Tax Bulletin

January 2021 - February 2021

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Highlights

BIR Administrative Requirements

- Revenue Memorandum Order (RMO) 6-2021 provides revised guidelines on the assignment and re-assignment of Revenue Officers involved in Excise Tax functions to establishments where articles subject to Excise Tax are made or kept based on Republic Act Nos. 10963, 11346 and 11467. **(Page 7)**

- RMO No. 7-2021 was issued to establish the policies, methodology and guidelines used in the allocation of the overall BIR collection goal for calendar year (CY) 2021 of Php2,081.161 Billion, and the resulting distribution of the collection goal to the Large Taxpayers Service (LTS) and Revenue Regions (RRs) including the Revenue District Offices (RDOs). **(Page 9)**

- Revenue Memorandum Circular (RMC) No. 14-2021 clarifies the effectivity date of RMO No. 47-2020, imposing new documentary requirements for processing VAT refund claims. **(Page 9)**

- RMC No. 17-2021 discusses the extension of the deadline for the filing/submission of the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form Nos. 1604-C and 1604-F). **(Page 9)**

- RMC No. 18-2021 provides clarification on the filing of BIR Form 1604-CF, 1604-E and other matters. **(Page 10)**

Other BIR Issuances

- RMC No. 10-2021 publishes the full text of the Memorandum of Agreement (MOA) between the BIR and the Civil Aviation Authority of the Philippines (CAAP) regarding data sharing agreements. **(Page 11)**

- RMC No. 12-2021 circularizes the Consolidated Price of Sugar at Millsite for the month of December 2020 issued by the Sugar Regulatory Administration (SRA) and contained in Operations Memorandum (OM) Nos. 2-2021, 3-2021, 4-2021 and 5-2021. **(Page 11)**

- RMC No. 13-2021 provides for the availability of the BIR Mobile Taxpayer Identification Number (TIN) Verifier Application. **(Page 12)**

- RMC No. 15-2021 announces the availability of the Central Business Portal (CBP), a project of the Anti-Red Tape Authority (ARTA), in coordination with the Department of Information and Communication Technology (DICT), on 28 January 2021. **(Page 12)**

- RMC No. 19-2021 is being issued in compliance with and in observance of the Bureau of Freedom of Information (FOI) Program. **(Page 13)**

- RMC No. 20-2021 circularized a copy of Republic Act No. 11494, entitled "An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for Other Purposes." **(Page 13)**

Bureau of Customs

- Customs Memorandum Order (CMO) No. 2-2021 provides for the supplemental guidelines in the implementation of CMO No. 49-2019 on the mandatory filling up of Box No. 41 in the lodgment of the Goods Declaration in the E2M. **(Page 13)**

- CMO No. 3-2021 provides a consolidation of the provisions of the Customs Modernization and Tariff Act (CMTA) and its implementing Customs Administrative Orders (CAO) dealing with the imposition of penalties and liabilities including the effects of failure of importers, exporters, third parties and other stakeholders to comply with their obligations under the laws and their implementing rules and regulation. **(Page 14)**

- CMO No. 4-2021 is a consolidation of the administrative and judicial appeal processes under the CMTA and its implementing rules and regulations into a singular document to be known as the "Manual of Appeal Procedures." **(Page 14)**

- CMO No. 5-2021 provides the New National Procedure Codes for goods declaration and E2M Lodgment. **(Page 16)**

- CMO No. 6-2021 imposes provisional safeguard duties on imported vehicles in the form of a cash bond. **(Page 16)**

- AOCG Memo No. 75-2021 amends the period of validity of a Product Evaluation Report for Certificates of Origin to five years. **(Page 17)**

Board of Investments

- BOI Memorandum Circular No. 2021-001 dated 9 February 2021 provides for the General Policies and Specific Guidelines to Implement the 2020 Investment Priorities Plan (IPP). **(Page 17)**

PEZA

- PEZA Memorandum Circular (MC) No. 2021-11 dated 3 February 2021 provides for the release of VAT Zero-Rating Certificates to registered enterprises. **(Page 18)**

Banks and Other Financial Institutions

Guidelines for Virtual Asset Providers

- Circular No. 1108 provides for guidelines for Virtual Asset Providers (VASPs). **(Page 19)**

Amendments to the Regulations on Investment Management Activities

- Circular No. 1109 provides amendments to the Regulations on Investment Management Activities. **(Page 20)**

Advisory on Illegal Online Gambling

- Circular Letter No. CL-2021-012 provides an advisory on Illegal Online Gambling. **(Page 21)**

Anti-Money Laundering Council (AMLC) Regulatory Issuances on the Amendments

- Circular Letter No. CL-2021-013 provides for Anti-Money Laundering Council (AMLC) Regulatory Issuances on the Amendments to Certain Provisions of the 2018 Implementing Rules and Regulations (IRR) of the Anti-Money Laundering Act (AMLA), as amended, Targeted Financial Sanctions (Related to Proliferation of Weapons of Mass Destructions and Proliferation Financing), and Amendments to Certain Provisions of ARI No. 4, Series of 2020. **(Page 22)**

Guidelines on the Electronic Submission of the Report on Crimes and Losses (RCL)

- Memorandum No. M-2021-009 provides for Guidelines on the Electronic Submission of the Report on Crimes and Losses (RCL). **(Page 22)**

Guidelines on the Electronic Submission of the Consolidated List of Stockholders and their Stockholdings (CLSS)

- Memorandum No. M-2021-009 provides for Guidelines on the Electronic Submission of the Consolidated List of Stockholders and their Stockholdings (CLSS). **(Page 23)**

Guidelines on the Electronic Submission of the List of Members of the Board of Directors, Trustees, and Officers (LDTO)

- Memorandum No. M-2021-010 provides for Guidelines on the Electronic Submission of the List of Members of the Board of Directors, Trustees, and Officers (LDTO). **(Page 23)**

Reclassification of Debt Securities Measured at Fair Value to the Amortized Cost Category

- Memorandum No. M-2021-011 provides for the Reclassification of Debt Securities Measured at Fair Value to the Amortized Cost Category. **(Page 24)**

Extension of Temporary Measures Implemented in the Bangko Sentral ng Pilipinas' (BSP) Rediscounting Facilities

- Memorandum No. M-2021-012 provides for the Extension of Temporary Measures Implemented in the Bangko Sentral ng Pilipinas' (BSP) Rediscounting Facilities. **(Page 24)**

SEC Filing, Payments and Other Deadlines

Deadlines for the filing of the Sworn Certifications by Financing Companies and Lending Companies

- SEC Memorandum Circular No. 2, Series of 2021, dated 15 February 2021 provided the deadlines for the filing of the Sworn Certifications by Financing Companies and Lending Companies. **(Page 25)**

Other SEC Updates

- SEC Notice dated 18 January 2021 confirmed that all entities regulated and supervised by the Markets and Securities Regulation Department (MSRD) are covered by SEC Memorandum Circular (MC) No. 28, Series of 2020. **(Page 25)**

- SEC Memorandum Circular No. 1, Series of 2021, dated 27 January 2021, laid down the guidelines in preventing the misuse of corporations for illicit activities, through measures designed to promote transparency of beneficial ownership, or the "BO Transparency Guidelines." **(Page 26)**

- SEC OGC Opinion No. 21-01 dated 18 January 2021 provides that the remaining members of a Board of Trustees may fill-up vacancies left by members who resigned, provided that the remaining members of the Board constitute a quorum. **(Page 27)**

Court of Tax Appeal Cases

Procedure on Tax Assessment

- The date of the post office stamp on the envelope or the registry receipt is considered the date of filing of a pleading sent by registered mail. Failure to indicate a definite period for payment of the tax assessed negates the BIR's demand for payment. **(Page 28)**

- If the local treasurer fails to act on the protest within the prescribed 60-day period, the taxpayer shall institute an appeal before a court of competent jurisdiction within a period of thirty days reckoned from the lapse of the 60-day period within which the local treasurer should have decided. It is further provided that the failure of the taxpayer to file a protest with the local treasurer or to appeal the decision or the inaction of the local treasurer, will result in the finality of the local tax assessment. **(Page 29)**

- The 30-day period to file an appeal with the Court of Tax Appeals (CTA) should be counted from the date of receipt of a copy of the Warrant of Garnishment (WG) and not from the date of receipt of a letter which merely contained a notification from the Bank as to the existence of the WG. **(Page 31)**

- If the taxpayer does his duty and duly informs the BIR of its change of address, then any communication sent to its old address becomes invalid and tolls the period within which the taxpayer is given to reply. **(Page 32)**

- Tax assessments issued in violation of the due process rights of a taxpayer are null and void. Due process requires the Bureau of Internal Revenue (BIR) to consider defenses and evidences submitted by the taxpayer. Its failure to adhere to these requirements constitutes denial of due process and taints the administrative proceedings with invalidity. **(Page 32)**

Tax Refunds/Issuance of Tax Credit

- Section 108(B)(2) of the National Internal Revenue Code of 1997, (Tax Code), as amended, provides that a service performed in the Philippines by a value added tax (VAT)-registered person may be subject to zero percent rate if proven that the said service was rendered to a person not engaged in business in the Philippines. **(Page 34)**

- Apart from the Capital Gains Tax (CGT) return for each transaction, there is still to be filed a final consolidation return to determine the CGT to be imposed on the net capital gains that arose for all transactions during the taxable year. **(Page 35)**

- The BIR act of filing a counterclaim to collect on an erroneously granted and paid VAT refund claim cannot prosper as it violates taxpayer's right to due process. **(Page 35)**

- PEZA-registered enterprises are not qualified to claim for Input VAT refund since to begin with, no VAT should have been passed on to them by virtue of its status as a duly registered PEZA, as provided under Revenue Memorandum Circular No. 74-99. **(Page 37)**

- The CIR's failure to cite the specific invoicing requirements that the taxpayer allegedly violated is a general assignment of error that is not allowed under the Rules of Court and jurisprudence, and the Court is not duty-bound to rule on the same. **(Page 38)**

- Non-submission of complete supporting documents in an administrative claim for refund is not fatal to the case, where the CIR failed to act on the administrative claim effectively giving the Court the authority in the judicial claim to give credence to all evidences presented by claimant including those that may not have been submitted to the CIR. **(Page 39)**

Violation of Tax Code

- The "deliberate ignorance" or "conscious avoidance" on the part of the taxpayer in ensuring the accuracy of the information provided in the subject ITRs and FS would justly characterize the failure to supply correct and accurate information as willful, within the contemplation of Section 255 of the Tax Code. Taxpayer cannot use as excuse the inadvertence on the part of his secretary and accountant especially if such claim is not supported. **(Page 39)**

- All violations of any provision of the Tax Code shall prescribe after five years counted from the day of the commission of the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution of judicial proceedings for investigation and punishment. **(Page 41)**

Seizure/Forfeiture

- There is no need to secure a prior import permit for out-quota rice importation, pursuant to prevailing laws and regulations, making the seizure and forfeiture proceeding conducted on such basis illegal and, in which case, a refund of the proceeds of the auction sale, less the corresponding customs duties and applicable expenses under Section 1143 of the CMTA, should be in order. **(Page 42)**

BIR Administrative Requirements

RMO 6-2021 provides revised guidelines on the assignment and re-assignment of Revenue Officers involved in Excise Tax functions to establishments where articles subject to Excise Tax are made or kept based on Republic Act Nos. 10963, 11346 and 11467.

RMO NO. 6-2021 issued on 21 January 2021

- There shall be assignment/re-assignment of Revenue Officers On-Premise (ROOPs) in Establishments Engaged in the Manufacture/Importation/ Export of Excisable Products (EEMIEPs) every two years thru a Revenue Travel Assignment Order/Revenue Special Order (RTAO/RSO) issued by the Commissioner based on the following criteria:

    1. Individual Performance Commitment and Review (IPCR) rating for the last two semesters

    2. Industry Exposure

    3. Involvement in Projects, and

    4. Other factors which shall include report of discrepancy/finding resulting into assessment and/or collection

- For purposes of optimizing ROOP distribution, establishments shall be classified according to type of taxpayers (whether manufacturer, importer, trader/dealer, etc.) and then prioritized and ranked according to:

    1. Amount of annual Excise Tax payments based on removals for the last three years; and

    2. Average growth rate on Excise Tax payments based on removals for the last three years

- Establishments engaged in the manufacture of excisable products shall have a monitoring ROOP assigned therein as priority taxpayers for monitoring purposes over those establishments engaged in the importation, trading and/or storage of tax paid excisable articles. Provided, however, that in the case of establishments engaged in the importation, trading and/or storage of tax paid excisable articles in a given zone, ROOP may be concurrently assigned thereat, in addition to his/her assignments in the manufacturing establishments.

- No ROOP shall be re-assigned back to his last two consecutive assignments in Zones except in meritorious cases. In the case of Excise Tax Areas (EXTAs), however, a ROOP may be allowed to be re-assigned to an establishment engaged in the manufacture of excisable products where he/she was previously assigned prior to his present place of assignment, only when deemed necessary.

- As a general rule, the re-assignment of ROOPs and Zone-in-Charge (ZIC) deployed in Zones I to XVII shall be limited to establishments located within the areas of Zones I to XVII. Likewise, re-assignment of ROOPs and Area Supervisors of EXTA shall be limited to establishments located within the jurisdiction of a particular EXTA. Provided, however, that when the exigencies of the revenue service so require, ROOP, Area Supervisor assigned in Zones I to XVII may be deployed to EXTA or vice-versa.

- The areas covered by each Zone/EXTA are as follows:

ZONE NO.	AREA COVERED
I	Marikina, Pasig, Antipolo, Cainta, Angono, Rizal, Pateros
II	Quezon City
III	Caloocan, Malabon, Navotas, Valenzuela
IV	Manila, Mandaluyong, San Juan, Pasay, Palawan
V	Parañaque, Makati, Taguig
VI	Muntinlupa, Las Piñas, Cavite
VII	Laguna 1 – Cabuyao & other nearby areas
VIII	Laguna 2 – Sta. Rosa & other nearby areas
IX	Laguna 3 – Calamba, San Pedro, Los Baños & other nearby areas
X	Batangas 1 – Nasugbu, Lian, Tuy & other nearby areas
XI	Batangas 2 – Calaca, Balayan, Bauan, Mindoro & other nearby areas
XII	Batangas 3 – Malvar, Lipa, Tabangao
XIII	Batangas 4 – Sto. Tomas, Tanauan
XIV	Bulacan
XV	Pampanga, Tarlac, Nueva Ecija
XVI	Bataan, Subic Special Economic Zone, Clark Special Economic Zone & other areas in Zambales
XVII	Quezon, Marinduque, Legaspi City, Masbate
EXTA NO.	**AREA COVERED**
I	RR 1 – Calasiao, Pangasinan, RR 2-Cordillera Administrative Region & RR 3 – Tuguegarao, Cagayan and Zambales Areas – Large Taxpayers Mining companies
II	RR 11 – Iloilo City, RR 12 – Bacolod City
III	RR 13 – Cebu City, RR 14 – Eastern Visayas Region
IV	RR 16 – Cagayan de Oro City, RR 17 – Butuan City
V	RR 15 – Zamboanga City, RR 18 – Koronadal City, RR 19 – Davao City

- All newly-hired Revenue Officers – Excise (ROs-E) shall undergo training and familiarization of excise tax functions for every excisable industry at the Excise Large Taxpayers Field Operations Division/Excise Large Taxpayers Regulatory Division (ELTFOD/ELTRD) within six months prior to assignment or being deployed as ROOP.

- In the case of special projects undertaken by the BIR in a particular industry which require sustained or prolonged training and familiarization both on the part of the pilot establishment/s and the ROOPs/s assigned thereat, the Commissioner may allow assignment of ROOPs for more than two years upon recommendation of the Assistant Commissioner of Internal Revenue, Large Taxpayers Service.

- To ensure smooth transition, the ZIC or Area Supervisor shall oversee the turnover of official records and other relevant files and documents of BIR offices within the EEMIEP premises by the outgoing to incoming ROOP/s.

- Conduct of spot checking of ROOPs in their respective place of assignment shall be done regularly to monitor their attendance and physical presence in the premises. The results of spot checking shall be considered in the re-assignment of ROOPs.

- There shall be a regular review of the list of EEMIEPs to be subjected to assignment of ROOP/s, as well as the number to be assigned thereat. If after review, it was determined that additional ROOP/s is/are necessary or if an establishment requires close monitoring, ROOPs may be transferred to ensure that collection of taxes is monitored.

This order was issued to establish the policies, methodology and guidelines used in the allocation of the overall BIR collection goal for CY 2021 of Php2,081.161 Billion, and the resulting distribution of the collection goal to the LTS and RRs including the RDOs.

RMO No. 7-2021 issued on 2 February 2021

- The said goal, as set by the Department of Finance, is based on the CY 2021 Medium Term Revenue Program (MTRP) dated December 2020, and higher by 23.46% than the 2020 target.

- The CY 2021 goal was allocated to all BIR implementing offices (IOs) and allocated by major tax type on a monthly basis.

- This Order took effect immediately.

RMC No. 14-2021 clarifies the effectivity date of RMO No. 47-2020, imposing new documentary requirements for processing VAT refund claims.

RMC No. 14-2021 dated 12 January 2021

- The effectivity of RMO No. 47-2020 shall commence on 19 January 2021, which is the 15th day from filing with the UP Law Center, pursuant to the rule in the Administration Code of 1987.

- The following shall be observed in the filing and processing of VAT refund claims:

    1. VAT refund claims filed prior to 19 January2021 shall be filed and processed following the guidelines and procedures set forth in RMC No. 47-2019 and RMO No. 25-2019; and

    2. VAT refund claims filed on or after 19 January 2021, the effectivity date of RMO No. 47-2020, shall be filed and processed in accordance with the guidelines and procedures indicated thereto.

RMC No. 17-2021 discusses the extension of the deadline for the filing/submission of the Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes (BIR Form Nos. 1604-C and 1604-F).

RMC No. 17-2021 issued on 29 January 2021

- The deadline of filing the Annual Information Returns (BIR Form Nos. 1604-C and 1604-F), including the submission of the 4th Quarter Quarterly Alphalist of Payees (QAP) and Annual Alphabetical List of Employees/Payees from Whom Taxes Were Withheld (alphalist) using the new version of the Alphalist Data Entry and Validation Module (Version 7.0) under RMC No. 7-2021, is extended from 31 January 2021 to 28 February 2021.

- Resubmission of alphalist that were already submitted prior to the issuance of the RMC using the old version of the module is no longer required.

RMC No. 18-2021 provides clarification on the filing of BIR Form 1604-CF, 1604-E and other matters.

RMC No. 18-2021 dated 27 January 2021

- For the **filing of the BIR Form 1604-CF and 1604-E**, the following requirements shall be complied with:

  1. On BIR Form 1604-CF

Type of Taxpayer	Type of Form	Version of Form	Filing Facility
Mandated-users of Electronic Filing and Payment System (eFPS)	Old consolidated form (BIR Form No. 1604CF)	July 2008 (ENCS)	eFPS facility
Mandated-users of Offline eBIRForms Package	New separated forms (BIR Form Nos. 1604C/1604F)	January 2018	Offline eBIRForms Package
Manual Filers	New separated forms (BIR Form Nos. 1604C/1604F)	January 2018	Offline eBIRForms Package

  2. On BIR Form 1604-E

Type of Taxpayer	Type of Form	Version of Form	Filing Facility
Mandated-users of Electronic Filing and Payment System (eFPS)	Old	July 1999 (ENCS)	eFPS facility
Mandated-users of Offline eBIRForms Package	New	January 2018 (ENCS)	Offline eBIRForms Package
Manual Filers	New	January 2018 (ENCS)	Offline eBIRForms Package

- For mandated users of EFPS, in case of unavailability of the system, **eFPS filers shall use the new forms in the Offline eBIRForms Package**.

- For manual filers, BIR Form Nos. 1604-C, 1604-F and 1604-E are only information returns and no payment is to be made, thus, these forms are considered "No Payment Form" and per RR No. 6-2014, as amended, **taxpayer filing for a "No Payment Return" shall use the Offline eBIRForms Package**.

- The copies of Certificate of Compensation Payment/Tax Withheld for Compensation Payment With or Without Tax Withheld (BIR Form No. 2316) without the signature of the concerned employee **shall be accepted by this Bureau, provided that the certificates are duly signed by the authorized representative of the taxpayer-employer**.

- Taxpayers who have already filed their tax returns online thru the facilities of eFPS and Offline eBIRForms Package **need not submit hard copies thereof to the RDO where they are duly registered.**

Other BIR Issuances

RMC No. 10-2021 publishes the full text of the MOA between the BIR and the CAAP regarding data sharing agreements.

RMC No. 10-2021 dated 19 January 2021

- CAAP consents to share with the BIR confidential/personal data or information of their members which it collected in the performance of its mandated duties and functions pursuant to Section 5 of the Tax Code, as amended, to be utilized by the BIR for assessment, collection and enforcement of national internal revenue taxes only.

- BIR consents to share with CAAP personal data or information of taxpayers not otherwise covered by Section 270 of the Tax Code, as amended, which it collected in the performance of its mandated duties and functions, subject to compliance with Section 4 of National Privacy Commission (NPC) Circular No. 16-02, to be utilized by CAAP for tax validation purposes only.

- The type of personal data or information to be shared between CAAP and the BIR, mode of data sharing, frequency and other operational details are specified in the Technical Annex of the MOA; Provided that, the BIR shall not share information regarding business, income, estate, secrets of operation, style of work, apparatus of any manufacturer or producer, or any confidential information regarding the business of the taxpayer, knowledge of which was acquired during the performance of duties pursuant to Section 270 of the Tax Code.

  Access to the personal data or information shall be limited to the list of BIR and CAAP officers/employees specified in the Technical Annex of the MOA. The types of processing of the data shall likewise be limited to those specified in the Technical Annex.

- The BIR warrants to treat any and/or all information by CAAP pursuant to the MOA with utmost confidentiality, in accordance with the Data Privacy Act, and for tax assessment, collection, and enforcement purposes only. CAAP also warrants to treat any and/or all information by BIR pursuant to the MOA with utmost confidentiality, in accordance with the Data Privacy Act, and for tax validation purposes only.

- The MOA shall remain in full force for five years from the date of signing thereof or until mutually abrogated by the parties concerned. Provided, that the effectivity of the MOA may not be extended, without prejudice to entering into a new data sharing agreement.

RMC No. 12-2021 circularizes the Consolidated Price of Sugar at Millsite for the month of December 2020 issued by the SRA and contained in OM Nos. 2-2021, 3-2021, 4-2021 and 5-2021.

RMC No. 12-2021 dated 26 January 2021

- While the SRA-issued weekly Price of Sugar at Millsite reflects the comparative prices of sugar between the previous year and current year, the consolidated schedule on the said weekly OMs contains only that of the current year for purposes of imposing the one percent (1%) Expanded Withholding Tax on sugar prescribed under the provisions of Revenue Regulations (RR) No. 2-98, as amended by RR No. 11-2014.

RMC No. 13-2021 provides for the availability of the BIR Mobile TIN Verifier Application.

RMC No. 13-2021 dated 27 January 2021

- The Bureau's Mobile TIN Verifier Application, also known as the "BIR Mobile TIN Verifier App", is now available for download on both the App Store (for iOS) and Google Play Store (for Android).
- The BIR Mobile TIN Verifier App is a service channel for taxpayers to send online TIN validation and TIN inquiry using their mobile phones with real-time response from the concerned BIR Office. The development of mobile applications is one of the Bureau's efforts in its digital transformation by giving taxpayers a convenient way and alternative in availing of the TIN validation service instead of going physically and queuing at a BIR district office.
- The Revenue District Offices (RDOs) shall inform taxpayers to download and use the BIR Mobile TIN Verifier App for TIN validation or TIN inquiry transactions by posting in office premises, social media or distributing information materials under the Tax Awareness Program. However, acceptance of walk-in taxpayers to get the service shall still be available in all RDOs to serve taxpayers with no access to the said mobile services.

RMC No. 15-2021 announces the availability of the CBP, a project of the ARTA, in coordination with the DICT, on 28 January 2021.

RMC No. 15-2021 dated 27 January 2021

- The CBP is an online system which serves as a central system to receive applications and captures application data involving business-related transactions from different government agencies (SEC, BIR, SSS, PhilHealth and Pag-Ibig), and a platform that will promote the use of the electronic payment systems for the said agencies.
- The CBP has the following features/functionalities:

    1. Registration of corporations with SEC and issuance of corresponding Company Registration Number (CRN);
    2. Issuance of Taxpayer Identification Number (TIN) of new corporations;
    3. Identification of the national internal revenue taxes which the new corporation will be liable to;
    4. Payment of the Annual Registration Fee (ARF) of P500 and loose Documentary Stamp Tax (DST) of P30 through the e-payment facilities or manually at the Revenue District Office (RDO);

        New corporations opting to pay ARF and loose DST manually shall complete its business registration at the respective RDO by submitting the following CBP-generated documents printed by the taxpayers, together with the Checklist of Documentary Requirements for Corporation *(Annex A of RMC No. 15-2021)*:

        - CBP Unified Application Form *(Annex B of RMC No. 15-2021)*
        - Accomplished Tax Type Questionnaire *(Annex C of RMC No. 15-2021)*; and
        - Pre-filled BIR Form No. 0605 (Payment Form)

5. Generation of BIR electronic Certificate of Registration (COR) which can be printed in A4 paper size by the taxpayers at their end. The electronic COR bears a Quick Response (QR) code that serves as a security feature to prove authenticity of the COR.

   After securing the BIR electronic COR through the CBP, the taxpayer shall proceed to the RDO indicated in the COR to buy its BIR Printed Receipts/ Invoices (BPR/BPI) in order to start its business operation immediately after its registration. Otherwise, it may apply for Authority to Print (ATP) its own receipts/invoices to be printed by BIR Accredited Printers.

- For its initial implementation, the CBP shall be available to the following domestic corporations:

  1. Corporations with two to four incorporators;

  2. Regular corporations whose incorporators are juridical entities and/or the capital structure is not covered by the 25%-25% rule; and

  3. One Person Corporation.

- Corporations not registering through the CBP shall comply with the documentary requirements provided in Annex A2.1 of RMC No. 57-2020.

RMC No. 19-2021 is being issued in compliance with and in observance of Bureau of Freedom of Information (FOI) Program.

RMC No. 19-2021 dated 9 February 2021

- We are publishing herewith, for the information of the public, the Revised One-Page FOI Manual of the Bureau, attached hereto as "Annex 1" and which hereby amends the Bureau's One-Page FOI Manual as circularized under RMC No. 30-2021.

RMC No. 20-2021 circularized a copy of Republic Act No. 11494, entitled "An Act Providing for COVID-19 Response and Recovery Interventions and Providing Mechanisms to Accelerate the Recovery and Bolster the Resiliency of the Philippine Economy, Providing Funds Therefor, and for Other Purposes".

RMC No. 20-2021 dated 9 February 2021

- RMC No. 20-2021 circularizes a copy of RA No. 11494 or "Bayanihan to Recover as One Act" for the information of all internal revenue officials, employees and others concerned.

Bureau of Customs

Supplemental Guidelines on the Mandatory Filling-up of Box No. 41 (Supplemental Units) in the Lodgment of the Goods Declaration in the E2M

CMO No. 2-2021 provides for the supplemental guidelines in the implementation of CMO No. 49-2019 on the mandatory filling up of Box No. 41 in the lodgment of the Goods Declaration in the E2M.

CMO No. 2-2021 dated 5 January 2021

- In order to fully adopt the recommendation of the World Customs Organization (WCO) to facilitate the collection, comparison and analysis of international statistics based on the harmonized system, the following standard units of quantity shall be used and implemented:

  1. For weight, kilograms (kg) and carat (carat);

  2. For length, meters (m);

  3. For area, square meters (m2);

4. For volume, cubic meters (m3) and liters (l);

5. For electrical power, 1,000 kilowatt hours (1,000 kwh); and

6. For number, pieces/items (u), pairs (2u), thousand of pieces/items (1,000u) and packs (u(jeu/pack))

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

(Editor's Note: CMO No. 2-2021 is published on 2 February 2021 in The Manila Times*, p. C3)*

Compendium of Penalties, Liabilities or Obligations

CMO No. 3-2021 provides a consolidation of the provisions of the CMTA and its CAO dealing with the imposition of penalties and liabilities including the effects of failure of importers, exporters, third parties and other stakeholders to comply with their obligations under the laws and their implementing rules and regulation.

CMO No. 03-2021 dated 13 January 2021

- This CMO covers all the penalties, liabilities, or obligations imposed by the Bureau of Customs (BOC) pursuant to the CMTA and its implementing rules and regulations.

- This Compendium does not supplement nor supplant the penalty provisions under the CMTA and its implementing rules and regulations.

- In general, the specific provision of the CMTA or any other law shall be applied in the imposition of penalty. These self-executory provisions do not require the issuance of separate interpretative or implementing CAO.

    1. However, if the penalty, liability or obligation is couched in general terms, or there is a value range in imposition thereof, the CAO implementing the same shall be applied considering that it already provides additional interpretative guidelines to the CMTA provision.

- This Compendium (attached as Annex A to the CMO), is presented in a matrix format to make it easily searchable, together with a quick index. It is divided into 2 parts. The first part deals with the specific provisions on penalty under the CMTA while the second part dwells on the implementing CAOs promulgated by the BOC Commissioner and approved by the Secretary of Finance (SOF).

- This CMO took effect on 27 January 2021.

(Editor's Note: CMO No. 3-2021 was filed with the UP-Office of the National Administrative Register on 14 January 2021)

Manual of Appeal Procedures Under the CMTA and Relevant Rules and Regulations

CMO No. 4-2021 is a consolidation of the administrative and judicial appeal processes under the CMTA and its implementing rules and regulations into a singular document to be known as the "Manual of Appeal Procedures."

CMO No. 04-2021 dated 22 January 2021

- This CMO covers the appeal process available to the stakeholders of the BOC under the CMTA in relation to customs rules and regulations.

- This CMO does not supplement nor supplant the appeal provisions under the CMTA and its implementing rules and regulations.

- In cases where the decision of the Port, Office, or the BOC Commissioner is adverse to the claimant or stakeholder, the following administrative and/or judicial appeal or remedy may be availed of, depending on the issue involved, and with the corresponding prescribed period under the CMTA:

Topic/Issue	Period
Compulsory Acquisition	Administrative: Appeal to the SOF within 20 working days after notice. Judicial: Appeal to the Court of Tax Appeals (CTA) within the period prescribed under existing regulation
Refund	Administrative: Appeal to the Commissioner within 30 days from receipt of denial of the District Collector Judicial: Appeal to CTA within 30 days from receipt of the Commissioner's decision
Abandonment	Administrative: Motion for reconsideration (MR) to District Collector or Appeal to the Commissioner within 15 days from receipt of Order/Decree/Decision of Abandonment.
Valuation Rules of Origin Other customs issues (except fixing of fines in seizure cases)	Administrative: Appeal by way of Protest to Commissioner upon payment or within 15 days from the receipt of the ruling of the Port
Classification Ruling	Judicial: Appeal to the CTA within 30 days from receipt of an adverse ruling of SOF
Advance Ruling	Administrative: MR to Commissioner within 15 days from the receipt of Ruling or Decision Judicial: Appeal to the CTA within 30 days from receipt of denial
Seizure and Forfeiture	Administrative: File a Notice of Appeal to the District Collector within 15 days, or 5 days if perishable, from receipt of Decision
Deficiency Assessment issued by PCAG	Administrative: MR or reinvestigation to the Commissioner within 15 days from receipt of Demand Letter
Disapproval of Application for Accreditation of Customs Broker	Administrative: If denial is by the Commissioner, MR to the Commissioner within 10 calendar days from receipt of disapproval Administrative: if denial is by a delegated BOC Official, Appeal to the Commissioner within 15 calendar days from receipt of Notice of Disapproval
Application as AEO Member	Administrative: MR to the Commissioner not later than 90 calendar days after the Decision of the Denial of Application
Other decisions relating to AEO	Administrative: MR to the Commissioner not later than 30 days from the adverse decision
General Appeal Clause	Appeal within 15 days from the receipt of questioned decision or order
General Appeal Clause	Judicial: Appeal to the CTA within 30 days from receipt of adverse ruling

- This CMO took effect on 22 January 2021.

(Editor's Note: CMO No. 4-2021 was filed with the UP-Office of the National Administrative Register on 25 January 2021)

New National Procedure Codes for Lodgment Of Conditionally Tax and/or Duty-Exempt Importations under Section 800 of the CMTA

CMO No. 5-2021 provides for the New National Procedure Codes for goods declaration and E2M Lodgment.

CMO No. 5-2021 dated 28 January 2021

- The National Procedure Codes provided in the CMO shall be adopted in filling up Box 37 of the Single Administrative Document (SAD).
- The effectivity date of this Order is on 8 February 2021.

(Editor's Note: CMO No. 5-2021 was filed with the UP-Office of the National Administrative Register on 2 February 2021)

Imposition of Provisional Safeguard Duties on Imported Vehicles in the Form of Cash Bond

CMO No. 6-2021 imposes provisional safeguard duties on imported vehicles in the form of a cash bond.

CMO No. 6-2021 dated 1 February 2021

- The BOC imposed provisional safeguard duties on imported vehicles in the form of a cash bond in the following amounts:
    1. P70,000 per unit of four-wheeled passenger car (PCs) classified under ASEAN Harmonized Tariff Nomenclature (AHTN) Code 8703 designed to transport less than 10 persons and not primarily to transport goods.
    2. P110,000 per unit of imported light commercial vehicles (LCVs) classified under AHTN Code 8704.21.19 and 8704.21.29, whether four-wheeled drive or not which are designed to carry both passenger and cargo.
- Excluded from the coverage of this provisional safeguard duties are imported PCs and LCVs that are:
    1. Completely knocked-down (CKD);
    2. Semi-knocked down (SKD);
    3. Used;
    4. With electric motors;
    5. Those designed for a special purpose such as ambulances and hearses;
    6. Four-wheeled PCs classified under AHTN Code 8703 that have a Free On Board (FOB) value of US$25,000 or higher; and
    7. LCVs classified under AHTN Code 8704.21.19 and 8704.21.29 that have an FOB value of US$28,000 or higher.
- The imposition of the provisional safeguard duties shall likewise be subject of the following:
    1. The imposition of the provisional safeguard shall be reckoned from the issuance of this CMO;
    2. The provisional safeguard duty imposed and collected herein shall not form part of the landed cost that is used as basis for the VAT to be paid upon importation; and

3. For purposes of computing excise tax, the provisional safeguard duty shall be deducted from the net importer's selling price and suggested retail price.

- The imposition of the provisional duty will last for 200 days upon the issuance of this CMO.
- This CMO shall take effect immediately.

(Editor's Note: CMO No. 6-2021 was filed with the UP-Office of the National Administrative Register on 2 February 2021)

Amendment of AOCG Memorandum No. 67-2021 as to the Period of Validity of Product Evaluation Report applying for Certificates of Origin from Three (3) years to Five (5) years

AOCG Memo No. 75-2021 amends the period of validity of Product Evaluation Report for Certificates of Origin to five years.

AOCG Memo No. 75-2021 dated 10 February 2021

- The Product Evaluation Report of Free Trade Agreements (FTAs) other than ASEAN Trade In Goods Agreement (ATIGA) shall now be valid for a period of five years from the date of issuance.
- For Product Evaluation Reports previously issued to exporters with a validity period of three years, the same shall be extended to five years, subject to periodic review or whenever appropriate.

Board of Investments

General Policies and Specific Guidelines to Implement the 2020 Investment Priorities Plan.

BOI Memorandum Circular No. 2021-001 dated 9 February 2021

- BOI Memorandum Circular (MC) No. 2021-001 implements the General Policies and Specific Guidelines to implement the 2020 Investment Priorities Plan (IPP). The 2020 IPP supports activities and government programs to combat the COVID-19 pandemic; accelerates the V-shaped recovery towards a more modern, industrial, innovation-driven, and inclusive Philippine economy; and serves as a foundation to facilitate a smooth transition towards a more relevant and responsive incentive regime.
- The *2020 Investment Priorities Plan (IPP)* is generally a carryover of the previous 2017 to 2019 IPP with the addition of the following:

  1. General policy on essential goods and/or provisions of services needed in the fight against COVID-19.
  2. General policy on relocation of facilities from other countries into the Philippines or within the Philippines from congested urban areas into the countryside and less congested areas.
  3. Preferred activities pertaining to:
     - Qualified activities relating to the fight against the COVID-19 pandemic
     - Investment in activities supportive of programs to generate employment opportunities outside of congested urban areas such as the "Balik Probinsya" and "Bagong Pag asa" programs of the Government

- Disaster Risk Reduction Management Services – covers the establishment and operation of quarantine and evacuation centers

- Inclusion of the following under Infrastructure and Logistics including LGU-PPPs:

    a. Telecommunications infrastructure
    b. Wastewater treatment
    c. Integrated terminal exchange
    d. Motor vehicle inspection centers
    e. Facilities for scrapping, treatment, storage and disposal of old public utility vehicles

- Inclusion of the following under Innovation Drivers:

    a. Smart cities
    b. Development of new and emerging technologies
    c. Commercialization of uncommercialized patents on products and services
    d. Space activities
    e. Startup and startup enablers under RA No. 111337 or the Innovative Startup Act

4. Energy Efficiency and Conservation Act (RA No. 11285) as a special law.

- The 2020 IPP has a validity of three years (2020-2023) subject to annual review.

- For the full text of the 2020 IPP: https://boi.gov.ph/wp-content/uploads/2020/12/20201118-MO-50-RRD-2.pdf

PEZA

Release of VAT Zero-Rating Certificates to Registered Enterprises.

PEZA Memorandum Circular (MC) No. 2021-11 dated 3 February 2021

- PEZA shall immediately issue the Certificates of VAT Zero-Rating to registered enterprises for CY 2021.

- The release of the certificates shall be subject to the following procedures:

Status of Reportorial Requirements	Validity of Certificate
Registered enterprises which are compliant with their submission of reportorial requirements upon filing of the request for the issuance of the PEZA certificate	Valid for the entire year of 2021
Registered enterprises which have pending submissions or incomplete reportorial requirements	Valid for six (6) months of 2021 (i.e. January to June 2021 only)

1. The issuance of the certificates for July to December 2021 shall be subject to full compliance with all reportorial requirements to PEZA as provided under Section 4 of the Rules and Regulations to Implement R.A. No. 7916, as amended (The PEZA Law), including documentary requirements for validation of entitlement to Income Tax Holiday (ITH) incentive.

2. Once the enterprises have satisfactorily complied with all the reportorial requirements, PEZA shall immediately issue the certificate covering the period from July to December 2021.

Banks and Other Financial Institutions

Circular No. 1108 provides for guidelines for Virtual Asset Providers (VASPs).

Circular No. 1108 dated 23 December 2020

- Circular No. 1108 publishes Resolution No. 78 dated 21 December 2020 approving the following rules and regulations governing the operations of VASPs in the Philippines, which shall amend in its entirety Section 902-N of the Manual of regulations for Non-Bank Financial Institutions:

1. These guidelines shall cover VASPs that offer their services or engage in VASP activities in the Philippines. These guidelines do not cover businesses involved in the participation and provision of financial services related to an issuer's offer and/or sale of a Virtual Asset (VA).

2. A VASP shall secure a Certificate of Authority (COA) to operate as a Money Service Business (MSB).

3. VASPs shall have a minimum paid-in capital as follows:

Category	Minimum Required Capital
VASP with safekeeping and/or administration services for Vas (i.e., VA Custodian) as defined in this Circular	Php 50 million
VASP without safekeeping and/or administration services for VAs	Php 10 million

4. VASPs shall adopt customer awareness measures to educate their customers.

   VASP shall clearly communicate and explain to their customers the terms and conditions prescribing the manner on how the losses and liabilities from security breaches, system failure, or human error will be settled between the VASP and its customers.

   VASP shall disclose, prior to entering into initial transaction and on-going basis, all material risks to their clients in a manner that is clear, fair and not misleading.

5. VASPs shall conduct customer due diligence when:

   - it establishes business relations with any customer;
   - undertakes any occasional but relevant business transaction for any customer who has not otherwise established business relations with the VASP;
   - where there is suspicion of money laundering or terrorist financing; or
   - where there is doubt about the veracity or adequacy of previously obtained customer identification data.

6. VASPs shall only engage with other VASPs, financial institutions, and/or remittance and transfer companies that are duly authorized and licensed by the appropriate regulatory authorities.

7. VASPs and other BSFIs that engage in or facilitate VA transfers shall consider all VA transfer transactions as cross-border wire transfers and shall comply with pertinent rules on wire transfers as stated in Part Six (AML Regulations).

8. The VASP shall maintain records and submit the following reports to the appropriate supervising department of the Bangko Sentral:

Nature of Report	Frequency	Due Date
1. AFS (audited by an external auditor included in the List of Selected External Auditors for BSFIs	Annually	Not later than 120 calendar days after the close of the reference calendar or fiscal year subject to the provisions under Section 901-N (Reports)
2. Quarterly Report on Total Volume and Value of VCs transacted*	Quarterly	10 business days from end of the reference quarter
3. List of operating offices and websites	Quarterly	10 business days from end of the reference quarter

**Duly certified by the Propietor/Managing Partner/President or any officer of equivalent rank*

A VASP shall ensure that the transaction and due diligence records are maintained for a period of at least five (5) years.

Circular No. 1109 provides amendments to the Regulations on Investment Management Activities.

Circular No. 1109 dated 4 February 2021

- Circular No. 1109 publishes Resolution No. 77 dated 21 January 2021 reducing the minimum size of an account and expanding the securities eligible as investment outlets for commingled funds under investment management.

- The conduct of investment management activities shall be subject to the following regulations:

1. BSFIs may determine the minimum amount that should be maintained by a client in an IMA: Provided, that the same shall at least be P100,000: Provided further, that the initial contribution and the carrying balance shall not fall below the said amount, except in cases where the reduction is due to investment losses and/or fund management fees.

2. Funds from IMAs may be commingled: Provided, that all the following conditions are met:

    - The investment of the IMAs in the commingled fund shall at least be P100,000;

- The commingled funds shall only be invested in:

    a. securities directly issued by the Philippine National Government;

    b. exchange-traded equities and fixed income securities and commercial papers, Provided, that these securities/papers are registered with the Securities; and Exchange Commission;

    c. securities issued by banks incorporated in the Philippines, except those issued through the trust units; or

    d. securities issued by other sovereigns that are exempt from registration under Section 9(b) of the Securities Regulation Code;

- The commingling of funds and the manner of termination of the same shall be specifically agreed in writing by the clients;

- The investment manager shall determine that it possesses the operational capability to manage the accounts participating in commingled funds;

- The maximum number of IMAs that can be commingled into one fund shall be determined by the investment manager based on its own operational capability of commingle IMAs.

3. Requirement (b) for exemption of IMAs of individuals from 20% final tax of the Tax Code is amended by prescribing that the minimum amount of investment for an IMA shall be the amount prescribed by the BSFIs, but not lower than P100,000.

4. Item 7 on "Advice of Counsel" of Appendix Q-18 of the MORNBFI was deleted.

5. The rule on Withdrawal of Income/Principal is amended by requiring that subject to the availability of funds and non-diminution Portfolio (the amount prescribed by the trust entity, but not lower than P100,000), the Principal may withdraw the income/principal of the Portfolio or portion thereof upon written instruction or order given to the Investment Manager.

Circular Letter No. CL-2021-012 provides advisory on Illegal Online Gambling.

Circular Letter No. CL-2021-012 dated 6 February 6, 2021

Online gaming or betting operators use banks, remittance transfer companies (RTCs), virtual currency exchanges (VCEs), electronic money issuers (EMIs) and operators of payment system (OPS) as conduits of funds (collection of bets and remittance of winnings) for their illegal operations.

BFIs are cautioned to strictly observe the requirements under Part 9 of the MOR for Banks and MOR for Non-Bank Financial Institutions, particularly on customer due diligence, ongoing monitoring, and reporting of suspicious transactions, as well as BSP Memorandum No. 2018-002.

Circular Letter No. CL-2021-013 provides for AMLC Regulatory Issuances on the Amendments to Certain Provisions of the 2018 IRR of the AMLA, as amended, Targeted Financial Sanctions (Related to Proliferation of Weapons of Mass Destructions and Proliferation Financing), and Amendments to Certain Provisions of ARI No. 4, Series of 2020.

Circular Letter No. CL-2021-013 dated 10 February 2021

This is to disseminate to all BFIs the following:

- ARI A, B, and C No. 1, Series of 2021 – This contains amendments to the 2018 IRR of the AMLA, as amended, which include the following:

    1. expansion of the list of covered persons to include real estate developers and brokers as well as the offshore gaming operators and their service providers;

    2. inclusion in the list of unlawful activities the violations of Section 19 (A) (3) of the R.A. No. 10697, in relation to the proliferation of weapons of mass destruction (WMD) and its financing and Section 254 of Chapter II, Title X of the NIRC of 1997, as amended; and

    3. the additional authority of the AMLC to apply for the issuance of a search and seizure order or a *subpoena ad testificandum and/or subpoena duces tecum* with any competent court, in the conduct of its investigation; and to implement TFS in relation to the proliferation of WMD and its financing, including *ex parte* freeze.

- TFS related to Proliferation of WMD and PF

    This requires all covered persons(CPs) to implement TFS relating to proliferation of WMD and its financing against all funds and assets that are controlled, directly or indirectly, including those derived or generated therefrom by individuals or entities designed and listed under United Nations Security Counsel (UNSC) Resolution Nos. 1718 (2006) (concerning the Democratic People's Republic of Korea) and 2231 (2015) (concerning the Islamic Republic of Iran) and their successor resolutions under the UNSC Consolidated List.

- ARI No. 2 dated 31 January 2021

    This amends ARI No. 4, specifically incorporating provisions relating to the implementation of TFS for PF, such as the legal basis of TFS related to terrorism and terrorist financing, list of AMLC resolutions/freeze orders (FOs) to implement TFS, directive and coverage of the FOs, who needs to comply with the TFS, and filing of detailed return before the AMLC. It also provides new chapters to cover administrative remedies (Chapter 6), TFS related PF (Chapter 7), and Sanctions (Chapter 8).

Memorandum No. M-2021-009 provides for Guidelines on the Electronic Submission of the Report on Crimes and Losses (RCL)

Memorandum No. M-2021-008 dated 19 January 2021

- The following guidelines shall be observed in submitting the RCL effective 01 February 2021:

    1. Reportable incidents falling due for submission to the BSP after 31 January 2021 shall be transmitted electronically using the Data Entry Template (DET) prescribed for the updated RCL.

    2. The DET for the RCL (DET-RCL) together with the corresponding scanned CP in PDF signed by the authorized official of the reporting entity shall be electronically transmitted within the existing deadline prescribed for the Initial Report and Final Report.

3. NSSLAs, MSBs, and Pawnshops that are unable to transmit via email due to any fortuitous event may submit the DET and its corresponding scanned CP using any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline.

Memorandum No. M-2021-009 provides for Guidelines on the Electronic Submission of the Consolidated List of Stockholders and their Stockholdings (CLSS.)

Memorandum No. M-2021-009 dated 19 January 2021

- The following guidelines are being issued to facilitate the electronic submission of CLSS beginning cut-off 31 December 2020:

1. The CLSS shall be submitted to the Bangko Sentral within the prescribed deadline, as follows:

Industry	Prescribed Deadline
Universal/Commercial Banks and Thrift Banks	12th banking day after end of calendar year
Rural Banks	30th banking day after end of calendar year
All Banks	12th banking day after end of reference quarter, if with changes

2. Banks shall electronically submit to the BSP-Department of Supervisory Analytics (DSA) beginning cut-off 31 December 2020, the CLSS in Portable Document Format (PDF) duly signed by the Bank's authorized official and the corresponding Excel File of the prescribed Data Entry Template (DET) which can be downloaded from http://www.bsp.gov.ph/ses/reporting_templates.

3. For publicly listed Banks, Certification under oath by the Corporate Secretary of its list of ultimate beneficial owners of bank shares held in the name of the Philippine Central Depository (PCD) Nominee Corporation shall be submitted in PDF.

4. The PDF of the CLSS-DET and its corresponding Excel File, and if applicable the Certification on ultimate beneficial owners, shall be electronically transmitted.

5. Subsequent updates whether there are changes or no changes in the said list shall begin with 31 March 2021 report.

Memorandum No. M-2021-010 provides for Guidelines on the Electronic Submission of List of Members of the Board of Directors, Trustees, and Officers (LDTO.)

Memorandum No. M-2021-010 dated 19 January 2021

- The following guidelines are being issued to facilitate the electronic submission of the LTDO beginning cut-off 31 December 2020:

1. BSFIs shall electronically submit to the BSP-Department of Supervisory Analytics (DSA), LDTO in PDF duly signed by the authorized officials of the BSFI and the corresponding Excel File of the prescribed DET which can be downloaded from http://www.bsp.gov.ph/ses/reporting_templates.

2. The PDF of the LTDO-DET and its and its corresponding Excel File shall be electronically transmitted within 20 banking/business days from the annual election of the board of directors/trustees, as provided in the BSFI's by-laws, to the prescribed email addresses, as follows:

Type of Institution	E-mail Address
Universal and Commercial Bank (UKB)	dsakb-clssdto@bsp.gov.ph
Thrift Bank (TB)	dsatb-clssdto@bsp.gov.ph
Rural and Cooperative Bank (RCB)	dsarb-clssdto@bsp.gov.ph
Non-Bank Financial Institution	dsanbfi-clssdto@bsp.gov.ph

3. For Money Service Businesses, Pawnshops, Virtual Currency Exchanges, and Electronic Money Issuers, the submission of the LTDO is only required upon registration and as requested by the supervising BSP department.

4. For BSFIs covered by Memorandum No. M-2017-028, only electronic submissions originating from their officially registered email address/es of the BSFIs shall be recognized and accepted by the DSA. The acknowledgement receipt for the submitted LDTO, will be sent to the same registered email address/es.

5. Hard copy submission shall not be accepted. Covered BSFIs that are unable to transmit electronically may submit the prescribed report in any portable storage device (e.g. USB flash drive) through messengerial or postal services within the prescribed deadline.

Memorandum No. M-2021-011 provides for the Reclassification of Debt Securities Measured at Fair Value to the Amortized Cost Category.

Memorandum No. M-2021-011 dated 2 February 2021

- The guidelines under Memorandum No. M-2020-022 dated 8 April 2020 is amended as follows:

    1. A BSFI which avails of the alternative accounting treatment under these guidelines and intends to revert to Philippine Financial Reporting Standards (PFRS) 9 shall classify its outstanding debt securities as of the start of financial reporting period when such decision will be made, i.e., 01 January, in the case of a BSFI that adopts a calendar year-end reporting period, or as of the first day of its fiscal year, in the case of a BSFI that adopts a fiscal year-end reporting period, as if the classification requirement of PFRS 9 had always been applied to the outstanding debt securities. The cumulative effect of such reclassification shall be reflected as an adjustment to each affected component of the BSFI's equity at the start of the relevant financial reporting period in its prudential reports.

    2. A BSFI may adopt the alternative accounting treatment under this Memorandum in its audited financial statements: Provided, that this is made in accordance with the provisions of the SEC Memorandum Circular No. 32.

Memorandum No. M-2021-012 provides for the Extension of Temporary Measures Implemented in the Bangko Sentral ng Pilipinas' (BSP) Rediscounting Facilities.

Memorandum No. M-2021-012 dated 5 February 2021

- The following measures implemented in the BSP's rediscounting facilities are extended until 30 April 2021, subject to further extension as may be approved by the MB:

    1. Reduction of the term spread on Peso rediscounting loans, relative to the BSP's Overnight Lending Rate, to zero, regardless of the maturity (i.e., 1 to 180 days);

2. Reduction of the term spread on rediscounting loans under the Exporters' Dollar and Yen Rediscount Facility (EDYRF);

3. Acceptance for rediscounting with the BSP under the EDYRF of the USD and JPY-denominated credit instruments related to the economic activities enumerated in Department of Trade and Industry Memorandum Circular No. 20-08 dated 20 March 2020, except for loans to banks and capital markets;

4. Acceptance for rediscounting with the BSP of credit instruments compliant with the requirements eligible papers and collaterals under Section 282 of the MORB, which were granted one-time 60-day grace period or longer as may be mutually agreed by the parties, pursuant to Section 4(uu) of Republic Act (RA) No. 11494.

SEC Filing, Payments and Other Deadlines

The SEC provided the deadlines for the filing of the Sworn Certifications by Financing Companies and Lending Companies.

SEC Memorandum Circular No. 2, Series of 2021, dated 15 February 2021

Under SEC Memorandum Circular ("MC") No. 18, series of 2019, which is the Prohibition on Unfair Debt Practices of Financing Companies ("FCs") and Lending Companies ("LC"), FCs and LCs must submit Sworn Certifications stating compliance with the provisions of such MC.

SEC MC No. 2, series of 2021, states the period to file such Sworn Certifications:

- FCs and LCs that were incorporated after 8 September 2019 (the effectivity date of SEC MC No. 18), and until the effectivity date of this MC No. 2, shall submit the Sworn Certification within 30 days from such effectivity date.

- FCs and LCs that will be incorporated subsequent to the effectivity date of this MC No. 2 shall submit the Sworn Certification within 30 calendar days from the issuance of their Certificates of Authority to Operate as a Financing/Lending Company.

(Editor's Note: This MC was published in the Philippine Daily Inquirer *and* Manila Times *on 17 February 2021, and it took effect on the same date)*

Other SEC Updates

The SEC confirmed that all entities regulated and supervised by the MSRD are covered by SEC MC No. 28, Series of 2020.

SEC Notice dated 18 January 2021

The SEC confirmed that the requirement to create and/ or designate an email account address and cellphone number for transactions with the SEC, as provided in SEC MC No. 28, Series of 2020, applies to entities which are regulated by the MSRD. Thus, such entities are enjoined to comply with the requirements of the circular on or before 22 February 2021.

The SEC laid down the guidelines in preventing the misuse of corporations for illicit activities, through measures designed to promote transparency of beneficial ownership, or the "BO Transparency Guidelines."

SEC Memorandum Circular No. 1, Series of 2021, dated 27 January 2021

The BO Transparency Guidelines apply to bearer shares, bearer share warrants, nominee directors/ trustees and nominee shareholders, and incorporators/ applicants for incorporation, and all corporation falling under the supervision and jurisdiction of the SEC.

- Issuance, sale, or offer for sale of bearer shares and bearer share warrants is prohibited.

- Except for sales or transfers of shares of publicly listed companies which are made through the Philippine Stock Exchange, alienation, sale, or transfer of shares shall be disclosed and recorded in the Stock and Transfer Book of the issuing corporation within 30 days from the date of such alienation, sale, or transfer.

- Payment of dividends shall be made only to shareholder of record, except for dividend payments made by publicly listed companies to the depositary or custodian of shares for purposes of trading in the stock exchange.

- Incorporators of a corporation shall disclose to the SEC the person/s on whose behalf the registration of the corporation was applied for. The disclosure shall include the following:

    1. Full names,

    2. Country of Residence,

    3. Nationality, and

    4. Tax Identification Number (TIN) or Passport Number.

    Nominee incorporators or applicants for registration, nominee directors/ trustees, and nominee shareholders of the applicant corporation shall also disclose to the SEC their respective principals or nominators. Otherwise, they shall submit to the SEC a declaration that they are not nominee incorporators/ applicants/ directors/ trustees/ subscribers and that they are not acting as such on behalf of another person.

    Such disclosure or declaration shall be submitted to the SEC within 30 days from the issuance of the corporation's Certificate of Registration.

- Nominee shareholders/ directors/ trustees of existing corporations are required to disclose their nominators and principals or persons on whose behalf they act as such shareholders/directors/trustees. The information required to be disclosed are:

    1. If the nominator or principal is a natural person – full name, country of residence, nationality, and TIN or passport number.

    2. If a corporation - registered name, country of registration, names of incorporators and directors, beneficial owner, and TIN, if any.

    3. If a trust – names of trustors/ trustees, and beneficiaries, nationality, country of residence, and TIN or passport number.

Such disclosure statements must be submitted to the SEC within 30 days from the date the BO Transparency Guidelines became effective. As to those who would become a nominee shareholder/ director/ trustee on or after the effective date of the BO Transparency Guidelines, the disclosure statement must be submitted to the SEC within 30 days from the time they assumed the role or started acting as such nominee shareholder/ director/ trustee.

- All Covered Institutions under Sec. 3(a) of the AMLA, as amended, and SEC Memorandum Circular No. 16, Series of 2018 or any amendments thereto are exempted from complying with the above-discussed disclosure requirement for existing corporations. However, the exemption only applies to the nominee/ trustee arrangements that are already subject to Customer Identification Requirements and Record Keeping by Supervising Authorities under the AMLA and its implementing rules and regulations.

- Beneficial ownership information shall form part of the records of the corporation and shall be kept and preserved at the principal office of the corporation and may be subject to shareholder's right of inspection.

- Violations of the BO Transparency Guidelines, including the making of any untrue statement of any material fact or refusal to permit lawful examination by the SEC, shall be sanctioned with

    1. Fine ranging from Php 5,000 to Php 2 million, plus not more than Php 1,000 for each day of continuing violation but in no case to exceed Php 2 million;

    2. Suspension or revocation of the certificate of incorporation; or

    3. Other penalties the SEC has the power to impose.

(Editor's Note: This MC took effect after it was published on 29 January 2021 in the Manila Bulletin *and the* Manila Standard*)*

SEC OGC Opinion No. 21-01 dated 18 January 2021

The remaining members of a board of trustees may fill-up vacancies left by members who resigned, provided that the remaining members of the board constitute a quorum.

Facts:

The Board of Trustees of A Corp., a condominium corporation, has 5 members. Three of these members resigned from the Board. The By-laws of A Corp. do not contain specific procedures for filing up such vacancies.

Issue:

Can the two remaining trustees fill up the vacancies arising from the resignations?

Ruling:

No. Under the Revised Corporation Code of the Philippines ("RCC"), any vacancy in the Board of Directors or Trustees other than by removal or expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if they still constitute a quorum; otherwise, the vacancies must be filled by the stockholders or members in a regular or special meeting called for such purpose. Further, the election must be held no later than 45 days from the time that the vacancy arose, and the director or trustee elected to fill the vacancy shall serve for the unexpired term of the predecessor in office.

Given that the remaining two members of the Board of Trustees of A Corp. no longer constitute a quorum, they cannot merely appoint the replacement of the members who resigned from the board. In this regard, the vacancies in the Board of Trustees must be filled up by the general membership of A Corp. in a regular or special meeting call for that purpose.

Court of Tax Appeals Cases

Procedure on Tax Assessment

Commissioner of Internal Revenue vs. Lorenzo Shipping Corporation
CTA EB Case No. 1964 promulgated 26 January 2021

The date of the post office stamp on the envelope or the registry receipt is considered the date of filing of a pleading sent by registered mail.

Failure to indicate a definite period for payment of the tax assessed negates the BIR's demand for payment.

Facts:

On 27 May 27 2009, a Letter of Authority (LOA) was issued against Company L for the examination of its books of accounts covering the period of 1 January 2008 to 31 December 2008. On 23 June 2010, Company L received an undated Preliminary Assessment Notice (PAN). On 18 April 2013, Company L received an undated Final Assessment Notice (FAN) and undated Audit Result/Assessment Notices. As a result, Company L filed a protest to the FAN dated 17 May 2013 on the same day via registered mail. The dispatch by Post Office was made only on 19 June 2013.

Issues:

Have the assessments against Company L become final, executory and demandable for belated filing of the protest?

Are the Audit Result/Assessment Notices considered null and void for lack of definite due date?

Ruling:

No. Company L's protest was filed on time as it was filed through registered mail on 17 May 2013, notwithstanding its dispatch by the Post Office only on 19 June 2013. This is in accordance with Section 3, Rule 13 of the Revised Rules of Court and *South Villa Chinese Restaurant and City Foods Corporation vs. NLRC (G.R. No. 112120, 23 November 1995)*, which stated that the date of the post office stamp on the envelope or the registry receipt is considered the date of filing of a pleading sent by registered mail.

Yes. On the matter of lack of definite due date, an examination of the Audit Result/Assessment Notices shows that the spaces provided for the due dates therein were left blank and unaccomplished. Thus, there is no definite period for the payment of the deficiency tax assessments. Following the Supreme Court pronouncement in *Commissioner of Internal Revenue vs. Fitness by Design, Inc. (G.R. No. 215957, 9 November 2016)*, failure to indicate a definite period for payment of the tax assessed negates the BIR's demand for payment. Hence, the assessments must be cancelled.

If the local treasurer fails to act on the protest within the prescribed 60-day period, the taxpayer shall institute an appeal before a court of competent jurisdiction within a period of 30 days reckoned from the lapse of the 60-day period within which the local treasurer should have decided. It is further provided that the failure of the taxpayer to file a protest with the local treasurer or to appeal the decision or the inaction of the local treasurer, will result in the finality of the local tax assessment.

Public Safety Mutual Benefit Fund, Inc. vs. Rosette F. Laquian, Acting City Treasurer, San Juan City
CTA EB No. 2198 promulgated 15 January 2021

Facts:

Company A is a non-stock, non-profit domestic corporation organized as a mutual benefit association.

On 29 October 2015, the Acting City Treasurer of San Juan City issued Tax Order of Payment (TOP1) assessing Company A for deficiency local business tax for taxable years 2009 to 2015, amounting to P122, 108,041.10, inclusive of penalties and interests. The assessment was pursuant to Section 143(f) and 131 of Republic Act No. 7160.

On 1 December 2015, Company A submitted a letter to the City Treasurer informing her that Company A is a mutual benefit association (MBA) pursuant to the Local Finance Circular No. 2-93 dated 15 June 1993 issued by the Bureau of Local Government Finance (BLGF), stating that it is not subject to local business tax.

On 29 December 2015, Company A filed its protest letter assailing TOP1.

In 2017, respondent issued another TOP (TOP2) dated 18 January 2017, assessing petitioner for deficiency local business tax covering 2009 to 2017, amounting to P160,185,097.80, inclusive of penalties and interests.

On 23 January 2018 and 25 January 2018, Company A received by personal service and by registered mail, respectively, a letter dated 5 September 2017, issued by respondent denying its protest filed on 29 December 2015.

On 22 February 2018, petitioner filed a Petition with the Regional Trial Court (RTC), praying for the cancellation and setting aside of TOP 1 and TOP 2. In the Decision dated October 26, 2018, the RTC denied the appeal for lack of merit. The RTC Decision was received by Company A on 23 November 2018.

Thus, Company A filed its Petition for Review before the Court in Division on 19 December 2018.

On 27 August 2019, the Court in Division rendered the assailed Decision dismissing the Petition for Review filed by Company A for lack of jurisdiction.

Issue:

Whether or not petitioner's right to appeal the assessment before the RTC has already prescribed.

Ruling:

Yes.

Section 195 of the Local Government Code (LGC) provides for the remedies available to the taxpayer in protesting the assessments of local business taxes. It states: "When the local treasurer or his duly authorized representative finds

that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency the surcharges, interests and penalties. Within 60 days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within 60 days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have 30 days from the receipt of the denial of the protest or from the lapse of the 60 day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable."

As may be gleaned from the above provision, the taxpayer has 60 days from receipt of the notice of assessment within which to file its written protest with the local treasurer. The local treasurer is then mandated to act on the protest within a period of 60 days counted from the filing of the protest. In case of denial, the taxpayer shall file its appeal before a court of competent jurisdiction within a period of (30 days from the receipt of the adverse decision.

However, if the local treasurer fails to act on the protest within the prescribed 60-day period, the taxpayer shall institute an appeal before a court of competent jurisdiction within a period of thirty days reckoned from the lapse of the 60-day period within which the local treasurer should decide. It is further provided that the failure of the taxpayer to file a protest with the local treasurer or to appeal the decision or the inaction of the local treasurer, will result in the finality of the local tax assessment.

Records reveal that Company A received TOP1 on 3 November 2015. Thereafter, Company A filed its written protest against the said assessment on 29 December 2015. Counting (60 days therefrom, the City Treasurer had until 27 February 2016, within which to decide on the protest. In view of City Treasurer's failure to act on the subject protest within the mandated 60-day period, such inaction shall be deemed a denial of petitioner's protest. Consequently, Company A had 30 days from 27 February 2016 or until 28 March 2016 within which to file an appeal before a court of competent jurisdiction.

However, considering that its Petition was filed before RTC only on 22 February 2018, the same was clearly filed out of time.

As regards TOP2, there is nothing on record which would show that Company A filed a written protest thereto. In fact, Company A admitted that it did not file any written protest to TOP2.

Hence, in view of Company A's failure to timely file an appeal before the RTC with respect to TOP1; and its failure to file a written protest with the local treasurer relative to TOP2, both assessments have become final, executory and unappealable.

Commissioner of Internal Revenue vs. First Balfour, Inc.
CTA EB 2116 promulgated 14 January 2021

The 30-day period to file an appeal with the CTA should be counted from the date of receipt of a copy of the Warrant of Garnishment (WG) and not from the date of receipt of a letter which merely contained a notification from the Bank as to the existence of the WG.

Facts:

In a letter dated 4 September 2014, Bank A notified First Balfour, Inc. (Company A) that a Warrant of Garnishment (WG) was issued by the BIR pertaining to First Philippine Balfour Beatty, Inc. (Company B).

Company A, through its letters dated 17 September 2014 and 17 November 2014 to Bank A, assailed the latter's unilateral act of putting Company A's account on hold. In these letters, Company A informed Bank A that it neither received a WG nor an assessment from the BIR and that the WG referred thereto does not pertain to Company A (as it patently mentioned a company with a name and TIN different from Company A's name and TIN).

On 9 January 2015, Company A received a Letter of even date from Bank A informing the former that its deposit in the amount of Php 2,538,798.06 with Bank A has been garnished and the same will be released to the BIR through a manager's check.

At the same time, Bank A furnished Company A a copy of BIR's Letter dated 8 January 2015, directing Bank A to garnish and surrender Company A's deposit. The same letter provides that a WG dated 3 September 2014 was issued pursuant to Assessment No. F-044-LNTF-07-VT-IT-MC-027 for taxable year 2007 involving deficiency VAT, Income Tax and MC.

Company A filed a Petition for Review with Motion for Suspension of Collection of Taxes (Motion for Suspension) on 6 February 2015. The CTA Special Third Division granted the petition and accordingly, the deficiency tax assessment was cancelled and set aside.

Hence, Petitioner filed the present Petition for Review before the CTA *En Banc*.

Issues:

Was Company A's prior Petition for Review filed on time?

Ruling:

Yes.

As to the timeliness of the filing of the prior Petition for Review, the CTA held that the same was reckoned correctly from the receipt of Bank A's letter dated 9 January 2015 and not from the letter dated 4 September 2014.

It must be emphasized that, in the 4 September 2014 letter, Company A was simply notified that UCPB received a "Notice of Garnishment - BIR Warrant of Garnishment No. WG-RR8-2014-08-0295-10 Revenue Region No. 8, Makati City" against Company A's current account. However, the records do not show that respondent was likewise furnished with a copy of the alleged WG on the same day.

Since Company A only received a copy of the WG on 9 January 2015, the 30-day period to file an appeal with this Court should be counted from the receipt of such and not from the 4 September 2014 letter which merely contained a notification from Bank A as to the existence of the WG.

Commissioner of Internal Revenue vs. Vitalo Packaging International, Inc.[1]
CTA Case EB No. 2148 promulgated 03 February 2021

If the taxpayer does his duty and duly informs the BIR of its change of address, then any communication sent to its old address becomes invalid and tolls the period within which the taxpayer is given to reply.

Facts:

Company A received a Letter of Authority LOA for the audit of its taxable year 2006. On 18 April 2008, Company A informed the BIR RDO 57 of its change of registered address from Panorama Compound to Laguna Technopark. Subsequently, several notices of assessments (Notice of Informal Conference, Preliminary Assessment Notice, Final Letter of Demand, Preliminary Collection Letter, Warrant of Distraint and/or Levy, among others) were issued and sent through registered mail to Company A's old address at Panorama Compound. Moreover, the notices sent were received by a security guard of the new lessee at its old address.

Issues:

Was there proper service of the assessments?

Ruling:

No. As early as 2008, Company A gave notice to the BIR that it changed its address from the Panorama Compound to its new address in Laguna Technopark. If the taxpayer does his duty and duly informs the BIR of its change of address, then any communication sent to its old address becomes invalid and tolls the period within which the taxpayer is given to reply. Revenue Regulations (RR) No. 12-99, which is the regulations applicable at the time of issuance of the subject assessments requires that assessments shall be sent to the taxpayer only by registered mail or by personal delivery. It is not enough, however, that the notice is sent by registered mail as provided under the said regulations. One of the requirements of a valid assessment notice is that the letter or notice must be properly addressed. On this ground alone, the assessments issued by the CIR do not come up to standard. Company A, in legal fiction, never received any of the notices the CIR sent, actually or constructively, notwithstanding the fact that they were able to protest the PAN and FAN. Moreover, RR 12-99 requires that the FAN /FLD must be received by the taxpayer or its authorized representative. Thus, the alleged receipt by a security guard of the FAN /FLD does not satisfy the due process requirement under RR 12-99 and Section 228 of the Tax Code. Considering that not only were all the notices sent to the wrong address, but also that they were not proven by the CIR to have been received by the taxpayer or his authorized representative, the assessments are void for lack of due process.

New Farmers Plaza Inc. vs. Commissioner of Internal Revenue, National Evaluation Board, and Regional Evaluation Board of Revenue Region No. 7
CTA 9474 promulgated 27 January 2021

Tax assessments issued in violation of the due process rights of a taxpayer are null and void.

Due process requires the BIR to consider defenses and evidences submitted by the taxpayer. Its failure to adhere to these requirements constitutes denial of due process and taints the administrative proceedings with invalidity.

Facts:

On 14 April 2011, Company A received the Preliminary Assessment Notice (PAN) from the BIR.

Subsequently, Company A received A Formal Letter of Demand (FLD) dated 27 April 2011 for the alleged deficiency IT, VAT, expanded withholding tax for calendar year 2006.

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[1] The same ruling was also held by the Court in an earlier case of ***Resource One Corporation vs. Commissioner of Internal Revenue***, CTA 9423 promulgated on 29 January 2021

On 13 November 2013, Company A filed an Application for Compromise, dated 30 October 2013, based on doubtful validity of the assessed deficiency taxes.

On 23 August 2016, Company A received the Notice of Denial of the Application for Compromise Settlement dated 1 June 2016.

On 22 September 2016, Company A filed Petition for Review.

Issues:

1. Were the assessments valid and is Company A entitled to the approval for a compromise?

2. Is the Notice of Denial of the Application for Compromise Settlement dated 1 June 2016 void?

Ruling:

1. No. The assessments did not become final, demandable and executory and void as there was failure on the part of the CIR to notify the taxpayer in writing of the law and the facts on which the assessments were made. Company A was not given the full 15 days within which to respond to the PAN. Therefore, Company A cannot be considered in default and the FLD and assessment dated 27 April 2011 cannot be issued at that point.

   Section 228 of the Tax Code provides that the BIR is mandated to inform taxpayers, in writing, of the law and the facts on which the assessment is made, otherwise, the assessment shall be void. Section 3.1.2 of Revenue Regulations (RR) No. 12-99, as amended by RR No. 18-2013, implements the above-quoted Section 228. The provisions prescribe, as part of due process in the issuance of tax assessments, that the FLD/FAN must state, among others, the facts on which the assessment is based, otherwise, the FLD/FAN shall be void.

   The Tax Code and revenue regulations allow a taxpayer to file a reply or otherwise submit comments or arguments with the supporting documents at each state in the assessment process. Due process requires the BIR to consider defenses and evidences submitted by the taxpayer and to render a decision based on these submissions. Its failure to adhere to these requirements constitutes a denial of due process and taints the administrative proceedings with invalidity *(SC Ruling on CIR vs Avon Products Manufacturing, Inc.)*.

2. Yes, the Notice of Denial of the Application for Compromise Settlement dated 1 June 2016 is void.

   Section 204(A) of the Tax Code provides that, the payment of any internal revenue tax may be *compromised* under either of the two instances: (1) a reasonable doubt as to the validity of the claim against the taxpayer exists; or (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

   The legal requirements for a valid exercise of the CIR to compromise a tax liability are as follows:

   1. There exists a reasonable doubt as to the validity of the claim against the concerned taxpayer, or the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax;

2. The taxpayer has paid the minimum compromise rate, which is either 40% or 10% of the basic assessed tax or taxes, depending on the ground being relied upon. The compromise offer must have been paid and fully settled by the concerned taxpayer upon filing of the application for compromise settlement; and

3. In case the basic tax exceeds Php 1,000,000.00, the application for compromise settlement has to be approved by respondent National Evaluation Board (NEB), with the concurrence of respondent CIR; and in case the basic tax is Php 500,000.00 or less, the said application has to be approved by respondent Regional Evaluation Board (REB).

There is no indication that the NEB has acted on the application for compromise settlement for the assessed deficiency tax assessments when the respective tax of which exceeds Php 1,000,000. Consequently, the Notice of Denial dated 1 June 2016 is void.

Tax Refunds/Issuance of Tax Credit

Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue
CTA EB 2137 promulgated 26 January 2021

Section 108(B)(2) of the Tax Code, as amended, provides that a service performed in the Philippines by a VAT-registered person may be subject to zero percent rate if proven that the said service was rendered to a person not engaged in business in the Philippines.

Facts:

On 31 March 2016, Company A filed its application requesting for the refund and/or issuance of a tax credit certificate of its alleged excess/unutilized input VAT attributable to its zero-rated sales/receipts for the 1st – 4th quarters of taxable year 2014 with the BIR.

Claiming inaction of the CIR, Company A filed the original Petition for Review, which the CTA in Division partially granted. Subsequently, both the both the CIR and Company A filed their respective Motions for Reconsideration which were denied by the CTA in Division. Hence, this Petition before the CTA *En Banc*.

Issue:

Is Company A entitled to the refund or issuance of a tax credit certificate?

Ruling:

No. Company A is an entity doing business in the Philippines. As such, all sales of service rendered to it do not qualify for VAT zero-rating. Section 108(B)(2) of the Tax Code, as amended, provides that a service performed in the Philippines by a VAT-registered person may be subject to zero percent rate if proven that the said service was rendered to a person not engaged in business in the Philippines.

One of the pieces of evidence submitted by Company A is its Agreement with Company B in which, it delineates the relationship between Company A and Company B. The latter is in the business of marketing and commercial activities the widespread availability of the computerized information, products and services stored in the Global Core. In order to meet its objective, Company B contracted Company A where the latter agreed to market, promote, offer, and distribute the system in the Philippines on a commission basis. The said Agreement paved the way for Company B with Company A to further advance its purpose to continually promote, market, and distribute the system in the Philippines. These fall squarely under the definition of "doing business in the Philippines" under Section 3(d) of Republic Act No. 7042.

Hence, Company A is not entitled to the refund.

AC Energy, Inc. vs. Commissioner of Internal Revenue
CTA Case No. 10009 promulgated 25 January 2021

Apart from the Capital Gains Tax (CGT) return for each transaction, there is still to be filed a final consolidation return to determine the CGT to be imposed on the net capital gains that arose for all transactions during the taxable year.

Facts:

On 20 December 2016, Company A sold its shares of stock in Company S. On 29 December 2016, Company A also sold its shares from various corporations. On 18 January 2017, Company A filed its CGT return and paid the CGT on its sale of shares of stock in Company S. Company A likewise filed the CGT returns, on 27 January 2017, for the sale of its shares in various corporations disclosing losses or the lack of gain from the same. Thereafter, on 12 April 2017, Company A filed its Annual CGT Return covering the said transactions for the year ended 31 December 2016, which reflected an overpayment/refundable CGT. On 29 September 2017, Company A filed with the BIR an *Application for Tax Credits / Refunds* requesting for the issuance of a tax credit certificate representing overpaid CGT for taxable year 2016.

Issue:

Is Company A entitled to the claim for issuance of tax credit representing overpaid CGT?

Ruling:

Yes. The determination of CGT (from the sale or exchange of shares of stock not traded through a local stock exchange) to which a domestic corporation may be held liable is on an annual basis. Such being the case, the CGT paid for a particular transaction should be considered as a mere installment, an advance, or a deposit, subject to the final determination of CGT for the entire taxable year in which such transaction took place, and after considering other transactions which took place within the same taxable year. Thus, the CGT paid for a particular transaction is akin to the quarterly payments of corporate income tax and withholdings taxes.

Commissioner of Internal Revenue vs. Northwind Power Development Corporation
CTA *En Banc* Case No. 2151 promulgated 21 January 2021

The BIR's act of filing a counterclaim to collect on an erroneously granted and paid VAT refund claim cannot prosper as it violates taxpayer's right to due process.

Facts:

On 25 July 2018, Company A, a generation company, filed a petition for review with the CTA for the BIR's partial denial of Company A's claim for excess and unapplied input VAT directly attributable to its zero-rated sales for the taxable year 2016 amounting to Php 3,609,519.85.

During the pre-trial conference on 28 February 2019, the CIR reiterated that Company A's claim for refund should have been denied in its entirety, instead of being only partially denied at the administrative level, which increased the amount in question to P20,083,963.55.

On 10 June 2019, the Court in Division granted Company A's motion to withdraw the petition for review of the partial denial of VAT refund, which the CIR did not object. However, on 2 July 2019, the CIR filed a Motion for Reconsideration alleging that the Court in Division should have resolved the merits of his counterclaim (i.e., that the total amount should be denied in its entirety). Subsequently, on 1 August 2019, the CIR filed a Motion for Reconsideration before the Court in Division, which was eventually denied due to lack of merit.

Issues:

1. Does the CTA have jurisdiction to rule on the BIR's counterclaim of VAT refund erroneously granted?

2. Did the BIR fail to exhaust the administrative remedies and denied Company A due process?

Rulings:

1. No. Sec. 112 (C) of the Tax Code, as amended, expressly provides that what is appealable before the Court is a full denial or partial denial of a VAT refund claim, which was confirmed by the Supreme Court in *Team Sual Corporation (formerly Mirant Sual Corporation) vs. Commissioner of Internal Revenue (G.R. Nos. 201225-26, 201132 & 201133 dated April 18, 2018).*

   The CTA does not have jurisdiction to entertain questions on the propriety of a granted VAT refund claim. Likewise, the CTA cannot take cognizance of and decide on issues and questions pertaining to the validity of VAT refund claims already granted by the CIR as these are clearly not included among the subject matters which the CTA can assume jurisdiction of. As the CTA can only take cognizance of denied VAT refund claims, it has no jurisdiction over the nature of the BIR's counterclaim which seeks to review a VAT refund claim which the BIR has granted. Thus, the BIR's counterclaim cannot be decided by the CTA.

2. Yes. By immediately resorting to a counterclaim to question a grant of a VAT refund, the BIR failed to exhaust the administrative remedies provided under the Tax Code and its implementing rules and regulations for deficiency tax assessments.

   After finding that the grant of a VAT refund was improper, the BIR should have issued an assessment against Company A (and complied with the legal requirements for the issuance of deficiency tax assessments) for the refund granted, rather than claiming the amount as a compulsory counterclaim in a VAT refund case filed with the CTA for the denied portion of Company A's VAT refund claim.

   RMC No. 17-2018 provides that if there is a finding of VAT liability on the part of the taxpayer-claimant, the proper recourse would be to subject said taxpayer-claimant to an audit/investigation, beginning with the issuance of a letter of authority and thereafter, the issuance of an assessment notice.

   The BIR's "act of immediately seeking relief from the Court *En Banc* denied the administrative machinery (i.e., BIR) a chance to resolve the tax dispute before recourse is had with the courts." Such action also deprived Company A of the rights and remedies available before the administrative proceedings, which include among others: the right to have an LOA issued prior to an audit/investigation, the right to receive a preliminary assessment notice (PAN), the right to file a reply to said PAN, the right to a final assessment notice (FAN), and the right [to] protest said FAN.

   Hence, the petition for review filed by the BIR was denied due to lack of merit.

Refund/issuance of Tax Credit

Wells Fargo Enterprise Global Services, LLC-Philippines vs. Commissioner of internal Revenue
CTA Case No. 9849 promulgated 08 February 2021

PEZA-registered enterprises are not qualified to claim for Input VAT refund since to begin with, no VAT should have been passed on to them by virtue of its status as a duly registered PEZA, as provided under Revenue Memorandum Circular No. 74-99.

Sale between PEZA registered entities should not have an impact on VAT considering the basic premise that ecozones are, by legal fiction, regarded as foreign territory. The sale and consumption are beyond the taxing jurisdiction of the Philippines. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered entities.

Facts:

Company A is a duly licensed Philippine branch office of Company B, duly organized and existing under the laws of the State of Delaware, USA. Company A is registered with the PEZA. In the course of its business operations, Company A purchased goods and services that were subjected to VAT. As a result, Company A incurred and paid input VAT attributable to its zero-rated sales.

Company A filed its claim for refund of its unused and unapplied input VAT sourced from the following:

a. Domestic purchases of goods and services other than capital goods; and

b. Amortization of input VAT on capital goods. Its purchase of capital goods is subject to VAT for the reason that the vendor's sale of its assets is not one of the registered activities, thus, not covered by the fiscal incentives.

The BIR denied the claim for refund on the ground of Revenue Memorandum Circular (RMC) No. 74-99, which provides that sales made by a VAT-registered supplier from a customs territory to a PEZA-registered enterprise is treated as indirect export subject to 0% VAT. Also, pursuant to the said RMC, the claims for input VAT by PEZA-registered companies, regardless of the type or class of PEZA registration, should be denied.

On the other hand, Company A claims that the services it rendered pursuant to the Intercompany Services Agreements fall within Section 108(B)(2) of the Tax Code, thus qualify for zero-rating. Company A also argues firmly that it has complied with all the requisites provided under Section 112(A) of the Tax Code in its claim for tax refund (e.g., VAT-registered entity; engaged in zero-rated or effectively zero-rated sales; there are creditable input taxes due or paid attributable to its zero-rated sales; the input VAT has not been applied against any output VAT; and the application was filed within the prescribed period).

Issue:

Is Company A entitled to refund of its excess and unutilized input VAT attributable to its zero-rated sales for 2016?

Ruling:

No. Although it would appear from the records that petitioner incurred and paid input VAT for its domestic purchases, the Court didn't allow the refund, since to begin with, no VAT should have been passed on to petitioner by virtue of its status as a duly registered PEZA entity invoking RMC No. 74-99.

While an ecozone is geographically within the Philippines, it is deemed a separate customs territory and is regarded in law as a foreign soil. The domestic purchases of goods and services by Company A that were destined for consumption within the ecozone are deemed exports and should be free from VAT. Accordingly, no Input VAT should therefore be paid on such purchases.

As to the purchase of capital goods, the sale of goods or property by a PEZA-registered enterprise to another PEZA-registered enterprise is exempt from VAT pursuant to the same RMC. The person making the exempt sale of goods shall not pass on any output tax to his customers as the said transaction is not subject to VAT. A VAT-registered purchaser of goods, properties or services that are VAT-exempt, is not entitled to any input tax on such purchases despite the issuance of a VAT invoice or receipt.

In line with the Destination Principle, the sale between PEZA registered entities should not have an impact on VAT considering the basic premise that ecozones are, by legal fiction, regarded as foreign territory. It is as if the sale was made outside of the Philippines and consumed thereat. The sale and consumption are beyond the taxing jurisdiction of the Philippines. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered entities.

The Court went on to say that the seller/supplier is statutorily liable for the payment of VAT although the burden of tax is allowed to be shifted or passed on to the buyer, being in the nature of an indirect tax. Nevertheless, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Thus, assuming the VAT was properly remitted to the government, the proper party to seek the tax refund or credit should be the Company's suppliers, and not Company A.

Commissioner of Internal Revenue vs. Kurimoto (Philippines) Corporation
CTA EB Case No. 2108 promulgated 03 February 2021

The CIR's failure to cite the specific invoicing requirements that the taxpayer allegedly violated is a general assignment of error that is not allowed under the Rules of Court and jurisprudence, and the Court is not duty-bound to rule on the same.

Facts:

Company A filed for a claim for refund of excess and unutilized input taxes for the first and second quarters of taxable year 2013. The CIR denied the claim, hence Company A's petition to the Court. The Court in Division partially granted Company A's claim for refund.

The CIR alleges that Company A did not comply with the invoicing requirements under the Tax Code without specifying the alleged violations that Company A committed.

Issue:

Is Company A entitled to the claim for refund?

Ruling:

Yes, Company A was able to prove entitlement to its refund claim. The CIR merely alleged that the official receipts do not contain the required information under the Tax Code, without identifying the specific errors in the document. The CIR's failure to cite the specific invoicing requirements that Company A allegedly violated is a general assignment of error that is not allowed under the Rules of Court and jurisprudence, and the Court is not duty-bound to rule on the same.

Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue
CTA Case No. 9662 promulgated 29 January 2021

Non-submission of complete supporting documents in an administrative claim for refund is not fatal to the case, where the CIR failed to act on the administrative claim effectively giving the Court the authority in the judicial claim to give credence to all evidences presented by claimant including those that may not have been submitted to the CIR.

Facts:

Company A, involved in the conversion of geothermal energy into electric power, filed for claims for refund of its excess and unutilized input taxes for the first and second quarters of taxable year 2015. Due to the CIR's inaction on the administrative claim, Company A filed for separate petitions for review, covering each quarter of the refund claim.

The CIR argues that Company A is not entitled to the refund and that the Court has no jurisdiction over the petition since there is no valid administrative claim due to Company A's failure to submit the complete supporting documents to support its application.

Issue:

Is Company A entitled to the claim for refund?

Ruling:

Yes, even on the assumption that Company A failed to submit the complete supporting documents, it is not fatal to the case considering that the CIR failed to act on the administrative claim giving the Court the authority to give credence to all evidences presented by Company A including those that may not have been submitted to the CIR.

Upon verification, however, the amount of refund should be reduced, as follows:

a. Input taxes on purchases of services from NGCP were not supported by VAT official receipts, although on account of VAT-registered third-party service providers. Such third-party service providers should have issued VAT official receipts in the name of the ultimate customer, Company A, in order that Company A may be able to utilize the related input taxes; and

b. The remaining valid input taxes are not entirely attributable to zero-rated sales since Company A has sales subject to 12% VAT. Input taxes allocable to sales subject to the 12% VAT based on the sales volume shall be disallowed.

Violation of Tax Code

The "deliberate ignorance" or "conscious avoidance" on the part of the taxpayer in ensuring the accuracy of the information provided in the subject ITRs and FS would justly characterize the failure to supply correct and accurate information as willful, within the contemplation of Section 255 of the Tax Code. Taxpayer cannot use as excuse the inadvertence on the part of his secretary and accountant especially if such claim is not supported.

People of the Philippines vs. Alexander R. Garcia
CTA Crim Case Nos. O-572, O-573 & O-610 promulgated 15 February 2021

Facts:

Mr. A is a dentist by profession and the owner/operator of a Dental Center. He was accused of willful failure to supply correct and accurate information in his income tax returns for years 2011, 2012 and 2013 in violation of Section 255 of the Tax Code.

In the Joint Complaint-Affidavit, it was alleged that, after evaluating and comparing the gross income or revenues declared by Mr. A in his ITRs for the said taxable years, with the payments made through credit cards of Mr. A's clients and written statements of the latter, it was discovered that Mr. A deliberately failed to declare his correct tax base by substantially under-declaring his income for such years.

In Mr. A's counter-affidavit, he claimed that

a. He was deprived of due process as the criminal cases were filed prior to the issuance of PAN and FAN/FLD.

b. He religiously paid his income tax and filed his ITRs on time; that accounting and taxation are matters that are very alien to him, and which he has very little knowledge of, and thus, he leaves those things to the care of his accountant; that whatever charges he is accused of are mere results of his inadvertence and lack of knowledge of the law, and not because of fraud or any malicious intent on his part.

Issue:

1. Was there a violation of Mr. A's right to due process?

2. Is Mr. A guilty of violating Section 255 of the Tax Code?

3. Is Mr. A liable to pay the assessed amount?

Ruling:

1. No. In enforcing the collection of unpaid taxes, Section 205, in relation to Section 222(a) of the Tax Code provides for 2 remedies:

    1. Through summary administrative (i.e., distraint or levy); and

    2. Through judicial remedies (i.e., filing of criminal or civil action against the erring taxpayer).

    Unlike summary administrative remedies, the government's power to enforce the collection through judicial action is not conditioned upon a valid previous assessment. There is no requirement for the precise computation and assessment of the tax before there can be a criminal prosecution under the Tax Code.

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

    1. The accused is a person required under the Tax Code or rules and regulations to supply correct and accurate information;

    2. The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and

    3. Such failure to supply correct and accurate information is willful.

    It is undisputed that the accused is a dentist by profession and operating under a business name. Thus, he is duty bound to declare his income from all sources, including but not limited to the income derived from the clinic. The first element was established.

    The concerned Revenue Officers (ROs) resorted to third party information when they conducted their preliminary investigation against the accused. This was done by sending Access Letters to BDO and Citibank N.A. for them to issue a Certification as to the amount of income payments that they made, and taxes withheld by them on a quarterly basis on the account of the accused for the concerned taxable years. After comparing the service income declared in the

ITRs/FS vis-à-vis income payments reflected in the said Certifications, the under-declaration was determined. The percentage of under-declaration for years 2011, 2012 and 2013 are 1492%, 966% and 1516%, respectively. Thus, there is a manifest showing of the under-declaration establishing the second element. The accused also admitted that he failed to reflect the correct and accurate amount in the subject returns in one of his testimonies.

The Court cannot accept Mr. A's blanket denial of responsibility. The inadvertence on the part of his secretary and accountant could have been corrected had he checked the documents collated by his secretary before handing them over to the assistant of his accountant; and had he verified the details allegedly supplied by his accountant in the subject returns and financial statements before signing them. The "deliberate ignorance" or "conscious avoidance" on his part in ensuring the accuracy of the information provided in the subject ITRs and FS would justly characterize the same as willful, within the contemplation of Section 255 of the Tax Code.

In addition, the repeated and deliberate significant under-declarations of income for 3 consecutive years is a clear indication of the propensity of the accused not to supply correct and accurate information on his ITRs to the damage and prejudice of the Government.

3. Yes. In case of a finding of guilt, the Court is mandated not only to impose the penalty for the criminal offense, but must also order the payment of taxes subject of the criminal case.

People of the Philippines vs. Ulysses Palconet Consebido
CTA EB Case No. CRIM-076 promulgated 27 January 2021

All violations of any provision of the Tax Code shall prescribe after 5 years counted from the day of the commission of the violation of the law, and if the same is not known at the time, from the discovery thereof and the institution of judicial proceedings for investigation and punishment.

Facts:

The accused. Mr. U, was charged in CTA Criminal Case Nos. 0-700, 0-702, and 0-703, under three separate Informations filed on 18 March 2019 for his alleged failure to supply correct and accurate information on his Annual Income Tax Return for taxable year 2009 and Quarterly VAT returns for taxable years 2008-2009 in violations of Section 255 of the Tax Code.

Mr. U filed a Motion to Quash the Information on the ground of prescription. Petitioner argues that the running of the prescriptive period was interrupted by the filing of the criminal complaint for preliminary investigation with the DOJ. Further, petitioner insists that tax cases are practically imprescriptible for as long as the period from the discovery and institution of judicial proceedings for its investigation and punishment does not exceed 5 years.

Issue:

Are the criminal charges against Mr. U already prescribed?

Ruling:

Yes.

The Court ruled that the period of prescription commences to run from the day of the perpetration of the offense, and if not known, from its discovery and the institution of judicial proceedings for its investigation and punishment. Applying Section 281 of the Tax Code, and taking into consideration the case of E. Lim, Sr.

And AS Lim v. CA and People of the Philippines and RMC No. 101-90, the Court *En Banc* sustained the Court in Division's finding that the filing of the Complaint Affidavit with the DOJ on 30 January 2014 constitutes as the judicial proceeding for investigation which commences the five-year prescriptive period. Accordingly, counting five years from 30 January 2014, the prescriptive period lapsed on 30 January 2019. Clearly, the prescription had already set in when petitioner separately filed the three Informations before the Court in Division on 18 March 2019.

Seizure/Forfeiture

Sta. Rosa Farm Products Corporation vs. Commissioner of Customs
CTA Case No. 9932 promulgated 03 February 2021

There is no need to secure a prior import permit for out-quota rice importation, pursuant to prevailing laws and regulations, making the seizure and forfeiture proceeding conducted on such basis illegal and, in which case, a refund of the proceeds of the auction sale, less the corresponding customs duties and applicable expenses under Section 1143 of the CMTA, should be in order.

Facts:

Company A consigned three shipments of rice with cost totaling Php 112,874,700. For alleged failure to secure a prior import permit from the National Food Authority (NFA), the Bureau of Customs (BOC) proceeded to seize the alleged out-quota rice and auctioned the shipment in a forfeiture proceeding.

In a Letter, the NFA opined that the out-quota importation may be well within the Directive of the President on the lifting of the quota on rice importation and may be released upon payment of 50% tariff rates as imposed by the BOC.

The BOC, however, filed a criminal complaint for smuggling against Company A arguing that the President's pronouncement on the lifting of the rice importation quota neither repealed any law nor altered the existing regulations for shipments that require a prior import permit from the NFA, insisting that the forfeiture was proper.

Issues:

1. Is there a need to secure a prior import permit from the NFA for the out-quota rice importation, and whether the forfeiture and sale are valid and legal?

2. If Company A is entitled to a refund, how should the refundable amount be determined under the circumstances?

Ruling:

1. No, there is no need to secure a prior Import Permit from the NFA for out-quota rice importation. Pursuant to the World Trade Organization (WTO) Agreement, including the Multilateral Trade Agreements attached thereto, WTO member countries such as the Philippines are prohibited from imposing QRs on imported products. Although the Philippines was accorded a Special Treatment, allowing to impose a discretionary import licensing as exception to the rule, the grant of the Special Treatment expired on 30 June 2017. Hence, the prohibition on imposing QRs on imported rice has taken effect and there was no need for Company A to secure a prior import permit from the NFA beginning 1 July 2017.

NFA's regulations do not cover out-quota rice importations. There being no law or regulation on the out-quota importation of rice, the latter may be freely imported into the Philippines without need for the import permit. The Court cannot also apply the memorandum between NFA and the BOC on the requirement to secure a prior Import Authority from the NFA for every rice importation since the requirement was made during the effectivity of the Special Treatment.

Considering that there was no requirement for Company A to secure the import permit from the NFA, the subject seizure and forfeiture proceeding was illegal.

2. On the determination of the refundable amount, the Court ruled that the out-quota importation is subject to ordinary duties. Section 1143 of the Customs Modernization and Tariff Act (CMTA) on the expenses pursuant to a forfeiture proceeding will not strictly apply since the forfeiture was conducted illegally. Additionally, the 10% limitation on incidental expenses covering an auction sale, as provided under Customs Administrative Order No. 5-90 dated 17 July 1990, may not prevail since the limitation was a mere footnote in the issuance and may not be considered as validly promulgated by the Secretary of Finance.

   Pursuant to the CMTA, the Collector of Customs is authorized to determine the maximum amount of charges to be recovered by concerned private citizens relative to a) arrastre and private storage charges and demurrage charges; and b) freight, lighterage or general average, on the voyage of importation, of which due notice shall have been given to the concerned District Collector.

   Company A is entitled to the refund of the proceeds of the auction sale less the corresponding customs duties and applicable expenses under Section 1143 of the CMTA.

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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.