-	000000000000	-	000000-000-0000-000000	-	00000
		LA Serial No.		Audit Case no.		Sequence No.

- All decisions on protest to the FLD/FAN, whether the taxpayer's protest is accepted or denied partially or wholly, shall be communicated to the taxpayer through the issuance of a FDDA together with the FAN bearing the amended deficiency tax assessment. However, to effect the issuance of the FDDA/ amended FAN, the protested FAN shall first be cancelled.

- Whenever a replacement electronic Letter of Authority (eLA) is issued due to reassignment of the case to another Revenue Officer/Group Supervisor, as prescribed under existing revenue issuances, the applicable letter of demand/ assessment notice shall now bear the recent LA Serial Number and Audit Case Number.

RMO No. 24-2022 drops the ATC WI730 to facilitate the proper identification and monitoring of remittance for final Income taxes withheld pursuant to the implementation of RA No. 9505 or the PERA Act of 2008 and the latest developments on the proper classification of the nature of penalties on early withdrawal under the ePERA.

RMO No. 24-2022 dated on 4 March 2022, and issued on 28 April 2022

Details of the said ATC are as follows:

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
WI730	Total income earned from the time of its opening to its withdrawal under the PERA Act	20%	RA No. 9505/ RR No. 6-2021	1601-FQ

RMO No. 26-2022, prescribes the policies, guidelines, and procedures in the application for revalidation of Tax Credit Certificates (TCC).

RMO No. 26-2022 dated on 8 March 2022, and issued on 28 April 2022

Salient provisions include the following:

- Documentary requirements (see details below) as well as BIR offices which will handle the application.

  Documentary Requirements:

  1. Letter request for revalidation of TCC of the taxpayer;
  2. Original copy of the TCC for revalidation;

3. Original copy of the Secretary's Certificate or Board Resolution appointing the company's authorized signatory/ies and representative/s;
4. Authorization letter of the employee/representative duly signed by the company signatory to follow-up the status of the application and to pick-up the new TCC; and
5. Photocopy of two valid government issued identification cards (IDs) and the company IDs of both the company signatory and its authorized employee/ representative, if applicable.

- All applications for TCC revalidation shall be submitted any time before the expiration of the validity period of the original TCC. A new TCC will be issued reflecting its unutilized amount or creditable balance.

- Issued TCCs that remain unutilized after five years from the date of issue, unless an application for revalidation has been filed before the end of the fifth year, shall be considered invalid. It shall not be allowed for use as payment of any of internal revenue tax liability, and the unutilized Certificate shall revert to the general fund of the government.

- The revalidated TCC shall be valid for a period of five years from the date of its issue.

- No revalidated TCC shall be issued unless the BIR has certified that the taxpayer-TCC holder has no outstanding tax liability which refers to an assessment that is already final and executory as provided under Section 5 (d) of RR No. 5-2000. The processing of application for revalidation that was held in abeyance due to existence of outstanding tax liability and valid open-stop filer cases shall be settled with the concerned RDO within two years from the date of application for TCC revalidation. Non-settlement of the outstanding tax liability or valid open cases shall result in the denial of the taxpayer's applications for TCC revalidation.

RMC No. 48-2022 aligns the policy in the renewal of the CTE, particularly on the submission of a Certified True Copy of the latest Financial Statements of the Cooperatives duly audited by a BIR-accredited independent Certified Public Accountant, per RMO No. 76-2010 with the provisions under Section 232 of Keeping of Books of Accounts- of the National Internal Revenue Code of 1997, as amended by Section 71 of the TRAIN Law.

RMC No. 48-2022 issued on 20 April 2022

As follows:

- **Corporations, Companies, Partnerships or Persons required to Keep Books of Accounts**. - All corporations, companies, partnerships or persons required by law to pay internal revenue taxes shall keep and use a relevant and appropriate set of bookkeeping records duly authorized by the Secretary of Finance wherein all transactions and results of operations are shown and from which all taxes due the Government may readily and accurately be ascertained and determined any time of the year. Corporations, companies, partnerships or persons whose gross annual sales, earnings, receipts or output **exceed Php3,000,000 shall have their books of accounts audited and examined yearly by independent Certified Public Accountants (CPAs)** and their income tax returns accompanied by a duly accomplished Account Information Form (AIF) which shall contain, among others, information lifted from certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding income therefrom and other relevant statements.

  Relative thereto, cooperatives registered under the Cooperative Development Authority (CDA) whose gross annual sales, earnings, or receipts do not exceed the above threshold of Php3,000,000 shall not be required to submit a Financial Statement (FS) audited by an independent CPA when renewing its application for CTE.

- This Circular shall take effect immediately.

RMC No. 49-2022 amends pertinent portions of the Q&A in RMC no. 24-2022 to align them with the provisions of the CREATE Act and its IRR.

RMC No. 49-2022 issued on 20 April 2022

To wit:

- Not only sales to registered export enterprises and domestic market enterprises (DMEs) within Ecozones and Freeport Zones are affected by the deferment of Revenue Regulations (RR) No. 9-2021. Hence Q & A No. 10 of RMC No. 24-2022 is revised to read as follows:

  Q10: RR No. 21-2021 was issued a few months after the issuance of RR No. 15-2021, which deferred the implementation of RR No. 9-2021. There is a possibility that the sales transactions covered in RR No. 9-2021 have been declared by the sellers as VAT zero-rated for the period 1 July 2021 up to 9 December 2021 or a day prior to the effectivity of RR No. 21, 2021 on 10 December 2021. What happens if these are not qualified for VAT zero-rating based on the provisions of the CREATE Act?

  A10: This is an instance where the non-retroactivity rule under Section 246 of the Tax Code, as amended, can be applied inasmuch as this will be prejudicial to the taxpayers affected. Hence, the said transactions that have been considered by the seller as VAT zero-rated shall still remain as VAT zero-rated for the period 1 July 2021 to 9 December 2021. However, for those affected taxpayers that have declared their transactions as subject to VAT, the options laid down in Q&A No. 8 and 9 may be followed.

  Entitlements of registered non-export locators (prior to the CREATE Act) or domestic market enterprises (DMEs as introduced in the CREATE Act) located in Ecozones and Freeport Zones differ if they are registered prior to or during the effectivity of the CREATE Act. Hence, Q & A No. 17 of RMC No. 24-2022 is revised to read as follows:

  Q17: What is the treatment on the sales by registered non-export locators or domestic market enterprises (DMEs) located in Ecozones and Freeport Zones?

  A17: The following rules shall apply to the DME's sale of goods and services:

  a. The seller is registered prior to CREATE:

     i. If the non-export locator is under the 5% Gross Income Tax (GIT) regime, the locator is a VAT-exempt entity; hence, shall treat its sales, whether inside the Ecozones or Freeport Zones as well as from the customs territory, as VAT-exempt only to the extent of the registered activity. The VAT passed on by its VAT-registered local suppliers shall form part of its cost or expenses.

     ii. If the non-export locator is under the Income Tax Holiday (ITH), sales to registered export enterprises are subject to VAT at zero-rate, provided the goods and services are directly and exclusively used in the latter's registered project or activity.

     iii. If the non-export locator is under the ITH, sales to non-export locators or DMEs within the Ecozones and Freeport Zones, as well as sales to enterprises from the customs territory are subject to VAT.

b. The seller is registered during the effectivity of CREATE:

i. Sales to registered export enterprises are subject to VAT at zero-rate, provided the goods and services are directly and exclusively used in the latter's registered project or activity.

ii. Sales to DMEs within the Ecozones and Freeport Zones, as well as sales to enterprises from the customs territory, are subject to VAT.

- The answers in Q & A Nos. 31 and 33 of RMC No. 24-2022 are revised to read as follows:

  Q31: What is required from the existing registered export enterprises that have already completed their ITH and are already under the 5% GIT or SCIT regime but remained as VAT-registered entity?

  A31: Registered export enterprises whose sales are generated only from the registered activity and have shifted from ITH to 5% GIT or the Special Corporate Income Tax (SCIT) regime shall, within two months from the expiration of their ITH, change their registration status from a VAT-registered entity to non-VAT. Likewise, registered export enterprises enjoying 5% GIT regime but are still VAT-registered at the time the CREATE Act took effect shall, within two months from the effectivity of this Circular, change their registration status to non-VAT. However, if the taxpayer has other activities other than those registered with the Investment Promotion Agency (IPA) that are subject to VAT (i.e., VAT at 12% and 0%), it shall remain as a VAT taxpayer and shall report the sales in the VAT returns as VATable, zero-rated and/or VAT-exempt, as the case may be.

  Q33: Is prior approval from the BIR needed to be secured by the local suppliers of goods/services of registered export enterprises in order for their sales to be accorded VAT zero-rating, as provided for under the CREATE?

  A33: Yes. Sections 294(E) and 295(D), Title XIII of the Tax Code, as implemented by Section 5, Rule 2 of the amended CREATE IRR emphasize that VAT zero-rating on local purchases shall only apply to goods and services directly and exclusively used in the registered project or activity of a registered export enterprise upon the endorsement of the concerned IPA, in addition to the documentary requirements of the BIR. It is therefore of paramount importance to validate whether the said requisites are duly complied with before availment of the VAT zero-rate incentive by the supplier of the registered export enterprise. Absence of prior approval from the BIR may result in the disallowance of the VAT zero-rated sale of the supplier. However, for sales transactions that are qualified for VAT zero-rating but failed to secure an approved application for VAT zero-rating with the BIR, prior application may not be required until 9 March 2022, or the effectivity of this RMC, subject, however, to the three documentary requirements enumerated in Q & A No. 37 hereof.

RMC No. 52-2022 dated 22 April 2022

RMC No. 52-2022 clarifies the filing and payment date of Franchise Tax and its corresponding Return for PAGCOR Licensees under RMC No. 32-2022.

- The 5% franchise tax is directly payable to the BIR, specifically to the concerned Revenue District Office (RDO) where the Licensee is registered, and that the Licensee shall remit the franchise tax to the BIR using BIR Form 2553 indicating the Alphanumeric Tax Code (ATC) OT 010.

- The BIR Form 2553 shall be filed and the corresponding franchise tax be paid within 25 days after the end of each taxable quarter.

RMC No. 61-2022 announces the expansion of the CBP to the DTI and additional LGUs in processing business registration, in relation to RMC No. 15-2021. New business taxpayers (single proprietors, corporations, and partnerships) can process their BIR registration online through CBP with its expansion.

RMC No. 61-2022 dated on 28 April 2022

The CBP is an online platform that aims to streamline and to integrate the business registration processes of the Securities and Exchange Commission (SEC), the DTI, the BIR, the Social Security System (SSS), the Philippine Health Insurance Corporation (PhilHealth), the Home Development Mutual Fund (HDMF, also known as Pag-IBIG Fund), and selected LGUs in Metro Manila. The CBP was developed in compliance with the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018" to establish a central system to receive applications and capture application data involving business-related transactions.

The following guidelines shall be observed by CBP applicants:

- Business taxpayers who registered with CBP may opt to pay their Annual Registration Fee (ARF) amounting to P500 and loose Documentary Stamp Tax (DST) of P30 either electronically or manually.

- Business taxpayers who pay online through various electronic payment (e-Payment) channels may immediately have their electronic Certificate of Registration (COR) with Quick Response (QR) Code be printed in A4 size bond paper thru CBP.

- The electronic COR issued by the CBP shall have the same purpose as the signed hard copy issued by the BIR and shall be posted together with the duly validated proof of payment of ARF at the principal place of business.

- Business taxpayers who opt to pay manually shall complete its business registration at the respective RDO by presenting the printed copy of the CBP generated documents, together with the following requirements:

    1. CBP Unified Form (Annex B1 for Corporations/Partnerships or Annex B2 for Sole Proprietors)
    2. Accomplished Tax Type Questionnaire (Annex C); and
    3. Pre-filled BIR form no. 0605 (Payment Form) (Annex D).

- All business taxpayers who registered in CBP shall proceed immediately to the RDO indicated in the electronic COR in order to complete the registration and buy BIR Printed Receipts/Invoices (BPR/BPI) or secure an Authority to Print (ATP) receipts/invoices before they can have their own receipts/invoices printed by BIR-Accredited Printers.

- Register books of accounts on or before the deadline for filing of the initial quarterly income tax return or the annual income tax return whichever comes earlier.

- Any correction on the required tax returns or tax types on the electronically issued COR from CBP shall require updates by the taxpayer with the concerned RDO. The RDO shall then review the registered tax and form types of the concerned business taxpayer in the BIR's Internal Revenue Integrated System - Taxpayer Registration System (IRIS-TRS), make necessary updates, if any, and replace the COR, if necessary, upon the issuance of BPR/BPI or ATP, whichever is applicable.

RMC No. 63-2022 clarifies the application of correct taxable base in the computation of excise tax for automobiles in the manufacturer's/ assembler's or importer's sworn declaration pursuant to Sections 4 and 5 of RR No. 25-2003, as amended.

RMC No. 63-2022 dated 21 April 2022

- The provisions of Sections 4 which was revised under RR No. 5-2018 (Sec. 3) is herein adopted, while Sec. 5 of RR No. 25-2003, is hereby amended to read as follows:

  "SEC. 4. RATES AND BASES OF THE AD VALOREM TAX ON

  AUTOMOBILES. There shall be levied, assessed and collected an ad valorem tax on automobiles based on the manufacturer's/ assembler's or importer's selling price, net of Excise and Value-Added Tax, in accordance with the following schedule:

Net Manufacturer's Price/Importer's Selling Price	Tax Rate
Up to Six Hundred Thousand Pesos (Php600,000.00)	4%
Over Six Hundred Thousand Pesos (Php 600,000.00) to One Million Pesos (Php 1,000,000.00)	10%
Over One Million Pesos 1,000,000.00) to Four Million Pesos (Php 4,000,000.00)	20%
Over One Million Pesos (Php 1,000,000.00) to Four Million Pesos (Php 4,000,000.00)	50%

  xxx xxx xxx

  SEC. 5. MANUFACTURER'S OR IMPORTER'S SELLING PRICE. – The net manufacturer's or importer's selling price shall refer to the price, net of Excise and Value-Added Taxes, at which locally manufactured/assembled or imported automobiles are offered for sale by the manufacturer/assembler or importer to the dealers, or to the public directly or through their sales agents, as reflected in the manufacturer's/assembler's or importer's sworn statement duly filed with the BIR, or in their sales invoices/official receipts, whichever is higher. Provided, that in computing the manufacturer's/assembler's or importer's selling price, it shall always include the value of car air conditioner, radio, mag wheels, including the cost of installation thereof whether or not the same were actually installed in the automobile. It shall include other accessories deemed necessary due to advancement on technology which were installed or for installation per sales agreement such as but not limited to: leather seats, air bags, cruise control, safe exit warnings, remote parking systems, live blind spot videos feeds, front back and overhead cameras, wireless smartphone connectivity and charging, emergency service/stolen vehicle tracking software, front and rear parking sensors, lane departure warnings, push button start, navigation system, airbags – basic and additional, etc. Provided, further, that in no case shall the manufacturer's/assembler's or importer's selling price be less than the amount computed as follows:

  80% x (Actual Dealer's Suggested Selling Price – Excise Tax – Value-Added Tax).

  Provided, furthermore, that the manufacturer's/assembler's or importer's selling price shall in no case be less than the cost of manufacture/assembly/ importation plus the industry profit margin of ten percent (10%) and other expenses incurred before the automobiles are sold to the market, provided, finally that the suggested retail price shall not be less than the actual selling price of the automobiles when sold to the market.

The value of other factory-installed accessory or optional equipment such as wheel covers, or any other attachment installed on the unit removed or sold, or previously removed and returned for purposes of installation thereof, as well as the costs of installation of the accessory, shall likewise form part of the manufacturer's/assembler's or importer's selling price. In cases where accessories are installed outside the production/assembly plant or after the release from the customs custody but before the actual sale of the imported automobile, as the case may be, the costs of such accessories and the cost of the installations shall form part of the expenses of the manufacturer/ assembler or importer, all subsequent billings therefor by the manufacturer/ assembler or importer to the dealer or customer shall form part of the selling price."

- Based on the provisions of Section 5 of this RMC, there are three primary taxable bases in applying the excise tax rates for automobiles, namely:

  1. Declared manufacturer's or importer's selling price, net of excise and value-added taxes;
  2. Based on the 80% actual dealer's price, net of excise and value-added taxes; and
  3. Based on the total cost of importation and expenses divided by 90%.

- The taxable bases are reflected in the Manufacturer's/Assembler's and Importer's Sworn Statement prescribed in Annex A of RMC No. 58-2003 where the Excise Tax shall be computed using the highest identified taxable base integrating the value of car air conditioner, radio and mag wheels including the cost of installation, as well as the value of other factory-installed accessory or optional equipment such as wheel covers, or any other attachment installed on the unit removed or sold, as the case may be.

- Sample scenarios were provided in the Circular to illustrate the required procedure in determining the tax base for Excise Tax and VAT computation. The different tax bases were reflected in the said scenarios depending on the circumstances of the case where computation must be made to arrive at the required values for selection of the highest value as the tax base for taxation purposes.

- No Authority to Release Imported Goods (ATRIG) shall be issued for the importation of automobiles without computing the three tax bases to clearly show that the excise tax was based on whichever is highest of the three values mandated under existing issuances. All issued ATRIGs shall be reconciled by Excise Large Taxpayer Field Operations Division (ELTFOD) with the removal per Excise Taxpayer's Removal Declaration (ETRD) and stock inventory per Official register Book (ORB). Said office shall also conduct product validation of the manufactured/imported/assembled automobiles registered with the Land Transportation Office (LTO) which mandatorily issues conduction sticker for automobiles. This is in accordance with the Monitoring, Supervision and Reporting of Excisable Products under Revenue Administrative Order (RAO) No. 2-2014, Large Taxpayer Service II. C.1-6.

Banks and Other Financial Institutions

Publication/Posting of Balance Sheet (BS) and Consolidated Balance Sheet (CBS)

Circular No. CL-2022-037 calls for the publication of banks' balance sheets and consolidated balance sheets.

Circular No. CL-2022-037 issued 18 April 2022

Pursuant to Section 61 of Republic Act No. 8791, a call is hereby made for the publication/posting of banks' Balance Sheets (Head Office, branches, and other offices) together with their Consolidated Balance Sheets (banks and their subsidiaries and affiliates), if applicable, as of 31 March 2022, in accordance with Section 175 of the Manual of Regulations for Banks (MORB) and Memorandum No. M-2020-073 dated 25 September 2020.

Publication/Posting of Statement of Condition and/or Consolidated Statement of Condition

Circular No. CL-2022-038 calls for the publication of Non-Bank Financial Institutions with Quasi-Banking Functions and/or Trust Authority's Statement of Condition.

Circular No. CL-2022-038 18 issued April 2022

Pursuant to Section 61 of Republic Act No. 8791, a call is hereby made for the publication of the institutions' Statements of Condition (Head Office, branches and other offices) side-by-side with their Consolidated Statements of Condition (parent institution and their subsidiaries and affiliates), if applicable, as of 31 March 2022, in accordance with Section 172-Q of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) for quasi-banks and Section 144-N of MORNBFI for trust entities.

The original and a copy of the Statement of Condition and/or Consolidated Statement of Condition, where applicable, shall be scanned and submitted in pdf format within 20 working days from the date of this Circular Letter at fssmail@bsp.gov.ph in accordance with Memorandum No. M-2021-036 dated 28 June 2021.

Copies of the Statement of Condition and Consolidated Statement of Condition, where applicable, as published, together with the publisher's certificate shall also be scanned and submitted in pdf format at fssmail@bsp.gov.ph within five working days from the date of publication.

Publication/Posting of Balance Sheet (BS)

Circular No. CL-2022-039 calls for the publication of Trust Corporations' Balance Sheet.

Circular No. CL-2022-039 issued 18 April 2022

Pursuant to Section 61 of Republic Act No. 8791, a call is hereby made for the publication of the institutions' Balance Sheet (Head Office, branches/other offices), as of 31 March 2022, in accordance with Section 134-T of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) and Memorandum No. M-2017-027 dated 11 September 2017.

Anti-Money Laundering Council (AMLC) Advisory dated 21 April 2022 on the List of Uncooperative Covered Persons

Circular No. CL-2022-043 disseminates the updated list of uncooperative covered persons.

Circular No. CL-2022-043 issued 2 May 2022

This is to disseminate to all BSFIs the AMLC advisory on the updated list of uncooperative covered persons, posted in its website on 21 April 2022 (copy attached), as follows:

- MG Universal Link Limited (MG Universal);
- Inner Strong Limited (Inner Strong);
- Smarc Group International Limited (Smarc);
- New Wave Infotech Ltd.;
- Shaw Global Leisure Limited; and
- Winherld Entertainment World Limited.

BSFIs are reminded to strictly observe the requirements under Part Nine of the Manual of Regulations (MOR) for Banks and MOR for NBFIs, particularly on customer due diligence, ongoing monitoring, and reporting of suspicious transactions, BSP Memorandum No. M-2018-0022 and Circular Letter No. CL-2021-0123, among others. These provide, among others, that BSFIs shall deal only with gambling and/or online gaming businesses that are authorized/licensed by or registered with the Appropriate Government Agency duly empowered by law or its charter to license or authorize entities or businesses to engage in such activities. Also, Section 3.2, Rule 4 of the Revised Implementing Rules and Regulations of the Anti-Money Laundering Act of 2001, as amended, requires all covered persons to register with the AMLC, which the Supervising Authorities shall prescribe as a requirement for continued licensing and/or operations of covered persons, and, when necessary, transacting with other covered persons.

Guidelines on the Submission of the Supplemental Capital Adequacy Ratio (CAR) Report on the Temporary Regulatory Relief on the Capital Treatment of Provisioning Requirements under the Philippine Financial Reporting Standard (PFRS) 9

Memorandum No. M-2022-022 provides guidelines on the submission of the supplemental CAR Report.

Memorandum No. M-2022-022 issued 20 April 2022

Pursuant to BSP Memorandum No. M-2022-002 dated 11 January 2022 on the Supplemental CAR Report on the Temporary Regulatory Relief on the Capital Treatment of Provisioning Requirements under the PFRS 9, the following submission guidelines shall be observed by covered BSFIs that will avail of the said temporary capital relief starting from the quarter-end reporting period subsequent to the date of notification to the Bangko Sentral of the BSFI's availment of the capital relief:

- **Submission Guidelines**

    1. All covered BSFIs shall use the Supplemental CAR Report Data Entry Templates (DET) and its corresponding Control Proof list (CP), which can be downloaded from www.bsp.gov.ph/ses/reporting_templates or may be directly requested from BSP-Department of Supervisory Analytics (DSA) through dsareports@bsp.gov.ph. In requesting the said files, covered BSFIs shall follow the prescribed format as the subject, [REQUEST] CAR_SRCP Template.

2. All covered BSFIs shall submit the Supplemental CAR Report (Solo and Consolidated bases) DET, and CP through the DSAReports@bsp.gov.ph within 15 banking days after end of reference quarter for solo basis and 30 banking days after end of reference quarter for consolidated basis.

3. All covered BSFIs shall apply the prescribed format for the subject:

   CAR_SRCP <space> BSFI Name, <space> Reference period in dd month name <space> ccyy

   Using the prescribed file naming convention, as illustrated below:

File	File Name	File Format
DET	CAR_SRCP-basis	xls
CP	CAR_SRCP-basis-CP	pdf

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

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

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

6. Queries regarding the electronic template of the Supplemental CAR Report and its mode and manner of submission shall be sent to the DSA via email to DSAReports@bsp.gov.ph following the prescribed format as the subject, [INQUIRY] CAR_SRCP

- **Important Reminders**

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

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

2. Report submissions that do not conform to the prescribed procedures shall not be accepted and will be considered non-compliant with the existing reportorial requirements subject to applicable penalties for late and/or erroneous submission under Sec. 171/172-Q (Sanctions on reports for non-compliance with the reporting standards) of the Manual of Regulations for Banks/Manual of Regulations for Non-Bank Financial Institutions.

Rural Bank Strengthening Program (RBSP)

Memorandum No. M-2022-023 circularizes the Rural Bank Strengthening Program.

Memorandum No. M-2022-023 issued 5 May 2022

The Monetary Board (MB), in its Resolution No.308 dated 5 March 2022, approved the Rural Bank Strengthening Program (RBSP) developed by the Interagency Working Group of the RBSPT (IAWG-RBSPI). The RBSP was developed to enhance the operations, capacity, and competitiveness of rural banks (RB) in view of their vital role in promoting countryside development and inclusive economic growth.

The RBSP is a structured program comprised of four key elements, namely: (i) strengthened capital base; (ii) holistic menu of five time-bound tracks; (iii) incentives and capacity-building interventions; and (iv) review and enhancements of existing regulations.

The RBSP shall be available for a period of three years from the date of issuance of this MAB.

Bureau of Customs

Rules and Regulations in the Implementation of the Electronic Customs Baggage and Currency Declaration (eCBCD) System

CMO No. 11-2022 provides the guidelines on the customs clearance process for all Travelers and Crew Members using the eCBCD System in relation to CAO No. 1-2017.

CMO No. 11-2022 dated 29 April 2022

- This CMO covers the operational procedure for the use of the eCBCD System for all Travelers and Crew Members arriving at or departing from all ports of entry and exit.
- **Electronic Customs Baggage and Currency Declaration (eCBCD)** System shall refer to a web portal that caters to the online Customs Baggage Declaration and Currency Declaration by Travelers and Crew Members.
- **Electronic Customs Baggage Declaration Form (eCBDF)** shall refer to the electronic form of the Customs Baggage Declaration Form in the eCBCD System prescribed by the Bureau of Customs (BOC) giving information or particulars required by Customs and any government agency.
- **Electronic Currency Declaration Form (eCDF)** shall refer to the electronic form of the Currency Declaration Form in the eCBCD System prescribed by the BSP to be filled-out by Travelers and Crew Members bringing in or out foreign currency in excess of US$10,000 or its equivalent in other foreign currency and other foreign-currency-denominated bearer monetary instruments, or bringing in or out legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding Php50,000.
- All arriving Travelers and Crew Members shall accomplish the eCBDF, including the eCDF, if applicable, in the eCBCD System before or upon arrival at all ports of entry.
- All departing Travelers and Crew Members intending to bring out foreign currency, as well as other foreign-currency-denominated bearer money instruments in excess of US$10,000 or its equivalent, or legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount exceeding Php50,000, shall accomplish the eCDF in the eCBCD System.

The copy of prior Authorization duly issued by the BSP shall be uploaded in the eCBCD System for Philippine currency and/or any Philippine monetary instrument.

- The eBCD System can be accessed by logging-in at htts://ideclare.customs.gov.ph or at designated eCBCD Kiosk at the Customs Arrival and Departure Area.
- A QR Code shall be generated after successful submission in the eCBCD System and shall be presented by the Traveler and Crew Member to the assigned Customs Officer at the Customs Arrival or Departure Area for validation and clearance.
- CMO 11-2022 shall take effect immediately.

(Editor's Note: CMO No. 11-2022 was received by Office of the National Administrative Register, UP Law Center on 5 May 2022)

Guidelines in the Issuance of Ammunition for Customs Personnel with BOC-issued Firearms

CMO No.12-2022 prescribes the ammunition allowance for each authorized BOC personnel and the procedures for replenishments.

CMO No.12-2022 dated 5 May 2022

- Under Section 3, the request for ammunition shall require concurrent approval by the Enforcement and Security Services (ESS), Director and Chief, CFEU-ESS.
- Replenishment of expended individual load shall be indorsed by the District Commander, and the request shall be addressed to the Director, ESS attention to the Chief, CFEU-ESS.
- The request shall be supported with the following documents signed by the respective District Commander:

    1. Name/s of authorized BOC personnel involved in the operation
    2. Date/time/place of operation
    3. Firearms used in the operation
    4. Types and quantity ammo expended during the operation

- This CMO shall take effect five days after publication in a newspaper of general circulation.

(Editor's Note: CMO No. 12-2022 was received by Office of the National Administrative Register, UP Law Center on 5 May 2022)

Information on the Pilot Implementation of the E2M Raw Materials and Liquidation System (RMLS) at the Port of Manila

OCOM Memo No. 56-2022 informs the stakeholders of the pilot implementation of the E2M RMLS at the Port of Manila.

OCOM Memo No. 56-2022 dated 19 April 2022

- The pilot implementation of the said system at the Port of Manila is on 2 May 2022.
- The E2M-RMLS has been integrated to the Automated Inventory Management System (AIMS).
- The system shall be applied to all goods declarations for warehousing or Warehousing Single Administrative Documents (WSAD) lodged in the E2M System.

SEC Memorandum, Circulars and Notices

SEC Notices

The SEC reiterated the requirement to submit reports through the eFAST.

SEC Notice dated 4 May 2022

The SEC reiterated that all registered corporations, both stock and non-stock, must enroll in the eFAST, previously called the Online Submission Tool (OST), to access and submit their annual reports. Over-the-counter submission through appointment and mail shall no longer be accommodated. Corporations may enroll their company account and one or more authorized filer/s through https://efast.sec.gov.ph. All reports submitted online shall be accepted only upon the approval of the enrollment in the eFAST.

Supreme Court Cases

Department of Finance (DOF), represented by its Secretary, and the Bureau of Internal Revenue (BIR), represented by its Commissioner, vs. Asia United Bank, et al., Supreme Court (Third Division) G.R. Nos. 240163 & 240168-69, promulgated 1 December 2021

Revenue Regulations No. 4-2011 is invalid. The CIR is empowered to interpret our tax laws but not expand or alter them.

Facts:

Th Secretary of Finance issued RR No. 4-2011, prescribing the rules on "proper allocation of costs and expenses amongst income earnings of banks and other financial institutions for income tax reporting purposes." RR No. 4-2011 provides that a bank may deduct only those costs and expenses attributable to the operations of its Regular Banking Units (RBU) to arrive at the taxable income of the RBU subject to regular income tax. Any cost or expense related with or incurred for the operations of its Foreign Currency Deposit Units (FCDU)/Expanded Foreign Currency (EFCDU) or Offshore Banking Unit (OBU) are not allowed as deduction from the RBU's taxable income. To compute for the amount allowable as deduction from RBU operations, all costs and expenses should be allocated between the RBU and FCDU/ EFCDU or OBU by way of: (1) specific identification, and (2) allocation.

Asia United Bank and other banks (collectively referred to as "Respondent banks") disputed RR No. 4-2011 with the Regional Trial Court (RTC). The RTC ruled in favor of the Respondent banks and ruled that RR No. 4-2011 is invalid, on which basis the DOF and the BIR appealed to the Supreme Court.

Issue:

Is RR No. 4-2011 valid?

Ruling:

No, RR 4-2011 is invalid. The BIR expanded or modified the law when it curtailed the income tax deductions of the Respondent banks and when it sanctioned the method of accounting that the Respondent banks should use without any basis found in the Tax Code.

Specifically, the Supreme Court cited the following basis for the invalidity of RR No. 4-2011:

1. RR No. 4-2011 contravenes Section 43 of the Tax Code. The Tax Code provides the general rule for taxpayer's accounting periods and methods of accounting. It states that taxpayers are allowed to self-determine the most applicable accounting method. The CIR may only prescribe an accounting method if any of the following conditions exist: (a) no accounting method has been employed by the taxpayer; or (b) while an accounting method has been employed, it does not clearly reflect the income of the taxpayer.

   In this case, the conditions under Section 43 of the Tax Code are not present. There is no showing that banks and financial institutions have not employed an accounting method, or that the accounting method employed do not reflect said banks and financial institutions' true income. Thus, the allocation rules under RR 4-2011 are arbitrary and indiscriminate impositions of a uniform accounting method as they dictate the amount that banks may reflect as deductions and taxable income.

2. RR No. 4-2011 unduly expands Section 50 of the Tax Code. Section 50 of the Tax Code authorizes the allocation of expense deductions if the CIR determines that such allocation is necessary in order to prevent evasion of taxes or clearly reflect the income of any such organization, trade, or business. Furthermore, Section 50 of the Tax Code is limited only to allocating expense deductions between two or more corporations, trades or businesses. In this case, RR No. 4-2011 was issued to provide for an allocation method for different units or income streams within one bank or financial institution. Section 50 cannot be invoked as basis for RR No. 4-2011 to require the allocation of costs and expenses among different units or income streams within a bank or a single business unit thereof.

3. RR No. 4-2011 impairs the taxpayers' right to claim deductions under Section 34 of the Tax Code. In issuing the said RR, which requires the aforesaid allocation of costs and expenses of banks with respect to its RBU and FCDU/EFCDU or OBU operations and as to its "tax paid income" and "tax exempt income" activities, the DOF and the BIR effectively imposed an additional requirement for deductibility of expenses which is not provided under the Tax Code. RR No. 4-2011, therefore, effectively qualified the deduction bestowed by the Tax Code, thereby modifying the law.

4. RR No. 4-2011 was issued in violation of due process requirements. Considering the burden imposed by RR No. 4-2011, the requirements of notice, hearing, and publication should have been strictly observed.

Republic of the Philippines represented by the Bureau of Internal Revenue vs. First Gas Power Corporation
Supreme Court (First Division) G.R. No. 214933, promulgated 15 February 2022

Failure to indicate the BIR's date of acceptance shall invalidate a waiver. Failure to indicate the specific date or period within which tax liabilities should be paid renders a Formal Assessment Notice invalid.

Facts:

First Gas Power Corporation (FG Corp.) was subjected by the BIR to a tax audit for taxable years 2000 and 2001, for which PANs were issued by the BIR for tax period 2000 and 2001. During all of this, FG Corp. executed three waivers of the defense of prescription under the statute of limitations.

FG Corp. likewise filed protest letters to dispute the FAN/FLD, which were also denied by the BIR. Upon appeal, the CTA cancelled the BIR's assessments on the basis that the waivers issued by FG Corp. are defective, the FAN/FLD are not valid because these did not indicate the specific date or period within which the tax liabilities should be paid by FG Corp.

The BIR is now appealing the CTA's decision cancelling the assessments

Issues:

1. Were the waivers issued by FG Corp. validly executed?
2. Are the FAN/FLD valid even if no date was indicated for the payment of the tax liabilities?

Ruling:

1. No, the waivers executed by FG Corp. are not valid because the date of acceptance by the taxpayer is not indicated.

   Revenue Memorandum Order No. 20-90 and Revenue Delegation Authority Order No. 05-01 clearly mandate that the date of acceptance by the BIR should be indicated in the waiver.

   Thus, in this case, failure to indicate the date of acceptance by the BIR in the first waiver means that the same is defective, and therefore the original three-year-period to assess the deficiency income tax of respondent for the taxable year 2000 was never extended. Consequently, the two subsequent waivers were also invalid because the original period was not extended and had already lapsed.

2. No, the FAN/FLD are not valid because the FAN did not indicate when the payment of deficiency taxes should be due. The Supreme Court has previously ruled that a FAN is not valid if it does not contain a definite due date for the payment of the taxpayer. In this case, the due date in each of the FAN was left blank. Clearly, the FAN did not contain a definite due date and actual demand to pay. Thus, both FAN and FLD were infirm and void.

Asian Transmission Corporation vs. Commissioner of Internal Revenue, Supreme Court (Second Division) G. R. No. 230861, promulgated 14 February 2022.

As a general rule, a waiver of statute of limitations in taxes that did not comply with the requisites for validity is invalid and ineffective to extend the prescriptive period to assess deficiency taxes. However, as an exception to the rule, waivers could be treated as an exemption and valid for the reason that the parties are in pari delicto or "in equal fault."

Facts:

Asian Transmission Corp. ("ATC") was subjected by the Bureau of Internal Revenue (BIR) to tax audit for taxable year 2002. In the course of the tax audit, ATC executed several waivers of the defense of prescription under the statute of limitations. The BIR subsequently issued a Formal Letter of Demand from the BIR, assessing it of deficiency Withholding Tax on Compensation, Expanded Withholding Tax, and Final Withholding Tax, which ATC protested. The BIR denied the protests.

Upon appeal to the Court of Tax Appeals (CTA), the CTA in Division cancelled the assessments against ATC on the ground that the waivers are invalid. Upon appeal, the CTA *En Banc* reversed the Division ruling and upheld the validity of the waivers. This decision was upheld by the Supreme Court, where it identified the following defects in the waiver: (1) the notarization of the waivers were not in accordance with the 2004 Rules on Notarial Practice; (2) several waivers failed to indicate the date of the BIR's acceptance; (3) the waivers were not signed by the proper revenue officer; (4) the waivers failed to specify the type of tax and the amount of tax due.

The Supreme Court initially ruled that both ATC and the BIR are at fault in so far as the waivers are concerned. Moreover, ATC benefited from the waivers and is now estopped from assailing the validity.

ATC filed a Motion for Reconsideration with the Supreme Court.

Issue:

Can the waivers be set aside and the assessment against ATC be upheld due to the defects in the waivers?

Ruling:

No, the waivers should be allowed to stand and the assessment against ATC must be upheld.

The defects noted in the waivers of ATC were not solely attributable to the BIR. While Revenue Delegation Authority Order (RDAO) No. 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO No. 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the BIR.

Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide ATC the sufficient time to gather and produce voluminous records for the audit. It would be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse.

Commissioner of Internal Revenue (CIR) vs. Pueblo de Oro Development Corporation
CTA EB No. 2303 promulgated 18 April 2022

"SEC. 13. Authority of a Revenue Officer. - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself."

The BIR shall conduct a post-audit/ review of the dockets bearing on ITH incentive availment endorsed by the BOI\BOI/ARMM prior to the end of the prescriptive period provided under Section 203 of the Tax Code, as amended, through the Assessment Service in the BIR National Office.

Facts:

On 12 April 2013, Company A filed its 2012 Income Tax Return (ITR).

On 27 January 2016, CIR issued a Preliminary Assessment Notice (PAN), assessing Company A for deficiency income tax, inclusive of interest and penalties, for taxable year 2012, in the total amount of Php33,814,119.24.

On 22 February 2016, CIR issued a Formal Letter of Demand (FLD) dated 22 February 2016, reiterating Company A's deficiency income tax, inclusive of interest and penalties, for taxable year 2012 in the total amount of P33,814,119.24, attaching therewith the Details of Discrepancy.

On 29 March 2016, Company A filed with the BIR Large Taxpayer's Division Office its protest letter dated 21 March 2016.

On 12 May 2016, Company A received a FDDA dated 4 May 2016, substantially upholding the deficiency income tax assessment against Company A, in the amount of Php35,284,993.00, inclusive of interest and penalties, with attached Details of Discrepancy and Audit Result/Assessment Notice dated 4 May 2016.

On 9 June 2016, Company A filed with the office of CIR the letter dated 9 June 2016, requesting for the reconsideration and eventual cancellation/withdrawal of the FDDA against Company A on the ground that said FDDA is null and void, and the corresponding deficiency income tax assessment lacks factual and legal bases.

On 22 February 2017, Company A received CIR's FDDA dated 21 February 2017, with attached Details of Discrepancy and Audit Result/Assessment Notice also dated 21 February 2017, reiterating the ruling in FDDA dated 4 May 2016.

On 24 March 2017, Company A filed the instant Petition for Review before the Court and the case was raffled to the Second Division of the Court.

On 12 December 2019, the Court in Division rendered the Assailed Decision. The instant Petition for Review is Granted. Accordingly, CIR's FDDA dated 21 February 2017 and the FDDA dated 4 May 2016 issued by the Assistant Commissioner are reversed and set aside. Moreover, the Audit Result/ Assessment Notice dated 4 May 2016 and the notice dated 21 February 2017, attached to the said FDDAs, respectively, are cancelled and set aside.

On 17 January 2020, Company A filed his Motion for Reconsideration on the Assailed Decision, which was denied for lack of merit by the Court in Division in a Resolution, dated 1 July 2020.

On 22 July 2020, Company A filed a Motion for Extension of Time to File Petition for Review which the Court *En Banc* granted through a Minute Resolution (dated 28 July 2020).

On 18 August 2020, Company A filed the instant Petition.

Issues:

A. Is relying only on the BOI's results of its review regarding the Company A's ITH incentive in 2012 enough for the CIR to issue PAN, FLD/FAN, and the FDDA?

B. Is the deficiency income tax assessment valid?

Ruling:

A. No. The Court resolves to Deny the Petition for lack of merit.

   The CIR should make an independent audit of investigation of the facts relevant to an assessment before issuing assessment notices.

   In fact, CIR acknowledged that he simply adopted the findings by the BOI as his basis for issuing an assessment against Company A without verifying the same. This is an apparent violation of Company A's right to due process.

In Ang Tibay v. The Court of Industrial Relations, this Court observed that although quasi-judicial agencies 'may be said to be free from the rigidity of certain procedural requirements [, it] does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.

The following fundamental requirements of due process must be respected in administrative proceedings:

(l) The party interested or affected must be able to present his or her own case and submit evidence in support of it.
(2) The administrative tribunal or body must consider the evidence presented.
(3) There must be evidence supporting the tribunal's decision.
(4) The evidence must be substantial or 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'
(5) The administrative tribunal's decision must be rendered on the evidence presented, or at least contained in the record and disclosed to the parties affected.
(6) The administrative tribunal's decision must be based on the deciding authority's own independent consideration of the law and facts governing the case.
(7) The administrative tribunal's decision is rendered in a manner that the parties may know the various issues involved and the reasons for the decision.

The second to the sixth requirements refer to the party's 'inviolable rights applicable at the deliberative stage.' The decision-maker must consider the totality of the evidence presented as he or she decides the case.

The BOI's findings cannot serve as a substitute for an actual examination and investigation that CIR should have conducted to ascertain the amount of Company A's revenue or income not entitled to ITH for the purposes of issuing the PAN, FLD/FAN, and FDDA.

In fact, a Memorandum of Agreement between the BOI, the BOI Autonomous Region of Muslim Mindanao ("BOI-ARMM"), and the BIR that was executed on 1 March 2007 ("MOA") required the BIR to conduct an audit of ITH incentives issues raised by the BOI/BOI-ARMM.

Given this, when CIR issued the PAN, FLD/F AN, and the FDDA without even conducting an actual audit of Company A's books of accounts and other accounting records to ascertain the amount of revenue or income not entitled to ITH, CIR did not only violate Company A's due process rights guaranteed in proceedings but his own duties under the MOA.

B. No. The Court ruled that the deficiency income tax assessment issued against Company A is null and void.

As the CIR merely relied on the BOI's results of its review regarding Company A's ITH incentive in 2012, there was a violation of Company A's right to due process as to the findings of the said amounts of revenues or income not entitled to ITH.

The Court further noted that the result of CIR's failure to conduct an actual audit or investigation is the CIR's failure to properly authorize the revenue officers whose efforts lead to the issuance of the PAN, FAN/FLD, and FDDA. Letter of Authority (LOA) is the most important requirement for the validity of a tax assessment.

An LOA is an instrument of due process for the protection of taxpayers. It guarantees that tax agents will act only within the authority given them in examining a taxpayer.

Under Sections 6 (A) and 13 of the NIRC, it is clear that revenue officers who will perform assessment functions must first be authorized to do so. This would allow such revenue officer to examine or investigate a taxpayer's books of accounts for purposes of ascertaining the tax liability.

As considered by the High Court recently in Commissioner of Internal Revenue v. McDonald's Philippines Realty Corp., "Due process requires that taxpayers must have the right to know that the revenue officers are duly authorized to conduct the examination and assessment, and this requires that the LOAs must contain the names of the authorized revenue officers. In other words, identifying the authorized revenue officers in the LOA is a jurisdictional requirement of a valid audit or investigation by the BIR, and therefore of a valid assessment."

As duly found by the Court in Division and verified by the Court *En Banc*, the revenue officers whose efforts led to the issuance of the PAN, FAN/FLD, and FDDA did not have a valid LOA. They clearly had no authority to issue an assessment against Company A. Thus, the deficiency income tax assessment issued against Company A is null and void.

Commissioner of Internal Revenue vs. Ma. Jethra B. Pascual
CTA EB No. 2400, promulgated 5 May 2022

A benefit under the Retirement Plan despite its erroneous designation as "retirement pay" is not taxable if a person received the same as a consequence of redundancy and not due to retirement.

Facts:

Person M was an employee of Company D from 1995 until 2014 when her employment was officially terminated due to redundancy. At the time of her employment's termination, she was 46 years old. Person M was given a severance package. As part of said package, Company D gave Person M her separation pay and retirement pay, among others. Aside from her compensation income from Company D, Person M also received income from her laundry business and lease of real property to Company T. Person M did not receive any income from her laundry business in 2014 but had received income from Company T from which the latter already withheld taxes.

For her mixed income, Person M filed her Income Tax Return (ITR) to report the income which she had received in 2014 from Company D and Company T. After adjustments, Person M's ITR reflected a refundable income tax on taxes withheld by Company D amounting to Php7,897,158.00.

Person M filed an Application for Issuances of Tax Credits/Refunds and sent a claim for refund to the BIR requesting a refund of the taxes erroneously withheld and remitted by Company D. Due to the BIR's inaction on Person M's claim, the latter filed a Petition for Review which was denied. Aggrieved, Person M filed a Motion for Reconsideration which was also denied by the Court in Division. Hence, this Petition.

Issue:

Is Person M entitled to claim tax refund?

Ruling:

Yes. To the Court's mind, the BIR focuses too heavily on the benefit's designation as "retirement pay" that it ignores the ultimate reason why such benefit was awarded to Person M in the first place. It is undisputed that Person M lost her employment due to redundancy in accordance with Article 283 of the Labor Code.

The taxability of separation benefits is governed by Sec 32(B)(6)(b) of the National Internal Revenue Code ("NIRC"), which states that any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee.

Person M was dismissed by reason of redundancy. Clearly, the benefit that accrued in Person M's favor under the retirement plan was a consequence of her separation from Company D, only that the amount of her separation pay, in this case, was computed consistent with the values used for computing a retirement pay.

It becomes evident that Company D committed the mistake of considering the benefit given to Person M as retirement pay and thus, subjecting it to withholding tax. Person M's benefit under the Retirement Plan despite its erroneous designation as "retirement pay" is not taxable since she received the same as a consequence of redundancy and not due to her retirement.

Tax Amnesty/Other

Mega Ricton Commercial and Industrial Corporation, Faith in God RPM Professional and Technical Corporation, and Mayel V. Villaceran vs. Bureau of Internal Revenue
CTA Case No. 10398, promulgated 13 April 2022

Mandamus may be defined as a command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to some inferior court, tribunal or board or to some corporation of person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law. It is a remedy available to compel the doing of an act specifically enjoined by laws as a duty.

Facts:

The BIR issued an LOA to Company M, Company F and Ms. V for taxable year 2017. It then issued Subpoena Duces Tecum (SDT) through its Regional Directors. Criminal complaints were allegedly lodged against Company M, Company F and Ms. V for failure to submit the required documents under the Subpoena.

In 2019, Ms. V filed a Request for Signature for the Urgent Action of President Rodrigo R. Duterte while Company M and Company F both filed a Request for CTD-Release and Request for APF-Signature in 2020.

On 10 November 2020, Company M, Company F and Ms. V filed a petition to the Court to mandate the BIR to issue Certificate of Tax Delinquencies (CTDs) and Acceptance Payment Forms (APFs) due to its inaction on the above requests.

Company M and F have a common stand that they have a clear legal right to be issued their respective CTDs and APFs because Section 17(b) of Republic Act (RA) No. 11213, otherwise known as the "Tax Amnesty Act", qualifies them to avail of the tax amnesty even if there is no assessment.

Issue:

Can Company M, Company F and Ms. V avail of the tax amnesty for 2017 tax liabilities which are the subject of investigation pursuant to an LOA?

Ruling:

No. Company M, Company F and Ms. V do not have legal rights to be issued CTDs and APFs because they are not qualified to avail of the tax amnesty. To qualify, the tax liabilities must be delinquent accounts prior to the effectivity of RR 4-2019.

BIR RMC No. 57-2019 states that if the assessment notices pertain to penalties only (i.e., without basic taxes assessed), the taxpayer can avail of the tax amnesty if the penalties pertain to taxable year 2017 and prior years and the assessment notices have become final and executory on or before 24 April 2019. However, since the required tax amnesty amount is based on the basic tax assessed, there shall be no amount due for payment.

Further, in availing of the tax amnesty applicants must submit the following:

(1) Complete and accurately accomplished and made under oath Tax Amnesty Return (TAR);

(2) Duly validated or stamped "received" APF with bank deposit slip by the Authorized Agent Bank (AAB) or Revenue Official Receipt (ROR) issued by the Revenue Collection Officers (RCOs); and

(3) Certificate of Tax Delinquencies/Tax Liabilities issued by the concerned BIR offices.

Since all three were not presented as evidence, Company M, Company F and Ms. V failed to comply with the tax amnesty requirements. As the investigation pursuant to the letter of authority was still ongoing, the tax liability cannot be considered as a delinquent account and therefore cannot be the subject of tax amnesty on delinquencies.

Lastly, in availing of mandamus, it must be found to have no other plain, speedy and adequate remedy in the ordinary course of law before any tribunal, corporation, board, office or person. Based on the evidence presented it appears that Company M, F and Ms. V have the option to submit the necessary documents for the conduct of tax examination by the respective ROs which could preclude the filing of the case in court and determine if indeed there will be any deficiency tax liabilities on their part. Rendering mandamus, in this case, as not applicable.

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

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