Tax Bulletin

July 2020

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and enable businesses for a better Philippines.

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Highlights

BIR Administrative Requirements

- RR No. 19-2020 prescribes the use of the new BIR Form No. 1709 or Information Return on Related Party Transactions (Domestic and/or Foreign), and replaces Form No. 1702H, series of 1992 or Information Return on Transactions with Related Foreign Persons. **(Page 10)**

- Revenue Memorandum Order (RMO) No. 20-2020 creates and modifies the Alphanumeric Tax Code (ATC) for excise tax on tobacco products, heated tobacco products and vapor products pursuant to the implementation of Republic Acts (RAs) No. 11346, 11467, and 10351. **(Page 13)**

- RMO No. 21-2020 prescribes policies, guidelines, and procedures for the inspection or supervision of the destruction/disposal and determination of deductible expense pertaining to inventory of goods/assets which have been declared as waste or obsolete. **(Page 15)**

- RMC No. 78-2020 circularizes the filing of various returns and payment of tax due thereon for taxpayers under the jurisdiction of Revenue Region No. 13 – Cebu City. **(Page 20)**

Banks and Other Financial Institutions

- RMC No. 72-2020 is issued to amend Revenue Memorandum Circular (RMC) No. 36-2020. **(Page 20)**

Debt Securities

- Circular No. 1091 publishes Resolution No. 899 dated 16 July 2020 approving the amendments to the Manual of Regulations for Banks (MORB) and the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) to exclude the debt securities held by market makers from the credit exposure limit to a single borrower. **(Page 21)**

Electronic Submission of Annual Reports and Audited Financial Statements

- Memorandum No. M-2020-55 provides for the guidelines on the submission of the Annual Report (AR) and Audited Financial Statements (AFS) in line with the digitalization initiatives of the Bangko Sentral ng Pilipinas (BSP). **(Page 22)**

Operational Relief Measures

- Memorandum No. M-2020-051 publishes Resolution No. 900 dated 16 July 2020 approving the amendments to the operational relief measures for the BSP-supervised financial institutions (BSFIs) under Memorandum No. M-2020-011 dated 19 Mach 2020, as amended, and M-2020-015 dated 30 March 2020. **(Page 23)**

Bureau of Customs

Enhanced Value Reference Information System (e-VRIS) in the Electronic to Mobile (E2M) System

- Customs Memorandum Order (CMO) No. 16-2020 provides for the implementation of the enhanced value reference information system (e-VRIS) in the Electronic to Mobile (E2M) System. **(Page 24)**

Seizure and Forfeiture Proceedings and Appeals Process

- Customs Administrative Order (CAO) No. 10-2020 provides for the process on seizure and forfeiture proceedings and appeals process. **(Page 25)**

VAT Exemptions on Sales and Importation of Drugs and Medicines

- Revenue Regulation (RR) No. 18-2020 provides for regulations to implement Section 1 of Republic Act (R.A.) No. 11467, further amending Section 109(AA) of the Tax Code, as amended by R.A. No. 10963 or the TRAIN Law, and provides for value-added tax (VAT) exemptions on the sales and importation of drugs and medicines prescribed for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, and kidney diseases. **(Page 28)**

- RMO No. 23-2020 provides for the issuance of an Authority to Release Imported Goods (ATRIG) for VAT exemption on the sales and importation of prescription drugs and medicines pursuant to Section 1 of Republic Act No. 11467, further amending Section 109 (AA) of the National Internal Revenue Code of 1997, as amended, and as implemented in Revenue Regulations (RR) No. 18-2020. **(Page 28)**

- RMO No. 25-2020 amends certain provisions of RMO No. 23-2020 to prescribe the offices to process the issuance of an ATRIG for VAT Exemption on the importation of prescription drugs and medicines pursuant to the provisions of RR No. 18-2020, which implemented Section 1 of R.A. No. 11467, further amending Section 109(AA) of the National Internal Revenue Code of 1997 as amended by R.A. No. 10963 or the "TRAIN Law." **(Page 29)**

POGO Licensees and Service Providers

- Revenue Memorandum Circular (RMC) No. 64-2020 circularizes the revised guidelines and requirements for POGO licensees and service providers to apply for a BIR clearance in connection with the resumption of operations. **(Page 29)**

Online Merchants

- RMC No. 75-2020 extends the deadline for business registration of those engaging in digital transactions under Revenue Memorandum Circular (RMC) 60-2020. **(Page 30)**

Cash Register Machines (CRM), Point-of-Sale (POS) Machines, and Other Similar Sales Machines

- RMC No. 69-2020 is issued to streamline existing procedures on the cancellation of Permit to Use (PTU) Cash Register Machines (CRM), Point-of-Sale (POS) Machines, and other similar sales machines generating receipts/ invoices in compliance with the requirement of RA No. 11032 otherwise known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018." **(Page 31)**

BSP

Payment System Oversight Framework

- The Monetary Board, in its Resolution No. 803 dated 25 June 2020, approved the Payment System Oversight Framework, which sets out the approach and rules of the BSP in the conduct of its oversight function pursuant to Republic Act (R.A.) No. 11127 or the National Payment Systems Act (NPSA) and R.A. No. 7653 or The New Central Bank Act as amended by R.A. No. 11211. **(Page 33)**

Socialized Credit to Agrarian Reform Beneficiaries

- Circular No. 1090 publishes Resolution No. 802 dated 25 June 2020 approving the adoption of the Implementing Rules and Regulations of R.A. No. 10878 or the Agricultural Land Reform Code and the corresponding amendments to the MORB. **(Page 34)**

Rediscount Facilities

- Memorandum No. M-2020-056 publishes Monetary Board (MB) Resolution No. 854 dated 09 July 2020 approving the extension of the temporary measures implemented in the BSP's rediscount facilities as contained in Memorandum No. M-2020-043 dated 18 May 2020. **(Page 34)**

Non - Profit Business League

- A non-profit business league may be subject to income tax on any income derived from its real or personal properties, or from any activities conducted for profit regardless of the disposition made. The absence of a Tax Exemption Certificate does not divest an entity of its income exemption under Sec. 30 of the NIRC. The collection of membership fees may be not considered as a sale of service in the ordinary course of business subject to VAT, as the primary purpose of the exaction is to support the administrative operations of the association. **(Page 35)**

Procedure on Tax Assessments

- Under our Tax Law, it is axiomatic that at the heart of every assessment conducted by the BIR, there must be a valid grant of authority. Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity. **(Page 36)**

- The authority of a revenue officer (RO) to conduct an audit/ examination goes into the validity of an assessment; thus, any assessment arising from the audit/ examination of a taxpayer's books of accounts by an RO who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit. **(Page 37)**

- Under our Tax laws, Income Tax is assessed on income received from any property, activity or service. Such being the case, in the imposition or assessment of income tax, it must be clear that there was income, and such income was received by the taxpayer, not when there is underdeclaration of purchases. **(Page 38)**

Due process requirement in tax assessments; Letter of Authority

- In an LOA, the Commissioner of Internal Revenue is the principal as he is the one mandated by law to make assessments. His agent is the Regional Director. Under Article 1892 of the Civil Code, an agent, such as the Regional Director, can appoint a sub-agent, such as the Revenue Officers. **(Page 39)**

- Unless authorized by the Commissioner of Internal Revenue himself or his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. Revenue officers are required to be specifically authorized by a valid LOA in order to exercise assessment functions. In the absence of a valid LOA issued specifically in favor of a revenue officer, the tax assessment issued against a taxpayer shall be void. **(Page 41)**

Due process requirement in tax assessments; Letter of Authority; Observance of 15-day period within which to protest the Preliminary Assessment Notice

- Unless authorized by the Commissioner of Internal Revenue himself or his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 of the Tax Code where the taxpayer can be assessed through best evidence obtainable, inventory-taking or surveillance, among others, has nothing to do with the LOA. These are methods of examining the taxpayer in order to arrive at the correct amount of taxes.

  The taxpayer's right to due process was violated when the 15-day period within which to protest the PAN under Section 228 of the Tax Code, as amended, and as implemented by Revenue Regulation No. 12-99 was not observed by the tax authorities when they issued the FAN even before the expiration of the said 15-day period. **(Page 42)**

Due process requirement in tax assessments; Proof of taxpayer's receipt of Final Assessment Notice

- Under Section 228 of the Tax Code, as amended, and in relation to Revenue Regulations (RR) No. 12-1999, the Commissioner of Internal Revenue or his duly authorized representative shall issue the FLD/FAN, which shall be sent to the taxpayer only by registered mail or by personal delivery. The use of the word "shall" indicates the mandatory nature of the requirements laid down under such rules. **(Page 44)**

Statute of Limitations

- RMC No. 74-2020 clarifies certain provisions of RMC 34-2020. **(Page 45)**

- Revenue Memorandum Circular No. 77-2020 issued on 30 July 2020. RMC No. 77-2020 clarifies ECQ as referred to in RMC No. 74-2020. **(Page 46)**

- Under Section 281 of the Tax Code (on Other Penal Provisions), all violations of any provision of the Tax Code shall prescribe after five years from its commission. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. **(Page 46)**

Prescriptive period within which to assess a taxpayer; Validity of a Waiver

- Under Section 203 of the Tax Code, as amended, the government has the right to assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after 3 years is not valid and effective. However, the rule does not cover those provided under Section 222 of the Tax Code, as amended. Under Section 222 (b), the three-year prescriptive period may be extended, if before the expiration thereof, both the respondent and the taxpayer agree in writing to its assessment, but only within the period agreed upon. **(Page 48)**

Local Business Tax Assessments

- A local business tax assessment based on its gross revenues and not on its gross receipts, is invalid.

  The CTA has no jurisdiction to rule on the validity of regulatory fees as it is within the ambit of police power, not taxation. **(Page 49)**

Criminal Charges on Failure to File and Pay Correct Taxes

- An assessment is not a pre-requisite to the filing of criminal charges. **(Page 50)**

- Under-declaration or failure to declare true and actual income for several consecutive years is an indication of fraudulent intent to cheat the Government of its taxes. **(Page 51)**

- The final determination of the Corporate Interest Restriction (CIR) of a tax liability is necessary to rule on the civil aspect of a criminal case. **(Page 54)**

Tax Refunds

- A plain reading of the law reveals that the refundable creditable input VAT should not be "directly attributable" to such zero-rated sales. **(Page 55)**

- There is no violation of the doctrine of exhaustion of administrative remedies even if the taxpayer-claimant did not wait for the action of the CIR on its refund claim before filing its judicial claim with the CTA. A cursory reading of RMO No. 53-98 and RR No. 2-2006 shows that nowhere is it stated that the non-

submission of the documents enumerated therein would *ipso facto* result in the denial of the claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of the claim for tax refund or credit. **(Page 56)**

- Under our tax laws, effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, but to relieve certain exempt entities from the burden of indirect tax so as to encourage the development of particular industries. **(Page 57)**

- The requisites prescribed under the Agreement between Japan and the Republic of the Philippines for an Economic Partnership (JPEPA) and Executive Order 905 must be met to be entitled to a refund of customs duties. For refund of excise tax, changes in the selling price of the automobiles must be accompanied by a manufacturer's or importer's sworn statement submitted to the BIR. A decrease in the customs duties paid results in a corresponding decrease in the VAT due. **(Page 58)**

Refund of tax erroneously collected or illegally collected

- Applying the provisions of Section 32(B)(6)(b) of the NIRC of 1997, as amended, Petitioner's separation from the service was not of her own making and beyond her control. The effectivity of the management's notice and her subsequent termination is covered in the cited provision. Further, Section 2.78.1 (B)(1)(b) of RR No. 02-98 categorically identified separation due to redundancy of service as one of the valid causes of tax exemption. **(Page 59)**

Requirements in filing a VAT refund claim

- Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the requisites which must be complied with by the taxpayer to successfully obtain a credit/ refund of input VAT. These are the following: (a) The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made; (b) That in case of full or partial denial of the refund claim or the failure on the part of the Commissioner of Internal Revenue to act on said claim within a period of 120 days, the judicial claim has been filed with the CTA within 30 days from receipt of the decision or after the expiration of the 120-day period; (c) The taxpayer is a VAT-registered taxpayer; (d) The taxpayer is engaged in zero-rated or effectively zero-rated sales; (e) For zero-rated sales under Sections 106(A)(2)(1) and (2); 106 (B) and 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (f) The input taxes are not transitional input taxes; (g) The input taxes are due or paid; (h) The input taxes are attributable to zero-rated or effectively zero-rated sales. Where there are however both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sales volume; and (i) The input taxes have not been applied against output taxes during and in the succeeding quarters. **(Page 61)**

- To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both an SEC Certification of Non-Registration of Corporation/ Partnership and a proof of incorporation/registration in a foreign country, and that there is no other indication which would disqualify said entity in being classified as a non-resident foreign corporation. **(Page 63)**

Requirements in filing an administrative claim for refund of excess and unutilized CWT

- In order to be entitled to its refund claim, a taxpayer must satisfy the following requirements: (a) That the claim for refund was filed within two year prescriptive period as provided under Section 204 (C) of the Tax Code, as amended, in relation to Section 229; (b) That the fact of the withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (c) That the income upon which the taxes were withheld was included in the return of the recipient, i.e. declared as part of the gross income. **(Page 65)**

Requirements in filing a claim for refund of unutilized input VAT

- In an action claiming for the refund or issuance of a tax credit certificate for input taxes based on Section 112 of the Tax Code, as amended requires that: (a) The claim is filed with the BIR within two year after the close of the taxable quarter when the sales were made; (b) That in case of full or partial denial of the refund claim or the failure on the part of the Commission of Internal Revenue to act on the said claim within a period of 120 days, the judicial claim has been filed with the Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period (c) The taxpayer is a VAT-registered person; (d) The taxpayer is engaged in zero-rated or effectively zero-rated sales; (e) For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B) and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (f) The input taxes are due or paid; (g) The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sale volume; and (h) The input taxes have not been applied against output taxes during and in the succeeding quarters. **(Page 67)**

- Section 112(A) and (C) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the requisites which must be complied with by the taxpayer to successfully obtain a credit/ refund of input VAT. These are the following: (a) The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made; (b) In case of full or partial denial of the refund claim or the failure on the part of the Commissioner of Internal Revenue to act on said claim within a period of 120 days, the judicial claim has been filed with the CTA within 30 days from receipt of the decision or after the expiration of the 120-day period; (c) The taxpayer is a VAT-registered taxpayer; (d) The taxpayer is engaged in zero-rated or effectively zero-rated sales; (e) For zero-rated sales under Sections 106(A)(2)(1) and (2); 106 (B) and 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations; (f) The input taxes are not transitional input taxes; (g) The input taxes are due or paid; (h) The input taxes are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sales volume; and (i) The input taxes have not been applied against output taxes during and in the succeeding quarters. **(Page 68)**

SEC Filing, Payment and Other Deadlines

Adjusted Filing Procedures and Processing Times for Annual Reports and Requests for Documents during the SEC Main Office's Temporary Closure

- The Commission provides the revised guidelines on the submission of annual reports and requests for SEC documents during the temporary closure of the SEC Main Office until 26 July 2020. **(Page 70)**

Filing of 17-A and/or 17-Q Reports

- The SEC lays down the guidelines to all publicly listed companies (PLC) and other companies with registered securities under the Markets and Securities Regulation Department's (MSRD) supervision (Collectively referred to as the "Concerned Companies") for the filing of 17-A and/or 17-Q reports in view of the COVID-19 pandemic. **(Page 71)**

Further Extension of the Deadline for the Submission of the Integrated Annual Corporate Governance Report (I-ACGR)

- The Commission provides a further extension of the deadline for the submission of the Integrated Annual Corporate Governance Report (I-ACGR) for Publicly-listed Companies. **(Page 72)**

Interim Guidelines for the Limited Manual Operations of the OGC

- The SEC issues the interim guidelines which shall cover all services provided by and transactions with the Office of the General Counsel (OGC) under the 2016 SEC Rules of Procedure and all other relevant rules and regulations during the period of State of National Emergency ("the Covered Period"). **(Page 72)**

New Deadline for the ONLINE Filing or Submission of the Mandatory Disclosure Form (MDF)

- The SEC prescribes the new deadline for the online filing or submission of the MDF. **(Page 79)**

Reglementary Periods in the Filing of Pleadings

- SEC informs the public that the reglementary periods in the filing of petitions and other pleadings will start to run effective 06 July 2020. **(Page 79)**

Revised Guidelines on the Issuance of Payment Assessment Form, Payment of Annual Fees, Request for Monitoring and Issuance of Monitoring Sheet/ Clearance, and Submission of Hard/Printed Copies of Documents

- The SEC Prescribes Guidelines for Investment Companies, Registered Issuers of Proprietary and Non-Proprietary Shares/Timeshares, Public Companies, Financing Companies, Lending Companies, Foundations, Accredited Microfinance NGOS, Corporate Governance Institutional Training Providers and Publicly-listed Companies under the supervision of the Corporate Governance and Finance Department (CGFD). **(Page 79)**

Submission of the Printed Mandatory Disclosure Form (MDF)

- The Commission discourages the public from personally coming to the SEC Main Office in filing the Mandatory Disclosure Form (MDF) in view of the continued risk of being infected or spreading the COVID-19 virus. **(Page 83)**

Other BIR issuances

- RMC No. 65-2020 circularizes the effectivity date of RA No. 11467 entitled "An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, and 288-A, and adding a New Section 290-A to Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, as for Other Purposes." **(Page 83)**

- RMO No. 22-2020 prescribes policies, guidelines, and procedures in the handling/resolution of complaints received through the 8888 Citizens' Complaints Center, Presidential Complaint Center, BIR eComplaint System, Contact Center ng Bayan, Anti-Red Tape Authority, and other feedback mechanisms. **(Page 83)**

Other SEC Updates

SEC Contact Center

- The SEC Main Office, Satellite Offices and Extension Offices will continue to operate at a limited capacity and implement alternative work arrangements while quarantine measures remain in place across the country due to the COVID-19 pandemic. **(Page 87)**

BIR Administrative Requirements

RR No. 19-2020 prescribes the use of the new BIR Form No. 1709 or Information Return on Related Party Transactions (Domestic and/or Foreign), and replaces Form No. 1702H, series of 1992 or Information Return on Transactions with Related Foreign Persons.

RR No. 19-2020 issued on 8 July 2020

- The regulations prescribe for the guidelines for the submission of BIR Form No. 1709, which should be attached to the Annual Income Tax Returns, for proper disclosure of the taxpayer's related party transactions.

- The following rules shall be considered in determining whether a person or entity is a related party:

    1. A person or a close member of that person's family is related to a reporting entity if that person:

        - has control or joint control of the reporting entity;
        - has significant influence over the reporting entity; or
        - is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

    2. Note that the list of family members is not exhaustive and does not preclude other family members from being considered as close members of the family of a person. As such, other family members, including parents or grandparents, could also qualify as close members of the family depending on the assessment of specific facts and circumstances.

    3. An entity is related to a reporting entity if any of the following conditions applies:

        - The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).

- One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group wherein the other entity is a member).

- Both entities are joint ventures of the same third party.

- One entity is a joint venture of a third entity is an associate of the third entity.

- The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.

- The entity is controlled or jointly controlled by a person identified as family members.

- A person identified as having control or joint control of the reporting entity has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

- The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

4. The substance of the relationships between the entities shall be taken into account.

5. The related party transactions shall include, but not limited to, the following:

    - Purchases or sales of goods (finished or unfinished);
    - Purchases or sales of property and other assets;
    - Rendering or receiving of services;
    - Leases;
    - Transfers of research and development;
    - Transfers under license agreements;
    - Transfers under finance arrangements (including loans and equity contributions in cash or in kind); provision of guarantees or collateral;
    - Commitments to do something if a particular event occurs or does not occur in the future, including executory contracts, i.e., contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent (recognized and unrecognized); and
    - Settlement of liabilities on behalf of the entity or by the entity on behalf of that related party.

- The required disclosures on transactions and outstanding balances shall be made separately for each of the following categories:

    1. The parent;
    2. Entities with joint control or significant influence over the entity;
    3. Subsidiaries;
    4. Associates;
    5. Joint ventures in which the entity is a joint venturer;
    6. Key management personnel of the entity or its parent; and
    7. Other related parties.

- For each of the foregoing categories, the following information shall be provided:

    1. The amount of the transactions;

    2. The amount of outstanding balances, including commitments, and their terms and conditions, including whether they are secured, and the nature of the consideration to be provided in settlement, and details of any guarantees given or received;

    3. Provisions for doubtful debts related to the amount of outstanding balances; and

    4. The expense recognized during the period with respect to bad or doubtful debts due from related parties.

- The BIR Form No. 1709 must be accomplished completely and truthfully by the taxpayer, who may be a reporting entity or a related party, or its authorized representative/s. This must be attached to the ITRs for the current taxable year and subsequent years.

- A detailed description of the nature of transaction and the accounts affected must be provided

- The multinational group's profile, along with the name, address, legal status, and country of tax residence of each related party with whom intra-group transactions have been entered into by the taxpayer, as well as ownership linkages, must be included under the "business overview of the ultimate parent company" in Part IV(A) of the Form.

- The taxpayer's business, the industry in which it operates, and the related parties' business with whom the taxpayer has transacted must be broadly described under the "functional profile" in Part IV(B) of the Form.

- The following are the required attachments to BIR Form No. 1709:

    1. Certified true copy of the relevant contracts or proof of transaction;

    2. Withholding tax returns and the corresponding proof of payment of taxes withheld and remitted to the BIR;

    3. Proof of payment of foreign taxes or ruling duly issued by the foreign tax authority where the other party is a resident; and

    4. Certified true copy of Advance Pricing Agreement, if any; and

    5. Any transfer pricing documentation.

- No spaces shall be left unanswered. If one or some portions are not applicable, it shall be so stated.

- The RR shall take effect after 15 days following its publication in a newspaper of general circulation.

(Editor's Note: The RR was published in Malaya Business Insight *on 10 July 2020 and took effect on 25 July 25)*

RMO No. 20-2020 issued on 08 July 2020

RMO No. 20-2020 creates and modifies the ATC for excise tax on tobacco products, heated tobacco products and vapor products pursuant to the implementation of Republic Acts (RAs) No. 11346, 11467, and 10351.

- The following Alphanumeric Tax Codes (ATCs) are hereby created:

ATC	Description	Tax Rate	Legal Basis	BIR Form No.
XT155	Cigarettes Packed by Machine		RA No. 11346	2200-T
	Effective January 1, 2020	P 45.00 per pack		
	Effective January 1, 2021	P 50.00 per pack		
	Effective January 1, 2022	P 55.00 per pack		
	Effective January 1, 2023	P 60.00 per pack		
XT160	On Heated Tobacco Products		RA No. 11346 and 11467	
	Effective January 1, 2020	P 10.00 per pack		
	Effective January 27, 2020	P 25.00 per pack		
	Effective January 1, 2021	P 27.50 per pack		
	Effective January 1, 2022	P 30.00 per pack		
	Effective January 1, 2023	P 32.50 per pack		
XT165	Vapor Products		RA No. 11346	
	Effective January 1, 2020 to January 26,2020			
	00.00 ml to 10.00 ml	P 10.00		
	10.01 ml to 20.00 ml	P 20.00		
	20.01 ml to 30.00 ml	P 30.00		
	30.01 ml to 40.00 ml	P 40.00		
	40.01 ml to 50.00 ml	P 50.00		
	More than 50.00 ml	P 50.00 plus P10.00 for every additional 10ml.		
XT170	On Vapor Products		RA No. 11467	
	a. Nicotine Salt/Salt Nicotine			
	Effective January 27, 2020	P 37.00 per ml.		
	Effective January 1, 2021	P 42.00 per ml.		
	Effective January 1, 2022	P 47.00 per ml.		
	Effective January 1, 2023	P 52.00 per ml.		
XT180	b. Conventional 'Freebase' or 'Classic' Nicotine			
	Effective January 27, 2020	P 45.00 per 10ml.		
	Effective January 1, 2021	P 50.00 per 10ml.		
	Effective January 1, 2022	P 55.00 per 10ml.		
	Effective January 1, 2023	P 60.00 per 10ml.		
XT190	Inspection Fee		RA No. 11346	
	Heated Tobacco Products	P 0.10 per 1000 unit of heated tobacco products		
XT200	Vapor Products	P 0.01 per ml.		

- The following ATCs are hereby modified:

EXISTING (per ATC Handbook)			MODIFIED/NEW			BIR FORM NO.
ATC	Description	Tax Rate	Description	Tax Rate	Legal Basis	
XT010	Tobacco Products		Tobacco Products		RA No. 10351 RR No. 17-2012	2200-T
	a. Tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing		a. Tobacco twisted by hand or reduced into a condition to be consumed in any manner other than the ordinary mode of drying and curing			
	Effective January 1, 2013	P 1.75/kg	Effective January 1, 2020	P 2.31/kg		
	Effective January 1, 2014	P1.82/kg	Effective January 1, 2021	P 2.40/kg		
	Effective January 1, 2015	P 1.89/kg	Effective January 1, 2022	P 2.50/kg		
	Effective January 1, 2016	P 1.97/kg	Effective January 1, 2023	P 2.60/kg		
	Effective January 1, 2017	P 2.05/kg				
	b. Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened		b. Tobacco prepared or partially prepared with or without the use of any machine or instrument or without being pressed or sweetened			
	Effective January 1, 2013	P 1.75/kg	Effective January 1, 2020	P 2.31/kg		
	Effective January 1, 2014	P 1.82/kg	Effective January 1, 2021	P 2.40/kg		
	Effective January 1, 2015	P 1.89/kg	Effective January 1, 2022	P 2.50/kg		
	Effective January 1, 2016	P 1.97/kg	Effective January 1, 2023	P 2.60/kg		
	Effective January 1, 2017	P 2.05/kg				
	c. Fine-cut shorts and refuse, scraps, clippings, cuttings, stems, midribs and sweepings of tobacco		c. Fine-cut shorts and refuse, scraps, clippings, cuttings, stems, midribs and sweepings of tobacco			
	Effective January 1, 2013	P 1.75/kg	Effective January 1, 2020	P 2.31/kg		
	Effective January 1, 2014	P 1.82/kg	Effective January 1, 2021	P 2.40/kg		
	Effective January 1, 2015	P 1.89/kg	Effective January 1, 2022	P 2.50/kg		
	Effective January 1, 2016	P 1.97/kg	Effective January 1, 2023	P 2.60/kg		
	Effective January 1, 2017	P 2.05/kg				
XT020	Chewing Tobacco Unsuitable for Use in Any Other Manner		Chewing Tobacco Unsuitable for Use in Any Other Manner		RA No. 10351 RR No. 17-2012	
	Effective January 1, 2013	P 1.50/kg	Effective January 1, 2020	P 1.97/kg		
	Effective January 1, 2014	P 1.56/kg	Effective January 1, 2021	P 2.05/kg		
	Effective January 1, 2015	P 1.62/kg	Effective January 1, 2022	P 2.13/kg		
	Effective January 1, 2016	P 1.68/kg	Effective January 1, 2023	P2.22/kg		
	Effective January 1, 2017	P 1.75/kg				

EXISTING (per ATC Handbook)			MODIFIED/NEW			BIR FORM NO.
ATC	Description	Tax Rate	Description	Tax Rate	Legal Basis	
XT035	Cigars		Cigars		RA No. 11346	2200-T
	a. Ad Valorem Tax Based on the Net Retail Price (NRP) per Cigar [excluding the excise and value-added tax (VAT)]		a. Ad Valorem Tax Based on the Net Retail Price (NRP) per Cigar [excluding the excise and value-added tax (VAT)]			
	Effective January 1, 2013	20% NRP/cigar	Effective January 1, 2020	20% NRP/ cigar		
	Effective January 1, 2014	20% NRP/cigar	Effective January 1, 2021	20% NRP/ cigar		
	Effective January 1, 2015	20% NRP/cigar	Effective January 1, 2022	20% NRP/ cigar		
	Effective January 1, 2016	20% NRP/cigar	Effective January 1, 2023	20% NRP/ cigar		
	Effective January 1, 2017	20% NRP/cigar				
XT036	b. Specific Tax		b. Specific Tax			
	Effective January 1, 2013	P5.00/cigar	Effective January 1, 2020	P6.57/cigar		
	Effective January 1, 2014	P5.20/cigar	Effective January 1, 2021	P6.83/cigar		
	Effective January 1, 2015	P5.41/cigar	Effective January 1, 2022	P7.10/cigar		
	Effective January 1, 2016	P5.62/cigar	Effective January 1, 2023	P7.38/cigar		
	Effective January 1, 2017	P5.85/cigar				
XT040	Cigarettes		Cigarettes			
	Cigarettes Packed by Hand		Cigarettes Packed by Hand			
	Effective January 1, 2013	P 12.00/pack	Effective January 1, 2020	P 45.00/ pack		
	Effective January 1, 2014	P 15.00/pack	Effective January 1, 2021	P 50.00/ pack		
	Effective January 1, 2015	P 18.00/pack	Effective January 1, 2022	P 55.00/ pack		
	Effective January 1, 2016	P 21.00/pack	Effective January 1, 2023	P 60.00/ pack		
	Effective January 1, 2017	P 30.00/pack				

RMO No. 21-2020 prescribes policies, guidelines, and procedures for the inspection or supervision of the destruction/disposal and determination of deductible expense pertaining to inventory of goods/ assets which have been declared as waste or obsolete.

RMO No. 21-2020 issued on 10 July 2020

- The "Application for Destruction/Disposal of Goods/Assets," together with the other complete documentary requirements, shall be filed at least seven days before the proposed scheduled date of destruction/disposal of the inventories/ equipment with the Large Taxpayers' (LT) Office or Revenue District Office (RDO) where the taxpayer's principal place of business is registered.
- Within five days from receipt of application, the BIR shall inform the taxpayer-applicant as to the approved manner of witnessing and schedule of destruction/ disposal.
- If the method approved is through a third party, the BIR shall issue a letter to the third party through the taxpayer.
- The destruction/disposal activity may be scheduled in a manner agreed upon by the taxpayer and the BIR/BIR authorized representative in the event the activity cannot be completed in one day.

- The date of the destruction shall be scheduled on regular working days, unless BIR approves that it be conducted on a weekend or on a non-working holiday.

- The valuation that will be used for the inventory or assets to be disposed/ destructed shall be the actual cost.

- Where actual cost cannot be accurately determined, the inventory valuation maintained and used by the taxpayer shall be adopted, subject to adjustment upon verification during the audit. In cases of fixed assets, the carrying book value shall be considered.

- Deduction of losses for income tax purposes shall be allowed after witnessing in accordance with this Order, and the issuance of the "Certificate of Deductibility of Goods/Assets Destructed/Disposed" by the BIR within five days from the date of submission by the taxpayer of the complete documents of the destruction/ disposal.

- The claim for the deductibility of the value shall be denied when:

    1. The inventories/assets applied for disposal are for any reason or cause/are replaced/substituted by its supplier; or

    2. The taxpayer shall become entitled to reimbursement for the partial or equivalent value by an insurance company.

- Taxpayer shall be subjected to mandatory audit when:

    1. There is any discrepancy in the course of the evaluation and verification of the application for deductibility; and

    2. After determination that the taxpayer has already claimed such deductions for income tax purposes.

- Any scrap or salvage value as may be subsequently determined shall be declared as other income.

- The ACIR-LTS or RD (or delegated in writing to the Division Chiefs of the LT Office/RDO having jurisdiction over the applicant-taxpayer) shall approve the corresponding reports bearing on the results of inventory destruction as well as the "Certificate of Deductibility of Goods/Assets Destructed/Disposed."

- The authorized BIR official, LTS Excise Tax Divisions, will witness/validate the destruction/disposal of goods, products and articles subject to Excise Tax.

- The following documents shall be submitted together with the "Application for Destruction/Disposal of Goods/Assets" (in duplicate copies):

    1. Sworn Declaration of Goods/Assets as Waste or Obsolete, including the statement that the loss in value of these goods is subject neither to subsequent replacement/payment by the supplier, nor to reimbursement from any insurance company. In case the declarant is not the actual owner but only the duly authorized representative of the actual owner, the sworn declaration shall specifically mention that:

        - The taxpayer he represents is the lawful owner of the certain goods that were produced or acquired for value but were nevertheless damaged or rendered obsolete; and

- The taxpayer he represents intends to effect the destruction thereof on a particular date at a specific location.

2. List of Goods/Assets for Destruction/Disposal or List of Machineries/ Equipment for Destruction/Disposal, as the case may be;

3. Letter of intent that he is considering availing of the services of a third party, and name thereof, as witness in the process of destruction/disposal;

4. Inventory List of Goods duly received by the BIR;

5. Supporting documents to prove the reasons stated in this application as the cause for the destruction/disposal; and

6. Other documents to prove the correctness of the value of the goods/assets to be destroyed/disposed.

- The taxpayer should arrange the inventory/assets in a manner that will facilitate easy identification and counting. Otherwise, the application may be denied without prejudice to the filing of another application.

- The following procedures should be observed in case the taxpayer is authorized to have the destruction/disposal witnessed by the BIR representative (physical witnessing or virtual means) or by a third party:

1. The taxpayer is required to submit documents to the concerned BIR Office, where the principal place of business of the taxpayer is registered, as follows:

2. Duly accomplished and notarized Sworn Declaration of Asset Disposal executed by the President, Chief Finance Officer, or any authorized representative containing:

   - List and description of inventory or assets destructed/disposed;

   - Valuation as stated above; and

   - Taxable year the assets were initially recognized/acquired.

3. The photographs of the assets BEFORE, DURING and AFTER the destruction/disposal must be:

   - Properly labeled, numbered, and quantified following the list in the Sworn Declaration of Asset Disposal;

   - Captured in JPEG or other format acceptable to the BIR;

   - Bearing the respective date and time of taking; and

   - Arranged in a way that the items and quantity are clearly identifiable together with the front page of a newspaper of national circulation as an evidence of the actual date.

4. For destruction/disposal witnessed by a third party, a video footage of the activity BEFORE, DURING and AFTER the destruction in a format (e.g. MP4) acceptable to the BIR, and bearing the front page of a newspaper of national circulation as evidence of the actual date of the said activity.

- The Sworn Declaration must be filed together with the video, photo files and the latest audited financial statements, with the concerned BIR Office where the principal place of business of the taxpayer is registered within three days after the completion of the actual destruction/disposal of the inventory/assets.

- The Sworn Declaration must be executed by the third party who, under the penalty of perjury, witnessed the process of destruction/disposal stating the accuracy as to the quantity of the items and the manner of destruction or disposal of inventory or equipment.

- The following is the procedure to be undertaken by the LT Office/RDO:

    1. Accept the application together with the complete requirements and stamp the word "RECEIVED," indicating the date and time of receipt and the signature of the receiving officer. Otherwise, the application shall be returned to the taxpayer with the list of lacking documents.

    2. Assign immediately the application to the Revenue Officer who will determine the appropriate manner of witnessing the destruction/disposal, which may be:

        - Through physical witnessing;
        - Virtual means; or
        - Through a third party.

    3. Within five days from receipt of application, inform the taxpayer-applicant as to the approved manner and date of witnessing, and schedule of destruction/disposal.

    4. If to be witnessed by a third party, issue an authorization letter, through the taxpayer, to witness the conduct of destruction/disposal.

    5. Process the destruction/disposal of inventories/equipment accordingly:

Before	During	After
Verify the accuracy and completeness of the information in the application against the supporting documents.	Check the existence of the actual volume/quantity and description of articles/ goods/materials/assets sought to be destroyed/ disposed, and compare with the volume/quantity/ description declared in the taxpayer's application. ▸ Taxpayer or authorized representative should confirm or attest to any discrepancy noted in the actual counting. Otherwise, it shall be a ground for denial.	Compare the amount/ value of inventory per list submitted against taxpayer's accounting records, such as: ▸ Inventory Ledger Card; ▸ Materials Requisition Report; ▸ Official Registry Books (ORB) for excisable products/ materials, if applicable; and ▸ Other relevant records (e.g. PEZA application, etc.).

Before	During	After
In case of current transaction, check the description and quantity of the goods for destruction against the latest Inventory List/Ledger filed with the BIR, or against the purchase invoices. ▸ Require the taxpayer to explain the discrepancy, if any.	Supervise and witness the conduct of actual destruction/disposal of goods considered as waste or obsolete.	Verify from the journal entries, ledger and/or other related accounting records that the goods subject for disposal/ destruction actually formed part of the taxpayer's inventory or assets as of the time of disposal/destruction.
Coordinate with the taxpayer on the schedule of actual date and time of destruction/ disposal.	Ensure that the goods were actually destroyed through incineration, dumping, or other methods of destruction to ascertain that such goods cannot be resold and/or used in production or operations in its original form.	Request the taxpayer to take pictures of the result of the destruction/disposal.
Request the taxpayer to take pictures of the goods to be destroyed/ disposed.	Request the taxpayer to take pictures of the goods during the destruction/ disposal activity.	Determine the correctness of the valuation of the goods destroyed/disposed.

6. Within five days from the date of submission of pictures and other required documents, prepare a memorandum report on the result of disposal/ destruction, containing all the necessary details, such as but not limited to:

   - Nature of taxpayer's business
   - Brief description of the activities undertaken during the inspection or verification;
   - Findings and other relevant information uncovered during the inspection or verification; and
   - Recommendation relevant to the application (e.g. approve/denied, amount of allowable deduction, etc.)

7. Prepare in triplicate the "Certificate of Deductibility of Goods/Assets Destructed/Disposed" and submit the entire docket to the approving office.

8. Release the signed "Certificate of Deductibility of Goods/Assets Destructed/ Disposed" to the taxpayer or taxpayer's authorized representative.

RMC No. 78-2020 circularizes the filing of various returns and payment of tax due thereon from taxpayers under the jurisdiction of Revenue Region No. 13 – Cebu City.

Revenue Memorandum Circular No. 78-2020 issued on 30 July 2020

- This Circular is issued to inform taxpayers and others concerned on the filing and payment of taxes during this period due to the declaration of Modified Enhanced Community Quarantine.

- All taxpayers under said jurisdiction are hereby allowed to file their respective tax returns and pay the corresponding taxes due thereon to the nearest Authorized Agent Banks via their over-the-counter payment facilities or to the nearest Revenue Collection Officers, duly authorized by the RDO to receive tax returns and accept payments of the taxes thereon.

- Concerned taxpayers are encouraged to electronically file returns through the eBIR Forms System and pay the corresponding taxes using the following ePayment facilities:

    1. Development Bank of the Philippines' (DBP) Pay Tax Online - for holders of Visa/Mastercard Credit Card and/or BancNet ATM/Debit Card

    2. LandBank of the Philippines (LBP) Link.biz Portal - for taxpayers who have an ATM account with LBP and/or holders of BancNet ATM/Debit/Prepaid Card and taxpayers utilizing PesoNet facility for depositors of RCBC, Robinsons Bank and Union Bank

    3. Union Bank Online Web and Mobile Payment Facility - for taxpayers who have an account with Union Bank of the Philippines

    4. Mobile Payment - GCash/PayMaya

- Taxpayers who will avail of the electronic payment (ePay) facilities may access the abovementioned ePay facilities via the BIR Website (www.bir.gov.ph). Taxpayers may also directly access the following AAB links:

    1. LBP - www.lbp-eservices.com/egps/portal/index.jsp
    2. DBP - www.dbppaytax.com
    3. Union Bank - online.unionbankph.com

- For taxpayers who will avail of GCash and PayMaya payment facilities, they shall download the said Apps from the Google Play Store, Apple App Store or Huawei AppGallery and install the same in their mobile phones.

- The Circular shall take effect immediately until the MECQ has been lifted in Metro Cebu and the same has been placed under General Community Quarantine (GCQ).

Banks and Other Financial Institutions

RMC No. 72-2020 is issued to amend RMC No. 36-2020.

Revenue Memorandum Circular No. 72-2020 issued on 17 July 2020

- This Circular is hereby issued to amend RMC 36-2020 particularly Part C thereof, to remove the requirement of submission of photocopies of documents evidencing credit extensions and credit restructurings granted by covered institutions during the enhanced community quarantine (ECQ).

- Part C of RMC 36-2020 shall now read as follows:

  Covered institutions, including but not limited to banks, quasi-banks, financing companies, lending companies, and other financial institutions, public and private, including the Government Service Insurance System, Social Security System and PAG-IBIG Fund, shall submit, in hard and soft copy, a summary listing of all pre-existing loans, pledges and other instruments as of March 17, 2020 (commencement date of ECQ) which were granted extension of payment and/or maturity periods based on the following format:

  Name of Taxpayer
  Summary Listing of Pre-Existing Loans, Pledges and
  Other Instruments with Granted
  Extension of Payment and/or Maturity periods
  as of March 17,2020

Type of Instrument	Date of Loan Agreement/ Promissory Note, Pledges, Etc.	Document Reference Number (Account ID/ Reference ID, as applicable	Original Payment Deadline Maturity Period	Extended Payment Deadline / Maturity Period	Amount of Loan / Pledge

  The above-mentioned summary listing shall be submitted to the Revenue District Office/Large Taxpayers Service/Large Taxpayers District Office where the taxpayer is registered within sixty (60) days from the lifting of the ECQ. The hard copy of the above summary listing shall be made under oath as to the completeness, truth and accuracy thereof by a duly authorized officer or representative of the taxpayer, and subject to post audit/verification by the BIR whether the summary list pertains to qualified loans only.

- All internal revenue officers, employees, and others concerned are hereby enjoined to give this Circular as wide publicity as possible.

Debt Securities

Circular No. 1091 publishes Resolution No. 899 dated 16 July 2020 approving the amendments to the MORB and the MORNBFI to exclude the debt securities held by market makers from the credit exposure limit to a single borrower (SBL).

BSP Circular No. 1091 dated 22 July 2020

- Debt securities shall be excluded in determining compliance with the SBL, provided:

  1. The market-making positions shall be taken up in the trading book in accordance with the Sec. 614/614-Q on investment activities of BSP Supervised Financial Institutions (BSFI);

  2. The market-making positions shall be properly identified and segregated from the BSFI's proprietary positions; and

  3. The BSFI shall periodically monitor the market value of the subject debt securities and the number of days the securities have been outstanding from date of acquisition.

- The subject debt securities shall be excluded from the SBL for a period not exceeding the period as indicated below:

Calendar Days	Date of Acquisition
90 days	1 August 2020 and 31 July 2021
60 days	1 August 2021 onwards

Electronic Submission of Annual Report and Audited Financial Statement

Memorandum No. M-2020-55 provides for the guidelines on the submission of the AR and AFS in line with the digitalization initiatives of the BSP.

BSP Memorandum No. M-2020-055 dated 11 July 2020

- Banks shall electronically transmit (in PDF) the AR and AFS beginning with the 2019 AR and AFS to the Department of Supervisory Analytics (DSA) as follows:

Type of Institution	E-mail Address	Report Title	File name
Universal/ Commercial Banks	dsakbafs@bsp.gov.ph	1. Annual Report of Management to Stockholders covering Results of Operations for the Past Year 2. Annual Reports Assessment Checklist (ARAC)	AR ARAC
Thrift Banks	dsatbafs@bsp.gov.ph		
Rural and Cooperative Banks	dsarbafs@bsp.gov.ph		
Type of Institution	**E-mail Address**	**Report Title**	**File name**
Universal/ Commercial Banks	dsakbafs@bsp.gov.ph	1. Audited Financial Statements 2. Certification of the External Auditor 3. Reconciliation Statement including adjusting entries, if any 3. Reconciliation Statement including adjusting entries, if any 4. Letter of Comments (LOC) Or Certification by the External Auditor that there are no issues noted in the course of audit to warrant the submission of LOC 5. Copy of the Board Resolutions (or Country Head Report, in case of foreign banks with branches in the Philippines) on action(s) taken by the covered institutions on AFS and LOC, if any 6. Certification by the external auditor of none to report on matters adversely affecting the condition or soundness of the bank 7. Audited Financial Statements of the FCDU/ EFCDUI.	AFS-basis AFS-Cert-basis AFS-Recon-basis AFS-LOC-basis or AFS-NLC-basis AFS-BMR-basis AFS-NCS-basis AFS-FXT
Thrift Banks	dsatbafs@bsp.gov.ph		
Rural and Cooperative Banks	dsarbafs@bsp.gov.ph		

- Format to be followed:

  AR<space><Bank Name>,<space><Reference period in dd Month yyyy>

  AFS<space><Bank Name>,<space><Reference period in dd Month yyyy>

- Only e-mail addresses officially registered with the DSA shall be used.

- Banks that are unable to electronically transmit the AR and AFS may use any portable storage device (e.g., USB flash drive) and submit the same to the DSA office within the prescribed deadline.

- For AFS submission, banks shall submit the six required files as described in the abovementioned table plus the 7th file if the bank is engaged in foreign exchange transactions

- The following may result in erroneous or failed submission, among others:

  a. Failure to use the prescribed filenames;
  b. Failure to use the correct file format;
  c. Failure to use the prescribed subject line or reporting date;
  d. Failure to use an officially registered e-mail address;
  e. Transmitting to the wrong e-mail address; and
  f. Attachments that do not contain the exact number of files.

- Report submissions that do not conform with the above prescribed guidelines shall not be accepted and will be considered non-compliant with the BSP reporting requirements as provided under Section L7t of the MORB.

Operational Relief Measures

Memorandum No. M-2020-051 publishes Resolution No. 900 dated 16 July 2020 approving the amendments to the operational relief measures for the BSFIs under Memorandum No. M-2020-011 dated 19 March 2020, as amended, and M-2020-015 dated 30 March 2020.

BSP Memorandum No. M-2020-057 dated 21 July 2020

- **Single Borrower's Limit (SBL)**: Increase in the SBL under Section 362 of the Manual of Regulations Banks (MORB)/Section 342-Q of the MORNBFI from 25% to 30% until 31 March 2021, pursuant to national interest.

- **Penalty for Reserve Deficiencies**: For the duration of the enhanced community quarantine (ECQ) and until 31 March 2021, the Overnight Lending Facility rate plus10 basis points shall be the maximum penalty that may be imposed by the BSP for reserve deficiencies; Provided, that the maximum reserve deficiency of the BSFI shall be 200 basis points, and the excess above that shall be subject to regular penalties.

- **Notification on Temporary Closure**:

  1. Bank branch/branch lite units or Non-stock Savings and Loan Association (NSSLA) Unit - the temporary closure from March 2020 to March 2021 shall not be subject to the notification requirements under Section 105 of the MORB/Subsection 4151S.8 of the MORNBI: Provided, that information on the closure shall be posted on the bank's/NSSLA's website or social media accounts or displayed in conspicuous places within the premises, if practicable.

The bank branch/branch-lite or NSSLA service unit that is temporarily closed shall be re-opened after 1 year, otherwise, it shall be deemed as a permanent closure and surrender of license and re-opening thereof shall be deemed as an establishment of a new bank branch/branch lite.

The same rule shall apply to the head office of a bank/NSSLA that continues to operate through its other branches/branch-lite units/offices/service units.

2. Other BSFI head office/offices/units – temporary closure from March 2020 to March 2021 shall be subject to the posting of information on the closure on the BSFI's website/social media account or in conspicuous places in the premises of the affected BSFI head office/office/unit, if practicable.

- **Reportorial Requirements on Temporary Closure**: A consolidated report shall be submitted by the BSFI on the bank head office/branches/branch-lite-units or BSFI head office/offices/service units that were temporarily closed from March 2020 to March 2021 and shall periodically submit updates on the status of the re-opening of said bank head office/branches/branch-lite units or BSFI head office/offices/service units until such time that these units are fully operational.

- **Submission of reports**: Submissions using the using official e-mail address of the BSFI to the BSP- Financial Supervision Sector (BSP-FSS) shall be recognized as an authorized submission without the need for a physical signature so long as made in accordance with the provisions of M-2020-007 dated 14 March 2020.

Bureau of Customs

Enhanced Value Reference Information System (e-VRIS) in the Electronic to Mobile (E2M) System

CMO No. 16-2020 provides for the implementation of the e-VRIS in the E2M System.

Customs Memorandum Order (CMO) No. 16-2020

- This CMO covers lodgment of goods declaration under consumption entry.

- The e-VRIS refers to the database of reference values that will operate in the E2M system. It is designed to determine if the desired value made by the importer actually represents the transaction value or the price actually paid or payable when sold for export to the Philippines.

- The reference values stored in the e-VRIS shall serve as a risk management tool to ascertain the veracity of any statement, document or declaration presented for customs valuation purposes. These values are not to be considered substitute values.

- The e-VRIS shall be incorporated into the E2M System and shall provide a repository of previously accepted transaction values of identical/similar goods. With this enhancement, the declared value shall be automatically match with the existing database of reference values to determine if there is possible undervaluation of goods.

- If the declaration was hit by the valuation criteria in the system, the customs examiners/appraisers shall scrutinize the documents presented to verify if the declared value actually represents the transaction value or the price actually paid or payable and/or may request the importer to provide further explanation, including submission of supporting documents to justify declared value.

- This CMO shall take effect 15 days after the completion of its publication.

(Editor's note: CMO 16-2020 was published in *The Manila Times* on 28 July 2020 Page A5)

Seizure and Forfeiture Proceedings and Appeals Process

CAO No. 10-2020 provides for the process on seizure and forfeiture proceedings and appeals process.

Customs Administrative Order (CAO) No. 10-2020

- CAO No. 10 – 2020 covers all properties subject to seizure and forfeiture.
- Properties subject to seizure and forfeiture include goods, vehicles, vessels or aircrafts, cargoes, stores or supplies of a vessel, and packages and receptacles, which are imported or exported under the following conditions:

    1. Goods:

        - Fraudulently concealed in or removed contrary to law from any public or private warehouse, container yard, or container freight station under customs supervision;
        - Imported or exported contrary to law;
        - Prohibited importation or exportation;
        - Which have been used or were entered to be used as instruments in the importation or exportation of prohibited goods;
        - Unmanifested goods;
        - Sought to be imported or exported without going through a customs office;
        - Found in the baggage of a person arriving from abroad and undeclared by such person;
        - Imported or exported through a false declaration or affidavit;
        - Sought to be imported or exported on the strength of a false invoice or other document;
        - Sought to be imported or exported through any other practice or device contrary to law; and
        - Imported goods offered openly for sale or kept in storage, which were discovered in the exercise of the Commissioner's power to inspect and visit, when proof of payment of duties and taxes cannot be presented after the lapse of fifteen (15) days.

    2. Vehicle, vessel or aircraft:

        - Used unlawfully in the importation or exportation of goods;
        - Used in conveying or transporting smuggled goods in commercial quantities within the Philippines;

- Any vessel engaging in the Coastwise Trade which shall have on board goods of foreign growth, produce, or manufacture in excess of the amount necessary for sea stores, without such goods having been properly entered or legally imported;

- Any vessel or aircraft into which shall be transferred cargo unloaded contrary to law prior to the arrival of the importing vessel or aircraft at the port of destination;

- Any conveyance actually used for the transport of goods subject to Forfeiture under the Customs Modernization and Tariff Act (CMTA), with its equipage or trappings, and any vehicle similarly used, together with its equipment and appurtenances; and

- The vessel or aircraft of the owner, agent, master, pilot-in-command or other responsible officer who is liable for any fine or penalty for violation of the CMTA.

3. Cargo, stores, or supplies of a vessel:

    - Arriving from a foreign port which is unloaded before arrival at the vessel's or aircraft's port of destination and without authority from the customs officer; and

    - Sea stores or aircraft stores adjudged by the District Collector to be excessive, when the duties and taxes assessed thereon are not paid.

4. Package and receptacles:

    - Any package of imported goods which is found upon examination to contain goods not specified in the invoice or goods declaration; and

    - Boxes, cases, trunks, envelopes, and other containers of whatever character used as receptacle or as device to conceal goods or are so designed as to conceal the character of such goods.

- The forfeiture of goods shall be effected only when any of the following circumstances exist:

    1. The goods are in the custody or within the jurisdiction of customs officers;

    2. The goods are in the possession or custody of or subject to the control of the importer, exporter, original owner, consignee, agent of another person effecting the importation, entry or exportation in question; or

    3. The goods are in the possession or custody of or subject to the control of persons who shall receive, conceal, buy, sell, transport the same, or aid in any of such acts, with knowledge that the goods were imported or were the subject of an attempt to import or export contrary to law.

- Vehicles, vessels or aircrafts used in carrying smuggled goods in Commercial Quantity shall be forfeited except if all of the following conditions are present:

    1. It is a common carrier;

    2. It has not been chartered for purposes of conveying and transporting persons or cargo; and

3. The owner or agent at that time of seizure has no knowledge of and participation in the unlawful act.

- Presentation of the proof of payment of duties and taxes shall be made within the 15-day period. During the said period, the goods shall be placed under Constructive Customs Custody, provided that the same may be released if any of the following documents are presented and verified:

  1. Proof of payment of correct duties and taxes or proof of exemption from payment of duties and taxes;

  2. Proof of local purchase and payment of correct duties and taxes by the original importer; or

  3. Proof that the goods were locally produced or manufactured.

- In the event that the interested party fails to produce such evidence within the 15-day period, the goods shall be seized and subjected to forfeiture proceedings.

- In case a Warrant of Seizure and Detention (WSD) has been issued, the goods may be released to the owner under the following circumstances:

  1. Proof of exemption from payment of duties and taxes, or proof of payment of correct duties and taxes were presented and are found to be authentic and in order;

  2. Proof of local purchase and payment of correct duties and taxes by the original importer were presented and are found to be authentic and in order;

  3. Proof was presented that the goods were locally produced or manufactured; or

  4. Voluntary payment of duties and taxes, provided that the claimant presented a proof of local purchase.

- The District Collector exercising territorial jurisdiction over the location of the seized goods shall have the original and exclusive authority to issue the WSD.

- Partial seizure of shipment is allowed if the offense relates only to a part or portion of a shipment, and only that part shall be seized or detained, provided that the District Collector is satisfied that the remainder of the shipment was not used, directly or indirectly, in the commission of the offense.

- The District Collector shall immediately direct the Enforcement and Security Service to serve the WSD within three working days from its issuance.

- The Bureau of Customs (BOC) shall exercise exclusive original jurisdiction over all forfeiture cases under the CMTA.

- Immediately from issuance of the WSD, the District Collector shall endorse the same to the Law Division for the assignment of a Hearing Officer.

- After termination of the hearing, the Hearing Officer shall require the claimant to submit its verified Position Paper, within 5 days from date of last hearing, copy furnished the Government Prosecutor.

- The remedies against the WSD include filing a motion to quash, payment of surcharge for undeclared baggage, settlement of forfeiture cases, and settlement of payment of fine or redemption of forfeited goods.

(Editor's Note: CAO No. 10-2020 was published in *The Manila Times* on 21 July 2020 Page C2)

VAT Exemptions on Sales and Importation of Drugs and Medicines

RR No. 18-2020 provides for regulations to implement Section 1 of R.A. No. 11467, further amending Section 109(AA) of the Tax Code, as amended by R.A. No. 10963 or the TRAIN Law, and provides for VAT exemptions on the sales and importation of drugs and medicines prescribed for diabetes, high cholesterol, hypertension, cancer, mental illness, tuberculosis, and kidney diseases.

RR No. 18-2020 issued on 8 July 2020

- Section 4.109-1 of RR No. 16-2005, as amended by RR No. 13-2018, is further amended to include the sale or importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension as VAT-exempt under R.A. 11467.
- The sale or importation of prescription drugs and medicines for cancer, mental illness, tuberculosis, and kidney diseases are VAT-exempt beginning 1 January 2023.
- The VAT-exemption only applies to sale or importation by the manufacturers, distributors, wholesalers and retailers of drugs and medicines included in the "list of approved drugs and medicines" issued by the Department of Health (DOH) for this purpose.
- The VAT on importation of prescription drugs and medicines for diabetes, high cholesterol, and hypertension listed in the DOH-FDA approved list from January 27, 2020 until the effectivity of this regulations shall be refunded under Section 204(C) of the Tax Code, as amended, and in accordance with the existing procedures for VAT refund.
- The input tax on the imported items should have not been reported and claimed as input tax credit in the monthly and/or quarterly VAT returns and shall not be allowed as credit pursuant to Section 110 of the Tax Code, as amended for purposes of computing the VAT payable for the said period.

RMO No. 23-2020 provides for the issuance of an ATRIG for VAT exemption on the sales and importation of prescription drugs and medicines pursuant to Section 1 of Republic Act No. 11467, further amending Section 109 (AA) of the National Internal Revenue Code of 1997, as amended, and as implemented in RR No. 18-2020.

RMO No. 23-2020 issued on 15 July 2020

- The ATRIG shall be issued on all importations of articles exempt from VAT pursuant to RMO No. 35-2002.
- The ATRIG shall be issued for VAT-exemption on the sale and importation of prescription drugs and medicines, pursuant to RR No. 18-2020, as follows:
    1. Diabetes, high cholesterol, and hypertension beginning 27 January 2020;
    2. Cancer, mental illness, tuberculosis, and kidney diseases beginning 1 January 2023.
- Revenue District Office (RDO) No. 33 – Intramuros-Ermita-Malate of Revenue Region No. 6 shall process applications for ATRIG by the manufacturers, distributors, wholesalers, and retailers of drugs and medicines included in the "list of approved drugs and medicines" issued by the DOH.

(Editor's Note: This order has been amended by RMO 25-2020.)

RMO No. 25-2020 amends certain provisions of RMO No. 23-2020 to prescribe the offices to process the issuance of an ATRIG for VAT Exemption on the importation of prescription drugs and medicines pursuant to the provisions of RR No. 18-2020, which implemented Section 1 of R.A. No. 11467, further amending Section 109(AA) of the National Internal Revenue Code of 1997 as amended by R.A. No. 10963 or the "TRAIN Law."

RMO No. 25-2020 issued on 28 July 2020

- This Order is being issued to amend second and third paragraphs of RMO 23-2020.
- For VAT purposes, the ATRIG shall be issued on all importations of VAT-exempt articles at the RDO having jurisdiction over the port of entry.
- The RDO having jurisdiction over the port of entry shall process applications for ATRIG by the manufacturers, distributors, wholesalers, and retailers of drugs and medicines included in the "list of approved drugs and medicines" issued by the DOH.

POGO Licensees and Service Providers

RMC No. 64-2020 circularizes the revised guidelines and requirements for POGO licensees and service providers to apply for a BIR clearance in connection with the resumption of operations.

Revenue Memorandum Circular No. 64-2020 issued on 24 June 2020

- The application letter for the issuance of a BIR Clearance and all documents must be filed with the BIR POGO Task Force c/o ODCIR, Rm. 404 BIR National Office Bldg. (NOB), BIR Road, Diliman, QC or submitted to @pogo.taskforce@bir.gov.ph.
- The letter should indicate the company name, TIN, business address/es, its authorized representative and his/her contact details as well as the monthly regulatory fees paid to PAGCOR in prior years.
- The submission of complete documentary requirements must be ensured for prompt processing.
- Submission of falsified or fraudulent documents shall result in the denial of the issuance of a BIR Clearance for resumption of operations.
- To get the BIR Clearance, POGO Licensee or Operators must comply with the following conditions:

    1. Registration with the concerned RDO having jurisdiction over the place of business;
    2. Payment of Franchise Tax and submit proof of payments;
    3. Remitted and paid the withholding taxes, if applicable;
    4. Submission of a notarized undertaking to pay tax arrears; and
    5. Failure to comply with any of the above will result in the denial of the issuance of a BIR Clearance for resumption of operations.

- To get the BIR Clearance, the following are the documentary requirements for POGO Licensees or Operators:

    1. Copy of Application for registration of Corporations, et al., duly received by the concerned RDO (BIR Form No. 1903) or CIR Certificate of Registration (COR), if already registered;
    2. Copies of Franchise Tax Returns (BIR Form No. 2553) together with proof of payments;

3. Copies of the Monthly Remittance Form for Income Tax Withheld (BIR Form Nos. 1601-C and 0629-E and F), Quarterly Remittance Return of Income Taxes Withheld (BIR Form 1601-EQ and FQ) or Payment Form (BIR Form No. 0605) for January to April 2020; and

4. Notarized Undertaking to pay tax arrears.

- To get a BIR Clearance, the POGO Service Provider must comply with the following conditions:

  1. Registered with the concerned Revenue District Office (RDO) having jurisdiction over the place of business;

  2. Submit a copy of 2019 Income Tax Return (ITR) with proof of payments;

  3. Remitted and paid the withholding taxes due from the months of January to April 2020;

  4. Submission of notarized undertaking to pay tax arrears; and

  5. Failure to comply with any of the above will result in the denial of the issuance of a BIR Clearance for resumption of operations.

- The following are the documentary requirements for the issuance of the BIR Clearance for POGO Service Providers:

  1. Copy of the BIR Application for registration duly received by the concerned RDO (BIR Form No. 1901 or 1903) or BIR Certificate of Registration (COR), if already registered;

  2. Copy of the 2019 Income Tax Return [ITR] (BIR Form No. 1701 or 1702) and proof of payments;

  3. Copies of Monthly Remittance Form for Income Tax Withheld (BIR Forms No. 1601-C and 0619-E and F), Quarterly Remittance Return of Income Taxes Withheld (BIR Form 1601-EQ and FQ) or Payment Form (BIR Form No. 0605) for the months of January to April 2020;

  4. Notarized Undertaking to pay tax arrears.

- The application of a Service Provider for the issuance of a BIR Clearance shall not be approved in case its POGO Licensee fail to comply with the BIR Requirements for BIR Clearance.

- All internal revenue officers, employees, and others concerned are hereby enjoined to give this Circular as wide a publicity as possible.

Online Merchants

RMC No. 75 -2020 extends the deadline for business registration of those engaging in digital transactions under RMC 60-2020.

Revenue Memorandum Circular No. 75-2020 issued on 29 July 2020

- RMC 60-2020 emphasizes Section 236 of the Tax Code, as amended, relative to the registration and other tax compliance requirements. As online merchants requested for more time to comply due to the current problem of going to district offices, limited open bank branches for funding and others, RMC 7502929 extends the registration deadline from 31 July 2020 stated in RMC 60-2020 to 31 August 2020.

- In addition, those who voluntarily declare their past transactions subject to pertinent taxes and pay such taxes on or before the said date shall not be subject to penalties for late filing and payment.

- Those later on found to be doing business without complying with registration/ update requirements, and those who fail to pay due taxes/unpaid taxes shall be subject to applicable penalties under the law, existing revenue rules and regulations.

- All internal revenue officers are enjoined to give this Circular as wide publicity as possible.

Cash Register Machines (CRM), Point-of-Sale (POS) Machines, and Other Similar Sales Machines

RMC No. 69-2020 is issued to streamline existing procedures with regard to the cancellation of PTU CRM, POS Machines, and other similar sales machines generating receipts/invoices in compliance with the requirement of RA No. 11032 otherwise known as the "Ease of Doing Business and Efficient Government Service Delivery Act of 2018."

Revenue Memorandum Circular No. 69-2020 issued on 13 July 2020

- Guidelines and Procedures:

1. The cancellation of the PTU CRM/POS machine shall be processed by the Revenue District Office/LT Office having jurisdiction over the taxpayer's business address where the machine was registered.

2. The taxpayer shall notify the concerned RDO/LT office, in writing, on their request for cancellation of the PTU within five days from the date the machine was last used/withdrawn from use stating the reason(s) for the cancellation and other information such as but not limited to the following:

    - Permit Number;
    - Machine Identification Number (MIN);
    - Type of Machine;
    - Machine serial number, brand/model;
    - Software name and/or version; and
    - Grand accumulated sales as of the last day of use of the machine.

3. The taxpayer shall submit the following documents as an attachment to the Letter of to the assigned Revenue Officer at the time of machine inspection:

    - Copy of the Z-Reading (for POS machines) / audit tape (for CRM) showing the reset counter number and EOD / Z Counter Reading as of the last day of use of the machine(s);

    - Copy of the back-end report (for POS machines) / cash register sales book page (for CRM) as of the last day of use of the machine(s);

    - Original copy of the PTU issued;

    - Original copy of the Decal;

    - Reprint copy of the last invoice/receipt generated as of the last day of use showing the serial number of such invoice/receipt;

    - Copy of the Z-Reading/End-of-Day (EOD) Report or its equivalent showing that the sales machine was reset to zero or initialized; and

- For new/upgraded software (loaded in the same machine where the old software is installed): Copy of the Z-Reading/End-of-Day (EOD) Report or its equivalent showing the initial reading of the newly installed software.

4. Actual inspection of the CRM/POS shall be mandatory in case of its withdrawal from use or its transfer to another branch of the company. However, in case of modification/upgrading of the software being used, actual inspection of the machine may be dispensed with so as not to disrupt the normal business operation of the taxpayer under the following conditions:

    - New/upgraded software shall be set-up in the same hardware/machines where the old POS software are installed;

    - POS machines are with existing PTU issued through the Electronic Accreditation and Registration (eAccReg) System;

    - The new or upgraded software will be implemented/deployed/rolled-out nationwide or in branches/franchisees located in different Revenue District Offices (RDOs); and

    - The changing/loading of the new/upgraded software in the POS machines will be implemented immediately after the close of the business hours.

5. In case of withdrawal from use or transfer of the CRM/POS to another branch of the taxpayer/ the assigned Revenue Officer shall conduct an inspection of the machine hereof and perform the following:

    - Check the specifications and details of the said machine(s) as against the specifications indicated in the Letter of the taxpayer;

    - Request taxpayer to generate the Z-Reading as of the day of inspection and match it to the Z-reading (as of the last day of use) submitted by the taxpayer. The grand accumulated sales should be the same. This means that the taxpayer did not use the machine after the reported last day of use;

    - Request taxpayer to generate the back end report (for POS) of the machine as of the date of inspection and compare it with the grand accumulated sales as reflected in the Z-Reading as of the last day of use of the machine; For CRM, check the entries in the Cash Register Sales Book if updated (last entry should be the declared last day of use of the machine);

    - Initialize the resetting to zero of the machine;

    - Impose penalties for any violation pertaining to the use of CRM/POS machines that may be found during the inspection.

6. Non-payment of the penalties at the time of the request for cancellation of the PTU shall not be grounds for the non-issuance of the Cancellation Certificate.

7. The assigned Revenue Officer shall submit a Memorandum Report on the result of the inspection upon completion of the machine inspection and submission of the required documents by the taxpayer. Such report shall be approved by the Assistant Commissioner, LTS/RDO.

8. Upon approval of the Memo report of the assigned Revenue Officer, the Chief, Client Support Section of the RDO/Chief, LT concerned office or its authorized staff, shall cancel the PTU and the MIN of the machine in the eAccReg system and generate the Cancellation Certificate.

9. In compliance with the processing time in the Citizen's Charter, the Cancellation Certificate must be issued within seven days from receipt of the letter request of the taxpayer by the concerned RDO/LT Office. In case when inspection of the machine was dispensed with, the Cancellation Certificate shall be issued to the taxpayer within three working days from receipt of the complete requirements by the RDO / concerned LT Office.

10. The concerned LT Office/RDO shall approve the application for PTU through the eAccReg within three days from receipt of such application as mandated under the Citizen's Charter of the BIR.

11. In order to authorize the simultaneous registration in the eAccReg system of the new accredited software or upgraded software to be installed in the same machine with application for cancellation of the old software, the taxpayer shall secure approval in writing from the concerned LT Office / RDO to add a distinct prefix/suffix to the serial number of the sales machine to allow registration of the new software consisting of the serial number of the machine followed by the prefix/suffix e.g., 123456A.

- While some of the procedures provided herein are reiterations of the provisions of RMC No. 72-2019, the policies, requirements and procedures in the said RMC apply only to machines found during Post-Evaluation to have requested for cancellation of PTU but have not been acted upon by the concerned LT Office/ RDO. Otherwise, the provisions on the cancellation of PTU under this Circular shall apply.

- All concerned are hereby enjoined to be guided accordingly and to give this Circular as wide publicity as possible.

- This Circular shall take effect immediately.

BSP

Payment System Oversight Framework

BSP Circular No. 1089 dated 07 July 2020

The Monetary Board, in its Resolution No. 803 dated 25 June 2020, approved the Payment System Oversight Framework, which sets out the approach and rules of the BSP in the conduct of its oversight function pursuant to R.A) No. 11127 or the National Payment Systems Act (NPSA) and R.A. No. 7653 or The New Central Bank Act as amended by R.A. No. 11211.

- The oversight function of the BSP shall cover the activities of the following institutions:

1. National Payment System
2. Operators of payment systems
3. Financial Market infrastructures
4. Payment System Management Body
5. Payment service providers
6. Critical Service Provider of a designated payment system.

- The BSP shall perform the following oversight activities:

    1. Monitoring existing and planned payment systems (including registration and licensing, off-site monitoring and on-site activities).

    2. Assessing the NPS and payment systems against the safety, efficiency and reliability objectives.

    3. Induce changes which can be achieved by means such as through stakeholder dialogue and policy issuances.

Socialized Credit to Agrarian Reform Beneficiaries

Circular No. 1090 publishes Resolution No. 802 dated 25 June 2020 approving the adoption of the Implementing Rules and Regulations of R.A. No. 10878 or the Agricultural Land Reform Code and the corresponding amendments to the MORB.

BSP Circular No. 1090 dated 20 July 2020

- The MORB now provides that the Land Bank of the Philippines (LBP) shall offer socialized credit to qualified small farmers, small fisherfolk and agrarian reform beneficiaries through qualified conduits.

- The LBP may offer and issue shares of stocks to agrarian reform beneficiaries, small farmers and fisherfolk through their organizations, cooperatives; federations and cooperative banks; development partners and strategic investors such as multilateral and bilateral institutions; and rural banks and their associations.

Rediscount Facilities

Memorandum No. M-2020-056 publishes MB Resolution No. 854 dated 9 July 2020 approving the extension of the temporary measures implemented in the BSP's rediscount facilities as contained in Memorandum No. M-2020-043 dated 18 May 2020.

BSP Memorandum No. M-2020-056 dated 16 July 2020

- Temporary relief measures on rediscount facilities are available for an additional 75 calendar day extension or until 30 September 2020, subject to further reduction as may be approved by the MB.

- Reduction of term spread on rediscounting loans under the BSP's Exporters' Dollar and Yen Rediscount Facility (EDYRF) is approved thereby reducing the applicable USD and JPY rediscount rates to the 90-day London Interbank Offered Rate, or in its absence, an applicable benchmark rate (e.g. the Secured Overnight Financing Rate) plus 200 basis points regardless of maturity (i.e. 1 – 360 days), until 30 September 2020, subject to further extension as may be approved by the MB.

- The following are the applicable rates for rediscounting loans for the month of July which shall be updated monthly:

USD	2.30788%
JPY	1.95617%

- Original documents for the above applications/availments shall be submitted to BSP - Department of Loans and Credit upon prior notice sent to DLCmail@bsp.gov.ph at least a day before the actual submission.

Non - Profit Business League

Contact Centers Association of the Philippines, Inc. (CCAP) vs. Commissioner of Internal Revenue
CTA (First Division) Case 9666 promulgated 8 July 2020

A non-profit business league may be subject to income tax on any income derived from its real or personal properties, or from any activities conducted for profit regardless of the disposition made.

The absence of a Tax Exemption Certificate does not divest an entity of its income exemption under Sec. 30 of the NIRC.

The collection of membership fees may be not considered as a sale of service in the ordinary course of business subject to VAT, as the primary purpose of the exaction is to support the administrative operations of the association.

Facts:

Respondent CIR assessed Petitioner Contact Centers Association of the Philippines (CCAP) for deficiency income tax, expanded withholding tax (EWT), and VAT for taxable year 2013. CCAP, which is a membership organization created to promote the business interest of contact centers – outsourced service providers in the Philippines, protested. It insisted that as a non-profit business organization that enjoys exemption from income tax under Section 30(F) of the NIRC, it should not be taxed on its receipts, not being income, but rather membership dues, sponsorships from its member companies for the funding of its non-profit projects. It averred that these amounts are not meant to inure to the benefit of any private individual.

CCAP argued that it should not be made to suffer the consequences of the failure of the Revenue District office to act on its application for the issuance of a Tax Exemption Certificate pursuant to Revenue Memorandum Order (RMO) 20-2013.

It filed a Petition for Review at the CTA due to the CIR's failure to act on its protest.

At the CTA, the BIR averred that CCAP does not fall under the category of tax-exempt corporations and that majority of its income inures to the benefit of its members as its expenses are exorbitant, questionable and unjustified for a non-profit corporation. It also took the position that under Revenue Memorandum Circular 35-2012, association dues, membership fees, and other charges collected by the association are subject to VAT since these constitute income payments or compensation for the beneficial services it provides to members.

Issues:

1. Is CCAP, as a business organization, automatically exempt from income tax?

2. Does the absence of a Tax Exemption Certificate divest CCAP of the exemption that is specifically granted under the law?

3. Are the membership fees collected by CCAP subject to VAT?

Rulings:

1. No. While CCAP is classified as a business league falling within the ambit of Section 30 (F) of the NIRC, it does not necessarily follow that it may not be liable for income taxes. Any income derived from its real or personal properties, or from any activities conducted for profit regardless of the disposition made, shall be subject to tax. CCAP failed to prove that the income that the BIR assessed was not derived from its real or personal properties, or from any activity conducted for profit, regardless of the disposition thereof.

2. No. CCAP falls under the category of "business league, chamber of commerce, or board of trade" which is not organized for profit and whose income does not inure to the benefit of any private stockholder. Even if CCAP has not secured a Tax Exemption Certificate from the BIR, it will not operate to remove the income tax exemption granted by law. The Tax Exemption Certificate should merely operate to confirm the entitlement of CCAP to income exemption but the entitlement thereto is Sec. 30 of the NIRC, not the Tax Exemption Certificate.

3. No. Quoting the Supreme Court's decision in *Association of Non-Profit Clubs, Inc. vs. BIR, G.R. No. 228539 promulgated on 26 June 2019*, the membership dues are held in trust for the furtherance of CCAP's purpose. The membership fees may not be considered as a sale of service in the ordinary course of business subject to VAT, as the primary purpose of exacting membership fees is to support the administrative operations of the association. However, for collections other than membership dues, the CTA reiterated the ruling in *CIR vs. Commonwealth Management and Services Corp., G.R. No. 125355 promulgated on 20 March 2000*, where it was clarified that an entity which provides service for a fee, remuneration or consideration, in the ordinary course of trade or business even without realizing profit therefrom, is subject to VAT.

Procedure on Tax Assessments

Nyk-Filjapan Shipping Corporation vs. Commissioner of Internal Revenue
CTA (3rd Division) Case No. 9120 promulgated on 25 June 2020

Under our Tax Law, it is axiomatic that at the heart of every assessment conducted by the BIR, there must be a valid grant of authority. Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. In the absence of such authority, the assessment or examination is a nullity.

Facts:

Petitioner Nyk-Filjapan Shipping Corporation is a domestic corporation engaged in the business of acting as shipping agent and shipbroker. In 2008, the petitioner received a Letter of Authority (LOA) issued by the Head Revenue Executive Assistant, through the Chief of Large Taxpayer (LT) Audit and Investigation Division I, authorizing Revenue Officer (RO) Juan M. Luna Jr., to conduct audit of Petitioner 's tax records for taxable year 2007. Subsequently, OIC-Chief Edralin M. Silario of the LT Regular Audit Division I issued a "Memorandum" referring the papers/ entire docket of Petitioner to Revenue Officer (RO) William F. Sundiam, and Group Supervisor (GS) Joriz U. Saldajeno. The Petitioner contends the assessment is void since no LOA was issue to authorize RO Sundiam to investigate and asses Petitioner.

Issues:

Is there a valid grant of authority to Revenue Officer (RO) Sundiam, and Group Supervisor (GS) Saldajeno to conduct and issue a valid assessment?

Ruling:

No. Under Section 6(A) of the Tax Code, the power to authorize examination of a taxpayer and issue assessments is primarily lodged with the Commissioner of Internal Revenue (CIR). Apparently, while the power to make assessments is primarily lodged with CIR, the power to issue LOA in relation thereto may be expressly delegated to the Regional Revenue Director (RRD). Consequently, the RRD may appoint a sub-agent such as the Revenue Officer (RO) through a "Memorandum Rereferrals" provided that the he is not prohibited from doing so by the principal.

Here, the Petitioner received a copy of a letter with an attached LOA issued by Head Revenue Executive Assistant, authorizing the conduct of an audit of petitioner's tax records for TY 2007. The authority to conduct the said audit was specifically granted to a certain RO Luna, Jr. Thereafter, the OIC-Chief of the LT Regular Audit Division I issued a Memorandum Referral referring the papers/ entire docket of petitioner to RO Sundiam and GS Saldajeno, for the continuance of investigation on all of petitioner's internal revenue taxes. The said Memorandum Referrals, however, were only signed by OIC-Chief of the LT Regular Audit Division I of the BIR and not by the Revenue Regional Director.

Considering that the examination of Petitioner's books of accounts and other accounting records, and the recommendation of the issuance of the PAN, FLD-PAN, and FDDA is done without authority, the audit performed, and the issuance of the assailed assessment against Petitioner are inescapably void.

Tektite Insurance Brokers, Inc. vs Commissioner of Internal Revenue
CTA (3rd Division) Case No. 9184 promulgated 25 June 2020

The authority of a RO to conduct an audit/ examination goes into the validity of an assessment; thus, any assessment arising from the audit/ examination of a taxpayer's books of accounts by an RO who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit.

Facts:

Petitioner Tektite Insurance Brokers, Inc. (Tektite) is a domestic corporation primarily engaged to carry on the business of insurance brokerage.

On November 14, 2012, the Commissioner of Internal Revenue (CIR) issued a Letter Notice (LN) with Details of Taxpayer's Suppliers' Records and Details of Taxpayers Customers' Records.

On January 15, 2013, the CIR issued a Letter of Authority (LOA), authorizing revenue officers to examine Tektite's books of accounts and other accounting records for all internal revenue taxes covering Calendar Year (CY) 2011. A Second and Final Notice was issued on February 8, 2013. Tektite then transmitted its books of accounts for Taxable Year (TY) 2011 on several dates.

On December 18, 2014, the CIR then issued a Preliminary Assessment Notice (PAN) with Details of Discrepancies, assessing Tektite for deficiency income tax, VAT, and EWT, inclusive of increments.

On January 9, 2015, Tektite received a Formal Letter of Demand (FLD) with attached Details of Discrepancies and Assessment Notices (FAN), assessing it for alleged deficiency income tax, VAT, and EWT. Tektite protested the FLD/FAN by requesting for a reinvestigation. Subsequently, Tektite submitted its supporting documents.

As the CIR allegedly did not act on the protest, Tektite filed a Petition for Review with the CTA, seeking the cancellation of the deficiency income tax, VAT, and EWT assessments.

Tektite argues that the 2011 PAN and FAN/FLD were void for having been issued pursuant to a prescribed LOA. Tektite also avers that the CIR failed to issue a PAN before the issuance of the FAN/FLD. Likewise, the FAN/FLD is allegedly void because the right of the CIR to assess Tektite for deficiency VAT and EWT for TY 2011 had already prescribed.

The CIR, on the other hand, counter-argues that Tektite received the PAN dated December 18, 2014 through their employee on the same date. The CIR contends that it was also sent through registered mail on the same date.

Allegedly, the prescription provided under Section 203 of the Tax Code, cannot apply to the instant case because of the finding of fraud.

Issues:

Is the assessment for deficiency income tax, deficiency value-added tax, and deficiency withholding tax – expanded void for having been issued (I) without the issuance of a PAN; and (II) beyond the prescriptive period allowed by law?

Ruling:

Yes. The authority of a revenue officer (RO) to conduct an audit/ examination goes into the validity of an assessment; thus, any assessment arising from the audit/ examination of a taxpayer's books of accounts by an RO who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit.

In the case at bar, the LOA was issued on January 15, 2013, authorizing RO Elma Delluta to examine Tektite's books of accounts and other accounting records for all internal revenue taxes for the CY 2011. In this regard, the RO had 120 days from January 15, 2013 or until May 15, 2013 to conduct the audit and submit the report. The RO, however, submitted the Memorandum Report only on April 21, 2014. Therefore, instead of continuing with the audit beyond the prescribed 120-day period, the RO should have just submitted a Progress Report and surrendered the LOA for revalidation, that is, for the issuance of a new LOA, which is lacking in this case.

Considering that there is no evidence that the LOA was revalidated on or before the expiration of the 120-day period, the LOA had ceased to be valid and the resulting assessment or examination is a nullity. In the absence of competent proof that the RO was duly authorized pursuant to a valid LOA, the deficiency tax assessments issued against Tektite, arising from the audit the RO conducted, are *void ab initio*.

Western Mindanao Power Corporation vs Commissioner of Internal Revenue
CTA (3rd Division) Case No. 9248 promulgated on 29 June 2020

Under our Tax laws, Income Tax is assessed on income received from any property, activity or service. Such being the case, in the imposition or assessment of income tax, it must be clear that there was income, and such income was received by the taxpayer, not when there is underdeclaration of purchases.

Facts:

In July 2015, the BIR issued a Preliminary Assessment Notice (PAN) against Petitioner, who filed a reply, stating that the PAN has no basis and requesting for its cancellation.

Subsequently, the BIR issued a Formal Letter of Demand (FLD), alleging that there is a discrepancy between Petitioner's Summary List of Purchases (SLP) and Summary List of Sales (SLS), which resulted in Income Tax and Value Added Tax (VAT) deficiencies, among others. Petitioner filed a request for reinvestigation.

Thereafter, the BIR issued a Final Decision on Disputed Assessment (FDDA). Consequently, the petitioner filed this instant Petition for Review.

Issue:

Is the petitioner liable for deficiency Income Tax and VAT arising from the discrepancy between SLS and SLP?

Ruling:

No. The three elements on the imposition of income tax are: (1) There must be a gain or profit (2) that the gain or profit is realized or received, actually or constructively, and (3) it is not exempted by law or treaty from income tax. It must be clear that there was income, and such income was received by the taxpayer, not when there is underdeclaration of purchases. Furthermore, a taxpayer is free to deduct from its gross income a lesser amount, or not claim a deduction at all. What is prohibited is the claim of deduction beyond the amount authorized by law.

Here, the assessment arose from a presumption that the undeclared purchases automatically resulted from undeclared income, which is not correct since the petitioner did not actually receive any income. In the same vein, no deficiency VAT assessment should also arise from undeclared purchases. Hence, the supposed "Unrecorded gross profit from Extraction of Master Files per CAATTS pursuant to RMO No.14-2011," must not be considered in the subject deficiency tax assessments.

In line with the findings discussed earlier, no deficiency VAT assessment should arise from an undeclared purchase. As discussed, respondent is incorrect to presume that the undeclared purchases automatically resulted in undeclared income, therefore the imposition of VAT thereon is likewise, incorrect. As such, the imposition of VAT assessment pertaining thereto shall also be cancelled.

Due process requirement in tax assessments; Letter of Authority

Sumitomo Corporation – Philippine Branch vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9422 promulgated on 30 June 2020

Facts:

A Letter of Authority (LOA) was issued against the petitioner Sumitomo Corporation – Philippine Branch ("Sumitomo") authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for the fiscal year (FY) ending March 31, 2011.

Sumitomo then received a Preliminary Assessment Notice (PAN) for deficiency income tax, value added tax (VAT), expanded withholding tax (EWT), capital gains tax (CGT) and documentary stamp tax (DST). Sumitomo filed a reply to the PAN.

Subsequently, Sumitomo received a Formal Letter of Demand (FLD), which reduced the amount of the deficiency tax assessments. Sumitomo protested the FLD.

The Commissioner of Internal Revenue (CIR) thereafter issued a Final Decision on Disputed Assessment (FDDA) against Sumitomo, which Sumitomo countered with a request for reconsideration.

An amended FDDA was thereafter issued against Sumitomo, which maintained the deficiency VAT assessment. The CIR reasoned that the excess input that Sumitomo carried over must be excluded in the computation of available input tax for the period under audit as Sumitomo already benefited from these input tax in the succeeding period, which oftentimes results to a lesser or sometimes no VAT due at all.

Thereafter, Sumitomo filed before the Court of Tax Appeals a Petition for Review assailing the decision of the CIR.

Issue:

Was there a valid assessment notice issued against Sumitomo Corporation – Philippine Branch?

In an LOA, the Commissioner of Internal Revenue is the principal as he is the one mandated by law to make assessments. His agent is the Regional Director. Under Article 1892 of the Civil Code, an agent, such as the Regional Director, can appoint a sub-agent, such as the Revenue Officers.

With regard to the document containing the authority of such sub-agent, the only directive under Section 13 of the Tax Code, as amended, is that the grant of authority be in writing. As long as the document contains all the elements to establish a contract of agency between the Commissioner of Internal Revenue and the new revenue officer, that document may suffice even if it is not entitled "Letter of Authority".

Hence, the new revenue officers can perform assessment functions even without the need of a new LOA provided that the letter or notice or memorandum clothing him or her with the power to perform assessment functions was signed by the Assistant Commissioner/ Head Revenue Executive Assistant of the Large Taxpayer Service. Under Revenue Memorandum Order (RMO) No. 29-07, the equivalent of a Regional Director in the Large Taxpayer Service is the Assistant Commissioner/ Head Revenue Executive Assistant.

Ruling:

No.

The revenue officer who conducted the investigation was not authorized through the LOA to examine Sumitomo's books of accounts and other accounting records. Thus, the subject tax assessment is void.

The audit process in the BIR normally commences when the CIR or his duly authorized representative issues the LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time, it authorizes or empowers a designated revenue officer to examiner, verify and scrutinize a taxpayer's books and records in relation to internal revenue tax liabilities for a particular period.

Pursuant to Sections 6 and 13 of the Tax Code, as amended, a grant of authority, through an LOA, must be made assigning a revenue officer to perform tax assessment functions, in order that such officer may examine taxpayers and collect the correct amount of tax or to recommend the assessment of any deficiency tax due.

A perusal of the records shows that the revenue officer who conducted the audit of Sumitomo's books of accounts and other accounting records was clothed with a Memorandum of Assignment issued for the former to continue to audit from the previously assigned revenue examiners. The examination of this revenue officer eventually led to the issuance of the PAN, FLD and FDDA. Another Memorandum of Assignment was issued to another revenue officer to continue to audit, whose report led to the issuance of an amended FDDA against Sumitomo.

In an LOA, the CIR is the principal as he is the one mandated by law to make assessments. His agent is the Regional Director. Under Article 1892 of the Civil Code, an agent, such as the Regional Director, can appoint a sub-agent, such as the Revenue Officers.

With regard to the document containing the authority of such sub-agent, the only directive under Section 13 of the Tax Code, as amended, is that the grant of authority be in writing. As long as the document contains all the elements to establish a contract of agency between the Commissioner of Internal Revenue and the new revenue officer, that document may suffice even if it is not entitled "Letter of Authority."

Hence, the new revenue officers can perform assessment functions even without the need of a new LOA provided that the letter or notice or memorandum clothing him or her with the power to perform assessment functions was signed by the Assistant Commissioner/ Head Revenue Executive Assistant of the Large Taxpayer Service. Under Revenue Memorandum Order (RMO) No. 29-07, the equivalent of a Regional Director in the Large Taxpayer Service is the Assistant Commissioner/ Head Revenue Executive Assistant.

The Memorandum of Assignment in the instant case was issued by a Chief of the Regular Large Taxpayer Audit Division, who is not clothed with authority under RMO No. 29-07. Hence, such document did not validly cloth upon the revenue officers the power to examine the books of accounts and other accounting records of Sumitomo and thus, the assessments issued against Sumitomo are null and void.

On the assumption that the revenue officers performed their assessment functions under a valid authority, the VAT assessment maintained in the amended FDDA is still void since the FLD provides an indefinite amount when it states that the interest will have to be adjusted if paid beyond the date specified therein.

The subject VAT assessment is void considering that it lacked "due tax liability that is definitely set and fixed." It likewise does not purport to be a demand for payment of tax due.

Robinsons Convenience Stores, Inc. vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9178 promulgated on 30 June 2020

Unless authorized by the Commissioner of Internal Revenue himself or his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. Revenue officers are required to be specifically authorized by a valid LOA in order to exercise assessment functions. In the absence of a valid LOA issued specifically in favor of a revenue officer, the tax assessment issued against a taxpayer shall be void.

Facts:

A Letter of Authority (LOA) was issued against Robinsons Convenience Stores Inc. (Robinsons) authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for the calendar year (CY) 2010.

Robinsons thereafter executed a Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code extending the period to assess until March 31, 2014.

Robinsons then received a Preliminary Assessment Notice (PAN) through facsimile. The said PAN proposes to assess Robinsons for deficiency income tax, VAT, expanded withholding tax (EWT) and withholding tax on compensation (WTC). Robinsons filed a reply to the PAN.

Subsequently, Robinsons received a Formal Letter of Demand (FLD), which Robinsons protested. A Final Decision on Disputed Assessment (FDDA) was thereafter issued by the Commissioner of Internal Revenue (CIR) against Robinsons, and Robinsons filed a request for reconsideration against the FDDA, which the CIR denied.

Thereafter, Robinsons filed before the Court of Tax Appeals a Petition for Review assailing the decision of the Commissioner of Internal Revenue.

Issue:

Was there a valid assessment notice issued against Robinsons Convenience Stores?

Ruling:

No.

Section 203 of the Tax Code, as amended, provides that except as provided under Section 222, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return. In case the return is filed beyond the period prescribed by law, the three-year period shall be counted from the day when the return was filed. Further, as there is no evidence presented to establish the fact of fraud on the part of Robinsons Convenience Stores, there is no reason to apply the exception provided under Section 222 (a) of the Tax Code which authorizes assessment beyond the three-year prescriptive period. Thus, the assessments for VAT, EWT and WTC are void.

Further, the assessments for deficiency VAT, EWT and WTC have already prescribed for being issued beyond the supposedly extended period indicated in the Waiver. Since the Waiver only extends the period to assess until March 31, 2014, the FLD, which was received by Robinsons Convenient Stores on April 14, 2014 was beyond the extended period indicated in the Waiver.

More importantly, the revenue officers who conducted the audit and subsequent reinvestigation of Robinsons Convenience Stores were not authorized to examine the latter's books of accounts and other tax records. Revenue officers are required to be specifically authorized by a valid LOA in order to exercise assessment functions. In the absence of a valid LOA issued specifically in favor of a revenue officer, the tax assessment issued against a taxpayer shall be void.

A perusal of the records shows that the revenue examiners who recommended the issuance of the PAN, FLD, FDDA and denial of the request for reconsideration of the FDDA were not properly clothed with authority to do so as there is no valid LOA issued authorizing them to examine the books of Robinsons Convenience Stores. Hence, the resulting assessment is null and void.

Due process requirement in tax assessments; Letter of Authority; Observance of 15-day period within which to protest the Preliminary Assessment Notice

Global Fresh Products, Inc. vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9718 promulgated on 30 June 2020

Unless authorized by the Commissioner of Internal Revenue himself or his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 of the Tax Code where the taxpayer can be assessed through best evidence obtainable, inventory-taking or surveillance, among others, has nothing to do with the LOA. These are methods of examining the taxpayer in order to arrive at the correct amount of taxes.

The taxpayer's right to due process was also violated when the 15-day period within which to protest the PAN under Section 228 of the Tax Code, as amended, and as implemented by Revenue Regulation No. 12-99 was not observed by the tax authorities when they issued the FAN even before the expiration of the said 15-day period.

Facts:

Global Fresh Products Inc. (Global Fresh) received a Preliminary Assessment Notice (PAN) with Details of Discrepancies representing alleged deficiency income tax, VAT, expanded withholding tax (EWT), withholding tax on compensation (WTC) and documentary stamp tax (DST). Ten days after, Global Fresh received a Formal Assessment Notice (FAN) for the aforementioned deficiency taxes for taxable year (TY) 2013. Global Fresh protested the subject assessment. In view of the Commissioner of Internal Revenue (CIR)'s inaction on the supplemental protest submitted by Global Fresh, the latter filed before the Court of Tax Appeals (CTA) a Petition for Review.

Issues:

1. Was there a valid assessment notice issued against Global Fresh Products?

2. Was petitioner given the opportunity to respond to the PAN and to explain its side?

Ruling:

1. No. The period of limitation upon the assessment of deficiency taxes is provided under Section 203 of the Tax Code, as amended. Except as provided under Section 222 of the Tax Code, as amended, Section 203 mandates the government to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. An assessment notice issued after the three-year prescriptive period is no longer valid and effective.

For income tax assessment, the CIR has three years from the date of filing the Income Tax Return within which to issue the assessment notice. The FAN was issued within the three-year prescriptive period.

For VAT, the three-year prescriptive period shall be counted from the due date of filing the quarterly VAT returns which is on the twenty-fifth day following the close of each taxable quarter, or the actual date of filing the quarterly VAT returns, whichever comes later, In this case, only the deficiency VAT assessment for the fourth quarter was valid as the FAN was issued within the three-year prescriptive period.

For WTC and EWT for the group under which Global Fresh Products is categorized, the three-year prescriptive period shall be counted from the due date of filing the monthly WTC return which is the thirteenth day after the end of each month or the actual date of filing whichever comes later. Hence, the WTC and EWT assessments for the period January 2013 to November 2013 have already prescribed as the FAN was issued beyond the three-year prescriptive period.

For DST, the same may be assessed within ten years from the discovery of such omission based on Section 222 (a) of the Tax Code, as amended. The FAN was issued within the prescriptive period.

It was, however, found that the subject tax assessments are void as the examining revenue officer was not duly authorized by a LOA to conduct the audit of Global Fresh.

In the case of Medicard Philippines vs. Commissioner of Internal Revenue (GR No. 222473 dated April 5, 2017), the Supreme Court emphasized the importance of a LOA relative to the performance of assessment functions. The Supreme Court in the same case held that unless authorized by the Commissioner of Internal Revenue himself or his duly authorized representative through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. The circumstances contemplated under Section 6 of the Tax Code where the taxpayer can be assessed through best evidence obtainable, inventory-taking or surveillance, among others, has nothing to do with the LOA. These are methods of examining the taxpayer in order to arrive at the correct amount of taxes.

Revenue Memorandum Order (RMO) No. 43-90 prescribes the revised policy guidelines for the audit/investigation and issuance of a letter of authority to audit. It requires that all audits/ investigation should be conducted under a LOA and requires the issuance of a new LOA in case of any reassignment or transfer of cases to another Revenue Officer.

The Revenue Officer who examined the books of Global Fresh was not the examining officer named in the LOA issued against Global Fresh. The Revenue Officer was directed to continue the audit through a Memorandum of Assignment, which was issued by then Revenue District Officer. A Memorandum of Assignment is not the document contemplated under the law to cloth the examining officer with authority to examine the books of Global Fresh.

2. No. According to Section 3.1.2 of RR No. 12-99, a taxpayer has 15 days within which to reply to the PAN. If the taxpayer fails to respond to the PAN within the said 15-day period, the taxpayer shall be considered in default and the BIR shall then issue the FLD and assessment notice.

In the case of Commissioner of Internal Revenue vs. Metro Star Superama, Inc., it was held that the strict compliance with the requirements laid down by law and its own rules is considered a denial of a taxpayer's right to due process.

Global Fresh's right to due process was also violated when the 15-day period within which to protest the PAN under Section 228 of the Tax Code, as amended, and as implemented by Revenue Regulation No. 12-99 was not observed by the tax authorities when they issued the FAN even before the expiration of the said 15-day period.

Considering that petitioner was not given the requisite opportunity to respond to the PAN and to explain its side, its right to due process was violated by respondent. Consequently, the subject Formal Assessment Notice and the Assessment Notices are void, and bear no valid fruit.

Due process requirement in tax assessments; Proof of taxpayer's receipt of the Final Assessment Notice

Square One Realty Corporation vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9484 promulgated on 30 June 2020

Under Section 228 of the Tax Code, as amended, and in relation to RR No. 12-1999, the Commissioner of Internal Revenue or his duly authorized representative shall issue the FLD/FAN, which shall be sent to the taxpayer only by registered mail or by personal delivery. The use of the word "shall" indicate the mandatory nature of the requirements laid down under such rules.

Facts:

Square One Realty Corporation (Square One Realty) received a Letter of Authority (LOA) issued by Revenue Region No. 6 authorizing Revenue Officer Nasser Abinal and Group Supervisor Manuel Hernandez of Revenue District Office (RDO) No. 34 to examine Square One Realty's books of accounts and other accounting records for all internal revenue taxes for calendar year (CY) 2012.

Thereafter, Square One Realty received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, assessing the company for deficiency income tax, VAT, expanded withholding tax (EWT) and documentary stamp tax (DST) for CY 2012. Square One filed a reply to the PAN.

The Commissioner of Internal Revenue (CIR) thereafter issued a Formal Letter of Demand with Assessment Notices and Details of Discrepancies assessing Square One Realty for deficiency income tax, VAT and EWT for CY 2012.

The CIR then issued a Preliminary Collection Letter and Final Notice Before Seizure. Square One Realty filed a reply to the Final Notice Before Seizure.

Square One Realty thereafter filed before the Court of Tax Appeals a Petition for Review.

Issue:

Was there a valid assessment notice issued against Square One Realty?

Ruling:

No. The CIR failed to prove that Square One Realty actually received the FLD/FAN.

Under Section 228 of the Tax Code, as amended, and in relation to Revenue Regulations (RR) No. 12-1999, the CIR or his duly authorized representative shall issue the FLD/FAN, which shall be sent to the taxpayer only by registered mail or by

personal delivery. The use of the word "shall" indicate the mandatory nature of the requirements laid down under such rules. Thus, it is essential for the CIR to establish and prove that the said FLD/FAN was duly served upon Square One Realty.

In tax assessment, due process requires that the taxpayer must actually receive the assessment. If the taxpayer denies having received the assessment notice, it is incumbent upon the Commissioner of Internal Revenue to prove by competent evidence that the assessment notices were indeed received by the taxpayer.

The Transmittal Letters presented by the CIR prove that the FAN/FLD were forwarded to the Administrative Division and to the Post Office for mailing, but do not establish the actual mailing and receipt thereof by Square One Realty.

In order to prove the fact of mailing, the CIR must have presented the Registry Receipt issued by the Bureau of Posts or the Registry Return card which would supposedly be signed by the taxpayer or its authorized representative. In the absence of the said documents, a Certification issue by the Bureau of Posts and any other pertinent document executed with its intervention, must have been presented to establish the fact of mailing.

Strict compliance with due process requirement is necessary for a valid tax assessment. Consequently, the deficiency tax assessment against Square One Realty are null and void for having been issued in violation of the due process requirement. The issuance of the Final Notice Before Seizure is, thus, void and ineffectual.

Statute of Limitations

RMC No. 74 -2020 clarifies certain provisions of RMC 34-2020

Revenue Memorandum Circular No. 74-2020 issued on 22 July 2020

- This Circular was issued to clarify a provision of RMC 34-2020 which states:

  "The cited provisions and stated circumstances therefore warrant the suspension of the running of the Statute of Limitations under Section 203 and 222 of the NIRC of 1997, as amended, for a period starting on March 16, 2020 until the lifting of the state of national emergency and for sixty (60) days thereafter. The suspension of the running of the Statute of Limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection of deficiency taxes. This Circular shall apply nationwide."

- For the purposes of this Circular, the said paragraph is amended to read:

  "The cited provisions and stated circumstances therefore warrant the suspension of the running of the Statute of Limitations under Section 203 and 222 of the NIRC of 1997, as amended, for a period starting on March 16, 2020 until the lifting of the extreme community quarantine (ECQ) and for sixty (60) days thereafter. The suspension of the running of the Statute of Limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection of deficiency taxes. This Circular shall apply nationwide to areas placed under ECQ."

- This Circular takes effect immediately.

RMC No. 77-2020 clarifies ECQ as referred to in RMC No. 74-2020.

Revenue Memorandum Circular No. 77-2020 issued on 30 July 2020

- This Circular is being issued to clarify the definition of the term "ECQ" under RMC No. 74-2020 as follows:

Provisions under RMC No. 74-2020	Clarification under RMC No. 77-2020
The cited provisions and stated circumstances therefore warrant the suspension of the running of the Statute of Limitations under Section 203 and 222 of the NIRC of 1997, as amended, for a period starting on 16 March 2020 until the lifting of the **extreme community quarantine (ECQ)** and for 60 days thereafter. The suspension of the running of the Statute of Limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection of deficiency taxes. This Circular shall apply nationwide on areas placed under ECQ.	The cited provisions and stated circumstances therefore warrant the suspension of the running of the Statute of Limitations under Section 203 and 222 of the NIRC of 1997, as amended, for a period starting on 16 March 2020 until the lifting of the **enhanced community quarantine (ECQ)** and for 60 days thereafter. The suspension of the running of the Statute of Limitations shall likewise apply with respect to the issuance and service of assessment notices, warrants and enforcement and/or collection of deficiency taxes. This Circular shall apply nationwide on areas placed under ECQ.

This Circular shall take effect immediately.

Imelda Sze, Sze Kou For, & Teresita Ng vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue
Supreme Court First Division G.R. No. 210238, promulgated 6 January 2020

Under Section 281 of the Tax Code (on Other Penal Provisions), all violations of any provision of the Tax Code shall prescribe after five years from its commission. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

Facts:

In 2003, the BIR issued a Letter of authority for the examination of the books and records of Chiat Sing Cardboard Corporation (CSCC) for all internal revenue taxes for 1999 and 2000. Despite notices sent by the BIR, CSCC did not present the required documents.

The Bureau of Internal Revenue (BIR) conducted its investigation and discovered, among others, that CSSC underdeclared its sales and income, deliberately and willfully misdeclared its taxable base to evade payment of the correct internal revenue tax, and understated the payment of its current tax liabilities by more than 30%.

The BIR served a Formal Letter of Demand and Final Assessment Notice (FLD/FAN) upon CSSC on February 7, 2005 but CSSC did not file any protest. Hence, the deficiency tax assessments for 1999 and 2000 became final, executory and demandable.

On May 19, 2005, the BIR charged the petitioner-officers of CSSC with tax evasion and/or tax fraud under various provisions of the National Internal Revenue Code of 1997 (NIRC). Petitioner-officers denied the accusations and claimed that (1) there was no factual and legal basis for the charges, (2) the filing was premature and violated their rights to due process, (3) they did not receive the notices, (4)

they were not responsible for any underdeclaration, misdeclaration or importation, (5) they were not responsible for the preparation and filing of tax returns, (6) CSSC has no assets to satisfy the assessed taxes, (7) CSSC notified the BIR of the termination of business as of December 2004, and (8) the BIR presumed that CSSC manufactured raw materials into final products and sold them.

The prosecutor dismissed the complaint, which was sustained by the Department of Justice (DOJ) but reversed on appeal to the Court of Appeals (CA). Finding probable cause for tax evasion and violation of the NIRC, the CA ordered the DOJ to file the corresponding Information (or criminal charge) with the proper court.

Petitioner-officers appealed to the Supreme Court and while the case was pending, they manifested that Amended Information for tax evasion were filed against them in the Court of Tax Appeals (CTA), which were dismissed on the ground of prescription. Hence, petitioners argued that the issues in the petition pending with the Supreme Court have become moot and academic.

Issue:

Should the case before the Supreme Court be dismissed for being moot and academic due to the dismissal of the criminal case at the CTA?

Ruling:

Yes, the case should be dismissed for being moot and academic due to the dismissal of the criminal case at the CTA against the officers on the ground of prescription.

Section 281 on Chapter IV of the Tax Code (on Other Penal Provisions) provides that all violations of any provision of the Tax Code shall prescribe after five years. The law further provides that "(P)rescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment."

Revenue Memorandum Circular No. 101-90 provides that an offense under the Tax Code is considered discovered only after the manner of commission and the nature and extent of fraud has been definitely ascertained. This occurs when the BIR renders its final decision and requires the taxpayer to pay the deficiency tax.

In this case, the FLD/FAN were served on CSSC on February 7, 2005. CSSC did not file any protest and the tax assessments became final, demandable and executory. Counting 30 days from the service of the FLD/FAN, violations were considered discovered on March 9, 2005. While the BIR's revenue officers filed their joint affidavit in the DOJ for preliminary investigation on May 26, 2005, the original Information (criminal charge) was filed in court only on April 23, 2014, which was beyond the five-year prescriptive period. Thus, the action has prescribed.

The CTA's dismissal of the criminal cases on the ground of prescription rendered the issue on the propriety of the CA's decision finding probable cause for tax evasion as moot and academic. The case ceased to present a justiciable controversy because of supervening events. Judgment will not serve any useful purpose or have any practical legal effect because it cannot be enforced. Thus, the present case was dismissed by the Supreme Court.

Prescriptive period within which to assess a taxpayer; Validity of a Waiver

GMA Network Films Inc. vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9381 promulgated on 30 June 2020

Under Section 203 of the Tax Code, as amended, the government has the right to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after 3 years is not valid and effective. However, the rule does not cover those provided under Section 222 of the Tax Code, as amended. Under Section 222 (b), the 3-year prescriptive period may be extended, if before the expiration thereof, both respondent and the taxpayer agreed in writing to its assessment, but only within the period agreed upon.

Facts:

The Commissioner of Internal Revenue (CIR) issued a Letter of Authority (LOA) authorizing Revenue Officer Irene Juana Acacio and Group Supervisor Virgilio Tablizo of Revenue District Office (RDO) No. 39 to examine GMA Network Films' books of accounts and other accounting records for all internal revenue taxes for calendar year (CY) 2011.

GMA Network Films executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code (Waiver) consenting to the assessment and/or collection of tax or taxes for the subject year which may be found after investigation not later than June 30, 2015. The said Waiver was accepted by the Revenue District Officer of RDO No. 39.

The CIR issued a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies, assessing GMA Network Films for deficiency income tax, VAT and expanded withholding tax (EWT) for CY 2011.

A Final Assessment Notice (FAN) and Formal Letter of Demand (FLD) was issued by the CIR against GMA Network Film in less than a month.

A request for reinvestigation was filed by GMA Network Films, which was granted by the CIR.

Consequently, a Final Decision on Disputed Assessment (FDDA) with attached Details of Discrepancies was issued against GMA Network Films. The CIR subsequently issued a Preliminary Collection Letter and a Final Notice Before Seizure.

GMA Network Films thereafter filed before the Court of Tax Appeals a Petition for Review.

Issue:

Was the Commissioner of Infernal Revenue's right to assess barred by prescription?

Ruling:

Yes. Under Section 203 of the Tax Code, as amended, the government has the right to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after 3 years is not valid and effective.

The rule however does not cover those provided under Section 222 of the Tax Code, as amended. Under Section 222 (b), the 3-year prescriptive period may be extended, if before the expiration thereof, both respondent and the taxpayer agreed in writing to its assessment, but only within the period agreed upon. Nevertheless, the original period so agreed upon may be extended by a subsequent written agreement before the expiration of such period.

A Waiver is a bilateral agreement between a taxpayer and the BIR to extend the period of assessment and collection to a certain date. It is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigation and thus, it must be carefully and strictly construed. The Waiver must faithfully comply with the provision of Revenue Memorandum Order (RMO) no. 20-90 and Revenue Delegation Authority Order (RADO) No. 05-01 in order to be valid and binding.

The Court finds the subject Waiver invalid. Based on Commissioner of Internal Revenue vs. La Flor Dela Isabela Inc. (GR No. 211289 dated January 14, 2019), it is required that the Waiver, to be valid, must indicated the nature and the amount of the tax due. These details are material as there can be no true and valid agreement between the taxpayer and respondent absent these information. The subject Waiver failed to indicate the kind and the exact amount of taxes to be assessed and collected. Hence, the Waiver did not effectively extend the 3-year prescriptive period under Section 203 of the Tax Code, as amended.

Further, considering that GMA Network Films received the subject FAN and FLD on June 15, 2015 which was beyond the 3-year period to assess the company for income tax (April 16, 2015), VAT (April 25, 2014, July 25, 2014, October 25, 2014 and January 25, 2015) and EWT (February 10, March 10, April 11, May 10, June 10, July 11, August 10, September 12, October 10, November 10, and December 12, 2014 and January 15, 2015), the assessment is invalid. A void assessment bears no valid fruit. Hence, the subject deficiency tax assessments for income tax, VAT and EWT for CY 2011 are not valid.

Local Business Tax Assessments

NLEX Corporation (Formerly Manila North Tollways Corporation, as the Surviving Corporation and has absorbed Tollways Management Corporation) vs. Municipality of Guiguinto, Bulacan and Guillerma DL. Garrido, in her capacity as the OIC-Municipal Treasurer of Guiguinto, Bulacan
CTA (Second Division) AC No. 217 promulgated 13 July 2020

A local business tax assessment based on the gross revenues and not on its gross receipts is invalid.

The CTA has no jurisdiction to rule on the validity of regulatory fees as it is within the ambit of police power, not taxation.

Facts:

Respondent Municipality of Guiguinto, Bulacan assessed NLEX Corporation for deficiency local business tax (LBT) and regulatory fees for 2005 to 2007. NLEX protested the imposition of LBT, particularly its computation based on its income from its Operations and Management Contract divided by the number of kilometers covered by NLEX, multiplied by the number of kilometers of toll roads within the municipality. Upon denial of the protest, NLEX filed a complaint at the lower court, which later ordered it to pay the deficiency amounts assessed.

NLEX filed a Petition for Review with the CTA.

Issues:

1. Is the deficiency LBT assessment based on gross revenues valid?
2. Can the CTA rule on the validity of the regulatory fees?

Rulings:

1. No. The CTA held that NLEX maintains a branch or sales office with the Guiguinto municipality and any sales of said branches or outlets shall be subject to LBT under Section 150 of the Local Government Code. However, the CTA cancelled the LBT assessment as it is based on gross revenues and not on the

gross receipts of NLEX, which makes it invalid. As a contractor, the LBT of NLEX should be based on gross sales and receipts, as provided under Section 143 (E) of the LGC. Based on the Supreme Court's decision in *Ericsson Telecommunications, Inc. vs. City of Pasig, G.R. No. 176667 promulgated on 22 November 2007*, the imposition of LBT based on gross revenue reflected on the audited financial statements will result in the constitutionally proscribed double taxation. This will be tantamount to taxing the same person twice by the same jurisdiction for the same thing, inasmuch as the revenue or income for a taxable year will include its gross receipts already reported during the previous year and for which LBT has already been paid.

2. No. The CTA has no jurisdiction to rule on the validity of regulatory fees. In the instant case, the mayor's permit, business license and miscellaneous fees are primarily regulatory in nature, and not primarily revenue-raising. These fees are within the ambit of police power and not of taxation.

Criminal Charges on Failure to File and Pay Correct Taxes

People of the Philippines Vs. Joselito B. Yap
CTA (2nd Division) Case No. 0-668 & 0-669 promulgated 29 June 2020 (Criminal Case)

An assessment is not a pre-requisite to the filing of the criminal charges

Facts:

At bar are two (2) consolidated criminal cases filed against accused, Joselito B. Yap (accused), for violations of Sections 254 and 255 of the National Internal Revenue Code (NIRC) of 1997, as amended. The prosecution argued that accused, a registered taxpayer, required by law to file income tax returns and to pay the corresponding income tax, unlawfully and feloniously attempt to evade and defeat payment of correct tax by under-declaring his income. The BIR Audit yielded an unexplained substantial increase in accused's assets between his original income tax return (ITR) and amended ITR for TY 2011. The alleged discrepancy then led the BIR to recommend the issuance of a Letter of Authority (LOA) and soon after Preliminary Assessment Notice (PAN) and Final Letter of Demand (FLD) against the accused.

Controverting the prosecutions assertions, accused testified that he never personally received a copy of the LOA, PAN and FLD. He claimed the person who allegedly received the mentioned documents on his behalf, was not his employee.

Accused likewise insisted that it was his accountant who prepared his Amended Audited Financial Statement (AFS) and included therein non-current assets (acquired prior to TY 2011 which therefore led to the drastic increase in assets in his amended ITR). According to accused, these assets were acquired not with his income but through numerous loans.

Issue:

1. Is a LOA, PAN or FLD required before a case for tax evasion can be prosecuted?
2. Is the Accused guilty of violating sections 254 and 255 of the NIRC?

Held:

1. No. At the outset, it cannot be overemphasized that an assessment is not a pre-requisite to the filing of the criminal charges. In particular, Section 222(a) of the NIRC of1997, as amended, states that, in case of a false or fraudulent return or failure to file a return, the tax may be assessed or a proceeding in court for the collection of such tax may be filed without assessment, at any time within

10 years after the discovery of the falsity fraud or omission. Thus, accused's contention that his failure to receive copies of the LOA, PAN and FLD were violative of his right to due process holds no water.

2. No.

In Commissioner of Internal Revenue v. The Estate of Benigno P. Toda, Jr., et al., the Supreme Court held that tax evasion connotes the integration of three (3) factors, namely:

1. The end to be achieved, that is, the payment of less than that known by the taxpayer to be legally due, or the non-payment of tax when it is shown that a tax is due;

2. An accompanying state of mind which is described as being "evil," in "bad faith," "willful," or "deliberate and not accidental"; and,

3. A course of action or failure of action which is unlawful.

The accused's amended ITR and its attached financial statements show substantial increase in his non-current assets as well as his current liabilities. Plaintiff contends that accused specifically omitted such declarations and conveniently resorted to amendment upon BIR's discovery during the audit investigation.

In his defense, accused claims that the increase in non-current assets was not sourced from business revenues but through bank loans as reflected in the entries "Accounts Payable" and "Mortgage Payable" in his amended AFS. It is noteworthy that accused did not submit any evidence to substantiate such information therein with evidence of any loan. It is settled, however, that the "conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution.

It also appears that the significant increase in assets of accused in his amended AFS and ITR has already been confirmed to be the result of loans and not undeclared income.

The accused has also already amended his ITR with the correct information prior to the filing of these criminal charges and this belies the element of "willfulness" for the purpose of prosecution for the offense of tax evasion. Such amendment is also allowed there being no Letter of Authority (LOA) that has been served at the time of filing.

Additionally, being a state of mind, "willful" for the purpose of tax evasion is equated with "evil" or "bad faith". "Willfulness" in tax crimes should be understood as a "voluntary, intentional violation of a known legal duty."

People of the Philippines Vs. Philippine Corinthian Liner Corporation, Clarita De Guzman a.k.a. Claire Dela Fuente (Criminal Case)
CTA (3rd Division) Case No. 0-172, 0-173, 0-174, 0-175, 0-176, 0-177 and 0-178 promulgated 30 June 2020

Under-declaration or failure to declare true and actual income for several consecutive years is an indication of fraudulent intent to cheat the Government of its taxes.

Facts:

Accused Philippine Corinthian Liner Corporation (PCLC) and Accused Clarita De Guzman, a.k.a. Claire Dela Fuente (Dela Fuente) are charged with seven separate counts of violating Sections 75, 76 and 255 in rel. to Sec. 253 of the Tax Code, for failure to file income tax returns for taxable years (TY) 1998 to 2004.

The Prosecution primarily argues that PCLC engaged in the transport business in 1998 to 2004 where it derived income from its business operations but failed to register as a taxpayer, failed to make and file the returns for the said taxable years, and failed to pay the taxes due thereon. As regards its failure to register, no records of returns and registration can be found with the BIR during the years in question and PCLC only registered and obtained a TIN in 2005, through fraudulent means.

The Prosecution claims that it has presented both testimonial and documentary evidence to prove that PCLC has been operating its business from 1997 to 2004. These include documents and certifications from various government agencies such as the BIR, LTO, SEC, LTFRB, consisting of original issuances of the aforementioned agencies and submissions by PCLC and Accused Dela Fuente in pursuance of operating its transport business, which include, but are not limited to, Deeds of Sale of units of buses with accompanying OR/CR, Franchises, Contracts of Lease of garage premises, all designed to show the viability of PCLC to operate. The Summary of Apprehensions the Prosecution obtained from the LTO indicate actual operation of the units during the period in question. The Prosecution claims that the documentary evidence that it presented are admissible in evidence and have probative value, despite being photocopies, as PCLC and Accused Dela Fuente have custody of the originals thereof, and that these show the guilt of PCLC and Accused Dela Fuente beyond reasonable doubt.

The Defense claims that the first element of the crime charged - that income has been received - has not been proven. Accused Dela Fuente claims that PCLC did not conduct any business operations during the subject period, and that it only began conducting operations in 2005 after the deaths of the real owners, Teofilo and Rolando, during which PCLC obtained a Certificate of Registration from the BIR and paid the necessary percentage taxes.

The evidence of the Prosecution taken from third parties such as those from the SEC, BIR, LTFRB, and LTO, are mere photocopies where the representative or custodian of the documents have not been presented, rendering them inadmissible.

The Defense likewise argues that the second element of the crime - that Accused be informed of the taxes due - does not exist. Accused Dela Fuente denies receiving the LOA, PAN, FAN, FAR, FLD and the Prosecution failed to prove that that PCLC or Accused Dela Fuente received it or that Ms. Rellente was authorized to receive the notices on behalf of the company. Accused Dela Fuente also denies any relation to Ms. Rellente, the person shown by the Prosecution to have received the LOA and First Notice of Presentation of Records. The Notice of investigation, PAN, FAN, FAR, on the other hand, were served to Accused's lawyer and only in 2011 or beyond the 3-year prescriptive period, long after the criminal cases had been filed.

The third element - that there has been a willful and deliberate failure to pay- is also inexistent. The Defense argues that Accused Dela Fuente could not have willfully failed to pay the taxes due since she did not receive the required notices and did not know that taxes were due.

Issue:

Is Accused guilty of violating sections 75, 76 and 255 in rel. to Sec. 253 of the NIRC?

Held:

Yes.

The following are the elements of the crime of violation of Section 255 that must be proven by the Prosecution:

1. The Accused is the person required under the tax code or by rules and regulations to file a return, to pay the tax and supply correct and accurate information;

2. The Accused failed to file a return, to pay the tax and supply correct and accurate information at the time required by law; and

3. Such failure was willful.

Anent the first element. The Certificate of Corporate Filing/information dated July 31, 2012 issued by Assistant Director Gerardo F. Del Rosario of the Corporate Filing and Records Division of the SEC states that PCLC was registered on November 18, 1996 with a corporate term of 50 years. The same certificate likewise states that there have been no filings of a) Amended Articles of Incorporation dissolving the corporation, b) General Information Sheet for 1997-2004, or c) Financial Statements for 1997-2004 as of July 31,2012.

The Prosecution contends that, as a domestic corporation, PCLC was required to comply with the requirements of declaring its income quarterly, filing its annual adjusted income tax return, and paying the corresponding taxes due thereon for the preceding taxable year, specifically for TYs 1998 to 2004, as it was operating its business. Section 23 of the NIRC, provides that " a domestic corporation is taxable on all income derived from sources within and without the Philippines." On the other hand, the requirement to register as a taxpayer is mandated in Section 236 of the NIRC.

Further, the pieces of evidence presented by the prosecution to prove business that PCLC was operating as business was admissible under the rules of evidence. As such, PCLC was required to file a return and pay the tax thereon.

As for the second element. The Prosecution presented several Certifications and it is apparent from the said certifications that Accused PCLC failed to declare its income quarterly and to make or file its annual income tax return for TYs 1998 to 2004.

The third element requires that the failure to make or file the return or to pay the tax was willful. The Defense alleges that Accused PCLC did not commit the crimes charged by presenting documents showing that it allegedly registered its business in 1997 under TIN 925-995-622-000 and that it filed the requisite tax returns for taxable years 1997 up to 2003. However, there is counter-evidence showing that the returns filed by Accused PCLC are spurious documents and that, in fact, Accused PCLC did not register in 1997, did not pay the required annual registration fee, and did not file any tax returns or pay for the tax for the subject period be it in Binondo or San Juan. The Prosecution was able to present evidence that the ITRs allegedly filed by Accused PCLC for the years 1999 to 2003 were only created in RDO-Binondo's database on March 10, 2006, as certified by the Revenue Data Center, Southern Luzon.

In several landmark cases, the Supreme Court has declared that under-declaration or failure to declare true and actual income for several consecutive years is an indication of fraudulent intent to cheat the Government of its taxes. What more if there has been no declaration at all? All of the foregoing point to no other conclusion than Accused PCLC willfully failed to make and file the required returns and pay taxes thereon with the intent to deprive the Government of the taxes it is due.

People of the Philippines vs. Leonila T. Arceo
CTA (*En Banc*) Criminal Case No. 60 promulgated 1 July 2020

A formal assessment must be issued by the BIR for civil liability to be included in the judgment against a taxpayer.

The final determination of the CIR of the tax liability is necessary to rule on the civil aspect of the criminal case.

Facts:

Respondent Leonila Tolentino Arceo, doing business under the name and style of L.T. Arceo Trading, was accused of filing false and fraudulent income returns for taxable years 2004 and 2005. She pleaded not guilty of the crime charged upon arraignment. The CTA Second Division acquitted Arceo as the alleged willful and deliberate failure to supply correct and accurate information in her income tax returns was not established. The Court in Division also held that there was no basis to rule on the Arceo's civil liability as the BIR did not present the assessment notices to prove that the assessment for deficiency income tax was issued against her.

Aggrieved, the BIR elevated the case to the CTA *En Banc*. It argued, among others, that the BIR is allowed to seek collection of deficiency tax through a civil action before the courts, even without assessment notices. It posited that an assessment is not necessary in a civil action for collection of delinquent tax as it is deemed simultaneously instituted with the criminal case. It insisted that when the CIR opted to file a criminal action against an erring taxpayer under Section 205 of the NIRC, as amended, he necessarily initiated the corresponding civil action and approved the computations made by his duly authorized Revenue Officers of Arceo's tax liability.

Issues:

1. Can a taxpayer be held liable for a deficiency tax even without the issuance of an assessment?

2. Is the referral of the CIR to the Department of Justice of the case sufficient proof that there was a final determination of the case?

Rulings:

1. No. Without an assessment issued against Arceo, there could be no demand against her to pay an exact amount of tax liability on a certain date. While there is no requirement for the precise computation and assessment of the tax liability before there can be a criminal prosecution, Section 205 of the Tax Code requires that the judgment in the criminal case shall not only impose the penalty but also order payment of the taxes subject of the criminal case as finally decided by the CIR. Thus, in order for a civil liability to be included in the judgment, it must be based on a formal assessment, which is the final decision of the CIR. The CTA *En Banc* said it cannot merely rely on the computations of deficiency income found in the Joint Complaint Affidavit, which cannot be deemed as a formal assessment as contemplated under the Tax Code.

2. No. The referral of the then CIR Jose Mario C. Bunag to the Secretary of Justice of the case was only for preliminary investigation and the filing of an information in court against Arceo. The hastily prepared undated referral-letter cannot be considered as the final determination and approval of the computation of tax deficiency by the BIR, which is necessary to rule on the civil aspect of the criminal case.

Tax Refunds

S&Woo Construction Philippines, Inc. vs. Commissioner of Internal Revenue
CTA (3rd Division) Case No. 9533 promulgated 24 June 2020 (the case mostly discussed the factual aspects of the claim for tax refund)

A plain reading of the law reveals that the refundable creditable input VAT should not be "directly attributable" to such zero-rated sales.

Facts:

Petitioner S&Woo Construction Philippines, Inc. (S&Woo) is a corporation duly organized and existing under the laws of the Philippines. It filed with the BIR an Application for Tax Credits / Refunds requesting for the refund and/or issuance of a tax credit certificate, representing its alleged excess/unutilized input VAT for the first quarter of CY 2016. Subsequently, another application was filed for the period covering the fourth quarter of CY 2015.

S&Woo argues that it is engaged in zero-rated transactions; that the input taxes due from the purchases of goods and services directly attributable to zero-rated sales of S&Woo were duly supported by VAT invoices or official receipts; and that the claimed input VAT payments were not applied against any output tax in the succeeding periods.

Respondent Commissioner of Internal Revenue (CIR) counter-argues that only the "creditable input taxes" that are "directly attributable" may be refunded; that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer; and that the taxpayer must present convincing evidence to substantiate a claim for refund.

Issue(s):

1. Is S&Woo entitled to its claim for refund or issuance of tax credit certificate representing its unutilized/excess input VAT credits for the fourth quarter of CY 2015 and the first quarter of CY 2016?

2. Is the CIR correct in claiming that only creditable input taxes that are "directly attributable" may be refunded?

Ruling(s):

1. The claim for refund is partially denied for failure to comply with VAT invoicing and official receipt requirements.

   The applicable law in this case is RA No. 7916, as amended by RA No. 8748, otherwise known as "The Special Economic Zone Act of 1995", which provides that an ecozone is considered a separate customs territory, and the business establishments operating within such ecozone are entitled to certain fiscal incentives.

   Since the ecozone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to zero percent (0%) VAT.

   S&Woo must further comply with the invoicing requirements mandated by the Tax Code, as amended, as well as by revenue regulations implementing them.

   The Tax Code further requires that the official receipts must likewise be duly registered with the BIR.

Upon scrutiny of the official receipts, some do not indicate whether the sales were zero-rated. Thus, the same should be denied VAT zero-rating for failure to comply with one of the invoicing requirements, i.e., that the term "zero-rated sale" shall be written or printed prominently on the official receipt.

2. No. A plain reading of Section 112(A) of the Tax Code, as amended, would reveal that the law merely states that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. In other words, nowhere does the said Section 112(A) say that the refundable creditable input VAT should be "directly attributable" to such sales. It is elementary that where the law does not distinguish, none must be made.

   While the words "directly . . . attributed" were used under the same provision, the said words merely relate to a situation where the creditable input VAT cannot be "directly . . . attributed" to any transaction, in which case the proportionate allocation thereof is called for on the basis of the volume of sales. It does not, in any way, qualify the preceding sentences of the same Section 112 (A) which will have the effect of making the refundable input VAT are only those which are "directly attributable" to zero-rated or effectively zero-rated sales.

SM Investments Corporation vs. Commissioner of Internal Revenue
CTA (3rd Division) Case No. 9569 promulgated 20 June 2020

There is no violation of the doctrine of exhaustion of administrative remedies even if the taxpayer-claimant did not wait for the action of the CIR on its refund claim before filing its judicial claim with the CTA.

A cursory reading of RMO No. 53-98 and RR No. 2-2006 shows that nowhere is it stated that the non-submission of the documents enumerated therein would *ipso facto* result in the denial of a claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of a claim for tax refund or credit.

Facts:

Petitioner SM Investments Corporation (SMIC) filed its Annual Income Tax Return (AITR) for CY2014, wherein SMIC indicated its option to be issued a TCC for its excess and unutilized CWT for CY2014.

On September 21, 2015, SMIC filed a letter to the BIR for the issuance of TCC for its excess and unutilized CWT for CY 2014.

There being no action on the part of the BIR, SMIC filed the instant Petition for Review on April 7, 2017.

At the CTA, SMIC argues that it was able to prove compliance with the requisites for the refund or issuance of TCC of its excess and unutilized CWT by proving the timeliness of its claim, the inclusion of the income in its ITR, and the proof that withholding taxes occurred. SMIC also contends that that the power of the CTA to exercise its appellate jurisdiction does not preclude it from considering the evidence that was not presented in the administrative claim with the BIR.

The CIR argues that SMIC failed to exhaust administrative remedies before elevating the case to the CTA. Further, the CIR asserts that SMIC is not entitled to the claim for refund of CWTs because it did not provide supporting documents required under Revenue Memorandum Order (RMO) No. 53-98 and Revenue Regulations (RR) No. 2-2006.

Issues:

1. Is the CIR correct in claiming that the case should be dismissed for prematurity or lack of action?

2. Is the non-submission of complete documents enumerated under RMO No. 53-98 and RR No. 2-2006 fatal to a claim for refund at the judicial level?

Ruling:

1. No. According to Section 229 of the Tax Code, the judicial claim for tax refund must be made within two (2) years from the date of payment of the tax or penalty, regardless of any supervening cause that may arise after such payment.

   There is no violation of the doctrine of exhaustion of administrative remedies even if the taxpayer-claimant did not wait for the action of the CIR on its refund claim before filing its judicial claim with the CTA.

   In this case, there is no showing that the CIR ever acted upon SMIC's administrative claim for refund from the time it was filed up to the filing of its judicial claim. Considering that the two-year prescriptive period is about to end, it was correct on the part of SMIC to have elevated its judicial claim within the said two-year prescriptive period under Section 229 of Tax Code.

2. No. A cursory reading of RMO No. 53-98 and RR No. 2-2006 shows that nowhere is it stated that the non-submission of the documents enumerated therein would *ipso facto* result in the denial of the claim for tax refund or credit. Further, it bears noting that RR No. 2-2006 merely imposes a penalty of fine for non-submission of the information or statement required therein, but not the outright denial of the claim for tax refund or credit.

   RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities and is never intended as a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. It is further stated that the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to the taxpayer's claim for tax credit or refund.

Hedcor, Inc. vs Commissioner of Internal Revenue
CTA (*En Banc*) EB No. 1913 promulgated on 29 June 2020

Under our tax laws, effective zero-rating is not intended as a benefit to the person legally liable to pay the tax, but to relieve certain exempt entities from the burden of indirect tax so as to encourage the development of particular industries.

Facts:

Petitioner Hedcor, Inc. is a domestic corporation primarily engaged in the business of owning, developing, constructing, operating, repairing and maintaining hydro-electric power plant systems, renewable and indigenous power generation plants and other types of power generation and or conversion stations. It filed a claim for refund or issuance of TCC for the first quarter of TCC on the basis of Section 108 (B)(7) and 112 (A) and (C) of the Tax Code. Due to BIR's inaction, it filed a Petition for Review with the CTA First division. The CTA denied the claim on the ground that under the Renewable Energy (RE) Act, the local purchases of the petitioner as RE developer is subject to VAT zero-rating. Since its purchases of goods/or services are mostly attributable to its zero-rated sales of electricity, it should not have erroneously paid any VAT payments to its suppliers. Consequently, the petitioner has no unutilized input-VAT to anchor its claim for refund. Aggrieved, the petitioner elevated the present petition to the CTA *En Banc*.

Issues:

1. Is the denial of the claim for refund or tax credit on the basis of Renewal Energy Act correct?

2. Is the petitioner entitled to tax credit or issuance of TCC?

Ruling:

1. Yes. Under the RE Act, all RE developers shall be entitled to zero-rated VAT on its purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities.

   Here, the petitioner, as RE developer, was unable to show proof that it is not covered by the RE Act during the first quarter of 2012. Mere allegation without proof is not evidence. Further, the RE Act has already been in force since 2008. Hence, as a RE developer, its purchases in the first quarter of 2012 already enjoys the fiscal incentive of VAT zero-rating provided by law.

2. No. Clearly, under the RE Act, the petitioner as a RE developer is entitled to zero-rated VAT on its purchases of local supply of goods, properties, and services needed for the development, construction and installation of its plant facilities.

   Here, no output VAT should be shifted to or passed on to RE developers in connection with their purchases of goods and services needed for the development, construction, and installation of their plant facilities as well as to the whole process of exploration and development of RE resource up to its conversion into power. Conversely, no input VAT shall be paid by RE developers on these transactions. There being no input VAT to be paid by RE developers, it necessarily follows that they are not entitled to refund or issuance of TCC from the said purchases.

   Petitioner's recourse for its purchases of goods and services where it paid VAT is not a claim for refund against the BIR, but to seek reimbursement of its alleged input VAT paid from its suppliers of goods and services since its purchases are subject to zero percent VAT under Sections 106 (A) (2) (c) and 108 (B) (3) of the Tax Code, as amended, in relation to Section 15 (g) of the RE Act.

Toyota Motor Philippines Corporation vs. Commissioner of Customs
CTA (First Division) Case 9250 promulgated 2 July 2020

The requisites prescribed under the Agreement between JPEPA and Executive Order 905 must be met to be entitled to a refund of customs duties.

For refund of excise tax, changes in the selling price of the automobiles must be accompanied by a manufacturer's or importer's sworn statement submitted to the BIR.

A decrease in the customs duties paid results in a corresponding decrease in the VAT due.

Facts:

Petitioner Toyota Motor Philippines Corp. filed a claim for refund of erroneously paid customs duties, excise tax, and VAT from January to June 2010 on its importation from Japan of Complete Built Up (CBU) motor vehicles with a cylinder capacity above 3,000 cc and Knocked Down (KD) components, parts, and/or accessories for the assembly of motor vehicles.

TMPC argued that pursuant to Executive Order 905, implementing the Agreement between Japan and the Republic of the Philippines for an Economic Partnership (JPEPA), the zero percent (0%) duty rate on motor vehicles above 3,000 cc became effective starting January 1, 2010. For KD importations, EO 905 eliminated the duties which was applied retroactively effective December 11, 2008. TMPC took the position that since the customs duties were eliminated, it also overpaid VAT on its importation as the tax base thereof included customs duties.

Due to inaction by the Bureau of Customs (BOC), TMPC filed a Petition for Review at the CTA.

At the CTA, the BOC averred that TMPC should have first invoked the authority of the Commissioner of Customs (COC) by requesting to direct the District Collector to act on its claim.

Issues:

1. Is TMPC entitled to a refund of erroneously paid customs duties?
2. Can it refund the excess excise tax?
3. Is the overpaid VAT recoverable?

Rulings:

1. Yes. To be entitled to a refund of excess customs duties under the JPEPA and EO 905, the following requisites must be met:

   (1) The claimant should be a duly accredited importer and a taxpayer;
   (2) There must have been an importation of goods from Japan evidenced by valid certificates of origin;
   (3) The imported foods should be covered by a preferential custom duty rate and imported in the period when the applicable preferential rates were already applicable;
   (4) It must be shown that the importer paid the customs duties, excise tax, and VAT based on regular duty rate;
   (5) The administrative claim for refund must be filed within six (6) months from the issuance of the certificate of origin; and
   (6) The judicial claim for refund must be filed within six (6) years from the time of payment.

The CTA held that TMPC complied with all the requisites and it thus entitled to refund the erroneously paid customs duties.

2. No. The computation of excise taxes is based on the selling price of the manufacturer or importer as reflected in the manufacturer's or importer's sworn statement (ISS). Under Section 13 of Revenue Regulations 25-2003, which governs the imposition of excise tax on automobiles, no changes in the selling price of the automobiles shall be allowed unless the corresponding amended sworn statement is submitted to the Commission of Internal Revenue. The CTA did not give due course to the amended ISS as it was not signed by a TMPC representative, unnotarized, and was not filed with the BIR. As such, TMPC did not adequately substantiate its claim for refund of excise tax.

3. Yes. Under Section 107(A) of the NIRC, the tax base for VAT on the importation of goods is the total value used by the Bureau of Customs in determining tariff and customs duties plus customs duties, excise taxes, if any, and other charges, such tax to be paid by the importer prior to the release of such goods from customs custody. The CTA held that a decrease in the customs duties paid should result in a corresponding decrease in the amount of VAT.

Refund of tax erroneously collected or illegally collected

Ma. Jethra B. Pascual vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9566 promulgated on 30 June 2020

Facts:

Petitioner, Ma. Jethra Pascual was an employee of Deutsche Bank from 1995 until 2014. Her position as Managing Director of ICG Sales Philippines was abolished as a result of a Deutsche Bank's downsizing program. She received a Confirmation of Redundancy/ Notice of Termination, which also contained a breakdown of separation package. Deutsche Bank also sent a letter to the Department of Labor and Employment (DOLE) on Jethra Pascuals' separation on ground of redundancy.

Applying the provisions of Section 32(B)(6)(b) of the NIRC of 1997, as amended, Petitioner's separation from the service was not of her own making and beyond her control. The effectivity of the management's notice and her subsequent termination is covered in the cited provision. Further, Section 2.78.1 (B)(1)(b) of RR No. 02-98 categorically identified separation due to redundancy of service as one of the valid causes of tax exemption.

She was thereafter officially terminated. As a consequence of her termination, Jethra Pascual, who was 46 years old when she was officially terminated, received separation pay and retirement pay. Deutsche Bank included the retirement pay as part of her taxable income and effectively withheld taxes on such.

Apart from her compensation income from Deutsche Bank, Jethra Pascual also had income from laundry business and lease of real property. For taxable year (TY) 2014, Jethra Pascual did not derive income from her laundry business but received income from her lease of real property. Jethra Pascual reported in her income tax return the income she received from Deutsche Bank and the income derived from the lease of a real property. Consequently, Jethra Pascual's income tax return reflected a refundable income. She, then, filed an application for issuance of tax credits/ refund. Despite completing all the documents required by the BIR, the claim for refund remained unacted on. Hence, the Petition for Review with the Court.

Issue:

Is Jethra Pascual entitled to the refund of taxes erroneously withheld from her "Retirement Pay" which was remitted to the BIR by former employer, Deutsche Bank?

Ruling:

Yes. Jethra Pascual anchors her claim on Section 32(B)(6)(b) of NIRC of 1997, as amended. Section 2.78.1.(B)(1)(b) of Revenue Regulations (RR) No. 02-98 also provides for the exemptions from withholding tax on compensation for remunerations received as an incident of employment.

Based on the foregoing provisions, any amount paid by an employer to an employee as a consequence of the latter's involuntary termination from service (i.e. redundancy of service), is exempt from income tax and consequently from withholding tax, regardless of the employees' age and length of service.

Applying the provisions of Section 32(B)(6)(b) of the NIRC of 1997, as amended, Jethra Pascual's separation from the service was not of her own making and beyond her control. The effectivity of the management's notice and her subsequent termination is covered in the cited provision. Further, Section 2.78.1 (B)(1)(b) of RR No. 02-98 categorically identifies separation due to redundancy of service as one of the valid causes of tax exemption.

Considering that Jethra Pascual was separated from service due to redundancy, the said retirement pay was erroneously subjected to withholding tax. Thus, the "Total Amount of Taxes Withheld As Adjusted" indicated under line 31 of BIR Form No. 2316 was excessive as it included taxes withheld on Jethra Pascual 's retirement pay.

In essence, it was sufficiently established that Jethra Pascual's retirement pay is exempt from income tax and consequently from withholding tax pursuant to Section 32(B)(6)(b) of the NIRC of 1997, as amended, and as implemented by Section 2.78.1 (B)(1)(b) of RR No. 02-98, thus, the claimed income taxes withheld thereon constitutes erroneously paid taxes which are refundable under Section 204(C) and 229 of the NIRC of 1997, as amended.

Requirements in filing a VAT refund claim

Macquarie Offshore Services Pty Ltd-Philippine Branch vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9469 promulgated 30 June 2020

Section 112(A) and (C) of the NIRC of 1997, as amended, provides for the requisites which must be complied with by the taxpayer to successfully obtain a credit/refund of input VAT.

Facts:

Petitioner Macquarie Offshore Services Pty Ltd.-Philippine Branch (Macquarie) is a foreign corporation duly registered with and authorized by the Securities and Exchange Commission (SEC) to operate as a Regional Operating Headquarter (ROHQ). As an ROHQ, Macquarie is engaged in the business of providing qualifying services to its affiliated and related parties in the Asia-Pacific Region and in other foreign markets.

On June 30, 2016, Macquarie filed with the BIR an Application for Tax Credits/ Refund, covering the period from April 1, 2014 to March 31, 2015 or the first to fourth quarters of fiscal year (FY) 2015.

On August 17, 2016, Macquarie received a letter signed by the Revenue District Officer of the BIR RDO No. 47, denying Macquarie's administrative claim for refund.

On September 15, 2016, Macquarie filed the instant Petition for Review before the CTA.

Issue:

Is Macquarie entitled to a refund/tax credit of excess or unutilized input VAT payments for the FY 2015?

Ruling:

Yes, to the extent of the sales that Macquarie has duly submitted the supporting documents as laid down under the relevant tax rules and issuances on VAT refund.

The Supreme Court has laid down certain requisites which the taxpayer-applicant must comply with to successfully obtain a credit/refund of input VAT.

Under Section 112(A) of the Tax Code, as amended, the requites are:

a. The claim is filed with the BIR within two year after the close of the taxable quarter when the sales were made;

b. That in case of full or partial denial of the refund claim or the failure on the part of the Commission of Internal Revenue to act on the said claim within a period of 120 days, the judicial claim has been filed with the Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;

c. The taxpayer is a VAT-registered person

d. The taxpayer is engaged in zero-rated or effectively zero-rated sales

e. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B) and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations

f. The input taxes are not transitional input taxes

g. The input taxes are due or paid

h. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sale volume

i. The input taxes have not been applied against output taxes during and in the succeeding quarters

For the first requisite on the filing of the refund claim for tax credit or refund of input VAT before the BIR, within two years from the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made, Macquarie's administrative claim was seasonably filed with the BIR.

The second requisite provides that the judicial claim must have been filed within 30 days from receipt of the CIR's decision or after the expiration of the 120-day period under Section 112(C) of the NIRC of 1997, as amended and Macquarie timely filed the instant Petition in the CTA.

Macquarie complied with the third requisite considering that it is a VAT registered taxpayer.

The fourth and fifth requisites require that the taxpayer is engaged in zero-rated or effectively zero-rated sales and for zero-rated sales under Section 106(A)(2)(a) (1) and (2), 106(B), and 108(B)(1) and (2) of the Tax Code, the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with the BPS rules and regulations.

Macquarie presented the Certification of Non-Registration of Company issued by the Philippine SEC to the effect that the records of the latter do not show the registration of Macquarie's sole client; Certificate of Registration on Change of Name; and (3) Certificate of Registration of a Company issued by the Australian Securities and Investments Commission in favor of the same client.

Macquarie also established, through the presentation of the Services Agreement, that the services to be performed for its sole client is done outside the Philippines.

Also, Macquarie presented Certifications of Inward Remittances issued by Hongkong and Shanghai Banking Corporation (HSBC), purportedly showing the remittances of its customers to Macquarie.

The foreign currency remittances referred to under Section 108(B)(2) however must not only be duly accounted for in accordance with the rules and regulations of the BSP but must also comply with the pertinent invoicing requirements, containing all the required information under Section 113(A) and (B) of the NIRC of 1997, as amended. These provisions are further implemented by Section 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05. In addition to these requirements, the sales invoices and official receipts must be duly registered with the BIR as prescribed under Section 237, in relation to Section 238, of the NIRC of 1997, as amended.

Macquarie was able to submit VAT ORs to support its zero-rated sales/receipts for FY 2015 and these ORs were found to be compliant with the invoicing requirements prescribed by the NIRC of 1997, as amended and RR No. 16-05.

Macquarie however was not able to explain nor account for noted differences in the credit notes and debit notes per OR. As such, the Court cannot verify if these credit notes issued by Macquarie's sole customer actually pertain to the debit notes deducted from the gross inward remittances of FY 2015. Consequently, the difference cannot be considered as valid zero-rated sales for purposes of VAT refund.

The sixth requisite requires that the input VAT being claimed are not transitional input taxes. As there is no showing that the input VAT being claimed is a transitional input VAT, Macquarie has complied with the sixth requisite for the grant of an input VAT refund.

Anent the seventh requisite, it is crucial for Macquarie to provide supporting documents to prove that the input taxes claimed during FY 2015 are actually due or paid in accordance with Section 110(A) of the NIRC of 1997, as amended. This provision is implemented by Sections 4.110-1 to f.110-3 of RR No. 16-05. These provisions expressly state that in order to be entitled to input tax credits, the same must be evidenced by VAT invoices or ORs issued in accordance with Section 113 of the NIRC of 1997, as amended. Accordingly, Macquarie submitted VAT invoices and ORs to support its input taxes from domestic purchases of goods and services, and BIR Forms No. 1600 to support the input taxes withheld from services rendered by non-residence. The CTA concurring with the report of the ICPA disallowed input taxes that were not properly supported by VAT invoices or ORs.

The eighth requisite is to the effect that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated and effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

In this case, there exists both effectively zero-rated sales/receipts and taxable sales/receipts for FY 2015. Since Macquarie's input VAT cannot be directly or entirely attributed to any of the transactions, the Court allocated the valid input VAT proportionately on the basis of the volume of its sales.

Lastly, although the total input VAT claim was carried over by Macquarie in its succeeding VAT returns, it was eventually deducted as "VAT Refund/TCC" in the Monthly Value-Added Tax Declaration for the month of February 2016. Thus, the subject claim no longer formed part of the excess input VAT as of the end of February 2016. Hence, Macquarie is, in effect, deemed to have fulfilled the ninth requisite for the refund/tax credit of input VAT.

Requirements in filing a VAT refund claim

To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certification of Non-Registration of Corporation/ Partnership and proof of incorporation/registration in a foreign country, and that there is no other indication which would disqualify said entity in being classified as a non-resident foreign corporation.

Knutsen Philippines Inc. vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9564 promulgated 30 June 2020

Facts:

On 8 December 2016, Knutsen Philippines, a domestic corporation, filed its Application for Tax Credits/Refunds of input VAT for taxable year (TY) 2015. Knutsen Philippines files the instant petition for review with the Court of Tax Appeals on 5 April 2017 after it received on 6 March 2018 a letter from the BIR denying its claim for refund.

Issue:

Is Knutsen Philippines entitled to its claim for refund of input VAT for TY 2015?

Ruling:

No.

Pursuant to Section 112 of the Tax Code and other relevant jurisprudence, the requisite for a valid claim for refund are:

a. The claim is filed with the BIR within two year after the close of the taxable quarter when the zero rated or effective zero-rated sales were made;

b. That in case of full or partial denial of the refund claim or the failure on the part of the Commission of Internal Revenue to act on the said claim within a period of 120 days, the judicial claim has been filed with the Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;

c. The taxpayer is a VAT-registered person

d. The taxpayer is engaged in zero-rated or effectively zero-rated sales

e. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B) and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations

f. The input taxes are not transitional input taxes

g. The input taxes are due or paid

h. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sale volume

i. The input taxes have not been applied against output taxes during and in the succeeding quarters

To qualify as zero-rating sales of services under Section 108(b)(2) of the NIRC of 1997, as amended, the following must be complied with:

a. The services fall under any of the categories under Section 108 (B) (2) of the Tax Code, as amended or that the services rendered must be other than processing, manufacturing or repacking of goods;

b. The recipient of the services is s foreign corporation and the said corporation is doing business outside the Philippines or is a nonresident person not engaged in business who is outside the Philippine when the services were performed

c. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules

d. The service must be performed in the Philippines by a VAT registered person

To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certification of Non-Registration and proof of incorporation/ registration in a foreign country.

Hence, only those clients of Knutson Philippines who are supported by the two documents will be considered as non-resident foreign corporation doing busies outside the Philippines.

On the other hand, foreign currency remittances referred to under Section 108(B)(2) must be duly supported by VAT zero-rated official receipts (ORs) in accordance with Section 113(A)(2), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, which provides that a VAT taxpayer, like Knutsen Philippines, shall for every sale, barter or exchange of services, issue a VAT official receipt which must contain the information stated in said provisions. In addition to the invoicing requirements, the ORs must be duly registered with the BIR, as prescribed under Section 237, in relation to Section 238 of the NIRC of 1997, as amended.

A perusal of the amounts reflected in the Certificates of Inward Remittances from BPI and PNB, bank advices, and passbooks pages/bank statements reveals that they do not tally with the amounts per ORs presented by Knutsen Philippines. Moreover, even if the amounts per the said ORs were accordingly traced to foreign currency inward remittances, significant amounts classified as "not related to claim" and "bank charges" were deducted before arriving at the net remittances reflected therein.

Since Knutsen Philippines did not present any document or evidence to support the said significant amounts and to show that the subject amounts actually correspond to its sales, the Court is not convinced that the foreign currency remittances refer to Knutsen Philippines' sales to its foreign clients.

Similarly, Knutsen Philippines presented no evidence to establish that the subject services were performed in the Philippines.

Requirements in filing an administrative claim for refund of excess and unutilized CWT

AZ Contracting System Service Inc. vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9558 promulgated on 30 June 2020

In order to be entitled to its refund claim, a taxpayer must satisfy the following requirements: (a) That the claim for refund was filed within two year prescriptive period as provided under Section 204 (C) of the Tax Code, as amended, in relation to Section 229; (b) That the fact of the withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and (c) That the income upon which the taxes were withheld was included in the return of the recipient, i.e. declared as part of the gross income

Facts:

AZ Contracting System Service Inc. is a domestic corporation engaged in sub-contracting/job contracting of all types of work or services including promotion of goods and the supply of manpower services, except recruitment services.

AZ Contracting System Service filed its original annual income tax return (AITR) for calendar year (CY) 2014 on April 14, 2015, which was later amended on May 6, 2016. In its amended AITR, AZ Contracting System Service declared total income tax credits and an overpayment. AZ Contracting System Service indicated in its original and amended AITR for CY 2014 its option to be refunded for its excess and unutilized CWT for CY 2014.

On January 26, 2017, AZ Contracting System Service filed its administrative claim for refund, requesting for the refund of the excess and unutilized creditable withholding taxes for CY 2014. For failure of the Commissioner of Internal Revenue to act on the said claim, AZ Contracting System Service filed a Petition for Review before the Court of Tax Appeals on March 30, 2017.

Issue:

Is AZ Contracting System Service entitled to its claim for refund representing unutilized CWT for CY 2014?

Ruling:

Yes, but to the extent that AZ Contracting System Service met the requirements laid down under Section 76 of the Tax Code, as amended, and other related provisions.

Claim for refund of excess and unutilized CWT is anchored on Section 76 of the of the Tax Code, as amended. The Supreme Court in Systra Philippines Inc. vs Commissioner of Internal Revenue (GR No. 176290, September 21, 2007) held that a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (a) to carry over the excess credit or (b) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period. The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention to either carry over the excess credit or to claim a refund. These remedies are in the alternative and the choice of one precludes the other.

AZ Contracting System Service opted to be refunded for its excess CWT for CY 2014 having marked the option "To be refunded" in its Original and Amended AITR for CY 2014. The total tax credits of AZ Contracting System Service Inc. for CY 2014 consisted of prior year's excess credits and CWTs accumulated during the four quarters of CY 2014. AZ Contracting System Service's income tax due was paid using a portion of its prior year's excess credits, thus leaving a balance of the prior year's excess credits and CWT during CY 2014.

In order to be entitled to its refund claim, AZ Contracting System Service must satisfy the following requirements:

a. That the claim for refund was filed within two-year prescriptive period as provided under Section 204 (C) of the Tax Code, as amended, in relation to Section 229;

b. That the fact of the withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

c. That the income upon which the taxes were withheld was included in the return of the recipient, i.e. declared as part of the gross income

With regard to the first requirement, it must be emphasized that both the administrative and judicial claims must be filed within the two-year prescriptive period from the date of payment of the tax. Hence, the prescriptive period commences to run at the earliest, on the date of the filing of the adjusted final tax return. Both the administrative claim and the judicial claim were filed on time by AZ Contracting System Service counting two years from April 14, 2015 when it filed its original AITR.

With regard to the second requirement, the taxpayer must present the pertinent certificates of creditable tax withheld at source. While AZ Contracting Systems Services was able to submit BIR Form No. 2307 there were certain items that were not properly substantiated.

With regard to the third requirement, it becomes necessary to trace the revenues recorded in the general ledger book to ascertain that the related income was duly reported as revenue in CY 2014.

In the case of AZ Contracting System Services, certain discrepancies were found upon examination of the company's general ledger and AITR resulting to the denial of the portion of the refund, which is construed in *strictissimi juris* against the claimant.

Requirements for filing a claim for refund of unutilized input VAT

Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue
CTA (Third Division) Case No. 9426 promulgated 30 June 2020

Action claiming for the refund or issuance of tax credit certificate for input taxes based on Section 112 of the Tax Code.

Facts:

On 16 March 2016, Lepanto Consolidated Mining Company filed an application for tax credit/refund (BIR Form No. 1914), together with the supporting documents, for its alleged input VAT for the first to fourth quarters of taxable year 2014. Alleging inaction on the part of the Commissioner of Internal Revenue, Lepanto Consolidated Mining filed before the Court of Tax Appeals a Petition for Review on 12 August 2016.

Issue:

Is Lepanto Consolidated Mining entitled to its claim for refund/ issuance of a tax credit certificate?

Ruling:

Yes, but to the extent that Lepanto Consolidated Mining Company met the requirements laid down under Section 112 (A) and (C) of the Tax Code, as amended.

In an action claiming for the refund or issuance of tax credit certificate for input taxes based on Section 112 of the Tax Code, as amended provides that:

a. The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made;

b. That in case of full or partial denial of the refund claim or the failure on the part of the Commission of Internal Revenue to act on the said claim within a period of 120 days, the judicial claim has been filed with the Court, within 30 days from receipt of the decision or after the expiration of the said 120-day period;

c. The taxpayer is a VAT-registered person

d. The taxpayer is engaged in zero-rated or effectively zero-rated sales

e. For zero-rated sales under Section 106 (A) (2) (1) and (2); 106 (B) and 108 (B) (1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations

f. The input taxes are due or paid

g. The input taxes claimed are attributable to zero-rated or effectively zero-rated sales. Where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sale volume

h. The input taxes have not been applied against output taxes during and in the succeeding quarters

Since Lepanto Consolidated Mining failed to substantiate all its sales subject of the refund, only those that are properly substantiated by VAT ORs/ sales invoices (SIs) were considered.

Pilipinas Kyohritsu Inc. vs. Commissioner of Internal Revenue
CTA (Second Division) Case No. 9706 promulgated on 30 June 2020

Section 112(A) and (C) of the NIRC of 1997, as amended, provides for the requisites which must be complied with by the taxpayer to successfully obtain a credit/ refund of input VAT.

Facts:

On 16 June 2017 Pilipinas Kyohritsu Inc. filed an administrative claim for refund covering the first and second quarters of fiscal year (FY) ending 31 March 2016. Due to the inaction of the Commissioner of Internal Revenue (CIR), Pilipinas Kyohritsu filed on 30 October 2017 a Petition for Review before the Court of Tax Appeals (CTA).

Issue:

Is Pilipinas Kyohritsu entitled to its claim for refund representing unutilized input VAT for the periods April to June 2015 and July to September 2015?

Ruling:

Yes, but to the extent that Pilipinas Kyohritsu Inc. met the requirements laid down under Section 112 (A) and (C) of the Tax Code, as amended.

Section 112(A) and (C) of the Tax Code, as amended, provides for the requisites which must be complied with by the taxpayer to successfully obtain a credit/ refund of input VAT. These are the following:

a. The claim is filed with the BIR within two years after the close of the taxable quarter when the sales were made

b. In case of full or partial denial of the refund claim or the failure on the part of the Commissioner of Internal Revenue to act on said claim within a period of 120 days, the judicial claim has been filed with the CTA within 30 days from receipt of the decision or after the expiration of the 120-day period.

c. The taxpayer is a VAT-registered taxpayer

d. The taxpayer is engaged in zero-rated or effectively zero-rated sales

e. For zero-rated sales under Sections 106(A)(2)(1) and (2); 106 (B) and 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds have been duly accounted for in accordance with BSP rules and regulations

f. The input taxes are not transitional input taxes

g. The input taxes are due or paid

h. The input taxes are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionally allocated on the basis of sales volume

i. The input taxes have not been applied against output taxes during and in the succeeding quarters

Certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of 0% under Section 108 (B) (2) of the Tax Code as amended, namely: (a) the recipient of the services is a foreign corporation doing business outside the Philippines or is a nonresident person not engaged in business who is outside the Philippines when the services were performed; (b) the services fall under any of the categories under Section 108 (B) (2) of the Tax Code, as amended; (c) the services must be performed in the Philippines by a VAT-registered person; and (d) the payment for such services should be in acceptable foreign currency accounted for in accordance with the BSP rules.

To be considered as a non-resident foreign corporation doing business outside the Philippines, such must be proved by presenting both SEC Certification of Non-Registration and Proof of Incorporation or Registration. Since Pilipinas Kyohritsu only presented the SEC Certification of Non-Registration without any proof of incorporation of registration of the foreign service recipient, it cannot be ascertained that the service recipient indeed was a non-resident foreign corporation doing business outside the Philippines.

Based on the Engineering Services Agreement provided by Pilipinas Kyohritsu, it is not clear whether the services were exclusively performed in the Philippines or part of the services were performed in the place where its client was located. Although the Agreement includes provision for indemnification, stating that Pilipinas Kyohritsu will comply with the Philippine laws while performing services anywhere in the Philippines, it connotes that Pilipinas Kyohritsu may render services outside the Philippines.

The Certificate of Inward Remittance, as a documentary support in a VAT refund claim, must be duly supported by VAT zero-rated official receipts (ORs) in accordance with Section 113 (A) (2), (B) (1), (2) (c) and (3) of the Tax Code, as amended, in relation to Section 4.113-1 (A) (2), (B) (1) and (2) (c) of Revenue Regulations (RR) No. 16-2005.

The foreign currency remittances submitted by Pilipinas Kyohritsu were not supported by VAT zero-rated ORs. It cannot be verified, then, whether the said foreign currency remittances actually pertain to the alleged zero-rated sale of services.

In order for an export sale to qualify as zero-rated under Section 106 (A) (2) (a) (1) of the Tax Code, as amended, the following must be complied with: (1) the sale was made by a VAT-registered taxpayer, (2) there was a sale and actual shipment of goods from the Philippines to a foreign country; and (3) the sale was paid for in acceptable foreign currency accounted for in accordance with the rules and regulations of the BSP.

In relation to item "2" above, any VAT registered person claiming VAT zero-rated direct export sales must present the following documents: (a) the sales invoice as proof of sale of goods; and (b) the bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country. The sales invoices must be duly registered with the BIR pursuant to Sections 237 and 238 of the Tax Code, as amended,

In relation to item "3" above, the amounts indicated in the Certificates of Inward Remittance must match the amounts of sales as per sales invoices. Pilipinas Kyohritsu failed this requirement.

On the other hand, in order for an export sale to be qualified for VAT zero-rating under Section 106 (A) (2) (a) (5) of the Tax Code, as amended, the following essential elements must be present: (1) the sale was made by a VAT-registered taxpayer; and (2) the sale of goods must be to an entity entitled to incentives under Executive Order No. 226 or the Omnibus Investment Code and other special laws. Since the economic zone is viewed as a foreign territory by legal fiction, sales of goods and services made by a VAT-registered person in the Philippine customs territory to an entity registered and operating within the ecozone are considered exports to a foreign country subject to VAT at 0%. However, the sale of must also be properly supported by VAT zero-rated sales invoices in accordance with the relevant provisions of the Tax Code and other BIR issuances.

The Court also stressed that in order to prove entitlement to credit for input taxes due and paid, the supporting documents must comply with the invoicing requirements under Sections 113 (A) and (B), 237 and 238 of the Tax Code, as amended, as implemented by Section 4.113-1 (A) and (B) of RR No. 16-2005.

SEC Filing, Payment and Other Deadlines

Adjusted Filing Procedures and Processing Times for Annual Reports and Requests for Documents during the SEC Main Office's Temporary Closure

The Commission provides the revised guidelines on the submission of annual reports and requests for SEC documents during the temporary closure of the SEC Main Office until 26 July 2020.

SEC Notice Series of 2020 dated 29 July 2020

- The Commission decided to completely suspend operations in the SEC Main Office until 26 July 2020.
- The Commission shall continue accepting submissions of AFS and GIS through courier under the SENS facility and requests for SEC documents online under the SEC Express System. However, adjustments in processing times for requests for return copies and plain or authenticated copies shall be necessary.
- Adjusted Deadlines for Annual Financial Statements - Corporations shall strictly observe the previously provided filing schedule, which is based on their SEC registration or license number.
- Adjusted Deadlines for General Information Sheet - Corporations, which held their annual stockholders' meetings during the ECQ and MECQ in the NRC shall have until 31 August 2020 to submit their GIS.

- Modes of Filing

    1. Via Courier Only - Submissions to the SEC Main Office shall be made through courier only using the SENS facility at https://sens.secexpress.ph while the SEC Main Office remains closed.

        - Corporations may request for their return copies by including in their submissions prepaid return envelopes with stamp.

        - Alternatively, corporations may request for plain or authenticated copies of their AFS, GIS and other documents through the SEC Express System at https://secexpress.ph.

    2. Email Submissions - Corporations may continue sending the scanned copies of their duly signed and, if applicable, notarized reports through email addresses as provided in the SEC Notice.

        - The documents shall be considered received on the date stated in the Acknowledgment Receipt (AC) the Commission shall send through email. Accordingly, the printed copies may be submitted through courier or the Philippine Postal Corporation (PHLPost) following the filing schedule provided above, but the reckoning of the date of receipt shall be based on the AC.

    3. Submission to the SEC Extension Offices – for Corporations with headquarters outside the NCR.

- Requests for SEC Documents

    1. Online Application Only – the Commission shall continue accepting requests for plain or authenticated copies of annual reports and other documents submitted by corporations through the SEC Express System at https://secexpress.ph.

    2. No Self-service Processing.

Filing of 17-A and/or 17-Q Reports

The SEC lays down the guidelines to all publicly listed companies (PLC) and other companies with registered securities under the Markets and Securities Regulation Department's (MSRD) supervision (Collectively referred to as the "Concerned Companies") for the filing of 17-A and/or 17-Q reports in view of the COVID-19 pandemic.

SEC Notice dated 3 July 2020

- The SEC issued Memorandum Circular No. 5 series of 2020 (MC No. 5, s. 2020) extending the filing of SEC Forms 17-A (2019 annual report) and 17-Q (2020 first quarter report), until June 30, 2020 or 60 days from the date of lifting of travel restrictions (if company has foreign operations).

- In this connection, the SEC issued Notices on 18 March 2020 and 3 April 2020 to relax certain requirements.

- Despite the aforesaid postponement, Concerned Companies, or through their representatives, have filed queries for additional extension with the MSRD.

- Considering that the Implementing Rules and Regulations of the Securities Regulation Code (SRC IRR) already provides for a mechanism (SEC Form 17-L) to extend the filing of subject reports and, in view of the lapse of the period provided under MC No. 5, s. 2020, Concerned Companies are given 5 days from issuance of this Notice to file their respective SEC Form 17-L.

- Concerned Companies are reminded that non-filing of the subject reports within the prescribed period is an actionable event. The happening of such an event shall be treated accordingly on a case to case basis.

- The Concerned Companies are directed to file the particular SEC Form with the PSE Edge (for PLCs) or msrd_covid19@sec.gov.ph (for issuers of securities under MSRD supervision).

Further Extension of the Deadline for the Submission of the Integrated Annual Corporate Governance Report (I-ACGR)

The Commission provides further extension of the deadline for the submission of the Integrated Annual Corporate Governance Report (I-ACGR) for Publicly-listed Companies.

SEC Notice Series of 2020 dated 22 July 2020

- The Commission extends the deadline for the submission of the I-ACGR to 01 September 2020 from 30 July 2020.

- The extension shall automatically be applied without the need for covered PLCs to submit a request to the Commission. PLCs, however, are not precluded from submitting their I-ACGRs on or before the previously set deadline (i.e., 30 July 2020).

Interim Guidelines for the Limited Manual Operations of the OGC

The SEC issues the interim guidelines which shall cover all services provided by and transactions with the OGC under the 2016 SEC Rules of Procedure and all other relevant rules and regulations during the period of State of National Emergency ("the Covered Period").

SEC Notice issued 3 July 2020

- To ensure and afford reasonable protection to the public and to the employees, the OGC will continue to implement measures where there are minimal face-to-face transactions in the following services:

    1. Receiving of documents (Petition, Memorandum of Appeal; pleadings, orders and decisions from courts or other quasi-judicial agencies; proof of payment; and all other documents);

    2. Releasing of certified true copies of records; and

    3. Releasing of orders, decisions, resolutions, and legal opinions.

- Other than the receiving of documents, the manual operations shall only cater to those requests of service that have already been assessed and approved during online processing.

- During the Covered Period, the OGC will resume its limited manual operations from Monday to Thursday between 9:00 AM – 3:00 PM in OGC's Main Office located at 3rd Floor, Secretariat Building, PICC, Pasay City. Personnel who are not part of the skeleton workforce shall work from home.

- Cut-off time for receiving of physical documents shall be at exactly 2:00 PM. Emails received beyond 3:00 PM will be processed/entertained on the next business day.

Transaction	General Requirements	Guidelines
A. Public Assistance on Walk-in/ Phone-in Legal Queries		During the covered period, walk-in and phone-in consultations of legal queries will be temporarily unavailable. Alternatively, the public is highly encouraged to present questions or inquiries through email at ogc_picc@sec.gov.ph. The cut-off time for purposes of reckoning the date of receipt of emails in a particular day shall be at 3:00 PM. Emails received beyond the cut-off time will be considered received on the next business day.
B. Request for Certified True Copy (CTC) or Plain Copy of Documents Related to Cases	1. Letter Request 2 Proof of Payment Fee: PHP 50.00 + PHP 30.00 Document Stamp Tax (DST) + PHP 10.00 per page	1. Prepare a formal Letter Request and send it through email to ogc_picc@sec.gov.ph. The cut-off time for purposes of reckoning the date of receipt of Letter Request in a particular day shall be at 3:00 PM. Letter Request received beyond the cut-off time will be considered received on the next business day. 2. Wait for an email reply with an advice to proceed with the payment of the CTC fee will be sent. 3. Acknowledge the email reply through email should the client wish to proceed with his or her request. A copy of the Payment Assessment Form (PAF) will be sent to Client's email address. 4. Upon receipt of the PAF, print the form and proceed to pay the assessed amount at any of the SEC Cashiers located at the following areas: **SEC MAIN OFFICE – CASHIER** Location: Ground Floor, Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City Telephone No.: (02) 8-818-5825 **SEC ORTIGAS – CASHIER** Location: SEC Ortigas Building, Ground Floor, EDSA, Mandaluyong City Telephone No.: (02) 8-584-9772 5. A copy of the official receipt shall be sent to ogc_picc@sec.gov.ph as proof of payment. The Client shall receive an update on the requested service. 6. The original copy of the official receipt will serve as the Client's claim stub in receiving the certified true copies of the documents.

Transaction	General Requirements	Guidelines
C. Filing of Request for Legal Opinion	1. Letter Request with supporting documents 2. Proof of Payment (If subject of the request is determined to be proper subject of a Legal Opinion pursuant to Memorandum Circular No. 15, s. 2003) Fee: PHP 10,000.00	1. Prepare a formal Letter Request, along with its supporting documents, and send it through email to gc_picc@sec.gov.ph for initial assessment. The cut-off time for purposes of reckoning the date of receipt of Letter Request in a particular day shall be at 3:00 PM. Letter Request received beyond the cut-off time will be considered received on the next business day. 2. After the determination that the Letter Request pertains to specific questions of law and complies with SEC Memorandum Circular No. 15 s. 2003 (MC No. 15, s.2003), the OGC shall send a reply to the Client through email with an advice to proceed with the payment of opinion fee in the amount of PHP 10,000.00. Otherwise, the OGC shall inform the Client that the Letter Request does not pertain to specific questions of law and not compliant with MC No. 15, s.2003, and is thus not opinionable. 3. Should the Client wish to proceed with his or her request, the Client must notify through email. Once the notification is received, a copy of the Payment Assessment Form (PAF) will be sent to Client's email address. 4. Upon receipt of the PAF, the Client shall print the form and proceed to pay the assessed amount at any of the SEC Cashiers located at the following areas: **SEC MAIN OFFICE – CASHIER** Location: Ground Floor, Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City Telephone No.: (02) 8-818-5825 **SEC ORTIGAS – CASHIER** Location: SEC Ortigas Building, Ground Floor, EDSA, Mandaluyong City Telephone No.: (02) 8-584-9772 5. A copy of the official receipt shall be sent to ogc_picc@sec.gov.ph as proof of payment. The Client shall receive an update on the requested service. The issuance and release of the opinion shall be on a first-in, first-out basis, and shall depend on the number, difficulty and novelty of the question presented therein. 6. The original copy of the official receipt will serve as the Client's claim stub in receiving the original copy of the opinion.

Transaction	General Requirements	Guidelines
D. Filing of Petition and Appeal	1. Verified petition or appeal with supporting documents 2. Proof of Payment Fee: PHP 3,030.00	1. File its verified petition or appeal through any of the following modes: (a) Manual Filing; (b) Registered Mail or Private Courier; or (c) Electronic Filing. **(a) Manual Filing** **Manner** ▸ Fill-out the Request Form provided by OGC. ▸ Six (6) legible copies of the petition or memorandum of appeal with supporting documents shall be sealed in an envelope and shall be left at the designated place provided by the Office. ▸ The Client will be receiving a temporary acknowledgment receipt from OGC. **Date of Filing** Date of filing shall be the date indicated on the official receipt issued to the Client upon payment of the filing fee. **(b) Registered Mail or Private Courier** **Manner** ▸ Six (6) legible copies of the petition or memorandum of appeal with supporting documents shall be sealed in an envelope, together with the postal money order for the payment of the filing fee, and sent through registered mail or private courier addressed to: **OFFICE OF THE GENERAL COUNSEL** Securities and Exchange Commission 3rd Floor, Secretariat Building PICC Complex, Pasay City **Date of Filing** Date of filing shall be the date of the mailing, as shown by the post office stamp on the envelope or the registry receipt or the acknowledgement receipt issued by the private courier company.

Transaction	General Requirements	Guidelines
		(c) Electronic Filing **Manner** ▸ Copy of the petition or appeal with supporting documents may be filed electronically by sending an electronic mail to ogc_picc@sec.gov.ph with a subject title: FILING OF APPEAL_CASE TITLE. ▸ Scanned copies of the printed or hard copies of the documents may be sent in Portable Document Format (PDF). For documents that have annex/es, a separate scanned file for each annex must be filed by the party using the prescribed file name. (Ex. Appeal - Annex "A"; Appeal – Annex "B"; and so forth) **Date of Filing** Date of filing shall be the date indicated on the official receipt issued to the Client upon payment of the filing fee. 2. In compliance with public health standards for the mitigation of the COVID-19 threat, the physical documents received by the OGC shall be subject to sanitation procedures and initial assessment of the OGC as to the completeness of the petition or memorandum of appeal. 3. Within a period of not exceeding three working days from submission (i.e. manual filing or electronic filing), the OGC shall send a reply to the Client through email confirming the completeness of the petition or memorandum of appeal with supporting documents. The OGC shall also advise the Client for the payment of filing fee in the amount of PHP 3,030.00. 4. Should the Client wish to proceed with its request, the OGC shall send a copy of the Payment Assessment Form (PAF) for payment. Upon receipt of the PAF, the Client shall print the form and proceed to pay the assessed amount at any of the SEC Cashiers located at the following areas: **SEC MAIN OFFICE – CASHIER** Location: Ground Floor, Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City Telephone No.: (02) 8-818-5825 **SEC ORTIGAS – CASHIER** Location: SEC Ortigas Building, Ground Floor, EDSA, Mandaluyong City Telephone No.: (02) 8-584-9772

Transaction	General Requirements	Guidelines
		5. A copy of the official receipt shall be sent to ogc_picc@sec.gov.ph as proof of payment. Upon receipt of the proof of payment, the OGC shall proceed with the docketing and raffling of the petition or memorandum of appeal. The Client shall receive an update on the requested service. The original copy of the official receipt may be sent to OGC's office via registered mail or any other private courier. 6. Filing of Responsive Pleadings and Other Documents a. The Commission may order the submission of additional documents based on the allegations in the petition or memorandum. b. Responsive Pleadings The party in any case pending before the OGC or the Commission *En Banc* may file its responsive pleading through any of the following modes: (a) Manual Filing; (b) Registered Mail or Private Courier; and (c) Electronic Filing. **Manual Filing** The party or its representative, or through its counsel must fill-out the Request Form provided by OGC. Copy of the responsive pleading shall be sealed in an envelope and shall be left at the designated place provided by the Office. **Registered Mail or Private Courier** Copy of the responsive pleading shall be sealed in an envelope and may be sent through registered mail or private courier addressed to: **OFFICE OF THE GENERAL COUNSEL** Securities and Exchange Commission 3rd Floor, Secretariat Building PICC Complex, Pasay City

Transaction	General Requirements	Guidelines
		Electronic Filing Copy of the responsive pleading may be filed electronically by sending an electronic mail to ogc_picc@sec.gov.ph with a subject title: CASE NUMBER_CASE TITLE_TYPE OF DOCUMENT. Scanned copies of the printed or hard copies of the documents may be sent in Portable Document Format (PDF). For documents that have annex/es, a separate scanned file for each annex must be filed by the party using the prescribed file name. (Ex. Comment - Annex "A"; Comment – Annex "B"; and so forth). If applicable, proof of service to the operating departments or other parties must be included in the attachments before a party can file the document/s covered under this item. The cut-off time for purposes of reckoning the date of receipt of emails in a particular day shall be at 3:00 PM. Emails received beyond the cut-off time will be considered received on the next business day. c. Other Pleadings and Documents Filing of other pleadings and documents, as stated below, shall be done electronically using the manner of electronic filing stated under item D(6)(b). i. Reply ii. Motion to Lift CDO iii. Manifestations and Motions iv. Rejoinder v. Position Paper vi. Other Pleadings
E. General Receiving of Documents		1. If the documents to be received by the OGC do not fall within the transactions specified above, the general public is hereby directed to send its letter, document or any correspondence to ogc_picc@sec.gov.ph. The cut-off time for purposes of reckoning the date of receipt of emails in a particular day shall be at 3:00 PM. Emails received beyond the cut-off time will be considered received on the next business day. 2. a. Alternatively, the general public may opt to send its documents through registered mail or private courier addressed to: **OFFICE OF THE GENERAL COUNSEL** Securities and Exchange Commission 3rd Floor, Secretariat Building PICC Complex, Pasay City b. In compliance with public health standards for the mitigation of the COVID-19 threat, the documents received by the OGC through registered mail or private courier shall be subject to sanitation procedures and initial assessment. Within a period of not exceeding three (3) working days from receipt of documents, the OGC shall send a reply to the Client through email confirming the receipt of the documents. 3. The Client shall receive an update regarding the requested service, if any.

- The interim guidelines will take effect on 06 July 2020 and shall continue to be in force unless modified or recalled.

New Deadline for the ONLINE Filing or Submission of the Mandatory Disclosure Form (MDF)

The SEC prescribes the new deadline for the online filing or submission of the MDF.

SEC Notice issued 14 July 2020

- In view of the extended suspension of operations of the SEC Main Office, online filing of the MDF is hereby extended until 31 July 2020. Said MDF may be submitted at https://forms.gle/KF4iBSimLKvChCwRA;

- Deadline for submission of the printed original copy of the MDFs with the signed and notarized Declaration/Verification page remains to be on 31 July 2020.

- For further information, email the Anti-Money Laundering Division (AMLD) at eipd-amld@sec.gov.ph or visit the SEC website at www.sec.gov.ph.

Reglementary Periods in the Filing of Pleadings

The SEC informs the public that the reglementary periods in the filing of petitions and other pleadings will start to run effective 6 July 2020.

SEC Notice dated 3 July 2020

- Pursuant to IATF Resolution No. 4o and the expiration of the 30-day extension period in the filing of appeals, motions and pleadings provided in the Office of the General Counsel (OGC) Advisory dated 8 April 2020, the reglementary periods in the filing of petitions, appeals, motions and other pleadings under the 2016 Rules of Procedure of the SEC or the Rules of Court as applicable will start to run.

- Th OGC will further suspend the conduct of hearings and preliminary conferences in cases pending with the OGC or the Commission *En Banc*, any may, in its discretion, order the parties to file their respective position papers.

- This Advisory supersedes the OGC Advisory dated 8 April 2020.

Revised Guidelines on the Issuance of Payment Assessment Form, Payment Annual Fees, Request for Monitoring and Issuance of Monitoring Sheet/ Clearance, and Submission of Hard/Printed Copies of Documents

The SEC Prescribes Guidelines for Investment Companies, Registered Issuers of Proprietary and Non-Proprietary Shares/ Timeshares, Public Companies, Financing Companies, Lending Companies, Foundations, Accredited Microfinance NGOS, Corporate Governance Institutional Training Providers and Publicly-listed Companies under the supervision of the CGFD.

SEC Notice Series of 2020 dated 20 July 2020

- ISSUANCE OF PAYMENT ASSESSMENT FORM

    1. CGFD-covered companies may request for, and be issued, electronic copies of the PAF by sending a request therefore via email to cgfd@sec.gov.ph.

    2. The following format shall be used in the subject head:

        NAME OF COMPANY_REQUEST FOR PAF_DATE OF EMAIL.

- PAYMENT OF ANNUAL FEES

    1. Lending and financing companies are advised to send their requests for electronic copies of the PAF by sending a request therefor via email to cgfd_md2@sec.gov.ph. The following format shall be used in the subject head: NAME OF COMPANY_PAF_ANNUAL FEE_DATE OF EMAIL

2. AF that fell due during the Enhanced Community Quarantine (ECQ) on 16 March 2020 up to 15 June 2020, and within 16 June 2020 to 31 July 2020 regardless of Head office shall be subject to the new deadline, which is on or before 1 September 2020.

3. For AF falling due after 31 July 2020, companies are advised to pay their AF on their original deadlines using the same online procedure until further notice.

- REQUEST FOR MONITORING AND ISSUANCE OF MONITORING SHEET/ CLEARANCE

1. Requests for monitoring of covered companies shall be sent via email at the following addresses:

   - Investment Companies Issuers of Proprietary and Non-Proprietary Securities Public Companies

     cgfd_ld@sec.gov.ph

   - Foundations Accredited Microfinance NGOs Financing Companies Lending Companies

     cgfd_md2@sec.gov.ph

   - The following format shall be used in the subject head:

     NAME OF COMPANY_REQUEST FOR MONITORING_DATE OF EMAIL

2. The list of documentary requirements and procedures for Financing Companies, Lending Companies, Foundations, and Accredited Microfinance NGOs are provided in these links:

   - For Lending Companies and Financing Companies

     http://www.sec.gov.ph/lending-companies-and-financing-companies/request-for-monitoring/

   - For Foundations and Accredited Microfinance NGOs

     http://www.sec.gov.ph/microfinance-ngo-regulatory-council/request-for-monitoring/

3. Covered companies requesting or with pending requests for monitoring may be required to present proof of filing/compliance or submit advance copies of reports/documents with Online Certification using the attached template and proof of transmittal if required to be submitted via courier service (i.e. Official Receipt). This submission shall only be used to facilitate the request for monitoring and issuance of monitoring sheet/clearance.

   - The following format shall be used in the subject head:

     NAME OF COMPANY_DOCUMENTS FOR MONITORING_DATE OF EMAIL

- SUBMISSION OF HARD/PRINTED COPIES OF DOCUMENTS

1. The hard copies of reports, letters, requests and other documents of Foundations, Accredited Microfinance NGOs, Lending Companies and Financing Companies, shall be filed through the following means:

    - Via Courier Service only – Printed or hard copies of the following documents of covered companies with wet signature and proper notarization should be sent through courier or Philippine Postal Corp. using the SEC Express Nationwide Submission (SENS) facility (https://sens.secexpress.ph/).

<table>
<tr><th>Covered Company</th><th>Documents for Submission</th></tr>
<tr><td>Foundation
Accredited MF-NGOs
Lending Companies
Financing Companies</td><td>Audited Financial Statements (AFS)
General Information Sheet (GIS)</td></tr>
<tr><td>Foundation and Accredited MF-NGOs</td><td>For the year 2013 up to 2018 Sworn Statement and Certificate of Existence of Projects

For the year 2019 onwards Schedules for Non-Stock, Non-Profit Organizations

<table>
<tr><td>NSPO Form-1</td><td>Sworn Statement</td></tr>
<tr><td>NSPO Form-2</td><td>Affidavit of Willingness to be Audited by the Commission</td></tr>
<tr><td>NSPO Form-3</td><td>Schedule of Receipts or Income or Sources of Funds other than Contributions and Donations</td></tr>
<tr><td>NSPO Form-4</td><td>Schedule of Contributions and Donations</td></tr>
<tr><td>NSPO Form-5</td><td>Schedule of Application of Funds</td></tr>
<tr><td>NSPO Form-6</td><td>Certificate of Existence of Program/Activity</td></tr>
</table>
</td></tr>
<tr><td>Lending Companies
Financing Companies</td><td>Special Forms of Financial Statements (LCFS/ FCFS)
Interim Financial Statements (LCIF/ FCIF)

Sworn Certification in compliance with SEC Memorandum

Circular No. 18, Series of 2019

SEC Form 1- Existing Online Lending Platform

SEC Form 2- Prospective Online Lending Platform

AMLA Compliance Form</td></tr>
</table>

Covered Company	Documents for Submission
Financing Companies	Revised Manual on Corporate Governance SEC Form MCG-2009 Compliance Officer's Certification on the extent of compliance with the Manual on Corporate Governance

2. Printed or hard copies of documents shall be deemed to have been filed on the date they were received by the courier.

   - Via email only – Scanned copies of the printed or hard copies of following documents with wet signature and with proper notarization as necessary may be sent in Portable Document Format (PDF) to the following addresses:

Item	Documents	Addressee
Documents which require payment (filing fee)	Annual Information Statement (submit email together with proof of payment-copy of OR and validated PAF)	cgfd_md2@sec.gov.ph
Documents which DO NOT require payment	a. Application for Accreditation of Microfinance-NGO (MNRC Memorandum Circular No. 4, series of 2018 http://www.sec.gov.ph/wp-content/uploads/2018/01/2018MNRCIssuances-MCNo4.pdf) b. Company's letter-reply to/ compliance with the Department's letters and orders c. Reply to show cause/ comment/ advisement letter d. Other requests or correspondence	cgfd_md2@sec.gov.ph
	Money Laundering and Terrorism Financing Prevention Program (MLPP)	eipd-amld@sec.gov.ph

- All inquiries pertaining to CGFD matters and application/s shall be sent via email at cgfd@sec.gov.ph.

Submission of the Printed Mandatory Disclosure Form (MDF)

The Commission discourages the public from personally coming to the SEC Main Office in filing the MDF in view of the continued risk of being infected or spreading the COVID-19 virus.

SEC Notice Series of 2020 dated 28 July 2020

- Everyone concerned are encouraged to submit the MDF through courier service, registered mail or through electronic mail as explained in detail in the guidelines previously issued by the Commission, found in the following link:

  https://www.sec.gov.ph/wp-content/uploads/2020/06/2020Notice_MDF-Submission-Guidelines.pdf

- When completely unavoidable, the MDF may be dropped off at the SEC chute box located at the G/F, Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City until 5:00 p.m. on 30 July 2020.

- No SEC personnel will be available to assist as face to face interaction is discouraged at this time.

- For the submission to be deemed complete, submit the following:

  1. Printed accomplished online MDF; and

  2. Notarized declaration/verification page.

- Only two copies of the above documents, in properly labeled (write "MDF" in the envelope) and sealed brown envelopes, will be received by the SEC.

Other BIR issuances

Revenue Memorandum Circular No. 65-2020 issued on June 30, 2020

RMC No. 65-2020 circularizes the effectivity date of RA No. 11467 entitled "An Act Amending Sections 109, 141, 142, 143, 144, 147, 152, 263, 263-A, 265, and 288-A, and adding a New Section 290-A to Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code of 1997, as for Other Purposes."

- For the information and guidance of all internal revenue officials and employees and others concerned, the effectivity date of the RA No. 11467 shall take effect immediately after its complete publication in a newspaper of general circulation pursuant to Section 15 of RA No. 11467 or on 27 January 2020.

- All internal revenue officers, employees, and others concerned are hereby enjoined to give this Circular as wide publicity as possible.

RMO No. 22-2020 issued on 14 July 2020

RMO No. 22-2020 prescribes policies, guidelines, and procedures in the handling/resolution of complaints received through the 8888 Citizens' Complaints Center, Presidential Complaint Center, BIR eComplaint System, Contact Center ng Bayan, Anti-Red Tape Authority, and other feedback mechanisms.

- All BIR-related complaints and concerns transmitted through the 8888 Citizens' Complaint Center, Contact Center ng Bayan (CCB), Anti-Red Tape Authority (ARTA), and Presidential Complaint Center (PCC) shall be initially received by the Public Information and Education Division (PIED).

- Citizens' complaints/concerns shall be forwarded through email to the concerned office (copy furnished the monitoring office, if applicable):

Classification	Concerned Office	Monitoring Office
a. System-Related Problems/eServices (i.e. intermittent, system downtime, offline, etc.)	Office being complained; or Where the person/s subject of the complaint is/are assigned	Information System Development & Operations Service
b. Non-System Related b.1 Electronic Certificate Authorizing Registration (eCAR) & other ONETT-related transactions b.2 tin, Certificate of Registration (COR), Authority to Print (ATP) & other registration-related concerns b.3 Tax Clearance	Office being complained; or Where the person/s subject of the complaint is/are assigned	Assessment Service (Thru Assessment Performance Monitoring Division) Client Support Service Collection Service
c. RATE (Run After Tax Evaders) c.1 Tax Evasion c.2 Non-issuance of Official Receipts (OR)/Sales Invoices (SI) c.3 Non-Granting of PWD/Senior Citizen's Discount	Office being complained; or Where the person/s subject of the complaint is/are assigned & Concerned Regional Investigation Division	Enforcement & Advocacy Service (thru National Investigation Division)
d. People/"Disiplina" d.1 Misdemeanor/ Discourtesy d.2 Corruption d.3 Other personnel-related issues		Internal Affairs Service (Thru Internal Investigation Division) & Human Resource Development Service (Thru Personnel Division)
e. Non-compliance with Citizen's Charter & other ARTA requirements		Client Support Service (thru Public Information & Education Division)
f. Commendation	Office being complained/ commended; or Where request for assistance is addressed	Human Resource Development Service
g. Request for assistance/ suggestions		Client Support Service

- The concerned office shall have a dedicated email (preferably office generic email account) for citizens' complaints/concerns.

- The head shall assign a responsible focal person and alternate focal person who shall ensure prompt and timely acknowledgment of receipt of complaints, and the performance of corresponding actions/resolutions.

- The Key Performance Indicators of the focal person shall consist of the timeliness of actions taken as documented by the submitted reports to PIED.

- The complaints shall be processed as follows:

Recipient	Action
ARTA (per RA No. 11032 [EODB])	Concerned office shall respond directly to the complainant within 24 hours from receipt of complaint. Submit copy of the response and supporting document, if any, to ART (cc: PIED at arta_tied@bir.gov.ph).
8888, CCB, PCC, etc. (EO No. 6 – 8888 Citizen's Complaint Center)	Concerned office shall acknowledge receipt of the complaint within 24 hours. Perform concrete and specific action and report the same to the complainant within 72 hours (cc: the complaint channel [8888, CCB, PCC] & PIED [complaints@8888.gov.ph]

- For commendations, PIED shall refer to ACIR, HRDS for the proper recognition, upon evaluation.

- The PIED shall perform the following:

    1. Acknowledge the receipt of the complaint within the same day, or if the complaint was sent on a weekend or holiday, acknowledge until the next business day.

    2. Classify the complaint based on the guidelines provided in this Order. Additional information and/or documents may be requested for clarificatory purposes, to be submitted within three working days to avoid archiving of the complaint.

    3. Indorse the complaint to the concerned office, copy furnished the monitoring office, if applicable.

    4. Monitor the submission of reports on actions taken. Prepare a follow-up, if necessary.

    5. Report the actions taken. Request for closure of complaint to the feedback authority.

    6. Process the Progress Reports submitted monthly by the concerned offices, providing a copy to the Monitoring Offices.

7. Prepare and submit the Status Report to the Office of the Commissioner not later than every 25th day of the month.

8. Provide the Monitoring Offices with the copy of the Progress Report concerning their respective type of complaint for monitoring and appropriate action.

- Procedure for the concerned office to whom PIED indorsed the complaint:

1. Check the email inbox dedicated for complaints, as often as possible, on a daily basis.

2. Within seventy-two (72) hours from receipt of the complaint:

   - Acknowledge receipt of the complaint;

   - Evaluate the sufficiency and nature of the complaint.

Content	Action
Sufficient; Sent to the rightful office-in-charge	Point person shall recommend to the office head the appropriate action/ resolution and/or investigation.
Sufficient; Determined that it should require action from other concerned office	Focal person shall recommend case referral to the proper office having jurisdiction.
Insufficient and/or jurisdiction cannot be certainly determined	Focal person shall request the complainant to provide additional information and/or documents, to be submitted within three (3) working days to avoid archiving.

   - Determine to which unit/official has jurisdiction to act on the matter. The focal person shall (whichever is applicable):

     a. Recommend to the office head the investigation of the complaint by a case officer in their unit; or

     b. Referral of the same to the appropriate office in charge.

   - Perform concrete and specific action on the complaint, and report the same directly to the complainant, copy furnished the complaint channel and PIED.

   - Report the concrete and specific action taken directly to the complainant, copy furnished the complaint channel and PIED; and

3. Track the progress of investigation/resolution of all complaints and submit progress reports not later than the 15th day of each month, copy furnished the PIED:

Authorized Recipient	Focal Persons in:
Regional Director	Regional offices District offices
Assistant Commissioner	National office

- Procedure for the Monitoring Offices:

1. Evaluate the Monthly Progress Report on Complaints.

2. Whenever necessary, identify the problem and perform appropriate action to resolve and avoid the re-occurrence of the same problem.

Other SEC Updates

SEC Contact Center

The SEC Main Office, Satellite Offices and Extension Offices will continue to operate at limited capacity and implement alternative work arrangements while quarantine measures remain in place across the country due to the COVID-19 pandemic.

SEC Notice Series of 2020 dated 29 July 2020

- The public may reach the Commission through the email addresses and interim hotline numbers for queries and other concerns during office hours provided in the issuance. The Commission will set up more interim hotlines and update the SEC Contact Center accordingly.

About SGV & Co.
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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.

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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.