

# Tax Bulletin

November 2022

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and enable businesses for a better Philippines.

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## Table of contents

<b>I. BIR Administrative Requirements</b>	<b>Page number</b>
Revenue Regulation (RR) No. 14-2022 provides the rules and regulations in implementing Republic Act (RA) No. 11900, relative to the importation, manufacture, sale, packaging, distribution, use, and communication of Vaporized Nicotine and Non-Nicotine Products, and Novel Tobacco Products (Subject Products).	<b>4</b>
Revenue Memorandum Circular (RMC) No. 138-2022 provides the List of BIR Official Social Media Accounts being managed by the Primary Social Media Team and Sub-Social Media Teams of the Bureau.	<b>9</b>
RMC No. 141-2022 informs eBIRForms users/filers on the revised contents of the eBIRForms email notification or the Tax Return Receipt Confirmation.	<b>10</b>
RMC No. 142-2022 publishes the full text of Department of Trade and Industry (DTI) Memorandum Circular No. 22-19, s. 2022 dated 18 October 2022, prescribing the guidelines on the transfer of Registered Business Enterprises (RBEs) in the Information Technology Business Process Management (IT-BPM) sector from their concerned Investment Promotion Agency (IPA) administering economic or Freeport zone to Board of Investments (BOI).	<b>10</b>
RMC No. 143-2022 provides further clarification and guidelines to several issues in the implementation of RR No. 13-2022 relating to the tax treatment of equity-based compensation granted by employers to its employees.	<b>11</b>
RMC No. 146-2022 prescribes the availability of TIN Verification/Validation, RDO Finder and eComplaint Facility in the BIR Chatbot (Revie).	<b>13</b>
<b>II. Banks and Other Financial Institutions</b>	
<b>Advanced Suptech Engine for Risk-based Compliance (ASTERisC*) Rollout</b>	
Memorandum No. M-2022-045 states the Bangko Sentral ng Pilipinas (BSP) implements the Advanced <i>Suptech</i> Engine for Risk-based Compliance or ASTERisC* effective 01 January 2023.	<b>14</b>
<b>Frequently Asked Questions on the Amendments to the Regulations on Outsourcing and IT Risk Management</b>	
Memorandum No. M-2022-046 offers additional FAQs in relation to the previously issued Circular No. 1137, which tackles amendments on the regulations pertaining to Outsourcing and IT Risk Management. The issued FAQs aims to provide additional guidance and clarification on the implementation of the said Circular.	<b>15</b>
<b>Templates for Merger and Consolidation of Banks</b>	
Memorandum No. M-2022-047 states the templates listed in Annex A of the memorandum serves to guide or assist banks in their merger and consolidation applications and help them comply with the documentary requirements in the Harmonized List of Requirements of the Streamlined Procedures for Applications for Mergers, Consolidations and Acquisitions of Banks, or Section 104 and Appendix 90 of the MORB.	<b>16</b>
<b>Bank of Commerce - Upgrade of the License to Operate from a Commercial Bank into a Universal Bank</b>	
Circular Letter No. CL-2022-077 states that the Monetary Board, in its Resolution No. 1798 dated 23 December 2021, approved the application of Bank of Commerce (BOC) to upgrade its banking license from a commercial bank to a universal bank under the same corporate name.	<b>16</b>

<b>Guidelines on Recovery Plan of Banks</b>	
Circular No. 1158 states that the Monetary Board, in its Resolution No. 1506 dated 13 October 2022, approved the amendments to the guidelines governing the submission of recovery plans of banks as well as the prudential measures under the Internal Capital Adequacy Assessment Process (ICAAP) and Supervisory Review Process.	<b>16</b>
<b>Implementing Rules and Regulations of the Mandatory Agriculture, Fisheries and Rural Development Financing under RA No. 11901 or "The Agriculture, Fisheries and Rural Development Financing Enhancement Act of 2022"</b>	
Circular No. 1159 states that The Monetary Board, in its Resolution No. 1542 dated 21 October 2022, approved the rules and regulations governing the mandatory agriculture, fisheries and rural development financing under RA No. 11901, otherwise known as "The Agriculture, Fisheries and Rural Development Financing Enhancement Act of 2022."	<b>18</b>
<b>III. Bureau of Customs</b>	
<b>Circulation of DTI Memorandum Circular No. 22-19 on the Guidelines on the Registration with the BOI of Existing RBEs in the IT-BPM Sector by virtue of FIRB Resolution No. 026-22</b>	
Customs Memorandum Circular (CMC) No. 153-2022 circularizes Department of Trade and Industry (DTI) Memorandum Circular (MC) No. 22-19, s.2022 which provides for the guidelines on the registration with the Board of Investments (BOI) of existing Registered Business Enterprises (RBES) in the Information Technology and Business Process Management (IT-BPM) Sector by virtue of Fiscal Incentives Review Board (FIRB) Resolution No. 026-22 dated 14 September 2022.	<b>18</b>
<b>Supplemental Provisions to Customs Memorandum Order (CMO) No. 24-2021 RE: Rules and Regulations on the Disposition of Forfeited and Abandoned Goods through Condemnation and Revisions on Order of Condemnation</b>	
Customs Memorandum Order (CMO) No. 28-2022 provides for the supplemental provisions and revisions to CMO No. 24-2021 which pertains to the Rules and Regulations implementing Customs Administrative Order (CAO) No. 3-2020 on the disposition of forfeited and abandoned goods through condemnation and revisions on the Order of Condemnation.	<b>19</b>
<b>IV. PEZA</b>	
PEZA Memorandum Circular No. 2022 - 067 provides the Guidelines on the Registration with the BOI of the existing RBES in the IT-BPM Sector under DTI MC No. 22-19.	<b>19</b>
PEZA Memorandum Circular No. 2022 - 070 provides Supplemental Guidelines on the Registration with the BOI of Existing RBES in the IT-BPM Sector Under DTI MC No. 22-19.	<b>20</b>
<b>V. SEC Filing, Payments and Other Deadlines</b>	
The SEC Notice clarifies the penalties applicable to inaccurate, incomplete false or misleading information contained in reportorial requirements submitted through e-FAST.	<b>21</b>
The SEC notifies the public that all formats of the Philippine Identification System (PhilSys) digital ID, included printed ePhilID, will be accepted as valid and sufficient proof of identity and age, subject to authentication.	<b>21</b>

## VI. Court of Tax Appeals

### Assessment

In determining the validity of the assessment, what is crucial is the definiteness of the amount indicated in the Final Assessment Notice (FAN) with respect to the deadline or due date provided. If the Final Demand on Disputed Assessment (FDDA) satisfies substantially both requirements, then the FDDA could not be wanting nor can the assessment be deemed as void. While it is true that the computation of interest may not yet appear definite, the same is only logical as BIR could not reasonably be expected to know or foresee when the taxpayer will actually settle the tax obligation.

21

## BIR Administrative Requirements

RR No. 14-2022 provides the rules and regulations in implementing RA No. 11900, relative to the importation, manufacture, sale, packaging, distribution, use, and communication of Vaporized Nicotine and Non-Nicotine Products, and Novel Tobacco Products (Subject Products).

### RR NO. 14-2022 dated 24 October 2022

#### ► Tax Rates and Bases

##### Excise Taxes

Below are the tax rates and bases of excise taxes on Vaporized Nicotine and Non-Nicotine Products:

##### Heated Tobacco Products

Date of Effectivity	Quantity	Excise Tax
1 January 2020	Per pack of 20 units or any packaging combinations of not more than 20 units	Php 10.00
23 January 2020		Php 25.00
1 January 2021		Php 27.50
1 January 2022		Php 30.00
1 January 2023		Php 32.50
2024 Onwards		Specific tax rate shall be increased by 5% every year effective 1 January 2024

##### Vapor Products

#### 1. Nicotine Salt or Salt Nicotine

Date of Effectivity	Quantity	Excise Tax
23 January 2020	Per milliliter or a fraction thereof	Php 37.00
1 January 2021		Php 42.00
1 January 2022		Php 47.00
1 January 2023		Php 52.00
2024 Onwards		Rate shall be increased by 5% every year effective 1 January 2024

2. Conventional “Freebase” or “Classic” Nicotine

Date of Effectivity	Quantity	Excise Tax
23 January 2020	Per 10 milliliters or a fraction thereof	Php 45.00
1 January 2021		Php 50.00
1 January 2022		Php 55.00
1 January 2023		Php 60.00
2024 Onwards		Rate shall be increased by 5% every year effective 1 January 2024

Novel Tobacco Products

Date of Effectivity	Quantity	Excise Tax
10 August 2022	Per kilogram	Php 2.50
1 January 2023		Php 2.60
2024 Onwards		Rate shall be increased by 4% every year effective 1 January 2024

Inspection Fees

PRODUCT	INSPECTION FEE	UNIT OF MEASURE
Heated Tobacco	Php 0.10	1,000 sticks
Vapor Products	Php 0.01	1 ml
Novel Tobacco Products	Php 0.03	1 kg

► **Compliance and Administrative Requirements**

**Registration of Business as Manufacturer or Importer of Vaporized Nicotine and Non-Nicotine Products and Novel Tobacco Products**

- Any person or entity who desires to engage in business as a **manufacturer** or **importer** shall, before the start of the business operations, be required to register with the Excise LT Regulatory Division (ELTRD) BIR National Office as an excise taxpayer.
- Applicant shall file a written application for the Permit addressed to the Commissioner of Internal Revenue, Attention: Chief, ELTRD, together with the following supporting documents:
  1. Certificate of Registration (COR) issued by the Securities and Exchange Commission (SEC), together with Articles of Incorporation/Partnership and By-Laws, for corporation or partnership, or COR issued by the Department of Trade and Industry (DTI), for individuals;
  2. Mayor's Permit issued by the concerned Local Government Unit;
  3. BIR Certificate of Registration (BIR Form No. 2303) including Registration Fee (BIR Form No. 0605);
  4. Latest copy of Income Tax Return duly filed and received by the BIR, if applicable;
  5. Importer/Manufacturer's Surety Bond with an initial coverage of Php 100,000.00; and

6. Location map, and plat and plan of the Production Plant/Warehouse, and if manufacturer, the blueprint.

**Assessment Numbers of Manufacturers and Importers**

- ▶ Permits shall be assigned assessment numbers

Administrative Schedule	Paragraph	Description
A	8	Manufacturer of Heated Tobacco Products
A	8(l)	Importer of Heated Tobacco Products
A	9	Manufacturer of Vapor Products
A	9(l)	Importer of Vapor Products
A	10	Manufacturer of Novel Tobacco Products
A	10(l)	Importer of Novel Tobacco Products
TM	8	Toll-Manufacturer of Heated Tobacco Products
TM	9	Toll-Manufacturer of Vapor Products
TM	10	Toll-Manufacturer of Novel Tobacco Products

Month Issued                    2 numeric  
 Year Issued                      2 numeric  
 Sequence Number               4 numeric

**Registration of Brands and Variants**

- ▶ Prior to the initial manufacturing, importation, or exportation of brands of the Subject Products, an application for the registration of the brand shall be filed with ELTRD together with the following documents:
  1. Manufacturer’s or importer’s Sworn Statement; and
  2. Three copies of exact replica of the proposed labels, packages and/or containers and artwork of the secondary containers (e.g., cartons, boxes) of the brand with graphic health warning sign in compliance with the Graphic Health Warnings Law under RA No. 10643 and related regulations
- ▶ All proposed labels, packages and/or containers as well as the artwork of the secondary containers of the brand of the said tobacco products shall be pre-approved by the BIR. Otherwise, it shall be a ground for confiscation or seizure by the BIR.

### **Manufacturer's or Manufacturer's or importer's Sworn Statement**

- ▶ Every local manufacturer or importer of the Subject Products shall submit a duly notarized manufacturer's or importer's Sworn Statement for said products showing among others, the following information:
  1. Name, address, TIN and assessment number of the manufacturer or importer;
  2. Complete root name of the brand as well as the complete brand name with modifiers, if any;
  3. Complete specifications of the brand detailing the specific measurements, weights, manner of packaging, etc.;
  4. Name(s) of the region(s) where the brand is/are to be marketed;
  5. Wholesale price per case, gross and net of VAT and Excise Tax;
  6. Suggested retail price, gross and net of VAT and Excise Tax, per pack, per pod, or per bottle/container, as the case may be;
  7. Detailed production/importation costs and all other expenses incurred or to be incurred until the product is finally sold (e.g., material, labor, overhead, selling, and administrative expenses) per case;
  8. Applicable Excise Tax rates; and
  9. Corresponding Excise and Value-Added Taxes per pack, per pod, or per bottle/container.
- ▶ An updated sworn statement on or before the end of the months of June and December of the year.
- ▶ If there is any change in the cost to manufacture, produce and sell the brand or change in the actual selling price of the brand, an updated sworn statement shall be submitted at least five days before the actual removal of the product from the place of production or release from the Custom's custody.

### **Manufacturer's or importer's Surety Bond**

- ▶ Initial bond of Php100,000.00
- ▶ After six months of operation, if the amount of initial bond is less than the amount of the total Excise Tax paid during the said period, the amount of the bond shall be adjusted to twice the tax actually paid for the period.
- ▶ For the succeeding years of operation, bond shall be based on the actual total excise tax paid during the year immediately preceding the current year.
- ▶ For taxpayers availing of the tax prepayment, advance deposit, or similar schemes, the amount of bond shall be in accordance with the schedule provided by RR No. 14-2022.

### **Application for Electronic Authority to Release Imported Goods (eATRIG)**

- ▶ The application shall be done online and processed in the ELTRD, BIR-National Office. The Chief of ELTRD shall be the designated approving officer.
- ▶ No ATRIG shall be issued in case the imported products are already released from the Customs' custody.
- ▶ No subsequent application for ATRIG shall be processed unless the importer has submitted proof of payment of the Excise Tax due on the imported products covered by previously issued ATRIG.

### **Excise Tax Returns and Excise Taxpayer's Removal Declaration**

- ▶ Excise Tax Returns (BIR Form No. 2200-T) and Excise Taxpayer's Removal Declaration (ETRD) (BIR Form No. 2299) are prescribed to be used and issued by all registered manufacturers for all removals of Tobacco Products, and Subject Products.
- ▶ The ETRD shall be requisitioned from the Excise Large Taxpayers Field Operations Division (ELTFOD) in the BIR National Office, or from the Excise Tax Area offices of the concerned BIR Revenue Regional Offices, having respective jurisdiction over the manufacturers of Tobacco Products and Subject Products.

### **Affixture of Internal Revenue Stamps for Subject Products**

- ▶ All manufacturers and importers of Subject Products shall comply with the requirements provided under RR No. 18-2021 on the affixture of internal revenue stamps and the use of Enhanced Internal Revenue Stamps Integrated System (E-IRSIS).

### **Notice of Stoppage of Production of a Particular Brand**

- ▶ A written notice shall be filed with the ELTRD that a particular brand/s shall not be manufactured on a permanent or temporary basis. The notice of stoppage shall be filed at least five days before the actual date of production stoppage of the brand(s). However, in case of fortuitous events, the BIR shall be notified within three days from the temporary stoppage of production.
- ▶ For temporary stoppage, the required notice shall be applicable in cases of production shutdown due to scheduled maintenance program, major repairs, labor strikes, orders by appropriate government agencies, and such other similar incidents, or due to occurrence of fortuitous events such as typhoons, floods, fire, etc.

### **Books and Records to be Kept or Maintained**

- ▶ Official Register Books (ORB) and such other forms or records that may be prescribed by the CIR must be kept and maintained within the place of production/importer's warehouse, which shall, always be made available for inspection by duly authorized internal revenue officer(s).
- ▶ All transcript sheets of ORBs by all manufacturers and importers, including toll manufacturers or sub-contractors to the LT Performance Monitoring and Programs Division (LTPMPD) or to the concerned Excise Tax Area (EXTA) having jurisdiction of the place of production/warehouse must be submitted on or before the eighth (8th) day of the month immediately following the month of operation.



### Floor/Minimum Price

- ▶ The minimum floor price of the Subject Products shall be the total production cost/ expenses/landed cost of the cheapest brand per tobacco product, including the sum of Excise Tax and VAT

### Other Matters

- ▶ When the Excise Tax for the Subject Products has already been paid, the same shall not be stored or permitted to remain in the manufacturing plant or place of production.
- ▶ Revenue Officers on Premise (ROOPs) will be assigned, on a day-to-day basis, to check or supervise the operation from receipt of raw materials, processing and removal of finished products of any establishment producing or manufacturing the Subject Products
- ▶ A signage showing the registered name and assessment number with size of not less than 6 centimeters high shall be placed in a conspicuous place outside the building, which is used as a production plant/factory or warehouse of the Subject Products.
- ▶ BIR shall conduct a physical stocktaking inventory by actual count and/or volume of the entire stocks (raw materials, in process or intermediate, and finished goods) on hand, in the presence of the manufacturer's or importer's authorized representative who shall jointly attest to the fact of witnessing and verifying the results thereof by affixing their signatures on the attestation clause in the inventory certificate.
- ▶ Online sale/distribution of the Subject Products shall only be made when registered with the SEC or DTI and compliant with RMC No. 23-2016 and other regulations on the tax stamp, minimum floor price, or fiscal marks.
- ▶ BIR shall maintain in their website an updated list of brands of the Subject Products that are eligible to be sold online.
- ▶ Penalties for violations are also provided by the RR.

RMC No. 138-2022 provides the List of BIR Official Social Media Accounts being managed by the Primary Social Media Team and Sub-Social Media Teams of the Bureau.

### **RMC No. 138-2022 dated 5 October 2022**

- ▶ The BIR officially adopted the use of social media platforms in 2018 through the issuance of RMO No. 24-2018 to widely and quickly disseminate information on new tax laws and regulations, policies, processes, procedures, updates on various programs and projects of the Bureau, and other tax-related information.
- ▶ The Bureau likewise issued RMO No. 7-2022 to prescribe the policies and guidelines in creating and managing the BIR Social Media Accounts.
- ▶ For the information and guidance of all internal revenue officials, employees and others concerned, attached as "Annex A" of this Circular is the List of BIR Official Social Media Accounts being managed by the Primary Social Media Team and Sub-Social Media Teams of the Bureau.
- ▶ All internal revenue officials, employees and others concerned are encouraged to like, follow, subscribe, and to comment, share and perform other forms of engagement in the BIR Official Social Media Accounts listed in Annex A to help the BIR reach more taxpayers through social media.

This RMC informs eBIRForms users/filers on the revised contents of the eBIRForms email notification or the Tax Return Receipt Confirmation.

#### **RMC No. 141-2022 dated 25 October 2022**

- ▶ The revised email content shall be read as follows:

***This confirms receipt of your submission with the following details subject to validation by BIR:***

*File name: 222222222222-0605-0118202210744.xml*

*Date received by BIR: 18 January 2022*

*Time received by BIR: 10:47:44 AM*

*Penalties may be imposed for any violation of the provisions of the NIRC and issuances thereof.*

#### **FOR RETURNS WITH TAX PAYABLE:**

*Please pay through any of the following ePayment Channels:*

#### ***Land Bank of the Philippines Link.Biz Portal***

*LBP ATM Cards*

*Bancnet ATM/Debit Cards*

*PCHC PayGate or PESONet (RCBC, Robinsons Bank, UnionBank, PSBank, BPI, Asia United Bank)*

#### ***DBP Pay Tax Online***

*Credit Cards (Master Card/Visa)*

*Bancnet ATM/Debit Cards*

#### ***UnionBank of the Philippines***

*UnionBank Online (for UnionBank Individual and Corporate Account Holders)*

*UPAY via InstaPay (for Individual Non-UnionBank Account Holders)*

#### ***Taxpayer Agent/Tax Software Provider - TSP***

*(GCASH PayMaya/MyEG)*

*This is a system-generated email. Please do not reply.*

*Bureau of Internal Revenue*

- ▶ EBIRForms users/filers with payments or tax payable are encouraged to pay through the BIR ePayment Channels listed above.

#### **RMC No. 142-2022 dated 2 November 2022**

- ▶ This is in view of the Fiscal Incentives Review Board Resolution No. 026-22 dated 14 September 2022, which allows RBEs in the IT-BPM sector to transfer their registration to BOI to implement up to 100% work-from-home (WFH) arrangements without their tax incentives being adversely affected.

RMC No. 142-2022 publishes the full text of DTI Memorandum Circular No. 22-19, s. 2022 dated 18 October 2022, prescribing the guidelines on the transfer of RBEs in the IT-BPM sector from their concerned Investment Promotion Agency (IPA) administering economic or Freeport zone to the BOI.

RMC No. 143-2022 provides further clarification and guidelines to several issues in the implementation of RR No. 13-2022 relating to the tax treatment of equity-based compensation granted by employers to its employees.

**RMC No. 143-2022 dated 9 November 2022**

Sections	Details
I. Effectivity	<p>RR No. 13-2022 was published in Manila Times, a newspaper of general circulation, on 14 October 2022, hence, the effectivity date of RR No. 13-2022 shall be 15 days therefrom or <u>29 October 2022</u>.</p> <p>Considering that there is no provision in RR No. 13-2022 expressly stating that it will be applied retroactively, <b>it shall be applied prospectively</b>.</p> <p>In this regard, <b>any exercise or availment of by employee-grantee</b> (whether rank-and-file or occupying a managerial or supervisory position) of the granted equity-based compensation <u>on or after 29 October 2022</u>, shall be considered as compensation which <b>shall be subject to withholding tax on compensation</b>.</p>
II. Tax Treatment	<ol style="list-style-type: none"> <li>1. Grant of Equity-Based Compensation               <ol style="list-style-type: none"> <li>a. Capital Gains Tax (CGT) <b>No CGT shall be imposed upon grant of equity-based compensation</b>, whether with or without an option price (which is, for the avoidance of doubt, different from the exercise price) since there is no realized capital gain on the part of the employer-grantor.</li> <li>b. Documentary Stamp Tax (DST) <b>No DST shall be imposed upon grant</b> by employers of equity-based compensation to its employees.</li> </ol> </li> <li>2. Sale or Transfer of Equity-Based Compensation               <p>Sale, barter, or exchange by employee-grantee of the granted equity-based compensation is <b>treated as a sale, barter, or exchange of stocks not listed on the stock exchange</b>.</p> <ol style="list-style-type: none"> <li>a. Sale or transfer is with consideration - <b>Sale or transfer of the granted equity-based compensation is subject to CGT</b> imposed under Section 24 (C) of the National Internal Revenue Code of 1997, as amended (Tax Code). If the equity-based compensation was <u>granted for a price</u>, the <b>difference</b> between the sales price and the option price <u>shall be subject to CGT</u>. If the same was granted without a price, the cost base of the option for purposes of computing the capital gains shall be zero.</li> <li>b. Transfer is without consideration - The <b>transfer shall be treated as a donation</b> of shares of stock <u>subject to donor's tax</u>. The basis shall be the <u>fair market value (FMV) of the option at the time of the donation</u>.</li> </ol> </li> </ol>

Sections	Details
	<p>3. Exercise of Equity-Based Compensation</p> <p>The <u>difference between the book value/FMV of the shares</u>, whichever is higher, at the time of the exercise of the equity-based compensation and the price fixed on the grant date, <b>shall be considered as additional compensation subject to income tax and consequently to withholding tax on compensation.</b></p> <p>The above rule applies to the exercise of equity-based compensation granted by employers involving its own shares of stock or shares of stock it owns to its employees, <u>whether rank-and-file or occupying a supervisory or managerial position.</u></p> <p><b>DST shall be imposed only upon the actual issuance</b> of shares of stock to the employee-grantee in line with Sections 174 and 175 of the Tax Code.</p> <p>In the event that the granted equity-based compensation is <b>transferable</b> to employee-grantee's successor/heirs in case of death of employee-grantee, and such <u>successor/heirs exercised the same within the prescribed exercise period</u>, the <u>difference between the book value/FMV of the shares</u>, whichever is higher, at the time of the exercise of the granted equity-based compensation and the price fixed on the grant date, <b>shall be considered as donation</b>, and shall be subject to donor's tax.</p>
<p><b>III. Filing of Tax Returns</b></p>	<p>The employer-grantors shall file the following BIR Forms <b>starting November 2022</b> (for equity-based compensation exercised starting <u>29 October 2022</u>).</p> <ol style="list-style-type: none"> <li>1. BIR Form No. 1601-C (Monthly Remittance Return of Income Taxes Withheld);</li> <li>2. BIR Form No. 1604-C (Annual Information Return of Income Taxes Withheld on Compensation); and</li> <li>3. BIR Form No. 2316 (Certificate of Compensation Payment/ Tax Withheld).</li> </ol> <p>Please note, however, that <b>employer-grantors are still required to file</b> the following tax returns relating to the equity-based compensation exercised by their respective employee-grantees occupying managerial or supervisory position <u>prior to the effectivity date of RR No. 13-2022</u>:</p> <ol style="list-style-type: none"> <li>1. BIR Form No. 1603Q (Quarterly Remittance Return of Final Income Taxes Withheld on Fringe Benefits Paid-to Employees Other Than Rank and File): <ol style="list-style-type: none"> <li>a. on or before <b>31 October 2022</b>, relating to the equity-based compensation <u>exercised during the third quarter of year 2022</u>; and/or</li> <li>b. on or before <b>31 January 2023</b>, relating to the equity-based compensation <u>exercised any time from October 1-28, 2022</u>;</li> </ol> </li> </ol>

Sections	Details
	<p>2. BIR Form No. 1604-F (Annual Information Return on Income Payments Subjected to Final Withholding Taxes); and</p> <p>3. BIR Form No. 2306 (Certificate of Final Tax Withheld at Source).</p>
IV. Reportorial Requirements	<p>1. Grant of Equity-Based Compensation</p> <p><b>Within 30 days from the grant of the equity-based compensation</b>, the issuing corporation which is, for the avoidance of doubt, the employer-grantor, shall submit to the Revenue District Office (RDO) where it is registered a statement under oath indicating the following:</p> <ol style="list-style-type: none"> <li>Terms and Conditions of the stock option;</li> <li>Names, TINs, positions of the grantees;</li> <li>Book value, fair market value, par value of the shares subject of the option at the grant date;</li> <li>Exercise price, exercise date and/or period;</li> <li>Taxes paid on the grant, if any; and</li> <li>Amount paid for the grant, if any.</li> </ol> <p>2. Exercise of Equity-Based Compensation</p> <p>During the exercise period, the employer-grantor shall file a report <b>on or before the 10th day of the month following the month of exercise</b> stating therein the following:</p> <ol style="list-style-type: none"> <li>Exercise Date;</li> <li>Names, TINs, positions of those who exercised the option;</li> <li>Book value, fair market value, par value of the shares subject of the option at the exercise date/s;</li> <li>Mode of settlement (i.e., cash, equity); and</li> <li>Taxes withheld on the exercise, if any.</li> </ol>

RMC No. 146-2022 prescribes the availability of TIN Verification/Validation, RDO Finder and eComplaint Facility in the BIR Chatbot (REVIE).

#### **RMC No. 146-2022 dated 2 November 2022**

- ▶ Through this RMC, the BIR announces the availability of the enhanced BIR Digital Assistant - Chatbot REVIE, which now include the TIN Verification/Validation, RDO Finder and eComplaint facility.
- ▶ The TIN Verification/Validation and RDO Finder are additional features that will assist taxpayers with their TIN and RDO inquiries. The eComplaint, on the other hand, is a facility that will help taxpayers lodge their grievances/complaints against establishments for non-issuance of receipts/invoices, tax evasion, and other violations against the provisions of the Tax Code. Complaints against erring BIR officials/personnel can also be submitted using the eComplaint facility.
- ▶ REVIE was launched in June 2021 as the BIR's Digital Assistant. It is an artificial intelligence that can be accessed 24/7 from the home page of the BIR Website ([www.bir.gov.ph](http://www.bir.gov.ph)). Frequently asked questions about taxpayers' registration requirements, eServices, BIR Forms, zonal values, among others, can be asked from REVIE. Taxpayers using the facility will also have the option to chat with a live agent in case they need clarifications on the answers provided by REVIE.

## Banks and Other Financial Institutions

### Advanced Suptech Engine for Risk-based Compliance (ASTERisC\*) Rollout

Memorandum No. M-2022-045 states that the BSP implements the Advanced Suptech Engine for Risk-based Compliance or ASTERisC\* effective 1 January 2023.

#### Memorandum No. M-2022-045 issued on 27 October 2022

ASTERisC\* is a unified Regulatory and Supervisory Technology solution that streamlines and automates regulatory supervision, reporting, and compliance assessment of BSFIs' cybersecurity risk management systems and processes. Initial implementation covers select BSFIs which meet the pre-defined criteria set by the BSP.

The memorandum provides information on the general requirements on the use of ASTERisC\* and the preparatory activities prior to rollout. Detailed system guide and other documentation shall be directly coordinated with the participating BSFIs and shall also be available in the ASTERisC\* platform.

#### ▶ General Description and Scope

The ASTERisC\* is a cloud-based solution which supports the BSP's end-to-end process on cybersecurity supervision and oversight to include cyber-profiling, cyber incident reporting and cybersecurity control self-assessments, among others. With this platform, BSFIs can directly access and transmit cybersecurity-related reports and information in real-time. The system likewise enables deeper analyses and correlation capabilities to help the BSP implement risk-based and proactive supervisory decisions and set policy direction on cybersecurity.

ASTERisC\* will initially be deployed to select BSFIs which meet the BSP's predefined criteria. The system scope features and functionalities may be further expanded in the future to cover additional participating BSFIs, other key risk areas and/or modules in line with supervisory priorities and/or requirements.

#### ▶ Procedural Overview

Participating BSFIs can access the system via a cloud-based web application by providing the necessary credentials. Authorized users can then submit cyber-related reports and assessments through web-based forms and can have access to the following: (1) a dashboard which summarizes the status of submissions and summary reports; (2) global reports predefined by the BSP, which contain charts, summary reports, or raw data; and (3) email notification for report due dates and BSP acknowledgement receipt.

The BSP shall directly coordinate with the participating BSFIs for the provision of login credentials authentication setup and schedule of training on the use of the system.

#### ▶ Minimum Technical Requirements

The minimum technical requirement for the use of ASTERisC\* are as follows:

1. Internet access;
2. Latest versions of web browser such as Microsoft Edge, Firefox, and Google Chrome; and
3. Mobile device for second factor authentication.

► **Implementation**

1. Initial scope of ASTERisC is as follows:

Report Title	MOR Reference
IT Profile Report	Section 148 of the MORB and Section 147-Q/145-S/142-P/126-N/125-T of the MORNBF1
Event Driven Report and Notification (EDRN)	Section 148 of the MORB and Section 147-Q/145-S/142-P/126-N/125-T of the MORNBF1
Report on Crimes and Losses (RCL)	Section 148 and 173 of the MORB and Section 147-Q/145-S/142-P/126-N/163-T and 172-Q/162-S/161-P/901-N of the MORNBF1
Cybersecurity Control Self-Assessment (CCSA)	Compliance self-assessment against Appendix 75 and Q-62 of the MORB and MORNFI, respectively.

2. At the initial phase of deployment, a single user account is provisioned for each BSFI participant. Requests and justification for additional account may be submitted to the Technology Risk and Innovation Supervision Department (TRISD) at trisd@bsp.gov.ph.
3. The assigned users are required to undergo the ASTERisC\* training to be conducted by TRISD prior to user account creation. The BSFI Chief Compliance Officer (CCO) or any authorized personnel is required to immediately notify the BSP should there be separation/transfer or permanent change of the assigned ASTERisC user.
4. Reporting through ASTERisC shall be effective starting 1 January 2023. Nonetheless, BSFIs may access the system in advance to prepare the IT Profile data for submission on 25 January 2023.
5. BSFIs not yet covered in the initial implementation shall continue to submit the regulatory reports through the default processes established by the BSP.

**Frequently Asked Questions on the Amendments to the Regulations on Outsourcing and IT Risk Management**

**Memorandum No. M-2022-046 issued on 27 October 2022**

The memorandum covers the following items:

1. Conduct of materiality assessment and maintenance of outsourcing register;
2. Intra-group and offshore outsourcing, and subcontracting arrangements;
3. Cloud outsourcing;
4. Additional outsourcing activity;
5. IT Outsourcing Questionnaire; and
6. Timeline on the submission of documentary requirements.

Memorandum No. M-2022-046 offers additional FAQs in relation to the previously issued Circular No. 1137, which tackles amendments on the regulations pertaining to Outsourcing and IT Risk Management. The issued FAQs aims to provide additional guidance and clarification on the implementation of the said Circular.

## **Templates for Merger and Consolidation of Banks Date Issued**

Memorandum No. M-2022-047 states the templates listed in Annex A of the memorandum serves to guide or assist banks in their merger and consolidation applications and help them comply with the documentary requirements in the Harmonized List of Requirements of the Streamlined Procedures for Applications for Mergers, Consolidations and Acquisitions of Banks, or Section 104 and Appendix 90 of the MORB.

### **Memorandum No. M-2022-047 issued on 09 November 2022**

It was mentioned that these templates are general in nature and are updated to comply with the requirements of the banking laws, BSP rules and regulations, the Revised Corporation Code of the Philippines, and the Philippine Cooperative Code, as applicable. Nonetheless, constituent banks may include provisions as may be necessary, taking into consideration their mutual agreements and other arrangements.

The review of the merger and consolidation applications, together with the supporting documents shall be made on a case-to-case basis, notwithstanding the use of the templates.

The memorandum amends Circular Letter No. CL-2015-068 dated 04 November 2015 covering the previous BSP issuance of the subject templates.

## **Bank of Commerce - Upgrade of the License to Operate from a Commercial Bank into a Universal Bank**

Circular Letter No. CL-2022-077 states that the Monetary Board, in its Resolution No. 1798 dated 23 December 2021, approved the application of Bank of Commerce (BOC) to upgrade its banking license from a commercial bank to a universal bank under the same corporate name.

### **Circular Letter No. CL-2022-077 issued on 28 October 2022**

The Securities and Exchange Commission approved on 9 August 2022 the amended Articles of Incorporation bearing the universal banking license. The corresponding Certificate of Authority to Operate as a universal bank was signed by the Bangko Sentral Governor on 4 October 2022.

BOC commenced its operations as a universal bank on 2 November 2022.

## **Guidelines on Recovery Plan of Banks**

Circular No. 1158 states that The Monetary Board, in its Resolution No. 1506 dated 13 October 2022, approved the amendments to the guidelines governing the submission of recovery plans of banks as well as the prudential measures under the Internal Capital Adequacy Assessment Process (ICAAP) and Supervisory Review Process.

### **Circular No. 1158 issued on 18 October 2022**

The following are the amendments issued by the Circular:

- ▶ Section 156 and Appendix 150 (Annex A of the Circular) of the Manual of Regulations for Banks (MORB) shall be created to provide the guidelines governing the recovery plan of banks. Annex D of Appendix 110 of the MORB on the Guidelines on Recovery Plan of a Domestic Systemically Important Bank (D-SIB) shall be deleted accordingly.
- ▶ Section 128 of the MORB is hereby amended, as follows:

#### **128 DOMESTIC SYSTEMICALLY IMPORTANT BANKS (D-SIBs)**

It is the thrust of the Bangko Sentral to ensure that its capital adequacy framework is consistent with the Basel principles.

The framework for dealing with D-SIBs including the guidelines on data requirements and reports, schedule of restriction on distribution of dividends during the phased-in implementation period of the HLA requirement are shown in Appendix 110. The guiding principles and components of the recovery plan of banks are provided in Appendix 150.



- ▶ Section 126-Q and Appendix Q-68 of the MORNBF1 are hereby deleted. Moreover, the Report on Selected Accounts and Activities for the Banks (Consolidated Basis) as indicated in Appendix Q-3 of the MORNBF1 is hereby deleted. All references to Section 126-Q and Appendix Q-68 of the MORNBF1 shall be changed to Section 156 and Appendix 150 of the MORB, respectively.
- ▶ Section 130 and Appendix 95 of the MORB on Internal Capital Adequacy Assessment Process and Supervisory Review Process are hereby amended, as follows:

#### 130 INTERNAL CAPITAL ADEQUACY ASSESSMENT PROCESS AND SUPERVTSORY REVIEW PROCESS

A bank's board of directors and senior management are ultimately responsible for ensuring that the bank maintains an appropriate level and quality of capital commensurate with its risk exposures. Hence, a bank must have in place an internal capital adequacy assessment process (ICAAP) that takes into account risks covered by the Risk-Based Capital Adequacy Framework and all other material risks.

The guidelines on banks' ICAAP and Bangko Sentral's supervisory review process (SRP) are shown in Appendices 94, 95, and 96, respectively.

The ICAAP guidelines shall apply.

The Bangko Sentral may implement any of the following supervisory actions if it considers that a bank's ICAAP does not adequately reflect its overall risk profile, or does not result in the bank having adequate capital:

1. Requiring the bank to improve its internal control and risk management frameworks;
2. Requiring the bank to reduce the risk inherent in its activities, products, and systems;
3. Restricting or limiting the business, operations, or network of the bank;
4. Limiting or prohibiting the distribution of net profits and requiring that part or all of the net profits be used to increase the capital accounts of the bank; and
5. Requiring the bank to increase or hold capital beyond the minimum capitalization requirements under Section 121 or minimum capital ratios under Sections 125 and 127, as may be required by the Monetary Board.

#### APPENDIX 95

##### GUIDELINES ON THE BANGKO SENTRAL'S SUPERVISORY REVIEW PROCESS (Appendix to Sec. 130)

- A. Introduction
- D. Guidelines on prudential measures

If the Bangko Sentral considers that a bank's ICAAP does not adequately reflect its overall risk profile or does not result in the bank having adequate capital, then consideration should be given to applying prudential measures.

1. The measures available to the Bangko Sentral include those enumerated under Sec. 130.
2. The choice of prudential measures should be determined according to the severity and underlying causes of the situation and the range of measures and sanctions available to the Bangko Sentral. Measures can be used individually or in combination.

Finally, Section 5 of the Circular discusses the transitory provisions, which reads:

The following provision shall be incorporated as a footnote to Section 156 of the MORB on the guidelines on recovery plan of banks.

Non-Domestic Systemically Important Banks (Non-D-SIBs), including subsidiary banks of D-SIBs that are required to submit the recovery plan for the first time, shall be given a transition period of two years to develop the same. The first recovery plan of said banks shall be submitted to the appropriate supervising department of the Bangko Sentral on or before 30 June 2024.

Meanwhile, D-SIBs that are already required to submit a recovery plan shall submit the same consistent with the new guidelines on or before 5 June 2023.

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

**Implementing Rules and Regulations of the Mandatory Agriculture, Fisheries and Rural Development Financing under RA No. 11901 or "The Agriculture, Fisheries and Rural Development Financing Enhancement Act of 2022"**

**Circular No. 1159 issued on 4 November 2022**

Full copy of the IRR which contained amendments on Section 331, Appendix 7 of the Manual of Regulations for Banks (MROB) and certain sections/appendices of Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) is attached on the Circular.

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

**Bureau of Customs**

**Circulation of the DTI Memorandum Circular No. 22-19 on the Guidelines on the Registration with the BOI of Existing RBEs in the IT-BPM Sector by virtue of FIRB Resolution No. 026-22**

**CMC No. 153-2022 dated 25 October 2022**

- ▶ By virtue of FIRB Resolution No. 026-22, RBEs in the IT-BPM sector that have remaining incentives under Section 311 of the National Internal Revenue Code (NIRC) of 1997, as amended by the CREATE Act, or those with approved incentives under the CREATE Act on or before 14 September 2022, may opt to transfer their registration to BOI to implement up to 100% work-from-home (WFH) arrangements without their tax incentives being adversely affected.
- ▶ To operationalize the transfer, DTI issued MC No. 22-19 which provides that an RBE contemplating to transfer its registration to BOI must file a request with its concerned IPA using the prescribed Request to Register with BOI form on or before 31 December 2022.

Circular No. 1159 states that The Monetary Board, in its Resolution No. 1542 dated 21 October 2022, approved the rules and regulations governing the mandatory agriculture, fisheries and rural development financing under RA No. 11901, otherwise known as "The Agriculture, Fisheries and Rural Development Financing Enhancement Act of 2022."

CMC No. 153-2022 circularizes DTI MC No. 22-19, s.2022 which provides for the guidelines on the registration with the BOI of existing RBEs in the IT-BPM Sector by virtue of Fiscal Incentives Review Board (FIRB) Resolution No. 026-22 dated 14 September 2022.

- ▶ IPAs shall be required to endorse to the BOI Infrastructure and Services Industries Service (ISIS) the requests of the affected RBEs using the prescribed IPA list of Endorsed RBEs.

**Supplemental Provisions to Customs Memorandum Order (CMO) No. 24-2021  
RE: Rules and Regulations on the Disposition of Forfeited and Abandoned Goods through Condemnation and Revisions on Order of Condemnation**

CMO No. 28-2022 provides for the supplemental provisions and revisions to CMO No. 24-2021 which pertains to the Rules and Regulations implementing CAO No. 3-2020 on the disposition of forfeited and abandoned goods through condemnation and revisions on the Order of Condemnation.

**CMO No. 28-2022 dated November 03, 2022**

- ▶ The final paragraph of Section 5, which provides for the functions of the Condemnation Committee, shall state that the award of condemnation projects must consider the availability and capacity of the condemnation facility/ies vis-à-vis the proposed condemnation project with regard to the nature of the goods as well as the timeline, among other considerations, provided, that no condemnation project shall be awarded to a facility unless a Completion Report of its latest activity has been submitted to the Assessment and Operations Coordinating Group (AOCG) by the District Collector through the Auction and Cargo Disposal Division (ACDD).
  1. Provided further that, if delay will be inevitable on the submission of the Completion Report based on reasons beyond the control of the condemnation facility (e.g., settlement of expenses/costs to the shipping lines), the Port may propose to proceed with another condemnation project upon submission of the detailed condemnation plan and notification to the appropriate parties/witnesses to the AOCG.
- ▶ An additional sentence shall be inserted in the first paragraph of Section 13, which pertains to the Order of Condemnation.
  1. Within 24 hours from the receipt of the Detailed Plan of Condemnation, the Condemnation Committee shall cause the preparation of the Order of Condemnation for the approval of the District Collector, containing the information in the Detailed Plan of Condemnation and the service contractor chosen to perform the destruction/condemnation of the goods. The District Collector shall approve or disapprove the Order of Condemnation within 24 hours from receipt thereof.
  2. The approved Order of Condemnation will then be submitted by the District Collector for the concurrence of AOCG.
- ▶ The penultimate paragraph of Section 21 shall provide that the signed Completion Report shall be submitted by the District Collector to AOCG.

**PEZA**

PEZA Memorandum Circular No. 2022 - 067 provides the Guidelines on the Registration with the BOI of the existing RBEs in the IT-BPM Sector under DTI MC No. 22-19.

**PEZA Memorandum Circular No. 2022 - 067 dated 21 October 2022**

MC 2022-067 provides for the additional procedures in addition to the general procedures provided by DTI MC No. 22-19:

- ▶ RBEs shall submit to PEZA accomplished Request to Register with BOI Form to [itbpm.transfer@peza.gov.ph](mailto:itbpm.transfer@peza.gov.ph) together with the scanned copies of its PEZA Certificate of Registration (COR) and Registration and Supplemental Agreements on a per project/activity basis.

PEZA registered IT enterprises have until 31 December 2022 to process their registration with BOI under DTI MC No. 22-19.

- ▶ PEZA shall endorse the request of the RBEs to BOI using the prescribed form under the condition that the RBEs are compliant with the terms and conditions of their registration with PEZA and are in good standing.
- ▶ PEZA shall continue to administer the fiscal (i.e., validation of ITH incentive and issuance of CETI, VAT Certifications and other applicable certificates) and non-fiscal (e.g., PEZA Visa, automated importation, issuance of building permits) incentives of the RBEs while simultaneously registered with the BOI. The RBEs are still under the administrative supervision and monitoring of the PEZA.
- ▶ The PEZA Rules and Regulations shall still apply on the operations of the transferee RBEs. However, for purposes of registration with BOI, no bond in whatever form, shall be imposed on the movement of capital equipment within and outside the PEZA economic zones.
- ▶ The transferee RBEs are still required to maintain an office inside PEZA-registered IT Centers/Buildings. Failure to comply with this mandatory requirement shall result in the cancellation of its registration with PEZA as an IT Enterprise and subsequently, its registration with BOI.

PEZA Memorandum Circular No. 2022 - 070 provides Supplemental Guidelines on the Registration with the BOI of Existing RBEs in the IT-BPM Sector Under DTI MC No. 22-19.

#### **PEZA Memorandum Circular No. 2022 - 070 dated 24 October 2022**

The PEZA issues the following supplemental guidelines for the processing of registration with BOI:

- ▶ Use the revised Annex A- Request to Register with BOI Form which the highest ranking official of the RBE shall sign and the same need not be notarized.
- ▶ The link provided contains the instructions on how to accomplish the application form and the 2019 Philippine Standard Industry Classification Code (PSIC) that are applicable to the RBEs in the IT-BPM industry. You may select from among the PSIC the one applicable to the registered project/activity.
- ▶ The deadline of submitting the application forms to PEZA is on or before 16 December 2022.
- ▶ All application forms (Annex A) including the attachments identified under PEZA MC No. 2022-067 shall be submitted through email to [itbpm.transfer@peza.gov.ph](mailto:itbpm.transfer@peza.gov.ph) and indicate the following in the subject:

SUBJECT: (Name of RBE)- Request to Register with BOI

The email address [itbpm.transfer@peza.gov.ph](mailto:itbpm.transfer@peza.gov.ph) will no longer be accessible after 16 December 2022.

- ▶ For those who already submitted their applications to the ODG, kindly re-submit the applications in compliance with procedure no. 4. Hard copies of the applications and attachments will not be accepted.
- ▶ PEZA shall furnish the RBEs with its endorsement to BOI through email. Once the RBEs receive the email from PEZA, the RBEs may now pay the applicable fee to BOI. The date indicated in the Official Receipt (OR) shall be the date of the effectivity of registration with BOI.
- ▶ Upon the issuance of BOI COR, kindly furnish PEZA a copy of the same for annotation also in the PEZA COR. Kindly send a copy of the BOI COR to the Office of the Board Secretary at [obs@peza.gov.ph](mailto:obs@peza.gov.ph).

- ▶ Within the 30 days from the issuance of the BOI COR, covered RBEs shall submit to PEZA the following:
  1. List of all equipment and/or other assets containing the following information: i) those brought out of the IT Centers/Park and those that remain in the registered facility of the RBE; ii) quantity; iii) year of acquisition, iv) acquisition costs; and v) book value. Please use the attached template/format.
  2. Total number of employees and number of employees under the WFH Arrangement.
- ▶ For monitoring purposes, RBEs which register with BOI are still required to submit their monthly reports to PEZA in the Information Technology Sector - Report Compliance System (ITS- RCS).

## SEC Filing, Payments and Other Deadlines

### SEC Notice dated 11 October 2022

The Electronic Records Management Division (ERMD) shall accept all reports filed in the e-FAST regardless of the forms and contents.

Effective 2 November 2022, all inaccurate, incomplete, false or any misleading information, which can be found in the submitted reports, shall be penalized in accordance with Sec. 162 of Republic Act No. 11232 otherwise known as the Revised Corporation Code.

No report/s shall be returned to the filers for correction. Amendments shall no longer be allowed unless directed by the Commission.

### SEC Notice dated 20 October 2022

## Court of Tax Appeals

### Assessment

#### **BASF Philippines Inc. vs. Commissioner of Internal Revenue**

CTA Case No. 10221 promulgated on 3 November 2022

#### **Facts:**

On 04 January 2017, Company A received a copy of Letter of Authority (original 2016 LOA) authorizing Revenue Officer (RO) B and Group Supervisor C to examine Company A's books of account and other accounting records for VAT for the taxable period of 01 January 2016 to 30 June 2016.

On 15 November 2018, Company A received a copy of the Preliminary Assessment Notice (PAN). On 29 November 2018, Company A filed its Protest Letter (PAN Protest).

On 03 January 2019, Company A received a copy of the Formal Assessment Notice (FAN). On 29 January 2019, or within 30 days from receipt of the FAN and assessment notice, Company A filed its Protest Letter (FAN Protest) against the FAN.

The SEC Notice clarifies the penalties applicable to inaccurate, incomplete false or misleading information contained in reportorial requirements submitted through e-FAST.

The SEC notifies the public that all formats of the Philippine Identification System (PhilSys) digital ID, included printed ePhilID, will be accepted as valid and sufficient proof of identity and age, subject to authentication.

In determining the validity of the assessment, what is crucial is the definiteness of the amount indicated in the FAN with respect to the deadline or due date provided. If the FDDA satisfies substantially both requirements, then the FDDA could not be wanting nor can the assessment be deemed as void. While it is true that the computation of interest may not yet appear definite, the same is only logical as BIR could not reasonably be expected to know or foresee when the taxpayer will actually settle the tax obligation.

On 14 March 2019, or within 60 days from the filing of the FAN Protest, Company A wrote the Commissioner of Internal Revenue (CIR) a letter informing the latter that the documents submitted with the FAN Protest are sufficient to support its claims. However, the CIR requested additional documents from Company A, to which the latter complied with.

On 07 November 2019, Company A received the Final Demand on Disputed Assessment (FDDA) and Amended Assessment Notice, both dated 28 October 2019, granting Company A's request for reinvestigation but demanding payment of deficiency VAT. In the FDDA, the CIR assessed Company A for deficiency VAT.

Moreover, in a letter dated 12 May 2019, the CIR informed Company A that: (1) Group Supervisor C was transferred to Revenue District Office (RDO) No. 47-East Makati; and (2) the VAT assessment was assigned to Revenue Officer D under the supervision of the new Group Supervisor. Pursuant to the reassignment, another LOA dated 22 April 2019 was issued, authorizing Revenue Officer D and Group Supervisor C to examine Company A's books of account and other accounting records for VAT assessment for the period of 01 January 2016 to 30 June 2016.

**Issue:**

Was Company A liable to the alleged deficiency VAT?

**Ruling:**

Yes, partially.

Company A contends that the VAT assessment is void in accordance with the doctrine in the Fitness by Design case since the tax liability remains indefinite.

The facts of the instant case are not on all fours with Fitness by Design as to warrant its application herein. In Fitness by Design (G.R. No. 215957,09 November 2016) the Supreme Court noted that the amount in the FAN remained indefinite as the same was subject to modification, depending on the date of the taxpayer's payment. The Supreme Court also emphasized that the FAN there did not contain due dates.

On the contrary, the pertinent portion of the FAN in the case at bar reads:

"Please take note that the interest and the total amount due will have to be adjusted if paid beyond the date specified therein."

Hence, the FAN clearly indicates that the interest, which forms part of the total amount due, will only be adjusted if the taxpayer pays beyond the deadline or due date provided (which is 21 January 2019). Insofar as the total amount indicated in the FAN is concerned, it is undeniable that the amount of deficiency VAT plus interest is definite and certain on the due date provided therein. This remains to be the fact despite a warning from the BIR that additional interest (consequently affecting the total amount due) shall continue to accrue beyond the due date. It is then not fair to fault the BIR for reminding the taxpayer of the consequences of a delayed settlement.

In determining the validity of the assessment, what is crucial is the definiteness of the amount indicated in the FAN with respect to the deadline or due date provided. If the FDDA satisfies substantially both requirements, then the FDDA could not be wanting nor can the assessment be deemed as void. While it is true that the computation of interest may not yet appear definite, the same is only logical as BIR could not reasonably be expected to know or foresee when the taxpayer will actually settle the tax obligation.

Therefore, to set aside the entire assessment on the basis of the indefiniteness not of the amount of deficiency taxes but of the interest that may accrue (beyond the deadline of payment) is in discord with the wisdom behind the Supreme Court's pronouncement in *Fitness by Design*.

Company A, citing *Avon Products* case, likewise asserts that the FAN lacks the required factual and legal bases since the FAN simply reiterated the assessment findings stated in the PAN - without addressing any of the legal and factual arguments raised by Company A in its PAN Protest. The BIR violated Avon's, right to due process when it disregarded the latter's pieces of evidence from the PAN's issuance until the release of the Collection Letter, which was ultimately appealed before this Court and the Supreme Court.

In the case at bar, the CIR took time to evaluate and consider the pieces of evidence that Company A submitted. In fact, in the FDDA dated 28 October 2019, the BIR, after taking into account the pieces of evidence submitted by Company A, reduced the basic deficiency VAT. Moreover, portions of the FDDA clearly show that the BIR considered Company A's assertions, allegations, documents, and other pieces of evidence.

In assessment proceedings, if there arises third party information (TPI) discrepancies, the taxpayer is required to submit schedules and reconciliations to substantiate its claims. In addition, the taxpayer is required to execute a sworn statement to attest the veracity and authenticity of the schedules and documents presented/submitted. On the other hand, BIR is required to obtain sworn statements from TPI sources to attest the veracity of the data provided. To obtain the sworn statements, BIR must first send confirmation requests to the third-party sources, or coordinate with the BIR, who has jurisdiction over the third-party sources, to course through the confirmation requests to the latter.

If the TPI source/s is/are located outside of the jurisdiction of the investigating or sending office, the BIR Confirmation Letters must be duly supported by registered return cards. Here, although there are confirmation letters attached to the BIR Records, respondent did not offer them as evidence. Further, not all customers were given confirmation letters. Also, no registered return cards can be found in the BIR Records although the addressees of the confirmation letters are located outside of the jurisdiction of the investigating office (i.e., concerned BIR office) in contravention of Revenue Memorandum Order No. 13-2012.

In the imposition or assessment of output VAT, it must be clear that there was a sale, either: (1) an actual or deemed sale for sale of goods and/or properties; or, (2) a valuable consideration actually or constructively for sale of services. Hence, no imposition or assessment of output VAT can arise from an alleged undeclared sales arising from under-declaration of importation. Importation is imposed an input VAT. If the CIR is alleging that Company A has undeclared importation, logically it can only argue that petitioner did not pay the corresponding input VAT. However, non-payment of input VAT does not translate to non-payment of output VAT. One cannot presume that what were imported were immediately sold. A sales transaction can only be proved if the same is duly supported by documentary evidence such as invoices (for sale of goods) or ORs (for sale of services). Absent such proof, the alleged undeclared importation cannot be presumed to have resulted to undeclared sales.

## SGV | Building a better working world

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Expiry date: no expiry

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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.