Tax Bulletin

November – December 2020

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Highlights

BIR Issuances

- RR No. 31-2020 further amends the pertinent provisions of Revenue Regulations (RR) No. 11-2018, as Previously Amended by RR No. 7-2019, on the criteria for identifying the top withholding agents. **(Page 8)**

- RR No. 32-2020 further amends RR No. 4-2019, as amended, by extending the period of availment of Tax Amnesty on Delinquencies until 30 June 2021. **(Page 9)**

- RR No. 33-2020 amends the period of Availment and Privilege under Sections 4 and 10 of RR No. 21-2020 so that qualified persons can avail of the benefits of the VAPP until 30 June 2021, unless extended further by the Secretary of Finance." **(Page 9)**

- Revenue Memorandum Circular (RMC) 121-2020 circularizes the pilot implementation of online application of tax clearance and Tax Compliance Verification Certificates (TCVC) for bidding purposes through the BIR's official e-mail address. **(Page 10)**

- RMC No. 122-2020 published the full Text of the Letter from the Food and Drug Administration of the Department of Health clarifying the List of VAT-Exempt Drugs under Joint AO No. 2-2018. **(Page 11)**

- RMC 123-2020 publishes the full text of the Memorandum of Agreement (MOA) between the Bureau of Internal Revenue (BIR) and the Land Registration Authority (LRA) on sharing of data for tax assessment, collection and enforcement purposes, subject to compliance with Section 4 of National Privacy Commission (NPC) Circular No. 16-02. **(Page 11)**

- RMC No. 124-2020 clarifies certain issues and concerns raised by the Cooperative sector during the Technical Working Group (TWG) discussions and workshops, as a result of the collaborative efforts of the House of Representative Committee on Cooperatives Development, the Cooperative Development Authority (CDA) and the Bureau of Internal Revenue (BIR). **(Page 11)**

- RMC No. 125-2020 disseminates the availability of BIR Form No. 1601-C (Monthly Remittance Return of Income Taxes Withheld on Compensation) January 2018 (ENCS) in the Electronic Filing and Payment System (eFPS). **(Page 13)**

- RMC No. 126-2020 provides the consolidated price of sugar at millsite for the month of October 2020. **(Page 13)**

- RMC No. 127-2020 suspends all audit and other field operations of the BIR effective 15 December 2020 for the period 15 December 2020 to 7 January 2021. **(Page 13)**

- RMC No. 128-2020 circularizes Joint Memorandum Circular (JMC) No. 003-2020 – Implementing the Rules and Regulations of Heated Tobacco Products and Vapor Products as Prescribed by Republic Act (RA) Nos. 11346 and 11467. **(Page 13)**

- RMC No. 129-2020 publishes the full text of the Memorandum of Agreement (MOA) between the BIR and the Maritime Industry Authority (MARINA) regarding sharing of data collected in the performance of their mandated duties and functions. **(Page 13)**

- RMC No. 130-2020 provides order and uniformity in the conduct of online meetings/conferences for the protection of both revenue officials/employees and taxpayers. **(Page 14)**

- RMC No. 131-2020 circularizes the 3 flyers containing updated information on registration, filing and payment of taxes specifically prepared for professionals, corporations and online sellers. **(Page 15)**

- RMC No. 132-2020 prescribes the new BIR Form No. 2200-C [Excise Tax Return for Cosmetic Procedures] January 2018 Version. **(Page 15)**

- RMC 133-2020 clarified the manual filing of tax returns and manual payments of taxes during the unavailability of the electronic filing and payment system (eFPS) due to Typhoon Rolly and Ulysses. **(Page 16)**

- RMC No. 134-2020 temporarily allows the acceptance of manually filed tax returns of National Government Agencies (NGA) who are mandated to file thru the Electronic Filing and Payment System (eFPS) and Electronic Tax Remittance Advice (eTRA) as a mode of payment to manually file their tax returns and pay the corresponding taxes due without penalty and sanctions due to temporary disconnection of power supply and/or telco internet connectivity on areas affected by Typhoon Rolly in Bicol Region. **(Page 16)**

- RMC No. 135-2020 provides notice of the loss of six (6) sets of unused/ unissued BIR Form 2298 – Product Replenishment Certificate. **(Page 16)**

- RMC 136-2020 clarifies the suspension of the statute of limitation provided under Revenue Regulations (RR) No. 11-2020, which started from 16 March 2020, declaration of state of emergency due to COVID-19, until 60 days after the lifting of the quarantine. **(Page 16)**

- Revenue Memorandum Order (RMO) No. 40-2020 prescribes the revised policies, guidelines and procedures in the processing and issuance of clearances in the National Office (NO) and Regional/District Offices. **(Page 17)**

- RMO 41-2020 amends RMO No. 10-2019 and other pertinent issuances, on the VAT refund process of resident foreign missions, their qualified personnel and personnel's dependents. **(Page 17)**

- RMO No. 42-2020 prescribes the guidelines in the submission of the Monthly Report on Issuance/Denial of Tax Exemption of Cooperatives pursuant to Republic Act No. 9520 and Non-Stock, Non-Profit Associations/Organizations under Section 30 of the National Internal Revenue Code of 1997, as amended. **(Page 19)**

- RMO 43-2020 amends RMO No. 51-2019 on the process of securing Tax Residence Certificates (TRC). **(Page 19)**

- RMO No. 44-2020 amends the provisions of RMO No. 15-2019 on the establishment of the standard taxpayer feedback system. **(Page 20)**

- RMO No. 45-2020 amends RMO No. 30-2020 which prescribed the allocation of the calendar year (CY) 2020 BIR Collection Goal by Implementing Office. **(Page 20)**

- RMO No. 46-2020 prescribes the guidelines and procedures for the availment of the reduced rate of 15% on intercompany dividends paid by a domestic corporation to a non-resident foreign corporation pursuant to Section 28(B)(5)(b) of the National Internal Revenue Code of 1997, as amended. **(Page 21)**

- Revenue Delegation Authority Order (RDAO) No. 4-2020 delegates the authority to sign and approve the Personal Equity and Retirement Account (PERA) electronic Tax Credit Certificate (TCC) for qualified PERA contributors to the Asst Commissioner of the Assessment Services of the Operations Group. **(Page 24)**

Transfer Pricing

- RR No. 34-2020 was issued to streamline the guidelines and procedures prescribed by RR No. 19-2020 for the submission of BIR Form No. 1709 (RPT Form), TP Documentation and other supporting documents. **(Page 25)**

BSP Issuances

- Memorandum No. 083 encourages market participants to take steps to transition to the use of alternative reference rates. **(Page 26)**

- Memorandum No. 084 provides for the adoption of Money Laundering/Terrorist Financing Risk Assessment System (MRAS). **(Page 27)**

- Memorandum No. 085 extends the effectivity of the temporary reduction in the minimum liquidity ratio of thrift banks, rural banks and cooperative banks. **(Page 28)**

- Memorandum No. 086 provides for an alternative mode of compliance with the mandatory credit allocation for agriculture and agrarian reform. **(Page 28)**

- Memorandum No. 087 amends the regulatory relief on the non-reporting of past due and non-performing loan under Memorandum No, M-2020-008. **(Page 28)**

- Memorandum No. 088 provides for additional regulatory relief for the Non-Stock Savings and Loan Association (NSSLA) Industry to manage the effects of COVID-19. **(Page 29)**

- Memorandum No. 089 provides for guidelines to facilitate the processing of reports pursuant to Section 101 of the Manual of Regulations on Foreign Exchange Transactions and to minimize the need to submit in hardcopy during this time of ongoing Covid-19 pandemic. **(Page 29)**

- Memorandum No. 090 enjoins BSFIs to revisit the recommended controls and measures in previous BSP Memoranda on Guidance on Management of Risks associated with Fraudulent E-mails or Websites, SMS-Based Attacks Targeting Customers of Financial Institutions, and other similar BSP issuances. **(Page 30)**

- Memorandum No. 091 provides for guidelines on the electronic submission of the credit card business activity report. **(Page 31)**

- Memorandum No. 092 provides a guidance paper on managing money laundering risks related to online sexual exploitation of children. **(Page 32)**

- Circular No. 1103 amends the regulations on UITF marketing personnel. **(Page 32)**

- Circular No. 1104 amends the regulations on submission of report on crimes/ losses for non-bank financial institutions. **(Page 32)**

- Circular No. 1105 provides for guidelines on the establishment of digital banks. **(Page 32)**

Bureau of Customs

Implementing Rules and Regulations for Sections 4(S), 4 (CC), 4(ZZZ), and Section 18 of the "Bayanihan to Recover as One Act"

- CAO No. 12-2020 provides for the Implementing Rules and Regulations for Sections 4(S), 4 (CC), 4(ZZZ), and Section 18 of the "Bayanihan to Recover as One Act". **(Page 34)**

Revocation of CMO No. 11-2010: Temporary Delegation by Export Coordination Group (ECD) to Export Division (ED) the function of pre-evaluation of exporters and their export products for certificate of origin issuance purposes

- CMO No. 28-2020 provides for the revocation of CMO No. 11-2010, the Temporary Delegation by Export Coordination Group (ECD) to Export Division (ED) the function of pre-evaluation of exporters and their export products for certificate of origin issuance purposes. **(Page 36)**

Regional Comprehensive Economic Partnership (RCEP) Agreement

- The RCEP is a free trade agreement signed by 15 countries on 15 November 2020. **(Page 36)**

Imposition of penalties, surcharges, interests and other charges for lifting, claiming, or recovering part of the proceeds in the sale of impliedly abandoned goods.

- CAO No. 13-2020 provides for the penalties, surcharges, interests and other charges for lifting, claiming or recovering part of the proceeds in the sale of impliedly abandoned goods. **(Page 36)**

Local Government Units

- DBM-DOF-DILG JMC No. 2 provides for the policy guidelines on the implementation of certain provisions of RA No. 11494 ("Bayanihan to Recover As One Act"). **(Page 38)**

SEC Opinions and Issuances

Basis of Preparation of Audited Financial Statements for BSP-supervised Financial Institutions (BSFIs)

- The SEC approved the adoption of an industry-specific financial reporting framework by BSFIs, as modified by the application of the financial reporting reliefs issued by the BSP and approved by the SEC. **(Page 39)**

Amendments to the Implementing Rules and Regulations (IRR) of the Investment Company Act, as Amended

- To align with global standards and practices to develop the Philippine capital market, to help prepare investment companies to qualify and compete in cross-border transactions, and to ensure adequate protection to shareholders and unitholders, the SEC promulgated amendments to the IRR of the Investment Company Act, as amended. **(Page 40)**

Deferral of the Philippine Interpretation Committee (PIC) Question & Answer No. 2018-12 and IFRS Interpretations Committee (IFRIC) Agenda Decision on Over Time Transfer of Constructed Goods for Real Estate Industry

- The SEC deferred the application of the provisions of the PIC Q&A No. 2018-12 on the accounting for significant financing component and the exclusion of land in the calculation of Percentage of Completion (POC) and IFRIC Agenda Decision on Over Time Transfers of Constructed Goods under PAS 23-Borrowing Cost for another period of three years, or until 2023. **(Page 41)**

SEC-OGC Opinion

- To engage in a secondary business purpose which is in furtherance of a corporation's primary business purpose, only the approval of the majority of the members of the Board of Directors or Trustees is required. **(Page 41)**

SEC Notice Series

- As the SEC Main Office, Satellite Offices, and Extension Offices continue to operate at limited capacity and implement alternative work arrangements due to the COVID-19 pandemic, the SEC has updated its list of email addresses and interim hotline numbers. **(Page 42)**

- The SEC extends the deadline for submission of primary and alternative email addresses and cellular phone numbers until 22 February without penalty. **(Page 42)**

CTA Decisions

Assessment

- Jurisprudence dictates that all presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence. **(Page 43)**

- Merely citing the wrong provision of the Tax Code, and failure to specify the kind and amount of tax would not readily result in the nullification of the waivers of the defense of prescription. Moreover, deficiency interest is imposed for the shortage of taxes paid, while delinquency interest is imposed for the delay in payment of taxes. Hence, having different nature for their existence, double imposition of interests cannot be assailed as the law itself allows the simultaneous imposition of these two kinds of interests. **(Page 43)**

- From 1 July 2012 to 24 July 2014, the Philippines was not authorized to impose import permit requirements for importation of rice within the country pursuant to the rules on Special Treatment based on WTO Trade Agreement on Agriculture. **(Page 45)**

- The payment of the assessed deficiency withholding tax after the issuance of the Final Decision on Disputed Assessment (FDDA) would not entitle the taxpayer to claim the same as deduction. **(Page 46)**

Refund/Issuance of Tax Credit

- PAGCOR's income from operations of other related services, including junket gaming operations, is subject to corporate income tax and not to the five percent (5%) franchise tax, pursuant to Section 14 (5) of P.D. No. 1869, as amended and R.A. No. 9337. PAGCOR's contractees and licensees shall likewise pay corporate income tax for income derived from such "other related services," including income from junket operations. **(Page 47)**

- A BOI Certification issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled 'Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales' dated 2 February 2020 is not sufficient to prove that the taxpayer-applicant has export sales for purposes of claiming input VAT refund. **(Page 48)**

- Section 3(c)(4)(a) of Revenue Regulations (RR) No. 9-2000 provides that, in loan agreements, the banking institution has the obligation to pay the DST due thereon. **(Page 49)**

- A Certificate of Compliance (COC) from the Energy Regulation Commission (ERC) is an indispensable requirement for generation companies to claim input VAT refund. **(Page 50)**

- In order to be considered a non-resident foreign corporation (NRFC) doing business outside the Philippines, each entity must be supported, at the very least, by both Exchange Commission (SEC) Certificate of Non-Registration of Corporation/Partnership and Proof of Incorporation/Association/Business Registration in a foreign country and that there is no other indication that would disqualify said entity in being classified as NRFC. **(Page 50)**

- In order to promote the securitization of the mortgage and housing-related receivables of the government housing agencies as may be determined by the Housing and Urban Development Coordinating Council (HUDCC) and the Department of Finance (DOF), the yield or income of the investor from any low-cost or socialized housing-related Asset-Backed Securities (ABS) shall be exempt from income tax. **(Page 51)**

- The sale of goods or properties between PEZA-registered entities are VAT-exempt pursuant to RMC No. 74-99. Notably, there is no distinction as to whether or not the goods are to be used for a PEZA-registered activity. Hence, a determination thereon becomes immaterial as the exemption is not dependent thereon. The VAT exemption of PEZA-registered enterprises flows from the legal fiction establishing Ecozones as foreign territories under Section 8 of RA No. 7916, as amended, and not by virtue of the special tax incentives granted to them under Section 24 of the same law. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered activities. What is vital is that the PEZA-registered enterprise purchasing the goods is located and operating within the Ecozone. For as long as the PEZA-registered purchaser is located and operating within the Ecozone, sellers from another Ecozone, or from the Customs Territory, cannot pass on any output VAT for any sale of goods or services destined for consumption within the Ecozone. **(Page 52)**

Violation of Tax Code

- Failure to serve the LOA within 30 days from the date of issuance renders the assessment void for having been issued from an invalid audit investigation. Hence, the period to file the protest will not commence and the assessment will not reach its finality. **(Page 53)**

Supreme Court Cases

- The CTA has the authority to take cognizance of "other matters" arising from the Tax Code and other laws administered by the BIR, which necessarily includes rules, regulations and measures on collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and to prescribe additional requirements for tax administration and enforcement. **(Page 54)**

- Service of the PAN or the FAN may be made by registered mail. In such a case, it is presumed that the notice directed and mailed was received in the regular course of mail. This presumption may, however, be disputed, in which case, the burden is shifted to the CIR to establish that the mailed notice was actually received by the taxpayer. The FAN must contain a demand for payment within a specific period as this signals the time when penalties and interests begin to accrue against the taxpayer, and this enables the taxpayer to determine his remedies. Failure to indicate such demand and the prescribed period to pay renders the assessment void. **(Page 55)**

BIR Issuances

RR No. 31-2020 further amends the pertinent provisions of Revenue Regulations (RR) No. 11-2018, as Previously Amended by RR No. 7-2019, on the criteria for identifying the top withholding agents.

RR No. 31-2020 dated 4 November 2020

RR No. 31-2020 further amends the pertinent provisions of RR No. 11-18, as previously amended by RR No. 7-19, to refer to Top Withholding Agents as those taxpayers whose gross sales/receipts or gross purchases during the preceding taxable year shall fall under the minimum thresholds determined according to the existing group classifications of the Revenue District Offices (RDOs) where they are duly registered as follows:

RDO Group Classification*	Gross Sales/Receipts or Gross Purchases of At Least
Groups A and B	Twelve Million Pesos (P 12,000,000)
Groups C, D and E	Five Million Pesos (P 5,000,000)

*Revenue Memorandum Order No. 13-2018

- The top withholding agents by concerned LTS/RRs/RDOs shall be published in a newspaper of general circulation or posted in the BIR website. These shall serve as the "notice" to the top withholding agents.

- The obligation to withhold under this sub-section shall commence on the first (1st) day of the month following the month of publication.

- Taxpayers who are classified as top withholding agents prior to the effectivity of these Regulations shall remain as such until failure to satisfy the aforesaid criteria and duly published as delisted from the existing list of top withholding agents. The initial and succeeding publications shall include the additional top withholding agents and those that are delisted.

- Revenue issuances inconsistent with the provisions of these Regulations are amended, modified or repealed accordingly.

RR No. 32-2020 further amends RR No. 4-2019, as amended, by extending the period of availment of Tax Amnesty on Delinquencies until 30 June 2021.

RR No. 32-2020 dated 17 December 2020

- Section 2. Amendment to Section 3. – Section 3 of RR No. 4-2019, as amended is hereby further amended to read as follows:

  "Section 3. Coverage. All persons, whether natural or juridical, with internal revenue liabilities covering taxable year 2017 and prior years, may avail of Tax Amnesty on Delinquencies within one year from the effectivity of these Regulations or until 30 June 2021, under any of the instances listed below. However, said date may be extended if the circumstances warrant an extension such as in case of country-wide economic or health reason/s."

RR No. 33-2020 amends the period of Availment and Privilege under Sections 4 and 10 of RR No. 21-2020 so that qualified persons can avail of the benefits of the VAPP until 30 June 2021, unless extended further by the Secretary of Finance."

RR No. 33-2020 dated 17 December 2020

Privilege of no audit: Taxpayers with a duly issued Certificate of Availment shall not be audited for 2018 for the tax types covered by the availment and shall be allowed to claim deduction on the corresponding income payment pursuant to RR No. 6-2018.

- In case the taxpayer's tax returns for the covered taxable period are currently being audited, the conduct of the audit shall be suspended upon availment of the VAPP while the availment is under evaluation and shall resume if the availment has been found invalid. If the taxpayer's availment has been determined to be valid, a Certificate of Availment shall be issued and the Letter of Authority, Tax Verification Notice, Discrepancy Notice, Notice of Discrepancy, Preliminary Assessment Notice and Final Assessment Notice previously issued for pending cases shall be consequently withdrawn and canceled.

- Despite the issuance of a Certificate of Availment, the taxpayer's availment shall be rendered invalid and shall be subject to audit or investigation following the prescribed procedures in these instances:

  1. There is strong evidence or findings of under-declaration of sales, receipts or income or overstatement of deductions by more than 30% based on a written report of the appropriate revenue official stating the facts with supporting documents, such as Discrepancy Notice and other third party information documents; and/or

  2. There is verifiable information that the taxpayer has withheld tax but failed to remit the same.

- Denial of application or invalidation of a previously issued Certificate of Availment shall be valid only if the taxpayer is formally notified by the Division Chief (LT Office) or the Revenue District Officer of the district office where the taxpayer is registered, stating the factual reasons therefor.

- Denial or invalidation can be appealed to the Assistant Commissioner-Large Taxpayer Service or concerned Regional Director within thirty (30) days from receipt of such notice.

- Any voluntary payment may be applied against the deficiency tax due, if any, that may be assessed against the taxpayer after the audit/investigation."

RMC No. 121-2020 circularizes the pilot implementation of online application of tax clearance and Tax Compliance Verification Certificates (TCVC) for bidding purposes through the BIR's official e-mail address.

RMC No. 121-2020 dated 26 October 2020

RMC No. 121-2020 clarifies the implementation of online application for tax clearance for bidding purposes and Tax Compliance Verification Certificate (TCVC) as additional option to taxpayers in the filing of application for tax clearance verification certificate and tax clearance for bidding purposes for taxpayer applicant registered with RR4 Pampanga, 7A-Quezon City, 7B-East NCR, Large Taxpayers Service except Large Taxpayers District Office Cebu and Davao, and for Non-Resident Foreign Corporation (NRFC) and Non-Resident Alien Not Engaged in Trade or Business (NRA-NETB).

- TCVC Documentary Requirements (for Non-Large Taxpayers) are: Application Form for TCVC; Proof of payment of certification fee worth P100 with payment confirmation and Proof of payment of Documentary Stamp Tax (DST) worth P30 with payment confirmation.

- TCBP Documentary requirements (for Large and Non-Large Taxpayers):

    1. Duly accomplished and notarized Application Form for Tax Clearance.

    2. Proof of payment of certification fee worth P100 with payment confirmation.

    3. Proof of payment of DST worth P30 with payment confirmation.

    4. For non-large taxpayers, copy of the approved TCVC issued by the Collection Section of the concerned Revenue District Office.

    5. Special Power of Attorney (SPA) or Authorization Letter signed by the applicant with one (1) photocopy of each valid identification cards.

- TCPB Documentary requirements (for NRFC/NRA-NETB):

    1. Duly accomplished and notarized Application Form for Tax Clearance with attached proof of payment of DST worth P30.

    2. SPA of the Authorized Representative in the Philippines authenticated by the Philippine Consul in the country where the business of the foreign corporation/individual is located as authorized by the Board of Directors or governing body of the Foreign corporation or by the Foreign Individual.

    3. Proof or payment of certification fee worth P100 using BIR Form 0605.

    4. Proof of payment of DST worth P30 using BIR Form 2000 to be attached in the TCVC.

    5. Unexpired and original copy of Non-Registration Certificate issued by Securities and Exchange Commission for NRFC or Department of Trade and Industry for NRA-NETB.

    6. Authorization letter originally signed by the Authorized Representative himself with one photocopy of each valid identification cards with 3 specimen signatures of both the authorized representative and the signatory in the Application Form.

- All applications for TCPB/TCVC shall be processed, issued and released with two working days from receipt of application if filed manually or upon acknowledgment of application via email if filed electronically provided the complete documentary requirements were submitted and the prescribed criteria set forth under RR No. 8-2016, as amended, were fully satisfied.

- The Tax Clearance Certificate for Bidding Purposes shall only be valid after the same has been posted in the BIR Website.

RMC No. 122-2020 published the full Text of the Letter from the Food and Drug Administration of the Department of Health clarifying the List of VAT-Exempt Drugs under Joint AO No. 2-2018.

RMC No. 122-2020 dated 3 November 2020

- The Letter clarified that the list of VAT-exempt Diabetes, High-Cholesterol and Hypertension Drugs is based on the International Non-Proprietary Name (INN) or generic name of the drug products which includes salt forms.

RMC 123-2020 publishes the full text of the MOA between the BIR and the LRA on sharing of data for tax assessment, collection and enforcement purposes, subject to compliance with Section 4 of NPC Circular No. 16-02.

RMC No. 123-2020 dated 3 March 2020

- LRA consents to share with the BIR personal data or information of the registered property owners relevant to land titles which it registered;

- BIR consents to share with the LRA personal data 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, to be utilized by LRA for tax validation purposes only; and

- BIR shall not share information regarding business, income, estate, secrets operation, style of work, apparatus of any manufacturer or procedure, or any confidential information regarding business of the taxpayer, knowledge of which was acquired during the performance of duties pursuant to Section 270 of the National Internal Revenue Code of 1997, as amended.

RMC No. 124-2020 clarifies certain issues and concerns raised by the Cooperative sector during the TWG discussions and workshops, as a result of the collaborative efforts of the House of Representative Committee on Cooperatives Development, the CDA and the BIR.

RMC No. 124-2020 issued on 25 November 2020

Some of the issues and concerns clarified in the RMC as provided below:

Issue/Scenario	Clarification
Requirements for securing a Certificate of Tax Exemption (CTE)	1. The duly accomplished Application for Certificate of Tax Exemption for Cooperatives (BIR Form No. 1945). 2. Documentary requirements as enumerated in the RMC.
Obligations of cooperatives with duly issued CTEs	1. Communicate immediately any change in or amendment to its Articles of Cooperation or By-Laws to the RDO where the cooperative is registered for update of its registration details; 2. Submit annually to the appropriate RDO the information or documents as enumerated in the RMC together with the filing of the cooperative's Annual Income Tax Return.

Issue/Scenario	Clarification
Upon the filing of application for CTE, in case the TINs of the members cannot be supplied yet, will that result in the denial of the application?	No, the concerned Office shall allow the processing and issuance/revalidation of CTEs of qualified cooperatives, provided, that in lieu of the TIN, the cooperative shall submit, an original copy of Certification under oath of the list of cooperative members, with their full name and capital contribution. Take note, however, that cooperatives which have been granted CTE are still required to complete and submit to the concerned Office the required TINs of their members within six months from the issuance of the CTE. The non-submission by the cooperatives of the members' TIN requirement within six months from the issuance of the CTE, without justifiable reason/s, shall be a ground for the revocation of the CTE pursuant to RMC No. 102-2016.
How will the Cooperative secure a TIN for its active members?	The Cooperative, with proper authorization from the members, may apply for the issuance of a TIN on behalf of its members by collating the duly accomplished BIR Forms 1904 of the members, together with a photocopy of any identification issued by any authorized government body (e.g., birth certificate, voter's ID, community tax certificate or cedula, passport, driver's license, senior citizen's ID, etc.) or any identification which shows the name, address and birthdate of the member. These shall be submitted to the concerned RDO for the processing and issuance of the TIN. An option to expedite the process is for the authorized official of the cooperative to submit an Application for eREG Access together with a Certification under Oath of the List of Active and Inactive Members and their capital contributions.
What is the prevailing rule on the exemption from documentary stamp tax on transactions between cooperative and its members?	Both the cooperative and its members are not liable to pay DST on transactions with each other based on Article 60 and 61 of Republic Act (RA) No. 9520.
Is the cooperative exempt from the assessment of the 1% and 2% creditable withholding tax on isolated purchases of not more than P10,000 each from non-regular suppliers?	Yes. The cooperative is exempt from the assessment of the 1% and 2% creditable withholding tax provided that it is not considered a Top Withholding Agent under Section 2.57.2(I) of RR No. 2-98 as amended by Section 2 of RR No. 11-2018 and RR No. 7-2019. However, if the cooperative is considered as a Top Withholding Agent, all purchases made with its regular suppliers or any single purchase of more than P 10,000.00 shall be subject to withholding tax.

RMC No. 125-2020 disseminates the availability of BIR Form No. 1601-C (Monthly Remittance Return of Income Taxes Withheld on Compensation) January 2018 (ENCS) in the eFPS.

RMC No. 125-2020 dated 26 November 2020

- Withholding Agents (WAs)/Payors who are eFPS filers shall use the BIR Form No. 1601-C January 2018 (ENCS) in filing and remitting the taxes withheld on compensation in accordance with business industry grouping as set forth in RR No. 26-2002.

RMC No. 126-2020 provides the consolidated price of sugar at millsite for the month of October 2020.

RMC No. 126-2020 dated 19 November 2020

- This regulation consolidates the weekly issuance of Operations Memoranda (OM) for the month of October which circularizes the weekly price of sugar at millsite issued by the Sugar Regulatory Administration (SRA).
- The consolidated schedule on the weekly OMs contains the comparative prices of sugar of the current year for purposes of imposing the 1% EWT on sugar.

RMC No. 127-2020 suspends all audit and other field operations of the BIR effective 15 December 2020 for the period 15 December 2020 to 7 January 2021.

RMC No. 127-2020 dated 2 December 2020

- No written orders to audit and/or investigate taxpayers' internal revenue tax liabilities shall be served except Investigation of cases prescribing on or before April 15, 2021;Tax evasion cases; Processing and verification of estate tax returns, donor's tax returns, capital gains tax returns and withholding tax returns on the sale of real properties or shares of stocks together with the documentary stamp taxes related thereto; Examination and/or verification of internal revenue tax liabilities of taxpayers retiring from business; Audit of National Government Agencies (NGAs), Local Government Units (LGUs) and Government Owned and Controlled Corporations (GOCCs) including subsidiaries and affiliates of GOCCs; Monitoring of privilege stores (tiangge); and Other matters/concerns where deadlines have been imposed or under the orders of the Commissioner of Internal Revenue.
- Nevertheless, to ensure maximum revenue collection throughout the year, service of Notices to avail the Tax Amnesty on Delinquencies (TAD), Estate Tax Amnesty (ETA) and Voluntary Assessment and Payment Program (VAPP) should still be effected. Taxpayers may voluntarily pay their known deficiency taxes without the need to secure authority from concerned Revenue Officials.

RMC No. 128-2020 circularizes JMC No. 003-2020 – Implementing Rules and Regulations of Heated Tobacco Products and Vapor Products as Prescribed by RA Nos. 11346 and 1146.

RMC No. 128-2020 dated 27 November 2020

- The RMC circularizes the JMC among the Department of Finance, Department of Health, Department of Budget and Management, Bureau of Internal Revenue and Philippine Health Insurance Corporation to implement the provisions of Section 17 of RA No. 11346 and Section 12 of RA No. 11467.

RMC No. 129-2020 publishes the full text of the MOA between the BIR and the MARINA regarding sharing of data collected in the performance of their mandated duties and functions.

RMC No. 129-2020 dated 23 November 2020

- MARINA consents to share with the BIR confidential/personal data or information of their MARINA registered persons;
- BIR consents to share with MARINA personal data or information of taxpayers not otherwise covered by Section 270 of the Tax Code, as amended;

- The type of personal data or information to be shared between MARINA 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.

- The operational details of the data sharing agreement shall be updated in a phased-in approach, once infrastructure is available.

- Access to the personal data or information shall be limited to specified BIR and MARINA officers/employees. 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 MARINA pursuant to the MOA with utmost confidentiality, in accordance with the Data Privacy Act, and for tax assessment, collection, and enforcement purposes only. MARINA 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. 130-2020 provides order and uniformity in the conduct of online meetings/conferences for the protection of both revenue officials/ employees and taxpayers.

RMC No. 130-2020 dated 20 October 2020 and issued on 10 December 2020

- The conduct of all online meetings/conferences with taxpayer/s and/or taxpayer/s' representatives shall be hosted by the BIR.

- In sending invitation, revenue officials and employees shall only use the prescribed BIR email address (name.surname@bir.gov.ph). Personal email shall not be used for this purpose.

- All meetings/conferences must be pre-approved in writing by the concerned Division Chief for National Office/Regional Director for Regional Offices/ Revenue District Officer for Revenue District Offices.

- All revenue officials and employees initiating the conduct of meeting/conference must file memorandum request stating the following information:

    1. Name of taxpayer and/or authorized taxpayer/s' representative

    2. Taxpayer Identification Number

    3. Name of persons who will attend the online meeting/conference (for both the BIR and for the taxpayer stating therein their official positions)

    4. Date and time of the meeting

    5. Agenda

    6. Details of Assessment: eLOA No., Date, Taxable year covered (if applicable)

- In order to be allowed to represent the taxpayer/s, all representative/s shall have a duly notarized Special Power of Attorney from the taxpayer including those with BIR Certificate of Accreditation pursuant to RR No. 11-2006, as amended by RR No. 4-2010 and RR No. 14-2010.

- Meetings/conferences shall only be conducted if taxpayer/s and/or taxpayer/s' representatives have requested the virtual meeting schedule through the BIR eAppointment System and clicked "Agree" to the BIR eAPPOINTMENT USER AGREEMENT or submitted a duly accomplished BIR VIRTUAL MEETING AGREEMENT for those BIR offices with no BIR eAppointment facility. The said Agreements are attached to the RMC as Annex A and Annex B, respectively.

- The proceedings shall be strictly confidential. To ensure that no untoward divulgence/disclosure may happen, recording of the meeting/conference in whatever form is strictly prohibited. Any unauthorized recording or disclosure shall be subject to appropriate criminal, civil and administrative liability.

- In cases of power interruption and/or poor connectivity, the online meeting/ conference may be rescheduled on a date and time agreed upon by both parties.

RMC No. 131-2020 circularizes the 3 flyers containing updated information on registration, filing and payment of taxes specifically prepared for professionals, corporations and online sellers.

RMC No. 131-2020 dated 16 November 2020

- The digital copies of flyers are available for access/download through the "downloadable"/"information materials" portion of the BIR website (https://www.bir.gov.ph/index.php/downloadables.html#info-mat). For easy access to said online contents, scan the Quick Response Codes (QR Codes) in the PDF copy of the RMC.

RMC No. 132-2020 prescribes the new BIR Form No. 2200-C [Excise Tax Return for Cosmetic Procedures] January 2018 Version.

RMC No. 132-2020 issued on 10 December 2020

- The new return is already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Excise Tax Return Selection. However, the form is not yet available in the Electronic Filing and Payment System (eFPS) and Electronic Bureau of Internal Revenue Forms (eBIRForms); thus, eFPS and/eBIRForms filers shall continue to use BIR Form No. 0605 in eFPS and in the Offline eBIRForms Package v7.7 in filing and paying the excise tax due. Once the return becomes available in the eFPS and in the Offline eBIRForms Package, a separate revenue issuance shall be released to announce its availability.

- The deadline for filing and paying the excise tax due is within 10 days following the close of the month. In cases when no invasive cosmetic procedure was performed during the return period; hence, no excise tax is due, BIR Form No. 2200-C shall still be filed with the Excise Large Taxpayers Field Operations Division (ELTFOD) for Large Taxpayers or the concerned RDO for the taxpayers in the National Capital Region (NCR) or Excise Tax Area (EXTA) for taxpayers outside NCR.

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

This RMC clarified the manual filing of tax returns and manual payments of taxes during the unavailability of the eFPS due to Typhoon Rolly and Ulysses.

RMC 133-2020 dated 18 November 2020

- Authorized Agent Banks (AABs) are advised to accept "over-the-counter" filing of eFPS filers due to the inaccessibility/unavailability of the eFPS between 10 to 14 November 2020. Remittance of withholding taxes due for the month of October 2020 can be made until the close of the banking hours of 20 November 2020 without incurring any penalty. The extension for the remittance of withholding taxes is applicable only to eFPS taxpayers with activated epayment accounts with the AABs.

- For taxpayers who are mandated users of eFPS and eBIR Forms Systems directly affected by Typhoon Rolly and Ulysses, where power supply and telco connectivity have been temporarily disconnected, are likewise allowed to manually file their respective tax returns and manually pay the taxes without imposition of penalties. These concerned taxpayers are given an extension of 15 days on deadlines falling between 15 and 30 November 2020 to file returns and pay the corresponding taxes due.

RMC No. 134-2020 temporarily allows the acceptance of manually filed tax returns of NGA who are mandated to file thru the eFPS and eTRA as a mode of payment to manually file their tax returns and pay the corresponding taxes due without penalty and sanctions due to temporary disconnection of power supply and/or telco internet connectivity on areas affected by Typhoon Rolly in Bicol Region.

RMC No. 134-2020 issued on 26 November 2020

- NGAs shall re-file the manually filed tax returns through eFPS within 24 hours immediately after restoration of power supply and/or telco internet connectivity.

RMC No. 135-2020 provides notice of the loss of six sets of unused/ unissued BIR Form 2298 – Product Replenishment Certificate.

RMC No. 135-2020 issued on 10 December 2020

- The unused/unissued BIR Form 2298 with serial numbers PRC201600002094 – PRC201600002099 were reported as lost by Revenue Officer I in the Export and Product Replenishment Section, Excise Large Taxpayers Field Operations Division and have subsequently been cancelled.

- All official transactions involving use of the forms are INVALID.

Revenue Memorandum Circular 136-2020 clarifies the suspension of the statute of limitation provided under RR No. 11-2020, which started from 16 March 2020, declaration of state of emergency due to COVID-19, until 60 days after the lifting of the quarantine.

RMC No. 136-2020 dated 7 December 2020

- With such suspension, the counting of the three-year period to assess and five-year period to collect shall exclude the suspended period, calculated as 137 days.

- To illustrate, the RMC provides the new prescriptive dates in the table below:

	Original Prescriptive Date	New Prescriptive Date
Case 1	15 March 2020	15 March 2020
Case 2	16 March 2020	31 July 2020
Case 3	15 April 2020	30 August 2020
Case 4	15 June 2020	30 October 2020
Case 5	15 July 2020	29 November 2020
Case 6	15 April 2021	30 August 2021

RMO No. 40-2020 prescribes the revised policies, guidelines and procedures in the processing and issuance of clearances in the NO and Regional/District Offices.

RMO NO. 40-2020 issued on 23 November 2020

- Following R.A. No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, a review of various HR processes had been conducted, and the need to fast track the issuance of clearance in relation to regular movement of revenue officials and employees had been identified to ensure that all accountabilities are properly settled prior to an employee's movement/separation/prolonged authorized absences from the revenue service.

- All BIR personnel are required to secure and submit clearances under the circumstances specified in the Order, such as retirement, resignation, transfer to another office, separation from the service, maternity leave, vacation/sick leave, among others, using the prescribed BIR Form.

RMO 41-2020 amends RMO No. 10-2019 and other pertinent issuances, on the VAT refund process of resident foreign missions, their qualified personnel and personnel's dependents.

RMO 41-2020 dated 27 November 2020

- This RMC directs all business establishments to honor and recognize the VAT Certificate (VC) or VAT Identification Card (VIC) issued by the BIR to the resident foreign missions (RFMs), their qualified personnel and the personnel's dependents when presented by them at the point of sale (POS), irrespective of whether the purchase was made online, and to accord them the VAT exemption privileges to which they are entitled.

- The usual procedures for claiming VAT refunds will not apply to RFMs, their qualified personnel and the personnel's dependents because of their unique situation, as follows:

    1. Their exemption is based on a convention to which the Philippines is a signatory, or based on reciprocity and international comity;

    2. They are not VAT-registered taxpayers; or

    3. Existing revenue issuances on processing of VAT refunds exclude from its coverage the Legal Services where ITAD (which processes the VAT exemptions of RFMs, their qualified personnel and the personnel's dependents) belongs.

- Thus:

    Filing A Claim For Refund –

    1. The VAT invoice/official receipt that must be presented need not contain the name, address and TIN of the purchaser.

    2. All claim for refund, together with the required attachments, must be filed within the two year prescriptive period set forth under Section 229 of the 1997 Tax Code, as amended, before the Office of the Protocol of the Department of Foreign Affairs (DFA-OP).

    3. Within three) working days, DFA-OP shall endorse and transmit the claim to RDO 51 for processing.

4. RDO 51 will assign the case docket to a Revenue Officer (RO),issue a Tax Verification Notice (TVN) to each claimant authorizing the RO to verify the claim, and process the claim within a 90-day period commencing upon the issuance of a TVN.

Processing of Payment of Approved Claims

1. The FD and the Administrative and Human Resource Management Division (AHRMD) shall be given 15 days to process the payment of approved claims for refund.

2. The AHRMD shall only issue the check to the proper claimant or the duly authorized representative.

Handling of Denied Claims

1. The Regional Director issues and signs a Letter of Denial which shall contain the factual and legal bases that led to the conclusion,

2. All original copies of receipts and/or invoices shall be stamped with the phrase "NOT VALID FOR VAT REFUND" by the RDO upon its receipt of the Letter of Denial signed by the Regional Director to prevent subsequent presentation of the same documents in future claims.

Refiling of Denied Claims for Refund

1. The refiling of denied claims depends on the reason for denial of the claim previously filed.

2. It must be done within the two -year prescriptive period set forth under Section 229 of the 1997 Tax Code, as amended.

3. Refiling is not allowed if the denial is based on the merits of the claim.

- All concerned revenue officials and employees are enjoined to act on all claims for VAT within the periods specified by the RMO. Failure to act on the claim for VAT refund within the prescribed periods shall be a ground for administrative disciplinary action.

- Failure of business establishments to issue a manual receipt when so requested by the purchaser shall be tantamount to refusal to issue receipt or invoices, which is punishable under Section 264 of the Tax Code.

- All pending applications for VAT refund shall be processed following the procedures set forth under the RMO.

- All claims for refund previously denied for failure to comply with the invoicing requirement, i.e., the sales invoice/official receipt does not bear the name of the taxpayer but may be supported by credit card slips or statement of account, shall be allowed to be refiled provided that the refiling thereof is still within the two-year prescriptive period set forth under Section 229 of the 1997 Tax Code, as amended.

RMO No. 42-2020 prescribes the guidelines in the submission of the Monthly Report on Issuance/Denial of Tax Exemption of Cooperatives pursuant to Republic Act No. 9520 and Non-Stock, Non-Profit Associations/Organizations under Section 30 of the National Internal Revenue Code of 1997, as amended.

RMO No. 42-2020 issued on 1 December 2020

- This Order requires all Regional Directors to submit the following reports on or before the 15th day of the following month:

Report	Hard copy	Soft copy
A. Monthly Summary Report of Certificate of Tax Exemption ("CTE") issued for Cooperatives	To: Assistant Commissioner, Legal Service (together with copies of CTE)	To: Audit Information Tax Exemption and Incentives Division (aiteid@bir.gov.ph) Copy furnished: Legal Service (faith.farochilen@bir.gov.ph); Law and Legislative Division (juanito.balbastre@bir.gov.ph)
B. Monthly Summary Report of CTE issued for Non-Stock, Non-Profit Organization/ Association	To: Assistant Commissioner, Legal Service (together with copies of CTE or copies of rulings issued by the Region denying the application, as the case may be)	To: Legal Service (faith.farochilen@bir.gov.ph); Law and Legislative Division (juanito.balbastre@bir.gov.ph)
C. Monthly Summary Report of Denied Tax Exemption Applications for Non-Stock, Non-Profit Organization/ Association		

- Non-compliance is subject to penalty defined in the Revised Code of Conduct as implemented by RMO No. 53-2010.

RMO 43-2020 amends RMO No. 51-2019 on the process of securing TRC.

RMO 43-2020 dated 1 December 2020

- Instead of filing a letter request, the applicant for TRC shall submit to the International Tax Affairs Division (ITAD), together with the required documents, a duly accomplished BIR Form No. 0902, which shall be signed by the taxpayer or his/her/its authorized representative.

- Each TRC application must be accompanied by required documents.

- The assigned case officer (CO) shall evaluate the completeness of the application and its supporting documents, such that, within 3 working days, the CO shall inform the applicant of any deficiency in the accompanying requirements either via registered mail or electronic mail (e-mail); and within 14 working days from the submission of complete documentary requirements, the BIR shall act upon the TRC application.

- ITAD, being the repository of information related to the foreign source income of Philippine taxpayers, shall, within a reasonable period of time after the close of each taxable year or whenever necessary, convey the relevant information to the concerned Revenue District Office (RDO) or Large Taxpayers Division (LTD) that has jurisdiction over the applicant, or the National Investigation Division, as the case may be. The investigating office shall verify whether the foreign source income was declared by the taxpayer for tax purposes, and verify from foreign tax authority through the Exchange of Information Unit of the ITAD, and collect any deficiency taxes and penalties.

- Prosecution for perjury under Article 183 of the Revised Penal Code, and/or for other appropriate crimes or offenses as may be warranted under appropriate laws, in addition to the payment of deficiency taxes, could arise if, the taxpayer made a false declaration under oath.

- Treaty benefits shall only be accorded to residents of either or both contracting states. The grant thereof is not automatic but is subject to presentation of proof of residency or a TRC in a contracting state.

- Failure to establish the fact of residency in a contracting state might result in the imposition of the regular tax in the state of source, i.e., without the benefit of the treaty.

- To avoid being subjected to the regular tax imposed in the source state, Philippine resident taxpayers deriving income from another contracting state must always secure a TRC and present the same before the foreign tax authority to be entitled to treaty benefits.

- A Philippine resident taxpayer who fails to secure a TRC shall not be allowed to claim FTC in excess of the appropriate amount of tax that he/she/it is supposed to pay in the source state had he/she/it invoked the provision/s of the treaty and proved his/her/its residency in the Philippines.

RMO No. 44-2020 amends the provisions of RMO No. 15-2019 on the establishment of the standard taxpayer feedback system.

RMO No. 44-2020 issued on 9 December 2020

- Implementation of the standard taxpayer feedback system to enhance adherence to Republic Act (RA) No. 11032, otherwise known as the Ease of Doing Business and Efficient Government Service Delivery Act of 2018;

- Prescribes and ensures the use of the Revised Customer Satisfaction Survey Form in order to measure the level of satisfaction of taxpayers on the services rendered by the Bureau; and capture the total citizen/client's experience, expectations and satisfaction in the delivered public service in relation to the service quality dimensions provided in Annex 4 of Memorandum Circular (MC) No. 2020-1.

- The frontliners shall encourage taxpayers to answer the survey forms by giving them to all taxpayers to be served as they secure the queuing number slip.

RMO No. 45-2020 amends RMO No. 30-2020 which prescribed the allocation of the calendar year (CY) 2020 BIR Collection Goal by Implementing Office

RMO No. 45-2020 issued on 21 December 2020

- This has reference to the issuance of the unnumbered Memorandum dated 1 September 2020 regarding the effectivity of the enlisting/delisting of taxpayers to/from the Large Taxpayers Service (LTS) effective 1 January 2021.

- This Order amends table nos. 1 to 5F of RMO No. 30-2020, dated 16 September 2020, prescribing the allocation of the CY 2020 BIR Collection Goal by Implementing Office, in consideration of the following:

    1. The Bureau's revised collection goal of P1,685.734 billion, comprises of Collection Goal of P1,641.602 billion from BIR Operations and P44.132 billion from non-BIR Operations.

    2. The revised Collection Goal from BIR Operations of P1,641.602 billion is lower by P490.512 billion or 23.01% compared to the previous year's refined collection of P2,132.114 billion.

    3. The decrease in CY 2019 refined collection from BIR Operations of 23.01% was uniformly applied to all Implementing Offices.

    4. The LTS shall allocate its goal among its divisions and prepare the corresponding memorandum within five working days upon issuance of this Order.

RMO No. 46-2020 prescribes the guidelines and procedures for the availment of the reduced rate of 15% on intercompany dividends paid by a domestic corporation to a non-resident foreign corporation pursuant to Section 28(B)(5)(b) of the National Internal Revenue Code of 1997, as amended.

RMO No. 46-2020 issued on 23 December 2020

- Under Section 28(B)(5)(b) of the National Internal Revenue Code of 1997, as amended, intercorporate dividends paid by a domestic corporation to a non-resident foreign corporation (NRFC) are subject to income tax of 15% provided that the country of residence of the NRFC shall allow a credit against its tax due taxes deemed to have been paid in the Philippines equivalent to 15%, which represents the difference between the regular tax of 30% on corporations and the reduced tax of 15% on dividends.

- An NRFC applying for the reduced rate must be guided by the following:

    1. The reduced rate of 15% may be applied to the cash and/or property dividends declared by all corporations, irrespective of their corporate income tax regimes (i.e., regular rate of 30% or other rates under the Tax Code, or whether granted an income tax holiday or covered by special tax regimes).

    2. The domestic corporation paying the dividends may remit outright the dividends to the NRFC and apply thereon the reduced rate of 15% without securing first a ruling from the Bureau of Internal Revenue (BIR). It must determine, however, whether the existing law of the country of domicile allows the NRFC a "deemed paid" tax credit in an amount equivalent to the 15% waived by the Philippines or exempts from tax the dividends received.

    3. In case the country of domicile of the NRFC is a member of the Apostille Convention, a foreign law can also be established by submitting an apostilled copy thereof in lieu of the required certification and authentication.

    4. Within 90 days from the remittance of dividends or from the determination by the foreign tax authority of the deemed paid tax credit/non-imposition of tax because of the exemption, whichever is later, the NRFC or its authorized representative shall file with the BIR, through the International Tax Affairs Division (ITAD), request for confirmation of the applicability of the reduced dividend rate of 15%.

5. Holders of Philippine Depositary Receipts (PDRs) may also be entitled to the reduced rate, subject to fulfillment of the conditions set out in the RMO.

6. To streamline the process of confirming entitlement to the reduced rate, the BIR shall issue a certification duly signed by the Assistant Commissioner for Legal Service in lieu of the usual BIR ruling. The ITAD shall always ensure that a loose documentary stamp provided by the applicant is affixed on the Certificate before releasing it.

   In case of denial, a BIR ruling signed by the Commissioner or his authorized representative, which shall contain the factual and legal bases that led to the conclusion, shall be issued. Such denial may result in the imposition of a deficiency assessment for the 15% differential, plus penalties.

   All unfavorable rulings are appealable to the Department of Finance within 30 days from receipt pursuant to existing rules and regulations.

- The NRFC may opt to avail of the reduced dividend rate under the Tax Code, irrespective of whether a double tax convention or tax treaty exists between the Philippines and its country of residence. If the taxpayer is not entitled to the reduced rate under the Tax Code, the treaty rate shall automatically be applied provided that the NRFC is able to prove its entitlement to the benefits provided under the treaty.

- A typical PDR entitles its holder to the dividends accruing to the underlying shares. For taxation purposes, these dividends may or may not be entitled to the reduced rate depending on the nature of the PDRs. In order to be entitled to the reduced rate, the following conditions must be met:

  1. The PDR is coupled with a right to purchase the underlying shares; and

  2. The said right can be legally exercised.

- It is not enough that there is an option to purchase the underlying shares. What is more important is that the option to purchase can be legally exercised without violating the provisions of the Constitution and special laws, which restrict the ownership and operation of certain companies to Philippine nationals. Again, if the ownership of the underlying shares is reserved to Philippine nationals, the foreign PDR holder cannot legally exercise the right to purchase the underlying shares but is only entitled to the monetary value or sales proceeds thereof.

- The following documents shall accompany the first application for the reduced dividend rate of I5% in a given taxable year:

  1. General Requirements

     - Letter-request which shall provide a background of the transaction, the relief sought and the legal basis;

     - Duly accomplished BIR Form No. 0901-TS;

     - Original copy of the apostilled/duly authenticated Tax Residence Certificate issued by the tax authority of the country of domicile;

     - Apostilled/duly authenticated copy of the NRFC's articles of incorporation or proof of establishment in its country of residence;

- Original copy of apostilled/duly authenticated Special Power of Attorney (SPA) issued by the NRFC to its authorized representative;

- Certified true copy of the Board of Directors' resolution of the domestic corporation approving the issuance of dividends, which shall include the amount of dividends, and dates of declaration, record and payment, among others;

- Original copy of the sworn statement executed by the corporate secretary of the domestic corporation/custodian banks/depository account holders/broker dealers stating the legal and beneficial owners, if applicable, of all issued and outstanding shares as of record date, their corresponding subscriptions, date/s of acquisition, percentage of ownership and the allocation of dividend;

- Certified true copy of the General Information Sheet (GIS) of the domestic corporation for the year or period immediately preceding the date of declaration, whichever is more applicable.

- Certified true copy of Audited Financial Statements (AFS) of the domestic corporation stamped "received" by the BIR and Securities and Exchange Commission, which was used as the basis of such dividend declaration; and

- Proof of remittance of the dividend payments.

2. Special Requirements

   - If the dividend is taxable in the country of domicile

     a. Duly authenticated or apostilled copy of the law of the country of domicile allowing a tax credit for taxes actually paid in the Philippines and for taxes deemed paid in the Philippines equivalent to at least 15% of the dividends; and

     b. Duly authenticated or apostilled copy of any document issued by, or filed with, the foreign tax authority showing the amount of deemed paid tax credit actually granted by the foreign tax authority.

   - If the dividend is exempt from tax in the country of domicile

     a. A duly authenticated or apostilled copy of the law of the country of domicile; and

     b. A duly authenticated or apostilled copy of any document issued by the foreign tax authority confirming that the NRFC is exempt from income tax on dividends received from the Philippine corporation.

     For subsequent applications during the year involving the same NRFC

     a. Letter-request which shall provide a background of the transaction, the relief sought and the legal basis;

     b. Duly accomplished BIR Form No. 0901-TS;

c. Original copy of the apostilled/duly authenticated Special Power of Attorney (SPA) issued by the NRFC to its authorized representative, if there is a change in the previous SPA;

d. Certified copy of the Board of Directors' resolution of the domestic corporation approving the issuance of dividends, which shall include the amount of dividends, and dates of declaration, record and payment, among others;

e. Certification under oath by the corporate secretary of the domestic corporation/custodian banks/depository account holders/broker dealers stating the legal and beneficial owners, if applicable, of all issued and outstanding shares as of record date, their corresponding subscriptions, date/s of acquisition, percentage of ownership and the allocation of dividend;

f. GIS for the year or period immediately preceding the date of declaration, if different from the previously submitted GIS;

g. Original copy of the apostilled/authenticated certification issued by the NRFC, or its authorized representative, confirming that there is no substantial change in the domestic law of the country of domicile of the NRFC;

h. Apostilled or duly authenticated copy of any document issued by, or filed with, the foreign tax authority showing the amount of deemed paid tax credit actually granted by the foreign tax authority; and,

i. Proof of remittance of the dividend payments.

- For dividends accruing to PDRs:

1. Duly authenticated and executed PDR Agreement; and,

2. Proof of remittance of dividend payments to the PDR holder.

- The BIR reserves the right to require the presentation of the original copies for verification purposes or to request additional information or any related document which may be deemed necessary in the processing of the application.

RDAO No. 4-2020 delegates the authority to sign and approve the PERA electronic TCC for qualified PERA contributors to the Asst Commissioner of the Assessment Services of the Operations Group.

RDAO No. 4-2020 issued on 26 November 2020

- To expedite the issuance of PERA eTCC for Qualified Employees, Overseas Filipinos and Self-Employed Contributors for PERA contributions made for the calendar years 2016 onwards, the authority to approve and sign the said eTCC, is delegated to the Assistant Commissioner, Assessment Services of the Operations Group.

Transfer Pricing

RR No. 34-2020 was issued to streamline the guidelines and procedures prescribed by RR No. 19-2020 for the submission of BIR Form No. 1709 (RPT Form), TP Documentation and other supporting documents.

RR No. 34-2020 issued on 18 December 2020

The following are required to file and submit the new RPT Form (simplified version in lieu of the old form), together with the Annual Income Tax Return (AITR):

- Large Taxpayers;
- Taxpayers enjoying tax incentives, i.e. Board of Investments (BOI)-registered and economic zone enterprises, those enjoying Income Tax Holiday (ITH) or subject to preferential income tax rate;
- Taxpayers reporting net losses for the current taxable year and the immediately preceding two consecutive taxable years; and
- A related party, as defined in RR No. 19-2020, which has transactions with (a), (b) or (c). For this purpose, key management personnel (KMP), as defined under Section 3(7) of RR No. 19-2020, shall no longer be required to file and submit the RPT Form, nor shall there be any requirement to report any transaction between the KMP and the reporting entity/parent company of the latter in the RPT Form.

The RPT Form shall also be attached to short period returns required to be filed under existing laws or regulations starting 2021 and subsequent years. It now requires a taxpayer to confirm if it has prepared a TP Documentation that is compliant with the documentation requirements of RR No. 2-2013 or the TP Regulations.

- **Submission of TP Documentation and Other Supporting Documents**

  Mandatory preparation and submission of TP Documentation for the above taxpayers who meet the following materiality thresholds:

  1. Annual gross sales/revenue for the subject taxable period exceeding One Hundred Fifty Million Pesos (P150,000,000) and the total amount of related party transactions with foreign and domestic related parties exceed Ninety Million Pesos (P90,000,000).

     In computing the above threshold, the following items shall be included:

     - Amounts received and/or receivable from related parties or paid and/or payable to related parties during the taxable year but excluding compensation paid to KMP, dividends and branch profit remittances; and
     - Outstanding balances of loans and non-trade amounts due from/to all related parties.

     RP transactions covered by an Advance Pricing Agreement (APA) need not be disclosed in the RPT Form but shall nonetheless be included in the computation of the amount of RP transactions following the prescribed formula, or

2. RP transactions meeting the following materiality threshold:

    - If involving sale of tangible goods in the aggregate amount exceeding Sixty Million Pesos (P60,000,000) within the taxable year.

    - If involving service transaction, payment of interest, utilization of intangible goods or other related party transaction in the aggregate amount exceeding Fifteen Million Pesos (P15,000,000) within the taxable year, or

3. If TP documentation was required to be prepared during the immediately preceding taxable period for exceeding either (a) or (b) above.

The TP Documentation and other supporting documents as set out in Section 6 of RR No. 19-2020 shall no longer be attached to the RPT Form, but shall be submitted within 30 calendar days upon receipt of request by the Commission or his/her duly authorized representative, pursuant to a duly issued Letter of Authority covering all internal revenue taxes, subject to non-extendible period of 30 calendar days based on meritorious grounds.

- **Additional Disclosure Requirements for Taxpayers with RP Transactions**

  Taxpayers who are not required to file and submit the RPT Form as enumerated above are required to disclose in the Notes to the Financial Statements that they are not covered by the requirements and procedures for RP transactions provided under this RR, in addition to the requirements provided under RR No. 21-2002, as amended by RR No. 15-2010.

- **Penalties**

  Any violation of the provisions of this issuance shall be subject to penalties provided in Sections 250, 266, and other relevant provisions of the NIRC, as amended.

- **Effectivity**

  This RR shall take effect immediately following its publication in a newspaper of general circulation.

  The pertinent provisions of RR No. 19-2020, its clarifying Revenue Memorandum Circular No. 76-2020 and other relevant issuances that are inconsistent herewith are repealed, amended or modified accordingly.

(Editor's Note: RR No. 34-2020 was published on 23 December 2020 in The Philippine Star*)*

BSP Issuances

Memorandum No. 083 encourages market participants to take steps to transition to the use of alternative reference rates.

Memorandum No. 083 dated 17 November 2020

The United Kingdom's Financial Conduct Authority announced that it will transition away from LIBOR as a benchmark rate.

Consequently, the BSP expects every BSP-supervised financial institution (BSFI) with LIBOR or LIBOR-related exposures to have a viable transition plan to prevent disruption of operations and to actively reduce reliance on LIBOR prior to the discontinuation.

Action Required: All universal and commercial banks and their subsidiary banks are required to submit quarterly reports on the extent of their remaining LIBOR-related exposures, beginning with the reference date of 30 September 2020 and ending with the reference date of 31 March 2022.

All universal and commercial banks are also encouraged to observe the following as part of the transition process:

- Periodically quantify LIBOR-related exposures;
- Be operationally ready;
- Place necessary systems and infrastructure, as well as the appropriate contractual arrangements; and
- Actively communicate with counterparties and be aware of LIBOR-related transition initiatives locally and globally.

Memorandum No. 084 provides for the adoption of MRAS.

Memorandum No. 084 dated 23 November 2020

The MRAS is a tool to assess the inherent ML/TF and proliferation financing (PF) risks and the quality of risk management systems to determine the net ML/TF/PF risk of BSFIs, taking into account their risk and context, business models and operations, among others. The MRAS uses a four point rating scale to describe the net ML/TF/PF risk, as follows:

Net Risk	Description
High	Excessive level of residual risk. The risk management and control framework is disproportionate and not commensurate with the high level of inherent risks posed by the nature and complexity of the BSFI's activities. Most likely to be used as a conduit for the proceeds of unlawful activities, TF and PF.
Above average	Substantial level of residual risk. The risk management and control framework is either acceptable, with certain areas for improvement, relative to high level of inherent risk, or is inadequate in critical aspects relative to the above average or lower level of inherent risk posed by the nature and complexity of the BSFI's activities. May be used as conduit for the proceeds of unlawful activities, TF and PF.
Moderate	Manageable level of residual risk. The risk management and control framework is sufficiently compatible or commensurate with the level of inherent risks posed by the nature and complexity of the BSFI's activities. Can withstand associated ML/TF/PF risks and there is low to moderate probability to be used for ML/TF/PF activities.
Low	Marginal level of residual risk. The risk and control framework is robust and/or fully compatible with the level of inherent risks posed by the nature and complexity of the BSFI's activities. Highly capable of withstanding ML/TF/PF risks and curbing ML/TF/PF activities.

The MRAS replaces the existing AML risk rating system (ARRS) and will be implemented along with the Supervisory Assessment Framework (SAFr).

Memorandum No. 085 extends the effectivity of the temporary reduction in the minimum liquidity ratio of thrift banks, rural banks and cooperative banks.

Memorandum No. 085 dated 1 December 2020

BSP Memorandum No. 085 extends the effectivity of the temporary reduction in the minimum liquidity ratio (MLR) for stand-alone thrift banks, rural banks and cooperative banks, as implemented under BSP Memorandum No. M-2020-020, for an additional one year or until 31 December 2021 unless revoked by the BSP.

During the extension, stand-alone thrift banks, rural banks, and cooperative banks may draw on their stock of liquid assets to meet liquidity demands to respond to the current circumstances, remaining cognizant of the MLR of 16%.

Action Required: A bank that has recorded a shortfall in the stock of eligible liquid assets on three banking days within any two-week rolling calendar period, thereby causing the MLR to fall below 16%, must notify the BSP of such breach on the banking day immediately following the occurrence of the third liquidity shortfall.

Memorandum No. 086 provides for an alternative mode of compliance with the mandatory credit allocation for agriculture and agrarian reform.

Memorandum No. 086 dated 3 December 2020

Housing loans granted starting from 15 September 2020 until 31 December 2020 may be used as an alternative mode of compliance with the 25% total mandatory credit allocation for agriculture and agrarian reform.

Banks may utilize eligible housing loans as alternative compliance either for the 10% mandatory agrarian reform credit allocation and/or for the 15% mandatory other agricultural credit allocation, as provided under Republic Act No. 10000 and Section 331 of the Manual of Regulations for Banks (MORB).

The use of housing loans as allowable alternative mode of compliance with the mandatory credit allocation for agriculture and agrarian reform credit shall be reflected as an adjustment to the amounts reported as compliance by private banks with the said mandatory credit for the quarters ending 30 September 2020 and 31 December 2020.

Housing loans that meet the criteria provided under this Memorandum shall be valued at amortized cost, gross of allowance for credit losses, and added to the total amount reported as compliance.

Action Required: Banks concerned shall submit a one-time supplemental report (Annex A) on the use of the housing loans as compliance with the mandatory credit allocation for agriculture and agrarian reform for the said periods on or before 22 January 2021.

Memorandum No. 087 amends the regulatory relief on the non-reporting of past due and non-performing loan under Memorandum No, M-2020-008.

Memorandum No. 087 dated 2 December 2020

Memorandum No. 087 amends BSP regulations related to the regulatory relief on the nonreporting of past due and non-performing loans, specifically Annex A of Memorandum No. M-2020-008 dated 14 March 2020, as amended by Memorandum No. M-2020-032 dated 27 April 2020, Memorandum No. M-2020-061 dated 3 August 2020 and Annex A of Memorandum No. M-2020-061.

Memorandum No. 088 provides for additional regulatory relief for the NSSLA Industry to manage the effects of COVID-19.

Memorandum No. 088 dated 9 December 2020

Memorandum No. 088 allows NSSLAs, for purposes of net income distribution to members for the year 2020, to recognize as income the accrued interest earned during the mandatory one-time 60-day grace period provided under Republic Act No. 11494 (Bayanihan to Recover as One Act) on the members' unclassified loans outstanding from 15 September 2020 until 31 December 2020, net of general allowance for credit losses (ACL) of one percent (1%) of outstanding accrued interest receivable, subject to the following conditions:

- The submission of a Board of Trustees' (BOT's) certification as to accuracy and integrity of income recognition which will be subject to BSP verification in the next on-site examination;
- That the distribution of accrued interest income, net of ACL, will not result in: (i) insufficiency of funds caused by the use of accrued interest income as part of net amount available for net income distribution; (ii) borrowing of funds to finance the net income distribution; (iii) curtailment of the lending operation; or (iv) liquidity problems; and
- That the availing NSSLA does not have deficiency in ACL on loans and other risk assets based on its latest approved Report of Examination.

Action Required: Availing NSSLAs are given until 31 December 2020 to submit, through the Financial Supervision Department IX, BSP, the following:

- Letter-notification stating the NSSLA's intention to avail of the aforesaid regulatory relief signed by its President or officer of equivalent rank;
- Resolution of the BOT authorizing the NSSLA to avail of the regulatory relief; and
- Justifications showing the current circumstances of the NSSLAs and/or reasons for availment, including support thereto, attributable to the COVID-19 pandemic.

Memorandum No. 089 provides for guidelines to facilitate the processing of reports pursuant to Section 101 of the Manual of Regulations on Foreign Exchange Transactions and to minimize the need to submit in hardcopy during this time of ongoing Covid-19 pandemic.

Memorandum No. 089 dated 11 December 2020

The processing of reports pursuant to Section 101 of the Manual of Regulations on Foreign Exchange Transactions shall be submitted electronically required annexes in one PDF file and the corresponding Excel File using templates which can be downloaded from http://www.bsp.gov.ph/ses/reporting_templates.

The PDF of the Annexes O and Q , which should be duly signed by the authorized official of the bank, and together with the other PDF of the other annexes and their corresponding Excel file, shall be electronically transmitted within three (3) banking days from reference date, to the prescribed e-mail address, **DSA-CFXPR@bsp.gov.ph**, using the required format for the subject, as follows:

"CFXPR<space><Bank Name>,<space><Reference Period>", as illustrated below

To	:	DSA-CFXPR@bsp.gov.ph
Subject	:	*CFXPR <Bank Name>, DD MMMM YYYY*
		(e.g. CFXPR ABCBank 01 December 2020)

and using the following prescribed file names and file format:

File Name	File Format
CFXPR-<Bank Acronym>_<Reference Period> Reference period format: YYYYMMDD	xls
CFXPR-<Bank Acronym>_<Reference Period> Reference period format: YYYYMMDD	pdf

Memorandum No. 090 enjoins BSFIs to revisit the recommended controls and measures in previous BSP Memoranda on Guidance on Management of Risks associated with Fraudulent E-mails or Websites, SMS-Based Attacks Targeting Customers of Financial Institutions, and other similar BSP issuances.

Memorandum No. 090 dated 12 December 2020

BSFIs should:

- Revisit the recommended controls and measures in previous BSP Memoranda on Guidance on Management of Risks associated with Fraudulent E-mails or Websitesl, SMS-Based Attacks Targeting Customers of Financial Institutions[1], and other similar BSP issuances;
- Intensify information security awareness and education campaigns as a first line of defense against these phishing and social engineering attacks;
- Minimize risk exposure through employing defense-in-depth security strategies such as calibration of fraud management system rules and parameters, conduct of threat hunting exercises to detect unusual activities and takedown of phishing sites, among others;
- Ensure that timely and appropriate consumer protection and redress mechanisms are in place.

Actions Required:

- BSFIs are strongly advised to implement the following:

    1. Consumer assistance helpdesk or hotline available 24 hours a day and 7 days a week (24x7);
    2. Increased surveillance on online banking systems/activities during holidays or long weekends;
    3. Facility to timely block/suspend accounts reported by clients/concerned parties or those tagged as fraudulent or suspicious; and
    4. Procedures to resolve disputes arising from the use of the digital financial services within the established turn-around-time (TAT).

- BSFIs should promptly report financial fraud resulting from phishing and other types of cyber-related crimes to the BSP in accordance with Sections 148, 173 and 901 of the Manual of Regulations for Banks (MORB) and Sections 147-Q/145S/142-P/126-N, Section 901-Q Appendix Q-5/S-3/P-8/T-4, and Appendix N-l of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI).

[1] Memorandum No. M-2020-066 dated 19 August 2020

Memorandum No. 091 provides for guidelines on the electronic submission of the credit card business activity report.

Memorandum No. 091 dated 12 December 2020

Memorandum No. 091 requires all BSP-Supervised Financial Institutions (BSFIs) with credit card operations and their subsidiary/affiliate credit card companies to observe submission procedures of their Credit Card Business Activity Report (CCBAR) beginning with the 31 October 2020 month-end report; to accomplish the updated Data Entry Template (DET) and reconciliation rules, which can be downloaded from *http://www.bsp.gov.ph/SES/reporting_templates*; to electronically transmit the CCBAR within 15 banking days from the reference month-end period to **sdc-ccbar@bsp.gov.ph** using the prescribed format for the Subject - **"CCBAR<space><BSFI Name>,<space>dd<space>month name<space>ccyy"**

For Example,

To : sdc-ccbar@bsp.gov.ph
Subject : CCBAR <BSFI Name>, 31 October 2020

and the following prescribed file names and file format:

File	File Name	File Format
Data Entry Template (DET)	CCBAR	XLS
Control Prooflist (CP)	CCBAR-Control Prooflist	PDF

The submission deadline for the reference periods 31 October, 30 November and 31 December 2020 shall be due on or before 22 January 2021.

The e-mail address/es used in electronically submitting the CCBAR shall be the same e-mail address/es that will be used by the DSA in electronically acknowledging the submitted report and transmitting the corresponding validation results. For BSFIs covered by Memorandum No. M-2017-028 dated 11 September 2017, only e-mail addresses officially registered with the DSA shall be used when electronically submitting the said report.

BSFIs that are unable to transmit via email may submit the DET and its generated CP using any portable storage device (e.g., USB flash drive) through messengerial or postal services within the prescribed deadline to:

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

Queries regarding the CCBAR, its related regulations and guidelines shall be sent via e-mail to ccbar-inq@bsp.gov.ph.

Important Reminders:

- The following may result in an erroneous or failed submission, among others: a. Transmitting the wrong report/attachment; b. Failure to use the correct/updated templates; c. Failure to use an officially registered email address; d. Transmitting to the wrong e-mail address; e. Failure to use the prescribed subject line or reporting date; f. Failure to use the prescribed filenames; g. Failure to use the correct file format.

- Only one DET and its corresponding signed and generated CP shall be submitted for each reporting period in one e-mail transmission.
- Report submissions that do not conform to the above prescribed procedures shall not be accepted by the BSP thus, considered unsubmitted.

Memorandum No. 092 provides for guidance paper on managing money laundering risks related to online sexual exploitation of children.

Memorandum No. 092 dated 15 December 2020

The guidance paper highlights good practices, relevant typologies, and red flag indicators related to OSEC and identifies areas for improvement that BSFIs are expected to use to strengthen their AML/CFT processes to detect, prevent, and mitigate risks arising from OSEC.

Circular No. 1103 amends the regulations on UITF marketing personnel.

Circular No. 1103 dated 26 November 2020

Circular No. 1103 amends Section 414 of the Manual of Regulations for Banks and Section 414-Q of the Manual of Regulations for Non-Bank Financial Institutions, on the implementation of the certification requirement by 2023, specifically, that UITF Marketing Personnel authorized to sell UITFs under the existing requirements, who shall undergo and fail to pass the UCP, will forfeit their existing qualification and will not be allowed to sell UITF until such time that they obtain the required certification. The Certification requirement shall be fully implemented beginning year 2023.

Circular No. 1104 amends the regulations on submission of report on crimes/losses for non-bank financial institutions.

Circular Letter No. 1104 dated 27 November 2020

Circular Letter No. 1104 amends relevant sections of the Manual of Regulations for Non-Bank Financial Institutions (MORNBFI) particularly pawnshop operators, non-stock savings and loan associations, money service businesses, covering the submission of electronic reports and supporting documents on each crime and loss amounting to P 20,000 or more within 10 calendar days from knowledge of the crime/incident.

Circular No. 1105 provides for guidelines on the establishment of digital banks.

Circular No. 1105 dated 2 December 2020

Circular No. 1105 publishes Resolution No. 1862 dated 26 November 2020 approving the inclusion of "Digital Banks" as a distinct classification of banks and the corresponding guidelines for their establishment.

The basic guidelines in establishing banks includes the following:

- A new banking organization must have suitable/fit shareholders, including the ultimate beneficial owners (UBOs); adequate financial strength, a legal structure in line with its operational structure, a board of directors and senior management with sufficient expertise and integrity to operate the bank in a safe and sound manner.
- Documentary requirements to be submitted to the Bangko Sentral are listed in Appendix 33. In the case of foreign bank applicants, the documentary requirements to be submitted during Stage I of the application process are enumerated in Appendix 2.

- The revised rules and regulations governing the organization, membership, establishment, administration, activities, supervision and regulation of cooperative banks are found in Appendix 34.

- The authority to establish a bank shall be automatically revoked if the bank is not organized and opened for business within one year from receipt by the organizers of the notice of Monetary Board approval of the application.

- Such authority may likewise be revoked if the Bangko Sentral has determined that the organizers provided false or misleading information during the processing of the application. Organizers of a bank found to have willfully certified or provided such false or misleading information shall be subject to the applicable administrative sanctions under Section 37 of Republic Act (R.A.) No. 7653, as amended. The imposition of the said administrative sanctions is without prejudice to the filing of appropriate criminal charges as provided under Sections 35 and 36 of R.A. No. 7653, as amended.

A Digital Bank has been defined as a bank that is granted a digital banking license may represent itself to the public as such in connection with its business name. They were included as one of the classification of banks and may perform any or all of the following services:

- Grant loans, whether secured or unsecured;

- Accept savings and time deposits, including basic deposit accounts;

- Accept foreign currency deposits;

- Invest in readily marketable bonds and other debt securities, commercial papers and accounts receivable, drafts, bills of exchange, acceptances or notes arising out of commercial transactions;

- Act as correspondent for other financial institutions;

- Act as collection agent for non-government entities;

- Issue electronic money products subject to the guidelines provided under Sec. 702;

- Issue credit cards;

- Buy and sell foreign exchange; and

- Present, market, sell and service microinsurance products subject to the guidelines provided under Sec.113-B.

  With prior Monetary Board approval and subject to such guidelines as may be established by it, digital banks may perform other activities not covered by the foregoing enumeration.

Existing banks may apply for conversion to a digital bank subject to the following:

- To convert their existing banking license to digital banking license. Said banks shall comply with the applicable requirements for a digital bank and submit an acceptable plan which shall address how the transition to a digital bank shall be managed.

- Existing banks converting to digital banks shall be given a period of three years from approval of the Monetary Board within which to meet the minimum capital requirement and implement the transition plan, including divestment or closure of branches or branch lite units.

  In the case of an existing bank with up to 60% of its voting stock held by a foreign individual or non-bank corporation, such stockholding may be retained or reduced, but once reduced, shall not be increased thereafter beyond 40% of the voting stock.

- Upon receipt of notice of approval of conversion, the bank shall no longer engage nor renew transactions under authorities not associated with those allowed for a digital bank.

- Within six months from date of receipt of notice of approval of its application for conversion, the bank shall:

  1. Phase-out all inherent powers and activities under special authorities not normally associated to a digital bank; and

  2. Submit the pertinent amended Articles of Incorporation and By-Laws duly registered with the Securities and Exchange Commission (SEC).

- The bank shall start operation as a digital bank after approval by the SEC of the bank's amended Articles of Incorporation and By-Laws, compliance with all the conditions of approval of the conversion, and issuance by the Bangko Sentral of a Certificate of Authority to Operate.

- Failure to comply with these requirements shall subject the bank to the appropriate enforcement action provided under Section 002 of the MORB.

The Monetary Board may limit the total number of digital banks that may be established taking into account the total number of applications received and the assessment of the overall banking situation.

Bureau of Customs

Implementing Rules and Regulations for Sections 4(S), 4 (CC), 4(ZZZ), and Section 18 of the "Bayanihan to Recover as One Act"

CAO No. 12-2020 provides for the Implementing Rules and Regulations for Sections 4(S), 4 (CC), 4(ZZZ), and Section 18 of the "Bayanihan to Recover as One Act".

CAO No. 12-2020

- The CAO covers importations of health products, equipment, or supplies in Section 4, paragraphs (s), (cc), and (zzz) and Section 18 of Republic Act (RA) No. 11494, otherwise known as "Bayanihan to Recover as One Act" ("the Act").

- Pursuant to Section 4 (cc) and 4 (zzz) of the Act, the importation of products, equipment or supplies deemed as critical or needed to carry out the policy declared in the Act and other goods necessary to aid in the COVID-19 public health emergency shall be exempt from duties, taxes, and fees, including Personal Protective Equipment (PPE); Laboratory equipment and its re-agents; Medical equipment and devices; Support and maintenance for laboratory and medical equipment; Surgical equipment and supplies; Medical supplies, tools, and consumables; COVID-19 testing kits; and others as may be identified by the Department of Health and other relevant government agencies.

- Pursuant to Section 18 of the Act, the grant of exemption for goods under Section 4 (cc) of the Act shall be deemed to be in effect since RA No. 11469 expired or beginning 25 June 2020. Thus, all covered and qualified shipments which arrived and were cleared by the Bureau of Customs (BOC) from 25 June 2020 subject to refund, shall be processed pursuant to the provisions of CAO No. 04-2019 *(Guidelines on Duty Drawback, Refund and Abatement)* and its related issuances.

    1. For purposes of the refund, the covered and qualified shipment must secure a Tax Exemption Indorsement ("TEI") from the Department of Finance-Revenue Office ("DOF-RO). The amount of refund shall be limited to actual duties and taxes received by the BOC.

    2. The CAO No. 04-2019 provides for the rules and procedure on the application for refund under certain situations only stated and listed in the said order.

- The following policy shall be applied to the importation covered by this CAO:

    1. The issuances of the Food and Drug Administration (FDA) and other regulatory agencies with regard to the requirements and clearances of goods covered under this Order shall be complied with, unless inconsistent with the provision of this Act.

    2. Imported health products for donation, duly certified by the regulatory agency or their accredited third party in the originating countries with established regulation, shall automatically be cleared.

    3. The waste management equipment and technologies and services being imported shall be approved by the Department of Environment and Natural Resources (DENR), Department of Health (DOH), or other concerned agencies.

    4. The Department of Trade and Industry (DTI) must certify that the equipment and supplies necessary for the manufacture of essential goods related to the containment or mitigation of COVID 19 being imported are not locally available or of insufficient quality and preference.

- Customs clearance procedure for importations of medical equipment and supplies for commercial purposes shall be in accordance with existing rules and regulations issued by the BOC; provided, that the actual value of the imported goods shall determine whether the clearance procedure is under formal or informal entry process.

- The shipments entitled to exemption under Section 4(cc) and 4(zzz) of the Act may be released under Provisional Goods Declaration (PGD) subject to the submission of the TEI from the DOF-RO within the period prescribed under the rules of PGD.

- The grant of exemption shall only cover importations which arrived and were cleared by the BOC upon the effectivity of the Act until 19 December 2020. This is without prejudice, however, to Section 4 (cc) of the Act which is effective beginning 25 June 2020 and the privilege granted to importers under Section 121 (on duty and tax free treatment of Relief Consignment) or 800 (m) (Conditionally Tax and/or Duty-Exempt Importation of donated goods for the account of the government or any duly registered relief organization, etc.).

- CAO 12 – 2020 shall take effect immediately after publication.

(Editor's Note: CAO 12-2020 is yet to be published)

Revocation of CMO No. 11-2010: Temporary Delegation by Export Coordination Group (ECD) to Export Division (ED) the function of pre-evaluation of exporters and their export products for certificate of origin issuance purposes

CMO No. 28-2020 provides for the revocation of CMO No. 11-2010, the Temporary Delegation by ECD to ED the function of pre-evaluation of exporters and their export products for certificate of origin issuance purposes

CMO No. 28-2020

- CMO 28-2020 aims to inform public of the permanent withdrawal and revocation of the temporary delegation by Export Coordination Division (ECD) to Export Division (ED) of the function of pre-evaluation of exporter and their export products. It shall now be reverted to the ECD as its original function as provided under CMO No. 2-2010.

RCEP Agreement

The RCEP is a free trade agreement signed by 15 countries on 15 November 2020.

RCEP Agreement dated 15 November 2020

- The objective of the RCEP is to establish a modern, comprehensive, high-quality and mutually beneficial economic partnership framework to facilitate the expansion of regional trade and investment and contribute to global economic growth and development.

- The parties-signatories are: Australia, Brunei, Cambodia, China, Indonesia, Japan, Lao, Malaysia, Myanmar, New Zealand, Philippines, Singapore, South Korea, Thailand, Vietnam

- The RCEP discusses among others, Rules of Origin, Customs Procedures and Trade Facilitation (CPTF), Sanitary and Phytosanitary Measures (SPS), Standards, Technical Regulations, and Conformity Assessment Procedures (STRACAP), Trade Remedies, Trade in Services, Temporary Movement of Natural Persons (MNP), Investment, Intellectual Property, Electronic Commerce, Competition, Small and Medium Enterprises (SMEs), Economic and Technical Cooperation (ECOTECH), Government Procurement.

Imposition of penalties, surcharges, interests and other charges for lifting, claiming, or recovering part of the proceeds in the sale of impliedly abandoned goods.

CAO No. 13-2020 provides for the penalties, surcharges, interests and other charges for lifting, claiming or recovering part of the proceeds in the sale of impliedly abandoned goods

CAO No. 13-2020

- The CAO covers all impliedly abandoned goods, whether for consumption, warehousing, admission or transshipment.

- The following goods are considered impliedly abandoned:

    1. Failure to lodge/file the Goods Declaration:

        - After the lapse of the original 15 calendar days or as adjusted by the Commissioner, from the Date of Discharge of the Last Package;

        - After the lapse of the approved extension of 15 calendar days;

2. Failure to pay the assessed duties and taxes:

    - After 15 calendar days from Final Assessment;

    - In case of regulated goods which are subject to an alert order, within 15 calendar days from Final Assessment from the receipt of the Order of the Release and Lifting the Alert or Order Lifting the Alert;

3. Failure to submit the required documents, permits or clearances, or information under the following instances, whichever comes first:

    - In case of provisional Goods Declaration, within 45 calendar days from date of lodgment or after the lapse of the approved extension of 45 calendar days; or

    - Within 15 calendar days from Final Assessment in case of regulated importation.

4. Failure to claim the:

    - Goods within 30 days from payment of the assessed duties, taxes, fees, interests and other charges;

    - Passenger's baggage within 30 calendar days from arrival thereof or payment of the assessed duties, taxes and other charges;

    - Mail matter within 30 calendar days from the third delivery of notice card to the addressee or claimant;

5. Failure to mark the goods within 30 calendar days after receipt of Notice to Mark from the District Collector concerned;

6. Failure to withdraw:

    - Imported raw materials or imported goods within 1 year from date of arrival at the customs bonded warehouse (CBW);

    - Perishable Goods within 3 months from the date of arrival at the CBW;

    - Perishable Goods after the lapse of the approved extension of 3 months to withdraw the goods from the CBW.

- The implied abandonment of goods may be lifted by the District Collector upon request by the owner, importer, or consignee, subject to the payment of fees and charges in accordance with the schedule provided under this CAO.

- Claiming of impliedly abandoned goods may be requested by the owner, importer or consignee by paying the fees and charges therefor.

    1. The owner, importer or consignee may reclaim the impliedly abandoned imported goods by lodging/filing the corresponding goods declaration, subject to the following conditions:

        - The subject goods have not been disposed by the BOC;

        - The goods declaration is lodged within 30 calendar days after the lapse of 15 calendar days period to file;

- The duties, taxes and other charges are paid in full;
- The charges and fees due to the port or terminal operator have been paid in full;
- The expenses incurred before the release of the imported goods from customs custody have been paid in full; and
- Compliance with pertinent legal requirements.

2. Where the owner, importer or consignee intends to claim the proceeds of the sale after deduction of duties, taxes and other charges and expenses incurred, the claimant may file a request at the Office of District Collector within 30 calendar days from payment of the auction price by the winning bidder, subject to review by the Commissioner or Secretary of Finance, as the case may be.

- The schedule of applicable penalties, surcharges, interests and other charges imposed for the lifting, claiming, or recovery of proceeds in the sale of impliedly abandoned goods are provided for in the CAO.
- CAO 13-2020 shall take effect 15 calendar days after its publication.

(Editor's Note: CAO 13-2020 was published on 11 December 2020 in Daily Tribute*, p.B12)*

Local Government Units

DBM-DOF-DILG JMC No. 2 provides for the policy guidelines on the implementation of certain provisions of RA No. 11494 ("Bayanihan to Recover As One Act").

DBM-DOF-DILG Joint Memorandum Circular No. 2 dated 4 December 2020

Among the policy guidelines provided in the DBM-DOF-DILG JMC No. 2 relates to the deadlines for the payment of local taxes, fees, and charges, pursuant to Section 4 (tt) of RA No. 11494.

- Section 2.6.1 of the JMC provides that the payment of all local taxes, fees, and charges with statutory deadlines that fall on or after 14 September 2020 shall be extended until 19 December 2020.
- No interest, surcharge, or any form of penalty shall be applied on any local tax, fee, or charge accruing on or due and demandable during the period provided in Section 2.6.1.
- All local tax delinquencies prior to the effectivity of RA No. 11494 shall remain, and shall be due and demandable upon the expiration of the deadline set in Section 2.6.1. The applicable interest, penalties and surcharges shall begin to run again, if due and demandable, after the lapsing of the effectivity of RA No. 11494.
- LGUs are encouraged to provide incentives and/or privileges to taxpayers and business establishments, particularly those extending assistance and providing essential services for COVID-19 response, in accordance with RA No. 7160 and other applicable laws and policies.

The JMC likewise provides for the waiving of all permits, licenses, clearances, and registration requirements for Infrastructure Flagship Projects identified by the National Economic and Development Authority.

- All LGU permits, licenses, clearances, and registration requirements for infrastructure flagship projects identified by the NEDA shall be deemed waived for a period of 1 year from effectivity of RA No. 11494, provided, that permit requirements relating to environmental laws, health, and occupational safety shall continue to be applicable and subject to a processing time of 7 working days.

- All local treasurers shall not assess and collect the fees and charges for such permits, licenses, clearances, and registration requirements.

- The reckoning period for waiving local government permits, licenses, clearances, and registration requirements for infrastructure flagship projects identified by NEDA shall be from 14 September 2020 to 13 September 2021.

SEC Opinions and Issuances

Basis of Preparation of Audited Financial Statements for BSP-supervised Financial Institutions (BSFIs)

The SEC approved the adoption of an industry-specific financial reporting framework by BSFIs, as modified by the application of the financial reporting reliefs issued by the BSP and approved by the SEC.

SEC Memorandum Circular No. 32 Series of 2020 dated 17 November 2020

To provide relief to industries impacted by the COVID-19 pandemic, the SEC approved the adoption by BSP-supervised financial institutions ("BSFIs") of an industry-specific financial reporting framework, as modified by the application of the financial reporting reliefs issued by the BSP and approved by the SEC.

- BSFIs have the option to prepare their financial statements using the industry-specific framework under this circular, or the full Philippine Financial Reporting Standards (PFRS) for the duration and terms allowed by BSP.

- BSFIs which opt to adopt the industry-specific framework should specify in the "Basis of Preparation of the Financial Statements" section of the financial statements the reliefs availed of and indicate that the availment covers only current-year transactions. The circular prescribes wordings that should be complied with.

- A qualitative disclosure of the impact of the availed reliefs should be disclosed. Other information that should be provided in tabular format in the Note to Financial Statements that contains the "Basis of Preparation of the Financial Statements" are:

    1. For staggered booking of allowances for credit losses:

        - Impact on the affected financial statement line items if the allowance was measured and recorded in accordance with PFRS

        - Amount of allowance recognized/amortized for the period

        - Balance of unrecognized (unamortized) allowance

2. For reclassification of debt securities measured at fair value to amortized cost category, a disclosure of the impact on the affected financial statement line items had the reclassification not been made.

- Entities have the option to take either the full retrospective or the modified retrospective approach in doing the above adjustments when it reverts to full PFRS after the period of relief.

- The PFRS, as modified by the application of the financial reporting reliefs issued by the BSP and approved by the SEC, shall form part of the applicable financial reporting framework for the purpose of preparing and filing general-purpose financial statements with the SEC pursuant to the Revised Securities Regulations Code (SRC) Rule 68.

- BSFIs which may avail of these reliefs but for whom the impact on the financial statements is deemed not material may still represent in the notes that the financial statements are presented in full compliance with PFRS. Under such circumstance, the disclosure requirements for such reliefs are not mandatory.

- Where the external auditor has been engaged to perform an audit engagement in accordance with Philippine Standards of Accounting (PSA) on these annual financial statements which have been prepared using PFRS as modified by the application of the financial reporting reliefs issued by the BSP and approved by the SEC, the external auditor shall reflect in the opinion paragraph that the financial statements are prepared in accordance with the compliance framework described in the notes to the financial statements. The external auditor shall also include an Emphasis of Matter paragraph in the auditor's report to draw attention to the basis of accounting that has been used in the preparation of the financial statements.

Amendments to the Implementing Rules and Regulations (IRR) of the Investment Company Act, as Amended

To align with global standards and practices to develop the Philippine capital market, to help prepare investment companies to qualify and compete in cross-border transactions, and to ensure adequate protection to shareholders and unitholders, the SEC promulgated amendments to the IRR of the Investment Company Act, as amended.

SEC Memorandum Circular No. 33 Series of 2020 dated 27 November 2020

The amendments to the Investment Company Act IRR include:

- Updates to the definitions of Collective Investment Schemes and Custodians;

- Creation of an Independent Oversight Committee to monitor the transactions and functions carried out by the Fund Manager;

- A requirement for a minimum subscribed and paid-up capital of P1,000,000 for an investment company which is part of a group of investment companies managed by the same fund manager;

- Revised requirements and additional responsibilities for Fund Managers and Custodians;

- Requirement to appoint a Net Asset Value Calculator;

- Revised rules on Money Market Funds, specifying details on allowed hedging arrangements; and

- Revised liquidity requirements.

(Editor's Note: This circular was published in the Philippine Star *and* Manila Standard *on 5 December 2020 and took effect on 20 December 2020.)*

Deferral of the Philippine Interpretation Committee (PIC) Question & Answer No. 2018-12 and IFRS Interpretations Committee (IFRIC) Agenda Decision on Over Time Transfer of Constructed Goods for Real Estate Industry

The SEC deferred the application of the provisions of the PIC Q&A No. 2018-12 on the accounting for significant financing component and the exclusion of land in the calculation of POC and IFRIC Agenda Decision on Over Time Transfers of Constructed Goods under PAS 23-Borrowing Cost for another period of 3 years, or until 2023.

SEC Memorandum Circular No. 34 Series of 2020 dated 15 December 2020

To allow the real estate industry more time to assess implementation issues in light of the COVID-19 pandemic, the SEC deferred the application of the provisions of the PIC Q&A No. 2018-12 with respect to the accounting for significant financing component and the exclusion of land in the calculation of POC and IFRIC Agenda Decision on Over Time Transfers of Constructed Goods under PAS 23-Borrowing Cost for another period of three (3) years, or until 2023.

- A real estate company may opt not to avail of any of the relief provided above and comply in full with the requirements of PIC Q&A 2018-12 and IFRIC Agenda Decision in respect of the relief not availed of.

- Real estate companies which opted for the deferral shall be required to disclose in the Notes to the Financial Statements the accounting policies applied, a discussion of the deferral of the subject implementation issues, and a qualitative discussion of the impact in the financial statements had the concerned application guidelines been adopted. Should any of the deferral options result in an accounting policy change, such accounting change will have to be accounted for under Philippine Accounting Standard 8, *Accounting Policies, Changes in Accounting Estimates and Errors*, i.e., retrospectively, together with the corresponding required quantitative disclosures.

- The regulatory relief, once adopted and recorded for financial reporting purposes, are not considered in accordance with PFRS. Real estate companies which opt to avail of the deferral shall specify in the "Basis of Preparation of the Financial Statements" section of the financial statements the relief availed of and indicate that the financial statements are prepared in accordance with PFRS, as modified by the application of the above financial reporting reliefs. The circular prescribes wordings that should be complied with.

- Where the external auditor has been engaged to perform an audit engagement in accordance with PSA on these financial statements which have been prepared using PFRS as modified by the application of the financial reporting relief issued and approved by the SEC, the external auditor shall reflect in the opinion paragraph that the financial statements are prepared in accordance with the compliance framework described in the notes to the financial statements. The external auditor shall also include an Emphasis of Matter paragraph in the auditor's report to draw attention to the basis of accounting that has been used in the preparation of the financial statements.

SEC-OGC Opinion No. 20-03 dated 23 November 2020

To engage in a secondary business purpose which is in furtherance of a corporation's primary business purpose, only the approval of the majority of the members of the Board of Directors or Trustees is required.

Facts:

A Co. is a domestic stock corporation, the primary purpose of which is to extend loans, credit, or any and all types of financial accommodation from its own capital funds or from funds sourced from not more than nineteen (19) other persons, including its own stockholders, and to do any and all acts that may be directly or indirectly necessary for the furtherance of its primary purpose. A Co. plans to engage in credit card activities as part of investing its corporate funds in a similar purpose. Its Board of Directors approved the amendment of the Articles of Incorporation ("AOI") of A Co. to include credit card activities as part of its secondary purposes.

Issue:

Is stockholders' ratification required to add credit card activities as a secondary business purpose?

Ruling:

No. Under Section 41 of the Revised Corporation Code, a private corporation may invest its funds for any purpose other than the primary purpose for which it was organized, when approved by a majority of the Board of Directors and ratified by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock at a meeting duly called for the purpose. However, where the investment by the corporation is reasonably necessary to accomplish its primary purpose as stated in the AOI, the approval of the stockholders shall not be necessary.

Republic Act No. 10870, or the Philippine Credit Card Industry Regulation Law, defines a credit card as any card or other credit device intended for the purpose of obtaining money, property, or services on credit. Such grant of loans/credit through the issuance of use of credit cards is an activity which is reasonably necessary in furtherance of A Co.'s primary purpose which is to extend loans, credit, or any and all types of financial accommodation. Thus, the approval of the majority of A Co.'s Board of Directors will suffice.

As the SEC Main Office, Satellite Offices, and Extension Offices continue to operate at limited capacity and implement alternative work arrangements due to the COVID-19 pandemic, the SEC has updated its list of email addresses and interim hotline numbers.

SEC Notice Series of 2020 dated 27 November 2020

The public may reach the SEC through the email addresses and interim hotline numbers provided in this issuance during office hours. The SEC plans to set up more interim hotlines.

The SEC extends the deadline for submission of primary and alternative email addresses and cellular phone numbers until 22 February without penalty.

SEC Notice Series of 2020 dated 28 December 2020

Registered entities have until 22 February to comply with the requirements of SEC Memorandum Circular 28, Series of 2020 to submit their primary and alternative email addresses and cellular phone numbers. The online submission via MC28_S2020@sec.gov.ph may be done on or before the deadline without penalty. Hard copies may be filed via submission to or appointment with the Information Communication Technology Department – Electronic Records Management Division (ICTD-ERMD) Receiving Unit or through SEC Express Nationwide Submission using an accredited courier or through the Philippine Postal Office.

Corporations, associations and partnerships with certificates of registration issued after 23 January 2021 have 30 days from the issuance of the certificate of registration to comply with SEC MC 28, without penalty.

CTA Decisions

Assessment

Anapi Multi-Purpose Cooperative vs. Commissioner of Internal Revenue, BIR Regional Director, Region 12, Bacolod City
CTA Case No. 9787 promulgated 16 November 2020

Jurisprudence dictates that all presumptions are in favor of the correctness of a tax assessment. It is to be presumed, however, that such assessment was based on sufficient evidence.

Facts:

Cooperative A is a multi-purpose agriculture cooperative duly organized in accordance with Philippine laws. On 16 July 2009, a Preliminary Assessment Notice (PAN) was issued against Cooperative A for taxable year 2006, based on the Authorization Allowing the Release of Refined Sugar (AARSS) issued to Cooperative A without payment of advance VAT, pursuant to Section 6 (b) of the Tax Code.

On 9 December 2010, an amended Formal Letter of Demand (FLD)/Final Assessment Notice (FAN) were issued against Cooperative A, demanding payment of assessed taxes representing deficiency VAT and compromise penalty for taxable year 2006. A Final Decision was issued providing that Cooperative A is liable for VAT since the BIR Ruling which grants tax exempt status in its favor as a producer, is null and void due to the misrepresentation of Cooperative A. It is argued that based on the Listing of Official Warehouse Receipt Quedan, Cooperative A is not the planter-producer of refined sugar.

Issues:

Is Cooperative A liable to pay the alleged deficiency VAT and compromise penalties?

Ruling:

No. The assessment is based on alleged "BIR data" stating that Cooperative A withdrew refined sugar for taxable year 2006, but the BIR failed to attach or show any breakdown of this alleged withdrawn refined sugar. Neither did the BIR explain how it computed this total amount. Thus, absent sufficient evidence to support the assessment, the presumption of correctness of assessment no longer applies.

Hence, the assessment must be cancelled.

Moreover, records show that there is a stamp indicating that said documents were mailed on 22 December 2010. Thus, the BIR had 3 years from 22 December 2010 or until 22 December 2013 within which to collect the said assessed deficiency VAT. The BIR, however, only issued the warrant of Distraint and/or Levy on 8 March 2018 and served the same on 14 March 2018, while the warrants of Garnishment were issued on 16 March 2018. Clearly, these collection efforts by the BIR were way beyond 22 December 2013, and therefore prescribed.

Merely citing the wrong provision of the Tax Code, and failure to specify the kind and amount of tax would not readily result in the nullification of the waivers of the defense of prescription. Moreover, deficiency interest is imposed for the shortage of taxes paid, while delinquency interest is imposed for the delay in payment of taxes. Hence, having different nature for their existence, double imposition of interests cannot be assailed as the law itself allows the simultaneous imposition of these two kinds of interests.

UPS-Delbros Transport, Inc. vs. Commissioner of Internal Revenue
CTA EB Case No. 2026 promulgated 19 November 2020

Facts:

On 4 September 2006, a Letter of Authority (LOA) was issued authorizing the named revenue officers to examine Company A's books of accounts and other accounting records for calendar year (CY) 2005.

On 8 December 2008, Company A received a Preliminary Assessment Notice (PAN) with attached Details of Discrepancies dated 5 December 2008 assessing it for alleged deficiency income tax, VAT, EWT for CY2005. On 12 December 2008, Company A filed its reply to the PAN.

Meanwhile, on different dates, Company A executed three Waivers of the Defense of Prescription (Waivers) under the Statutes of Limitation of the Tax Code.

On 29 June 2010, Company A received the Final Assessment Notice (FAN) and subsequently received on 8 May 2015 the Final Decision on Disputed Assessment (FDDA) demanding payment of deficiency taxes despite the protests filed. With the issuance of a FDDA, Company A filed a Petition for Review before the Court on 5 June 2015.

The Court cancelled the deficiency income tax and VAT assessments but ordered Company A to pay the deficiency EWT and the 25% surcharge. In addition, the Court ordered Company A to pay interest.

Issues:

1. Are the waivers valid?

2. Are the simultaneous imposition of the deficiency and delinquency interests correct?

Ruling:

1. Yes. Merely citing the wrong provision of the Tax Code, and failure to specify the kind and amount of tax would not readily result in the nullification of the waivers.

   Section 222(b) of the Tax Code provides that the period to assess and collect taxes may only be extended upon a written agreement between the BIR Commissioner and the taxpayer executed before the expiration of the three-year period. A valid waiver of the statute of limitations under the Tax Code, must be: (1) in writing; (2) agreed to by both the BIR Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. Revenue Memorandum Order (RMO) No. 20-90 and Revenue Delegation Authority Order (RDAO) No. 05-01 laid down the procedures for the proper execution of a waiver.

   The citation of the wrong provisions of the Tax Code could easily pass as an inadvertent typographical error. At any rate, Company A executed the waivers and should have copied the template provided in RDAO 05-01. While regrettably, the wrong provisions cited escaped the scrutiny of the BIR, both parties were not exactly faultless and Company A cannot benefit from the infirmity in the waivers.

2. Yes. There is no double imposition of civil interests as Section 249 of the Tax Code, clearly distinguishes deficiency interest from delinquency interest.

   As to when the deficiency and delinquency interests legally accrue, Section 249 (B) and (C)(3) of the Tax Code, evidently states that the deficiency interest on any deficiency tax shall be assessed *"from the date prescribed for its payment until the full payment thereof"*; while the assessment of the delinquency interest that is imposed upon failure to pay a deficiency tax, or any surcharge or interest thereon, shall be reckoned from *"the due date appearing in the notice and demand of the Commissioner until the amount is fully paid."*

   Clearly, these two interests are different in nature. Deficiency interest is imposed for the shortage of taxes paid, while delinquency interest is imposed for the delay in payment of taxes. Hence, having different nature for their existence, double imposition of interests cannot be assailed as the law itself allows the simultaneous imposition of these two kinds of interests.

   Moreover, the Tax Reform for Acceleration and Inclusion Act (TRAIN Law) introduced a substantial modification on the rate of interest vis-à-vis the end date of the accrual of interest for both deficiency and delinquency interest. The TRAIN law now prescribes 12% interest (double the legal interest rate for loans or forbearance of money), instead of the 20% per annum under the Tax Code. Thus, for deficiency taxes which became due prior to the effectivity of the TRAIN Law on 1 January 2018 and full payment thereof will only be made after the said effectivity date, the interest rate of 20% shall be applied for the period up to 31 December 2017 and 12% shall be applied for the period starting 01 January 2018 until full settlement thereof.

Commissioner of Customs, Bureau of Customs vs. RMJR Grains Center Corporation
CTA EB No. 2113 promulgated 23 November 2020

From 1 July 2012 to 24 July 2014, the Philippines was not authorized to impose import permit requirements for importation of rice within the country pursuant to the rules on Special Treatment based on WTO Trade Agreement on Agriculture.

Facts:

On 3 November 2013, shipment containers containing bags of white rice consigned to Company R arrived from Thailand on board different vessels. Company R paid the duties and taxes on the shipments. The Manila International Container Port (MICP) of the Bureau of Customs (BOC) conducted an examination of said shipments.

Upon examination, said shipments were discovered to contain excess importation of white rice. Company R paid the amounts appearing in the assessment notices. The BOC released to Company R the shipments but withheld several containers not covered by import permits. The BOC issued a Warrant of Seizure and Detention against the withheld containers. On 21 January 2015, the excess rice importations of Company R were the subject of sale via auction.

Issue:

Are the importations of white rice valid?

Ruling:

Yes. The Philippines became a member of the General Agreement on Tariffs and Trade (GAAT) on 27 December 1979. The WTO Trade Agreement prohibits the use of quantitative restrictions (QRs) and from using discretionary import licensing, or the discretionary grant or refusal of a country's authorities to issue documents necessary for the importation of goods, as part of its policies on imported goods.

Despite the prohibition against the use of QRs, Article 15 of the WTO Trade Agreement on Agriculture provided a safety net for developing country members by mandating a flexible application of the WTO Trade Agreement in their case. Consequently, developing nations, such as the Philippines, are entitled to a Special Treatment (i.e., exemption) on the general prohibition against QRs for the first 10 years of its membership, which may be re-negotiated for extensions. As long as the Special Treatment is in effect, developing countries may impose QRs, such as discretionary import licensing, on importations of goods into their jurisdictions.

The Philippines negotiated and was able to request for an extension of the Special Treatment from 1 July 2005 to 31 June 2012. After this period, the Philippines negotiated again for an extension but was only able to successfully obtain the said extension on 24 July 2014.

Thus, the Philippines did not enjoy the Special Treatment from the general prohibition against QRs from 1 July 2012 to 24 July 2014. Accordingly, it could not impose any import or license requirement during this interval. As the rice importations by Company R occurred on 3 November 2013, it is covered by the interregnum. This means that Company R, for the specified period, lawfully imported rice without obtaining any import permit or other license from the government.

Hotel Specialist (Tagaytay), Inc. vs. Commissioner of Internal Revenue
CTA EB No. 2084 promulgated 25 September 2020

The payment of the assessed deficiency withholding tax after the issuance of the FDDA would not entitle the taxpayer to claim the same as deduction.

Facts:

On 11 July 2014, the Commissioner of Internal Revenue (CIR) issued a Preliminary Assessment Notice (PAN) to Company H for alleged deficiency income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), and expanded withholding tax (EWT) for calendar year 2009.

On 14 April 2016, Company H received the Final Decision on Disputed Assessment (FDDA) from the CIR stating that the due date for the payment of the assessment is on 30 April 2016. Company H paid the undisputed portion of the assessment only on 10 May 2016.

Company H claims that since it paid the assessed deficiency EWT and WTC after the issuance of the FDDA, the assessment item of "disallowed expense due to non-withholding" should already be deleted.

Issue:

Can Company H claim the expense as deduction if the assessed deficiency EWT and WTC were paid after the issuance of the FDDA?

Ruling:

No. At the time Company H paid the undisputed items of assessment in the FDDA on 10 May 2016, Revenue Regulations (RR) No. 12 – 2013 was the governing rule on deductibility of expenses for which withholding tax were only paid at the time of the audit investigation or reinvestigation/reconsideration. Based on RR No. 12 – 2013, deduction will not be allowed notwithstanding payment of withholding tax at the time of the audit investigation or reinvestigation/reconsideration.

Moreover, even if such payment is to be considered due to subsequent repeal of RR No. 12 – 2013 by RR No. 6 – 2018, which reinstated the rule allowing the deduction if the payment was made at the time of the audit investigation or reinvestigation/ reconsideration, Company H may not still claim the deduction since it only paid the deficiency EWT and WTC after the FDDA's issuance and not at the time of the audit investigation or reinvestigation/reconsideration.

The time prescribed for the taxpayer to pay the deficiency withholding taxes in order to claim the expense as deduction is very clear in limiting the same to the time of the audit investigation or reinvestigation/reconsideration. If the CIR and the Secretary of Finance deemed it appropriate to include the period extending prior to the filing of an appeal to the Court of Tax Appeals, they could have easily provided so in the subject RR.

When the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

Refund/Issuance of Tax Credit

Prime Investment Korea Inc. vs. Commissioner of Internal Revenue
CTA Case 9814 promulgated 19 November 2020

PAGCOR's income from operations of other related services, including junket gaming operations, is subject to corporate income tax and not to the five percent (5%) franchise tax, pursuant to Section 14 (5) of P.D. No. 1869, as amended and R.A. No. 9337. PAGCOR's contractees and licensees shall likewise pay corporate income tax for income derived from such "other related services," including income from junket operations.

Facts:

On 3 July 2013, Company A and the Philippine Amusement and Gaming Corporation (PAGCOR) entered into a Junket Agreement, providing Company A the Grant of Authority pursuant to Presidential Decree (P.D.) No. 1869 to conduct junket gaming operations at PAGCOR's Casino Filipino-Midas. on 13 September 2013, Company A and PAGCOR executed a Supplement to Junket Agreement.

The above Grants of Authority were extended and renewed on 10 June 2016.

On 14 April 2016, Company A filed its Annual Income Tax Return (ITR) (BIR Form No. 1702-RT) for taxable year 2015 and paid the income tax due thereon on 15 April 2016.

On 12 April 2018, Company A filed with the BIR Large Taxpayers Service an administrative claim for refund or issuance of tax credit certificate (TCC) relative to the alleged erroneously, wrongfully, illegally or excessively paid corporate income tax on e-junket gaming revenues for taxable year 2015.

Due to inaction on the part of the BIR, Company A filed a Petition for Review before the CTA on 13 April 2018.

Issues:

1. Are the revenues from junket gaming operations exempt from income tax?

2. Was Company A entitled to claim for refund the alleged erroneously paid income tax?

Ruling:

1. No. PAGCOR's income from operations of other related services, including junket gaming operations, is subject to corporate income tax and not to the 5% franchise tax, pursuant to Section 14 (5) of P.D. No. 1869, as amended and R.A. No. 9337.

   R.A. No. 9337, which withdrew the income tax exemption of PAGCOR under R.A. No. 8424, merely reinstated PAGCOR's tax liability on income from other related services.

   PAGCOR's contractees and licensees shall likewise pay corporate income tax for income derived from such "other related services," including income from junket operations. Section 14 (5) of P.D. No. 1869 is clear in stating that any income that may be realized from these related services shall not be included as part of the income for the purpose of applying the franchise tax, but the same shall be considered as a separate income and shall be subject to income tax.

2. No. Company A, as a contractee of PAGCOR by virtue of the Junket Agreement and Supplement to Junket Agreement executed between them, is not exempt from payment of corporate income tax for income derived from its junket gaming operations and thus not entitled to a claim for refund.

Carmen Copper Corporation vs. Commissioner of Internal Revenue
CTA EB No. 2161 promulgated 25 November 2020

A BOI Certification issued pursuant to the Guidelines on the issuance of BOI Certification per Revenue Memorandum Order No. 9-2000 entitled 'Tax Treatment of Sales of Goods, Properties and Services made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters with 100% Export Sales' dated 2 February 2020 is not sufficient to prove that the taxpayer-applicant has export sales for purposes of claiming input VAT refund.

Facts:

Company C is engaged in the business of mining ores and other mineral resources. Company C filed its quarterly VAT Return for the 1st quarter of taxable year (TY) 2014 on 25 April 2014. On 30 March 2016, Company C filed an administrative claim for refund of its alleged excess and unutilized input VAT payments for the 1st quarter of TY 2014.

To prove its zero-rated sales, Company C alleged that its BOI Certification is sufficient evidence that it has exported its copper concentrates.

Issue:

Is Company C entitled to the refund?

Ruling:

No. The BOI Certification issue to Company C is not sufficient to prove that its sales are subject to zero-rated VAT. It must be emphasized that the said BOI Certification was issued pursuant to Revenue Memorandum Order (RMO) No. 9 – 2000, which provides that the BOI Certification is furnished by the BOI-registered buyers to its suppliers as proof of authority for the supplier to avail of the VAT zero-rating for its sales to said BOI-registered buyers.

Evidently, the BOI Certification issued to Company C was not issued to attest to its export sales in connection with its claim for input VAT refund, but rather, the said BOI Certification mainly serves as authority for the suppliers of Company C to avail of the VAT zero-rating of their sales to Company C. Thus, the BOI Certification is not sufficient proof to establish that Company C's sales is subject to VAT zero-rating.

Bank of the Philippine Islands vs. Commissioner of Internal Revenue
CTA EB No. 2126 promulgated 2 December 2020

Section 3(c)(4)(a) of RR No. 9-2000 provides that, in loan agreements, the banking institution has the obligation to pay the DST due thereon.

Facts:

Company A, a banking institution, entered into an Amended and Restated Loan Agreement with Company B. Company A advanced to Company B an amount not exceeding P15 billion.

Also, Company A entered into an Omnibus Notes Facility and Security Agreement with Company C in which the former agreed to advance the latter an amount not exceeding P10 billion.

Pursuant to the agreements above, Company B loaned from Company A some amount in which the former issued a promissory note. Likewise, Company C drew some amount from Company A and issued a Rate Note to evince its indebtedness.

On 30 September 2015, Company C filed a Documentary Stamp Tax (DST) Return covering Company A's credit commitment. On 2 October 2015, Company B also filed a DST Return based on the amount of its loan. On 5 October 2015, Company A remitted to the BIR the amounts representing DST on its transactions with Company B and Company C.

On 1 February 2017, Company A filed separate administrative claims with the BIR for the refund of the DST allegedly overpaid on the subject transactions.

Due to the BIR's inaction, Company A filed its judicial claim before the Court of Tax Appeals (CTA). The CTA in Division denied the Petition. The CTA in Division likewise denied the Motion for Reconsideration.

Issue:

Is Company A entitled to its claim for refund?

Ruling:

No.

Section 3(c)(4)(a) of Revenue Regulations (RR) 9-2000 is more than clear. Company A, as the banking institution in the agreements it entered with Company B and Company C, has the obligation to pay the DST due thereon. As an exception, if Company A is exempt from payment of DST, its payment of such taxes would only be in the capacity of a collecting agent. However, this is not Company A's case. Considering the aforementioned provisions of RR 9-2000, Company A's DST payments on the subject loan transactions were only proper. As it would appear, it was Company B and Company C that mistakenly paid the DST on their transactions when the obligation to do so devolved upon Company A.

Hedcor Sabangan, Inc. vs. Commissioner of Internal Revenue
CTA EB No. 2085 promulgated 2 December 2020

A COC from the ERC is an indispensable requirement for generation companies to claim input VAT refund.

Section 6 of the EPIRA provides that the sale of generated power by generation companies shall be zero-rated. Section 4(x) of the same law states that, a generation company 'refers to any person or entity authorized by the ERC to operate facilities used in the generation of electricity.' Corollarily, to be entitled to a refund or credit of unutilized input VAT attributable to the sale of electricity under the EPIRA, a taxpayer must establish: (1) that it is a generation company, and (2) that it derived sales from power generation.

Facts:

Company H is a domestic corporation which primary purpose is to engage in the business of owning, developing, constructing, operating, repairing, and maintain of hydroelectric power plant systems, renewable and indigenous power generation plants and other types of power generation and/or converting stations, and to act as holding company or joint venture partners or investors in the business of developing, operating and/or owning power generation plants and/or converting stations. It is authorized by the ERC to operate facilities used in the generation of electricity, as evidenced by a COC.

Company H requested a refund of its excess and unutilized input VAT refund covering the period from 2nd Quarter of calendar year (CY) 2013 to the 2nd Quarter of CY 2015. Its claim for input VAT refund was partially granted by BIR.

Subsequently, Company H appealed the denial of its claim for input VAT refund.

Issue:

Is Company H entitled to its claim for refund?

Ruling:

No.

A COC is a proof that a generation facility is authorized by the ERC to engage in the generation of electricity. Without a COC, there can be no proof that a generation facility is authorized by the ERC to generate electricity, which is a primordial requirement to be entitled to VAT zero-rating sales of electricity under the *EPIRA Law*.

Company H is not entitled to its claim for input VAT as it did not possess the requisite COC when the sales of electricity were made. Without the COC, the sales of electricity during the 2nd Quarter of CY 2015 did not quality as zero-rated sales under the *EPIRA Law*.

Even assuming that Company H is a Registered Renewable Energy (RE) Developer, it is not allowed to claim input VAT refund because as an RE Developer, it is entitled to VAT zero-rating of both its sales of electricity generated from renewable energy and local purchases. Considering that no VAT should have been passed on to it in the first place. Company H's sole recourse would be to demand reimbursement from its local suppliers for the VAT it paid on its purchases.

In order to be considered a NRFC doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certificate of Non-Registration of Corporation/Partnership and Proof of Incorporation/Association/ Business Registration in a foreign country and that there is no other indication that would disqualify said entity in being classified as NRFC.

AIG Shared Services Corporation (Philippines) vs. Commissioner of Internal Revenue
CTA Case No. 9351 promulgated 2 December 2020

Facts:

Company A, a duly registered Regional Operating Headquarters (ROHQ), filed an administrative claim for tax refund/issuance of Tax Credit Certificate (TCC) for the excess and unutilized input taxes attributable to its VAT zero-rated transactions for the short period 1 to 31 December 2013.

Due to inaction from the BIR, Company A filed the instant Petition for Review on 16 May 2016.

Issue:

Is Company A entitled to its claim for refund?

Ruling:

Yes (partially).

Company A presented the related Certification of Non-Registrations of its client-affiliates issued by the Philippine SEC, printed screenshots of foreign government website and consularized certificates of foreign registration, in order to prove that its client-affiliates are NRFC doing business outside the Philippines. The Court held that, in order to be considered a NRFC doing business outside the Philippines, each entity must be supported, at the very least, by both SEC Certificate of Non-Registration of Corporation/Partnership and Proof of Incorporation/Association/ Business Registration in a foreign country and that there is no other indication that would disqualify said entity in being classified as NRFC.

The Court cannot give credence or probative value to the printed screenshots of foreign government websites database considering that such can be easily manipulated and none from the said foreign governments attested to the authenticity of the said websites and to the registration of the purported Company A's foreign clients found therein. More importantly, said printed screenshots fail to establish that the said clients are not doing business here in the Philippines.

Hence, most of Company A's clients were not considered as NRFC doing business outside the Philippines for its failure to present both or valid SEC Certification of Non-Registration and the articles of association/certificates of incorporation stating that the clients are registered to operate in their respective home countries, outside the Philippines. The Court also noted that, though the Company was able to show both the SEC Certification of Non-registration and the consularized Foreign Registration, the names indicated in these documents are inconsistent.

Commissioner of Internal Revenue vs. Bahay Bonds 2 Special Purpose Trust
CTA EB No. 2142 promulgated 7 December 2020

In order to promote the securitization of the mortgage and housing-related receivables of the government housing agencies as may be determined by the Housing and Urban Development Coordinating Council (HUDCC) and the Department of Finance (DOF), the yield or income of the investor from any low-cost or socialized housing-related Asset-Backed Securities (ABS) shall be exempt from income tax.

Facts:

Company A is a special purpose trust (SPT) with a special purpose vehicle status under Republic Act (RA) No. 9267, otherwise known as "The Securitization Act of 2004". Company A entered into a securitization plan with Company B, whereby the latter will transfer to the former, on a without recourse basis, a select pool of long-term secured residential loans. In order to fund its purchase of residential loans from Company B, Company A issued ABS. The HUDCC confirmed that Company B's loan portfolio constitutes a low-cost and socialized housing package.

Pursuant to the Securitization Plan, the Home Guaranty Corporation (HGC) issued a cash flow guarantee for the residential loan sold by Company B to Company A. On 3 August 2012, Company B obtained BIR Ruling No. 516-2012 stating that the subject ABS are deemed deposit substitutes, and interest income derived from said securities are subject to final withholding tax (FWT). As such, Company A started withholding FWT on the interest income derived from the ABS. On 10 August 2016, Company A filed an administrative claim for refund on the FWT remitted to the BIR from 26 August 2014 to 25 May 2016.

Issue:

Is Company A entitled to its claim for refund?

Ruling:

Yes.

RA 9267 was enacted to promote the development of the capital market by supporting securitization. Section 33 of the said law provides that any income or yield generated by a Special Purpose Entity (SPE) shall be exempt from income tax if the income or yield is earned by an investor from any low-cost or socialized housing related-ABS. Moreover, Section 19 of RA No. 8763, the law establishing the HGC, expressly exempts, to a certain extent, from all taxation interests and yields earned or accumulated on mortgage, debentures, bonds, notes, mortgage and asset-backed securities, interest under a lease, and other credit instruments, whether issued by HGC or covered by its guaranty in favor of natural or juridical person. Clearly, the cited provisions of RA 9267 and RA No. 8763 clearly exempts income, interest and yields of Company A from taxation.

Wells Fargo Enterprise Global Services, LLC – Philippines vs. Commissioner of Internal Revenue
CTA EB No. 2087 promulgated 14 December 2020

Facts:

Company A is duly licensed Philippine branch office of a foreign entity. Company A is engaged in the provision of engaged in providing administrative back office, call center, information technology, support, training and other allied services related to the foregoing services.

On 24 February 2017, Company A filed an administrative claim for refund, which the BIR denied.

Issue:

Is Company A entitled to its claim for refund?

Ruling:

The sale of goods or properties between PEZA-registered entities are VAT-exempt, as provided for under Revenue Memorandum Circular (RMC) No. 74-99. Notably, there is no distinction made as to whether or not the goods are to be used for a PEZA-registered activity. Hence, a determination thereon becomes immaterial as the exemption is not dependent thereon.

The VAT exemption of PEZA-registered enterprises flows from the legal fiction establishing Ecozones as foreign territories under Section 8 of RA No. 7916, as amended, and not by virtue of the special tax incentives granted to them under Section 24 of the same law. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered activities.

What is vital is that the PEZA-registered enterprise purchasing the goods is located and operating within the Ecozone. For as long as the PEZA-registered purchaser is located and operating within the Ecozone, sellers from another Ecozone, or from the Customs Territory, cannot pass on any output VAT for any sale of goods or services destined for consumption within the Ecozone.

The sale of goods or properties between PEZA-registered entities are VAT-exempt pursuant to RMC No. 74-99. Notably, there is no distinction as to whether or not the goods are to be used for a PEZA-registered activity. Hence, a determination thereon becomes immaterial as the exemption is not dependent thereon.

The VAT exemption of PEZA-registered enterprises flows from the legal fiction establishing Ecozones as foreign territories under Section 8 of RA No. 7916, as amended, and not by virtue of the special tax incentives granted to them under Section 24 of the same law. Such being the case, it is not essential that the sale of goods to PEZA-registered enterprises be directly connected to its registered activities. What is vital is that the PEZA-registered enterprise purchasing the goods is located and operating within the Ecozone. For as long as the PEZA-registered purchaser is located and operating within the Ecozone, sellers from another Ecozone, or from the Customs Territory, cannot pass on any output VAT for any sale of goods or services destined for consumption within the Ecozone.

The exemption referred to above, means that the sale of goods or property is not subject to VAT (output tax) and the buyer is not allowed any tax credit on VAT (input tax) previously paid. The person making the exempt sale of goods or properties shall not bill any output tax to his VAT-exempt customers because the said transaction is not subject to VAT. Thus, a VAT-registered purchaser of goods, properties or services that is VAT-exempt, is not entitled to any input tax on such purchases despite the issuance of a VAT invoice or receipt.

In the instant case, Company A's purchases of capital goods from Company X, another PEZA-registered entity, are VAT-exempt. Company A, as a PEZA-registered entity, should not have paid input VAT on such purchases of goods from a PEZA-registered supplier, because such purchases are VAT-exempt. That is, it cannot be subjected to output VAT by the seller and no input VAT can be passed on to the buyer in the transaction, regardless of whether or not, the purchase is directly connected to its PEZA-registered activities. Thus, Company A cannot claim input VAT refund on its purchases of capital goods from Company X, another PEZA-registered entity.

Company A's only recourse is to recover the amount it paid for input VAT from its supplier of goods who imposed the same on its purchases.

Violation of Tax Code

People of the Philippines vs. Cross Country Oil and Petroleum Corp.
CTA EB Case No. CRIM-071 promulgated 4 December 2020

Failure to serve the LOA within 30 days from the date of issuance renders the assessment void for having been issued from an invalid audit investigation. Hence, the period to file the protest will not commence and the assessment will not reach its finality.

Facts:

The BIR filed a case against the President (P) and Treasurer (T) of Company A for violation of the Tax Code arising from the alleged refusal of P and T to pay the deficiency tax liabilities of Company A, which have become final and executory due to Company A's failure to file a Protest.

Company A argues that the findings of tax deficiency never reached finality for being void due to the revenue officer's lack of authority to conduct the audit under a valid Letter of Authority (LOA), considering that the LOA was served after the lapse of the mandatory 30-day period from the date of issuance.

Issue:

Is the assessment against Company A valid?

Ruling:

No. The assessments were void for having been issued based on a void LOA. Failure to serve the LOA on time is in direct contravention to revenue Audit Memorandum (RAMO) No. 1-00 which requires the LOA to be served within 30 days from the date of issuance. Without an assessment arising from a valid audit investigation, the period to file the protest does not commence and the assessment did not reach finality.

In absolving P and T from the said crime, the Court found that the BIR failed to prove that Company A is required to pay the assessed deficiency taxes on the ground that the assessment issued by the BIR are null and void.

Supreme Court Cases

Commissioner of Internal Revenue v. Bank of the Philippine Islands
Supreme Court Second Division G.R. No. 227049 promulgated 16 September 2020

The CTA has the authority to take cognizance of "other matters" arising from the Tax Code and other laws administered by the BIR, which necessarily includes rules, regulations and measures on collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and to prescribe additional requirements for tax administration and enforcement.

Facts:

In a letter dated 6 May 1991, the Commissioner of Internal Revenue (CIR) sent Assessment Notices to Citytrust Banking Corporation (Citytrust) for deficiency tax assessments for the taxable year 1986.

The assessments came after Citytrust executed three waivers of the Statute of Limitations under the National Internal Revenue Code (Tax Code) dated 11 August 1989, 12 July1990, and 8 November 1990 to extend the prescriptive period for the CIR to issue an assessment.

On 30 May 1991 and 17 February 1992, Citytrust protested the assessments.

On 4 October 1996, Citytrust and Bank of the Philippine Islands (BPI) entered into a merger agreement, wherein BPI emerged as the surviving corporation. Hence, the CIR sought to collect from BPI the deficiency taxes through a Warrant of Distraint and/or Levy (WDL), which was received by BPI on 4 November 2011. BPI sought to cancel the WDL before the Court of Tax Appeals (CTA) and asked the CTA to declare the right of the BIR to issue assessments as having prescribed and to cancel the assessments.

Issues:

1. Does the CTA have jurisdiction over BPI's petition?

2. Did the CIR timely issue assessments against Citytrust for deficiency EWT, WTD, DFT, and WTC for taxable year 1986?

3. May the CIR still collect the unpaid taxes?

Rulings:

1. Yes, the CTA has jurisdiction over BPI's petition. The law expressly vests the CTA the authority to take cognizance of "other matters" arising from the then 1977 Tax Code and other laws administered by the BIR, which necessarily includes rules, regulations and measures on collection of tax. Tax collection is part and parcel of the CIR's power to make assessments and to prescribe additional requirements for tax administration and enforcement.

2. No, the CIR's right to assess has already prescribed. The waivers were invalid due to the absence of CIR's signature and only the BIR's right to assess EWT and DFT have not prescribed. Although the Tax Code allowed the parties to execute a waiver of the three-year Statute of Limitations for tax assessment, it is essential that the form prescribed by the applicable tax regulations is complied with. Both parties, the taxpayer and the CIR, must signify their assent in extending the assessment period considering that this is essential to the validity of a contract under the Civil Code, and not merely a formal requirement under tax rules.

3. No, the BIR may no longer collect the alleged deficiency taxes. Under the 1977 Tax Code, any internal revenue tax which has been assessed within the period of limitation may be collected by distraint and/or levy within three years [now five years under the 1997 Tax Code] following the assessment of the tax. While the

reckoning point is not clear, the latest possible time the CIR could have released the assessment was the same day Citytrust protested the same (or on 30 May 1991). Thus, the CIR had until 30 May 1994 within which to collect the taxes. The CIR's answer to the present petition (which can be considered as a judicial action for collection of tax) was filed only in 2011, and therefore, out of time. While taxes are the lifeblood of the nation, tax authorities cannot be allowed an indefinite period to assess and/or collect alleged unpaid taxes.

Editor's note: At present, waivers are considered accepted when any of the following signs the waiver - the CIR, official/s previously designated in existing issuances, revenue district officer or group supervisor designated in the letter of authority/memorandum of assignment.

RMO No. 14-16 dated 4 April 2016, as reiterated by RMC No. 141-2019 dated 20 December 2019, provides that the waiver is a unilateral and voluntary undertaking which shall take legal effect and be binding on the taxpayer immediately upon execution. As such, it shall be the duty of the of the taxpayer to submit the waiver to the CIR, official/s previously designated in existing issuances, RDO or group supervisor designated in the letter of authority/memorandum of assignment who shall then indicate acceptance by signing the same.

Further, the waiver is no longer required to be in the form prescribed by applicable tax regulations. The taxpayer may utilize any form, and failure to follow the prescribed form will not invalidate the executed waiver.

Commissioner of Internal Revenue vs. T Shuttle Services, Inc.
Supreme Court Second Division G.R. No. 240729, promulgated 24 August 2020

Service of the PAN or the FAN may be made by registered mail. In such a case, it is presumed that the notice directed and mailed was received in the regular course of mail. This presumption may, however, be disputed, in which case, the burden is shifted to the CIR to establish that the mailed notice was actually received by the taxpayer.

The FAN must contain a demand for payment within a specific period as this signals the time when penalties and interests begin to accrue against the taxpayer, and this enables the taxpayer to determine his remedies. Failure to indicate such demand and the prescribed period to pay renders the assessment void.

Facts:

The Bureau of Internal Revenue (BIR) issued to T Shuttle a Letter Notice (LN) for Calendar Year (CY) 2007.

On 29 March 2010, the CIR issued a Preliminary Assessment Notice (PAN) to T Shuttle.

On 20 July 2010, the CIR issued a Final Assessment Notice (FAN). The last paragraph of the FAN indicates that the CIR would still issue a formal letter of demand and assessment notice should T Shuttle fail to respond to the FAN within 15 days.

The Revenue District Officer (RDO) then issued a Preliminary Collection Letter, and then, a Final Notice Before Seizure (FNBS).

On 20 March 2013, T Shuttle sent a letter to the RDO and the collection officers stating that it is not aware of any pending liability for CY 2007 and that Mr. B. Benitez who signed and received the preliminary notices was a disgruntled rank-and-file employee not authorized to receive the same and that Mr. Benitez did not forward the notices to it. T Shuttle requested for a grace period of one month to review its documents, which was denied by the RDO.

Issues:

1. Are the deficiency tax assessments void for failure of CIR to prove that the PAN and FAN were duly received by T Shuttle?

2. Is the FAN void for not containing a definite due date for the payment of alleged deficiency taxes?

Ruling:

1. Yes, the deficiency tax assessments are void for failure of CIR to prove that the PAN and FAN were duly received by T Shuttle.

   Section 228 of the Tax Code requires that the taxpayer must be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

   Section 3 of Revenue Regulations (RR) No. 12-99 provides for the due process requirement in the issuance of a deficiency tax assessment. Hence, service of the PAN or the FAN may be made by registered mail. The presumption under the Rules of Court that "a letter duly directed and mailed was received in the regular course of mail" may be disputed. The burden is shifted to the CIR to establish that the notice was actually received by the taxpayer.

   Since T Shuttle categorically denied due receipt of the PAN and the FAN, the burden to prove that the mailed assessment notices were received by T Shuttle or its authorized representative is shifted to the CIR. Mere presentation of registry receipts are not sufficient to prove this. The witnesses for the CIR failed to establish that T Shuttle received the PAN and FAN.

   Revenue Memorandum Order (RMO) No. 40-2019 dated 30 May 2019 states that a detailed record of all assessment notices issued by the CIR is required. Under the said RMO, the Chief of the Assessment Division or the Head of the Reviewing Office is required to record the name of the taxpayer/person who received the assessment notice as well as the position/designation/relationship of the recipient to the taxpayer, if not served to the taxpayer named in the assessment notice. Although the RMO was not yet in force at the time when the PAN and FAN were issued, the issuance of the RMO affirms the necessity of complying with due process in the service of assessment notices to the taxpayer.

2. Yes, the FAN is void for not containing a definite due date for the payment of alleged deficiency taxes.

   The FAN must contain a demand for payment within a specific period as this signals the time when penalties and interests begin to accrue against the taxpayer, and this enables the taxpayer to determine his remedies. The CTA found that the subject assessments did not contain a definite period within which to pay the assessed taxes.

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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.